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10
11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 PROTÉGÉ RESTAURANT PARTNERS LLC,
14 on Behalf of Itself and All Others Similarly
15 Situated,

16 Plaintiff,

17 vs.

18 SENTINEL INSURANCE COMPANY,
19 LIMITED, d/b/a THE HARTFORD,

20 Defendant.
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Case No. 5:20-cv-03674

**CLASS ACTION COMPLAINT FOR
BREACH OF CONTRACT AND
DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiff Protégé Restaurant Partners, LLC (“Protégé”), individually and on behalf of all
2 other similarly situated entities (collectively, the “Class”), bring this class action against defendant
3 Sentinel Insurance Co., Ltd. d/b/a The Hartford (“Sentinel”).

4 **NATURE OF ACTION**

5 1. This is a class action for breach of contract and declaratory and injunctive relief
6 arising from Sentinel’s refusal to pay COVID-19-related claims as required by its insurance
7 policies it sold to plaintiff and other policyholders.

8 2. According to the National Association of Insurance Commissioners’ database,
9 Sentinel collects \$650 million per year in annual premiums for commercial insurance, including
10 business interruption policies. Insurance companies collected net premiums of \$1.22 trillion in
11 2018, with 51% of that amount collected by property/casualty insurers, according to the Insurance
12 Information Institute.

13 3. Plaintiff Protégé owns and operates a Michelin-starred restaurant located in Palo
14 Alto, California. Protégé is an upscale casual restaurant featuring New American cuisine and a
15 comprehensive wine and spirits program. In response to California and Santa Clara County
16 mandates, and COVID-19, Protégé’s restaurant has been completely shut down since March 17,
17 2020, and continues to be closed to this day. As a result, plaintiff has suffered substantial losses
18 of income.

19 4. Protégé purchased an all-risk commercial property insurance policy from Sentinel
20 to indemnify it for business income lost due to the shutdown of its operations. The current policy
21 is in effect from January 20, 2020, through January 20, 2021. Protégé paid \$16,936 in annual
22 premiums for the policy for \$4 million in coverage under the policy.

23 5. Yet, despite plaintiff’s claim for payment under the policy to cover these losses to
24 its income, defendant has refused to provide the protection that plaintiff purchased, citing policy
25 exclusions and coverage defenses that do not apply and which that have no merit. While there is a
26 virus exclusion written into the policy, it explicitly does not apply to the special coverage that
27 provides business income protection under which plaintiff seeks coverage. Moreover, plaintiff is
28 not unique. The reasons given by Sentinel to deny coverage are written in terms that appear

1 designed to deny coverage to all claims under these form contracts, even though the policy it
2 drafted does not contain an applicable exclusion for losses caused by the Closure Orders and
3 COVID-19 (as described more particularly below).

4 6. On March 11, 2020, the World Health Organization (WHO) declaring that COVID-
5 19 had become a pandemic. On March 16, 2020, the United States issued new guidelines urging
6 avoidance of gatherings of more than ten people, and states, counties and cities across the nation
7 began announcing widespread business shutdown and stay-at-home orders, including orders issued
8 by the State of California and Santa Clara County. As of the date of filing of this complaint, more
9 than 1.75 million people were confirmed to have been infected with COVID-19 in the United
10 States, with over 104,000 deaths reported nationwide, according to the United States Centers for
11 Disease Control and Prevention (“CDC”).

12 7. COVID-19 is caused by a novel coronavirus now known as Severe Acute
13 Respiratory Syndrome Coronavirus 2 (SARS-CoV-2). It is a physical virus that is spread and
14 transmitted through the air and contact with surfaces of property. While the virus reportedly
15 originated in China, the rapid transmission of COVID-19 has resulted in an exponential increase
16 in the number of cases outside of China to about ten times the number of reported cases and deaths
17 in mainland China. (In this complaint, plaintiff refers to both the virus and the resulting diseases
18 as COVID-19.)

19 8. The virus easily disseminates among humans through respiratory droplets, which
20 are produced by coughing, sneezing and talking, and through aerosols, which are released during
21 breathing and can also spread through contact with an object or surface containing the virus.
22 Infected aerosols can remain suspended for hours in the air and for days on objects and surfaces,
23 potentially infecting someone who unwittingly touches an infected object or surface and then
24 touches his or her face.

25 9. As of April 1, 2020, the United States and every state in the Union has issued
26 emergency declarations relating to COVID-19, and by mid-April 95% of the population of the
27 United States was under one or more state or local directives to, among other things, refrain from
28 close contact with other persons.

1 10. The closure orders typically ordered the shut-down of businesses deemed “non-
2 essential” and prohibited in-person services to be provided on their premises. Businesses deemed
3 “essential” have been also heavily impacted by the closure orders. For example, businesses deemed
4 to be essential have had to cease in-person services (such as dining in a restaurant), adjust cleaning
5 protocols, limit hours, install barriers between employees and customers, and supply employees
6 with personal protective equipment. Many of these businesses have been unable to keep employees
7 at work on their premises because of their fear of becoming infected.

8 11. Santa Clara County and the State of California have issued business shut down and
9 closure orders, as have cities, counties and states across the country (“Closure Orders”). These
10 Closure Orders have caused the suspension of operations by both non-essential and essential
11 businesses.

12 12. The first case of COVID-19 in California was confirmed on January 26, 2020, and
13 the first case in Santa Clara County was confirmed on January 31, 2020. The first confirmed
14 COVID-19 death in Santa Clara County took place on February 6, 2020. Given that it takes up to
15 fourteen days to develop symptoms after infection, public health experts estimate that the person
16 who died on February 6, 2020, was likely infected in December 2019. Public Health experts have
17 also opined that it is likely the virus had been circulating undetected in the United States by
18 November 2019. People infected by the virus have likely visited plaintiff’s place of business, and
19 insured businesses across the country, and thereby contaminated plaintiff’s property with the virus.
20 By March 15, 2020, there was a known risk that surfaces of physical property located in businesses
21 nationwide were potentially infected, and that risk, among others, prompted the Closure Orders,
22 as acknowledged in those orders.

