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9 Attorneys for Plaintiffs

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF LOS ANGELES

12 NEWMARK MERRILL COMPANIES,  
13 INC., a California Company; NMC SOUTH,  
14 LLC, a California Limited Liability  
15 Company; NEWMARK MERRILL  
16 MOUNTAIN STATES, LLC, a California  
17 Limited Liability Company; NMC  
18 BROADWAY, LLC, a California Limited  
19 Liability Company; CHINO RETAIL, LLC,  
20 a California Limited Liability Company;  
21 CHINO HILLS RETAIL II, LLC, a  
22 California Limited Liability Company;  
23 NMC ANAHEIM, LLC, a California  
24 Limited Liability Company; ANAHEIM  
25 ISLAND PARTNERS, LLC, a California  
26 Limited Liability Company; RLM FAMILY  
27 PROPERTIES, LLC, a California Limited  
28 Liability Company; F&F INVESTMENTS,  
LLC, a California Limited Liability  
Company; EAST ANAHEIM  
ACQUISITION, LLC, a California Limited  
Liability Company; MESA TOWN  
CENTER, LLC, a California Limited  
Liability Company; ANAHEIM FRIES

Case No.:

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

1. BREACH OF THE IMPLIED  
COVENANT OF GOOD FAITH AND  
FAIR DEALING
2. BREACH OF CONTRACT

1 PARTNERS, LLC, a California Limited  
2 Liability Company; BRISTOL CHINO II,  
3 LLC, a California Limited Liability  
4 Company; NMC SANTA ANA, LLC, a  
5 California Limited Liability Company;  
6 GINSBORG BOYS, LLC, a California  
7 Limited Liability Company; NJL  
8 CORONA, LLC, a California Limited  
9 Liability Company; FRANK MISSION  
10 MARKETPLACE, LLC, a California  
11 Limited Liability Company; NORWALK  
12 TOWN SQUARE MANAGEMENT, INC., a  
13 California Corporation; JAVID LEVIAN –  
14 NORWALK LLC, a California Limited  
15 Liability Company; SHOKRAOLAH  
16 LEVIAN – NORWALK LLC, a California  
17 Limited Liability Company; JAMSHID  
18 LEVIAN – NORWALK LLC, a California  
19 Limited Liability Company;  
20 MANOCHEHR LEVIAN – NORWALK  
21 LLC, a California Limited Liability  
22 Company; LEVIAN FAMILY – NORWALK  
23 LLC, a California Limited Liability  
24 Company; HEKMATRAVAN FAMILY - a  
25 California Limited Liability Company;  
26 ARLINGTON SQUARE, L.P., a California  
27 Limited Partnership; NMC GROVE  
28 ONTARIO, LLC, a California Limited  
Liability Company; NMC GROVE  
ONTARIO EPL, a Delaware Limited  
Liability Company; NMC GROVE  
ONTARIO PB, LLC, a Delaware Limited  
Liability Company; NMC GROVE  
ONTARIO MC, LLC, a Delaware Limited  
Liability Company; NMC GROVE  
ONTARIO PDA, LLC, a Delaware Limited  
Liability Company; SHANE UNIVERSITY,  
LLC, a Delaware Limited Liability  
Company; NEWMARK UNIVERSITY, LLC,

1 a California Limited Liability Company;  
2 NMC STRATFORD, LLC, a Delaware  
3 Limited Liability Company; CHINO  
4 STRATFORD, LLC, an Illinois Limited  
5 Liability Company; GMX REAL ESTATE  
6 GROUP, LLC, an Illinois Limited Liability  
7 Company; SHANE STRATFORD, LLC, an  
8 Illinois Limited Liability Company; NMC  
9 WHITTIER, LLC, a California Limited  
10 Liability Company; NMC TOWER, LLC, a  
11 California Limited Liability Company;  
12 WHITTIER GATEWAY, L.P, a California  
13 Limited Partnership; PEARL WHITTIER  
14 PAINTER, LLC, a California Limited  
15 Liability Company; NMC WHITTIER II,  
16 LLC, a California Limited Liability  
17 Company; NMC COTTONWOOD, LLC, a  
18 California Limited Liability Company;  
19 SHANE TOWER, LLC, a Delaware Limited  
20 Liability Company; NMC BROOMFIELD,  
21 LLC, a California Limited Liability  
22 Company; BROOMFIELD ASSOCIATES,  
23 LP, a California Limited Partnership;  
24 TOWER BROOMFIELD, LLC a Delaware  
25 Limited Liability Company; NMC  
26 MELROSE PARK, LLC, a California  
27 Limited Liability Company; NMC  
28 MELROSE PARK MANAGER, LLC, a  
California Limited Liability Company;  
MELROSE PARK INVESTMENTS L.P., a  
California Limited Partnership; MELROSE  
PARK EQUITY, LLC, an Illinois Limited  
Liability Company ; MELROSE PARK  
ASSOCIATES, LLC, a Delaware Limited  
Liability Company; NMC GROVE  
MELROSE, LLC, a Delaware Limited  
Liability Company; GMX MELROSE, LLC,  
an Illinois Limited Liability Company;  
NMC MELROSE PARK II, LLC, an Illinois

1 Limited Liability Company; NMC  
2 WASHINGTON, LLC, a California Limited  
3 Liability Company; AU ZONE ARVADA,  
4 LLC, a Colorado Limited Liability  
5 Company; AU ZONE INVESTMENTS #2,  
6 LP, a California Limited Partnership;  
7 THOUSAND OAKS MARKETPLACE, LP,  
8 a California Limited Partnership; J & J  
9 BALDWIN PARK LLC, a Delaware Limited  
10 Liability Company; NEWMAN CAPITAL  
11 TEK, LLC, a Delaware Limited Liability  
12 Company; J&J WAREHOUSE LLC, a  
13 California Limited Liability Company;  
14 DEVONSHARE RESEDA, LLC, a California  
15 Limited Liability Company; NMC  
16 UPLAND, LLC, a California Limited  
17 Liability Company; NORWALK  
18 FLALLON, LLC, a California Limited  
19 Liability Company; TOMO GD LLC, a  
20 Delaware Limited Liability Company;  
21 UPLAND TERRY, LLC, a Delaware  
22 Limited Liability Company; SOURCE  
23 ASSOCIATES, LLC, a California Limited  
24 Liability Company; UPSIDE CRENSHAW  
25 HOLDINGS, LLC, a Delaware Limited  
26 Liability Company; UPSIDE CIP, LP, a  
27 Delaware Limited Partnership; NMMS  
28 TWIN PEAKS, LLC, a California Limited  
Liability Company; NMC SOUTHGATE,  
LLC, a California Limited Liability  
Company; NMC SOUTHGATE PLAZA,  
LLC, a California Limited Liability  
Company; NJM RIALTO, LLC, a California  
Limited Liability Company; NMC  
PLACENTIA, LLC, a California Limited  
Liability Company; AU ZONE  
PLACENTIA, LLC, a California Limited  
Liability Company; AU ZONE MADISON,  
LLC; a California Limited Liability

1 Company; NMC MADISON  
2 MARKETPLACE, LLC, a California  
3 Limited Liability Company; TRIANGLE  
4 TOWN CENTER NW, LLC, a Washington  
5 Limited Liability Company; NMC STONY  
6 ISLAND, LLC, a Delaware Limited Liability  
7 Company,

8 Plaintiffs,

9 vs.

10 CERTAIN UNDERWRITERS AT  
11 LLOYD'S LONDON SUBSCRIBING TO  
12 CERTIFICATE NUMBER ARP19021; and  
13 DOES 1 through 100, inclusive,

14 Defendants.

15  
16  
17 **I.**

18 **INTRODUCTION**

19 1. Business Interruption coverage is an optional insurance benefit available  
20 to businesses to minimize their risk and sustain them when a suspension of business  
21 operations causes a loss of business income. This coverage allows businesses to pay  
22 continuing operating expenses, additional expenses incurred because of the  
23 interruption, and supplement their lost business income.

24 2. As California Insurance Commissioner Ricardo Lara stated in a notice on  
25 April 14, 2020 to all admitted and non-admitted insurance companies in California,  
26 "small and large California businesses purchase Business Interruption insurance to  
27 protect against the loss of income and other losses caused by an interruption to the  
28 normal operations of the business." (Exhibit 1).

1           3. Plaintiff NewMark Merrill Companies, Inc., a California Corporation  
2 ["NMMC"] manages shopping centers in California and Illinois. Plaintiff NMC South,  
3 LLC ["NMC South"] manages shopping centers in the San Diego area of California and  
4 in Washington. NewMark Merrill Mountain States, LLC ["NMC Mountain States"]  
5 manages shopping centers in Colorado.

