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10  
11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 **FOUNDER INSTITUTE INCORPORATED**, a  
14 Delaware Corporation,

15 Plaintiff,

16 v.

17 **HARTFORD FIRE INSURANCE COMPANY**, a  
corporation doing business in California;  
18 **SENTINEL INSURANCE COMPANY,**  
**LIMITED**, a corporation doing business in  
19 California; and **DOES 1 through 50**, inclusive,

20 Defendants.

Case No.: 3:20-cv-04466-VC

**PLAINTIFF’S OPPOSITION TO  
DEFENDANT HARTFORD FIRE  
INSURANCE COMPANY, LIMITED’S  
MOTION TO DISMISS FOR FAILURE TO  
STATE A CLAIM**

**[Fed. R. Civ. Pro. 12(b)(1) and 12(b)(6)]**

Date: October 15, 2020  
Time: 10:00 a.m.  
Location: 450 Golden Gate Avenue  
San Francisco, CA 94102  
Courtroom 4 – 17th floor  
Judge: Hon. Vince Chhabria

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## I. INTRODUCTION

1  
2 The COVID-19 pandemic triggered unprecedented governmental responses at the state, county  
3 and city level, with civil ordinances requiring vast regional shutdowns and stay-at-home orders and  
4 crippling businesses. Concern over the possible presence of the virus in human respiratory and saliva  
5 droplets catalyzed the issuance, breadth, and scope of the ordinances. The resulting suspension of  
6 operations was the exact kind of loss insurers marketed they would cover to potential purchasers of the  
7 policies. Yet, when the pandemic unfolded and local ordinances suspended partially or fully operations  
8 at tens of thousands of businesses, insurance companies, including Defendant Sentinel Insurance  
9 Company Limited (“Sentinel”), and their parent company The Hartford Financial Services Group, Inc.  
10 (“HFSG” or “Hartford”), balked. Though Hartford’s all-risk policy also expressly provided civil  
11 ordinance coverage and should provide coverage for the business interruption that has ensued, Hartford  
12 began an immediate campaign to block consumers from even tendering coverage, and then summarily  
13 denied coverage.

14 Plaintiff has named Hartford Fire Insurance Company (“HFIC”) as a Defendant alongside  
15 Defendant Sentinel Insurance Company Limited (“Sentinel”) to date. Defendant purports that the correct  
16 entity named should have been Hartford Financial Services Group, Inc. (“HFSG”). HFIC’s Motion to  
17 Dismiss (“HFIC Motion” or “Motion”) at 3:4-6. As later explained in this opposition brief, if this is  
18 indeed a mistake (which only discovery would confirm), this mistake was understandable because  
19 Hartford originally began as Hartford Fire Insurance Company (HFIC). However, it is now comprised of  
20 numerous subsidiaries and underwriting companies with extremely similar names who market  
21 themselves together as “The Hartford.” Regardless, all of the arguments regarding jurisdictional privity  
22 applicable to HFIC would apply to HFSG, and as such Plaintiff files this opposition addressing the  
23 arguments as they would apply to both entities. This will enable, assuming the action against Defendant  
24 Sentinel otherwise moves forward and assuming the Court agrees with Plaintiff’s jurisdictional analysis  
25 here, the Court to deny this motion and permit leave to amend the SAC to correct the named entity or  
26 add HFSG as an additional Defendant.

1 Through what is tantamount to a shell game, Hartford now attempts to dismiss HFIC from the  
 2 action by arguing lack of privity of contract, despite ample evidence in the pleading and the attached  
 3 insurance policy that the entities collectively refer to themselves as “The Hartford.” Specifically,  
 4 Defendants use the term “The Hartford” in describing all of their services and marketing, and the policy  
 5 document is replete with the term “The Hartford” to identify the “entity” that enters into a contract with  
 6 Plaintiff. As set forth below, Hartford should remain in the action and all that is required is a simple  
 7 correction of the named entity or addition of a third defendant. There is no jurisdictional or privity basis  
 8 to otherwise dismiss Hartford.

9 For the reasons stated below, the Court should deny HFIC’s Motion to Dismiss, and in the  
 10 alternative, allow Plaintiff to conduct discovery.

