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R&J ENTERTAINMENT LLC D/B/A TRAPPED ESCAPE ROOM, a California limited liability company, and TRAPPED! LLC, a Nevada limited liability company, individually and on behalf of themselves and all others similarly situated,  

Plaintiffs,  

vs.  

HCC SPECIALTY INSURANCE COMPANY, an Oklahoma Corporation, and HOUSTON CASUALTY COMPANY, a Texas Corporation,  

Defendants.
Plaintiffs, R&J Entertainment LLC d/b/a Trapped Escape Room (“R&J”) and Trapped! LLC (“Trapped!”) (together, “Trapped Escape Room” or “Plaintiff”), by and through their undersigned attorneys, bring this action on behalf of themselves and all others similarly situated against Defendants, HCC Specialty Insurance Company (“HCC Insurance”), and Houston Casualty Company (“Houston Casualty”) (together, “Defendant”).

INTRODUCTION

1. This is a class action brought by Plaintiff Trapped Escape Room against Defendant, related to insurance policies that insure Plaintiff’s properties, business operations, and potential liability in connection with Plaintiff’s business operations. These insurance policies include Business Income coverage, Extra Expense coverage, and coverage for loss due to the actions of a Civil Authority, but do not contain any exclusions for viruses such as COVID-19.

2. Plaintiff is a small business that purchased Defendant’s insurance policy and made premium payments for a policy that, in the event of a catastrophe requiring a shutdown of business operations, would require Defendant to honor its contractual obligation to provide coverage. In March 2020, such a catastrophe took place when Plaintiff was forced to close its retail businesses due to the COVID-19 pandemic. All across the country, including in California and Nevada, government authorities issued closure orders to retail establishments, including the business operated by Trapped Escape Room, in an effort to stop the rapid spread of the deadly COVID-19 virus. Orders from Civil Authorities requiring businesses to close have resulted in massive losses to businesses throughout the country. As a result, many insureds, including Plaintiff, filed claims for Business Income coverage, Extra Expense coverage, and coverage for losses due to the actions of a Civil Authority.

3. In response to the business interruption claims filed by Plaintiff and thousands of other class members resulting from the COVID-19 pandemic, Defendant has systematically denied and continues to deny and refuses to provide payment for insurance claims for coverage for similar losses and expenses by insureds holding policies that are, in all material respects, identical. Defendant’s decision to not provide coverage and/or its decision to refuse to pay
claims under the common policy forms issued to Plaintiff and the putative class members constitutes a breach of contract and provides them with the right to seek a declaratory judgment pursuant to 28 U.S.C. § 2201(a) on behalf of itself and the class members establishing that they are entitled to receive the benefit of the insurance coverage it purchased and for indemnification of the businesses losses it has sustained.

PARTIES, JURISDICTION AND VENUE

4. R＆J is a limited liability company organized under California law with its principal place of business located in Upland, California. R＆J operates two “escape room” game businesses in Upland, CA and San Dimas, CA.

5. Trapped! is a limited liability company organized under Nevada law with its principal place of business located in Henderson, Nevada. Trapped! operates an “escape room” game business in Las Vegas, Nevada.

6. Defendant HCC Insurance is an Oklahoma business corporation with its principal place of business in Houston, Texas. HCC Insurance is an insurance company engaged in the business of selling insurance contracts to commercial entities such as Plaintiff in California and across the country. HCC Insurance is listed as an insurer for Plaintiff’s insurance Policy with Defendant.

7. Defendant Houston Casualty is a Texas business corporation with its principal place of business in Houston, Texas. Houston Casualty is an insurance company engaged in the business of selling insurance contracts to commercial entities such as Plaintiff in California and across the country. Houston Casualty is is listed as an insurer for Plaintiff’s insurance Policy with Defendant

8. At all times material, Defendant engaged in substantial and not isolated activity on a continuous and systematic basis in the state of California by issuing and selling insurance policies in California and by contracting to insure property located in California.

9. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(a) because it involves citizens of different states and the amount in controversy exceeds $75,000.
10. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d) because there is diversity between Defendant and at least one member of each class; there are more than one hundred members of each class; and the amount in controversy exceeds $5,000,000 exclusive of interest and costs. This Court also has subject matter jurisdiction under 28 U.S.C. §§ 2201 and 2202 and is authorized to grant declaratory relief under these statutes.

11. Venue is proper in the San Francisco Division of this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events and/or omissions giving rise to the claim occurred in this District and/or a substantial party of the property that is the subject of the action is situated in this District.

12. This Court has personal jurisdiction over Defendant because Plaintiff’s claims arise out of, among other things, Defendant conducting, engaging in, and/or carrying on business in California; Defendant breaching a contract in this state by failing to perform acts required by contract to be performed in this state; and Defendant contracting to insure property in California. Defendant also purposefully availed themselves of the opportunity of conducting activities in the state of California by marketing its insurance policies and services within the state, and intentionally developing relationships with brokers, agents, and customers within the state to insure property within the state, all of which resulted in the policy at issue in this action.

FACTUAL BACKGROUND

A. Insurance Coverage

13. On December 30, 2019, Trapped Escape Room obtained the commercial property policy, with at policy period of November 1, 2019 to November 1, 2020, a property insurance policy issued and underwritten by the Defendant (the “Policy”). The insured premises under the policy are: (a) 4760 Polaris Avenue, Las Vegas, NV 89103; (b) 600 N Mountain Ave Suite B204 Upland CA 91786; and (c) 173 Village Ct Ste 105, San Dimas CA 91773. A copy of the Policy is attached as Exhibit A.

14. The Policy is part of a Master Policy written on behalf of all members of the Association for Room Escapes of North America (“ARENA”) who elect to purchase coverage through ARENA. The unique certificate number for Plaintiff’s specific Policy is S187007423056.
15. The Policy uses standard common forms that contain the same and/or substantially similar provisions at issue in this action as those issued by Defendant to the members of the putative class as defined herein.

16. The Policy is an all-risk insurance policy. In an all-risk insurance policy, all risks of loss are covered unless they are specifically excluded.

17. In accordance with the all-risk nature of the Policy, Defendant agreed to pay for all losses caused by a “Covered Cause of Loss.”

18. The Policy provides “Business Income” coverage, pursuant to which Defendant will pay certain amounts “for the actual loss of Business Income you sustain due to the necessary ‘suspension’ of your ‘operations’ during the ‘period of restoration.’ The ‘suspension’ must be caused by direct physical loss of or damage to property at the described premises.”

19. The Policy also provided to “Extended Business Income” under certain circumstances when there is a loss of Business Income.

20. The Policy also provides “Extra Expense” coverage, which “means reasonable and necessary expenses you incur during the ‘period of restoration’ that you would not have incurred if there had been no direct physical loss of or damage to property caused by or resulting from a Covered Cause of Loss.”

21. Defendant agreed to pay Extra Expense (other than the expense to repair or replace property) to (1) Avoid or minimize the “suspension” of business and to continue “operations” at the described premises or at replacement premises or temporary locations, including relocation expenses and costs to equip and operate the replacement premises or temporary locations; or (2) Minimize the “suspension” of business if you cannot continue “operations.”

22. The terms of the Policy also provide the insured with insurance coverage for Business Income, along with any necessary extra expenses incurred, when access to the Insured’s properties is specifically prohibited by Civil Authority Orders. This additional coverage is identified as coverage under “Civil Authority” and states in part as follows:
We will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises due to direct physical loss of or damage to property, other than at the described premises, caused by or resulting from any Covered Cause of Loss.

The coverage for will apply for a period of up to three consecutive weeks after coverage begins.

23. The Civil Authority coverage is an independent basis for business interruption coverage that can be triggered even when the standard business interruption coverage is not.

24. Defendant’s standardized language in the Policy regarding coverage for loss of Business Income coverage, Extra Expenses coverage, and coverage for loss due to the actions of a Civil Authority is present in every policy issued by Defendant to Plaintiff and the putative class members that provides coverage for Business Income, Extra Expenses, and coverage for loss due to the actions of a Civil Authority.

