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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PIGMENT INC., Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

THE HARTFORD FINANCIAL
SERVICES GROUP, INC. and
SENTINEL INSURANCE COMPANY,
LTD.,

Defendants.

Case No. **'20CV0794 BEN JLB**

CLASS ACTION

**COMPLAINT FOR DECLARATORY
JUDGMENT AND BREACH OF
CONTRACT**

DEMAND FOR JURY TRIAL

1 Plaintiff Pigment Inc. (“plaintiff”), on behalf of itself and all others similarly
 2 situated, brings this class action against defendants The Hartford Financial Services
 3 Group, Inc. and Sentinel Insurance Company, Ltd. (together, “Defendants” or
 4 “Hartford”), and alleges as follows based on personal knowledge as to itself and upon
 5 information and belief as to other matters based on its counsel’s investigation.
 6 Plaintiff believes additional evidentiary support exists for its allegations, given an
 7 opportunity for discovery.

8 SUMMARY OF THE ACTION

9 1. Plaintiff and other businesses nationwide purchased commercial property
 10 insurance to ensure that they would not be forced to close their doors for good if they
 11 were shuttered temporarily by an unanticipated crisis. Such a crisis is now upon us,
 12 but Hartford and other insurers are refusing to pay the claims.

13 2. On March 11, 2020, the World Health Organization’s (“WHO”) Director
 14 General, Tedros Adhanom Ghebreyesus, declared the COVID-19 outbreak a
 15 worldwide pandemic: “WHO has been assessing this outbreak around the clock and
 16 we are deeply concerned both by the alarming levels of spread and severity, and by
 17 the alarming levels of inaction. We have therefore made the assessment that COVID-
 18 19 can be characterized as a pandemic.”¹

19 3. On March 13, 2020, President Trump declared the COVID-19 pandemic
 20 to be a national emergency.² On March 16, 2020, the Centers for Disease Control and
 21 Prevention (“CDC”) and members of the national Coronavirus Task Force issued
 22 guidance to the American public, styled as “30 Days to Slow the Spread,” for stopping
 23

24 ¹ See World Health Organization, *WHO Director-General's opening remarks at the*
 25 *media briefing on COVID-19 - 11 March 2020* (Mar. 11, 2020),
<https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

26 ² See The White House, *Proclamation on Declaring a National Emergency*
 27 *Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (Mar. 13, 2020),
<https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.
 28

1 the spread of COVID-19. This guidance advised individuals to adopt social
 2 distancing measures, such as working from home, avoiding shopping trips, avoiding
 3 gatherings of more than 10 people, and staying away from bars, restaurants, and food
 4 courts.³

5 4. On March 12, 2020, California Governor Gavin Newsom issued a civil
 6 authority order directing California residents to cancel non-essential gatherings. On
 7 March 19, 2020, Gov. Newsom issued Executive Order N-33-20, a civil authority
 8 order that required all residents to stay home, except as needed to maintain federal
 9 critical infrastructure sectors. All California businesses not deemed essential,
 10 including plaintiff's retail locations, have been ordered to close their doors.

11 5. In addition to California, the vast majority of other states across the
 12 nation have entered civil authority orders requiring residents to "stay-at-home" or
 13 "shelter-in-place" and suspending or severely curtailing business operations of non-
 14 essential businesses that interact with the public and/or provide social gathering places
 15 for residents (collectively, the "COVID-19 Civil Authority Orders").

16 6. These far-reaching COVID-19 Civil Authority Orders have been
 17 financially devastating for most non-essential businesses, especially restaurants and
 18 other foodservice businesses, as well as retail establishments, entertainment venues,
 19 and other small, medium, and large businesses who have been forced to close,
 20 furlough employees, and endure a sudden shutdown of cash flow that threatens their
 21 survival.

22 7. Many businesses have purchased insurance to protect against losses from
 23 catastrophic events like the current unforeseen COVID-19 pandemic through all-risk
 24 commercial property insurance policies. These policies promise to indemnify the
 25 policyholder for actual business losses incurred when business operations are

26 ³ See The White House, *The President's Coronavirus Guidelines for America, 30*
 27 *Days to Slow the Spread*, [https://www.whitehouse.gov/wp-](https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf)
 28 [content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf](https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf) (last
 visited Apr. 27, 2020).

1 involuntarily suspended, interrupted, curtailed, when access to the premises is
2 prohibited because of direct physical loss or damage to the property, or by a civil
3 authority order that restricts or prohibits access to the property. This coverage,
4 commonly known as “business interruption coverage, is standard in most all-risk
5 commercial property insurance policies.

6 8. Despite the provision of business interruption coverage in these policies,
7 Defendants are denying their obligation to pay for business income losses and other
8 covered expenses incurred by policyholders for the physical loss and damage to the
9 insured property arising from COVID-19 Civil Authority Orders put in place as a
10 precaution to slow the contagion.

11 9. Plaintiff now brings this action on behalf of a Nationwide Class and a
12 California Sub-Class (as defined below) of policyholders who purchased standard
13 Hartford commercial property insurance to insure property in the United States and
14 California, respectively, where such policies provide for business income loss and
15 extra expense coverage and do not exclude coverage for pandemics, and who have
16 suffered losses due to measures put into place by a COVID-19 Civil Authority Order.

17 10. This action seeks a declaratory judgment that Hartford is contractually
18 obligated to pay business interruption losses incurred due to plaintiff’s and other Class
19 members’ compliance with COVID-19 Civil Authority Orders. In addition, plaintiff
20 seeks damages, attorneys’ fees and costs, and any other relief that this Court deems
21 equitable and just, arising out of Hartford’s breach of contract and wrongful conduct
22 alleged herein.

23 **PARTIES**

24 11. Plaintiff Pigment Inc. (“Pigment”) is a California corporation with its
25 principal place of business in San Diego, California. Pigment operates several retail
26 stores in San Diego County that sell artisan-crafted home goods, furniture, and plants
27 and host community workshops and events. Pigment’s success depends upon patrons
28 being able to shop and attend events at its retail businesses. In March 2020, Pigment

1 was forced to close its retail locations due to the issuance of applicable COVID-19
2 Civil Authority Orders.

3 12. Defendant The Hartford Financial Services Group, Inc. (“Hartford
4 Financial”) is a Delaware corporation with its principal place of business in Hartford,
5 Connecticut. It owns subsidiaries, directly and indirectly, that issue, among other
6 things, property insurance.

7 13. Defendant Sentinel Insurance Company, Ltd. (“Sentinel”) is a
8 Connecticut corporation with its principal place of business in Hartford, Connecticut.
9 Sentinel is a subsidiary of Hartford and is duly qualified and licensed to issue
10 insurance in the State of California and other states.

