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12 Attorneys for Plaintiffs

13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF SANTA BARBARA**

16 MODA LLC; MARC FISHER LLC; FISHER
INTERNATIONAL LLC; MB FISHER LLC; FISHER
17 FOOTWEAR LLC; MFKK, LLC; UNISA FISHER
WHOLESALE LLC; FISHER LICENSING LLC;
18 FISHER ACCESSORIES LLC; FISHER SIGERSON
MORRISON LLC; MBF HOLDINGS LLC (DE);
19 MARC FISHER HOLDINGS LLC; FISHER
SERVICES LLC; MBF AIR LLC; UNISA FISHER
20 LLC; MBF LICENSING LLC; MBF INVEST LLC;
MBF HOLDINGS LLC (WY); FISHER DESIGN LLC;
21 MARC FISHER JR BRAND LLC; MARC FISHER
INTERNATIONAL LLC; MF-TFC LLC; EASY
22 SPIRIT LLC; MFF-NW LLC; and MFF NW
INVESTMENT LLC;

23 Plaintiffs,

24 vs.

25 HARTFORD FIRE INSURANCE COMPANY,

26 Defendant.

ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
4/13/2020 3:53 PM
By: Narzralli Baksh, Deputy

Case No. 20CV01655
COMPLAINT & JURY DEMAND

1 Plaintiffs complain of Defendant and allege as follows:

2 **NATURE OF THE ACTION**

3 1. This is an action by Plaintiffs MODA LLC (“Moda”), MARC FISHER LLC, FISHER
4 INTERNATIONAL LLC (“Fisher International”), MB FISHER LLC, FISHER FOOTWEAR LLC,
5 MFKK, LLC, UNISA FISHER WHOLESale LLC, FISHER LICENSING LLC, FISHER
6 ACCESSORIES LLC, FISHER SIGERSON MORRISON LLC, MBF HOLDINGS LLC (DE),
7 MARC FISHER HOLDINGS LLC, FISHER SERVICES LLC, MBF AIR LLC, UNISA FISHER
8 LLC, MBF LICENSING LLC, MBF INVEST LLC, MBF HOLDINGS LLC (WY) (“MBF
9 Holdings”), FISHER DESIGN LLC, MARC FISHER JR BRAND LLC, MARC FISHER
10 INTERNATIONAL LLC, MF-TFC LLC, EASY SPIRIT LLC, MFF-NW LLC, and MFF NW
11 INVESTMENT LLC (together “Plaintiffs” or the “Company”) against Defendant HARTFORD
12 FIRE INSURANCE COMPANY (“The Hartford”), which has wrongfully invoked inapplicable
13 virus exclusions and policy limitations to deny tens of millions of dollars in coverage to Plaintiffs
14 for insured property and lost business income in the midst of a pandemic.

15 **THE PARTIES**

16 2. Plaintiffs are principally engaged in the wholesale business of designing, developing,
17 sourcing, marketing and selling women’s, men’s and children’s footwear under their owned or
18 licensed brand names, including “Calvin Klein,” “Guess,” “G by Guess,” “Tommy Hilfiger,”
19 “Tretorn,” “Easy Spirit,” “Evolve,” “Bandolino,” “Nine West,” “Indigo Rd,” “Unisa,” and
20 “Sigerson Morrison,” along with the namesake brands “Marc Fisher” and “Marc Fisher LTD.”¹
21 Plaintiffs sell footwear to national department stores and other retail establishments located
22 throughout the United States, including in Santa Barbara, as well as direct to customers through
23
24

25 _____
26 ¹ Plaintiffs Moda and Fisher International are not engaged in a wholesale business, but a first cost
27 business in which they design and source the manufacture of footwear products for their private
28 label customers. For purposes of this complaint, plaintiffs Moda and Fisher International will not
be distinguished from the other plaintiffs (except where necessary) since they have suffered similar
losses.

1 online e-commerce websites. Plaintiffs’ business employs hundreds of workers throughout the
2 United States, including in Santa Barbara.

