

1 M. Elizabeth Graham, CA 143085
2 **Grant & Eisenhofer P.A.**
3 One Market Street
4 Spear Tower, Suite 3600
5 San Francisco, CA 94105
6 T: (415) 293-8210
7 F: (415) 789-4367
8 egraham@gelaw.com

[Additional Counsel Listed on Signature Page]

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 **FLOWERS BY ADELAIDE, INC.**

12 Plaintiff,

13 v.

14 **THE HARTFORD FINANCIAL**
15 **SERVICES GROUP, INC.**
16 **and SENTINEL INSURANCE**
17 **COMPANY, LIMITED,**

18 Defendants.

Case No. '20CV2344 DMS AHG

CLASS ACTION

1. **DECLARATORY JUDGMENT**
2. **BREACH OF CONTRACT**
3. **BAD FAITH BREACH OF CONTRACT AND BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

JURY TRIAL DEMANDED

19 **CLASS ACTION COMPLAINT**

20 Plaintiff Flowers by Adelaide, Inc. (“Adelaide” or “Plaintiff”), both individually
21 and on behalf of all others similarly situated, files this class action Complaint against
22 Defendants The Hartford Financial Services Group Inc. and Sentinel Insurance
23 Company, Limited (collectively “Defendants” or “Hartford”), and in support of its
24 claims states the following on information and belief based on reasonable investigation
25 and discovery, except where specifically identified as being based on personal
26 knowledge:

1 **INTRODUCTION**

2 1. On personal knowledge, Adelaide is a corporation operating as a retail
3 florist with a location in La Jolla, California.

4 2. To protect its properties and income from the operation of its businesses,
5 Adelaide purchased a Spectrum Business Owner’s commercial insurance policy issued
6 by Hartford bearing policy numbers 72 SBA BB3357 DX, (“Spectrum Policy”). A
7 true and correct copy of the policy is attached here to as **Exhibit A**.

8 3. Under the Spectrum Policy, Hartford is responsible for receiving and
9 managing claims and loss notices, responding to questions about insurance and
10 coverage and paying claims for covered losses.

11 4. The Spectrum Policy is a bilateral contract: Plaintiff agreed to pay
12 premiums to Hartford in exchange for Hartford’s promises of coverage for all risks of
13 loss except those specifically and unambiguously excluded.

14 5. Plaintiff reasonably expected that claims for loss of business income and
15 extra expenses arising from the inability to physically use its insured premises would
16 be paid unless specifically and unambiguously excluded.

17 6. Among other types of coverage, the Spectrum Policy protects Plaintiff
18 against an actual loss of business income due to a “suspension” of the business’s
19 “operations” due to direct physical loss of or damage to the insured premises.

20 7. Specifically, the *Special Property Coverage Form* (SS 00 07 07 05)
21 endorsement to the Spectrum Policy protects Plaintiff against the actual loss of
22 business income due to a suspension of Plaintiff’s operations. Along with this business
23 income coverage, Plaintiff also had in effect “Extra Expense” coverage under which
24 Hartford promised to pay necessary expenses Plaintiff incurred during a period of
25 restoration that it would not have otherwise incurred if there had been no direct physical
26 loss of or physical damage to the insured premises.

1 8. Additionally, the *Special Property Coverage Form* (SS 00 07 07 05)
2 endorsement provides “Civil Authority” coverage, under which Hartford promised to
3 pay for loss of business income sustained when the action of a civil authority prohibits
4 access to the insured premises.

5 9. Plaintiff duly complied with its obligations under the Spectrum Policy,
6 and timely paid the requisite premiums.

7 10. On March 19, 2020, the Governor of the State of California issued an
8 Executive Order requiring that all non-essential businesses in the state close in order
9 to slow the spread of COVID-19 in the state.¹

10 11. As a result of this and other local government orders, Adelaide was forced
11 to suspend the physical use of its insured premises in California for purposes of
12 conducting its business activities.

13 12. As a result of the Orders of the various civil authorities, Plaintiff suffered,
14 and/or continues to suffer, significant and injurious losses and expenses directly related
15 to the inability to use the physical locations covered by the Spectrum Policy.

16 13. The Spectrum Policy obligated Hartford to provide coverage for, and to
17 pay, business income losses and extra expense losses resulting from the suspension of
18 Plaintiff’s operations, including suspensions resulting from actions of civil authorities.
19 Adelaide was actively discouraged from submitting a formal claim for coverage by
20 insurance intermediaries who, upon information and belief, were directed or
21 encouraged by Hartford to preemptively advise policyholders that the Spectrum
22 Policies do not afford coverage for the losses alleged herein.

23 14. Under the Spectrum Policy, Hartford promised to cover these losses, and
24 is obligated to pay for them. But in blatant breach of its contractual obligations,
25 Hartford has failed to pay for these losses.

26
27
28

¹ See attached **Exhibit B**, California Executive Order No. N-33-20 (March 19, 2020).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

15. Upon information and belief, Hartford has failed to pay for similar losses of other insureds holding policies that are, in all material respects, identical.

THE PARTIES

16. On personal knowledge, Adelaide is a corporation organized under the laws of and existing in the State of California with a principal place of business located at 7766 Girard Avenue, La Jolla, California 92037.

17. Defendant The Hartford Financial Services Group, Inc. is a corporation organized under the laws of Connecticut, with its principal place of business located at One Hartford Plaza, Hartford, Connecticut 06155.

18. Defendant Sentinel Insurance Company, Limited is a corporation organized under the laws of Connecticut, with its principal place of business located at One Hartford Plaza, Hartford, Connecticut 06155. Sentinel Insurance Company, Limited is a wholly owned subsidiary of The Hartford Financial Services Group, Inc.

19. At all material times hereto, Defendants conducted and transacted business through the selling and issuing of insurance policies, including, but not limited to, selling and issuing commercial property coverage to Plaintiffs and all other Class Members as defined *infra*.

20. At all times relevant, the Defendants were acting in the course and scope of such agency, representation, joint venture, conspiracy, consultancy, predecessor agreement, successor agreement, service and employment, with knowledge, acquiescence, and ratification of each other and their principal The Hartford Financial Group.

JURISDICTION AND VENUE

21. This Court has subject matter jurisdiction over the claims asserted in this action under 28 U.S.C. § 1332 because there is complete diversity between Defendants and at least one member of each class; there are more than one hundred members of each class; and the amount in controversy exceeds \$5,000,000 exclusive of interest and

1 costs. This Court also has subject matter jurisdiction under 28 U.S.C. §§ 2201 and 2202
2 and is authorized to grant declaratory relief under these statutes.

3 22. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2)
4 because a substantial part of the events or omissions giving rise to the claim occurred
5 in this district and property that is the subject of the action is situated in this District.

6 23. This Court has personal jurisdiction over the Defendants because
7 Plaintiff's claims arise out of, among other things, Defendants conducting, engaging
8 in, and/or carrying on business in California; Defendants breaching a contract in
9 California by failing to perform acts required by contract to be performed in California;
10 and Defendants contracting to insure property in California, including, but not limited
11 to, premises insured under the Spectrum Policy. Defendants also purposefully availed
12 themselves of the opportunity of conducting activities in the State of California by
13 marketing their insurance policies and services within California, and intentionally
14 developing relationships with brokers, agents, and customers within California to
15 insure property within California, all of which resulted in the issuance of policies at
16 issue in this class action.