11 14. Sentinel and Hartford Financial are referred to herein collectively as
12 “Defendants” or “Hartford.”

13 15. Sentinel issued the Hartford Policy No. 72 SBA UU6772 to Pigment for
14 the policy period of February 15, 2020, through February 15, 2021 (“Plaintiff’s
15 Hartford Policy”).

16 JURISDICTION AND VENUE

17 16. This Court has jurisdiction over this action pursuant to 28 U.S.C.
18 §1332(d) in that this is a class action in which the amount in controversy exceeds
19 \$5,000,000, exclusive of interest and costs, and plaintiff and at least one member of
20 the putative class is a citizen of a different state than the Defendants.

21 17. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) in that
22 plaintiff is located in this District and Defendants do business in this District and thus
23 reside in this District, in accordance with 28 U.S.C. §1391(c).

24 FACTUAL BACKGROUND

25 A. The Global COVID-19 Pandemic

26 18. Viruses of the family Coronaviridae, such as Middle East respiratory
27 syndrome (MERS) coronavirus (MERS-CoV) and severe acute respiratory syndrome
28

(SARS) coronavirus (SARS-CoV), have been responsible for the loss of human life since at least 2002 and were identified in several animal hosts.⁴

19. In December 2019, an initial cluster of nine patients with an unknown cause of viral pneumonia was linked to the Huanan seafood market in Wuhan, China, where many non-aquatic animals such as birds were also on sale. However, one of the patients never visited the market, though he had stayed in a hotel nearby before the onset of the illness.⁵

20. By January 2020, genetic sequencing from patient samples was conducted to identify a novel virus, SARS-CoV-2, as the causative agent for the pneumonia cluster.⁶ SARS-CoV-2 is an RNA virus, with a crown-like appearance under an electron microscope because of glycoprotein spikes on its envelope. Among

⁴ See Roujian Lu, et al., Center for Disease Control, *Genomic characterisation and epidemiology of 2019 novel coronavirus: implications for virus origins and receptor binding* (Jan. 29, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/genomic-characterization-of-2019-nCoV-Lancet-1-29-2020.pdf> (There are four genera of coronaviruses: (I) α -coronavirus (alphaCoV) and (II) β -coronavirus (betaCoV), which are probably present in bats and rodents; and (III) δ -coronavirus (deltaCoV) and (IV) γ -coronavirus (gammaCoV), which probably represent avian species.).

⁵ See Francesco Di Gennaro et al., MDPI: International Journal of Environmental Research and Public Health, *Coronavirus Diseases (COVID-19) Current Status and Future Perspectives a Narrative Review* (Apr. 1, 2020), <https://www.mdpi.com/1660-4601/17/8/2690> (As a typical RNA virus, the average evolutionary rate for coronaviruses is roughly 10-nucleotide substitutions per site per year, with mutations arising during every replication cycle. This finding suggests that COVID-19 originated from one source within a short period and was detected rapidly. However, as the virus transmits to more individuals, constant surveillance of arising mutations is needed.); Roujian Lu, et al., Center for Disease Control, *Genomic characterisation and epidemiology of 2019 novel coronavirus: implications for virus origins and receptor binding* (Jan. 29, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/genomic-characterization-of-2019-nCoV-Lancet-1-29-2020.pdf>, (This finding suggests either possible droplet transmission or that the patient was infected by a currently unknown source. Evidence of clusters of infected family members and medical workers has now confirmed the presence of human-to-human transmission.).

⁶ See Francesco Di Gennaro et al., MDPI: International Journal of Environmental Research and Public Health, *Coronavirus Diseases (COVID-19) Current Status and Future Perspectives a Narrative Review* (Apr. 1, 2020), <https://www.mdpi.com/1660-4601/17/8/2690>.

the functions of the structural proteins, the envelope has a crucial role in virus pathogenicity as it promotes viral assembly and release.⁷

21. The first confirmed case of the virus outside China was diagnosed on January 13, 2020, in Bangkok, Thailand with the number of cases rapidly increasing worldwide.

22. On January 30, 2020, WHO declared that the SARS-CoV-2 outbreak constituted a public health emergency of international concern.

23. By February 11, 2020, the novel coronavirus was named “COVID-19” by the WHO Director-General.⁸

24. As of April 27, 2020, the number of confirmed cases of COVID-19 topped 3 million globally with over 200,000 deaths, with the United States dealing with nearly 1 million confirmed cases and over 55,000 reported deaths – more than any other country in the world.⁹

25. The clinical features of COVID-19 vary from asymptomatic forms to fatal conditions of severe respiratory failure that require ventilation and support in an intensive care unit (“ICU”). Pneumonia has been the most frequent severe manifestation of COVID-19, with symptoms of fever, cough, dyspnea, and bilateral infiltrates on chest imaging.¹⁰ There are no specific treatments recommended for COVID-19, and no vaccine is currently available.¹¹

⁷ See *id.* (To address the pathogenetic mechanisms of SARS-CoV-2, its viral structure and genome must be considered. Coronaviruses are enveloped positive strand RNA viruses with the largest known RNA genomes – 30-32 kb – with a 50-cap structure and 30-poly-A tail.).

⁸ See *id.*

⁹ See Lateshia Beachum et al., Wash. Post, *Live updates: States lay out plans to reopen as coronavirus cases surpass 3 million worldwide* (Apr. 27, 2020), <https://www.washingtonpost.com/world/2020/04/27/coronavirus-latest-news/>.

¹⁰ See Francesco Di Gennaro et al., MDPI: International Journal of Environmental Research and Public Health, *Coronavirus Diseases (COVID-19) Current Status and Future Perspectives a Narrative Review* (Apr. 1, 2020), <https://www.mdpi.com/1660-4601/17/8/2690> (Asymptomatic infections have also been described, but their frequency is unknown. Other, less common symptoms have included headaches, sore

26. It has now been discovered by scientists that COVID-19 has several modes of transmission. Pursuant to a “Situation Report” released by the WHO, the virus can be transmitted through symptomatic transmission, pre-symptomatic transmission, and asymptomatic transmission.¹² Symptomatic transmission refers to transmission by a person experiencing symptoms associated with the virus who then transfers COVID-19 to another. Data from published studies provide evidence that COVID-19 is primarily transmitted from symptomatic persons to others who are in close contact through respiratory droplets, by direct contact with infected persons, or by contact with contaminated objects and surfaces.¹³

27. The incubation period for COVID-19 – the time between exposure to the virus (becoming infected) and symptom onset – is an average of 5-6 days, but can take up to 14 days.¹⁴ During this period, also known as the “pre-symptomatic” period, some infected persons can be contagious. For that reason, transmission from a pre-throat, and rhinorrhea. Along with respiratory symptoms, gastrointestinal symptoms (e.g., nausea and diarrhea) have also been reported, and in some patients, they may be the presenting complaint.).

