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11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

PASICHTM

14 ANOTHER PLANET
15 ENTERTAINMENT, LLC,

16 Plaintiff,

17 vs.

18 VIGILANT INSURANCE COMPANY

19 Defendants.

Case No.

COMPLAINT FOR

- 1. BREACH OF CONTRACT;
- 2. TORTIOUS BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
- 3. FRAUD IN THE INDUCEMENT;
- 4. FRAUDULENT PROMISE MADE WITHOUT INTENT TO PERFORM
- 5. FRAUDULENT CONCEALMENT;
- 6. NEGLIGENT MISREPRESENTATION; AND
- 7. DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

1 Plaintiff Another Planet Entertainment, LLC brings this action against
2 defendant Vigilant Insurance Company and alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This Court has subject matter jurisdiction over this action pursuant to
5 28 U.S.C. section 1332 based on complete diversity of the parties and an amount in
6 controversy exceeding \$75,000, exclusive of interest and costs.

7 2. Venue is proper in this District pursuant to 28 U.S.C. section 1391.

8 **NATURE OF THE ACTION**

9 3. Another Planet is an independent operator and exclusive promoter of
10 concerts, events, and festivals at the Greek Theatre at UC Berkeley, the Bill Graham
11 Civic Auditorium in San Francisco, the Fox Theater in Oakland, and the Lake Tahoe
12 Outdoor Arena at Harveys. Vigilant is an insurer that sold Another Planet a broad,
13 “all-risk” property insurance policy protecting Another Planet against losses of
14 business income when there was, to quote the policy, “direct loss or damage to
15 property.”

16 4. As SARS-CoV-2 and COVID-19 began spreading around the United
17 States, Another Planet, like thousands of other businesses, was forced to suspend its
18 operations, close the concert venues, and cancel performances for almost all of 2020
19 and likely well into 2021.

20 5. SARS-CoV-2, by its presence and threatened presence, damaged
21 Another Planet’s property. SARS-CoV-2, COVID-19, and the orders of state and
22 local civil authorities and guidance from the Centers for Disease Control impaired
23 Another Planet’s ability to use its insured locations for their intended uses and
24 purposes. The closures also were necessary in order for Another Planet to mitigate
25 it damages. As a result, Another Planet has suffered, and continues to suffer,
26 substantial financial losses, including lost profits, lost commissions, and lost
27 business opportunities.

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1 6. When Another Planet turned to Vigilant, Another Planet reasonably
2 expected Vigilant to cover its losses. However, instead of honoring its, Vigilant
3 wrongfully denied coverage and refused to pay Another Planet for any portion of its
4 losses.

5 7. Put simply, there is no merit to Vigilant’s refusal to pay Another Planet
6 for its losses. Broad “all risk” property insurance policies, such as the policy here,
7 cover all losses not expressly excluded. The policy here promised coverage for
8 “direct physical loss or damage to property,” a phrase that Vigilant and other
9 insurers have known for decades extends to losses caused by the presence of a
10 hazardous substance in the airspace inside a building or on property, and losses that
11 result when the use or function of property is substantially impaired, even if the
12 property has not been physically altered.

13 8. In fact, as Vigilant has long known and California courts have
14 recognized since at least 1962, even if a building or structure is not physically or
15 structurally altered, it will be deemed, for insurance purposes, to have suffered a
16 “direct physical loss or damage to property” if its function or purpose is
17 substantially impaired.

18 9. Vigilant has known for more than a decade that it and its insureds face
19 a substantial risk of loss from viruses and pandemics and often has included an
20 exclusion in its policies to limit or bar coverage for such losses. Indeed, the
21 insurance industry created a standard-form “virus or bacteria” exclusion in 2006 in
22 an attempt to limit insurance for such losses. However, in selling its policy to
23 Another Planet, Vigilant decided not to include any such exclusion in the policy. In
24 fact, Vigilant did nothing in selling the policy to limit its liability for virus- or
25 pandemic-associated risks. Nor did Vigilant warn Another Planet that even though
26 it did not include a virus or pandemic exclusion, it would interpret its policy as if it
27 contained such an exclusion.

28

1 10. By this lawsuit, Another Planet seeks damages to compensate it for
2 Vigilant’s contractual breaches, bad faith, and fraud. It also seeks declaratory relief
3 confirming that its losses are covered and will continue to be covered as they
4 continue to be incurred.

5 **THE PARTIES**

6 11. Another Planet is a Delaware limited liability company whose members
7 are trusts that are citizens of California.

8 12. Another Planet is informed and believes, and on that basis alleges, that
9 Vigilant is a New York corporation, with its principal place of business in
10 Whitehouse Station, New Jersey. At all times material hereto, Vigilant was licensed
11 to transact, and did transact, business in California and the County of San Francisco.

12 13. Another Planet is informed and believes, and on that basis alleges, that
13 Vigilant is a wholly owned subsidiary of Federal Insurance Company, which is a
14 wholly owned subsidiary of Chubb INA Holdings Inc., which is a subsidiary of
15 Chubb Limited. All are, and hold themselves out as being, members of the Chubb
16 group of insurance companies (collectively, “Chubb”). Another Planet is informed
17 and believes, and on that basis alleges, that Vigilant and the other Chubb companies
18 are, and hold themselves out as being, extremely sophisticated and knowledgeable
19 in insuring against property and business interruption losses and in investigating the
20 risks they are insuring. Another Planet is informed and believes, and on that basis
21 alleges, that Vigilant and the other Chubb companies participate in a wide range of
22 first-party property insurance programs and are, and hold themselves out as being,
23 knowledgeable, experienced, and reliable, and willing to insure, and capable of
24 insuring, substantial property and business interruption losses.

25 14. Chubb makes various representations on behalf of its member
26 companies, including Vigilant, on its collective website for its member companies,
27 in advertising, and in public statements. Another Planet is informed and believes,
28 and on that basis alleges, that in making these statements, Chubb is speaking on

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1 behalf of its member companies, including Vigilant, and is authorized to do so, such
2 that Chubb’s statements are the statements of its member companies, including
3 Vigilant.

4 15. Chubb poses this question on its website: “How is Chubb different?” It
5 answers as follows:

6 We don’t just process claims, we make things right.
7 We hope you never need to file a claim with us. But if you
8 do, that’s our opportunity to show you what “craftsmanship”
9 means in service to you. It means a quick response when you
10 need it most. It means Chubb people working with empathy,
11 integrity and our legendary attention to detail to make you
12 whole. It means we honor the promises we’ve made to you.
13 Your loved ones, your employees, your home, your business
14 reputation—these things matter. These things are personal,
15 for you and for us.

16 We’re here to help.¹

17 16. Chubb also has represented, and represents, to the public:
18 If being treated fairly and paid quickly are important to
19 your clients when they have a loss, you want Chubb.
20 When your clients insure with Chubb, they’re buying real
21 insurance.²

22 17. Chubb also represents:
23 The insurance claims process can sometimes be, well, a
24 process. At Chubb, it’s different. That’s because we’re
25 not just in the insurance business, we’re in the people
26

27
28 ¹ <https://www.chubb.com/us-en/claims/claims-difference.aspx>.