## 11 **II. PROCEDURAL AND FACTUAL BACKGROUND**

### 12 **A. Brief Procedural History.**

13 Plaintiff Founder filed the Original Complaint in the Superior Court of California, County of  
 14 Santa Clara, on April 16th, 2020. Defendants removed the case to this Court on July 6, 2020. ECF No. 1.  
 15 On August 21st, 2020, per stipulation approved by this Court, Founder filed a second amended  
 16 complaint to incorporate the latest scientific evidence relating to the distinction between human droplets  
 17 and virus particles, a critical distinction which Plaintiff Founder believes was overlooked in some of the  
 18 early motion practice across the country, and to also address recent opinions issued by other federal  
 19 courts related to the COVID-19 business insurance coverage litigation. See Second Amended Complaint  
 20 (“SAC”). On September 4th, 2020, Defendant HFIC filed its motion to dismiss under 12(b)(1) and  
 21 12(b)(6) in response to Founder’s Second Amended Complaint.<sup>1</sup> ECF. No. 25 (“HFIC’s Motion”).  
 22 Defendant Sentinel filed its motion to dismiss under Rule 12(b)(6). ECF No. 26 (“Sentinel’s Motion”).  
 23

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24  
 25  
 26 <sup>1</sup> HFIC argues in the alternative that in the event its motion is not fully dispositive of the SAC as to  
 27 HFIC, HFIC joins in the 12(b)(6) motion filed by Sentinel. HFIC’s Motion, Fn. 1.

1       **B. Background Facts and Allegations.**

2           Relevant jurisdictional facts, evidence, and allegations are summarized here.

3           **1. Founder Institute’s Background.**

4           As Founder has pled in its SAC, Founder is a startup incubator in Palo Alto, California. SAC at  
5 5:6-13. The Founder Institute is the world’s largest pre-seed startup accelerator, with nationwide alumni  
6 that have built numerous companies that have provided employment and economic stimulus in cities  
7 across the nation. *Id.* Cutting off access to Plaintiff’s physical headquarters prevented Plaintiff from  
8 conducting its revenue generating business. *Id.* at 13:14-19.

9           **2. The Hartford’s Policy, Website, and Marketing Materials Lump Together All of The**  
10 **Hartford Entities as “The Hartford” and Make It Clear That Hartford, Not Just**  
11 **Sentinel, Marketed and Provided The Policy To Founder**

12           Publicly available evidence and documents already in Founder’s possession indicate that  
13 Hartford, including HFSG and Defendant HFIC and not just Defendant Sentinel, provided Founder the  
14 coverage in question. Consider the following.

15           First, the policy document provided to Founder is replete with references to “The Hartford,”  
16 without any disclaimer or language clarifying that Sentinel was the insurer and not “The Hartford.” See  
17 SAC, Exhibit A, generally. Indeed, within the attached policy document itself, a word count search of  
18 the document reveals that the term “Sentinel” only appears three times, while the term “Hartford”  
19 appears more than 79 times, not including the non-text readable “The Hartford” logo appearing on  
20 certain portions of the documents. Declaration of Michael Indrajana in Support of Plaintiff’s Opposition  
21 to Defendant Hartford Fire Insurance Company Motion to Dismiss (“Indrajana Decl.”) at ¶ 12. In fact,  
22 the policy verbatim states “Thank you for being a loyal customer of The Hartford” and directs the  
23 insured for information to Hartford’s service center. SAC, Exhibit A at 4.

24           Second, the policy document gives notice to the insured that they can access further information  
25 about their policy at the Hartford Cyber Center Website Access, located at the URL  
26 [www.thehartford.com/cybercenter](http://www.thehartford.com/cybercenter). SAC, Exhibit A at 6; see also Indrajana Decl. at ¶ 2, Exhibit 1. The  
27 Legal Notices for [www.hartford.com](http://www.hartford.com) (the page to which insureds are directed) is found at  
28 <https://www.thehartford.com/legal-notice> and plainly states that HFSG is “is a financial holding

