

EXHIBIT A

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

11 GYM MANAGEMENT SERVICES, INC.,
12 a California corporation;
13 MUSCLEHEAD, INC., a California
14 corporation; MUSCLEBOUND, INC., a
15 California corporation; LOS ANGELES
16 CORPORATE FITNESS, INC., a
17 California corporation; THOUSAND
18 OAKS CORPORATE FITNESS, INC., a
19 California corporation; SIMI VALLEY
20 CORPORATE FITNESS, INC., a
21 California corporation; WEST COVINA
22 CORPORATE FITNESS, INC., a
23 California corporation; VALENCIA
24 CORPORATE FITNESS, INC., a
25 California corporation; SANTA ANITA
26 CORPORATE FITNESS, INC., a
27 California corporation; SANTA
28 BARBARA CORPORATE FITNESS, INC.

Case No.: 20STCV35460

**PLAINTIFF'S COMPLAINT AND
DEMAND FOR JURY TRIAL**

- 1. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
- 2. BREACH OF CONTRACT
- 3. NEGLIGENCE

1 California corporation; OXNARD
2 CORPORATE FITNESS, INC., a
3 California corporation; ANAHEIM
4 CORPORATE FITNESS, INC., a
5 California corporation; CARSON
6 CORPORATE FITNESS, INC., a
7 California corporation,

8 Plaintiffs,

9 vs.

10 VANTAPRO SPECIALTY INSURANCE
11 COMPANY, an Arkansas corporation;
12 CARE PROVIDERS INSURANCE
13 SERVICES LLC, a Texas Limited
14 Liability Corporation dba NSM
15 INSURANCE GROUP; and DOES 1-50,
16 inclusive

17 Defendants.

18 I.

19 INTRODUCTION

20 1. Business Interruption coverage is an optional insurance benefit available
21 to businesses to minimize their risk and sustain them when a suspension of business
22 operations causes a loss of business income. This coverage allows businesses to pay
23 continuing operating expenses, additional expenses incurred because of the suspension,
24 and supplement their lost business income.

25 2. As California Insurance Commissioner Ricardo Lara stated in a notice on
26 April 14, 2020 to all admitted and non-admitted insurance companies in California,
27 “small and large California businesses purchase Business Interruption insurance to
28

1 protect against the loss of income and other losses caused by an interruption to the
2 normal operations of the business.” (Exhibit 1).

3 3. For nearly the past six decades, Gold’s Gym has enjoyed a reputation for
4 providing Southern California residents with top-notch gyms and training facilities.
5 Since its birth in 1965, the brand has grown to international recognition with locations
6 worldwide. Its original location in Venice Beach is considered a sports landmark by
7 ESPN and is named on their list of the 100 most important sports venues.

8 4. Plaintiff Gym Management Services, Inc. (“GMS”) is the manager for the
9 largest domestic franchisee of Gold’s Gym clubs, with a total of 20 locations throughout
10 Los Angeles, Orange, Ventura, San Bernardino, and Santa Barbara counties. All
11 franchises managed by GMS are individually named in this Complaint.

12 5. GMS purchased, timely paid all premiums, and performed all duties
13 required of it to be performed under an “All Risk” commercial insurance policy issued
14 by Defendant, Vantapro Specialty Insurance Company (“Vantapro”), Policy No. 5075-
15 4251-00 (the “Policy”), attached hereto as Exhibit 2. Under an “All Risk” policy, all risks
16 of physical loss of or damage to property are covered unless specifically and
17 unambiguously excluded. Stated differently, all non-excluded perils are covered.

18 6. Each of the franchise locations managed by GMS are Named Insured(s) on
19 the Policy and were subject to its coverages.

20 7. The Policy included “Business Income (and Extra Expense)” coverage,
21 through which Vantapro promised it will “pay for the actual loss of Business Income
22 you sustain due to the necessary ‘suspension’ of your ‘operations’ . . . caused by direct
23 physical loss of or damage to property” (Exhibit 2, p. EX02-054).

24 8. Novel Coronavirus (“COVID-19”) originated in China in late 2019, spread
25 to Europe, and eventually came to the United States. Although COVID-19 was present
26 in California by late January 2020, all businesses and fitness centers, including GMS and
27 its franchise locations were allowed to remain open throughout February and the first
28 half of March. On January 30, 2020 the World Health Organization (the “W.H.O.”)

1 declared a public health emergency of international concern. On March 4, 2020,
2 California Governor Gavin Newsom proclaimed a State of Emergency to exist in
3 California “as a result of the threat of COVID 19” and one week later, on March 11,
4 2020, the W.H.O. made the assessment that COVID-19 could be characterized as a
5 pandemic.

6 9. On March 16, 2020, California’s Department of Public Health issued
7 directives to combat the spread of COVID-19, including a directive that all gyms and
8 health clubs should close. After the directives were issued, City and County officials in
9 the areas where Plaintiffs were located issued their own Orders specifically requiring
10 gyms to close. By March 18, 2020, all Plaintiffs had suspended their business operations
11 to comply with the Orders.

12 10. On March 19, 2020, Governor Newsom issued Executive Order N-33-20,
13 which ordered all individuals living in the State of California to stay at home or at their
14 place of residence, except as needed to maintain continuity of operations in designated
15 infrastructure sectors. Fitness centers and gyms were not among those types of
16 businesses that could continue operations after Executive Order N-33-20 was issued.

