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15  
 16 **UNITED STATES DISTRICT COURT**  
 17 **NORTHERN DISTRICT OF CALIFORNIA**

19 ADL FITNESS, LLC,  
 20 on behalf of itself and other similarly situated,

21 Plaintiff

22 v.

24 MARKEL INSURANCE COMPANY,

25 Defendant.

**COMPLAINT**

CLASS ACTION

1 **COMPLAINT**

2 Plaintiff ADL Fitness, LLC (“Plaintiff”), individually and on behalf of the other members  
3 of the below-defined class (collectively, the “Class”), brings this declaratory relief class action  
4 against Defendant Markel Insurance Company (“Markel”).

5 **I. INTRODUCTION**

6 1. COVID-19 has interrupted businesses nation-wide, causing itself, or through issuance  
7 of government orders, devastating losses to Plaintiff and other policyholders.

8 2. Defendant is obligated to cover Plaintiff’s losses under the terms of the insurance  
9 contract it issued to Plaintiff, which is identical in all material respects to those policies issued to  
10 other Class Members.

11 3. Although COVID-19 is caused by virulent virus strain, SARS-CoV-2, that is novel  
12 to humans, the damage it inflicts is the type of physical damage covered by “all risk” policies such  
13 as those issued by Markel. The virus’s inherent danger is its physical presence.

14 4. Plaintiff purchased insurance coverage from Defendant to protect against the risk  
15 of losses from the suspension of its businesses. Plaintiff purchased an insurance policy that  
16 included “Business Income” coverage that broadly covered risks due to closure, shut down, or  
17 slowdown of Plaintiff’s business.

18 5. The policy also included “Extra Expense” coverage, that provides for additional  
19 costs and expenses that are necessary to continue operations after an interruption to business  
20 operations has occurred.

21 6. The Special Property Coverage Form also includes “Civil Authority” coverage,  
22 which applies when a civil authority such as the Governor of California or local authority takes  
23 action that prohibits physical access to covered businesses premises.

24 7. “Civil Authority” coverage is implicated by the COVID-19 epidemic because the  
25 virus was physically present at businesses and other public places near Plaintiff’s and Class  
26 Members’ businesses.

27 8. Plaintiff’s business, and its premises, were physically damaged by the presence of  
28

1 the virus that causes COVID-19. Plaintiff's business was suspended by the presence of the virus  
2 and Plaintiff was required to take measures to prevent further interruption and damage.

3 9. Defendant has broadly refused to pay any amount of coverage for claims made under  
4 the Business Income, Extra Expense, or Civil Authority coverage. These refusals were not made on  
5 the basis of any of Plaintiff or Class Members' individual circumstances. On information and belief,  
6 the refusal to pay is uniform and is part of Defendant's business strategy.

7 10. Plaintiff and Class Members have tendered claims under the Business Income, Extra  
8 Expense, Civil Authority, and any and all other applicable coverage related to the virus that causes  
9 COVID-19, but Defendant has refused to pay.

## 10 **II. JURISDICTION AND VENUE**

11 11. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, because  
12 Defendant and at least one Class member are citizens of different states, and because the Class  
13 consists of at least 100 members and the amount in controversy exceeds \$5,000,000 exclusive of  
14 interest and costs.

15 12. Venue is proper in this District under 28 U.S.C. § 1391, because Defendant conducts  
16 business in this District, Class Members are likely located in this District, and certain of the acts  
17 and conduct giving rise to the claims occurred within the District.

## 18 **III. PARTIES**

19 13. Plaintiff ADL Fitness, LLC is located at 1855 Holmes Street in Livermore, CA  
20 94550. Plaintiff's sole member and manager similarly resides in Alameda County, California.

21 14. Plaintiff owns and operates an Anytime Fitness franchise located in Livermore.

22 15. Defendant Markel Insurance Company ("Markel") has its headquarters located at  
23 Ten Parkway North in Deerfield, Illinois 60015. Markel is authorized to write, sell, and issue  
24 insurance policies providing property and business income coverage in California and throughout  
25 the United States.

1 **IV. FACTUAL ALLEGATIONS**

2 16. Defendant issued Plaintiff Policy No. HCP20020595-06, attached as Exhibit A and  
3 incorporated by reference. On information and belief, this policy is similar in all material respects  
4 to policies issued to other Class Members.

5 17. Plaintiff's Policy contains coverage for Business Income, Extra Expense, and Civil  
6 Authority.

