

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

JUJAMCYN THEATERS LLC,  
Plaintiff,

v.

FEDERAL INSURANCE COMPANY and  
PACIFIC INDEMNITY COMPANY,  
Defendants.

Case No. 1:20-cv-06781-ALC

CIVIL ACTION

**ANSWER TO PLAINTIFF'S  
COMPLAINT**

**JURY TRIAL DEMANDED**

Defendants Federal Insurance Company (“Federal”) and Pacific Indemnity Company (“Pacific”) (collectively, “Chubb”), by and through their attorneys, Clyde & Co US LLP, as and for an Answer to the Complaint (“Complaint”) filed by Plaintiff Jujamcyn Theaters LLC (“Plaintiff”), state as follows:

**NATURE OF THIS LAWSUIT**

1-2. The allegations in Paragraphs 1 through 2 of the Complaint are not directed to Chubb and, thus, no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 1 through 2 of the Complaint.

3-4. The allegations in Paragraphs 3 through 4 of the Complaint are not directed to Chubb and, thus, no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 3 through 4 of the Complaint, except admits that the Governor of the State of New York issued certain Executive Orders, which speaks for themselves. Chubb denies any allegations contrary to, misconstruing and/or mischaracterizing any Executive Orders of the Governor of the State of New York.

5. The allegations in Paragraph 5 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of the Complaint, except admits that Federal issued Policy No. 7944-46-01 (the “Federal Policy”) and Pacific issued Policy No. 7993-60-33 (the “Pacific Policy”) (collectively, the “Chubb Policies”), which are clear, unambiguous and speak for themselves. Chubb denies any allegations contrary to, misconstruing and/or mischaracterizing the Chubb Policies. Chubb further denies the allegations that Federal and/or Pacific “sold” any insurance policy to Plaintiff. Chubb further denies that it did not “honor its promises.” Federal further admits that Plaintiff made a claim under the Federal Policy. Federal admits that it issued a letter, dated June 22, 2020, responding to Plaintiff’s claim, which letter speaks for itself. Federal denies any allegations contrary to, misconstruing and/or mischaracterizing the June 22, 2020 letter. Pacific further admits that Plaintiff made a claim under the Pacific Policy. Pacific admits that it issued a letter responding to Plaintiff’s claim, which letter speaks for itself. Pacific denies any allegations contrary to, misconstruing and/or mischaracterizing the letter responding to Plaintiff’s claim.

**THE PARTIES**

6. Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint.

7. Chubb denies the allegations contained in Paragraph 7 of the Complaint, except admits that Federal and Pacific are part of the Chubb Group of Insurance Companies.

8. Chubb denies the allegations contained in Paragraph 8 of the Complaint, except Federal admits that it is incorporated under the laws of the State of Indiana and has a principal place of business in New Jersey.

9. Chubb denies the allegations contained in Paragraph 9 of the Complaint, except Pacific admits that it is incorporated under the laws of the State of Wisconsin and has a principal place of business in New Jersey.

10-16. Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 10 through 16 of the Complaint, except denies any allegations contrary to, misconstruing and/or mischaracterizing any writing which speaks for itself.

**JURISDICTION AND VENUE**

17-18. The allegations in Paragraphs 17 through 18 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb admits that it has subject matter jurisdiction over this action and that venue is proper.

**THE COVID-19 PANDEMIC AND SUBSEQUENT CIVIL AUTHORITY ORDERS**

19-24. Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 19 through 24 of the Complaint, except admits that COVID-19 is the name of a disease caused by the SARS-CoV2 coronavirus and admits that the Internet links are to various journal or news articles and refers to those journals and news articles for their terms.. Chubb further denies any allegations contrary to, misconstruing and/or mischaracterizing any writing which speaks for itself.

25-28. Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 25 through 28 of the Complaint, except admits that Governor Cuomo issued certain Executive Orders, which speak for themselves. Chubb denies any allegations contrary to, misconstruing and/or mischaracterizing any Executive Order issued by Governor Cuomo.

29. Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29 of the Complaint, except denies any allegations contrary to, misconstruing and/or mischaracterizing any writing, which speaks for itself.

30-32. Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 30 through 32 of the Complaint, except admits that Mayor de Blasio issued certain Executive Orders, which speak for themselves. Chubb denies any allegations contrary to, misconstruing and/or mischaracterizing any Executive Order issued by Mayor de Blasio.

**FEDERAL AND PACIFIC’S KNOWLEDGE OF THE RISK OF PANDEMICS AND  
THEIR DECISION TO PROVIDE COVERAGE**

33. The allegations in Paragraph 33 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33 of the Complaint, except denies that Chubb “sold” any policy of insurance to Plaintiff, and admits that Chubb filed a Form 10-K for the fiscal year ended December 31, 2019, which speaks for itself. Chubb further denies any allegations contrary to, misconstruing and/or mischaracterizing any writing, including without limitation, the Form 10-K referenced above. Chubb further denies that Federal and Pacific “knew” that that the policies they issued, including the Federal Policy and the Pacific Policy, “would cover losses associated with pandemics” and, in fact, denies the allegation that the Federal Policy and the Pacific Policy “would cover losses associated with pandemics” as stated.

34-35. Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 34 through 35 of the Complaint, except denies that Chubb

“sold” any policy of insurance to Plaintiff, and denies any allegations contrary to, misconstruing and/or mischaracterizing any writing which speaks for itself.

36. The allegations in Paragraph 36 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36 of the Complaint, except denies any allegations contrary to, misconstruing and/or mischaracterizing any writing, which speaks for itself. Chubb further denies that Chubb “decided not to” “use common and widely available exclusions to guard against being obligated to pay for pandemic-associated losses.” Chubb further denies that Chubb “deliberately omitt[ed] from the policies any potentially applicable exclusion associated with a virus-related pandemic.” Chubb further denies that it “sold” any policy of insurance to Plaintiff.

**FEDERAL’S “ENTERTAINMENT INSURANCE PROGRAM” POLICY**

37-44. Pacific denies the allegations contained in Paragraphs 37 through 44 of the Complaint, and Federal denies that it “sold” any insurance policy to Plaintiff. Federal admits that it issued the Federal Policy, which speaks for itself Federal further denies any allegations contrary to, misconstruing and/or mischaracterizing the Federal Policy. Federal further denies the allegations that the Federal Policy “does not contain any exclusion for losses caused by or resulting from the spread of viruses, communicable diseases, or pandemics,” “insures losses caused by or resulting from viruses, communicable diseases, and pandemics,” and that “viruses, communicable diseases, or pandemics” are “insured ‘covered perils.’”

45. The allegations in Paragraph 45 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Pacific denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 45

of the Complaint, and Federal denies the allegations in Paragraph 45 of the Complaint as alleged because they are so broadly and vaguely worded. Federal further denies that it “sold” any policy of insurance to Plaintiff.

46. The allegations in Paragraph 46 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 46 of the Complaint, except Federal denies that it “wrongfully withheld the policy benefits that Jujamcyn is entitled to receive—and that it needs to weather the past, present, and future circumstances associated with the spread of SARS-CoV-2 and actions to ‘flatten the curve,’ rebound from its financial losses, and continue operating as a productive member of New York’s economy in one of the world’s cultural centers.”

47-48. The allegations in Paragraphs 47 through 48 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 47 through 48 of the Complaint, except Federal denies that “it decided months before it wrongfully denied Jujamcyn’s claim that it would deny all business income losses associated with SARS-CoV-2, COVID-19, and closure orders.” Federal further denies the allegation that, “[B]efore Federal did any meaningful investigation (if it did any investigation at all), it already had decided that it would not pay Jujamcyn for its losses under the Federal Policy.” Federal further denies any allegations contrary to, misconstruing and/or mischaracterizing any writing, which speaks for itself.