23 13. The transmission of COVID-19 and the Closure Orders have adversely impacted
24 plaintiff’s business and the businesses of other class members. For example, customers cannot
25 access their place of business due to the Closure Orders or the fear of being infected with COVID-
26 19. Suppliers to businesses have also been adversely impacted by the Closure Orders and COVID-
27 19.

28

1 14. But plaintiff, like other businesses, prudently prepared for an unexpected event like
2 the COVID-19 pandemic. Specifically, plaintiff purchased insurance from defendant, under Policy
3 No. 57 SBA BK2040 SC (the “Policy”), that did not exclude coverage for income loss caused by
4 a virus. (A true and correct copy of the Policy is attached hereto as Exhibit A.)

5 15. The Policy contains several forms and endorsements that define the scope of
6 coverage. Upon information and belief, the forms and endorsements used in plaintiff’s Policy are
7 materially the same as policies held by the members of the Class.

8 16. The Policy provides coverage for:

- 9 a. Interruption of business caused by an order from a civil authority (“Civil Authority”
10 coverage) (*id.* at 40);
- 11 b. Business income losses sustained due to the necessary suspension of operations
12 (“Business Income” coverage) (*id.* at 39);
- 13 c. Expenses incurred to minimize the suspension of business (“Extra Expense”
14 coverage) (*id.* at 39);

15 17. In addition, the Policy requires plaintiff to “[t]ake all reasonable steps to protect the
16 Covered Property from further damage by a Covered Cause of Loss,” which in this instance
17 required plaintiff to suspend operations to reduce the risks of infection by COVID-19 and the
18 contamination of “Covered Property” and further injury that would be occasioned by the spread of
19 COVID-19 at plaintiff’s place of business. *Id.* at 49.

20 18. On or about March 30, 2020, plaintiff made a claim for coverage under the Policy,
21 seeking coverage caused by COVID-19 and the Closure Orders. In response, defendant denied
22 coverage and requested information that was not reasonably necessary to evaluate plaintiff’s claim
23 for coverage. Upon information and belief, defendant has refused to pay its other insureds under
24 the same standard policy for losses and expenses related to COVID-19.

25 19. Defendant has caused substantial harm to plaintiff and members of the proposed
26 class by wrongfully refusing coverage under the Policy.

27 20. On behalf of itself and the Class, plaintiff seeks to recover damages for breach of
28 contract, as well as declaratory and injunctive relief.

1 **PARTIES**

2 21. Plaintiff Protégé Restaurant Partners, LLC is a California limited liability company
3 with its principal place of business in Palo Alto, California. Plaintiff owns and operates Protégé
4 restaurant in Palo Alto.

5 22. Defendant Sentinel Insurance Co., Ltd., d/b/a The Hartford, is a Connecticut
6 corporation with its principal place of business in Hartford, Connecticut. Sentinel is a stock
7 insurance company of The Hartford Insurance Group.

8 **JURISDICTION AND VENUE**

9 23. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d)(2) because this
10 is a class action in which at least one member of the class is a citizen of a state different from
11 defendant, the amount in controversy exceeds \$5 million, exclusive of interest and costs, and the
12 proposed class contains more than 100 members.

13 24. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial
14 portion of the events giving rise to plaintiff’s claims for relief occurred in this judicial district. The
15 Policy at issue covers plaintiff’s restaurant business located in the State of California, and plaintiff
16 purchased the Policy from an insurance broker located in the State of California.

17 **FACTUAL BACKGROUND**

18 **A. The Physical Transmission of the Virus Through Air and Surfaces**

19 25. According to the CDC, COVID-19 can spread by respiratory droplets when an
20 infected person talks, sneezes, or coughs, and can also be spread through contact with surfaces
21 touched or breathed on by an infected person. According to several studies, the virus can live on
22 surfaces for several days.

23 26. Coronaviruses are not new. The name comes from the crown-like appearance of the
24 array of spikes around the enveloped virion. Coronaviruses are responsible for approximately 25%
25 of human colds of all age groups. The SARS-CoV-2 disease that spread from southern China in
26 2002 is a coronavirus. Prior studies have shown that coronaviruses have been detected on surfaces
27 of physical objects located in a wide array of public spaces and businesses, including hospitals,
28 daycare centers, offices, and restaurants. Studies found that SARS-CoVs have retained their

1 infectivity for up to nine days on surfaces. And studies have shown that coronaviruses can live for
2 up to eight days on produce, such as lettuce, and can be recovered from lettuce with an efficiency
3 of 19.6%.

4 27. In an article posted on the National Institute of Health’s website on March 24, 2020,
5 the NIH stated that “[v]iruses can live for a time on surfaces outside the human body. According
6 to the CDC, it may be possible to contract the virus responsible for the current outbreak, SARS-
7 CoV-2, by touching a surface or object with the virus on it and then touching your face.”

8 28. In addition, studies have reported that COVID-19 has been detected in the air. The
9 NIH article reported that a study published in the *New England Journal of Medicine* found that
10 aerosols containing the virus remained highly infectious in the air for at least 3 hours. In that
11 study, published on March 17, 2020, Researchers led by Dr. Vincent Munster of NIH’s National
12 Institute of Allergy and Infectious Diseases studied how long the virus survives in the air and on
13 surfaces. The researchers reported that the COVID-19 virus remained infectious on plastic and
14 stainless steel surfaces for two to three days, and it remained infectious for up to 24 hours on
15 cardboard surfaces. The study found that “Aerosols from infected persons may therefore pose an
16 inhalation threat even at considerable distances and in enclosed spaces....” The NIH, reporting on
17 the study, stated that the “results suggest that people may acquire SARS-CoV-2 through the air
18 and after touching contaminated objects.”

