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*Applications for admission *pro hac vice* to be filed

13 Counsel for Plaintiff and the Proposed Classes (*additional counsel appear on*
14 *signature page*)

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 WESTERN DIVISION

18 **CARIBE RESTAURANT &**
19 **NIGHTCLUB, INC.,**
20 individually and on behalf of
21 all others similarly situated,

21 Plaintiff,

22 v.

24 **TOPA INSURANCE**
25 **COMPANY,**

26 Defendant

Case No. 20-3570

CLASS ACTION COMPLAINT
FOR:

- (1) BREACH OF CONTRACT; and
- (2) DECLARATORY JUDGMENT

DEMAND FOR JURY TRIAL

1 Plaintiff Caribe Restaurant & Nightclub, Inc. (d/b/a Laz Luz Ultralounge)
2 (“Caribe”), individually and on behalf of the other members of the below-defined
3 nationwide classes (collectively, the “Class”), brings this class action against
4 Defendant Topa Insurance Company (“Topa”), and in support thereof states the
5 following:

6 **I. NATURE OF THE ACTION**

7 1. Plaintiff Caribe owns and operates La Luz Ultralounge (“La Luz”), a
8 restaurant and nightclub, located in Bonita, California. La Luz has served the San
9 Diego community since 2004. It’s existence, however, is now threatened by
10 COVID-19 (a.k.a. the “coronavirus” or “SARS-CoV-2”).

11 2. To protect its businesses in the event that it suddenly had to suspend
12 operations for reasons outside of its control, or if it had to act in order to prevent
13 further property damage, Plaintiff purchased insurance coverage from Topa,
14 including special property coverage, as set forth in Topa’s Businessowner’s
15 Business Income (and Extra Expense) Coverage Form (Form CP 00 30 10 02)
16 (“Special Property Coverage Form”).

17 3. Topa’s Special Property Coverage Form provides “Business Income”
18 coverage, which promises to pay for loss due to the necessary suspension of
19 operations following loss to property.

20 4. Topa’s Special Property Coverage Form also provides “Civil
21 Authority” coverage, which promises to pay for loss caused by the action of a civil
22 authority that prohibits access to the insured premises.

23 5. Topa’s Special Property Coverage Form also provides “Extra Expense”
24 coverage, which promises to pay the expense incurred to minimize the suspension
25 of business and to continue operations.

26 6. Topa’s Special Property Coverage Form, under a section entitled
27 “Duties in the Event of Loss” mandates that Topa’s insured “must see that the
28 following are done in the event of loss. . . [t]ake all reasonable steps to protect the

1 Covered Property from further damage and keep a record of your expenses necessary
2 to protect the Covered Property, for consideration in the settlement of the claim.”
3 This is commonly referred to as “Sue and Labor” coverage.

4 7. Unlike many policies that provide Business Income coverage (also
5 referred to as “business interruption” coverage), Topa’s Special Property Coverage
6 Form does not include, and is not subject to, any exclusion for losses caused by the
7 spread of viruses or communicable diseases.

8 8. Plaintiff was forced to suspend or reduce business at La Luz due to
9 COVID-19 and the resultant closure orders issued by civil authorities in California.

10 9. Upon information and belief, Topa has, on a widescale and uniform
11 basis, refused to pay its insureds under its Business Income, Civil Authority, Extra
12 Expense, and Sue and Labor coverages for losses suffered due to COVID-19, any
13 orders by civil authorities that have required the necessary suspension of business,
14 and any efforts to prevent further property damage or to minimize the suspension of
15 business and continue operations. Indeed, Topa has denied Plaintiff’s claim under
16 its Topa policy.

17 **II. JURISDICTION AND VENUE**

18 10. This Court has jurisdiction over this action pursuant to 28 U.S.C. §
19 1332, because Defendant and at least one member of the Class are citizens of
20 different states and because: (a) the Class consists of at least 100 members; (b) the
21 amount in controversy exceeds \$5,000,000 exclusive of interest and costs; and (c)
22 no relevant exceptions apply to this claim.

23 11. Venue is proper in this District under 28 U.S.C. § 1391, because
24 Defendant resides in this District and a substantial portion of the acts and conduct
25 giving rise to the claims occurred within the District.

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1 **III. THE PARTIES**

2 ***Plaintiff***

3 12. Plaintiff Caribe is a California corporation, with its principal place of
4 business in Bonita, California. Caribe owns and operates La Luz nightclub in
5 Bonita.

6 ***Defendant***

7 13. Defendant Topa is an insurance company organized under the laws of
8 the State of California, with its principal place of business in Calabasas, California.
9 It is authorized to write, sell, and issue insurance policies providing property and
10 business income coverage in California. At all times material hereto, Topa
11 conducted and transacted business through the selling and issuing of insurance
12 policies within California, including, but not limited to, selling and issuing property
13 coverage to Plaintiff.