² Chubb Ad, Business Insurance, at 11 (Apr. 4, 2008)

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1 business. Our experienced claims specialists are relentless
2 about every detail in the most personal way possible.
3 Whether you have a business, homeowners or auto policy,
4 it’s our policy to make your life easier. . . . If a solution is
5 possible, we’ll find a way to make it happen.”³

6 18. Chubb claims to specifically appreciate and understand that “[t]he risks
7 faced by entertainment industry companies can be unique and vary widely. Chubb
8 offers customized coverage for property . . . to support your risk management
9 strategy.”⁴

10 **THE COVID-19 PANDEMIC AND**
11 **ENSUING CIVIL AUTHORITY ORDERS**

12 19. COVID-19 is a disease caused by a recently discovered virus known as
13 SARS-CoV-2. The World Health Organization has named the virus and resulting
14 disease. As the World Health Organization has stated:

15 Official names have been announced for the virus
16 responsible for COVID-19 (previously known as “2019
17 novel coronavirus”) and the disease it causes. The official
18 names are:

19 **Disease**
20 coronavirus disease
21 (COVID-19)

22 **Virus**
23 severe acute respiratory syndrome coronavirus 2
24 (SARS-CoV-2).⁵

25
26 ³ <https://www.chubb.com/us-en/claims/>.

27 ⁴ <https://www.chubb.com/us-en/business-insurance/entertainment.aspx>.

28 ⁵ [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it).

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1 20. The World Health Organization also has provided a straight-forward
2 example of the distinction between a virus and a disease:

3 Viruses, and the diseases they cause, often have different
4 names. For example, HIV is the virus that causes AIDS.
5 People often know the name of a disease, such as measles,
6 but not the name of the virus that causes it (rubeola).

7 There are different processes, and purposes, for naming
8 viruses and diseases.⁶

9 21. The first reported cases of COVID-19 in humans were diagnosed in or
10 around December 2019 in Wuhan, the capital city of the Hubei Province in China.
11 Since then, SARS-CoV-2 and COVID-19 have spread throughout the world,
12 prompting the World Health Organization to declare a global pandemic.

13 22. As explained by the World Health Organization,
14 People can catch COVID-19 from others who have the
15 [SARS-CoV-2] virus. The disease spreads primarily from
16 person to person through small droplets from the nose or
17 mouth, which are expelled when a person with COVID-19
18 coughs, sneezes, or speaks. These droplets are relatively
19 heavy, do not travel far and quickly sink to the ground.
20 People can catch COVID-19 if they breathe in these
21 droplets from a person infected with the virus. . . . These
22 droplets can land on objects and surfaces around the
23 person such as tables, doorknobs and handrails. People
24 can become infected by touching these objects or surfaces,
25 then touching their eyes, nose or mouth.⁷

26
27 ⁶ *Id.*

28 ⁷ World Health Organization, “How does COVID-19 spread?” (April 17, 2020), *available at*

1 23. Aerosolized droplets exhaled by normal breathing can travel significant
2 distances and stay suspended in air for hours until gravity ultimately forces them to
3 the nearest surface. Studies suggest that the SARS-CoV-2 virus can remain active
4 on inert surfaces for up to 28 days.⁸

5 24. Since January 1, 2020, and as of the date of the filing of this Complaint,
6 there have been more than 40,000,000 confirmed cases of COVID-19 throughout
7 the world, more than 1,100,000 of which have resulted in deaths.⁹ There have been
8 more than 8,100,000 confirmed cases of COVID-19 in the United States, more than
9 218,000 of which have resulted in deaths.¹⁰ Moreover, due in part to the initial
10 absence of available tests, it is believed that the true number of coronavirus cases is
11 significantly higher than the reported numbers might suggest.¹¹

12 25. In March 2020, in response to the pandemic and the worldwide spread
13 of SARS-CoV-2, civil authorities throughout the United States began issuing “stay
14 home” and “shelter in place” quarantine orders and requiring the suspension of non-
15 essential business operations (collectively, “Closure Orders”).

16 26. In California, Governor Gavin Newsom issued Executive Order N-25-
17 20, ordering that: “All residents are to heed any orders and guidance of state and
18 local public health officials, including but not limited to the imposition of social
19
20

21 _____
22 <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses>.

23 ⁸ See, e.g., CNBC, *Virus that causes Covid-19 can survive for 28 days on common surfaces,*
24 *research says* (Oct. 12, 2020), <https://www.cnbc.com/2020/10/12/virus-that-causes-covid-19-can-survive-for-28-days-on-surfaces-research-says.html>; Shane Riddell, Sarah Goldie, Andrew Hill,
25 Debbie Eagles, & Trevor W. Drew, *The effect of temperature on persistence of SARS-CoV-2 on common surfaces*, 17 *Virology J.*, Art. No. 145 (2020),
<https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7>.

26 ⁹ <https://covid19.who.int>.

27 ¹⁰ <https://covid19.who.int/region/amro/country/us>.

28 ¹¹ Fiona P. Havers, Carrie Reed, Travis Lim, et. al, *Seroprevalence of Antibodies to SARS-CoV-2 in 10 Sites in the United States, March 23-May 12, 2020*, *JAMA Internal Medicine* (July 21, 2020), <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2768834>.

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1 distancing measures, to control the spread of COVID-19.” Executive Order N-25-
2 20 took effect on March 12, 2020.

3 27. On March 19, 2020, the State of California issued an Order of the State
4 Public Health Officer, which required all individuals living in the state to stay at
5 home or at their place of residence “except as needed to maintain operations of the
6 federal critical infrastructure sectors.” On that same date, California Governor
7 Newsom issued Executive Order N-33-20, expressly requiring California residents
8 to follow the March 19, 2020, Order of the State Public Health Officer, and
9 incorporating by reference California Government Code 8665, which provides that
10 “[a]ny person . . . who refuses or willfully neglects to obey any lawful order . . .
11 issued as provided in this chapter, shall be guilty of a misdemeanor and, upon
12 conviction thereof, shall be punishable by a fine of not to exceed one thousand
13 dollars (\$1,000) or by imprisonment for not to exceed six months or by both such
14 fine and imprisonment.”

15 28. Officials of Alameda and San Francisco Counties subsequently issued
16 similar orders in response to the rapid spread of SARS-CoV-2 and the resulting
17 damage to individuals and property that it causes.

18 29. Similarly, in Nevada, Governor Steve Sisolak issued Declaration of
19 Emergency Directive 003, ordering that all non-essential business close. In
20 conjunction with that order, the Nevada Health Response issued Covid-19 Risk
21 Mitigation Initiative further ordering that “all Nevadans stay home.” These orders
22 took effect on March 17, 2020.

23 30. Chubb has publicly commented on the pandemic and made many
24 representations about how it would respond to claims by its insureds under Chubb
25 policies. For example, Chubb proclaims as follows on its website:

26 Our hearts go out to those affected by the COVID-19
27 pandemic. We have been – and stand ready to continue –

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1 supporting our clients, distribution partners and
2 communities.¹²

3 31. Chubb also states:

4 **We're here for you —**

5 **Financially** – Chubb has the financial strength and
6 resources to support our policies and the financial capacity
7 to pay covered claims even in these uncertain times.

8 **Operationally** – All of our claims networks and supporting
9 systems are fully operational and all Chubb employees can
10 access these systems from home.

11 **Resourcefully** – We know we will face unanticipated
12 challenges, but Chubb is committed to providing you with
13 the high level of claims service and responsiveness that you
14 expect, and we will do what is feasible to ensure that
15 continues, all in compliance with the fast-changing laws,
16 rules and regulations. We plan for the unexpected and
17 remain agile and adaptable; including using alternative
18 means of adjusting claims as needed and feasible.

19 **While we are in a time of unprecedented uncertainty,**
20 **Chubb is well prepared and will be there for you, as**
21 **always.**¹³

22 32. Chubb further states:

23 **Doing our part**

24 Chubb takes pride in our continuing commitment to our
25 clients.¹⁴

26
27 ¹² <https://www.chubb.com/microsites/covid19-resource-center/index.aspx>.

28 ¹³ <https://www.chubb.com/microsites/covid19-resource-center/claims.aspx>.

¹⁴ <https://www.chubb.com/microsites/covid19-resource-center/index.aspx>.

