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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

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

Plaintiff,

v.

**TOPA INSURANCE
COMPANY,**

Defendant

) Case No.

) **CLASS ACTION COMPLAINT
FOR:**

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

) **DEMAND FOR JURY TRIAL**

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

6 **I. NATURE OF THE ACTION**

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

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

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

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

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

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

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

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

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

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

17 **II. JURISDICTION AND VENUE**

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

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

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1 **III. THE PARTIES**

2 *Plaintiff*

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

5 *Defendant*

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

13 **IV. FACTUAL BACKGROUND**

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

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

22 15. In many parts of the world, property insurance is sold on a specific peril
23 basis. Such policies cover a risk of loss if that risk of loss is specifically listed (e.g.,
24 hurricane, earthquake, H1N1, etc.). Most property policies sold in the United States,
25 however, including those sold by Topa, are all-risk property damage policies. These
26 types of policies cover all risks of loss except for risks that are expressly and
27 specifically excluded. In the Special Property Coverage Form provided to Plaintiff,
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1 under the heading “Covered Causes of Loss,” Topa agreed to “pay for direct physical
2 loss” to Covered Property “unless the loss is excluded or limited by” the policy.

3 16. In the policy, Topa did not exclude or limit coverage for losses from
4 viruses.

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

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

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

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

22 Disease-causing agents may render a product impure
23 (change its quality or substance), or enable the spread of
24 disease by their presence on interior building surfaces or
25 the surfaces of personal property. When disease-causing
26 viral or bacterial contamination occurs, potential claims
27 involve the cost of replacement of property (for example,
28 the milk), cost of decontamination (for example, interior

1 building surfaces), and business interruption (time
2 element) losses. Although building and personal property
3 could arguably become contaminated (often temporarily)
4 by such viruses and bacteria, the nature of the property
5 itself would have a bearing on whether there is actual
6 property damage. An allegation of property damage may
7 be a point of disagreement in a particular case.

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

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

14 23. Topa also agreed to “pay for the actual loss of Business Income” that
15 Plaintiff sustains “and any Extra Expense caused by action of civil authority that
16 prohibits access to” the Covered Property when a Covered Cause of Loss causes
17 damage to property immediately surrounding the Covered Property, the civil
18 authority prohibits access to the described premises and takes such action “in
19 response to dangerous physical conditions.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **V. CLASS ACTION ALLEGATIONS**

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

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

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

- 3
- 4 • All persons and entities that: (a) had Extra Expense
5 coverage under a property insurance policy issued by
6 Topa; (b) sought to minimize the suspension of business
7 in connection with COVID-19 at the premises covered by
8 their Topa property insurance policy; (c) made a claim
9 under their property insurance policy issued by Topa; and
10 (d) were denied Extra Expense coverage by Topa despite
11 their efforts to minimize the suspension of business caused
12 by COVID-19 (the “Extra Expense Breach Class”).

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

23 37. Excluded from each defined Class is Defendant and any of its members,
24 affiliates, parents, subsidiaries, officers, directors, employees, successors, or assigns;
25 governmental entities; and the Court staff assigned to this case and their immediate
26 family members. Plaintiff reserves the right to modify or amend each of the Class
27 definitions, as appropriate, during the course of this litigation.
28

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

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

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

- 16 a. Topa issued all-risk policies to the members of the Class in exchange
17 for payment of premiums by the Class members;
- 18 b. whether the Class suffered a covered loss based on the common
19 policies issued to members of the Class;
- 20 c. whether Topa wrongfully denied all claims based on COVID-19;
- 21 d. whether Topa’s Business Income coverage applies to a suspension of
22 business caused by COVID-19;
- 23 e. whether Topa’s Civil Authority coverage applies to a loss of Business
24 Income caused by the orders of state governors requiring the
25 suspension of business as a result of COVID-19;
- 26 f. whether Topa’s Extra Expense coverage applies to efforts to minimize
27 a loss caused by COVID-19;

- 1 g. whether Topa’s Sue and Labor provision applies to require Topa to
- 2 pay for efforts to reduce damage caused by COVID-19;
- 3 h. whether Topa has breached its contracts of insurance through a
- 4 blanket denial of all claims based on business interruption, income
- 5 loss or closures related to COVID-19 and the related closures; and
- 6 i. whether Plaintiff and the Class are entitled to an award of reasonable
- 7 attorney fees, interest and costs.

8 **41. Typicality—Federal Rule of Civil Procedure 23(a)(3).** Plaintiff’s

9 claims are typical of the other Class members’ claims because Plaintiff and the other

10 Class members are all similarly affected by Defendant’s refusal to pay under its

11 Business Income, Civil Authority, Extra Expense, and Sue and Labor coverages.

12 Plaintiff’s claims are based upon the same legal theories as those of the other Class

13 members. Plaintiff and the other Class members sustained damages as a direct and

14 proximate result of the same wrongful practices in which Defendant engaged.