49. The allegations in Paragraph 49 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Pacific denies knowledge

or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 49 of the Complaint, and Federal denies the allegations contained in Paragraph 49 of the Complaint.

50. The allegations in Paragraph 50 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50 of the Complaint, and Federal denies that it is “obligated” to pay for Plaintiff’s alleged losses. Federal further denies that, “[E]ven if Jujamcyn suffered no “direct physical loss or damage” to its insured property, other provisions in the Federal Policy insure Jujamcyn for its losses resulting from the presence of SARS-CoV-2 elsewhere, losses caused by the issuance of orders of civil authorities (such as the orders issued by Governor Andrew Cuomo and Mayor de Blasio), and interference with ingress or egress to its premises.”

**FEDERAL’S BREACHES AND WRONGFUL CONDUCT**

51. Pacific denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51 of the Complaint, and Federal denies the allegations in Paragraph 51 of the Complaint.

52. The allegations in Paragraph 52 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 52 of the Complaint, except Federal denies that, “the presence of the SARS-CoV-2 virus on or around property amounts to ‘direct physical loss or damage’ as that phrase is used in the Federal Policy.”

53. The allegations in Paragraph 53 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Pacific denies knowledge

or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53 of the Complaint, and Federal denies the allegations contained in Paragraph 53 of the Complaint.

54. The allegations in Paragraph 54 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54 of the Complaint, except Federal denies that it is “obligated” to pay to Plaintiff “the costs and losses associated with the closures.”

55. The allegations in Paragraph 55 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Pacific denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 55 of the Complaint, and Federal denies the allegations contained in Paragraph 55 of the Complaint, except admits that it denied coverage for Plaintiff’s claim.

56-57. The allegations in Paragraphs 56 through 57 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 56 through 57 of the Complaint, except Federal admits that it issued a letter, dated June 22, 2020, which speaks for itself. Federal further denies any allegations contrary to, misconstruing and/or mischaracterizing any writing which speaks for itself, including without limitation the June 22, 2020 letter.

58. The allegations in Paragraph 58 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Pacific denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 58

of the Complaint, and Federal denies the allegations contained in Paragraph 58 of the Complaint as stated because they are so broadly and vaguely worded.

59. Pacific denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 59 of the Complaint, and Federal denies that the language of the Federal Policy has a “misleading nature,” and further denies the remaining allegations contained in Paragraph 59 of the Complaint as stated because they are so broadly and vaguely worded.

60. Pacific denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 60 of the Complaint, and Federal denies the allegations contained in Paragraph 60 of the Complaint.

61. The allegations in Paragraph 61 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 61 of the Complaint. Federal further denies any allegations contrary to, misconstruing and/or mischaracterizing any writing, which speaks for itself.

62. The allegations in Paragraph 62 of the Complaint are so broadly and vaguely worded that they are denied as alleged.

63. Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 63 of the Complaint, except Federal admits that Plaintiff sent a letter, dated July 6, 2020, which speaks for itself. Federal denies any allegations contrary to, misconstruing and/or mischaracterizing the July 6, 2020 letter.

64. The allegations in Paragraph 64 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 64

of the Complaint, except Federal denies that Plaintiff is “entitled to all benefits of insurance provided by the Federal Policy.”

**PACIFIC’S “PERFORMANCE DISRUPTION” COVERAGE, “ENTERTAINMENT – PROPERTY INSURANCE FOR THE PERFORMING ARTS” POLICY**

65-70. Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 65 through 70 of the Complaint, except Pacific admits that it issued the Pacific Policy, which speaks for itself. Pacific further denies any allegations contrary to, misconstruing and/or mischaracterizing the Pacific Policy or any other writing which speaks for itself, including without limitation, any reservation of rights letter from Pacific.