3 3. With the exception of Plaintiff MBF Holdings, Plaintiffs are organized and existing
4 under the laws of the State of Delaware, with their principal place of business at 777 West Putnam
5 Avenue, Greenwich, Connecticut 06830. Plaintiff MBF Holdings is a Wyoming limited liability
6 company with its principal place of business located in Greenwich, Connecticut.

7 4. Defendant Hartford Fire Insurance Company (“Defendant”) is an insurance company
8 organized and existing under the laws of the State of Connecticut, with its principal place of business
9 at One Hartford Plaza, Hartford, Connecticut 06155.

10 **JURISDICTION AND VENUE**

11 5. Subject matter jurisdiction is proper in the Superior Court of the State of California
12 for the County of Santa Barbara, which is a court of general jurisdiction. .

13 6. Personal jurisdiction over Defendant is proper under California Code of Civil
14 Procedure Section 410.10, which provides that California courts are authorized to exercise
15 jurisdiction over parties “on any basis not inconsistent with the Constitution.”

16 7. Personal jurisdiction over Defendant is proper because Defendant has purposeful
17 contacts with the California forum. Defendant is registered with the Secretary of State to do
18 business, has an agent for service of process in California, and has offices in California. Defendant
19 sells its insurance products through its agents in California (including in Santa Barbara). Defendant
20 does substantial, continuous and systematic business in the State of California. Defendant regularly
21 files and responds to insurance coverage lawsuits in California. Defendant has performed acts and
22 consummated transactions in California giving rise to the claims in this Complaint, including
23 insuring Plaintiffs’ California property, business income and payroll risks. Defendant has also
24 performed activities out-of-state that were aimed at and had an effect in California, including
25 denying insurance coverage for Plaintiffs’ California property, business income and payroll risks.

26 8. Venue is proper under California Code of Civil Procedure Section 395.5 in the
27 Superior Court of the State of California for the County of Santa Barbara, which is the county “where
28 the obligation or liability arises”—namely, the obligation to pay for Santa Barbara property,

1 business income and payroll losses covered under the Policy. Moreover, to the extent that Defendant
2 has not designated the location and address of its principal office in the State, venue is proper in any
3 county in the State under Section 395.5 and *Easton v. Sup. Ct.*, 12 Cal.App.3d 243, 246-47 (1970).

4 **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

5 **A. Overview of the Company's Business**

6 9. The Company's business enterprise was founded by Marc Fisher who began his career
7 working closely for 23 years alongside his father (who was the co-founder of Nine West). In 2005,
8 Mr. Fisher started his own company. The Company's initial business involved the Guess footwear
9 license business and subsequently expanded to Marc Fisher branded footwear exclusively sold to
10 Macy's. Since then, the Company has grown and picked up more owned and licensed brands.

11 10. The Company is principally engaged in the wholesale business of designing,
12 developing, sourcing, marketing and selling women's and men's footwear. The Company's clients
13 include, but are not limited to, nationwide retailers such as Nordstrom, Macy's and DSW. The
14 Company's footwear is sold in Santa Barbara at Macy's, 3805 State Street, Santa Barbara, California
15 93105, at Nordstrom, 17 W. Canon Perdido Street, Santa Barbara, California 93101, and at The
16 Walking Company / Footsmart, 25 W. Anapamu, Santa Barbara California 93101, among other
17 retail locations. These locations are presently closed pursuant to orders of civil authority.

18 11. The Company currently employs over 200 people across the country, in California
19 (including Santa Barbara), New York, Connecticut, New Jersey, Ohio, Georgia, Pennsylvania,
20 North Carolina, South Carolina, Florida, Minnesota and Texas. The Company also sources a
21 distribution center in Ontario, California that currently houses a substantial amount of its inventory.

22 12. Prior to mid-March of 2020, the Company and its affiliates ran a successful business.
23 The Company has no long-term debt and finances its operation through short-term financing known
24 as "factoring."

