

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

LACHTMAN COHEN, P.C.  
245 MAIN STREET, SUITE 230, WHITE PLAINS, NEW YORK 10601  
Tel/EFax: (914) 505-6654

GREGORY A. BLUE, SBN 275668  
gblue@lcpclaw.com  
LACHTMAN COHEN, P.C.  
245 Main Street, Suite 230  
White Plains, New York 10601  
Telephone/Facsimile: (914) 505-6654

*Attorneys for Plaintiffs*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BARBIZON SCHOOL OF SAN FRANCISCO, INC., a California Corporation; and BARBIZON SCHOOL OF MODELING OF MANHATTAN, INC., a New York Corporation;

*Plaintiffs,*

vs.

SENTINEL INSURANCE COMPANY, LTD., a Connecticut Corporation and a Member of The Hartford Financial Services Group, Inc.,

*Defendant.*

Case No.: 3:20-cv-8578

**COMPLAINT**

Complaint for:

- (1) Breach of Contract;
- (2) Breach of The Implied Covenant of Good Faith and Fair Dealing (Bad Faith); and
- (3) Unfair Business Practices in Violation of California Business & Professions Code § 17200 *et seq.*

**JURY TRIAL DEMANDED**

Plaintiffs BARBIZON SCHOOL OF SAN FRANCISCO, INC. (“Barbizon-West”) and BARBIZON SCHOOL OF MODELING OF MANHATTAN, INC. (“Barbizon-NY” and collectively with Barbizon-West, “Barbizon” or “Plaintiffs”), by and through their undersigned attorneys, bring this Complaint against SENTINEL INSURANCE COMPANY, LTD., a Connecticut Corporation and a member of The Hartford Financial Services Group, Inc. (“Defendant,” or “Hartford”), and alleges as follows:

LACHTMAN COHEN, P.C.  
245 MAIN STREET, SUITE 230, WHITE PLAINS, NEW YORK 10601  
Tel/EFax: (914) 505-6654

**INTRODUCTION**

1  
2 1. This is a case in which the Defendant insurance company, Hartford, wrongfully  
3 denied business interruption coverage for losses due to COVID-19-related closures at Barbizon’s  
4 business locations.

5 2. To date, there have been more than 1,250 COVID-19-related insurance coverage  
6 cases filed.<sup>1</sup> This case, however, differs from most, if not all, of those cases in an important respect:  
7 in this case, the policy holders are two related entities, under common ownership and control, that  
8 purchased insurance coverage under two separate insurance policies from the same insurance  
9 carrier. The policies are similar, but not the same, and their differences provide an essential guide to  
10 their interpretation:

- 11 • One of the policies contains a “Limited Fungi, Bacteria Or Virus  
12 Coverage” endorsement; the other does not.
- 13 • One of the policies excludes coverage for any losses due to the “Presence,  
14 growth, proliferation, spread or any activity of ... virus;” the other does  
15 not.
- 16 • One of the policies expressly recognizes that Hartford will pay at least  
17 some claims for “Direct physical loss or direct physical damage to  
18 Covered Property caused by ... virus;” the other does not.

19 3. The differences between those policies show that Hartford’s denial of coverage  
20 under one of the policies is unsupportable, and that its marketing of the other was fraudulent.

**THE PARTIES**

21 4. Plaintiff Barbizon School Of San Francisco, Inc., is a California Corporation which,  
22 at all relevant times during the events described in this Complaint, had a principal place of business  
23 in this District at 420 Sutter Street, San Francisco, California, and now has an office located at 1201  
24 W 5th Street, Suite T300, Los Angeles, California.

25 5. Plaintiff Barbizon School of Modeling of Manhattan, Inc. is a New York  
26 Corporation which, at all relevant times during the events described in this Complaint, had a place  
27 of business in this District at 420 Sutter Street, San Francisco, California, and now has a place of  
28 business located in Marin County, California.

