

PASICH^{LLP}

Kirk Pasich (SBN 94242)
KPasich@PasichLLP.com
PASICH LLP
10880 Wilshire Boulevard, Suite 2000
Los Angeles, California 90024
Telephone: (424) 313-7860
Facsimile: (424) 313-7890

Jeffrey L. Schulman (*Pro Hac Vice to be filed*)
JSchulman@PasichLLP.com
PASICH LLP
757 Third Avenue, 20th Floor
New York, NY 10017
Telephone: (212) 686-5000
Facsimile: (424) 313-7890

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SUNSTONE HOTEL INVESTORS, INC.,

Plaintiff,

vs.

ENDURANCE AMERICAN
SPECIALTY INSURANCE COMPANY,
a corporation,

Defendant.

Case No.

**COMPLAINT FOR BREACH OF
CONTRACT, ANTICIPATORY
BREACH OF CONTRACT,
TORTIOUS BREACH OF THE
IMPLIED COVENANT OF GOOD
FAITH AND FAIR DEALING,
AND DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

1 *“A February meeting of biotech executives became a coronavirus*
 2 *‘superspreading’ event with a transmission chain across the globe.”*

3 ~ New York Times¹

4
 5 Plaintiff Sunstone Hotel Investors, Inc. (“Sunstone”) complains of defendant
 6 Endurance American Specialty Insurance Company (“Endurance”) and alleges as
 7 follows:

8 **NATURE OF THIS LAWSUIT**

9 1. Sunstone is a lodging real estate investment trust that presently has, or
 10 at all relevant times had, an interest in 20 hotel properties comprising approximately
 11 10,000 guest rooms across the country operated under world renowned brands,
 12 including Hilton, Hyatt, and Marriott. Given its national operation in the hotel and
 13 hospitality industry, Sunstone purchased a broad “Site Environmental Impairment
 14 Liability Coverage” policy from Endurance. Among other things, the policy
 15 promised coverage for Sunstone’s economic losses including business interruption
 16 losses from certain enumerated risks at each of the properties that the policy defines
 17 as the “**Scheduled Locations.**” Unlike more common property insurance policies,
 18 the Endurance policy does not require “direct physical loss or damage to property”
 19 to trigger its coverage and does not exclude loss stemming from a “virus.” Quite to
 20 the contrary, it expressly promises to pay for economic losses resulting from
 21 “Biological Agent Conditions,” which are defined to specifically **include** the
 22 presence of “Viruses and other pathogens.” Rather than seeking to exclude such
 23 losses by, for example, using the insurance industry’s standard-form “virus”
 24 exclusion introduced in 2006 or a common pandemic exclusion, Endurance
 25 expressly promised to insure virus-associated losses.

26
 27
 28 _____
¹ <https://www.nytimes.com/2020/08/26/health/covid-19-superspreaders-boston.html>

2. The policy Endurance sold to Sunstone is as markedly unique as the facts and circumstances resulting in Sunstone's covered losses. Like many businesses, Sunstone has incurred, and, with respect to certain of its **Scheduled Locations**, continues to incur, substantial economic losses from the suspension of its operations because of SARS-CoV-2, COVID-19, the associated orders of civil authorities, and the need to mitigate its losses. However, unlike most other businesses alleging that SARS-CoV-2 was present on its properties, its presence at one **Scheduled Location** is globally recognized. The Marriott Boston Long Wharf property, one of Sunstone's **Scheduled Locations**, hosted the Biogen conference in February 2020. That conference is now identified as the first "super spreader" event in the United States, resulting in more than 20,000 COVID-19 cases around the world.

3. SARS-CoV-2 spreads easily, can remain in the air inside of buildings for hours, and can remain on surfaces inside of buildings for 28 days or longer. Sunstone, its guests and employees at the Boston Long Wharf property, and scores of individuals around the world with which they would subsequently come in contact in the early days of the pandemic, can certainly attest to this fact. Because SARS-CoV-2 spreads through community transmission, including by infected individuals who are asymptomatic or pre-symptomatic, there was no meaningful way for Sunstone to protect its properties other than by suspending operations. Sunstone was forced to suspend operations at its properties and to take other steps to reduce its loss, as required by the policy.

