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23 Attorneys for Plaintiff Lulu’s Fashion Lounge LLC

24 UNITED STATES DISTRICT COURT
25 EASTERN DISTRICT OF CALIFORNIA

26 LULU’S FASHION LOUNGE LLC,

27 Plaintiff,

28 v.

HARTFORD FIRE INSURANCE
COMPANY,

Defendant.

CASE NO.:

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

DATE: September 11, 2020

COMPLAINT

1
2 Plaintiff, LULU’S FASHION LOUNGE LLC (“Lulus”), files this Complaint
3 for damages, declaratory relief, injunctive relief, punitive damages, and violation of
4 the California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*)
5 (the “UCL”) against Defendant, HARTFORD FIRE INSURANCE COMPANY
6 (“Hartford”), alleging the following:

7 **I. INTRODUCTION**

8 1. Like many businesses throughout the country, Lulus has sustained
9 devastating business interruption losses because of direct physical loss of, and/or
10 direct physical damage to, property from COVID-19, the omnipresence of COVID-19
11 as a pandemic (hereinafter the “Pandemic”) and/or orders issued by various
12 governmental entities.

13 2. To protect itself from catastrophic losses like these, Lulus bought a
14 standard form “All Risks” commercial property insurance policy from Hartford which
15 broadly covers “direct physical loss of or direct physical damage to” Covered
16 Property.

17 3. Lulus had a reasonable expectation that the Hartford All Risks policy
18 would cover its COVID-19 related losses and promptly made a claim to Hartford.

19 4. Yet rather than pay the claim, and without even investigating it, Hartford
20 summarily rejected Lulus’ claim within four days of Lulus’ original notice of loss and
21 again just one day after Lulus submitted a detailed supplemental notice of loss. In
22 doing so, it ignored long accepted constructions of the operative insurance policy
23 terms, and further, knowing that California courts will, wherever reasonably possible,
24 construe ambiguities in standard form policy wording against its drafter, Hartford has
25 maintained that these long-accepted judicial constructions were not even reasonable.

26 5. The actual presence of COVID-19, the Pandemic and/or state or local
27 governmental orders have resulted in direct physical loss or damage to property and
28 the Hartford policy unambiguously provides coverage for Lulus’ COVID-19 related

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1 losses.

2 6. However, even if the policy could reasonably be interpreted not to
3 provide such coverage, the policy terms could also reasonably be interpreted to
4 provide such coverage. Ambiguous policy terms must be construed in the
5 policyholder's favor. The fact that a Missouri federal court judge's decision in *Studio*
6 *417, Inc., et al. v. The Cincinnati Ins. Co.*, No. 20-cv-03127-SRB, 2020 WL 4692385
7 (W.D. Mo. Aug. 12, 2020), accepted the Policyholder's construction makes this
8 construction *per se* reasonable.

9 7. By this action, Lulus seeks to compel Hartford to provide the insurance
10 benefits for which Lulus paid. Furthermore, given Hartford's wrongful denial of
11 coverage, its denial of Lulus' claim without a reasonable investigation, its intentional
12 misconstruction of the express terms of the insurance policy, and its flagrant disregard
13 for California law pursuant to which the policy provisions must be interpreted, Lulus
14 seeks punitive damages and other damages deemed appropriate by the Court.

15 **II. PARTIES**

16 8. Lulus is incorporated under the laws of the State of Delaware and has its
17 principal place of business in Chico, California.

18 9. Hartford is incorporated under the laws of the State of Connecticut and
19 has its principal place of business in Hartford, Connecticut.

20 **III. JURISDICTION AND VENUE**

21 10. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1332,
22 because the parties are completely diverse in citizenship and the amount in
23 controversy exceeds \$75,000 exclusive of interest and costs.

24 11. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b) because a
25 substantial portion of the events or omissions giving rise to Lulus' claim occurred in
26 this District, including the negotiation and delivery of the insurance policy at issue and
27 the submission of the claim.

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1 **IV. FACTUAL BACKGROUND**

2 **A. Lulus' Operations and Purchase of the Hartford Policy**

3 12. Lulus is a women's apparel, footwear, and accessories retailer offering
4 affordable luxury to consumers through its private label and other named fashion
5 brands.

6 13. Lulus sells its products online as well as at a physical location in Chico,
7 California.

8 14. Lulus targets a generation keen on affordable luxury with a demand for
9 on-trend designs, and changes its inventory frequently to keep up with the short
10 lifespan of the latest styles. Lulus' private label line, items designed specifically for
11 the company and available exclusively through Lulus (or Nordstrom), make up a
12 considerable portion of its inventory.

13 15. A significant percentage of Lulus' sales is related to special occasion
14 events, including but not limited to proms, graduations, and weddings – the
15 overwhelming majority of which have been canceled or postponed indefinitely
16 throughout the world due to COVID-19, the Pandemic and/or orders issued by various
17 governmental entities.

18 16. A large part of Lulus' brand success as an e-retailer is due to the use of
19 social media as a key tool for reaching its customer base, trend-savvy teenage and
20 millennial women. Lulus owns and operates its own studio where it creates in-house
21 content for posting on social media sites, and relies on video content and brand
22 ambassadors to spread word of the brand. Critically, Lulus also uses its studio to
23 photograph images of every single product available for sale on its e-commerce
24 website.

25 17. Lulus has nine (9) locations, which include one (1) retail outlet and eight
26 (8) non-retail locations that support its business operations through distribution,
27 fulfillment, marketing, accounting, returns locations, and related business activities.
28

1 18. One (1) of Lulus' locations is situated in Los Angeles County, California;
2 seven (7) of Lulus' locations, including its retail outlet, are situated in Butte County,
3 California; and the remaining location is in Northampton County, Pennsylvania.

4 19. Prior to COVID-19, the Pandemic and/or orders issued by various
5 governmental entities, Lulus employed approximately 900 employees in its nine (9)
6 locations, the majority of whom work at distribution or fulfillment locations
7 processing orders, preparing items to be shipped to customers throughout the world,
8 handling returned and damaged items, and receiving inbound shipments from
9 suppliers.

10 20. Lulus partners with hundreds of suppliers and vendors to offer affordable
11 luxury apparel at reasonable prices.

12 21. In addition to selling its products on its own website and at its retail
13 outlet, Lulus sells exclusive products in-store and online through Nordstrom.

14 22. As stated above, to protect itself from catastrophic losses, Lulus bought
15 an insurance policy from Hartford and is the Named Insured.

16 23. The Hartford policy was titled, Special Multi-Flex Business Insurance
17 Policy, No. 84 UUN ZV1121 K3 (the "Hartford All Risks Policy" or the "Policy")
18 and had an effective term from August 7, 2019 to August 7, 2020. A true copy of the
19 Policy is attached as Exhibit A and incorporated herein *in hac verbe*m.

20 24. The Policy covers Lulus, the Named Insured, for "direct physical loss of
21 or direct physical damage to" Covered Property from a Covered Cause of Loss and
22 defines Covered Cause of Loss as "direct physical loss or direct physical damage . . .
23 unless the loss or damage is excluded or limited in this policy." (Exhibit A at
24 COMPLAINT-00079, COMPLAINT-00092)

25 25. The Policy provisions applicable to this case are standard form and were
26 drafted by Hartford.

27 26. The Policy provides up to \$72,234,180 for Business Income and Extra
28 Expense Coverage and an additional \$5,294,510 for Business Personal Property

1 (excluding Stock) Coverage. (See Endorsement No. 2, attached as Exhibit B at
2 COMPLAINT-000241).

3 **B. COVID-19 is a Deadly Communicable Disease**

4 27. COVID-19 is a deadly communicable disease caused by a recently
5 discovered coronavirus, referred to as severe acute respiratory syndrome coronavirus
6 2 or “SARS-CoV-2.”

7 28. This coronavirus and the COVID-19 disease were unknown before the
8 outbreak began in Wuhan, China, in or about December 2019.

9 29. On March 11, 2020, the World Health Organization (the “WHO”)
10 declared the COVID-19 outbreak a pandemic.

11 30. A pandemic, by definition, is “an epidemic occurring worldwide”¹

12 31. On March 13, 2020, President Trump issued a proclamation declaring a
13 national emergency concerning the COVID-19 outbreak.²

14 32. As of September 8, 2020, COVID-19 has infected over 6.2 million
15 people in the United States and caused more than 188,000 deaths.³

16 33. The Centers for Disease Control and Prevention (the “CDC”) estimates
17 that infection rates for COVID-19 likely are at least ten (10) times higher than
18 reported.⁴

19
20
21 ¹ Heath Kelly, *The classical definition of a pandemic is not elusive*, 89 Bulletin of the World
22 Health Organization 7, at 540-41 (2011) (<https://www.who.int/bulletin/volumes/89/7/11-088815/en/#:~:text=A%20pandemic%20is%20defined%20as>) (last visited Sept. 8, 2020).

