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Attorneys for Plaintiff
ROUNDIN3RD SPORTS BAR LLC

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ROUNDIN3RD SPORTS BAR LLC,

Plaintiff,

v.

THE HARTFORD and SENTINEL
INSURANCE COMPANY, LIMITED,

Defendants.

Case No. 2:20-cv-5159

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Roundin3rd Sports Bar LLC (“Plaintiff”) brings this Complaint against Defendants The Hartford and Sentinel Insurance Company, Limited (“Defendants”) and, upon information and belief, alleges as follows:

NATURE OF THE CASE

1. This is a civil action seeking declaratory relief arising from Plaintiff’s contracts of insurance with Defendants.

1 2. In light of the Coronavirus global pandemic and state and local orders
2 mandating that all non-essential in store businesses must shut down on March 16,
3 2020, Plaintiff's restaurant has suffered business loss.

4 3. Plaintiff's insurance policies provide coverage for all non-excluded
5 business losses, and thus provide coverage here.

6 4. As a result, Plaintiff is entitled to declaratory relief that its business is
7 covered for all business losses that have been incurred in an amount greater than
8 \$150,000.00.

9 **JURISDICTION AND VENUE**

10 5. This Court has subject matter jurisdiction over this action pursuant to 28
11 U.S.C. § 1332, because there is complete diversity of citizenship between Plaintiff
12 and Defendants. Plaintiff has suffered business losses at each restaurant in an amount
13 greater than \$150,000.00. The amount in controversy necessary for diversity
14 jurisdiction over a declaratory judgment action is measured by the value of those
15 business losses. *Id.* § 1332(a).

16 6. This Court has personal jurisdiction over Defendants. Defendants have
17 engaged in substantial business in this District, including the formation of the Policies
18 underlying Plaintiff's claims, and Defendants have therefore personally availed
19 themselves of jurisdiction in this District.

20 7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2)
21 because a substantial part of the events or omissions giving rise to Plaintiff's claims
22 occurred in this District, including the formation of the Policies underlying Plaintiff's
23 claims.

24 **PARTIES**

25 8. Plaintiff is a limited liability company that owns and operates a
26 restaurant, Roundin3rd Sports Bar, located 4133 E Anaheim Street, Long Beach, CA
27 90804. Plaintiff is owned by Patrick Malone, Geoffery Rau, and Susan Hartert, who
28 are all citizens of California.

1 interruption or closures by order of Civil Authority and for business loss for property
2 damage.

3 15. Under the Policy, insurance is extended to apply to the actual loss of
4 business income sustained and the actual, necessary and reasonable extra expenses
5 incurred when access to the Insured Property is specifically prohibited by order of
6 civil authority as the direct result of a covered cause of loss to property in the
7 immediate area of Plaintiff's Insured Property. This additional coverage is identified
8 as coverage under "Civil Authority."

9 16. The Policy is an all-risk policy, insofar as it provides that covered causes
10 of loss under the policy means coverage for all covered losses, including but not
11 limited to direct physical loss or direct physical damage, unless the loss is specifically
12 excluded or limited in the Policy.

13 17. The Policy also covers for damages resulting from business interruption
14 when there is property damage. The exclusion for viruses does not apply to this
15 pandemic. The Policy does not identify any exclusions for a pandemic.

16 18. Based on information and belief, Defendants have accepted the policy
17 premiums with no intention of providing any coverage for business losses or the Civil
18 Authority extension due to a loss and shutdown and property damage.

19 **II. The Coronavirus Pandemic**

20 19. The scientific community, and those personally affected by the virus,
21 recognize the Coronavirus as a cause of real physical loss and damage. It is clear that
22 contamination of the Insured Property would be a direct physical loss requiring
23 remediation to clean the surfaces of the business.

24 20. The virus that causes COVID-19 remains stable and transmittable in
25 aerosols for up to three hours, up to four hours on copper, up to 24 hours on
26 cardboard and up to two to three days on plastic and stainless steel. *See*
27 [https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-](https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces)
28 [surfaces](https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces) (last visited April 9, 2020).

1 21. The CDC has issued a guidance that gatherings of more than 10 people
2 must not occur. People in congregate environments, which are places where people
3 live, eat, and sleep in close proximity, face increased danger of contracting COVID-
4 19.

