

UNITED TALENT AGENCY v. VIGILANT INS. CO.

Case No. 20STCV43745

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

November 13, 2020

Reporter

2020 CA Sup. Ct. Pleadings LEXIS 15156 *

UNITED TALENT AGENCY, LLC, Plaintiff, v. VIGILANT INSURANCE COMPANY; FEDERAL INSURANCE COMPANY; and DOES 1 through 10, Defendants.

Type: Pleading

Counsel

Kirk Pasich (SBN 94242), PASICH LLP, Los Angeles, CA, Michael S. Gehrt (SBN 246450), PASICH LLP, Manhattan Beach, CA, Attorneys for Plaintiff .

Title

COMPLAINT FOR: 1. BREACH OF CONTRACT; 2. TORTIOUS BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; AND 3. DECLARATORY RELIEF

Text

DEMAND FOR JURY TRIAL [*1]

Plaintiff United Talent Agency, LLC ("UTA") brings this action against defendants Vigilant Insurance Company ("Vigilant") and Federal Insurance Company ("Federal") and alleges as follows:

NATURE OF THE ACTION

1. UTA is one of the largest talent agencies in the world. It represents actors, directors, producers, recording artists, writers, and other professionals in a variety of industries, including film, television, digital media, publishing, music, and video games.

2. Like thousands of other businesses, UTA was forced to suspend its operations, and had the use and functionality of its premises, as well as those premises upon which it relies, substantially impaired due to SARS-CoV-2, COVID-19, the subsequent actions and orders of state and local civil authorities, guidance from the Centers for Disease Control and Prevention, and the need to mitigate its losses and damage. Additionally, UTA suffered losses as a result of cancelled live events, as well as cancelled television and motion picture productions. As a result, UTA has suffered, and continues to suffer, substantial financial losses, including lost profits, lost commissions, and lost [*2] business opportunities.

3. When UTA turned to Vigilant, its commercial property and business interruption insurer, UTA reasonably expected Vigilant to afford coverage for UTA's financial losses. However, instead of honoring its promises to UTA, Vigilant has wrongfully withheld the policy benefits that UTA is entitled to receive—and that it needs to weather the circumstances associated with the spread of SARS-CoV-2 and actions to "flatten the curve," rebound from their financial losses, and continue operating as productive members of California's economy.

4. UTA is informed and believes, and on that basis alleges, that Federal also disputes that UTA is entitled to any benefits under the policy that Federal issued to UTA. The Federal policy is substantially similar to the policy issued by Vigilant and both insurers are part of the Chubb group of insurance companies, which has adopted a universal practice of denying coverage for all business interruption claims associated with SARS-CoV-2, Covid-19, and subsequent events.

5. There is no merit to Vigilant's and Federal's position that their policies do not insure the losses that UTA has suffered and is suffering. In selling their [*3] broad, "all risk" property policies to UTA, Vigilant and Federal promised to insure financial losses attributable to "direct physical loss or damage" to property unless an exclusion conspicuously, plainly and clearly applies to bar coverage. Vigilant and Federal have known for decades that the phrase "direct physical loss or damage to property" extends to damage or loss caused by the presence of a hazardous substance in the airspace inside a building or on property, and losses that result when the use or function of property is substantially impaired, even if the property has not been physically altered.

6. In fact, as Vigilant and Federal have long known, and California courts have recognized since at least 1962, even if a building or structure is not physically or structurally altered it will be deemed, for insurance purposes, to have suffered a "direct physical loss or damage to property" if its function or purpose is substantially impaired.

7. Vigilant and Federal also have known for more than a decade that they and their insureds face a substantial risk of loss from viruses and pandemics and often have included an exclusion in their policies to limit or bar coverage for [*4] such losses. Indeed, the insurance industry created a standard-form "virus or bacteria" exclusion in 2006 in an attempt to limit insurance for such losses. However, in selling their policies to UTA, Vigilant and Federal decided not to include any such exclusion. In fact, Vigilant and Federal did nothing in selling their policies to limit their liability for virus- or pandemic-associated risks. Nor did Vigilant and Federal warn UTA that even though they did not include a virus or pandemic exclusion, they would interpret their policies as if they contained such an exclusion.

8. By this lawsuit, UTA seeks damages to compensate it for Vigilant's contractual breaches and bad faith conduct. It also seeks declaratory relief confirming that its losses are covered.

THE PARTIES

9. UTA is a Delaware limited liability company with its principal place of business in Beverly Hills, California. Its members include citizens of New York and New Jersey.

10. UTA is informed and believes, and on that basis alleges, that Vigilant is a New York corporation, with its principal place of business in Whitehouse Station, New Jersey. At all times material hereto, Vigilant was licensed to transact, [*5] and did transact, business in California and the County of Los Angeles.

11. UTA is informed and believes, and on that basis alleges, that Federal is an Indiana corporation, with its principal place of business in Whitehouse Station, New Jersey. At all times material hereto, Federal was licensed to transact, and did transact, business in California and the County of Los Angeles.

12. UTA is ignorant of the true names and capacities, whether individual, associate, partnership, corporate, or otherwise, of the defendants fictitiously designated herein as Does 1 through 10, and therefore sues those defendants by these fictitious names. UTA will seek leave of court to amend this complaint when the true names and capacities of these fictitiously designated defendants have been ascertained. UTA is informed and believes, and on that basis alleges, that Does 1 through 10, in some way unknown to UTA, have underwritten or provided insurance coverage to it, or are otherwise responsible for losses alleged herein, and that Does 1 through 10 are authorized to, and do, transact insurance business in the State of California and the County of Los Angeles.

13. UTA is informed and believes, and [*6] on that basis alleges, that Vigilant and Federal are members of the Chubb group of insurance companies. UTA is informed and believes, and on that basis alleges, that Vigilant, Federal, and the other Chubb companies are, and hold themselves out as being, extremely sophisticated and knowledgeable in insuring against property and ***business interruption*** losses and in investigating the risks they are insuring. UTA is informed and believes, and on that basis alleges, that Vigilant, Federal, and the other Chubb companies participate in a wide range of first-party property insurance programs and hold themselves out as being knowledgeable, experienced, and reliable, and willing to insure, and capable of insuring, substantial property and ***business interruption*** losses.