17 11. As a result of the government mandated closures, Plaintiffs suffered an
18 immediate loss of business income.

19 12. Plaintiffs promptly submitted a claim for their business income loss to
20 their insurer, Vantapro.

21 13. Engaging in the business of insurance in California imposes upon insurers
22 the legal obligation to promptly conduct fair, balanced and thorough investigations of
23 all bases of claims for benefits made by their insureds, with a view toward honoring the
24 claims. As part of these obligations, an insurance company is obligated to diligently
25 search for and consider evidence that supports coverage of the claimed loss, and in
26 doing so must give at least as much consideration to the interests of its insured as it
27 gives to its own interests.

28

1 14. During the COVID-19 Pandemic, Commissioner Lara issued a notice after
2 the California Department of Insurance “ha[d] received numerous complaints from
3 businesses, public officials, and other stakeholders asserting that certain insurers,
4 agents, brokers, and **insurance company representatives** [we]re attempting to dissuade
5 policyholders from filing a notice of claim under its Business Interruption insurance
6 coverage, or **refusing to** open and **investigate these claims** upon receipt of a notice of
7 claim” (Exhibit 1, p. EX01-001, emphasis added).

8 15. The Commissioner’s notice reminded insurers facing these claims of the
9 importance of complying with their obligations, citing the California Fair Claims
10 Settlement Practices Regulations. (Cal. Code Regs., tit. 10, §§ 2695.1 *et seq.* (hereinafter
11 referred to as “Regulations”)). His notice went on to state, “Therefore, Insurance
12 Commissioner Ricardo Lara finds it necessary to issue this Notice to ensure that all
13 agents, brokers, **insurance companies**, and other licensees accept, forward,
14 acknowledge, and **fairly investigate all business interruption insurance claims**
15 submitted by businesses” (Exhibit 1, p. 001-002, emphasis added). The Commissioner
16 stated that “every insurer is required to conduct and diligently pursue a thorough, fair,
17 and objective investigation of the reported claim.” (*Id.* at 002).

18 16. Amongst other information provided to insurers, the Commissioner
19 further reminded them that “[i]f the claim is denied in whole or in part, the insurer is
20 **required to** communicate the denial in writing to the policyholder **listing all the legal**
21 **and factual bases** for such denial. (Regulations, § 2695.7(b)(1)). Where the denial of a
22 first party claim is based on a specific statute, applicable law or policy provision,
23 condition, or exclusion, the written denial must include reference to and provide an
24 explanation of the application of the statute, applicable law, or policy provisions,
25 condition, or exclusion to the claim...Regulations, § 2695.7(b)(1)” (Exhibit 1, p. 003,
26 emphasis added).

27 17. Consistent with all of these well-established and non-controversial
28 California insurance claims handling standards, Plaintiffs had the right to rely on

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1 Vantapro to handle their insurance claim for business interruption losses in a manner
2 consistent with these standards of good faith and fair dealing. Unfortunately for
3 Plaintiffs, Vantapro failed in all respects and abruptly, unreasonably and with a callous
4 disregard for the interests of its insured, denied the claim in its entirety on June 19,
5 2020.

6 18. In order to obtain the benefits promised under its Policy and required by
7 California law, Plaintiffs were compelled to institute this lawsuit to pursue all available
8 remedies available to it.

9 **II.**

10 **PARTIES**

11 19. Plaintiff Gym Management Services, Inc. is, and at all relevant times was,
12 a California corporation. GMS provides management services for 20 Gold's Gym fitness
13 club franchises located in Los Angeles, Orange, Ventura, San Bernardino and Santa
14 Barbara counties. Though the gyms are all commonly administered by GMS and are
15 Named Insureds under the Policy, each individual location is a unique entity subject to
16 its own franchise agreement.

17 20. Plaintiff Musclehead, Inc. is, and at all relevant times was, a California
18 corporation doing business as Gold's Gym North Hollywood #0336.

19 21. Plaintiff Musclebound, Inc. is, and at all relevant times was, a California
20 corporation doing business as Gold's Gym Hollywood #0201.

21 22. Plaintiff Los Angeles Corporate Fitness, Inc. is, and at all relevant times
22 was, a California corporation doing business as Gold's Gym Downtown Los Angeles
23 #0563.

24 23. Plaintiff Thousand Oaks Corporate Fitness, Inc. is, and at all relevant
25 times was, a California corporation doing business as Gold's Gym Thousand Oaks
26 #0710.

27 24. Plaintiff Simi Valley Corporate Fitness, Inc. is, and at all relevant times
28 was, a California corporation doing business as Gold's Gym Simi Valley #0858.

1 25. Plaintiff Culver City Corporate Fitness, Inc. is, and at all relevant times
2 was, a California corporation doing business as Gold’s Gym Culver City #1038.

3 26. Plaintiff Fullerton Corporate Fitness, Inc. is, and at all relevant times was,
4 a California corporation doing business as Gold’s Gym Fullerton #1133.

5 27. Plaintiff West Covina Corporate Fitness, Inc. is, and at all relevant times
6 was, a California corporation doing business as Gold’s Gym West Covina #1118.

7 28. Plaintiff Valencia Corporate Fitness, Inc. is, and at all relevant times was, a
8 California corporation doing business as Gold’s Gym Valencia #1440.

9 29. Plaintiff Santa Anita Corporate Fitness, Inc. is, and at all relevant times
10 was, a California corporation doing business as Gold’s Gym Arcadia #1550 and Gold’s
11 Gym Pasadena #1975.