19 29. This air and surface transmission is made possible in part because COVID-19
20 transmits through aerosols. The American Association for the Advance of Science’s prestigious
21 magazine *Science* recently published an article by Dr. Kimberly Prather, who found that COVID-
22 19 transmits through aerosols – which are produced by normal breathing – and through surfaces
23 on which the aerosol particles land. She reported

24
25 Respiratory infections occur through the transmission of virus-containing droplets
26 (>5 to 10 μm) and aerosols ($\leq 5 \mu\text{m}$) exhaled from infected individuals during
27 breathing, speaking, coughing, and sneezing. Traditional respiratory disease control
28 measures are designed to reduce transmission by droplets produced in the sneezes
and coughs of infected individuals. However, a large proportion of the spread of
coronavirus disease 2019 (COVID-19) appears to be occurring through airborne
transmission of aerosols produced by asymptomatic individuals during breathing

1 and speaking (1–3). Aerosols can accumulate, remain infectious in indoor air for
2 hours, and be easily inhaled deep into the lungs.¹

3 30. Dr. Prather also found that because it transmits as an aerosol, COVID-19 can
4 physically contaminate surfaces and be transmitted through contact with those infected surfaces.

5 Respiratory droplets will undergo gravitational settling faster than they evaporate,
6 contaminating surfaces and leading to contact transmission. Smaller aerosols (≤ 5
7 μm) will evaporate faster than they can settle, are buoyant, and thus can be affected
8 by air currents, which can transport them over longer distances. Thus, there are two
9 major respiratory virus transmission pathways: contact (direct or indirect between
10 people and with contaminated surfaces) and airborne inhalation.²

11 31. In an interview with *America* magazine on May 26, Dr. Anthony Fauci, who leads
12 the National Institute of Allergy and Infectious Diseases, referenced aerosol transmission in
13 churches. "When you sing, the amount of droplets and aerosol that come out is really, in some
14 respects, scary," Dr. Fauci said.³

15 32. Similarly, another scientist, Dr. Lidia Morawska told *Nature* that, "In the minds of
16 scientists working on this, there's absolutely no doubt that the virus spreads in the air. This is a
17 no-brainer."⁴

18 33. Other studies have shown that in addition to water droplets, COVID-19 is
19 transmitted through aerosols. A study of hospitals in Wuhan, China, found COVID-19 in aerosols
20 further than 6 feet, and up to 13 feet, from patients with higher concentrations detected in more
21 crowded areas.⁵ Those authors found evidence of the virus on floors, trash bins, air vents, and other
22 places. Estimates using an average viral load for COVID-19 indicate that one minute of loud
23 speaking could generate more than 1000 virion-containing aerosols.⁶

24
25 ¹ <https://science.sciencemag.org/content/early/2020/05/27/science.abc6197>.

26 ² *Id.*

27 ³ <https://www.americamagazine.org/faith/2020/05/27/dr-anthony-fauci-catholic-churches-masks-communion-covid-coronavirus>.

28 ⁴ <https://www.nature.com/articles/d41586-020-00974-w>.

⁵ Y. Liu et al., *Nature* (2020). doi:10.1038/s41586-020-2271-3pmid:32340022.

⁶ V. Stadnytskyi, C. E. Bax, A. Bax, P. Anfinrud, *Proc. Natl. Acad. Sci. U.S.A.* 202006874 (2020). doi:10.1073/pnas.2006874117pmid:32404416.

1 34. Other studies have used invisible fluorescent tracers — decoy germs that glow
2 under black light — to track how germs are spread from surfaces. In one series of experiments, 86
3 percent of workers were contaminated when spray or powder tracers were put on commonly
4 touched objects in an office. When tracer powder was put on a bathroom faucet and exit doorknob,
5 the glowing residue was found on employees’ hands, faces, phones and hair. From a shared cell
6 phone, the tracer spread to desktop surfaces, drinking cups, keyboards, pens and doorknobs. A
7 contaminated copy machine button added a trail of fluorescent finger prints transferred to
8 documents and computer equipment. And just twenty minutes after arriving home from the office,
9 the decoy germs carried by the employee were found on backpacks, keys and purses, and on home
10 doorknobs, light switches, countertops and kitchen appliances.⁷

11 35. A recent study of an outbreak from a restaurant in China concluded that the
12 transmission in that case was likely prompted by air-conditioned ventilation.⁸ In that case, from
13 January 26 through February 10, 2020, an outbreak of COVID-19 infected ten persons from three
14 families (families A–C) who had eaten at the same air-conditioned restaurant in Guangzhou,
15 China. The only known source of exposure for the affected persons in families B and C was patient
16 A1 at the restaurant. The families were seated more than a meter apart, and yet 10 people became
17 ill who were at the restaurant that day. The authors concluded that the virus likely spread through
18 the restaurant’s air-conditioning system.

19 36. A 2014 analysis published in the scientific journal *Clinical Infectious Diseases*
20 investigated an outbreak of a SARS-CoV virus in an apartment complex where the residents were
21 not in close contact.⁹ The study found that “airborne spread was the most likely explanation, and
22 the SARS coronavirus could have spread over a distance of 200 meters,” or about 600 feet.¹⁰

25
26 ⁷ Kelly A Reynolds, Pamela M Watt, Stephanie A Boone & Charles P Gerba (2005) Occurrence of bacteria and
27 biochemical markers on public surfaces, *International Journal of Environmental Health Research*, 15:3, 225-234,
DOI: 10.1080/09603120500115298.

28 ⁸ Lu J, Gu J, Li K, Xu C, Su W, Lai Z, et al. COVID-19 outbreak associated with air conditioning in restaurant,
Guangzhou, China, 2020. *Emerg Infect Dis*. 2020 Jul [date cited]. <https://doi.org/10.3201/eid2607.200764>.

⁹ <https://academic.oup.com/cid/article/58/5/683/365793>.

¹⁰ *Id.*

1 37. The fact that COVID-19 can spread through the aerosols, on surfaces, and through
2 the air has made the ease of transmission of the virus especially alarming. It means the virus can
3 spread to people who are not close to each other, who occupy the same space at different points in
4 time, or who merely breath the same air or touch common surfaces at different periods of time.

5 **B. The COVID-19 Closure Orders**

6 38. State and local governments have determined that, in light of these dangers of
7 physical transmission, the Closure Orders were required to slow the spread of COVID-19.

