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16 *Company, Limited*

17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA

19 R3 HOSPITALITY GROUP, LLC,
20 Plaintiff,
21 vs.
22 THE HARTFORD and SENTINEL
23 INSURANCE COMPANY, LIMITED,
24 Defendants.

Case No.: 5:20-cv-01182-JGB-SHK

**DEFENDANT SENTINEL
INSURANCE COMPANY,
LIMITED'S ANSWER TO
COMPLAINT**

Honorable Jesus G. Bernal
Magistrate Judge Shashi H.
Kewalramani

Complaint Filed: June 10, 2020
Trial Date: None Set

1 Defendant Sentinel Insurance Company, Limited (“Sentinel”) by the
2 undersigned counsel, hereby responds to the Complaint for Declaratory Relief filed
3 by Plaintiff R3 Hospitality Group, LLC (“Plaintiff”) as follows:¹

4 **NATURE OF THE CASE**

5 1. Paragraph 1 of the Complaint merely characterizes the nature of the
6 claims asserted by Plaintiff in this action, and therefore requires no response. To
7 the extent a response is required, Sentinel admits that this is a civil action, but
8 denies any remaining allegations in Paragraph 1 of the Complaint.

9 2. Denied. Sentinel is without sufficient knowledge or information to
10 form a belief as to the truth of the allegations contained in paragraph 2 of the
11 Complaint. Therefore, the allegations are denied.

12 3. Denied.

13 4. Denied.

14 **JURISDICTION AND VENUE**

15 5. The allegations in this paragraph of the Complaint are conclusions of
16 law to which no response is required. As to Plaintiff’s allegations that it has
17 suffered business losses in an amount greater than \$150,000, Sentinel is without
18 sufficient knowledge or information to form a belief as to the truth of the
19 allegations and therefore denies the remaining allegations in Paragraph 5 of the
20 Complaint.

21 6. Sentinel admits that it has engaged in business activities in California
22 and derived revenues from such business but otherwise denies the allegations of
23 Paragraph 6 of the Complaint. As to whether Sentinel is subject to personal
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26 ¹ On August 12, 2020, Plaintiff voluntarily dismissed defendant “The Hartford.”
27 (See Plaintiff’s Notice of Dismissal of Defendant The Hartford, ECF No. 28.)
28 Accordingly, this Answer is submitted solely on behalf of Sentinel, and all
allegations in the Complaint are denied to the extent that they pertain to The
Hartford.

1 jurisdiction in this Court with respect to the claims asserted in Plaintiff’s
2 Complaint, that is a legal conclusion to which no response is required.

3 7. The allegations in this paragraph of the Complaint are conclusions of
4 law to which no response is required. To the extent that a response is required, the
5 allegations are denied to the extent that the Complaint asserts that events or
6 omissions give rise to liability or coverage under the Policy.

7 **PARTIES**

8 8. Denied. Sentinel is without sufficient knowledge or information to
9 form a belief as to the truth of the allegations contained in this paragraph of the
10 Complaint. Therefore, the allegations are denied.

11 9. Denied.

12 10. Sentinel admits that it is an insurance carrier. Sentinel further admits
13 that it is incorporated in Connecticut and has its principal place of business at One
14 Hartford Plaza Hartford, CT 06155. Sentinel denies the remaining allegations of
15 Paragraph 10 of the Complaint.

16 **FACTUAL BACKGROUND**

17 **I. Insurance Coverage**

18 11. Admitted that Sentinel issued an insurance policy number 57 SBA
19 BM3683, to R3 Hospitality Group LLC, doing business as Roundin3rd Sports Bar,
20 with effective dates of November 1, 2019 until November 1, 2020 (the “Policy”).
21 Admitted that the insured location as described in the policy is 1041 E 16th St
22 Upland, CA 91784. The Policy is a document that speaks for itself. Any
23 characterization or interpretation of the document by Plaintiff is denied. Sentinel
24 denies the remaining allegations of Paragraph 11 of the Complaint.

25 12. Sentinel denies the allegations in Paragraph 12 as they attempt to
26 characterize and interpret the terms of the Policy, which speaks for itself.

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1 13. Sentinel admits that it was provided with notice of alleged losses
2 under the Policy by Plaintiff. Sentinel further admits that, in March 2020, it
3 informed Plaintiff, based on Sentinel’s understanding of the facts then known to
4 Sentinel, that the Policy does not provide coverage for the alleged loss. The
5 remaining allegations are denied as stated.