1 company for a group of insurance and non-insurance subsidiaries (collectively referred to as  
2 "subsidiaries") that provide property and casualty, group benefits and investment products to both  
3 individual and business customers in the United States” and also states that “The Hartford,<sup>®</sup> the Stag  
4 logo, and combinations of the foregoing and all other trademarks, service marks, trade names, logos and  
5 icons, registered or not, are the property of Hartford Fire Insurance Company [i.e., Defendant HFIC as  
6 currently named in the SAC] and certain subsidiaries of The Hartford, or third parties which may be  
7 indicated.” Indrajana Decl. at ¶ 3, Exhibit 2. Defendant HFIC and Defendant Sentinel are both listed in  
8 the list of HFSG insuring entities, and both are described as being authorized to sell insurance in all fifty  
9 states. *Id.*

10 Third, Hartford’s online “Our History” page prominently shows that the company began as “The  
11 Hartford Fire Insurance Company” in 1810. Indrajana Decl. at ¶ 4, Exhibit 3. The remaining portion of  
12 the historical narrative on the page use the pronoun “we,” “us,” “our directors and founders,” “our  
13 commitment,” and finally, at the end of the page, the page declares, “in 2010, we celebrated our 200th  
14 anniversary,” while displaying the logo with the text “trusted 200 years THE HARTFORD.” *Id.*

15 Finally, in all of the email and other correspondence provided to Founder, the insurer is referred  
16 to as “Hartford” with scant references to Sentinel. Indrajana Decl. at ¶ 5, Exhibit 4.

17 Thus, in view of the above, it is clear that:

- 18 (i) The insurance policy was provided by Hartford through its wholly owned subsidiary  
19 Sentinel (SAC, Exhibit A at p. 13; Indrajana Decl. at ¶ 3, Exhibit 2) but using the  
20 marketing platforms and property owned in part by HFIC (Indrajana Decl. at ¶ 3, Exhibit  
21 2) and using the HFSG insurance platform ([www.thehartford.com](http://www.thehartford.com)) to administer the  
22 policy. It remains unknown how the premiums collected by Sentinel are distributed  
23 between Sentinel, HFIC, and HFSG.
- 24 (ii) All three entities effectively not only participated in providing the policy and policy  
25 related services to Founder, but expressly list themselves as involved in doing so when  
26 the policy is read in conjunction with the material provided to Founder on  
27 [www.thehartform.com](http://www.thehartform.com) and specifically in their Legal Notice section where all three

1 entities are described expressly as having a role in the operations which made the  
 2 provision of the policy to Founder possible. Indrajana Decl. at ¶ 3, Exhibit 2.

### 3 III. LEGAL STANDARD

#### 4 A. 12(b)(1) Motion to Dismiss Standard.

5 Rule 12(b)(1) provides that a defendant may move to dismiss an action if the court lacks  
 6 jurisdiction over the subject matter of the suit. Fed. R. Civ. P. 12(b)(1). "A party invoking federal  
 7 jurisdiction has the burden of establishing that it has satisfied the 'case-or-controversy' requirement of  
 8 Article III of the Constitution [and] standing is a 'core component' of that requirement." *Lujan*  
 9 *v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). In ruling on a motion to dismiss under Rule 12(b)(1),  
 10 the court must "accept as true all material allegations of the complaint, and . . . construe the complaint in  
 11 favor of the complaining party." *Levine v. Vilsack*, 587 F.3d 986, 991 (9th Cir. 2009) (internal quotation  
 12 marks and citation omitted).

13 Because standing is a matter of subject-matter jurisdiction, and not a merits decision, dismissal  
 14 should be ordered "without prejudice." *Sinckler v. F.C.C.*, No. 09-CIV-1313, 2009 WL 2151345, at \*2  
 15 (D.D.C. July 16, 2009).

#### 16 B. The Court Should Accept All of the Allegations Made in the SAC as True, and Construe 17 the Pleadings in the Light Most Favorable to Plaintiff; and Alternatively Grant Liberal 18 Leave for Plaintiff to Amend the Complaint.

19 Rule 12(b)(6) provides that a defendant may move to dismiss for "failure to state a claim upon  
 20 which relief can be granted." Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss, a complaint  
 21 must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its  
 22 face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations and quotation marks omitted)  
 23 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *Johnson v. Fed. Home Loan Mortg.*  
*Corp.*, 793 F.3d 1005, 1008 (9th Cir. 2015).

