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Attorney for Defendant LEXINGTON INSURANCE  
COMPANY

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

MENOMINEE INDIAN TRIBE OF  
WISCONSIN, MENOMINEE INDIAN  
GAMING AUTHORITY d/b/a MENOMINEE  
CASINO RESORT, and WOLF RIVER  
DEVELOPMENT COMPANY, individually  
and on behalf of all others similarly situated,

Plaintiffs,

v.

- (1) LEXINGTON INSURANCE  
COMPANY;
- (2) UNDERWRITERS AT LLOYD'S –  
SYNDICATES: ASC 1414, XLC 2003,  
TAL 1183, MSP 318, ATL1861, KLN  
510, AGR 3268;
- (3) UNDERWRITERS AT LLOYD'S –  
SYNDICATE: CNP 4444;
- (4) UNDERWRITERS AT LLOYD'S –  
ASPEN SPECIALTY INSURANCE  
COMPANY;
- (5) UNDERWRITERS AT LLOYD'S –  
SYNDICATES: KLN 0510, ATL 1861,  
ASC 1414, QBE 1886, MSP 0318, APL  
1969, CHN 2015, XLC 2003;
- (6) UNDERWRITERS AT LLOYD'S –  
SYNDICATE: BRT 2987;
- (7) UNDERWRITERS AT LLOYD'S –  
SYNDICATES: KLN 0510, TMK 1880,  
BRT 2987, BRT 2988, CNP 4444, ATL  
1861, NEON WORLDWIDE  
PROPERTY CONSORTIUM, AUW  
0609, TAL 1183, AUL 1274;
- (8) HOMELAND INSURANCE COMPANY  
OF NEW YORK;

CASE NO. 4:21-cv-00231

**NOTICE OF REMOVAL BY DEFENDANT  
LEXINGTON INSURANCE COMPANY**

[Removal from the Superior Court of the State of  
California, Alameda County, Case No.  
RG20080933]

- 1 (9) HALLMARK SPECIALTY  
INSURANCE COMPANY;  
2 (10) ENDURANCE WORLDWIDE  
INSURANCE LTD T/AS SOMPO  
3 INTERNATIONAL;  
4 (11) ARCH SPECIALTY INSURANCE  
COMPANY;  
5 (12) EVANSTON INSURANCE COMPANY;  
6 (13) ALLIED WORLD NATIONAL  
ASSURANCE COMPANY;  
7 (14) LIBERTY MUTUAL FIRE  
INSURANCE COMPANY;  
8 (15) LANDMARK AMERICAN  
INSURANCE COMPANY; and  
(16) SRU DOE INSURERS 1-20,  
9 Defendants.

**TO THE CLERK OF THE COURT, AND TO ALL PARTIES AND THEIR COUNSEL OF  
RECORD:**

PLEASE TAKE NOTICE THAT, pursuant to the Class Action Fairness Act of 2005 and 28 U.S.C. §§ 1332(d), 1441, 1446, and 1453, Defendant Lexington Insurance Company (“Lexington” or “Defendant”) respectfully removes the above-captioned matter from the Superior Court of California, County of Alameda, where it is pending as Case No. RG20080933, to the United States District Court for the Northern District of California.

This Court has original jurisdiction over this action under 28 U.S.C. § 1332(d) because there is minimal diversity of citizenship between the parties, the amount in controversy exceeds \$5,000,000 exclusive of interest and costs, and the proposed class consists of 100 or more members. Removal is proper for the reasons set forth below.

**I. BACKGROUND**

1. Plaintiffs Menominee Indian Tribe of Wisconsin (the “Menominee Tribe”), Menominee Indian Gaming Authority d/b/a Menominee Casino Resort (“MCR”), and Wolf River Development Company (“Wolf River”) (collectively, “Plaintiffs”) filed a Class Action Complaint on November 12, 2020, in the Superior Court of the State of California for Alameda County, which is within the district and division to which this case is removed. Plaintiffs filed the Complaint individually and on behalf of a “nationwide class of insureds under the Tribal First Tribal Property Insurance Program” (collectively, the “Class”), against Lexington and other insurers. As required under 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon Lexington in the underlying state court action are attached as exhibits to the accompanying declaration.

2. The Menominee Tribe “is a federally recognized Indian Tribal Entity located in Keshena, Wisconsin, composed of more than 9,000 enrolled members.” Compl. ¶¶ 1, 26.