**PACIFIC'S BREACHES AND WRONGFUL CONDUCT**

71. The allegations in Paragraph 71 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 71 of the Complaint, except Pacific admits issuing the Pacific Policy, which speaks for itself. Pacific further denies any allegations contrary to, misconstruing and/or mischaracterizing the Pacific Policy or any other writing which speaks for itself, including without limitation, any reservation of rights letter from Pacific. Pacific further denies the allegations that it significantly underpaid Plaintiff and that Pacific materially breached the Pacific Policy.

72. The allegations in Paragraph 72 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 72 of the Complaint, except Pacific admits issuing the Pacific Policy, which speaks for itself. Pacific further denies any allegations contrary to, misconstruing and/or mischaracterizing the Pacific Policy

or any other writing which speaks for itself, including without limitation, any reservation of rights letter from Pacific.

73. The allegations in Paragraph 73 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Federal denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 73 of the Complaint, and Pacific denies that it “sold” or “sells” any policies of insurance and further denies the allegations in Paragraph 73 of the Complaint as stated because they are so broadly and vaguely worded.

74. The allegations in Paragraph 74 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 74 of the Complaint, except Pacific admits that it issued the Pacific Policy, which speaks for itself, and admits that Plaintiff sought coverage under its “performance disruption” policy. Pacific further denies any allegations contrary to, misconstruing and/or mischaracterizing the Pacific Policy and/or any other writing which speaks for itself, including without limitation, any reservation of rights letter from Pacific. Pacific further denies that Pacific “deprived Jujamecyn of the financial protection that it needs to weather the past, present and future circumstances associated with the spread of SARS-CoV-2 and actions to ‘flatten the curve, ‘rebound from its financial losses, and continue operating.”

75. The allegations in Paragraph 75 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 75 of the Complaint, except Pacific admits that it issued the Pacific Policy, which speaks for itself.

Pacific further denies any allegations contrary to, misconstruing and/or mischaracterizing the Pacific Policy and/or any other writing which speaks for itself, including without limitation, any reservation of rights letter from Pacific. Pacific further denies that Pacific “got it wrong.”

76-77. The allegations in Paragraphs 76 through 77 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Federal denies knowledge or information sufficient for form a belief as to the allegations contained in Paragraphs 76 through 77 of the Complaint, and Pacific denies the allegations contained in Paragraphs 76 through 77 of the Complaint, except Pacific admits that it issued the Pacific Policy, which speaks for itself. Pacific further denies any allegations contrary to, misconstruing and/or mischaracterizing the Pacific Policy and/or any other writing which speaks for itself, including without limitation, any reservation of rights letter from Pacific.

78. The allegations in Paragraph 78 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 78 of the Complaint, except Pacific admits that Plaintiff seeks damages and declaratory relief in this action, but Pacific denies that Pacific committed any “contractual breaches” and/or “wrongful conduct.” Pacific further denies any allegations contrary to, misconstruing and/or mischaracterizing the Pacific Policy and/or any other writing, which speaks for itself, including without limitation, any reservation of rights letter from Pacific.

79. The allegations in Paragraph 79 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 79 of the Complaint, except Pacific admits that it previously tendered \$250,000 to Plaintiff. Pacific

further denies any allegations contrary to, misconstruing and/or mischaracterizing the Pacific Policy and/or any other writing which speaks for itself, including without limitation, any reservation of rights letter from Pacific.

80-101. Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 80 through 101 of the Complaint, except Chubb denies any allegations contrary to, misconstruing and/or mischaracterizing the Federal Policy, the Pacific Policy and/or any other writing which speaks for itself, including without limitation, any reservation of rights letter from Federal or Pacific, or any Order issued by the City and/or the State of New York.

102. The allegations in Paragraph 102 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 102 of the Complaint, except Pacific denies that “each loss at one theater is separate and distinct from the losses at the other theaters.” Pacific further denies any allegations contrary to, misconstruing and/or mischaracterizing the Pacific Policy and/or any other writing which speaks for itself, including without limitation, any reservation of rights letter from Pacific.

