

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

PF SUNSET VIEW, LLC dba PLANET
FITNESS, PF RIVERVIEW, LLC dba PLANET
FITNESS, PF SKIPPER VIEW, LLC dba
PLANET FITNESS, and PF WATER VIEW,
LLC dba PLANET FITNESS, individually and
on behalf of all others similarly situated,

Plaintiffs,

vs.

ATLANTIC SPECIALTY INSURANCE
COMPANY,

Defendant.

CASE NO.

DEFENDANT’S NOTICE OF REMOVAL

[Removal from the Fifteenth Judicial Circuit,
Palm Beach County, Florida, Case No.
2020CA005643]

Complaint Filed: May 22, 2020

**TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO PLAINTIFFS AND
THEIR COUNSEL OF RECORD:**

PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1332, 1441, 1453, and 1446, Defendant Atlantic Specialty Insurance Company (“Defendant”), hereby removes the above-captioned matter—with reservation of all defenses and rights—from the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, Case No. 2020CA005643, to the United States District Court for the Southern District of Florida.

This Court has original jurisdiction over this action under 28 U.S.C. § 1332(a) on the grounds that complete diversity exists between all the parties and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs. Removal is also proper because the Complaint allegations facially meet the requirements under the Class Action Fairness Act (“CAFA”) for federal jurisdiction.

I. BACKGROUND

1. This action was filed on May 22, 2020 in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (“State Court Action”). Pursuant to 28 U.S.C. § 1446(a), true and

correct copies of the Docket Sheet, Summons, Complaint, Civil Cover Sheet, and Plaintiffs' Proof of Service, are attached hereto as Exhibits 1 through 4 to the Declaration of Christine M. Renella ("Renella Decl.") filed concurrently herewith.¹

2. Plaintiffs are four limited liability companies which own and operate fitness club franchises in Florida. Compl. ¶ 1 (Renella Decl., Ex. 3). They bring this action "individually and on behalf of all others similarly situated." *Id.* at 1.

3. Plaintiffs seek certification of a putative class comprised of:

All persons and entities in Florida with Business Income, Civil Authority, or Extra Expense coverage under an insurance policy issued by Atlantic Specialty, who suffered loss of business income or incurred extra expenses due to a suspension of business related to COVID-19, and for which Atlantic Specialty denied a claim for the losses or has otherwise failed to acknowledge, accept as a covered loss, or pay for the covered loss.

Id. ¶ 70 and at 24.

4. Plaintiffs (on behalf of themselves and the putative class) seek business interruption and extra expense coverage for losses caused by COVID-19 and/or related actions of civil authorities taken in response to COVID-19. *Id.* ¶¶ 58-65, 74.

5. Plaintiffs allege breach of contract and seek declaratory relief, "damages for breach of contract," "attorneys' fees and litigation costs," and "pre- and post-judgment interest." *Id.* at 24.

II. REMOVAL IS TIMELY

6. While Plaintiffs had sent the Complaint to the Chief Financial Officer of the Florida Department of Financial Services ("FLDFS"), the FLDFS did not serve the Complaint on Defendant's agent until July 9, 2020. Service of process is not complete until "the Chief Financial

¹ The Complaint served on Defendant has missing pages. Filed concurrently herewith as Renella Decl., Ex. 3 is a full version of the Complaint filed in the State Court Action.

Officer sends or makes available by other verifiable means a copy of the process.”² Fla. Stat. Ann. § 624.423.

7. Defendant’s agent for service of process was served with the Summons and Complaint on July 9, 2020. *See* Renella Decl., Ex. 2. This notice of removal is therefore timely pursuant to 28 U.S.C. § 1446(b) because it is filed within 30 days after service was completed.

III. REMOVAL IS PROPER BASED ON DIVERSITY CITIZENSHIP

8. The State Court Action may be removed to the United States District Court in accordance with 28 U.S.C. § 1441(b), since this Court has original jurisdiction over the State Court Action on the basis of diversity of citizenship pursuant to 28 U.S.C. § 1332. Specifically, the State Court Action is a civil action between citizens of different states and the amount in controversy exceeds the sum of \$75,000.

A. Complete Diversity of Citizenship Exists

9. In order to qualify for diversity of citizenship jurisdiction, all of the named plaintiffs’ citizenship must be completely diverse from all the named defendants’ citizenships, excluding nominal, fraudulent and/or sham defendants. *Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U.S. 567, 571 (2004).

10. The Complaint alleges that all four named plaintiffs are Florida corporations with principal places of business in Florida and their members are also citizens of Florida. Compl. ¶¶ 11-14.

11. Defendant has been at all times during the pendency of this action an insurance company organized and existing under the laws of the State of New York with its principal place of business in Plymouth, Minnesota. *Id.* ¶ 15. Thus, Defendant is a citizen of New York and Minnesota for purposes of determining diversity. 28 U.S.C. § 1332(c)(1).

² This delay caused Judge Jaimie R. Goodman to grant Plaintiffs’ motion for default in the State Court Action on July 7, 2020. Judge Goodman entered an order vacating the default on July 10, 2020. *See* Renella Decl., Ex. 1.

12. Because all of the named plaintiffs' citizenships are completely diverse from Defendant's citizenship, complete diversity exists.

B. The Amount-in-Controversy Requirement Is Satisfied

13. In addition to diversity of citizenship, "the matter in controversy [must] exceed[s] the sum or value of \$75,000, exclusive of interest and costs." 28 U.S.C. § 1332(a). Generally, the amount in controversy is determined from the allegations or prayer of the complaint. *See St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938).

14. Here, Plaintiffs seek both monetary damages and declaratory relief. Compl. at 24; *see also id.* ¶¶ 78-95 ("Count I Declaratory Judgment") and 96-107 ("Count II Breach of Contract").