6           4. The Plaintiffs who have an ownership interest in the specific shopping  
7 centers ["Owner Plaintiffs"] managed by NMMC, NMC South, and NMC Mountain  
8 States are:

9                   CHINO RETAIL, LLC.; CHINO HILLS RETAIL II, LLC.; NMC  
10                   ANAHEIM, LLC.; ANAHEIM ISLAND PARTNERS, LLC; RLM FAMILY  
11                   PROPERTIES, LLC; F&F INVESTMENTS, LLC; EAST ANAHEIM  
12                   ACQUISITION, LLC; MESA TOWN CENTER, LLC; ANAHEIM FRIES  
13                   PARTNERS, LLC; BRISTOL CHINO II, LLC; NMC SANTA ANA, LLC;  
14                   GINSBORG BOYS, LLC; NJL CORONA, LLC; FRANK MISSION  
15                   MARKETPLACE, LLC; NORWALK TOWN SQUARE MANAGEMENT,  
16                   INC.; JAVID LEVIAN – NORWALK LLC; SHOKRAOLAH LEVIAN –  
17                   NORWALK LLC; JAMSHID LEVIAN – NORWALK LLC;  
18                   MANOOCHEHR LEVIAN – NORWALK LLC; LEVIAN FAMILY –  
19                   NORWALK LLC; HEKMATRAVAN FAMILY; ARLINGTON SQUARE,  
20                   L.P.; NMC GROVE ONTARIO, LLC; NMC GROVE ONTARIO EPL; NMC  
21                   GROVE ONTARIO PB, LLC; NMC GROVE ONTARIO MC, LLC; NMC  
22                   GROVE ONTARIO PDA, LLC; SHANE UNIVERSITY, LLC; NEWMARK  
23                   UNIVERSITY, LLC; NMC STRATFORD, LLC; CHINO STRATFORD,  
24                   LLC; GMX REAL ESTATE GROUP, LLC; SHANE STRATFORD, LLC;  
25                   NMC WHITTIER, LLC; NMC TOWER, LLC; WHITTIER GATEWAY, L.P.;  
26                   PEARL WHITTIER PAINTER, LLC; NMC WHITTIER II, LLC; NMC  
27                   COTTONWOOD, LLC; SHANE TOWER, LLC; NMC BROOMFIELD,  
28                   LLC; BROOMFIELD ASSOCIATES, LP; TOWER BROOMFIELD, LLC;

1 NMC MELROSE PARK, LLC.; NMC MELROSE PARK MANAGER, LLC;  
2 MELROSE PARK INVESTMENTS L.P.; MELROSE PARK EQUITY, LLC;  
3 MELROSE PARK ASSOCIATES, LLC; NMC GROVE MELROSE, LLC;  
4 GMX MELROSE, LLC; NMC MELROSE PARK II, LLC; NMC  
5 WASHINGTON, LLC; AU ZONE ARVADA, LLC; AU ZONE  
6 INVESTMENTS #2, LP; THOUSAND OAKS MARKETPLACE, LP; J & J  
7 BALDWIN PARK LLC.; NEWMAN CAPITAL TEK, LLC; J&J  
8 WAREHOUSE LLC; DEVONSHARE RESEDA, LLC; NMC UPLAND,  
9 LLC; NORWALK FLALLON, LLC; TOMO GD LLC; UPLAND TERRY,  
10 LLC; SOURCE ASSOCIATES, LLC; UPSIDE CRENSHAW HOLDINGS,  
11 LLC; UPSIDE CIP, LP; NMMS TWIN PEAKS, LLC; NMC SOUTHGATE,  
12 LLC; NMC SOUTHGATE PLAZA, LLC; NJM RIALTO, LLC; NMC  
13 PLACENTIA, LLC; AU ZONE PLACENTIA, LLC; AU ZONE MADISON,  
14 LLC; NMC MADISON MARKETPLACE, LLC; TRIANGLE TOWN  
15 CENTER NW, LLC; NMC STONY ISLAND, LLC  
16

17 5. NMMC, NMC South, NMC Mountain States, and the Owner Plaintiffs  
18 will be collectively referred to in this Complaint as “Plaintiffs”.

19 6. Plaintiffs purchased, timely paid all premiums, and performed all duties  
20 required of them to be performed under a Real Estate America Property Association  
21 [“REAPA”] All Risk Property Master insurance policy, certificate number ARP19021  
22 [the “Policy”]. (Exhibit 2). Certain Underwriters of Lloyds of London [the  
23 “Underwriters”] is the lead insurer for the Policy. Other participating insurers are  
24 identified in Appendix “A” to the Policy, but the extent to which any specific syndicates  
25 or other insurers listed in Appendix A provide any share or layer of coverage for this  
26 loss is unclear and such insurers will be named as Doe Defendants. Underwriters and  
27 Does 1 through 100 will be collectively referred to as Defendants in this Complaint.  
28

1           7.     NMMC, NMC South, and NMC Mountain States are named Insureds  
2 under the Policy, and the Owner Plaintiffs are insureds under the Policy as subsidiaries,  
3 associated or allied companies, corporations, firms, organizations, and any interest the  
4 Insured has in any partnership or joint venture in which an Insured has management  
5 control or ownership.

6           8.     Under an "All Risk" policy, all risks of physical loss or damage are  
7 covered unless specifically and unambiguously excluded. Stated differently, all non-  
8 excluded perils are covered.

9           9.     The Policy insures Business Interruption loss "resulting from necessary  
10 interruption of business conducted by the Insured including all interdependent loss of  
11 earnings between or among companies owned or operated by the Insured caused by  
12 loss, damage, or destruction by any of the perils covered herein during the term of this  
13 policy to real and personal property as covered herein." (Exhibit 2, Appendix B, at p. 7,  
14 ¶ 11.)

15           10.    The Policy provides a sublimit of coverage for the lesser of \$10,000,000 or  
16 30 days per occurrence per insured when "access to real or personal property is  
17 prohibited by order of civil or military authority **irrespective of whether the property**  
18 **of the Insured shall have been damaged.**" (Exhibit 2, Appendix B, at p. 13, ¶  
19 20(d)(emphasis added).)

20           11.    The Policy also provides a sublimit of coverage for the lesser of  
21 \$10,000,000 or 30 days per occurrence per insured when "ingress and egress from real  
22 or personal property is thereby impaired or hindered **irrespective of whether the**  
23 **property of the Insured shall have been damaged.**" (Exhibit 2, Appendix B, at p. 13, ¶  
24 20(e)(emphasis added).)

25           12.    The Coronavirus ["COVID-19"] originated in China in late 2019, spread to  
26 Europe, and eventually came to the United States. On January 30, 2020 the World  
27 Health Organization ["W.H.O."] declared a public health emergency of international  
28 concern. By March 11, 2020, the W.H.O. made the assessment that COVID-19 could be



1 characterized as a pandemic. Starting in the middle of March, states and counties  
2 throughout the United States, including the states and counties where Plaintiffs'  
3 shopping centers were located, issued governmental orders requiring all non-essential  
4 businesses to close. The shopping centers were subject to the specific state and county  
5 governmental orders where each was located. The closure of each shopping center  
6 based on the governmental orders of the jurisdiction where the shopping center is  
7 located constitutes a separate occurrence as defined in the Policy.

8 13. The governmental orders restricted access and/or impaired or hindered  
9 egress and ingress to Plaintiffs' properties causing an interruption and suspension to  
10 Plaintiffs' business operations resulting in a covered business income loss. Plaintiffs  
11 incurred additional losses for extra expenses and soft costs covered under the Policy.

12 14. Engaging in the business of insurance in California imposes upon  
13 insurers, including non-admitted carriers, the legal obligation to promptly conduct fair,  
14 balanced and thorough investigations of all bases of claims for benefits made by their  
15 insureds, with a view toward honoring and promptly paying valid claims. As part of  
16 these obligations, an insurance company is obligated to diligently search for and  
17 consider evidence that supports coverage of the claimed loss, and in doing so must give  
18 at least as much consideration to the interests of its insured as it gives to its own  
19 interests.

20 15. During the COVID-19 Pandemic, Commissioner Lara issued a notice after  
21 the California Department of Insurance "ha[d] received numerous complaints from  
22 businesses, public officials, and other stakeholders asserting that certain insurers,  
23 agents, brokers, and **insurance company representatives** [we]re attempting to dissuade  
24 policyholders from filing a notice of claim under its Business Interruption insurance  
25 coverage, or **refusing to** open and **investigate these claims** upon receipt of a notice of  
26 claim" (Exhibit 1, p. 1, emphasis added.)

27 16. The Commissioner's notice reminded insurers facing these claims of the  
28 importance of complying with their obligations, citing the California Fair Claims

1 Settlement Practices Regulations (Cal. Code Regs., tit. 10, §§ 2695.1 *et seq.*  
2 (“Regulations”)). His notice went on to state, “[t]herefore, Insurance Commissioner  
3 Ricardo Lara finds it necessary to issue this Notice to ensure that all agents, brokers,  
4 **insurance companies**, and other licensees accept, forward, acknowledge, and **fairly**  
5 **investigate all business interruption insurance claims** submitted by businesses”  
6 (Exhibit 1, pp. 1-2, emphasis added). The Commissioner stated that “every insurer is  
7 required to conduct and diligently pursue a thorough, fair, and objective investigation  
8 of the reported claim” (*Id.* at 2).

9 17. The Commissioner further reminded insurers that “[i]f the claim is denied  
10 in whole or in part, the insurer is **required to** communicate the denial in writing to the  
11 policyholder **listing all the legal and factual bases** for such denial (Regulations, §  
12 2695.7(b)(1)). Where the denial of a first party claim is based on a specific statute,  
13 applicable law or policy provision, condition, or exclusion, the written denial must  
14 include reference to and provide an explanation of the application of the statute,  
15 applicable law, or policy provisions, condition, or exclusion to the claim...Regulations,  
16 § 2695.7(b)(1)” (Exhibit 1, p. 3, emphasis added).

17 18. Consistent with all of these well-established and non-controversial  
18 California insurance claims handling standards, Plaintiffs had the right to rely on  
19 Defendants to handle their insurance claims for business interruption losses in a  
20 manner consistent with these standards of good faith and fair dealing. Unfortunately,  
21 Defendants failed in all respects, and unreasonably and with a callous disregard for the  
22 interests of its insureds delayed and denied Plaintiffs’ business interruption claim,  
23 except as to the sub-limit for Special Perils Business Interruption for Contagious Disease  
24 coverage which Defendants continue to unreasonably delay in paying.

25 19. In order to obtain the benefits promised under the Policy and required by  
26 California law, Plaintiffs are compelled to institute this lawsuit to pursue all available  
27 legal and equitable remedies available to them.  
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**II.**  
**PARTIES**

20. Plaintiff NMMC is, and at all relevant times was, a California corporation, with its principal place of business in Woodland Hills, California.

21. Plaintiff NMC South is, and at all relevant times was, a California limited liability corporation with its principal place of business in Woodland Hills, California.

