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

12 JOSHUA ETS-HOKIN,

13 Plaintiff,

14 vs.

15 SENTINEL INSURANCE COMPANY, LTD.,

16 Defendant.

CASE NO: 3:20-cv-06518

**COMPLAINT FOR DAMAGES:**

**(1) BREACH OF CONTRACT**

**(2) BREACH OF THE IMPLIED  
COVENANT OF GOOD FAITH AND  
FAIR DEALING**

**DEMAND FOR JURY TRIAL**

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19 Plaintiff JOSHUA ETS-HOKIN herein sets forth the allegations of their Complaint against  
20 Defendant, SENTINEL INSURANCE COMPANY, LTD., a wholly owned subsidiary of The  
21 Hartford Financial Services Group (“The Hartford”).

22 **PRELIMINARY ALLEGATIONS**

23 1. Jurisdiction is based on diversity of citizenship pursuant to 28 U.S.C. § 1332. The  
24 amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00.

25 2. Venue is proper in this Court based upon 28 U.S.C. § 1391(a).

26 3. Plaintiff is informed and believes that Defendant, SENTINEL INSURANCE  
27 COMPANY LTD, is a corporation incorporated in Connecticut with its principle place of business  
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1 in Connecticut. Defendant is authorized to transact and transacting business in the Northern  
2 District of California and can be found in the Northern District of California.

3 4. At the time of the purchase of the insurance policy which is the subject of this  
4 action Plaintiff was a resident and citizen of the County of San Francisco, State of California.

5 5. Intradistrict assignment is proper in the San Francisco or Oakland Division of the  
6 Northern District of California because the events giving rise to this lawsuit occurred in San  
7 Francisco County.

8 **FACTUAL BACKGROUND**

9 6. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth  
10 herein.

11 7. Plaintiff owns a photography studio, Ets-Hokin Studios. The nature of his business  
12 requires that he work in a variety of unusual locations. His business is also vulnerable to closures  
13 of public spaces and to government orders to quarantine, such as have occurred during the  
14 COVID-19 pandemic.

15 8. Recognizing these issues, Plaintiff intentionally sought the broadest coverage he  
16 could find. He obtained a Spectrum Business Owner’s Policy, Policy No. 57 SBA BL6110 from  
17 The Hartford on or about March 27, 2019 (the “Policy”). Wanting to cover his business as broadly  
18 as possible, Plaintiff obtained a “Super Stretch” coverage endorsement intended to cover his  
19 business in a wide range of situations. He also requested, and received, a virus endorsement in the  
20 Policy to insure his business in the event it was affected by a virus.

21 9. The Policy provides coverage for loss business income of 12 months of actual loss  
22 sustained. It includes a total of 60 days of coverage for actual loss sustained for actions by a civil  
23 authority. The virus endorsement provides an additional \$50,000 of coverage, which includes 30  
24 days coverage for lost business income and extra expenses.

25 10. All premiums due to maintain Plaintiff’s coverage in full force and effect under the  
26 Policy have been paid by Plaintiff. At all relevant times, Plaintiff has performed all obligations  
27 under the Policy on his part to be performed.  
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**The SARS-CoV-2 (“COVID-19”) Pandemic**

11. A virus is a pathogen. Unlike bacteria or fungi, viruses are not living organisms. They can grow and reproduce only inside of the host cells they infect. When found outside these living cells, viruses are dormant. Bacteria, on the other hand, are single-celled organisms that can generate energy, make its own food, move and reproduce, which allows it to live in many places.<sup>1</sup>

12. Severe acute respiratory syndrome (“SARS”) is a viral respiratory disease of zoonotic origin that surfaced in the early 2000s caused by the first identified strain of the SARS coronavirus (“SARS-CoV” a/k/a “SARS-CoV-1”). The scientific community eventually traced the source of the virus to a meat market in China through the intermediary of civets (small mammals) to cave-dwelling bats.<sup>2</sup>

13. In 2019, a variation (and/or mutation) of the coronavirus strain was discovered in Wuhan, China. According to the CDC, the source of the strain is once again a meat market where the virus has jumped from bats, through an intermediary animal, to humans.<sup>3</sup>

14. The Coronavirus Study Group (“CSG”) of the International Committee on Taxonomy of Viruses (“ICTV”), which is responsible for developing the official classification of viruses and taxa naming (taxonomy) of the Coronaviridae family, assessed the strain discovered in Wuhan, China. Based on phylogeny, taxonomy and established practice, the ICTV formally recognized the virus as a variation of SARSCoV-1 and designated it as severe acute respiratory syndrome coronavirus 2 (SARSCoV-2).