12 30. Plaintiff Montclair Corporate Fitness, Inc. is, and at all relevant times was,
13 a California corporation doing business as Gold’s Gym Montclair #1608.

14 31. Plaintiff Santa Barbara Corporate Fitness, Inc. is, and at all relevant times
15 was, a California corporation doing business as Gold’s Gym Downtown Santa Barbara
16 #1847, Gold’s Gym Uptown #1848, and Gold’s Gym Goleta #1849.

17 32. Plaintiff Anaheim Corporate Fitness, Inc. is, and at all relevant times was,
18 a California corporation doing business as Gold’s Gym Anaheim #1816 and Gold’s Gym
19 Anaheim East #1974.

20 33. Plaintiff Glendale Corporate Fitness, Inc. is, and at all relevant times was,
21 a California corporation doing business as Gold’s Gym Glendale #1868.

22 34. Plaintiff Oxnard Corporate Fitness, Inc. is, and at all relevant times was, a
23 California corporation doing business as Gold’s Gym Oxnard #1487

24 35. Plaintiff Carson Corporate Fitness, Inc. is, and at all relevant times was, a
25 California corporation doing business as Gold’s Gym Long Beach #0272.

26 36. Plaintiffs Gym Management Services, Inc., Musclehead, Inc.,
27 Musclebound, Inc., Los Angeles Corporate Fitness, Inc., Thousand Oaks Corporate
28 Fitness, Inc., Simi Valley Corporate Fitness, Inc., Culver City Corporate Fitness, Inc.,

1 Fullerton Corporate Fitness, Inc., West Covina Corporate Fitness, Inc., Valencia
2 Corporate Fitness, Inc., Santa Anita Corporate Fitness, Inc., Montclair Corporate Fitness,
3 Inc., Santa Barbara Corporate Fitness, Inc., Anaheim Corporate Fitness, Inc., Glendale
4 Corporate Fitness, Inc., Oxnard Corporate Fitness, Inc., and Carson Corporate Fitness,
5 Inc. are collectively referred to herein as the "Plaintiffs."

6 37. Defendant Vantapro Specialty Insurance Company ("Vantapro") is, and at
7 all relevant times was, an Arkansas corporation with its principal place of business in
8 the State of New York. At all times relevant to the allegations contained herein,
9 Vantapro was conducting business as an insurer in the State of California.

10 38. Defendant Care Providers Insurance Services LLC is, and at all relevant
11 times was a Texas limited liability corporation doing business as NSM Insurance Group
12 ("NSM"). The states of citizenship for NSM's members are presently unknown. At all
13 times relevant to the allegations contained herein, NSM was conducting business as an
14 insurance broker in the State of California.

15 39. The true names or capacities, whether individual, corporate, associate, or
16 otherwise, of defendants DOES 1 through 25, inclusive, are unknown to Plaintiffs, who
17 therefore sues said defendants by such fictitious names. Plaintiffs are informed and
18 believe and based on such information and belief alleges that each of the defendants
19 sued herein as a Doe is legally responsible in some manner for the events and
20 happenings referred to herein, and will ask leave of this Court to amend this complaint
21 to insert their true names and capacities in place and instead of the fictitious names
22 when the same become known to it.

23 40. Plaintiffs are informed and believe and based thereon allege that at all
24 times mentioned herein, each of the defendants was the agent, partner, joint venturer,
25 associate and/or employee of one or more of the other defendants and was acting in the
26 course and scope of such agency, partnership, joint venture, association and/or
27 employment when the acts giving rise to the cause of action occurred.

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III.
INSURANCE

41. With the assistance and advice of NSM, who was acting as their insurance broker, Plaintiffs purchased the Policy from Vantapro for a coverage period from October 17, 2019 to October 17, 2020.

42. Plaintiffs timely paid all premiums that were due under the Policy.

43. In exchange for payment of the premiums, Vantapro agreed to provide the insurance coverage described in the Policy.

44. The commercial property insurance portion of the Policy contains a coverage form for "Business Income (and Extra Expense)." (Exhibit 2, p. EX02-054).

45. The Policy provides "All Risk" coverage for Business Income (and Extra Expense) coverage through the following provisions:

A. Coverage

1. Business Income

...

We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss

...

3. Covered Causes of Loss, Exclusions And Limitations

See applicable Causes of Loss form as shown in the Declarations. (Exhibit 2, p. EX02-054, 055).

46. The Declarations page for the Policy includes a schedule of locations, which lists all of the Plaintiff locations whose operations were suspended as a result of

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1 State and Local Health Orders. (Id. at. EX02-003 to 005).

2 47. The Declarations page for the Policy includes a Business Income Limit of
3 Insurance for each of the Plaintiffs. (Id.).

4 48. The Declarations page for the Policy identifies the covered causes of loss
5 for Business Income (and Extra Expense) coverage to be “Special” for each Plaintiff. The
6 Policy includes an endorsement titled “Causes of Loss – Special Form”, which states:

7 **A. Covered Causes of Loss**

8 When Special is shown in the Declarations, Covered Causes of Loss means
9 direct physical loss unless the loss is excluded or limited in this policy.

10 (Id. at EX02-028, underline added).

11 49. All terms in the Policy which appear in quotation marks are specially
12 defined terms. Notably, Vantapro chose not to define the term “direct physical loss”.

