

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MAIA SALON SPA AND WELLNESS CORP.,
MEHRYAR M. SADEGHI, MD, and OPTIMUM
HEALTH PHYSICAL THERAPY, PC,
individually and on behalf of all others similarly
situated,

Plaintiffs,

- against -

SENTINEL INSURANCE COMPANY, LTD, a
Connecticut corporation, and TWIN CITY FIRE
INSURANCE COMPANY, an Indiana
corporation,

Defendants.

Case No. 20-cv-3805

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff MAIA Salon Spa and Wellness Corp. (“MAIA”), Plaintiff Mehryar M. Sadeghi, MD (“Sadeghi”), and Plaintiff Optimum Health Physical Therapy, PC (“Optimum Health”) (together, “Plaintiffs”), bring this Class Action Complaint and Demand for Jury Trial against Defendant Sentinel Insurance Company, LTD (“Sentinel”) and Defendant Twin City Fire Insurance Company (“Twin City”) (collectively, “Defendants” or “Hartford”)¹ for wrongfully denying their claims under an all-risk Hartford property insurance policy for losses sustained due to the ongoing COVID-19 pandemic. Plaintiffs allege as follows upon personal knowledge as to themselves and their own acts and experiences and, as to all other matters, upon information and belief, including investigation conducted by their attorneys:

NATURE OF THE ACTION

1. Plaintiff MAIA operates a salon and spa offering a full range of services to its

¹ Defendants are both wholly owned subsidiaries of The Hartford Financial Services Group, Inc.

customers, from hair and nail services to facials and massage therapy. Unfortunately, MAIA was forced to close its doors to the public—through no fault of its own—as a result of the COVID-19 global pandemic and pursuant to orders of civil authority (the “Closure Orders,” defined below), bringing its business to a standstill. The Closure Orders initially required MAIA to cease 100% of its business operations because, as a salon and spa, it is considered a “non-essential” business by the State of New York. The closure of and subsequent stringent limits placed on MAIA’s salon and spa has resulted in catastrophic business income loss and significant extra expense.

2. Plaintiff Mehryar M. Sadeghi, MD is an ophthalmologist who has operated an eye surgeon practice for over 20 years, and has expanded his practice to two locations in Brooklyn, New York. Unfortunately, Dr. Sadeghi was forced to close his practice to the public—through no fault of his own—as a result of the COVID-19 global pandemic and pursuant to the Closure Orders, bringing his business to a standstill. The Closure Orders initially required Dr. Sadeghi to cease 100% of his business operations because, as an eye surgeon practice, it is considered a “non-essential” business by the State of New York. The closure of and subsequent stringent limits placed on Dr. Sadeghi’s ophthalmology practice has resulted in catastrophic business income loss and significant extra expense.

3. Plaintiff Optimum Health has operated a physical therapy practice for over seven years, and in March of 2019, expanded its practice to two facilities, both in Brooklyn, New York. Unfortunately, due to the COVID-19 global pandemic and pursuant to the Closure Orders, Optimum Health has been forced to significantly limit its practice—through no fault of its own—resulting in catastrophic business income loss and significant extra expense. Optimum Health, as a physical therapy practice, is considered an “essential business” by the State of New York.

4. To protect their businesses in situations like these, Plaintiffs obtained business

interruption insurance from Defendants, as set forth in the Hartford Special Property Coverage Form, No. SS 00 07 07 05 (the “Special Property Coverage Form”). The Special Property Coverage Form provides, *inter alia*, “Business Income” coverage, “Extended Business Income” coverage, “Extra Expense” coverage, and “Civil Authority” coverage.

5. However, in blatant breach of the insurance obligations that Defendants voluntarily undertook in exchange for Plaintiffs’ premium payments, Defendants issued blanket denials to Plaintiffs’ claims for Business Income losses or other covered Extra Expenses related to COVID-19 or the Closure Orders. Finding themselves in troubled times with an onslaught of insurance claims related to COVID-19, Defendants abandoned the industry’s established standards of good faith and fair dealing, instead issuing categorical denials without any meaningful coverage investigations, hoping to deter policyholders from pursuing their rights, and forcing Plaintiffs to file this lawsuit to enforce their covered benefits under the policies they purchased.

6. As a result of Defendants’ wrongful denial of coverage, Plaintiffs bring this action, on behalf of themselves and all those similarly situated, for declaratory judgement establishing that the COVID-19 pandemic has caused physical property loss and/or physical damage to property and triggers coverage under the Special Property Coverage Form; for breach of Defendants’ contractual obligations under the Special Property Coverage Form to indemnify Plaintiffs and others similarly situated for Business Income losses and Extra Expenses; and for violations of New York’s General Business Law (GBL) § 349 *et seq.*

PARTIES

7. Plaintiff MAIA Salon Spa and Wellness Corp. is a corporation incorporated and existing under the laws of the State of New York with its principal place of business located at

725 Smithtown Bypass, Smithtown, New York 11787.

8. Plaintiff Sadeghi is the sole proprietor of an eye surgeon practice doing business as Eye Care Center of Park Slope and Eye Care Center of Kensington with two facilities located at 59 8th Avenue, Brooklyn, New York 11217 and 503 Church Avenue, Brooklyn, New York 11218.

9. Plaintiff Optimum Health Physical Therapy, PC is a professional corporation incorporated and existing under the laws of the State of New York with its principal place of business at 416 Bay Ridge Parkway, Brooklyn, New York 11209.

10. Defendant Sentinel Insurance Company, LTD is an insurance company and wholly owned subsidiary of The Hartford Financial Services Group, Inc. organized under the laws of Connecticut with its principal place of business at One Hartford Plaza, Hartford, Connecticut 06155. Defendant Sentinel is engaged in the business of selling Hartford insurance contracts to commercial entities such as Plaintiffs in the State of New York and elsewhere, and otherwise conducts business throughout this District, the State of New York, and the United States.

11. Defendant Twin City Fire Insurance Company is an insurance company and wholly owned subsidiary of The Hartford Financial Services Group, Inc. organized under the laws of Indiana with its principal place of business at 501 Pennsylvania Parkway, Suite 400, Indianapolis, Indiana 46280. Defendant Twin City is engaged in the business of selling Hartford insurance contracts to commercial entities such as Plaintiffs in the State of New York and elsewhere, and otherwise conducts business throughout this District, the State of New York, and the United States.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(a) because there is complete diversity between the parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

13. This Court also has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2) because (i) at least one member of the Class is a citizen of a different state than any Defendant, (ii) the amount in controversy exceeds \$5,000,000, exclusive of interests and costs, and (iii) none of the exceptions under that section apply.