<sup>1</sup>University of Pennsylvania Law School Covid Coverage Litigation Tracker, <https://cclt.law.upenn.edu/> (retrieved on December 4, 2020.)



**The West Coast Policy**

11. Barbizon-West procured insurance coverage under Hartford Policy Number 57 SBA UZ9898 (“West Coast Policy”) for the policy period July 8, 2019, through July 8, 2020 (“West Coast Policy Period”). The West Coast Policy was issued as of April 19, 2019.

12. The basic coverage provisions of the West Coast Policy are written on the “Special Property Coverage Form,” Form SS 00 07 07 05, which states:

**A. COVERAGE**

We will pay for direct physical loss of or physical damage to Covered Property at the premises described in the Declarations (also called "scheduled premises" in this policy) caused by or resulting from a Covered Cause of Loss.

13. “Covered Property” under the Special Property Coverage Form includes the “buildings(s) and structure(s) described in the Declarations.” (Special Property Coverage Form, A(1)(a)).

14. Under the West Coast Policy, the buildings covered in the declarations are:

- a. 420 Sutter Street, San Francisco, California 94108;
- b. 2020 Hurley Way, Suite 245, Sacramento, California 95825;
- c. 1201 W 5th Street, Suite T300, Los Angeles, California 90017;
- d. 1520 3rd Avenue, Seattle, Washington 98101; and
- e. 4035 NE Sandy Boulevard, Portland, Oregon 97212 (collectively the “West Coast Locations”).

15. Under the Special Property Coverage Form in the West Coast Policy “Covered Cause of Loss” is defined as follows:

LACHTMAN COHEN, P.C.  
245 MAIN STREET, SUITE 230, WHITE PLAINS, NEW YORK 10601  
Tel/EFax: (914) 505-6654

**B. 3. Covered Causes of Loss**

RISKS OF DIRECT PHYSICAL LOSS unless the loss is:

- a. Excluded in Section B., **EXCLUSIONS**; or
- b. Limited in Paragraph **A.4. Limitations**; that follow.

(Special Property Coverage Form, A(3)).

16. "Section B., EXCLUSIONS" of the Special Property Coverage Form," Form SS 00 07 07 05, for the West Coast Policy does not itself have a "virus" exclusion.

17. An exclusion was, however, added to "Section B., EXCLUSIONS" of the West Coast Policy through a "LIMITED FUNGI, BACTERIA OR VIRUS COVERAGE" Endorsement (the "Virus Endorsement"), Form SS 40 93 07 05.

18. Despite its name, the Virus Endorsement removes all virus coverage from the Special Property Coverage Form by adding an exclusion (the "Virus Exclusion") to Section B of the Special Property Coverage Form:

2. The following exclusion is added to Paragraph **B.1. Exclusions** of the...Special Property Coverage Form...:

**i. "Fungi", Wet Rot, Dry Rot, Bacteria And Virus**

We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss:

- (1) Presence, growth, proliferation, spread or any activity of "fungi", wet rot, dry rot, bacteria or virus.
- (2) But if "fungi", wet rot, dry rot, bacteria or virus results in a "specified cause of loss" to Covered Property, we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion does not apply:

- (1) When "fungi", wet or dry rot, bacteria or virus results from fire or lightning; or
- (2) To the extent that coverage is provided in the Additional Coverage – Limited Coverage for "Fungi", Wet Rot, Dry Rot, Bacteria and Virus with respect to

LACHTMAN COHEN, P.C.  
245 MAIN STREET, SUITE 230, WHITE PLAINS, NEW YORK 10601  
Tel/EFax: (914) 505-6654

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

loss or damage by a cause of loss other than fire or lightning.

This exclusion applies whether or not the loss event results in widespread damage or affects a substantial area.