1 33. Chubb echoed these sentiments in a news release in April 2020, stating:
 2 “We are committed to supporting people, business and
 3 communities most impacted by this global crisis,” said
 4 Evan G. Greenberg, Chairman and Chief Executive
 5 Officer.¹⁵

6 **WHAT VIGILANT KNEW BEFORE IT SOLD THE POLICY**

7 34. Vigilant and other insurers were repeatedly warned over the years of
 8 the potential impact of pandemics. In fact, there were many publicly available
 9 reports about the risks of pandemics and what insurers should do—in the months
 10 and years before the outbreak of the COVID-19 pandemic. For example, one article
 11 noted in March 2018:

12 Even with today’s technology, a modern severe pandemic
 13 would cause substantive direct financial losses to the
 14 insurance community. In addition, indirect losses would be
 15 severe, most notably on the asset side of the balance
 16 sheet.¹⁶

17 35. One insurance industry repository shows the proverbial “tip of the
 18 iceberg” about how much information was available to Vigilant and other insurers
 19 regarding the risk of pandemics. The Insurance Library Association of Boston,
 20 founded in 1887, describes itself as “the leading resource for and provider of
 21 literature, information services, and quality professional education for the insurance
 22 industry and related interests.”¹⁷ The Association states on its website:

23
 24
 25 ¹⁵ <https://news.na.chubb.com/2020-04-05-Chubb-Commits-10-Million-to-Pandemic-Relief-Efforts-Globally-Company-Pledges-No-Covid-19-Layoffs>.

26
 27 ¹⁶ “What the 1918 Flu Pandemic Can Teach Today’s Insurers,” *AIR* (Mar. 29, 2018),
 28 <https://www.air-worldwide.com/publications/air-currents/2018/What-the-1918-Flu-Pandemic-Can-Teach-Today-s-Insurers/>.

¹⁷ <http://insurancelibrary.org/about-us/>.

1 The past 20 years [have] seen the rise of a number of
 2 pandemics. Slate recently published an article on what has
 3 been learned about treating them in that time. We thought
 4 it might be apt for us to take a look back and see what the
 5 insurance industry has learned as well.¹⁸

6 36. The Association lists more than 20 articles, reports, and white papers
 7 available to insurers from early 2007 through 2018. One white paper warned in
 8 2009 of a pandemic's consequences to the insurance industry:

9 It is highly unlikely that the insurance industry would have
 10 the financial reserves to meet the worldwide claims arising
 11 out of a pandemic of this size.¹⁹

12 37. Thus, Vigilant has known, or should have known, for decades that its
 13 policies probably would be called upon to pay hundreds of millions of dollars or
 14 more to its insureds.

15 38. Vigilant also has known, or should have known, for decades that its
 16 policies could be held to cover losses from the presence of a hazardous substance,
 17 such a virus inside buildings or because a building could not be used for its intended
 18 purposes or function. As Vigilant has known, or should have known, for decades
 19 many courts have held that the presence of a hazardous substance in property,
 20 including the airspace inside buildings, constitutes property damage and that there
 21 may be "direct physical loss" to property even if the property is not physically
 22 damaged. As Vigilant has known, or should have known, the many decisions
 23 include the following:

24
 25
 26
 27 ¹⁸ <http://insurancelibrary.org/pandemics-and-insurance/>.

28 ¹⁹ Allan Manning, *White Paper on Infectious Disease Cover* (updated 2009),
http://www.lmigroup.com/Documents/Articles/White%20Paper%20on%20Infectious%20Disease%20Cover.pdf?mc_cid=f0cee24803&mc_eid=41023ebc2c.

- 1 • *AIU Insurance Co. v. Superior Court*, 51 Cal. 3d 807, 842 (1990):
 2 “contamination of the environment satisfies” the requirement of
 3 property damage.
- 4 • *Aetna Casualty & Surety Co. v. Pintlar Co.*, 1948 F.2d 1507, 1514 (9th
 5 Cir. 1981): “The insurers further concede that contamination of the
 6 soil and water by hazardous substances constitutes injury to property . .
 7 . . . And an ordinary person would find that the environmental
 8 contamination alleged . . . falls within the plain mean of ‘property
 9 damage’ as that term is used in policies.”
- 10 • *Arbeiter v. Cambridge Mut. Fire Ins. Co.*, 1996 WL 1250616, at *2
 11 (Mass. Super. Ct. Mar. 15, 1996): presence of oil fumes in building
 12 constituted “physical loss” to building.
- 13 • *Essex Ins. Co. v. BloomSouth Flooring Corp.*, 562 F.2d 399, 406 (1st
 14 Cir. 2009): odor from carpet and adhesive “can constitute physical
 15 injury to property.”
- 16 • *Farmers Ins. Co. v. Trutanich*, 123 Or. App. 6, 9-11 (1993): “[T]he
 17 odor produced by the methamphetamine lab had infiltrated the house.
 18 The cost of removing the odor is a direct physical loss.”
- 19 • *Gregory Packaging, Inc. v. Travelers Prop. Cas. Co.*, 2014 WL
 20 6675934 (D.N.J. Nov. 25, 2014): closure of facility because of
 21 accidentally released ammonia; while “structural alteration provides the
 22 most obvious sign of physical damage, . . . property can sustain
 23 physical loss or damage without experiencing structural alteration.”
- 24 • *Matzner v. Seacoast Ins. Co.*, 1998 WL 566658 (Mass. Super. Ct. Aug.
 25 12, 1998): building with unsafe levels of carbon monoxide sustained
 26 direct physical loss.
- 27 • *Mellin v. N. Sec. Ins. Co.*, 167 N.H. 544, 550-51 (2015): cat urine odor
 28 inside condominium constitutes direct physical loss; “‘physical loss’

1 need not be read to include only tangible changes to the property that
 2 can be seen or touched, but can also encompass changes that are
 3 perceived by the sense of smell.” . . . a property policy insures “physical
 4 loss changes to the insured property, but also changes that are
 5 perceived by a sense of smell” and ‘may exist in the absence of
 6 structural damage to the insured property.’”

- 7 • *Oregon Shakespeare Festival Ass’n v. Great Am. Ins. Co.*, 2016 WL
 8 3267247, at *9 (D. Ore. June 7, 2016): “smoke infiltration in theatre
 9 caused direct property loss or damage by causing the property to be
 10 uninhabitable and unusable for its intended purpose.”
- 11 • *Port Authority of New York & New Jersey v. Affiliated FM Ins. Co.*,
 12 311 F.3d 226, 236 (3d Cir. 2002): property sustained a direct physical
 13 loss because it was rendered uninhabitable by the presence of asbestos
 14 fibers.
- 15 • *Sentinel Mgt. Co. v. Aetna Cas. & Sur. Co.*, 1999 WL 540466, at *7
 16 (Minn. Ct. App. July 27, 1999): “If rental property is contaminated by
 17 asbestos fibers and presents a health hazard to tenants, its function is
 18 seriously impaired.”
- 19 • *Sentinel Mgt. Co. v. New Hampshire Ins. Co.*, 563 N.W.2d 296, 300
 20 (Minn. Ct. App. 1997): “Although asbestos contamination does not
 21 result in tangible injury to the physical structure of a building, a
 22 building's function may be seriously impaired or destroyed and the
 23 property rendered useless by the presence of contaminants. . . . Under
 24 these circumstances, we must conclude that contamination by asbestos
 25 may constitute a direct, physical loss to property under an all-risk
 26 insurance policy.”

- *Western Fire Ins. Co. v. First Presbyterian Church*, 165 Colo. 34, 39-40 (1968): direct physical loss when gasoline contaminated church building making it dangerous to use.