5 22. The global Coronavirus pandemic is exacerbated by the fact that the
6 deadly virus physically infects and stays on surfaces of objects or materials,
7 “fomites,” for up to twenty-eight (28) days.

8 23. China, Italy, France, and Spain have implemented the cleaning and
9 fumigating of public areas prior to allowing them to re-open publicly due to the
10 intrusion of microbials.

11 **III. Civil Authority**

12 24. On March 4, 2020, the State of California declared a State of Emergency
13 for the entire state of California as a result of COVID-19.

14 25. On March 11, 2020, the State of California set restrictions on large
15 gatherings.

16 26. On March 16, 2020, the State of California prohibited all gatherings
17 regardless of size. This order effectively shut down all non-essential businesses.

18 27. On March 17, 2020, the State of California issued a stay at home order
19 that all non-essential workers must stay at home as a result of COVID-19. This order
20 has been extended indefinitely.

21 28. On May 29, 2020, Plaintiff’s business was able to begin re-opening.

22 29. Plaintiff’s business was unable to operate due to the stay-at-home orders
23 for public safety issued by the State of California (the “Orders”). Plaintiff has
24 submitted a claim to its insurance carriers related to such losses, but Defendants
25 denied Plaintiff’s claims.

26 30. Further, on April 10, 2020, President Trump seemed to support
27 insurance coverage for business loss like that suffered by the Plaintiff.
28

1 REPORTER: Mr. President may I ask you about credit
 2 and debt as well. Many American individuals, families,
 3 have had to tap their credit cards during this period of
 4 time. And businesses have had to draw down their credit
 5 lines. Are you concerned Mr. President that that may
 6 hobble the U.S. economy, all of that debt number one?
 7 And number two, would you suggest to credit card
 8 companies to reduce their fees during this time?

9 PRESIDENT TRUMP: Well it's something that we've
 10 already suggested, we're talking to them. Business
 11 interruption insurance, I'd like to see these insurance
 12 companies—you know you have people that have paid.
 13 ***When I was in private I had business interruption.*** When
 14 my business was interrupted through a hurricane or
 15 whatever it may be, I'd have business where I had it, I
 16 didn't always have it, sometimes I had it, sometimes, I
 17 had a lot of different companies. But if I had it I'd expect
 18 to be paid. You have people. I speak mostly to the
 19 restaurateurs, where they have a restaurant, they've been
 20 paying for 25, 30, 35 years, business interruption.
 21 They've never needed it. All of a sudden they need it.
 22 And I'm very good at reading language. I did very well in
 23 these subjects, OK. And I don't see the word pandemic
 24 mentioned. Now in some cases it is, it's an exclusion. But
 25 in a lot of cases I don't see it. I don't see it referenced.
 26 And they don't want to pay up. I would like to see the
 27 insurance companies pay if they need to pay, if it's fair.
 28 And they know what's fair, and I know what's fair, I can
 tell you very quickly. But business interruption insurance,
 that's getting a lot money to a lot of people. And they've
 been paying for years, sometimes they just started paying,
***but you have people that have never asked for business
 interruption insurance, and they've been paying a lot of
 money for a lot of years for the privilege of having it,
 and then when they finally need it, the insurance
 company says 'we're not going to give it.' We can't let
 that happen.***

See https://youtu.be/_cMeG5C9TjU (last visited on April 17, 2020).

31. The President is articulating a few core points:
 - a. Business interruption is a common type of insurance.
 - b. Businesses pay in premiums for this coverage and should reasonably expect they'll receive the benefit of the coverage.
 - c. This pandemic should be covered unless there is a specific exclusion for pandemics.
 - d. If insurers deny coverage, they would be acting in bad faith.

1 32. These Orders and proclamations, as they relate to the closure of all “non-
2 life- sustaining businesses,” evidence an awareness on the part of both state and local
3 governments that COVID-19 causes damage to property. This is particularly true in
4 places where business is conducted, such as Plaintiff’s, as the requisite contact and
5 interaction causes a heightened risk of the property becoming contaminated.

6 **IV. Impact on Plaintiff**

7 33. As a result of the Orders referenced herein, Plaintiff shut its doors to its
8 restaurant.

9 34. Plaintiff’s business loss occurred when the State of California issues its
10 order on March 16, 2020 banning any gatherings at an establishment.

11 35. Prior to March 16, 2020, Plaintiff’s business was open. Plaintiff’s
12 Insured Property is not a closed environment, and because people – staff, customers,
13 community members, and others – constantly cycle in and out, there is an ever-
14 present risk that the Insured Property is contaminated and would continue to be
15 contaminated.