24 Further, for the purposes of this analysis, a court "accept[s] factual allegations in the complaint  
 25 as true and construe[s] the pleadings in the light most favorable to the nonmoving party." *Manzarek*  
 26 *v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). A court "presume[s] that  
 27 general allegations embrace those specific facts that are necessary to support the claim." *Nat'l Org. for*



1 *Women v. Scheidler*, 510 U.S. 249, 256 (1994). See *Scottsdale Ins. Co. v. Hudson Specialty Ins. Co.*, No.  
2 15-cv-02896-HSG, at \*6 (N.D. Cal. Mar. 25, 2016).

3 Finally, in the event that the Court grants the motion to dismiss, the Court should allow broad  
4 discretion for Plaintiff to amend its complaint to cure any defects in the factual allegations. *Manzarek v.*  
5 *Marine*, 519 F.3d 1025, 1031 (9th Cir. 2008) (“Denial of leave to amend is reviewed for an abuse of  
6 discretion.” *Gompper v. VISX, Inc.*, 298 F.3d 893, 898 (9th Cir. 2002). “Dismissal without leave to  
7 amend is improper unless it is clear, upon de novo review, that the complaint could not be saved by any  
8 amendment.” *Id.* (quoting *Polich v. Burlington N., Inc.*, 942 F.2d 1467, 1472 (9th Cir. 1991)).”) )

#### 9 IV. ARGUMENT.

##### 10 A. The SAC Sufficiently Alleges That “The Hartford” Was a Party To the Policy.

11 Plaintiff alleged at all relevant times, since 2011 Plaintiff has been a Hartford policyholder,  
12 currently insured under Hartford’s business policy number 57 SBA BA6715 DX (the “All-Risk Policy”).  
13 SAC at 5:14-16. Plaintiff was invoiced by The Hartford and paid its premium to Defendants and  
14 performed all of its obligations under the Hartford policy. SAC at 5:26-28. The Policy document sent to  
15 Plaintiff is replete with references to “The Hartford.” See SAC, Exhibit A, generally.

16 Defendants claim that Plaintiff improperly lumps HFIC and Sentinel under common monikers  
17 such as “Defendants.” HFIC Motion at 12:13-14. However, HFIC’s argument is incorrect (and ironic)  
18 because in fact it appears when the policy is read in light of Hartford’s own Legal Notices, all three  
19 entities are substantively involved in the provision of the policy and/or policy related services to  
20 Founder (i.e. it is not simply that they are all using the Hartford brand):

- 21 (iii) The insurance policy was provided by Hartford through its wholly owned subsidiary  
22 Sentinel (See Indrajana Decl. at ¶ 3, Exhibit 2), but using the marketing platforms and  
23 property owned in part by HFIC (*Id.*) and using (and directing the insured to) the HFSG  
24 insurance platform ([www.thehartford.com](http://www.thehartford.com)) to administer the policy. It remains unknown  
25 how the premiums collected by Sentinel are distributed between Sentinel, HFIC, and  
26 HFSG.

- 1 (iv) All three entities effectively not only participated in providing the policy and policy  
2 related services to Founder, but expressly list themselves as involved in doing so when  
3 the policy is read in conjunction with the material provided to Founder on  
4 [www.thehartford.com](http://www.thehartford.com) and specifically in their Legal Notice section where all three  
5 entities are described expressly as having a role in the operations which made the  
6 provision of the policy to Founder possible. Indrajana Decl. at ¶ 3, Exhibit 2.
- 7 (v) Plaintiff also alleges that “The Hartford” operates websites in California specifically  
8 selling its Hartford commercial products to California businesses. SAC at 3:21-26. The  
9 “thehartford.com” domain is currently registered to Hartford Fire Insurance Company.  
10 Indrajana Decl. at ¶ 6, Exhibit 5.

11 It should also be noted that when Founder automatically renewed its Policy for 2019, it was  
12 thanked for being a loyal customer of The Hartford. SAC, Exhibit A at 3-4. The Insurance Policy Billing  
13 Information states, “Thank you for selecting The Hartford for your business insurance needs.” *Id.*, SAC,  
14 Exhibit A at 5.

