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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BARBIZON SCHOOL OF SAN FRANCISCO, INC., a California Corporation; and BARBIZON SCHOOL OF MODELING OF MANHATTAN, INC., a New York Corporation;

Plaintiffs,

vs.

SENTINEL INSURANCE COMPANY, LTD., a Connecticut Corporation and a Member of The Hartford Financial Services Group, Inc.,

Defendant.

Case No.: 3:20-cv-8578

COMPLAINT

Complaint for:

- (1) Breach of Contract;
- (2) Breach of The Implied Covenant of Good Faith and Fair Dealing (Bad Faith); and
- (3) Unfair Business Practices in Violation of California Business & Professions Code § 17200 *et seq.*

JURY TRIAL DEMANDED

Plaintiffs BARBIZON SCHOOL OF SAN FRANCISCO, INC. (“Barbizon-West”) and BARBIZON SCHOOL OF MODELING OF MANHATTAN, INC. (“Barbizon-NY” and collectively with Barbizon-West, “Barbizon” or “Plaintiffs”), by and through their undersigned attorneys, bring this Complaint against SENTINEL INSURANCE COMPANY, LTD., a Connecticut Corporation and a member of The Hartford Financial Services Group, Inc. (“Defendant,” or “Hartford”), and alleges as follows:

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INTRODUCTION

1. This is a case in which the Defendant insurance company, Hartford, wrongfully denied business interruption coverage for losses due to COVID-19-related closures at Barbizon’s business locations.

2. To date, there have been more than 1,250 COVID-19-related insurance coverage cases filed.¹ This case, however, differs from most, if not all, of those cases in an important respect: in this case, the policy holders are two related entities, under common ownership and control, that purchased insurance coverage under two separate insurance policies from the same insurance carrier. The policies are similar, but not the same, and their differences provide an essential guide to their interpretation:

- One of the policies contains a “Limited Fungi, Bacteria Or Virus Coverage” endorsement; the other does not.
- One of the policies excludes coverage for any losses due to the “Presence, growth, proliferation, spread or any activity of ... virus;” the other does not.
- One of the policies expressly recognizes that Hartford will pay at least some claims for “Direct physical loss or direct physical damage to Covered Property caused by ... virus;” the other does not.

3. The differences between those policies show that Hartford’s denial of coverage under one of the policies is unsupported, and that its marketing of the other was fraudulent.

THE PARTIES

4. Plaintiff Barbizon School Of San Francisco, Inc., is a California Corporation which, at all relevant times during the events described in this Complaint, had a principal place of business in this District at 420 Sutter Street, San Francisco, California, and now has an office located at 1201 W 5th Street, Suite T300, Los Angeles, California.

5. Plaintiff Barbizon School of Modeling of Manhattan, Inc. is a New York Corporation which, at all relevant times during the events described in this Complaint, had a place of business in this District at 420 Sutter Street, San Francisco, California, and now has a place of business located in Marin County, California.

¹University of Pennsylvania Law School Covid Coverage Litigation Tracker, <https://cclt.law.upenn.edu/> (retrieved on December 4, 2020.)

6. Upon information and belief, Defendant Sentinel Insurance Company, Ltd. is a Connecticut corporation authorized to do business in the State of California, and having a principal place of business at One Hartford Plaza, Hartford, Connecticut.

JURISDICTION AND VENUE

7. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(a)(1) in that:
- a. the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs;
 - b. Plaintiffs are corporations organized and existing under the laws of the State of California and New York, with principal places of business in California; and
 - c. Defendant is a corporation organized and existing under the laws of the State of Connecticut, with a principal place of business in the State of Connecticut.

8. Pursuant to 28 U.S.C. § 1391(b)(2), venue is proper in the Northern District of California because a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, within this district.

INTRADISTRICT ASSIGNMENT

9. Assignment to the San Francisco Division of this District is proper pursuant to Civil Local Rule 3-2(c) because at all relevant times during events described in this Complaint the Plaintiffs had a place of business located at 420 Sutter Street, San Francisco, California, and the insurance policies that are the subject of this action were issued to the Plaintiffs there.