¹¹ See *id.* (The treatment is symptomatic, and oxygen therapy represents the major treatment intervention for patients with severe infection. Mechanical ventilation may be necessary in cases of respiratory failure refractory to oxygen therapy, whereas hemodynamic support is essential for managing septic shock. Different strategies can be used depending on the severity of the patient and local epidemiology. Home management is appropriate for asymptomatic or paucisintomatic patients. They need a daily assessment of body temperature, blood pressure, oxygen saturation and respiratory symptoms for about 14 days. Management of such patients should focus on prevention of transmission to others and monitoring for clinical status with prompt hospitalization if needed.).

¹² See World Health Organization, *Coronavirus disease 2019 (COVID-19) Situation Report – 73* (Apr. 3, 2020), https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2.

¹³ See *id.* (Data from clinical and virologic studies that have collected repeated biological samples from confirmed patients provide evidence that shedding of the COVID-19 virus is highest in the upper respiratory tract (nose and throat) early in the course of the disease. That is, within the first three days from onset of symptoms. Preliminary data suggests that people may be more contagious around the time of symptom onset as compared to later on in the disease.).

¹⁴ See *id.*

1 symptomatic case can occur before symptom onset. Pre-symptomatic transmission
2 still requires the virus to be spread through infectious droplets or touching
3 contaminated surfaces.¹⁵

4 28. An individual who does not develop symptoms – known as an
5 asymptomatic case of COVID-19 – can still transmit the virus to another. Though
6 there are few documented cases reported, it does not exclude the possibility that it has
7 or may have occurred.¹⁶

8 29. Not only is COVID-19 transmitted via human-to-human contact, but the
9 WHO and scientific studies have confirmed that the virus can live on contaminated
10 objects or surfaces. According to a study in *The New England Journal of Medicine*,
11 COVID-19 was detectable in aerosols for up to 3 hours, up to 4 hours on copper, up to
12 24 hours on cardboard, and up to 2-3 days on plastic and stainless steel.¹⁷ All of these
13 materials are used in the preparation and service of food by restaurants. The results of
14 the study suggest that individuals could get COVID-19 through indirect contact with
15 surfaces or objects used by an infected person, whether or not they were symptomatic.

16
17
18 ¹⁵ See *Id.* (In a small number of case reports and studies, pre-symptomatic
19 transmission has been documented through contact tracing efforts and enhanced
20 investigation of clusters of confirmed cases. This is supported by data suggesting that
21 some people can test positive for COVID-19 from 1-3 days before they develop
22 symptoms. Thus, it is possible that people infected with COVID-19 can transmit the
23 virus before significant symptoms develop.).

24 ¹⁶ See *Id.*

25 ¹⁷ See News Release, National Institutes of Health, *New coronavirus stable for hours*
26 *on surfaces* (Mar. 17, 2020), [https://www.nih.gov/news-events/news-releases/new-](https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces)
27 *coronavirus-stable-hours-surfaces*; see also World Health Organization, *Modes of*
28 *transmission of virus causing COVID-19: implications for IPC* (Mar. 29, 2020),
[https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-](https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations)
causing-covid-19-implications-for-ipc-precaution-recommendations (Airborne
transmission of COVID-19 “may be possible in specific circumstances and settings in
which procedures or support treatments that generate aerosols are performed; *i.e.*,
endotracheal intubation, bronchoscopy, open suctioning, administration of nebulized
treatment, manual ventilation before intubation, turning the patient to the prone
position, disconnecting the patient from the ventilator, non-invasive positive-pressure
ventilation, tracheostomy, and cardiopulmonary resuscitation.”).

30. The *Journal of Hospital Infection* has found that human coronaviruses, such as SARS-CoV and MERS-CoV, can remain infectious on inanimate surfaces at room temperature for up to nine days.¹⁸ At a temperature of 30 degrees Celsius or more, the duration of persistence is shorter. Contamination of frequently touched surfaces is, therefore, a potential source of viral transmission.¹⁹ Though this study was not conclusive as to COVID-19, scientists are still grappling with the implications.

31. On March 27, 2020, the CDC released a report entitled “Public Health Responses to COVID-19 Outbreaks on Cruise Ships – Worldwide, February - March 2020.”²⁰ The report detailed how, during this time frame, COVID-19 outbreaks associated with three different cruise ship voyages caused over 800 confirmed cases and 10 deaths.²¹ Of the individuals tested, a high proportion were found to be

¹⁸ See G. Kampf et al., *Journal of Hospital Infection, Persistence of coronaviruses on inanimate surfaces and their inactivation with biocidal agents*, (Jan. 31, 2020), <https://www.journalofhospitalinfection.com/action/showPdf?pii=S0195-6701%2820%2930046-3>.

¹⁹ See *id.* (Although the viral load of coronaviruses on inanimate surfaces is not known during an outbreak situation, it seems plausible to reduce the viral load on surfaces by disinfection, especially of frequently touched surfaces in the immediate area surrounding a patient where the highest viral load can be expected. The WHO recommends ensuring that “environmental cleaning and disinfection procedures are followed consistently and correctly.”).

²⁰ See Leah F. Moriarty, MPH, Centers for Disease Control and Prevention, *Public Health Responses to COVID-19 Outbreaks on Cruise Ships - Worldwide, February - March 2020* (Mar. 27, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm?s_cid=mm6912e3_w.

²¹ See *id.* (“During February 7-23, 2020, the largest cluster of COVID-19 cases outside mainland China occurred on the Diamond Princess cruise ship, which was quarantined in the port of Yokohama, Japan, on February 3. . . . On March 6, cases of COVID-19 were identified in persons on the Grand Princess cruise ship off the coast of California; that ship was subsequently quarantined. By March 17, confirmed cases of COVID-19 had been associated with at least 25 additional cruise ship voyages. On February 21, CDC recommended avoiding travel on cruise ships in Southeast Asia; on March 8, this recommendation was broadened to include deferring all cruise ship travel worldwide for those with underlying health conditions and for persons [over] 65 years. On March 13, the Cruise Lines International Association announced a 30-day voluntary suspension of cruise operations in the United States. CDC issued a level 3 travel warning on March 17, recommending that all cruise travel be deferred worldwide.”).

