

1 DAVID B. GOODWIN (CA Bar #104469)
2 CHRISTINE S. HASKETT (CA Bar #188053)
3 SARAH Y. KWON (CA Bar #319229)
4 COVINGTON & BURLING LLP
5 415 Mission Street, Suite 5400
6 San Francisco, California 94105
7 Telephone: (415) 591-6000
8 Facsimile: (415) 591-6091
9 Email: dgoodwin@cov.com; chaskett@cov.com;
10 skwon@cov.com

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Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

ROSS STORES, INC. and ROSS DRESS FOR
LESS, INC.,

Plaintiffs,

v.

ZURICH AMERICAN INSURANCE
COMPANY; ARGO MANAGING AGENCY
LIMITED; ASCOT SYNDICATE; AXIS
SPECIALTY EUROPE SE; BEAZLEY
SYNDICATES AFB; BRIT INSURANCE;
LANCASHIRE INSURANCE &
LANCASHIRE SYNDICATES LTD; MS
AMLIN UNDERWRITING LIMITED;
ROYAL AND SUN ALLIANCE
INSURANCE PLC; SOMPO
INTERNATIONAL; AIG SPECIALTY
INSURANCE COMPANY; ALLIANZ
GLOBAL RISKS US INSURANCE
COMPANY; ARCH SPECIALTY
INSURANCE COMPANY; GENERAL
SECURITY INDEMNITY COMPANY OF
ARIZONA; HARTFORD FIRE INSURANCE
COMPANY; CERTAIN UNDERWRITERS
AT LLOYD'S, LONDON; PARTNERRE
IRELAND INSURANCE DAC.; and DOES 1-
100,

Defendants.

Civil Case No. **RG20084158**

**COMPLAINT FOR BREACH OF
CONTRACT, DECLARATORY
RELIEF AND MONEY
DAMAGES**

JURY TRIAL DEMANDED

BY FAX

1 Plaintiffs Ross Stores, Inc. and Ross Dress for Less, Inc. (together, "Ross") bring this
2 action against their stock throughput insurers, Defendants Zurich American Insurance Company;
3 Argo Managing Agency Limited; Ascot Syndicate; Axis Specialty Europe SE; Beazley
4 Syndicates AFB; Brit Insurance; Lancashire Insurance & Lancashire Syndicates Ltd; MS Amlin
5 Underwriting Limited; Royal and Sun Alliance Insurance PLC; and Somp International
6 (collectively in that capacity, the "Stock Throughput Insurers"); and their property insurers,
7 Defendants Zurich American Insurance Company; AIG Specialty Insurance Company; Allianz
8 Global Risks US Insurance Company; Arch Specialty Insurance Company; Certain Underwriters
9 at Lloyd's, London; General Security Indemnity Company of Arizona; Hartford Fire Insurance
10 Company; and PartnerRe Ireland Insurance Dac. (collectively in that capacity, the "Property
11 Insurers") and DOES 1-100 (all Defendants collectively, the "Insurers"), with respect to Ross's
12 claims for insurance coverage for massive business interruption, property damage, and "time
13 element" losses that Ross has experienced as a result of COVID-19.

14 NATURE OF THE ACTION

15 1. COVID-19 has been a tragedy that affects all of our lives and businesses. Thus
16 far, the novel coronavirus that causes COVID-19 has infected more than 18 million and killed
17 more than 320,000 people in the United States and has caused far too many people and
18 businesses to suffer great economic harm due to physical loss and damage.

19 2. In the wake of the pandemic, Ross has incurred more than a billion dollars in
20 losses after government-mandated shutdowns forced Ross to close its doors on most of its stores
21 and non-retail locations, thereby physically preventing people from entering those locations.

22 3. The coronavirus and COVID-19 also caused direct physical loss or damage to
23 properties throughout the United States, including to Ross's own properties and surrounding
24 properties, by altering the physical conditions of properties such that properties were no longer
25 safe or fit for occupancy or use. The coronavirus and COVID-19 physically alter and damage
26 the air within buildings such that the air is no longer safe to breathe. The coronavirus also
27 attaches itself to surfaces and properties and causes a physical change in the condition of the
28 surfaces and properties.

1 4. Based in part on this physical loss and damage to property, starting in March 2020,
2 various states and counties nationwide issued orders depriving Ross of the use of its stores and
3 non-retail locations for their intended purposes and physically preventing ingress to those
4 properties. The physical loss and damage and these orders resulted in losses to Ross that Ross
5 would not otherwise have incurred but for the coronavirus, COVID-19, and the ensuing series of
6 unprecedented civil authority orders—many of which expressly cite the physical damage to
7 property resulting from the nature of COVID-19.

8 5. Ross brings this lawsuit to enforce the insurance promises the Insurers made to
9 protect against the risks Ross now faces. Ross purchased two programs of high-end insurance—
10 stock throughput coverage (the “Stock Throughput Policies”) and property coverage (the
11 “Property Policies”), as described more fully below—to protect itself against such a catastrophe.
12 That insurance came at a significant price: Ross paid millions of dollars in premiums year after
13 year because it deliberately sought broad, highly protective coverage.

14 6. The Stock Throughput Policies, for example, broadly insure—without any virus
15 exclusions or, indeed, property damage requirement—against actual loss sustained due to
16 interruption of business when ingress to or egress from a retail store or non-retail location is
17 physically prevented.

18 7. And the Property Policies specifically insure against, for example, physical loss or
19 damage arising from communicable disease *caused by virus*. The Property Policies also include
20 coverage promises for business interruption losses, losses occasioned by government orders,
21 losses occurring when ingress to or egress from covered locations is physically prevented, and
22 extra expense payments, among others. The so-called contamination exclusion in the Property
23 Policies does not apply to the losses here because it does not exclude, for example, losses from
24 communicable disease caused by virus and does not apply at all to business interruption losses.

25 8. Yet, the Insurers have refused to live up to their contractual obligations to pay
26 what they promised. This civil suit seeks declaratory relief and money damages arising from the
27 Insurers’ failure and refusal to pay Ross’s COVID-19 insurance claims.

28

1 **THE PARTIES**

2 9. Plaintiff Ross Stores, Inc. is a corporation organized and existing under the laws of
3 the State of Delaware, with its principal place of business in Dublin, California.

4 10. Plaintiff Ross Dress for Less, Inc. is a corporation organized and existing under
5 the laws of the State of Virginia, with its principal place of business in Dublin, California.

6 11. Defendant Zurich American Insurance Company ("Zurich") is a corporation
7 organized and existing under the laws of the State of New York, with its principal place of
8 business in the State of Illinois. At all times relevant hereto, Zurich was and is and transacting
9 business in the State of California.

10 12. Defendant AIG Specialty Insurance Company ("AIG") is a corporation organized
11 and existing under the laws of the State of Illinois, with its principal place of business in the
12 State of New York. At all times relevant hereto, AIG was and is and transacting business in the
13 State of California.

14 13. Defendant Allianz Global Risks US Insurance Company ("Allianz") is a
15 corporation organized and existing under the laws of the State of Illinois, with its principal place
16 of business in the State of Illinois. At all times relevant hereto, Allianz was and is and
17 transacting business in the State of California.

18 14. Defendant Arch Specialty Insurance Company ("Arch") is a corporation organized
19 and existing under the laws of the State of Missouri, with its principal place of business in the
20 State of New Jersey. At all times relevant hereto, Arch was and is and transacting business in
21 the State of California.

22 15. Defendant Certain Underwriters at Lloyd's, London ("Lloyds") are individuals,
23 unincorporated associations, partnerships and/or corporations existing under the laws of various
24 foreign and domestic jurisdictions who have subscribed to insurance policies through the
25 Lloyd's of London insurance market located in the United Kingdom. At all times relevant
26 hereto, Lloyds was and is and transacting business in the State of California.

27 16. Defendant General Security Indemnity Company of Arizona ("GSINDA") is a
28 corporation organized and existing under the laws of the State of New York, with its principal

1 place of business in the State of Arizona. At all times relevant hereto, GSINDA was and is and
2 transacting business in the State of California.

3 17. Defendant Hartford Fire Insurance Company (“Hartford”) is a corporation
4 organized and existing under the laws of the State of Connecticut, with its principal place of
5 business in the State of Connecticut. At all times relevant hereto, Hartford was and is and
6 transacting business in the State of California.