13 50. “Business Income” is defined in the Policy to mean

- 14 a. Net Income (Net Profit or Loss before income taxes) that
15 would have been earned or incurred; and
16 b. Continuing normal operating expenses incurred,
17 including payroll.” (Exhibit 2, p. EX02-054).

18 51. “Suspension” is defined in the Policy to mean

- 19 a. The slowdown or cessation of your business activities; or
20 b. That a part or all of the described premises is rendered
21 untenable, if coverage for Business Income Including
22 ‘Rental Value’ or ‘Rental Value’ applies.” (Id. at EX02-062)

23 52. “Operations” is defined in the Policy to mean

- 24 a. Your business activities occurring at the described
25 premises; and
26 b. The tenantability of the described premises, if coverage
27 for Business Incoming Including ‘Rental Value’ or ‘Rental
28 Value’ applies.” (Id.).

1 53. "Period of restoration" is defined in the Policy to mean
 2 The period of time that:
 3 a. Begins:
 4 (1) 72 hours after the time of direct physical loss or damage
 5 for Business Income Coverage; or
 6 (2) Immediately after the time of direct physical loss or
 7 damage for Extra Expense Coverage;
 8 caused by or resulting from any Covered Cause of Loss at the
 9 described premises; and
 10 b. Ends on the earlier of:
 11 (1) The date when the property at the described premises
 12 should be repaired, rebuilt or replaced with reasonable
 13 speed and similar quality; or
 14 (2) The date when business is resumed at a new permanent
 15 location.

16 ...

17 The expiration date of this policy will not cut short the "period of
 18 restoration". (Id.).

19 54. The Policy also provides additional coverage for Civil Authority. This
 20 coverage states:

21 **a. Civil Authority**

22 In this Additional Coverage, Civil Authority, the described premises are
 23 premises to which the Coverage Form applies, as shown in the
 24 Declarations.

25 When a Covered Cause of Loss causes damage to property other than
 26 property at the described premises, we will pay for the actual loss of
 27 Business Income you sustain and necessary Extra Expense caused by
 28 action of civil authority that prohibits access to the described premises,



1 provided that both of the following apply:

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

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

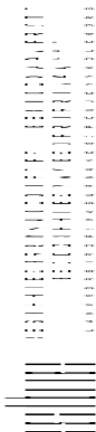
15 Civil Authority Coverage for Extra Expense will begin immediately after
16 the time of the first action of civil authority that prohibits access to the
17 described premises and will end:

- 18 (1) Four consecutive weeks after the date of that action; or
- 19 (2) When your Civil Authority Coverage for Business Income ends;
- 20 whichever is later. (Id. at EX02-055)

21 55. One of the exclusions in the Policy is for “Governmental Action.” But the
22 scope of the “Governmental Action” exclusion is expressly limited to governmental
23 orders regarding the “seizure or destruction of property.” (Id. at EX02-029). Specifically,
24 the “Governmental Action” exclusion reads as follows:

25 **c. Governmental Action**

26 Seizure or destruction of property by order of governmental authority.
27 But we will pay for loss or damage caused by or resulting from acts of
28 destruction ordered by governmental authority and taken at the time of a



1 fire to prevent its spread, if the fire would be covered under this Coverage
2 Part.” (Id.).

3 56. The Policy does not contain an exclusion for loss or damage caused by or
4 related to virus or pandemic, nor is any such exclusion identified in the Policy’s
5 schedule of forms and endorsements. (See Exhibit 2, Pg. EX-02-020 to 21).

6
7 **IV.**

8 **FACTUAL BACKGROUND**

9 **A. Gym Management Services, Inc. and the Gold’s Gym Plaintiffs**

10 57. Gold’s Gym is a world-recognized fitness brand. Since its humble
11 beginning in Venice Beach in 1965, the Gold’s Gym brand of fitness centers and health
12 clubs has grown to over 700 locations worldwide, comprised of local franchise and
13 corporate-owned facilities. Gold’s Gym became famous for its bodybuilding culture and
14 its celebrity clientele, which in the past has included Arnold Schwarzenegger and
15 Muhammad Ali. .

16 58. Plaintiff Gym Management Services, Inc. (“GMS”) is the entity that
17 manages franchisee-owned Gold’s Gym facilities in Southern California. By volume of
18 customers and number of locations, it is the largest operator of Gold’s Gym franchises,
19 with a total of 20 locations and approximately 150,000 active memberships as of March
20 2020. GMS has earned a number of accolades within the Gold’s Gym network,
21 including awards for opening the “Best New Club of Gold’s Gym International” in both
22 2018 and 2019.

23 59. Each individual Plaintiff under GMS’s umbrella owns and operates one or
24 more of the GMS Gold’s Gym franchise locations in Los Angeles, Orange, Ventura, San
25 Bernardino, and Santa Barbara counties.

26 60. All Plaintiffs are named insureds under the Policy purchased from
27 Vantapro, and whose claims for business interruption losses caused by government
28 shutdown orders have been denied.

1 **B. The COVID-19 Pandemic**

2 61. It has been widely reported that COVID-19 has its origins in Wuhan,
3 China. The first public reports were on December 31, 2019 of an “outbreak of
4 respiratory illness.”

5 62. By January 8, 2020, the United States Centers for Disease Control and
6 Prevention (“CDC”) issued warnings to American travelers going to China for a
7 “pneumonia of unknown etiology” (<https://emergency.cdc.gov/han/han00424.asp>, last
8 accessed April 17, 2020).