7 18. The "Covered Property" under Defendant's policy is located at 1855 Holmes Street  
8 in Livermore, California.

9 19. Defendant's policy contains a Special Property Coverage Form that is an "all risk"  
10 policy that covers all "direct physical loss of or damage to" the Covered Property.

11 20. "All risk" policies cover all damage from all sources unless it is specifically  
12 excluded.

13 **A. Business Income Coverage**

14 21. With respect to Business Income, Markel "will pay for the actual loss of Business  
15 Income you sustain due to the necessary 'suspension' of your 'operations' during the 'period of  
16 restoration'. The 'suspension' must be caused by direct physical loss of or damage to property at  
17 premises that are described in the Declarations of the policy to which this endorsement is attached."

18 22. "Suspension" is defined in Markel policies as "1. The shutdown or cessation of your  
19 business activities; or 2. That a part or all of the described premises is rendered untenable"

20 23. "Period of restoration" means the period of time that "[b]egins ... (1) 72 hours after  
21 the time of direct physical loss or damage for Business Income coverage; or (2) Immediately after  
22 the time of direct physical loss or damage for Extra Expense coverage; caused by or resulting from  
23 any Covered Cause of Loss at the described premises; and [e]nds the earlier of: (1) The date when  
24 the property at the described premises should be repaired, rebuilt or replaced with reasonable speed  
25 and similar quality; or (2) The date when business is resumed at a new permanent location.

26 24. As alleged herein, "Business Income" is net income that Plaintiff would have earned  
27 or incurred, and continuing normal operating expenses incurred, including payroll. "Extra Expense"

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1 are costs that Plaintiff incurred during the “period of restoration” of the Covered Property that would  
2 not have been incurred if there had been no direct physical loss or damage to the Covered Property.

3 25. By the Business Income coverage, Defendant agreed to pay for Plaintiff’s and Class  
4 Members’ actual losses business income suffered during the suspension of Plaintiff’s and Class  
5 Members’ businesses. Coverage runs through the “Period of Restoration,” which is ongoing due to  
6 direct physical loss from COVID-19.

7 26. Losses due to COVID-19 is a “Covered Loss” under the Policy.

8 **B. Extra Expense Coverage**

9 27. Under Markel policies “Extra Expense means the necessary expenses you incur  
10 during the ‘period of restoration’ that you would not have incurred if there had been no direct  
11 physical loss or damage to property caused by or resulting from a Covered Cause of Loss.”

12 28. Extra Expense coverage includes costs incurred to “[a]void or minimize the  
13 ‘suspension’ of business and to continue ‘operations’ at the described premises or at replacement  
14 premises or temporary locations, including relocation expenses and costs to equip and operate the  
15 replacement location or temporary location.” It also includes costs incurred to “[m]inimize the  
16 ‘suspension’ of business if you cannot continue ‘operations’.”

17 29. Extra Expense also includes costs “to repair or replace the property, but only to the  
18 extent it reduces the amount of loss that otherwise would have been payable under” Business Income  
19 coverage.

20 **C. Civil Authority Coverage**

21 30. Civil Authority coverage under Markel policies provides added Business Insurance  
22 and Extra Expense coverage when physical damage to nearby properties causes losses at Covered  
23 Property.

24 31. The policies provide that “[w]hen a Covered Cause of Loss causes damage to  
25 property other than property at the described premises, we will pay for actual loss of Business  
26 Income you sustain and necessary Extra Expense you incur caused by action of civil authority that  
27 prohibits access to the described premises, provided that both of the following apply: (i) Access to  
28

1 the area immediately surrounding the damaged property is prohibited by civil authority as a result  
2 of the damage, and the described premises are within that area but are not more than one mile from  
3 the damaged property; and (ii) The action of civil authority is taken in response to dangerous  
4 physical conditions resulting from the damage or continuation of the Covered Cause of Loss that  
5 caused the damage, or action is taken to enable civil authority to have unimpeded access to the  
6 damaged property.”

7 32. “Civil Authority Coverage for Business Income will begin 72 hours after the time of  
8 the first action of civil authority that prohibits access to the described premises and will apply for a  
9 period of up to four consecutive weeks from the date on which such coverage began.”

10 33. “Civil Authority Coverage for Extra Expense will begin immediately after the time  
11 of the first action of civil authority that prohibits access to the described premises and will end: (i)  
12 Four consecutive weeks after the date of that action; or (ii) When your Civil Authority Coverage for  
13 Business Income coverage ends; whichever is later.”