103. The allegations in Paragraph 103 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Federal denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 103 of the Complaint, and Pacific denies the allegations contained in Paragraph 103, except admits that Pacific took the position that the COVID-19 pandemic is the occurrence and that Plaintiff sustained only one “loss.” Pacific further refers to the terms and conditions of the Pacific Policy and denies any allegations contrary to, misconstruing and/or mischaracterizing the Pacific Policy and/or

any other writing which speaks for itself, including without limitation, any reservation of rights letter from Pacific.

104. The allegations in Paragraph 104 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Federal denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 104 of the Complaint, and Pacific denies the allegations contained in Paragraph 104 of the Complaint.

**FIRST CAUSE OF ACTION**  
**(Breach of Contract against Federal)**

105. Chubb incorporates by reference its responses to Paragraphs 1 through 104 above, as its answer to Paragraph 105.

106. The allegations in Paragraph 106 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies the allegations contained in Paragraph 106 of the Complaint.

107. The allegations in Paragraph 107 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Pacific denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 107 of the Complaint, and Federal denies the allegations contained in Paragraph 107 of the Complaint.

108. The allegations in Paragraph 108 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 108 of the Complaint, except Federal denies that Plaintiff's alleged damages are "a direct and proximate result of Federal's acts."

109. The allegations in Paragraph 109 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 109 of the Complaint, except Federal admits that Plaintiff seeks certain relief and Federal further denies that it committed any “breach.”

**SECOND CAUSE OF ACTION**  
**(Breach of the Implied Covenant of Good Faith and Fair Dealing against Federal)**

110. Chubb incorporates by reference its responses to Paragraphs 1 through 109 above, as its answer to Paragraph 110.

111-117. The allegations in Paragraphs 111 through 117 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Pacific denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 111 through 117 of the Complaint, and Federal denies the allegations contained in Paragraphs 111 through 117 of the Complaint, except admits that Plaintiff seeks certain relief.

**THIRD CAUSE OF ACTION**  
**(Declaratory Judgment against Federal)**

118. Chubb incorporates by reference its responses to Paragraphs 1 through 117 above, as its answer to Paragraph 118.

119-120. The allegations in Paragraphs 119 through 120 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Pacific denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 119 through 120 of the Complaint, and Federal denies the allegations contained in Paragraphs 119 through 120 of the Complaint, except Federal admits that it issued the

Federal Policy, which speaks for itself. Federal further denies any allegations contrary to, misconstruing and/or mischaracterizing the Federal Policy and/or any other writing which speaks for itself, including without limitation, any reservation of rights letter from Federal.

121. The allegations in Paragraph 121 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Pacific denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 121 of the Complaint, and Federal admits the allegations contained in Paragraph 121 of the Complaint.

122-124. The allegations in Paragraphs 122 through 124 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 122 through 124 of the Complaint, except Federal admits that Plaintiff seeks declaratory relief.

**FOURTH CAUSE OF ACTION**  
**(Breach of Contract Against Pacific)**

125. Chubb incorporates by reference its responses to Paragraphs 1 through 124 above, as its answer to Paragraph 125.

126. The allegations in Paragraph 126 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies the allegations contained in Paragraph 126 of the Complaint.

127-128. The allegations in Paragraphs 127 through 128 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Federal denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 127 through 128 of the Complaint, and Pacific denies the allegations

contained in Paragraphs 127 through 128 of the Complaint, except admits that it issued the Pacific Policy, which speaks for itself. Pacific further denies any allegations contrary to, misconstruing and/or mischaracterizing the Pacific Policy and/or any other writing which speaks for itself, including without limitation, any reservation of rights letter from Pacific.

129. The allegations in Paragraph 129 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 129 of the Complaint, except Pacific admits that Plaintiff seeks certain relief and Pacific further denies that it committed any “breach.”

**FIFTH CAUSE OF ACTION**  
**(Breach of the Implied Covenant of Good Faith and Fair Dealing Against Pacific)**

130. Chubb incorporates by reference its responses to Paragraphs 1 through 129 above, as its answer to Paragraph 130.

131-138. The allegations in Paragraphs 131 through 138 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Federal denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 131 through 138 of the Complaint, and Pacific denies the allegations contained in Paragraphs 131 through 138 of the Complaint, except admits that Plaintiff seeks certain relief.