17 **FACTUAL BACKGROUND**

18 *The Policy*

19
20 24. On personal knowledge, in or about April 2019, Adelaide renewed its
21 Spectrum Policy. The Spectrum Policy has a policy period of April 1, 2019, to April 1,
22 2020. The insured premises under the Spectrum Policy are 7766 Girard Avenue, La
23 Jolla, California 92037 and 7385 Mission Gorge Road, Suite B, San Diego California
24 92120.

25 25. The Spectrum Policy is the same or substantially similar to all other
26 Spectrum Policies issued by Hartford to Class members.

1 26. The Spectrum Policy provides coverage on an “all risk” rather than
2 specified peril basis. In an all-risk insurance policy, all risks of loss are covered unless
3 they are specifically excluded.

4 27. The Spectrum Policy, in the Special Property Coverage Form, state:

5 **A. Coverage**

6 **We will pay for direct physical loss of or damage to Covered**
7 **Property at the premises described in the Declarations (also**
8 **called “scheduled premises” in this policy) caused by or**
9 **resulting from a Covered Cause of Loss.**

10 28. The Spectrum Policy contains both a “Specified Cause of Loss” category
11 and “Covered Cause of Loss” category, the latter of which is an all-risk coverage form
12 meaning that all risks are covered unless specifically excluded or limited by the Policy.
13 All risks coverage is defined by limitations and exclusions in the policies.

14 29. Under paragraph “A. Coverage” subparagraph 3 “Covered Causes of
15 Loss” of the Special Property Coverage Form, the Spectrum Policy provides coverage
16 for all “RISKS OF DIRECT PHYSICAL LOSS unless the loss is: a. Excluded in
17 Section **B., EXCLUSIONS**, or b. Limited in Paragraph **A.4. Limitations ...**”
18 (emphasis in original).

19 30. Under paragraph “A. COVERAGE” subparagraph 5. “Additional
20 Coverages” of the Special Property Coverage Form, the Spectrum Policy provides
21 coverage for, among other things: “o. Business Income”; “p. Extra Expense”; “q. Civil
22 Authority”; “r. Extended Business Income” and “s. Business Income from Dependent
23 Properties.”

24 31. So long as the Plaintiff sustained a physical loss of their insured property,
25 the Defendants promised:
26
27
28

1 **o. Business Income**

2 **We will pay for the actual loss of Business Income you sustain**
3 **due to the necessary “suspension” of your “operations” during**
4 **the “period of restoration”. The “suspension” must be caused**
5 **by direct physical loss of or damage to property at the**
6 **“scheduled premises”, including personal property in the open**
7 **Cause of**
8 **Loss....**

9 **p. Extra Expense**

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

16 32. Neither “damage” nor the phrases “direct physical loss” and “damage to
17 property” are defined by the Spectrum Policy. However, “suspension” is defined as “a.
18 The partial shutdown or complete cessation of your business activities; or 2. That a part
19 or all of the ‘scheduled premises’ is rendered untenable as a result of a Covered
20 Cause of Loss if coverage for Business Income applies to the policy.”

21 33. The Spectrum Policy also provides Extended Business Income coverage,
22 as follows:

23 **r. Extended Business Income**

24 **If the necessary “suspension” of your “operations”**
25 **produces a Business Income loss payable under this**
26 **policy, we will pay for the actual loss of Business Income**
27 **you incur during the period that:**
28

1 **(a) Begins on the date property is actually**
2 **repaired, rebuilt or replaced and**
3 **“operations” are resumed; and**

4 **(b) Ends on the earlier of:**

5 **i. The date you could restore your**
6 **“operations”, with reasonable speed,**
7 **to the condition that would have**
8 **existed if no direct physical loss or**
9 **damage occurred; or**

10 **ii. 30 consecutive days after the date determined in**
11 **(1)(4) above.**

12 **Loss of Business Income must be caused by direct physical loss or**
13 **physical damage at the “scheduled premises” caused by or resulting**
14 **from a Covered Cause of Loss.**

15 34. In addition to promising to pay for loss of Business Income, under the
16 Spectrum Policy, Defendants also promised to pay for certain necessary “Extra
17 Expense.” Extra Expense is defined as expenses that the policyholder incurs to
18 “minimize the suspension of business if you cannot continue “operations”“.

19 35. The Spectrum Policy also provides additional “Civil Authority” coverage
20 as follows:

21 **q. Civil Authority**

22 **(1) This insurance is extended to apply to the actual loss of Business**
23 **Income you sustain when access to your “scheduled premises” is**
24 **specifically prohibited by order of a civil authority as the direct**
25 **result of a Covered Cause of Loss to property in the immediate**
26 **area of your “scheduled premises”..**

27 36. The Business Income and Extra Expense, as well as the Extended
28 Business Income, coverages are separate, independent and not mutually exclusive of

1 the coverage for Civil Authority; thus, the Plaintiff theoretically could recover under
2 any one of these coverages or all of these coverages at the same time.

3
4 *History of COVID-19*

5
6 37. On December 31, 2019, the World Health Organization reported people
7 in China were becoming sick due to a mysterious form of pneumonia.

8
9 38. On January 11, 2020, China reported its first death from the mysterious
10 form of pneumonia.

11
12 39. On January 21, 2020, the first confirmed case of the mysterious form of
13 pneumonia was reported in the United States.

14
15 40. On January 30, 2020, for only the sixth time in its history, the World
16 Health Organization, declared the outbreak of the mysterious form of pneumonia a
17 Public Health Emergency of International Concern.

18
19 41. On February 29, 2020, the first death caused by COVID-19 was reported
20 in the United States.

21
22 42. On March 13, 2020, President Trump declares the outbreak of COVID-
23 19 to be a national emergency.

24
25 43. As of March 17, 2020, COVID-19 was reported to be present in every
26 state in the United States.

27
28 44. As of March 26, 2020, the United States had more confirmed cases of
COVID-19 than any other country in the world.

45. Per the Centers for Disease Control and Prevention (“CDC”), there is no
vaccine to protect against COVID-19 and no medications approved to treat it.

46. It may take up to 14 days for an infected person to have symptoms.

47. A large percentage of persons who tested positive for COVID-19 showed
no symptoms prior to testing. In fact, the director of the CDC, Dr. Robert Redfield,
stated that “we have pretty much confirmed that a significant number of individuals

1 that are infected actually remain asymptomatic. That may be as many as 25%. That's
2 important, because now you have individuals that may not have any symptoms that can
3 contribute to transmission, and we have learned that in fact they do contribute to
4 transmission”.

5 48. The WHO states that COVID-19 can spread directly from person to
6 person through small droplets from the nose or mouth and also indirectly when a person
7 with COVID-19 contaminates objects and surfaces, and other people touch these
8 objects or surfaces and then touch their eyes, nose or mouth.

9
10 *Actions of Civil Authority by the State of California*

11 49. On March 4, 2020, California Governor Gavin Newsom issued an
12 executive order declaring a state of emergency in California as a result of the threat of
13 COVID-19.

14 50. On March 19, 2020, Governor Newsom issued Executive Order N33-20,
15 finding that “in a short period of time, COVID-19 has rapidly spread throughout
16 California” and directed all Californians to “heed the current State public health
17 directives...” including the Order of the State Public Health Officer dated March 19,
18 2020.

19 51. The March 19, 2020 Order of the State Public Health Officer ordered “all
20 individuals living in the State of California to stay at home or at their place of residence
21 except as needed to maintain continuity of operations of the federal critical
22 infrastructure sections...”