25. The Policy utilizes, in part, policy forms and language published by the Insurance Services Office, Inc. (“ISO”), which publishes policy forms for use by the insurance industry—as evidenced by the ISO copyright designation at the bottom of some pages of the Policy.

26. Despite the fact that, prior to the effective date of the Policy, ISO published and made available for use a standard virus exclusion form, Defendant chose not to include the ISO standard virus exclusion form in the Policy. Indeed, the word “virus” does not appear in the Policy.

27. The Policy does not contain any exclusion which would apply to allow Defendant to completely deny coverage for losses caused by COVID-19 and related actions of civil authorities taken in response to COVID-19.

28. Because the Policy is an all-risk policy and does not exclude Plaintiff’s losses, Plaintiff’s losses are covered up to the applicable limits of insurance.

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CLASS ACTION COMPLAINT
B. The COVID-19 Pandemic

29. COVID-19 is a novel coronavirus that originated in Wuhan, China at the end of 2019 and rapidly spread around the world, infecting millions of people, including over 2.15 million Americans. Over 118,000 Americans have died due to COVID-19.

30. COVID-19 is a physical substance that can cause lethal illness. COVID-19 can be present outside the body in viral fluid particles. COVID-19 is highly contagious and easily communicable through droplets in the air and on surfaces.

31. The scientific community, and those personally affected by the virus, recognize COVID-19 as a cause of real physical loss and damage. Contamination of the Insured Property would be a direct physical loss requiring remediation to clean the surfaces within the Insured Property.

32. COVID-19 remains capable of being transmitted on a variety of inert physical surfaces for various periods of time. For example, reports issued by the National Institute of Health (“NIH”) indicates that COVID-19 remains stable and transmittable in airborne aerosols for up to three hours, on copper for up to four hours, on cardboard for up to 24 hours, and on plastic and stainless steel for up to two to three days. Moreover, the COVID-19 pandemic has been exacerbated by the fact that the virus physically infects and stays on surfaces of some objects or materials for up to 28 days.

33. The Center for Disease Control (“CDC”) has issued guidance recommending people not to gather in groups larger than 10. Pursuant to CDC guidelines, people face increased danger of contracting COVID-19 in places where people congregate and are in close proximity to one another, and especially in indoor environments.

34. COVID-19 has been transmitted in a variety of ways, including transmission (a) by way of human contract with surfaces and items of physical property; (b) by human to human contact and interaction, including places like bars and restaurants, retail stores, and hair and beauty salons, and the like; and (c) through airborne particles emitted into the air and even recirculated through air conditioning units.
35. The presence of COVID-19 particles renders physical property unsafe and impairs its value, usefulness, and/or normal function, causing direct physical harm to property and resulting in direct physical loss and physical damage to property.

36. The presence of COVID-19 particles and/or the presence of persons infected with COVID-19 or carrying COVID-19 particles at premises renders the premises unsafe, thereby impairing the premises’ value, usefulness, and/or normal function, and resulting in direct physical loss to and of the premises and property.

C. The Covered Cause of Loss

37. The presence of COVID-19 has caused civil authorities throughout the country to issue order requiring the suspension of business at a wide range of establishments, including civil authorities with jurisdiction over Plaintiff’s business (the “Closure Orders”).

38. As of the date this complaint is filed, California had over 471,000 confirmed COVID-19 cases, and over 8,633 deaths, while Nevada had over 44,982 cases and over 760 deaths.

39. In response to the public health emergency caused by the COVID-19 pandemic, civil authorities across the United States, including the civil authorities with jurisdiction over Plaintiff in California, have issued Closure Order restricting and prohibiting access to Plaintiff’s insured property and the insured properties of other putative class members.


41. Notably, on March 19, 2020, California Governor Newsom issued Executive Order N033-20 which ordered all individual living in the State of California to stay at home or at their place of residence, except as needed to maintain continuity of operations of the federal critical infrastructure sectors as defined in the Order.