**SIXTH CAUSE OF ACTION**  
**(Declaratory Judgment Against Pacific)**

139. Chubb incorporates by reference its responses to Paragraphs 1 through 138 above, as its answer to Paragraph 139.

140-141. The allegations in Paragraphs 140 through 141 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 140 through 141 of the Complaint, except Pacific admits that it issued the Pacific Policy, which speaks for itself. Pacific further denies any allegations contrary to, misconstruing and/or mischaracterizing the Pacific Policy and/or any other writing which speaks for itself, including without limitation, any reservation of rights letter from Pacific.

142. The allegations in Paragraph 142 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Federal denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 142 of the Complaint, and Pacific admits the allegations contained in Paragraph 142 of the Complaint.

143-145. The allegations in Paragraphs 143 through 145 of the Complaint contain conclusions of law to which no response is required. To the extent that a response is required, Chubb denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 143 through 145 of the Complaint, except Pacific admits that Plaintiff seeks declaratory relief.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Chubb respectfully requests that this Court deny Plaintiff's requested relief, and declare Chubb's rights and duties as follows:

1. That this Court adjudge, determine and declare that (a) Federal is not obligated to provide coverage to Plaintiff under any provision of the Federal Policy; and (b) Pacific is not

obligated to provide coverage to Plaintiff under any provision of the Pacific Policy beyond the amount already tendered; and

2. That this Court grant Chubb such other and further relief as this court may deem, just proper and equitable.

## **DEFENSES**

### **FIRST DEFENSE** **(Failure to State a Claim)**

The Complaint does not or may not state facts sufficient to state a claim upon which relief can be granted against Chubb.

### **SECOND DEFENSE** **(Building or Personal Property; No Direct Physical Loss or Damage)**

The Building and Personal Property form (80-02-1000) of the Federal Policy provides:

Building Or Personal Property

We will pay for direct physical loss or damage to:

- **building;** or
- **personal property;**

caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit of Insurance for Building Or Personal Property shown in the Declarations.

Inasmuch as Plaintiff has not sustained any direct physical loss or damage to its buildings or personal property, coverage is not available under the Building or Personal Property coverage provision.

### **THIRD DEFENSE** **(Business Income; No Direct Physical Loss or Damage)**

The Business Income With Extra Expense form (80-02-1004) of the Federal Policy provides, in pertinent part:

## Business Income and Extra Expense

We will pay for the actual:

- **business income** loss you incur due to the actual impairment of your operations; and
- **extra expense**, you incur due to the actual or potential impairment of your **operations**,

during the **period of restoration**, not to exceed the applicable Limit of Insurance for Business Income With Extra Expense shown in the Declarations.

This actual or potential impairment of **operations** must be caused by or result from direct physical loss or damage by a **covered peril** to **property**, unless otherwise stated.

Inasmuch as Plaintiff has not sustained any direct physical loss or damage to property, coverage is not available under the Business Income and Extra Expense coverage provision

### **FOURTH DEFENSE** **(Civil Authority)**

The Federal Policy contains the following Civil Authority provision in Section 80-02-1004:

Civil Authority

We will pay for the actual:

- **business income** loss; or
- **extra expense**,

you incur due to the actual impairment of your **operations** directly caused by the prohibition of access to:

- your premises; or
- a **dependent business premises**

by a civil authority.

This prohibition of access by a civil authority must be the direct result of direct physical loss or damage to property away from such premises or such **dependent business premises** by a **covered peril**, provided such property is within:

- one mile; or
- the applicable miles shown in the Declarations,

from such premises or **dependent business premises**, whichever is greater.

Inasmuch as no civil authority order impacting the insured's operations was issued as the direct result of direct physical loss or damage to property within one mile of the premises or **dependent business premises**, civil authority coverage is not available under the Federal Policy.