7 18. Defendant PartnerRe Ireland Insurance Dac (“PartnerRe”) is a corporation
8 organized and existing under the laws of the Republic of Ireland, with its principal place of
9 business in the Republic of Ireland. At all times relevant hereto, PartnerRe was and is and
10 transacting business in the State of California.

11 19. Defendant Argo Managing Agency Limited (“Argo”) is, on information and
12 belief, a syndicate comprised of individuals, unincorporated associations, partnerships and/or
13 corporations existing under the laws of various foreign and domestic jurisdictions who have
14 subscribed to an insurance policy through the Lloyd’s of London insurance market located in the
15 United Kingdom. At all times relevant hereto, Argo was and is and transacting business in the
16 State of California.

17 20. Defendant Ascot Syndicate (“Ascot”) is, on information and belief, a syndicate
18 comprised of individuals, unincorporated associations, partnerships and/or corporations existing
19 under the laws of various foreign and domestic jurisdictions who have subscribed to an
20 insurance policy through the Lloyd’s of London insurance market located in the United
21 Kingdom. At all times relevant hereto, Ascot was and is and transacting business in the State of
22 California.

23 21. Defendant Axis Specialty Europe SE (“Axis”) is a corporation organized and
24 existing under the laws of the Republic of Ireland, with its principal place of business in the
25 Republic of Ireland. At all times relevant hereto, Axis was and is and transacting business in the
26 State of California.

27 22. Defendant Beazley Syndicates AFB (“Beazley”) is, on information and belief, a
28 syndicate comprised of individuals, unincorporated associations, partnerships and/or

1 corporations existing under the laws of various foreign and domestic jurisdictions who have
2 subscribed to an insurance policy through the Lloyd's of London insurance market located in the
3 United Kingdom. At all times relevant hereto, Beazley was and is and transacting business in
4 the State of California.

5 23. Defendant Brit Insurance ("Brit") is a corporation organized and existing under
6 the laws of the United Kingdom, with its principal place of business in the United Kingdom. At
7 all times relevant hereto, Brit was and is and transacting business in the State of California.

8 24. Defendant Lancashire Insurance & Lancashire Syndicates Ltd ("Lancashire") are
9 corporations organized and existing under the laws of Bermuda and the United Kingdom,
10 respectively, with their principal places of business in Bermuda and the United Kingdom,
11 respectively. At all times relevant hereto, Lancashire was and is and transacting business in the
12 State of California.

13 25. Defendant MS Amlin Underwriting Limited ("MS Amlin") is a corporation
14 organized and existing under the laws of the United Kingdom, with its principal place of
15 business in the United Kingdom. At all times relevant hereto, MS Amlin was and is and
16 transacting business in the State of California.

17 26. Defendant Royal and Sun Alliance Insurance PLC ("RSA") is a corporation
18 organized and existing under the laws of the United Kingdom, with its principal place of
19 business in the United Kingdom. At all times relevant hereto, RSA was and is and transacting
20 business in the State of California.

21 27. Defendant Sompo International ("Sompo") is a corporation organized and existing
22 under the laws of Bermuda, with its principal place of business in Bermuda. At all times
23 relevant hereto, Sompo was and is and transacting business in the State of California.

24 28. Ross is ignorant of the true names and capacities of defendants sued herein as
25 DOES 1-100, inclusive, and therefore sue these defendants by said fictitious names. Ross is
26 informed and believes, and thereon alleges, that said fictitiously named defendants are
27 responsible in some manner for the events and happenings herein referred to, and negligently
28 or otherwise caused injuries and damages proximately thereby to Ross as herein alleged.

1 **I. ROSS PURCHASED INSURANCE TO PROTECT ITSELF AGAINST**
2 **CATASTROPHES**

3 34. To protect its significant property and business income interests, Ross purchased
4 the Stock Throughput and Property Policies for which the Insurers collected substantial
5 premiums.

6 **A. The Stock Throughput Policies**

7 35. The Stock Throughput Policies cover Ross's business interruption losses due to
8 physical prevention of ingress to or egress from a location where Ross's goods and/or
9 merchandise and/or property are located, provided the interruption continues for 30 days or
10 more. The Stock Throughput Policies—which have no aggregate policy limit—provide
11 coverage for both retail and non-retail locations. For retail locations, one policy issued by
12 Zurich provides up to \$10 million in coverage for each location. For non-retail locations, Zurich
13 provides \$10 million in coverage, with different combinations of insurers sharing subsequent
14 layers from \$10 million up to \$400 million in coverage for each location. Both coverages are
15 subject to a single \$100,000 deductible. Because Ross's non-retail location losses under the
16 Stock Throughput Policies currently are not estimated to exceed the limits of the first layer
17 excess Stock Throughput Insurers, Ross has only named the first layer excess insurers as
18 defendants in this action. None of the Stock Throughput Policies contains any "virus"
19 exclusion.

20 36. Ross's retail stores are covered by Zurich under Policy No. OC 5846048-00.

21 37. Ross's non-retail locations are covered by Zurich under the same Policy No. OC
22 5846048-00 as the primary insurer and by excess layers of insurers. The effective dates of the
23 Stock Throughput Policies are March 1, 2020 through March 1, 2021.

24 38. The primary and first excess layer policies are as follows:

Insurer	Quota Share	Policy No.
<i>Primary Insurer</i>		
Zurich	100%	OC 5846048-00
<i>First Excess Layer</i>		
Argo	4.0476%	B0509MARCW2000054
Ascot	12.1429%	B0509MARCW2000054
Axis	8.0952%	B0509MARCW2000054

Beazley	20.2381%	B0509MARCW2000054
Brit	20.2381%	B0509MARCW2000054
Lancashire	6.0714%	B0509MARCW2000054
MS Amlin	8.0952%	B0509MARCW2000054
RSA	15.0000%	B0509MARCW2000054
Sompo	6.0715%	B0509MARCW2000054

B. The Property Policies

39. The Property Policies provide coverage for a wide array of COVID-19 losses, including losses caused when orders by civil authorities shut down retail operations and losses from communicable disease caused by virus.

40. The Property program is comprised of multiple Property Policies, with Zurich as the primary insurer, covering up to \$25 million in excess of a \$500,000 deductible, and three excess layers providing an additional \$500 million in coverage. The effective dates of the Property Policies are March 1, 2020 through March 1, 2021.

41. The relevant layers and policies are as follows¹:

Insurer	Quota Share	Policy No.
<i>Primary Insurer</i>		
Zurich	100%	ERP-7034924-01
<i>First Excess Layer</i>		
AIG	10%	020413555
Allianz	10%	USP00088620
Arch	10%	PRP0037527-10
GSINDA	12%	10F128871-2020-1
Hartford	16%	57 UFL FP9527
Lloyds	8.5%	BOWPN2000048
PartnerRe	5%	F611968
<i>Second Excess Layer</i>		
Zurich	100 %	ERP7034924-01
<i>Third Excess Layer</i>		
Zurich	100 %	ERP7034924-01

¹ Plaintiffs have not sued two of the Property Insurers in the first excess layer.

1 42. The Property Policies' limits of liability, *i.e.*, the amounts the Property Insurers are
2 obligated to pay, assuming coverage, apply on a "per occurrence" basis, except as expressly
3 stated otherwise in the Property Policies.

4 43. The Property Policies cover up to \$525 million in losses for any one "occurrence,"
5 and potentially much more for losses involving multiple occurrences. Some of the insuring
6 agreements are subject to sub-limits, as set forth in the Property Policies.

7 44. The Property Policies cover "ALL RISKS OF PHYSICAL LOSS OR DAMAGE,"
8 other than those expressly excluded, and include many extensions of coverage for specified
9 perils. Each Property Policy provides both "Property Damage" and "Time Element" coverage.

10 45. The basic "Time Element" (or business interruption) grant of coverage in each
11 Property Policy insures against either GROSS EARNINGS or GROSS PROFITS loss (at the
12 Insured's election) during the Period of Liability, as set forth more fully in the Property Policies.
13 The "Time Element" portion of the Property Policies also provides EXTRA EXPENSE
14 coverage for the extra costs incurred during the Period of Liability to continue in business.