16 36. Businesses like Plaintiff’s are more susceptible to being or becoming
17 contaminated, as both respiratory droplets and fomites are more likely to be retained
18 on the Insured Property and remain for far longer as compared to a facility with open-
19 air ventilation.

20 37. Plaintiff’s Insured Property is also highly susceptible to rapid person-to-
21 property transmission of the virus, and vice-versa, because the service nature of the
22 business places staff and customers in close proximity to the property and to one
23 another and because the nature of the business exposes people to high levels of
24 respiratory droplets and fomites being released into the air of the property.

25 38. The virus is physically impacting Plaintiff. Any effort by Defendants to
26 deny the reality that the virus causes physical loss and damage would constitute a
27 false and potentially fraudulent misrepresentation that could endanger Plaintiff and
28 the public.

39. A declaratory judgment determining that the coverage provided under the Policy exists and is necessary so as to prevent Plaintiff from being left without vital coverage acquired to ensure the survival of the business due to the shutdown caused by the civil authorities' response. As a result of these Orders, Plaintiff has incurred, and continues to incur, among other things, a substantial loss of business income and additional expenses covered under the Policy.

CAUSE OF ACTION

DECLARATORY RELIEF

40. Plaintiff re-alleges and incorporates by reference into this cause of action each and every allegation set forth in each and every paragraph of this Complaint.

41. The Declaratory Judgment Act, 28 U.S.C. § 2201(a), provides that in "a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a).

42. An actual controversy has arisen between Plaintiff and Defendants as to the rights, duties, responsibilities and obligations of the parties under the Policy in that Plaintiff contends and, on information and belief, Defendants dispute and deny that:

- a. The Orders constitute a prohibition of access to Plaintiff's Insured Property;
- b. The prohibition of access by the Orders has specifically prohibited access as defined in the Policy;
- c. The Policy's Exclusion of Loss Due to Virus or Bacteria does not apply to the business losses incurred by Plaintiff here. These exclusions do not apply to the pandemic;
- d. The Orders trigger coverage;

- 1 e. The Policy provides coverage to Plaintiff for any current and future
2 civil authority closures of business in California due to physical
3 loss/or damage directly or indirectly from the Coronavirus under the
4 Civil Authority coverage parameters. The Policy does not exclude
5 coverage for the pandemic;
- 6 f. The Policy provides business income coverage in the event that
7 Coronavirus has directly or indirectly caused a loss or damage at the
8 Insured Property or immediate area of the Insured Property; and
- 9 g. Resolution of the duties, responsibilities and obligations of the
10 parties is necessary as no adequate remedy at law exists and a
11 declaration of the Court is needed to resolve the dispute and
12 controversy.

13 43. Plaintiff seeks a Declaratory Judgment to determine whether the Orders
14 constitute a prohibition of access to Plaintiff's Insured Property as Civil Authority as
15 defined in the Policy.

16 44. Plaintiff further seeks a Declaratory Judgment to affirm that the Orders
17 trigger coverage.

18 45. Plaintiff further seeks a Declaratory Judgment to affirm that the Policy
19 provides coverage to Plaintiff for any current and future Civil Authority closures of
20 businesses in the State of California due to physical loss or damage from the
21 Coronavirus and that the Policy provides business income coverage in the event that
22 Coronavirus has caused a loss or damage at the Insured Property.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for a judgment against Defendants as follows:

- 25 a. For a declaration that the Orders constitute a prohibition of access to
26 Plaintiff's Insured Property.
- 27 b. For a declaration that the prohibition of access by the Orders is
28 specifically prohibited access as defined in the Policy.

- 1 c. For a declaration that the Orders trigger coverage under the Policy.
- 2
- 3 d. For a declaration that Policy provides coverage to Plaintiff for any
- 4 current, future and continued civil authority closures of businesses in
- 5 California due to physical loss or damage directly or indirectly from
- 6 the Coronavirus under the Civil Authority coverage parameters.
- 7
- 8 e. For a declaration that the Policy provides business income coverage
- 9 in the event that Coronavirus has directly or indirectly caused a loss
- 10 or damage at Plaintiff's Insured Property or the immediate area of
- 11 Plaintiff's Insured Property.
- 12
- 13 f. For such other relief as the Court may deem proper.