23 ² Donald J. Trump, *Proclamation on Declaring a National Emergency Concerning the Novel*
24 *Coronavirus Disease (COVID-19) Outbreak*, The White House (Mar. 13, 2020)
25 (<https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>) (last visited Sept. 8, 2020).

26 ³ CDC, *Cases in the U.S.* (last updated Sept. 7, 2020)
27 (<https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>) (last visited
28 Sept. 8, 2020).

⁴ Erika Edwards, *CDC says COVID-19 cases in U.S. may be 10 times higher than reported*,

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1 34. To date, there remains no effective vaccine for COVID-19.

2 35. The incubation period for COVID-19, which is the time between
3 exposure and the onset of symptoms, can be up to fourteen (14) days.⁵

4 36. During the incubation period, or “pre-symptomatic” period, infected
5 persons can be contagious, and disease transmission can occur before the infected
6 person shows any symptoms or has any reason to believe he or she has become
7 infected.⁶

8 37. COVID-19 can spread through person-to-person transmission where an
9 uninfected person ingests droplets of the saliva or nasal discharge of an infected
10 person.⁷

11 38. COVID-19 also can spread through surface- or object-to-person
12 transmission, where an uninfected person touches an object or surface that has come
13 into contact with the saliva or nasal discharge of an infected person, and the
14 uninfected person then touches his or her eyes, nose, or mouth.⁸

15 39. A cloud of droplets of saliva or nasal discharge of an infected person,
16 which may be released by a cough, a sneeze, or loud speech, can linger in the air for a
17 period of minutes to hours, and can be pulled into air circulation systems.⁹

18
19 _____
20 NBC News (June 25, 2020) (<https://www.nbcnews.com/health/health-news/cdc-says-covid-19-cases-u-s-may-be-10-n1232134>) (last visited Sept. 8, 2020).

21 ⁵ World Health Organization, *Coronavirus disease 2019 (COVID-19) Situation Report – 73*
22 (Apr. 2, 2020) (https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2) (last visited Sept. 8, 2020).

23 ⁶ *Id.* (“In a small number of case reports and studies, pre-symptomatic transmission has been
24 documented through contact tracing efforts and enhanced investigation of clusters of
25 confirmed cases. This is supported by data suggesting that some people can test positive for
26 COVID-19 from 1-3 days before they develop symptoms.”).

27 ⁷ World Health Organization, *How does COVID-19 spread?*,
28 (<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses#>) (last visited Sept. 8, 2020).

⁸ *Id.*

⁹ Ramon Padilla & Javier Zarracina, *Coronavirus might spread much farther than 6 feet in*

1 40. The CDC published a study in July 2020 concluding that “droplet
2 transmission was prompted by air-conditioned ventilation” that caused an outbreak
3 among people who dined in the same air-conditioned restaurant.¹⁰

4 41. COVID-19, like a gas or odor, renders the entire infected property unsafe
5 or unfit for use until it has been remediated.

6 42. Likewise, as evidenced by the recent advice that HEPA and other
7 specialized air filtration systems can be used to remedy the presence of COVID-19,
8 physical alteration of property may be necessary to render it safe from COVID-19 and
9 return the property to a useable state.¹¹

10 43. Medical researchers have advised that HEPA and other specialized air
11 filtration systems can be used to remediate the presence of COVID-19.¹²

12 44. The SARS-CoV-2 virus also can remain on various objects and surfaces
13 for a period of hours to days.¹³

14 45. The New England Journal of Medicine has reported that SARS-CoV-2

15
16 *the air. CDC says wear a mask in public.* USA Today (July 17, 2020)
17 (www.usatoday.com/in-depth/news/2020/04/03/coronavirusprotection-how-masks-might-stop-spread-throughcoughs/5086553002/) (last visited Sept. 8, 2020).

18 ¹⁰ Jianyun Lu, *et al.*, *COVID-19 Outbreak Associated with Air Conditioning in Restaurant, Guangzhou, China, 2020*, *Emerging Infectious Diseases*, vol. 26, no. 7 (July 2020)
19 (https://wwwnc.cdc.gov/eid/article/26/7/20-0764_article) (last visited Sept. 8, 2020).

20 ¹¹ *Id.*

21 ¹² Zeynep Tufekci, *We Need to Talk About Ventilation*, *The Atlantic* (July 30, 2020)
22 (<https://www.theatlantic.com/health/archive/2020/07/why-arent-we-talking-more-aboutairborne-transmission/614737/>) (last visited Sept. 8, 2020).

23 ¹³ Ramon Padilla & Javier Zarracina, *Coronavirus might spread much farther than 6 feet in the air. CDC says wear a mask in public.*, USA Today (July 17, 2020)
24 (www.usatoday.com/in-depth/news/2020/04/03/coronavirusprotection-how-masks-might-stop-spread-throughcoughs/5086553002/) (last visited Sept. 8, 2020); Alex W H Chin, *et al.*,
25 *Stability of SARS-CoV-2 in different environmental conditions*, *The Lancet* (Apr. 2, 2020)
26 ([https://www.thelancet.com/journals/lanmic/article/PIIS2666-5247\(20\)30003-3/fulltext](https://www.thelancet.com/journals/lanmic/article/PIIS2666-5247(20)30003-3/fulltext)) (last
27 visited Sept. 8, 2020); *The New England Journal of Medicine, Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1*, (Mar. 17, 2020)
28 (<https://www.nejm.org/doi/full/10.1056/NEJMc2004973>) (last visited Sept. 8, 2020).

1 was detectable up to two-to-three days on plastic and stainless steel,¹⁴ and the CDC
2 has reported that the virus can remain on polystyrene plastic, aluminum, and glass for
3 four (4) days at the humidity recommended for indoor living spaces.¹⁵

4 46. Frequently touched surfaces, therefore, are a potential source of
5 transmission of COVID-19.¹⁶

6 47. On March 27, 2020, the CDC released a report titled, “Public Health
7 Responses to COVID-19 Outbreaks on Cruise Ships – Worldwide, February – March
8 2020,” which details COVID-19 outbreaks on three different cruise ships, which
9 caused more than 800 confirmed cases and ten (10) deaths.¹⁷

10 48. Of the individuals tested, a high proportion were found to be
11 asymptomatic.¹⁸

12 49. COVID-19 was identified on a variety of surfaces in cabins of both
13 symptomatic and asymptomatic infected passengers up to seventeen (17) days after
14 cabins were vacated on the Diamond Princess, but before disinfection procedures.¹⁹

15 50. The CDC notes that more studies are required to understand COVID-19
16

17
18 ¹⁴ National Institutes of Health, *New coronavirus stable for hours on surfaces* (Mar. 17,
19 2020) (<https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces>) (last visited Sept. 8, 2020).

20 ¹⁵ Boris Pastorino, *et al.*, *Prolonged Infectivity of SARS-CoV-2 in Fomites*, *Emerging*
21 *Infectious Diseases* vol. 26, no. 9 (Sept. 2020) (https://wwwnc.cdc.gov/eid/article/26/9/20-1788_article) (last visited Sept. 8, 2020).

22 ¹⁶ G. Kampf, *et al.*, *Persistence of coronaviruses on inanimate surfaces and their*
23 *inactivation with biocidal agents*, *Journal of Hospital Infection* vol. 104 at pp. 246-51 (2020)
24 (<https://www.journalofhospitalinfection.com/action/showPdf?pii=S0195-6701%2820%2930046-3>) (last visited Sept. 8, 2020).

25 ¹⁷ Leah F. Moriarty, *et al.*, *Public Health Responses to COVID-19 Outbreaks on Cruise*
26 *Ships — Worldwide, February–March 2020*, CDC (Mar. 27, 2020)
27 (https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm?s_cid=mm6912e3_w) (last visited Sept. 8, 2020).

28 ¹⁸ *Id.*

¹⁹ *Id.*

1 transmission, but the uncertainty has serious implications for close contact
2 environments.

3 **C. Civil Authority Orders because of COVID-19, the Pandemic and/or**
4 **Related Physical Loss or Damage to Property**

5 51. On March 16, 2020, to reduce further loss and/or damage and to slow the
6 Pandemic, the CDC and the national Coronavirus Task Force issued public guidance,
7 titled “30 Days to Slow the Spread” of COVID-19. This guidance called for social
8 distancing measures that included working from home and avoiding gatherings of
9 more than ten (10) people.