39. Because Vigilant long has been licensed to sell insurance to California insureds, it has known, or should have known, that a California Court of Appeal addressed in 1962—58 years ago—the question of whether a property insurance policy could cover loss or damage to a structure that had no physical damage or alteration. In *Hughes v. Potomac Insurance Co.*, 199 Cal. App. 2d 239 (1962), the insureds’ house had been left partially overhanging a cliff after landslide. The house suffered no physical damage. However, the court rejected the insurer’s argument that there was no “direct physical loss.” The court explained why, and what an insurer should do if it did not want to cover such losses:

Despite the fact that a ‘dwelling building’ might be rendered completely useless to its owners, [the insurer] would deny that any loss or damage had occurred unless some tangible injury to the physical structure itself could be detected. Common sense requires that a policy should not be so interpreted in the absence of a provision specifically limiting coverage in this manner. [The insureds] correctly point out that a ‘dwelling’ or ‘dwelling building’ connotes a place fit for occupancy, a safe place in which to dwell or live. It goes without question that [the insureds’] ‘dwelling building’ suffered real and severe damage when the soil beneath it slid away and left it overhanging a 30-foot cliff. Until such damage was repaired and the land beneath the building stabilized, the structure could scarcely be considered a ‘dwelling

1 building' in the sense that rational persons would be
2 content to reside there.²⁰

3 40. Given the potential liability that insurers, including Vigilant, faced
4 under their policies for losses from pandemics, shortly after the outbreak of SARS in
5 2003, the insurance industry undertook to draft exclusions applicable to losses from
6 viruses and bacteria. In 2006, the Insurance Services Office ("ISO"), the insurance
7 industry's drafting organization, considered the need to draft an exclusion that
8 would bar coverage for losses caused by a virus.²¹

9 41. On July 6, 2006, ISO prepared a circular as part of its filing with state
10 insurance regulators of a standard exclusion of loss due to viruses and bacteria.²² In
11 that circular, it noted that examples of "viral and bacterial contaminants are
12 rotavirus, SARS, [and] influenza," observing, "The universe of disease-causing
13 organisms is always in evolution."²³ ISO recognized that viruses could cause
14 property damage, stating:

15 Disease-causing agents may render a product impure
16 (change its quality or substance), or enable the spread of
17 disease by their presence on interior building surfaces or
18 the surfaces of personal property. When disease-causing
19 viral or bacterial contamination occurs, potential claims
20 involve the cost of replacement of property (for example,
21 the milk), cost of decontamination (for example, interior

22 _____
23 ²⁰ *Id.* at 248-49.

24 ²¹ "ISO is a non-profit trade association that provides rating, statistical, and actuarial policy forms
25 and related drafting services to approximately 3,000 nationwide property or casualty insurers.
26 Policy forms developed by ISO are approved by its constituent insurance carriers and then
submitted to state agencies for review. Most carriers use the basic ISO forms, at least as the
starting point for their general liability policies." *Montrose Chem. Corp. v. Admiral Ins. Co.*, 10
Cal. 4th 645,671 n.13 (1995).

27 ²² See ISO Circular, "New Endorsements Filed to Address Exclusion of Loss Due to Virus or
28 Bacteria," (July 6, 2006), <https://www.propertyinsurancecoveragelaw.com/files/2020/03/ISO-Circular-LI-CF-2006-175-Virus.pdf>.

²³ *Id.*

1 building surfaces), and business interruption (time
2 element) losses.²⁴

3 42. In fact, ISO expressly warned that “the specter of pandemic or hitherto
4 unorthodox transmission of infectious material raises the concern that insurers
5 employing [property] policies may face claims in which there are efforts to expand
6 coverage and to create sources of recovery for such losses, contrary to policy
7 intent.”²⁵ Therefore, ISO introduced a standard-form exclusion that it entitled
8 “Exclusion Of Loss Due To Virus Or Bacteria” (form CP 01 40 07 06 and, in certain
9 jurisdictions, form CP 01 75 07 06).

10 43. Thus, Vigilant and other insurers have had a “virus or bacteria”
11 exclusion since 2006 that is approved for use throughout the United States. As one
12 recent article succinctly stated, “Insurers knew the damage a viral pandemic could
13 wreak on businesses. So they excluded coverage.”²⁶

14 44. However, Another Planet is informed and believes, and on that basis
15 alleges, that even though they knew they could be liable for losses from viruses and
16 pandemics if they did not include an appropriate exclusion in their policies, Vigilant
17 and other members of the Chubb group of insurers still sold many policies
18 (including the policy at issue here) without including such an exclusion. Therefore,
19 it should be no surprise to Vigilant that it would be obligated to pay for losses when
20 it did not include such an exclusion. In fact, in reporting on the financial condition
21 and performance of Vigilant and the other Chubb companies, Chubb Limited
22 warned investors of the potential negative impact on their financial results and
23 condition from this exposure—and did so well before Vigilant sold the policy to
24

25 ²⁴ *Id.*

26 ²⁵ *Id.*

27 ²⁶ Todd Frankel, “Insurers knew the damage a viral pandemic could wreak on businesses. So they
28 excluded coverage,” *Washington Post* (April 2, 2020). This statement might be true for many
policies, but it is not true as to the policy here—Vigilant did not exclude coverage for viruses and
pandemics.

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1 Another Planet. For example, Chubb Limited stated the following warning in its
2 2017 Annual Report:

3 **Our results of operations or financial condition could**
4 **be adversely affected by the occurrence of natural and**
5 **man-made disasters.**

6 We have substantial exposure to losses resulting from
7 natural disasters . . . such as . . . catastrophic events,
8 including pandemics. This could impact a variety of our
9 businesses, including our commercial and personal
10 lines Catastrophes can be caused by various events,
11 including . . . natural or man-made disasters, including a
12 global or other wide-impact pandemic The
13 occurrence of claims from catastrophic events could result
14 in substantial volatility in our results of operations or
15 financial condition for any fiscal quarter or year. The
16 historical incidence for events such as . . . pandemics . . .
17 is infrequent and may not be representative of
18 contemporary exposures and risks. . . . [T]he occurrence
19 of one or more catastrophic events could have an adverse
20 effect on our results of operations and financial
21 condition.²⁷

22 **THE VIGILANT POLICY**

23 45. Vigilant sold Another Planet a Customarq Series Entertainment
24 Insurance Program, which includes a Property Insurance Section and a Liability
25 Insurance Section (the “Policy”). A true and correct copy of the Policy is attached
26

27 _____
28 ²⁷ Chubb Limited, 2017 Annual Report, at 19,
https://s1.q4cdn.com/677769242/files/doc_financials/2018/AGM/Chubb_Limited_2017_Annual_Report.pdf.

1 hereto as Exhibit A and incorporated herein by reference. The Policy was in effect
 2 from May 1, 2019, to May 1, 2020. Before selling the Policy to Another Planet,
 3 Vigilant engaged in, or had reasonable opportunities to engage in, an extensive
 4 underwriting investigation and became familiar and knowledgeable regarding the
 5 nature and scope of Another Planet’s business and the nature of the risks that it was
 6 insuring against.

7 46. The Property Insurance Section of the Policy is an “all risk” property
 8 insurance policy—that is, a policy that covers all risks of physical loss or damage
 9 except those plainly, clearly, conspicuously, and expressly excluded. Unlike
 10 “enumerated perils” property insurance policies, which cover only certain causes of
 11 loss, “all risk” property insurance policies provide broad coverage for
 12 unprecedented and unanticipated risks of loss.

13 47. The Policy is comprised of a number of forms and endorsements that
 14 define the scope of coverage. Like most commercial property insurance policies,
 15 the Policy insures not only against physical loss or damage to covered property, but
 16 also for resulting economic and financial losses. This coverage is referred to in the
 17 Policy as “Business Income With Extra Expense” coverage. *See* Ex. A, Property
 18 Insurance – Business Income With Extra Expense.