4. Therefore, Sunstone turned to Endurance for the unique coverage Endurance provided under the unique circumstances Sunstone faced. However, instead of agreeing to pay Sunstone for any part of its millions of dollars of insured loss, Endurance ultimately denied the claim. However, even though it had decided by March 2020 not to pay for losses associated with the pandemic, Endurance delayed in telling Sunstone its coverage position and then delayed more months by

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1 demanding that Sunstone provide additional information. In fact, when Endurance
2 officially denied the claim in May 2020, it still claimed to need additional
3 information and suggested that Sunstone may have provided insufficient
4 cooperation in some unarticulated respect. Although ready and willing to undertake
5 that exercise a second time, Sunstone reminded Endurance that policy grounds on
6 which it denied coverage could not even arguably be impacted by the information it
7 subsequently sought. So, Sunstone asked that Endurance not require it to go
8 through this expensive and time-consuming exercise (in the middle of a pandemic
9 that was having drastic impact on the hospitality industry) if Endurance was going
10 to simply deny coverage again on these same grounds. Endurance assured Sunstone
11 that its efforts would not be futile so Sunstone spent the next several months
12 answering questions and providing information, all of which was previously
13 requested and provided. In October 2020, Sunstone's fear was realized when
14 Endurance denied the claim on the very same grounds (while again suggesting that
15 Sunstone's cooperation may be deemed somehow insufficient).

16 5. Despite selling a wide variety of policies to an equally wide variety of
17 insureds, all addressing a multitude of unique circumstances, Sunstone is informed
18 and believes, and on that basis alleges, that Endurance is taking a similar position
19 with other insureds, having adopted a corporate-wide and systematic position that
20 deprives Sunstone and Endurance's other insureds of the coverage bought and paid
21 for. Sunstone is informed and believes, and on that basis alleges, that Endurance
22 applied its systematic denial of coverage to Sunstone without regard to Sunstone's
23 policy and facts underlying its claim. Sunstone is further informed and believes,
24 and on that basis alleges, that Endurance is doing so to protect its financial interests
25 at the expense of Sunstone and with conscious disregard and disdain for Sunstone's
26 rights, interests, and reasonable expectations.

27 6. Endurance's conduct constitutes a breach of the insurance policy and
28 violates the implied covenant of good faith and fair dealing. By this lawsuit,

1 Sunstone seeks recovery for the damages Endurance has inflicted upon it by its
2 wrongful conduct. Sunstone also seeks declaratory relief confirming that Endurance
3 must honor the terms of its policy.

4 **JURISDICTION AND VENUE**

5 7. The Court has subject matter jurisdiction to hear this case under 28
6 U.S.C § 1332 based on complete diversity of citizenship between the parties and
7 because the amount in controversy, exclusive of the cost and interest, exceeds
8 \$75,000.

9 8. The Court has personal jurisdiction over Endurance because the subject
10 policy provides that any dispute relating to that policy shall be resolved “in
11 accordance with the law and practices of the State or Jurisdiction” of California.

12 9. Venue is proper in this District because a substantial part of the events
13 giving rise to Sunstone’s claims occurred in this District, including the issuance of
14 the policy through an insurance broker located in Glendale, California to Sunstone
15 at its offices in Irvine, California. Venue is also proper in this District because the
16 subject policy provides that any dispute shall be resolved in the “federal or state
17 courts located in . . . California.”

18 **THE PARTIES**

19 10. Sunstone is a corporation organized and existing under the laws of the
20 State of Maryland with its principal place of business in the State of California.
21 Sunstone is authorized to pursue this action, and to collect, on behalf of all of its
22 affiliates and subsidiaries that are insured under the policy at issue.

23 11. Endurance is a corporation organized and existing under the laws of the
24 State of Delaware with its headquarters in the State of New York. Endurance is a
25 member of an insurance holding system known as Endurance Specialty Holdings
26 Ltd. and is a wholly owned subsidiary of Endurance U.S. Holdings Corp. Sunstone
27 is informed and believes, and on that basis alleges that Endurance Specialty
28

1 Holdings Ltd. (including Endurance) was acquired by Sampo Holdings, Inc., a
2 Japanese domestic company, in 2017.

3 12. Endurance and the other members of Endurance Specialty Holdings
4 Ltd. brand hold themselves out to the public as both Endurance and Sampo. They
5 maintain a worldwide website at <https://www.sampo-intl.com/> on which they make
6 various statements and representations on behalf of Endurance.