15 **42. Adequacy of Representation—Federal Rule of Civil Procedure**

16 **23(a)(4).** Plaintiff is an adequate Class representative because their interests do not

17 conflict with the interests of the other Class members who they seek to represent,

18 Plaintiff has retained counsel competent and experienced in complex class action

19 litigation, including successfully litigating class action cases similar to this one,

20 where insurers breached contracts with insureds by failing to pay the amounts owed

21 under their policies, and Plaintiff intends to prosecute this action vigorously. The

22 interests of the above-defined Classes will be fairly and adequately protected by

23 Plaintiff and their counsel.

24 **43. Inconsistent or Varying Adjudications and the Risk of**

25 **Impediments to Other Class Members’ Interests—Federal Rule of Civil**

26 **Procedure 23(b)(1).** Plaintiff seeks class-wide adjudication as to the interpretation,

27 and resultant scope, of Defendant’s Business Income, Civil Authority, Extra

28 Expense, and Sue and Labor coverages. The prosecution of separate actions by

1 individual members of the Classes would create an immediate risk of inconsistent or
2 varying adjudications that would establish incompatible standards of conduct for the
3 Defendant. Moreover, the adjudications sought by Plaintiff could, as a practical
4 matter, substantially impair or impede the ability of other Class members, who are
5 not parties to this action, to protect their interests.

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

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

19 **VI. CLAIMS FOR RELIEF**

20 **COUNT I**

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

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

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

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

27 48. Plaintiff’s Topa policy, as well as those of the other Business Income
28 Breach Class members, are contracts under which Topa was paid premiums in

1 exchange for its promise to pay Plaintiff and the other Business Income Breach Class
2 members' losses for claims covered by the policy.

3 49. In the Special Property Coverage Form, Topa agreed to pay for its
4 insureds' actual loss of Business Income sustained due to the necessary suspension
5 of its operations during the "period of restoration."

6 50. A "slowdown or cessation" of business activities at the Covered
7 Property is a "suspension" under the policy, for which Topa agreed to pay for loss
8 of Business Income during the "period of restoration" that occurs within 72 hours
9 after the time of direct physical loss or damage.

10 51. "Business Income" means net income (or loss) before tax that Plaintiff
11 and the other Business Income Breach Class members would have earned "if no
12 physical loss or damage had occurred" and continuing normal operating expenses
13 incurred.

14 52. COVID-19 caused direct physical loss and damage to Plaintiff and the
15 other Business Income Breach Class members' Covered Properties, requiring
16 suspension of operations at the Covered Properties. Losses caused by COVID-19
17 thus triggered the Business Income provision of Plaintiff and the other Business
18 Income Breach Class members' Topa policies.

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

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

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

4 **COUNT II**
5 **BREACH OF CONTRACT – CIVIL AUTHORITY COVERAGE**
6 **(Claim Brought on Behalf of the Civil Authority Breach Class)**

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

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

11 58. Plaintiff’s Topa insurance policy, as well as those of the other Civil
12 Authority Breach Class members, are contracts under which Topa was paid
13 premiums in exchange for its promise to pay Plaintiff and the other Civil Authority
14 Breach Class members’ losses for claims covered by the policy.

15 59. Topa agreed to “pay for the actual loss of Business Income” that
16 Plaintiff sustains “and any Extra Expense caused by action of civil authority that
17 prohibits access to” the Covered Property when a Covered Cause of Loss causes
18 damage to property immediately surrounding the Covered Property, the civil
19 authority prohibits access to the described premises and takes such action “in
20 response to dangerous physical conditions.”

21 60. The Closure Orders triggered the Civil Authority provision under
22 Plaintiff and the other members of the Civil Authority Breach Class’s Topa
23 insurance policies.

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

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

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

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

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

16 **COUNT V**

17 **DECLARATORY JUDGMENT – BUSINESS INCOME COVERAGE**
18 **(Claim Brought on Behalf of the Business Income Declaratory Judgment**
19 **Class)**

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

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

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

28 84. Plaintiff and the other Business Income Declaratory Judgment Class
members have complied with all applicable provisions of the policies and/or those

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

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

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

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

19 i. Plaintiff and the other Business Income Declaratory Judgment Class
20 members' Business Income losses incurred in connection with the
21 Closure Orders and the necessary interruption of their businesses
22 stemming from the COVID-19 pandemic are insured losses under their
23 policies; and

24 ii. Topa is obligated to pay Plaintiff and the other Business Income
25 Declaratory Judgment Class members for the full amount of the
26 Business Income losses incurred and to be incurred in connection with
27 the Closure Orders during the period of restoration and the necessary
28

1 interruption of their businesses stemming from the COVID-19
2 pandemic.