8 39. On March 11, 2020, the WHO declared COVID-19 a global pandemic. And
9 President Trump announced he would block travelers from continental Europe. On March 12,
10 2020, an influential scientific study posted on the CDC’s website found that surface transmission
11 of the virus was the most likely explanation for an outbreak at a Chinese shopping mall.¹¹ In that
12 study, the researchers studied an outbreak in January, when seven workers who shared an office
13 in a shopping mall became ill after one of their co-workers returned from Wuhan. Public health
14 officials tracked two dozen more sick people, including several women who had shopped at the
15 mall, as well as their friends. None of them had come into contact with the sick office workers.
16 The researchers concluded that “its findings appear to indicate that low intensity transmission
17 occurred without prolonged close contact in this mall; that is, the virus was spread by indirect
18 transmission.” One leading explanation was that the virus was “spread via fomites” (i.e., infected
19 surfaces), such as “elevator buttons or restroom taps.” Virus aerosolization was also suspected.

20 40. On March 15, 2020, the CDC issued guidance restricting gatherings to less than 50
21 people. In the guidance, the CDC recognized the danger of spreading the virus through surface
22 transmission, and through the air, advising people to “clean frequently touched surfaces and
23 objects daily,” to cover “coughs and sneezes,” and to “routinely clean and disinfect surfaces and
24 objects that are frequently touched.”

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¹¹ https://www.nc.cdc.gov/eid/article/26/6/20-0412_article.

1 41. Effective at 12:01 a.m., on March 17, 2020, Santa Clara County issued a stay-at-
2 home order to mitigate the spread of COVID-19 in Santa Clara County on the basis of a confirmed
3 outbreak and person-to-person spread of COVID-19 in the United States, including in California,
4 and Santa Clara County.¹² The Santa Clara County Order specifically recognized that COVID-19
5 spreads easily from person to person and may result in serious illness or death. It further expressly
6 recognized that physical surfaces of property located in businesses may be contaminated and a
7 source of transmission, and required cleaning of physical surfaces to reduce transmission. The
8 Santa Clara County Order was issued in an effort to mitigate and slow the spread of COVID-19 in
9 the community.

10 42. Effective March 19, 2020, Governor Gavin Newsom issued an Executive Order and
11 Public Health Order that directed all Californians to stay at home except to go to work at a job
12 deemed to be essential, to shop for essential needs or to seek medical care.¹³ The order specifically
13 directed “all individuals living in the State of California to stay home or at their place of residence
14 except as needed to maintain continuity of operations of the federal critical infrastructure sectors.”

15 43. As of April 1, 2020, at least forty-four states and local governments across the
16 country issued orders entirely closing restaurants for in-person dining; at least five more allowed
17 only limited on-site service; and one limited gatherings to no more than ten people.¹⁴ By April 15,
18 2020, at least forty-three states had issued orders closing or severely limiting the operation of non-
19 essential businesses, and at least forty-seven states had issued orders prohibiting restaurants from
20 offering dine-in services, with other states either limiting on-site service or prohibiting gatherings
21 of more than ten people.¹⁵ The purpose of these orders is to try to mitigate and slow the spread of
22 COVID-19. Every state has now issued emergency declarations to slow the spread of COVID-19.

25 ¹² [https://www.sccgov.org/sites/covid19/Documents/03-16-20-Health-Officer-Order-to-Shelter-
26 in-Place.pdf](https://www.sccgov.org/sites/covid19/Documents/03-16-20-Health-Officer-Order-to-Shelter-in-Place.pdf).

¹³ [https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-
27 ORDER.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf).

¹⁴ [https://web.archive.org/web/20200401202749/https://www.kff.org/health-costs/issue-brief/state-data-and-policy-
28 actions-to-address-coronavirus/](https://web.archive.org/web/20200401202749/https://www.kff.org/health-costs/issue-brief/state-data-and-policy-actions-to-address-coronavirus/).

¹⁵ [https://web.archive.org/web/20200415130206/https://www.kff.org/health-costs/issue-brief/state-data-and-policy-
actions-to-address-coronavirus/](https://web.archive.org/web/20200415130206/https://www.kff.org/health-costs/issue-brief/state-data-and-policy-actions-to-address-coronavirus/).

1 44. The Closure Orders also explicitly acknowledge that COVID-19 can spread in and
2 damage physical property, including surfaces. For example, the March 16, 2020 Santa Clara
3 County Order required all persons to “regularly” clean “high-touch surfaces,” and made this
4 surface-cleaning requirement part of the county-ordered “Social Distancing Requirements.” Other
5 Closure Orders in California and across the country, as well as federal government guidance,
6 specifically recognize that COVID-19 endangers property, and can be physically spread by
7 touching infected surfaces and through the air.

8 45. COVID-19 and the Closure Orders have forced plaintiff to completely shut down
9 its operations. The restaurant is located in Palo Alto, which is in Santa Clara County, California.
10 There have been 2,675 confirmed cases of COVID-19 in Santa Clara County as of the date of this
11 filing, and 139 confirmed COVID deaths. In the United States, there have been over 1.75 million
12 confirmed cases, and over 104,000 confirmed COVID deaths.

13 **C. The Sentinel Business Interruption Policies**

14 46. In order to protect itself against unexpected risks like COVID-19, plaintiff
15 purchased the Policy from defendant. The Policy was in effect from January 2020 through January
16 2021. Plaintiff performed all obligations under the policy and paid all premiums required by the
17 Policy.

18 47. Plaintiff is the named insured under the Policy, which remains in force and effect.

19 48. Defendant is the insurer of the Policy and policies held by the other members of the
20 Class.

21 49. Generally, under business interruption policies like those issued by defendant to
22 plaintiff and Class members, the policies provide coverage for all risks to property, unless
23 specifically excluded.

24 50. The Policy form at issue does not exclude or limit coverage for losses from viruses
25 or communicable diseases like COVID-19 in these circumstances. Nor does it contain a pandemic
26 exclusion clause.

27 51. The risk of a virus like COVID-19 was foreseen, and foreseeable to, defendant. The
28 Insurance Services Office (“ISO”), an organization that provides policy writing services to

1 insurers, sent the following statement to state insurance regulators in 2006, in connection with the
2 submission of an exclusion of loss “due to disease-causing agents such as viruses and bacteria”:

3 Disease-causing agents may render a product impure (change its quality or substance), or
4 enable the spread of disease by their presence on interior building surfaces or the surfaces
5 of personal property. When disease-causing viral or bacterial contamination occurs,
6 potential claims involve the cost of replacement of property (for example, the milk), cost
7 of decontamination (for example, interior building surfaces), and business interruption
(time element) losses. Although building and personal property could arguably become
contaminated (often temporarily) by such viruses and bacteria, the nature of the property
itself would have a bearing on whether there is actual property damage. An allegation of
property damage may be a point of disagreement in a particular case.