14. Vigilant, Federal, and other members of the Chubb group of insurance companies operate under the name "Chubb" and make various representations as "Chubb" on behalf of themselves and all members of the Chubb group of companies. Together as Chubb, they operate a website located at <https://www.chubb.com/us-en/>. They use this website to market their insurance products, to represent the nature of their insurance products, their [*7] policy underwriting, and their claims handling, and to represent the quality of insurance and service their customers will get if they do business with a Chubb company. In essence, Vigilant, Federal, and the other members of the Chubb group of insurance companies use this website and their advertising to speak as a single voice, boasting of their combined capabilities and strong financial foundation. UTA is informed and believes, and on that basis alleges, that when "Chubb" says things through its website, through its advertising, and through its statements, including annual reports and other financial statements, it is speaking on behalf of, and is authorized to speak on behalf of, its member companies, including Vigilant and Federal.

15. Chubb asks on its website, "How is Chubb different?" It responds as follows:

We don't just process claims, we make things right.

We hope you never need to file a claim with us. But if you do, that's our opportunity to show you what "craftsmanship" means in service to you. It means a quick response when you need it most. It means Chubb people working with empathy, integrity and our legendary attention to detail to make you whole. It means [*8] we honor the promises we've made to you. Your loved ones, your employees, your home, your business reputation-these things matter. These things are personal, for you and for us.

We're here to help.¹

16. Chubb also long has represented to the public, "If being treated fairly and paid quickly are important to your clients when they have a loss, you want Chubb. When your clients insure with Chubb, they're buying *real* insurance."²

17. Chubb also represents on its website:

The insurance claims process can sometimes be, well, a process. At Chubb, it's different. That's because we're not just in the insurance business, we're in the people business. Our experienced claims specialists are relentless about every detail in the most personal way possible. Whether you have a business, homeowners or auto policy, it's our policy to make your life easier. . . . If a solution is possible, we'll find a way to make it happen."³

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

19. Chubb also proclaims as follows with respect to SARS-CoV-2 and COVID-19:

Our hearts go out to those affected by the COVID-19 pandemic. We have been - and stand ready to continue - supporting our clients, distribution partners and communities.⁵

20. Chubb also states:

We're here for you -

Financially - Chubb has the financial strength and resources to support our policies and the financial capacity to pay covered claims even in these uncertain times.

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

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

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

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

⁵ <https://www.chubb.com/microsites/covid19-resource-center/index.aspx>.

Operationally - All of our claims networks and supporting systems are fully operational and all Chubb employees can access these systems from home.

Resourcefully - We know we will face unanticipated challenges, but Chubb is committed to providing you with the high level of claims service and responsiveness that you expect, and we will do what is feasible to ensure that continues, all in compliance with the fast-changing laws, rules and regulations. We plan for [*10] the unexpected and remain agile and adaptable; including using alternative means of adjusting claims as needed and feasible.

While we are in a time of unprecedented uncertainty, Chubb is well prepared and will be there for you, as always. ⁶

21. Chubb also states on behalf of Vigilant, Federal, and its other member companies:

Doing our part

Chubb takes pride in our continuing commitment to our clients. ⁷

Chubb echoed these sentiments in a news release in April 2020, stating:

"We are committed to supporting people, business and communities most impacted by this global crisis," said Evan G. Greenberg, Chairman and Chief Executive Officer. ⁸

THE COVID-19 PANDEMIC AND ENSUING CIVIL AUTHORITY ORDERS

22. **COVID-19** is a disease caused by a recently discovered virus known as SARSCoV-2. The World Health Organization has named the virus and a resulting disease. As the World Health Organization has stated:

Official names have been announced for the virus responsible [*11] for **COVID-19** (previously known as "2019 novel **coronavirus**") and the disease it causes. The official names are:

Disease

coronavirus disease

(COVID-19) Virus

severe acute respiratory syndrome **coronavirus 2**
(SARS-CoV-2). ⁹

⁶ <https://www.chubb.com/microsites/covid19-resource-center/claims.aspx>.

⁷ *Id.*

⁸ <https://news.na.chubb.com/2020-04-05-Chubb-Commits-10-Million-to-Pandemic-Relief-Efforts-Globally-Company-Pledges-No-Covid-19-Layoffs>.

⁹ [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).

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

Viruses, and the diseases they cause, often have different names. For example, HIV is the virus that causes AIDS. People often know the name of a disease, such as measles, but not the name of the virus that causes it (rubeola). There are different processes, and purposes, for naming viruses and diseases.

¹⁰

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

25. As explained by the World Health Organization,

[p]eople [*12] can catch COVID-19 from others who have the [SARSCoV-2] virus. The disease spreads primarily from person to person through small droplets from the nose or mouth, which are expelled when a person with COVID-19 coughs, sneezes, or speaks. These droplets are relatively heavy, do not travel far and quickly sink to the ground. People can catch COVID-19 if they breathe in these droplets from a person infected with the virus. . . . These droplets can land on objects and surfaces around the person such as tables, doorknobs and handrails. People can become infected by touching these objects or surfaces, then touching their eyes, nose or mouth. ¹¹

26. Aerosolized droplets exhaled by normal breathing can travel significant distances and stay suspended in air for hours until gravity ultimately forces them to the nearest surface. Studies suggest that the SARS-CoV-2 virus can remain on surfaces for at least 28 days. ¹²

27. Since January 1, 2020, there have been more than 52,000,000 confirmed cases of COVID-19 throughout the world, more than 1,200,000 of which have resulted in deaths as of the date of filing of this Complaint. ¹³ There have been more than 10,200,000 confirmed cases of COVID-19 in the United States, more than 240,000 of which have resulted in deaths. ¹⁴ Moreover, due in part to the initial absence of

¹⁰ *Id.*

¹¹ How does COVID-19 spread?," World Health Organization (April 17, 2020), available at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/qa-detail/q-a-coronaviruses>.