14 **IV. FACTUAL BACKGROUND**

15 ***A. The Special Property Coverage Form***

16 14. In return for the payment of a premium, Topa issued Policy No. PC-
17 6606802 to Plaintiff for a policy period of May 18, 2019 to May 18, 2020, including
18 a Businessowners Special Property Coverage Form. Policy No. PC-6606802 is
19 attached hereto as Exhibit A. Plaintiff has performed all of its obligations under
20 Policy No. PC-6606802, including the payment of premiums. The Covered
21 Property, with respect to the Special Property Coverage Form, is the La Luz
22 Ultralounge at 5080 Bonita Road, Bonita, California 91902.

23 15. In many parts of the world, property insurance is sold on a specific peril
24 basis. Such policies cover a risk of loss if that risk of loss is specifically listed (e.g.,
25 hurricane, earthquake, H1N1, etc.). Most property policies sold in the United States,
26 however, including those sold by Topa, are all-risk property damage policies. These
27 types of policies cover all risks of loss except for risks that are expressly and
28 specifically excluded. In the Special Property Coverage Form provided to Plaintiff,

1 under the heading “Covered Causes of Loss,” Topa agreed to “pay for direct physical
2 loss” to Covered Property “unless the loss is excluded or limited by” the policy.

3 16. In the policy, Topa did not exclude or limit coverage for losses from
4 the spread of viruses. The policy only contains an exclusion for so-called “NBCR
5 Activity,” defined as an act involving the use, alleged use, threatened use, or
6 dissemination of a “Nuclear, Biological, Bio-Chemical, Chemical or Radioactive
7 agent, substance, material, device or weapon.” This exclusion applies to intentional
8 acts taken to cause the dissemination of biological weapons or agents (or acts taken
9 to hinder such intentional acts), not the natural spread of a virus.

10 17. Losses due to COVID-19 are a Covered Cause of Loss under Topa
11 policies with the Special Property Coverage Form.

12 18. In the Special Property Coverage Form, Topa agreed to pay for its
13 insureds’ actual loss of Business Income sustained due to the necessary suspension
14 of its operations during the “period of restoration” caused by direct physical loss or
15 damage. A “slowdown or cessation” of business activities at the Covered Property
16 is a “suspension” under the policy, for which Topa agreed to pay for loss of Business
17 Income during the “period of restoration” that begins within 72 hours after the time
18 of direct physical loss or damage.

19 19. “Business Income” means net income (or loss) before tax that Plaintiff
20 and the other Class members would have earned “if no physical loss or damage had
21 occurred” as well as continuing normal operating expenses incurred.

22 20. The presence of virus or disease can constitute physical damage to
23 property, as the insurance industry has recognized since at least 2006. When
24 preparing so-called “virus” exclusions to be placed in some policies, but not others,
25 the insurance industry drafting arm, ISO, circulated a statement to state insurance
26 regulators that included the following:

27 Disease-causing agents may render a product impure
28 (change its quality or substance), or enable the spread of
disease by their presence on interior building surfaces or
the surfaces of personal property. When disease-causing

1 viral or bacterial contamination occurs, potential claims
2 involve the cost of replacement of property (for example,
3 the milk), cost of decontamination (for example, interior
4 building surfaces), and business interruption (time
5 element) losses. Although building and personal property
6 could arguably become contaminated (often temporarily)
7 by such viruses and bacteria, the nature of the property
8 itself would have a bearing on whether there is actual
9 property damage. An allegation of property damage may
10 be a point of disagreement in a particular case.

11 21. In the Special Property Coverage Form, Topa also agreed to pay
12 necessary Extra Expense that its insureds incur during the “period of restoration”
13 that the insureds would not have incurred if there had been no direct physical loss or
14 damage to the Covered Property.

15 22. “Extra Expense” includes expenses to avoid or minimize the
16 suspension of business, continue operations, and to repair or replace property.

17 23. Topa also agreed to “pay for the actual loss of Business Income” that
18 Plaintiff sustains “and any Extra Expense caused by action of civil authority that
19 prohibits access to” the Covered Property when a Covered Cause of Loss causes
20 damage to property near the Covered Property, the civil authority prohibits access
21 to property immediately surrounding the damaged property, the Covered Property is
22 within the prohibited area,, and the civil authority action is taken “in response to
23 dangerous physical conditions.”

24 24. Topa’s Special Property Coverage Form, under a section entitled
25 “Duties in the Event of Loss” mandates that Topa’s insured “must see that the
26 following are done in the event of loss. . . [t]ake all reasonable steps to protect the
27 Covered Property from further damage and keep a record of your expenses necessary
28 to protect the Covered Property, for consideration in the settlement of the claim.”
This is commonly referred to as “Sue and Labor” coverage.

29 25. Losses caused by COVID-19 and the related orders issued by local,
30 state, and federal authorities triggered the Business Income, Extra Expense, Civil
31 Authority, and Sue and Labor provisions of the Topa policy.

1 ***B. The Covered Cause of Loss***

2 26. The presence of COVID-19 has caused civil authorities throughout the
3 country to issue orders requiring the suspension of business at a wide range of
4 establishments, including civil authorities with jurisdiction over Plaintiff's business
5 (the "Closure Orders").

6 **1. The San Diego and California Closure Orders**

7 27. On March 16, 2020, San Diego County issued a civil authority order
8 requiring the closure of bars in San Diego County and banning dine-in eating in San
9 Diego County. This order has been in effect since March 16, 2020 and is scheduled
10 to remain in effect through at least April 30, 2020.