8 52. Plaintiff’s Policy contains no such applicable virus exclusion, despite its
9 availability since 2006. Nor does plaintiff’s Policy contain an exclusion for “pandemics,”
10 “communicable disease,” or anything similar.

11 53. Moreover, to mitigate further losses, as required by the Policy, plaintiff suspended
12 operations when the Closure Orders and government officials announced that COVID-19 posed a
13 risk of causing further physical property damage and loss.

14 54. The Policy is composed of several distinct forms. Policyholders can pay for
15 optional forms and coverages, but the forms themselves are standardized.

16 55. The Policy contains several types of additional coverages that provide coverage in
17 these circumstances. The following additional coverages all appear in the “SPECIAL PROPERTY
18 COVERAGE FORM,” which is a standardized form with form number “Form SS 00 07 07 05.”

19 56. Defendant agreed to provide coverage from an interruption to business caused by
20 an order from a “**Civil Authority.**” (Exhibit A.) Specifically, defendant agreed to pay for loss of
21 business income in the following circumstances:

22 This insurance is extended to apply to the actual loss of Business Income you sustain
23 when access to your "scheduled premises" is specifically prohibited by order of a civil
24 authority as the direct result of a Covered Cause of Loss to property in the immediate
area of your "scheduled premises.

25 57. The term “Covered Causes of Loss” is defined to mean “RISKS OF DIRECT
26 PHYSICAL LOSS,” unless that loss is limited or excluded in certain sections of the Policy. *Id.* at
27 31. Because the Closure Orders directly resulted from the risk of direct physical loss caused by
28 COVID-19 and have caused plaintiff to have lost the use of its premises for their intended purpose,

1 plaintiff's losses are covered under the Policy, including under the "Civil Authority" coverage.
2 Access has been restricted to the Covered Property due to the presence and threat of COVID-19
3 in the immediate surrounding areas and related Closure Orders. Plaintiff has suffered tens of
4 thousands of dollars per month in lost "Business Income" because it has suspended operations of
5 its business due to COVID-19 and the Closure Orders.

6 58. Defendant is also obligated to pay for actual loss of "**Business Income**" sustained
7 "due to the necessary suspension of your 'operations' during the 'period of restoration.' The
8 suspension must be caused by direct physical loss of or physical damage to property at the
9 'scheduled premises.'" *Id.* at 39. "Business Income" means net income (net profit or loss before
10 income taxes) that "would have been earned or incurred if no direct physical loss or physical
11 damage had occurred," as well as "Continuing normal operating expenses incurred, including
12 payroll." *Id.* at 39. Coverage lasts during the "period of restoration" – beginning at the time of the
13 "direct physical loss or physical damage" and running through the earlier of the date the property
14 is repaired or resumed at a new permanent location. *Id.* at 53. A "slowdown or cessation" of
15 business activities constitutes a "suspension" under the Policy. *Id.* at 39. Plaintiff has suffered tens
16 of thousands of dollars per month in lost Business Income because of the necessary suspension
17 operations of its business due to the Closure Orders and COVID-19.

18 59. Defendant also agreed to pay for "**Extra Expense.**" *Id.* at 39. Extra Expenses are
19 expenses to avoid or minimize suspension of business whether or not operations are able to
20 continue and to repair or replace property. *Id.* Plaintiff has suffered "Extra Expenses" because it
21 has suspended operations due to COVID-19 and the Closure Orders and has spent money to break-
22 down and clean the property for COVID-19 in order to minimize the suspension of business.

23 60. Defendant also required plaintiff to "[t]ake all reasonable steps to protect the
24 Covered Property from further damage by a Covered Cause of Loss" and to "keep a record of your
25 expenses for emergency and temporary repairs, for consideration in the settlement of the claim."
26 This is known as a "**Sue and Labor**" provision. Plaintiff expended expenses to protect and repair
27 the restaurant in response to the Closure Orders and COVID-19, including breaking down the
28 restaurant's equipment and furniture and clean-up costs.

1 By including this virus exclusion, and explicitly stating it applies only to forms *other* than the
 2 SPECIAL PROPERTY COVERAGE FORM, the Policy makes it clear that this virus exclusion
 3 does not apply to the additional coverages alleged above, which give rise to plaintiff's claims.

4 64. Finally, the Policy also has an "Optional" coverage for "Limited Fungi, Bacteria,
 5 or Virus Coverage," which provides additional coverage for certain virus-related losses. *Id.* at 127.

6 CLASS ALLEGATIONS

7 65. Pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), 23(b)(3) and 23(c)(4),
 8 plaintiff brings this action on behalf of itself and all others similarly situated, and seeks to represent
 9 the following nationwide classes:

10 a. **Nationwide Declaratory and California subclass and Injunctive Relief Class.**

11 All policyowners subject to a Closure Order that are insured by one of the
 12 defendant's policies which contains **Business Income, Civil Authority, Extra**
 13 **Expense, or Sue and Labor** coverage on terms similar to the plaintiff's Policy
 14 ("collectively, the Policies") which were in effect at any time during the COVID-
 15 19 pandemic.

16 b. **Nationwide Breach of Contract Class.** All policyholders of defendant who made
 17 a claim and were denied coverage under one of defendant's Policies due to COVID-
 18 19.

19 c. **Nationwide Virus Endorsement Class.** All policyholders who purchased one of
 20 defendant's Policies which contains **Limited Fungi, Bacteria or Virus Coverage**
 21 on terms similar to the plaintiff's policy, which were in effect at any time during
 22 the COVID-19 pandemic and were denied coverage due to COVID-19.

23 d. **California Subclass.** All policyholders who purchased one of defendant's Policies
 24 in California and were denied coverage due to COVID-19.

25 Excluded from the Classes are defendant; any of the officers, directors, or employees of the
 26 defendant; and the legal representatives, successors, and assigns of the defendant.