19. The Virus Endorsement then adds some very limited virus coverage:

b. We will pay for loss or damage by "fungi", wet rot, dry rot, bacteria and virus. As used in this Limited Coverage, the term loss or damage means:

- (1) Direct physical loss or direct physical damage to Covered Property caused by "fungi", wet rot, dry rot, bacteria or virus, including the cost of removal of the "fungi", wet rot, dry rot, bacteria or virus;
- (2) The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungi", wet rot, dry rot, bacteria or virus; and
- (3) The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungi", wet rot, dry rot, bacteria or virus are present.

20. That limited virus coverage is limited further by the requirement that, for coverage to apply, the loss must be due to a limited number of things. As relevant here, the coverage is restricted by this language:

a. The coverage described in 1.b. below only applies when the "fungi", wet or dry rot, bacteria or virus is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.

- (1) A "specified cause of loss" other than fire or lightning;

21. "Specified Cause of Loss" is defined in the Special Property Coverage Form as follows:

19. "Specified Cause of Loss" means the following:

Fire; lightning; explosion, windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole

LACHTMAN COHEN, P.C.  
245 MAIN STREET, SUITE 230, WHITE PLAINS, NEW YORK 10601  
Tel/EFax: (914) 505-6654

collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.

22. As a result, the Virus Endorsement *does* purport to obligate Hartford to cover “[d]irect physical loss or direct physical damage to Covered Property caused by...virus,” provided that such “direct physical loss or direct physical damage” is caused by a virus that “is the result of” “explosion, windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.”

**The New York Policy**

23. Barbizon-NY procured insurance coverage under Hartford Policy Number 57 SBA BG9898 (“NY Policy,” and together with the West Coast Policy, the “Policies”) for the policy period September 14, 2019, through September 14, 2020 (“NY Policy Period,” and together with the West Coast Policy Period, the “Policy Periods”). The New York Policy was issued as of July 3, 2019, almost three months after the West Coast Policy.

24. The New York Policy, like the West Coast Policy, is based upon “Special Property Coverage Form,” Form SS 00 07 07 05, which states:

**C. COVERAGE**

We will pay for direct physical loss of or physical damage to Covered Property at the premises described in the Declarations (also called "scheduled premises" in this policy) caused by or resulting from a Covered Cause of Loss.

25. Under the NY Policy, the “premises described in the Declarations” is 1384 Broadway, New York, New York 10018. (the “NY Location” and collectively with the West Coast Locations, the “Insured Locations.”)

26. The New York Policy, issued after the West Coast Policy, does *not* include the Virus Endorsement.

27. Because the New York Policy does not include the Virus Endorsement, it does not include the Virus Exclusion.

LACHTMAN COHEN, P.C.  
245 MAIN STREET, SUITE 230, WHITE PLAINS, NEW YORK 10601  
Tel/EFax: (914) 505-6654

**The Losses and Claims**

28. In March 2020, Plaintiffs were forced to close the Insured Locations due to the COVID-19 pandemic, which was caused by the pervasive presence of the virus SARS-CoV-2 in the cities where the Insured Locations are located.

29. On June 26, 2020, Plaintiffs submitted claims (the “Claims”) to Hartford for business interruption losses at the Insured Locations through Hartford’s online claims submission portal at <https://bi.covidclaim.thehartford.com/reportclaim>.

30. The very same day, without seeking additional documentation or information, and without further investigation, Hartford denied the Claims.

31. In a letter dated June 26, 2020 (“NY Denial Letter”), the same day that Plaintiffs submitted their claims, Hartford denied coverage under the NY Policy by stating that, “We have completed a review of your loss and have determined that since the coronavirus did not cause property damage at your place of business or in the immediate area, this loss is not covered.”

32. Similarly, in separate letter dated the same day (“West Coast Denial Letter,” and collectively with the NY Denial Letter, the “Denial Letters”), Hartford denied coverage under the West Coast Policy with identical language stating that, “We have completed a review of your loss and have determined that since the coronavirus did not cause property damage at your place of business or in the immediate area, this loss is not covered.”

33. The West Coast Denial Letter went on to state that, “[e]ven if the virus did cause damage, it is excluded from the policy, and the limited coverage available for losses caused by virus does not apply to the facts of your loss.”