15 It is also notable, further affirming the actual operational overlap in provision of the policy by all  
16 Hartford entities, that Plaintiff’s Spectrum Policy Declaration was countersigned by Susan L. Castaneda,  
17 Authorized Representative. SAC, Exhibit A at 13. Further, at the end of the Common Policy Conditions,  
18 it states, “our President and Secretary have signed the policy. Where required by law, the Declarations  
19 page has also been countersigned by our duly authorized representative.” *Id.*, Exhibit A at 26. At the  
20 bottom of the page, the document was signed by Lisa Levin, Secretary, and Douglas Elliot, President. *Id.*

21 The LinkedIn profiles of both Lisa Levin and Susan Castaneda state that they are employed by  
22 The Hartford Financial Services Group. Indrajana Decl. at ¶ 7 and ¶ 8, Exhibit 6 and 7. Douglas Elliot is  
23 listed on The Hartford’s About Us page as the President of The Hartford Financial Services Group.  
24 Indrajana Decl. at ¶ 9, Exhibit 8. Both Mr. Elliot and Ms. Levin serve in the same capacity (i.e. President  
25 and Secretary) of *Defendant Sentinel and Defendant HFIC* according to the California Secretary of State  
26 2020 Statement of Information filings by the two companies. Indrajana Decl. at ¶¶ 10-11, Exhibits 9 and  
27 10.

1 Given the circumstances, Plaintiff has plead sufficient facts to allege that (and/or has provided  
 2 additional evidence to support that) HFIC has a privity of contract with Plaintiff. Their policy, attached  
 3 to the SAC and which directs the insured to Hartford's websites, make it clear that Defendant HFIC, its  
 4 parents company HFSG (not yet named), and Defendant Sentinel, all participated in marketing and  
 5 providing the policy that is the subject of the policy contract upon which Defendant HFIC makes its  
 6 privity arguments. Which entity did what in connection with the underwriting, the denial of coverage,  
 7 the investigation or lack thereof of the COVID claims, and ultimately who should be held liable if these  
 8 cases move forward, should be a topic for further discovery.

9 **B. Other Courts have Denied Similar Hartford Motions to Dismiss Because The Relationship  
 Among The Various Hartford Entities Are Unclear, And Therefore Discovery Is Necessary.**

10 As it turns out, Hartford has tried a similar defense in a prior case that had a nearly identical  
 11 factual pattern and had its Motion to Dismiss denied by the court. See *Smith v. Sentinel Ins. Co., Ltd., et*  
 12 *al.*, 2010 WL 5174377, at \*1 (N.D. Okla. Dec. 15, 2010). In *Smith*, after their hail damage claim was  
 13 denied, Plaintiff sued Sentinel and HFSG for breach of insurance contract and bad faith. *Smith*, 2010  
 14 WL 5174377 at \*2.

15 In *Smith*, Defendant HFSG filed for a motion to dismiss using the exact same argument  
 16 presented by Defendant HFIC here, namely. (1) arguing that HFSG had no role in issuing the policy, and  
 17 (2) judicially noticing its Form 10-K filing as part of its motion to dismiss in *Smith*. The court in *Smith*  
 18 subsequently denied HFSG's motion, finding the Form 10-K filing irrelevant, and echoed Plaintiff's  
 19 arguments above in rejecting HFSG's position, noting:

20 The contract is replete with references to both "The Hartford" and to "Sentinel  
 21 Insurance Company's" ("Sentinel") role in the contract. (See Dkt. #2-1, p. 6-38).  
 22 The complaint thus states a plausible claim that HFSG is a proper party defendant  
 23 in this case. HFSG's arguments that "The Hartford" is merely a trade name, and  
 24 that HFSG did not have sufficient involvement in the insurance claim to either be  
 in privity or a special relationship are arguments better addressed on summary  
 judgment. Therefore, the Motion to Dismiss (Dkt. #16) is denied.

25 *Smith v. Sentinel Insurance Company, Ltd.*, No. 10-CV-269-GKF-PJC, WL 5174377 at \*2 (N.D.  
 26 Okla. Dec. 15, 2010)

1 The court later reiterated its holding in a motion to compel discovery when HFSG tried to avoid  
2 its obligation to respond to discovery:

3 A major contention in this action is whether HFSG is a proper party Defendant.  
4 HFSG contends that it is not the Smiths' insurer and, furthermore, that it is not  
5 even an insurance company or insurer, that it does not write, underwrite or sell  
6 insurance policies and does not handle insurance claims or employ claims  
7 adjusters. More than a year ago, HFSG filed a Motion to Dismiss on this basis  
8 [Dkt. No. 16]. That Motion was denied on Dec. 15, 2010, with the caveat that the  
9 issue would be more appropriately addressed on summary judgment. [Dkt. No.  
10 49]. The issue of HFSG's status is now before the District Court on cross motions  
11 for summary judgment [Dkt. Nos. 54-77] that are set for hearing on Aug. 11,  
12 2011. Thus, at this juncture and for purposes of this discovery dispute, HFSG is a  
13 party to this lawsuit and must respond to discovery as required by the Federal  
14 Rules of Civil Procedure.