19 48. The Policy’s Business Income With Extra Expense coverage is
 20 designed, understood, stated, and intended to cover Another Planet for economic
 21 losses, including losses from the interruption and/or reduction of its business,
 22 suffered as a result of “direct physical loss or damage” to covered property that is
 23 “caused by or result[s] from a **covered peril.**” Vigilant elected not to define or
 24 explain the phrase “direct physical loss or damage.”

25 49. Under this coverage, Vigilant agreed to pay for Another Planet’s actual
 26 loss of Business Income sustained due to the “impairment” of Another Planet’s
 27 operations. *Id.*

28

1 50. The “Extra Expense” portion of this coverage grant is designed,
2 understood, stated, and intended to cover Another Planet for losses from “the actual
3 or potential impairment” of its “**operations.**” *Id.*

4 51. Within the Business Income With Extra Expense coverage, the Policy
5 provides an “Additional Coverage” for “Civil Authority,” which obligates Vigilant
6 to pay Another Planet’s “**business income loss**” and “**extra expense**” “incur[red]
7 due to the actual impairment of [its] **operations**, directly caused by the prohibition
8 of access to: [its] premises; or a **dependent business premises**, by a civil
9 authority.” *Id.* The “prohibition of access by a civil authority must be the direct
10 result of direct physical loss or damage to property away from such premises or such
11 **dependent business premises** by a **covered peril**, provided such property is within:
12 one mile . . . from such premises or **dependent business premises**” *Id.*

13 52. The Policy also provides an “Additional Coverage” for “Dependent
14 Business Premises,” which obligates Vigilant to pay Another Planet’s “**business**
15 **income loss . . . due to the actual impairment of [its] operations**” and its “**extra**
16 **expense . . . due to the actual or potential impairment of [its] operations.**” *Id.* The
17 “actual or potential impairment of **operations** must be caused by or result from
18 direct physical loss or damage by a **covered peril to property . . . at a dependent**
19 **business premises.**” *Id.*

20 53. The Policy defines “**dependent business premises**” as “premises
21 operated by others on whom [Another Planet] depend[s] to: deliver materials or
22 services to you or to others for your account (contributing premises); [and] accept
23 your products or services (recipient premises)” *Id.*

24 54. Vigilant’s knowledge of the ability of a virus to cause property damage
25 is further evidenced by its inclusion of a virus-related exclusion in the liability
26 portion of the package policy that it sold to Another Planet. *See* Ex. A, Exclusion
27 End., Biological Agents. Even though the liability portion of the Policy covers
28 “damages that the insured becomes legally obligated to pay by reason of liability:

1 imposed by law; or assumed in an insured contract; for . . . property damage caused
 2 by an occurrence to which this coverage applies,” it excludes coverage for
 3 “damages, loss, cost or expense arising out of the actual, alleged or threatened
 4 contaminative, pathogenic, toxic or other hazardous properties of **biological**
 5 **agents.”** *Id.* “**Biological Agents**” is defined to include “viruses or other pathogens
 6 (whether or not a microorganism).” *Id.*

7 55. Despite its awareness of the massive losses that its insureds, including
 8 Another Planet, could face from a virus-related pandemic, Vigilant decided to sell
 9 the Policy without any exclusion for losses caused by or resulting from the viruses,
 10 communicable diseases, or pandemics. Because losses caused by or resulting from
 11 viruses, communicable diseases, and pandemics are not expressly excluded under
 12 the Policies, they are, as a matter of law and pursuant to decades of insurance
 13 industry custom and practice, Covered Perils.

14 VIGILANT’S WRONGFUL CONDUCT

15 56. Another Planet has sustained covered Business Income and Extra
 16 Expense losses as defined in the Policy. These Business Income and Extra Expense
 17 losses were sustained due to the “impairment” of Another Planet’s business
 18 operations as a result of “direct physical loss or damage” to insured premises and
 19 “dependent business premises.” These Business Income and Extra Expense losses
 20 were also caused by the state, municipal, and other civil authority orders issued
 21 throughout the United States, each of which were issued in response to the actual
 22 presence of the virus and constitute a “prohibition of access by a civil authority” as
 23 that phrase is used in the Policies.

24 57. The Closure Orders were issued due to the presence of the SARS-CoV-
 25 2 virus and the desire to avoid the spread of the virus and the disease that it causes,
 26 COVID-19. The Closure Orders further prohibited Another Planet’s access to its
 27 insured premises. Because the SARS-CoV-2 virus adheres to surfaces of property
 28 for almost a month and can linger in the air in buildings for several hours, the

1 presence of the SARS-CoV-2 virus on or around property amounts to “direct
 2 physical loss or damage to property” as that phrase is used in the Policies. In fact,
 3 given the manner in which SARS-CoV-2 lingers in the air and on surfaces, and its
 4 manner of transmission, and the desire to “flatten the curve,” Another Planet’s
 5 premises and the premises upon which it depends were not capable of fulfilling their
 6 essential functions. Accordingly, the state, municipal, and other civil authority
 7 orders issued in response to “direct physical loss or damage” that SARS-CoV
 8 caused substantially impaired the premises. They also amount to the “prohibition of
 9 access by a civil authority” that is “the direct result of direct physical loss or damage
 10 to property away from such premises” as required to trigger Civil Authority
 11 coverage under the Policy.

12 58. SARS-CoV-2 particles attached to and damaged Another Planet’s
 13 premises that were insured under the Policy, as well as the surrounding vicinity,
 14 rendering its premises unsafe and unusable, and resulted in direct physical loss or
 15 property damage. As a result, all events scheduled for Another Planet’s venues
 16 were cancelled, including scheduled concerts by Bob Dylan, John Legend, Sturgill
 17 Simpson, Wilco, Phish, The Black Keys, Nelly, Kraftwerk and Kenny Chesney,
 18 among many others. At this time, it appears that Another Planet will not be able to
 19 access or otherwise operate its venues as it ordinarily would until sometime in 2021.

20 59. By suspending business operations, Another Planet also reduced the
 21 likelihood of further losses, including the ability to reopen at any point in the future.
 22 Had Another Planet not done so, the potential for a complete loss was imminent.
 23 The viability of the intended use of the premises entirely depends on the ability of
 24 Another Planet’s customers to know and believe that attending an event there is
 25 safe. Had Another Planet not acted in accordance with the Closure Orders, that
 26 knowledge would have been seriously called into question. Therefore, by closing in
 27 response to the presence of SARS-CoV-2 on the premises and the Closure orders,
 28 Another Planet preserved the functional viability of the insured premises.

1 60. The suspension of business at each insured venue as a result of the
2 property damage caused by the presence of SARS-CoV-2 and the related Closure
3 Orders resulted in significant losses to Another Planet that will exceed the Policy’s
4 \$23,908,822 limit, and which continue to rise.

5 61. Although Another Planet has sustained Business Income and Extra
6 Expense losses falling squarely with the Policy’s coverage, Vigilant failed and
7 refused to acknowledge coverage for Another Planet’s losses.

8 62. Vigilant wrongfully denied Another Planet’s claim months after it had
9 decided, in conjunction with a blanket position taken in March 2020 by all Chubb
10 insurers, that it would deny coverage under property policies for business income
11 losses associated with SARS-CoV-2, COVID-19, and the Closure Orders. In fact,
12 the Chubb website contains a “Final – March 26, 2020” notice stating in part:

13 Business interruption insurance generally covers losses to
14 your business’ income that result from disruption of your
15 business. The disruption must be caused by physical loss
16 or damage to your property by a “covered peril.” The
17 presence of an infectious agent or communicable disease
18 at a location where there is covered property generally will
19 not mean that property has suffered “physical loss or
20 damage” under your policy. Generally, “physical loss or
21 damage” means that the physical structure or physical
22 characteristics of the property have been altered by a
23 “covered peril”. Loss of use, or diminished value of
24 property that has not been physically altered will not be
25 considered “physical loss or damage.”²⁸

26
27
28 ²⁸ <https://www.chubb.com/microsites/covid19-resource-center/assets/pdf/covid-commercial-property-policyholder-notice-4-1-2020.pdf>.