10 52. Also, to reduce loss and/or damage from COVID-19 and to slow the rate
11 of transmission, state and local governments imposed directives requiring residents to
12 shelter-in-place, or remain in their homes unless performing “essential” activities
13 (“Governmental Orders”).

14 53. Because COVID-19 physically affects the property on which it is present
15 and can be transferred to individuals that come in contact with the surface of such
16 property, and because it can also be transmitted via airborne droplets, infecting the
17 individual through either or both modes of transmission, the Governmental Orders
18 were issued directly because of damage to property to minimize the spread of
19 COVID-19 by reducing the likelihood of an individual’s exposure to that property.

20 54. These Governmental Orders commonly require businesses deemed “non-
21 essential” to close and forbid in-person work, and require businesses that remain open
22 to make changes to their property and operations to avoid the spread of COVID-19.

23 55. On March 19, 2020, California issued Executive Order N-33-20, ordering
24 that, “[t]o protect public health, . . . all individuals living in the State of California
25 [must] stay home or at their place of residence except as needed to maintain continuity
26 of operations of the federal infrastructure sectors” A true copy of Executive
27 Order N-33-20 is attached as Exhibit C. (at COMPLAINT-00285.)

28 56. On May 27, 2020, the City of Los Angeles revised its March 19, 2020

1 “Safer at Home” order, detailing how COVID-19 “can spread easily from person to
2 person and it is physically causing property loss or damage due to its tendency to
3 attach to surfaces for prolonged periods of time.” A true copy of the City of Los
4 Angeles Safer at Home Order is attached as Exhibit D. (at COMPLAINT-00287.)

5 57. On March 6, 2020, Butte County’s Assistant Chief Administrative
6 Officer proclaimed a public health emergency in response to COVID-19, under which
7 Butte County has enforced compliance with orders issued by the State of California in
8 response to COVID-19. A true copy of the Butte County emergency proclamation is
9 attached as Exhibit E. (at COMPLAINT-00300-03.)

10 58. Other governmental entities issued similar orders declaring a public
11 health emergency and describing how COVID-19 causes property damage. *See e.g.*,
12 Napa County order attached as Exhibit F (at COMPLAINT-00305) and Sonoma
13 County order attached as Exhibit G (at COMPLAINT-00332).

14 59. As another example, the Pennsylvania Supreme Court found that “the
15 virus can live on surfaces for up to four days. Thus, any location (including
16 Petitioners’ businesses) where two or more people can congregate is within the
17 disaster area.” *Friends of DeVito, et al. v. Tom Wolf, Governor, et al.*, No. 68 MM
18 2020, at 29 (Pa. Apr. 13, 2020). Notably, one of Lulus’ warehouses is located in
19 Pennsylvania.

20 60. Positivity rates measure the number of positive tests from the total
21 number of tests administered and are used for determining whether a particular area is
22 prepared to reopen.

23 61. The WHO recommends that a particular area reach a positivity rate of
24 5.00% or lower before reopening.²⁰

25 62. As of September 8, 2020, Johns Hopkins University calculates eighteen
26

27 ²⁰ *See* Johns Hopkins University & Medicine, *WHICH U.S. STATES MEET WHO*
28 *RECOMMENDED TESTING CRITERIA?* (<https://coronavirus.jhu.edu/testing/testing-positivity>) (last visited Sept. 8, 2020).

1 (18) states to have a positivity rate that is equal to or below 5.00%.²¹

2 63. Numerous Governmental Orders remain in effect and continue to require
3 the suspension of business operations for non-essential and essential businesses.

4 64. Even with the reopening and loosening of restrictions in certain
5 jurisdictions, many businesses have not yet returned operations to pre-loss levels.

6 65. In some jurisdictions, including California, new orders restricting or
7 closing businesses have been issued as a direct result of a resurgence in COVID-19
8 cases after reopening for only a short period of time.²²

9 **D. The Impact of COVID-19 on Lulus' Operations**

10 66. COVID-19 has caused direct physical loss of and/or direct physical
11 damage to Lulus' property.

12 67. Lulus was forced to close all of its locations, with the exception of two
13 distribution and fulfillment facilities, due to COVID-19, the Pandemic and/or
14 Governmental Orders.

15 68. Lulus was forced to shut down its Pennsylvania distribution and
16 fulfillment location for approximately one day to disinfect the facility after learning
17 that an employee tested positive for COVID-19.

18 69. Lulus was forced to end a work shift early in its California distribution
19 and fulfillment location, and send all employees home, to disinfect the facility after it
20 learned that an employee tested positive for COVID-19.

21 70. The presence of COVID-19 caused direct physical loss or damage to all
22 of Lulus' locations.

23 71. The Policy requires Lulus to take reasonable actions to mitigate its losses,
24

25 _____
26 ²¹ *Id.*

27 ²² *See Anabel Munoz and Alix Martichoux, Gov. Newsom orders major reopening rollback*
28 *in attempt to control rampant COVID-19 spread, ABC7 (Jul. 13, 2020)*
(<https://abc7.com/governor-newsom-update-today-gavin-press-conference-california-covid-19-coronavirus/6315327/>) (last visited Sept. 8, 2020).

1 a requirement which, in conjunction with COVID-19, the Pandemic and/or the
2 Governmental Orders, caused Lulus to require employees who had been in close
3 contact with any employee who tested positive for COVID-19 to self-quarantine for
4 two (2) weeks. Lulus paid the wages of the employees who self-quarantined.

5 72. COVID-19, the Pandemic and/or the Governmental Orders have
6 restricted public gatherings such as graduation, proms, weddings and hospitality
7 operations, which reduced consumer demand for Lulus' apparel, substantially
8 reducing Lulus' sales and causing it to sustain substantial losses.

9 73. Lulus has incurred, and continues to incur, substantial losses associated
10 with the closure of its studio, which is used to photograph every item that is sold on its
11 e-commerce website and content for social media, for several weeks due to COVID-
12 19, the Pandemic and/or the Governmental Orders. Lulus has lost sales due to its
13 inability to advertise products available for sale on its e-commerce website using
14 professional models.

15 74. Even when Governmental Orders permitted Lulus to reopen its studio,
16 and Lulus implemented safety and health measures for the studio, professional models
17 refused, and continue to refuse, to travel to work in the studio out of a concern of
18 contracting COVID-19. Lulus has incurred additional costs to have professional
19 models photographed in their own homes throughout the country, as opposed to
20 Lulus' studio.

21 75. Lulus was forced to suspend incoming inventory for approximately seven
22 (7) weeks to prevent a large oversupply of the inventory it had on-hand and that it
23 would be unable to sell.

24 76. Lulus also has incurred losses associated with supply chain disruptions
25 and staffing issues due to the presence of the disease, Governmental Orders issued
26 because of same, and the presence of COVID-19 in the vicinity of Lulus' locations.

27 77. Some of Lulus' suppliers could not fulfill Lulus' orders for reasons
28 related to COVID-19 and/or the Pandemic, and Lulus had to find new suppliers.

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1 78. Nordstrom, Lulus' wholesale partner, temporarily closed all of its stores
2 in the United States, Canada, and Puerto Rico as a result of COVID-19 and/or the
3 Pandemic and/or the Governmental Orders; it also canceled unfulfilled and future
4 orders with Lulus.

5 79. COVID-19, the Pandemic and the Governmental Orders thus have
6 directly impacted Lulus' operations as well as Lulus' gross earnings and gross profit
7 and have directly caused Lulus to incur extra costs to temporarily continue as nearly
8 as normal as practicable the conduct of the business.

9 80. The restrictions and limitations on Lulus' operations have caused
10 substantial damage as compared to the year before; these losses are continuing.

11 81. Even when Governmental Orders did not require closure of Lulus'
12 warehouse and fulfillment locations, and Lulus implemented costly measures to
13 ensure employees' safety and health, some employees would not return to work out of
14 a concern of contracting COVID-19. Lulus has also paid an "essential worker"
15 premium to retain and incentivize employees to work in Lulus' distribution centers
16 during the Pandemic.

17 82. The materials on which COVID-19 have been scientifically shown to
18 remain for hours, and even days as discussed *supra*, are used at Lulus' properties.

19 83. Lulus also has incurred and continues to incur mitigation and
20 preservation of property expenses to prevent the spread of the disease onsite, where
21 possible.

22 84. COVID-19, the Pandemic and/or the Governmental Orders have rendered
23 Lulus' property unusable and/or unfit for Lulus' normal business operations.

24 85. Operations at Lulus' properties continue to remain limited or modified as
25 a direct result of the physical presence of COVID-19 and the reasonable likelihood of
26 its further spread at such locations, as well as due to a direct result of Governmental
27 Orders issued in connection with preventing further physical loss or damage to
28 property and transmission to uninfected individuals.