23 52. The State Public Health Officer has designated the following 13 sectors
24 as Essential Critical Infrastructure and the employees in those sectors that are permitted
25 to continue working in California:

- 26 a. Healthcare;
27 b. Emergency Services;
28

- 1 c. Food & Agriculture;
- 2 d. Energy;
- 3 e. Water;
- 4 f. Transportation;
- 5 g. Communications;
- 6 h. Community-Based Government Operations;
- 7 i. Critical Manufacturing;
- 8 j. Hazardous Materials;
- 9 k. Financial Service;
- 10 l. Chemical; and
- 11 m. Defense and Industrial Base.

12
13
14
15
16 53. The actions of the State of California directly forced Adelaide to cease,
17 suspend and/or severely limit its physical use of the insured premises and
18 corresponding business operations.

19 *Plaintiff's Covered Loss*

20 54. The presence of COVID-19 caused civil authorities throughout California
21 to issue orders requiring the suspension of business and/or use of commercial property,
22 including the property of Plaintiffs and other class members, as well as property in the
23 immediate area of such covered property.

24 55. The Civil Authority Orders include, but are not limited to, the following
25 Executive Order:

26 March 19, 2020, Executive Order by Governor Gavin Newsom stating:

27 "All residents are to heed any orders and guidance of state and local
28

1 public health officials, including but not limited to the imposition of
2 social distancing measures, to control the spread of COVID-19.”

3 56. Plaintiff has suffered a suspension of normal business operations and a
4 cessation of all operations on the premises, sustained losses of business income, and
5 incurred extra expenses.

6 57. These losses and expenses have continued through the date of filing of
7 this action.

8 58. These losses and expenses are not excluded from coverage under the
9 Spectrum Policy, and because the Spectrum Policy is an all-risk policy, and Plaintiff
10 has complied with their contractual obligations, Plaintiff is entitled to payment for
11 these losses and expenses.

12 59. Plaintiff has suffered a suspension and/or cessation of all normal business
13 operations given the response to the global pandemic associated with the spread of
14 COVID-19, including the actions of civil authority described herein.

15 60. These losses and expenses have continued through the date of filing of
16 this action, and will continue unabated unless and until Hartford fulfills its contractual
17 obligations under the Spectrum Policy.

18 *Hartford’s Uniform Practice to Deny Coverage for COVID-19 Business Interruption*
19 *Losses*

20 61. Hartford arbitrarily and wrongfully disclaimed coverage for Plaintiff’s
21 losses.

22 62. Defendants’ denial of coverage was pre-determined and without regard to
23 the individual circumstances of Plaintiff or other insureds.

24 63. Before Plaintiff and other members of the proposed class of policy holders
25 submitted notice of and information about their claims, Defendants had determined not
26 to afford coverage for any such claims.
27
28

1 64. Defendants have refused to make payment to Plaintiff for damages
2 resulting from the covered losses described *supra*, which constitutes a breach of the
3 Spectrum Policy.

4 65. Defendants' refusal to cover the covered losses is erroneous and
5 unsupported by the plain language of the Spectrum Policy.

6 66. As such, Defendants owe Plaintiff's insurance coverage and benefits
7 under the Spectrum Policy for the losses, and there is no valid basis for its refusal to
8 issue the same.

9 67. Plaintiff continues to be damaged by Defendants' refusal to issue the full
10 amounts due and owing under the Spectrum Policy.

11 **CLASS ACTION ALLEGATIONS**

12 68. The class claims all derive directly from a single course of conduct by
13 Defendants: their systematic, uniform, capricious and arbitrary refusal to pay insureds
14 for covered losses and the actions taken by civil authorities to suspend business
15 operations.

16 69. Plaintiff brings this action pursuant to Rules 23(a), 23(b)(1), 23(b)(2),
17 and/or 23(b)(3), as well as 23(c)(4), of the Federal Rules of Civil Procedure,
18 individually and on behalf of all others similarly situated. This action satisfies the
19 numerosity, commonality, typicality, adequacy, predominance, and superiority
20 requirements of those provisions.

21 70. Plaintiff seeks to represent a California state-wide class as the Court may
22 deem appropriate defined as:

- 23 a. All California businesses that purchased Business Income and
24 Extra Expense coverage under a policy of insurance issued by
25 Defendants covering the period of March 2020 through the present
26 that suffered a suspension of business operations due to government
27 prohibitions on the use of their insured premises, and for which
28

1 Defendants have either actually denied or stated they will deny a
2 claim for the losses or have otherwise failed to acknowledge, accept
3 as a covered cause of loss, or pay for the covered losses (“the
4 Business Income Coverage Class”).

5 b. All California businesses that purchased Extended Business
6 Income coverage under a policy of insurance issued by Defendants
7 covering the period of March 2020 through the present that incurred
8 extra expenses to avoid or minimize the suspension of business
9 operations due to government prohibitions on the use of their
10 insured premises, and for which Defendants have either actually
11 denied or stated they will deny a claim for the extended business
12 income or have otherwise failed to acknowledge, accept as a
13 covered expense, or pay for the covered expenses (“the Extended
14 Business Income Coverage Class”).

15 c. All California businesses that purchased Civil Authority coverage
16 under a policy of insurance issued by Defendants, covering the
17 period of March 2020 through the present that suffered an actual
18 loss of Business Income and/or Extra Expense due to government
19 prohibitions on the use of their insured premises, and for which
20 Defendants have either actually denied or stated they will deny a
21 claim for the losses or have otherwise failed to acknowledge, accept
22 as a covered cause of loss, or pay for the covered losses (“the Civil
23 Authority Coverage Class”).

24 71. Excluded from each defined proposed Classes are Defendants and any of
25 their members, affiliates, parents, subsidiaries, officers, directors, employees,
26 successors, or assigns; governmental entities; Class Counsel and their employees; and
27
28

1 the judicial officers and Court staff assigned to this case and their immediate family
2 members.

3 72. Plaintiff reserves the right to modify, expand, or amend the definitions of
4 the proposed Classes, as appropriate, during the course of this litigation.

5 73. This action has been brought and may properly be maintained on behalf
6 of each Class proposed herein under the criteria of Rule 23 of the Federal Rules of
7 Civil Procedure.

8 *Numerosity*

9
10 74. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(1). The
11 members of each proposed Class are so numerous that individual joinder of all Class
12 members is impracticable. There are, at a minimum, thousands of members of each
13 proposed Class, and these individuals and entities are spread out across the State and
14 the United States.

15 75. The identity of Class members is ascertainable, as the names and
16 addresses of all Class members can be identified in Defendants' or its agents' books
17 and records. Class members may be notified of the pendency of this action by
18 recognized, Court-approved notice dissemination methods, which may include U.S.
19 mail, electronic mail, internet postings, and/or published notice.

20 *Commonality and Predominance*

21 76. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(2) and
22 23(b)(3) because this action involves common questions of law and fact that
23 predominate over any questions affecting only individual Class members. Defendants
24 issued all-risk policies to all the members of each proposed Class in exchange for
25 payment of premiums by the Class members. The questions of law and fact affecting
26 all Class members include, without limitation, the following:

- 27 a. Whether Plaintiff and the Class members suffered a covered cause
28 of loss under the policies issued to members of the Class;

- 1 b. Whether Defendants wrongfully, capriciously and arbitrarily
- 2 denied all claims based on the facts set forth herein;
- 3 c. Whether Defendants' Business Income coverage applies based on
- 4 the facts set forth herein;
- 5 d. Whether Defendants' Civil Authority coverage applies to a loss of
- 6 Business Income based on the facts set forth herein;
- 7 e. Whether Defendants' Extra Expense coverage applies to efforts to
- 8 avoid or minimize a loss caused by the suspension of business
- 9 based on the facts set forth herein;
- 10 f. Whether Defendants have breached their contracts of insurance
- 11 through a uniform and blanket denial of all claims for business
- 12 losses based on the facts set forth herein;
- 13 g. Whether the Defendants act in bad faith breach of contract and the
- 14 duty of good faith and fair dealing through a uniform and blanket
- 15 denial of all claims for business losses based on the facts set forth
- 16 herein; and
- 17 h. Whether Plaintiff and the Class members suffered damages as a
- 18 result of Defendants' actions; and
- 19 i. Whether Plaintiff and the Class members are entitled to an award
- 20 of reasonable attorneys' fees, interest, and costs.