15 46. In addition, the "Time Element" portion of the Property Policies includes a series
16 of coverage extensions, among which, as set forth more fully in the Property Policies, are:

- 17 • Civil or Military Authority coverage for actual loss sustained and extra expense
18 incurred if an order of civil authority limits, restricts, or prohibits partial or total
19 access to an insured location if the order is the direct result of physical damage
20 of the type insured at the insured location or within five statute miles;
- 21 • Ingress/Egress coverage for actual loss sustained and extra expense when the
22 insured's business is interrupted due to partial or total physical prevention of
23 ingress to or egress from an insured location;
- 24 • Interruption by Communicable Disease coverage for actual loss sustained if an
25 order from a civil authority or an officer of the Insured limits, restricts, or
26 prohibits access to a premises because of the actual presence of communicable
27 disease on the premises;

- 1 • Leasehold Interest coverage for continued rent payments made on property that
- 2 is wholly or partially untenantable or unusable;
- 3 • Rental Insurance coverage for, among other things, lost rent and actual loss
- 4 sustained with respect to rental properties;
- 5 • Extended Period of Liability coverage for lost GROSS EARNINGS and Rental
- 6 Insurance losses incurred after the end of the Period of Liability;
- 7 • Business Interruption coverage resulting from the restriction of access to any
- 8 location owned, leased or rented by the Insured due to the actual presence of
- 9 communicable disease;
- 10 • Extra Expense coverage for the costs of attempting to stay in or resume
- 11 business; and
- 12 • Protection and Preservation of Property time element coverage for actual loss
- 13 sustained to prevent immediately impending, insured physical loss or damage to
- 14 insured property.

15 47. The Property Policies each have a basic "Property Damage" grant of coverage that
16 includes the following additional coverage provisions, as set forth more fully in the Property
17 Policies:

- 18 • Communicable Disease Response coverage, including but not limited to costs
- 19 incurred for cleanup, removal, and disposal of communicable diseases from
- 20 insured property and related public relations fees and costs;
- 21 • Protection and Preservation of Property coverage, including but not limited to
- 22 costs incurred to protect property temporarily in order to prevent actual or
- 23 impending physical loss or damage to insured property; and
- 24 • Claims Preparation Costs, including but not limited to reasonable fees payable
- 25 to accountants, architects, auditors, engineers, or other professionals, as well as
- 26 the cost of using the Insured's employees for producing and certifying any
- 27 particulars or details contained in the Insured's books or documents, or such
- 28 other proofs, information, or evidence required by the Company resulting from

1 insured loss payable under these Policies for which the Company has accepted
2 liability.

3 **II. THE STOCK THROUGHPUT POLICIES COVER ROSS'S LOSSES**

4 **A. COVID-19 Is a Deadly Communicable Disease**

5 48. COVID-19 is a deadly disease caused by the novel coronavirus known as SARS-
6 CoV-2 (referred to herein as "SARS-CoV-2" or "the coronavirus"). The coronavirus can be
7 transmitted in several ways, including via human-to-human contact, airborne viral particles in
8 ambient air, and touching surfaces or objects. For example, when an uninfected person touches
9 a surface containing the coronavirus, thus picking up the virus, that person may then transmit the
10 coronavirus to another person, either by touching and infecting a second surface, which is
11 subsequently touched by that other person, or by transmitting the coronavirus directly to the
12 other person. The coronavirus spreads easily from person to person, and person to surface or
13 object, primarily through small, physical droplets expelled from the nose or mouth when an
14 infected person speaks, yells, sings, coughs, or sneezes or through traces of those droplets on a
15 person's hands. According to research published in The Journal of the American Medical
16 Association, a person who sneezes can release a cloud of pathogen-bearing droplets that can
17 span as far as 23 to 27 feet.² The Centers for Disease Control and Prevention ("CDC") has
18 stated that the coronavirus is most likely to spread when people are within six feet of each other,
19 and has further acknowledged that the coronavirus may spread from an infected person who is
20 more than six feet away or who has left a given space.³ Further, "longer exposure time likely
21 increases exposure risk" to the coronavirus.⁴

22 49. According to the World Health Organization ("WHO"), the incubation period for
23 COVID-19—*i.e.*, the time between exposure to the coronavirus and symptom onset—can be up
24

25 ² See <https://jamanetwork.com/journals/jama/fullarticle/2763852> (last viewed Dec. 17,
2020).

26 ³ See [https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-
27 spreads.html](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html) (last viewed Dec. 17, 2020).

28 ⁴ See [https://www.cdc.gov/coronavirus/2019-ncov/php/contact-tracing/contact-tracing-
plan/appendix.html](https://www.cdc.gov/coronavirus/2019-ncov/php/contact-tracing/contact-tracing-plan/appendix.html) (last viewed Dec. 17, 2020).

1 to 14 days. Other studies suggest that the period may be up to 21 days. Before infected
2 individuals exhibit symptoms, *i.e.*, the so-called “pre-symptomatic” period, they are most
3 contagious; as their viral loads will likely be very high, and they may not know they have
4 become carriers. In addition, studies from the CDC and others estimate that between 40% to
5 70% of infected individuals may never become symptomatic (referred to as “asymptomatic”
6 carriers). Pre- and asymptomatic carriers are likely unaware that they are spreading the
7 coronavirus by merely touching objects and surfaces, or by expelling droplets into the air. The
8 National Academy of Sciences has found that the majority of transmission is attributable to
9 people who are not showing symptoms, either because they are pre-symptomatic or
10 asymptomatic.

11 **B. COVID-19 Led Directly to Orders Physically Preventing Customers and**
12 **Employees from Entering Ross Locations**

13 50. Ross operates nearly 2,000 retail stores and non-retail locations nationwide.
14 Because Ross’s stores and non-retail locations did not constitute essential workplaces permitted
15 to remain open during lockdowns, state and county civil authority orders prevented Ross’s
16 employees, customers, and other individuals from physically accessing Ross’s retail stores and
17 certain other insured properties.

18 51. At the time of the shutdowns, the coronavirus and COVID-19 were present on and
19 around Ross’s properties, including but not limited to the insured premises. During this time,
20 the coronavirus and COVID-19 were prevalent in all counties where Ross’s shuttered operations
21 were located. Employees, customers, and other individuals carrying the virus visited Ross’s
22 stores and non-retail locations at all relevant times, breathing the coronavirus and COVID-19
23 into the air and touching surfaces throughout the insured premises.

24 52. For example, by March 10, 2020, there were at least 18 confirmed COVID-19
25 cases in the City of San Francisco.⁵ Those known cases, as well as likely cases involving
26 undiagnosed or asymptomatic carriers, resulted in physical damage to and loss of property in the

27 _____
28 ⁵ See <https://sfist.com/2020/03/12/san-francisco-reports-4-new-covid-19-cases-3-from-community-spread/> (last viewed Dec. 17, 2020).

1 City. On March 17, the City and County of San Francisco, California, restricted activities and
2 travel to only essential tasks. On March 20, Ross closed all its locations following that order
3 (along with other similar orders and impacts of the outbreak). The San Francisco Board of
4 Supervisors on April 7 adopted a “[r]esolution supporting the COVID-19 orders by civil
5 authority interrupting and prohibiting access to businesses as necessary, due to physical property
6 loss or damage.”

7 53. This series of orders was repeated state-by-state and county-by-county across
8 much of the country, including every state and, on the county level, almost every county in
9 which Ross maintained a facility, with the result that customers were physically prevented from
10 entering every store; employees and vendors were physically prevented from entering non-retail
11 locations; and construction workers were physically prevented from entering stores and non-
12 retail locations under construction so that their openings were delayed.

13 54. Thus, beginning in March 2020, Ross was forced to shut down retail store and
14 non-retail location operations for multiple months due to the coronavirus and COVID-19, and
15 physical loss and damage related to the coronavirus and COVID-19, and employees and
16 customers were prohibited and physically prevented from accessing those locations.

17 **C. Loss Under The Stock Throughput Policies**

18 55. Ross is insured under the Stock Throughput Policies. Its retail stores are insured
19 locations under the Zurich policy and its non-retail locations are insured locations under all of
20 the Stock Throughput Policies.