1 86. As a further result of these circumstances, Lulus has incurred actual,
2 necessary and reasonable extra expenses to continue its business operations in the
3 interim as close to normal as practicable in locations where any continuation of
4 business operations has been possible.

5 87. In addition to the direct physical loss and/or direct physical damage that
6 COVID-19 has caused to Lulus' property, orders by civil authority have specifically
7 prohibited access to Lulus' locations as the direct result of COVID-19 in the
8 immediate area of Lulus' locations, which has caused and continues to cause Lulus to
9 sustain actual, necessary and reasonable Extra Expense.

10 88. Accordingly, COVID-19, the Pandemic and/or the Governmental Orders
11 have caused direct physical loss and/or direct physical damage to Lulus' property.

12 **E. COVID-19, the Pandemic and/or the Governmental Orders Have**
13 **Triggered Multiple Coverages under the Hartford Policy**

14 **1. Property Coverage and Direct Physical Loss or Direct Physical**
15 **Damage**

16 89. The Hartford All Risks Policy states Hartford "will pay for direct
17 physical loss of or direct physical damage to" Covered Property from a Covered
18 Cause of Loss. (Exhibit A at COMPLAINT-00079.)

19 90. The Policy defines "Covered Property" to include locations "for which a
20 Limit of Insurance and a premises address is shown in the Property Choice – Schedule
21 of Premises and Coverages." (Exhibit A at COMPLAINT-00079 Exhibit B at
22 COMPLAINT-000247-57; COMPLAINT-000268-78)

23 91. All nine (9) of Lulus' locations are listed in the Property Choice –
24 Schedule of Premises and Coverages with a Limit of Insurance and a premise address.
25 (Exhibit B at COMPLAINT-000247-57; COMPLAINT-000268-78)

26 92. The Policy also defines Covered Cause of Loss as "direct physical loss or
27 direct physical damage . . . unless the loss or damage is excluded or limited in this
28 policy." (Exhibit A at COMPLAINT-00092.)

1 93. The Policy is an All Risks policy, meaning that it covers all risks unless
2 clearly excluded.

3 94. In 2006, the Insurance Services Office (“ISO”), an entity charged with
4 drafting standard form policy language for use by the insurance industry, developed a
5 form exclusion, numbered CP 01 40 0706 and titled “Loss due to Virus or Bacteria.”
6 The Policy does **not** contain this exclusion.

7 95. In fact, Hartford and other insurance companies have acknowledged that
8 All Risks policies may cover claims associated with COVID-19, the Pandemic and/or
9 Governmental Orders.

10 96. Hartford stated in a Securities and Exchange Commission (“SEC”) Form
11 10-Q filed on July 27, 2006 that “[o]ur property and casualty insurance operations
12 expose us to claims arising out of catastrophes. Catastrophes can be caused by
13 various unpredictable events, including earthquakes, hurricanes, hailstorms, severe
14 winter weather, floods, fires, tornadoes, explosions and other natural or man-made
15 disasters. *We also face substantial exposure from losses resulting from* acts of war,
16 acts of terrorism, *disease pandemics* and political instability.” (emphasis added)
17 Additionally, since at least 2010, and including in its annual report for 2020, Hartford
18 has dedicated an entire subsection of certain SEC annual and quarterly filings to
19 “Pandemic Risk.”

20 97. Another large insurer, Chubb, similarly has acknowledged, in its Form
21 10-K for the fiscal year ended December 31, 2019, that it has “substantial exposure to
22 losses resulting from . . . catastrophic events, including pandemics.”

23 98. The presence of COVID-19 at Lulus’ locations has triggered coverage
24 under the policies.

25 99. The presence of COVID-19 at or near property away from Lulus’
26 locations also has triggered coverage under the Policy.

27 100. COVID-19, the Pandemic and/or the Governmental Orders have caused
28 and continue to cause direct physical loss of and/or direct physical damage to Lulus’

1 property.

2 101. The Policy does not provide a definition of “damage” and the term
3 reasonably encompasses some and/or all of the loss Lulus has sustained.

4 102. COVID-19, the Pandemic and/or the Governmental Orders caused and
5 continue to cause physical damage to property including but not limited to a physical
6 alteration to the integrity of the property at and away from Lulus’ locations.

7 103. COVID-19 has been present in the air at Lulus’ locations and has directly
8 caused and continues to directly cause physical damage to Lulus’ property.

9 104. Hartford has asserted that the undefined term “damage” should be
10 narrowly construed on its behalf, enabling it to avoid covering Lulus’ losses, an
11 assertion contrary to generally accepted rules of construction in California, which
12 provide that, wherever reasonably possible, courts will construe ambiguities in a
13 standard form policy against the drafter.

14 105. In the alternative, Lulus maintains, that the term “loss,” which similarly
15 is not defined in the Policy, has a separate and distinct meaning from the term
16 “damage,” including, but not limited to, loss of use, loss of functionality for intended
17 purpose, or loss of value, any and all of which would be reasonable constructions of
18 the term “loss.”

19 106. COVID-19, the Pandemic and/or the Governmental Orders caused and
20 continue to cause Lulus to sustain direct physical loss.

21 107. Hartford has asserted that the undefined term “loss” should be construed
22 as redundant of the term “damage” and thereby enabling it to avoid covering Lulus’
23 losses, an assertion contrary to generally accepted rules of construction in California,
24 which provide that, wherever reasonably possible, courts will construe ambiguities in
25 a standard form policy against the drafter, and that courts will strive to give meaning
26 to every term in the insurance policy.

27 108. The term “direct” is reasonably construed to mean “proximate cause” and
28 COVID-19, the Pandemic and/or the Governmental Orders are a direct or proximate

1 cause of “loss” as well as “damage” to Lulus’ Covered Property.

2 109. Additionally, because of asymptomatic and pre-symptomatic
3 transmission, Lulus incurred and continues to incur costs of mitigation and
4 preservation of property and/or damage to its property to prevent the spread of the
5 disease at its locations, where possible.

6 110. Lulus’ loss of use of its property and/or damage to its property, due to the
7 actual and imminent presence of COVID-19, the Pandemic and/or the Governmental
8 Orders, is “physical” because Lulus has been deprived of the use and function of its
9 buildings, land on which the buildings are located, the immovable objects within these
10 buildings (all of which are physical), and/or because the virus itself is tangible, visible
11 through a microscope, breathable and otherwise physical.

12 111. Lulus asserts that the presence of COVID-19, the Pandemic and/or the
13 Governmental Orders have caused and continue to cause Lulus to suffer covered loss
14 and/or damage under the Policy’s Property Coverage.

15 112. Lulus’ actions ceasing and/or reducing operations were reasonably
16 necessary to protect its property from further damage and resulting loss or damage as
17 required by the Policy (Exhibit A at COMPLAINT-00066) and are covered for this
18 reason as well.

19 **2. Specialized Property Coverages**

20 113. The Policy contains an endorsement, titled “Property Choice –
21 Specialized Property Insurance Coverages for Business Services,” which provides
22 additional property coverages (the “Specialized Property Coverages Endorsement”).
23 (Exhibit A at COMPLAINT-00046.)

24 114. The Policy provides Extra Expense and Expediting Expenses Coverage
25 which states that, in the event of a Covered Cause of Loss to Covered Property,
26 coverage extends to “the actual, necessary and reasonable” extra expenses Lulus
27 incurs “to continue as nearly as possible [its] normal business operations immediately
28 following the covered loss or damage[.]” (Exhibit A at COMPLAINT-00050.)

1 115. The Policy’s Extra Expense and Expediting Expenses Coverage provides
2 coverage here because Lulus has incurred and will continue to incur actual, necessary
3 and reasonable extra expenses to continue as nearly as possible its normal business
4 operations immediately following the direct physical loss of and/or direct physical
5 damage to its property from COVID-19, the Pandemic and/or the Governmental
6 Orders.

7 **3. Business Income and Extra Expense Coverage**

8 116. Hartford is obligated to pay for “the actual loss of Business Income
9 [Lulus] sustain[s] and the actual, necessary and reasonable Extra Expense [Lulus]
10 incur[]s due to the necessary interruption of [Lulus’] business operations during the
11 Period of Restoration due to direct physical loss of or direct physical damage to
12 property caused by or resulting from a Covered Cause of Loss” (Exhibit A at
13 COMPLAINT-00085.)

14 117. For the reasons discussed *supra*, the presence of COVID-19 at Lulus’
15 properties damaged the physical infrastructure at the properties, directly causing loss
16 and/or damage.