22. Plaintiff NMC Mountain States is, and at all relevant times was, a California limited liability corporation with its principal place of business in Woodland Hills, California.

23. The Owner Plaintiffs are, and at all relevant times were, organized and doing business as follows:

a. NMC BROADWAY, LLC is, and at all relevant times was, a California Limited Liability Company with its principal place of business in California.

b. CHINO RETAIL, LLC is, and at all relevant times was, a California Limited Liability Company with its principal place of business in California.

c. CHINO HILLS RETAIL II, LLC is, and at all relevant times was, a California Limited Liability Company with its principle place of business in California.

d. NMC ANAHEIM, LLC is, and at all relevant times was, a California Limited Liability Company with its principle place of business in California.

e. ANAHEIM ISLAND PARTNERS, LLC is, and at all relevant times was, a California Limited Liability Company with its principle place of business in California.

f. RLM FAMILY PROPERTIES, LLC is, and at all relevant times was, a California Limited Liability Company with its principle place of business in California.

g. F&F INVESTMENTS, LLC is, and at all relevant times was, a California Limited Liability Company with its principle place of business in California.

- 1 h. EAST ANAHEIM ACQUISITION, LLC is, and at all relevant times was, a  
2 California Limited Liability Company with its principle place of business in  
3 California.
- 4 i. MESA TOWN CENTER, LLC is, and at all relevant times was, a California  
5 Limited Liability Company with its principle place of business in California.
- 6 j. ANAHEIM FRIES PARTNERS, LLC is, and at all relevant times was, a  
7 California Limited Liability Company with its principle place of business in  
8 California.
- 9 k. BRISTOL CHINO II, LLC is, and at all relevant times was, a California  
10 Limited Liability Company with its principle place of business in California.
- 11 l. NMC SANTA ANA, LLC is, and at all relevant times was, a California  
12 Limited Liability Company with its principle place of business in California.
- 13 m. GINSBORG BOYS, LLC is, and at all relevant times was, a California  
14 Limited Liability Company with its principle place of business in California.
- 15 n. NJL CORONA, LLC is, and at all relevant times was, a California Limited  
16 Liability Company with its principle place of business in California.
- 17 o. FRANK MISSION MARKETPLACE, LLC is, and at all relevant times was,  
18 a California Limited Liability Company with its principle place of business in  
19 California.
- 20 p. NORWALK TOWN SQUARE MANAGEMENT, INC. is, and at all  
21 relevant times was, a California Corporation with its principle place of business  
22 in California.
- 23 q. JAVID LEVIAN – NORWALK LLC is, and at all relevant times was, a  
24 California Limited Liability Company with its principle place of business in  
25 California.
- 26 r. SHOKRAOLAH LEVIAN – NORWALK LLC is, and at all relevant times  
27 was, a California Limited Liability Company with its principle place of business  
28 in California.

- 1 s. AMSHID LEVIAN – NORWALK LLC is, and at all relevant times was, a  
2 California Limited Liability Company with its principle place of business in  
3 California.
- 4 t. MANOOCHEHR LEVIAN – NORWALK LLC is, and at all relevant times  
5 was, a California Limited Liability Company with its principle place of business  
6 in California.
- 7 u. LEVIAN FAMILY – NORWALK LLC is, and at all relevant times was, a  
8 California Limited Liability Company with its principle place of business in  
9 California.
- 10 v. HEKMATRAVAN FAMILY is, and at all relevant times was, a California  
11 Limited Liability Company with its principle place of business in California.
- 12 w. ARLINGTON SQUARE, L.P. is, and at all relevant times was, a California  
13 Limited Partnership with its principle place of business in California.
- 14 x. NMC GROVE ONTARIO, LLC is, and at all relevant times was, a  
15 California Limited Liability Company with its principle place of business in  
16 California.
- 17 y. NMC GROVE ONTARIO EPL is, and at all relevant times was, a  
18 Delaware Limited Liability Company with its principle place of business in  
19 California.
- 20 z. NMC GROVE ONTARIO PB, LLC is, and at all relevant times was, a  
21 Delaware Limited Liability Company with its principle place of business in  
22 California.
- 23 aa. NMC GROVE ONTARIO MC, LLC is, and at all relevant times was, a  
24 Delaware Limited Liability Company with its principle place of business in  
25 California.
- 26 bb. NMC GROVE ONTARIO PDA, LLC is, and at all relevant times was, a  
27 Delaware Limited Liability Company with its principle place of business in  
28 California.

- 1 cc. SHANE UNIVERSITY, LLC is, and at all relevant times was, a Delaware  
2 Limited Liability Company with its principle place of business in Illinois.  
3 dd. NEWMARK UNIVERSITY, LLC is, and at all relevant times was, a  
4 California Limited Liability Company with its principle place of business in  
5 Illinois.  
6 ee. NMC STRATFORD, LLC is, and at all relevant times was, a Delaware  
7 Limited Liability Company with its principle place of business in Illinois.  
8 ff. CHINO STRATFORD, LLC, is, and at all relevant times was, an Illinois  
9 Limited Liability Company with its principle place of business in California.  
10 gg. GMX REAL ESTATE GROUP, LLC is, and at all relevant times was, an  
11 Illinois Limited Liability Company with its principle place of business in  
12 California.  
13 hh. SHANE STRATFORD, LLC is, and at all relevant times was, an Illinois  
14 Limited Liability Company with its principle place of business in Illinois.  
15 ii. NMC WHITTIER, LLC is, and at all relevant times was, a California  
16 Limited Liability Company with its principle place of business in California.  
17 jj. NMC TOWER, LLC is, and at all relevant times was, a California Limited  
18 Liability Company with its principle place of business in California.  
19 kk. WHITTIER GATEWAY, L.P. is, and at all relevant times was, a California  
20 Limited Partnership with its principle place of business in California.  
21 ll. PEARL WHITTTIER PAINTER, LLC is, and at all relevant times was, a  
22 California Limited Liability Company with its principle place of business in  
23 California.  
24 mm. NMC WHITTIER II, LLC is, and at all relevant times was, a California  
25 Limited Liability Company with its principle place of business in California.  
26 nn. NMC COTTONWOOD, LLC is, and at all relevant times was, a California  
27 Limited Liability Company with its principle place of business in Colorado.  
28

- 1 oo. SHANE TOWER, LLC is, and at all relevant times was, a Delaware  
2 Limited Liability Company with its principle place of business in Colorado.
- 3 pp. NMC BROOMFIELD, LLC is, and at all relevant times was, a California  
4 Limited Liability Company with its principle place of business in Colorado.
- 5 qq. BROOMFIELD ASSOCIATES, LP is, and at all relevant times was, a  
6 California Limited Partnership with its principle place of Colorado.
- 7 rr. TOWER BROOMFIELD, LLC is, and at all relevant times was, a Delaware  
8 Limited Liability Company with its principle place of business in Colorado.
- 9 ss. NMC MELROSE PARK, LLC is, and at all relevant times was, a California  
10 Limited Liability Company with its principle place of business in Illinois.
- 11 tt. NMC MELROSE PARK MANAGER, LLC is, and at all relevant times was,  
12 a California Limited Liability Company with its principle place of business in  
13 Illinois.
- 14 uu. MELROSE PARK INVESTMENTS L.P. is, and at all relevant times was, a  
15 California Limited Partnership with its principle place of business in Illinois.
- 16 vv. MELROSE PARK EQUITY, LLC is, and at all relevant times was, an  
17 Illinois Limited Liability Company with its principle place of business in Illinois.
- 18 ww. MELROSE PARK ASSOCIATES, LLC is, and at all relevant times was, a  
19 Delaware Limited Liability Company with its principle place of business in  
20 Illinois.
- 21 xx. NMC GROVE MELROSE, LLC is, and at all relevant times was, a  
22 Delaware Limited Liability Company with its principle place of business in  
23 Illinois.
- 24 yy. GMX MELROSE, LLC is, and at all relevant times was, an Illinois Limited  
25 Liability Company with its principle place of business in Illinois.
- 26 zz. MELROSE PARK, II, LLC is, and at all relevant times was, an Illinois  
27 Limited Liability Company with its principle place of business in Illinois.
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- 1           aaa. NMC WASHINGTON, LLC is, and at all relevant times was, a California  
2 Limited Liability Company with its principle place of business in California.  
3           bbb. AU ZONE ARVADA, LLC is, and at all relevant times was, a Colorado  
4 Limited Liability Company with its principle place of business in Colorado.  
5           ccc. AU ZONE INVESTMENTS #2, LP is, and at all relevant times was, a  
6 California Limited Partnership with its principle place of business in California.  
7           ddd. THOUSAND OAKS MARKETPLACE, LP is, and at all relevant times was,  
8 a California Limited Partnership with its principle place of business in California.  
9           eee. J & J BALDWIN PARK LLC, is, and at all relevant times was, a Delaware  
10 Limited Liability Company with its principle place of business in California.  
11           fff. NEWMAN CAPITAL TEK, LLC is, and at all relevant times was, a  
12 Delaware Limited Liability Company with its principle place of business in  
13 California.  
14           ggg. J&J WAREHOUSE LLC is, and at all relevant times was, a California  
15 Limited Liability Company with its principle place of business in California.  
16           hhh. DEVONSHARE RESEDA, LLC, is, and at all relevant times was, a  
17 California Limited Liability Company with its principle place of business in  
18 California.  
19           iii. NMC UPLAND, LLC, is, and at all relevant times was, a California  
20 Limited Liability Company with its principle place of business in California.  
21           jjj. NORWALK FLALLON, LLC is, and at all relevant times was, a California  
22 Limited Liability Company with its principle place of business in California.  
23           kkk. TOMO GD LLC is, and at all relevant times was, a Delaware Limited  
24 Liability Company with its principle place of business in California.  
25           lll. UPLAND TERRY, LLC is, and at all relevant times was, a Delaware  
26 Limited Liability Company with its principle place of business in California.  
27  
28