**FIFTH DEFENSE**  
**(Prohibition of Access Endorsement)**

The Federal Policy contains the following Prohibition of Access Endorsement (Form 80-02-5357):

Prohibition of Access

We will pay for the actual:

- **business income** loss; and
- **extra expense**,

you incur due to the actual impairment of your **operations**, directly caused by the prohibition of access to a premises shown in the Declarations by a civil authority, not to exceed the applicable Per Occurrence Limit of Insurance for Prohibition Of Access shown in the Schedule above.

This prohibition of access must be the direct result of a peril (not otherwise excluded by the Building and Personal Property Contract included in this policy) that:

- A. has occurred at or within 1,000 feet of such premises; or
- B. is certain to occur imminently, provided the prohibition of access:
  - 1. does not apply to a geographic area of more than 1,000 square feet;  
or
  - 2. only applies to a premises shown in the Declarations.

To the extent there was no prohibition of access to the insured's premises, no coverage applies

under this provision.

Moreover, to the extent there was a prohibition of access to the insured's premises, such prohibition was not the direct result of a peril that has either occurred at or within 1,000 feet of such premises or is certain to occur imminently, provided the prohibition of access: 1) does not apply to a geographic area of more than 1,000 square feet; or 2) only applies to a premises shown in the Declarations.

**SIXTH DEFENSE**  
**(Loss Prevention Expenses)**

No coverage is or may be available for the claims against Chubb for loss prevention expenses to the extent that Plaintiff failed to notify Chubb of Plaintiff's intent to incur loss prevention expenses before taking loss prevention action, and/or to the extent that Plaintiff failed to notify Chubb within 48 hours after it took any loss prevention action.

**SEVENTH DEFENSE**  
**(Ingress and Egress)**

No coverage is or may be available for the claims against Federal to the extent that existing ingress to or egress from a premises shown in the Declarations is prevented due to direct physical loss or damage by a "covered peril" to property at a location contiguous to such premises, as defined in the Federal Policy.

**EIGHTH DEFENSE**  
**(Civil Authority; Prohibition of Access)**

No coverage is or may be available for the claims against Federal under the Civil Authority coverage to the extent that there is no prohibition of access as a direct result of a covered peril to a premises shown in the Declarations of the Federal Policy by a civil authority.

**NINTH DEFENSE**

**(Failure to Perform Obligations, Covenants, and Conditions Precedent and/or Subsequent)**

No coverage is or may be available for the claims against Chubb to the extent that Plaintiff failed to perform the obligations, covenants, conditions precedent, and conditions subsequent under the Chubb Policies.

**TENTH DEFENSE**

**(Acts or Decisions Exclusion)**

The Federal Policy contains the following Acts or Decisions exclusion in Form 80-02-1000:

**Policy Exclusions**

The following Policy exclusions apply to all the coverages in this contract.

\* \* \*

**Acts or Decisions**

This insurance does not apply to loss or damage caused by or resulting from acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

To the extent that Plaintiff's claims are the result of an act or decision of any person, group, organization, or governmental body, coverage may be barred under the Federal Policy.

**ELEVENTH DEFENSE**

**(Loss of Market)**

The claims asserted in the Complaint are or may be barred in whole or in part that results from loss of market, loss or use or delay.

**TWELFTH DEFENSE**

**(Insured's Duties in the Event of Loss or Damage/Assistance and Cooperation)**

The Chubb Policies provide that you have certain duties in the event of loss or damage, including without limitation that you must "cooperate with [Chubb] in the investigation, settlement or handling of any claim." Thus, to the extent that Plaintiff failed to comply with its

duties in the event of loss or damage as provided in the Chubb Policies, including assistance and cooperation, no coverage is or may be available for the claims against Chubb.

**THIRTEENTH DEFENSE**  
**(Failure to Mitigate Damages)**

To the extent you have failed to mitigate, minimize or avoid any damages you allegedly sustained, any recovery against Chubb must be limited by that amount.