7 13. According to the website, Endurance's "approach is simple; provide the
8 best in class services and products to our broker partners and their insureds."²
9 With regard to the policy sold to Sunstone, Endurance recognizes that companies,
10 including "real estate" companies like Sunstone "can face significant environmental
11 exposures from existing and emerging conditions affecting their properties[.]"³ So,
12 it "offers custom tailored environmental insurance products that provide financial
13 and operational security."⁴ It claims to have "the expertise to deliver sophisticated
14 and customized solutions for U.S. clients" and promises that its "dedicated
15 underwriters, loss control and claims professionals have decades of experience in
16 the industries we serve and bring deep expertise to each account."⁵

17 14. Directly below its "Coronavirus (COVID-19) Update," Endurance
18 promises to "deliver fair and appropriate outcomes for our insureds," and "efficient
19 service [and] timely responses" to claims."⁶ Unfortunately for Sunstone, Endurance
20 has delivered neither a "fair" nor an "appropriate" outcome.

21 **ENDURANCE'S KNOWLEDGE OF THE RISK OF PANDEMICS**

22 15. Endurance and other insurers were repeatedly warned over the years of
23 the potential impact of pandemics. In fact, there were many publicly available
24

25 ²[https://www.sampo-](https://www.sampo-intl.com/sites/default/files/files/Endurance%20Insurance%20US%20Brochure.pdf)
26 [intl.com/sites/default/files/files/Endurance%20Insurance%20US%20Brochure.pdf](https://www.sampo-intl.com/sites/default/files/files/Endurance%20Insurance%20US%20Brochure.pdf)

27 ³ [https://www.sampo-intl.com/wp-content/uploads/2019/01/si-us-environmental-](https://www.sampo-intl.com/wp-content/uploads/2019/01/si-us-environmental-contact-sheet.pdf)
28 [contact-sheet.pdf](https://www.sampo-intl.com/wp-content/uploads/2019/01/si-us-environmental-contact-sheet.pdf)

⁴ *Id.*

⁵ *Id.*

⁶ <https://www.sampo-intl.com/services/insurance-claims/>

1 reports about the risks of pandemics and what insurers should do—in the months
 2 and years before the outbreak of the COVID-19 pandemic. For example, one article
 3 noted in March 2018:

4 Even with today’s technology, a modern severe pandemic
 5 would cause substantive direct financial losses to the
 6 insurance community. In addition, indirect losses would
 7 be severe, most notably on the asset side of the balance
 8 sheet.⁷

9 16. One insurance industry repository shows the proverbial “tip of the
 10 iceberg” about how much information was available to Endurance and other insurers
 11 regarding the risk of pandemics. The Insurance Library Association of Boston,
 12 founded in 1887, describes itself as “the leading resource for and provider of
 13 literature, information services, and quality professional education for the insurance
 14 industry and related interests.”⁸ The Association states on its website:

15 The past 20 years [have] seen the rise of a number of
 16 pandemics. Slate recently published an article on what has
 17 been learned about treating them in that time. We thought
 18 it might be apt for us to take a look back and see what the
 19 insurance industry has learned as well.⁹

20 17. The Association lists more than 20 articles, reports, and white papers
 21 available to insurers from early 2007 through 2018. One white paper warned in
 22 2009 of a pandemic’s consequences to the insurance industry:

26 ⁷ “What the 1918 Flu Pandemic Can Teach Today’s Insurers,” *AIR* (Mar. 29, 2018),
 27 <https://www.air-worldwide.com/publications/air-currents/2018/What-the-1918-Flu-Pandemic-Can-Teach-Today-s-Insurers/>.

28 ⁸ <http://insurancelibrary.org/about-us/>.

⁹ <http://insurancelibrary.org/pandemics-and-insurance/>.

1 It is highly unlikely that the insurance industry would have
 2 the financial reserves to meet the worldwide claims arising
 3 out of a pandemic of this size.¹⁰

4 18. Thus, Endurance has known, or should have known, for decades that
 5 Sunstone's policy and policies like those sold to Sunstone would be called upon to
 6 pay the limits of liability in connection with damages arising from a global
 7 pandemic.

8 19. Given the potential liability that insurers, including Endurance, faced
 9 under their policies for losses from pandemics, shortly after the outbreak of SARS in
 10 2003, the insurance industry undertook to draft exclusions applicable to losses from
 11 viruses and bacteria. In 2006, the Insurance Services Office, the insurance
 12 industry's drafting organization, considered the need to draft an exclusion that
 13 would bar coverage for losses caused by a virus.¹¹

14 20. On July 6, 2006, ISO prepared a circular that included a standard
 15 exclusion of loss due to viruses and bacteria as part of its filing with state insurance
 16 regulators.¹² In that circular, it noted that examples of "viral and bacterial
 17 contaminants are rotavirus, SARS, [and] influenza," observing, "[t]he universe of
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 19
 20

21 ¹⁰ Allan Manning, *White Paper on Infectious Disease Cover* (updated 2009),
 22 http://www.lmigroup.com/Documents/Articles/White%20Paper%20on%20Infectious%20Disease%20Cover.pdf?mc_cid=f0cee24803&mc_eid=41023ebc2c.

