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13 **UNITED STATES DISTRICT COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**  
15 **SAN FRANCISCO DIVISION**

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

20 Plaintiffs,

21 vs.

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

24 Defendants.

Case No.

**CLASS ACTION COMPLAINT  
DEMAND FOR JURY TRIAL**

1. Declaratory Judgment – Business  
Income Coverage
2. Declaratory Judgment – Civil  
Authority Coverage
3. Declaratory Judgment – Extra  
Expense Coverage

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

6 **INTRODUCTION**

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

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

24 3. In response to the business interruption claims filed by Plaintiff and thousands of  
25 other class members resulting from the COVID-19 pandemic, Defendant has systematically  
26 denied and continues to deny and refuses to provide payment for insurance claims for coverage  
27 for similar losses and expenses by insureds holding policies that are, in all material respects,  
28 identical. Defendant’s decision to not provide coverage and/or its decision to refuse to pay

1 claims under the common policy forms issued to Plaintiff and the putative class members  
2 constitutes a breach of contract and provides them with the right to seek a declaratory judgment  
3 pursuant to 28 U.S.C. § 2201(a) on behalf of itself and the class members establishing that they  
4 are entitled to receive the benefit of the insurance coverage it purchased and for indemnification  
5 of the businesses losses it has sustained.

6 **PARTIES, JURISDICTION AND VENUE**

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

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

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

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

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

26 9. This Court has subject matter jurisdiction over this action under 28 U.S.C. §  
27 1332(a) because it involves citizens of different states and the amount in controversy exceeds  
28 \$75,000.

1           10.     This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d) because  
2 there is diversity between Defendant and at least one member of each class; there are more than  
3 one hundred members of each class; and the amount in controversy exceeds \$5,000,000  
4 exclusive of interest and costs. This Court also has subject matter jurisdiction under 28 U.S.C.  
5 §§ 2201 and 2202 and is authorized to grant declaratory relief under these statutes.

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

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

## **FACTUAL BACKGROUND**

### ***A. Insurance Coverage***

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

26           14.     The Policy is part of a Master Policy written on behalf of all members of the  
27 Association for Room Escapes of North America (“ARENA”) who elect to purchase coverage  
28 through ARENA. The unique certificate number for Plaintiff’s specific Policy is S187007423056.

1           15.     The Policy uses standard common forms that contain the same and/or  
2 substantially similar provisions at issue in this action as those issued by Defendant to the  
3 members of the putative class as defined herein.

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

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

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

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

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

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

24           22.     The terms of the Policy also provide the insured with insurance coverage for  
25 Business Income, along with any necessary extra expenses incurred, when access to the  
26 Insured’s properties is specifically prohibited by Civil Authority Orders. This additional  
27 coverage is identified as coverage under “Civil Authority” and states in part as follows:  
28

1 We will pay for the actual loss of Business Income you sustain and necessary Extra  
2 Expense caused by action of civil authority that prohibits access to the described  
3 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.

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

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

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

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

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

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

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

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1        **B. *The COVID-19 Pandemic***

2            29.        COVID-19 is a novel coronavirus that originated in Wuhan, China at the end of  
3 2019 and rapidly spread around the world, infecting millions of people, including over 2.15  
4 million Americans. Over 118,000 Americans have died due to COVID-19.

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

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

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

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

23           34.        COVID-19 has been transmitted in a variety of ways, including transmission (a)  
24 by way of human contact with surfaces and items of physical property; (b) by human to human  
25 contact and interaction, including places like bars and restaurants, retail stores, and hair and  
26 beauty salons, and the like; and (c) through airborne particles emitted into the air and even  
27 recirculated through air conditioning units.

28

1           35.     The presence of COVID-19 particles renders physical property unsafe and  
2 impairs its value, usefulness, and/or normal function, causing direct physical harm to property  
3 and resulting in direct physical loss and physical damage to property.

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

8           ***C. The Covered Cause of Loss***

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

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

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

19           40.     On March 4, 2020, Governor Newsom of the State of California proclaimed the  
20 existence of a disaster emergency in the State of California due to the COVID-19 pandemic.

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

25           42.     Nevada Governor Sisolak declared a state of emergency due to COVID-19 on  
26 March 12, 2020.

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1           43.     On March 31, 2020, Governor Sisolak issued Emergency Directive 010 Stay at  
2 Home Order. With limited exceptions, all Nevadans were ordered to stay at home in their  
3 residences.

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

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

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

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

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

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

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

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

9 52. Plaintiff’s losses and expenses are not excluded from coverage under the Policy.  
10 Because the Policy is an all-risk policy and Plaintiff has complied with its contractual  
11 obligations, Plaintiff is entitled to payment for these losses and expenses.

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

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

17 **CLASS ACTION ALLEGATIONS**

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

22 56. Plaintiff seeks to represent nationwide classes defined as:

- 23 a. All persons and entities with Business Income coverage under a property  
24 insurance policy issued by Defendant that suffered a suspension of business due  
25 to COVID-19 at the premises covered by the business income coverage (the  
26 “Business Income Declaratory Judgment Class”).

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1           b. All persons and entities with Civil Authority coverage under a property insurance  
2           policy issued by Defendant that suffered loss of Business Income and/or Extra  
3           Expense caused by a Closure Order (the “Civil Authority Declaratory Judgment  
4           Class”).