9 63. Starting January 17, 2020, the CDC and the United States Department of
10 Homeland Security’s Customs and Border Protection implemented enhanced health
11 screenings for passengers who came from or connected through Wuhan, China
12 (<https://www.cdc.gov/media/releases/2020/p0117-coronavirus-screening.html>, last
13 accessed April 17, 2020).

14 64. On January 20, 2020, the W.H.O. reported the first confirmed cases outside
15 mainland China in Japan, South Korea and Thailand ([https://www.nytimes.com/article/
16 coronavirus-timeline.html](https://www.nytimes.com/article/coronavirus-timeline.html), last accessed April 17, 2020). The following day, on January
17 21, 2020, the first American COVID-19 case was confirmed in the State of Washington
18 (<https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html>,
19 last accessed April 17, 2020).

20 65. On January 30, 2020, the W.H.O declared a public health emergency of
21 international concern. The following day, on January 31, 2020, all travel from China to
22 the United States was blocked.

23 66. During February, COVID-19 began spreading rapidly throughout Europe,
24 with Italy initially becoming the most impacted country. That same month, an
25 increasing number of cases were being reported in the United States, with the largest
26 concentration of cases in the Seattle area of Washington State. The first cluster of
27 COVID-19 cases was reported at a nursing home in Kirkland, Washington in late
28 February, where the first COVID-19 death was announced on February 28, 2020.

1 67. COVID-19 also continued to spread throughout California during
2 February 2020. In early February, several COVID-19 cases were announced in Northern
3 California. During February, the number of reported COVID-19 cases in California
4 increased. On February 26, 2020, the CDC announced the first reported California
5 COVID-19 case resulting from community spread ([https://www.cdc.gov/media/
6 releases/2020/s0226-Covid-19-spread.html](https://www.cdc.gov/media/releases/2020/s0226-Covid-19-spread.html), last accessed April 17, 2020).

7 68. On March 4, 2020, the first COVID-19 fatality was reported in California.

8 69. As COVID-19 cases continued to increase in certain areas of the United
9 States, on March 4, 2020 Congress passed emergency funding of \$8.3 billion to aid in the
10 immediate health response to COVID-19.

11 70. Also on March 4, 2020, Governor Newsom proclaimed a State of
12 Emergency to exist in California “as a result of the threat of COVID 19.”

13 71. On March 11, 2020, travel from Europe to the United States was restricted,
14 and the W.H.O. declared COVID-19 a pandemic. The term “pandemic” does not appear
15 anywhere as an excluded peril in this “All Risk” Policy.

16 72. On March 13, 2020, the President of the United States declared a national
17 emergency.

18 73. Yet, throughout the entire period from December 2019 until March 17,
19 2020, Plaintiffs had not suffered an interruption of their thriving businesses.

20 **C. Plaintiffs Are Forced to Suspend Operations due to Government Orders**

21 74. On March 15, 2020, Los Angeles Mayor Eric Garcetti issued an order
22 requiring the immediate closure of all public gyms and fitness centers within City
23 limits. (Exhibit 3, p. EX03-001).

24 75. On March 16, 2020, the California Department of Public Health published
25 directives, one of which said that all gyms and health clubs should be closed. (Id. at
26 EX03-004). Over the next few days various Cities and Counties, citing the State’s
27 directives, enacted orders requiring the closure of gyms.

28

1 76. On March 16, 2020, the Los Angeles County Department of Public Health
2 issued an order requiring all gyms and fitness centers to immediately close. (Id. at
3 EX03-006).

4 77. On March 17, 2020, the Ventura County Department of Public Health, San
5 Bernardino County Department of Public Health, and City of Santa Barbara issued
6 orders requiring the closure of all public gyms and fitness centers. (Id. at EX03-011, 014,
7 017).

8 78. On March 18, 2020, the Orange County Department of Public Health
9 issued an order requiring the immediate closure of all public gyms and fitness centers.
10 (Id. at EX03-024)

11 79. The following day, March 19, 2020, California Governor Gavin Newsom
12 issued Executive Order N-33-20, which ordered all individuals living in the State of
13 California to heed State public health directives to stay at home, except as needed to
14 maintain continuity of operations in essential critical infrastructure sectors. (Id. at EX03-
15 029). As part of Executive Order N-33-20, California's Public Health Officer created a
16 list of thirteen sectors of industry that were deemed "essential" and whose operations
17 could continue. Fitness centers and gyms were not included in the list of businesses
18 deemed "essential", nor were they part of any critical infrastructure sectors identified
19 by the Public Health Officer.

20 80. The State's directives, Local Health Orders, and Executive Order N-33-20
21 prohibited club members and staff from leaving their homes to go to gyms and fitness
22 centers, resulting in a loss of functional use of those premises and effectively causing an
23 immediate suspension of business operations at Plaintiffs' locations. As of the time this
24 Complaint is filed, Plaintiffs have not resumed business operations.

25 81. Also, to comply with California's guidelines to facilitate the reopening of
26 gyms and fitness centers, Plaintiffs have been or will be required to incur extra expenses
27 including, but not limited to, equipment, construction, services, and supplies necessary
28 to abide by social distancing and sanitation rules.

1 82. These Orders by State and Local government constitute a predominant
2 cause of Plaintiffs' losses, which continue to this day.