15. SARS-CoV-2 is the causative virus for the COVID-19 disease implicated in the ongoing 2019–2020 coronavirus pandemic.

16. On March 4, 2020, California Governor Gavin Newsom declared a state of emergency in California due to the COVID-19 pandemic. On March 13, 2020 San Francisco

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<sup>1</sup> <https://www.merriam-webster.com/words-at-play/virus-vs-bacteria-difference>

<sup>2</sup> Civets are small mammalian creatures that feed on bats. In 2002-03, civets sold for meat in Chinese markets carried the SARS-CoV-1 virus from horseshoe bats to humans. The resulting viral outbreak killed 774 people.

<sup>3</sup> <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html>

1 banned gatherings of 100 people or more. On March 15, 2020 Governor Newsom closed all bars,  
 2 nightclubs, wineries and brewpubs and reduced restaurant capacity. On March 16, 2020, a shelter  
 3 in place order was issued in six counties, including San Francisco County, requiring that Bay Area  
 4 residents restrict activities and only travel to essential tasks. While in June some counties began to  
 5 reopen, by July 1, 2020, the governor ordered most indoor operations to shut down due to spikes  
 6 in COVID-19. As of September 10, 2020 most indoor services remain closed in San Francisco  
 7 County per order of the county health department due to COVID-19.

### 8 The Policy

9 17. The Policy provides building and business personal property coverage. It provides  
 10 business income and extra expense coverage for up to 12 months of actual loss sustained. To  
 11 obtain coverage for business income loss, the loss must be caused by “physical damage or loss” to  
 12 the building. “We will pay for the actual loss of

13 Business Income you sustain due to the necessary suspension of your "operations" during the  
 14 "period of restoration". The suspension must be caused by direct physical loss of or physical  
 15 damage to property at the "scheduled premises", including personal property in the open (or in a  
 16 vehicle) within 1,000 feet of the “scheduled premises”, caused by or resulting from a Covered  
 17 Cause of Loss.”

18 18. The Policy provides coverage for “Civil Authority” interruption that causes  
 19 business loss. Per the Policy, “This insurance is extended to apply to the actual loss of Business  
 20 Income you sustain when access to your "scheduled premises" is specifically prohibited by order  
 21 of a civil authority as the direct result of a Covered Cause of Loss to property in the immediate  
 22 area of your "scheduled premises".” The Policy states that the “coverage for Business Income will  
 23 begin 72 hours after the order of a civil authority and coverage will end at the earlier of (a) When  
 24 access is permitted to your ‘scheduled premises’; or (b) 30 consecutive days after the order of the  
 25 civil authority.”

26 19. The Policy includes an endorsement titled “Limited Fungi, Bacteria or Virus  
 27 Coverage.” It states:

#### 28 **1. Limited Coverage For "Fungi", Wet Rot, Dry Rot, Bacteria and Virus**

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

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

(2) Equipment Breakdown Accident  
occurs to Equipment Breakdown  
Property, if Equipment Breakdown  
applies to the affected premises.

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...

**The Hartford Denies Coverage Under the Policy**

14  
15 20. As of March 2020, Plaintiff had to close his photography studio due to the  
16 pandemic and the orders from the Governor and the San Francisco County Health Department. It  
17 remains closed under the guidelines promulgated by the state and county health departments,  
18 which require non-essential businesses to close their offices.

19 21. Plaintiff's has suffered a physical loss to the building through exposure to the virus,  
20 such that it is not safe to occupy at this time.

21 22. Plaintiff has been barred by multiple civil authorities from accessing his studio  
22 building, or performing his profession at off-site locations, because of the physical losses  
23 sustained by buildings throughout the county and state due to the pandemic.

24 23. Plaintiff has been unable to re-open his business due to the virus COVID-19.

25 24. For all the above reasons, Plaintiff has suffered losses to his business income.