27 66. Plaintiff's Classes satisfy the numerosity, commonality, typicality, adequacy, and
 28 superiority requirements of a class action under Rule 23, as alleged more fully herein.

1 67. **Numerosity.** COVID-19 has impacted thousands of businesses across the country
2 and defendant is a nationwide insurer which, on information and belief, issued thousands of
3 Policies with the relevant provisions both in California and nationwide. Consequently, members
4 of each Class are so numerous that individual joinder of all Class members is impracticable. Class
5 members and California Subclass members may be informed of the pendency of this class action
6 through recognized, Court-approved notice dissemination methods, including direct mail or other
7 means based on defendant's records of its policyholders.

8 68. **Commonality.** There are predominant questions of fact and law common to the
9 Classes. These include, without limitation, the following:

- 10 a. Do the Policies cover losses resulting from the Closure Orders and COVID-19?
- 11 b. Do the Policies cover losses resulting from state and local Closure Orders requiring
12 the suspension or reduction in business?
- 13 c. Has defendant wrongfully denied claims for losses resulting from COVID-19
14 and/or the Closure Orders?
- 15 d. Does the **Business Income** coverage of the Policies cover losses due to COVID-19
16 and the Closure Orders?
- 17 e. Does the **Civil Authority** coverage of the Policies cover losses due to COVID-19
18 and the Closure Orders issued by state and local governments?
- 19 f. Does the **Extra Expense** coverage of the Policies cover losses due to COVID-19
20 or the Closure Orders?
- 21 g. Does the **Sue and Labor** coverage of the Policies cover losses due to COVID-19
22 or the Closure Orders?
- 23 h. Does the **Virus Endorsement** coverage of the Policies cover losses due to COVID-
24 19 or the Closure Orders?
- 25 i. Has defendant breached its Policies by refusing to cover COVID-19 related losses?
- 26 j. Are Class members entitled to reasonable attorneys' fees and expenses?

1 69. **Predominance.** The common questions predominate over any individual issues in
2 the action. Thousands of business are impacted by defendant’s denial of coverage for COVID-19
3 losses and their claims arise from a common factual predicate, which is the nationwide shutdown
4 and suspension of activities due to the virus and Closure Orders. On information and belief,
5 defendant has denied these COVID-19 claims in form letters that give substantially the same,
6 classwide reasons for the denial of coverage. The Policies are written on form contracts that are
7 common to the Classes, and the breach will be common to the Classes.

8 70. **Typicality.** Plaintiff’s claims are typical of those of the Classes because plaintiff
9 and other Class members have the same or similar policy provisions, their losses stem from
10 COVID-19 and the Closure orders, they are similarly situated with respect to defendant’s reasons
11 for denial of coverage, and their claims arise from the same legal theories.

12 71. **Superiority.** A class action is the superior method for the fair and efficient
13 adjudication of this controversy. Defendant has acted on grounds applicable to the Classes and
14 California Subclass. Individualized litigation would create a risk of inconsistent and varying
15 adjudications, would establish incompatible standards of conduct for defendant, and substantially
16 impairs or impedes the ability of Class members to protect their interests, given that individual
17 claims may too expensive to litigate.

18 72. **Declaratory Relief – Rule 23(b)(2).** Defendant has acted or refused to act on
19 grounds applicable to the Classes and California Subclass, making injunctive and declaratory relief
20 as described below appropriate. Specifically, defendant has denied COVID-19 claims on similar
21 grounds, under similar Policies, and in similar factual circumstances.

22 73. **Adequacy.** Plaintiff is an adequate representative of the Classes and California
23 Subclass because it is a member of the Classes and its interests do not conflict with the interests
24 of those it seeks to represent. Plaintiff’s counsel, who have extensive experience prosecuting
25 complex class litigation, along with plaintiff will fairly and adequately protect the interests of the
26 Classes.

27 74. **Issue Class and Modification of Class Definitions and Creation of Subclasses.**
28 In the alternative, plaintiff reserves the right to seek certification of one or more common issues

1 pursuant to Rule 23(c)(4), and to modify the class definition, including by seeking certification of
2 subclasses for policyholders with each of the following Policy provisions: **Business Income, Civil**
3 **Authority, Extra Expense, Sue and Labor, and Virus Endorsement**, or other subclasses as may
4 be appropriate or necessary.

5 **FIRST CLAIM FOR RELIEF**

6 **BREACH OF CONTRACT – BUSINESS INCOME**

7 **(On behalf of Nationwide Breach of Contract Class and California Subclass)**

8 75. The preceding paragraphs are incorporated by reference as if fully alleged herein.

9 76. Plaintiff and the Class purchased property coverage policies from defendant.

10 77. Plaintiff and the Class substantially performed their obligations under the Policies
11 including giving defendant notice of the claim. Alternatively, defendant has waived any
12 conditions, terms or defenses to coverage.

13 78. The Policies are enforceable contracts between the defendant and plaintiff and
14 Class members.

15 79. Plaintiff and the Class have sustained a loss under the Business Income coverage
16 in the Policies due to the COVID-19 virus and Closure Orders.

17 80. Defendant has wrongfully refused to pay the claim for Business Income, and
18 instead has requested information not necessary to determine coverage.

19 81. Defendant has denied claims for Business Income related to COVID-19 on a
20 uniform and classwide basis, in breach of the Policies.

21 82. As a direct and proximate result of defendant’s breaches, plaintiff and the members
22 of the Class have sustained damages in an amount to be determined at trial.

23 **SECOND CLAIM FOR RELIEF**

24 **DECLARATORY AND INJUNCTIVE RELIEF – BUSINESS INCOME**

25 **(On behalf of Nationwide Declaratory Judgment
and Injunctive Relief Class and California Subclass)**

26 83. The preceding paragraphs are incorporated by reference as if fully alleged herein.

27 84. The Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, allows this Court to
28 declare the rights and other legal relations of the parties to this dispute.