¹² See, e.g., CNBC, *Virus that causes Covid-19 can survive for 28 days on common [*13] surfaces, 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, 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://virology.biomedcentral.com/articles/10.1186/s12985-020-01418-7>.

¹³ <https://covid19.who.int/>.

¹⁴ *Id.*

available tests, it has been reported that at least in the United States, the number of people infected with SARS-CoV-2 may be ten times higher than reported.¹⁵

28. In March 2020, in response to the pandemic and the worldwide spread of SARSCoV-2, civil authorities throughout the United States began issuing "stay home" and "shelter in place" quarantine orders and requiring the suspension of non-essential business operations (collectively, "Closure Orders").

29. For example, in New York, Governor Cuomo issued Executive Order No. 202 on March 7, 2020, Declaring a Disaster Emergency in the State of New York. On March 12, 2020, Governor Cuomo issued Executive Order 202.1, which required large gatherings and events to be cancelled or postponed if they had anticipated attendance in excess of 500 people.¹⁶ On March 16, 2020, Governor Cuomo issued Executive Order 202.3, which reduced the anticipated attendance threshold to 50 people.¹⁷

30. On March 16, 2020, New York City Mayor de Blasio issued Emergency Executive Order [*15] No. 100 in which he declared that "the virus physically is causing property loss and damage." In that same Executive Order, the Mayor of New York City directed that "all entertainment venues, including those with seating capacity below 500, are hereby closed effective Monday, March 16, 2020 at 8:00 PM."¹⁸

31. In California, Governor Gavin Newsom issued Executive Order N-25-20, ordering that: "All residents are to heed any orders and guidance of state and local public health officials, including but not limited to the imposition of social distancing measures, to control the spread of COVID-19." Executive Order N-25-20 took effect on March 12, 2020.¹⁹

32. On March 19, 2020, the State of California issued an Order of the State Public Health Officer, which required all individuals living in the state to stay at home or at their place of residence "except as needed to maintain continuity of operations of the federal critical infrastructure sectors." On that same date, California Governor Newsom issued Executive Order N-33-20, [*16]²⁰ expressly requiring California residents to follow the March 19, 2020, Order of the State Public Health Officer, and incorporating by reference California Government Code section 8665. Section 8665 provides:

Any person . . . who refuses or willfully neglects to obey any lawful order . . . issued as provided in this chapter, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a

¹⁵ 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, [*14] 2020), <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2768834>.

¹⁶ Section 8.202.1. Executive Order No. 202.1: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency, 9 NYCRR 8.202.1, March 12, 2020. <https://www.governor.ny.gov/news/no-2021-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

¹⁷ Section 8.202.3. Executive Order No. 202.3: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency, 9 NYCRR 8.202.3, March 16, 2020. <https://www.governor.ny.gov/news/no-2023-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

¹⁸ <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-100.pdf>

¹⁹ Executive Order Further Enhancing State and Local Government's Ability to Respond to COVID-19 Pandemic, 2019 CA EO 25-20, March 12, 2020. <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.12.20-EO-N-25-20-COVID-19.pdf>

²⁰ Stay at Home Order, 2019 CA EO33-20, March 19, 2020. <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>

fine of not to exceed one thousand dollars (\$ 1,000) or by imprisonment for not to exceed six months or by both such fine and imprisonment.

33. On March 15, 2020, Los Angeles Mayor Eric Garcetti issued a public order prohibiting all dining in restaurants, prohibiting other large gatherings, and strongly discouraging religious gatherings.²¹

34. On March 16, 2020, the County of Los Angeles Department of Public Health issued [*17] an order prohibiting gatherings of greater than 50 people.²²

35. On March 19, 2020, the County of Los Angeles amended its prior order and mandated the closure of all businesses operating in the County, subject to certain exceptions for "essential" businesses and business activities. The County of Los Angeles stated that this order was issued in direct response to the "continued rapid spread of COVID-19 and the need to protect the most vulnerable members of our community." It added that the order was "based upon scientific evidence and best practices, as currently known and available, to protect members of the public from avoidable risk of serious illness and death resulting from the spread of COVID-19" The March 19, 2020, Order further recognized that, as of that date, there were "at least 231 cases of COVID-19 and 2 deaths reported in Los Angeles County," noting that "[t]here remains a strong likelihood [*18] of significant and increasing number of suspected cases of community transmission."²³

36. Also on March 19, 2020, Mayor Garcetti issued a Public Order Under City of Los Angeles Emergency Authority with the subject "Safer at Home." Mayor Garcetti's Order stated that "all persons living within the City of Los Angeles are hereby ordered to remain in their homes" and "all businesses within the City of Los Angeles are ordered to cease operations that require in-person attendance by workers at a workplace" Mayor Garcetti's Order included certain exceptions for "essential" businesses and business activities.²⁴

37. On March 21, 2020, the County of Los Angeles Department of Public Health amended and superseded its March 16 and 19, 2020 Orders to "comply with Executive Order N-33-20 issued by Governor Gavin Newsom."²⁵ This March 21 Order "specifically requires all businesses to cease in-person operations and close to the public, unless the business is defined as an Essential Business by this Order."