21 56. Ross has incurred actual loss due to necessary business interruptions sustained due
22 to the various governmental orders physically preventing ingress to and egress from its retail
23 stores and non-retail locations, as covered by the Stock Throughput Policies.

24 57. Ross has sustained actual loss and incurred extra expenses as a result of cases of
25 COVID-19, the coronavirus, and related government orders. These losses and expenses arose
26 out of numerous discrete events, at different times, in different locations, and under different
27 circumstances.

1 58. Ross gave timely notice of its claims and has satisfied, is excused from
2 performing, or the Insurers have waived or are estopped from insistence upon performance of,
3 all conditions of the Stock Throughput Policies, including but not limited to payment of required
4 premiums, provision of timely notice of claim, and submission of a Proof of Loss.

5 59. All of the Stock Throughput Policies, through Endorsement #2, "cover the actual
6 loss sustained incurred . . . due to the necessary interruption of The Insured's business due to
7 physical prevention of ingress to or egress from a location, where goods and/or merchandise
8 and/or property of The Insured are located," where the interruption has continued for 30 days.

9 60. Beginning in March 2020, a series of government-mandated shutdowns forced
10 Ross to shut down its operations. Those state and civil authority orders prohibited access to
11 Ross's retail store and non-retail locations for the purpose of carrying on business, thereby
12 physically preventing ingress to those locations, in many cases for 30 days or longer.

13 61. After the phased reopenings of its retail locations beginning late May 2020, Ross
14 was forced to implement aggressive markdowns to clear aged inventory. Ross also lost business
15 from not being able to restock and sell inventory during the shutdowns, all of which resulted in
16 an estimated total actual loss of over \$1 billion.

17 **D. No Exclusion Bars Coverage of Ross's Losses and Damages**

18 62. The Stock Throughput Policies contain no exclusions that would apply to preclude
19 or limit coverage for Ross's losses.

20 63. None of the exclusions contained in the Stock Throughput Policies precludes
21 coverage for losses or damage due to communicable disease, including COVID-19, or due to the
22 virus that causes COVID-19.

23 64. The exclusions contained in the Stock Throughput Policies do not preclude
24 coverage for losses due to physical prevention of ingress to or egress from a location where
25 Ross's goods and/or merchandise and/or property are located by a government order issued as a
26 result of COVID-19 and the coronavirus.

27 65. None of the Stock Throughput Policies contains a virus exclusion.
28

1 66. None of the other exclusions in the Stock Throughput Policies applies to or bars
2 coverage for Ross's losses.

3 **III. LOSSES UNDER THE PROPERTY POLICIES**

4 **A. The Coronavirus and COVID-19 Cause Physical Loss and Damage**

5 67. The coronavirus and coronavirus-containing respiratory droplets and nuclei are
6 physical substances that are active on physical surfaces and are also emitted into the air. Such
7 substances are not theoretical, informational, or incorporeal, but rather have a material existence
8 and are physically dangerous.

9 68. Physical droplets containing the coronavirus can land on objects and surfaces.
10 After landing on objects and surfaces, the coronavirus can remain present and dangerous for
11 periods ranging from hours to many days.

12 69. According to the WHO, people can become infected with the coronavirus by
13 touching such objects and surfaces, then touching their eyes, nose, or mouth. This mode of
14 transmission—indirect transmission via objects and surfaces—is known as “fomite
15 transmission.” As the WHO has noted, fomite transmission is “a likely mode of transmission
16 for SARS-CoV-2” because studies have consistently confirmed the existence of virus-laden
17 droplets on objects and surfaces “in the vicinity of infected cases,” and because it is well known
18 that other coronaviruses can be transmitted via fomite transmission.⁶

19 70. A study of a COVID-19 outbreak published in the CDC's Emerging Infectious
20 Diseases journal identified indirect transmission via objects such as elevator buttons and
21 restroom taps as an important possible cause of a “rapid spread” of the coronavirus in a
22 shopping mall in Wenzhou, China.⁷

23 71. Research has indicated that the coronavirus can be detected on certain surfaces
24 even weeks after infected persons are present at a given location.

25
26
27 ⁶ See <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions> (last viewed Dec. 17, 2020).

28 ⁷ See https://wwwnc.cdc.gov/eid/article/26/6/20-0412_article (last viewed Dec. 17, 2020).

1 72. One study, for example, found that the coronavirus remains active and dangerous
2 on plastics for at least three days, while another reported that the coronavirus remained stable
3 and viable for seven days on a range of common surfaces, including plastic, stainless steel,
4 glass, and wood.⁸ Yet another study detected viable coronavirus samples on glass, stainless
5 steel, and money for approximately one month if left at or around room temperature.

6 73. Research has also indicated that the coronavirus can spread through the air. For
7 example, airborne viral particles are known to have spread into a facility's heating and
8 ventilation ("HVAC") system, leading to transmission of the coronavirus from person to person.
9 A study of an outbreak at a restaurant in China concluded that the spread of the coronavirus
10 "was prompted by air-conditioned ventilation," with persons who sat at tables downstream of
11 the HVAC system's air flow becoming infected.⁹ Another study found the presence of the
12 coronavirus within the HVAC system servicing hospital ward rooms of COVID-19 patients.
13 This study detected SARS-CoV-2 RNA in ceiling vent openings, vent exhaust filters, and
14 central ducts that were located more than 50 meters from the patients' rooms.¹⁰

15 74. The Environmental Protection Agency ("EPA") has compiled several studies
16 reflecting "epidemiological evidence suggestive of [coronavirus] transmission through
17 aerosol."¹¹ Based on these and other studies, the EPA has recommended that facilities make
18 improvements to their ventilation and HVAC systems by, for example, increasing ventilation
19 with outdoor air and air filtration.¹²

21 ⁸ See <https://www.nejm.org/doi/full/10.1056/nejmc2004973> (last viewed on Dec. 17,
22 2020); <https://www.medrxiv.org/content/10.1101/2020.05.07.20094805v1.full.pdf> (last viewed
23 on Dec. 17, 2020); <https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7>
(last viewed on Dec. 17, 2020).

24 ⁹ See https://wwwnc.cdc.gov/eid/article/26/7/20-0764_article#r2 (last viewed Dec. 17,
25 2020).

26 ¹⁰ See <https://www.nature.com/articles/s41598-020-76442-2> (last viewed Dec. 17, 2020).

27 ¹¹ See [https://www.epa.gov/coronavirus/indoor-air-and-covid-19-key-references-and-](https://www.epa.gov/coronavirus/indoor-air-and-covid-19-key-references-and-publications)
28 publications (last viewed Dec. 17, 2020; capitalization omitted).

¹² See <https://www.epa.gov/coronavirus/indoor-air-and-coronavirus-covid-19> (last viewed
Dec. 17, 2020).

1 75. Accordingly, COVID-19 and the coronavirus cause physical loss and damage by,
2 among other things, destroying, distorting, corrupting, attaching to, and physically altering
3 property, including its surfaces, and by rendering property unusable, uninhabitable, unfit for
4 intended function, dangerous and unsafe. While mitigation efforts have been undertaken and
5 remain ongoing, COVID-19 and the coronavirus have caused such physical loss and damage to
6 properties insured by the Property Policies, as described further below.

7 76. Respiratory droplets (*i.e.*, droplets larger than 5-10 μm) expelled from infected
8 individuals land on, attach, and adhere to surfaces and objects. In doing so, they physically
9 change the property and its surface by becoming a part of that surface. This physical alteration
10 makes physical contact with those previously safe, inert surfaces (*e.g.*, walls, handrails, desks)
11 unsafe.

12 77. When individuals carrying the coronavirus breathe, talk, cough, or sneeze, they
13 expel aerosolized droplet nuclei (*i.e.*, those smaller than 5 μm) that remain in the air and, like
14 dangerous fumes, make the premises unsafe and affirmatively dangerous. This process alters
15 the physical properties of air in buildings from safe and breathable to unsafe and dangerous.