1 mmm. SOURCE ASSOCIATES, LLC is, and at all relevant times was, a  
2 California Limited Liability Company with its principle place of business in  
3 California.  
4 nnn. UPSIDE CRENSHAW HOLDINGS, LLC is, and at all relevant times was,  
5 a Delaware Limited Liability Company with its principle place of business in  
6 California.  
7 ooo. UPSIDE CIP, LP is, and at all relevant times was, a Delaware Limited  
8 Partnership with its principle place of business in California.  
9 ppp. NMMS TWIN PEAKS, LLC is, and at all relevant times was, a California  
10 Limited Liability Company with its principle place of business in California.  
11 qqq. NMC SOUTHGATE, LLC is, and at all relevant times was, a California  
12 Limited Liability Company with its principle place of business in California.  
13 rrr. NMC SOUTHGATE PLAZA, LLC is, and at all relevant times was, a  
14 California Limited Liability Company with its principle place of business in  
15 California.  
16 sss. NJM RIALTO, LLC is, and at all relevant times was, a California Limited  
17 Liability Company with its principle place of business in California.  
18 ttt. NMC PLACENTIA, LLC is, and at all relevant times was, a California  
19 Limited Liability Company with its principle place of business in California.  
20 uuu. AU ZONE PLACENTIA, LLC is, and at all relevant times was, a  
21 California Limited Liability Company with its principle place of business in  
22 California.  
23 vvv. AU ZONE MADISON, LLC is, and at all relevant times was, a California  
24 Limited Liability Company with its principle place of business in California.  
25 www. NMC MADISON MARKETPLACE, LLC is, and at all relevant times was,  
26 a California Limited Liability Company with its principle place of business in  
27 California.  
28

1 xxx. TRIANGLE TOWN CENTER NW, LLC is, and at all relevant times was, a  
2 Washington Limited Liability Company with its principle place of business in  
3 Washington.

4 yyy. NMC STONY ISLAND, LLC is, and at all relevant times was, a Delaware  
5 Limited Liability Company with its principle place of business in Illinois.,

6 24. Certain Underwriters at Lloyd's London subscribing to Certificate  
7 Number ARP19021 is an unincorporated association of syndicates comprised of an  
8 aggregation of numerous members of unknown citizenship. Defendants issued the  
9 Policy in California, and are non-admitted carriers in California.

10 25. The true names or capacities, whether individual, corporate, associate, or  
11 otherwise, of defendants Does 1 through 100, inclusive, are unknown to Plaintiffs, who  
12 therefore sue said defendants by such fictitious names. Plaintiffs are informed and  
13 believe and based on such information and belief allege that each of the defendants  
14 sued herein as a Doe is legally responsible in some manner for the events and  
15 happenings referred to herein, and will ask leave of this Court to amend this complaint  
16 to insert their true names and capacities in place and instead of the fictitious names  
17 when the same become known to Plaintiffs.

18 26. Plaintiffs are informed and believe and based thereon allege that at all  
19 times mentioned herein, each of the defendants was the agent, partner, joint venturer,  
20 associate and/or employee of one or more of the other defendants and was acting in the  
21 course and scope of such agency, partnership, joint venture, association and/or  
22 employment when the acts giving rise to this action occurred.

23  
24 **III.**

25 **INSURANCE**

26 27. Plaintiffs obtained the Policy with coverage dates from May 31, 2019 to  
27 May 31, 2020. (Exhibit 2, Evidence of Coverage, p. 1). Coverage was extended to June  
28 30, 2020.

1           28. Plaintiffs NMMC, NMC South, and NMC Mountain States are separately  
 2 named Insureds under the Policy. Additionally, any “subsidiary, associated or allied  
 3 company, corporation, firm, organization, and any interest the Insured has in any  
 4 partnership or joint venture in which the Insured has management control or ownership  
 5 as now constituted or hereafter is acquired, as the respective interests of each may  
 6 appear” is an Insured. The Owner Plaintiffs are therefore Insureds under the Policy.

7           29. Plaintiffs timely paid all premiums that were due under the Policy.

8           30. In exchange for payment of the premiums, Defendants agreed to provide  
 9 the insurance coverage described in the Policy.

10          31. The Evidence of Coverage states that the Coverage is “All Risk Property,  
 11 except as specifically excluded.” (Exhibit 2, Evidence of Coverage, p. 1.)

12          32. On Page 15, Paragraph 24 of Appendix B, the Policy states:

“PERILS INSURED AGAINST – This policy insures against all risks of  
 direct physical loss of or damage to property described herein including  
 general average, salvage, and all other charges on shipments covered  
 hereunder, except as hereinafter excluded.”  
 (Exhibit 2, Appendix B, p. 15, ¶ 24.)

18          33. The terms “direct physical loss of or damage” are not defined in the  
 19 Policy.

20          34. The Evidence of Coverage states the following relevant coverages and  
 21 sublimits:

- |    |     |                                   |  |
|----|-----|-----------------------------------|--|
| 23 | “d) | \$100,000,000                     | Contingent Business Interruption<br>- Per Occurrence |
| 24 | ... |                                   |  |
| 25 | k)  | Lesser of \$10,000,000 or 30 days | Ingress/Egress – Per<br>Occurrence per Insured       |
| 26 | l)  | Lesser of \$10,000,000 or 30 days | Civil Authority – Per<br>Occurrence per Insured      |
| 27 | ... |                                   |  |
| 28 | ... |                                   |  |

- 1 q) \$1,000,000 Special Perils Business  
2 Interruption [Contagious  
3 ...  
4 u) \$100,000 Communicable Disease Extra  
5 Expense – Per Occurrence”  
6 (Exhibit 2, Evidence of Coverage , p. 3.)

7 35. The term “occurrence” is defined in the Policy as: “Except as hereinafter  
8 defined, ‘loss occurrence’ shall mean accident or occurrence or series of accidents or  
9 occurrences arising out of one event.” (Exhibit 2, Appendix B, p. 17, ¶ 26.)

10 36. The Policy states the following grant of coverage for Business  
11 Interruption:

12 “11. BUSINESS INTERRUPTION - This policy shall cover the loss  
13 resulting from necessary interruption of business conducted by the  
14 Insured including all interdependent loss of earnings between or among  
15 companies owned or operated by the Insured caused by loss, damage, or  
16 destruction by any of the perils covered herein during the term of this  
17 policy to real and personal property as covered herein:

18 a) In the event of such loss, damage or destruction this  
19 Insurer shall be liable for the ACTUAL LOSS SUSTAINED by the  
20 insured resulting directly from such interruption of business, but  
21 not exceeding the reduction in gross earnings less charges and  
22 expenses which do not necessarily continue during the interruption  
23 of business.”

24 (Exhibit 2, Appendix B, Page 7-8, ¶ 11)(Emphasis in original).

25 37. The term “interruption” is not defined in the Policy. One definition of  
26 “interruption” is “a stoppage or hindering of an activity for a time.”  
27 [https://www.merriam-webster.com/dictionary/interruption (last accessed on  
28 November 16, 2020).]

38. The Policy covers loss of Rental Value/Rental Income:

1           “15. Rental Value/Rental Income – This policy shall cover the actual loss  
2           sustained by the Insured resulting directly from the necessary untenability  
3           caused by loss, damage, or destruction by any of the perils covered herein  
4           during the term of this policy to real or personal property as covered  
5           herein. Loss settlement shall not exceed the reduction in rental value less  
6           charges and expenses which do not necessarily continue during the period  
7           of untenability.

- 6           a) If the Insured is the lessor, for the purposes of this  
7           insurance, ‘rental value’ is defined as the sum of:  
8           i) the total anticipated gross rental income of the  
9           described property as furnished and equipped by the  
10           insured, and  
11           ii) the amount of all charges which are legal obligation  
12           of the tenant(s) and which would otherwise be obligations of  
13           the Insured, and  
14           iii) the fair rental value of any portion of said property  
15           which is occupied by the Insured.”

13           (Exhibit 2, Appendix B, p. 10, ¶ 15.)

15           39. The Policy covers “leasehold interest of the Insured as Lessor in excess of  
16           the actual rental payable as of the date of loss over the rental value of the Lessee’s  
17           leased premises (giving due consideration to rental and over-standard tenant’s  
18           improvement allowances and including any maintenance or operating charges paid by  
19           Lessee) during the unexpired term of the Lessee’s lease.” (Exhibit 2, Appendix B, p. 11,  
20           ¶ 17.)

21           40. The Policy covers “leasing commission insofar as they are unearned at the  
22           time of loss. In addition, in the event leasing commissions are due and payable upon re-  
23           leasing of the property, the Insured will be entitled to the difference between re-leasing  
24           commission paid, minus the leasing commission previously paid for the period when  
25           the property is re-leased, until the original lease would have expired.” (Exhibit 2,  
26           Appendix B, p. 11-12, ¶ 18.)

27           41. The Policy covers “the necessary extra expense, as hereinafter defined,  
28           incurred by the Insured caused by loss, damage, or destruction by any of the perils

1 covered herein during the term of this policy to real and personal property as covered  
2 herein.

- 3 a) The term 'Extra Expense' wherever used in this Policy, is defined as the  
4 excess (if any) of the total cost(s) incurred during the period of restoration,  
5 chargeable to the operation of the Insured's business, over and above the  
6 total cost(s) that would have normally have been incurred to conduct the  
7 business during the same period had no loss or damage occurred...."

8 (Exhibit 2, Appendix B, Page 9, ¶ 12(a).)

9 42. Additionally, the Policy states that "[t]his policy is extended to cover  
10 expenses as are necessarily incurred for the purpose of reducing any loss under this  
11 policy, even though such expense may exceed by which the loss under this policy is  
12 therefore reduced." (Exhibit 2, Appendix B, Page 9, ¶ 13.)