1 asymptomatic, which may explain the high rate of transmission on cruise ships.
 2 Further, COVID-19 was identified on a variety of surfaces in cabins of both
 3 symptomatic and asymptomatic infected passengers up to 17 days after cabins were
 4 vacated on the Diamond Princess cruise line, but before disinfection procedures had
 5 been conducted.²² The CDC study noted that more studies are required to understand
 6 the perpetuation of transmission, but what is clear is the uncertainty around COVID-
 7 19 and its implications for the lawful and safe functioning of a variety of businesses,
 8 most significantly, food service businesses.

9 32. Without a vaccine to protect against COVID-19, effective control of the
 10 outbreak relies on measures designed to reduce human-to-human and surface-to-
 11 human exposure. Recent information on the CDC's website provides that COVID-19
 12 spreads when people are within six feet of each other or when a person comes in
 13 contact with a surface or object that has the virus on it.²³ Various other sources state
 14 that close contact with a person with the virus or surfaces where the virus is found can
 15 transmit the virus.²⁴

16
 17 ²² See *id.* ("Cruise ships are often settings for outbreaks of infectious diseases
 18 because of their closed environment, contact between travelers from many countries,
 19 and crew transfers between ships. On the Diamond Princess, transmission largely
 20 occurred among passengers before quarantine was implemented, whereas crew
 21 infections peaked after quarantine. . . . On the Grand Princess, crew members were
 22 likely infected on voyage A and then transmitted [COVID-19] to passengers on
 23 voyage B. The results of testing of passengers and crew on board the Diamond
 24 Princess demonstrated a high proportion (46.5%) of asymptomatic infections at the
 25 time of testing. Available statistical models of the Diamond Princess outbreak suggest
 26 that 17.9% of infected persons never developed symptoms. . . . A high proportion of
 27 asymptomatic infections could partially explain the high attack rate among cruise ship
 28 passengers and crew. . . . Although these data cannot be used to determine whether
 transmission occurred from contaminated surfaces, further study of fomite
 transmission of [COVID-19] aboard cruise ships is warranted.").

24 ²³ See Centers for Disease Control and Prevention, *How COVID-19 Spreads*,
 25 [https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-COVID-
 spreads.html](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-COVID-spreads.html) (last visited Apr. 27, 2020).

26 ²⁴ See G. Kampf et al., *Journal of Hospital Infection*, *Persistence of coronaviruses on*
 27 *inanimate surfaces and their inactivation with biocidal agents*, (Jan. 31, 2020),
 28 [https://www.journalofhospitalinfection.com/action/showPdf?pii=S0195-
 6701%2820%2930046-3](https://www.journalofhospitalinfection.com/action/showPdf?pii=S0195-6701%2820%2930046-3) (remains infectious from 2 hours to 28 days depending on
 conditions); see also Nina Bai, *Why One Test May Not Be Enough*, University of

33. The secondary exposure of humans to contaminated surfaces is particularly acute in places where the public gathers to socialize, eat, drink, shop, find entertainment, and recreate. This is why the CDC recommends that in viral outbreaks individuals who are infected stay at home and those who are not sick engage in preventive measures such as constant hand washing and avoiding activities that would bring them into the close proximity of people with the virus or surfaces where the virus may reside. However, because these recommendations have proven ineffective to minimize the spread of COVID-19, containment efforts have led to civil authorities issuing orders closing non-essential business establishments, including restaurants, bars, hotels, theaters, personal care salons, gyms, and schools, and mandating social distancing among the population. This has caused the cancelation of sporting events, parades, and concerts, the closure of amusement parks, and substantial travel restrictions. In addition, to conserve medical supplies, orders have been issued prohibiting the performance of non-urgent or non-emergency elective procedures and surgeries, forcing the suspension of operations at many medical, surgical, therapeutic, and dental practices.

34. On March 4, 2020, California Governor Gavin Newsom declared a state of emergency statewide. On March 12, 2020, Gov. Newsom issued an executive order directing California residents to cancel large non-essential gatherings. On March 19, 2020, Gov. Newsom issued Executive Order N-33-20, which required all residents to stay home except as needed to maintain continuity of operations of the federal critical infrastructure sectors. In addition, on March 16, 2020, the Mayor of the City of San Diego issued Executive Order No. 2020-1, prohibiting any gathering

California San Francisco (Feb. 13, 2020), <https://www.ucsf.edu/news/2020/02/416671/how-new-coronavirus-spreads-and-progresses-and-why-one-test-may-not-be-enough> (door knobs and table tops can contain the virus); Heather Murphy, *Surfaces? Sneezes? Sex? How the Coronavirus Can and Cannot Spread*, N.Y. Times (Mar. 19, 2020), <https://www.nytimes.com/2020/03/02/health/coronavirus-how-it-spreads.html> (virus can remain on metal, glass and plastic for several days).

1 of 50 or more people and discouraging all non-essential gatherings of any size. The
2 Mayor's executive order has since been extended until April 30, 2020.

3 35. In addition to California, all but 6 states have enacted a COVID-19 Civil
4 Authority Order, including but not limited to "stay-at-home" or "shelter-in-place"
5 orders; 35 states have closed all non-essential businesses with other states enacting
6 measures to curtail business operations; all 50 states have closed schools; and all but
7 one state has closed restaurants and bars for services other than take-out and
8 delivery.²⁵

9 **B. Defendants' Standard Commercial Property Insurance Policies**

10 36. Hartford's insurance policies issued to plaintiff and other Class members
11 are standard commercial property policies that cover loss or damage to the covered
12 premises resulting from all risks other than those expressly excluded.

13 37. Plaintiff's Hartford Policy, as well as the policies of other Class
14 members, is a standard form used by Hartford for all insureds with applicable
15 coverage.

16 38. Among the coverages provided by Plaintiff's Hartford Policy was
17 business interruption insurance, which, generally, would indemnify plaintiff for lost
18 income and profits if its business was shut down.

19 39. Pigment's Special Property Coverage Form, Form SS 00 07 07 05,
20 provided coverage as follows:

21 **Business Income**

- 22 (1) We will pay for the actual loss of Business Income you sustain
23 due to the necessary suspension of your "operations" during the
24 "period of restoration." The suspension must be caused by direct
25 physical loss of or physical damage to property at the "scheduled
premises", including personal property in the open (or in a
vehicle) within 1,000 feet of the "scheduled premises", caused by
or resulting from a Covered Cause of Loss.

26
27 ²⁵ See Kaiser Family Foundation, *State Data and Policy Actions to Address*
28 *Coronavirus* (Apr. 27, 2020), <https://www.kff.org/health-costs/issue-brief/state-data-and-policy-actions-to-address-coronavirus/>.