17 118. For the reasons discussed *supra*, the presence of COVID-19 in the air at
18 Lulus’ properties damaged the physical infrastructure of the properties, directly
19 causing loss and/or damage.

20 119. For the reasons discussed *supra*, the presence of COVID-19 at or near
21 Lulus’ property resulted in Governmental Orders which directly caused Lulus to incur
22 loss and/or damage.

23 120. COVID-19, the Pandemic and/or the Governmental Orders have caused
24 physical loss of and/or direct physical damage to Covered Property by impairing the
25 “value, usefulness, or normal function of” Lulus’ premises, rendering it unusable
26 and/or unfit for its normal business operations, and otherwise by damaging Lulus’
27 property.

28 121. Specifically, Lulus cannot resume its normal operations because, in light

1 of the factors alleged above, there is a reasonable likelihood that COVID-19 will be
2 brought onto the premises.

3 122. Lulus' loss of use of its property and/or its damage to its property, due to
4 COVID-19, the Pandemic and/or the Governmental Orders, is "physical" because
5 Lulus has been deprived of the use and function of its buildings, land on which the
6 buildings are located, and the immovable objects within these buildings (all of which
7 are physical) and/or because the virus itself is physical.

8 123. The term "direct" is reasonably construed to mean "proximate cause" and
9 COVID-19, the Pandemic and/or the Governmental Orders are a direct or proximate
10 cause of "loss" as well as "damage" to Lulus' Covered Property.

11 124. Lulus thus has sustained and continues to sustain actual loss of Business
12 Income due to the necessary interruption of its business operations because of direct
13 physical loss of, or physical damage to, property that has been caused by or resulted
14 from COVID-19, the Pandemic and/or the Governmental Orders.

15 125. COVID-19, the Pandemic and/or the Governmental Orders thus have
16 triggered Business Income Coverage under the Policy.

17 126. Lulus also has incurred and continues to incur actual, necessary and
18 reasonable Extra Expense due to the necessary interruption of its business operations
19 because of direct physical loss of and/or direct physical damage to property that has
20 been caused by or resulted from COVID-19, the Pandemic and/or the Governmental
21 Orders.

22 127. COVID-19, the Pandemic and/or the Governmental Orders thus have
23 triggered Extra Expense Coverage under the Policy.

24 **4. Business Income and Extra Expense Additional Coverages**

25 128. The Policy contains an endorsement, titled "Property Choice Business
26 Income and Extra Expense Coverage Form – Additional Coverages," which provides
27 additional business interruption coverages (the "Business Income and Extra Expense
28 Additional Coverages Endorsement"). (Exhibit A at COMPLAINT-00070.)

1 operations caused by direct physical loss and/or direct physical damage to a
2 Dependent Property proximately caused by COVID-19, the Pandemic and/or the
3 Governmental Orders.

4 134. The Policy’s Dependent Properties Coverage covers Lulus because Lulus
5 has sustained actual, necessary and reasonable Extra Expense because of the necessary
6 suspension of its operations caused by direct physical loss of and/or direct physical
7 damage to a Dependent Property caused by or resulting from COVID-19, the
8 Pandemic and/or the Governmental Orders.

9 **c. Future Earnings Coverage**

10 135. The Policy provides Future Earnings Coverage, which states that, in the
11 event of a covered Business Income Loss at Scheduled Premises, Hartford will pay for
12 “the actual loss of Business Income [Lulus] subsequently and necessarily sustain[s]
13 after the Period of Restoration and the Extended Income period ends and that [sic] the
14 actual loss in Business Income is directly attributable to the Covered Cause of Loss
15 occurrence.” (Exhibit A at COMPLAINT-00074.)

16 136. COVID-19, the Pandemic and/or the Governmental Orders have
17 triggered Future Earnings Coverage under the Policy because Lulus has incurred and
18 will continue to incur actual loss of Business Income subsequently and necessarily
19 after the end of the Period of Restoration and the Extended Income period, and such
20 actual loss of Business Income is directly attributable to COVID-19, the Pandemic
21 and/or the Governmental Orders.

22 137. The Policy’s Future Earnings Coverage covers Lulus because Lulus has
23 incurred and will continue to incur actual, necessary and reasonable Extra Expense
24 subsequently and necessarily after the end of the Period of Restoration and the
25 Extended Income period, and such actual loss of Business Income is directly
26 attributable to COVID-19, the Pandemic and/or the Governmental Orders.

27 **d. Ingress or Egress Coverage**

28 138. The Policy provides Ingress or Egress Coverage, which states that “[t]his

1 insurance is extended to apply to the actual loss of Business Income you sustain when
2 ingress or egress to your ‘Scheduled Premises’ is specifically prohibited as the direct
3 result of a Covered Cause of Loss to property at premises that is [sic] contiguous to
4 your ‘Scheduled Premises’.” (Exhibit A at COMPLAINT-00074.)

5 139. The Policy’s Ingress or Egress Coverage covers Lulus because Lulus has
6 sustained and will continue to sustain actual loss of Business Income because ingress
7 to and egress from Scheduled Premises has been specifically prohibited as the direct
8 result of COVID-19, the Pandemic and/or the Governmental Orders at premises that
9 are contiguous to the Scheduled Premises.

10 140. None of the exclusions in Section 8 of the Business Income and Extra
11 Expense Additional Coverages Endorsement preclude coverage for Lulus’ claimed
12 loss under the Ingress or Egress Coverage.

13 **F. No Exclusion in the Policy Precludes or Limits Coverage for Lulus’**
14 **Losses due to COVID-19**

15 141. No exclusions in the Policy preclude or limit coverage, in whole or in
16 part, for Lulus’ claimed losses.

17 142. Specifically, the Policy’s “Fungus” Exclusion does not preclude or limit
18 coverage, in whole or in part, for Lulus’ claim, where the exclusion states that
19 Hartford will not pay for loss or damage caused directly or indirectly by “Presence,
20 growth, proliferation, spread or any activity of ‘fungus,’ wet rot, dry rot, bacteria or
21 virus.” (Exhibit A at COMPLAINT-00093.)

22 143. COVID-19 is not a bacteria or a virus; it is a communicable disease that
23 is caused by the virus known as SARS-CoV-2.²³ Hartford cannot reasonably maintain
24

25 ²³ World Health Organization, *Transmission of SARS-CoV-2: implications for infection*
26 *prevention precautions* (July 9, 2020), [https://www.who.int/news-](https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions)
27 [room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-](https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions)
28 [precautions](https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions) (last visited Sept. 8, 2020); Centers for Disease Control and Prevention, *SARS-*
CoV-2 Viral Culturing at CDC (last updated May 5, 2020),
<https://www.cdc.gov/coronavirus/2019-ncov/lab/grows-virus-cell-culture.html> (last visited

1 that COVID-19, which is a communicable disease, constitutes a virus or bacteria.

2 144. Thus, because the Policy’s “Fungus” Exclusion does not exclude
3 coverage for a disease or communicable disease, it clearly and unambiguously does
4 not preclude coverage for Lulus’ claimed losses due to COVID-19.

5 145. Even if application of the “Fungus” Exclusion to COVID-19 was unclear
6 (it is clear and does not apply), such ambiguity must be construed in favor of
7 coverage.

8 146. Additionally, pursuant to the doctrine of *ejusdem generis*, general words
9 appearing in a series with words of a particular and specific meaning must be
10 construed narrowly to apply to persons and things of the same general kind or class as
11 those specifically mentioned. Thus, the words “virus” and “bacteria” in the Policy’s
12 “Fungus” Exclusion must be construed as applying to circumstances similar to those
13 that would apply with respect to the other words in the series, *i.e.*, fungus, wet rot, and
14 dry rot.

15 147. Nor is coverage limited here by the “Fungus” Endorsement, which, in
16 Section 6 of the Business Income and Extra Expense Endorsement, provides coverage
17 when “fungus,” wet rot, dry rot bacteria or virus is the result of one or more causes
18 specified in the provision, or when Business Income and/or Extra Expense Coverage
19 applies to the Scheduled Premises.

20 148. The “Fungus” Endorsement does not limit coverage here because it
21 provides a grant of coverage. It is not an exclusion.

22 149. Even if the “Fungus” Endorsement could unambiguously limit coverage
23 for the causes of loss to which it applies (which it cannot), the provision would not
24 apply regarding COVID-19 because COVID-19 is a communicable disease, and the
25 “Fungus” Endorsement does not discuss diseases.

26
27
28 _____
Sept. 8, 2020).