11 28. On March 19, 2020, the State of California issued a civil authority order
12 requiring the closure of bars in California and banning dine-in eating in California.
13 This order has been in effect since March 19, 2020 and is in effect until further
14 notice.

15 29. The San Diego County and State of California Closure Orders were
16 issued in response to the rapid spread of COVID-19 throughout California.

17 30. Violations of the San Diego County and State of California Closure
18 Orders are punishable by fine, imprisonment, or both.

19 **2. The Impact of COVID-19 and the Closure Orders**

20 31. The presence of COVID-19 caused direct physical loss of or damage to
21 the covered property under the Plaintiff's policies, and the policies of the other Class
22 members, by denying use of and damaging the covered property, and by causing a
23 necessary suspension of operations during a period of restoration.

24 32. The Closure Orders, including the issuance of San Diego and California
25 Closure Orders, prohibited access to Plaintiff and the other Class members' Covered
26 Property, and the area immediately surrounding Covered Property, in response to
27 dangerous physical conditions resulting from a Covered Cause of Loss.

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1 33. As a result of the presence of COVID-19 and the Closure Orders,
2 Plaintiff and the other Class members lost Business Income and incurred Extra
3 Expense.

4 34. Caribe submitted a claim for loss to Topa under its policy due to the
5 presence of COVID-19 and the Closure Orders, and Topa denied that claim.

6 **V. CLASS ACTION ALLEGATIONS**

7 35. Plaintiff brings this action pursuant to Rules 23(a), 23(b)(1), 23(b)(2),
8 23(b)(3), and 23(c)(4) of the Federal Rules of Civil Procedure, individually and on
9 behalf of all others similarly situated.

10 36. Plaintiff seeks to represent nationwide classes defined as:

- 11 • All persons and entities that: (a) had Business Income
12 coverage under a property insurance policy issued by
13 Topa; (b) suffered a suspension of business related to
14 COVID-19, at the premises covered by their Topa
15 property insurance policy; (c) made a claim under their
16 property insurance policy issued by Topa; and (d) were
17 denied Business Income coverage by Topa for the
18 suspension of business resulting from the presence or
19 threat of COVID-19 (the “Business Income Breach
20 Class”).
- 21 • All persons and entities that: (a) had Civil Authority
22 coverage under a property insurance policy issued by
23 Topa; (b) suffered loss of Business Income and/or Extra
24 Expense caused by action of a civil authority; (c) made a
25 claim under their property insurance policy issued by
26 Topa; and (d) were denied Civil Authority coverage by
27 Topa for the loss of Business Income and/or Extra
28 Expense caused by a Closure Order (the “Civil Authority
Breach Class”).
- All persons and entities that: (a) had Extra Expense
coverage under a property insurance policy issued by
Topa; (b) sought to minimize the suspension of business
in connection with COVID-19 at the premises covered by
their Topa property insurance policy; (c) made a claim
under their property insurance policy issued by Topa; and

1 (d) were denied Extra Expense coverage by Topa despite
2 their efforts to minimize the suspension of business caused
3 by COVID-19 (the “Extra Expense Breach Class”).

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- 5 • All persons and entities that: (a) had a Sue and Labor
6 provision under a property insurance policy issued by
7 Topa; (b) sought to prevent property damage caused by
8 COVID-19 by suspending or reducing business
9 operations, at the premises covered by their Topa property
10 insurance policy; (c) made a claim under their property
11 insurance policy issued by Topa; and (d) were denied Sue
12 and Labor coverage by Topa in connection with the
13 suspension of business caused by COVID-19 (the “Sue
14 and Labor Breach Class”).

- 15 • All persons and entities with Business Income coverage
16 under a property insurance policy issued by Topa that
17 suffered a suspension of business due to COVID-19 at the
18 premises covered by the business income coverage (the
19 “Business Income Declaratory Judgment Class”).

- 20 • All persons and entities with Civil Authority coverage
21 under a property insurance policy issued by Topa that
22 suffered loss of Business Income and/or Extra Expense
23 caused by a Closure Order (the “Civil Authority
24 Declaratory Judgment Class”).

- 25 • All persons and entities with Extra Expense coverage
26 under a property insurance policy issued by Topa that
27 sought to minimize the suspension of business in
28 connection with COVID-19 at the premises covered by
their Topa property insurance policy (the “Extra Expense
Declaratory Judgment Class”).

- All persons and entities with a Sue and Labor provision
under a property insurance policy issued by Topa that
sought to prevent property damage caused by COVID-19
by suspending or reducing business operations, at the
premises covered by their Topa property insurance policy
(the “Sue and Labor Declaratory Judgment Class”).

1 37. Excluded from each defined Class is Defendant and any of its members,
2 affiliates, parents, subsidiaries, officers, directors, employees, successors, or assigns;
3 governmental entities; and the Court staff assigned to this case and their immediate
4 family members. Plaintiff reserves the right to modify or amend each of the Class
5 definitions, as appropriate, during the course of this litigation.