14 **D. COVID-19 Triggers Business Income, Extra Expense, and Civil Authority**  
15 **Coverage.**

16 34. The presence of a virus is a physical interaction with property, making it dangerous  
17 and less valuable. This damage is direct, in that the presence of virus particles alone is enough to  
18 make the property dangerous and less valuable.

19 35. There is also a direct physical loss of property, in that the property may not accessed  
20 and is untenable.

21 36. Persons infected with COVID-19 spread the virus through the release of virus  
22 particles in talking, breathing, coughing, and sneezing. A mere sneeze can spread millions<sup>1</sup> or  
23 even hundreds of millions<sup>2</sup> of virus particles. A little as a dozen particles can infect an adult.

24 37. Gyms are particularly dangerous during the COIVD-19 pandemic, as strenuous  
25 exercise enhances the risk of transmission, especially if an infected person is asymptomatic.

26 \_\_\_\_\_  
27 <sup>1</sup> <https://www.texastribune.org/2020/04/02/texas-er-doctors-demand-rapid-testing-coronavirus/>

28 <sup>2</sup> <https://acis.cals.arizona.edu/community-ipm/home-and-school-ipm-newsletters/ipm-newsletter-view/ipm-newsletters/2020/03/30/people-unite-against-the-threat-of-covid-19>

1 Asymptomatic spread of SARS-CoV-2 is common.

2 38. SARS-CoV-2 can live for days on surfaces such as doorknobs, faucet handles,  
3 counters, desks, and carpeting.<sup>3</sup>

4 39. A study from an intensive care unit in a hospital suggests that SARS-CoV-2 can  
5 travel around four meters through the air.<sup>4</sup>

6 40. Insurance carriers know that viruses cause damage to property.

7 41. In July 2006 the Insurance Services Office (“ISO”), a leading insurance industry  
8 advisory and ratings company, issued a circular that “introduces [a] new endorsement . . . Exclusion  
9 Of Loss Due To Virus Or Bacteria, which states that there is no coverage for loss or damage caused  
10 by or resulting from any virus, bacterium or other microorganism that induces or is capable of  
11 inducing physical distress, illness or disease.”

12 42. The July 2006 ISO circular explained “Disease-causing agents may render a product  
13 impure (change its quality or substance), or enable the spread of disease by their presence on interior  
14 building surfaces or the surfaces of personal property. When disease-causing viral or bacterial  
15 contamination occurs, potential claims involve the cost of replacement of property (for example, the  
16 milk), cost of decontamination (for example, interior building surfaces), and business interruption  
17 (time element) losses.”

18 43. The physical presence of COVID-19 caused “direct physical loss of or damage  
19 to” each “Covered Property” under the Policy, and the policies of the other Class members. COVID-  
20 19 damaged the “Covered Property” by requiring it to be shut down. It was necessary for Plaintiff  
21 to shut down business operations in the “Covered Property” due to the damage to its property and  
22 that of nearby property.

23 44. Additionally COVID-19 and the resulting pandemic led to “direct physical loss of”  
24 Plaintiff’s covered property.

25 45. The “Civil Authority” provisions of the Policy have likewise been triggered here.

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27 <sup>3</sup> <https://www.nejm.org/doi/full/10.1056/NEJMc2004973>

28 <sup>4</sup> [https://wwwnc.cdc.gov/eid/article/26/7/20-0885\\_article](https://wwwnc.cdc.gov/eid/article/26/7/20-0885_article)

1 The Governor of California has issued Executive Orders, including Executive Order N-33-20,  
2 that limit or reduce the normal business operations of businesses in Plaintiff's community.  
3 Governor Newsom's Proclamation of State of Emergency is authorized by Government Code  
4 Section 8625 which requires the Governor find the existence of the circumstances described in  
5 Government Code Section 8558(b). Those circumstances include "conditions of disaster or of  
6 extreme peril to the safety of persons and property" caused by conditions such as epidemics.  
7 Executive Order N-33-20, which ordered the closure of class members' businesses, is premised  
8 on a finding by the Governor of extreme peril to property as a result of the epidemic.

9 46. State and local government across the national have issued similar orders.

10 47. The orders issued by state and local governments limit and restrict business  
11 hours; require closure of certain businesses altogether; limit the number of guests that may be  
12 allowed inside a business premises at one time; and require distancing between patrons that  
13 imposes additional limits on business operations.