15. While Plaintiffs' action ultimately asks the Court to find coverage under the commercial insurance policies issued by Defendant, *id.* ¶¶ 96-107 ("Count II Breach of Contract"), Plaintiffs claim an unspecified amount of damages. *See id.* ¶ 9 (only alleging Florida county court jurisdictional threshold of \$30,000).

16. "When the complaint does not claim a specific amount of damages, removal from state court is proper if it is facially apparent from the complaint that the amount in controversy exceeds the jurisdictional requirement." *Williams v. Best Buy Co.*, 269 F.3d 1316, 1319 (11th Cir. 2001).

17. Although Defendant denies that Plaintiffs' claims have any merit and disputes that Plaintiffs are entitled to any of the sums sought in the Complaint, it is facially apparent that, Plaintiffs' allegations—if accepted—would easily place in excess of \$75,000 in controversy for each named plaintiff, exclusive of interest and costs.

18. Plaintiffs allege that "COVID-19 caused direct physical loss of and damage to Plaintiffs' Planet Fitness gyms and other Class members' insured premises, resulting in suspension of business operations at these premises" and "[t]hese suspensions have caused [Plaintiffs] and Class members to suffer losses of business income and to incur necessary extra expenses." Compl.

¶ 100; *see also id.* ¶¶ 62, 64, 86. Plaintiffs allege that these suspensions and losses triggered business income coverage under the insurance policies. *Id.* ¶¶ 87, 101.

19. Plaintiffs further allege that they and other insureds have suffered losses of business income and incurred expenses as result of the governmental mandates that prohibited access to insured premises under the insurance policies. *Id.* ¶¶ 89, 103. Plaintiffs allege that these losses triggered Civil Authority coverage under the insurance policies. *Id.* ¶¶ 90, 104; *see also id.* ¶¶ 63, 65.

20. Therefore, the value of the relief ultimately requested by Plaintiffs on their own behalf—the amount in controversy—is the coverage available under the “Business Income” and “Extra Expense” provisions for the claimed losses under their policies. *See generally id.* ¶ 70.

21. The insurance policy of each of the named Planet Fitness entities has a combined limit for “Business Interruption” and “Extra Expense” coverage of \$400,000. *See* PF Sunset View Policy No. 710-03-88-23-0001 at 26 (Renella Decl., Ex. 3 at 52); PF Riverview Policy No. 710-03-90-50-0000 at 26 (Renella Decl., Ex. 3 at 263); PF Skipper View Policy No. 710-03-84-17-0001 at 26 (Renella Decl., Ex. 3 at 469); PF Water View Policy No. 710-03-73-58-0002 at 26 (Renella Decl., Ex. 3 at 680).³ As a result, Defendant’s potential exposure for each of the four named plaintiffs’ time element losses is \$400,000.⁴

22. In addition, Count I of the Complaint seeks declaratory relief. “When a plaintiff seeks injunctive or declaratory relief, the amount in controversy is the monetary value of the object of the litigation from the plaintiff’s perspective.” *Cohen v. Office Depot, Inc.*, 204 F.3d 1069, 1077 (11th Cir. 2000) (citation omitted); *see also Hartford Ins. Grp. v. Lou-Con Inc.*, 293 F.3d 908, 910 (5th Cir. 2002) (amount-in-controversy in an action for declaratory relief is “the value of

³ Because Plaintiffs refer to the insurance policies in their Complaint, Compl.¶¶ 11-14, the Court can consider the policies when determining removal. *Cf. Hoefling v. City of Miami*, 811 F.3d 1271, 1277 (11th Cir. 2016) (“A district court can generally consider exhibits attached to a complaint in ruling on a motion to dismiss”).!

⁴ Time element coverages are those where the measurement of loss is tied to a period of time—here, the period of interruption or the period of restoration.

the right to be protected or the extent of the injury to be prevented”). In the insurance context, the “value of the right to be protected is the [insurer’s] potential liability under the policy, plus potential attorneys’ fees, penalties, statutory damages and punitive damages.” *Canopus U.S. Ins., Inc. v. Prestige Gen. Cleaning Servs., Inc.*, No. 14-CIV-81095, 2014 WL 6979658, at *2 (S.D. Fla. Dec. 9, 2014) (citation omitted).

23. Clearly, the right to be protected in Count I is the cause of action set forth in Count II. In other words, the amount that will be put at issue—the amount in controversy—is the amount that each named plaintiff may be eligible to recover from Defendant in the event that Plaintiffs obtain declaratory relief. *See South Florida Wellness, Inc. v. Allstate Ins. Co.*, 745 F.3d 1312, 1318 (11th Cir. 2014) (“The amount in controversy is not proof of the amount the plaintiff will recover. Rather, it is an estimate of the amount that will be put at issue in the course of the litigation”) (citation omitted). As demonstrated above, since Defendant’s potential liability under each plaintiff’s policy exceeds \$75,000, Count I also meets the amount-in-controversy requirement.

IV. THE COMPLAINT ALSO SATISFIES THE REMOVAL REQUIREMENTS UNDER CAFA

24. Under CAFA, federal courts have original jurisdiction over class actions where the amount in controversy exceeds \$5 million in the aggregate for the entire class, exclusive of interest and costs; the putative class action contains at least 100 members; and any member of the putative class is a citizen of a state different from that of any defendant. 28 U.S.C. § 1332(d)(2), (d)(5)(B), and (d)(6).

25. While Defendant disputes the size of the proposed class and the amount the putative class is ultimately likely to recover, Plaintiffs’ allegations facially meet the removal requirements under CAFA.

A. The Putative Class Allegedly Consists of More Than 100 Members

26. Plaintiffs allege that “Defendant has failed to pay for similar business interruption losses and expenses by thousands of other insureds holding policies that are, in all material

respects, identical to [Plaintiffs'] Policy.” Compl. ¶ 7.

27. Plaintiffs further allege that “[t]here are, at a minimum, thousands of members of the proposed Class.” *Id.* ¶ 73.

28. Accordingly, while Defendant denies that class treatment is permissible or appropriate, based on the Complaint’s allegations the proposed class consists of more than 100 members.