6 38. This action has been brought and may properly be maintained on behalf
7 of each Class proposed herein under the criteria of Rule 23 of the Federal Rules of
8 Civil Procedure.

9 39. **Numerosity—Federal Rule of Civil Procedure 23(a)(1).** The
10 members of each defined Class are so numerous that individual joinder of all Class
11 members is impracticable. While Plaintiff is informed and believes that there are
12 thousands of members of each Class, the precise number of Class members is
13 unknown to Plaintiff but may be ascertained from Defendant’s books and records.
14 Class members may be notified of the pendency of this action by recognized, Court-
15 approved notice dissemination methods, which may include U.S. Mail, electronic
16 mail, internet postings, and/or published notice.

17 40. **Commonality and Predominance—Federal Rule of Civil**
18 **Procedure 23(a)(2) and 23(b)(3).** This action involves common questions of law
19 and fact, which predominate over any questions affecting only individual Class
20 members, including, without limitation:

- 21 a. Topa issued all-risk policies to the members of the Class in exchange
22 for payment of premiums by the Class members;
- 23 b. whether the Class suffered a covered loss based on the common
24 policies issued to members of the Class;
- 25 c. whether Topa wrongfully denied all claims based on COVID-19;
- 26 d. whether Topa’s Business Income coverage applies to a suspension of
27 business caused by COVID-19;

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- e. whether Topa's Civil Authority coverage applies to a loss of Business Income caused by the orders of state governors requiring the suspension of business as a result of COVID-19;
- f. whether Topa's Extra Expense coverage applies to efforts to minimize a loss caused by COVID-19;
- g. whether Topa's Sue and Labor provision applies to require Topa to pay for efforts to reduce damage caused by COVID-19;
- h. whether Topa has breached its contracts of insurance through a blanket denial of all claims based on business interruption, income loss or closures related to COVID-19 and the related closures; and
- i. whether Plaintiff and the Class are entitled to an award of reasonable attorney fees, interest and costs.

41. **Typicality—Federal Rule of Civil Procedure 23(a)(3).** Plaintiff's claims are typical of the other Class members' claims because Plaintiff and the other Class members are all similarly affected by Defendant's refusal to pay under its Business Income, Civil Authority, Extra Expense, and Sue and Labor coverages. Plaintiff's claims are based upon the same legal theories as those of the other Class members. Plaintiff and the other Class members sustained damages as a direct and proximate result of the same wrongful practices in which Defendant engaged.

42. **Adequacy of Representation—Federal Rule of Civil Procedure 23(a)(4).** Plaintiff is an adequate Class representative because their interests do not conflict with the interests of the other Class members who they seek to represent, Plaintiff has retained counsel competent and experienced in complex class action litigation, including successfully litigating class action cases similar to this one, where insurers breached contracts with insureds by failing to pay the amounts owed under their policies, and Plaintiff intends to prosecute this action vigorously. The interests of the above-defined Classes will be fairly and adequately protected by Plaintiff and their counsel.

1 43. **Inconsistent or Varying Adjudications and the Risk of**
2 **Impediments to Other Class Members’ Interests—Federal Rule of Civil**
3 **Procedure 23(b)(1).** Plaintiff seeks class-wide adjudication as to the interpretation,
4 and resultant scope, of Defendant’s Business Income, Civil Authority, Extra
5 Expense, and Sue and Labor coverages. The prosecution of separate actions by
6 individual members of the Classes would create an immediate risk of inconsistent or
7 varying adjudications that would establish incompatible standards of conduct for the
8 Defendant. Moreover, the adjudications sought by Plaintiff could, as a practical
9 matter, substantially impair or impede the ability of other Class members, who are
10 not parties to this action, to protect their interests.

11 44. **Declaratory and Injunctive Relief—Federal Rule of Civil**
12 **Procedure 23(b)(2).** Defendant acted or refused to act on grounds generally
13 applicable to Plaintiff and the other Class members, thereby making appropriate final
14 injunctive relief and declaratory relief, as described below, with respect to the Class
15 members.

16 45. **Superiority—Federal Rule of Civil Procedure 23(b)(3).** A class
17 action is superior to any other available means for the fair and efficient adjudication
18 of this controversy, and no unusual difficulties are likely to be encountered in the
19 management of this class action. Individualized litigation creates a potential for
20 inconsistent or contradictory judgments and increases the delay and expense to all
21 parties and the court system. By contrast, the class action device presents far fewer
22 management difficulties, and provides the benefits of single adjudication, economy
23 of scale, and comprehensive supervision by a single court.

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1 **VI. CLAIMS FOR RELIEF**

2 **COUNT I**

3 **BREACH OF CONTRACT -- BUSINESS INCOME COVERAGE**

4 **(Claim Brought on Behalf of the Business Income Breach Class)**

5 46. Plaintiff Caribe (“Plaintiff” for the purpose of this claim) repeats and
6 realleges Paragraphs 1-45 as if fully set forth herein.

7 47. Plaintiff brings this Count individually and on behalf of the other
8 members of the Business Income Breach Class.