1 63. Vigilant also took the same position through its trade association, the
 2 American Property Casualty Insurance Association in a letter to the United States
 3 House of Representatives Committee on Business. The Association wrote on March
 4 18, 2020, stating: “Business interruption policies do not, and were not designed to,
 5 provide coverage against communicable diseases such as COVID-19.” *See* March
 6 18, 2020, Letter, American Property Casualty Insurance Association, The Council of
 7 Insurance Agents & Brokers, Big Independent Insurance Agents & Brokers of
 8 America, and National Association of Mutual Insurance Companies to House
 9 Committee on Small Business. A true and correct copy of this letter is attached
 10 hereto as Exhibit B and incorporated herein by reference. Thus, it is clear that
 11 before Vigilant did any meaningful investigation into Another Planet’s claim (if it
 12 did any investigation at all), it already had decided that it would not pay Another
 13 Planet for its losses under the Policy.

14 64. Vigilant was required under California law and insurance industry
 15 custom and practice to conduct a thorough investigation of facts that might support
 16 Another Planet’s claim before denying coverage. Another Planet is informed and
 17 believes, and on that basis alleges, that Vigilant did not conduct the required
 18 investigation before denying Another Planet’s claim. With either a perfunctory or
 19 no meaningful investigation into Another Planet’s losses, Vigilant denied Another
 20 Planet’s claim, incorrectly asserting that its losses were not caused by or the result
 21 of direct physical loss or damage or due to the prohibition of access by a civil
 22 authority. Vigilant took this position despite the Closure Orders issued in response
 23 to the presence of SARS-CoV-2 in California and Nevada, and notwithstanding the
 24 fact that the presence of SARS-CoV-2 on or around the insured property amounts to
 25 “direct physical loss or damage” to property under the governing rules of insurance
 26 policy interpretation and California law.

27 65. Vigilant denied coverage even though it knew, or should have known,
 28 that by selling its Policy without a virus exclusion or a pandemic exclusion, Another

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1 Planet reasonably would understand and expect that the Policy covered losses
2 associated with viruses and pandemics. Vigilant knew, or should have known, that
3 it should not deny coverage when the Policy did not contain such an exclusion,
4 when its insured reasonably could expect coverage for losses associated with viruses
5 and pandemics, and when any ambiguity in its Policy would be resolved in favor of
6 any reasonable interpretation held by Another Planet.

7 66. To the extent not waived or otherwise excused, Another Planet
8 complied with provisions contained in the Policy. Therefore, Another Planet is
9 entitled to all benefits of insurance provided by the Policy.

10 **FIRST CAUSE OF ACTION**

11 ***For Breach of Contract***

12 67. Another Planet realleges and incorporates by reference paragraphs 1
13 through 66 above.

14 68. Vigilant breached its duties under the Policy by adopting the position
15 that Another Planet sustained no “physical loss or damage,” by denying coverage
16 for Another Planet’s losses, and by otherwise acting as alleged above.

17 69. As a direct and proximate result of Vigilant’s breaches, Another Planet
18 has sustained, and continues to sustain, damages, plus interest, for which Vigilant is
19 liable. The amount of Another Planet’s damages is not yet precisely known but will
20 be established according to proof. Another Planet will seek leave to amend this
21 Complaint to more precisely allege the amount of its damages when the amount is
22 more precisely known.

23 **SECOND CAUSE OF ACTION**

24 ***For Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing***

25 70. Another Planet realleges and incorporates by reference paragraphs 1
26 through 66 and 68 above.

27 71. Implied in the Policy was a covenant that Vigilant would act in good
28 faith and deal fairly with Another Planet, that Vigilant would do nothing to interfere

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1 with right of Another Planet to receive benefits due under the Policy, and that
2 Vigilant would give at least the same level of consideration to the interests of
3 Another Planet as it gave to its own interests.

4 72. Vigilant also had a duty under the Policy, the law, and insurance
5 industry custom, practice, and standards to conduct a prompt and thorough
6 investigation, including as to all bases that might support Another Planet's claims
7 for insurance coverage, before reserving rights to deny or denying, coverage.

8 73. Instead of complying with its duties, Vigilant acted in bad faith by,
9 among other things:

- 10 a. failing to conduct a full and thorough investigation of Another
11 Planet's claim for insurance coverage and asserting grounds for
12 denying coverage without conducting such investigation;
- 13 b. wrongfully and unreasonably asserting grounds for denying
14 coverage that Vigilant knew, or should have known, are not
15 supported by, and in fact are contrary to, the terms of the Policy,
16 the law, insurance industry custom and practice, and the facts;
- 17 c. failing to fully inquire into the bases that might support coverage
18 for Another Planet's claim;
- 19 d. failing to conduct an adequate investigation of the losses suffered
20 by Another Planet, and asserting grounds for disputing coverage
21 based on its inadequate investigation;
- 22 e. creating and implementing a course of action to automatically
23 deny coverage for all business interruption claims relating to
24 SARS-CoV-2, Covid-19, and subsequent events;
- 25 f. unreasonably failing and refusing to honor its promises and
26 representations in the Policy it issued to Another Planet;
- 27 g. giving greater consideration to its own interests than it gave to
28 the interests of Another Planet; and

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1 h. otherwise acting as alleged above.

2 74. In breach of the implied covenant of good faith and fair dealing,
3 Vigilant did the things and committed the acts alleged above for the purpose of
4 consciously withholding from Another Planet the rights and benefits to which it is
5 and are entitled under the Policy.

6 75. Vigilant's actions are inconsistent with Another Planet's reasonable
7 expectations, are contrary to established industry custom and practice, are contrary
8 to legal requirements, are contrary to the express terms of the Policy, and constitute
9 bad faith.

10 76. As a direct and proximate result of Vigilant's breaches, Another Planet
11 has sustained, and continues to sustain, damages in an amount in excess of this
12 Court's jurisdictional limits, plus interest, for which Vigilant is liable. Also,
13 pursuant to *Brandt v. Superior Court*, 37 Cal. 3d 813 (1985), Another Planet is
14 entitled to recover all attorneys' fees it reasonably incurred, and continues to incur,
15 in the efforts to obtain the benefits due under the Policy that Vigilant has withheld,
16 and is withholding, in bad faith. The amount of Another Planet's damages is not yet
17 precisely known but will be established according to proof. Another Planet will
18 seek leave to amend this Complaint to more precisely allege the amount of its
19 damages when the amount is more precisely known.

20 77. Another Planet is informed and believes, and on that basis alleges, that
21 Vigilant, acting through one or more of its officers, directors, or other corporate
22 employees with substantial independent and discretionary authority over significant
23 aspects of its business, performed, authorized, or ratified the bad faith conduct
24 alleged above.

25 78. Vigilant's conduct is despicable and has been done with a conscious
26 disregard of the rights of Another Planet, constituting oppression, fraud, or malice.
27 Vigilant engaged in a series of acts designed to deny Another Planet the benefits due
28 under the Policy. Specifically, Vigilant, by acting as alleged above, in light of

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1 information, facts, and relevant law to the contrary, consciously disregarded
2 Another Planet’s respective rights and forced Another Planet to incur substantial
3 financial losses, thereby inflicting substantial financial damage on Another Planet.
4 Vigilant ignored Another Planet’s interests and concerns with the requisite intent to
5 injure within the meaning of California Civil Code section 3294. Therefore,
6 Another Planet is entitled to recover punitive damages from Vigilant in an amount
7 sufficient to punish and make an example of Vigilant and to deter similar conduct in
8 the future.