6 14. Denied that Plaintiff faithfully paid policy premiums to Sentinel with
7 respect to the Policy. With respect to the remaining allegations in Paragraph 14,
8 the Policy speaks for itself and Sentinel denies any characterization or
9 interpretation of the Policy by Plaintiff.

10 15. Denied. The Policy speaks for itself and Sentinel denies any
11 characterization or interpretation of the Policy by Plaintiff.

12 16. Denied. The Policy is a document that speaks for itself. Any
13 characterization or interpretation of the document by Plaintiff is denied.

14 17. Denied. The Policy is a document that speaks for itself. Any
15 characterization or interpretation of the document by Plaintiff is denied.
16 Responding further, Sentinel denies Plaintiff’s contentions as to the applicable
17 exclusions.

18 18. Denied.

19 **II. The Coronavirus Pandemic**

20 19. Sentinel denies the first sentence of Paragraph 19 of the Complaint as
21 stated. The remaining allegations in this paragraph contain conclusions of law to
22 which no response is required. To the extent that a response is required, the
23 allegations are denied.

24 20. Sentinel is without sufficient knowledge or information to form a
25 belief as to the truth of the allegations contained Paragraph 20 of the Complaint.
26 Therefore, the allegations are denied.

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1 21. Sentinel is without sufficient knowledge or information to form a
2 belief as to the truth of the allegations contained in Paragraph 21 of the Complaint.
3 Therefore, the allegations are denied.

4 22. Sentinel is without sufficient knowledge or information to form a
5 belief as to the truth of the allegations contained in Paragraph 22 of the Complaint.
6 Therefore, the allegations are denied.

7 23. Sentinel is without sufficient knowledge or information to form a
8 belief as to the truth of the allegations contained in Paragraph 23 of the Complaint.
9 Therefore, the allegations are denied.

10 **III. Civil Authority**

11 24. Sentinel is without sufficient knowledge or information to form a
12 belief as to the truth of the allegations contained in Paragraph 24 of the Complaint.
13 Therefore, the allegations are denied.

14 25. Sentinel is without sufficient knowledge or information to form a
15 belief as to the truth of the allegations contained in Paragraph 25 of the Complaint.
16 Therefore, the allegations are denied.

17 26. Sentinel is without sufficient knowledge or information to form a
18 belief as to the truth of the allegations contained in Paragraph 26 of the Complaint.
19 Therefore, the allegations are denied.

20 27. The May 17, 2020 order referenced in paragraph 27 of the Complaint
21 is a document that speaks for itself. Any characterization or interpretation of the
22 document by Plaintiff is denied. Therefore, the allegations are denied.

23 28. Sentinel is without sufficient knowledge or information to form a
24 belief as to the truth of the allegations contained in Paragraph 28 of the Complaint.
25 Therefore, the allegations are denied.

26 29. Sentinel admits that it was provided with notice of alleged losses
27 under the Policy by Plaintiff. Sentinel further admits that, in March 2020, it
28 informed Plaintiff, based on Sentinel's understanding of the facts then known to

1 Sentinel, that the Policy does not provide coverage for the alleged loss. Sentinel is
2 without sufficient knowledge or information to form a belief as to the truth of the
3 remaining allegations contained in Paragraph 29. Therefore, the allegations are
4 denied.

5 30. Paragraph 30 purports to summarize the contents of a video for which
6 a hyperlink is provided in Paragraph 30 of the Complaint. That video speaks for
7 itself. Sentinel denies any characterization or interpretation of the video by
8 Plaintiff. Therefore, the allegations are denied.

9 31. Sentinel admits that President Trump made remarks to the press in a
10 briefing on April 10, 2020, and refers to his remarks for their contents. Sentinel
11 denies any characterization or interpretation of the video by Plaintiff. Sentinel
12 denies the remaining allegations in Paragraph 31 of the Complaint.

13 32. Denied.

14 **IV. Impact on Plaintiff**

15 33. Sentinel is without sufficient knowledge or information to form a
16 belief as to the truth of the allegations contained in Paragraph 33 of the Complaint.
17 Therefore, the allegations are denied.

18 34. Sentinel is without sufficient knowledge or information to form a
19 belief as to the truth of the allegations contained in this Paragraph 34 of the
20 Complaint. Therefore, the allegations are denied.

21 35. Sentinel is without sufficient knowledge or information to form a
22 belief as to the truth of the allegations contained in Paragraph 35 of the Complaint.
23 Therefore, the allegations are denied.