B. There Is Minimal Diversity

29. Minimal diversity of citizenship exists in this matter because Plaintiffs and Defendant are citizens of different states and the proposed class is comprised of persons and entities in Florida. *Id.* ¶ 70.

C. The Amount in Controversy Exceeds \$5 Million

30. As previously demonstrated, the amount in controversy for each named plaintiff easily exceeds \$75,000. Therefore, the amount in controversy in the aggregate for the proposed class—which allegedly contains “thousands of members” holding “identical” policies (*id.* ¶¶ 7, 73)—would far exceed \$5 million. *See also* Plaintiffs’ Civil Cover Sheet, Renella Decl., Ex. 4 (stating that the estimated amount of claim is \$10,000,000).

V. THE OTHER PREREQUISITES FOR REMOVAL ARE SATISFIED

31. The United States District Court for the Southern District of Florida is the appropriate venue for removal pursuant to 28 U.S.C. § 1441(a) because it embraces the place where Plaintiffs originally filed the case.

32. In accordance with 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders served upon Defendant are attached as Exhibits 1 through 4 to the Renella Declaration.

33. Pursuant to 28 U.S.C. § 1446(d), the undersigned counsel hereby certifies that a true and correct copy of this Notice of Removal will be promptly filed with the Clerk of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, and served upon Plaintiffs’ counsel.

WHEREFORE, Defendant respectfully requests that this action, now pending in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, be removed to the United States District Court for the Southern District of Florida.

Respectfully submitted this 29th day of July, 2020.

/s/ Christine M. Renella

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**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

Case No.

**PF SUNSET VIEW, LLC dba PLANET
FITNESS, PF RIVERVIEW, LLC dba
PLANET FITNESS, PF SKIPPER VIEW,
LLC dba PLANET FITNESS, and PF
WATER VIEW, LLC dba PLANET
FITNESS individually and on behalf of all
others similarly situated,**

Plaintiffs,

v.

**ATLANTIC SPECIALTY INSURANCE
COMPANY,**

Defendant.

CLASS ACTION COMPLAINT

Plaintiffs PF Sunset View, LLC dba Planet Fitness, PF Riverview, LLC dba Planet Fitness, PF Skipper View, LLC dba Planet Fitness, and PF Water View, LLC dba Planet Fitness (“Plaintiffs”)¹ bring this class action complaint against Defendant Atlantic Specialty Insurance Company (“Defendant” or “Atlantic Specialty”), individually and on behalf of all others similarly situated, and allege upon personal knowledge as to their acts and experiences, and, as to all other matters, upon information and belief, as follows:

NATURE OF THE ACTION

1. Plaintiffs own and operate fitness club franchises operating as Planet Fitness gyms in Florida. By recent orders issued by the State of Florida, Plaintiffs’ businesses have been forced to cease their operations as part of the State’s efforts due to the COVID-19 global pandemic.

¹ Plaintiffs own and operate four Planet Fitness franchises in Florida. Although each of Plaintiffs’ four Planet Fitness locations have separate Atlantic Specialty policies and claim numbers, the policies and claims are materially identical as concerns this coverage dispute.

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2. To protect their businesses from situations like these, Plaintiffs obtained commercial property insurance from Atlantic Specialty. The Policy is a bilateral contract: Plaintiffs agreed to pay monthly premiums to Defendant in exchange for Defendant's promises of coverage for certain losses.

3. Among other types of coverage, the Policy protects Plaintiffs against a loss of business income due to a suspension of the fitness clubs' operations. This type of coverage is often referred to as business interruption coverage.

4. The Policy also provides "Extra Expense" coverage, under which Defendant promised to pay expenses incurred to minimize the suspension of business. Additionally, the Policy provides "Civil Authority" coverage, under which Defendant promised to pay for a loss of business income caused by the action of a civil authority prohibiting access to the fitness club.

5. Beginning in March 2020, Plaintiffs were forced to suspend business operations at their fitness clubs as a result of COVID-19 and government orders prohibiting access to the premises. This suspension has caused Plaintiffs to suffer significant losses.

6. Under the Policy, Defendant promised to cover these losses and expenses, and is obligated to pay for them. But in blatant breach of its contractual obligations, Defendant has failed to pay for these losses and expenses.

7. Upon information and belief, Defendant has failed to pay for similar business interruption losses and expenses by thousands of other insureds holding policies that are, in all material respects, identical to the Policy.

8. As a result, Plaintiffs now bring this action individually and on behalf of all similarly situated insured businesses against Atlantic Specialty for its failure to honor its obligations under commercial property insurance policies issued to Plaintiffs and Class members,

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which provide coverage for losses incurred due to a necessary suspension of operations, including when businesses are forced to close due to a government order. Plaintiffs seek a declaratory judgment that Plaintiffs and Class members' business income losses are covered losses under the Policy.

JURISDICTION AND VENUE

9. The amount at issue in this case is in excess of \$30,000.00, exclusive of interest, attorneys' fees and costs.

10. Venue is proper in this Circuit because the conduct at issue occurred in this County, Plaintiffs' causes of action accrued in this Circuit, and Defendant is present in this Circuit through its business activities.