25 13. The Company finances its wholesale business operation through factoring
26 arrangements with two of the largest factors. Generally, under a factoring arrangement, a lender
27 agrees to be the Company's factor and purchases certain of the Company's accounts receivables and
28 collects directly from the Company's customers the amounts due on the accounts receivables less

1 certain charges, interest owed by the Company and any chargebacks (*i.e.*, any costs that the
2 Company owed to the customer, such as advertisement fees, etc.). In exchange, the lender provides
3 advances on a percentage of the face value of the accounts receivables to the Company's wholesale
4 business so that it can support new lines of inventory for upcoming seasons. Under the agreements,
5 lenders maintain a 15% cushion by financing only 85% of the total value of the accounts receivables.
6 Lenders also grant the Company's wholesale business the ability to borrow against the value of
7 "eligible" inventory at approximately a 50% level and subject to maximum levels. The inventory's
8 value is based upon the lower of the cost of the footwear products or the lender's measure of "fair
9 market value."

10 **B. The Policy**

11 14. Defendant issued to Plaintiffs Special Multi-Flex Business Insurance Policy No. UUN
12 AB7878, effective from October 15, 2019 to October 15, 2020 (the "Policy"). A true and correct
13 copy of the Policy is attached hereto as "Exhibit A."

14 15. The Policy is an "all risks" property policy that provides coverage to Plaintiffs for loss
15 to insured property, unless that loss is subject to an express exclusion or limitation.

16 16. The Policy's "Property Choice – Business Income and Extra Expense Coverage Form
17 (Business Interruption)" provides business income coverage to Plaintiffs, "for the actual loss of
18 Business Income [they] sustain and the actual, necessary and reasonable Extra Expense [they] incur
19 due to the necessary interruption of [their] business operations . . . due to direct physical loss of or
20 direct physical damage to property." In turn, "Business Income" includes "net income" and
21 "continuing normal operating expenses, including Payroll Expenses."

22 17. The Policy's "Property Choice Business Income and Extra Expense Coverage Form
23 – Additional Coverages" Endorsement provides special coverage for the Plaintiffs in the event of
24 "loss of Business Income" they "incur when access to [their] Scheduled Premises is specifically
25 prohibited by order of civil authority." This civil authority coverage does not require a direct
26 physical loss of property, other than a loss of access to Plaintiffs' insured locations.

27 18. This "Property Choice Business Income and Extra Expense Coverage Form –
28 Additional Coverages" Endorsement also provides special Dependent Properties coverage for "the

1 suspension of [Plaintiffs'] operations" caused by events at "premises owned and operated by others
2 that they depend on to: (1) deliver materials or services [or] (2) accept [their] products or services."

3 19. The standard 30 days of business income coverage described above is expanded by
4 the "Extended Income" coverage, which provides up to 180 days of additional business income, and
5 by the "Future Earnings" coverage, which provides up to 2 years of additional income, from the date
6 the loss occurred.

7 20. The Policy expressly provides that "two or more coverages in this policy [may] apply
8 to the same loss." The Policy further provides that "if we adopt any revision that would broaden
9 this Coverage Part, without additional premium, within 45 days prior to inception of this policy or
10 during this policy period, the broadened coverage will immediately apply to you."

11 21. The Policy provides up to \$20,595,300 in business personal property coverage *per*
12 *occurrence*, and up to \$20,000,000 in special business income coverage *per occurrence*.

13 22. The Policy contains an inapplicable "New York – Exclusion of Loss Due to Virus or
14 Bacteria" Endorsement "for loss or damages caused by or resulting from any virus, bacterium or
15 other microorganism that induces or is capable of inducing physical distress, illness or disease."
16 Therefore, as a preliminary matter, by its express terms the exclusion does not apply to coverage for
17 exposures *outside* New York.

18 23. Neither does the "New York – Exclusion of Loss Due to Virus or Bacteria"
19 Endorsement apply to exposures *inside* New York. That is because the "New York – Exclusion of
20 Loss Due to Virus or Bacteria" Endorsement conflicts with the "Property Choice Business Income
21 and Extra Expense Coverage Form – Additional Coverages" Endorsement, which provides express
22 coverage for "business income and/or extra expense" where business "interruption is necessary due
23 to loss or damage to property caused by 'fungus,' wet rot, dry rot, bacteria or *virus*."