42. Nevada Governor Sisolak declared a state of emergency due to COVID-19 on March 12, 2020.
43. On March 31, 2020, Governor Sisolak issued Emergency Directive 010 Stay at Home Order. With limited exceptions, all Nevadans were ordered to stay at home in their residences.

44. Governor Newsom’s and Governor Sisolak’s “Stay At Home” orders, like other similar orders entered by Civil Authorities across the United States, were partially entered to stop physical damage and physical loss of property caused by COVID-19’s presence.

45. State courts such as the Pennsylvania Supreme Court have already entered rulings adopting Plaintiff’s position that physical loss and damage exists resulting in coverage here. See Friends of DeVito, et. al v. Wolf, No. 68 MM 2020 (Pa. April 13, 2020). Furthermore, orders issued in states such as New York, Colorado, Washington, Indiana, New Mexico, North Carolina, Missouri, and Illinois have all recognized that COVID-19 poses a specific threat to property and can cause property loss and damage.

46. Furthermore, in the City of Los Angeles, the Mayor issued a Public Order on March 19, 2020 ordering people to stay at home and explaining that the “Order is given because, among other reasons, the COVID-19 virus can spread easily from person to person and it is physically causing property loss or damage due to its tendency to attach to surfaces for prolonged periods of time.”

47. The Closure Orders issued by California authorities covering California non-essential businesses (such as Plaintiff’s) are similar to Closure Orders that have been issued nationwide by state and local civil authorities.

48. The presence of COVID-19 caused direct physical loss of and/or damage to the Insured Property under the Policy by, among other things, damaging the property, denying access to the property, preventing customers and patients from physically occupying the property, causing the property to be physically uninhabitable by customers and patients, causing its function to be nearly eliminated or destroyed, and/or causing a suspension of business operations on the premises.

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CLASS ACTION COMPLAINT
49. The Closure Orders of civil authorities prohibited access to Plaintiff and other
class members’ Insured Properties, and the areas immediately surrounding the Insured
Properties, in response to dangerous physical conditions resulting from a covered cause of loss.

50. As a result of the presence of COVID-19 and the Closure Orders, Plaintiff and
other class members sustained a suspension of business operations, sustained losses of business
income, and incurred extra expenses.

51. Plaintiff’s losses and expenses have continued through the date of filing this
action.

52. Plaintiff’s losses and expenses are not excluded from coverage under the Policy.

Because the Policy is an all-risk policy and Plaintiff has complied with its contractual
obligations, Plaintiff is entitled to payment for these losses and expenses.

53. Consistent with the terms and procedures of the Policy, Plaintiff submitted a
claim for loss to Defendant under the Policy due to the presence of COVID-19 and the
shutdown Civil Authority orders.

54. In violation of the Policy’s plain language and its own contractual obligations,
Defendant denied Plaintiff’s claim and refuses to pay for Plaintiff’s losses and expenses.

CLASS ACTION ALLEGATIONS

55. Plaintiff brings this action pursuant to Rules 23(a), 23(b)(1), 23(b)(2), 23(b)(3),
and 23(c)(4) of the Federal Rules of Civil Procedure, individually and on behalf of all others
similarly situated. This action satisfies the numerosity, commonality, typicity, adequacy,
predominance, and superiority requirements of those provisions.

56. Plaintiff seeks to represent nationwide classes defined as:

   a. All persons and entities with Business Income coverage under a property
      insurance policy issued by Defendant that suffered a suspension of business due
      to COVID-19 at the premises covered by the business income coverage (the
      “Business Income Declaratory Judgment Class”).
b. All persons and entities with Civil Authority coverage under a property insurance policy issued by Defendant that suffered loss of Business Income and/or Extra Expense caused by a Closure Order (the “Civil Authority Declaratory Judgment Class”).