14 **JURY TRIAL DEMANDED**

15 Plaintiff hereby demands trial by jury.

16 Dated: June 10, 2020

17 Respectfully submitted,

18 /s/ David M. Birka-White

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Counsel for Plaintiff

EXHIBIT 1

84 This **Spectrum Policy** consists of the Declarations, Coverage Forms, Common Policy Conditions and any
 36 other Forms and Endorsements issued to be a part of the Policy. This insurance is provided by the stock
 BM insurance company of The Hartford Insurance Group shown below.

SBA

INSURER: SENTINEL INSURANCE COMPANY, LIMITED
 ONE HARTFORD PLAZA, HARTFORD, CT 06155
COMPANY CODE: A

Policy Number: 57 SBA BM3684 DX



SPECTRUM POLICY DECLARATIONS

Named Insured and Mailing Address: ROUNDIN3RD SPORTS BAR LLC
 (No., Street, Town, State, Zip Code) DBA ROUNDIN3RD SPORTS BAR
 4133 E ANAHEIM ST
 LONG BEACH CA 90804

Policy Period: From 11/01/19 To 11/01/20 365 DAYS
 12:01 a.m., Standard time at your mailing address shown above. **Exception:** 12 noon in New Hampshire.

Name of Agent/Broker: GUARDUS INS SVCS INC/PHS
Code: 141519

Previous Policy Number: NEW

Named Insured is: LIMITED LIAB CORP

Audit Period: ANNUAL

Type of Property Coverage: SPECIAL

Insurance Provided: In return for the payment of the premium and subject to all of the terms of this policy, we agree with you to provide insurance as stated in this policy.

TOTAL ANNUAL PREMIUM IS: \$7,007

IN RECOGNITION OF THE MULTIPLE COVERAGES INSURED WITH THE HARTFORD, YOUR
 POLICY PREMIUM INCLUDES AN ACCOUNT CREDIT.

Suean L. Castaneda
 Countersigned by
 Authorized Representative

10/31/19
 Date

SPECTRUM POLICY DECLARATIONS (Continued)

POLICY NUMBER: 57 SBA BM3684

Location(s), Building(s), Business of Named Insured and Schedule of Coverages for Premises as designated by Number below.

Location: 001 **Building:** 001

4133 E ANAHEIM ST
LONG BEACH CA 90804

Description of Business:

RESTAURANT - FULL SERVICE (WAITER/WAITRESS)

Deductible: \$ 2,500 PER OCCURRENCE

BUILDING AND BUSINESS PERSONAL PROPERTY LIMITS OF INSURANCE

BUILDING

NO COVERAGE

BUSINESS PERSONAL PROPERTY

REPLACEMENT COST \$ 150,000

PERSONAL PROPERTY OF OTHERS

REPLACEMENT COST NO COVERAGE

MONEY AND SECURITIES

INSIDE THE PREMISES \$ 10,000
OUTSIDE THE PREMISES \$ 10,000

SPECTRUM POLICY DECLARATIONS (Continued)

POLICY NUMBER: 57 SBA BM3684

Location(s), Building(s), Business of Named Insured and Schedule of Coverages for Premises as designated by Number below.

Location: 001 **Building:** 001

**PROPERTY OPTIONAL COVERAGES APPLICABLE LIMITS OF INSURANCE
TO THIS LOCATION**

RESTAURANT STRETCH

FORM: SS 04 11

THIS FORM INCLUDES MANY ADDITIONAL
COVERAGES AND EXTENSIONS OF
COVERAGES. A SUMMARY OF THE
COVERAGE LIMITS IS ATTACHED.

LIMITED FUNGI, BACTERIA OR VIRUS \$ 50,000
COVERAGE:

FORM SS 40 93

THIS IS THE MAXIMUM AMOUNT OF
INSURANCE FOR THIS COVERAGE,
SUBJECT TO ALL PROPERTY LIMITS
FOUND ELSEWHERE ON THIS
DECLARATION.