24 24. Additionally, the "New York – Exclusion of Loss Due to Virus or Bacteria" does not
25 apply to losses caused by a concurrent cause of loss.

1 C. **The Company Has Sustained Significant Losses, Including Property, Business**
2 **Income and Payroll Losses Covered Under The Policy**

3 25. Beginning in late-February 2020, state and local governments issued orders of civil
4 authority temporarily closing all “non-essential” businesses. In direct response to these orders of
5 civil authority, among others, the Company’s major retail customers not only shuttered their
6 storefronts, but also cancelled their retail orders, placed months prior, from Plaintiffs’ spring lines.
7 As a result, Plaintiffs’ warehouses are now overflowing with spring inventory, which due to the
8 seasonal nature of the retail business, is effectively unsellable.

9 26. Because of the orders of civil authority shutting down their retail locations, the
10 Company’s retail customers have either cancelled, halted payment and/or unilaterally extended the
11 agreed upon payment dates for an additional 90 to 180 days on the outstanding \$120 million of retail
12 customer orders. However, with respect to the customers who have unilaterally extended the
13 payment dates, there is no assurance that they will ever resume making payments to the Company.
14 In addition, for goods that Plaintiffs have produced and are ready to ship – there is inventory in the
15 warehouses² and en route, totaling approximately an additional \$90 million of inventory. Therefore,
16 Plaintiffs will sustain significant damages as a result of their customers cancelling and/or delaying
17 payment on \$120 million of outstanding orders from March through July 2020 and having
18 approximately \$90 million in inventory for which, due to the orders of civil authority, they have no
19 outlet to offload.

20 27. These orders of civil authority have directly impacted the Company’s operations and
21 ability to market its inventory, as several insured locations are within the jurisdictions in which civil
22 authority orders were issued. Among these are the Company’s Greenwich, Connecticut
23 headquarters, which employs over 150 individuals, its New York showroom, at which all of its
24 major customers view the footwear styles offered before placing that season’s retail orders, as well
25 as their California and New Jersey warehouses that substantially receive, store and ship the
26 inventory. To date, civil authority orders have been issued to cease “non-essential” operations,

27 _____
28 ² Plaintiffs Moda and Fisher International do not own any inventory nor do they maintain any
inventory at any warehouses.

1 including the Company's and its customers' businesses, in almost every state the Company has
2 operations. Moreover, while direction from the federal, state and local governments changes day to
3 day, as of the date of this filing, it appears unlikely that these governments will reopen "non-
4 essential" businesses prior to the end of May, at the earliest.

5 28. As of April 1, 2020, Plaintiffs are obligated to pay approximately \$55 million to its
6 third-party factories, which already manufactured goods based on production orders submitted to
7 the factories (that are based on customers' orders that have now mainly been cancelled by retail
8 customers shuttered by orders of civil authority). Most of these goods are in Plaintiffs' warehouses
9 with no outlet to offload. In addition, Plaintiffs are currently obligated to pay these same factories
10 approximately \$52 million related to production orders for the current season's lines that are out to
11 the factories, or the related cancellation costs for work in process and component/material liability
12 related to cancelled production orders.

13 29. To generate new income to keep their business afloat and their workers employed,
14 Plaintiffs must also soon begin having these factories produce shoes for the fall season, after state
15 and local governments lift their orders of civil authority and major retailers are expected to need
16 new products after their stores start to resume business. In general, the production orders for this
17 next season of inventory would follow the \$52 million of production orders above. However, in
18 order to do so, Plaintiffs must first pay the outstanding balances owed to the third-party factories.
19 Unlike many other shoe businesses, the Company produces shoes for its customer base, largely
20 utilizing smaller factories. Since the factories largely depend upon Plaintiffs' business to operate
21 (Plaintiffs, at times, may be responsible for 75% of the factories' monthly production), these
22 factories' businesses will be destroyed if Plaintiffs are unable to pay them on the outstanding
23 purchase orders and Plaintiffs will not have a factory base still operating to fulfill upcoming
24 production orders.