1 40. Pigment's Special Property Coverage Form, Form SS 00 07 07 05,
2 provided coverage as follows:

3 **Civil Authority**

- 4 (1) This insurance is extended to apply to the actual loss of Business
5 Income you sustain when access to your "scheduled premises" is
6 specifically prohibited by order of a civil authority as the direct
result of a Covered Cause of Loss to property in the immediate
area of your "scheduled premises."

7 41. In addition, Pigment's Special Property Coverage Form, Form SS 00 07
8 07 05, provided coverage as follows:

9 **Extra Expense**

- 10 (1) We will pay reasonable and necessary Extra Expense you
11 incur during the "period of restoration" that you would not
12 have incurred if there had been no direct physical loss or
13 physical damage to property at the "scheduled premises",
including personal property in the open (or in a vehicle)
within 1,000 feet, caused by or resulting from a Covered
Cause of Loss.

14 42. Under Pigment's Special Property Coverage Form, Form SS 00 07 07 05,
15 Business Income is defined as:

- 16 (a) Net Income (Net Profit or Loss before income taxes) that
17 would have been earned or incurred if no direct physical
loss or physical damage had occurred; and
18 (b) Continuing normal operating expenses incurred, including
19 payroll.

20 43. Pigment's Special Property Coverage Form, Form SS 00 07 07 05,
21 defined Extra Expense as follows

- 22 (a) To avoid or minimize the suspension of business and to
continue "operations":
23 (i) At the "scheduled premises"; or
24 (ii) At replacement premises or at temporary locations,
25 including:
26 (aa) Relocation expenses; and
27 (bb) Cost to equip and operate the replacement or
28 temporary location, other than those costs
necessary to repair or to replace damaged
stock and equipment.

1 (b) To minimize the suspension of business if you cannot
2 continue “operations.”

3 (c) (i) To repair or replace any property; or

4 (ii) To research, replace or restore the lost information
5 on damaged “valuable papers and records”; to the
6 extent it reduces the amount of loss that otherwise
7 would have been payable under this Additional
8 Coverage or Additional Coverage o., Business
9 Income.

10 We will only pay for Extra Expense that occurs
11 within 12 consecutive months after the date of direct
12 physical loss or physical damage. This Additional
13 Coverage is not subject to the Limits of Insurance.

14 44. Pigment’s Special Property Coverage Form provides coverage for direct
15 physical loss of or physical damage to Covered Property at the premises described in
16 the Declarations (also called “scheduled premises” in this policy) caused by or
17 resulting from a Covered Cause of Loss.

18 45. The interruption of plaintiff’s and other Class members’ businesses was
19 not caused by any of the exclusions set forth in the applicable policies.

20 46. Pigment’s policy contains Limited Fungi, Bacteria or Virus Coverage,
21 which excludes remediation measures for a rot, bacteria or virus infestation at the
22 insured property, but covers such an infestation if it is caused by an otherwise covered
23 peril.

24 47. Plaintiff and all Class members have suffered a direct physical loss of
25 and damage to their property because they have been unable to use their property for
26 its intended purpose.

27 48. Plaintiff’s Fungi, Bacteria or Virus Coverage provision in its policy does
28 not exclude plaintiff’s losses because the efficient proximate cause of losses was
precautionary measures taken by its state to prevent the spread of COVID-19 in the
future, not because coronavirus was found on or around plaintiff’s insured property.

49. Notwithstanding the foregoing, by way of letter dated March 30, 2020,
Hartford denied Pigment’s claim for business interruption losses.

1 **C. The COVID-19 Pandemic Has Affected Policyholders Nationwide**

2 50. COVID-19 is physically impacting private commercial property
3 throughout the United States and the State of California, threatening the survival of
4 thousands of restaurants, retail establishments, and other businesses that have had
5 their business operations suspended or curtailed indefinitely by order of civil
6 authorities.

7 51. Hartford does not intend to cover losses caused by the COVID-19
8 pandemic as part of business interruption coverage. As aforementioned, Hartford
9 denied plaintiff's claim by way of a letter dated March 30, 2020, even though Pigment
10 was forced to close its retail locations due to the COVID-19 Civil Authority Orders.
11 On information and belief, Hartford has denied similar claims by other Class
12 members.

13 52. As a result, many small businesses that maintain commercial multi-peril
14 insurance policies with business interruption coverage will have significant uninsured
15 losses absent declaratory relief from this Court.

16 53. A declaratory judgment determining that the business income loss and
17 extra expense coverage provided in standard Hartford commercial property insurance
18 policies applies to the suspension, curtailment, and interruption of business operations
19 resulting from measures put into place by civil authorities is necessary to prevent
20 plaintiff and similarly situated Class members from being denied critical coverage for
21 which they have paid premiums.

22 **CLASS ALLEGATIONS**

23 54. Plaintiff brings this lawsuit pursuant to Federal Rule of Civil Procedure
24 23(a) and (b)(3) individually and on behalf of all other persons similarly situated.

25 55. The Nationwide Class is defined as:

26 All persons and entities who have entered into a standard commercial
27 property insurance policy with a Hartford insurance carrier to insure
28 property in the United States, where such policy provides for business
income loss and extra expense coverage and does not exclude coverage

1 for pandemics, and who have suffered losses due to measures put in
2 place by a COVID-19 Civil Authority Order.

3 The California Sub-Class is defined as:

4 All persons and entities who have entered into a standard commercial
5 property insurance policy with a Hartford insurance carrier to insure
6 property in California, where such policy provides for business income
loss and extra expense coverage and does not exclude coverage for
pandemics, and who have suffered losses due to measures put in place by
a COVID-19 Civil Authority Order.

7 Excluded from each of the Classes are the Defendants, their employees, officers,
8 directors, legal representatives, heirs, successors, and wholly or partly owned
9 subsidiaries or affiliated companies; Class Counsel and their employees; and the
10 judicial officers and their immediate family members and associated court staff
11 assigned to this case.

12 56. Plaintiff reserves the right to modify, expand, or amend the definitions of
13 the proposed Classes following the discovery period and before the Court determines
14 whether class certification is appropriate.

15 57. Certification of plaintiff's claims for class-wide treatment is appropriate
16 because plaintiff can prove the elements of its claims on a class-wide basis using the
17 same evidence as would prove those elements in individual actions alleging the same
18 claims.

19 **Numerosity**

20 58. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(1). The
21 Classes number at least in the hundreds and consists of geographically dispersed
22 business entities who are insured for business interruption losses. Hartford sells many
23 insurance policies nationwide and in the State of California and, therefore, joinder of
24 the Class members is impracticable.