23 ¹¹ "ISO is a non-profit trade association that provides rating, statistical, and actuarial
 24 policy forms and related drafting services to approximately 3,000 nationwide
 25 property or casualty insurers. Policy forms developed by ISO are approved by its
 26 constituent insurance carriers and then submitted to state agencies for review. Most
 carriers use the basic ISO forms, at least as the starting point for their general
 liability policies." *Montrose Chem. Corp. v. Admiral Ins. Co.*, 10 Cal. 4th 645, 671
 n.13 (1995).

27 ¹² See ISO Circular, "New Endorsements Filed to Address Exclusion of Loss Due to
 28 Virus or Bacteria," (July 6, 2006),
<https://www.propertyinsurancecoveragelaw.com/files/2020/03/ISO-Circular-LI-CF-2006-175-Virus.pdf>.

1 disease-causing organisms is always in evolution.”¹³ ISO recognized that viruses
2 could cause property damage, stating:

3 Disease-causing agents may render a product impure
4 (change its quality or substance), or enable the spread of
5 disease by their presence on interior building surfaces or
6 the surfaces of personal property. When disease-causing
7 viral or bacterial contamination occurs, potential claims
8 involve the cost of replacement of property (for example,
9 the milk), cost of decontamination (for example, interior
10 building surfaces), and business interruption (time
11 element) losses.¹⁴

12 21. Thus, Endurance has had available for its use since 2006 a “virus or
13 bacteria” exclusion that is approved for use throughout the United States. As one
14 recent article succinctly stated, “Insurers knew the damage a viral pandemic could
15 wreak on businesses. So they excluded coverage.”¹⁵

16 22. However, Endurance took a different approach. For insureds willing to
17 pay significant premiums, Endurance was willing to sell business interruption
18 coverage that specifically covered losses associated with “viruses.” In fact,
19 Sunstone paid more than \$350,000 in premiums for that very type of coverage—a
20 policy which explicitly covers the economic losses caused by “viruses.” Therefore,
21 Endurance cannot be surprised that Sunstone asked it to pay for Sunstone’s losses.
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25 ¹³ *Id.*

26 ¹⁴ *Id.*

27 ¹⁵ Todd Frankel, “Insurers knew the damage a viral pandemic could wreak on
28 businesses. So they excluded coverage,” *Washington Post* (April 2, 2020). In the
early wave of coverage litigation over losses associated with the pandemic, many
insureds and insurers are fighting over whether the standard-form exclusion actually
bars coverage, in whole or in part, for those losses. Only time will tell.

THE ENDURANCE SITE ENVIRONMENTAL
IMPAIRMENT LIABILITY POLICY

23. Endurance sold Sunstone a Sompo Global Risk Solutions “Site Environmental Impairment Liability” policy, No. GER10011343500 (the “Policy”) for the period of June 22, 2017, to June 22, 2020. A true and correct copy of the Policy is attached hereto as Exhibit A and incorporated herein by reference.

24. The Policy provides \$40,000,000 of insurance, with sublimits for various coverages. *Id.* Declarations, Item 8.

25. The Policy’s “Business Interruption and Extra Expense” coverage (“BI and EE”) has a stated “Limit of Liability” in the amount of \$25,000,000 subject to a 3 day “waiting period.” *Id.* Declarations, Item 7.

26. The BI and EE coverage grant states in pertinent part:
 The Company shall pay, up to the Limits of Liability as specified in the Declarations and after the **Waiting Period**, the **Insured’s Business Interruption Losses** and **Extra Expenses** during the **Interruption Period** that directly result from . . . **Biological Agent Condition(s): 1.**
 On or under a **Scheduled Location**[.]”

Id. § I(D).

27. The BI and EE provision also requires that the “**Biological Agent Condition(s)** result in **Cleanup Costs** covered under this **Policy**” and they be “first **Discovered** and reported to the Company during the **Policy Period**[.]” *Id.*

28. The BI and EE provision also extends coverage to **Biological Agent Condition(s)** that “occur within five (5) miles of a **Scheduled Location** and which commence on or after the effective date of this **Policy**[.]” *Id.*

29. The Policy defines **Business Interruption Losses** in pertinent part as “[t]he actual loss . . . not to exceed the net income . . . that would have been earned or incurred by the **Insured** during the **Interruption Period** in the absence of

1 suspension of the **Insured's** operations; and b. [c]ontinuing normal operating
 2 expenses . . . due to the necessary suspension of business operations resulting
 3 directly from . . . **Biological Agent Condition(s)** at a **Scheduled Location** during
 4 the **Interruption Period.**" *Id.* § VIII(6).