16 78. In a study by the U.S. National Institutes of Health, researchers found that the
17 coronavirus was detectable for up to three hours in aerosols, four hours on copper, up to 24
18 hours on cardboard, and up to three days on stainless steel and plastic surfaces.¹³

19 79. When the coronavirus and COVID-19 attach to and adhere on surfaces and
20 materials, they become a part of those surfaces and materials, converting the surfaces and
21 materials to fomites.¹⁴ This represents a physical change in the affected surface or material,
22 which constitutes physical loss and damage.

23
24
25 _____
26 ¹³ See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last viewed Dec. 17, 2020).

27 ¹⁴ See <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions> (last viewed Dec. 17, 2020).
28

1 80. The presence of the coronavirus and COVID-19 within a facility causes physical
2 loss and damage by necessitating remedial measures that include without limitation extensive
3 cleaning and disinfecting, repairing or replacing air filtration systems, remodeling and
4 reconfiguring physical spaces, and other measures to reduce or eliminate the presence of cases
5 of COVID-19 and the coronavirus on-site.

6 81. The presence of cases of COVID-19 and the coronavirus within a facility causes
7 physical loss and damage by transforming the facility from property that is usable and safe for
8 humans into a property that is unsatisfactory for use, uninhabitable, unfit for its intended
9 function, and extremely dangerous and potentially deadly for humans.

10 82. In addition, the presence of the coronavirus on property creates the imminent
11 threat of further damage to that property or to nearby property. Individuals who come into
12 contact, for example, with respiratory droplets at one location in the facility by touching a
13 doorknob or a handrail will carry those droplets on their hands and deposit them elsewhere in
14 the facility, causing additional damage and loss.

15 **B. The Property Policies**

16 **1. Ross Has Suffered Insured Physical Loss or Damage**

17 83. Each of the Property Policies “covers property” against “**ALL RISKS OF**
18 **PHYSICAL LOSS OR DAMAGE**, except as ... excluded.” (Emphasis added.) Ross has
19 suffered physical loss and damage to its properties insured by the Property Policies as a result of
20 one or more covered risks, not excluded by the Property Policies, as described more fully herein,
21 leading to huge losses covered by the Property Policies. To the extent that the Property Policies
22 require structural alteration to establish “physical damage,” which Ross disputes, such alteration
23 has occurred.

24 84. Individuals with COVID-19 or otherwise carrying the coronavirus have been
25 physically present at the insured facilities of each Ross location. The presence of the
26 coronavirus and COVID-19, including but not limited to coronavirus droplets or nuclei on solid
27 surfaces and in the air at insured property, has caused and will continue to cause direct physical
28 damage to physical property and ambient air at those premises. Coronavirus, a physical

1 substance, has attached and adhered to Ross's property, and by doing so, altered that property.
2 Such presence has also directly resulted in loss of use of those facilities.

3 85. Ross employees have tested positive for COVID-19, the disease caused by the
4 coronavirus, on various dates and at various locations during 2020. Persons who tested positive
5 for COVID-19 were present at insured property on various dates during 2020. Persons who
6 came into contact with persons diagnosed with COVID-19 were present at insured property on
7 various dates during 2020.

8 86. On information and belief, persons who were pre-symptomatic or asymptomatic
9 and unknowingly carrying the coronavirus, including but not limited to employees and
10 customers, were present at insured property on various dates during 2020.

11 87. Coronavirus droplets have been conveyed from infected persons (whether
12 symptomatic, pre-symptomatic, or asymptomatic) to solid surfaces, including but not limited to
13 furniture, doors, floors, elevator buttons, bathroom facilities, equipment, and supplies, and into
14 the air and HVAC systems at insured property, causing damage and alteration to physical
15 property and ambient air at the premises. Aerosolized coronavirus has entered the air in Ross's
16 property.

17 88. Ross has sustained actual loss, including but not limited to substantial sums spent
18 to remediate physical damage to its property, such as for cleaning and disinfecting premises,
19 repairing or replacing air filtration systems, remodeling and reconfiguring physical spaces, and
20 other measures to reduce or eliminate the presence of the coronavirus on its property. Such
21 remediation measures have been ongoing because of the continuous and repeated recurrence of
22 the coronavirus while the pandemic persists.

23 89. In addition to physical damage, Ross's insured property has also suffered physical
24 loss. The on-site coronavirus, fomites, and respiratory droplets or nuclei containing the
25 coronavirus have attached to and deprived Ross of the physical use of their insured properties by
26 making them unsafe and unusable and thereby lost.

27 90. These physical losses to Ross's insured properties include without limitation the
28 rendering of its insured property from a satisfactory state to a state dangerous and/or

1 unsatisfactory for use because of the fortuitous presence and effect of the coronavirus, fomites,
2 and respiratory droplets or nuclei directly upon the property.

3 91. These physical losses to Ross's insured properties include without limitation the
4 deprivation of using those properties for their intended purposes.

5 92. The losses and damages to Ross's insured properties also include, among many
6 other things, the government-mandated shutdown of nearly 2,000 stores and non-retail locations
7 nationwide, resulting in substantial losses covered under the Property Policies.

8 93. Ross's losses arising from physical loss and damage fall within many different
9 coverage grants of the Property Policies.

10 2. Ross Has Suffered Insured Time Element Loss

11 94. Each of the Property Policies "insures TIME ELEMENT loss . . . directly resulting
12 from physical loss or damage of the type insured." Ross's financial losses arising from COVID-
13 19-related physical losses and damages, and the inability to physically use Ross's retail
14 locations, are losses covered by the Time Element coverages in the Property Policies.

15 95. TIME ELEMENT loss includes either the insured's lost "GROSS EARNINGS"
16 (*i.e.*, its lost gross earnings less certain saved variable expenses plus all other lost earnings)
17 during the Period of Liability and Extended Period of Liability or its lost "GROSS PROFIT"
18 (*i.e.*, its reduction in sales and increase in the cost of doing business) during the Period of
19 Liability after the loss or damage to its property. The Property Policies allow Ross to choose
20 between GROSS EARNINGS and GROSS PROFIT to measure its losses.

21 96. Ross has suffered direct physical loss and damage of the type insured under the
22 Property Policies to property insured by the Property Policies.

23 97. A direct result of the insured direct physical loss and damage to its insured
24 properties was that Ross sustained losses of gross earnings, additional operational expenses, loss
25 of other operational earnings, losses of gross profits, diminished sales, extra expenses, increases
26 in the cost of doing business, claim preparation costs, and other covered losses.

27 98. Although Ross has sought to mitigate losses where possible, it has been unable to
28 reduce materially its Time Element losses through the use of property or services owned or

1 controlled by Ross, the use of property or services obtainable from other sources, working extra
2 time or overtime, or the use of inventory.

3 99. Ross's Time Element losses are ongoing and likely to persist.

4 100. Ross has incurred reasonable and necessary extra expenses to continue temporarily
5 as nearly normal as practicable the conduct of its business due to the suspension of operations
6 and limited access to retail locations, including but not limited to extra expenses for COVID-19
7 screening and testing, housing, cleaning supplies, physical and structural modifications, extra
8 security at closed facilities, and other operational changes.

9 101. Ross's extra expenses are other than those that usually would have been incurred
10 in conducting its business during the same period had no physical loss or damage occurred.

11 **3. Ross Has Sustained Actual Loss and Incurred Extra Expenses Insured**
12 **by the Property Policies' Civil Authority Coverage**

13 102. The Property Policies cover "the Actual Loss Sustained and EXTRA EXPENSE
14 incurred by the Insured . . . if an order or civil or military authority limits, restricts, or prohibits
15 partial or total access to an insured **location** provided such order is the direct result of physical
16 damage of the type insured at the insured **location** or within five statute miles . . . of it."

17 103. Ross has sustained actual loss and incurred EXTRA EXPENSES because one or
18 more governmental orders have limited, restricted or prohibited partial or total access to its
19 insured locations, or impaired access to, such locations.

20 104. The governmental orders limiting, restricting, prohibiting, or impairing access to
21 Ross's insured locations have all been issued as a direct result of, among other things, physical
22 loss or damage caused by the coronavirus and COVID-19 either at insured locations or within
23 five statute miles thereof. Such physical loss and damage is of the type insured by the Property
24 Policies generally as well as by the Communicable Disease provision specifically.

