1 2 3 4 5 6 7 8 9 110 111 112 113 114 115 116 117 118 119	GUY O. KORNBLUM (39974) gkomblum@kcehlaw.com MUKESH ADVANI (117974) madvani@kcehlaw.com YAELLE E. SHAHAM (294775) yshaham@kcehlaw.com KORNBLUM, COCHRAN, ERICKSON & HARBISON, LLP 1388 Sutter Street, Suite 505 San Francisco, California 94109 Telephone: (415) 440-7800 Fax: (415) 440-7898 Attorneys for Plaintiff IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF SAN FRANCISCO JAMES COLGAN, an individual d/b/a JAMES COLGAN UNION SQUARE and JAMES COLGAN POTRERO HILL, Plaintiff, SENTINEL INSURANCE COMPANY, LTD., a Connecticut corporation, and DOES 1 to 20, inclusive, Defendants.
20	Comes now, Plaintiff, who alleges as follows:
21	THE PARTIES, JURISDICTION AND VENUE
22	1. At all times relevant hereto, Plaintiff, JAMES COLGAN d/b/a JAMES COLGAN
23	UNION SQUARE and JAMES COLGAN POTRERO HILL ("COLGAN" or "Plaintiff") was and is an
24	individual and the owner and sole proprietor of a well known, high-end hair styling salon at two
25	locations in San Francisco, California.
26 27	BYFAX
28	1 COMPLAINT FOR BREACH OF CONTRACT
	AND DECLARATORY RELIEF

2. At all times relevant hereto, SENTINEL INSURANCE COMPANY, LTD.
("SENTINEL" or "Defendant") was and is an insurance company operating in the State of California to provide property insurance services such as the property insurance coverage described herein.

- 3. Plaintiff is informed and believes, and therefor alleges, that at all relevant times described herein, Defendants, and each of them, were the agents, servants and employees of each of the remaining Defendants, and were at all times acting within the purpose, scope and authority of said agency, service and employment. In addition, each Defendant has ratified and approved the acts of each other Defendant acting for and on behalf of the former. There exists, and at all times herein mentioned has existed, a unity of interest and ownership between Defendants such that any separateness between them has ceased to exist in that Defendants controlled, dominated, managed, and operated the other Defendants to suit its convenience. There was such a unity of interest and ownership among Defendants that the individuality, or separateness, of them has ceased, and that the facts are such that an adherence to the fiction of the separate existence of these entities would, under the particular circumstances, sanction a fraud or promote injustice.
- 4. The true names or capacities, whether individual, corporate, associate, or otherwise, of defendants DOES 1 to 20, inclusive, are unknown to Plaintiff, who therefore sues them as fictitiously named Defendants. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Each of these Defendants designated as a DOE legally and proximately caused injury and damages to Plaintiff as herein alleged and are, therefore, responsible to Plaintiff, as alleged herein for all damages requested by any Plaintiff.
- 5. Pursuant to Code of Civil Procedure §395(a), venue is appropriate in this Court since the policy of insurance described herein was entered into in this County, and the obligations to be performed as described herein were to be performed there.

GENERAL ALLEGATIONS

6. Effective August 15, 2019, to August 15, 2020, in return for an agreement by Plaintiff to pay the premium, SENTINEL and DOES 1-20 issued to Plaintiff Defendants' "Business Owner's

Policy" No. 57-SBA BD4683 ("the Policy"), providing, *inter alia*, insurance coverage for "Business Income and Extra Expense" – sometimes referred to as "business interruption" coverage – resulting from "direct physical loss of or physical damage to Covered Property at the premises" described in the Policy. The "premises" covered by the Policy included three locations where, at all times relevant hereto, Plaintiff maintained his hair styling business in San Francisco, California. A copy of what Plaintiff is informed and believes is the Policy is attached hereto, and incorporated herein by this reference, as **EXHBIT 1**.

- 7. Effective March 17, 2020, and amended March 31, 2020, an Order was issued by the Department of Public Health, City and County of San Francisco, for all people in San Francisco to shelter in place at their residences and, further, for all businesses in San Francisco to cease all but specified limited operations at facilities located within the Country of San Francisco.
- 8. Effective March 19, 2020, the Public Health Officer of the State of California issued Executive Order N-33-20, generally mandating that all individuals living in the State of California stay home or at their place of residence but for limited essential outings.
- 9. The aforementioned orders were issued for public health reasons as a result of a pandemic of a disease called coronavirus 2019, or COVID-19. Plaintiff did not suffer from this virus nor was there evidence that it existed or even threatened his business establishment.
- 10. Because of these governmental orders, Plaintiff was physically unable to utilize his business premises and thus lost the physical use thereof.
- 11. As a result of the above, Plaintiff made a claim to SENTINEL for his business interruption coverage.
- 12. By two letters, both dated March 22, 2020, SENTINEL, through a representative of The Hartford Commercial Property Center (specifically, Eric.Franklin@thehartford.com), denied Plaintiff's claim on various bases, including, *inter alia*, that Plaintiff had "not identified any physical loss to any property at a scheduled premises," despite SENTINEL's knowledge of the circumstances outlined herein.

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FIRST CAUSE OF ACTION: BREACH OF CONTRACT

- Each and every allegation above in Paragraphs 1 through 12 is incorporated herein as part 13. of this First Cause of Action.
- 14. Under the Policy, there existed between the Plaintiff and Defendants a contractual relationship whereby Defendants had a duty to pay for Plaintiff's "actual loss of Business Income . . . sustain[ed] due to the necessary suspension of [his] 'operations' during a 'period of restoration' . . . caused by direct physical loss of or damage to the [insured property]." (Emphasis added.) "Business Income" includes "Net Income (Net Profit or Loss before income taxes)" and "[c]ontinuing normal operating expenses incurred, including payroll." Defendants, however, have failed and refused to pay said sums, which are now due and owing. This failure and refusal to pay is a breach of the provisions of the Policy as an insurance contract.
- 15. Plaintiff performed all of his obligations under the Policy, except for those, if any, he was excused from performing.
- As a direct, proximate and legal result of these Defendants' breaches of contract, and the 16. failure to pay the sums described, Plaintiff is, has been, and will continue to be damaged in that amount, as well as other damages caused by the failure to pay the promised sum. He seeks and is owed those damages which Defendants have refused to pay him.

WHEREFORE, Plaintiff prays for the relief as set forth herein.

SECOND CAUSE OF ACTION: DECLARATORY RELIEF

- 17. Each and every allegation above in Paragraphs 1 through 16 is incorporated herein as part of this Second Cause of Action.
- 18. Under California Code of Civil Procedure, §§1050 et seq., this Court may declare rights, status, and other legal obligations regardless of whether further relief is or could be claimed. Accordingly, Plaintiff claims relief as set forth in this Second Cause of Action.
- 19. An actual controversy has arisen and now exists between Plaintiff and Defendants concerning their respective rights and duties in that Plaintiff contends he is entitled to the Policy

DEMAND FOR JURY

Plaintiff hereby demands a trial by jury in this matter on all triable issues.

DATED: May 25, 2020.

KORNBLUM, COCHRAN, ERICKSON & HARBISON, LLP

GUY O. KORNBLUM
Attorneys for PLAINTIFF

COMPLAINT FOR BREACH OF CONTRACT AND DECLARATORY RELIEF