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10 R3 HOSPITALITY GROUP, LLC
11 d/b/a ROUNDIN3RD SPORTS BAR

12 **UNITED STATES DISTRICT COURT**
13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
14 **EASTERN DIVISION**

15 R3 HOSPITALITY GROUP, LLC
16 d/b/a ROUNDIN3RD SPORTS BAR,

17 Plaintiff,

18 v.
19

20 THE HARTFORD and SENTINEL
21 INSURANCE COMPANY, LIMITED,

22 Defendants.
23

Case No. 5:20-cv-1182

COMPLAINT

JURY TRIAL DEMANDED

24
25 Plaintiff R3 Hospitality Group, LLC d/b/a Roundin3rd Sports Bar
26 (“Plaintiff”) brings this Complaint against Defendants The Hartford and Sentinel
27 Insurance Company, Limited (“Defendants”) and, upon information and belief,
28 alleges as follows:

NATURE OF THE CASE

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

4 2. In light of the Coronavirus global pandemic and state and local orders
5 mandating that all non-essential in store businesses must shut down on March 16,
6 2020, Plaintiff's restaurant has suffered business loss.

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

9 4. As a result, Plaintiff is entitled to declaratory relief that its business is
10 covered for all business losses that have been incurred in an amount greater than
11 \$150,000.00.

JURISDICTION AND VENUE

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

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

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

PARTIES

8. Plaintiff is a limited liability company that owns and operates a restaurant, Roundin3rd Sports Bar, located 1041 E 16th Street, Upland, CA 91784. Plaintiff is owned by Patrick Malone, Geoffery Rau, and Kevin Robbins, who are all citizens of California.

9. Defendant The Hartford (“Hartford”) is an insurance carrier that provides business interruption insurance to Plaintiff. Defendant Hartford is headquartered at One Hartford Plaza, Hartford, Connecticut 06155. Defendant Hartford is a citizen of Connecticut.

10. Defendant Sentinel Insurance Company, Limited (“Sentinel”) is an insurance company affiliated with Hartford that insured Plaintiff for business interruption insurance. Defendant Sentinel is headquartered at One Hartford Plaza, Hartford, Connecticut 06155. Defendant Sentinel is a citizen of Connecticut.

FACTUAL ALLEGATIONS

I. Insurance Coverage

11. At all relevant times, Defendants issued a policy to Plaintiff to cover business interruption loss from November 1, 2019 until November 1, 2020 for its restaurant at 1041 E 16th Street, Upland, CA 91784 (the “Insured Property”). The policy number is 57 SBA BM3683 DX. This policy was intended to cover losses to business interruption. *See* Declaration, attached hereto as Exhibit 1 (the “Policy”).

12. The Policy is currently in full effect in providing, among other things, personal property, business income and extra expense, contamination coverage and additional coverage.

13. Plaintiff submitted a claim for a date of loss pursuant to its Policy seeking coverage under this policy. Defendants rejected Plaintiff’s claim for coverage for business loss and business interruption and other claims, contending, *inter alia*, that Plaintiff did not suffer physical damage to its property directly and stating other reasons why Plaintiff purportedly is not entitled to coverage for the

1 losses and damages. Defendants also claimed the Policy does not cover losses due to
2 the Virus Exclusion Clause.

3 14. Plaintiff faithfully paid policy premiums to Defendants, specifically to
4 provide, among other things, additional coverages in the event of business
5 interruption or closures by order of Civil Authority and for business loss for property
6 damage.

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

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

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

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

23 **II. The Coronavirus Pandemic**

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

1 20. The virus that causes COVID-19 remains stable and transmittable in
2 aerosols for up to three hours, up to four hours on copper, up to 24 hours on
3 cardboard and up to two to three days on plastic and stainless steel. *See*
4 [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)
5 [surfaces](https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces) (last visited April 9, 2020).

6 21. The CDC has issued a guidance that gatherings of more than 10 people
7 must not occur. People in congregate environments, which are places where people
8 live, eat, and sleep in close proximity, face increased danger of contracting COVID-
9 19.

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

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

16 **III. Civil Authority**

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

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

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

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

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

27 29. Plaintiff’s business was unable to operate due to the stay-at-home orders
28 for public safety issued by the State of California (the “Orders”). Plaintiff has

1 submitted a claim to its insurance carriers related to such losses, but Defendants
2 denied Plaintiff's claims.