13 43. The Policy also covers "soft costs" incurred by the Insured caused by loss,  
14 damage, or destruction by any of the perils covered by the policy, including  
15 "accounting and attorney fees" and "[c]osts and commissions resulting from  
16 renegotiating leases which directly result from the covered loss." (Exhibit 2, Appendix  
17 B, p. 9, ¶ 14(a)(vii) and 14(a)(viii).)

18 44. The Policy provides for Civil Authority coverage for "the actual loss for a  
19 period not to exceed thirty (30) consecutive days when, as a result of a peril insured  
20 against, access to real or personal property is prohibited by order of civil or military  
21 authority **irrespective of whether the property of the Insured shall have been**  
22 **damaged.**" (Exhibit 2, Appendix B, p. 13, ¶ 20(d), emphasis added.)

23 45. The Policy provides for Ingress/Egress coverage for "the actual loss  
24 sustained for a period not to exceed thirty (30) consecutive days when, as a result of a  
25 peril insured against, ingress to or egress from real or personal property is thereby  
26 impaired or hindered **irrespective of whether the property of the Insured shall have**  
27 **been damaged.**" (Exhibit 2, Appendix B, p. 13, ¶ 20(e), emphasis added.)  
28

- 1           46.    The Policy states a sublimit of \$1,000,000 for Special Perils Business  
2 Interruption for Contagious Disease Coverage. The Policy states:  
3           “c) CONTAGIOUS DISEASE – This policy is extended to insure loss as  
4           Insured hereunder when there is an interruption or interference with  
5           the business of the insured as a consequence of an order by a  
6           competent public authority due to:  
7           i)    Infection or contagious disease manifested by any person while  
8           on the premises of the insured;  
9           ii)   Injury or illness sustained by any person arising from or  
10           traceable to a foreign or injurious matter in food or drink  
11           provided on the premises of the Insured or the threat thereof;  
12           iii)   the existence or threat of hazardous conditions either actual or  
13           suspected at the premises of the Insured.”  
14           (Exhibit 2, Appendix B, Page 33, ¶ 72(c).)
- 15           47.    The Policy provides \$100,000 in Extra Expense coverage for  
16 Communicable Diseases. This coverage states:  
17           “This policy covers the extra expense the Insured incurs due to a  
18           communicable disease event means that a Public Health Authority has  
19           ordered that a covered premises be evacuated and disinfected due to the  
20           outbreak of a communicable disease at the covered premises,  
21           Communicable disease means any disease caused by a biological agent  
22           that is transmitted directly or indirectly from one individual to  
23           another.”(Exhibit 2, Appendix B, Page 34, ¶ 77.)
- 24           48.    Exclusion J in the Policy states:  
25           “PERILS EXCLUDED – This policy does not insure:  
26           ...  
27           j)    Disease, Infestation, Insect, Animal or Vermin Damage.”  
28           (Exhibit 2, Appendix B, Page 17, ¶ 25j.)
49.    The term “disease” is not defined in the Policy, but all the terms in  
Exclusion J require the actual presence of the excluded peril.

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IV.

FACTUAL BACKGROUND

A. Plaintiffs' Business Operations

50. Plaintiffs NMMC, NMC South, and NMC Mountain States are separate companies that manage various shopping centers in different locations in the United States, each subject to the governmental orders of the jurisdiction where the shopping centers are located. NMMC manages shopping centers throughout the state of California, and in Illinois. NMC South manages shopping centers primarily in San Diego County, California, but also in the state of Washington. NMC Mountain States manages shopping centers in the state of Colorado. The shopping centers that are managed by Plaintiffs are "allied, managed or owned entities."

51. Attached as Exhibit 3 is the list of the shopping center ownership by the Owner Plaintiffs and the shopping centers that are managed by Plaintiffs NMMC, NMC South and NMC Mountain States covered by the Policy.

52. The governmental orders issued by various states and counties during the COVID-19 pandemic have restricted access, and/or impaired or hindered the ingress and egress to Plaintiffs' shopping centers. The shopping centers owned by the Owner Plaintiffs and managed by Plaintiffs NMMC, NMC South and NMC Mountain States suffered an interruption in business resulting in, lost rental income from businesses that were unable to operate, and Plaintiffs have incurred and will continue to incur ancillary losses and expenses.

53. Additionally, Plaintiffs have lost leasing fees, management fees, development fees, and profit participation from the shopping centers, and have incurred and will incur extra expenses and soft costs as those terms are defined in the Policy.



1 **B. The COVID-19 Pandemic**

2 54. It has been widely reported that COVID-19 has its origins in Wuhan,  
3 China. The first public reports were on December 31, 2019 of an “outbreak of  
4 respiratory illness.”

5 55. By January 8, 2020, the United States Centers for Disease Control and  
6 Prevention (“CDC”) issued warnings to American travelers going to China for a  
7 “pneumonia of unknown etiology” (<https://emergency.cdc.gov/han/han00424.asp>, last  
8 accessed November 16, 2020).

9 56. On January 20, 2020, the W.H.O. reported the first confirmed cases outside  
10 mainland China in Japan, South Korea and Thailand ([https://www.nytimes.com/article/  
11 coronavirus-timeline.html](https://www.nytimes.com/article/coronavirus-timeline.html), last accessed October 14, 2020). The following day, on  
12 January 21, 2020, the first American COVID-19 case was confirmed in the State of  
13 Washington ([https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-  
14 travel-case.html](https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html), last accessed November 16, 2020).

15 57. During February 2020, COVID-19 began spreading rapidly throughout  
16 Europe, with Italy initially becoming the most impacted country. That same month, an  
17 increasing number of cases were being reported in the United States, with the largest  
18 known initial concentration of cases in the Seattle area of Washington State, where  
19 NMC South has shopping centers. The first cluster of COVID-19 cases was reported at a  
20 nursing home in Kirkland, Washington in late February, and the first COVID-19 death  
21 in the United States was announced on February 28, 2020.

22 58. Published reports state that COVID-19 also continued to spread  
23 throughout California during February 2020. In early February, several COVID-19 cases  
24 were announced in Northern California. During February, the number of reported  
25 COVID-19 cases in California increased. On February 26, 2020, the CDC announced the  
26 first reported California COVID-19 case resulting from community spread  
27 (<https://www.cdc.gov/media/releases/2020/s0226-Covid-19-spread.html>, last accessed  
28 November 16, 2020).

1           59. As COVID-19 cases continued to increase in certain areas of the United  
2 States, on March 4, 2020 Congress passed emergency funding of \$8.3 billion to aid in the  
3 immediate health response to COVID-19.

4           60. On March 11, 2020, travel from Europe to the United States was restricted,  
5 and the W.H.O. declared COVID-19 a pandemic. The term “pandemic” does not appear  
6 anywhere as an excluded peril in this “All Risk” Policy.

7           61. On March 13, 2020, the President of the United States declared a national  
8 emergency. Throughout this time, Plaintiffs’ shopping centers remained open and their  
9 business was not interrupted.

10  
11 **C. Numerous states issue Governmental Orders**

12           62. Numerous states, including California, Illinois, Colorado and Washington,  
13 issued governmental orders that restricted the operations of businesses, other than  
14 those providing essential services.

15 **a. WASHINGTON**

16           63. On February 29, 2020, Governor Jay Inslee of Washington declared a state  
17 of emergency. He subsequently issued a “stay-at-home” Proclamation on March 23,  
18 2020 prohibiting personal activities and ordering the cessation of non-essential business  
19 operations. On May 4, 2020, Governor Inslee issued Proclamation 20-25.3 continuing all  
20 COVID-19 orders until May 31, 2020 with a four stage Phased reopening. Phase One of  
21 the reopening allowed low-risk business such as landscaping, vehicle sales, pet  
22 walking, retail (curb-side pick-up only), and car washes to reopen. Phase Two allowed.  
23 Phase Two allowed in-store retail purchases with health restrictions, barber shops and  
24 salons could reopen, restaurants could reopen with 50% capacity and with a table size  
25 no larger than five persons.

26           64. Triangle Center NW LLC’s shopping center managed by NMC South and  
27 in Longview, Washington is located in Cowlitz, County. On May 23, 2020, Cowlitz  
28

1 County was allowed to enter Phase Two, where it remained until November 15, 2020  
2 when Governor Inslee announced a four week state-wide restrictions.

3 **b. CALIFORNIA**

4 65. On March 19, 2020, California Governor Gavin Newsom issued an  
5 Executive Order requiring all individuals living in California to stay home or at their  
6 place of residence except to visit essential businesses, and permitting people working in  
7 "critical infrastructure sectors" to go to work.

8 66. On May 4, 2020, Governor Newsome issued an Executive Order directing  
9 all residents to continue to obey State Public health directives. This Order directed State  
10 Public Health Officers to establish criteria on reopening lower-risk businesses ("Stage  
11 Two") and then allowing reopening of higher-risk business and spaces ("Stage Three").

12 67. On May 7, 2020, the State Public Health Officer responded by issuing an  
13 Order allowing local health jurisdictions in the State to begin gradual movement into  
14 Stage Two. As part of the Order, the State Public Health Officer set forth criteria and  
15 procedures that local jurisdictions would be required to meet in order to progress  
16 through Stage Two. One of the requirements is that the local health jurisdiction must  
17 have a COVID-19 Containment Plan. This plan includes, among other things, ensuring  
18 that essential businesses have "access to key supplies" such as hand sanitizer.