GENERAL AND FACTUAL ALLEGATIONS

10. Plaintiffs are independently owned and operated licensees of Barbizon International, Inc., offering modeling, acting, and studio services at locations in New York City (Barbizon-NY), San Francisco, Los Angeles, and Sacramento, California; Portland, Oregon; and Seattle, Washington (Barbizon-West).

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The West Coast Policy

11. Barbizon-West procured insurance coverage under Hartford Policy Number 57 SBA UZ9898 (“West Coast Policy”) for the policy period July 8, 2019, through July 8, 2020 (“West Coast Policy Period”). The West Coast Policy was issued as of April 19, 2019.

12. The basic coverage provisions of the West Coast Policy are written on the “Special Property Coverage Form,” Form SS 00 07 07 05, which states:

A. COVERAGE

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

13. “Covered Property” under the Special Property Coverage Form includes the “buildings(s) and structure(s) described in the Declarations.” (Special Property Coverage Form, A(1)(a)).

14. Under the West Coast Policy, the buildings covered in the declarations are:

- a. 420 Sutter Street, San Francisco, California 94108;
- b. 2020 Hurley Way, Suite 245, Sacramento, California 95825;
- c. 1201 W 5th Street, Suite T300, Los Angeles, California 90017;
- d. 1520 3rd Avenue, Seattle, Washington 98101; and
- e. 4035 NE Sandy Boulevard, Portland, Oregon 97212 (collectively the “West Coast Locations”).

15. Under the Special Property Coverage Form in the West Coast Policy “Covered Cause of Loss” is defined as follows:

B. 3. Covered Causes of Loss

RISKS OF DIRECT PHYSICAL LOSS unless the loss is:

- a. Excluded in Section B., **EXCLUSIONS**; or
- b. Limited in Paragraph **A.4. Limitations**; that follow.

(Special Property Coverage Form, A(3)).

16. "Section B., EXCLUSIONS" of the Special Property Coverage Form," Form SS 00 07 07 05, for the West Coast Policy does not itself have a "virus" exclusion.

17. An exclusion was, however, added to "Section B., EXCLUSIONS" of the West Coast Policy through a "LIMITED FUNGI, BACTERIA OR VIRUS COVERAGE" Endorsement (the "Virus Endorsement"), Form SS 40 93 07 05.

18. Despite its name, the Virus Endorsement removes all virus coverage from the Special Property Coverage Form by adding an exclusion (the "Virus Exclusion") to Section B of the Special Property Coverage Form:

2. The following exclusion is added to Paragraph **B.1. Exclusions** of the...Special Property Coverage Form...:

i. "Fungi", Wet Rot, Dry Rot, Bacteria And Virus

We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss:

- (1) Presence, growth, proliferation, spread or any activity of "fungi", wet rot, dry rot, bacteria or virus.
- (2) But if "fungi", wet rot, dry rot, bacteria or virus results in a "specified cause of loss" to Covered Property, we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion does not apply:

- (1) When "fungi", wet or dry rot, bacteria or virus results from fire or lightning; or
- (2) To the extent that coverage is provided in the Additional Coverage – Limited Coverage for "Fungi", Wet Rot, Dry Rot, Bacteria and Virus with respect to

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loss or damage by a cause of loss other than fire or lightning.

This exclusion applies whether or not the loss event results in widespread damage or affects a substantial area.

19. The Virus Endorsement then adds some very limited virus coverage:

b. We will pay for loss or damage by "fungi", wet rot, dry rot, bacteria and virus. As used in this Limited Coverage, the term loss or damage means:

- (1) Direct physical loss or direct physical damage to Covered Property caused by "fungi", wet rot, dry rot, bacteria or virus, including the cost of removal of the "fungi", wet rot, dry rot, bacteria or virus;
- (2) The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungi", wet rot, dry rot, bacteria or virus; and
- (3) The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungi", wet rot, dry rot, bacteria or virus are present.

20. That limited virus coverage is limited further by the requirement that, for coverage to apply, the loss must be due to a limited number of things. As relevant here, the coverage is restricted by this language:

a. The coverage described in 1.b. below only applies when the "fungi", wet or dry rot, bacteria or virus is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.

- (1) A "specified cause of loss" other than fire or lightning;

21. "Specified Cause of Loss" is defined in the Special Property Coverage Form as follows:

19. "Specified Cause of Loss" means the following:

- Fire; lightning; explosion, windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole

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collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.