25 30. Factories also produce the footwear samples that Plaintiffs show to their customers in
26 their showroom. By producing these footwear samples, factories ensure that a product can be made
27 to Plaintiffs' design specifications and understand the approximate amount they will cost to
28 manufacture. However, if there is no factory base to produce these samples and the factories' sample

1 rooms are not in operation, Plaintiffs will have no samples to market to their customers, and will be
2 unable to sell future footwear products to their customers and keep the business afloat.

3 31. Normally, Plaintiffs would be able to turn to financing to meet this need. As noted
4 above, Plaintiffs' financing for their wholesale business is premised on their accounts receivables
5 being deemed "good" by their lenders. With significant delays or stoppage in retail customers'
6 payments, the "good" accounts receivable amount is decreasing daily such that there is little to no
7 borrowing availability left under these usually robust lending arrangements. In addition, with most
8 customer orders cancelled and their warehouses and stores closed, Plaintiffs' inventory (which is
9 seasonal in nature) is effectively unsellable (and becoming therefore ineligible as collateral) and
10 therefore Plaintiffs have little to no availability for borrowing against their owned inventory value.

11 32. Plaintiffs purchased all-risk property and business income coverage from Defendant
12 to protect against these and other business interruption losses. Here, the covered losses include, but
13 are not limited to, (a) multiple occurrences of direct physical loss of insured property; (b) multiple
14 occurrences of lost business income, extra expense, extended income and future earnings due to the
15 restriction of access to premises by order of civil authority; (c) multiple occurrences of lost business
16 income, extra expense, extended income and future earnings due to the necessary suspension of
17 Plaintiffs operations with Dependent Properties, including several major retailers on which Plaintiffs
18 rely to accept their products; and (d) payroll expenses.

19 33. Plaintiffs gave Defendant notice of these losses under the Policy on April 1, 2020.
20 A true and correct copy of Plaintiffs' notice and proof of receipt is attached hereto as "Exhibit B."
21 In particular, the Company advised Defendant of the rapid damage it had incurred, including to its
22 California inventory, and requested confirmation that Defendant would honor its contractual
23 obligations and provide the Company with insurance by a date certain—April 6, 2020. To date,
24 Defendant has not acknowledged coverage. In fact, Defendant has continued to ignore Plaintiffs'
25 subsequent pleas for coverage, including an April 8, 2020, request by Plaintiffs' counsel that
26 Defendant's counsel acknowledge coverage.

27 34. Based on Defendant's conduct to date, it is apparent that Defendant has accepted
28 Plaintiffs' policy premiums with no intention of providing any coverage under the Policy.

1 35. On April 13, 2020, Defendant reached out to the Company concerning its notice of
2 losses, but would not confirm whether Defendant was acknowledging coverage under the Policy.
3 Without assurance of coverage under the Policy, and in light of Defendant’s express position on its
4 website that, among other things, coverage will not be available due to policy limitations and
5 exclusions for viruses and “direct physical loss,” then Defendant has effectively denied coverage
6 for Plaintiffs’ property and business income claims. Upon information and belief, Defendant has
7 similarly preemptively and summarily denied coverage for the claims of other hard-hit businesses
8 nationwide, using the ongoing pandemic as an excuse to avoid making payments under its policy
9 contracts. Indeed, on its website, Defendant falsely asserts that the “civil authority and dependent
10 property coverage” it sold Plaintiffs and others was “designed to cover losses that result from direct
11 physical loss or damage to property caused by hurricanes, fires, wind damage or theft and is not
12 designed to apply in the case of a virus.” Defendant further asserts that while “we’re closely
13 monitoring COVID-19, and we know it’s affecting businesses across the country, . . . coverage may
14 be unavailable or limited because viruses generally do not cause physical loss or damage to property
15 as required by the policy.” Defendant has further relied on plainly inapplicable exclusions for
16 pollution, loss of market, and governmental action. Defendant’s no-coverage position is incorrect.