²¹ Public Order Under City of Los Angeles Emergency Authority, New City Measures to Address COVID-19, March 15, 2020. <https://www.lamayor.org/sites/g/files/wph446/f/article/files/Mayor%20Garcetti%20Emergency%20Order%20-%20March%2015%202020.pdf>

²² Los Angeles County Department of Public Health Temporary Prohibition of Group Events and Gatherings, Required Social Distancing Measures, and Closure of Certain Businesses, March 16, 2020. <http://www.publichealth.lacounty.gov/phcommon/public/media/mediapubhpdetail.cfm?prid=2269>

²³ http://file.lacounty.gov/SDSInter/lac/1070029_COVID-19_SaferAtHome_HealthOfficerOrder_20200319_Signed.pdf

²⁴ Public Order Under City of Los Angeles Emergency Authority, Safer At Home, March 19, 2020. <https://www.lamayor.org/sites/g/files/wph446/f/page/file/20200527%20Mayor%20Public%20Order%20SAFER%20AT%20HOME%20ORDER%202020.03.19%20%28REV%202020.05.27%29.pdf>

²⁵ Safer [*19] at Home Order for Control of COVID-19, County of Los Angeles Department of Public Health, Order of the Health Officer, March 21, 2020. <https://www.westcovina.org/home/showdocument?id=18058>

38. On April 1, 2020, Mayor Garcetti further revised his March 19, 2020, Order.²⁶ Mayor Garcetti's April 1, 2020, Order reiterated that all Los Angeles residents were required to stay home and mandated the continued closure of non-essential in-person businesses. The April 1, 2020, Order explicitly recognizes that the SARS-CoV-2 virus can spread easily from person to person and "it is physically causing property loss or damage due to its tendency to attach to surfaces for prolonged periods of time."

39. States, municipalities, and other civil authorities issued similar orders [*20] across the United States.²⁷ In relevant part, the Closure Orders all required citizens to stay at home, prohibited large gatherings, and mandated the continued closure of all non-essential in-person businesses.

THE VIGILANT AND FEDERAL POLICIES

40. Vigilant and Federal each issued UTA a Customarq Series Entertainment Insurance Program, which includes a Property Insurance Section and a Liability Insurance Section. Vigilant sold the first policy for the period of March 18, 2019, to March 18, 2020 (the "Vigilant Policy"). Federal sold the second policy for the period of March 18, 2020, to March 18, 2021 (the "Federal Policy") (collectively, the "Policies"). True and correct copies of the Vigilant Policy and the Federal Policy are attached hereto as Exhibits A and B, respectively, and incorporated herein by reference. Before selling the Policies to UTA, Vigilant and Federal engaged in, or had reasonable opportunities to engage in, extensive underwriting investigation, and became familiar and knowledgeable regarding the nature and scope of UTA's business [*21] and the nature of the risks that it was insuring against.

41. The Property Insurance Section of the Policies is an "all risk" property insurance policy-that is, a policy that covers all risks of physical loss and damage except those plainly, clearly, conspicuously, and expressly excluded. Unlike "enumerated perils" property insurance policies, which cover only certain causes of loss, "all risk" property insurance policies provide broad coverage for unprecedented and unanticipated risks of loss.

42. The Policies are comprised of a number of forms and endorsements that define the scope of coverage. Like most commercial property insurance policies, the Policies insure not only against physical loss or damage to covered property, but also for resulting economic and financial losses. This coverage is referred to in the Policy as "Business Income With Extra Expense" coverage. *See* Exs. A & B, Property Insurance - Business Income With Extra Expense.

43. The Policies' Business Income With Extra Expense coverage is designed, understood, stated, and intended to cover UTA for economic losses, including losses from the interruption and/or reduction of its business, suffered as a result [*22] of "direct physical loss or damage" to covered property. Under this coverage, Vigilant and Federal agreed to pay for UTA's actual loss of Business Income sustained due to the "impairment" of UTA's operations. *Id.*

44. The "Extra Expense" portion of this coverage grant is designed, understood, stated, and intended to cover UTA for losses from "the actual or potential impairment" of its " **operations.**" *Id.*

²⁶Public Order Under City of Los Angeles Emergency Authority, Safer At Home, March 19, 2020 (Revised April 1, 2020). <https://www.lamayor.org/sites/g/files/wph446/f/page/file/SAFER%20AT%20HOME%20ORDER%202020.03.19%20%28REV%202020.04.01%29.pdf>

²⁷ See, e.g., The Council of State Governments, *COVID-19* Resources for State Leaders, <https://web.csg.org/covid19/executive-orders/>.

45. Within the Business Income With Extra Expense coverage, the Policies provide an "Additional Coverage" for "Civil Authority," which obligates Vigilant and Federal to pay UTA's " **business income** loss" and " **extra expense**" "incur[red] due to the actual impairment of [its] **operations**, directly caused by the prohibition of access to: [its] premises; or a **dependent business premises**, by a civil authority." *Id.* The "prohibition of access by a civil authority must be the direct result of direct physical loss or damage to property away from such premises or such **dependent business premises** by a **covered peril**, provided such property is within: one mile . . . from such premises or **dependent business premises** . . ." *Id.*

46. The Policies also provide an "Additional [*23] Coverage" for "Dependent Business Premises," which obligates Vigilant and Federal to pay UTA's " **business income** loss . . . due to the actual impairment of [its] **operations**" and its " **extra expense** . . . due to the actual or potential impairment of [its] **operations**." *Id.* The "actual or potential impairment of **operations** must be caused by or result from direct physical loss or damage by a **covered peril** to **property** . . . at a **dependent business premises**." *Id.*

47. The Policies define "dependent business premises" as premises operated by others on whom UTA depends to "deliver materials or services to you or to others for your account (contributing premises); [and] accept your products or services (recipient premises) . . ." *Id.*

48. Critically, unlike many policies that provide Business Income coverage, the Policies do not include, and are not subject to, any exclusion for losses caused by or resulting from the spread of viruses, communicable diseases, or pandemics. Because losses caused by or resulting from viruses, communicable diseases, and pandemics are not expressly excluded under the Policies, they are, as a matter of law and pursuant to decades of insurance [*24] industry custom and practice, Covered Perils.

49. UTA is informed and believes, and on that basis alleges, that when Vigilant and Federal sold UTA the Policies they knew that there were standard-form exclusions available in the insurance market place that could exclude coverage for losses caused by viruses and pandemics and that other insurers had included such exclusions in policies they sold.