22. As a result, the Virus Endorsement *does* purport to obligate Hartford to cover “[d]irect physical loss or direct physical damage to Covered Property caused by...virus,” provided that such “direct physical loss or direct physical damage” is caused by a virus that “is the result of” “explosion, windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.”

The New York Policy

23. Barbizon-NY procured insurance coverage under Hartford Policy Number 57 SBA BG9898 (“NY Policy,” and together with the West Coast Policy, the “Policies”) for the policy period September 14, 2019, through September 14, 2020 (“NY Policy Period,” and together with the West Coast Policy Period, the “Policy Periods”). The New York Policy was issued as of July 3, 2019, almost three months after the West Coast Policy.

24. The New York Policy, like the West Coast Policy, is based upon “Special Property Coverage Form,” Form SS 00 07 07 05, which states:

C. COVERAGE

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

25. Under the NY Policy, the “premises described in the Declarations” is 1384 Broadway, New York, New York 10018. (the “NY Location” and collectively with the West Coast Locations, the “Insured Locations.”)

26. The New York Policy, issued after the West Coast Policy, does *not* include the Virus Endorsement.

27. Because the New York Policy does not include the Virus Endorsement, it does not include the Virus Exclusion.

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The Losses and Claims

1
2 28. In March 2020, Plaintiffs were forced to close the Insured Locations due to the
3 COVID-19 pandemic, which was caused by the pervasive presence of the virus SARS-CoV-2 in the
4 cities where the Insured Locations are located.

5 29. On June 26, 2020, Plaintiffs submitted claims (the “Claims”) to Hartford for business
6 interruption losses at the Insured Locations through Hartford’s online claims submission portal at
7 <https://bi.covidclaim.thehartford.com/reportclaim>.

8 30. The very same day, without seeking additional documentation or information, and
9 without further investigation, Hartford denied the Claims.

10 31. In a letter dated June 26, 2020 (“NY Denial Letter”), the same day that Plaintiffs
11 submitted their claims, Hartford denied coverage under the NY Policy by stating that, “We have
12 completed a review of your loss and have determined that since the coronavirus did not cause
13 property damage at your place of business or in the immediate area, this loss is not covered.”

14 32. Similarly, in separate letter dated the same day (“West Coast Denial Letter,” and
15 collectively with the NY Denial Letter, the “Denial Letters”), Hartford denied coverage under the
16 West Coast Policy with identical language stating that, “We have completed a review of your loss
17 and have determined that since the coronavirus did not cause property damage at your place of
18 business or in the immediate area, this loss is not covered.”

19 33. The West Coast Denial Letter went on to state that, “[e]ven if the virus did cause
20 damage, it is excluded from the policy, and the limited coverage available for losses caused by virus
21 does not apply to the facts of your loss.”

22 **FIRST CAUSE OF ACTION:**
23 **BREACH OF CONTRACT**
24 **(NY POLICY)**

25 34. Plaintiffs repeat, reiterate, and reallege each of the allegations set forth in the
26 preceding paragraphs as if set forth fully herein.

27 35. On March 7, 2020, New York Governor Andrew Cuomo issued Executive Order
28 Number 202, “declaring a State disaster emergency for the entire State of New York.”

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1 36. In an Executive Order dated March 16, 2020, Governor Cuomo decreed that “every
2 school in the state of New York is hereby directed to close no later than Wednesday, March 18,
3 2020, for a period of two weeks, ending April 1, 2020.” NY Executive Order 202.4.

4 37. On March 17, 2020, New York City declared a state of emergency, and on March 22,
5 2020, issued its first “stay at home” order. The order explicitly states that COVID-19 is “causing
6 property loss and damage.”

7 38. On March 20, 2020, Governor Cuomo issued Executive Order No. 202.6, ordering
8 “[a]ll businesses and not-for-profit entities in the state [to] utilize, to the maximum extent possible,
9 any telecommuting or work from home procedures that they can safely utilize,” and further
10 directing all non-essential businesses to reduce in-person workforces by 50%.