17 36. Defendant’s denial of coverage is wrongful. By its express terms, Defendant’s civil
18 authority and dependent property coverage does not require direct physical loss. Moreover, any
19 alleged direct physical loss requirement in the other coverages is satisfied by the loss of access to
20 and loss of use of property. By its express terms, the “New York – Exclusion of Loss Due to Virus
21 or Bacteria” does not apply to Plaintiffs loss for several reasons, including that the loss occurred
22 outside New York. Neither can Defendant meet its burden to show that exclusions for pollution,
23 loss of market, and governmental action apply.

24 37. Defendant is obligated to pay Plaintiffs’ losses under the terms of its Policy. Indeed,
25 the Company will suffer immediate and irreparable destruction of if its business and will have no
26 choice but to liquidate if Defendant is not enjoined from refusing to honor its contractual obligations
27 to provide coverage under the Policy. As discussed above, the Company – which lacks access to
28 vital financing and has an obligation to immediately pay a majority of the \$55 million owed now –

1 will be unable to access manufacturers' facilities and pay its expenses. The Company's inability to
2 pay its vendors and factories will have a devastating impact on its ability to continue functioning.

3 38. The Company has substantial outstanding debts which exceed its current liquidity of
4 approximately \$20 million. With such limited cash on hand, the Company will be unable to cover
5 its operational expenses, which include, among other things, employee payroll, rents, marketing,
6 royalties, customs, taxes and insurance coverage for its inventory. Also, given that substantially all
7 of the Company's assets serve as collateral under the existing factoring arrangements, the Company
8 lacks any assets to provide as collateral to obtain a meaningful source of financing from another
9 lender. While the Company has applied for a small business loan under the new Paycheck Protection
10 Program for approximately \$5.7 million pursuant to the Coronavirus Aid, Relief, and Economic
11 Security Act, Pub. L. No. 116-136, 134 Stat 281 (2020), those funds alone will be insufficient.
12 Without expeditious policy payments from Defendant, Plaintiffs will be unable to continue to fund
13 the business through the summer, when best estimates anticipate the orders of civil authority will be
14 lifted and Plaintiffs' major retail customers will place orders for the fall season. As a result, the
15 Company will be forced to lay off scores of employees and liquidate. Indeed, Plaintiffs have already
16 been forced to furlough some of their employees due to their precarious financial condition.

17 **FIRST CAUSE OF ACTION**

18 **(Breach of Contract)**

19 39. Plaintiffs reallege and incorporate by reference herein each allegation contained in
20 Paragraphs 1 through 38 above.

21 40. Defendant had duties under the Policy, the law, and insurance industry and custom
22 and practice to, among other things, pay Plaintiffs' property, business income and payroll losses, as
23 more fully discussed above. Defendants were likewise obligated to conduct a thorough investigation
24 of all bases that might support Plaintiffs' claim for coverage.

25 41. Defendant breached its duties under the Policy by, among other things, denying
26 coverage for Plaintiffs' property, business income and payroll losses; asserting grounds to avoid or
27 limit coverage that it knew were not supported by, and are contrary to, the terms of the Policy, the
28 law, industry custom and practice, the parties' course of dealings, and the facts; failing to conduct

1 an adequate investigation and asserting grounds to avoid coverage based on that inadequate
2 investigation; failing to fully inquire into possible bases that might support coverage; and by giving
3 greater consideration to its own interests than it gave to Plaintiffs' interests.

4 42. In the alternative, Defendant committed anticipated breach by clearly and positively
5 indicating, by words and conduct, that it would not fulfill its duties under the Policy.

6 43. As a direct and proximate result of Defendant's breach of contract, or in the
7 alternative, anticipatory breach of contract, Plaintiffs have suffered, and continue to suffer, damages
8 in an amount in excess of the Court's jurisdictional limits. When the precise amount of Plaintiffs'
9 damages are known, it will assert those damages accordingly.