9 48. Plaintiff’s Topa policy, as well as those of the other Business Income
10 Breach Class members, are contracts under which Topa was paid premiums in
11 exchange for its promise to pay Plaintiff and the other Business Income Breach Class
12 members’ losses for claims covered by the policy.

13 49. In the Special Property Coverage Form, Topa agreed to pay for its
14 insureds’ actual loss of Business Income sustained due to the necessary suspension
15 of its operations during the “period of restoration.”

16 50. A “slowdown or cessation” of business activities at the Covered
17 Property is a “suspension” under the policy, for which Topa agreed to pay for loss
18 of Business Income during the “period of restoration” that begins within 72 hours
19 after the time of direct physical loss or damage.

20 51. “Business Income” means net income (or loss) before tax that Plaintiff
21 and the other Business Income Breach Class members would have earned “if no
22 physical loss or damage had occurred” as well as continuing normal operating
23 expenses incurred.

24 52. COVID-19 caused direct physical loss and damage to Plaintiff and the
25 other Business Income Breach Class members’ Covered Properties, requiring
26 suspension of operations at the Covered Properties. Losses caused by COVID-19
27 thus triggered the Business Income provision of Plaintiff and the other Business
28 Income Breach Class members’ Topa policies.

1 53. Plaintiff and the other Business Income Breach Class members have
2 complied with all applicable provisions of their policies and/or those provisions have
3 been waived by Topa or Topa is estopped from asserting them, and yet Topa has
4 abrogated its insurance coverage obligations pursuant to the policies' clear and
5 unambiguous terms.

6 54. By denying coverage for any Business Income losses incurred by
7 Plaintiff and the other Business Income Breach Class members in connection with
8 the COVID-19 pandemic, Topa has breached its coverage obligations under the
9 policies.

10 55. As a result of Topa's breaches of the policies, Plaintiff and the other
11 Business Income Breach Class members have sustained substantial damages for
12 which Topa is liable, in an amount to be established at trial.

13 **COUNT II**
14 **BREACH OF CONTRACT – CIVIL AUTHORITY COVERAGE**
15 **(Claim Brought on Behalf of the Civil Authority Breach Class)**

16 56. Plaintiff Caribe ("Plaintiff" for the purpose of this claim) repeats and
17 realleges Paragraphs 1-45 as if fully set forth herein.

18 57. Plaintiff brings this Count individually and on behalf of the other
19 members of the Civil Authority Breach Class.

20 58. Plaintiff's Topa insurance policy, as well as those of the other Civil
21 Authority Breach Class members, are contracts under which Topa was paid
22 premiums in exchange for its promise to pay Plaintiff and the other Civil Authority
23 Breach Class members' losses for claims covered by the policy.

24 59. Topa agreed to "pay for the actual loss of Business Income" that
25 Plaintiff sustains "and any Extra Expense caused by action of civil authority that
26 prohibits access to" the Covered Property when a Covered Cause of Loss causes
27 damage to property near the Covered Property, the civil authority prohibits access
28 to property immediately surrounding the damaged property, the Covered Property is

1 within the prohibited area, and the civil authority action is taken “in response to
2 dangerous physical conditions.”

3 60. The Closure Orders triggered the Civil Authority provision under
4 Plaintiff and the other members of the Civil Authority Breach Class’s Topa
5 insurance policies.

6 61. Plaintiff and the other members of the Civil Authority Breach Class
7 have complied with all applicable provisions of the policies, and/or those provisions
8 have been waived by Topa, or Topa is estopped from asserting them, and yet Topa
9 has abrogated its insurance coverage obligations pursuant to the Policies’ clear and
10 unambiguous terms.

11 62. By denying coverage for any business losses incurred by Plaintiff and
12 other members of the Civil Authority Breach Class in connection with the Closure
13 Orders and the COVID-19 pandemic, Topa has breached its coverage obligations
14 under the policies.

15 63. As a result of Topa’s breaches of the policies, Plaintiff and the other
16 members of the Civil Authority Breach Class have sustained substantial damages for
17 which Topa is liable, in an amount to be established at trial.

18 **COUNT III**
19 **BREACH OF CONTRACT – EXTRA EXPENSE COVERAGE**
20 **(Claim Brought on Behalf of the Extra Expense Breach Class)**

21 64. Plaintiff Caribe (“Plaintiff” for the purpose of this claim) repeats and
22 realleges Paragraphs 1-45 as if fully set forth herein.

23 65. Plaintiff brings this Count individually and on behalf of the other
24 members of the Extra Expense Breach Class.

25 66. Plaintiff’s Topa insurance policy, as well as those of the other Extra
26 Expense Breach Class members, are contracts under which Topa insurance was paid
27 premiums in exchange for its promise to pay Plaintiff and the other Extra Expense
28 Breach Class members’ losses for claims covered by the policy.

1 67. In the Special Property Coverage Form, Topa also agreed to pay
2 necessary Extra Expense that its insureds incur during the “period of restoration”
3 that the insureds would not have incurred if there had been no direct physical loss or
4 damage to the Covered Property.

5 68. “Extra Expense” includes expenses to avoid or minimize the
6 suspension of business, continue operations, and to repair or replace property.