26 25. Plaintiff made a claim to The Hartford for his business losses, grateful that he had  
27 chosen to obtain the virus endorsement to ensure his protection in this situation. On July 8, 2020,  
28

1 The Hartford formally denied his claim, Claim No. Y2HF42609, opining that he had no coverage  
2 in the Policy for his claim. On July 20, 2020, The Hartford emailed him to confirm its position that  
3 the virus endorsement provided coverage for his losses during the pandemic. The Hartford  
4 informed him that his virus endorsement only applied “when the virus is caused by the following  
5 scenarios: Fire; lightning; explosion, windstorm or hail; smoke; aircraft or vehicles; riot or civil  
6 commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic  
7 action; falling objects; weight of snow, ice or sleet; water damage.” Plaintiff is informed and  
8 believes that viruses cannot be “caused” by any of the above scenarios.

9  
10 **FIRST CLAIM FOR RELIEF AGAINST**  
11 **THE HARTFORD**  
12 **FOR BREACH OF CONTRACT**

13 26. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth  
14 herein.

15 27. Plaintiff intentionally requested, and received, a virus endorsement for his Policy to  
16 provide coverage in the event of a viral outbreak or pandemic.

17 28. The Policy provided by The Hartford only provides coverage for viruses that are  
18 “caused by” otherwise covered acts under the Policy. Viruses are not “caused by” any acts  
19 covered under the Policy. They are inert pathogens.

20 29. Defendant issued a Policy which, if interpreted per Defendant’s stated position,  
21 provides no actual coverage for viruses under its virus endorsement.

22 30. Defendant failed to properly investigate the claim.

23 31. The Hartford deliberately failed to recognize that COVID-19 has caused Plaintiff to  
24 suffer the physical loss of his business premises, due to viral exposure and to civil authority  
25 orders.

26 32. As a direct and proximate result of Defendant’s improper handling regarding  
27 Plaintiff’s claim, Plaintiff has been deprived of the right to obtain benefits under the terms of the  
28 Policy.



1 is presently unaware. Plaintiff will amend this Complaint at such time as Plaintiff discover these  
2 other acts or omissions.

3 37. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered  
4 and will continue to suffer in the future, damages under the Policy, plus interest, for a total amount  
5 to be shown at the time of trial.

6 38. As a further proximate result of the wrongful conduct of Defendant, Plaintiff has  
7 suffered mental and emotional distress, and other incidental damages and out-of-pocket expenses,  
8 all to Plaintiff's general damage in a sum to be determined at the time of trial.

9 39. As a further proximate result of the wrongful conduct of Defendant, Plaintiff was  
10 compelled to retain legal counsel to obtain the benefits due under the Policy. Therefore, Defendant  
11 is liable to Plaintiff for those attorneys' fees reasonably necessary and incurred by Plaintiff to  
12 obtain Policy benefits in a sum to be determined at the time of trial.

13 40. Defendant's conduct described herein was intended by Defendant to cause injury to  
14 Plaintiff, was despicable conduct carried on by Defendant with a willful and conscious disregard  
15 of the rights of Plaintiff, subjected Plaintiff to cruel and unjust hardship in conscious disregard of  
16 their rights, and was an intentional misrepresentation, deceit, or concealment of a material fact  
17 known to Defendant with the intention to deprive Plaintiff of property and/or legal rights or to  
18 otherwise cause injury, such as to constitute malice, oppression, or fraud under California Civil  
19 Code § 3294, thereby entitling Plaintiff to punitive damages in an amount appropriate to punish or  
20 set an example of Defendant.

21 **REQUEST FOR RELIEF**

22 WHEREFORE, Plaintiff Joshua Ets-Hokin prays for judgment against the Defendant as  
23 follows:

24 1. Damages for failure to provide full insurance benefits under the Policy, in an  
25 amount to be determined at the time of trial but in excess of \$200,000, plus interest, including pre-  
26 judgment interest;

27 2. General damages for mental and emotional distress and other incidental damages in  
28 the sum of \$1,000,000.00;

- 1           3.       Punitive and exemplary damages in an amount in excess of \$5,000,000.00;
- 2           4.       Attorneys' fees reasonably incurred to obtain Policy benefits in a sum to be
- 3 determined at the time of trial;
- 4           5.       Costs of suit incurred herein; and,
- 5           6.       Such other and further relief as the Court deems just and proper.

7 DATED:     September 17, 2020                             KANTOR & KANTOR, LLP

8  
9   By:     /s/ Glenn R. Kantor  
10    Glenn R. Kantor  
11    Attorneys for Plaintiff,  
12    JOSHUA ETS-HOKIN

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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury.

DATED: September 17, 2020

KANTOR & KANTOR, LLP

By: /s/ Glenn R. Kantor  
Glenn R. Kantor  
Attorneys for Plaintiff,  
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