14. This Court has personal jurisdiction over Defendants pursuant to New York's "long arm statute." N.Y. C.P.L.R. 302. At all relevant times, Defendants have submitted to jurisdiction in this State by: (a) transacting business within New York and (b) contracting to insure persons, properties, or risks located within New York at the time of contracting. N.Y. C.P.L.R. 302(a)(1).

15. This Court has jurisdiction to grant declaratory relief under 28 U.S.C. § 2201 because an actual controversy exists between the parties as to their respective rights and obligations under the Policies with respect to the loss of Business Income and Extra Expense arising from the events detailed herein.

16. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to Plaintiffs' claims occurred in Brooklyn, New York and Smithtown, New York, both of which are located within the Eastern District of New York.

FACTUAL BACKGROUND

I. The Hartford All-Risk Policy.

17. Defendant Sentinel issued to Plaintiff MAIA Policy No. 12 SBA UN4432 DW for

the policy period between September 1, 2019 to September 1, 2020. The policy covers MAIA's premises located at 725 Smithtown Bypass, Smithtown, New York 11787.

18. Defendant Twin City issued to Plaintiff Mehryar M. Sadeghi, MD Policy No. 33 SBA AC6332 SA for the policy period between February 27, 2020 to February 27, 2021. The policy covers Dr. Sadeghi's premises located at 59 8th Avenue, Brooklyn, New York 11217 and 503 Church Avenue, Brooklyn, New York 11218.

19. Defendant Sentinel issued to Plaintiff Optimum Health Policy No. 10 SBA BC7971 SB for the policy period between August 29, 2019 to August 29, 2020. The policy covers Optimum Health's premises located at 416 Bay Ridge Parkway, Brooklyn, New York 11209 and 477 Atlantic Avenue, Brooklyn, New York 11217.

20. In exchange for substantial premiums, Defendants sold Plaintiffs identical versions of the Special Property Coverage Form, which include several additional coverages, including "Business Income," "Extended Business Income," "Extra Expense," and "Civil Authority," coverages. Each Plaintiff's Special Property Coverage Form is included within the policies attached as Exhibits A–C (together, the "Policies").

21. The Policies are "all-risk" policies, meaning that the Policies cover all risks of loss unless the risk is expressly and specifically excluded or limited.

22. Plaintiffs have performed all of their obligations under the Policies, including the payment of premiums.

A. Business Income and Extended Business Income Coverage

23. One type of coverage provided by the Policies is for loss of business income, often called "business interruption" insurance. "Business Income" coverage is specifically provided as an additional coverage in the Special Property Coverage Form, Form SS 00 07 07

05.

24. Pursuant to the Special Property Coverage Form, Defendants agreed to “pay for the actual loss of Business Income” sustained by Plaintiffs “due to the necessary suspension of [their] ‘operations’ during the ‘period of restoration.’” (Special Property Coverage Form, § A.5.o.(1).)

25. The “suspension must be caused by direct physical loss of or physical damage to property” at the insured premises. (*Id.*) “Suspension” under the Business Income coverage means: (a) “[t]he partial slowdown or complete cessation of [Plaintiffs’] business activities;” or (b) “[t]hat part or all of the ‘scheduled premises’ is rendered untenable as a result of a Covered Cause of Loss if coverage for Business Income applies to the policy.” (*See id.*, § A.5.o.(5).)

26. “Business income” is defined in relevant part as “Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no direct physical loss or physical damage had occurred” plus “[c]ontinuing normal operating expenses incurred, including payroll.” (*See id.*, § A.5.o.(4).)

27. The Special Property Coverage Form also contains additional coverage for “Extended Business Income.” (*Id.*, § A.5.r.) Pursuant to this additional coverage, Defendants agreed to pay for Plaintiffs’ actual losses of business income that occur after the property is restored. The Extended Business Income period begins when the property is actually repaired and operations are resumed, and continues (i) until the date Plaintiffs “could restore [their] ‘operations’ with reasonable speed, to the condition that would have existed if no direct physical loss or damage occurred” or (ii) for 30 consecutive days, whichever occurs sooner. (*Id.* § A.5.r.(1).)

B. Extra Expense Coverage

28. Under the Special Property Coverage Form, Defendants also promised to “pay reasonable and necessary Extra Expense” Plaintiffs incur during the period of interruption that they “would not have incurred if there had been no direct physical loss or physical damage to property at the ‘scheduled premises[.]’” (*Id.*, § A.5.p.(1).)

29. “Extra Expense” is defined in relevant part as any expense incurred (i) “[t]o avoid or minimize the suspension of business and to continue ‘operations’ [a]t the ‘scheduled premises’; (ii) “[t]o minimize the suspension of business if [Plaintiffs] cannot continue ‘operations’”; or (iii) “to [r]epair or replace any property[.]” (*See id.*, § A.5.p.(3).)

30. Defendants agreed to pay Plaintiffs’ Extra Expenses for 12 consecutive months after the date of the physical loss or damage. (*Id.*)

C. Civil Authority Coverage

31. The Policies also provide “Civil Authority” coverage under the Special Property Coverage Form. Under the Civil Authority coverage provision, Defendants promised to pay for Plaintiffs’ actual loss of Business Income “when access to [Plaintiffs’] ‘scheduled premises’ is specifically prohibited by order of a civil authority.” The order must be a “direct result of a Covered Cause of Loss to property in the immediate area of [Plaintiffs’] ‘scheduled premises’” for Civil Authority coverage to be triggered.

* * * * *

32. The Special Property Coverage Form contains specific exclusions, but none mention viruses or pandemics. (*See* Special Property Coverage Form, § B.)

33. The COVID-19 pandemic and the related Closure Orders triggered the Business Income, Extended Business Income, Extra Expense, and Civil Authority coverages provided by

the Policies.

II. The COVID-19 Pandemic.

34. For years, if not decades, the Center for Disease Control and Prevention (“CDC”) along with the World Health Organization (“WHO”) have been warning about the possibility of an airborne virus that could cause a worldwide pandemic.

35. COVID-19 is a highly contagious airborne virus that has rapidly spread and continues to spread across the United States.

36. COVID-19 is a physical substance and an organic human pathogen that travels through respiratory droplets. The virus physically transforms the air exposed to it and attaches itself to surfaces and structures.