11 39. On March 23, 2020, Governor Cuomo issued Executive Order No. 202.10, ordering
12 that “Non-essential gatherings of individuals of any size for any reason (e.g. parties, celebrations or
13 other social events) are canceled or postponed at this time.”

14 40. In an Executive Order dated April 7, 2020, Governor Cuomo decreed that “all in-
15 person business restrictions and workplace restrictions will be effective until 11:59 p.m. on April
16 29, 2020.” NY Executive Order 202.14.

17 41. Subsequent Executive Orders extended those dates, and continued the restrictions on
18 non-essential business use of property, including the NY Location.

19 *Civil Authority Coverage*

20 42. The NY Policy provides “Civil Authority Coverage” as follows:

21 **q. Civil Authority**

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

27 (2) The coverage for Business Income will begin
72 hours after the order of a civil authority and
28 coverage will end at the earlier of:

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(a) When access is permitted to your “scheduled premises”, or

(b) 30 consecutive days after the order of the civil authority.

43. The Civil Authority Coverage is triggered by an “order of a civil authority as the direct result of a Covered Cause of Loss to property in the immediate area” of the NY Location.

44. An objectively reasonable policy holder purchasing both the NY Policy and the West Coast Policy would interpret those Policies by reference to one another, ascribing meaning and operative effect to the words that are found in one and not the other, and understanding that the omission of language in one policy but not the other meant that the omitted terms were not operative in the policy in which they were omitted. *See* Cal Civ Code § 1642 (“Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.”)

45. An objectively reasonable policy holder purchasing both the NY Policy and the West Coast Policy would conclude that an exclusion appearing in one policy, but not the other, meant that the exclusion did not apply in the policy in which it was omitted.

46. The Virus Exclusion appears in the West Coast Policy, removing “virus” from “Covered Cause of Loss” in the West Coast Policy’s Special Property Coverage Form.

47. The Virus Exclusion does *not* appear in the NY Policy.

48. An objectively reasonable policy holder purchasing both the NY Policy and the West Coast Policy would conclude that “virus” is a “Covered Cause of Loss” in the NY Policy because Hartford knew how to exclude “virus” as a “Covered Cause of Loss” in the Special Property Coverage Form, as it did in the West Coast Policy, but chose not to exclude “virus” as a “Covered Cause of Loss” in the NY Policy.

49. An objectively reasonable policy holder purchasing both the NY Policy and the West Coast Policy would know that Hartford offers some insurance coverage for “Direct physical loss or direct physical damage to Covered Property caused by ... virus,” and that Hartford therefore acknowledges and accepts that a virus is capable of causing, at least in some circumstances, “direct

1 physical loss of or damage to” property as that term is used in the Policies. This objectively
2 reasonable conclusion would be based on the facts that:

3 (a) In the West Coast Policy, Hartford specifically excluded “virus” from the
4 “risks of direct physical loss of or damage to” property. If a virus is never capable of causing
5 a “direct physical loss of or damage to” property within the meaning of the Policies, then
6 there would be no reason for Hartford to insert the Virus Exclusion some policies, including
7 the West Coast Policy;

8 (b) In the West Coast Policy, Hartford specifically offered some modicum of
9 coverage for “direct physical loss or physical damage” caused by virus. If a virus is never
10 capable of causing “direct physical loss of or damage to” property, then then entire virus
11 coverage offered by Hartford in the Virus Endorsement is meaningless and worthless. It
12 would be unreasonable, and contrary to California law, to interpret the West Coast Policy in
13 a way that rendered an express grant of coverage ephemeral and utterly without effect. *See*
14 Cal Civ Code § 1641 (“The whole of a contract is to be taken together, so as to give effect to
15 every part, if reasonably practicable, each clause helping to interpret the other.”); and

16 (c) The NY Policy includes an “Exclusion - Nuclear Energy Liability” (the
17 “Nuclear Exclusion”) which defines “property damage” to include non-structural
18 contamination damage. Specifically, the Nuclear Exclusion states that “Injury or damage
19 and ‘property damage’ include all forms of radioactive contamination of property.” An
20 objectively reasonable policy holder would interpret the phrase “physical loss of or damage
21 to” property in the Special Property Coverage Form consistent with the definition of
22 “property damage” in the Nuclear Exclusion and, in so doing, reasonably conclude that
23 “physical loss of or damage to” property includes non-structural contamination.