50. Additionally, well before Vigilant and Federal sold UTA the Policies, they knew of the possibility of a pandemic and the potential losses that could be associated with a pandemic. In fact, Vigilant and Federal have long known that if there were a pandemic, they could be obligated to pay substantial amounts under their policies. For years, including for the fiscal year ended December 31, 2019, Chubb stated as follows in its Form 10-K filed with the United States Securities and Exchange Commission:

We have substantial exposure to losses resulting from . . . catastrophic events, *including pandemics* .²⁸

51. Chubb further stated in this annual filing that "catastrophes" "including a global or other wide-impact pandemic" may result in "substantial" "losses." Chubb routinely [*25] represented in this annual filing that the "forward-looking" "risks" it contemplated included "infection rates and severity of pandemics and their effects on our business operations and claim activity."

²⁸ Chubb Limited, 2019 Form 10-K, at 19 (emphasis added).

52. Thus, UTA is informed and believes, and on that basis alleges, that Vigilant and Federal knew that the policies they were selling would cover losses associated with pandemics. In fact, as these disclosures show, instead of warning their insureds, including UTA, that their policies would not cover pandemic-associated losses, Vigilant, Federal, and other members of the Chubb group of insurance companies warned the public and their shareholders that the amounts they might have to pay for such losses could affect their financial condition.

53. There were many other publicly available reports about the risks of pandemics and what insurers should do in the months and years before Vigilant and Federal sold UTA the Policies.²⁹

54. One insurance industry repository demonstrates the proverbial "tip of the iceberg" about how much information was available to insurers regarding the risks of pandemics. The Insurance Library Association of Boston, founded in 1887, describes itself as "the leading resource for and provider of literature, information services, and quality professional education for the insurance industry and related interests."³⁰ The Association states on its website:

The past 20 years has seen the rise of a number of pandemics. Slate recently published an article on what has been learned about treating them in that time. We thought it might be apt for us to take a look back and see what the insurance industry has learned as well.³¹

The Association lists more than 15 publications available to the insurance industry since at least early 2007, long *before* Vigilant and Federal sold UTA the Policies.

55. Thus, even [*27] though Vigilant and Federal were aware of the massive losses that its insureds, including UTA, could face from a virus-related pandemic, they still sold UTA the Policies without any potentially applicable exclusion.

VIGILANT'S BREACHES AND BAD FAITH CONDUCT

56. UTA has sustained covered Business Income and Extra Expense losses as defined in the Policies. These Business Income and Extra Expense losses were sustained due to the "impairment" of UTA's business operations as a result "direct physical loss or damage" to insured premises and "dependent business premises." These Business Income and Extra Expense losses were also caused by the Closure Orders issued throughout the United States, each of which constitute a "prohibition of access by a civil authority" as that phrase is used in the Policies.

57. The Closure Orders were issued due to the presence of SARS-CoV-2 and the desire to avoid the spread of SARS-CoV-2 and **COVID-19**, the disease that it causes. Because the SARS-CoV-2 virus can adhere to surfaces of property for at least 28 days and can linger in the air in buildings for several hours, the presence of SARS-CoV-2 on or around property amounts to "direct physical [*28] loss or damage to

²⁹ See, e.g., "What the 1918 Flu Pandemic Can Teach Today's Insurers," *AIR* (Mar. 29, 2018), <https://www.air-worldwide.com/publications/air-currents/2018/What-the-1918-Flu-Pandemic-Can-Teach-Today-s-Insurers/> ("Even with today's technology, a modern severe pandemic [*26] would cause substantive direct financial losses to the insurance community. In addition, indirect losses would be severe, most notably on the asset side of the balance sheet.").

³⁰ <http://insurancelibrary.org/about-us/>.

³¹ <http://insurancelibrary.org/pandemics-and-insurance/>.

property" as that phrase is used in the Policies. In fact, given the manner in which SARS-CoV-2 lingers in the air and on surfaces and its manner of transmission, and the desire to "flatten the curve," UTA's premises and the premises upon which it depends were and are not capable of performing their essential functions. Accordingly, the Closure Orders substantially impaired the premises, constituting "direct physical loss or damage." They also amount to the "prohibition of access by a civil authority" that is "the direct result of direct physical loss or damage to property away from such premises" as required to trigger Civil Authority coverage under the Policies.

58. SARS-CoV-2 was present on and in the vicinity of UTA's premises that were insured under the Policies, as well as on and in the vicinity of premises upon which UTA depends to deliver and accept services. At least 13 UTA employees, five spouses, and some of their dependents have tested positive for **COVID-19**. As a result of the presence of SARS-CoV-2 and the Closure Orders, UTA suffered losses from cancelled live events-including cancelled tours by Guns N' Roses, Post Malone, Toby Keith, Pitbull, Burna [*29] Boy, Monsta X, and 3 Doors Down-and cancelled television and motion picture production. UTA currently estimates that its financial losses, including lost profits, lost commissions, and lost business opportunities, approximate \$ 150,000,000, and are continuing.

59. Although UTA has sustained Business Income and Extra Expense losses falling squarely within their Policies' coverages, Vigilant has failed and refused to acknowledge coverage for UTA's losses.

60. Worse yet, Vigilant and Federal predetermined their coverage decisions for **business interruption** claims relating to SARS-CoV-2, **Covid-19**, and subsequent events in March, without any investigation into their insureds' claims. The Chubb website contains a "Final - March 26, 2020" notice stating in part:

Business interruption insurance generally covers losses to your business' income that result from disruption of your business. The disruption must be caused by physical loss or damage to your property by a 'covered peril.' The presence of an infectious agent or communicable disease at a location where there is covered property generally will not mean that property has suffered "physical loss or damage" under your policy. Generally, [*30] "physical loss or damage" means that the physical structure or physical characteristics of the property have been altered by a "covered peril". Loss of use, or diminished value of property that has not been physically altered will not be considered "physical loss or damage." ³²

61. Vigilant and Federal also took the same position through their trade association, the American Property Casualty Insurance Association, in a letter to the United States House of Representatives Committee on Business. The Association wrote on March 18, 2020, stating: "**Business interruption** policies do not, and were not designed to, provide coverage against communicable diseases such as **COVID-19**." ³³

62. Vigilant [*31] was required under California law and insurance industry custom and practice to conduct a thorough investigation of facts that might support UTA's claim before denying coverage.