7 69. Due to COVID-19 and the Closure Orders, Plaintiff and the other
8 members of the Extra Expense Breach Class incurred Extra Expense at Covered
9 Property

10 70. Plaintiff and the other members of the Extra Expense Breach Class have
11 complied with all applicable provisions of the policies and/or those provisions have
12 been waived by Topa or Topa is estopped from asserting them, and yet Topa has
13 abrogated its insurance coverage obligations pursuant to the policies’ clear and
14 unambiguous terms.

15 71. By denying coverage for any business losses incurred by Plaintiff and
16 the other members of the Extra Expense Breach Class in connection with the Closure
17 Orders and the COVID-19 pandemic, Topa has breached its coverage obligations
18 under the policies.

19 72. As a result of Topa’s breaches of the policies, Plaintiff and the other
20 members of the Extra Expense Breach Class have sustained substantial damages for
21 which Topa is liable, in an amount to be established at trial.

22 **COUNT IV**
23 **BREACH OF CONTRACT – SUE AND LABOR COVERAGE**
24 **(Claim Brought on Behalf of the Sue and Labor Breach Class)**

25 73. Plaintiff Topa (“Plaintiff” for the purpose of this claim) repeats and
26 realleges Paragraphs 1-45 as if fully set forth herein.

27 74. Plaintiff brings this Count individually and on behalf of the other
28 members of the Sue and Labor Breach Class.

1 75. Plaintiff's Topa policy, as well as those of the other Sue and Labor
2 Breach Class members, are contracts under which Topa was paid premiums in
3 exchange for its promise to pay Plaintiff and the other Sue and Labor Breach Class
4 members' losses for claims covered by the policy.

5 76. In the Special Property Coverage Form, Topa agreed to give due
6 consideration in settlement of a claim to expenses incurred in taking all reasonable
7 steps to protect Covered Property from further damage.

8 77. In complying with the Closure Orders and otherwise suspending or
9 limiting operations, Plaintiff and other members of the Sue and Labor Breach Class
10 incurred expenses in connection with reasonable steps to protect Covered Property.

11 78. Plaintiff and the other members of the Sue and Labor Breach Class have
12 complied with all applicable provisions of the policy and/or those provisions have
13 been waived by Topa, or Topa is estopped from asserting them, and yet Topa has
14 abrogated its insurance coverage obligations pursuant to the policies' clear and
15 unambiguous terms.

16 79. By denying coverage for any Sue and Labor expenses incurred by
17 Plaintiff and the other members of the Sue and Labor Breach Class in connection
18 with the Closure Orders and the COVID-19 pandemic, Topa has breached its
19 coverage obligations under the policies.

20 80. As a result of Topa's breaches of the policies, Plaintiff and the other
21 members of the Sue and Labor Breach Class have sustained substantial damages for
22 which Topa is liable, in an amount to be established at trial.

23 **COUNT V**
24 **DECLARATORY JUDGMENT – BUSINESS INCOME COVERAGE**
25 **(Claim Brought on Behalf of the Business Income Declaratory Judgment**
26 **Class)**

27 81. Plaintiff Caribe ("Plaintiff" for the purpose of this claim) repeats and
28 realleges Paragraphs 1-45 as if fully set forth herein.

1 82. Plaintiff brings this Count individually and on behalf of the other
2 members of the Business Income Declaratory Judgment Class.

3 83. Plaintiff's Topa policy, as well as those of the other Business Income
4 Declaratory Judgment Class members, are contracts under which Topa was paid
5 premiums in exchange for its promise to pay Plaintiff and the other Business Income
6 Declaratory Judgment Class members' losses for claims covered by the policy.

7 84. Plaintiff and the other Business Income Declaratory Judgment Class
8 members have complied with all applicable provisions of the policies and/or those
9 provisions have been waived by Topa, or Topa is estopped from asserting them, and
10 yet Topa has abrogated its insurance coverage obligations pursuant to the policies'
11 clear and unambiguous terms and has wrongfully and illegally refused to provide
12 coverage to which Plaintiff and the other Business Income Declaratory Judgment
13 Class members are entitled.

14 85. Topa has denied claims related to COVID-19 on a uniform and class
15 wide basis, without individual bases or investigations, such that the Court can render
16 declaratory judgment irrespective of whether members of the Class have filed a
17 claim.

18 86. An actual case or controversy exists regarding Plaintiff and the other
19 Business Income Declaratory Judgment Class members' rights and Topa's
20 obligations under the policies to reimburse Plaintiff for the full amount of Business
21 Income losses incurred by Plaintiff and the other Business Income Declaratory
22 Judgment Class members in connection with suspension of their businesses
23 stemming from the COVID-19 pandemic.

24 87. Pursuant to 28 U.S.C. § 2201, Plaintiff and the other Business Income
25 Declaratory Judgment Class members seek a declaratory judgment from this Court
26 declaring the following:

27 i. Plaintiff and the other Business Income Declaratory Judgment Class
28 members' Business Income losses incurred in connection with the

1 Closure Orders and the necessary interruption of their businesses
2 stemming from the COVID-19 pandemic are insured losses under their
3 policies; and

- 4 ii. Topa is obligated to pay Plaintiff and the other Business Income
5 Declaratory Judgment Class members for the full amount of the
6 Business Income losses incurred and to be incurred in connection with
7 the Closure Orders during the period of restoration and the necessary
8 interruption of their businesses stemming from the COVID-19
9 pandemic.