9 **THIRD CAUSE OF ACTION**

10 ***Fraud in the Inducement***

11 79. Another Planet realleges and incorporates by reference herein each
12 allegation contained in 1 through 66, 68, and 71 through 75 above.

13 80. Another Planet is informed and believes, and on that basis alleges, that
14 when Vigilant sold the Policy to Another Planet, it knew that Another Planet could
15 suffer substantial business income and other economic losses from a virus or
16 pandemic and that Another Planet sought and expected the broadest coverage
17 possible.

18 81. In negotiating and selling the Policy, Vigilant expressly and impliedly
19 represented to Another Planet that the Policy would cover all forms of property loss
20 and damage unless expressly excluded, including by issuing an April 29, 2019
21 binder that promised broad coverage without any restrictions or exclusions for virus
22 or pandemic losses, and selling the Policy with the same terms.

23 82. Another Planet is informed and believes, and on that basis alleges, that
24 if Vigilant’s position that it has no obligation to pay for property damage or loss
25 caused by a virus or pandemic is true, then Vigilant misrepresented the insurance it
26 planned and promised to provide to Another Planet and the true nature and the
27 characteristics of the Policy.

28

1 83. At no time during the discussions leading to Another Planet’s purchase
2 of the Policy did any representative of Vigilant ever disclose that despite these clear
3 representations, Vigilant believed and later would contend that it would not cover
4 property loss or damage caused by a virus or pandemic, which was not excluded
5 from coverage.

6 84. Another Planet is informed and believes, and on that basis alleges, that
7 at the time that Vigilant made these promises and representations, Vigilant did so
8 intentionally knowing that they were false. Vigilant intended Another Planet to rely
9 upon them in agreeing to purchase the Policy. Vigilant induced Another Planet to
10 purchase the Policy based on Vigilant’s representation that the Policy was, in fact,
11 an “all risk” policy that would cover all losses not expressly excluded, including
12 losses caused by viruses and pandemics.

13 85. At the time Vigilant made these representations and promises, Another
14 Planet was ignorant of Vigilant’s secret plan and intention not to perform and the
15 falsity of the representations. Another Planet could not, in the exercise of
16 reasonable diligence, have discovered Vigilant’s secret plan and intention or the
17 falsity of Vigilant’s representations.

18 86. In reliance on Vigilant’s representations and promises, Another Planet
19 purchased the Policy and did not purchase alternative coverage that was available in
20 the marketplace at that time that would have provided the coverage that Vigilant
21 promised to provide. Had Vigilant not misrepresented the coverage it was selling,
22 Another Planet would not have purchased the Policy and would have purchased
23 insurance elsewhere or would have purchased the Policy with different premiums,
24 terms, and conditions. Another Planet justifiably relied on Vigilant’s
25 representations based on, among other things, Vigilant’s superior knowledge and
26 expertise about insurance, the express representations in the Policy, Vigilant’s
27 representations that the Policy was an “all risk” Policy, and Chubb’s reputation and
28 public statements about how it treats its insureds.

1 87. Vigilant failed to abide by its representations and promises and,
2 contrary to those representations and promises, refused to provide the coverage it
3 promised to provide.

4 88. As a direct and proximate result of Vigilant's acts, Another Planet has
5 sustained, and continues to sustain, damages in an amount in excess of this Court's
6 jurisdictional limits, plus interest, for which Vigilant is liable, including the
7 premiums it paid to Vigilant. The amount of Another Planet's damages is not yet
8 precisely known but will be established according to proof. Another Planet will
9 seek leave to amend this Complaint to more precisely allege the amount of its
10 damages when the amount is more precisely known.

11 89. Vigilant's conduct constitutes oppression, fraud, and/or malice.
12 Vigilant engaged in a series of acts designed to deny the benefits due under the
13 Policy that Vigilant promised and represented, and to conceal and/or mispresent
14 material facts.

15 90. Another Planet is informed and believes, and on that basis alleges, that
16 Vigilant—acting through one or more of its officers, directors, or other corporate
17 employees with substantial independent and discretionary authority over significant
18 aspects of Vigilant's business—performed, authorized, and/or ratified the fraudulent
19 conduct alleged above.

20 91. Vigilant's conduct is despicable and has been done with a conscious
21 disregard of the rights of Another Planet, constituting oppression, fraud, or malice.
22 Vigilant engaged in a series of acts designed to deny Another Planet the benefits due
23 under the Policy. Specifically, Vigilant, by acting as alleged above, consciously
24 disregarded Another Planet's respective rights and forced Another Planet to incur
25 substantial financial losses, thereby inflicting substantial financial damage on
26 Another Planet. Vigilant ignored Another Planet's interests and concerns with the
27 requisite intent to injure within the meaning of California Civil Code section 3294.
28 Therefore, Another Planet is entitled to recover punitive damages from Vigilant in

1 an amount sufficient to punish and make an example of Vigilant and to deter similar
2 conduct in the future.

3 **FOURTH CAUSE OF ACTION**

4 ***Fraud - Promise Made without Intent to Perform***

5 92. Another Planet realleges and incorporates by reference herein each
6 allegation contained in 1 through 66, 68, 71 through 75, and 80 through 87 above.

7 93. In selling the Policy, Vigilant expressly and impliedly represented to
8 Another Planet that the Policy would be applied as written and would cover all
9 forms of physical loss or damage unless the cause of the loss was excluded. At no
10 time during the discussions leading to Another Planet's purchase of the Policy did
11 any representative of Vigilant ever disclose that despite the representations in the
12 Policy, Vigilant believed and would contend that it had no obligation to cover losses
13 caused by a virus or pandemic.

14 94. Another Planet is informed and believes, and on that basis alleges, that
15 at the time that Vigilant made its promises and representations, the promises and
16 representations were false.

17 95. Another Planet is informed and believes, and on that basis alleges, that
18 at the time that Vigilant made these promises and representations, Vigilant did not
19 intend to honor its representations or perform these promises and intended not to
20 cover losses caused by a virus or pandemic.

21 96. As a direct and proximate result of Vigilant's acts, Another Planet has
22 sustained, and continues to sustain, damages in an amount in excess of this Court's
23 jurisdictional limits, plus interest, for which Vigilant is liable, including the
24 premiums it paid to Vigilant. The amount of Another Planet's damages is not yet
25 precisely known but will be established according to proof. Another Planet will
26 seek leave to amend this Complaint to more precisely allege the amount of its
27 damages when the amount is more precisely known.

28

1 97. Vigilant’s conduct constitutes oppression, fraud, and/or malice.
 2 Vigilant engaged in a series of acts designed to deny the benefits due under the
 3 Policy that Vigilant promised and represented, and to conceal and/or mispresent
 4 material facts.

5 98. Another Planet is informed and believes, and on that basis alleges, that
 6 Vigilant—acting through one or more of its officers, directors, or other corporate
 7 employees with substantial independent and discretionary authority over significant
 8 aspects of Vigilant’s business—performed, authorized, and/or ratified the fraudulent
 9 conduct alleged above.

10 99. Vigilant’s conduct is despicable and has been done with a conscious
 11 disregard of the rights of Another Planet, constituting oppression, fraud, or malice.
 12 Vigilant engaged in a series of acts designed to deny Another Planet the benefits due
 13 under the Policy. Specifically, Vigilant, by acting as alleged above, consciously
 14 disregarded Another Planet’s respective rights and forced Another Planet to incur
 15 substantial financial losses, thereby inflicting substantial financial damage on
 16 Another Planet. Vigilant ignored Another Planet’s interests and concerns with the
 17 requisite intent to injure within the meaning of California Civil Code section 3294.
 18 Therefore, Another Planet is entitled to recover punitive damages from Vigilant in
 19 an amount sufficient to punish and make an example of Vigilant and to deter similar
 20 conduct in the future.