³² <https://www.chubb.com/microsites/covid19-resource-center/assets/pdf/covid-commercial-property-policyholder-notice-4-1-2020.pdf>.

³³ March 18, 2020, Letter, American Property Casualty Insurance Association, The Council of Insurance Agents & Brokers, Big Independent Insurance Agents & Brokers of America, and National Association of Mutual Insurance Companies to House Committee on Small Business. A true and correct copy of this letter is attached hereto as Exhibit C and incorporated herein by reference.

Notwithstanding its obligations, on May 26, 2020, Vigilant sent UTA a letter with four generic questions about the basis for UTA's claim. A true and correct copy of this letter is attached hereto as Exhibit D and incorporated by reference.

63. On August 28, 2020, UTA sent Vigilant a letter in which it asked if Vigilant was adopting Chubb's predetermined coverage position for claims relating to SARS-CoV-2, **COVID-19**, and the subsequent events, and, if so, why Vigilant was asking for information from its insured that it knew was irrelevant to its position. A true and correct copy of UTA's August 27, 2020, letter, which was sent on August 28, 2020, is attached hereto as Exhibit E and incorporated herein by reference.

64. On September 14, 2020, after only a perfunctory "investigation," Vigilant denied UTA's claim, incorrectly asserting that it was "unaware of physical loss or damage that would implicate coverage in this matter." A true and correct copy of Vigilant's September 14, 2020, denial letter is attached [*32] hereto as Exhibit F and incorporated herein by reference. Vigilant took this position notwithstanding the fact that the Closure Orders were issued in response to the presence of SARS-CoV-2 and even though the presence of SARS-CoV-2 on or around property amounts to "direct physical loss or damage" under the governing rules of insurance policy interpretation and California law.

65. UTA is informed and believes, and on that basis alleges, that Vigilant denied coverage on this basis even though it has known for decades that many courts have held that the presence of a hazardous substance in property, including the airspace inside buildings, constitutes property damage and that there may be "direct physical loss" to property even if the property is not structurally damaged. As Vigilant has known, or should have known, the many decisions include the following:

- . [*AIU Insurance Co. v. Superior Court*, 51 Cal. 3d 807, 842 \(1990\)](#): "contamination of the environment satisfies" the requirement of property damage.
- . [*Aetna Casualty & Surety Co. v. Pintlar Corp.*, 948 F.2d 1507, 1514 \(9th Cir. 1981\)](#): "The insurers further concede that contamination of the soil and water by hazardous substances constitutes injury to property An ordinary person [*33] would find that the environmental contamination alleged . . . falls within the plain meaning of 'property damage' as that term is used in the policies."
- . [*Arbeiter v. Cambridge Mut. Fire Ins. Co.*, 1996 WL 1250616, at *2 \(Mass. Super. Ct. Mar. 15, 1996\)](#): presence of oil fumes in building constituted "physical loss" to building.
- . [*Essex Ins. Co. v. BloomSouth Flooring Corp.*, 562 F.3d 399, 406 \(1st Cir. 2009\)](#): odor from carpet and adhesive "can constitute physical injury to property."
- . [*Farmers Ins. Co. v. Trutanich*, 123 Or. App. 6, 9-11 \(1993\)](#): "[T]he odor produced by the methamphetamine lab had infiltrated the house. The cost of removing the odor is a direct physical loss."
- . [*Gregory Packaging, Inc. v. Travelers Prop. Cas. Co.*, 2014 WL 6675934, at *5 \(D.N.J. Nov. 25, 2014\)](#): closure of facility because of accidentally released ammonia; while "structural alteration provides the most obvious sign of physical damage, . . . property can sustain physical loss or damage without experiencing structural alteration."

. *Matzner v. Seaco Ins. Co.*, 1998 WL 566658 (Mass. Super. Ct. Aug. 12, 1998): building with unsafe levels of carbon monoxide sustained direct physical loss.

. *Mellin v. Northern Security Ins. Co.*, 167 N.H. 544, 550-51 (2015): cat urine odor inside condominium constitutes direct physical loss; "'physical loss' need not be read to include only tangible changes to the property that can be seen [*34] or touched, but can also encompass changes that are perceived by the sense of smell." . . . a property policy insures "physical loss [which] may include not only tangible changes to the insured property, but also changes that are perceived by the sense of smell" and may "exist in the absence of structural damage . . . to the insured property."

. *Oregon Shakespeare Festival Ass'n v. Great Am. Ins. Co.*, 2016 WL 3267247, at *9 (D. Ore. June 7, 2016): smoke infiltration in theatre caused direct property loss or damage by causing the property to be uninhabitable and unusable for its intended purpose.

. *Port Authority of New York & New Jersey v. Affiliated FM Ins. Co.*, 311 F.3d 226, 236 (3d Cir. 2002): property sustained a direct physical loss because it was rendered uninhabitable by the presence of asbestos fibers.

. *Sentinel Mgmt. Co. v. Aetna Cas. & Sur. Co.*, 1999 WL 540466, at *7 (Minn. Ct. App. July 27, 1999): "If rental property is contaminated by asbestos fibers and presents a health hazard to the tenants, its function is seriously impaired."

. *Sentinel Mgmt. Co. v. New Hampshire Ins. Co.*, 563 N.W.2d 296, 300 (Minn. Ct. App. 1997): "Although asbestos contamination does not result in tangible injury to the physical structure of a building, a building's function may be seriously impaired or destroyed and the property rendered useless by the [*35] presence of contaminants. . . . Under these circumstances, we must conclude that contamination by asbestos may constitute a direct, physical loss to property under an all-risk 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.