10 **COUNT VI**

11 **DECLARATORY JUDGMENT – CIVIL AUTHORITY COVERAGE**

12 **(Claim Brought on Behalf of the Civil Authority Declaratory Judgment Class)**

13 88. Plaintiff Caribe (“Plaintiff” for the purpose of this claim) repeats and
14 realleges Paragraphs 1-45 as if fully set forth herein.

15 89. Plaintiff brings this Count individually and on behalf of the other
16 members of the Civil Authority Declaratory Judgment Class.

17 90. Plaintiff’s Topa insurance policy, as well as those of the other Civil
18 Authority Declaratory Judgment Class members, are contracts under which Topa
19 was paid premiums in exchange for its promise to pay Plaintiff and the other Civil
20 Authority Declaratory Judgment Class members’ losses for claims covered by the
21 policy.

22 91. Plaintiff and the other Civil Authority Declaratory Judgment Class
23 members have complied with all applicable provisions of the policies and/or those
24 provisions have been waived by Topa, or Topa is estopped from asserting them, and
25 yet Topa has abrogated its insurance coverage obligations pursuant to the policies’
26 clear and unambiguous terms and has wrongfully and illegally refused to provide
27 coverage to which Plaintiff and the other Class members are entitled.
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1 92. Topa has denied claims related to COVID-19 on a uniform and class
2 wide basis, without individual bases or investigations, such that the Court can render
3 declaratory judgment irrespective of whether members of the Class have filed a
4 claim.

5 93. An actual case or controversy exists regarding Plaintiff and the other
6 Civil Authority Declaratory Judgment Class members' rights and Topa's obligations
7 under the policies to reimburse Plaintiff and the other Civil Authority Declaratory
8 Judgment Class members for the full amount of covered Civil Authority losses
9 incurred by Plaintiff and the other Civil Authority Declaratory Judgment Class
10 members in connection with Closure Orders and the necessary interruption of their
11 businesses stemming from the COVID-19 pandemic.

12 94. Pursuant to 28 U.S.C. § 2201, Plaintiff and the other Civil Authority
13 Declaratory Judgment Class members seek a declaratory judgment from this
14 Court declaring the following:

- 15 i. Plaintiff and the other Civil Authority Declaratory Judgment Class
16 members' Civil Authority losses incurred in connection with the
17 Closure Orders and the necessary interruption of their businesses
18 stemming from the COVID-19 pandemic are insured losses under their
19 policies; and
- 20 ii. Topa is obligated to pay Plaintiff and the other Civil Authority
21 Declaratory Judgment Class members the full amount of the Civil
22 Authority losses incurred and to be incurred in connection with the
23 covered losses related to the Closure Orders and the necessary
24 interruption of their businesses stemming from the COVID-19
25 pandemic.

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COUNT VII

DECLARATORY JUDGMENT – EXTRA EXPENSE COVERAGE
(Claim Brought on Behalf of the Extra Expense Declaratory Judgment Class)

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3 95. Plaintiff Caribe (“Plaintiff” for the purpose of this claim) repeats and
4 realleges Paragraphs 1-45 as if fully set forth herein.

5 96. Plaintiff brings this Count individually and on behalf of the other
6 members of the Extra Expense Declaratory Judgment Class.

7 97. Plaintiff’s Topa insurance policy, as well as those of the other Extra
8 Expense Declaratory Judgment Class members, are contracts under which Topa was
9 paid premiums in exchange for its promise to pay Plaintiff and the other Extra
10 Expense Declaratory Judgment Class members’ losses for claims covered by the
11 policy.

12 98. Plaintiff and the other Extra Expense Declaratory Judgment Class
13 members have complied with all applicable provisions of the policies and/or those
14 provisions have been waived by Topa, or Topa is estopped from asserting them, and
15 yet Topa has abrogated its insurance coverage obligations pursuant to the policies
16 clear and unambiguous terms and has wrongfully and illegally refused to provide
17 coverage to which Plaintiff and the other Class members are entitled.

18 99. Topa has denied claims related to COVID-19 on a uniform and class
19 wide basis, without individual bases or investigations, such that the Court can render
20 declaratory judgment irrespective of whether members of the Class have filed a
21 claim.

22 100. An actual case or controversy exists regarding Plaintiff and the other
23 Extra Expense Declaratory Judgment Class members’ rights and Topa’s obligations
24 under the policies to reimburse Plaintiff and the other Extra Expense Declaratory
25 Judgment Class members for the full amount of Extra Expense losses incurred by
26 Plaintiff in connection with Closure Orders and the necessary interruption of their
27 businesses stemming from the COVID-19 pandemic.