25 59. The identity of Class members is ascertainable, as the names and
26 addresses of all Class members can be identified in Hartford's or their agent's books
27 and records. Plaintiff anticipates providing appropriate notice to the certified Classes
28

1 in compliance with Fed. R. Civ. P. 23(c)(2)(A) and/or (B), to be approved by the
2 Court after class certification, or pursuant to court order under Fed. R. Civ. P. 23(d).

3 **Typicality**

4 60. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(3) because
5 plaintiff's claims are typical of the claims of each of the Class members, as all Class
6 members were and are similarly affected and their claims arise from the same standard
7 policy provisions entered into with Hartford. Each Class member's insurance policy
8 contains the same form providing coverage for business income loss. None of the
9 forms exclude coverage due to a governmental action intended to reduce the effect of
10 the ongoing global pandemic. As a result, a declaratory judgment as to the rights and
11 obligations under plaintiff's policy will address the rights and obligations of all Class
12 members.

13 **Adequacy of Representation**

14 61. Plaintiff is committed to prosecuting the action, will fairly and adequately
15 protect the interests of Class members, and has retained counsel competent and
16 experienced in class action litigation, including litigation relating to insurance
17 policies. Plaintiff has no interests antagonistic to or in conflict with other Class
18 members. Plaintiff anticipates no difficulty in the management of this litigation as a
19 class action.

20 **Commonality**

21 62. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(2) because
22 there are questions of law and fact that are common to each of the Classes. These
23 common questions predominate over any questions affecting only individual Class
24 members. The questions of law and fact common to the Classes include, but are not
25 limited to:

26 (a) Whether there is an actual controversy between plaintiff and
27 Hartford as to the rights, duties, responsibilities and obligations of the parties under
28

1 the business interruption coverage provisions in standard commercial property
2 insurance policies;

3 (b) Whether measures to reduce the spread of the COVID-19
4 pandemic are excluded from plaintiff's and Class members' standard commercial
5 property insurance policies;

6 (c) Whether the measures put in place by civil authorities to stop the
7 spread of COVID-19 caused physical loss or damage to the covered commercial
8 property;

9 (d) Whether Hartford has repudiated and breached the insurance
10 policies with business interruption coverage by denying or intending to deny claims
11 for coverage; and

12 (e) Whether plaintiff and Class members suffered damages as a result
13 of the breach by Hartford.

14 **Superiority/Predominance**

15 63. This action satisfies the requirements of Fed. R. Civ. P. 23(b)(3). A class
16 action is superior to other available methods for the fair and efficient adjudication of
17 the rights of the Class members. The joinder of individual Class members is
18 impracticable because of the vast number of Class members who have purchased
19 commercial property insurance policies from Defendants.

20 64. Because a declaratory judgment as to the rights and obligations under the
21 uniform insurance policies will apply to all Class members, most or all Class members
22 would have no rational economic interest in individually controlling the prosecution
23 of specific actions. The burden imposed on the judicial system by individual
24 litigation, and to Hartford, by even a small fraction of the Class members, would be
25 enormous.

26 65. In comparison to piecemeal litigation, class action litigation presents far
27 fewer management difficulties, conserves the resources of both the judiciary and the
28 parties far better, and protects the rights of each Class member far more effectively.

1 The benefits to the legitimate interests of the parties, the Court, and the public
2 resulting from class action litigation substantially outweigh the expenses, burdens,
3 inconsistencies, economic infeasibility, and inefficiencies of individualized litigation.
4 Class adjudication is superior to other alternatives under Fed. R. Civ. P. 23(b)(3)(D).
5 Class treatment will also avoid the substantial risk of inconsistent factual and legal
6 determinations on the many issues in this lawsuit.

7 66. Plaintiff knows of no obstacles likely to be encountered in the
8 management of this action that would preclude its maintenance as a class action. Rule
9 23 provides the Court with the authority and flexibility to maximize the efficiencies
10 and benefits of the class mechanism and reduce management challenges. The Court
11 may, on motion of plaintiff or on its own determination, certify nationwide and
12 statewide classes for claims sharing common legal questions; use the provisions of
13 Rule 23(c)(4) to certify particular claims, issues, or common questions of law or of
14 fact for class-wide adjudication; certify and adjudicate bellwether class claims; and
15 use Rule 23(c)(5) to divide any class into subclasses.

16 **COUNT I**

17 **DECLARATORY JUDGMENT – BUSINESS INCOME COVERAGE** 18 **(Claim Brought on Behalf of the Nationwide Class and California Sub-Class)**

19 67. Plaintiff repeats the allegations set forth above as if fully set forth herein.

20 68. Plaintiff brings this Count individually and on behalf of the other
21 members of the Nationwide Class and California Sub-Class.

22 69. Plaintiff's Hartford Policy, as well as those of the other Class members,
23 is a contract under which Hartford was paid premiums in exchange for its contractual
24 agreement to pay plaintiff's, and the other Class members', losses for claims covered
25 by the policy.

26 70. As part of standard business interruption coverage, Hartford agreed to
27 pay for insureds' loss of Business Income sustained due to the necessary suspension
28 of its operations during the "period of restoration." Hartford also agreed to pay its

1 insureds' actual loss of Business Income sustained due to the necessary "suspension of
2 [their] operations" during the "period of restoration" caused by direct physical loss or
3 damage. "Business Income" under the policies means the "Net Income (Net Profit or
4 Loss before income taxes) that would have been earned or incurred," as well as
5 "[c]ontinuing normal operating expenses incurred, including payroll."

6 71. The COVID-19 Civil Authority Orders caused direct physical loss and
7 damage to plaintiff's and the other Class members' Covered Properties, requiring
8 suspension of operations at the Covered Properties. Accordingly, losses caused by the
9 COVID-19 Civil Authority Orders triggered the Business Income provision of
10 plaintiff's and the other Class members' Hartford policies.

11 72. Plaintiff and other Class members have complied with all applicable
12 provisions of the policies and/or those provisions have been waived by Hartford or
13 Hartford is estopped from asserting them. Yet Hartford has abrogated its insurance
14 coverage obligations pursuant to the policies' clear and unambiguous terms and has
15 wrongfully and illegally refused to provide the coverage to which plaintiff and Class
16 members are entitled.

17 73. Hartford has denied plaintiff's and other Class members' claims for
18 business interruption losses caused by COVID-19 Civil Authority Orders on a
19 uniform and class-wide basis without individual bases or investigations, so the Court
20 can render declaratory judgment irrespective of whether a particular Class member
21 has filed a claim.