21 *Typicality*

22

23 77. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(3) because

24 Plaintiff's claims are typical of the claims of the Class members and arise from the

25 same course of conduct by Defendants. Plaintiff and the other Class members are all

26 similarly affected by Defendants' refusal to pay under their property insurance policies.

27 Plaintiff's claims are based upon the same legal theories as those of the other Class

28 members. Plaintiff and the other Class members sustained damages as a direct and

1 proximate result of the same wrongful practices in which Defendants engaged. The
2 relief Plaintiff seek is typical of the relief sought for the absent Class members.

3
4 *Adequacy of Representation*

5 78. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(4) because
6 Plaintiff will fairly and adequately represent and protect the interests of Class members.
7 Plaintiff has retained counsel with substantial experience in prosecuting complex class
8 action litigation.

9 79. Plaintiff and their counsel are committed to vigorously prosecuting this
10 action on behalf of the Class members and have the financial resources to do so. Neither
11 Plaintiff nor their counsel has interests adverse to those of the Class members.

12 *Inconsistent or Varying Adjudications and the Risk of Impediments to*
13 *Other Class Members' Interests*

14 80. This action satisfies the requirements of Fed. R. Civ. P. 23(b)(1). Plaintiff
15 seeks class-wide adjudication as to the interpretation and scope of Defendants'
16 Commercial Business Owner insurance policies that use the same language and terms
17 as the Spectrum Policy. The prosecution of separate actions by individual members of
18 the proposed Classes would create an imminent risk of inconsistent or varying
19 adjudications that would establish incompatible standards of conduct for Defendants.

20 *Final Injunctive and/or Corresponding Declaratory Relief with Respect to*
21 *the Class is Appropriate*

22
23 81. This action satisfies the requirements of Fed. R. Civ. P. 23(b)(2) because
24 Defendants acted or refused to act on grounds generally applicable to Plaintiff and the
25 members of the Classes, thereby making appropriate final injunctive and/or
26 corresponding declaratory relief with respect to the Class members. The class claims
27 all derive directly from Defendants' systematic, uniform, capricious and arbitrary
28 refusal to pay insureds for losses suffered due to actions taken by civil authorities to

1 suspend or interrupt business operations in response to the pandemic associated with
2 the spread of COVID-19. Defendants' actions or refusal to act are grounded upon the
3 same generally applicable legal theories.

4
5 *Superiority*

6 82. This action satisfies the requirements of Fed. R. Civ. P. 23(b)(3) because
7 a class action is superior to other available methods for the fair and efficient group-
8 wide adjudication of this controversy. The common questions of law and of fact
9 regarding Defendants' conduct and the interpretation of the common language in their
10 health club insurance policies predominate over any questions affecting only individual
11 Class members.

12 83. Because the damages suffered by certain individual Class members may
13 be relatively small, the expense and burden of individual litigation would make it very
14 difficult for all individual Class members to redress the wrongs done to each of them
15 individually, such that many Class members would have no rational economic interest
16 in individually controlling the prosecution of specific actions, and the burden imposed
17 on the judicial system by individual litigation by even a small fraction of the Class
18 would be enormous, making class adjudication the superior alternative under Fed. R.
19 Civ. P. 23(b)(3)(A).

20 84. The conduct of this action as a class action presents far fewer management
21 difficulties, far better conserves judicial resources and the parties' resources, and far
22 more effectively protects the rights of each Class member than would piecemeal
23 litigation. Compared to the expense, burdens, inconsistencies, economic infeasibility,
24 and inefficiencies of individualized litigation, the challenges of managing this action
25 as a class action are substantially outweighed by the benefits to the legitimate interests
26 of the parties, the Court, and the public of class treatment in this Court, making class
27 adjudication superior to other alternatives, under Fed. R. Civ. P. 23(b)(3)(D).
28

1 85. Plaintiff is not aware of any obstacles likely to be encountered in the
2 management of this action that would preclude its maintenance as a class action. Rule
3 23 provides the Court with authority and flexibility to maximize the efficiencies and
4 benefits of the class mechanism and reduce management challenges. The Court may,
5 on motion of Plaintiff or on its own determination, certify nationwide, statewide and/or
6 multistate classes for claims sharing common legal questions; utilize the provisions of
7 Rule 23(c)(4) to certify any particular claims, issues, or common questions of fact or
8 law for class-wide adjudication; certify and adjudicate bellwether class claims; and
9 utilize Rule 23(c)(5) to divide any Class into subclasses.

10
11 **CAUSES OF ACTION**
12 **COUNT I: DECLARATORY JUDGMENT**
13 **(On behalf of the Business Income Coverage Class)**

14 86. Plaintiff incorporates by reference and re-allege paragraphs 1 through 85
15 as though fully set forth herein.

16 87. Plaintiff brings this Count both individually and on behalf of the other
17 members of the Business Income Coverage Class.

18 88. Under 28 U.S.C. §§ 2201 and 2202, this Court has jurisdiction to declare
19 the rights and other legal relations of the parties in dispute.

20 89. The Spectrum Policy, as well as the policies of other Business Income
21 Coverage Class members, are insurance contracts under which Defendants were paid
22 premiums in exchange for promises to pay Class members' losses for claims covered
23 by the Spectrum Policies.

24 90. In the Spectrum Policy, Defendants promised to pay for losses of business
25 income and extra expense sustained as a result of perils not excluded under the
26 Spectrum Policy. Specifically, Defendants promised to pay for losses of business
27 income and extra expense sustained as a result of a suspension of business operations
28 during the period of restoration.

1 91. Plaintiff and Class members suffered direct physical loss of or damage to
2 Plaintiff's insured locations and other Class members' insured premises, resulting in
3 interruptions or suspensions of business operations at the locations. These suspensions
4 and interruptions have caused Plaintiff and Class members to suffer losses of business
5 income and extra expense.

6 92. These suspensions and interruptions, and the resulting losses, triggered
7 business income and extra expense coverage under the Spectrum Policy and other Class
8 members' policies.

9 93. Plaintiff and the other Class members have complied with all applicable
10 provisions of their respective policies, including payment of premiums.

11 94. Defendants, without justification, deny that the Plaintiff's Spectrum
12 Policy and other Class members' policies provide coverage for these losses.

13 95. Plaintiff seeks a Declaratory Judgment that its Spectrum Policy and other
14 Class members' policies provide coverage for the losses of business income and extra
15 expense attributable to the facts set forth above.

16 96. An actual case or controversy exists regarding Plaintiff's and other Class
17 members' rights and Defendants' obligations to reimburse Plaintiff and other Class
18 members for the full amount of these losses. Accordingly, the Declaratory Judgment
19 sought is justiciable.

20 **WHEREFORE**, Plaintiff requests that this Court enter a Declaratory Judgment
21 declaring that the Spectrum Policy and other Class members' policies provide coverage
22 for Class members' losses of business income.