PARTIES

11. Plaintiff PF Sunset View, LLC dba Planet Fitness is a Florida corporation located at 21322 Harrow Court, Boca Raton, Florida 33433. Plaintiff's members are Arthur Nudelman, Jacob Khotoveli, and Eric Gleit, citizens of Florida. PF Sunset View, LLC dba Planet Fitness owns and operates a Planet Fitness franchise located at 1883-1885 N Highland Ave., Clearwater, FL 33755. In 2019, Atlantic Specialty issued all-risk commercial property insurance policy no. 710-03-88-23-0001 to PF Sunset View, LLC dba Planet Fitness, with a policy period of April 17, 2019 – April 17, 2020. On or about April 17, 2020, Atlantic Specialty renewed this policy and issued all-risk commercial property insurance policy no. 710-03-88-23-0002 to PF Sunset View, LLC dba Planet Fitness with a policy period of April 17, 2020 – April 17, 2021. Copies of the aforementioned policies issued to Plaintiff PF Sunset View, LLC are attached hereto as Exhibits "A" and "B." On March 27, 2020, after Plaintiff ceased operations and shut its business by orders of the State of Florida and Pinellas County, it made a claim with Defendant under the

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Policy. On April 13, 2020, more than two weeks after the claim was made, Defendant finally acknowledged the claim and assigned it claim number 0AB284248. In its response, Defendant identified provisions of the Policy it believed may be applicable to the loss, and despite knowing all facts necessary to accept or deny the claim, refused to accept the claim and instead asserted a reservation of rights without basis. Plaintiff has followed up with Defendant and provided additional information about the claim. However, two months have passed and Defendant still has not notified Plaintiff of its coverage determination. Meanwhile, Plaintiff is in dire need of the insurance benefits to which Plaintiff is entitled.

12. Plaintiff PF Riverview, LLC dba Planet Fitness is a Florida corporation located at 21322 Harrow Court, Boca Raton, Florida 33433. Plaintiff's members are Arthur Nudelman, Jacob Khotoveli, and Eric Gleit, citizens of Florida. PF Riverview, LLC dba Planet Fitness owns and operates a Planet Fitness franchise located at 9822 US Highway 301 S., Riverview, FL 33578. In 2019, Atlantic Specialty issued all-risk commercial property insurance policy no. 710-03-90-50-0000 to PF Riverview, LLC dba Planet Fitness with a policy period of August 6, 2019 – April 17, 2020. On or about April 17, 2020, Atlantic Specialty renewed this policy and issued all-risk commercial property insurance policy no. 710-03-90-50-0001 to PF Riverview, LLC dba Planet Fitness with a policy period of April 17, 2020 – April 17, 2021. Copies of the aforementioned policies issued to Plaintiff PF Riverview, LLC are attached hereto as Exhibits "C" and "D." On March 27, 2020, after Plaintiff ceased operations and shut its business by orders of the State of Florida and Hillsborough County, it made a claim with Defendant under the Policy. On April 13, 2020, more than two weeks after the claim was made, Defendant finally acknowledged the claim and assigned it claim number 0AB284243. In its response, Defendant identified provisions of the Policy it believed may be applicable to the loss, and despite knowing

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all facts necessary to accept or deny the claim, refused to accept the claim and instead asserted a reservation of rights without basis. Plaintiff has followed up with Defendant and provided additional information about the claim. However, two months have passed and Defendant still has not notified Plaintiff of its coverage determination. Meanwhile, Plaintiff is in dire need of the insurance benefits to which Plaintiff is entitled.

13. Plaintiff PF Skipper View, LLC dba Planet Fitness is a Florida corporation located at 21322 Harrow Court, Boca Raton, Florida 33433. Plaintiff's members are Arthur Nudelman, Jacob Khotoveli, and Eric Gleit, citizens of Florida. PF Skipper View, LLC dba Planet Fitness owns and operates a Planet Fitness franchise located at 2546 E. Bearss Avenue, Tampa, FL 33613. In 2019, Atlantic Specialty issued all-risk commercial property insurance policy no. 710-03-84-17-0001 to PF Skipper View, LLC dba Planet Fitness, with a policy period of April 17, 2019 – April 17, 2020. On or about April 17, 2020, Atlantic Specialty renewed this policy and issued all-risk commercial property insurance policy no. 710-03-84-17-0002 to PF Skipper View, LLC dba Planet Fitness with a policy period of April 17, 2020 – April 17, 2021. Copies of the aforementioned policies issued to Plaintiff PF Skipper View, LLC are attached hereto as Exhibits "E" and "F." On March 27, 2020, after Plaintiff ceased operations and shut its business by orders of the State of Florida and Hillsborough County, it made a claim with Defendant under the Policy. On April 7, 2020, nearly two weeks after the claim was made, Defendant finally acknowledged the claim and assigned it claim number 0AB284250. In its response, Defendant identified provisions of the Policy it believed may be applicable to the loss, and despite knowing all facts necessary to accept or deny the claim, refused to accept the claim and instead asserted a reservation of rights without basis. Plaintiff has followed up with Defendant and provided additional information about the claim. However, two months have

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passed and Defendant still has not notified Plaintiff of its coverage determination. Meanwhile, Plaintiff is in dire need of the insurance benefits to which Plaintiff is entitled.

14. Plaintiff PF Water View, LLC dba Planet Fitness is a Florida corporation located at 21322 Harrow Court, Boca Raton, Florida 33433. Plaintiff's members are Arthur Nudelman, Jacob Khotoveli, and Eric Gleit, citizens of Florida. PF Water View, LLC dba Planet Fitness owns and operates a Planet Fitness franchise located at 210 W Waters Ave., Tampa, FL 33604. In 2019, Atlantic Specialty issued all-risk commercial property insurance policy no. 710-03-73-58-0002 to PF Water View, LLC dba Planet Fitness, with a policy period of April 17, 2019 – April 17, 2020. On or about April 17, 2020, Atlantic Specialty renewed this policy and issued all-risk commercial property insurance policy no. 710-03-73-58-0003 to PF Water View, LLC dba Planet Fitness with a policy period of April 17, 2020 – April 17, 2021. Copies of the aforementioned policies issued to Plaintiff PF Water View, LLC are attached hereto as Exhibits "G" and "H." On March 27, 2020, after Plaintiff ceased operations and shut its business by orders of the State of Florida and Hillsborough County, it made a claim with Defendant under the Policy. On April 13, 2020. In its response, Defendant identified provisions of the Policy it believed may be applicable to the loss, and despite knowing all facts necessary to accept or deny the claim, refused to accept the claim and instead asserted a reservation of rights without basis. Plaintiff has followed up with Defendant and provided additional information about the claim. However, two months have passed and Defendant still has not notified Plaintiff of its coverage determination. Meanwhile, Plaintiff is in dire need of the insurance benefits to which Plaintiff is entitled.