3 **D. Vantapro Improperly Denies Plaintiffs' Claim.**

4 83. On or around March 18, 2020, Plaintiffs, through its insurance broker
5 NSM, tendered a claim to Vantapro under its Policy for business interruption losses
6 resulting from the government-ordered closure of its fitness centers.

7 84. On May 7, 2020, having performed no investigation into the circumstances
8 of Plaintiffs' claim, Vantapro wrote a letter to GMS' chief financial officer, Paul Becker,
9 through its third-party administrator, stating that coverage may be limited by the terms
10 of the Policy and that it required additional information regarding the Loss. GMS was
11 sent a "Loss Questionnaire," which was returned on June 11, 2020.

12 85. Shortly thereafter, on June 19, 2020, GMS received a letter from Vantapro's
13 third-part administrator stating that the claims for business interruption loss were
14 denied. (Exhibit 4). In explaining the denial, the letter stated that "there was no direct
15 physical loss or damage to covered property." (Id. at EX04-007). This was incorrect,
16 since every Plaintiff gym managed by GMS was ordered by the government to close,
17 resulting in a "direct physical loss of" covered property.

18 86. The letter also cited to an "Exclusion of Loss Due to Virus or Bacteria,"
19 which appears nowhere in the Policy or in its Schedule of Forms and Endorsements.
20 (Id.).

21 87. Finally, the letter stated that "[c]overage may likewise be excluded under
22 the 'Fungus, Wet Rot, Dry Rot And Bacteria' Exclusion", (Id.), without any explanation
23 of how a virus or pandemic would fall within the Policy's definition of a "Fungus," wet
24 rot, dry rot, or bacteria.

25 88. Pursuant to Title 10, Section 2695.7(b)(1) of the California Code of
26 Regulations, Vantapro was required to state in its April 27, 2020 denial letter all the
27 factual, contractual, and legal grounds for denying the claim, thus forfeiting the right to
28 raise additional grounds to attempt to justify its denial of Plaintiffs' claim.

1 90. As a result of Vantapro’s wrongful denial of the claim, Plaintiffs were
2 compelled to retain counsel and pursue this litigation in order to obtain the benefits
3 promised under the Policy.
4

5 **FIRST CAUSE OF ACTION**

6 PLAINTIFFS, FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS
7 VANTAPRO AND DOES 1 THROUGH 25, INCLUSIVE, FOR BREACH OF THE
8 IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING, ALLEGES:

9 91. Plaintiffs incorporate by reference all paragraphs above as if set forth in
10 full in this cause of action.

11 92. Vantapro and DOES 1 to 25, inclusive, have breached their duty of good
12 faith and fair dealing owed to Plaintiffs in the following respects:

- 13 a. Unreasonably acting or failing to act in a manner that deprives
14 Plaintiffs of the benefits of the Policy;
- 15 b. Unreasonably engaging in a pattern and practice of acting or failing to
16 act in a manner that deprives its insureds of the benefits of policies it
17 issues;
- 18 c. Unreasonably failing to conduct a prompt, fair, balanced and thorough
19 investigation of all of the bases of Plaintiffs’ claims;
- 20 d. Unreasonably engaging in a pattern and practice of failing to conduct a
21 prompt, fair, balanced and thorough investigation of all of the bases of
22 claims made under policies it issues;
- 23 e. Unreasonably failing to diligently search for and consider evidence
24 that supports coverage of Plaintiffs’ claims;
- 25 f. Unreasonably engaging in a pattern and practice of failing of failing to
26 diligently search for and consider evidence that supports coverage of
27 claims;

- 1 g. Unreasonably failing to conduct an investigation to determine the
- 2 efficient proximate cause (predominant cause) of Plaintiffs' losses;
- 3 h. Unreasonably engaging in a pattern and practice of failing to conduct
- 4 an investigation to determine the efficient proximate cause
- 5 (predominant cause) on claims made by insureds;
- 6 i. Unreasonably failing to give at least as much consideration to the
- 7 interests of Plaintiffs as it gives to its own interests;
- 8 j. Unreasonably engaging in a pattern and practice of failing to give at
- 9 least as much consideration to the interests of its insureds as it gives to
- 10 its own interests;
- 11 k. Unreasonably placing its own financial interests above the interests of
- 12 Plaintiffs;
- 13 l. Unreasonably engaging in a pattern and practice of placing its own
- 14 financial interests above the interests of its insureds;
- 15 m. Unreasonably failing to comply with the Regulations, including
- 16 Section 2695.7(b)(1);
- 17 n. Unreasonably failing to apply the Policy's definitions and terms to
- 18 determine whether Plaintiffs' claim was covered; and
- 19 o. Unreasonably compelling Plaintiffs to institute this action to obtain
- 20 benefits due under the Policy.

21 93. Plaintiffs are informed and believe, and thereon allege, that the foregoing
22 unreasonable, malicious, oppressive and/or fraudulent misconduct was not limited to
23 Vantapro's and DOES 1 to 25, inclusive, evaluation of this particular claim, but
24 represents an ongoing pattern and practice, which they apply to all of their
25 policyholders, that is specifically designed by Vantapro and DOES 1 to 25, inclusive, to
26 earn illicit profits at the expense of their policyholders' rights. This ongoing pattern of
27 conduct constitutes institutional bad faith.