23 **COUNT II: BREACH OF CONTRACT**
24 **(On behalf of the Business Income Coverage Class)**

25 97. Plaintiff incorporates by reference and re-allege paragraphs 1 through 85
26 as though fully set forth herein.
27
28

1 98. Plaintiff brings this Count both individually and on behalf of the other
2 members of the Business Income Coverage Class.

3 99. The Spectrum Policy, as well as the policies of other Business Income
4 Coverage Class members, are insurance contracts under which Defendants were paid
5 premiums in exchange for promises to pay Class members' losses for claims covered
6 by the policies.

7 100. In the Spectrum Policy, Defendants promised to pay for losses of business
8 income and extra expense incurred as a result of perils not excluded under the Spectrum
9 Policy. Specifically, Defendants promised to pay for losses of business income and
10 extra expense sustained as a result of a suspension of business operations during the
11 period of restoration.

12 101. Plaintiff and Class members have suffered a direct physical loss of or
13 damage to Plaintiff's insured locations and other Class members' insured premises as
14 a result of interruptions or suspensions of business operations at these premises. These
15 interruptions and suspensions have caused Class members to suffer losses of business
16 income and extra expense.

17 102. These losses triggered business income and extra expense coverage under
18 both the Spectrum Policies and other Class members' policies.

19 103. Plaintiff and the other Class members have complied with all applicable
20 provisions of their respective policies, including payment of premiums.

21 104. Defendants, without justification and in bad faith, have denied coverage
22 and refused performance under the Spectrum Policy and other Class members' policies
23 by denying coverage for these losses and expenses. Accordingly, Defendants are in
24 breach of the Spectrum Policy and other Class members' policies.

25 105. As a result of Defendants' breaches of the Spectrum Policy and other
26 Class members' policies, Plaintiffs and other Class members have suffered actual and
27 substantial damages for which Defendants are liable.
28

1 **WHEREFORE**, Plaintiff, both individually and on behalf of other Class
2 members, seeks compensatory damages resulting from Defendants’ breaches of the
3 Spectrum Policy and other Class Members’ policies and seek all other relief deemed
4 appropriate by this Court.

5 **COUNT III: BAD FAITH BREACH OF CONTRACT AND**
6 **THE DUTY OF GOOD FAITH AND FAIR DEALING**
7 **(On behalf of the Business Income Coverage Class)**

8 106. Plaintiff incorporates by reference and re-allege paragraphs 1 through 85
9 as though fully set forth herein.

10 107. Plaintiff brings this Count both individually and on behalf of the other
11 members of the Business Income Coverage Class.

12 108. The Spectrum Policy, as well as the policies of other Business Income
13 Coverage Class members, are insurance contracts under which Defendants were paid
14 premiums in exchange for promises to pay Class members’ losses for claims covered
15 by the Spectrum Policy.

16 109. In the Spectrum Policy, Defendants promised to pay for losses of business
17 income and extra expense incurred as a result of perils not excluded under the Spectrum
18 Policy. Specifically, Defendants promised to pay for losses of business income and
19 extra expense sustained as a result of a suspension of business operations during the
20 period of restoration.

21 110. Plaintiff and Class members suffered an actual loss of business income
22 and extra expense to the necessary suspension of Plaintiff’s and other Class members’
23 business operations at insured premises and said suspension(s) were caused by direct
24 physical loss of and damage to Plaintiff’s and other Class members’ insured premises
25 caused by or resulting from COVID-19 disease and/or pandemic, both of which are
26 Covered Causes of Loss under the Spectrum Policy and other Class members’ policies.

1 These actual losses, therefore, triggered Business Income and Extra Expense coverage
2 under both the Spectrum Policy and other Class members' policies.

3 111. COVID-19 disease and COVID-19 pandemic were direct, physical and
4 foreseeable causes of loss under the Spectrum Policy and other Class members'
5 policies and they each caused, and/or resulted in, dangerous physical conditions at, and
6 physical injuries to, the Plaintiff's and other Class members' insured premises and
7 property immediately adjacent to each. COVID-19 disease and COVID-19 pandemic
8 pose a serious risk to and endanger(ed) the public's health, safety and property and
9 rendered the Plaintiff's and other Class members' insured premises unusable and/or
10 uninhabitable; thus, mandating a suspension of business operations.

11 112. These losses and expenses are not excluded from coverage under the
12 Spectrum Policy. Because the Spectrum Policy is an all-risk policy, and Covered
13 Causes of Loss are determined by exclusions, COVID-19 disease and COVID-19
14 pandemic are Covered Causes of Loss since neither disease nor pandemic are excluded
15 Business Income and Extra Expense coverage.

16 113. Furthermore, COVID-19 disease and COVID-19 pandemic caused direct
17 physical loss and damage to the Plaintiff's various business premises and the other
18 Class Members' insured premises resulting in dangerous physical conditions, the nature
19 of such loss and damage to property having been recognized by civil authorities in
20 Orders addressing COVID-19.

21 114. Plaintiff and the other Class members have complied with all applicable
22 provisions of their respective policies, including payment of premiums.

23 115. The actions of the Defendants give rise to a cause of action for bad faith
24 breach of contract and the duty of good faith and fair dealing as Plaintiff and other
25 Class members were covered under Plaintiff's Spectrum Policy, as well as the policies
26 of other Business Income Coverage Class members, and the Defendants have breached
27 the terms of said policies by denying business income and extra expense coverage to
28

1 the Plaintiffs and other Class members. Defendants' actions in breaching the terms of
2 the Spectrum Policy and the other Class Members' policies, in bad faith, have
3 proximately caused damages to Plaintiff and other Class members, and the damages
4 were reasonably foreseeable to the Defendants.

5 116. It appears that the Defendants' conduct was performed because they
6 placed their own financial interests before the Plaintiff's and other Class Members'
7 financial interests.

8 117. Further, the actions of the Defendants in denying business income and
9 extra expense coverage to the Plaintiff and other Class Members were done so without
10 any legitimate basis or arguable reason and constitute intentional and/or malicious
11 conduct or gross negligence and reckless disregard.

12 118. Implied in the Spectrum Policy and the other Class Members' policies is
13 a duty of good faith and fair dealing with respect to conduct encompassed by
14 contractual relations. Defendants' conduct as aforesaid breached the duty of good faith
15 and fair dealing which further gives rise to the tort of bad faith for the breach of
16 contract.

17 119. Defendants, at all times relevant hereto, owed Plaintiff and other Class
18 Members a duty to exercise good faith and an obligation to deal fairly with them;
19 however, the denial of business income and extra expense coverage by Defendants
20 constituted a bad faith breach of contract and was totally made with only the
21 Defendants' best interests in mind and in total disregard of the contractual rights of
22 Plaintiff and other Class Members.

23 120. Defendants' bad faith material breach(es) of the Spectrum Policy, as well
24 as other Class members' policies, have resulted in actual and substantial damages to
25 the Plaintiff and Business Income Coverage Class members, depriving all of the benefit
26 of their bargain, and represents, in addition to warranting contractual damages,
27 incidental damages and consequential damages, an independent tort entitling Plaintiff
28

1 and other Class Members to punitive damages in an amount which will punish the
2 Defendants for their intentional, grossly negligent, and/or reckless conduct as well as
3 to deter Defendants and others from similar misconduct in the future.

4 **WHEREFORE**, Plaintiff, both individually and on behalf of other Class
5 members, seeks compensatory damages, contractual damages, incidental damages,
6 consequential damages, and punitive damages, resulting from Defendants' bad faith
7 breach(es) of the Spectrum Policy and other Class Members' policies and seek all other
8 relief deemed appropriate by this Court.