15 *Smith v. Sentinel Insurance Co., Ltd.*, No. 10-CV-269-GKF-PJC, WL 5174377 at \*2 (N.D. Okla.  
16 July 15, 2011)

17 The court also found that, “After examining the record herein, the Court finds that *the*  
18 *relationship among the various Hartford entities and HFSG's role in the corporate structure is*  
19 *unclear*; consequently, the Court cannot find that the information Plaintiffs seek could have no possible  
20 bearing on the claims/defenses in this case. Therefore, the relevance objection is overruled. Furthermore,  
21 simple fairness dictates that if HFSG has filed a Motion for Summary Judgment supported by  
22 evidentiary materials, Plaintiffs be given an opportunity to respond with evidence of their own —  
23 evidence gathered through the process of discovery.” (emphasis added). *Smith v. Sentinel Insurance Co.,*  
24 *Ltd.*, No. 10-CV-269-GKF-PJC, WL 5174377 at \*3-4 (N.D. Okla. July 15, 2011).

25 Given the near identical posture of the *Smith* case and what HFIC is trying to do here, the Court  
26 should take a cautioned approach in reviewing HFIC's motion to dismiss. Indeed, the Court should take  
27 the same position as the *Smith* court and let the issue of privity between HFIC and Plaintiff or lack  
28 thereof be addressed on summary judgment and deny HFIC's Motion at the present time. Indeed, as it  
appears from the evidence cited above, it is possible in view of the SAC and the Hartford Legal Notice  
contained on its website, that not only was HFIC properly named but that in fact Plaintiff may be  
seeking leave at the appropriate time to add Defendant HFSG (the parent entity) as a defendant as well.

1 **C. In the Alternative, the Court Should Allow Discovery on Whether HFIC Is the Alter Ego of**  
 2 **the Other Defendants Including Sentinel, HFSG, and Other the Hartford Entities.**

3 In the alternative, if the Court is considering granting Defendant's motion to dismiss, Plaintiff  
 4 requests and moves that the Court allow Plaintiff to conduct jurisdictional discovery. For example, one  
 5 part of this inquiry would be whether HFIC (and indeed HSFG) is subject to "alter ego" liability under  
 6 California law. To recover on an alter ego theory, a plaintiff need not use the words "alter ego," but must  
 7 allege sufficient facts to show a unity of interest and ownership, and an unjust result if the corporation is  
 8 treated as the sole actor. *Leek v. Cooper*, 194 Cal.App.4th 399, 415 (Cal. Ct. App. 2011), citing *Vasey v.*  
*California Dance Co.* (1977) 70 Cal.App.3d 742, 749.

9 Among the factors to be considered in applying this doctrine are:

10 [c]ommingling of funds and other assets[;] . . . the unauthorized diversion of  
 11 corporate funds or assets to other than corporate uses; . . . the treatment by an individual  
 12 of the assets of the corporation as his own; . . . the failure to maintain minutes or adequate  
 13 corporate records . . . ; sole ownership of all of the stock in a corporation by one  
 14 individual . . . [;] the failure to adequately capitalize a corporation; . . . the use of a  
 15 corporation as a mere shell, instrumentality or conduit for a single venture or the business  
 16 of an individual or another corporation; . . . the disregard of legal formalities . . . [;] the  
 17 diversion of assets from a corporation by or to a stockholder or other person or entity, to  
 18 the detriment of creditors . . . [;] the use of a corporation as a subterfuge of illegal  
 19 transactions . . . .

16 *Leek v. Cooper*, 194 Cal. App. 4th 399, 417 (2011) (quotation omitted).

