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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ROBERT W. FOUNTAIN, INC., a California  
Corporation d/b/a ROBERT FOUNTAIN  
INTERNATIONAL; and ROBERT W.  
FOUNTAIN, an Individual and Its Sole Owner,

Plaintiffs,

v.

CITIZENS INSURANCE COMPANY OF  
AMERICA, a Michigan Corporation; and DOES  
1 to 20, Inclusive,

Defendants.

Case No.

CGC - 20 - 585165

COMPLAINT FOR:

1) BREACH OF CONTRACT  
2) DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

Comes now, Plaintiffs, who allege as follows:

THE PARTIES, JURISDICTION AND VENUE

1. At all times relevant hereto, Plaintiff ROBERT W. FOUNTAIN, INC. d/b/a ROBERT FOUNTAIN INTERNATIONAL ("RFI") was an is a corporation authorized to do business in California. Plaintiff ROBERT W. FOUNTAIN was and is at all times relevant hereto, an individual over the age of 18 and RFI's sole shareholder/owner (collectively, "Plaintiffs"). RFI is an internationally prominent and well-known event designer and producer with offices at 411 Vermont

BY FAX

FILED  
SUPERIOR COURT  
COUNTY OF SAN FRANCISCO

JUN 25 2020

CLERK OF THE COURT

BY: *Angelica Sunga*  
Deputy Clerk

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1 Street and 2021-2023 17<sup>th</sup> Street, in San Francisco, which serve from time to time as hosting venues for  
2 events that RFI designs and produces.

3 2. At all times relevant hereto, Defendant CITIZENS INSURANCE COMPANY OF  
4 AMERICA (“CITIZENS” or “Defendant”), a part of the Hanover Insurance Group, was and is an  
5 insurance company operating in the State of California to provide the property insurance coverage  
6 described herein.

7 3. Plaintiffs are informed and believe, and therefor allege, that at all relevant times  
8 described herein, Defendants, and each of them, were the agents, servants and employees of each of the  
9 remaining Defendants, and were at all times acting within the purpose, scope and authority of said  
10 agency, service and employment. In addition, each Defendant has ratified and approved the acts of  
11 each other Defendant acting for and on behalf of the former. There exists, and at all times herein  
12 mentioned has existed, a unity of interest and ownership between Defendants such that any  
13 separateness between them has ceased to exist in that Defendants controlled, dominated, managed, and  
14 operated the other Defendants to suit its convenience. There was such a unity of interest and ownership  
15 among Defendants that the individuality, or separateness, of them has ceased, and that the facts are such  
16 that an adherence to the fiction of the separate existence of these entities would, under the particular  
17 circumstances, sanction a fraud or promote injustice.

18 4. The true names or capacities, whether individual, corporate, associate, or otherwise, of  
19 defendants DOES 1 through 20, inclusive, are unknown to Plaintiffs, who therefore sue them as  
20 fictitiously named Defendants. Plaintiffs will amend this Complaint to allege their true names and  
21 capacities when ascertained. Each of these Defendants designated as a DOE legally and proximately  
22 caused injury and damages to Plaintiffs as herein alleged and are, therefore, responsible to Plaintiffs, as  
23 alleged herein for all damages requested by any Plaintiff.

24 5. Pursuant to Code of Civil Procedure §395(a), venue is appropriate in this court since the  
25 policy of insurance described herein was entered into in this County, and the obligations to be  
26 performed as described herein were to be performed there.

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1 GENERAL ALLEGATIONS

2 6. Effective May 1, 2019 through May 1, 2021, in return for an agreement by Plaintiff to  
3 pay the premium, CITIZENS and DOES 1-20 issued to Plaintiff Defendants’ “Business Owner’s  
4 Policy” No. OBF-9926622-07/08 (“the Policies”) providing, *inter alia*, insurance coverage for  
5 “Business Income and Extra Expense” coverage – sometime known as “business interruption” coverage  
6 – resulting from “direct physical loss of or damage to Covered Property” at premises described in the  
7 Policies. The “premises” covered by the Policies include two locations where, at all times relevant  
8 hereto, Plaintiffs maintained their prominent and esteemed event planning, design and production  
9 business in San Francisco, California (www.robbertfountain.com). A copy of what Plaintiff is  
10 informed and believes are the Policies is attached hereto and incorporated herein by this reference as  
11 **EXHIBITS 1 and 2.**

12 7. Effective March 17, 2020, and amended March 31, 2020, an Order was issued by the  
13 Department of Public Health, City and County of San Francisco, for all people in San Francisco to  
14 shelter in place at their residences and, further, for all businesses in San Francisco to cease all but  
15 specified limited operations at facilities located within the County of San Francisco.