**FIRST CAUSE OF ACTION:  
BREACH OF CONTRACT  
(NY POLICY)**

34. Plaintiffs repeat, reiterate, and reallege each of the allegations set forth in the preceding paragraphs as if set forth fully herein.

35. On March 7, 2020, New York Governor Andrew Cuomo issued Executive Order Number 202, “declaring a State disaster emergency for the entire State of New York.”

LACHTMAN COHEN, P.C.  
245 MAIN STREET, SUITE 230, WHITE PLAINS, NEW YORK 10601  
Tel/EFax: (914) 505-6654





LACHTMAN COHEN, P.C.  
245 MAIN STREET, SUITE 230, WHITE PLAINS, NEW YORK 10601  
Tel/EFax: (914) 505-6654

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

(a) When access is permitted to your “scheduled premises”, or

(b) 30 consecutive days after the order of the civil authority.

43. The Civil Authority Coverage is triggered by an “order of a civil authority as the direct result of a Covered Cause of Loss to property in the immediate area” of the NY Location.

44. An objectively reasonable policy holder purchasing both the NY Policy and the West Coast Policy would interpret those Policies by reference to one another, ascribing meaning and operative effect to the words that are found in one and not the other, and understanding that the omission of language in one policy but not the other meant that the omitted terms were not operative in the policy in which they were omitted. *See* Cal Civ Code § 1642 (“Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.”)

45. An objectively reasonable policy holder purchasing both the NY Policy and the West Coast Policy would conclude that an exclusion appearing in one policy, but not the other, meant that the exclusion did not apply in the policy in which it was omitted.

46. The Virus Exclusion appears in the West Coast Policy, removing “virus” from “Covered Cause of Loss” in the West Coast Policy’s Special Property Coverage Form.

47. The Virus Exclusion does *not* appear in the NY Policy.

48. An objectively reasonable policy holder purchasing both the NY Policy and the West Coast Policy would conclude that “virus” is a “Covered Cause of Loss” in the NY Policy because Hartford knew how to exclude “virus” as a “Covered Cause of Loss” in the Special Property Coverage Form, as it did in the West Coast Policy, but chose not to exclude “virus” as a “Covered Cause of Loss” in the NY Policy.

49. An objectively reasonable policy holder purchasing both the NY Policy and the West Coast Policy would know that Hartford offers some insurance coverage for “Direct physical loss or direct physical damage to Covered Property caused by ... virus,” and that Hartford therefore acknowledges and accepts that a virus is capable of causing, at least in some circumstances, “direct

1 physical loss of or damage to” property as that term is used in the Policies. This objectively  
2 reasonable conclusion would be based on the facts that:

3 (a) In the West Coast Policy, Hartford specifically excluded “virus” from the  
4 “risks of direct physical loss of or damage to” property. If a virus is never capable of causing  
5 a “direct physical loss of or damage to” property within the meaning of the Policies, then  
6 there would be no reason for Hartford to insert the Virus Exclusion some policies, including  
7 the West Coast Policy;

8 (b) In the West Coast Policy, Hartford specifically offered some modicum of  
9 coverage for “direct physical loss or physical damage” caused by virus. If a virus is never  
10 capable of causing “direct physical loss of or damage to” property, then then entire virus  
11 coverage offered by Hartford in the Virus Endorsement is meaningless and worthless. It  
12 would be unreasonable, and contrary to California law, to interpret the West Coast Policy in  
13 a way that rendered an express grant of coverage ephemeral and utterly without effect. *See*  
14 Cal Civ Code § 1641 (“The whole of a contract is to be taken together, so as to give effect to  
15 every part, if reasonably practicable, each clause helping to interpret the other.”); and

16 (c) The NY Policy includes an “Exclusion - Nuclear Energy Liability” (the  
17 “Nuclear Exclusion”) which defines “property damage” to include non-structural  
18 contamination damage. Specifically, the Nuclear Exclusion states that “Injury or damage  
19 and ‘property damage’ include all forms of radioactive contamination of property.” An  
20 objectively reasonable policy holder would interpret the phrase “physical loss of or damage  
21 to” property in the Special Property Coverage Form consistent with the definition of  
22 “property damage” in the Nuclear Exclusion and, in so doing, reasonably conclude that  
23 “physical loss of or damage to” property includes non-structural contamination.