9
10 **COUNT IV:**
11 **DECLARATORY JUDGMENT**
(On behalf of the Extended Business Income Coverage Class)

12 121. Plaintiff incorporates by reference and re-allege paragraphs 1 through 85
13 as though fully set forth herein.

14 122. Plaintiff brings this Count both individually and on behalf of the other
15 members of the Extra Expense Coverage Class.

16 123. Under 28 U.S.C. §§ 2201 and 2202, this Court has jurisdiction to declare
17 the rights and other legal relations of the parties in dispute.

18 124. The Spectrum Policy, as well as the policies of other Extended Business
19 Income Coverage Class members, are insurance contracts under which Defendants
20 were paid premiums in exchange for promises to pay Class members' losses for claims
21 covered by the respective policies.

22 125. Specifically, Defendants promised to pay for extended business income
23 for losses incurred by Plaintiff and other Class members during the period of
24 restoration that the insureds would not have incurred if there had been no loss or
25 damage to the insured premises. Extended business income included income to avoid
26 or minimize the suspension of business, continue operations, and to repair or replace
27 property.

1 126. Plaintiff and Class members suffered direct physical loss of or damage to
2 Plaintiff's locations and other Class members' insured premises, resulting in
3 suspensions or interruptions of business operations at these premises. As a result,
4 Plaintiff and other Class members have incurred losses, as defined in the Spectrum
5 Policy and other Class members' policies.

6 127. These losses triggered Extended Business Income coverage under the
7 Spectrum Policy and other Class members' policies.

8 128. Plaintiff and the other Class members have complied with all applicable
9 provisions of their respective policies, including payment of premiums.

10 129. Defendants, without justification, deny that the Spectrum Policy and other
11 Class members' policies provide coverage for Extended Business Income.

12 130. Plaintiff, both individually and on behalf of the other members of the
13 Extended Business Income Coverage Class, seeks a Declaratory Judgment that the
14 Spectrum Policy, and those of other members of the Extended Business Income
15 Coverage Class, provides coverage for these extended business income.

16 131. An actual case or controversy exists regarding Class members' rights and
17 Defendants' obligations under Class members' policies to reimburse Class members
18 for extended business income. Accordingly, the Declaratory Judgment sought is
19 justiciable.

20 **WHEREFORE**, Plaintiff requests that this Court enter a Declaratory Judgment
21 declaring that the Spectrum Policy and other Class members' policies provide coverage
22 for Class members' extended business income

23 **COUNT V: BREACH OF CONTRACT**

24 **(On behalf of the Extended Business Income Coverage Class)**

25 132. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 85
26 as though fully set forth herein.

1 133. Plaintiff brings this Count individually and on behalf of the other
2 members of the Extended Business Income Coverage Class.

3 134. The Spectrum Policy, as well as the policies of other Extended Business
4 Income Coverage Class members, are insurance contracts under which Defendants
5 were paid premiums in exchange for promises to pay Class members' losses for claims
6 covered by the policies.

7 135. Specifically, Defendants promised to pay for extended business income
8 for losses incurred by Plaintiff and other Class members during the period of
9 restoration that the insureds would not have incurred if there had been no loss or
10 damage to the insured premises. Extended business income losses included income to
11 avoid or minimize the suspension of business, continue operations, and to repair or
12 replace property.

13 136. Plaintiff and Class members suffered direct physical loss of or damage to
14 the Plaintiff's insured locations and other Class members' insured premises, resulting
15 in suspensions and interruptions of business operations at these premises. These
16 suspensions and interruptions have caused Class members to incur Extra Expenses.

17 137. These expenses triggered extended business income coverage under the
18 Spectrum Policy and other Class members' policies.

19 138. Plaintiff and the other Class members have complied with all applicable
20 provisions of the Spectrum Policy, including payment of premiums.

21 139. Defendants, without justification and in bad faith, have denied coverage
22 and refused performance extended business income. Accordingly, Defendants are in
23 breach of the Spectrum Policy and other Class members' policies.

24 140. As a result of Defendants' breaches of the Spectrum Policy and other
25 Class members' policies, Plaintiff and other Class members have suffered actual and
26 substantial damages for which Defendants are liable.
27
28

1 **WHEREFORE**, Plaintiff, individually and on behalf of other Class members,
2 seeks compensatory damages resulting from Defendants’ breaches of the Spectrum
3 Policy and other Class Members’ policies and seek all other relief deemed appropriate
4 by this Court.

5 **COUNT VI: BAD FAITH BREACH OF CONTRACT AND**
6 **THE DUTY OF GOOD FAITH AND FAIR DEALING**
7 **(On behalf of the Extended Business Income Coverage Class)**

8 141. Plaintiff incorporates by reference and re-allege paragraphs 1 through 85
9 as though fully set forth herein.

10 142. Plaintiff brings this Count both individually and on behalf of the other
11 members of the Extended Business Income Coverage Class.

12 143. The Spectrum Policy, as well as the policies of other Extended Business
13 Income Coverage Class members, are insurance contracts under which Defendants
14 were paid premiums in exchange for promises to pay Class members’ losses for claims
15 covered by the policies.

16 144. In the Spectrum Policy, Defendants promised to pay extended business
17 income for losses, pursuant to the Specialty Property Coverage Form’s Extended
18 Business Income provision contained the Spectrum Policy and other Class Members’
19 policies, incurred as a result of perils not excluded under the policies. Specifically,
20 Defendants promised to pay for losses of Extended Business Income sustained as a
21 result of a suspension of business operations during the period of restoration.

22 145. Plaintiff and Class members suffered an actual loss of business income
23 due to the necessary Suspension of Plaintiff’s and other Class members’ business
24 operations at insured premises and said suspension(s) were caused by direct physical
25 loss of and damage to Plaintiff’s and other Class members’ insured premises caused
26 by or resulting from COVID-19 disease and/or pandemic, both of which are Covered
27 Causes of Loss under the Spectrum Policy and other Class members’ policies. These
28

1 actual losses, therefore, triggered Specialty Property Coverage Form's Extended
2 Business Income coverage under both the Spectrum Policy and other Class members'
3 policies.

4 146. COVID-19 disease and COVID-19 pandemic were direct, physical and
5 foreseeable causes of loss under the Spectrum Policy and other Class members'
6 policies and they each caused, and/or resulted in, dangerous physical conditions at, and
7 physical injuries to, the Plaintiff's and other Class members' insured premises and
8 property immediately adjacent to each. COVID-19 disease and COVID-19 pandemic
9 pose a serious risk to and endanger(ed) the public's health, safety and property and
10 rendered the Plaintiff's and other Class members' insured premises unusable and/or
11 uninhabitable; thus, mandating a suspension of business operations.

12 147. These losses and expenses are not excluded from coverage under the
13 Spectrum Policy. Because the Spectrum Policy is an all-risk policy, and Covered
14 Causes of Loss are determined by exclusions, COVID-19 disease and COVID-19
15 pandemic are Covered Causes of Loss since neither disease nor pandemic are excluded
16 under Extended Business Income coverage.

17 148. Furthermore, COVID-19 disease and COVID-19 pandemic caused direct
18 physical loss and damage to the Plaintiff's various business premises and the other
19 Class Members' insured premises resulting in dangerous physical conditions, the
20 nature of such loss and damage to property having been recognized by civil authorities
21 in Orders addressing COVID-19.

22 149. Plaintiff and the other Class members have complied with all applicable
23 provisions of their respective policies, including payment of premiums.