14 48. The premise of all these orders is that the virus that causes COVID-19 is  
15 physically present in proximity to Plaintiff's Covered Property. Due to the omnipresence of the  
16 virus, executive orders were issued due to the "community spread" of COVID-19. Community  
17 spread was only possible because the virus that causes COVID-19 was physically present in  
18 public places and businesses in Newport Beach and across the nation.

19 49. Due to these executive orders, Plaintiff and Class Members could not access their  
20 businesses on Covered Property.

21 50. Plaintiff and Class Members lost Business Income and paid Extra Expense as a result  
22 of COVID-19.

23 51. Plaintiff submitted a claim to Defendant, but Defendant has denied Plaintiff's claim.

24 52. Defendant's denial of Plaintiff's claim is part of a common plan or business policy  
25 that applies to all Class Members. Defendant will not pay any claims related to COVID-19 as a  
26 matter of corporate policy.

27 **E. No Exclusion Prevents the Possibility of Coverage.**

28

1           53. Plaintiff's policy states "[w]e will not pay for loss or damage caused by or resulting  
2 from any virus, bacterium or other microorganism that induces or is capable of inducing physical  
3 distress, illness or disease."

4           54. This exclusion, entitled "EXCLUSION OF LOSS DUE TO VIRUS OR  
5 BACTERIA," does not apply to exclude the losses from the COVID-19 pandemic Plaintiff seeks  
6 recovery for here.

7           55. Plaintiff does not seek to recover for "loss or damage" caused or resulting from virus  
8 particles that may be at the Covered Property. Plaintiff's losses under the Business Interruption that  
9 it seeks to recover here are in the nature of income lost due to the presence of the COVID-19  
10 pandemic in California.

11           56. Plaintiff does not seek to recovery any amount of money for "loss or damage" to the  
12 Covered Property itself.

13 **V. CLASS ACTION ALLEGATIONS**

14           57. Plaintiff brings this action pursuant to Rules 23(a), and 23(b)(1), 23(b)(2), 23(b)(3)  
15 and/or 23(c)(4), of the Federal Rules of Civil Procedure, individually and on behalf of all others  
16 similarly situated. Plaintiff seeks to represent the following classes of Markel policyholders for  
17 purposes of obtaining declaratory judgement:

18           58. The "Business Income Class": All Anytime Fitness franchisees with Business  
19 Income coverage under an insurance policy issued by Markel that suffered an interruption of  
20 business due to COVID-19 at the premises covered by the business income coverage.

21           59. The "Extra Expense Class": All Anytime Fitness franchisees with Extra Expense  
22 coverage under a policy issued by Markel that paid or incurred costs in seeking to minimize the  
23 suspension of business in connection with COVID-19 at the premises covered by their Markel  
24 property insurance policy.

25           60. The "Civil Authority Class": All Anytime Fitness franchisees with Civil Authority  
26 coverage under a policy issued by Markel that suffered loss of Business Income and/or Extra  
27 Expense caused by an order closing businesses and public spaces due to COVID-19.

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1           61. Defendant and any of its members, affiliates, parents, subsidiaries, officers,  
2 directors, employees, successors, or assigns; governmental entities; and the Court staff assigned to  
3 this case and their immediate family members are excluded from each class.

4           62. Each of the Rule 23 requirements are satisfied here.

5           63. There is “numerosity” under Rule 23(a)(1) because Class Members are so  
6 numerous that joinder is impracticable. On information and belief Class Members consist of  
7 dozens or more of persons and entities across the United States.

8           64. Class Members are ascertainable because they can be readily identified based on  
9 Defendant’s records, including insurance policies issued by Defendant and electronic databases  
10 maintained by Defendant that identify Class Members by their names, policies, or other  
11 personally identifiable information, including their addresses and the Covered Property under  
12 their policies.

13           65. “Commonality” and “predominance” may be established under Rule 23(a)(2) and  
14 Rule 23(b)(3) because this action involves common issues of law and fact that determine  
15 coverage under the policies at issue here. Such questions include, but are not limited to:

- 16           • Whether Plaintiff and Class Members paid premiums in exchange for all-risk  
17 property policies containing Business Income, Extra Expense, and Civil Authority  
18 coverage;
- 19           • Whether Class Members suffered a covered loss based on the Business Income,  
20 Extra Expense, or Civil Authority coverage;
- 21           • Whether COVID-19 triggered a covered loss under the Business Income, Extra  
22 Expense, or Civil Authority coverage;
- 23           • Whether Defendant improperly denied claims for coverage under the Business  
24 Income, Extra Expense, or Civil Authority coverage based on the position these  
25 provisions do not cover COVID-19;
- 26           • Whether Defendant breached its obligations under insurance policies with Business  
27 Income, Extra Expense, or Civil Authority coverage by denying claims en masse;