66. 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 a 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 [*36] 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 building' in the sense that rational persons would be content to reside there.

Id. at 248-49.

67. Given the potential liability that insurers faced under their policies for losses from pandemics, shortly after the outbreak of SARS in 2003, the insurance industry undertook to draft exclusions applicable to losses from viruses and bacteria. In 2006, the Insurance Services Office ("ISO"), the insurance industry's drafting organization, considered the need to draft an exclusion that would bar coverage for losses caused by a virus.³⁴

68. On July 6, 2006, ISO prepared a circular as part of its filing with state insurance regulators of a standard exclusion of loss due to viruses and bacteria.³⁵ In that circular, it noted that examples of "viral and bacterial contaminants are rotavirus, SARS, [and] influenza," observing, "The universe of disease-causing organisms is always in evolution."³⁶ ISO recognized that viruses could cause property damage, stating:

Disease-causing agents may render a product impure (change its quality or substance), [*38] or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and *business interruption* (time element) losses.³⁷

69. In fact, ISO expressly warned that "the specter of pandemic or hitherto unorthodox transmission of infectious material raises the concern that insurers employing [property] policies may face claims in which there are efforts to expand coverage and to create sources of recovery for such losses, contrary to policy intent."³⁸ Therefore, ISO introduced a standard-form exclusion that it entitled "Exclusion Of Loss Due To Virus Or Bacteria" (form CP 01 40 07 06 and, in certain jurisdictions, form CP 01 75 07 06).

70. Thus, Vigilant, Federal, and other insurers have had a "virus or bacteria" exclusion since 2006 that is approved for use throughout the United States. As one recent article succinctly stated, "Insurers knew the damage a viral pandemic could wreak on businesses. So they excluded coverage." [*39]³⁹

³⁴ "ISO [*37] is a non-profit trade association that provides rating, statistical, and actuarial policy forms and related drafting services to approximately 3,000 nationwide property or casualty insurers. 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).

³⁵ See ISO Circular, "New Endorsements Filed to Address Exclusion of Loss Due to Virus or Bacteria," (July 6, 2006), <https://www.propertyinsurancecoveragelaw.com/files/2020/03/ISO-Circular-LI-CF-2006-175-Virus.pdf>.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

71. However, UTA is informed and believes, and on that basis alleges, that even though they knew they could be liable for losses from viruses and pandemics if they did not include an appropriate exclusion in their policies, Vigilant and Federal still sold many policies (including the Policies) without including such an exclusion. Therefore, it should be no surprise to Vigilant and Federal that they would be obligated to pay for losses when they did not include such an exclusion. In fact, in reporting on the financial condition and performance of Vigilant, Federal, and the other Chubb companies, Chubb Limited warned investors of the potential negative impact on their financial results and condition from this exposure-and did so well before Vigilant and Federal sold the Policies to UTA. For example, Chubb Limited stated the following warning in its 2017 Annual Report:

Our results of [*40] operations or financial condition could be adversely affected by the occurrence of natural and man-made disasters.

We have substantial exposure to losses resulting from natural disasters . . . such as . . . catastrophic events, including pandemics. This could impact a variety of our businesses, including our commercial and personal lines Catastrophes can be caused by various events, including . . . natural or man-made disasters, including a global or other wide-impact pandemic The occurrence of claims from catastrophic events could result in substantial volatility in our results of operations or financial condition for any fiscal quarter or year. The historical incidence for events such as . . . pandemics . . . is infrequent and may not be representative of contemporary exposures and risks. . . . [T]he occurrence of one or more catastrophic events could have an adverse effect on our results of operations and financial condition.⁴⁰

72. In denying coverage for UTA's losses, Vigilant also reserved the right to rely on certain [*41] exclusions. However, the Policies do not include any exclusions conspicuously, plainly, clearly, and unambiguously barring coverage for losses attributable to viruses, communicable diseases, or pandemics. UTA is informed and believes, and on that basis alleges, that Vigilant and Federal consciously decided not to include in the Policies the 2006 standard-from ISO "virus or bacteria" exclusion or any other exclusion conspicuously, plainly, clearly, and unambiguously barring coverage for losses attributable to viruses, communicable diseases, or pandemics. Therefore, UTA reasonably expected, and was led by Vigilant and Federal to believe, that the Policies would cover losses such as those associated with the COVID-19 pandemic and the orders of civil authorities thereafter.

FIRST CAUSE OF ACTION

(Breach of Contract Against Vigilant)

73. UTA realleges and incorporates by reference paragraphs 1 through 72 above.

³⁹ Todd Frankel, "Insurers knew the damage a viral pandemic could wreak on businesses. So they 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.

⁴⁰ Chubb Limited, 2017 Annual Report, at 19, https://s1.q4cdn.com/677769242/files/doc_financials/2018/AGM/Chubb_Limited_2017_Annual_Report.pdf.

74. To the extent not waived or otherwise excused, UTA has complied with all terms and conditions precedent contained in the Vigilant Policy. Therefore, UTA is entitled to all benefits of insurance provided by the Vigilant Policy.

75. Vigilant breached [*42] its duties under the Vigilant Policy by unreasonably stating that UTA sustained no "physical loss or damage" and by denying coverage for all of UTA's losses.

76. As a direct and proximate result of Vigilant's breaches, UTA has sustained, and continues to sustain, substantial damages for which Vigilant is liable, in amounts to be established at trial. UTA also is entitled to interest on its damages at the legal rate. UTA continues to suffer damages because of Vigilant's contractual breaches and will seek leave to amend this complaint once it ascertains the full extent of its damages.