16 8. Effective March 19, 2020, the Public Health Officer of the State of California issued  
17 Executive Order N-33-20, generally mandating that all individuals living in the State of California stay  
18 home or at their place of residence but for limited essential outings.

19 9. The aforementioned orders were issued for public health reasons as a result of a  
20 pandemic of a disease called coronavirus 2019, or COVID-19. Plaintiffs did not suffer from this virus  
21 nor was there evidence that it existed or even threatened their business establishment.

22 10. Because of these governmental orders, Plaintiffs were physically unable to utilize their  
23 business premises and thus lost the physical use thereof.

24 11. As a result of the above, Plaintiffs made a claim to Defendants for their business  
25 interruption coverage.

26 12. By letter dated March 27, 2020, Defendants denied Plaintiff’s claim on various bases,  
27 including, *inter alia*, that “there were no direct physical damages sustained to your described premises  
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1 or property due to a covered cause of loss. . . ,” despite Defendants’ knowledge of the circumstances  
2 outlined herein.

3 **FIRST CAUSE OF ACTION: BREACH OF CONTRACT**

4 13. Each and every allegation above in Paragraphs 1 through 12 is incorporated herein as  
5 part of this First Cause of Action.

6 14. Under the Policies, there existed between the Plaintiffs and Defendants a contractual  
7 relationship whereby Defendants had a duty to pay for Plaintiffs’ “actual loss of Business Income . . .  
8 sustain[ed] due to the necessary suspension of [their] ‘operations’ during a ‘period of restoration’ . . .  
9 caused by direct physical *loss of* or damage to the [insured property].” (Emphasis added.) “Business  
10 Income” includes “Net Income (Net Profit or Loss before income taxes)” and “[c]ontinuing normal  
11 operating expenses incurred, including payroll.” Defendants, however, have failed and refused to pay  
12 said sums, which are now due and owing as a result of Plaintiffs’ “loss of” the insured property. This  
13 failure and refusal to pay is a breach of the provisions of the Policy as an insurance contract.

14 15. Plaintiffs performed all of their obligations under the Policies, except for those, if any,  
15 they was excused from performing.

16 16. As a direct, proximate and legal result of these Defendants’ breaches of contract, and the  
17 failure to pay the sums described, Plaintiffs are, have been, and will continue to be damaged in that  
18 amount, as well as other damages caused by the failure to pay the promised sum. They seek and are  
19 owed those damages which Defendants have refused to pay Plaintiffs.

20 WHEREFORE, Plaintiffs pray for the relief as set forth herein.

21 **SECOND CAUSE OF ACTION: DECLARATORY RELIEF**

22 17. Each and every allegation above in Paragraphs 1 through 16 is incorporated herein as  
23 part of this Second Cause of Action.

24 18. Under California Code of Civil Procedure, §§1050 *et seq.*, this Court may declare rights,  
25 status, and other legal obligations regardless of whether further relief is or could be claimed.

26 Accordingly, Plaintiffs claim relief as set forth in this Second Cause of Action.

27 19. An actual controversy has arisen and now exists between Plaintiffs and Defendants  
28 concerning their respective rights and duties in that Plaintiffs contend they are entitled to the Policies’

1 proceeds and benefits, and damages, claimed herein, whereas Defendants dispute these contentions and  
2 contend that Plaintiffs are not so entitled.

3 20. Plaintiffs desire a judicial determination of their rights regarding the Policies and a  
4 declaration from the court affirming them. Thus, a judicial declaration is necessary and appropriate at  
5 this time under the circumstances in order that Plaintiffs may ascertain those rights and duties and  
6 enforce them under the law. Further, time is of the essence in that Plaintiffs continue to suffer  
7 business/economic losses which threaten their business operation and may require closure if they are  
8 not promptly paid what Defendants owe under the Policies, and thus Plaintiffs will suffer substantial  
9 and significant injury if the relief herein requested is not granted.


10 WHEREFORE, Plaintiffs pray for relief as follows:

11 PRAYER

- 12 1. For general and special damages according to proof,
- 13 2. For a Declaration of Rights as set forth herein,
- 14 3. For prejudgment and post-judgment interest as permitted by law and according to proof,
- 15 4. For costs of suit herein incurred, and
- 16 5. For such other and further relief as the Court may deem proper.

17  
18 DATED: June 19, 2020

19 KORNBLUM, COCHRAN, ERICKSON &  
20 HARBISON, LLP

21 By:   
22 GUY O. KORNBLUM  
23 Attorneys for PLAINTIFFS  
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DEMAND FOR JURY

Plaintiffs hereby demand a trial by jury in this matter on all triable issues.

DATED: June 19, 2020

KORNBLUM, COCHRAN, ERICKSON &  
HARBISON, LLP

By: 

GUY O. KORNBLUM  
Attorneys for PLAINTIFFS

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