- 1 • Whether Plaintiff and Class Members are entitled to a declaratory judgment that
- 2 COVID triggers coverage under Business Income, Extra Expense, or Civil
- 3 Authority coverage;
- 4 • Whether the “EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA” applies
- 5 in whole or in part to Plaintiff and Class Member’s claims under Markel’s policies;
- 6 and
- 7 • Whether Plaintiff and Class Members are entitled to attorneys’ fees, court costs,
- 8 and other costs incurred in prosecuting this class action litigation.

9 66. Plaintiff’s claims are typical of other Class Members’ claims for purposes of Rule  
10 23(a)(3) because, on information and belief, Defendant has issued blanked denials of coverage  
11 based on a uniform policy to not pay out claims for COVID-19 related claims for Business  
12 Income, Extra Expense, or Civil Authority coverage. Plaintiff’s injuries, like those of other Class  
13 Members, are caused directly by these denials of coverage.

14 67. Plaintiff is an adequate class member under Rule 23(a)(4) because Plaintiff’s  
15 interests are aligned with those of other Class Members. Plaintiff has retained counsel experienced  
16 in class action litigation, and insurance recovery. Plaintiff is willing, ready, and able to prosecute  
17 this action against Defendant on behalf of other policyholders.

18 68. For purposes of Rule 23(b)(1) and Rule 23(b)(3), maintaining a class action is  
19 superior to individual litigation of Business Income, Extra Expense, or Civil Authority coverage  
20 because of the inherent risk of inconsistent results on common factual and legal issues that arise  
21 from common facts. These coverage issues and Defendant’s position with respect to COVID-19  
22 should be determined on a representative basis to achieve efficiency and finality. Individual  
23 litigation will only result in delay and differing legal standards applying to the same challenged  
24 conduct.

25 69. For purposes of Rule 23(b)(2), Defendant’s actions are equally applicable to  
26 Plaintiff and Class Members such that the wrongdoing may be addressed by declaratory relief,  
27 including a declaratory judgment concerning coverage under Business Income, Extra Expense, or  
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1 Civil Authority coverage relating to COVID-19.

2 **VI. LEGAL CLAIMS**

3 **COUNT I**

4 **DECLARATORY JUDGMENT**

5 **(On Behalf of the Business Income Class)**

6 70. Plaintiff incorporates and re-alleges the allegations set forth above.

7 71. Plaintiff and Class Members paid premiums in exchange for a Markel property  
8 insurance contract that included Business Income coverage.

9 72. Coverage under the Business Income provisions of their Markel insurance contracts  
10 would compensate Plaintiff and Class Members for their injuries related to COVID-19.

11 73. Plaintiff and other Class Members have complied with all aspects of the policies  
12 issued by Markel.

13 74. For purposes of Business Income coverage, Defendant is required to pay claims  
14 related to COVID-19 because the virus caused physical damage to Plaintiff's and Class Members'  
15 Covered Property. Plaintiff and Class Members suffered lost profits or other covered amounts due  
16 to the suspension or interruption of their businesses at the damaged properties.

17 75. Defendant has denied COVID-19 related claims en masse, such that the Court can  
18 effectively issue a declaratory judgment that would give all Class Members relief in determining  
19 their rights with respect to Business Income coverage in their Markel policies.

20 76. An actual controversy exists between Defendant and Plaintiff and other Class  
21 Members because Plaintiff and Class Members contend, and Defendant denies, that there are  
22 claims for Business Income coverage under Markel policies.

23 77. Plaintiff and other Class Members are entitled to a declaratory judgment under 28  
24 U.S.C. § 2201 that (a) for purposes of Business Income coverage Plaintiff's and Class Members'  
25 losses incurred in connection with necessary interruption of their businesses due to the presence of  
26 COVID-19 and are insured losses; (b) Defendant is required to pay Plaintiff and other Class  
27 Members for the full amount of losses incurred for Business Income coverage.

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1 **COUNT II**

2 **DECLARATORY JUDGMENT**

3 **(On Behalf of the Extra Expense Class)**

4 78. Plaintiff incorporates and re-alleges the allegations set forth above.

5 79. Plaintiff and Class Members paid premiums in exchange for a Markel property  
6 insurance contract that included Extra Expense coverage.