24 150. The actions of the Defendants give rise to a cause of action for bad faith
25 breach of contract and the duty of good faith and fair dealing as Plaintiff and other
26 Class members were covered under the Spectrum Policy, as well as the policies of other
27 Extended Business Income Coverage Class members, and the Defendants have
28

1 breached the terms of said policies by denying extended business income coverage to
2 the Plaintiff and other Class members. Defendants' actions in breaching the terms of
3 the Spectrum Policy and the other Class Members' policies, in bad faith, have
4 proximately caused damages to Plaintiffs and other Class members and the damages
5 were reasonably foreseeable to the Defendants.

6 151. It appears that the Defendants' conduct was performed because they
7 placed their own financial interests before the Plaintiff's and other Class Members'
8 financial interests.

9 152. Further, the actions of the Defendants in denying extended business
10 income coverage to the Plaintiff and other Class Members was done so without any
11 legitimate basis or arguable reason and constitute intentional and/or malicious conduct
12 or gross negligence and reckless disregard.

13 153. Implied in the Spectrum Policy and the other Class Members' policies is
14 a duty of good faith and fair dealing with respect to conduct encompassed by
15 contractual relations. Defendants' conduct as aforesaid breached the duty of good faith
16 and fair dealing which further gives rise to the tort of bad faith for the breach of
17 contract.

18 154. Defendants, at all times relevant hereto, owed Plaintiff and other Class
19 Members a duty to exercise good faith and an obligation to deal fairly with them;
20 however, the denial of extended business income coverage by Defendants constituted
21 a bad faith breach of contract and was totally made with only the Defendants' best
22 interests in mind and in total disregard of the contractual rights of Plaintiffs and other
23 Class Members.

24 155. Defendants' bad faith material breach(es) of the Spectrum Policy, as well
25 as other Class members' policies, has resulted in actual and substantial damages to the
26 Plaintiff and Extended Business Income Coverage Class members, depriving all of the
27 benefit of their bargain, and represents, in addition to warranting contractual damages,
28

1 incidental damages, and consequential damages, an independent tort entitling Plaintiff
2 and other Class Members to punitive damages in an amount which will punish the
3 Defendants for their intentional, grossly negligent, and/or reckless conduct as well as
4 to deter Defendants and others from similar misconduct in the future.

5 **WHEREFORE**, Plaintiff, both individually and on behalf of other Class
6 members, seek compensatory damages, contractual damages, incidental damages,
7 consequential damages, and punitive damages, resulting from Defendants' bad faith
8 breach(es) of the Spectrum Policy and other Class Members' policies and seek all other
9 relief deemed appropriate by this Court.

10 **COUNT VII: DECLARATORY JUDGMENT**
11 **(On behalf of the Civil Authority Coverage Class)**

12 156. Plaintiff incorporates by reference and re-allege paragraphs 1 through 85
13 as though fully set forth herein.

14 157. Plaintiff brings this Count both individually and on behalf of the other
15 members of the Civil Authority Coverage Class. 112. Under 28 U.S.C. §§ 2201 and
16 2202, this Court has jurisdiction to declare the rights and other legal relations of the
17 parties in dispute.

18 158. The Spectrum Policy, as well as the policies of other Civil Authority
19 Coverage Class members, are insurance contracts under which Defendants were paid
20 premiums in exchange for promises to pay Class members' losses for claims covered
21 by the policies.

22 159. In the Spectrum Policy and other Class members' policies, Defendants
23 promised to pay for losses of business income sustained and extra expenses incurred
24 when, among other things, a covered cause of loss causes damage to property near the
25 insured premises, the civil authority prohibits access to property near the insured
26 premises, and that access to the "scheduled premises" was prohibited by order of the
27
28

1 civil authority as a direct result of a Covered Cause of Loss to property in the immediate
2 area.

3 160. Plaintiff and other Class members have suffered losses and incurred
4 expenses as a result of actions of civil authorities that prohibited access to insured
5 premises under the Spectrum Policy and Class members' policies.

6 161. These losses satisfied all requirements to trigger Civil Authority coverage
7 under the Spectrum Policy and other Class members' policies.

8 162. Plaintiff and the other Class members have complied with all applicable
9 provisions of the Spectrum Policy, including payment of premiums.

10 163. Defendants, without justification, deny that the Spectrum Policy provides
11 coverage for these losses.

12 164. Plaintiff seeks a Declaratory Judgment that the Spectrum Policy and other
13 Class members' policies provide coverage for the losses that Class members have
14 sustained and extra expenses they have incurred caused by actions of civil authorities.

15 165. An actual case or controversy exists regarding Class members' rights and
16 Defendants' obligations under Class members' policies to reimburse Class members
17 for these losses and extra expenses. Accordingly, the Declaratory Judgment sought is
18 justiciable.

19 **WHEREFORE**, Plaintiff, both individually and on behalf of other Class
20 members, requests that this Court enter a Declaratory Judgment declaring that the
21 policies provide Civil Authority coverage for the losses and extra expenses incurred by
22 Plaintiffs and the other Class members.

23 **COUNT VIII: BREACH OF CONTRACT**
24 **(On behalf of the Civil Authority Coverage Class)**

25
26 166. Plaintiff incorporates by reference and re-allege paragraphs 1 through 85
27 as though fully set forth herein.
28

1 167. Plaintiff brings this Count individually and on behalf of the other
2 members of the Civil Authority Coverage Class.

3 168. The Spectrum Policy, as well as the policies of other Civil Authority
4 Coverage Class members, are insurance contracts under which Defendants were paid
5 premiums in exchange for promises to pay Class members' losses and expenses
6 covered by the policies.

7 169. In the Spectrum Policy and other Class members' policies, Defendants
8 promised to pay for losses of business income sustained and extra expenses incurred
9 when a covered cause of loss causes damage to property near the insured premises, the
10 civil authority prohibits access to property near the insured premises, and that access
11 to the "scheduled premises" was prohibited by order of the civil authority as a direct
12 result of a Covered Cause of Loss to property in the immediate area.

13 170. Plaintiff and other Class members have suffered losses and incurred
14 expenses as a result of actions of civil authorities that prohibited access to insured
15 premises under the Spectrum Policy and Class members' policies.

16 171. These losses satisfied all requirements to trigger Civil Authority coverage
17 under the Spectrum Policy and other Class members' policies.

18 172. Plaintiff and the other Class members have complied with all applicable
19 provisions of their policies, including payment of premiums.

20 173. Defendants, without justification and in bad faith, have refused
21 performance under the Spectrum Policy and other Class members' policies by denying
22 coverage for these losses and expenses. Accordingly, Defendants are in breach of the
23 Spectrum Policy and other Class members' policies.

24 174. As a result of Defendants' breaches of the Spectrum Policy and other
25 Class members' policies, Plaintiffs and other Class members have suffered actual and
26 substantial damages for which Defendants are liable.

1 **WHEREFORE**, Plaintiff seeks compensatory damages resulting from
2 Defendants’ breaches of the Spectrum Policy and other Class members’ policies, and
3 seeks all other relief deemed appropriate by this Court.
4

5 **COUNT IX: BAD FAITH BREACH OF CONTRACT AND**
6 **THE DUTY OF GOOD FAITH AND FAIR DEALING**
7 **(On behalf of the Civil Authority Coverage Class)**

8 175. Plaintiff incorporates by reference and re-allege paragraphs 1 through 85
9 as though fully set forth herein.

10 176. Plaintiff brings this Count individually and on behalf of the other
11 members of the Civil Authority Coverage Class.

12 177. The Spectrum Policy, as well as the policies of other Civil Authority
13 Coverage Class members, are insurance contracts under which Defendants were paid
14 premiums in exchange for promises to pay Class members’ losses and expenses
15 covered by the policies.