21 **FIFTH CAUSE OF ACTION**

22 ***Fraud by Concealment***

23 100. Another Planet realleges and incorporates by reference paragraphs 1
 24 through 1 through 66, 68, 71 through 75, 80 through 87, and 93 through 95 above.

25 101. Another Planet is informed and believes, and on that basis alleges, that
 26 if Vigilant’s statements made since the outbreak of the pandemic that its policies do
 27 not cover losses from a virus or pandemic are true, Vigilant planned and intended,
 28

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1 before selling the Policy, not to cover such losses and concealed its plans and intent
2 from Another Planet.

3 102. A limitation on coverage, such as one relating to viruses and
4 pandemics, is material to the Policy.

5 103. Vigilant had a duty to disclose all limitations on coverage to Another
6 Planet prior to selling the Policy.

7 104. Another Planet is informed and believes, and on that basis alleges, that
8 Vigilant knew of the availability of a “virus or bacteria” exclusion since 2006.
9 Vigilant knew it could be liable for losses from viruses and pandemics if it did not
10 include an appropriate exclusion in its policies, but Vigilant did not include such an
11 exclusion.

12 105. Another Planet is informed and believes, and on that basis alleges, that
13 when Vigilant sold the Policy to Another Planet, Vigilant knew that Another Planet
14 did not know Vigilant’s plan and intent not to pay under the Policy for any losses
15 that might arise from viruses and pandemics and concealed its plan and intent from
16 Another Planet.

17 106. At the time Another Planet purchased the Policy, it was unaware of any
18 limitation on coverage concerning or related to damage or loss caused by a virus or
19 pandemic.

20 107. As a direct and proximate result of Vigilant’s acts, Another Planet has
21 sustained, and continues to sustain, damages in an amount in excess of this Court’s
22 jurisdictional limits, plus interest, for which Vigilant is liable, including the
23 premiums it paid to Vigilant. The amount of Another Planet’s damages is not yet
24 precisely known but will be established according to proof. Another Planet will
25 seek leave to amend this Complaint to more precisely allege the amount of its
26 damages when the amount is more precisely known.

27 108. Vigilant’s conduct constitutes oppression, fraud, and/or malice.
28 Vigilant engaged in a series of acts designed to deny the benefits due under the

1 Policy that Vigilant promised and represented, and to conceal and/or mispresent
2 material facts.

3 109. Another Planet is informed and believes, and on that basis alleges, that
4 Vigilant—acting through one or more of its officers, directors, or other corporate
5 employees with substantial independent and discretionary authority over significant
6 aspects of Vigilant’s business—performed, authorized, and/or ratified the fraudulent
7 conduct alleged above.

8 110. Vigilant’s conduct is despicable and has been done with a conscious
9 disregard of the rights of Another Planet, constituting oppression, fraud, or malice.
10 Vigilant engaged in a series of acts designed to deny Another Planet the benefits due
11 under the Policy. Specifically, Vigilant, by acting as alleged above, consciously
12 disregarded Another Planet’s respective rights and forced Another Planet to incur
13 substantial financial losses, thereby inflicting substantial financial damage on
14 Another Planet. Vigilant ignored Another Planet’s interests and concerns with the
15 requisite intent to injure within the meaning of California Civil Code section 3294.
16 Therefore, Another Planet is entitled to recover punitive damages from Vigilant in
17 an amount sufficient to punish and make an example of Vigilant and to deter similar
18 conduct in the future

19 **SIXTH CAUSE OF ACTION**

20 ***Negligent Misrepresentation***

21 111. Another Planet realleges and incorporates by reference herein each
22 allegation contained in 1 through 66, 68, 71 through 75, 80 through 87, 93 through
23 95, and 101 through 106 above.

24 112. Another Planet is informed and believes, and on that basis alleges, that
25 at the time that Vigilant made the promises and representations about the Policy,
26 Vigilant made them without any reasonable basis to believe they were true and with
27 the intent and knowledge that Another Planet would rely upon them.

1 113. If Vigilant's current position that it has no obligation to cover Another
 2 Planet's losses is correct, then the representations Vigilant made in selling the
 3 Policy were, in fact, false, and were made without any reasonable basis for believing
 4 them to be true. If Vigilant's current position is to be believed, then Vigilant did not
 5 plan or intend to insure losses associated with viruses or pandemics and, in fact,
 6 planned and intended the contrary.

7 114. As a direct and proximate result of Vigilant's acts, Another Planet has
 8 sustained, and continues to sustain, damages in an amount in excess of this Court's
 9 jurisdictional limits, plus interest, for which Vigilant is liable, including the
 10 premiums it paid to Vigilant. The amount of Another Planet's damages is not yet
 11 precisely known but will be established according to proof. Another Planet will
 12 seek leave to amend this Complaint to more precisely allege the amount of its
 13 damages when the amount is more precisely known.

14 **SEVENTH CAUSE OF ACTION**

15 *For Declaratory Relief*

16 115. Another Planet realleges and incorporates by reference paragraphs 1
 17 through 66 above.

18 116. Another Planet contends that it is entitled to coverage under the Policy
 19 for Business Income losses suffered and/or Extra Expense incurred as a result of the
 20 presence of SARS-CoV-2 and the related Closure Orders. Another Planet is
 21 informed and believes, and on that basis alleges, that Vigilant disputes that Another
 22 Planet is entitled to such coverage. Therefore, an actual and justiciable controversy
 23 exists between Another Planet, on the one hand, and Vigilant, on the other.

24 117. Pursuant to 28 U.S.C. § 2201, Another Planet seeks a judicial
 25 declaration from this Court confirming that Another Planet's contentions, as stated
 26 above, are correct. A declaration is necessary in order that the parties' dispute may
 27 be resolved and that they may be aware of their respective rights and duties.

28

PRAYER FOR RELIEF

WHEREFORE, Another Planet prays for relief as follows:

ON THE FIRST CAUSE OF ACTION

1. For damages according to proof at the time of trial, plus interest;

ON THE SECOND CAUSE OF ACTION

2. For damages according to proof at the time of trial, including reasonable attorneys’ fees incurred in obtaining the benefits due under the Policy, plus interest; and

3. For punitive damages in an amount to be determined at the time of trial;

ON THE THIRD CAUSE OF ACTION

4. For damages, plus interest, according to proof at the time of trial;
5. For punitive damages in an amount to be determined at the time of trial;

ON THE FOURTH CAUSE OF ACTION

6. For damages, plus interest, according to proof at the time of trial;
7. For punitive damages in an amount to be determined at the time of trial;

ON THE FIFTH CAUSE OF ACTION

8. For damages, plus interest, according to proof at the time of trial;
9. For punitive damages in an amount to be determined at the time of trial;

ON THE SIXTH CAUSE OF ACTION

10. For damages, plus interest, according to proof at the time of trial;

ON THE SEVENTH CAUSE OF ACTION

11. For declarations in accord with Another Planet’s contentions stated above;

ON ALL CAUSES OF ACTION

12. For the costs of this lawsuit; and

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13. For such other, further, and/or different relief as the Court may deem just and proper.

DATED: October 23, 2020 PASICH LLP

By: /s/Anamay M. Carmel
Anamay M. Carmel
Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

Plaintiff Another Planet Entertainment, LLC hereby demands a trial by jury in this action.

DATED: October 23, 2020 PASICH LLP

By: /s/Anamay M. Carmel
Anamay M. Carmel
Attorneys for Plaintiff

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