INCLUDING BUSINESS INCOME AND EXTRA
EXPENSE COVERAGE FOR: 30 DAYS

SPECTRUM POLICY DECLARATIONS (Continued)

POLICY NUMBER: 57 SBA BM3684

**PROPERTY OPTIONAL COVERAGES APPLICABLE LIMITS OF INSURANCE
TO ALL LOCATIONS**

**BUSINESS INCOME AND EXTRA EXPENSE
COVERAGE**
**COVERAGE INCLUDES THE FOLLOWING
COVERAGE EXTENSIONS:**

12 MONTHS ACTUAL LOSS SUSTAINED

ACTION OF CIVIL AUTHORITY:
EXTENDED BUSINESS INCOME:

30 DAYS
30 CONSECUTIVE DAYS

EQUIPMENT BREAKDOWN COVERAGE
DEDUCTIBLE: \$5,000 FORM: SS 40 65
**COVERAGE FOR DIRECT PHYSICAL LOSS
DUE TO:**
**MECHANICAL BREAKDOWN,
ARTIFICIALLY GENERATED CURRENT
AND STEAM EXPLOSION**

**THIS ADDITIONAL COVERAGE INCLUDES
THE FOLLOWING EXTENSIONS**

HAZARDOUS SUBSTANCES	\$ 50,000
EXPEDITING EXPENSES	\$ 50,000

**MECHANICAL BREAKDOWN COVERAGE ONLY
APPLIES WHEN BUILDING OR BUSINESS
PERSONAL PROPERTY IS SELECTED ON
THE POLICY**

IDENTITY RECOVERY COVERAGE	\$ 15,000
FORM SS 41 12	

FOOD CONTAMINATION COVERAGE	\$ 10,000
FORM SS 41 32	

SPECTRUM POLICY DECLARATIONS (Continued)**POLICY NUMBER:** 57 SBA BM3684

BUSINESS LIABILITY	LIMITS OF INSURANCE
LIABILITY AND MEDICAL EXPENSES	\$1,000,000
MEDICAL EXPENSES - ANY ONE PERSON	\$ 5,000
PERSONAL AND ADVERTISING INJURY	\$1,000,000
DAMAGES TO PREMISES RENTED TO YOU ANY ONE PREMISES	\$1,000,000
AGGREGATE LIMITS	
PRODUCTS-COMPLETED OPERATIONS	\$2,000,000
GENERAL AGGREGATE	\$2,000,000

**BUSINESS LIABILITY OPTIONAL
COVERAGES****HIRED/NON-OWNED AUTO LIABILITY** \$1,000,000**CYBERFLEX COVERAGE**
FORM SS 40 26

SPECTRUM POLICY DECLARATIONS (Continued)

POLICY NUMBER: 57 SBA BM3684

**BUSINESS LIABILITY OPTIONAL COVERAGES
(Continued)**

LIMITS OF INSURANCE

UNMANNED AIRCRAFT LIABILITY
IS EXCLUDED
SEE FORM: SS 42 06

SPECTRUM POLICY DECLARATIONS (Continued)

POLICY NUMBER: 57 SBA BM3684

Form Numbers of Forms and Endorsements that apply:

SS 00 01 03 14	SS 00 05 10 08	SS 00 07 07 05	SS 00 08 04 05
SS 00 38 04 04	SS 00 45 12 06	SS 00 60 09 15	SS 00 61 07 19
SS 00 64 09 16	SS 84 04 10 15	SS 01 21 03 17	SS 42 06 03 17
SS 04 11 09 07	SS 04 19 04 09	SS 04 22 07 05	SS 04 30 07 05
SS 04 38 09 09	SS 04 39 07 05	SS 04 41 03 18	SS 04 42 03 17
SS 04 44 07 05	SS 04 45 07 05	SS 04 46 09 14	SS 04 47 04 09
SS 04 80 03 00	SS 04 86 03 00	SS 40 18 07 05	SS 40 26 03 17
SS 40 65 07 05	SS 40 93 07 05	SS 41 12 12 17	SS 41 32 09 06
SS 41 51 10 09	SS 41 63 06 11	IH 10 01 09 86	SS 05 10 03 00
SS 05 47 09 15	SS 50 57 04 05	SS 51 11 03 17	SS 50 19 01 15
IH 99 40 04 09	IH 99 41 04 09	SS 83 76 01 15	SS 89 93 07 16

SPECTRUM POLICY DECLARATIONS (Continued)

POLICY NUMBER: 57 SBA BM3684

SUPPLEMENTAL DECLARATIONS:

A service fee of \$ 7.00 is charged for each installment when your premium is paid in installments. The service fee is \$ 5.00 per withdrawal when you select an electronic fund transfer payment plan. The service fee will be added to the premium amount shown on your premium billing statement.