24 50. Under the NY Policy, the SARS-CoV-2 virus was a “Covered Cause of Loss” that
25 was not excluded from coverage.

26 51. Under the NY Policy, there was no express exclusion for “physical loss of or damage
27 to” property caused by virus.

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1 52. The SARS-CoV-2 virus was pervasive and widespread throughout New York City,
2 including in the immediate area of the NY Location during the relevant time period.

3 53. The presence of the SARS-CoV-2 virus involves a physical interaction with
4 property, making it dangerous and less valuable. This damage is direct, in that the presence of
5 SARS-CoV-2 virus particles renders property dangerous and less valuable.

6 54. The SARS-CoV-2 virus and the resulting pandemic led to “direct physical loss of”
7 the NY Location because Barbizon-NY was unable to use the NY Location because of the virus

8 55. Orders of civil authorities issued by the Governor of New York and the Mayor of
9 New York City, including but not limited to those described above:

- 10 a. functionally prohibited access to the New York Location;
- 11 b. were issued as a direct result of SARS-CoV-2, which was “Covered
12 Cause of Loss” in the immediate area of the New York Location.

13 56. Hartford wrongfully denied coverage under the “Civil Authority” coverage of the
14 NY Policy.

15 57. As a result of Hartford’s refusal to pay policy benefits under the Civil Authority
16 coverage, Barbizon-NY has suffered damages in an amount to be determined at trial but believed to
17 be in excess of \$125,000.

18 ***Business Income and Extended Business Income***

19 58. The NY Policy provides “Business Income” coverage as follows:

20 o. Business Income

21 (1) We will pay for the actual loss of Business Income you
22 sustain due to the necessary suspension of your
23 "operations" during the "period of restoration". The
24 suspension must be caused by direct physical loss of or
25 physical damage to property at the "scheduled premises",
including personal property in the open (or in a vehicle)
within 1,000 feet of the “scheduled premises”, caused by
or resulting from a Covered Cause of Loss.

26 * * *

27 (5) With respect to the coverage provided in this Additional
28 Coverage, suspension means:

(a) The partial slowdown or complete cessation of your business activities; or

(b) That part or all of the "scheduled premises" is rendered untenantable as a result of a Covered Cause of Loss if coverage for Business Income applies to the policy.

59. An objectively reasonable policy holder would conclude, for the reasons stated in paragraphs 49 and 49 above, that a virus is capable of causing "direct physical loss of or damage to" property as that term is used in Business Income coverage of the NY Policy.

60. The SARS-CoV-2 virus caused at least as much "direct physical loss of or damage to" the NY Location as any virus is capable of causing to any property under any circumstances.

61. The NY Policy also provides "Extended Business Income" coverage. The "Extended Business Income" coverage in the Special Property Coverage Form is entirely replaced by the following from the "Stretch for Schools" Endorsement:

r. Extended Business Income

(1) If the necessary suspension of your "operations" produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:

(a) Begins on the date property is actually repaired, rebuilt or replaced and "operations" are resumed; and

(b) Ends on the earlier of:

(i) The date you could restore your "operations" with reasonable speed, to the condition that would have existed if no direct physical loss or damage occurred; or

(ii) 30 consecutive days after the date determined in (1)(a) above.

Loss of Business Income must be caused by direct physical loss or physical damage at the "scheduled premises" caused by or resulting from a Covered Cause of Loss.

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(2) With respect to the coverage provided in this Additional Coverage, suspension means:

(a) The partial slowdown or complete cessation of your business activities; and

(b) That a part or all of the "scheduled premises" is rendered untenable as a result of a Covered Cause of Loss.

62. The "Stretch for Schools" endorsement increases the 30-day period of loss under the NY Policy's "Extended Business Income" coverage to 120 days:

4. Extended Business Income

In the Extended Business Income Additional Coverage, paragraph 4.j.(1)(b)(ii) of the Standard Property Coverage Form and paragraph 5.r.(1)(b)(ii) of the Special Property Coverage Form are amended to read as follows:

(b) 120 consecutive days after the date determined in (a) above.