28

1 94. Vantapro's and DOES 1 to 25, inclusive, institutional bad faith constitutes
2 reprehensible conduct because it is part of a repeated pattern of unfair practices and not
3 an isolated occurrence. The pattern of unfair practices constitutes a conscious course of
4 wrongful conduct that is firmly grounded in Vantapro's and DOES 1 to 25, inclusive,
5 established company policies and practices. Plaintiffs are informed and believe and
6 thereon allege that Vantapro and DOES 1 to 25, inclusive, have engaged in similar
7 wrongful conduct as to other insureds and that they have substantially increased its
8 profits as a result of causing similar harm to others.

9 95. As a proximate result of the aforementioned conduct of Vantapro and
10 DOES 1 to 25, inclusive, Plaintiffs have suffered, and will continue to suffer in the
11 future, damages under the Policy, plus interest and other economic and consequential
12 damages, for a total amount to be shown at the time of trial.

13 96. As a further proximate result of the aforementioned unreasonable conduct
14 of Vantapro and DOES 1 to 25, inclusive, Plaintiffs were compelled to retain legal
15 counsel to obtain the benefits due under the Policy. Therefore Vantapro and DOES 1 to
16 25, inclusive, are liable to Plaintiffs for the attorneys' fees reasonably necessary and
17 incurred by Plaintiffs in order to obtain the Policy benefits.

18 97. The conduct of Vantapro and DOES 1 to 25, inclusive, was intended by
19 them to cause injury to Plaintiffs, and/or was despicable conduct carried on by them
20 with a willful and conscious disregard of Plaintiffs' rights, subjected Plaintiffs to cruel
21 and unjust hardship in conscious disregard of its rights; and/or constituted an
22 intentional misrepresentation or concealment of a material fact known to Vantapro and
23 DOES 1 to 25, inclusive, with the intention to deprive Plaintiffs of property or legal
24 rights or to otherwise cause injury, such as to constitute malice, oppression or fraud
25 under California Civil Code section 3294. Plaintiffs are therefore entitled to an award of
26 punitive damages in an amount appropriate to punish and set an example for other
27 similarly situated insurers.

28

1 98. Vantapro's and DOES 1 to 25, inclusive, conduct was undertaken by its
2 corporate officers, directors or managing agents, identified herein as DOES 15 to 25,
3 who were responsible for claims supervision and operations, underwriting,
4 communications, and/or decisions; and/or this conduct was authorized by one or more
5 of Vantapro's officers, directors or managing agents, and/or one or more Vantapro's
6 officers, directors or managing agents knew of the actions and adopted or approved
7 that conduct after it occurred. This conduct was, therefore, undertaken on behalf of
8 Vantapro and DOES 15 to 25, inclusive.

9
10 **SECOND CAUSE OF ACTION**

11 PLAINTIFFS, FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS
12 VANTAPRO AND DOES 1 THROUGH 25, INCLUSIVE, FOR BREACH OF
13 CONTRACT ALLEGES:

14 99. Plaintiffs incorporate by reference all paragraphs above as if set forth in
15 full in this cause of action.

16 100. Plaintiffs entered into a contract, the Policy, with Vantapro and DOES 1
17 through 25, inclusive. Vantapro and DOES 1 through 25, inclusive, owed duties and
18 obligations to Plaintiffs under the Policy.

19 101. Plaintiffs did all, or substantially all, of the significant things that the
20 Policy required it to do.

21 102. Vantapro's and DOES 1 through 25, inclusive, denial of Plaintiffs' claims
22 are not in accordance with the terms of the Policy and California law.

23 103. As a direct and proximate result of Vantapro's and DOES 1 through 25,
24 inclusive, conduct and breach of their contractual obligations, Plaintiffs have suffered
25 damages under the Policy in an amount to be determined according to proof at the time
26 of trial, plus pre-judgment interest pursuant to California Civil Code section 3289(b),
27 and other foreseeable and consequential damages according to proof and in amounts to
28 be determined at the time of trial.

THIRD CAUSE OF ACTION

(Negligence)

PLAINTIFFS, FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS CARE PROVIDERS INSURANCE SERVICES LLC DBA NSM INSURANCE GROUP, AND DOES 26 THROUGH 50, INCLUSIVE, FOR NEGLIGENCE ALLEGES:

104. Plaintiffs incorporate by reference all paragraphs above as if set forth in full in this cause of action.

105. Plaintiffs brings this third cause of action in the alternative to its first and second causes of action.

106. As set forth in Plaintiffs’ first and second causes of action and the factual allegations of this Complaint, Plaintiffs asserts that there is full coverage under the Policy for its loss. However, to the extent that there is a finding that the Policy does not provide coverage, then Plaintiffs allege in the alternative that Care Providers Insurance Services LLC dba NSM Insurance Group (“NSM”) was negligent in the procurement of the Policy.

107. At all relevant times, NSM, by and through its authorized employees, and DOES 26 through 50, inclusive, represented to be registered, licensed and authorized insurance brokers, who undertook the obligations to place insurance coverage for Plaintiffs and to assist it with any questions or concerns it had about the Policy.

108. In that process, NSM and DOES 26 through 50, inclusive had a duty to use reasonable care, diligence and judgment in procuring the insurance that Plaintiffs requested.

109. NSM and DOES 26 through 50, inclusive, sold the Policy to Plaintiffs. In the process, they held themselves out to be experts in the field of insurance, and in particular, experts in the field of insurance for gyms and fitness centers.