16 178. In the Spectrum Policy and other Class members’ policies, Defendants
17 promised to pay for actual loss of business income sustained and necessary extra
18 expenses incurred when a Covered Cause of Loss caused damage to property other
19 than property at the Plaintiff’s respective insured premises or Class Members’ insured
20 premises and that the Plaintiff and other Class Members suffered actual loss due to
21 civil authorities prohibiting access to Plaintiff’s and Class Members’ premises and that
22 access to the “scheduled premises” was prohibited by order of the civil authority as a
23 direct result of a Covered Cause of Loss to property in the immediate area.

24 179. COVID-19 disease and COVID-19 pandemic were direct, physical and
25 foreseeable causes of loss under the Spectrum Policy and other Class members’
26 policies and they each caused, and/or resulted in, dangerous physical conditions at, and
27 physical injuries to, the Plaintiff’s and other Class members’ insured premises and
28 property immediately adjacent to each. COVID-19 disease and COVID-19 pandemic

1 pose a serious risk to and endanger(ed) the public's health, safety and property and
2 rendered the Plaintiff's and other Class members' insured premises and areas within
3 the immediate area of the Plaintiff's business premises and other Class Members'
4 insured premises, damaged, unusable and/or uninhabitable; thus, prompting the Orders
5 of civil authorities prohibiting access to the same.

6 180. These losses and expenses are not excluded from coverage under the
7 Spectrum Policy. Because the Spectrum Policy are all-risk policies, and Covered
8 Causes of Loss are determined by exclusions, COVID-19 disease and COVID-19
9 pandemic are Covered Causes of Loss since neither disease nor pandemic are excluded
10 under Civil Authority coverage.

11 181. Furthermore, COVID-19 disease and COVID-19 pandemic caused
12 damage to property in the immediate area of Plaintiffs' various insured business
13 premises, and the other Class Members' insured premises, resulting in dangerous
14 physical conditions prompting civil authorities, such as, for example, the State of
15 California to issue Orders prohibiting the public's access to the area immediately
16 surrounding the damaged property, including access to the Plaintiff's business
17 premises and other Class Members' insured premises.

18 182. Accordingly, these losses satisfied all requirements to trigger Civil
19 Authority coverage under the Spectrum Policy and other Class members' policies.

20 183. Plaintiffs and the other Class members have complied with all applicable
21 provisions of the policies, including payment of premiums.

22 184. The actions of the Defendants give rise to a cause of action for bad faith
23 breach of contract and the duty of good faith and fair dealing as Plaintiff and other
24 Class members were covered under the Spectrum Policies, as well as the policies of
25 other Civil Authority Coverage Class members, and the Defendants have breached the
26 terms of said policies by denying Civil Authority coverage to the Plaintiff and other
27 Class members. Defendants' actions in breaching the terms of the Spectrum Policy and
28

1 the other Class Members' policies, in bad faith, have proximately caused damages to
2 Plaintiffs and other Class members and the damages were reasonably foreseeable to
3 the Defendants.

4 185. It appears that the Defendants' conduct was performed because they
5 placed their own financial interests before the Plaintiff's and other Class Members'
6 financial interests.

7 186. Further, the actions of the Defendants in denying Civil Authority coverage
8 to the Plaintiff and other Class Members were done so without any legitimate basis or
9 arguable reason and constitute intentional and/or malicious conduct or gross
10 negligence and reckless disregard.

11 187. Implied in the Spectrum Policy and the other Class Members' policies is
12 a duty of good faith and fair dealing with respect to conduct encompassed by
13 contractual relations. Defendants' conduct as aforesaid breached the duty of good faith
14 and fair dealing which further gives rise to the tort of bad faith for the breach of
15 contract.

16 188. Defendants, at all times relevant hereto, owed Plaintiff and other Class
17 Members a duty to exercise good faith and an obligation to deal fairly with them;
18 however, the denial of Civil Authority coverage by Defendants constituted a bad faith
19 breach of contract and was totally made with only the Defendants' best interests in
20 mind and in total disregard of the contractual rights of Plaintiff and other Class
21 Members.

22 189. Defendants' bad faith material breach(es) of the Spectrum Policy, as well
23 as other Class members' policies, has resulted in actual and substantial damages to the
24 Plaintiff and Civil Authority Coverage Class members, depriving all of the benefit of
25 their bargain, and represents, in addition to warranting contractual damages, incidental
26 damages, and consequential damages, an independent tort entitling Plaintiff and other
27 Class Members to punitive damages in an amount which will punish the Defendants
28

1 for their intentional, grossly negligent, and/or reckless conduct as well as to deter
2 Defendants and others from similar misconduct in the future.

3 **WHEREFORE**, Plaintiff, both individually and on behalf of other Class
4 members, seeks compensatory damages, contractual damages, incidental damages,
5 consequential damages, and punitive damages, resulting from Defendants' bad faith
6 breach(es) of the Spectrum Policy and other Class Members' policies, and seek all
7 other relief deemed appropriate by this Court.

8 **PRAYER FOR RELIEF**

9
10 **WHEREFORE**, Plaintiff respectfully requests that the Court enter judgment in
11 its favor and against Defendants, as follows:

12 A. Entering an order certifying the proposed Classes, designating Plaintiff as
13 Class representatives for each of the Classes, and appointing Plaintiff's attorneys as
14 Counsel for the Classes;

15 B. Entering declaratory judgments on Counts I, IV, and VII in favor of
16 Plaintiff and the members of the Business Income Coverage Class, Extended Business
17 Income Coverage Class and Civil Authority Coverage Class as follows:

18 a. That all Business Income and Extra Expense, Civil Authority and
19 Extended Business Income losses and expenses incurred and sustained
20 based on the facts and circumstances set forth above are insured and
21 covered losses and expenses under Plaintiff's and Class members'
22 policies; and

23 b. Defendants are obligated to pay for the full amount of the Business
24 Income and Extra Expense, Civil Authority and Extended Business
25 Income losses and expenses sustained and incurred, and to be sustained
26 and incurred, based on the facts and circumstances set forth above are
27 insured and covered losses and expenses under Plaintiff's and Class
28 members' policies;

1 C. Entering judgments on counts II, V, and VIII in favor of Plaintiff and the
2 members of the Business Income Coverage Class, Extended Business Income
3 Coverage Class and Civil Authority Coverage Class, and awarding damages for breach
4 of contract in an amount to be determined at trial;

5 D. Entering judgments on counts III, VI, IX in favor of the Plaintiff and the
6 members of the Business Income Coverage Class, Extended Business Income
7 Coverage Class and Civil Authority Coverage Class, and awarding compensatory
8 damages, incidental damages, consequential damages, and punitive damages for the
9 Defendants' bad faith material breach(es) in an amount to be determined at trial;

10 E. An order requiring Defendants to pay both pre- and post-judgment interest
11 on any amounts awarded; and

12 F. Such other or further relief as may be appropriate.

13 **DEMAND FOR JURY TRIAL**

14 The undersigned hereby demands a trial by jury as to all issues so triable.

15
16 Dated: December 1, 2020

Respectfully submitted,

17
18 /s/ M. Elizabeth Graham
19 M. Elizabeth Graham, CA 143085
20 Adam J. Gomez**
21 **Grant & Eisenhofer P.A.**
22 One Market Street
23 Spear Tower, Suite 3600
24 San Francisco, CA 94105
25 T: (415) 293-8210
26 F: (415) 789-4367
27 egraham@gelaw.com
28 agomez@gelaw.com

*** Pro Hac Vice Forthcoming
Attorneys for Plaintiff and the Putative
Class*