1 85. An actual controversy has arisen and now exists between plaintiff and the Class, on
2 the one hand, and defendant, on the other hand, concerning the respective rights and duties of the
3 parties under the Policies. On or about March 30, 2020, plaintiff requested coverage for COVID-
4 19-related losses through its agent. Defendant responded with a letter denying coverage and
5 seeking information that is not reasonably necessary to evaluate plaintiff's claim. Defendant is in
6 breach of its obligations by refusing to provide coverage despite having sufficient information to
7 evaluate and pay the claim.

8 86. Moreover, upon information and belief, defendant has denied its insureds' claims
9 related to Closure Orders and COVID-19 on a uniform and classwide basis, without individual
10 bases or investigations, such that the Court can render declaratory judgment irrespective of
11 whether members of the Class have filed a claim for coverage.

12 87. Plaintiff seeks a declaration of the parties' respective rights and duties under the
13 Policies and requests the Court declare the conduct of defendant alleged above to be unlawful and
14 in material breach of the Policies so that future controversies may be avoided. Specially, plaintiff
15 seeks a declaration that:

- 16 a. The losses incurred in connection with COVID-19 and the Closure Orders are
17 insured losses under plaintiff's and class members' Policies; and
18 b. Sentinel is obligated to pay policyowners the full amount of the Business Income
19 losses incurred and to be incurred in connection with COVID-19 and the Closure
20 Orders during the period of restoration and the necessary suspension of their
21 business operations.

22 88. Plaintiff further seeks an injunction enjoining defendant (1) from continuing to
23 engage in breaching its coverage obligations under the Business Income Coverage Extension; and
24 (2) ordering defendant to comply with the terms of the Policies regarding to coverage decisions.

25 **THIRD CLAIM FOR RELIEF**

26 **DECLARATORY AND INJUNCTIVE RELIEF – CIVIL AUTHORITY**
27 **(On behalf of Nationwide Declaratory Judgment and**
28 **Injunctive Relief Class and California Subclass)**

89. The preceding paragraphs are incorporated by reference as if fully alleged herein.

1 90. The Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, allows this Court to
2 declare the rights and other legal relations of the parties to this dispute.

3 91. An actual controversy has arisen and now exists between plaintiff and the Class, on
4 the one hand, and defendant, on the other hand, concerning the respective rights and duties of the
5 parties under the Policies. On or about March 30, 2020, plaintiff requested coverage for COVID-
6 19-related losses through its agent. Defendant responded with a letter wrongfully denying coverage
7 and seeking information that is not reasonably necessary to evaluate plaintiff's claim. Defendant
8 is in breach of its obligations under the Policy by refusing to provide coverage despite having
9 sufficient information to evaluate and pay plaintiff's claims.

10 92. Moreover, upon information and belief, defendant has denied claims related to
11 Closure Orders and COVID-19 on a uniform and classwide basis, without individual bases or
12 investigations, such that the Court can render declaratory judgment irrespective of whether
13 members of the Class have filed a claim for coverage.

14 93. Plaintiff therefore seeks a declaration of the parties' respective rights and duties
15 under the Policies and requests the Court declare the conduct of defendant alleged above to be
16 unlawful and in material breach of the Policies so that future controversies may be avoided.
17 Specially, plaintiff seeks a declaration that:

- 18 a. The losses incurred in connection with COVID-19 and the Closure Orders are
19 insured losses under plaintiff's and class members' Policies; and
20 b. Sentinel is obligated to pay policyowners the full amount of the Civil Authority
21 losses incurred and to be incurred in connection with the Closure Orders during the
22 period of restoration and the necessary suspension of their businesses.

23 94. Plaintiff further seeks an injunction enjoining defendant (1) from continuing to
24 engage in breaching its coverage obligations under the Civil Authority Coverage Extension; and
25 (2) ordering defendant to comply with the terms of the Policies regarding to coverage decisions.

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FOURTH CLAIM FOR RELIEF

BREACH OF CONTRACT – CIVIL AUTHORITY

(On behalf of Nationwide Breach of Contract Class and California Subclass)

95. The preceding paragraphs are incorporated by reference as if fully alleged herein.

96. Plaintiff and the Class purchased property coverage policies from defendant.

97. Plaintiff and the Class substantially performed their obligations under the Policies including giving defendant notice of the claim. Alternatively, defendant has waived any conditions, terms or defenses to coverage.

98. The Policies are enforceable contracts between the defendant and plaintiff and Class members.

99. Plaintiff and the Class have sustained a loss under the Civil Authority Coverage in the Policies due to the COVID-19 virus and Closure Orders.

100. Defendant has refused to pay the claim for Civil Authority coverage, and instead has requested information not necessary to determine coverage.

101. Defendant has denied claims for Civil Authority related to COVID-19 on a uniform and classwide basis, in breach of the Policies.

102. As a direct and proximate result of defendant’s breaches, plaintiff and the Class have sustained damages in an amount to be determined at trial.

FIFTH CLAIM FOR RELIEF

**DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF –
EXTRA EXPENSE**

**(On behalf of Nationwide Declaratory Judgment and
Injunctive Relief Class and California Subclass)**

103. The preceding paragraphs are incorporated by reference as if fully alleged herein.

104. The Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, allows this Court to declare the rights and other legal relations of the parties to this dispute.

105. An actual controversy has arisen and now exists between plaintiff and the Class, on the one hand, and defendant, on the other hand, concerning the respective rights and duties of the parties under the Policies. On or about March 30, 2020, plaintiff requested coverage for COVID-19-related losses through its agent. Defendant responded with a letter denying coverage and

1 seeking information that is not reasonably necessary to evaluate its claim. Defendant is in breach
2 of its obligations by refusing to provide coverage despite having sufficient information to evaluate
3 and pay the claim.

4 106. Moreover, upon information and belief, defendant has denied claims related to
5 Closure Orders and COVID-19 on a uniform and classwide basis, without individual bases or
6 investigations, such that the Court can render declaratory judgment irrespective of whether
7 members of the Class have filed a claim for coverage.

8 107. Plaintiff therefore seeks a declaration of the parties' respective rights and duties
9 under the Policies and requests the Court declare the conduct of defendant alleged above to be in
10 breach of the Policies so that future controversies may be avoided. Specially, plaintiff seeks a
11 declaration that:

- 12 a. The losses incurred in connection with COVID-19 and the Closure Orders are
13 insured losses under plaintiff's and class members' Policies; and
14 b. Sentinel is obligated to pay policyowners the full amount of the Extra Expense
15 losses incurred and to be incurred in connection with COVID-19 and the Closure
16 Orders during the period of restoration and the necessary suspension of their
17 businesses.