19 68. Shopping centers throughout Los Angeles County are managed by  
20 Plaintiff NMMC and owned by certain Owner Plaintiffs as identified in Exhibit 3, and  
21 the business that operate in the shopping centers, were subject to governmental orders.  
22 Prior to the California statewide stay-at-home order, Los Angeles County issued its first  
23 governmental order on March 16, 2020, prohibiting all indoor and outdoor public and  
24 private events within a confined space, and the closure of all in person dining at  
25 restaurants. On May 13, 2020, Los Angeles County only permitted retailers not in an  
26 indoor mall or shopping center to open for curbside pickup as part of the Stage Two  
27 reopening. On May 22, 2020, indoor mall curbside pickup was permitted. On May 26,  
28 2020, in-store shopping was permitted at all retail establishments, including at shopping

1 centers. On June 19, 2020, personal care facilities such as hair and nail salons were  
2 permitted to reopen. On June 27, 2020, Los Angeles County issued an order permitting  
3 outside dining at restaurants. Indoor shopping malls in Los Angeles County were  
4 ordered closed again in July 13, 2020.

5 69. In Los Angeles County there have been subsequent shut downs and  
6 restrictions, including an Order issued on November 28, 2020 that prohibited all indoor  
7 and outdoor dining, and limited retail and shopping center to 20 percent occupancy  
8 capacity

9 70. Shopping centers throughout Orange County are managed by Plaintiff  
10 NMMC and owned by certain Owner Plaintiffs as identified in Exhibit 3, and the  
11 business that operate within those shopping centers, were subject to governmental  
12 orders. On March 17, 2020 all business except essential businesses were ordered to close  
13 in Orange County. On May 23, 2020, the State of California approved the County of  
14 Orange's reopening of retail establishments subject to social distancing and sanitizing  
15 protocols, and indoor person dining at restaurants at a limited scale. On July 1, 2020 a  
16 further order was issued prohibiting indoor in person dining and ordering bars to close  
17 starting on July 2, 2020.

18 71. Shopping centers in Ventura County are managed by Plaintiff NMMC and  
19 owned by certain Owner Plaintiffs as identified in Exhibit 3, and the business that  
20 operate within those shopping centers, were subject to governmental orders. Prior to  
21 the California statewide stay-at-home order, Ventura County on March 17, 2020  
22 prohibited the operations of in person dining at restaurants, and restricted large  
23 gatherings. On May 20, 2020, retail businesses and restaurants were allowed to reopen  
24 subject to following the state-mandated COVID protocols.

25 72. Shopping centers in San Bernardino County are managed by Plaintiff  
26 NMMC and owned by certain Owner Plaintiffs as identified in Exhibit 3, and the  
27 business that operate within those shopping centers, were subject to governmental  
28 orders. Non-essential businesses in San Bernardino County were ordered to be closed

1 based on the statewide stay-at-home order on March 19, 2020. On May 8, 2020, San  
2 Bernardino rescinded all prior COVID local orders. On May 23, 2020, dine-in  
3 restaurants, stores, shopping malls and shopping centers in San Bernardino County  
4 were permitted by the state of California to reopen subject to compliance with the state-  
5 mandated safety protocols. On July 2, 2020 all in-person inside dining was prohibited  
6 and all bars were ordered to close in San Bernardino County. Indoor shopping malls in  
7 San Bernardino County were ordered closed again on July 13, 2020, and only permitted  
8 to reopen in early September 2020.

9 73. Shopping centers in Riverside County managed by Plaintiff NMMC and  
10 owned by certain Owner Plaintiffs as identified in Exhibit 3, and the business that  
11 operate within those shopping centers, were subject to governmental orders. Non-  
12 essential businesses in Riverside County were ordered to be closed based on the  
13 statewide stay-at-home order on March 19, 2020. On May 22, 2020, the State of  
14 California approved Riverside County retail businesses in shopping centers and in-  
15 person dining, subject to state-mandated social distancing and sanitizing requirements.  
16 Indoor shopping malls and dine-in restaurants and bars in Riverside County were  
17 ordered closed again on July 13, 2020, and only permitted to reopen in early September  
18 2020.

19 74. Shopping centers in Sacramento County managed by Plaintiff NMMC and  
20 owned by certain Owner Plaintiffs as identified in Exhibit 3, and the business that  
21 operate within those shopping centers, were subject to governmental orders. Non-  
22 essential businesses in Sacramento County were closed based on the statewide stay-at-  
23 home order on March 19, 2020. On May 22, 2020, the State of California approved  
24 Sacramento County to reopen in-person dining and retail shopping. Shopping centers  
25 began reopening shortly thereafter. On July 2, 2020, Sacramento County issued a stay-  
26 at-home order. Indoor shopping malls and dine-in restaurants and bars in Sacramento  
27 County were ordered to remain closed on July 13, 2020, and only permitted to reopen in  
28 early September 2020.

1           75. Shopping centers in San Diego County managed by Plaintiff NMC South  
2 and owned by certain Owner Plaintiffs as identified in Exhibit 3, and the business that  
3 operate within those shopping centers, were subject to governmental orders. Plaintiff  
4 NMC South's shopping centers were subject to San Diego County's governmental  
5 orders. In San Diego County non-essential businesses closed based on the statewide  
6 stay-at-home order mandated on March 19, 2020. On May 20, 2020, the State of  
7 California approved San Diego County to reopen in-person dining and retail shopping.  
8 Shopping centers began reopening shortly thereafter.

9           c. ILLINOIS

10           76. Shopping centers in Illinois managed by Plaintiff NMMC and owned by  
11 certain Owner Plaintiffs as identified in Exhibit 3, and the businesses that operate  
12 within those shopping centers, were subject to the executive orders issued by Illinois  
13 Governor J.B. Pritzker.

14           77. On March 16, 2020, in Governor Pritzker issued an Executive Order 2020-8  
15 prohibiting the service of food inside any business premises and prohibiting public  
16 gatherings of more than 100 people. On March 20, 2020, Governor Pritzker issued an  
17 Executive Order 2020-10 requiring all individuals living in Illinois to stay at home or at  
18 their place of residence, requiring social distancing, prohibiting gatherings of more than  
19 10 people, prohibiting non-essential activities and travel, and ordering non-essential  
20 businesses to cease all activities. On April 1, 2020, the "stay at home" order and all  
21 COVID-19 orders were extended.

22           78. On April 30, 2020, Governor Pritzker issued a further Executive Order  
23 2020-32 that allowed non-essential stores and businesses to reopen for minimum basic  
24 operations. Such minimum basic operations included the minimum necessary activities  
25 to maintain the business, the minimum necessary activity to facilitate employees of the  
26 business being able to continue to work remotely, and allowing retail operations to  
27 fulfill online and telephonic order. The Order requires all essential business and  
28 businesses engaged in minimum basic operations to take proactive measures to ensure

1 compliance with social distancing requirements. These requirements included ensuring  
2 that hand sanitizer and sanitizing products are readily available for employees and  
3 customers.

4 79. On June 29, 2020, Governor Pritzker issued Executive Order 2020-43  
5 requiring retail business to adhere to safety protocols, and limit capacity to 50 percent  
6 and discontinue use of recyclable bags. Restaurants were allowed to offer food and  
7 beverages for on-site consumption.

8 **d. COLORADO**

9 80. Shopping centers in Colorado managed by Plaintiff NMMC and owned by  
10 certain Owner Plaintiffs as identified in Exhibit 3, and the businesses that operate  
11 within these shopping malls, were required to follow the executive orders issued in  
12 Colorado.

13 81. On March 16, 2020, the Executive Director of the Colorado Department of  
14 Public Health & Environment issued a Public Health Order closing bars, restaurants,  
15 theaters, etc. through April 30, 2020.

16 82. On March 22, 2020, Colorado Executive Director issued a Public Health  
17 Order requiring a reduction of in-person work force by at least 100%.

18 83. On March 25, 2020, Colorado Governor Jared Polis issued an Executive  
19 Order that ordered all people to stay at home and ordered all non-essential businesses  
20 to close temporarily.

21 84. On April 18, 2020, Colorado Executive Director issued a Public Health  
22 Order prohibiting public gatherings of more than 10 people and requiring Social  
23 Distancing.

24 85. On April 27, 2020, Governor Polis issued a "safer-at-home" order that  
25 permitted certain business to open. Retail businesses outside of Denver were allowed to  
26 reopen with limited capacity. On May 9, non-critical retail businesses were allowed to  
27 reopen with limited capacity in the Denver area.

28

1           86.    On May 14, 2020, the Colorado Department of Public Health issued a  
2 Health order that allowed to critical business and other sectors of the economy to  
3 resume operations including non-critical retail.

4           87.    On May 27, 2020 restaurants were permitted to serve customers for in-  
5 person dining  
6

7 **D.    Plaintiffs’ Business Interruption Claim.**

8           88.    On April 9, 2020, Plaintiffs submitted a Notice of Loss for their business  
9 interruption losses. The Notice of Loss identified shopping center locations, primarily in  
10 California, but also in Illinois, Colorado and Washington, which suffered a business  
11 interruption. (Exhibit 4.)

12           89.    The Notice of Loss identified the governmental orders issued in the  
13 various states that prohibited access and/or impaired or hindered ingress and egress to  
14 business activities as the cause of loss. The Notice of Loss stated that Plaintiffs suffered  
15 a business interruption loss resulting from the governmental orders that restricted  
16 business activities resulting in lost rental income, leasing fees, management fees,  
17 development fees, and profit participation from the shopping centers. Additionally, the  
18 Plaintiffs have incurred extra expenses to operate remotely, for sanitizing and PPE  
19 equipment and supplies, and soft costs for legal expenses (not related to making the  
20 insurance claim).

21           90.    On April 10, 2020, OneSource Claims Management LLC, 6320 Canoga  
22 Avenue, Ste. 7100, Woodland Hills, California 91367 [“OneSource”] acknowledged  
23 receipt of the claim on behalf of the insurers. Attached as Exhibit 5 is a true and correct  
24 copy of the e-mail acknowledging receipt of the claim.

25           91.    On April 22, 2020, OneSource sent Plaintiffs a reservation of rights letter,  
26 which identified various provisions of the Policy, but did not accept or deny any  
27 portion of the claim. (Exhibit 6.) This letter also requested information and  
28 documentation regarding the claim.