7 80. Coverage under the Extra Expense provisions of their Markel insurance contracts  
8 would compensate Plaintiff and Class Members for their injuries related to COVID-19.

9 81. Plaintiff and other Class Members have complied with all aspects of the policies  
10 issued by Markel.

11 82. For purposes of the Extra Expense coverage, Defendant is required to pay claims  
12 related to COVID-19 because Plaintiff and Class Members paid or incurred costs in a period of  
13 restoration of their Covered Property because they took precautions; performed repairs; purchased  
14 equipment or other services due to COVID-19; or otherwise incurred expenses that were directly  
15 due to the interruption or suspension of their businesses.

16 83. Defendant has denied COVID-19 related claims en masse, such that the Court can  
17 effectively issue a declaratory judgment that would give all Class Members relief in determining  
18 their rights with respect to Extra Expense coverage in their Markel policies.

19 84. An actual controversy exists between Defendant and Plaintiff and other Class  
20 Members because Plaintiff and Class Members contend, and Defendant denies, that there are  
21 claims for Extra Expense coverage under Markel policies.

22 85. Plaintiff and other Class Members are entitled to a declaratory judgment under 28  
23 U.S.C. § 2201 that (a) for purposes of Extra Expense coverage, the amounts paid or incurred by  
24 Plaintiff and Class Members during the period of restoration of access to their Covered Property  
25 are insured losses; (b) Defendant is required to pay Plaintiff and other Class Members for the full  
26 amount of losses incurred for Extra Expense coverage.

27 **COUNT III**

**DECLARATORY JUDGMENT**

**(On Behalf of the Civil Authority Class)**

1  
2  
3 86. Plaintiff incorporates and re-alleges the allegations set forth above.

4 87. Plaintiff and Class Members paid premiums in exchange for a Markel property  
5 insurance contract that included Civil Authority coverage.

6 88. Coverage under the Civil Authority provisions of their Markel insurance contracts  
7 would compensate Plaintiff and Class Members for their injuries related to COVID-19.

8 89. Plaintiff and other Class Members have complied with all aspects of the policies  
9 issued by Markel.

10 90. For purposes of Civil Authority coverage, Defendant is required to pay for the lost  
11 profits other covered amounts that were caused by the issuance of orders, such as executive  
12 orders, closing and suspending business operations due to the physical presence of the virus that  
13 causes COVID-19 in close proximity to the Covered Property under Plaintiff's and Class  
14 Members' property policies issued by Markel.

15 91. Defendant has denied COVID-19 related claims en masse, such that the Court can  
16 effectively issue a declaratory judgment that would give all Class Members relief in determining  
17 their rights with respect to Civil Authority coverage in their Markel policies.

18 92. An actual controversy exists between Defendant and Plaintiff and other Class  
19 Members because Plaintiff and Class Members contend, and Defendant denies, that there are  
20 claims for Civil Authority coverage under Markel policies.

21 93. Plaintiff and other Class Members are entitled to a declaratory judgment under 28  
22 U.S.C. § 2201 that (a) for purposes of Civil Authority coverage, the interruption or suspension of  
23 Plaintiff's and Class Members' businesses have led to insured losses under their Markel policies;  
24 (b) Defendant is required to pay Plaintiff and other Class Members for the full amount of losses  
25 incurred for Civil Authority coverage.

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1 **VII. REQUEST FOR RELIEF**

2 Plaintiff, individually and on behalf of the other Class members, respectfully requests that  
3 the Court:

- 4 a. Enter judgment in their favor on all Counts;
- 5 b. Certify the proposed nationwide Classes, appoint Plaintiff as a representative of the  
6 Class, and designate Plaintiff's counsel as counsel for the Class;
- 7 c. Pay Plaintiff its losses and other amounts due under the Policy;
- 8 d. Direct Defendant to pay attorneys' fees and costs of suit; and
- 9 e. Order such other and further relief as may be just and proper.

10 **VIII. JURY DEMAND**

11 Plaintiff hereby demands a trial by jury on all claims so triable.

12

13 Dated: August 21, 2020

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**SCHNEIDER WALLACE COTTRELL  
KONECKY LLP**

15

/s/ Todd M. Schneider

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**ECF FILER’S ATTESTATION**

Pursuant to Local Rule 5-1(i)(3) of the Northern District of California regarding signatures,  
I attest the concurrence in the filing of this document has been obtained.

Dated: August 21, 2020

/s/ Matthew S. Weiler  
Matthew S. Weiler