10 SECOND CAUSE OF ACTION

11 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

12 44. Plaintiffs reallege and incorporate by reference herein each allegation contained in
13 Paragraphs 1 through 43 above.

14 45. In breach of the implied covenant of good faith and fair dealing, Defendant did the
15 things and committed the acts alleged above for the purpose of consciously withholding from
16 Plaintiffs the rights and benefits to which they are entitled under the Policy, and without considering
17 Plaintiffs' interests at least to the same extent as Defendant considered its own interests.

18 46. As a direct and proximate result of Defendant's acts, Plaintiffs have been damaged in
19 an amount in excess of the Court's jurisdictional limits. The actual amount of damages has not yet
20 been precisely ascertained. When the precise amount of Plaintiffs' damages are known, it will assert
21 those damages accordingly.

22 47. Defendant's acts are inconsistent with Plaintiffs' reasonable expectations, and are
23 contrary to established claims practices and legal requirements, and constitute bad faith. Plaintiffs
24 are entitled to recover all attorneys' fees that they have reasonably incurred, and are incurring, in
25 their efforts to obtain the benefits of the coverage that Defendant has wrongfully withheld, and is
26 withholding, in bad faith, plus interest. The total amount of these attorneys' fees is currently
27 unknown. When the precise amount of Plaintiffs' damages are known, they will assert those
28 damages accordingly.

1 48. Defendant's conduct is despicable and has been done with a conscious disregard of
2 Plaintiffs' rights, constituting oppression, fraud, and/or malice. Defendant engaged in a series of
3 acts designed to deny wrongfully the benefits due under the Policy. Specifically, Defendant, by
4 acting as alleged above, in light of the information, facts, and law to the contrary, consciously
5 disregarded Plaintiffs' rights and forced it to incur substantial financial loss, without sufficient
6 assistance from it, thereby inflicting substantial financial damage on Plaintiffs. Therefore, Plaintiffs
7 are entitled to recover punitive damages from Defendant in an amount sufficient to punish and to
8 make an example of it and in order to deter similar conduct.

9 **THIRD CAUSE OF ACTION**

10 **(Declaratory Relief)**

11 49. Plaintiffs reallege and incorporate by reference herein each allegation contained in
12 Paragraphs 1 through 48 above.

13 50. As set forth above, an actual and justiciable controversy exists between Plaintiff, on
14 the one hand, and Defendant, on the other hand.

15 51. Plaintiffs allege, and are informed and believe, that Defendant disputes that it has a
16 duty to pay Plaintiffs' property and business income losses under the Policy.

17 52. Plaintiffs seek a judicial declaration as to their rights and Defendant's obligations
18 under the Policy, confirming, among other things: (a) Defendant cannot meet its burden to show the
19 "direct physical loss" requirement bars coverage; (b) Defendant cannot meet its burden to show the
20 purported virus exclusion bars coverage; and (c) Defendant cannot meet its burden to show
21 purported exclusions for pollution, loss of market, and governmental action bar coverage.

22 **FOURTH CAUSE OF ACTION**

23 **(Violation of Unfair Competition Laws)**

24 53. Plaintiffs reallege and incorporate by reference herein each allegation contained in
25 Paragraphs 1 through 52 above.

26 54. The bad faith acts and conduct of Defendant as alleged above in this Complaint
27 constitute unlawful, unfair, and/or fraudulent business acts or practices as defined by California
28 Business and Professions Code Section 17200, *et seq.* and/or Connecticut General Statutes §42-

1 110a, *et seq.* These acts include, but are not limited to, Defendant's improper claims handling and
2 refusal to promptly acknowledge coverage, to gain and maintain an unfair advantage over insureds
3 and the industry, and to enable Defendant to collect exorbitant premium payments, all of which acts
4 constitute dishonest, deceptive, oppressive, fraudulent, unfair and destructive conduct.