110. For example, NSM identifies itself as an expert in industry-specific insurance on its website. NSM’s website also includes a specific page for “Sports & Wellness” Insurance, which states “you will be assisted by an experienced staff that

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1 specializes in the athletic industry. Therefore, you will know that you are securing
2 quality insurance products that are designed to meet your clients' unique needs."
3 (<http://nsmSportsinsurance.com> , last visited 8/24/20). Another page on NSM's website
4 states, "As sports and fitness insurance specialists, we understand the industry's
5 specific exposures. We offer complete coverage for a broad appetite of programs
6 including: gyms, health clubs, yoga studios, martial arts studios, recreational facilities,
7 fitness centers, and more Our comprehensive insurance programs provide
8 coverage for all risks your client faces, including on premises injuries, property damage
9 and business interruption[.]" (<http://nsmSportsinsurance.com/fitness-centers/>, last
10 visited 8/24/20).

11 111. During the procurement process of the Policy, NSM assumed additional
12 duties by express agreement and/or holding itself out as an expert in procuring business
13 interruption coverage for fitness centers like those owned and managed by Plaintiffs.

14 112. NSM and DOES 26 through 50, inclusive, undertook the obligation and
15 assumed a duty to place business interruption insurance coverage for Plaintiffs.
16 Accordingly, they owed Plaintiffs a duty of due care to see that its interests were fully
17 protected by the coverage that was requested by Plaintiffs and promised by NMS and
18 DOES 26-50, inclusive. However, if Vantapro's interpretation is upheld, NSM and
19 DOES 26 through 50, inclusive, misrepresented the nature, extent or scope of the
20 coverage being offered and then ultimately provided under the Policy.

21 113. NSM and DOES 26 through 50, inclusive, knew that Plaintiffs would rely,
22 and they did justifiably rely, upon the experience, skill, and expertise of NSM, its office
23 employees and DOES 26 through 50, inclusive, to obtain and place sufficient coverage
24 for the restaurant, even in the event of government orders related to viral outbreak or
25 pandemic.

26 114. NSM and DOES 26 through 50, inclusive, represented that they were
27 ready and willing to perform the professional service of procuring insurance coverage
28

1 for Plaintiffs, which desired to obtain business interruption coverage that would protect
2 them against losses, including pandemic and government shutdown orders.

3 115. To the extent the coverage procured by NSM and DOES 26 through 50,
4 inclusive, for Plaintiffs does not provide coverage for the damages suffered as alleged in
5 this Complaint, NSM and DOES 26 through 50, inclusive, were negligent in their
6 procurement and placement of the insurance.

7 116. As a proximate result of the aforementioned negligent conduct of NSM
8 and DOES 26 through 50, inclusive, Plaintiffs have suffered damages, including
9 economic losses, for a total amount to be shown at the time of trial.

10
11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

13 **AS TO THE FIRST CAUSE OF ACTION AGAINST DEFENDANTS**

14 **VANTAPRO AND DOES 1 THROUGH 25, INCLUSIVE, FOR BREACH OF THE**
15 **IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING:**

16 1. For damages for failure to pay benefits owed under the Policy, plus
17 interest, in a sum to be determined at trial;

18 2. For prejudgment interest on all damages awarded to Plaintiffs in
19 accordance with California Civil Code section 3287;

20 3. For attorneys' fees, witness fees, and costs of litigation incurred by
21 Plaintiffs to obtain the Policy benefits in an amount to be determined at trial;

22 4. For economic and consequential damages arising out of Vantapro's and
23 DOES 1 through 25's, inclusive, unreasonable failure to pay benefits owed under the
24 Policy;

25 5. For punitive and exemplary damages in an amount appropriate to punish
26 or set an example of Vantapro and DOES 1 through 25, inclusive;

27 6. For costs of suit herein; and

28 7. For such other relief as the Court deems just and proper.

1 AS TO THE SECOND CAUSE OF ACTION AGAINST DEFENDANTS
2 VANTAPRO AND DOES 1 THROUGH 25, INCLUSIVE, FOR BREACH OF
3 CONTRACT:

- 4 1. For economic and consequential damages, in an amount to be determined
- 5 according to proof at trial;
- 6 2. For prejudgment interest on all damages awarded to Plaintiffs in
- 7 accordance with California Civil Code section 3289(b);
- 8 3. For costs of suit incurred herein; and
- 9 4. For such other and further relief as the Court deems just and proper.

10
11 AS TO THE THIRD CAUSE OF ACTION AGAINST DEFENDANTS CARE
12 PROVIDERS INSURANCE SERVICES LLC DBA NSM INSURANCE GROUP AND
13 DOES 1 THROUGH 25, INCLUSIVE, FOR BREACH OF CONTRACT:

- 14 1. For economic damages in an amount to be determined at trial;
- 15 2. For prejudgment interest pursuant to California Civil Code section 3288;
- 16 3. For costs of suit incurred herein; and
- 17 4. For such other and further relief as the Court deems just and proper.

18
19 Dated: September 16, 2020

SHERNOFF BIDART ECHEVERRIA LLP

20
21 *Michael J Bidart*
22 By: _____
23 MICHAEL J. BIDART
24 RICARDO ECHEVERRIA
25 Attorneys for Plaintiffs
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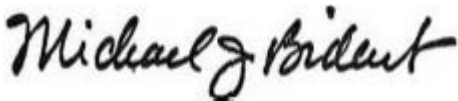
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JURY DEMAND

Plaintiffs hereby demand a jury trial.

Dated: September 16, 2020

SHERNOFF BIDART ECHEVERRIA LLP

By: 
MICHAEL J. BIDART
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