15. Atlantic Specialty Insurance Company ("Atlantic Specialty") is a New York corporation with its principal place of business at 605 Highway 169 North, Suite 800, Plymouth,

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Minnesota 55441. Atlantic Specialty is an insurance company authorized to do business in the State of Florida and elsewhere.

FACTUAL ALLEGATIONS

The Policy

16. Atlantic Specialty sold Plaintiffs and members of the Class commercial property insurance policies (the “Policy”) covering business income losses resulting from the necessary suspension of business operations at an insured location and business income losses caused by a government orders prohibiting access to the premises. Plaintiffs and members of the Class paid substantial premiums in exchange for the coverages of the Policy.

17. 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.

18. Consistent with the all-risk nature of the Policy, Atlantic Specialty specifically agreed to pay for all losses caused by a “Covered Cause of Loss,” defined as “a cause of loss that would be covered under your policy for the type of property that has been lost or damaged.”

19. One type of coverage provided by the Policy is for loss of business income, often called business interruption insurance. This coverage is specifically provided for in a section of the Policy titled “Business Income and Extra Expense Coverage.”

20. Pursuant to the Policy’s “Business Income” coverage form, Atlantic Specialty promised it “will pay for the actual loss of Business Income you sustain due to the necessary suspension of your ‘Operations’ during the ‘Period of Restoration’.”

3. Business Income and Extra Expense Coverage

a. Business Income

- (1) We will pay 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:
- (a) The described premises;
 - (b) Your new buildings while being built on or within 1000 feet of the described premises;
 - (c) Buildings you acquire at locations other than the described premises, intended for:
 - (i) Similar use as the building described in the Declarations; or
 - (ii) Use as a warehouse.

The loss or damage must be caused by or result from a Covered Cause of Loss. If the damaged property is Covered Property under your Building or Business Personal Property Coverages, then the same Causes of Loss that apply to the property under those Coverages and under the loss circumstances apply to this Business Income Coverage. If the damaged property is not Covered Property under your Building or Business Personal Property Coverages, then the General Causes of Loss apply to this Business Income Coverage. With respect to loss of or damage to business personal property in the open or personal property in a vehicle, the described premises include the area within 1000 feet of the site at which the described premises are located. Your Business Income Coverage does not apply to any loss otherwise covered only under your Crime Coverages.

21. Each of the operative terms of this coverage provision is defined by the Policy as follows.

22. The term "Business Income" means the net income that would have been earned plus any normal operating expenses, including payroll.

- (4) Throughout all of your Business Income and Extra Expense Coverages, the term Business Income means the:

- (a) Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no physical loss or damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses. Net Income includes "Rental Value" unless the phrase **Business Income Excluding Rental Value** appears in the Declarations; and
- (a) Continuing normal operating expenses incurred, including payroll.

23. The term "Operations" means "your business activities occurring at the described premises, including the tenantability of the described premises. If the phrase Business Income Excluding Rental Value appears in the Declarations, "Operations" does not include the tenantability of the described premises."

24. The phrase “Period of Restoration” means the time that begins with the date of loss or damage resulting from any covered cause of loss and ends on the date the property should be repaired.

13. “Period of Restoration” means the period of time that:
- a. Begins with the date of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; and
 - b. Ends on the date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality.

25. Additionally, under the Policy, Defendant also promised to cover “Extended Business Income” during the “Extended Period of Indemnity.” This coverage requires Defendant to pay for loss of Business Income beyond the Period of Restoration under certain conditions.

26. Specifically, Defendant promised to pay for the actual loss of Business Income during the Extended Period of Indemnity that begins on the date that the insured property is repaired and Operations are resumed, and ends either 90 days thereafter or on the date when Operations are restored to the level which would generate Business Income to normal levels, whichever is earlier.

27. In addition to promising to pay for loss of Business Income, under the Policy, Defendant also promised to pay for certain necessary “Extra Expense[s].” Extra Expenses mean expenses that the policyholder incurs to, for example, minimize the suspension of business.

28. The Policy also provides “Civil Authority” coverage. Under this type of coverage, Defendant promised to pay for the loss of Business Income and Extra Expense that Plaintiffs sustained as a result of “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.”

f. Civil Authority

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. This Coverage will apply for a period of up to 2 consecutive weeks from the date of that action.

29. This Civil Authority provision is an independent basis for business interruption coverage. That is, it can be triggered even when the standard business interruption coverage is not.

30. Parts of the Policy, including the “Business Income and Extra Expense Coverage” form, are standardized forms drafted by the Insurance Services Office (ISO). The ISO is a company that drafts standard policy language for use in insurance contracts.

31. In 2006, the ISO drafted a new endorsement, CP 01 40 07 06, acknowledging that claims for business interruption losses would be filed under existing policy language for losses resulting from the presence of disease-causing agents. Endorsement CP 01 40 07 06, which other insurers have since incorporated in policies, provides that the insurer “will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.” Significantly, Defendant chose to not include this endorsement in the Policy.

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

33. Accordingly, because the Policy is an all-risk policy and does not specifically exclude the losses that Plaintiffs have suffered, those losses are covered.

The COVID-19 Pandemic and Actions of Civil Authorities

34. In late 2019 and early 2020, an outbreak of respiratory illness caused by a novel coronavirus n/k/a COVID-19 started to infect humans across the globe. On March 11, 2020, the World Health Organization (“WHO”) declared the COVID-19 outbreak a pandemic (i.e. a global outbreak of disease).

35. Throughout March 2020, governments around the world, including the U.S. Government, State of Florida, and County officials throughout Florida (including in Hillsborough and County and Pinellas County) began ordering the shutdown of non-essential businesses, including fitness centers, movie theaters, bars and restaurants, and ordering citizens to stay at home in order to slow the spread of COVID-19 and reduce the health, property and economic impact of the pandemic.