25 105. The coronavirus and COVID-19 have caused physical harm, damage and injury to
26 many people, including many people within five miles of insured locations. In addition, the
27 governmental orders are the direct result of, among other things, physical loss and damage at or
28 within five statute miles of Ross's insured properties, including but not limited to physical
damage caused by the physical presence of and/or structural damage caused by the coronavirus

1 on furniture, doors, floors, and inventory; and in the air within the stores, restrooms, and HVAC
2 systems at the insured property.

3 106. Numerous outbreaks of COVID-19 have also led to numerous discrete events of
4 physical loss and damage at or within five miles of insured locations, and those damages have in
5 turn led to numerous discrete governmental orders limiting, restricting, impairing or prohibiting
6 access to insured locations. Certain governmental orders that purport to prevent against future
7 proliferation of the coronavirus and future transmission of COVID-19 are the direct result of
8 physical loss and damage of the type insured. Such physical loss and damage is of the type
9 insured by the Property Policies generally as well as by the Communicable Disease provision
10 specifically.

11 107. State and local authorities in each county and/or state where a Ross property is
12 located have issued orders that impair, limit, restrict or prohibit partial or total access to insured
13 property.

14 108. Ross has sustained actual loss due to the civil authority orders.

15 109. Ross has incurred reasonable and necessary extra expenses, due to the civil
16 authority orders, to continue temporarily as nearly normal as practicable the conduct of its
17 business.

18 110. Ross's extra expenses due to the civil authority orders are other than those that
19 usually would have been incurred in conducting its business during the same period had no
20 physical loss or damage occurred.

21 **4. Ross Has Sustained Actual Loss and Incurred Extra Expenses Insured**
22 **by the Property Policies' Ingress/Egress Coverage**

23 111. The Property Policies cover "the Actual Loss Sustained and EXTRA EXPENSE
24 incurred ... due to the necessary interruption of the Insured's business due to partial or total
25 physical prevention of ingress to or egress from an insured location, whether or not the premises
26 or property of the Insured is damaged, provided that such prevention is a direct result of physical
27 damage of the type insured to the property of the type insured."

28 112. As explained above, the coronavirus, fomites, and respiratory droplets or nuclei
adhere and attach to common materials, thereby structurally altering those materials and

1 physically changing them from inert to dangerous and unsafe. This process impairs and
2 physically damages the materials and the property in question.

3 113. In communities in which outbreaks of COVID-19 occurred, such damage was
4 widespread and—in addition to numerous individuals harmed, damaged, and injured—affected,
5 among other things, property necessary for travel to, access and ingress to, and egress from
6 Ross's retail stores and other facilities, including non-retail locations.

7 114. The widespread presence of the coronavirus, fomites, and respiratory droplets or
8 nuclei and widespread presence of damaged property during these outbreaks made traveling to,
9 entering, traveling from or leaving Ross's facilities significantly more dangerous and unsafe.

10 115. The widespread presence of the coronavirus, fomites, and respiratory droplets or
11 nuclei and widespread presence of physical damage during these outbreaks made traveling to,
12 entering, traveling from or leaving Ross's facilities significantly more difficult and arduous.

13 116. As a result of COVID-19 outbreaks within the vicinity of each affected Insured
14 location, including within five miles of each affected insured location, it became difficult and
15 dangerous to travel to or from Ross's facilities. The foregoing partially or totally prevented
16 ingress to and egress from, and impaired access to and egress from, those facilities.

17 117. As a result of these partial or total preventions or impairments of ingress to and
18 egress from Ross's facilities, the operations and business of Ross were interrupted.

19 118. Ross has sustained actual loss and has incurred extra expenses due to the
20 necessary interruption of its business because of the partial or total physical prevention and
21 impairment of ingress to or egress from insured property as a result of physical damage to the
22 type insured by the policy (including, *inter alia*, the actual presence of communicable disease) to
23 property of the type insured by the policy.

24 119. Ross's extra expenses due to prevention of ingress/egress are other than those that
25 usually would have been incurred in conducting business during the same period had no
26 physical loss or damage occurred.

27 **5. Ross Has Sustained Actual Loss Insured by the Property Policies'**
28 **Coverage for Leasehold Interest and Rental Insurance**

1 120. Ross has sustained actual loss in the form of rent paid for retail stores it has been
2 unable to use for an extended period of time because of orders, physical damage, or physical
3 loss, as described more fully above, due to the coronavirus and COVID-19 and related civil
4 orders.

5 121. Ross has sustained actual loss of rental income from tenants and subtenants due to
6 COVID-19, including but not limited to sustained losses of rental income on properties that
7 could not be accessed because of orders, physical damage, or physical loss, as described more
8 fully above.

9 **6. Ross Has Sustained Actual Loss and Incurred Extra Expense Insured**
10 **by the Property Policies' Communicable Disease Coverages**

11 122. The Property Policies define "communicable disease," in pertinent part, as a
12 disease that is transmissible from human to human by direct or indirect contact with an affected
13 individual or the individual's discharges.

14 123. Each Property Policy extends coverage to reasonable and necessary costs incurred
15 due to COMMUNICABLE DISEASE RESPONSE at any insured location that has the actual
16 presence of communicable disease and to which access has been limited, restricted, or
17 prohibited for more than 48 hours by an order of an authorized governmental agency regulating
18 the presence of communicable disease or a decision of an Officer of the Insured. Communicable
19 disease response costs include cleanup, removal, and disposal of communicable diseases from
20 insured property, fees paid to public relations services, and costs of using the Insured's
21 employees for reputation management.

22 124. The Communicable Disease Coverages are Additional Coverage Extensions,
23 designed to supplement, not to supplant, other coverages provided under the Property Policies.

24 125. Nowhere do the Property Policies state that the Communicable Disease Coverage
25 is the sole and exclusive coverage that applies to loss or damage related to communicable
26 disease, or that the Property Policies' other coverages do not apply if the Communicable Disease
27 Coverage is also triggered.

28 126. Employees of Ross have tested positive for COVID-19, the disease caused by the
coronavirus, on various dates between March 1, 2020 and the date of filing of this complaint.

1 127. Persons carrying the communicable disease COVID-19, including but not limited
2 to employees who tested positive for COVID-19, were actually present at one or more insured
3 properties on various dates between March 1, 2020 and the date of filing of this complaint.

4 128. On information and belief, pre- and asymptomatic persons carrying the
5 communicable disease COVID-19 were actually present at one or more insured properties on
6 various dates between March 1, 2020 and the date of filing of this complaint.

7 129. By order of authorized governmental agency, access to one or more insured
8 properties of Ross was limited, restricted, or prohibited as a result of the actual presence of the
9 communicable disease COVID-19 at insured property for a period of more than 48 hours.

10 130. Ross has sustained actual loss and incurred extra expense during the period when
11 its insured property was inaccessible due to the actual presence of COVID-19 on the property.
12 Such extra expenses were other than those that usually would have been incurred in conducting
13 Ross's business during the same period had no loss occurred.

14 131. Ross incurred reasonable and necessary costs for the cleanup, removal and
15 disposal of the actual presence of the communicable disease COVID-19, including the cleanup,
16 removal, and disposal of materials contaminated with the coronavirus, which is the virus that
17 causes the communicable disease COVID-19.

18 132. Ross incurred reasonable and necessary costs for public relations and related
19 services resulting from the presence of COVID-19 on insured property.

20 **7. Ross Has Incurred Costs and Has Sustained Actual Loss to Protect and**
21 **Preserve Insured Property**

22 133. Ross has incurred reasonable and necessary costs for actions to protect temporarily
23 or preserve insured property due to actual, or to prevent immediately impending, physical loss or
24 damage from the coronavirus and COVID-19 to such insured property.

25 134. Ross has sustained actual loss during the period beginning 48 hours before and
26 lasting until 48 hours after the need to take reasonable action for the temporary protection and
27 preservation of property insured by the Property Policies to prevent impending physical loss or
28 damage to such property, including the cost of closing retail and non-retail locations, protecting

1 and preserving property at those locations, and ensuring that its property is not damaged by the
2 coronavirus or COVID-19.

3 **8. Ross's Losses Trigger Other Coverages**

4 135. In addition to the losses and coverages described above, Ross's COVID-19 losses
5 are covered under any and all other coverages under the Property Policies that may apply.
6 These include but are not limited to Claims Preparation Cost coverage.