63. The "Stretch for Schools" endorsement also increases the limits for "Business Income and Extra Expense" coverage:

c. Business Income and Extra Expense

(1) If Business Income or Extra Expense are provided under this policy, the most we will pay in any one occurrence in subparagraph (3) is increased from \$50,000 to \$500,000 in any one occurrence at each premises.

(2) The Limit of Insurance stated above is the maximum Limit of Insurance available for this coverage under this policy.

64. An objectively reasonable policy holder would conclude, for the reasons stated in paragraphs 49 and 49 above, that a virus is capable of causing "direct physical loss of or damage to" property as that term is used in "Extended Business Income" coverage of the NY Policy.

65. The SARS-CoV-2 virus caused at least as much "direct physical loss of or damage to" the NY Location as any virus is capable of causing to any property under any circumstances.

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1 66. Hartford wrongfully denied coverage under the “Business Income” and “Extended
2 Business Income” coverages of the NY Policy.

3 67. Hartford has refused to comply with its obligations under the NY Policy, including,
4 but not limited to, the following:

- 5 a. Hartford has unreasonably failed and refused, and continues to fail and
- 6 refuse, to pay benefits owed to Barbizon NY under the Policy;
- 7 b. Hartford has failed to conduct a complete, full, and fair investigation of
- 8 Barbizon NY’s claim; and
- 9 c. Barbizon NY is informed and believes and thereon alleges that Hartford
- 10 has failed to adopt and implement reasonable standards for the prompt
- 11 investigation and processing of claims.

12 68. As a result of Hartford’s refusal to pay policy benefits under the Business Income
13 and Extended Business Income coverages, Barbizon-NY has suffered damages in an amount to be
14 determined at trial but believed to be in excess of \$500,000.

**SECOND CAUSE OF ACTION:
Breach of Duty of Good Faith and Fair Dealing
(NY Policy)**

17 69. Plaintiffs repeat, reiterate, and reallege each of the allegations set forth in the
18 preceding paragraphs as if set forth fully herein.

19 70. Based upon the virus coverage in the Virus Endorsement that is made a part of the
20 West Coast Policy, an objectively reasonable policyholder would conclude that Hartford accepts
21 and acknowledges that a virus is capable of causing “[d]irect physical loss of or direct physical
22 damage to Covered Property.”

23 71. Upon information and belief, Hartford has denied all claims related to SARS-CoV-2.
24 based upon its categorical claims handling position that a virus cannot cause “direct physical loss of
25 or physical damage to” property under any circumstances.

26 72. Upon information and belief, Hartford has not voluntarily paid any claims for “direct
27 physical loss of or physical damage to” property caused by SARS-CoV-2.
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1 73. Upon information and belief, Hartford has taken the position in every coverage
2 litigation against it that SARS-CoV-2 has not caused “direct physical loss of or physical damage to”
3 property.

4 74. Upon information and belief, Hartford made no effort prior to its denial of coverage
5 to determine if the NY Location suffered “direct physical loss of or physical damage to” property as
6 a result of SARS-CoV-2.

7 75. Upon information and belief, Hartford failed to determine – or even investigate –
8 whether Barbizon NY was entitled to coverage under the “Civil Authority” coverage in the NY
9 Policy due to an order of a civil authority based upon a “Covered Cause of Loss to property in the
10 immediate area” of the NY Location. Instead, Hartford denied coverage based upon its categorical
11 claims handling position that a virus is not a “Covered Cause of Loss.”

12 76. Hartford’s failure to determine – or even investigate – whether Barbizon NY
13 suffered a covered loss at the NY Location was a breach of the duty of good faith and fair dealing.

14 77. As a result, Plaintiffs are entitled to damages, attorneys’ fees, and the costs of suit, in
15 an amount to be determined at trial or inquest.

16 **THIRD CAUSE OF ACTION:**
17 **Unfair Business Practices in Violation of**
18 **California Business & Professions Code § 17200 et seq.**

19 78. Plaintiffs repeat, reiterate, and reallege each of the foregoing allegations as if fully
20 set forth herein.

21 79. In the Virus Endorsement, Hartford purports to offer coverage for at least some
22 “[d]irect physical loss or direct physical damage to Covered Property caused by...virus.”