1 **G. Hartford’s Breach of Good Faith and Fair Dealing and Violation of**
2 **the UCL**

3 150. Hartford’s failure to diligently pursue a thorough, fair, and objective
4 investigation of Lulus’ claim and its improper denial of coverage constitute a breach
5 of the covenant of good faith and fair dealing that is implied in every insurance policy.

6 151. On March 30, 2020, Lulus submitted its original notice of loss (the
7 “Original Notice of Loss”) to Hartford under the Policy, providing a description of
8 loss as “COVID-19.” A true copy of the Original Notice of Loss is attached as
9 Exhibit H.

10 152. On April 2, 2020, Hartford declined the tender, and stated, without
11 having conducted any investigation, that “no covered loss of income or otherwise has
12 occurred at the present time.” A true copy of this denial is attached as Exhibit I. (at
13 COMPLAINT-00345.)

14 153. On April 15, 2020, Lulus submitted a revised notice of loss (the “Revised
15 Notice of Loss”) to Hartford, providing a detailed description of loss as follows:

16 This notice of loss is based on COVID-19 including, without
17 limitation, the direct physical loss of or damage to property,
18 actual detection of COVID-19, orders from civil and/or
19 governmental authorities based on the physical loss of or
20 damage to property and restricting or prohibiting partial or total
access to property, and necessitating the preservation and
protection of property.

21 For example, the Chico administrative offices and studio
22 building are closed due to California’s safer at home order. The
23 Los Angeles office is closed due to Los Angeles County safer at
24 home order. The Chico Outlet Store is closed due to
California’s safer at home order.

25 Distribution facilities are operating in a limited capacity and are
26 also impacted as a result of local and state orders issued in
27 California and Pennsylvania. With respect to the distribution
28 centers, the insured is also incurring significant extra expense
and other costs to preserve and protect property, continue
business operations, and mitigate further losses. An employee

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1 of the Easton, Pennsylvania distribution center tested positive
2 for COVID-19 within the last week.

3 In addition, the insured is experiencing supply chain disruption
4 as a result of the physical loss of or damage to property caused
5 by COVID-19 and the resulting decline in sales due to the
6 impact of the physical loss of or damage to property caused by
7 COVID-19, and the resulting state and governmental orders, on
8 the insured's customers.

9 A true copy of the Revised Notice of Loss is attached as Exhibit J. (at COMPLAINT-
10 00349.)

11 154. The next day, April 16, 2020, Hartford again denied Lulus' claim, again
12 without requesting any information from Lulus, again expressing the conclusion that
13 Lulus had not suffered any direct physical loss or direct physical damage to property
14 from COVID-19, and again, providing no reason(s) supporting its denial. A true copy
15 of Hartford's April 16, 2020 denial is attached as Exhibit K.

16 155. On June 2, 2020, Lulus, by and through its counsel, responded to
17 Hartford's denial of coverage, providing a detailed explanation with case authority
18 explaining why Lulus is entitled to coverage under the Policy for its claim. A true
19 copy of Lulus' June 2, 2020 letter to Hartford is attached as Exhibit L.

20 156. By letter dated June 11, 2020, Hartford responded that its coverage
21 position remained unchanged, maintaining there was no evidence of "actual damage"
22 to property due to COVID-19. This position misstates the terms of the Policy and
23 fails to adequately address the multiple coverages to which Lulus is entitled under the
24 Policy for its claim, as alleged in this Complaint. COVID-19, the Pandemic and/or
25 the Governmental Orders have caused direct physical loss and/or damage to Lulus'
26 property, as Lulus reported in its Notice of Loss. A true copy of Hartford's June 11,
27 2020 letter is attached as Exhibit M.

28 157. Additionally, while Hartford's denial of coverage, centrally, was based
on its position that there was no evidence of actual damage, Hartford still did not

1 request any additional information or provide any substantive discussion concerning
2 its conclusory position that there was no direct physical loss or direct physical damage
3 to Lulus' property due to COVID-19.

4 158. Hartford's conduct with respect to Lulus is consistent with and part of an
5 orchestrated campaign that Hartford has engaged in throughout the country, denying
6 coverage without having conducted any investigation, to innumerable other Hartford
7 policyholders with the object of dissuading them from pursuing covered insurance
8 claims.

9 159. Hartford's bad faith conduct as described herein and otherwise, as the
10 facts will show, also violates California insurance laws and regulations.

11 160. The UCL (Cal. Bus. & Prof. Code §§ 17200, *et seq.*) prohibits "unfair
12 competition," including "any unlawful, unfair or fraudulent business act or practice
13 and unfair, deceptive, untrue or misleading advertising." A violation of the UCL may
14 occur based on unfair business practices even where the violator did not intend to
15 injure anyone through such unfair business practices, or where it violated common
16 law principles of good faith.

17 161. California Insurance Code §790.03(h) provides that it constitutes unfair
18 methods of competition, and unfair and deceptive acts or practices, in the business of
19 insurance to knowingly commit or perform with such frequency as to indicate a
20 general business practice, any of the following unfair claims settlement practices:

21 (1) Misrepresenting to claimants pertinent facts or insurance policy
22 provisions relating to any coverages at issue.

23 (2) Failing to acknowledge and act reasonably promptly upon
24 communications with respect to claims arising under insurance
25 policies.

26 (3) Failing to adopt and implement reasonable standards for the
27 prompt investigation and processing of claims arising under insurance
28 policies.

...

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(5) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.

(6) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds, when the insureds have made claims for amounts reasonably similar to the amounts ultimately recovered.

...

(11) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either, to submit a preliminary claim report, and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.

(12) Failing to settle claims promptly, where liability has become apparent, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

(13) Failing to provide promptly a reasonable explanation of the basis relied on in the insurance policy, in relation to the facts or applicable law, for the denial of a claim or for the offer of a compromise settlement.

162. The California Fair Claims Settlement Practices Regulations state at section 2695.7(b)(1) that: “Where an insurer denies or rejects a first party claim, in whole or in part, it shall do so in writing and shall provide to the claimant a statement listing all bases for such rejection or denial and the factual and legal bases for each reason given for such rejection or denial which is then within the insurer’s knowledge. Where an insurer’s denial of a first party claim, in whole or in part, is based on a specific statute, applicable law or policy provision, condition or exclusion, the written denial shall include reference thereto and provide an explanation of the application of the statute, applicable law or provision, condition or exclusion to the claim.”

163. Additionally, on April 14, 2020, California Insurance Commissioner

1 Ricardo Lara issued a notice titled, “Requirement to Accept, Forward, Acknowledge,
2 and Fairly Investigate All Business Interruption Insurance Claims Caused by the
3 COVID-19 Pandemic” (the “Department of Insurance Notice”), a true copy of which
4 is attached as Exhibit N.

5 164. The Department of Insurance Notice acknowledges that to help combat
6 the spread of COVID-19, government officials have issued emergency public health
7 orders and “shelter-in-place” directives, and that the COVID-19 pandemic “has
8 severely curtailed activities of policyholders in both personal and commercial lines,
9 causing significant and widespread economic loss in California.” (Exhibit N at
10 COMPLAINT-00368.)

11 165. In this regard, the Department of Insurance Notice states, among other
12 things, that after receipt of a notice of claim “every insurer is required to conduct and
13 diligently pursue a thorough, fair, and objective investigation of the reported claim,
14 and is prohibited from seeking information not reasonably required for or material to
15 the resolution of a claim dispute before determining whether the claim will be
16 accepted or denied, in whole or in part. (Regulations, section 2695.7(d).)” (*Id.* at
17 COMPLAINT-000369.)

18 166. Hartford’s failure to diligently pursue a thorough, fair, and objective
19 investigation of Lulus’ claim and improper denial of coverage constitutes a violation
20 of the California common law principles of good faith, which are implied in every
21 insurance contract, the California Insurance Code, and the UCL.

22 **H. Hartford’s Breach of Contract**

23 167. Lulus has sustained covered loss under the Policy and, accordingly,
24 submitted its claim to Hartford.

25 168. Hartford has wrongfully refused to provide coverage for Lulus’ claim in
26 breach of the Policy.

27 169. Hartford has asserted the following coverage positions with respect to
28 Lulus’ claim under the Policy: (i) there is no coverage under the Policy for this claim

1 because Lulus has not shown actual direct physical loss or direct physical damage to
2 property because of COVID-19; (ii) there is no coverage under the Policy for this
3 claim pursuant to the Policy’s “Fungus” Exclusion; and (iii), notwithstanding (i) and
4 (ii), other exclusions in the Policy may preclude coverage for this claim. These
5 coverage positions are wrong and constitute a wrongful denial of coverage for Lulus’
6 claim under the Policy.