24 36. Sentinel is without sufficient knowledge or information to form a
25 belief as to the truth of the allegations contained in Paragraph 36 of the Complaint.
26 Therefore, the allegations are denied.

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1 37. Sentinel is without sufficient knowledge or information to form a
2 belief as to the truth of the allegations contained in Paragraph 37 of the Complaint.
3 Therefore, the allegations are denied.

4 38. Denied.

5 39. Sentinel denies that Plaintiff is entitled to coverage under the Policy
6 and further denies the remaining allegations contained in Paragraph 39 of the
7 Complaint.

8 **CAUSE OF ACTION DECLARATORY RELIEF**

9 40. Sentinel incorporates by reference the above paragraphs as though
10 fully set forth at length herein.

11 41. The allegations in Paragraph 41 of the Complaint contain conclusions
12 of law and citations to case authority to which no response is required.

13 42. The allegations in Paragraph 42 of the Complaint contain conclusions
14 of law to which no response is required. To the extent that a response is required,
15 the allegations are denied. Responding further, Sentinel denies Plaintiff's
16 contentions as to Sentinel's duties, responsibilities or obligations under the Policy.

17 43. Paragraph 43 merely describes the nature of the judicial declaration
18 sought by Plaintiff and therefore requires no response. To the extent a response is
19 required, Sentinel denies that Plaintiff is entitled to the judicial declaration that it
20 seeks.

21 44. Paragraph 44 merely describes the nature of the judicial declaration
22 sought by Plaintiff and therefore requires no response. To the extent a response is
23 required, Sentinel denies that Plaintiff is entitled to the judicial declaration that it
24 seeks.

25 45. Paragraph 45 merely describes the nature of the judicial declaration
26 sought by Plaintiff and therefore requires no response. To the extent a response is
27 required, Sentinel denies that Plaintiff is entitled to the judicial declaration that it
28 seeks.

1 Sentinel denies that Plaintiff is entitled to any of the relief sought in the
2 section titled “Prayer for Relief.” Any allegation in the Complaint not specifically
3 admitted in this Answer is denied.

4 **AFFIRMATIVE DEFENSES**

5 Sentinel asserts the following affirmative defenses and reserves all rights to
6 amend or supplement these defenses when and if amended or additional defenses
7 become appropriate and/or available in this action. The statement of any defense
8 herein does not assume the burden of proof for any issue to which the applicable law
9 places the burden of proof on Plaintiff.

10 **FIRST AFFIRMATIVE DEFENSE**

11 (Failure to state a claim)

12 The Complaint fails to state a cause of action upon which relief are granted.

13 **SECOND AFFIRMATIVE DEFENSE**

14 (Virus Exclusion)

15 The Policy contains an exclusion titled “‘Fungi’, Wet Rot, Dry Rot, Bacteria
16 And Virus.” Form SS 40 93 07 05 at 1. Plaintiff’s claims are barred or limited, in
17 whole or in part, to the extent that the alleged loss or damage, if any, is excluded by
18 the ‘Fungi’, Wet Rot, Dry Rot, Bacteria and Virus exclusion.

19 **THIRD AFFIRMATIVE DEFENSE**

20 (Virus-Limited Additional Coverage-Limits)

21 The Policy contains a provision titled “Limited Coverage For ‘Fungi,’ Wet
22 Rot, Dry Rot, Bacteria and Virus.” Form SS 40 93 07 05 at 2-3; Form SS 00 02 12
23 06 at 3. Plaintiff’s claims are barred or limited, in whole or in part, by the Limited
24 Coverage for ‘Fungi,’ Wet Rot, Dry Rot, Bacteria and Virus provision.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 (Comparative fault, waiver, estoppel, and unclean hands)

27 Plaintiff’s claims are barred or limited, in whole or in part, by the doctrines
28 of comparative fault, waiver, estoppel, and/or unclean hands.

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FIFTH AFFIRMATIVE DEFENSE

(Merger clause)

The Policy is the sole agreement between Plaintiff and Sentinel, and Sentinel did not breach any Policy terms.

SIXTH AFFIRMATIVE DEFENSE

(Terms of the Policy are controlling)

Sentinel’s obligations in the Policy are defined, limited, and controlled by the terms and conditions of the Policy, including, but not limited to, the coverages, limits, sub-limits, exclusions, endorsements, conditions, and all other terms set forth therein.