**FOURTEENTH DEFENSE**  
**(Performance Disruption Limit of Liability)**

The Pacific Policy contains the following business income and extra expense coverage in the Performance Disruption coverage form (Form 10-02-1065):

We will pay for the actual:

- **business income** loss you incur due to the necessary cancellation, interruption or postponement of one or more of your performances, including the inability to open a new production as scheduled; and
- **extra expense** you incur due to the actual or potential cancellation, interruption, postponement or other impairment of one or more of your performances,

not to exceed the applicable Limit of Insurance for Performance Disruption shown in the Declarations.

This coverage applies only when the actual or potential cancellation, interruption, postponement or impairment of your performance is caused by or results from a **covered occurrence**.

Moreover, the term “**covered occurrence**” is defined in the Policy as “any unexpected circumstances beyond your control, except as listed under Exclusions.”

The Limit of Insurance for Performance Disruption shown on the Declarations is \$250,000 “each loss.” The term “Limits of Insurance” is defined in Form 10-02-0165 of the Pacific Policy as: “The most we will pay in any one occurrence is the amount of loss, not to exceed the applicable Limit of Insurance shown in the Declarations.” Here, the “occurrence” at

issue is the COVID-19 pandemic. Accordingly, the claim for all five theaters is subject to a single \$250,000 limit for “Performance Disruption.”

**FIFTEENTH DEFENSE**  
**(Lack of Audience Exclusion-Pacific Policy)**

The Pacific Policy contains the following exclusion for “Lack of Audience” in Form 10-02-1065: “This insurance does not apply to loss caused by or resulting from lack or loss of audience or public support for your production.” To the extent that any loss or portion of loss asserted by Plaintiff is the result of lack or loss of audience or public support for the insured’s production, coverage may be barred.

**SIXTEENTH AFFIRMATIVE DEFENSE**  
**(Policy Terms, Exclusions, Conditions and Limitations)**

No coverage is or may be available for the claims against Chubb based on, and/or coverage may be limited or barred by, the terms, exclusions, conditions and limitations contained in the Chubb Policies.

**SEVENTEENTH DEFENSE**  
**(Additional Defenses)**

Chubb reserves the right to amend its Answer to assert such additional affirmative defenses and/or applicable policy terms, exclusions, conditions and limitations as may become apparent during the continuing course of discovery in this matter. Additionally, Chubb reserves the right to amend its Answer to assert additional affirmative defenses to the extent that the law of a state other than New York is applied and/or the law of New York changes or develops, thereby requiring such amendment.

**WHEREFORE**, Chubb respectfully requests that this Court deny Plaintiff’s requested relief, and declare Chubb’s rights and duties as follows:

1. That this Court adjudge, determine and declare that (a) Federal is not obligated to provide coverage to Plaintiff under any provision of the Federal Policy; and (b) Pacific is not obligated to provide coverage to Plaintiff under any provision of the Pacific Policy beyond the amount already tendered; and

2. That this Court grant Chubb such other and further relief as this court may deem, just proper and equitable.

**JURY DEMAND**

Chubb requests a jury for all issues so triable.

Dated: September 29, 2020

CLYDE & CO US LLP



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*Attorneys for Defendants, Federal Insurance  
Company and Pacific Indemnity Company*

**CERTIFICATION OF SERVICE**

I hereby certify that on the date set forth below, true and correct copies of Chubb's Answer to Plaintiff's Complaint was filed with the Clerk of the United States District Court for the Southern District of New York, via ECF electronic filing, and that true and correct copies of the foregoing documents were served upon all counsel of record listed below by ECF electronic filing, pursuant to and within the time permitted by the Memo Endorsement Order, entered on September 11, 2020:

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jschulman@pasichllp.com  
*Attorneys for Plaintiff*

Dated: September 29, 2020

Respectfully submitted,

**CLYDE & CO US LLP**



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