24 50. Under the NY Policy, the SARS-CoV-2 virus was a “Covered Cause of Loss” that  
25 was not excluded from coverage.

26 51. Under the NY Policy, there was no express exclusion for “physical loss of or damage  
27 to” property caused by virus.



(a) The partial slowdown or complete cessation of your business activities; or

(b) That part or all of the "scheduled premises" is rendered untenantable as a result of a Covered Cause of Loss if coverage for Business Income applies to the policy.

59. An objectively reasonable policy holder would conclude, for the reasons stated in paragraphs 49 and 49 above, that a virus is capable of causing "direct physical loss of or damage to" property as that term is used in Business Income coverage of the NY Policy.

60. The SARS-CoV-2 virus caused at least as much "direct physical loss of or damage to" the NY Location as any virus is capable of causing to any property under any circumstances.

61. The NY Policy also provides "Extended Business Income" coverage. The "Extended Business Income" coverage in the Special Property Coverage Form is entirely replaced by the following from the "Stretch for Schools" Endorsement:

**r. Extended Business Income**

(1) If the necessary suspension of your "operations" produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:

(a) Begins on the date property is actually repaired, rebuilt or replaced and "operations" are resumed; and

(b) Ends on the earlier of:

(i) The date you could restore your "operations" with reasonable speed, to the condition that would have existed if no direct physical loss or damage occurred; or

(ii) 30 consecutive days after the date determined in (1)(a) above.

Loss of Business Income must be caused by direct physical loss or physical damage at the "scheduled premises" caused by or resulting from a Covered Cause of Loss.

LACHTMAN COHEN, P.C.  
245 MAIN STREET, SUITE 230, WHITE PLAINS, NEW YORK 10601  
Tel/EFax: (914) 505-6654

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

(2) With respect to the coverage provided in this Additional Coverage, suspension means:

(a) The partial slowdown or complete cessation of your business activities; and

(b) That a part or all of the "scheduled premises" is rendered untenable as a result of a Covered Cause of Loss.

62. The "Stretch for Schools" endorsement increases the 30-day period of loss under the NY Policy's "Extended Business Income" coverage to 120 days:

**4. Extended Business Income**

In the Extended Business Income Additional Coverage, paragraph 4.j.(1)(b)(ii) of the Standard Property Coverage Form and paragraph 5.r.(1)(b)(ii) of the Special Property Coverage Form are amended to read as follows:

(b) 120 consecutive days after the date determined in (a) above.

63. The "Stretch for Schools" endorsement also increases the limits for "Business Income and Extra Expense" coverage:

c. Business Income and Extra Expense

(1) If Business Income or Extra Expense are provided under this policy, the most we will pay in any one occurrence in subparagraph (3) is increased from \$50,000 to \$500,000 in any one occurrence at each premises.

(2) The Limit of Insurance stated above is the maximum Limit of Insurance available for this coverage under this policy.

64. An objectively reasonable policy holder would conclude, for the reasons stated in paragraphs 49 and 49 above, that a virus is capable of causing "direct physical loss of or damage to" property as that term is used in "Extended Business Income" coverage of the NY Policy.

65. The SARS-CoV-2 virus caused at least as much "direct physical loss of or damage to" the NY Location as any virus is capable of causing to any property under any circumstances.

LACHTMAN COHEN, P.C.  
245 MAIN STREET, SUITE 230, WHITE PLAINS, NEW YORK 10601  
Tel/EFax: (914) 505-6654

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28







1 the categorical position that a virus cannot cause “direct physical loss of or physical damage to”  
2 property within the meaning of the policies it issues.