7 170. In denying Lulus’ claim, Hartford has failed to faithfully apply the
8 language of the Policy that it drafted, ignored longstanding principles of California
9 insurance law, failed to conduct a reasonable investigation, and failed to consider the
10 facts relevant to the claim against the language of the Policy as interpreted pursuant to
11 California law.

12 171. Hartford’s actions in handling Lulus’ claim under the Policy constitutes a
13 breach of contract.

14 172. In consequence of Hartford’s breach of contract, Lulus has suffered and
15 continues to suffer significant damages.

16 173. Lulus has fully complied with all of the terms and conditions of the
17 Policy and has satisfied any and all conditions precedent to coverage under the Policy,
18 including but not limited to paying premiums, providing timely notice of the claim,
19 taking all reasonable steps to protect the property from further damage, and keeping a
20 record of expenses necessary to protect the Covered Property.

21 **V. CAUSES OF ACTION**

22 **COUNT I**
23 **Declaratory Judgment**

24 174. Lulus repeats and realleges the allegations in the preceding paragraphs.

25 175. Lulus seeks a declaration of the parties’ rights and duties under the Policy
26 pursuant to 28 U.S.C. §2201. A justiciable controversy exists between Lulus and
27 Hartford concerning the availability of coverage under the Policy for Lulus’ claim.

28 176. The controversy between Lulus and Hartford is ripe for judicial review.

1 177. Accordingly, Lulus seeks a declaration from the Court that:

- 2 (1) Each coverage provision identified herein is triggered by Lulus’
3 claim;
4 (2) No exclusion in the Policy applies to bar or limit coverage for
5 Lulus’ claim;
6 (3) The Policy covers Lulus’ claim;
7 (4) Hartford violated the implied covenant of good faith and fair
8 dealing;
9 (5) Hartford violated the UCL; and
10 (6) Any other declaratory relief that would be useful to the resolution
11 of the dispute between the parties.

12
13 **COUNT II**
14 **Breach of Contract**
15 **(Property Coverage)**

16 178. Lulus repeats and realleges the allegations in the preceding paragraphs.

17 179. The Policy is a valid and enforceable contract between Lulus and
18 Hartford.

19 180. In the Policy, Hartford agreed to cover property against all risks of
20 physical loss or damage not otherwise excluded.

21 181. COVID-19, the Pandemic and/or the Governmental Orders have caused
22 and are continuing to cause physical loss and/or damage to Lulus’ property.

23 182. No exclusions apply to bar coverage.

24 183. Lulus is entitled to coverage for the physical loss and/or damage up to the
25 Policy’s \$72,234,180 limit of liability or any applicable sublimits.

26 184. Lulus complied with all applicable provisions in the Policy and satisfied
27 all conditions precedent to coverage, including paying premiums and providing timely
28 notice of the claim. To the extent Hartford contends otherwise, any such conditions
have been waived.

1 185. Nonetheless, Hartford unjustifiably refuses to pay for Lulus' loss in
2 breach of the Policy.

3 186. Lulus has suffered and continues to suffer damages as a result of
4 Hartford's breach of the Policy.

5 187. Lulus is entitled to damages as a result of Hartford's breach of contract in
6 an amount to be determined at trial, including pre- and post-judgment interest and any
7 other costs and relief that this Court deems appropriate.

8 **COUNT III**
9 **Breach of Contract**
10 **(Specialized Property Coverages)**

11 188. Lulus repeats and realleges the allegations in the preceding paragraphs.

12 189. The Policy is a valid and enforceable contract between Lulus and
13 Hartford.

14 190. In the Policy, Hartford agreed to cover property against all risks of
15 physical loss or damage not otherwise excluded as provided in the Policy's
16 Specialized Property Coverages Endorsement.

17 191. COVID-19, the Pandemic and/or the Governmental Orders have caused
18 and, upon information and belief, are continuing to cause physical loss and/or damage
19 to Lulus' property covered under the Specialized Property Coverages Endorsement.

20 192. No exclusions apply to bar coverage.

21 193. Lulus is entitled to coverage for the physical loss and/or damage up to
22 each Specialized Property Coverage's limit of liability or any applicable sublimits.

23 194. Lulus complied with all applicable provisions in the Policy and satisfied
24 all conditions precedent to coverage, including paying premiums and providing timely
25 notice of the claim. To the extent Hartford contends otherwise, any such conditions
26 have been waived.

27 195. Nonetheless, Hartford unjustifiably refuses to pay for Lulus' loss in
28 breach of the Policy.

1 196. Lulus has suffered and continues to suffer damages as a result of
2 Hartford's breach of the Policy.

3 197. Lulus is entitled to damages as a result of Hartford's breach of contract in
4 an amount to be determined at trial, including pre- and post-judgment interest and any
5 other costs and relief that this Court deems appropriate.

6 **COUNT IV**
7 **Breach of Contract**
8 **(Business Income and Extra Expense Coverage)**

9 198. Lulus repeats and realleges the allegations in the preceding paragraphs.

10 199. The Policy is a valid and enforceable contract between Lulus and
11 Hartford.

12 200. In the Policy, Hartford agreed to cover Business Income and Extra
13 Expense due to direct physical loss of or direct physical damage to property caused by
14 or resulting from a Covered Cause of Loss as provided in the Business Income and
15 Extra Expense Coverage Form.

16 201. COVID-19, the Pandemic and/or the Governmental Orders have caused
17 and, upon information and belief, are continuing to cause physical loss and/or physical
18 damage to Lulus' property and the property of others that has caused Lulus to suffer
19 Business Income and Extra Expense loss.

20 202. No exclusions apply to bar coverage.

21 203. Lulus is entitled to coverage for its Business Income and Extra Expense
22 loss related to COVID-19, the Pandemic and/or the Governmental Orders up to the
23 Policy's \$72,234,180 limit of liability or any applicable sublimits.

24 204. Lulus complied with all applicable provisions in the Policy and satisfied
25 all conditions precedent to coverage, including paying premiums and providing timely
26 notice of the claim. To the extent Hartford contends otherwise, any such conditions
27 have been waived.

28 205. Nonetheless, Hartford unjustifiably refuses to pay for Lulus' loss in

1 breach of the Policy.

2 206. Lulus has suffered and continues to suffer damages as a result of
3 Hartford's breach of the Policy.

4 207. Lulus is entitled to damages as a result of Hartford's breach of contract in
5 an amount to be determined at trial, including pre- and post-judgment interest and any
6 other costs and relief that this Court deems appropriate.

7
8 **COUNT V**
9 **Breach of Contract**
10 **(Business Income and Extra Expense Additional Coverages)**

11 208. Lulus repeats and realleges the allegations in the preceding paragraphs.

12 209. The Policy is a valid and enforceable contract between Lulus and
13 Hartford.

14 210. In the Policy, Hartford agreed to cover Business Income and Extra
15 Expense due to direct physical loss of or direct physical damage to property caused by
16 or resulting from a Covered Cause of Loss as provided in the Business Income and
17 Extra Expense Additional Coverages Endorsement.

18 211. COVID-19, the Pandemic and/or the Governmental Orders have caused
19 and, upon information and belief, are continuing to cause physical loss and/or physical
20 damage to Lulus' property and the property of others that has caused Lulus to suffer
21 business interruption loss covered under the Business Income and Extra Expense
22 Additional Coverages Endorsement.

23 212. No exclusions apply to bar coverage.

24 213. Lulus is entitled to coverage for its business interruption loss related to
25 COVID-19, the Pandemic and/or the Governmental Orders up to each Business
26 Income and Extra Expense Additional Coverage's limit of liability or any applicable
27 sublimits.

28 214. Lulus complied with all applicable provisions in the Policy and satisfied
all conditions precedent to coverage, including paying premiums and providing timely

1 notice of the claim. To the extent Hartford contends otherwise, any such conditions
2 have been waived.

3 215. Nonetheless, Hartford unjustifiably refuses to pay for Lulus' loss in
4 breach of the Policy.

5 216. Lulus has suffered and continues to suffer damages as a result of
6 Hartford's breach of the Policy.

7 217. Lulus is entitled to damages as a result of Hartford's breach of contract in
8 an amount to be determined at trial, including pre- and post-judgment interest and any
9 other costs and relief that this Court deems appropriate.

10 **COUNT VI**
11 **Punitive Damages**
12 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

13 218. Lulus repeats and realleges the allegations in the preceding paragraphs.

14 219. In connection with its efforts to sell the Policy to Lulus, Hartford
15 represented that it would evaluate claims on a good faith basis consistent with the
16 plain language of the Policy and pursuant to the law governing the interpretation of
17 that Policy.