17 Plaintiff believes that discovery might very well enable it to establish these elements. The first  
 18 one is apparent already. HFIC, HFSG and Sentinel all have the same statutory address located at One  
 19 Hartford Plaza, Hartford, CT 06155. Indrajana Decl at ¶ 3, Exhibit 2 (Hartford Legal Notice); Indrajana  
 20 Decl. at ¶ 9 (California SOS Statement of Information Filings for HFIC and Sentinel). Furthermore, as  
 21 set forth above, documents show HFSG's president and secretary signing Plaintiff's insurance policy,  
 22 while they are also serving both as president and secretary of Sentinel and HFIC, and all policy  
 23 documents are controlled and hosted at [www.thehartford.com](http://www.thehartford.com) which is operated by HFIC and under the  
 24 control of HFSG. Indrajana Decl. at ¶ 3, Exhibit 2; ¶ 6 at Exhibit 5. As of today HFIC and Sentinel are  
 25 the insurers affording coverage to Plaintiff, but the day-to-day servicing of the policy is conducted by  
 26 HFSG's employees and by HFIC through the website at [www.thehartford.com](http://www.thehartford.com). *Id.*

1 The second element ties closely together with the Defendants' posture to this litigation. The  
 2 Hartford has been sued in at least 184 COVID-19 business interruption cases, with more filed every  
 3 week.<sup>2</sup> Damages as a result of the COVID-19 shutdowns of all of The Hartford insureds may be at a  
 4 potentially unprecedented high number, potentially more than the insurer subsidiaries can pay  
 5 themselves at any point in time. Thus, in the event courts across the country find for insured that there is  
 6 coverage under the policy for losses due to shutdowns as a result of the COVID-19 pandemic, it is a  
 7 very real possibility for The Hartford to cut its losses and jettison the subsidiaries while keeping the  
 8 parent company's coffers safe from liability if The Hartford can dismiss the parent company HFSG from  
 9 the numerous pending litigations against The Hartford. This would be the unjust outcome that the alter  
 10 ego doctrine is designed to prevent.

11 **D. Plaintiff Has Sufficiently Pled Factual Allegations for Each of Its Causes of Action.**

12 HFIC's contention that each of Plaintiff's seven causes of action hinges on the contract privity  
 13 between itself and Plaintiff is true. However, as argued above, questions of privity cannot be adjudicated  
 14 at the pleading stage given the factual circumstances, and Plaintiff has sufficiently pled plausible facts to  
 15 support each of the causes of action to survive HFIC's Motion to Dismiss.

16 **1. Counts 1 and 4 – Breach of Contract and Declaratory Relief.**

17 HFIC's sole attack on all of Plaintiff's causes of action is that HFIC has no privity of contract  
 18 with Plaintiff, and in the event HFIC does not prevail on this Motion, HFIC joins Sentinel in its 12(b)(6)  
 19 Motion to Dismiss. Sentinel's sole attack on these causes of action is that all claims derive from the  
 20 Policy, and if there is no coverage, there are no claims. Sentinel's Motion at 17:7-18. If the Court denies  
 21 the Rule 12(b)(6) motion for the reasons set forth above, and the Court finds that Founder has alleged  
 22 sufficient facts to support a privity of contract with HFIC, then there is no other basis to dismiss Counts  
 23 1-4.

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27 <sup>2</sup> <https://cclt.law.upenn.edu/> (Last accessed Sept. 17, 2020)

1           **2.       Counts 5 – Unjust Enrichment.**

2           The Court should not dismiss Plaintiff’s Unjust Enrichment cause of action for the same reason  
 3 the other causes of actions survive in this case. Plaintiff acknowledges that as a matter of law,  
 4 an unjust enrichment claim does not lie where the parties have an enforceable express contract.  
 5 (*California Medical Assn. v. Aetna U.S. Healthcare of California, Inc.* (2001) 94 Cal.App.4th 151, 172,  
 6 114 Cal.Rptr.2d 109.). However, in this case, HFIC is claiming there is no privity with the insured but  
 7 HFIC may have still profited from the insured due to its own actions in facilitating the rapid, wrongful,  
 8 bad faith denial of claims. See *Deras v. Volkswagen Grp. of Am., Inc.*, 2018 U.S. Dist. LEXIS 83553, at  
 9 \*19 (N.D. Cal. May 17, 2018) (holding that there is “no bar to the pursuit of alternative remedies at the  
 10 pleading stage.”).