18 108. Plaintiff further seeks an injunction enjoining defendant (1) from continuing to
19 engage in breaching its coverage obligations under the Extra Expense Coverage Extension; and
20 (2) ordering defendant to comply with the terms of the Policies regarding to coverage decisions.

21 **SIXTH CLAIM FOR RELIEF**

22 **BREACH OF CONTRACT – EXTRA EXPENSE**

23 **(On behalf of Nationwide Breach of Contract Class and California Subclass)**

24 109. The preceding paragraphs are incorporated by reference as if fully alleged herein.

25 110. Plaintiff and the Class purchased property coverage policies from defendant.

26 111. Plaintiff and the Class substantially performed their obligations under the Policies
27 including giving defendant notice of the claim. Alternatively, defendant has waived any
28 conditions, terms or defenses to coverage.

1 112. The Policies are enforceable contracts between the defendant and plaintiff and
2 Class members.

3 113. Plaintiff and the Class have sustained a loss under the Extra Expense Coverage in
4 the Policies due to the COVID-19 virus and Closure Orders.

5 114. Defendant has refused to pay the claim for Extra Expense, and instead has requested
6 information not necessary to determine coverage.

7 115. Defendant has denied claims for Extra Expense related to COVID-19 on a uniform
8 and classwide basis, in breach of the Policies.

9 116. As a direct and proximate result of defendant’s breaches, plaintiff and the Class
10 have sustained damages in an amount to be determined at trial.

11 **SEVENTH CLAIM FOR RELIEF**
12 **DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF –**
13 **SUE AND LABOR**
14 **(On behalf of Nationwide Declaratory Judgment and**
15 **Injunctive Class and California Subclass)**

16 117. The preceding paragraphs are incorporated by reference as if fully alleged herein.

17 118. The Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, allows this Court to
18 declare the rights and other legal relations of the parties to this dispute.

19 119. An actual controversy has arisen and now exists between plaintiff and the Class, on
20 the one hand, and defendant, on the other hand, concerning the respective rights and duties of the
21 parties under the Policies. On or about March 30, 2020, plaintiff requested coverage for COVID-
22 19-related losses through its agent. Defendant responded with a letter denying coverage and
23 seeking information that is not reasonably necessary to evaluate its claim. Defendant is in breach
24 of its obligations by refusing to provide coverage despite having sufficient information to evaluate
25 and pay the claim.

26 120. Moreover, upon information and belief, defendant has denied claims related to
27 Closure Orders and COVID-19 on a uniform and classwide basis, without individual bases or
28 investigations, such that the Court can render declaratory judgment irrespective of whether
members of the Class have filed a claim for coverage.

1 Orders during the period of restoration and the necessary suspension of their
2 businesses.

3 136. Plaintiff further seeks an injunction enjoining defendant (1) from continuing to
4 engage in breaching its coverage obligations under the Virus Endorsement Coverage Extension;
5 and (2) ordering defendant to comply with the terms of the Policies regarding to coverage
6 decisions.

7 **TENTH CLAIM FOR RELIEF**

8 **BREACH OF CONTRACT – VIRUS ENDORSEMENT**

9 **(On behalf of Nationwide Breach Class and California Subclass)**

10 137. The preceding paragraphs are incorporated by reference as if fully alleged herein,
11 and this claim is pled in the alternative.

12 138. Plaintiff and the Class purchased property coverage policies from defendant.

13 139. Plaintiff and the Class substantially performed their obligations under the Policies
14 including giving defendant notice of the claim. Alternatively, defendant has waived any
15 conditions, terms or defenses to coverage.

16 140. The Policies are enforceable contracts between the defendant and plaintiff and
17 Class members.

18 141. Plaintiff and the Class have sustained a loss under the Virus Endorsement Coverage
19 in the Policies due to the COVID-19 virus and Closure Orders.

20 142. Defendant has refused to pay the claim for Virus Endorsement, and instead has
21 requested information not necessary to determine coverage.

22 143. Defendant has denied claims for Virus Endorsement related to COVID-19 on a
23 uniform and classwide basis, in breach of the Policies.

24 144. As a direct and proximate result of defendant’s breaches, plaintiff and the Class
25 have sustained damages in an amount to be determined at trial.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, plaintiff, individually and on behalf of all others similarly situated,
28 requests relief and judgment against defendant as follows:

- 1 1. That the Court enter an order certifying the classes, appointing plaintiff as a
- 2 representative of the classes, appointing plaintiff's counsel as class counsel, and directing that
- 3 reasonable notice of this action, as provided by Federal Rule of Civil Procedure 23(c)(2), be given
- 4 to the Class;
- 5 2. For a judgment against defendant for the claims for relief alleged against it;
- 6 3. For damages in an amount to be proven at trial;
- 7 4. For a declaration that defendant's conduct as alleged herein is unlawful and in
- 8 material breach of the Policies;
- 9 5. For appropriate injunctive relief, enjoining defendant from continuing to breach of
- 10 the Policies;
- 11 6. For pre-judgment and post-judgment interest at the maximum rate permitted by
- 12 law;
- 13 7. For plaintiff's attorney's fees;
- 14 8. For plaintiff's costs incurred; and for such other relief as the Court deems just and
- 15 proper.

16
17 Dated: June 2, 2020

Respectfully submitted,

MARC M. SELTZER
STEVEN SKLAVER
SETH ARD
SUSMAN GODFREY L.L.P.

21 By: /s/ Mark M. Seltzer
22 Marc M. Seltzer

23 *Attorneys for Plaintiff*

DEMAND FOR JURY TRIAL

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Plaintiff hereby demands a trial by jury of any issue triable by right of a jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: June 2, 2020

Respectfully submitted,

MARC M. SELTZER
STEVEN SKLAVER
SETH ARD
SUSMAN GODFREY L.L.P.

By: /s/ Mark M. Seltzer
Marc M. Seltzer

Attorneys for Plaintiff