22 74. An actual case or controversy exists regarding plaintiff's and the other
23 Class members' rights and Hartford's obligations under the policies to pay for losses
24 incurred by plaintiff and the other Class members in connection with the business
25 interruption caused by COVID-19 Civil Authority Orders.

26 75. Pursuant to 28 U.S.C. §2201, plaintiff and other Class members seek a
27 declaratory judgment from this Court as follows:
28

- 1 i. Plaintiff's and the other Class members' Business Income losses
2 incurred due to COVID-19 Civil Authority Orders are insured losses
3 under their Hartford policies; and
- 4 ii. Hartford is obligated to pay plaintiff and other Class members for the full
5 amount of their Business Income losses (up to the maximum allowable
6 amount under the policies) incurred in connection with the COVID-19
7 Civil Authority Orders during the period of restoration and the necessary
8 interruption of their businesses stemming therefrom.

COUNT II

BREACH OF CONTRACT – BUSINESS INCOME COVERAGE (Claim Brought on Behalf of the Nationwide Class and California Sub-Class)

9 76. Plaintiff repeats the allegations set forth above as if fully set forth herein.

10 77. Plaintiff brings this Count individually and on behalf of the other
11 members of the Nationwide Class and California Sub-Class.

12 78. Plaintiff's Hartford Policy, as well as those of other Class members, is a
13 contract under which Hartford was paid premiums in exchange for its promise to pay
14 plaintiff's, and the other Class members', losses for claims covered by the policies.

15 79. As part of standard business interruption coverage, Hartford agreed to
16 pay for insureds' actual loss of Business Income sustained due to the necessary
17 suspension of its operations during the "period of restoration." Hartford also agreed to
18 pay its insureds' actual loss of Business Income sustained due to the necessary
19 "suspension of [their] operations" during the "period of restoration" caused by direct
20 physical loss or damage. "Business Income" under the policies means the "Net
21 Income (Net Profit or Loss before income taxes) that would have been earned or
22 incurred," as well as "[c]ontinuing normal operating expenses incurred, including
23 payroll."

24 80. The COVID-19 Civil Authority Orders caused direct physical loss and
25 damage to plaintiff's and the other Class members' Covered Properties, requiring
26 suspension of operations at the Covered Properties. Accordingly, losses caused by the
27 COVID-19 Civil Authority Orders triggered the Business Income provision of
28 plaintiff's and the other Class members' Hartford policies.

81. Plaintiff and the other Class members have complied with all applicable provisions of their policies and/or those provisions have been waived by Hartford and/or Hartford is estopped from asserting them. Yet Hartford has abrogated its insurance coverage obligations under the policies' clear and unambiguous terms.

82. By denying coverage for any Business Income loss incurred by plaintiff or other Class members as a result of the COVID-19 Civil Authority Orders, Hartford has breached its coverage obligations under the policies.

83. As a result of Hartford's breaches of contract, plaintiff and other Class members have sustained substantial damages for which Hartford is liable in an amount to be established at trial.

COUNT III

DECLARATORY JUDGMENT – CIVIL AUTHORITY COVERAGE
(Claim Brought on Behalf of the Nationwide Class and California Sub-Class)

84. Plaintiff repeats the allegations set forth above as if fully set forth herein.

85. Plaintiff brings this Count individually and on behalf of the other members of the Nationwide Class and California Sub-Class.

86. Plaintiff's Hartford Policy, as well as those of other Class members, is a contract under which Hartford was paid premiums in exchange for its promise to pay plaintiff's, and other Class members', losses for claims covered by the policy.

87. Plaintiff's Hartford Policy provided for "Civil Authority" coverage, which promises to pay "the actual loss of Business Income you sustain when access to your 'scheduled premises' is specifically prohibited by order of a civil authority as the direct result of a Covered Cause of Loss to property in the immediate area of your 'scheduled premises.'" Accordingly, the COVID-19 Civil Authority Orders triggered the Civil Authority provision under plaintiff's and the other Class members' Hartford policies.

88. Plaintiff and Class members have complied with all applicable provisions of the policies and/or those provisions have been waived by Hartford and/or Hartford

1 is estopped from asserting them. Yet Hartford has abrogated its insurance coverage
 2 obligations under the policies' clear and unambiguous terms and has wrongfully and
 3 illegally refused to provide coverage to which plaintiff and Class members are
 4 entitled.

5 89. Hartford has denied claims related to COVID-19 on a uniform and class
 6 wide basis without individual bases or investigations, so the Court can render
 7 declaratory judgment irrespective of whether a particular Class member has filed a
 8 claim.

9 90. An actual case or controversy exists regarding plaintiff's and other Class
 10 members' rights and Hartford's obligations under the policies to reimburse plaintiff
 11 and other Class members for the full amount of covered Civil Authority losses
 12 incurred by plaintiff and other Class members in connection with COVID-19 Civil
 13 Authority Orders and the necessary interruption of their businesses stemming
 14 therefrom.

15 91. Pursuant to 28 U.S.C. §2201, plaintiff and other Class members seek a
 16 declaratory judgment from this Court declaring the following:

- 17 i. Plaintiff's and other Class members' Civil Authority losses incurred in
 18 connection with COVID-19 Civil Authority Orders and the necessary
 19 interruption of their businesses stemming therefrom are insured losses
 20 under their policies; and
- 21 ii. Hartford is obligated to pay plaintiff and other Class members for the full
 22 amount of their Civil Authority losses (up to the maximum allowable
 23 amount under the policies) incurred in connection with the COVID-19
 24 Civil Authority Orders and the necessary interruption of their businesses
 25 stemming therefrom.

26 COUNT IV

27 **BREACH OF CONTRACT – CIVIL AUTHORITY COVERAGE** 28 **(Claim Brought on Behalf of the Nationwide Class and California Sub-Class)**

92. Plaintiff repeats the allegations set forth above as if fully set forth herein.

93. Plaintiff brings this Count individually and on behalf of the other
 members of the Nationwide Class and California Sub-Class.

94. Plaintiff's Hartford Policy, as well as those of other Class members, is a contract under which Hartford was paid premiums in exchange for its promise to pay plaintiff's, and the other Class Members', losses for claims covered by the policy.

95. Plaintiff's Hartford Policy provided for "Civil Authority" coverage, which promises to pay "the actual loss of Business Income you sustain when access to your 'scheduled premises' is specifically prohibited by order of a civil authority as the direct result of a Covered Cause of Loss to property in the immediate area of your 'scheduled premises.'" Accordingly, the COVID-19 Civil Authority Orders triggered the Civil Authority provision under plaintiff's and the other Class members' Hartford policies.