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

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

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

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

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

a. Defendant issued all-risk policies to the members of the Class in exchange for payment of premiums by the Class Members;
b. whether the Class suffered a covered loss based on the common policies issued to members of the Class;

c. whether Defendant wrongfully denied all claims based on COVID-19;

d. whether Defendant’s Business Income coverage applies to a suspension of business caused by COVID-19;

e. whether Defendant’s Civil Authority coverage applies to a loss of Business Income caused by the orders of state governors requiring the suspension of business as a result of COVID-19;

f. whether Defendant’s Extra Expense coverage applies to efforts to minimize a loss caused by COVID-19;

g. whether Defendant has breached its contracts of insurance through a blanket denial of all claims based on business interruption, income loss or closures related to COVID-19 and the related closures; and

h. whether Plaintiff and the class are entitled to an award of reasonable attorney fees, interest and costs.

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

62. **Adequacy of Representation—Federal Rule of Civil Procedure 23(a)(4).** Plaintiff is an adequate Class representative because its interests do not conflict with the interests of the other Class Members who it seeks to represent, Plaintiff has retained counsel competent and experienced in complex class action litigation, including successfully litigating class action cases similar to this one, where insurers breached contracts with insureds by failing to pay the amounts owed under its policies, and Plaintiff intends to prosecute this action vigorously. The interests of the above-defined Classes will be fairly and adequately protected by
63. **Inconsistent or Varying Adjudications and the Risk of Impediments to Other Class Members’ Interests—Federal Rule of Civil Procedure 23(b)(1).** Plaintiff seeks class-wide adjudication as to the interpretation, and resultant scope, of Defendant’s Business Income, Civil Authority, and Extra Expense coverages. The prosecution of separate actions by individual members of the Classes would create an immediate risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for the Defendant. Moreover, the adjudications sought by Plaintiff could, as a practical matter, substantially impair or impede the ability of other Class Members, who are not parties to this action, to protect their interests.

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

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

COUNT I

DECLARATORY JUDGMENT – BUSINESS INCOME COVERAGE

(Claim Brought on Behalf of the Business Income Declaratory Judgment Class)

66. Plaintiff repeats and realleges Paragraphs 1-65 as if fully set forth herein.

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

68. Plaintiff’s HCC policy, as well as those of the other Business Income Declaratory Judgment Class Members, are contracts under which Defendant was paid premiums in exchange for its promise to pay Plaintiff and the other Business Income Declaratory Judgment Class Members’ losses for claims covered by the policy.

69. Plaintiff and the other Business Income Declaratory Judgment Class Members have complied with all applicable provisions of the policies and/or those provisions have been waived by Defendant, or Defendant is estopped from asserting them, and yet Defendant has abrogated its insurance coverage obligations pursuant to the policies’ clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Plaintiff and the other Business Income Declaratory Judgment Class Members are entitled.

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

71. An actual case or controversy exists regarding Plaintiff and the other Business Income Declaratory Judgment Class Members’ rights and Defendant’s obligations under the policies to reimburse Plaintiff for the full amount of Business Income losses incurred by Plaintiff and the other Business Income Declaratory Judgment Class Members in connection with suspension of their businesses stemming from the COVID-19 pandemic.

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

CLASS ACTION COMPLAINT
a. Plaintiff and the other Business Income Declaratory Judgment Class Members’
Business Income losses incurred in connection with the Closure Orders and the
necessary interruption of their businesses stemming from the COVID-19
pandemic are insured losses under their policies; and
b. Defendant is obligated to pay Plaintiff and the other Business Income
Declaratory Judgment Class Members for the full amount of the Business
Income losses incurred and to be incurred in connection with the Closure Orders
during the relevant time period and the necessary interruption of their businesses
stemming from the COVID-19 pandemic.

COUNT II

DECLARATORY JUDGMENT – CIVIL AUTHORITY COVERAGE

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

73. Plaintiff repeats and realleges Paragraphs 1-65 as if fully set forth herein.

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

75. Plaintiff’s HCC insurance policy, as well as those of the other Civil Authority
Declaratory Judgment Class Members, are contracts under which Defendant was paid premiums
in exchange for its promise to pay Plaintiff and the other Civil Authority Declaratory Judgment
Class Members’ losses for claims covered by the policy.