3 **COUNT VI**

4 **DECLARATORY JUDGMENT – CIVIL AUTHORITY COVERAGE**

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

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

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

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

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

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

25 93. An actual case or controversy exists regarding Plaintiff and the other
26 Civil Authority Declaratory Judgment Class members’ rights and Topa’s obligations
27 under the policies to reimburse Plaintiff and the other Civil Authority Declaratory
28 Judgment Class members for the full amount of covered Civil Authority losses

1 incurred by Plaintiff and the other Civil Authority Declaratory Judgment Class
2 members in connection with Closure Orders and the necessary interruption of their
3 businesses stemming from the COVID-19 pandemic.

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

7 i. Plaintiff and the other Civil Authority Declaratory Judgment Class
8 members' Civil Authority losses incurred in connection with the
9 Closure Orders and the necessary interruption of their businesses
10 stemming from the COVID-19 pandemic are insured losses under their
11 policies; and

12 ii. Topa is obligated to pay Plaintiff and the other Civil Authority
13 Declaratory Judgment Class members the full amount of the Civil
14 Authority losses incurred and to be incurred in connection with the
15 covered losses related to the Closure Orders and the necessary
16 interruption of their businesses stemming from the COVID-19
17 pandemic

18 **COUNT VII**

19 **DECLARATORY JUDGMENT – EXTRA EXPENSE COVERAGE**

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

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

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

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

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

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

11 100. An actual case or controversy exists regarding Plaintiff and the other
12 Extra Expense Declaratory Judgment Class members' rights and Topa's obligations
13 under the policies to reimburse Plaintiff and the other Extra Expense Declaratory
14 Judgment Class members for the full amount of Extra Expense losses incurred by
15 Plaintiff in connection with Closure Orders and the necessary interruption of their
16 businesses stemming from the COVID-19 pandemic.

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

- 20 i. Plaintiff and the other Extra Expense Declaratory Judgment Class
21 members' Extra Expense losses incurred in connection with the Closure
22 Orders and the necessary interruption of their businesses stemming
23 from the COVID-19 pandemic are insured losses under their policies;
24 and
- 25 ii. Topa is obligated to pay Plaintiff and the other Extra Expense
26 Declaratory Judgment Class members for the full amount of the Extra
27 Expense losses incurred and to be incurred in connection with the
28 covered losses related to the Closure Orders during the period of

1 restoration and the necessary interruption of their businesses stemming
2 from the COVID-19 pandemic.

3 **COUNT VIII**

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

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

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

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

15 105. Plaintiff and the other Sue and Labor Declaratory Judgment Class
16 members have complied with all applicable provisions of the policies and/or those
17 provisions have been waived by Topa, or Topa is estopped from asserting them, and
18 yet Topa has abrogated its insurance coverage obligations pursuant to the policies’
19 clear and unambiguous terms and has wrongfully and illegally refused to provide
20 coverage to which Plaintiff is entitled.

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

25 107. An actual case or controversy exists regarding Plaintiff and the other
26 Sue and Labor Declaratory Judgment Class members’ rights and Topa’s obligations
27 under the policies to reimburse Plaintiff and the other Sue and Labor Declaratory
28 Judgment Class members for the full amount Plaintiff and the other members of the

1 Sue and Labor Declaratory Judgment Class reasonably incurred to protect Covered
2 Property from further damage by COVID-19.

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

6 i. Plaintiff and the other Sue and Labor Declaratory Judgment Class
7 members reasonably incurred expenses to protect Covered Property
8 from further damage by COVID-19 are insured losses under their
9 policies; and

10 ii. Topa is obligated to pay Plaintiff and the other Sue and Labor
11 Declaratory Judgment Class members for the full amount of the
12 expenses they reasonably incurred to protect Covered Property from
13 further damage by COVID-19.

14 **VII. REQUEST FOR RELIEF**

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

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

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

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

- 1 i. Business Income, Civil Authority, Extra Expense, and Sue and
- 2 Labor losses incurred in connection with the Closure Orders and the
- 3 necessary interruption of their businesses stemming from the
- 4 COVID-19 pandemic are insured losses under their policies; and
- 5 ii. Topa is obligated to pay for the full amount of the Business Income,
- 6 Civil Authority, Extra Expense, and Sue and Labor losses incurred
- 7 and to be incurred related to COVID-19, the Closure Orders and the
- 8 necessary interruption of their businesses stemming from the
- 9 COVID-19 pandemic;
- 10 d. Ordering Defendant to pay both pre- and post-judgment interest on any
- 11 amounts awarded;
- 12 e. Ordering Defendant to pay attorneys' fees and costs of suit; and
- 13 f. Ordering such other and further relief as may be just and proper.

14 **VIII. JURY DEMAND**

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

17 Dated: April __, 2020

Respectfully submitted,

18 /s/ _____
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