36. On March 1, 2020, Florida Governor Ron DeSantis issued Executive Order 20-51, directing the State Health Officer and Surgeon General to declare a Public Health Emergency due to the discovery of COVID-19 in Florida.

37. On March 9, 2020, Governor DeSantis issued Executive Order Number 20-52 declaring a State of Emergency for the state of Florida in furtherance of efforts to respond to and mitigate the effects of COVID-19 throughout the State.

38. On March 12, 2020, the Hillsborough County Emergency Policy Group declared a state of local emergency in response to a County wide threat from COVID-19 for all of Hillsborough County.

39. On March 13, 2020, the Board of County Commissioners of Pinellas County, Florida passed Resolution 20-16 and declared a state of local emergency as of 3:00 p.m. on March 13, 2020, for all legal territory within Pinellas County.

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40. On March 17, 2020, Governor DeSantis issued Executive Order 20-68, which included an immediate order prohibiting certain access to bars, pubs, nightclubs, and restaurants for the entire State of Florida.

41. On March 19, 2020, the Hillsborough County Administrator issued Administrator Order Updating COVID-19 Limitations for Establishments and Gatherings. In addition to ordering compliance with all Executive Orders issued by the Governor of the State of Florida, the Order prohibited public and private gatherings that bring together more than 10 people in a single room, single space, or any other venue, at the same time. The Order included prohibiting gatherings of more than 10 people at fitness centers, health clubs, private clubs and theaters.

42. On March 20, 2020, Governor DeSantis issued Executive Order 20-71, stating in part that “the State Surgeon General has advised [] that gyms and fitness centers are establishments that attract gatherings of more than 10 people and are more susceptible for spreading COVID-19.” Pursuant to Executive Order 20-71, all licensed alcohol vendors were ordered to suspend sale of alcoholic beverages for on-premises consumption, restaurants and food establishments were ordered to suspend on-premises food consumption for customers, and gymnasiums and fitness centers within the State of Florida were ordered closed.

43. On March 20, 2020, the Hillsborough County Administrator issued Administrator Order Number 20-05. In addition to ordering compliance with all Executive Orders issued by the Governor of the State of Florida, Administrator Order Number 20-05 prohibited public and private gatherings that bring together more than 10 people in a single room, single space, or any other venue, at the same time.

44. On March 25, 2020, the Board of County Commissioners of Pinellas County, Florida issued Resolution 20-20, declaring that “there is reason to believe that COVID-19 is

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spread amongst the population by various means of exposure, including the propensity to spread person to person and the propensity to attach to surfaces for prolonged periods of time, thereby spreading from surface to person[.]” Among other things, this order required the closure of all non-essential businesses, including restaurants, bars and gyms. This order had “the force of law and may be enforced by any available legal process.” Resolution 20-20 was expressly issued in response to the propensity of COVID-19 causing increased infections to persons “and property loss and damage.”

45. On April 1, 2020, Governor DeSantis issued Executive Order 20-91 ordering “all persons in Florida shall limit their movements and personal interactions outside their home to only those necessary to obtain or provide essential services or conduct essential activities.” Executive Order 20-91 defined “essential services” to mean and encompass the list detailed by the U.S. Department of Homeland Security in its Guidance on the Essential Critical Infrastructure Workforce, v.2 (March 28, 2020) and any subsequent lists published, as well as those businesses and activities designated by Executive Order 20-89. Executive Order 20-91 also defined the “essential activities” that were not prohibited. Executive Order 20-91 expressly superseded any conflicting local orders that allowed any essential services or activities prohibited by Executive Order 20-91.

46. Executive Order 20-112, effective May 4, 2020, established the “Phase One Recovery” path to re-opening portions of business in Florida. Pursuant to Executive Order 20-112, operations of bars and restaurants continue to be limited by statewide order, and gyms and fitness centers closed by Executive Order 20-71 remain closed.

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47. Hillsborough County announced that bars, pubs, nightclubs, gyms and fitness center, and sports venues and movie theaters continue to remain closed under the first phase of Governor DeSantis' May 4, 2020, "Safe. Smart. Step-by-Step" plan.

48. In Florida, violations of an executive order issued by the Governor pursuant to the State Emergency Management Act are second-degree misdemeanors punishable by imprisonment.

Plaintiffs' Covered Losses

49. As of May 15, 2020, according to the Florida Department of Health, COVID-19 was present in all of Florida's 67 counties. As of May 15, 2020, the Florida Department of Health reported 44,138 confirmed cases of COVID-19, and 1,917 deaths in the state. As of May 15, 2020, Hillsborough County, where Tampa and Riverview are located, has had 1,530 confirmed cases of COVID-19, and 46 deaths. Pinellas County, where Clearwater is located, has had 962 confirmed cases of COVID-19 and 65 deaths.

50. Per the Centers for Disease Control and Prevention ("CDC"), there is no vaccine to protect against COVID-19 and no medications approved to treat it.

51. It may take up to 14 days for an infected person to have symptoms.

52. A large percentage of persons who tested positive for COVID-19 showed no symptoms prior to testing. In fact, the director of the CDC, Dr. Robert Redfield, stated that "we have pretty much confirmed [now is] that a significant number of individuals that are infected actually remain asymptomatic. That may be as many as 25%. That's important, because now you have individuals that may not have any symptoms that can contribute to transmission, and we have learned that in fact they do contribute to transmission".

53. The WHO states that COVID-19 can spread from person to person when a person

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with COVID-19 contaminates objects and surfaces, and other people touch these objects or surfaces and then touch their eyes, nose or mouth.

54. The CDC states that COVID-19 may remain viable for days on surfaces normally considered inhospitable to viruses, such as doorknobs, faucets, and other hard surfaces in buildings, and recommends the routine cleaning of all frequently touched surfaces and disinfection-level deep cleaning of surfaces thought to be contaminated.