SECOND CAUSE OF ACTION

(Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing Against Vigilant)

77. UTA realleges and incorporates by reference paragraphs 1 through 72, 74, and 75 above.

78. Implied in the Vigilant Policy was a covenant that Vigilant would act in good faith and deal fairly with UTA, that Vigilant would do nothing to interfere with the right of UTA to receive benefits due under the Vigilant Policy, and that Vigilant would give at least the same level of consideration to the interests of UTA as it gave to its own interests.

79. Vigilant also [*43] had a duty under the Vigilant Policy, the law, and insurance industry custom, practice, and standards to conduct a prompt and thorough investigation, including as to all bases that might support UTA's claims for insurance coverage before reserving rights to deny, and denying, coverage.

80. Instead of complying with these duties, Vigilant acted in bad faith by, among other things:

- a. failing to conduct a full and thorough investigation of UTA's claim for insurance coverage and asserting grounds for denying coverage without conducting such investigation;
- b. wrongfully and unreasonably asserting grounds for denying coverage that Vigilant knew, or should have known, are not supported by, and in fact are contrary to, the terms of the Vigilant Policy, the law, insurance industry custom and practice, and the facts;
- c. failing to fully inquire into the bases that might support coverage for UTA's claim;
- d. failing to conduct an adequate investigation of the losses suffered by UTA, and asserting grounds for disputing coverage based on its inadequate investigation;
- e. creating and implementing a course of action to automatically deny coverage for all ***business interruption*** claims [*44] relating to SARS-CoV-2, ***COVID-19***, and subsequent events;
- f. unreasonably failing and refusing to honor its promises and representations in the Policy it issued to UTA;
- g. giving greater consideration to its own interests than it gave to the interests of UTA; and
- h. otherwise acting as alleged above.

81. In breach of the implied covenant of good faith and fair dealing, Vigilant did the things and committed the acts alleged above for the purpose of consciously withholding from UTA the rights and benefits to which it is and are entitled under the Vigilant Policy.

82. Vigilant's actions are inconsistent with the reasonable expectations of UTA, are contrary to established industry custom and practice, are contrary to legal requirements, are contrary to the express terms of the Vigilant Policy, and constitute bad faith.

83. As a direct and proximate result of Vigilant's actions, UTA has been damaged in an amount exceeding the Court's jurisdictional limits. Also, pursuant to [*Brandt v. Superior Court, 37 Cal. 3d 813 \(1985\)*](#), UTA is entitled to recover all attorneys' fees it reasonably incurred, and continues to incur, in the efforts to obtain the benefits due under the Vigilant Policy that Vigilant [*45] has withheld, and is withholding, in bad faith. UTA is entitled to interest at the maximum legal rate.

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

85. Vigilant's conduct is despicable and has been done with a conscious disregard of the rights of UTA, constituting oppression, fraud, or malice. Vigilant engaged in a series of acts designed to deny UTA the benefits due under the Vigilant Policy. Specifically, Vigilant, by acting as alleged above, in light of information, facts, and relevant law to the contrary, consciously disregarded UTA's respective rights and forced UTA to incur substantial financial losses, thereby inflicting substantial financial damage on UTA. Vigilant ignored UTA's interests and concerns with the requisite intent to injure within the meaning of [*California Civil Code section 3294*](#). Therefore, UTA is entitled to recover punitive damages from Vigilant in an amount sufficient to [*46] punish and make an example of Vigilant and to deter similar conduct in the future.

THIRD CAUSE OF ACTION

(Declaratory Relief Against Vigilant)

86. UTA realleges and incorporates by reference paragraphs 1 through 72 above.

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

88. UTA therefore seeks a judicial declaration from this Court confirming that UTA's contentions, as stated above, are correct. A declaration is necessary in order that the parties' dispute may be resolved and that they may be aware of their respective rights and duties.

FOURTH CAUSE OF ACTION

(Declaratory Relief Against Federal)

89. UTA realleges and incorporates by reference paragraphs 1 through 72 above.

90. UTA contends that it is entitled to coverage under the Federal Policy for [*47] Business Income losses suffered and/or Extra Expense incurred as a result of the presence of SARS-CoV-2 and the Closure Orders. UTA is informed and believes, and on that basis alleges, that Federal disputes that UTA is entitled to such coverage. Therefore, an actual and justiciable controversy exists between UTA, on the one hand, and Federal, on the other.

91. UTA therefore seeks a judicial declaration from this Court confirming that UTA's contentions, as stated above, are correct. A declaration is necessary in order that the parties' dispute may be resolved and that they may be aware of their respective rights and duties.

FIFTH CAUSE OF ACTION

(*Declaratory Relief Against Does 1 through 10*)

92. UTA realleges and incorporates by reference paragraphs 1 through 72 above.

93. UTA contends it is entitled to insurance coverage for the losses it has suffered as a result of the presence of SARS-CoV-2 and the Closure Orders. UTA is informed and believes, and on that basis alleges, that Does 1 through 10 dispute that UTA is entitled to such coverage. Therefore, an actual and justiciable controversy exists between UTA and Does 1 through 10 concerning the matters alleged [*48] herein.

94. UTA therefore seeks a judicial declaration as to the duties of Does 1 through 10 and confirming that UTA's contentions, as stated above, are correct. A declaration is necessary in order that the parties' dispute may be resolved and that they may be aware of their respective rights and duties.

PRAYER FOR RELIEF

WHEREFORE, UTA 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 issued by Vigilant to UTA, 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 declarations in accord with UTA's contentions stated above;

ON THE FOURTH CAUSE OF ACTION

5. For declarations in accord with UTA's contentions stated above;

ON THE FIFTH CAUSE OF ACTION

6. For declarations in accord with UTA's contentions stated above;

ON ALL CAUSES OF ACTION :

7. For the costs of this lawsuit; [*49] and

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

Dated: November 13, 2020

PASICH LLP

By: /s/ [Signature]

Kirk Pasich

Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

United Talent Agency, LLC hereby demands a trial by jury in this action.

Dated: November 13, 2020

PASICH LLP

By: /s/ [Signature]

Kirk Pasich

Attorneys for Plaintiff

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