37. The COVID-19 virus spreads primarily by “fomite”—meaning objects, materials, or surfaces that have been physically contaminated or infected by respiratory droplets—and can survive on surfaces for extended periods of time. Recent information on the CDC’s website provides that COVID-19 spreads when people are within six feet of each other or when a person comes in contact with a surface or object that has the virus on it.²

38. According to a scientific study in *The New England Journal of Medicine*, the coronavirus responsible for the COVID-19 disease—SARS-CoV-2—can physically infect and survive on surfaces for up to 72 hours.³

39. Another scientific study documented in the *Journal of Hospital Infection* found

² *How COVID-19 Spreads*, Ctr. for Disease Control and Prevention (April 13, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

³ Neeltje van Doremalen, Ph.D., et al., *Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1*, *The New England Journal of Medicine* (April 16, 2020), available at <https://www.nejm.org/doi/pdf/10.1056/NEJMc2004973?articleTools=true>.

that human coronaviruses, such as COVID-19, can remain infectious on inanimate surfaces at room temperature for up to nine days.⁴

40. While in some cases asymptomatic, COVID-19 is also known to cause severe and sometimes fatal respiratory failure. This, in addition to the highly contagious nature of COVID-19, renders any property exposed to the contagion unsafe and dangerous.

41. On March 11, 2020, the WHO declared that the emerging threat of COVID-19 constituted a global pandemic.⁵

42. While some rogue media outlets have downplayed the danger and impact of the COVID-19 pandemic, the scientific community and those personally and professionally affected by the virus recognize COVID-19 as a cause of real physical loss and damage. Recently, the Pennsylvania Supreme Court found that the COVID-19 pandemic constitutes a “natural disaster,” namely because, like other identified natural disasters, it involves “substantial damage to property, hardship, suffering or possible loss of life.” *Friends of DeVito v. Wolf*, No. 68 MM 2020, 2020 WL 1847100, at 10 (Pa. Apr. 13, 2020).

43. Governmental authorities and public health officials around the country have similarly acknowledged that a pandemic causes direct physical loss and damage to property. For example:

- a. The State of Colorado issued a public health order indicating that “COVID-19 ... **physically contributes to property loss, contamination, and damage...**” (Emphasis added);

⁴ See G. Kampf, et al. *Persistence of coronavirus on inanimate surfaces and their inactivation with biocidal agents* (February 06, 2020), available at <https://www.journalofhospitalinfection.com/action/showPdf?pii=S0195-6701%2820%2930046-3>.

⁵ See *WHO Director-General’s opening remarks at the media briefing on COVID-19*, World Health Organization (March 11, 2020), available at <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

- b. The State of Washington issued a stay-at-home proclamation stating the “COVID-19 pandemic and its progression ... remains a public disaster affecting life, health, [and] **property**...” (Emphasis added);
- c. The State of Indiana issued an executive order recognizing that COVID-19 has the “propensity to **physically impact surfaces and personal property**.” (Emphasis added);
- d. The City of New Orleans issued an order stating “there is reason to believe that COVID-19 may spread amongst the population by various means of exposure, including the propensity to attach to surfaces for prolonged period of time, thereby spreading from surface to person and **causing property loss and damage** in certain circumstances.” (Emphasis added);
- e. The State of New Mexico issued a public health order acknowledging the “threat” COVID-19 “poses” to “**property**.” (Emphasis added);
- f. North Carolina issued a statewide executive order in response to the COVID-19 pandemic not only “to assure adequate protection for lives,” but also to “assure adequate protection of... **property**.” (Emphasis added); and
- g. The City of Los Angeles issued an order in response to COVID-19 “because, among other reasons, the COVID-19 virus can spread easily from person to person and it is **physically causing property loss or damage** due to its tendency to attach to surfaces for prolonged periods of time.” (Emphasis added).

44. As these orders all recognize, during a pandemic, the presence of people—whether confirmed carriers of COVID-19 or not—in places, like Plaintiffs’ insured premises, where business operations require frequent person-to-person and person-to-surface interactions, renders those places unsafe and unusable.

III. The Closure Orders and Other Action by Governmental Authorities.

45. Civil authorities across the country promptly responded to the presence of COVID-19 in their jurisdictions by entering civil authority orders suspending or severely curtailing business operations of businesses that interact with the public and provide gathering places for individuals, including in cities and states with jurisdiction over Plaintiffs’ insured

premises (the “Closure Orders”).

46. As discussed below, all of the various Closure Orders affecting Plaintiffs’ insured premises were issued in direct response to both the spread and physical presence of COVID-19 on persons and property throughout the areas immediately surrounding Plaintiffs’ insured premises as well as the hazards posed by exposure to *any* human respiratory droplets. At the time the Closure Orders were issued, civil authorities had confirmed that properties and premises throughout their respective jurisdictions contained COVID-19 particles on surfaces and items of property. At the same time, they acknowledged that the emergency posed by the COVID-19 pandemic stemmed, in part, from the unavailability of reliable and efficient virus testing. In other words, under pandemic conditions, exposure to *any* human respiratory droplets posed a serious hazard to public health, grave enough to invoke the authorities’ emergency powers.

47. In issuing the Closure Orders, the civil authorities also recognized that the spread of COVID-19 throughout their respective jurisdictions and the risks posed by hazardous human respiratory droplets could not be sufficiently abated by cleaning and disinfecting frequently used surfaces in public settings; it mandated that access to such surfaces be suspended altogether.

48. Plaintiff MAIA and Plaintiff Sadeghi, as “non-essential” businesses, suspended 100% of their business operations at each of their insured locations as a result of the spread of COVID-19 in the areas surrounding their insured premises and/or the Closure Orders described below.

49. Plaintiff Optimum Health, as an “essential” business, significantly limited its business operations at each of its insured locations as a result of the spread of COVID-19 in the areas surrounding their insured premises and/or the Closure Orders described below.

A. New York Declares a Public Health Emergency in March.

50. New York has been called the “epicenter” of the global COVID-19 outbreak.⁶

51. The State of New York confirmed its first case of COVID-19 on March 1, 2020.⁷

52. On March 7, 2020, Governor Andrew Cuomo declared a state of emergency after 89 cases had been confirmed in the state.⁸ On March 12, 2020, Mayor Bill de Blasio of New York City likewise declared a state of emergency in New York City after 95 cases had been confirmed in the city.⁹ All sixty-two counties in the State of New York had declared states of emergency by March 16, 2020. In early April, Governor Cuomo likened the virus to “a fire spreading”¹⁰ as the State of New York alone had more confirmed COVID-19 cases than any other country beyond its own.¹¹

53. In response to the growing COVID-19 pandemic, Governor Cuomo and Mayor De Blasio issued multiple executive orders including, but are not limited to, the following:

⁶ Jesse McKinley, *New York City Region is Now an Epicenter of the Coronavirus Pandemic*, N.Y. TIMES, (March 22, 2020), available at <https://www.nytimes.com/2020/03/22/nyregion/Coronavirus-new-York-epicenter.html>.