5 30. The Policy defines **Extra Expenses** in pertinent part as the "reasonable
 6 and necessary expenses that the **Insured** incurs during the **Interruption Period** at
 7 the **Scheduled Location** over and above the **Insured's** normal operating expenses
 8 that the **Insured** would not have incurred if there had been no interruption of the
 9 **Insured's** operations directly resulting from a covered . . . **Biological Agent**
 10 **Condition(s)**, provided that, such expenses are incurred to avoid or minimize
 11 **Business Interruption Losses** and to continue operations at the **Scheduled**
 12 **Location.**" *Id.* § VIII(19).

13 31. The Policy defines **Cleanup Costs** as "the reasonable and necessary
 14 costs incurred in performing **Corrective Actions** . . . at, upon, within, under or
 15 migrating from a **Scheduled Location.**" *Id.* § VIII(11).

16 32. The Policy defines **Biological Agent Condition(s)** in pertinent part as
 17 the presence of **Biological Agents** at, upon or within a
 18 **Scheduled Location** . . . provided that: a. There is actual
 19 or alleged . . . **Property Damage** due to or associated with
 20 such **Biological Agents**; or b. The **Biological Agents**
 21 affect an area greater than 25 square feet or requires
 22 **Corrective Actions** as determined by an **Environmental**
 23 **Professional.**

24 *Id.* § VIII(4).

25 33. **Biological Agents** includes, among other things, "Viruses and other
 26 pathogens." *Id.* § VIII(3).

27 34. Despite the Policy providing "first-party" coverage for **Property**
 28 **Damage**, that phrase is defined to only include "property of **Third Parties.**"

1 *Id.* § VIII(38). Endurance wrongfully and unjustifiably denied Sunstone’s “first
 2 party” BI and EE claim by relying on a core definition, that Endurance drafted,
 3 which is plainly inapplicable and inconsistent with the coverage Sunstone purchased
 4 in the apparent absence of a definition of **Property Damage** that includes damage to
 5 Sunstone’s property.

6 35. The Policy also includes a “Mitigation Actions” provision which
 7 requires Sunstone to “make all reasonable efforts to abate, stop, prevent or reduce
 8 the . . . **Business Interruption Losses** [and] **Extra Expenses** . . . caused by any . . .
 9 **Biological Agent Condition(s)**[.]” *Id.* § VII(Q). Sunstone took prompt and
 10 reasonable Mitigation Actions at its **Scheduled Locations**. Sunstone’s need to do
 11 so was highlighted in retrospect by the tens of thousands of COVID-19 cases
 12 attributed to Marriott Boston Long Wharf before the global medical and scientific
 13 community understood how it is transmitted. Sunstone took prompt and reasonable
 14 Mitigation Actions to prevent similar outcomes at other **Scheduled Locations**.

15 36. The Policy provides a range of other coverages for losses, which also
 16 may apply.

17 37. None of the Policy’s exclusions bar coverage for Sunstone’s losses
 18 because the efficient proximate causes of those losses are covered under the terms of
 19 the Policy and are not conspicuously, plainly, and clearly excluded.

20 **ENDURANCE’S BREACHES AND WRONGFUL CONDUCT**

21 38. In December 2019, SARS-CoV-2 and COVID-19 broke out in Wuhan,
 22 China. Since then, SARS-CoV-2 and COVID-19 have spread throughout the world,
 23 prompting the World Health Organization to declare a global pandemic.

24 39. As explained by the World Health Organization,
 25 People can catch COVID-19 from others who have the
 26 [SARS-CoV-2] virus. The disease can spread from person
 27 to person through small droplets from the nose or mouth
 28 which are spread when a person with COVID-19 coughs

1 or exhales. These droplets land on objects and surfaces
 2 around the person. Other people then catch COVID-19 by
 3 touching these objects or surfaces, then touching their
 4 eyes, nose or mouth. People can also catch COVID-19 if
 5 they breathe in droplets from a person with COVID-19
 6 who coughs out or exhales droplets.¹⁶

7 40. Aerosolized droplets exhaled by normal breathing can travel significant
 8 distances and stay suspended in air for hours until gravity ultimately forces them to
 9 the nearest surface. Studies suggest that the SARS-CoV-2 virus can remain on
 10 surfaces for at least 28 days.¹⁷