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

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

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

24 See <https://youtu.be/cMeG5C9TjU> (last visited on April 17, 2020) (emphasis
25 added).

1 31. The President is articulating a few core points:

- 2 a. Business interruption is a common type of insurance.
- 3 b. Businesses pay in premiums for this coverage and should reasonably
- 4 expect they'll receive the benefit of the coverage.
- 5 c. This pandemic should be covered unless there is a specific exclusion
- 6 for pandemics.
- 7 d. If insurers deny coverage, they would be acting in bad faith.

8 32. These Orders and proclamations, as they relate to the closure of all "non-

9 life- sustaining businesses," evidence an awareness on the part of both state and local

10 governments that COVID-19 causes damage to property. This is particularly true in

11 places where business is conducted, such as Plaintiff's, as the requisite contact and

12 interaction causes a heightened risk of the property becoming contaminated.

13 **IV. Impact on Plaintiff**

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

15 restaurant.

16 34. Plaintiff's business loss occurred when the State of California issues its

17 order on March 16, 2020 banning any gatherings at an establishment.

18 35. Prior to March 16, 2020, Plaintiff's business was open. Plaintiff's

19 Insured Property is not a closed environment, and because people – staff, customers,

20 community members, and others – constantly cycle in and out, there is an ever-

21 present risk that the Insured Property is contaminated and would continue to be

22 contaminated.

23 36. Businesses like Plaintiff's are more susceptible to being or becoming

24 contaminated, as both respiratory droplets and fomites are more likely to be retained

25 on the Insured Property and remain for far longer as compared to a facility with open-

26 air ventilation.

27 37. Plaintiff's Insured Property is also highly susceptible to rapid person-to-

28 property transmission of the virus, and vice-versa, because the service nature of the

1 business places staff and customers in close proximity to the property and to one
 2 another and because the nature of the business exposes people to high levels of
 3 respiratory droplets and fomites being released into the air of the property.

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

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

14 **CAUSE OF ACTION**

15 **DECLARATORY RELIEF**

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

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

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

28

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

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

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

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

PRAYER FOR RELIEF

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

- a. For a declaration that the Orders constitute a prohibition of access to Plaintiff's Insured Property.
- b. For a declaration that the prohibition of access by the Orders is specifically prohibited access as defined in the Policy.
- c. For a declaration that the Orders trigger coverage under the Policy.
- d. For a declaration that Policy provides coverage to Plaintiff for any current, future and continued civil authority closures of businesses in California due to physical loss or damage directly or indirectly from the Coronavirus under the Civil Authority coverage parameters.
- e. For a declaration that the Policy provides business income coverage in the event that Coronavirus has directly or indirectly caused a loss or damage at Plaintiff's Insured Property or the immediate area of Plaintiff's Insured Property.
- f. For such other relief as the Court may deem proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands trial by jury.

Dated: June 10, 2020

Respectfully submitted,

/s/ David M. Birka-White

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Counsel for Plaintiff

EXHIBIT 1

83 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 BM3683 DX



SPECTRUM POLICY DECLARATIONS

Named Insured and Mailing Address: R3 HOSPITALITY GROUP 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: \$5,549

Suean L. Castaneda
 Countersigned by
 Authorized Representative

10/31/19
 Date

SPECTRUM POLICY DECLARATIONS (Continued)

POLICY NUMBER: 57 SBA BM3683

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

Location: 001 **Building:** 001

1041 E 16TH ST
UPLAND CA 91784

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 \$ 5,000

SPECTRUM POLICY DECLARATIONS (Continued)

POLICY NUMBER: 57 SBA BM3683

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**

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 BM3683

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

BUSINESS INCOME AND EXTRA EXPENSE
COVERAGE 12 MONTHS ACTUAL LOSS SUSTAINED
COVERAGE INCLUDES THE FOLLOWING
COVERAGE EXTENSIONS:

ACTION OF CIVIL AUTHORITY: 30 DAYS
EXTENDED BUSINESS INCOME: 30 CONSECUTIVE DAYS

EQUIPMENT BREAKDOWN COVERAGE
DEDUCTIBLE: \$2,500 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

SPECTRUM POLICY DECLARATIONS (Continued)

POLICY NUMBER: 57 SBA BM3683

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 BM3683

**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 BM3683

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 01 21 03 17	SS 42 06 03 17	SS 04 38 09 09
SS 40 26 03 17	SS 40 65 07 05	SS 40 93 07 05	SS 41 12 12 17
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 BM3683

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.