⁷ Melanie Grayce West, *First Case of Coronavirus Confirmed in New York State*, WALL ST. J., (March 1, 2020), available at <https://www.wsj.com/articles/first-case-of-coronavirus-confirmed-in-new-york-state-11583111692>.

⁸ N.Y. Executive Order No. 202 (March 7, 2020), available at https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.pdf.

⁹ *De Blasio Declares State of Emergency in N.Y.C., and Large Gatherings are Banned*, N.Y. TIMES, (March 12, 2020), available at <https://www.nytimes.com/2020/03/12/nyregion/coronavirus-new-york-update.html>.

¹⁰ *Coronavirus Hot Spots Emerging Near New York City*, N.Y. TIMES (April 5, 2020), available at <https://www.nytimes.com/2020/04/04/nyregion/coronavirus-new-york-update.html#link-696ea085>.

¹¹ Yelena Dzhanova, *New York state now has more coronavirus cases than any other country outside of the US*, CNBC (April 10, 2020), available at <https://www.cnbc.com/2020/04/10/new-york-state-now-has-more-coronavirus-cases-than-any-country-outside-the-us.html>.

- a. On March 12, 2020, by Executive Order 202.1, Governor Cuomo announced restrictions on mass gatherings.¹²
- b. On March 16, 2020, Mayor de Blasio, by New York City Emergency Executive Order No. 100, announced further restrictions on businesses in New York City, specifically stating that “the virus physically is causing property loss and damage.”¹³
- c. On March 18, 2020, by Executive Order 202.6, Governor Cuomo ordered that all non-essential businesses reduce their on-site workers by 50%, effective at 8:00 p.m. on March 20, 2020.¹⁴
- d. On March 19, 2020, by Executive Order 202.7, Governor Cuomo ordered that all non-essential businesses reduce their on-site workers by 75%, effective at 8:00 p.m. on March 21, 2020.¹⁵
- e. On March 20, 2020, by Executive Order 202.8, Governor Cuomo ordered that all non-essential businesses statewide close in-office personnel functions through April 19, 2020, effective at 8:00 p.m. on March 22, 2020.¹⁶ Governor Cuomo stated that “this is the most drastic action we can take” and termed the policy “New York State on PAUSE,” which stands for “Policies that Assure Uniform Safety for Everyone.”¹⁷
- f. That same day, Mayor de Blasio, by New York City Emergency Executive Order No. 102, also ordered the closure of all non-essential business in New York City due to “the propensity of the virus to spread person-to-

¹² N.Y. Executive Order No. 202.1 (March 12, 2020), available at https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202_1.pdf.

¹³ City of New York, Emergency Executive Order No. 100 (March 16, 2020), available at <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eeo-100.pdf>.

¹⁴ N.Y. Executive Order No. 202.6 (March 18, 2020), available at <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO202.6.pdf>.

¹⁵ N.Y. Executive Order No. 202.7 (March 19, 2020), available at <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO%20202.7.pdf>.

¹⁶ N.Y. Executive Order No. 202.8 (March 20, 2020), available at https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.8.pdf.

¹⁷ Chris Francescani, *Timeline: The first 100 days of New York Gov. Andrew Cuomo's COVID-19 response*, ABC NEWS (June 17, 2020), available at <https://abcnews.go.com/US/News/timeline-100-days-york-gov-andrew-cuomos-covid/story?id=71292880>.

person and also because the actions taken to prevent such spread have led to property loss and damage.”¹⁸

- g. On April 7, 2020, by Executive Order 202.14, Governor Cuomo extended the New York State on PAUSE order through April 29, 2020.¹⁹ On April 16, 2020, by Executive Order 202.18, the stay at home order was extended again through May 15, 2020.
- h. On April 15, 2020, by Executive Order 202.17, Governor Cuomo ordered the mandatory use of “face-covering[s]” when in any “public place.”²⁰

B. New York is Slow to Reopen in May, June, and July.

- 54. By mid-May, New York City alone had over half of the State’s cases.²¹

Consequently, New York City has been particularly slow to reopen.

55. Fears remain that a second wave of COVID-19 could surge in the State of New York, like they have in other parts of the country, and Governor Cuomo has threatened to close down parts of the state again if social distancing guidelines are not met.²² We are painfully aware now that an outbreak anywhere is an outbreak everywhere,” he said. “The virus is spreading. It’s

¹⁸ City of New York, Emergency Executive Order No. 102 (March 20, 2020), available at <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-102.pdf>.

¹⁹ N.Y. Executive Order No. 202.14 (April 7, 2020), available at https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.14_final.pdf.

²⁰ N.Y. Executive Order No. 202.17 (April 15, 2020), available at https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.17.pdf.

²¹ Joe Sexton and Joaquin Sapien, *Two Coasts. One Virus. How New York Suffered Nearly 10 Times the Number of Deaths as California*, PROPUBLICA (May 16, 2020), available at <https://www.propublica.org/article/two-coasts-one-virus-how-new-york-suffered-nearly-10-times-the-number-of-deaths-as-california>.

²² Teo Armus, *As maskless New Yorkers crowd outside bars, Cuomo threatens to shut the city back down*, WASHINGTON POST (July 15, 2020), available at <https://www.washingtonpost.com/nation/2020/06/15/ny-bars-reopen-cuomo/>.

all across the country. It's getting worse and it will have an effect on New York.”²³

56. As of August 18, 2020, there were over 430,000 confirmed cases of COVID-19 and 32,435 deaths reported in the State of New York.²⁴

IV. Plaintiffs' Losses Due to the COVID-19 Pandemic and Resulting Closure Orders.

57. Plaintiff MAIA's and Plaintiff Sadeghi's insured locations are considered “non-essential” businesses pursuant to the Closure Orders.