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

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

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

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

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

26               a. Defendant issued all-risk policies to the members of the Class in exchange for  
27               payment of premiums by the Class Members;

- b. whether the Class suffered a covered loss based on the common policies issued to members of the Class;
- c. whether Defendant wrongfully denied all claims based on COVID-19;
- d. whether Defendant's Business Income coverage applies to a suspension of business caused by COVID-19;
- e. whether Defendant's Civil Authority coverage applies to a loss of Business Income caused by the orders of state governors requiring the suspension of business as a result of COVID-19;
- f. whether Defendant's Extra Expense coverage applies to efforts to minimize a loss caused by COVID-19;
- g. whether Defendant has breached its contracts of insurance through a blanket denial of all claims based on business interruption, income loss or closures related to COVID-19 and the related closures; and
- h. whether Plaintiff and the class are entitled to an award of reasonable attorney fees, interest and costs.

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

62. **Adequacy of Representation—Federal Rule of Civil Procedure 23(a)(4).** Plaintiff is an adequate Class representative because its interests do not conflict with the interests of the other Class Members who it seeks to represent, Plaintiff has retained counsel competent and experienced in complex class action litigation, including successfully litigating class action cases similar to this one, where insurers breached contracts with insureds by failing to pay the amounts owed under its policies, and Plaintiff intends to prosecute this action vigorously. The interests of the above-defined Classes will be fairly and adequately protected by

1 Plaintiff and its counsel.

2           63.     **Inconsistent or Varying Adjudications and the Risk of Impediments to**  
3 **Other Class Members’ Interests—Federal Rule of Civil Procedure 23(b)(1).** Plaintiff seeks  
4 class-wide adjudication as to the interpretation, and resultant scope, of Defendant’s Business  
5 Income, Civil Authority, and Extra Expense coverages. The prosecution of separate actions by  
6 individual members of the Classes would create an immediate risk of inconsistent or varying  
7 adjudications that would establish incompatible standards of conduct for the Defendant.  
8 Moreover, the adjudications sought by Plaintiff could, as a practical matter, substantially impair  
9 or impede the ability of other Class Members, who are not parties to this action, to protect their  
10 interests.

11           64.     **Declaratory and Injunctive Relief—Federal Rule of Civil Procedure**  
12 **23(b)(2).** Defendant acted or refused to act on grounds generally applicable to Plaintiff and the  
13 other Class Members, thereby making appropriate final injunctive relief and declaratory relief,  
14 as described below, with respect to the Class Members.

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

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**CAUSES OF ACTION**

**COUNT I**

**DECLARATORY JUDGMENT –BUSINESS INCOME COVERAGE**

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

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

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

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

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

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

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

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

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

10 **COUNT II**

11 **DECLARATORY JUDGMENT – CIVIL AUTHORITY COVERAGE**

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

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

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

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

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

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

1 78. An actual case or controversy exists regarding Plaintiff and the other Civil  
2 Authority Declaratory Judgment Class Members' rights and Defendant's obligations under the  
3 policies to reimburse Plaintiff and the other Civil Authority Declaratory Judgment Class  
4 Members for the full amount of covered Civil Authority losses incurred by Plaintiff and the  
5 other Civil Authority Declaratory Judgment Class Members in connection with Closure Orders  
6 and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

7 79. Pursuant to 28 U.S.C. § 2201, Plaintiff and the other Civil Authority Declaratory  
8 Judgment Class Members seek a declaratory judgment from this Court declaring the following:

- 9 a. Plaintiff and the other Civil Authority Declaratory Judgment Class Members'  
10 Civil Authority losses incurred in connection with the Closure Orders and the  
11 necessary interruption of their businesses stemming from the COVID-19  
12 pandemic are insured losses under their policies; and
- 13 b. Defendant is obligated to pay Plaintiff and the other Civil Authority Declaratory  
14 Judgment Class Members the full amount of the Civil Authority losses incurred  
15 and to be incurred in connection with the covered losses related to the Closure  
16 Orders and the necessary interruption of their businesses stemming from the  
17 COVID-19 pandemic.

18 **COUNT III**

19 **DECLARATORY JUDGMENT – EXTRA EXPENSE COVERAGE**

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

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

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

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

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

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

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

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

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**REQUEST FOR RELIEF**

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

- a. Entering an order certifying the proposed nationwide Classes, as requested herein, designating Plaintiff as Class representative, and appointing Plaintiff’s undersigned attorneys as Counsel for the Classes;
- b. Entering declaratory judgments on Counts I–IV in favor of Plaintiff and the members of the Business Income Declaratory Judgment Class, the Civil Authority Declaratory Judgment Class, and the Extra Expense Declaratory Judgment Class, as follows:
  - i. Business Income, Civil Authority, and Extra Expense losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under their policies; and
  - ii. Defendant is obligated to pay for the full amount of the Business Income, Civil Authority, and Extra Expense losses incurred and to be incurred related to COVID-19, the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.
- c. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded;
- d. Ordering Defendant to pay attorneys’ fees and costs of suit; and
- e. Ordering such other and further relief as may be just and proper.

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**JURY DEMAND**

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

Dated: August 27, 2020

Respectfully submitted,

By: /s/ William F. "Chip" Merlin

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