55. The infectious particles of COVID-19 are invisible to the naked eye and it is not feasible to test every surface to determine if it has been contaminated. A surface that is touched by a person infected with COVID-19 is presumed to be contaminated.

56. Accordingly, the presence or danger of COVID-19 on property renders that property unusable and non-functioning until such time as the property is decontaminated.

57. After a room is occupied by a person with confirmed or suspected COVID-19, the CDC, in addition to ensuring sufficient time for enough air changes to remove potentially infectious particles, recommends cleaning and disinfecting environmental surfaces and shared equipment before a room is used by another person otherwise there is significant risk of re-contamination.

58. Property owned by Plaintiffs or others is capable of being contaminated by direct physical contact from an infected person(s) either knowingly or unwittingly. The property owner would be temporarily unable to use such property even though structurally unaltered until such property is sanitized or otherwise restored to its pre-COVID-19 condition.

59. Plaintiffs' customers come from all over and Plaintiffs have no reliable way of knowing whether any of their customers were infected by COVID-19.

60. Plaintiffs will incur extra expenses for cleaning and sanitizing their equipment

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and property.

61. As detailed above, the presence of COVID-19 and the public health emergency it has created have prompted actions by civil authorities throughout the United States (“Civil Authority Actions”), including but not limited to civil authorities with jurisdiction over Plaintiffs’ Planet Fitness gyms: Pinellas County, Hillsborough County, and the state of Florida. These Civil Authority Actions have restricted and prohibited access to the insured properties.

62. The presence of COVID-19 caused direct physical loss of and/or damage to the covered premises under the Policies by, among other things, damaging the properties, denying access to the properties, preventing customers from physically occupying the properties, causing the properties to be physically uninhabitable by customers, causing their functions to be nearly eliminated or destroyed, and/or causing a suspension of business operations on the premises.

63. The Civil Authority Actions prohibiting public access to the covered premises and the surrounding areas were issued in response to dangerous physical conditions and caused a suspension of business operations on the covered premises.

64. As a result of the presence of COVID-19, Plaintiffs’ Planet Fitness gyms have suffered a suspension of business operations and sustained losses of business income.

65. As a result of the Civil Authority Actions, Plaintiffs’ Planet Fitness gyms have suffered a suspension of business operations and sustained losses of business income.

66. These losses have continued through the date of filing of this action.

67. These losses are not excluded from coverage under the Policy. And because the Policy is an all-risk policy, and Plaintiffs have complied with their contractual obligations, Plaintiffs are entitled to payment for these losses.

68. Accordingly, Plaintiffs provided notice of their losses to Defendant, consistent

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with the terms and procedures of the Policy.

69. But contrary to the plain language of the Policy, and to Defendant's corresponding promises and contractual obligations, Defendant has refused to pay for Plaintiffs' losses.

CLASS DEFINITION AND ALLEGATIONS

70. Plaintiffs assert this action on behalf of the following class:

All persons and entities in Florida with Business Income, Civil Authority, or Extra Expense coverage under an insurance policy issued by Atlantic Specialty, who suffered loss of business income or incurred extra expenses due to a suspension of business related to COVID-19, and for which Atlantic Specialty denied a claim for the losses or has otherwise failed to acknowledge, accept as a covered loss, or pay for the covered loss.

71. Excluded from the Class is Defendant, its parents, subsidiaries, affiliates, officers, and directors, all persons who make a timely election to be excluded from the Class, the judge to whom this case is assigned and any immediate family members thereof.

72. Certification of Plaintiffs' claims for class wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

73. **Numerosity.** The members of the Class are so numerous that individual joinder of all Class members is impracticable. There are, at a minimum, thousands of members of the proposed Class.

74. **Commonality and Predominance.** This action involves common questions of law and fact, which predominate over any questions affecting individual Class members. Defendant issued all-risk policies to all the members of each proposed Class in exchange for payment of premiums by the Class members. The questions of law and fact affecting all Class members include, without limitation, the following:

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- a) Whether Plaintiffs and Class members suffered a Covered Cause of Loss under the common policies issued to the Class;
- b) Whether Defendant wrongfully denied all claims based on COVID-19;
- c) Whether Defendant's Business Income coverage applies to a suspension of business caused by COVID-19 and/or related actions of civil authorities taken in response to the presence or threat of COVID-19;
- d) Whether Defendants' Civil Authority coverage applies to a loss of Business Income caused by the orders of local, municipal, city, county, and/or state governmental entities requiring the suspension of business during the outbreak of COVID-19 in the United States;
- e) Whether Defendant's Extra Expense coverage applies to efforts to avoid or minimize a loss caused by COVID-19;
- f) Whether Defendant has breached its contracts of insurance through a uniform and blanket denial of all claims for business losses related to COVID-19 and/or the related actions of civil authorities taken in response to the presence or threat of COVID-19;
- g) Whether Plaintiffs and the Class members suffered damages as a result of Defendant's actions; and
- h) Whether Plaintiffs and the Class members are entitled to an award of reasonable attorneys' fees, interest, and costs.

75. **Typicality.** Plaintiffs' claims are typical of the other Class members' claims because, among other things, all Class members were comparably injured through Defendant's uniform conduct described above.

76. **Adequacy of Representation.** Plaintiffs are adequate representatives of the Class because Plaintiffs' interests do not conflict with the interests of the other Class members Plaintiffs seek to represent; Plaintiffs have retained counsel competent and experienced in complex commercial and class action litigation; and Plaintiffs intend to prosecute this action vigorously. The interests of the Class members will be fairly and adequately protected by Plaintiffs and their counsel.

77. **Superiority.** 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. The damages or other financial detriment suffered by Plaintiffs and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for Class members to individually seek redress for Defendant's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. 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.