23 80. In reality, Hartford has taken the position that a virus cannot cause “direct physical
24 loss of or physical damage to” property under *any* circumstances.

25 81. Thus, while Hartford markets and sells policies of insurance that include what
26 Hartford calls “LIMITED FUNGI, BACTERIA OR VIRUS COVERAGE,” Hartford does not disclose to
27 insureds that the purported virus coverage provides no coverage at all because Hartford has taken
28

1 the categorical position that a virus cannot cause “direct physical loss of or physical damage to”
2 property within the meaning of the policies it issues.

3 82. Hartford’s position that a virus cannot cause “direct physical loss of or physical
4 damage to” property within the meaning of the policies it issues renders the purported virus
5 coverage in the LIMITED FUNGI, BACTERIA OR VIRUS COVERAGE meaningless and worthless.

6 83. As a result, Hartford’s sale and marketing of the LIMITED FUNGI, BACTERIA OR
7 VIRUS COVERAGE constitutes false, unfair, fraudulent, and/or deceptive business practices within the
8 meaning of California Bus. & Prof. Code § 17200 *et seq.*

9 84. Moreover, in the Denial Letters, Hartford takes the position that “[t]he coronavirus is
10 understood to be an irritant or contaminant which causes or threatens to cause physical impurity,
11 unwholesomeness and threatens human health or welfare” and that, for that reason, even if coverage
12 were otherwise available for loss caused by coronavirus, the pollution exclusion could further bar
13 coverage for the loss.”

14 85. Given Hartford’s reliance upon the pollution exclusion, Hartford’s marketing and
15 sale of policies including the “LIMITED FUNGI, BACTERIA OR VIRUS COVERAGE” is a false, unfair,
16 fraudulent and/or deceptive business practice because Hartford’s interpretation of the pollution
17 exclusion renders the purported virus coverage in the LIMITED FUNGI, BACTERIA OR VIRUS
18 COVERAGE meaningless and worthless.

19 86. In addition, Hartford’s marketing and sale of the NY Policy without clearly and
20 unmistakably stating its position that a virus can never be a “Covered Cause of Loss,” constitutes
21 false, unfair, fraudulent, and/or deceptive business practices within the meaning of California Bus.
22 & Prof. Code § 17200 *et seq.*

23 87. As a result of these unlawful acts, Hartford has reaped, and continues to reap, unfair
24 benefit and illegal profits at the expense of Plaintiffs.

25 88. As a result, Plaintiffs are entitled to damages, attorneys’ fees, and the costs of suit, in
26 an amount to be determined at trial or inquest.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. On the First Cause of Action for Breach of Contract, that the Court enter judgment against the Defendant for general, special, and compensatory damages, in an amount to be determined at trial, reasonably believed to be in excess of \$500,000.

2. On the Second Cause of Action for Breach of the Covenant of Good Faith and Fair Dealing, that the Court enter judgment against the Defendant for general, special, and compensatory damages, in an amount to be determined at trial.

3. On the Third Cause of Action for Unfair Business Practices in Violation of California Business & Professions Code § 17200 et seq., that the Court enter judgment against the Defendant for general, special, and compensatory damages, in an amount to be determined at trial.

4. For such other and further relief as this Court may deem proper and just.

DATED: December 4, 2020

LACHTMAN COHEN, P.C.

By:



Gregory A. Blue, SBN 275668
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs respectfully request a jury trial on all triable issues in the above entitled action.

DATED: December 4, 2020

LACHTMAN COHEN, P.C.

By:



Gregory A. Blue, SBN 275668
Attorneys for Plaintiffs

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

BARBIZON SCHOOL OF SAN FRANCISCO, INC., a California Corporation; and BARBIZON SCHOOL OF MODELING OF MANHATTAN, INC., a New York Corporation;

(b) County of Residence of First Listed Plaintiff Los Angeles (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

GREGORY A. BLUE, SBN 275668, LACHTMAN COHEN, P.C. 245 Main Street, Suite 230, White Plains, New York 10601 (914) 505-6654

DEFENDANTS

SENTINEL INSURANCE COMPANY, LTD., a Connecticut Corporation

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant X 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- X 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions): JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2) (Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 12/04/2020 SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature of Gregory A. Blue