SEVENTH AFFIRMATIVE DEFENSE

(Failure to comply with Policy)

Plaintiff’s claims are barred or limited, in whole or in part, to the extent that Plaintiff failed to perform its obligations under the Policy.

EIGHT AFFIRMATIVE DEFENSE

(Losses not covered by Policy)

Plaintiff’s claims are barred or limited, in whole or in part, to the extent Plaintiff seeks relief for damages or losses not covered by the Policy.

NINTH AFFIRMATIVE DEFENSE

(Two or more coverages)

The Policy contains a General Condition titled “Other Insurance – Property Coverage.” Form SS 01 21 03 17 at 3. Plaintiff’s claims are limited, in whole or in part, to the extent the Other Insurance – Property Coverage provision is applicable to the loss or damage.

TENTH AFFIRMATIVE DEFENSE

(Other insurance)

Plaintiff’s claims are barred or limited, in whole or in part, to the extent other insurance or contributing insurance is applicable to the alleged loss or damage.

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ELEVENTH AFFIRMATIVE DEFENSE

(Failure to exhaust other insurance coverage)

Plaintiff's claims are barred or limited, in whole or in part, because Plaintiff has not demonstrated exhaustion of coverage for losses under other more specific insurance policies.

TWELFTH AFFIRMATIVE DEFENSE

(Deductibles, Sub-limits)

Plaintiff's claims are barred or limited, in whole or in part, by applicable deductibles, retentions, and/or limits and sub-limits (including per occurrence limits) contained in the Policy.

THIRTEENTH AFFIRMATIVE DEFENSE

(Outside Period of Restoration)

Plaintiff's claims are barred or limited, in whole or in part, to the extent Plaintiff seeks to recover for loss incurred outside the Period of Restoration.

FOURTEENTH AFFIRMATIVE DEFENSE

(Law or Public Policy)

Plaintiff's claims are barred or limited, in whole or in part, to the extent coverage is excluded by express provisions of law or public policy.

FIFTEENTH AFFIRMATIVE DEFENSE

(Conditions precedent and subsequent)

Plaintiff's claims are barred or limited, in whole or in part, to the extent that conditions precedent and subsequent to the availability of insurance coverage under the Policy have not been satisfied.

SIXTEENTH AFFIRMATIVE DEFENSE

(Offset)

Sentinel's obligation to Plaintiff, if any, is subject to offset for recoveries by Plaintiff from other persons or entities.

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SEVENTEENTH AFFIRMATIVE DEFENSE

(Valuation Clause)

Plaintiff’s claims are limited, in whole or in part, by the valuation provisions in the Policy.

EIGHTEENTH AFFIRMATIVE DEFENSE

(No “direct physical loss”)

Plaintiff’s claims are barred or limited, in whole or in part, to the extent there is no direct physical loss of or direct physical damage to covered property.

NINETEENTH AFFIRMATIVE DEFENSE

(No “direct physical loss” – Business Interruption)

Plaintiff’s claims are barred or limited, in whole or in part, because the interruption to Plaintiff’s business, if any, was not due to the direct physical loss of or direct physical damage to property caused by or resulting from a covered cause of loss.

TWENTIETH AFFIRMATIVE DEFENSE

(Covered Cause of Loss)

Plaintiff’s claims are barred or limited, in whole or in part, to the extent Plaintiff cannot demonstrate a Covered Cause of Loss, as defined in the Policy. Form SS 00 07 07 05 at 2.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Ordinance or Law-Limits)

The Policy contains an Additional Coverage provision for “Ordinance or Law.” Form SS 00 07 07 05 at 7-9. Plaintiff’s claims are barred or limited, in whole or in part, by the time period and/or sub-limits applicable to the Ordinance or Law provision.

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TWENTY-SECOND AFFIRMATIVE DEFENSE

(Pollution Exclusion)

The Policy contains an exclusion titled “Pollution.” Form SS 00 07 07 05, at 17-18. Plaintiff’s claims are barred or limited, in whole or in part, to the extent that the alleged loss or damage, if any, is excluded by the Pollutants and Contaminants exclusion.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Consequential Losses Exclusion)

The Policy contains an exclusion titled “Consequential Losses.” Form SS 00 07 07 05 at 17. Plaintiff’s claims are barred or limited, in whole or in part, to the extent that the alleged loss or damages, if any, are excluded by the Consequential Losses exclusion.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Civil Authority-Limits)