1           92. On May 15, 2020, Plaintiffs sent OneSource a Preliminary Summary of  
2 Losses and Expenses for April 2020, which included Excel spreadsheets and supporting  
3 documentation. (Exhibit 7) The following losses were documented:

4  
5           The total combined loss of rents for the Owner Plaintiffs in April 2020 is  
6 \$5,617,212

7           The April 2020 Lost Management Fees:

- 8           1. NMMC - \$93,540.96
- 9           2. NMC South - \$42,820.97
3. NMC Mountain States - \$18,201.08

10          The April 2020 Extra Expenses are as follows:

- 11          NMMC - \$161,855.28
- 12          a. PPE and Sanitizers - \$123,130
  - 13          b. Legal Fees - \$3,148
  - 14          c. Mitigation Related Fed Ex Charges - \$195.07
  - d. Remote Access - \$35,382.21

15          93. Owner Plaintiffs' loss of Rental Income includes tenants that have been  
16 closed as a result of the governmental orders. Rent has been deferred for some and  
17 abated for others. Some tenants may never reopen and will go out of business and be  
18 unable to pay any past rents that are currently owed.

19          94. The loss of Rental Income by Owner Plaintiffs and management fees  
20 claimed by NMMC, NMC South, and NMC Mountain States are covered under the  
21 Policy as part of the actual loss for business interruption based on the Civil Authority,  
22 Ingress/Egress and Contagious Diseases coverages.

23          95. The costs for personal protective equipment ("PPE") and sanitizing  
24 supplies, mitigation-related Federal Express Charges, and Remote Access incurred by  
25 Plaintiffs are covered Extra Expenses under the Policy.

26          96. The attorney fees listed in the May 15, 2020 by NMMC are covered "Soft  
27 Costs" as that term is defined in the Policy.

28

1           97. On June 2, 2020, Plaintiffs provided further responses to Defendants'  
2 Requests for Information. Plaintiffs stated that there were no known confirmed COVID-  
3 19 cases at their locations. In addition, Plaintiffs stated the "direct cause for the  
4 disruption of each [location] was the 'stay at home' executive orders issued by the  
5 governors of the States of California, Illinois, Colorado and Washington." Plaintiffs  
6 further stated they were claiming a direct physical loss of or damage to insured  
7 property" because of the presence of SARS CoV-2 ['COVID-19'] in each State and the  
8 resulting illnesses, contamination, and property damage caused by the virus, the  
9 governors of California, Illinois, Colorado and Washington issued executive orders and  
10 the state departments of public health issued public health orders requiring the closure  
11 of retail properties, prohibiting citizens from entering retail tenants, requiring the  
12 employees of the insureds to stay at home, and requiring the implementation and  
13 execution of 'safe distancing' and sanitation measures." Attached as Exhibit 8 is a true  
14 and correct copy of Plaintiffs' responses to all of the initial questions by the insurers in  
15 the April 22, 2020 letter.

16           98. On June 22, 2020, Plaintiffs' counsel, Daniel Zollner, Esq., requested an  
17 updated status report. (Exhibit 9, p. 7.)

18           99. On June 23, 2020, OneSource responded stating that there was no  
19 definitive answer from the insurers, and it would provide a further timeframe after  
20 speaking with the insurers the following week. (Exhibit 9, p. 6.)

21           100. On July 17, 2020, Mr. Zollner sent a further e-mail to OneSource again  
22 noting there had been no response or communication received. (Exhibit 9, p. 4-5.)

23           101. On July 22, 2020, OneSource responded by e-mail stating, the  
24 "Underwriters acknowledge in principle that certain aspects of the claim may be  
25 covered under Paragraph 72(c)(iii) of the Policy – SPECIAL PERILS BUSINESS  
26 INTERRUPTION – CONTAGIOUS DISEASE. That provision states: 'This policy shall  
27 cover the Actual Loss Sustained resulting from necessary interruption of business  
28 conducted by the insured cause by any of the periods listed below ... c)

1 CONTAGIOUS DISEASE – This policy is extended to insure loss as Insured hereunder  
2 when there is an interruption or interference with the business of the insured as a  
3 consequence of an order of competent public authority due to: ... iii) the existence or  
4 threat of hazardous conditions either actual or suspected at the premises of the  
5 Insured.” It was also noted that there was a sublimit of \$1,000,000, but that the  
6 Underwriters did not accept or deny coverage at that time and continued to reserve  
7 their rights. (Exhibit 9, p. 2-4.)

8 102. On that same date, July 22, 2020, Mr. Zollner demanded payment of the  
9 \$1,000,000 for the Contagious Disease coverage. He also requested a form for the Proof  
10 of Loss, which OneSource had first time requested earlier that day. (Exhibit 9, p. 2.)

11 103. On July 28, 2020, OneSource responded that the Underwriters were  
12 determining how the Contagious Disease that sublimit applies to Plaintiffs’ claim and  
13 the amount of the actual loss sustained. (Exhibit 9, p. 2.)

14 104. Defendants continued to unreasonably delay payment of any benefits to  
15 Plaintiffs, including on the Contagious Disease coverage.

16 105. On August 12, 2020, OneSource sent a letter stating that “the Insurers  
17 continue to evaluate whether and to what extent coverage for the Claim may exist  
18 under the Policy. The insurers require additional time in order to properly evaluate  
19 whether claims for losses arising out of the COVID-19 pandemic are covered under the  
20 Policy.” (Exhibit 10.)

21 106. On September 21, 2020, OneSource sent a letter stating the insurers were  
22 continuing to evaluate whether and to what extent coverage for the Claim may exist  
23 under the Policy. The September 21, 2020 letter is attached as Exhibit 11.

24 107. On October 1, 2020, nearly six months after the Notice of Loss was  
25 submitted, OneSource sent a denial letter to Plaintiffs, denying the business  
26 interruption claim except as to the Contagious Disease coverage that Defendants finally  
27 agreed to pay, subject to the payment being shared among all REAPA Members with  
28

1 covered claims. (Exhibit 12.) At this point, no payment has been made nor any  
2 determination by Defendants as to a “sharing” formula.

3 108. In the denial letter, Defendants adopted their own definition of the terms  
4 “direct physical loss of or damage to,” which are not defined in the Policy, to provide  
5 the basis for denial. Defendants’ extrinsic definition, as stated in the denial letter, was  
6 that these terms require “some tangible or detectable change to the insured property.”  
7 (Exhibit 12, p. 6.)

8 109. In denying the claims for business interruption loss, Defendants  
9 interpreted their own Master Policy inconsistently with the terms that were used. Even  
10 though the plain language of the Policy expressly states that coverage exists under Civil  
11 Authority and Ingress/Egress coverage “irrespective of whether the Property of the  
12 Insured shall have been damaged,” Defendants unreasonably read into the Policy that  
13 “some tangible or detectable change to the insured property” is required. (*Id.*)  
14 Defendants in a footnote claimed that the language in the Civil Authority and  
15 Ingress/Egress coverage was used to mean that physical loss of or damage must still  
16 occur but need not be on the Insured’s property (presumably meaning it would be  
17 required to occur somewhere else). This interpretation is contrary to the Policy’s plain  
18 language, and Defendants are unreasonably attempting to rewrite the Policy to support  
19 their interpretation to deny coverage.

20 110. Under the plain language of the Policy, the loss of Rental Income,  
21 leasehold interests and leasing fees, Extra Expenses and the defined “soft costs” are  
22 covered losses under the express grants of coverage for Civil Authority and  
23 Ingress/Egress “irrespective of whether the Property of the Insured shall have been  
24 damaged.”

25 111. In the October 1, 2020 denial letter, Defendants also claim that the loss of  
26 rental income was not based on the necessary “untenability,” even though that term is  
27 not defined in the Policy. A definition of an untenable condition “is a condition of  
28 premises rendering them unfit for the purpose for which they were leased, particularly

1 where the lease expressly designates the use to be made of the premises.  
2 <https://definitions.uslegal.com/u/untenantable-condition/> (last accessed November 16,  
3 2020.) Another definition for “untenantable” is that the Tenant is actually unable to use  
4 any or all of the premises in the normal course of its business.

5 <https://www.lawinsider.com/dictionary/untenantable> (last accessed on November 16,  
6 2020.)

7 112. The denial letter also unreasonably claimed that Exclusion “j” for  
8 “diseases” applies, even though Defendants simultaneously conceded there was no  
9 evidence of the presence of a disease on Plaintiffs’ properties. Defendants cannot meet  
10 their burden that Exclusion “j” applies.

11 113. Pursuant to Section 2695.7(b)(1) of the California Code of Regulations,  
12 Defendants were required to state in their denial letter all the factual, contractual, and  
13 legal grounds for denying the claim, thus forfeiting the right to later raise additional  
14 grounds to attempt to justify their denial of Plaintiffs’ claim.

15 114. Defendants’ unreasonable delay in paying Plaintiffs’ policy benefits,  
16 including the delay in paying the Contagious Disease coverage which Defendants  
17 conceded provided coverage, has caused Plaintiffs to suffer further consequential  
18 economic losses and damages. Such economic losses and damages include Plaintiffs  
19 being required to pay additional lender costs, invest additional equity, and take other  
20 steps to finance their properties.

21 115. As a result of Defendants’ wrongful denial of Plaintiffs’ claim, at a time  
22 when the Governmental Orders caused an interruption to their business operations,  
23 Plaintiffs have been compelled to retain counsel and pursue this litigation in order to  
24 obtain the benefits promised under the Policy.