58. Plaintiff Optimum Health's insured locations are considered “essential” businesses pursuant to the Closure Orders.

59. As a result of the COVID-19 pandemic and the Closure Orders, Plaintiff MAIA was required to close its storefront and suspend its in-person workforce on March 21, 2020, thereby requiring it to cease its business operations completely across all locations. Plaintiff MAIA remained completely closed until June 10, 2020, at which time it was allowed to partially reopen but with stringent capacity and service limitations. Since June 10, 2020, MAIA has only been permitted to operate at 50% customer capacity and has been limited to providing only salon and spa services that can be performed while customers are wearing face masks, meaning a significant portion of its business—including, but not limited to, facials, make up services, and facial waxing—is still completely shut down.

60. As a result of the COVID-19 pandemic and the Closure Orders, Plaintiff Sadeghi was required to close his ophthalmology offices and suspend his in-person workforce on March

²³ Press Release, *Governor Cuomo Announces New York City Cleared by Global Health Experts to Enter Phase Four of Reopening Monday, July 20th*, (July 17, 2020), available at <https://www.governor.ny.gov/news/governor-cuomo-announces-new-york-city-cleared-global-health-experts-enter-phase-four-reopening>.

²⁴ *New York Coronavirus Map and Case Count*, NEW YORK TIMES (August 18, 2020), available at <https://www.nytimes.com/interactive/2020/us/new-york-coronavirus-cases.html>.

21, 2020, thereby requiring him to cease his business operations completely across all locations. Dr. Sadeghi's offices remained completely closed until June 8, 2020, at which time he was allowed to partially reopen but with stringent capacity limitations. Since June 8, 2020, Dr. Sadeghi's offices have only been permitted to operate at 30% patient capacity.

61. As a result of the COVID-19 pandemic and the Closure Orders, Plaintiff Optimum Health has been required to significantly limit its physical therapy practice in order to comply with mandated social distancing measures. From March 21, 2020 to June 8, 2020, Optimum Health was only permitted to have 10 people present at each of its two locations, and its hours of operation were limited to 8 hours per day. On June 8, 2020, the allowable number of persons present per location slightly increased to 15 people per location, but the 8-hour restriction remained.

62. Human interaction is critical—and indeed, unavoidable—for each Plaintiff's business. However, the hazardous presence of human respiratory droplets on or around Plaintiffs' premises (and the risk of a continued hazard should business continue as usual) has damaged the property and has rendered the premises unsafe, uninhabitable, and unfit for their intended use (*i.e.*, for spa and salon services, eye surgeries, and in-person physical therapy).

63. Ultimately, the Closure Orders prohibited the public from accessing Plaintiffs' insured premises, thereby causing the necessary suspension of their operations.

64. Moreover, the continuous presence of COVID-19 particles in, on, or around Plaintiffs' premises has damaged property by infecting it and has rendered the premises unsafe, uninhabitable, and unfit for their intended use.

65. Upon information and belief, people carrying COVID-19 particles in, on, or about their person, have been physically present at or around Plaintiffs' insured premises during the

time the Policies were in effect.

66. Upon information and belief, human respiratory droplets and/or COVID-19 virus particles have been physically present at or around Plaintiffs' insured premises—both airborne and on surfaces and items of property at or around Plaintiffs' premises—during the time the Policies were in effect.

67. Plaintiffs have sustained direct physical loss and physical damage to items of property located at their premises and direct physical loss and physical damage to their premises described in the Policies as a result of the presence of COVID-19 particles, hazardous human respiratory droplets, and/or the COVID-19 pandemic. The COVID-19 pandemic and the presence of hazardous respiratory droplets caused direct physical loss of and/or physical damage to the premises insured under the Policies by, among other things, damaging the property, denying access to the property, preventing customers from physically occupying the property, causing the property to be physically uninhabitable by customers, causing their function to be nearly eliminated or destroyed, and/or causing a suspension of business operations on the premises.

68. Plaintiffs have incurred substantial Business Income losses and Extra Expense caused by: (i) the COVID-19 pandemic and the presence of hazardous respiratory droplets at or around Plaintiffs' insured premises, and (ii) the Closure Orders which prohibit access to Plaintiffs' insured premises or the sale of Plaintiffs' products and services.

V. Defendants' Denial of Plaintiffs' Claims for Coverage.

69. Plaintiffs, like countless other New York businesses, submitted timely insurance claims to Defendants requesting coverage for their business interruption losses and extra expenses promised under the Policies.

70. On April 3, 2020, Defendant Sentinel denied Plaintiff Optimum Health's claim in writing. (*See* April 3, 2020 Denial Letter, attached hereto as Exhibit D.)

71. On April 7, 2020, Defendant Twin City denied Plaintiff Sadeghi's claim in writing. (*See* April 7, 2020 Denial Letter, attached hereto as Exhibit E.)

72. On May 8, 2020, Defendant Sentinel denied Plaintiff MAIA's claim in writing. (*See* May 8, 2020 Denial Letter, attached hereto as Exhibit F.)

73. Upon information and belief, Defendants have uniformly refused to provide Business Income, Extended Business Income, Extra Expense, and Civil Authority coverage to most, if not all, insured businesses that have claimed business interruption losses and/or extra expense as a result of COVID-19 and the Closure Orders, as described below.

74. In the wake of the COVID-19 pandemic, Hartford published a notice to its website, stating:

We're closely monitoring COVID-19, and we know it's affecting businesses across the country. Although most property insurance includes business interruption coverage, coverage may be unavailable or limited because viruses generally do not cause physical loss or damage to property as required by the policy.²⁵

75. Defendants categorically issued denials without first conducting a meaningful coverage investigation. Defendants considered only their own interests and did not meaningfully consider and address the coverage options available to policyholders but proceeded only according to its one-sided and self-serving interpretation of the Policies.

76. Defendants ignored their duty to interpret any exclusions narrowly, took advantage of the power and information asymmetries between insurers and their insured, and

²⁵ *Commercial Property Claims*, THE HARTFORD, available at <https://www.thehartford.com/commercial-property-insurance/claims>.

construed the policy language beyond reason and in favor of denial.

77. Defendants' denial of Plaintiffs' independent claims for Civil Authority coverage underscores the shortcomings in their investigations of Plaintiffs' claims more generally by making no mention whatsoever of any of Plaintiffs' specific locations or the facts affecting the suspension of operations at any of those locations. In fact, Defendants did not mention a single civil authority order. Instead, Defendants claimed ignorance reciting that they have "no information to indicate that a civil authority issued an order as a direct result of a covered cause of loss to property in the immediate area of your scheduled premises," and thus there is no civil authority coverage. *See* Exhibits D–F. Upon information and belief, Defendants uniformly stated this conclusion to Plaintiffs and other policyholders without undertaking any investigation into claims that COVID-19 and/or the resulting Closure Orders caused physical loss of and damage to the insured premises and to property in the immediate area of the insured premises.