7 **9. No Exclusion Bars Coverage of Ross's Losses and Damages**

8 136. The Property Policies contain no exclusions that would apply to preclude or limit
9 coverage for Ross's losses.

10 137. None of the exclusions contained in the Property Policies preclude coverage for
11 losses or damage due to communicable disease, including COVID-19, or due to the virus that
12 causes COVID-19.

13 138. The exclusions contained in the Property Policies do not preclude coverage for
14 losses or damage arising out of the prohibition, limitation, restriction, or impairment of access to
15 property under orders of civil authority issued due to physical damage, including physical
16 damage to people, caused by COVID-19 and the coronavirus.

17 139. None of the Property Policies contains a virus exclusion outside the context of
18 "contamination."

19 140. The Property Insurers were aware of and had available to them broad language
20 purporting to exclude property losses and business interruption losses caused by or resulting
21 from viruses. For example, the Property Insurers were aware of and had available to them, since
22 at least 2006, the Insurance Services Office's explicit virus exclusion, which states: "We will not
23 pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism
24 that induces or is capable of inducing physical distress, illness or disease." On information and
25 belief, one or more of the Property Insurers or affiliates of one or more of the Property Insurers
26 were involved in the drafting of this ISO Virus Exclusion and the presentation of this ISO Virus
27 Exclusion to state regulators for approval in or around 2006. But the Property Insurers chose to
28

1 include Communicable Disease coverage and not to include the ISO Virus Exclusion in the
2 Property Policies.

3 141. The Property Policies instead contain an exclusion for “contamination” that states
4 in relevant part:

5 D. This Policy excludes the following **unless directly resulting**
6 **from other physical damage not excluded by this Policy:**

7 1) contamination, and any cost due to **contamination** including
8 the inability to use or occupy property or any cost of making
9 property safe or suitable for use or occupancy. If **contamination**
10 due only to the actual not suspected presence of **contaminant(s)**
11 directly results from other physical damage not excluded by this
12 Policy, then only physical damage caused by such **contamination**
13 may be insured. This exclusion D1 does not apply to radioactive
14 contamination which is excluded elsewhere in this Policy.
15 (Underscoring added; other emphasis in original.)

16 142. The Property Policies define “contamination” as “any condition of property due to
17 the actual or suspected presence of any foreign substance, impurity, pollutant, hazardous
18 material, poison, toxin, pathogen or pathogenic organism, bacteria, virus, disease causing or
19 illness causing agent, fungus, mold or mildew.”

20 143. The Property Policies’ contamination exclusion refers to “virus” and to “disease
21 causing or illness causing agent,” but not to communicable disease, which is expressly covered
22 by the Property Policies.

23 144. The Property Policies’ contamination exclusion contains an express exception for
24 losses, such as losses from COVID-19 or related civil orders, that result from physical damage
25 that does not fall within one of the Policies’ other exclusions.

26 145. The Property Policies’ contamination exclusion on its face expressly applies to
27 “costs” but makes no mention of “losses.” Nearly all of Ross’s losses under the Property
28 Policies are “losses” as that term is used in the Property Policies, and not “costs” as that term is
used in the Property Policies. The exclusion does not apply to time element losses and extra
expenses, including but not limited to losses and expenses due to civil authority orders,
impairment of ingress or egress, crisis management, or interruption by communicable disease.

1 146. Accordingly, the Property Policies' contamination exclusion does not apply to the
2 losses that are the subject of the coverage claim in this lawsuit.

3 147. In addition, costs, damages or losses "directly resulting from other physical
4 damage not excluded by [the] Policy," including without limitation those costs, damages or
5 losses described above, are exempt from the operation of the exclusion.

6 148. None of Ross's COVID-19 losses involves traditional environmental pollution,
7 which is the focus of this exclusion, and for this reason, among others, this exclusion does not
8 apply to Ross's losses.

9 149. None of the other exclusions in the Property Policies applies to or bars coverage
10 for Ross's losses.

11 **IV. DESPITE ROSS'S TIMELY CLAIMS FOR COVERAGE, THE INSURERS**
12 **HAVE NOT ACKNOWLEDGED A DUTY TO PAY IN ACCORDANCE WITH**
13 **THEIR CONTRACTUAL PROMISES**

14 150. On April 9, 2020, Ross provided notice of its claim to the Property Insurers. To
15 date, the Property Insurers have not acknowledged their duty under the Property Policies to pay
16 for Ross's losses.

17 151. On May 4, 2020, Ross provided notice of its claim to the Stock Throughput
18 Insurers. To date, the Stock Throughput Insurers have not acknowledged their duty under the
19 Stock Throughput Policies to pay for Ross's losses.

20 152. Ross has satisfied or been excused from satisfying, or each Insurer has waived or
21 is estopped from enforcing, all conditions precedent under the Stock Throughput Policies and
22 the Property Policies.

23 **FIRST CAUSE OF ACTION**
24 **(For Declaratory Relief Against Zurich Under Its Stock Throughput Policy In Connection**
25 **with Ross's Retail Stores)**

26 153. Ross repeats and incorporates by reference the allegations set forth in Paragraphs 1
27 through 152 of this Complaint, inclusive, as though set forth fully herein.

28 154. Ross seeks a declaration of the parties' rights and duties under Zurich's Stock
Throughput Policy in accordance with Sections 1060 and 379 of the Code of Civil Procedure.

1 155. An actual and justiciable controversy exists between the parties concerning the
2 Zurich's contractual duties to pay Ross's claims for actual loss sustained under its Stock
3 Throughput Policy.

4 156. The controversy between Ross and Zurich with respect to Zurich's Stock
5 Throughput Policy is ripe for judicial review.

6 157. The controversy is of sufficient immediacy to justify the issuance of declaratory
7 relief.

8 158. Ross accordingly seeks a declaration from the Court that:

- 9 a) The Stock Throughput Policy coverage provision identified in this Complaint
10 is triggered by Ross's claims;
- 11 b) No exclusion or other provision in the Stock Throughput Policy applies to limit
12 coverage for Ross's claims;
- 13 c) Ross has satisfied or been excused from satisfying, or Zurich has waived or is
14 estopped from enforcing, all conditions precedent under the Stock Throughput
15 Policy; and
- 16 d) Zurich is contractually obligated under the Stock Throughput Policy to
17 indemnify Ross for its claims of actual loss and other losses sustained at Ross's
18 retail stores due to the coronavirus and/or COVID-19.

18 **SECOND CAUSE OF ACTION**

19 **(For Breach of Contract Against Zurich Under Its Stock Throughput Policy In Connection
20 with Ross's Retail Stores)**

21 159. Ross repeats and incorporates by reference the allegations set forth in Paragraphs 1
22 through 158 of this Complaint, inclusive, as though set forth fully herein.

23 160. Zurich's Stock Throughput Policy is a valid and enforceable contract between
24 Ross and Zurich.

25 161. Ross has satisfied or been excused from satisfying, or Zurich has waived or is
26 estopped from enforcing, all conditions precedent under Zurich's Stock Throughput Policy,
27 including but not limited to payment of required premiums, provision of timely notice of claim,
28 and submission of a Proof of Loss.

162. Zurich agreed in its Stock Throughput Policy to provide insurance coverage for all
actual loss or damage not otherwise excluded as described more fully above.

- 1 a) Each Stock Throughput Policy coverage provision identified in the Complaint
2 is triggered by Ross's claims;
- 3 b) No exclusion or other provision in each Stock Throughput Policy applies to
4 limit coverage for Ross's claims;
- 5 c) Ross has satisfied or been excused from satisfying, or the Stock Throughput
6 Insurers have waived or are estopped from enforcing, all conditions precedent
7 under the Stock Throughput Policies;
- 8 d) The Stock Throughput Insurers are contractually obligated under the Stock
9 Throughput Policies to indemnify Ross for its claims of actual loss and other
10 losses sustained at Ross's non-retail locations due to the coronavirus and/or
11 COVID-19.

12 **FOURTH CAUSE OF ACTION**

13 **(For Breach of Contract Against All Primary and First Excess Layer Stock Throughput 14 Insurers In Connection with Ross's Non-Retail Locations)**

15 175. Ross repeats and incorporates by reference the allegations set forth in Paragraphs 1
16 through 174 of this Complaint, inclusive, as though set forth fully herein.