11           **3.       Counts 6 and 7 – Violation of Cal. Bus. & Prof. Code § 17200 (UCL) and Injunctive  
 Relief Under § 17200.**

12           Defendants’ rapid denial of Plaintiff’s claim violates California UCL laws. Specifically,  
 13 Hartford’s bad faith denial meets the definition of unfair business practice in the three recognized  
 14 definitions of “unfair” under the UCL: (i) unfair (ii) fraudulent or (iii) unlawful. The SAC pleads  
 15 conduct which fits all three categories of conduct. SAC at 16:15-18:15, 26:14-28:18.

16           That said, it is true that under California law, a UCL action is equitable in nature (see *Korea*  
 17 *Supply Co. v. Lockheed Martin Corp*, 29 Cal. 4th 1134, 1144 (2003)), and the “remedies available in a  
 18 UCL action are limited to injunctive relief and restitution,” both of which are equitable remedies. *In re*  
 19 *Vioxx Class Cases*, 180 Cal. App. 4th 116, 130 (Cal. Ct. App. 2009). In addition, “it is axiomatic that a  
 20 court should determine the adequacy of a remedy in law before resorting to equitable relief,” *Franklin v.*  
 21 *Gwinnett Cty. Pub. Sch.*, 503 U.S. 60, 75-76 (1992).

22           However, the Court does not need to reach this issue until a later procedural juncture in the case,  
 23 when there is more certainty as to whether the legal relief sought would, in fact, be “adequate.” A  
 24 number of other courts have declined to dismiss UCL claims by a plaintiff because there is no bar to the  
 25 pursuit of alternative remedies at the pleadings stage. *Aberin v. Am. Honda Motor Co., Inc.*, 2018 U.S.  
 26 Dist. LEXIS 49731, at \*26 (N.D. Cal. Mar. 26, 2018). In *Adkins v. Comcast Corp.*, 2017 U.S. Dist.  
 27 LEXIS 137881 (N.D. Cal. Aug. 1, 2017), for example, the Court noted that a “few federal courts seem

1 to have decided that claims for equitable relief should be dismissed at the pleading stage if the plaintiff  
2 manages to state a claim for relief that carries a remedy at law,” but declined to follow suit because the  
3 court was “aware of no basis in California or federal law for prohibiting the plaintiffs from pursuing  
4 their equitable claims in the alternative to legal remedies at the pleadings stage.” *Id.* at \*7; *see also*  
5 *Vicuña v. Alexia Foods, Inc.*, 2012 U.S. Dist. LEXIS 59408 (N.D. Cal. April 27, 2012) (observing that  
6 while a “claim for restitution is inconsistent and incompatible with a related claim for breach of contract  
7 or a claim in tort, at the pleading stage, a plaintiff is allowed to assert inconsistent theories of  
8 recovery.”); *Deras v. Volkswagen Grp. of Am., Inc.*, 2018 U.S. Dist. LEXIS 83553, at \*19 (N.D. Cal.  
9 May 17, 2018) (declining to dismiss UCL claim because plaintiff has adequate remedy at law on ground  
10 that there is “no bar to the pursuit of alternative remedies at the pleading stage.”).

11 From a relief standpoint, injunctive relief is appropriate when insurance companies like The  
12 Hartford choose to litigate the issue instead of expending good faith effort to investigate the claims to  
13 see whether some form of coverage is available to the policyholders, who desperately needed (and still  
14 need) the funds to literally survive the ongoing pandemic. Indeed, many businesses have permanently  
15 closed because they cannot financially recover from the losses due to the government shutdowns caused  
16 by the pandemic. At the very least, to the extent that more businesses apply for coverage in the near  
17 future, it is in the best interest of the public that insurers like Hartford actually fulfill their obligation  
18 under law to reasonably and thoroughly investigate the claims instead of issuing blanket, rapid denials of  
19 coverage.

## 20 V. CONCLUSION

21 For the reasons stated above, Plaintiff requests that the Court deny Defendant HFIC’s Motion to  
22 Dismiss for Failure to State a Claim. As the Court can see by now, there are significant factual issues  
23 that require discovery relating to the relationship among the Hartford entities. To the extent that the  
24 Court believes the motion has merit, Plaintiff requests leave to conduct jurisdictional discovery and  
25 amend the Complaint as appropriate.



1 DATED: September 22, 2020

Respectfully Submitted by,

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