78. Upon information and belief, Defendants also instructed insurance brokers to discourage policyholders from filing claims and promulgated the false conclusion that no coverage was available under the Special Property Coverage Form.

79. Upon information and belief, Defendants made these statements in furtherance of a corporate strategy designed to intentionally mislead policyholders about the relevant coverage terms in their policies and the force and effect of certain coverage provisions and to discourage policyholders from filing claims for losses arising from COVID-19-related business interruptions.

80. This conduct makes it clear that Defendants were not making coverage determinations based on the facts of the claims and the language of the policies that they issued, but rather based on the financial impact that the pandemic would have upon the insurance

industry if Defendants covered the losses as required by the language of their own policies. Simply put, Defendants put their own financial interests ahead of the interests of their policyholders (and taxpayers), in violation of New York law.

81. Finally, unlike many commercial property policies available on the market, the “all-risk” Hartford Policies that Defendants sold to Plaintiffs do not exclude loss caused by a virus. In fact, Hartford went so far as to create a “Limited Fungi, Bacteria or Virus Coverage” endorsement—which excludes loss or damage caused by the presence of a virus and which Hartford has included in other commercial property policies containing the Special Property Coverage Form—but did not include that endorsement in Plaintiffs’ Policies. Thus, Plaintiffs reasonably expected that the Hartford insurance Policies they purchased from Defendants included coverage for business interruption damage/loss caused by viruses like COVID-19.

82. Indeed, Defendants could have excluded pandemic-related losses under the Special Property Coverage Form or another endorsement to the Policies, as they and other insurers frequently do. The Insurance Services Office, Inc. (“ISO”) frequently drafts form endorsements to clarify policy coverage in anticipated disputes, which insurers regularly incorporate into their policies. In 2006, the ISO drafted a new endorsement, CP 01 40 07 06, acknowledging that claims for business interruption losses would be filed under existing policy language for losses resulting from the presence of disease-causing agents. Endorsement CP 01 40 07 06, which other insurers have since incorporated in policies, provides that the insurer “will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.” Defendants did not include any language to this effect in the Special Property Coverage Form, nor did they include this endorsement in the Policies.

83. Instead, Defendants waited until after they collected Plaintiffs' premiums, and after a pandemic and the resulting Closure Orders caused catastrophic business losses to Plaintiffs, to attempt to limit their exposure on the back-end through their erroneous assertion that the presence of COVID-19 is not a physical "loss" or damage and is therefore not a covered cause of loss under the Policies.

84. That the insurance industry has created and often uses specific exclusions for pandemic-related losses under similar commercial property policies, and that Hartford itself has created and used virus exclusions in other commercial property policies, undermines Defendants' claim that the presence of a virus, like COVID-19, did not cause physical "loss" or damage to Plaintiffs' premises. Indeed, if a virus could not result in physical "loss" or damage to property, such specific exclusions for pandemic or virus-related losses would be unnecessary.

85. Thus, Defendants' swift and wholesale denial of coverage is arbitrary, unreasonable, and inconsistent with the facts and plain language of the Policies. Upon information and belief, Defendants' denials were driven by Defendants' desire to reduce or extinguish their own financial exposure to the economic fallout caused by the COVID-19 crisis, rather than their obligations to initiate, as is their legal duty, a full and fair investigation of the claims and a careful review of the Policies they sold to Plaintiffs.

CLASS ALLEGATIONS

86. **Class Definition:** Pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1), 23(b)(2), and 23(b)(3), Plaintiffs bring this action on behalf of themselves and two classes of similarly situated individuals defined as follows:

Non-Essential Business Class: All persons and entities that own an interest in a New York business that: (1) are not considered an "essential business" or "entity providing essential services or functions" pursuant to the Closure Orders, (2) purchased an insurance policy issued by any Defendants in this

Action, (3) have Business Income, Extended Business Income, Extra Expense, and/or Civil Authority coverage to insure property under Hartford's Special Property Coverage Form, No. SS 00 07 07 05, or any other Hartford coverage form with identical language, (4) do not have a "Limited Fungi, Bacteria or Virus Coverage" endorsement, (5) suffered Business Income and/or Extra Expense losses due to the COVID-19 pandemic, (6) have made an insurance claim for losses, and (7) have been denied coverage.

Essential Business Class: All persons and entities that own an interest in a New York business that: (1) are considered an "essential business" or "entity providing essential services or functions" pursuant to the Closure Orders, (2) purchased an insurance policy issued by any Defendants in this Action, (3) have Business Income, Extended Business Income, Extra Expense, and/or Civil Authority coverage to insure property under Hartford's Special Property Coverage Form, No. SS 00 07 07 05, or any other Hartford coverage form with identical language (4) do not have a "Limited Fungi, Bacteria or Virus Coverage" endorsement, (5) suffered Business Income and/or Extra Expense losses due to the COVID-19 pandemic, (6) have made an insurance claim for losses, and (7) have been denied coverage.

The Non-Essential Business Class and Essential Business Class are referred to collectively as the "Class" The following people are excluded from the Class: (1) any Judge or Magistrate presiding over this action and the members of their family; (2) Defendants, Defendants' subsidiaries, parents, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest and their current or former employees, officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiffs' counsel and Defendants' counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

87. **Numerosity:** The exact number of members of the Class is unknown, but individual joinder in this case is impracticable. The Class likely consists of hundreds if not thousands of members. Members of the Class can be easily identified through Defendants'

records.

88. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiffs and the other members of the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include but are not limited to the following:

- a. Whether Defendants issued all-risk insurance policies to Plaintiffs and members of the Class in exchange for payment of premiums by Plaintiffs and the Class members;
- b. Whether Plaintiffs and the Class suffered a covered loss based on the common policies issued to Plaintiffs and members of the Class;
- c. Whether Defendants wrongfully denied all claims based on COVID-19;
- d. Whether COVID-19 causes “direct physical loss of or physical damage to” property;
- e. Whether Defendants’ Business Income coverage applies to a suspension of business caused by COVID-19;
- f. Whether any of the Closure Orders constitute an “order of a civil authority;”
- g. Whether Defendants’ Civil Authority coverage applies to a loss of Business Income caused by the Closure Orders requiring the suspension of business as a result of COVID-19;
- h. Whether Defendants’ Extra Expense coverage applies to efforts to minimize a loss caused by COVID-19;
- i. Whether Defendants’ have breached their contracts of insurance through a blanket denial of all claims based on business interruption, income loss or closures related

to COVID-19 and the Closure Orders; and

- j. Whether Plaintiffs and the Class are entitled to an award of reasonable attorney fees, interest and costs.