96. Plaintiff and the other Class members have complied with all applicable provisions of the policies and/or those provisions have been waived by Hartford and/or Hartford is estopped from asserting them. Yet Hartford has abrogated its insurance coverage obligations under the policies' clear and unambiguous terms.

97. By denying coverage for any business losses incurred by plaintiff and other Class members in connection with the COVID-19 Civil Authority Orders, Hartford has breached its coverage obligations under the policies.

98. As a result of Hartford's breaches of contract, plaintiff and other Class members have sustained substantial damages for which Hartford is liable in an amount to be established at trial.

COUNT V

DECLARATORY JUDGMENT – EXTRA EXPENSE COVERAGE
(Claim Brought on Behalf of the Nationwide Class and California Sub-Class)

99. Plaintiff repeats the allegations set forth above as if fully set forth herein.

100. Plaintiff brings this Count individually and on behalf of the other members of the Nationwide Class and the California Sub-Class.

1 101. Plaintiff's Hartford Policy, as well as those of other Class Members, is a
2 contract under which Hartford was paid premiums in exchange for its promise to pay
3 plaintiff's, and other Class members', losses for claims covered by the policies.

4 102. Plaintiff's Hartford Policy provided that Hartford would pay necessary
5 Extra Expense that its insureds incur during the "period of restoration" that the
6 insureds would not have incurred if there had been no direct physical loss or damage
7 to the described premises. "Extra Expense" means expenses "[t]o avoid or minimize
8 the suspension of business and to continue 'operations,'" and to repair or replace
9 property. Due to the COVID-19 Civil Authority Orders, plaintiff and other Class
10 members incurred Extra Expense at their Covered Properties.

11 103. Plaintiff and other Class members have complied with all applicable
12 provisions of the policies and/or those provisions have been waived by Hartford
13 and/or Hartford is estopped from asserting them. Yet Hartford has abrogated its
14 insurance coverage obligations under the policies' clear and unambiguous terms and
15 has wrongfully and illegally refused to provide coverage to which plaintiff and Class
16 members are entitled.

17 104. Hartford has denied claims related to COVID-19 on a uniform and class-
18 wide basis without individual bases or investigations, so the Court can render
19 declaratory judgment irrespective of whether a particular Class member has filed a
20 claim.

21 105. An actual case or controversy exists regarding plaintiff's and other Class
22 members' rights and Hartford's obligations under the policies to reimburse plaintiff
23 and the other Class members for the full amount of Extra Expense losses incurred by
24 plaintiff and Class members in connection with COVID-19 Civil Authority Orders
25 and the necessary interruption of their businesses stemming therefrom.

26 106. Pursuant to 28 U.S.C. §2201, plaintiff and other Class members seek a
27 declaratory judgment from this Court declaring the following:
28

- i. Plaintiff's and other Class members' Extra Expense losses incurred in connection with the COVID-19 Civil Authority Orders and the necessary interruption of their businesses stemming therefrom are insured losses under their policies; and
- ii. Hartford is obligated to pay plaintiff and other Class members for the full amount of their Extra Expenses losses (up to the maximum allowable amount under the policies) in connection with the COVID-19 Civil Authority Orders and the necessary interruption of their businesses stemming therefrom.

COUNT VI

BREACH OF CONTRACT – EXTRA EXPENSE COVERAGE (Claim Brought on Behalf of the Nationwide Class and California Sub-Class)

107. Plaintiff repeats the allegations set forth above as if fully set forth herein.

108. Plaintiff brings this Count individually and on behalf of the other members of the Nationwide Class and California Sub-Class.

109. Plaintiff's Hartford Policy, as well as those of the other Class members, is a contract under which Hartford was paid premiums in exchange for its promise to pay plaintiff's, and the other Class members', losses for claims covered by the policy.

110. Plaintiff's Hartford Policy provided that Hartford agreed to pay necessary Extra Expense that it incurred during the "period of restoration" that would not have incurred if there had been no direct physical loss or damage to the described premises. "Extra Expense" means expenses "[t]o avoid or minimize the suspension of business and to continue 'operations,'" and to repair or replace property. Due to the COVID-19 Civil Authority Orders, plaintiff and other Class members incurred Extra Expense at their Covered Properties.

111. Plaintiff and other Class members have complied with all applicable provisions of the policies and/or those provisions have been waived by Hartford and/or Hartford is estopped from asserting them. Yet Hartford has abrogated its insurance coverage obligations under the policies' clear and unambiguous terms.

1 112. By denying coverage for any business losses incurred by plaintiff and
2 other Class members in connection with the COVID-19 Civil Authority Orders,
3 Hartford has breached its coverage obligations under the policies.

4 113. As a result of Hartford's breaches of the policies, plaintiff and the other
5 Class members have sustained substantial damages for which Hartford is liable in an
6 amount to be established at trial.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, plaintiff, individually and on behalf of all similarly situated
9 individuals and entities, prays for relief and judgment against Defendants as follows:

10 A. Determining that this action is a proper class action under one or more
11 provisions of Federal Rule of Civil Procedure 23, appointing plaintiff to serve as a
12 Class Representative and appointing its counsel to serve as Class Counsel;

13 B. Issuing a Declaratory Judgment declaring the parties' rights and
14 obligations under the insurance policy provisions at issue;

15 C. Awarding plaintiff and the Classes compensatory damages against
16 Defendants, jointly and severally, for all damages sustained as a result of Defendants'
17 breach of the policies in an amount to be proven at trial, including interest thereon;

18 D. Awarding plaintiff and the Classes pre-judgment and post-judgment
19 interest as well as reasonable attorneys' fees and expenses incurred in this action; and

20 E. Awarding such other relief as the Court may deem just and proper.

21 **JURY DEMAND**

22 Plaintiff demands a trial by jury on all issues so triable.

23 DATED: April 28, 2020

ROBBINS GELLER RUDMAN
& DOWD LLP
BENNY C. GOODMAN III
RACHEL L. JENSEN

26 *s/Rachel L. Jensen*
27 _____
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Attorneys for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

PIGMENT INC., Individually and on Behalf of All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff San Diego County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Rachel L. Jensen, Robbins Geller Rudman & Dowd LLP
655 West Broadway, Suite 1900, San Diego, CA 92101
619/231-1058

DEFENDANTS

THE HARTFORD FINANCIAL SERVICES GROUP, INC. and
SENTINEL INSURANCE COMPANY, LTD.,

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'20CV0794 BEN JLB**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §1332(d)

Brief description of cause:

COMPLAINT FOR DECLARATORY JUDGMENT AND BREACH OF CONTRACT

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

04/28/2020

SIGNATURE OF ATTORNEY OF RECORD

s/Rachel L. Jensen

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable [class action lawsuit database](#)