CLAIMS ALLEGED

COUNT I

Declaratory Judgment

78. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

79. Plaintiffs bring this claim on behalf of themselves and the other members of the Class

80. Florida Statute § 86.021 creates a right to declaratory judgment when a question of construction or validity arises under a contract.

81. The purpose of a declaratory judgment is to afford relief for a person's insecurity and uncertainty with respect to their rights, status, or other equitable or legal relations.

82. There is a bona fide, actual, present need for a declaratory judgment to determine this matter.

83. Plaintiffs' policies, as well as the policies of other Class members, are insurance contracts under which Defendant was paid premiums in exchange for promises to pay Class members' losses for claims covered by the policies.

84. Plaintiffs and the other Class members have complied with all applicable provisions of the Policy, including payment of premiums.

85. In the Policy, Defendant promised to pay for losses of business income sustained as a result of perils not excluded under the Policy. Specifically, Defendant promised to pay for losses of business income sustained as a result of a suspension of business operations during the Period of Restoration.

86. COVID-19 caused direct physical loss of and damage to Plaintiffs' Planet Fitness gyms and other Class members' insured premises, resulting in suspensions of business operations at these premises. These suspensions have caused Plaintiffs and Class members to suffer losses of business income.

87. These suspensions and losses triggered business income coverage under the Policy.

88. In the Policy, Defendant also promised to pay for losses of business income sustained and extra expenses incurred when action of civil authority prohibits access to the

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described premises due to direct physical loss of or damage to property near the described premises, caused by or resulting from any Covered Cause of Loss.

89. Plaintiffs and other Class members have suffered losses of business income and incurred expenses as a result of actions of civil authorities that prohibited access to insured premises under the Policy.

90. These losses also satisfied all requirements to trigger Civil Authority coverage under the Policy.

91. Defendant, without justification, disputes that the Policy provides coverage for these losses.

92. An actual case or controversy exists regarding Class members' rights and Defendant's obligations under the Policy to reimburse Class members for these business income losses and extra expenses. Accordingly, the declaratory judgment sought is justiciable.

93. Accordingly, Plaintiffs request that this Court enter a declaratory judgment declaring the following:

a) Losses of business income and extra expenses incurred by Plaintiffs and the other Class members in connection with the Civil Authority Actions and the necessary suspension of their businesses stemming from COVID-19 are insured losses under the Policy.

b) Atlantic Specialty is obligated to pay Plaintiffs and the other Class members for the full amount of their losses of business income and the extra expenses incurred because of the necessary suspension of their Operations during the Period of Restoration that was caused by or resulting from COVID-19.

c) Atlantic Specialty is obligated to pay Plaintiffs and the other Class members for the full amount of their losses of business income and the extra expenses incurred

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caused by the Civil Authority Actions prohibiting 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 COVID-19.

94. Plaintiffs also seek an order requiring Defendant to the notify the Class of the declaratory judgment entered by the Court, and to comply with the terms of that declaration.

95. A declaration and judgment regarding Defendant's obligation to reimburse Plaintiffs and Class members for the loss of business income and extra expenses they incurred as a result of COVID-19 and Civil Authority Actions will terminate the controversy and clarify the respective rights and obligations of the parties under the Policy.

COUNT II

BREACH OF CONTRACT

96. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

97. Plaintiffs bring this claim on behalf of themselves and the other members of the Class.

98. Plaintiffs' policies, as well as the policies of other Class members, are insurance contracts under which Defendant was paid premiums in exchange for promises to pay Class members' losses for claims covered by the Policy.

99. In the Policy, Defendant promised to pay for losses of business income and extra expenses incurred as a result of perils not excluded under the Policy. Specifically, Defendant promised to pay for losses of business income sustained as a result of a suspension of business operations during the Period of Restoration and Extended Period of Indemnity.

100. COVID-19 caused direct physical loss of and damage to Plaintiffs' Planet Fitness gyms and other Class members' insured premises, resulting in suspensions of business operations

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at these premises. These suspensions have caused Class members to suffer losses of business income and to incur necessary extra expenses.

101. These suspensions and losses triggered business income coverage under the Policy.

102. In the Policy, Defendant also promised to pay for losses of business income sustained and extra expenses incurred when action of civil authority prohibits access to the described premises due to direct physical loss of or damage to property near the described premises, caused by or resulting from COVID-19.

103. Plaintiffs and other Class members have suffered losses and incurred expenses as a result of actions of civil authorities that prohibited access to insured premises under the Policy.

104. These losses satisfied all requirements to trigger Civil Authority coverage under the Policy.

105. Plaintiffs and the other Class members have complied with all applicable provisions of their respective policies, including payment of premiums.

106. Defendant, without justification, has refused performance under the Policy by denying coverage for these losses and expenses. Accordingly, Defendant is in breach of the Policy.

107. As a result of Defendant's breaches of the Policy, Plaintiffs and other Class members have suffered actual and substantial damages for which Defendant is liable.

JURY DEMAND

108. Plaintiffs demand a trial by jury of all claims in this Complaint so triable.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the other members of the

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proposed Class, respectfully request that the Court enter judgment in Plaintiffs' favor and against Defendant as follows:

A. Declaring that this action is a proper class action, certifying the Class as requested herein, designating Plaintiff as Class Representative and appointing the undersigned counsel as Class Counsel;

B. Entering judgment in favor of Plaintiffs and against Atlantic Specialty;

C. Entering declaratory judgments in favor of Plaintiffs and members of the Class as requested herein;

D. Ordering Defendant to notify members of the Class of the declaration and judgment;

E. Entering an order that, among other things, prohibits Defendant from not complying with the declaration and enjoins Defendant to adjust claims in accordance with the declaration and otherwise comply with the terms of the declaration;

F. Awarding damages for breach of contract;

G. Ordering Defendant to pay attorneys' fees and litigation costs;

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

I. Ordering such other and further relief as may be just and proper.

Respectfully submitted,

Dated: May 22, 2020

By: /s/ Adam M. Balkan

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