89. **Typicality:** Plaintiffs' claims are typical of the claims of the other members of the Class in that Plaintiffs and members of the Class purchased identical insurance coverage from Defendants containing identical language regarding Business Income losses and Extra Expense, their coverage claims for COVID-19 losses were denied by Defendants, and they have sustained damages arising out of Defendants' wrongful denials.

90. **Adequate Representation:** Plaintiffs have and will continue to fairly and adequately represent and protect the interests of the Class and have retained counsel competent and experienced in complex litigation and class actions. Plaintiffs have no interests antagonistic to those of the Class, and Defendants have no defenses unique to Plaintiffs. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and they have the resources to do so. Neither Plaintiffs nor their counsel have any interest adverse to those of the other members of the Class.

91. **Inconsistent or Varying Adjudications and the Risk of Impediments to Other Class Members' Interests:** Plaintiffs seek class-wide adjudication as to the interpretation, and resultant scope, of the Special Property Coverage Form. The prosecution of separate actions by individual members of the Class would create an immediate risk of inconsistent or varying adjudications on this issue, which would establish incompatible standards of conduct for Defendants in evaluating future claims. Moreover, the adjudications sought by Plaintiffs could, as a practical matter, substantially impair or impede the ability of other members of the Class, who are not parties to this action, to protect their interests.

92. **Declaratory and Injunctive Relief:** Defendants acted or refused to act on grounds generally applicable to Plaintiffs and the other members of the Class, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the members of the Class.

93. **Superiority:** This class action is appropriate for certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy and joinder of all members of the Class is impracticable. The prosecution of separate actions by individual members of the Class would impose heavy burdens upon the courts and would create a risk of inconsistent or varying adjudications of the questions of law and fact common to the Class. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered, and uniformity of decisions will be ensured.

94. Plaintiffs reserve the right to revise the foregoing “Class Allegations” and “Class Definition” based on facts learned through additional investigation and discovery.

FIRST CAUSE OF ACTION
Declaratory Relief
(On behalf of Plaintiffs and the Class)

95. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

96. Plaintiffs’ Policies, as well as those of other members of the Class, are insurance contracts under which Defendants were paid premiums in exchange for their promise to pay Plaintiffs’ and the Class’s losses for claims covered by the Policies.

97. Plaintiffs and other members of the Class have complied with all applicable provisions of the Policies and/or those provisions have been waived by Defendants, or

Defendants are estopped from asserting them.

98. Defendants have arbitrarily and without justification refused to reimburse Plaintiffs and members of the Class for any losses incurred by them in connection with the covered business losses and extra expenses related to the Closure Orders and the necessary interruption of their businesses stemming from COVID-19.

99. Defendants have denied claims related to COVID-19 on a uniform and class-wide basis, without individual bases or investigations, such that the Court can render declaratory judgment.

100. An actual case or controversy exists regarding Plaintiffs' and the Class's rights and Defendants' obligations under the Policies to reimburse Plaintiffs and the Class for the full amount of losses incurred by Plaintiffs and the Class in connection with the Closure Orders and the suspension of their businesses stemming from COVID-19.

101. Pursuant to 28 U.S.C. § 2201, Plaintiffs and the Class seek a declaratory judgement from this Court declaring the following:

- a. Plaintiffs' and the Class's losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under the Special Property Coverage Form;
- b. Defendants have waived any right they may have had to assert defenses to coverage, or otherwise seek to bar or limit coverage for Plaintiffs' and the Class's losses, by issuing blanket coverage denials without conducting a claim investigation as required by law; and
- c. Defendants are obligated to pay Plaintiffs and the Class for the full amount of the losses incurred and to be incurred, in connection with the covered business losses

related to the Closure Orders, during the period of restoration and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

SECOND CAUSE OF ACTION
Breach of Contract
(On behalf of Plaintiffs and the Class)

102. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

103. Plaintiffs' Policies, as well as those of other members of the Class, are insurance contracts under which Defendants were paid premiums in exchange for their promise to pay Plaintiffs' and the Class's losses for claims covered by the Policies.

104. Plaintiffs and the Class have complied with all applicable provisions of the Policies and/or those provisions have been waived by Defendants, or Defendants are estopped from asserting them, yet Defendants have abrogated their insurance coverage obligations pursuant to the Policies' clear and unambiguous terms.

105. By denying coverage for any business losses and extra expense incurred by Plaintiffs and the Class in connection with the Closure Orders and the COVID-19 pandemic, Defendants have breached their coverage obligations under the Policies.

106. Defendants knowingly and willfully breached their coverage obligations under the Policies in order to protect Defendants' financial interests in the wake of unanticipated insurance claims related to the COVID-19 pandemic.

107. As a result of Defendants' breaches of the policies, Plaintiffs and the Class have sustained, and continue to sustain, substantial damages for which Defendants are liable, in an amount to be established at trial.

THIRD CAUSE OF ACTION
Statutory Penalty for Deceptive Practices and/or Bad Faith Denial of Insurance
(On behalf of Plaintiffs and the Class)

108. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

109. New York's General Business Law (GBL) § 349(a) makes it unlawful to engage in "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in" the State of New York.

110. Defendants operate their business providing insurance services throughout the State of New York, including to Plaintiffs and members of the Class, and they furnish their policyholders with standard policy forms to be purchased at large, therefore engaging in consumer-oriented conduct within the meaning of GBL § 349. Upon information and belief, Defendants also issued wholesale coverage denials (using form denial letters) to policyholders claiming business interruption losses related to COVID-19.

111. When Plaintiffs and the Class purchased the Policies from Defendants, they reasonably believed that claims for such losses would be assessed in a reasonable and fair manner, including a fair coverage investigation.

112. However, Defendants, finding themselves in troubled economic times, disregarded the ordinary and intended purpose of the Policies' Business Income, Extended Business Income, Civil Authority, and Extra Expense coverage, abandoned the industry's (and their own) standards for fair and comprehensive claims investigation and handling, and immediately and categorically denied claims for losses related to the COVID-19 pandemic, including claims by Plaintiffs and, upon information and belief, the Class.