76. Plaintiff and the other Civil Authority Declaratory Judgment Class Members
have complied with all applicable provisions of the policies and/or those provisions have been
waived by Defendant, or Defendant is estopped from asserting them, and yet Defendant has
abrogated its insurance coverage obligations pursuant to the policies’ clear and unambiguous
terms and has wrongfully and illegally refused to provide coverage to which Plaintiff and the
other Class Members are entitled.

77. Defendant has denied claims related to COVID-19 on a uniform and class wide
basis, without individual bases or investigations, such that the Court can render declaratory
judgment irrespective of whether members of the Class have filed a claim.
78. An actual case or controversy exists regarding Plaintiff and the other Civil Authority Declaratory Judgment Class Members’ rights and Defendant’s obligations under the policies to reimburse Plaintiff and the other Civil Authority Declaratory Judgment Class Members for the full amount of covered Civil Authority losses incurred by Plaintiff and the other Civil Authority Declaratory Judgment Class Members in connection with Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

79. Pursuant to 28 U.S.C. § 2201, Plaintiff and the other Civil Authority Declaratory Judgment Class Members seek a declaratory judgment from this Court declaring the following:
   a. Plaintiff and the other Civil Authority Declaratory Judgment Class Members’ Civil Authority losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under their policies; and
   b. Defendant is obligated to pay Plaintiff and the other Civil Authority Declaratory Judgment Class Members the full amount of the Civil Authority losses incurred and to be incurred in connection with the covered losses related to the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

COUNT III

DECLARATORY JUDGMENT – EXTRA EXPENSE COVERAGE

(Claim Brought on Behalf of the Extra Expense Declaratory Judgment Class)

80. Plaintiff repeats and realleges Paragraphs 1-65 as if fully set forth herein.

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

82. Plaintiff’s HCC insurance policy, as well as those of the other Extra Expense Declaratory Judgment Class Members, are contracts under which Defendant was paid premiums in exchange for its promise to pay Plaintiff and the other Extra Expense Declaratory Judgment Class Members’ losses for claims covered by the policy.
83. Plaintiff and the other Extra Expense Declaratory Judgment Class Members have
complied with all applicable provisions of the policies and/or those provisions have been
waived by Defendant, or Defendant is estopped from asserting them, and yet Defendant has
abrogated its insurance coverage obligations pursuant to the policies clear and unambiguous
terms and has wrongfully and illegally refused to provide coverage to which Plaintiff and the
other Class Members are entitled.

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

85. An actual case or controversy exists regarding Plaintiff and the other Extra
Expense Declaratory Judgment Class Members’ rights and Defendant’s obligations under the
policies to reimburse Plaintiff and the other Extra Expense Declaratory Judgment Class
Members for the full amount of Extra Expense losses incurred by Plaintiff in connection with
Closure Orders and the necessary interruption of their businesses stemming from the COVID-19
pandemic.

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

a. Plaintiff and the other Extra Expense Declaratory Judgment Class Members’
Extra Expense losses incurred in connection with the Closure Orders and the
necessary interruption of their businesses stemming from the COVID-19
pandemic are insured losses under their policies; and

b. Defendant is obligated to pay Plaintiff and the other Extra Expense Declaratory
Judgment Class Members for the full amount of the Extra Expense losses
incurred and to be incurred in connection with the covered losses related to the
Closure Orders during the relevant time period and the necessary interruption of
their businesses stemming from the COVID-19 pandemic.

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CLASS ACTION COMPLAINT
REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the other Class Members, respectfully requests that the Court enter judgment in its favor and against Defendant as follows:

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

b. Entering declaratory judgments on Counts I–IV in favor of Plaintiff and the members of the Business Income Declaratory Judgment Class, the Civil Authority Declaratory Judgment Class, and the Extra Expense Declaratory Judgment Class, as follows:

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

ii. Defendant is obligated to pay for the full amount of the Business Income, Civil Authority, and Extra Expense losses incurred and to be incurred related to COVID-19, the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

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

d. Ordering Defendant to pay attorneys’ fees and costs of suit; and

e. Ordering such other and further relief as may be just and proper.
JURY DEMAND

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

Dated: August 27, 2020

Respectfully submitted,

By: /s/ William F. “Chip” Merlin

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