17 176. The Stock Throughput Policies are valid and enforceable contracts between Ross
18 and the Stock Throughput Insurers.

19 177. Ross has satisfied or been excused from satisfying, or the Stock Throughput
20 Insurers have waived or are estopped from enforcing, all conditions precedent under the Stock
21 Throughput Policies, including but not limited to payment of required premiums, provision of
22 timely notice of claim, and submission of a Proof of Loss.

23 178. The Stock Throughput Insurers agreed in their insurance contracts to provide
24 insurance coverage for all actual loss or damage not otherwise excluded.

25 179. The COVID-19 pandemic has caused and continues to cause actual loss sustained
26 to Ross.

27 180. No policy exclusion applies to preclude or limit coverage.

28 181. As is set forth more fully above, the Stock Throughput Insurers are contractually
obligated under the Stock Throughput Policies to indemnify Ross for the full amount of its
actual loss sustained at its non-retail locations.

1 182. Nonetheless, the Stock Throughput Insurers have refused to pay for Ross's loss in
2 breach of the Stock Throughput Policies.

3 183. As a direct and proximate result of their breach of contract, the Stock Throughput
4 Insurers have deprived Ross of the benefits of the insurance coverage for which substantial
5 premiums were paid, which entitles Ross to money damages, including interest according to
6 law.

7 184. Ross's losses as a result of the Stock Throughput Insurers' breach of contract are
8 continuing, and Ross reserves the right to seek the full and exact amount of its damages at the
9 time of trial.

10 **FIFTH CAUSE OF ACTION**
11 **(For Declaratory Relief Against the Property Insurers)**

12 185. Ross repeats and incorporates by reference the allegations set forth in Paragraphs 1
13 through 184 of this Complaint, inclusive, as though set forth fully herein.

14 186. Ross seeks a declaration of the parties' rights and duties under the Property
15 Policies in accordance with Sections 1060 and 379 of the Code of Civil Procedure.

16 187. An actual and justiciable controversy exists between the parties concerning the
17 Property Insurers' contractual duties to pay Ross's claims for real property losses, time element
18 losses, and other losses, costs, and expenses under the Property Policies.

19 188. The controversy between Ross and the Property Insurers is ripe for judicial
20 review.

21 189. The controversy is of sufficient immediacy to justify the issuance of declaratory
22 relief.

23 190. Ross accordingly seek a declaration from the Court that:

- 24 a) Each coverage provision identified in the Complaint is triggered by Ross's
25 claims;
- 26 b) No exclusion in the Property Policies applies to preclude or limit coverage for
27 Ross's claims;
- 28 c) Ross has satisfied or been excused from satisfying, or the Property Insurers
have waived or is estopped from enforcing, all conditions precedent under the
Property Policies;

- 1 d) The Property Insurers are contractually obligated under the Property Policies to
2 indemnify Ross for its claims of property damage losses, time element losses,
3 extra expense, and other losses sustained as a result of direct loss or damage to
4 property due to the coronavirus and/or COVID-19;
- 5 e) The Property Insurers are contractually obligated under the Property Policies to
6 indemnify Ross for its claims of time element losses for GROSS EARNINGS
7 or GROSS PROFITS loss, at Ross's election, during the Period of Liability;
- 8 f) The Property Insurers are contractually obligated under the Property Policies to
9 indemnify Ross for its claims of EXTRA EXPENSE incurred to continue
10 business during the Period of Liability;
- 11 g) The Property Insurers are contractually obligated under their Property Policies
12 to indemnify Ross for its claims of time element losses and extra expense as a
13 result of orders of civil authority that have impaired access to insured
14 properties as a result of the coronavirus and/or COVID-19 at insured property
15 or other locations within five miles;
- 16 h) The Property Insurers are contractually obligated under the Property Policies to
17 indemnify Ross for its claims of time element losses and extra expense
18 wherever access to or egress from insured property has been impaired as a
19 result of the coronavirus and/or COVID-19 at insured property or other
20 locations;
- 21 i) The Property Insurers are contractually obligated under the Property Policies to
22 indemnify Ross for its claims of lost rent and actual loss sustained with respect
23 to rented properties;
- 24 j) The Property Insurers are contractually obligated under the Property Policies to
25 indemnify Ross for its response costs and time element losses and extra
26 expense as a result of the actual presence of communicable disease at insured
27 locations;
- 28 k) The Property Insurers are contractually obligated under the Property Policies to
indemnify Ross for actual loss sustained to prevent and costs incurred to
protect temporarily actual or impending physical loss or damage to insured
property; and
- l) The Property Insurers are contractually obligated under the Property Policies to
indemnify Ross for its claims preparation costs.

SIXTH CAUSE OF ACTION
(For Breach of Contract Against the Property Insurers)

1 191. Ross repeats and incorporates by reference the allegations set forth in Paragraphs 1
2 through 190 of this Complaint, inclusive, as though set forth fully herein.

3 192. The Property Policies are valid and enforceable contracts between Ross and the
4 Property Insurers.

5 193. Ross has satisfied, is excused from performing, or the Property Insurers have
6 waived or are estopped from insistence upon performance of, all conditions of the Property
7 Policies, including but not limited to payment of required premiums, provision of timely notice
8 of claim, and submission of a Proof of Loss.

9 194. The Property Insurers agreed in their insurance contracts to provide insurance
10 coverage for all risks of physical loss or damage not otherwise excluded.

11 195. The COVID-19 pandemic has caused and continues to cause physical loss and/or
12 damage to Ross's properties and to properties within five miles of Ross's insured locations.

13 196. Ross has suffered actual loss and incurred extra expense due to physical loss and
14 damage caused by the COVID-19 pandemic, a risk not excluded by the Property Policies.

15 197. No Policy exclusion applies to preclude or limit coverage.

16 198. As is set forth more fully above, the Property Insurers are contractually obligated
17 under the Property Policies to indemnify Ross for the full amount of its losses, including
18 property damage losses, time element losses, extra expenses, and costs resulting from (i)
19 physical loss and damage caused by the coronavirus and COVID-19, (ii) civil authority orders,
20 (iii) obstruction of ingress and egress, (iv) communicable disease response and business
21 interruption, (v) extra expense losses, and (vi) claims preparation costs, subject only to the
22 applicable deductibles and limits of liability in the Property Policies.

23 199. Nonetheless, the Property Insurers have failed to pay for Ross's loss and expenses
24 in breach of the Property Policies.

25 200. As a direct and proximate result of its breach of contract, the Property Insurers
26 have deprived Ross of the benefits of the insurance coverage for which substantial premiums
27 were paid, which entitles Ross to money damages, including interest according to law.
28

1 impaired or partially or totally prevented as a result of the coronavirus and/or
2 COVID-19 at insured property or other locations;

3 j) The Property Insurers are contractually obligated under their Property Policies
4 to indemnify Ross for its claims of lost rent and actual loss sustained with
5 respect to rented properties;

6 k) The Property Insurers are contractually obligated under their Property Policies
7 to indemnify Ross for response costs and time element losses and extra
8 expense as a result of the actual presence of communicable disease at insured
9 locations;

10 l) The Property Insurers are contractually obligated under their Property Policies
11 to indemnify Ross for actual loss sustained to prevent and costs incurred to
12 protect temporarily actual or impending physical loss or damage to insured
13 property; and

14 m) The Property Insurers are contractually obligated under their Property Policies
15 to indemnify Ross for its claims preparation costs;

16 (2) Compensatory and consequential damages in an amount to be proven at trial;

17 (3) Pre-judgment and post-judgment interest as provided by law;

18 (4) An award of court costs and attorneys' fees; and

19 (5) Such other and further relief as this Court finds just and proper.

20 Dated: December 22, 2020

COVINGTON & BURLING LLP

21 By:



Christine S. Haskett
Attorneys for Plaintiffs

1
2 **JURY TRIAL DEMAND**

3 Ross hereby demands a jury trial of all issues so triable.

4 Dated: December 22, 2020

COVINGTON & BURLING LLP

5 By: 

6 Christine S. Haskett
7 Attorneys for Plaintiffs
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