11 41. Since January 1, 2020, there have been more than 52,487,000
 12 confirmed cases of COVID-19 throughout the world, more than 1,290,000 of which
 13 have resulted in deaths as of the date of the filing of this Complaint.¹⁸ Moreover,
 14 due in part to the initial absence of available tests, it is believed that the true number
 15 of coronavirus cases is significantly higher than the reported numbers might
 16 suggest.¹⁹

17 42. Since the outbreak of SARS-Cov-2 and COVID-19, and in response
 18 thereto, civil authorities throughout the world issued “stay-at-home,” and “shelter in
 19 place,” travel restrictions, quarantine, and other orders, including orders requiring
 20 the suspension of non-essential business operations.

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 23 ¹⁶ See <https://www.who.int/news-room/q-a-detail/q-acoronaviruses>.

24 ¹⁷ See, e.g., CNBC, *Virus that causes Covid-19 can survive for 28 days on common*
surfaces, research says (Oct. 12, 2020), [https://www.cnbc.com/2020/10/12/virus-](https://www.cnbc.com/2020/10/12/virus-that-causes-covid-19-can-survive-for-28-days-on-surfaces-research-says.html)
 25 [that-causes-covid-19-can-survive-for-28-days-on-surfaces-research-says.html](https://www.cnbc.com/2020/10/12/virus-that-causes-covid-19-can-survive-for-28-days-on-surfaces-research-says.html);
 26 Shane Riddell, Sarah Goldie, Andrew Hill, Debbie Eagles, & Trevor W. Drew, *The*
effect of temperature on persistence of SARS-CoV-2 on common surfaces, 17
 27 *Virology J.*, Art. No. 145 (2020),
 28 <https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7>.

¹⁸ See <https://covid19.who.int/>.

¹⁹ See [https://www.nbcnews.com/health/health-news/how-many-people-have-had-](https://www.nbcnews.com/health/health-news/how-many-people-have-had-coronavirus-no-symptoms-n1187681)
[coronavirus-no-symptoms-n1187681](https://www.nbcnews.com/health/health-news/how-many-people-have-had-coronavirus-no-symptoms-n1187681).

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43. Sunstone has **Scheduled Locations** around the country including, for example, in New York, California, Hawaii, Florida, Massachusetts and Illinois. As SARS-CoV-2 and COVID-19 spread around the country, Sunstone suffered losses covered by the Policy. Sunstone timely notified Endurance and, over the course of several months, provided Endurance with all requested information about its losses at each of the **Scheduled Locations**.

44. For example, Sunstone notified Endurance of a claim involving the Marriott Boston Long Wharf (one of the **Scheduled Locations**) on or about March 6, 2020. As has been widely reported, Biogen held an international meeting of its leaders at this location from approximately February 24 to February 27, 2020. On or about March 4, 2020, Sunstone was informed by the Centers for Disease Control and Prevention that approximately three attendees of that conference tested positive for COVID-19. That property was closed as of March 12, 2020. It has been estimated that more than 20,000 COVID-19 cases are attributed to this Biogen conference at this **Scheduled Location**, making it the first COVID-19 “super spreader event.”²⁰

45. In the months that followed, Endurance made no reference to or acknowledgment of Sunstone’s BI and EE coverage claim, thereby requiring Sunstone to ask for confirmation that this claim was being investigated or considered. Endurance finally provided a written, omnibus response on May 11, 2020 in which it attempted to justify denying coverage for all **Scheduled Locations** in disregard for the actual terms and provisions of the Policy.

46. For example, Endurance suggested that Sunstone’s BI and EE claim relative to any **Scheduled Location** was subject to a \$100,000 self-insured retention, despite the Policy clearly and unambiguously providing that this coverage was subject to 3 day waiting period only and not any monetary retention.

²⁰ <https://www.bostonglobe.com/2020/08/25/business/biogen-conference-likely-led-20000-covid-19-cases-boston-area-researchers-say/>

1 47. Endurance only made specific reference to the Marriott Boston Long
2 Wharf property, claiming that the **Interruption Period** was only 2 days,
3 notwithstanding the fact that it was closed for months after being identified as a
4 COVID-19 “super spreader.” It has never provided any analysis of the
5 **Interruption Period** for any of the other **Scheduled Locations**.