3 82. Hartford’s position that a virus cannot cause “direct physical loss of or physical  
4 damage to” property within the meaning of the policies it issues renders the purported virus  
5 coverage in the LIMITED FUNGI, BACTERIA OR VIRUS COVERAGE meaningless and worthless.

6 83. As a result, Hartford’s sale and marketing of the LIMITED FUNGI, BACTERIA OR  
7 VIRUS COVERAGE constitutes false, unfair, fraudulent, and/or deceptive business practices within the  
8 meaning of California Bus. & Prof. Code § 17200 *et seq.*

9 84. Moreover, in the Denial Letters, Hartford takes the position that “[t]he coronavirus is  
10 understood to be an irritant or contaminant which causes or threatens to cause physical impurity,  
11 unwholesomeness and threatens human health or welfare” and that, for that reason, even if coverage  
12 were otherwise available for loss caused by coronavirus, the pollution exclusion could further bar  
13 coverage for the loss.”

14 85. Given Hartford’s reliance upon the pollution exclusion, Hartford’s marketing and  
15 sale of policies including the “LIMITED FUNGI, BACTERIA OR VIRUS COVERAGE” is a false, unfair,  
16 fraudulent and/or deceptive business practice because Hartford’s interpretation of the pollution  
17 exclusion renders the purported virus coverage in the LIMITED FUNGI, BACTERIA OR VIRUS  
18 COVERAGE meaningless and worthless.

19 86. In addition, Hartford’s marketing and sale of the NY Policy without clearly and  
20 unmistakably stating its position that a virus can never be a “Covered Cause of Loss,” constitutes  
21 false, unfair, fraudulent, and/or deceptive business practices within the meaning of California Bus.  
22 & Prof. Code § 17200 *et seq.*

23 87. As a result of these unlawful acts, Hartford has reaped, and continues to reap, unfair  
24 benefit and illegal profits at the expense of Plaintiffs.

25 88. As a result, Plaintiffs are entitled to damages, attorneys’ fees, and the costs of suit, in  
26 an amount to be determined at trial or inquest.

LACHTMAN COHEN, P.C.  
245 MAIN STREET, SUITE 230, WHITE PLAINS, NEW YORK 10601  
Tel/EFax: (914) 505-6654

LACHTMAN COHEN, P.C.  
245 MAIN STREET, SUITE 230, WHITE PLAINS, NEW YORK 10601  
Tel/EFax: (914) 505-6654

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. On the First Cause of Action for Breach of Contract, that the Court enter judgment against the Defendant for general, special, and compensatory damages, in an amount to be determined at trial, reasonably believed to be in excess of \$500,000.

2. On the Second Cause of Action for Breach of the Covenant of Good Faith and Fair Dealing, that the Court enter judgment against the Defendant for general, special, and compensatory damages, in an amount to be determined at trial.

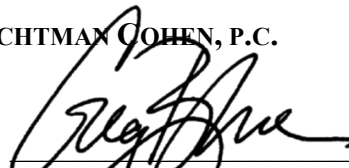
3. On the Third Cause of Action for Unfair Business Practices in Violation of California Business & Professions Code § 17200 et seq., that the Court enter judgment against the Defendant for general, special, and compensatory damages, in an amount to be determined at trial.

4. For such other and further relief as this Court may deem proper and just.

DATED: December 4, 2020

LACHTMAN COHEN, P.C.

By:

  
\_\_\_\_\_  
Gregory A. Blue, SBN 275668  
*Attorneys for Plaintiffs*

**DEMAND FOR JURY TRIAL**

Plaintiffs respectfully request a jury trial on all triable issues in the above entitled action.

DATED: December 4, 2020

LACHTMAN COHEN, P.C.

By:

  
\_\_\_\_\_  
Gregory A. Blue, SBN 275668  
*Attorneys for Plaintiffs*