The Policy contains an Additional Coverage provision for “Civil Authority.” Form SS 00 07 07 05 at 11. Plaintiff’s claims are barred or limited, in whole or in part, by the time period and/or sub-limits, if any, applicable to the Civil Authority provision.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Business Income from Dependent Properties-Limits)

The Policy contains an Additional Coverage provision for “Business Income from Dependent Properties.” Form SS 00 07 07 05 at 11-12. Plaintiff’s claims are barred or limited, in whole or in part, by the time period and/or sub-limits, if any, applicable to the Business Income from Dependent Properties provision.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Extended Business Income-Limits)

The Policy contains an Additional Coverage provision for “Extended Business Income.” Form SS 00 07 07 05 at 11. Plaintiff’s claims are barred or

1 limited, in whole or in part, by the time period and/or sub-limits, if any, applicable
2 to the Extended Business Income provision.

3 TWENTY-SEVENTH AFFIRMATIVE DEFENSE

4 (Acts or Decisions)

5 The Policy contains an exclusion titled “Acts or Decisions.” Form SS 00 07
6 07 05 at 18. Plaintiff’s claims are barred or limited, in whole or in part, to the extent
7 that the alleged loss or damage, if any, is excluded by the Acts or Decisions
8 exclusion.

9 TWENTY-EIGHT AFFIRMATIVE DEFENSE

10 (No bad faith)

11 Plaintiff’s claims are barred or limited, in whole or in part, because Sentinel
12 has at all relevant times acted reasonably and in good faith.

13 TWENTY-NINTH AFFIRMATIVE DEFENSE

14 (No bad faith - Claim was properly handled)

15 Plaintiff’s claims are barred or limited, in whole or in part, because Sentinel
16 conducted a full, fair, prompt, and thorough investigation of all bases of Plaintiff’s
17 insurance claim.

18 THIRTIETH AFFIRMATIVE DEFENSE

19 (No bad faith - Reasonable grounds)

20 Plaintiff’s claims are barred or limited, in whole or in part, to the extent that
21 Sentinel had reasonable grounds to deny Plaintiff’s insurance claim.

22 THIRTY-FIRST AFFIRMATIVE DEFENSE

23 (Punitive damages violate due process)

24 The Complaint, to the extent that it seeks punitive or exemplary damages,
25 violates Sentinel’s rights to substantive due process as provided by the Fifth and
26 Fourteenth Amendments to the United States Constitution. The imposition of any
27 punitive damages in this matter would deprive Sentinel of its property without due
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1 process of law under the United States Constitution. Therefore, any such damages
2 may not be included in any final judgment.

3 THIRTY-SECOND AFFIRMATIVE DEFENSE

4 (Punitive damages constitute excessive fines)

5 Plaintiff's request for punitive damages violates the excessive fine clause of
6 the Eighth Amendment to the United States Constitution.

7 THIRTY-THIRD AFFIRMATIVE DEFENSE

8 (Failure to mitigate)

9 Plaintiff's claims are barred or limited, in whole or in part, to the extent that
10 Plaintiff failed to mitigate damages, if any. To the extent Plaintiff failed to take
11 reasonable steps to mitigate Plaintiff's alleged damages, if any, Plaintiff should be
12 denied any recovery in this action.

13 THIRTY-FOURTH AFFIRMATIVE DEFENSE

14 (Named or additional insured)

15 Plaintiff's claims are barred or limited, in whole or in part, to the extent that
16 Plaintiff is not a named or additional insured under the Policy.

17 THIRTY-FIFTH AFFIRMATIVE DEFENSE

18 (Reservation of future defenses)

19 Plaintiff's claims are barred or limited, in whole or in part, by additional
20 defenses that cannot now be articulated because of the generality of the pleadings,
21 and other presently undeveloped information. Accordingly, Sentinel reserves the
22 right to supplement the foregoing defenses as this case progresses to the full extent
23 permissible by law.

24 **WHEREFORE**, Sentinel respectfully requests that this Court enter
25 judgment in its favor and against Plaintiff and that Plaintiff's claims be dismissed
26 with prejudice. Sentinel further demands costs, interest, and such other relief as
27 the Court may deem just and appropriate.

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DATED: August 14, 2020

STEPTOE & JOHNSON LLP

By: /s/ Ashwin J. Ram

Ashwin J. Ram

Sarah D. Gordon

*(pro hac vice application
forthcoming)*

Attorneys for Defendant

Sentinel Insurance Company, Limited