6 48. In fact, Sunstone sent a 10-page letter to Endurance on June 17, 2020,
7 in which it cited Policy provisions and governing case law, and explained the fatal
8 flaws in Endurance’s coverage positions, none of which were based on the Policy or
9 governing law. And, Sunstone once again noted Endurance’s continuing failure to
10 investigate or adjudicate Sunstone’s business interruption and extra expense claim in
11 whole or in part. Endurance waited one month before responding on July 17 in a
12 letter which, once again took no position on Endurance’s claim and did not address
13 any portion of Endurance’s June 17, 2020, letter. Instead, Endurance demanded that
14 Sunstone complete a new “questionnaire” with respect to each **Scheduled Location**.

15 49. The new questionnaire almost entirely sought the same information
16 Sunstone previously and contemporaneously provided, reaffirming Sunstone’s belief
17 that Endurance had not undertaken any meaningful investigation of Sunstone’s
18 claim to date. Moreover, Endurance would not need to again be advised, for
19 example, whether a **Scheduled Location** was “disinfected or cleaned” if, for
20 example, Endurance had already concluded that Sunstone did not satisfy a \$100,000
21 Self-Insured Retention for any/all **Scheduled Locations** and concluded that
22 Sunstone’s **Interruption Period**, at every **Scheduled Location**, was no more than 2
23 days (and, therefore, within the 3-day Self-Insured Retention). Sunstone
24 specifically asked that Endurance not require Sunstone to invest additional time and
25 resources in a futile exercise. Endurance would neither confirm nor deny that it was
26 futile, and only responded by confirming that no new or additional coverage
27 positions would be forthcoming without first receiving the completed
28 questionnaires.

50. Despite all indications that this was a futile exercise, but because Endurance was suggesting that Sunstone had not fulfilled its obligation to cooperate, Sunstone provided the information and responded to the requests (most of which had been previously requested and provided). Precisely as Sunstone anticipated, Endurance waited until October 2020 to again deny coverage and, this time, issued individual denials with respect to each **Scheduled Location**. Each of those denials, however, virtually mirrored each other and virtually mirrored the flawed positions taken five months earlier. To this day, Endurance has never responded to Sunstone's June 2020 letter highlighting the fallacies of Endurance's contentions. It merely repeated its faulty, boilerplate contentions again in October.

51. Sunstone is informed and believes, and on that basis alleges, that Endurance decided—by May 2020 but perhaps months earlier—that it would not pay for Sunstone's losses or any part of them. In doing so, Endurance breached its duties to Sunstone.

52. Sunstone is entitled to the maximum amounts of coverage needed for its losses for the maximum periods of time provided by and under the Policy.

53. To the extent not waived or otherwise excused, Sunstone has complied with the provisions contained in the Policy. Therefore, Sunstone is entitled, on behalf of itself and all other insureds, to all benefits of insurance provided by the Policy.

54. As a direct result of Endurance's breaches, Sunstone has suffered and will continue to suffer millions of dollars in damages. Endurance is liable for these damages.

FIRST CAUSE OF ACTION

(Breach of Contract)

55. Sunstone realleges and incorporates by reference paragraphs 1 through 54, above.

57. As a direct and proximate result of Endurance's breaches, Sunstone has sustained, and will continue to sustain, damages in an amount to be proven in excess of this Court's jurisdictional limit. Sunstone will seek leave to amend this Complaint once it ascertains the full extent of its damages.

58. Sunstone realleges and incorporates by reference paragraphs 1 through 54 and 56, above.

60. Therefore, to the extent that any aspect of Endurance's acts and omissions is not deemed to constitute a breach of the Policy, they constitute an anticipatory breach of the Policy.

61. As a direct and proximate result of Endurance's acts and omissions, Sunstone has sustained, and will continue to sustain, damages in an amount to be proven in excess of this Court's jurisdictional limit. Sunstone will seek leave to amend this Complaint once it ascertains the full extent of its damages

THIRD CAUSE OF ACTION

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

62. Sunstone realleges and incorporates by reference paragraphs 1 through 54, 56 and 59 through 60, above.

63. Implied in the Policy is a covenant that Endurance would act in good faith and deal fairly with Sunstone, that Endurance would do nothing to interfere with the rights of Sunstone to receive the benefits due under the Policy, and that Endurance would give at least the same level of consideration to Sunstone's interests as it gives its own interests.

64. Endurance also had a duty under the Policy, the law, and insurance industry custom, practice, and standards to honor the terms of insurance promised under its Policy.