18 220. Instead of doing what it represented it would do, Hartford implemented a
19 claims handling practice that was intended to deprive Lulus of the coverage that
20 Hartford was contractually required to provide under the Policy.

21 221. Hartford's improper claims handling practices include but are not limited
22 to: (i) failing to diligently pursue a thorough, fair, and objective investigation of
23 Lulus' claim; (ii) improperly denying coverage based on its position that there was no
24 evidence of "actual damage" to property, which is not the requirement for coverage
25 under the Policy; (iii) improperly asserting that the "Fungus" Exclusion bars coverage
26 for Lulus' claimed losses due to COVID-19, where such exclusion clearly and
27 unambiguously does not exclude coverage for a communicable disease such as
28 COVID-19; and (iv) asserting that other exclusions may preclude coverage, without

1 providing any legal or factual bases to support the applicability of any other
2 exclusions in the Policy, and where no such exclusions would bar coverage for Lulus'
3 claim under the Policy.

4 222. Hartford further violated the implied covenant of good faith and fair
5 dealing in numerous other respects including but not limited to the following: (i) it
6 misrepresented insurance policy provisions relating to coverages at issue and
7 otherwise failed to apply the Policy language; (ii) it failed to act reasonably promptly
8 upon communications with respect to claims arising under the Policy; (iii) it failed to
9 consider the facts relevant to the claim against the language of the Policy as
10 interpreted pursuant to California law; (iv) it failed to adopt and implement reasonable
11 standards for the prompt investigation and processing of claims under its Policy; (v) it
12 failed to conduct a full, fair, prompt and thorough investigation of the basis for Lulu's
13 claim; (vi) it did not attempt in good faith to effectuate a prompt, fair and equitable
14 settlement of a claim in which liability is clear; (vii) it did not give at least as much
15 consideration to Lulus' interests as it gave to its own interests; (viii) it unreasonably
16 and without proper cause acted or failed to act in a way which deprived Lulus of the
17 benefits of the Policy; (ix) it compelled Lulus to institute this litigation to recover
18 amounts due under the Policy; and (x) it ignored longstanding principles of California
19 law.

20 223. Hartford's conduct in handling Lulus' claim under the Policy, as
21 predicate of its violation of California common law principles of good faith, which are
22 implied in every insurance contract, has violated one or more elements of the UCL as
23 well as California insurance laws.

24 224. Hartford's wrongful conduct, including, but not limited to, its denial of
25 coverage, was unreasonable based on the information available to Hartford at the time
26 of such conduct.

27 225. Due to Hartford's unlawful and bad faith conduct, Lulus has suffered an
28 ascertainable loss and is continuing to suffer ascertainable losses.

1 226. Hartford’s unlawful and bad faith conduct was a substantial factor in
2 causing Lulus’ losses.

3 227. Lulus is entitled to an award of punitive damages, exemplary damages,
4 attorneys’ fees and such other relief as the Court deems appropriate based on
5 Hartford’s wrongful conduct.

6 **COUNT VII**
7 **Violation of California Unfair Competition Law**
8 **(Cal. Bus. & Prof. Code §§ 17200, et. seq.)**

9 228. Lulus repeats and realleges the allegations in the preceding paragraphs.

10 229. As discussed *supra*, instead of doing what Hartford represented it would
11 do in connection with its efforts to sell the Policy to Lulus, which is that it would
12 evaluate claims on a good faith basis consistent with the plain language of the Policy
13 and pursuant to the law governing the interpretation of that Policy, Hartford
14 implemented a claims handling practice that was intended to deprive Lulus of the
15 coverage that Hartford was contractually required to provide under the Policy.

16 230. Hartford’s improper claims handling practices include but are not limited
17 to the following ongoing misconduct at the expense of its insured: (i) failing to
18 diligently pursue a thorough, fair, and objective investigation of Lulus’ claim; (ii)
19 improperly denying coverage based on its position that there was no evidence of
20 “actual damage” to property, which is not the requirement for coverage under the
21 Policy; (iii) improperly asserting that the “Fungus” Exclusion bars coverage for Lulus’
22 claimed losses due to COVID-19, where such exclusion clearly and unambiguously
23 does not exclude coverage for a communicable disease such as COVID-19; and (iv)
24 asserting that other exclusions may preclude coverage, without providing any legal or
25 factual bases to support the applicability of any other exclusions in the Policy, and
26 where no such exclusions would bar coverage for Lulus’ claim under the Policy.

27 231. In handling Lulus’ claim under the Policy, Hartford has failed, and
28 continues to fail, to faithfully apply the language of the Policy that it drafted, ignored

1 longstanding principles of California insurance law, failed to conduct a reasonable
2 investigation, and failed to consider the facts relevant to the claim against the
3 language of the Policy as interpreted pursuant to California law.

4 232. Hartford's conduct, including its practice of avoiding its obligations
5 under the Policy at the expense of Lulus, is unlawful because, as discussed *supra*,
6 such conduct violated and continues to violate California common law principles of
7 good faith, which are implied in every insurance contract, which has caused Lulus to
8 incur substantial losses that should have been paid by Hartford under the Policy.

9 233. Hartford's conduct is unfair because it offends the established California
10 public policies that require an insurer to act in good faith in dealings with its insured;
11 to treat the interests of its insured as it would its own; to diligently pursue a thorough,
12 fair, and objective investigation of claims; to construe ambiguous policy terms in
13 favor of coverage; to construe the grants of coverage broadly in favor of coverage and
14 exclusions or other limiting terms narrowly; to not unreasonably delay in providing
15 insurance benefits under a policy; and to not place its own interests above the
16 insured's. Additionally, or alternatively, Hartford's conduct is unfair because it is
17 immoral, unethical, oppressive, unscrupulous and/or substantially injurious to
18 consumers.

19 234. Due to Hartford's unlawful and bad faith conduct, Lulus has suffered and
20 continues to suffer an ascertainable loss, and Lulus will continue to incur reasonable
21 attorneys' fees in order to enforce its rights.

22 235. Lulus is entitled to an award of equitable relief based on Hartford's
23 wrongful conduct, including injunctive relief, restitution, and any equitable relief that
24 this Court deems appropriate, pursuant to California Business and Professions Code
25 §17203.

26 236. Included in Lulus' claim for injunctive relief, Lulus seeks preliminary
27 and permanent injunctive relief prohibiting Hartford from continuing to engage in its
28 wrongful practices, including its misrepresentations regarding the terms and

1 conditions of the Policy, its refusal to honor its coverage obligations under the Policy,
2 and its refusal to take all necessary and reasonable actions to comply with the
3 covenant of good faith and fair dealing that is implied in the Policy.

4 237. Included in Lulus' claim for restitution, Lulus seeks restitutionary
5 disgorgement of the premiums Lulus paid directly to Hartford, which were wrongfully
6 obtained by Hartford through agreeing to policy obligations it did not intend to honor
7 and refuses to honor.

8 238. The remedies or penalties provided to Lulus under the UCL for
9 Hartford's unlawful conduct are cumulative to each other and to the remedies or
10 penalties available under all other laws of California, pursuant to California Business
11 and Professions Code §17205.

12 **PRAYER FOR RELIEF**

13 **Wherefore**, Lulus prays for judgment against Hartford as follows:

- 14 (1) A declaration from the Court that:
- 15 (a) Each of the coverage provisions identified herein is triggered by
 - 16 Lulus' claim;
 - 17 (b) No exclusion under the Policy applies to bar or limit coverage for
 - 18 Lulus' claim;
 - 19 (c) The Policy covers Lulus' claim;
 - 20 (d) Hartford breached the implied covenant of good faith and fair
 - 21 dealing;
 - 22 (e) Hartford violated the UCL (Cal. Bus. & Prof. Code §§ 17200, *et*
 - 23 *seq.*); and
 - 24 (f) Any other declaratory relief that would be useful to the resolution
 - 25 of this dispute between the parties;
- 26 (2) For special and consequential damages against Hartford in an amount to
- 27 be proved at trial, in excess of \$75,000.00;
- 28 (3) For punitive and exemplary damages as provided by law;

- 1 (4) Pre- and post-judgment interest as provided by law;
2 (5) An award of attorney’s fees and costs of suit incurred;
3 (6) For injunctive relief, restitution, and other equitable relief as provided by
4 law, including under the UCL (Cal. Bus. & Prof. Code §§ 17200, *et seq.*);
5 and
6 (7) For such other and further relief as the Court deems just and proper.

7 **DEMAND FOR JURY TRIAL**

8 Lulus demands trial by jury on all issues so triable.

9 DATED: September 11, 2020

HUNTON ANDREWS KURTH LLP

10
11 By: /s/ Scott P. DeVries

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13 Walter J. Andrews
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