25  
26  
27  
28

**FIRST CAUSE OF ACTION**

PLAINTIFFS FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS  
CERTAIN UNDERWRITERS AT LLOYD'S LONDON SUBSCRIBING TO  
CERTIFICATE NUMBER ARP19021 AND DOES 1 THROUGH 100, INCLUSIVE, FOR  
BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING  
ALLEGE:

116. Plaintiffs incorporate by reference all paragraphs above as if set forth in  
full in this cause of action.

117. The Underwriters and Does 1 through 100, inclusive, have breached their  
duty of good faith and fair dealing owed to Plaintiffs in the following respects:

- a. Unreasonably acting or failing to act in a manner that deprives  
Plaintiffs of the benefits of the Policy;
- b. Unreasonably engaging in a pattern and practice of acting or failing  
to act in a manner that deprives their insureds of the benefits of  
policies they issue;
- c. Unreasonably failing to conduct a prompt, fair, balanced and  
thorough investigation of all of the bases of Plaintiffs' claims;
- d. Unreasonably engaging in a pattern and practice of failing to  
conduct a prompt, fair, balanced and thorough investigation of all  
of the bases of claims made under policies they issue;
- e. Unreasonably failing to diligently search for and consider evidence  
that supports coverage of Plaintiffs' claims;
- f. Unreasonably engaging in a pattern and practice of failing to  
diligently search for and consider evidence that supports coverage  
of claims;
- g. Unreasonably failing to conduct an investigation to determine the  
efficient proximate cause (predominant cause) of Plaintiffs' loss;

- 1 h. Unreasonably engaging in a pattern and practice of failing to
- 2 conduct an investigation to determine the efficient proximate cause
- 3 (predominant cause) on claims made by insureds;
- 4 i. Unreasonably failing to give at least as much consideration to the
- 5 interests of Plaintiffs as they give to their own interests;
- 6 j. Unreasonably engaging in a pattern and practice of failing to give
- 7 at least as much consideration to the interests of their insureds as
- 8 they gives to their own interests;
- 9 k. Unreasonably placing their own financial interests above the
- 10 interests of Plaintiffs;
- 11 l. Unreasonably engaging in a pattern and practice of placing their
- 12 own financial interests above the interests of their insureds;
- 13 m. Unreasonably failing to comply with the Regulations, including
- 14 Section 2695.7(b)(1);
- 15 n. Unreasonably failing to apply the Policy's definitions and terms to
- 16 determine whether Plaintiffs' claim was covered;
- 17 o. Unreasonably attempting to add new terms not stated in the Policy
- 18 in order to deny Plaintiffs' claim;
- 19 p. Unreasonably delaying payment of the Contagious Disease
- 20 coverage to Plaintiffs; and
- 21 q. Unreasonably compelling Plaintiffs to institute this action to obtain
- 22 benefits due under the Policy.

23 118. Plaintiffs are informed and believe, and thereon allege, that the foregoing  
24 unreasonable, malicious, oppressive and/or fraudulent misconduct was not limited to  
25 the Underwriters' and Does 1 through 100's, inclusive, evaluation of this particular  
26 claim, but represents an ongoing pattern and practice, which they apply to all of their  
27 policyholders, that is specifically designed by the Underwriters, and Does 1 through  
28

1 100, inclusive, to earn illicit profits at the expense of their policyholders' rights. This  
2 ongoing pattern of conduct constitutes institutional bad faith.

3 119. The Underwriters and Does 1 through 100, inclusive, institutional bad  
4 faith constitutes reprehensible conduct because it is part of a repeated pattern of unfair  
5 practices and not an isolated occurrence. The pattern of unfair practices constitutes a  
6 conscious course of wrongful conduct that is firmly grounded in the Underwriters' and  
7 Does 1 through 100's, inclusive, established company policies and practices. Plaintiffs  
8 are informed and believe and thereon allege that the Underwriters and Does 1 through  
9 100, inclusive, have engaged in similar wrongful conduct as to other insureds and that  
10 they have substantially increased their profits as a result of causing similar harm to  
11 others.

12 120. As a proximate result of the aforementioned conduct of the Underwriters  
13 and Does 1 through 100, inclusive, Plaintiffs have suffered, and will continue to suffer  
14 in the future, damages under the Policy, plus interest and other economic and  
15 consequential damages, for a total amount to be shown at the time of trial.

16 121. As a further proximate result of the aforementioned unreasonable conduct  
17 of the Underwriters, and Does 1 through 100, inclusive, Plaintiffs were compelled to  
18 retain legal counsel to obtain the benefits due under the Policy. Therefore, the  
19 Underwriters and Does 1 through 100, inclusive, are liable to Plaintiffs for the attorneys'  
20 fees and costs reasonably necessary and incurred by Plaintiffs in order to obtain the  
21 Policy benefits.

22 122. The conduct of the Underwriters and Does 1 through 100, inclusive, was  
23 intended by them to cause injury to Plaintiffs, and/or was despicable conduct carried on  
24 by them with a willful and conscious disregard of Plaintiffs' rights, subjected Plaintiffs  
25 to cruel and unjust hardship in conscious disregard of its rights; and/or constituted an  
26 intentional misrepresentation or concealment of a material fact known to the  
27 Underwriters and Does 1 through 100, inclusive, with the intention to deprive Plaintiffs  
28 of property or legal rights or to otherwise cause injury, such as to constitute malice,



1 oppression or fraud under California Civil Code section 3294. Plaintiffs are therefore  
2 entitled to an award of punitive damages in an amount appropriate to punish and set  
3 an example for other similarly situated insurers.

4 123. The Underwriters' and Does 1 through 100's, inclusive, conduct was  
5 undertaken by its corporate officers, directors or managing agents, identified herein as  
6 Does 1 through 100, who were responsible for claims supervision and operations,  
7 underwriting, communications, and/or decisions; and/or this conduct was authorized  
8 by one or more of the Defendants' officers, directors or managing agents, and/or one or  
9 more of the Defendants' officers, directors or managing agents knew of the actions and  
10 adopted or approved that conduct after it occurred. This conduct was, therefore,  
11 undertaken on behalf of the Underwriters and Does 1 through 100, inclusive.

12  
13 **SECOND CAUSE OF ACTION**

14 PLAINTIFFS FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS  
15 CERTAIN UNDERWRITERS AT LLOYD'S LONDON SUBSCRIBING TO  
16 CERTIFICATE NUMBER ARP19021 AND DOES 1 THROUGH 100, INCLUSIVE, FOR  
17 BREACH OF CONTRACT ALLEGE:

18 124. Plaintiffs incorporate by reference all paragraphs above as if set forth in  
19 full in this cause of action.

20 125. Plaintiffs entered into a contract, the Policy, with the Underwriters and  
21 Does 1 through 100, inclusive. The Underwriters and Does 1 through 100, inclusive,  
22 owed duties and obligations to Plaintiffs under the Policy.

23 126. Plaintiffs did all of the significant things that the Policy required them to  
24 do.

25 127. The Underwriters and Does 1 through 100, inclusive, denial of Plaintiffs'  
26 claim is not in accordance with the terms of the Policy and California law.

27 128. As a direct and proximate result of the Underwriters' and Does 1 through  
28 100's, inclusive, conduct and breach of their contractual obligations, Plaintiffs have

1 suffered damages under the Policy in an amount to be determined according to proof at  
2 the time of trial, plus pre-judgment interest pursuant to California Civil Code section  
3 3289(b), and other foreseeable and consequential damages according to proof and in  
4 amounts to be determined at the time of trial.

5  
6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

8 **AS TO THE FIRST CAUSE OF ACTION AGAINST DEFENDANTS**  
9 **CERTAIN UNDERWRITERS AT LLOYD'S LONDON SUBSCRIBING TO**  
10 **CERTIFICATE NUMBER ARP19021 AND DOES 1 THROUGH 100, INCLUSIVE,**  
11 **FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR**  
12 **DEALING:**

- 13 1. For damages for failure to pay benefits owed under the Policy, plus  
14 interest, in a sum to be determined at trial;
  - 15 2. For prejudgment interest on all damages awarded to Plaintiffs in  
16 accordance with California Civil Code section 3287;
  - 17 3. For attorneys' fees, witness fees, and costs of litigation incurred by  
18 Plaintiffs to obtain the Policy benefits in an amount to be determined at trial;
  - 19 4. For economic and consequential damages arising out of the Underwriters  
20 and Does 1 through 100's, inclusive, unreasonable failure to pay benefits owed under  
21 the Policy;
  - 22 5. For punitive and exemplary damages in an amount appropriate to punish  
23 or set an example of the Underwriters and Does 1 through 100, inclusive;
  - 24 6. For costs of suit herein; and
  - 25 7. For such other relief as the Court deems just and proper.
- 26  
27  
28

1           **AS TO THE SECOND CAUSE OF ACTION AGAINST DEFENDANTS**  
2           **CERTAIN UNDERWRITERS AT LLOYD'S LONDON SUBSCRIBING TO**  
3           **CERTIFICATE NUMBER ARP19021 AND DOES 1 THROUGH 100, INCLUSIVE,**  
4           **FOR BREACH OF CONTRACT:**

- 5           1.     For economic and consequential damages, in an amount to be determined  
6           according to proof at trial;
- 7           2.     For prejudgment interest on all damages awarded to Plaintiffs in  
8           accordance with California Civil Code section 3289(b);
- 9           3.     For costs of suit incurred herein; and
- 10          4.     For such other and further relief as the Court deems just and proper.

11  
12          Dated: December \_\_\_\_, 2020

SHERNOFF BIDART ECHEVERRIA LLP

13  
14  
15          By: \_\_\_\_\_

16               MICHAEL J. BIDART  
17               RICARDO ECHEVERRIA  
18               STEVEN SCHUETZE  
19               Attorneys for Plaintiffs

20                               **JURY DEMAND**

21           Plaintiffs hereby demand a jury trial.

22          Dated: December \_\_\_\_, 2020

SHERNOFF BIDART ECHEVERRIA LLP

23  
24          By: \_\_\_\_\_

25               MICHAEL J. BIDART  
26               RICARDO ECHEVERRIA  
27               STEVEN SCHUETZE  
28               Attorneys for Plaintiffs