65. Instead of complying with these duties, Endurance acted in bad faith by, among other things,

- Adopting the position that Sunstone is required to satisfy a Self-Insured Retention other than the Self-Insured Retention specifically applicable to the BI and EE claim; to take the unreasonable and unsupportable position that Sunstone's **Interruption Period** at every **Scheduled Location** is less than 3 days; in failing to provide coverage in connection with widely known and reported **Biological Agent Condition** at the Marriott Boston Long Wharf property; and its failure to consider, let alone meaningfully investigate the possibility, that Sunstone is entitled to any coverage in connection with any **Scheduled Location**;

- Failing to promptly and timely tell Sunstone of its intent not to pay Sunstone for its losses;

- Failing to conduct an unbiased and thorough investigation into the facts supporting Sunstone's claim for coverage;

- Unreasonably failing and refusing to honor its promises and representations;

- Putting its interests above that of its insured; and
- Otherwise acting as alleged above.

66. In breach of the implied covenant of good faith and fair dealing, Endurance committed the acts alleged above for the purpose of knowingly withholding from Sunstone the rights and benefits to which it is and was entitled under the Policy.

67. Endurance's acts are inconsistent with the reasonable expectations of Sunstone, are contrary to established industry custom and practice, are contrary to the express and implied terms of the Policy and constitute bad faith.

68. As a direct and proximate result of Endurance's breach of the implied covenant of good faith and fair dealing, Sunstone has sustained, and continues to sustain, damages in an amount in excess of this Court's jurisdictional limit to be proven at trial. Also, pursuant to *Brandt v. Superior Court*, 37 Cal. 3d 813 (1985), Sunstone is entitled to recover all attorneys' fees that it has reasonably incurred, and continues to incur, in its efforts to obtain the benefits due under the Policy that Endurance wrongfully has withheld, and is withholding, in bad faith. Sunstone is entitled to interest thereon at the maximum legal rate. Sunstone continues to suffer damages because of Endurance's bad faith and will seek to amend this Complaint once it ascertains the full extent of its damages.

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

70. Endurance's conduct is contemptible and has been done with a conscious disregard of Sunstone's rights, constituting oppression, fraud, and/or malice. Endurance has engaged in a series of acts designed to deny Sunstone of the benefits due under the Policy. Specifically, Endurance, by acting alleged above,

1 consciously disregarded Sunstone's rights and forced Sunstone to incur substantial
 2 financial losses, thereby inflicting substantial financial damage on Sunstone.
 3 Endurance ignored Sunstone's interests and concerns with the requisite intent to
 4 injure within the meaning of California Civil Code section 3294. Therefore,
 5 Sunstone is entitled to recover punitive damages from Endurance in an amount
 6 sufficient to punish and make an example of Endurance and to deter similar conduct
 7 in the future.

8 **FOURTH CAUSE OF ACTION**

9 **(Declaratory Relief)**

10 71. Sunstone realleges and incorporates by reference paragraphs 1 through
 11 54, 56, 59 through 60 and 63 through 70, above.

12 72. Sunstone contends that it is entitled to coverage for its losses under the
 13 Policy and that its contentions stated above are correct.

14 73. Sunstone is informed and believes, and on that basis alleges, that
 15 Endurance disputes Sunstone's contentions and contends that Sunstone is not
 16 entitled to coverage under the Policy for any of its losses.

17 74. Therefore, an actual and justiciable controversy exists between
 18 Sunstone and Endurance concerning the matters alleged herein.

19 75. Sunstone seeks a judicial declaration by this Court in accord with its
 20 contentions and rejecting Endurance's contentions and stating that Sunstone's losses
 21 are insured under the Policy.

22 76. A declaration is necessary at this time in order that the parties' dispute
 23 may be resolved and that they may be aware of their prospective rights and duties.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Sunstone prays for relief as follows:

26 **ON THE FIRST CAUSE OF ACTION**

27 1. For damages, plus interest, according to proof at the time of trial;
 28

ON THE SECOND CAUSE OF ACTION

2. For damages, plus interest, according to proof at the time of trial;

ON THE THIRD CAUSE OF ACTION

3. For damages, including reasonable attorneys' fees plus interest, according to proof at the time of trial;

4. For punitive damages in an amount to be determined at the time of trial;

ON THE FOURTH CAUSE OF ACTION

5. For a declaration in accord with Sunstone's contentions;

ON ALL CAUSES OF ACTION

6. For costs of suit herein; and

7. For such other, further, and/or different relief as may be deemed just and proper.

DATED: November 13, 2020 PASICH LLP

By: /s/ Kirk Pasich
Kirk Pasich

Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff Sunstone Hotel Investors, Inc. hereby demands a trial by jury in this action.

DATED: November 13, 2020 PASICH LLP

By: /s/ Kirk Pasich

Kirk Pasich

Attorneys for Plaintiff

PASICH^{LLP}