5 55. The following actions by Defendant also constitute an unfair and/or deceptive trade
6 act or practice, which amounts to an offense against and/or violation of public policy as set forth in
7 the Connecticut Unfair Insurance Practices Act, Conn. Gen. Stat. §38a-815 *et seq.*:

- 8
- 9 a. Misrepresenting pertinent facts or insurance policy provisions relating to coverages
at issue;
 - 10 b. failing to acknowledge and act with reasonable promptness upon communications
11 with respect to claims arising under insurance policies;
 - 12 c. failing to adopt and implement reasonable standards for the prompt investigation of
claims arising under insurance policies;
 - 13 d. refusing to pay claims without conducting a reasonable investigation based upon all
14 available information;
 - 15 e. failing to affirm or deny coverage of claims within a reasonable time after proof of
16 loss statements have been completed;
 - 17 f. not attempting in good faith to effectuate prompt, fair and equitable settlements of
claims in which liability has become reasonably clear;
 - 18 g. compelling insureds to institute litigation to recover amounts due under an insurance
19 policy by offering substantially less than the amounts ultimately recovered in actions
brought by such insureds;
 - 20
 - 21 ...
 - 22 m. failing to promptly settle claims, where liability has become reasonably clear, under
one portion of the insurance policy coverage in order to influence settlements under
23 other portions of the insurance policy coverage;
 - 24 n. failing to promptly provide a reasonable explanation of the basis in the insurance
policy in relation to the facts or applicable law for denial of a claim or for the offer
25 of a compromise settlement;

26 56. Defendant, by its actions, has violated each of these provisions. Defendant failed to
27 properly investigate the facts surrounding the Plaintiffs' loss, failed to conduct a timely or thorough
28

1 investigation of the facts, and preemptively and summarily denied coverage on unworkable
2 grounds. Defendant has engaged in both procedural bad faith and wrongful denial of coverage.

3 57. Defendant's acts of unlawful, unfair, and fraudulent competition have caused harm to
4 competition, to consumers, and to its competitors. Defendant's acts of unlawful, unfair and
5 fraudulent competition have proximately caused Plaintiffs to suffer injury and loss of money and/or
6 property (including as a result of expenses that Plaintiffs have incurred, and continue to incur, in
7 their efforts to prevent and deter Defendant from engaging in unlawful conduct) in an amount to be
8 proven at trial. Defendant's acts of unlawful, unfair and fraudulent competition have also caused
9 irreparable injury to Plaintiffs and, unless enjoined, could cause further irreparable injury, whereby
10 Plaintiffs have no adequate remedy at law.

11 **PRAYER FOR RELIEF**

12 **ON THE FIRST CAUSE OF ACTION**

- 13 1. For damages, plus interest, according to proof at the time of trial;

14 **ON THE SECOND CAUSE OF ACTION**

- 15 2. For damages, plus interest, according to proof at the time of trial;
16 3. For damages consisting of reasonable attorneys' fees and costs incurred in obtaining
17 the benefits due under the Policy;
18 4. For punitive damages in an amount to be determined at trial;

19 **ON THE THIRD CAUSE OF ACTION**

- 20 5. For a declaration confirming that (a) Defendant cannot meet its burden to show the
21 "direct physical loss" requirement bars coverage; (b) Defendant cannot meet its burden to
22 show the purported virus exclusion bars coverage; and (c) Defendant cannot meet its burden
23 to show purported exclusions for pollution, loss of market, and governmental action bar
24 coverage;

25 **ON THE FOURTH CAUSE OF ACTION**

- 26 6. For an injunction, forbidding Defendant from (a) relying on the "direct physical loss"
27 requirement to deny coverage; (b) relying on the purported virus exclusion to deny coverage;
28 and (c) relying on purported exclusions for pollution, loss of market, and governmental action

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demands a trial by jury in this action.

Dated: April 13, 2020

KASOWITZ BENSON TORRES LLP

By: /s/ Jerold Oshinsky
Jerold Oshinsky
Attorneys for Plaintiffs