113. Defendants' immediate coverage denials to Plaintiffs' claims were part of a corporate strategy to deny any claims for losses related to COVID-19, without reference to the facts underlying the claims, the ordinary purpose of the relevant policy provisions, or the specific policy language at issue, and was aimed at all policyholders in the general public.

114. Defendants' conduct in denying Plaintiffs'—and, upon information and belief, the Class's—claims also constitutes “unfair claims settlement practices” under New York Insurance Law § 2601, which likewise constitutes a deceptive practice under GBL § 349.

115. Specifically, Defendants categorically and systematically denied claims related to COVID-19 without investigating or referring to the particular facts and disseminated information to insurance agents, brokers, and the general public designed to mislead policyholders about their coverage rights and to discourage policyholders from even filing claims, in violation of New York Insurance Law that prohibits “knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue” and “failing to adopt and implement reasonable standards for the prompt investigation of claims arising under its policies” and requires insurers to “attempt in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear[.]” *See* § 2601(a)(1), (3), (4).

116. The practices described above were committed by Defendants knowingly and willfully in order to mislead the public, discourage the filing of claims, and avoid paying benefits to policyholders, that is, to protect Defendants' financial interests (at the expense of the insureds) in the wake of a global pandemic.

117. As a consequence of Defendants' actions, Plaintiffs and members of the Class suffered an ascertainable loss of the coverage benefits that they reasonably believed they were entitled to under the Policies. Plaintiffs and members of the Class also suffered damages by paying premiums to Defendants for policy coverage and claims processing standards that they did not receive. Plaintiffs thus request that the Court enter a judgment in favor of Plaintiffs and the Class and against Defendants for the premiums they paid to Defendants and/or the coverage benefits that they reasonably believed they were entitled to but did not receive, in an amount to

be established at trial.

118. Plaintiffs further request that the Court enter a judgment in favor of Plaintiffs and against Defendants for an amount equal to the attorneys' fees and costs incurred by Plaintiffs for the prosecution of this coverage action.

FOURTH CAUSE OF ACTION
Bad Faith
(On behalf of Plaintiffs and the Class)

119. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

120. Defendants owed Plaintiffs and the Class a duty of good faith and fair dealing in conducting their investigations, making coverage determinations, communicating with the insured(s), and in handling the claims described herein. This duty was implicit in the Policies and also derived from the parties' special relationship as insured and insurer.

121. Defendants breached their duty of good faith and fair dealing by wrongfully, and without reasonable justification, denying coverage to Plaintiffs and the Class under the Policies. Defendants' processing and denial of Plaintiffs' claims were unreasonable and done in bad faith. It was reasonably foreseeable (or should have been foreseeable) that Plaintiffs and the Class would be deprived of coverage benefits and forced to file suit to enforce their rights under the Policies as a result of Defendants' conduct.

122. Specifically, Defendants intentionally, fraudulently, maliciously, and/or recklessly (1) failed to effectuate a prompt and fair settlement of Plaintiffs' claims when liability was reasonably clear; (2) refused and failed to conduct a reasonable, prompt, and fair investigation into the issues surrounding Plaintiffs' claims; (3) denied Plaintiffs' claims for their own financial preservation and with no reasonable or justifiable basis; (4) failed to treat Plaintiffs' interests with equal regard to their own; (5) mischaracterized the nature of Plaintiffs' losses in order

minimize the coverage available to Plaintiffs and to protect Defendants' own financial interests; (6) falsely represented to Plaintiffs that coverage was not available under the Policies and ignored provisions of the Policies that plainly provided coverage for Plaintiffs' claimed losses; (7) misrepresented relevant facts and policy provisions to Plaintiffs; and (8) forced Plaintiffs to file suit to enforce their rights under the Policies.

123. Defendants, acting with conscious disregard for Plaintiffs' rights and with the intention of causing (or willfully disregarded the probability of causing) unjust and cruel hardship on Plaintiffs, ignored the facts and law validating Plaintiffs' claims for benefits, denied Plaintiffs' claims, and withheld monies and benefits rightfully due to Plaintiffs.

124. Upon information and belief, Defendants' handling of Plaintiffs' claims was part of a general policy and practice of denying all claims for business income and extra expense related to COVID-19.

125. As a result, Plaintiffs and the Class have sustained, and continue to sustain, substantial consequential damages for which Defendants are liable, in an amount to be established at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the other Class members, respectfully request that the Court:

1. Enter an order certifying the proposed Non-Essential Business Class and Essential Business Class, as defined above, designating Plaintiff MAIA and Plaintiff Sadeghi as representatives of the Non-Essential Business Class, designating Plaintiff Optimum Health as representative of the Essential Business Class, and appointing Plaintiffs' undersigned attorneys as Class Counsel;

2. Enter a declaratory judgment in favor of Plaintiffs and the Class and against Defendants, declaring as follows:
 - a. Plaintiffs' and the Class members' losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under the Policies;
 - b. Defendants have waived any right they may have had to assert defenses to coverage or otherwise seek to bar or limit coverage for Plaintiffs' and the Class members' losses by issuing blanket coverage denials without conducting a claim investigation as required under New York law; and
 - c. Defendants are obligated to pay Plaintiffs and the Class for the full amount of the losses incurred and to be incurred in connection with the covered business losses related to the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.
3. Enter a judgment on the Second Cause of Action in favor of Plaintiffs and the Class and against Defendants and award damages for breach of contract in an amount to be established at trial;
4. Enter a judgment on the Third Cause of Action in favor of Plaintiffs and the Class and against Defendants for deceptive acts and practices in violation of New York's General Business Law § 349 and granting actual damages and treble damages should the Court find that Defendants' actions were willful.
5. Enter a judgment on the Fourth Cause of Action in favor of Plaintiffs and the Class and against Defendants for bad faith;
6. Award to Plaintiffs reasonable litigation expenses and attorneys' fees;

7. Award to Plaintiffs punitive damages for Defendants' bad faith;
8. Award to Plaintiffs and the Class pre- and post- judgment interest, to the extent allowable; and
9. Award to Plaintiffs such other and further relief as may be just and proper.

Respectfully submitted,

**MAIA SALON SPA AND WELLNESS CORP.,
MEHRYAR M. SADEGHI, MD, d/b/a Eye Care
Center, and OPTIMUM HEALTH PHYSICAL
THERAPY, PC, individually and on behalf of all
others similarly situated,**

Dated: August 19, 2020

By: /s/ Benjamin H. Richman
One of Plaintiffs' Attorneys

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**Pro hac vice admission to be sought*