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1 101. Pursuant to 28 U.S.C. § 2201, Plaintiff and the other Extra Expense
2 Declaratory Judgment Class members seek a declaratory judgment from this Court
3 declaring the following:

- 4 i. Plaintiff and the other Extra Expense Declaratory Judgment Class
5 members' Extra Expense losses incurred in connection with the Closure
6 Orders and the necessary interruption of their businesses stemming
7 from the COVID-19 pandemic are insured losses under their policies;
8 and
- 9 ii. Topa is obligated to pay Plaintiff and the other Extra Expense
10 Declaratory Judgment Class members for the full amount of the Extra
11 Expense losses incurred and to be incurred in connection with the
12 covered losses related to the Closure Orders during the period of
13 restoration and the necessary interruption of their businesses stemming
14 from the COVID-19 pandemic.

15 **COUNT VIII**

16 **DECLARATORY JUDGMENT – SUE AND LABOR COVERAGE**
17 **(Claim Brought on Behalf of the Sue and Labor Declaratory Judgment Class)**

18 102. Plaintiff Caribe (“Plaintiff” for the purpose of this claim) repeats and
19 realleges Paragraphs 1-45 as if fully set forth herein.

20 103. Plaintiff brings this Count individually and on behalf of the other
21 members of the Sue and Labor Declaratory Judgment Class.

22 104. Plaintiff’s Topa insurance policy, as well as those of the other Sue and
23 Labor Declaratory Judgment Class members, are contracts under which Topa was
24 paid premiums in exchange for its promise to pay Plaintiff and the other Sue and
25 Labor Declaratory Judgment Class members’ reasonably incurred expenses to
26 protect Covered Property.

27 105. Plaintiff and the other Sue and Labor Declaratory Judgment Class
28 members have complied with all applicable provisions of the policies and/or those

1 provisions have been waived by Topa, or Topa is estopped from asserting them, and
2 yet Topa has abrogated its insurance coverage obligations pursuant to the policies'
3 clear and unambiguous terms and has wrongfully and illegally refused to provide
4 coverage to which Plaintiff is entitled.

5 106. Topa has denied claims related to COVID-19 on a uniform and class
6 wide basis, without individual bases or investigations, such that the Court can render
7 declaratory judgment irrespective of whether members of the Class have filed a
8 claim.

9 107. An actual case or controversy exists regarding Plaintiff and the other
10 Sue and Labor Declaratory Judgment Class members' rights and Topa's obligations
11 under the policies to reimburse Plaintiff and the other Sue and Labor Declaratory
12 Judgment Class members for the full amount Plaintiff and the other members of the
13 Sue and Labor Declaratory Judgment Class reasonably incurred to protect Covered
14 Property from further damage by COVID-19.

15 108. Pursuant to 28 U.S.C. § 2201, Plaintiff and the other Sue and Labor
16 Declaratory Judgment Class members seek a declaratory judgment from this Court
17 declaring the following:

- 18 i. Plaintiff and the other Sue and Labor Declaratory Judgment Class
19 members reasonably incurred expenses to protect Covered Property
20 from further damage by COVID-19 are insured losses under their
21 policies; and
22 ii. Topa is obligated to pay Plaintiff and the other Sue and Labor
23 Declaratory Judgment Class members for the full amount of the
24 expenses they reasonably incurred to protect Covered Property from
25 further damage by COVID-19.

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1 **VII. REQUEST FOR RELIEF**

2 WHEREFORE, Plaintiff, individually and on behalf of the other Class
3 members, respectfully requests that the Court enter judgment in their favor and
4 against Defendant as follows:

5 a. Entering an order certifying the proposed nationwide Classes, as
6 requested herein, designating Plaintiff as Class representative, and appointing
7 Plaintiff's undersigned attorneys as Counsel for the Classes;

8 b. Entering judgment on Counts I-IV in favor of Plaintiff Caribe and the
9 members of the Business Income Breach Class, the Civil Authority Breach Class,
10 the Extra Expense Breach Class, and the Sue and Labor Breach Class; and awarding
11 damages for breach of contract in an amount to be determined at trial;

12 c. Entering declaratory judgments on Counts V-VIII in favor of Plaintiff
13 and the members of the Business Income Declaratory Judgment Class, the Civil
14 Authority Declaratory Judgment Class, the Extra Expense Declaratory Judgment
15 Class, and the Sue and Labor Declaratory Judgment Class as follows;

16 i. Business Income, Civil Authority, Extra Expense, and Sue and
17 Labor losses incurred in connection with the Closure Orders and the
18 necessary interruption of their businesses stemming from the
19 COVID-19 pandemic are insured losses under their policies; and

20 ii. Topa is obligated to pay for the full amount of the Business Income,
21 Civil Authority, Extra Expense, and Sue and Labor losses incurred
22 and to be incurred related to COVID-19, the Closure Orders and the
23 necessary interruption of their businesses stemming from the
24 COVID-19 pandemic;

25 d. Ordering Defendant to pay both pre- and post-judgment interest on any
26 amounts awarded;

27 e. Ordering Defendant to pay attorneys' fees and costs of suit; and

28 f. Ordering such other and further relief as may be just and proper.

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VIII. JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims so triable.

IX. CERTIFICATION AND CLOSING

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

Dated: April 17, 2020

Respectfully submitted,

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*Applications for admission *pro hac vice* to be filed