3. MCR “holds a business Charter from the Tribal Government of the Menominee Tribe and was formed for the purpose of conducting the gaming and gaming related operations of the Menominee Tribe” on the Menominee Tribe’s reservation in Keshena, Wisconsin. *Id.* ¶¶ 1, 5, 27. According to the MCR Charter, MCR “enjoys an autonomous existence,” is managed by a Board of Directors, and complies with various reporting requirements and fiscal practices. *See* Menominee

1 Tribal Code, Chapter 660, Art. II, Menominee Indian Gaming Auth., available at  
2 <https://www.ecode360.com/13574083>.

3 4. Wolf River “holds a Charter from the Tribal Government of the Menominee Tribe as a  
4 tribal business and was formed for the purpose of conducting the nongaming commercial activity of  
5 the Menominee Tribe” on the Menominee Tribe’s reservation in Keshena, Wisconsin. Compl. ¶¶ 1,  
6 28. According to the Wolf River Charter, Wolf River is managed by a Board of Directors and  
7 complies with various reporting requirements and fiscal practices. *See* Menominee Tribal Code,  
8 Chapter 740, Wolf River Dev. Co., available at <https://www.ecode360.com/12129090>.

9 5. Plaintiffs allege that for the policy period from July 1, 2019 to July 1, 2020, they and  
10 members of the proposed Class “purchased insurance coverage in the Tribal Property Insurance  
11 Program” (“TPIP”) maintained by Alliant Underwriting Services, Inc. (“Alliant”) and Alliant’s  
12 “specialized program,” Tribal First. Compl. ¶¶ 9–10. TPIP “is comprised of insurance policies from  
13 more than a dozen insurance carriers,” including Lexington, and each of the policies issued to  
14 Plaintiffs and members of the proposed Class contain a master policy form identified as TPIP USA  
15 Form No. 15 (the “Policy”). *Id.* ¶¶ 10, 29–45.

16 6. Plaintiffs claim the Policy provides insurance against “all risk of direct physical loss or  
17 damage occurring during the period of this Policy” to covered property, subject to the “terms,  
18 conditions and exclusions” contained in the Policy. *Id.* ¶¶ 46–47, 53. Plaintiffs allege their “covered  
19 property” includes “Menominee Tribal property, such as the casino, hotel, restaurant, healthcare and  
20 other property at MCR, Thunderbird and the Clinic.” *Id.* ¶ 45; *see also id.* ¶ 6 (Thunderbird is owned  
21 and operated by Plaintiffs and “is a modern facility including a mini casino with slot machines, the  
22 Thunderbird restaurant, and a full bar, as well as a venue for seasonal outdoor entertainment”); *id.* ¶ 7  
23 (the Clinic is owned and operated by the Menominee Tribe and “provides healthcare to the  
24 Menominee community”). Plaintiffs further allege that the Policy includes coverage for “Business  
25 Interruption,” “Extra Expense,” “Ingress/Egress,” “Civil Authority,” “Contingent Time Element,”  
26 and “Tax Revenue Interruption” coverages. *Id.* ¶¶ 61, 68–70, 72–73. For Business Interruption and  
27 Extra Expense coverages, the “period of restoration during which . . . losses accrue begins ‘on the  
28 date direct physical loss occurs and interrupts normal business operations and ends on the date that

1 the damaged property should have been repaired, rebuilt or replaced with due diligence and dispatch,  
2 but not limited by the expiration of this policy.” *Id.* ¶¶ 64, 68.

3 7. Plaintiffs allege that, in response to the COVID-19 pandemic, “local, state and Tribal  
4 governments throughout the United States,” including the State of Wisconsin and the Menominee  
5 Tribal Legislature, issued a series of “Closure Orders” that suspended non-essential businesses and  
6 required individuals “to stay at home or in their place of residence,” causing Plaintiffs’ businesses to  
7 close and lose revenue. *See id.* ¶¶ 83–101. Plaintiffs allege that “[a]s a result of the presence of  
8 COVID-19 and the Closure Orders,” they and the members of the proposed Class suffered losses  
9 covered by the Policy. *Id.* ¶ 106.

10 8. The Complaint seeks, among other relief, payment for “losses incurred and to be  
11 incurred by the Class related to COVID-19, the Closure Orders and the interruption of their  
12 businesses stemming from the COVID-19 pandemic,” along with “pre- and post-judgment interest on  
13 any amounts awarded,” “attorneys’ fees and costs of suit,” and “multiple damages where required  
14 under state law.” *Id.*, Request for Relief, subds. (d)(ii), (e)–(g).

15 9. Lexington was served with the Summons and Complaint no earlier than December 11,  
16 2020. The Summons and Complaint were received as attachments to a letter dated December 11,  
17 2020, which bore a notation suggesting it was hand delivered to “FLWA Service Corp. c/o Foley and  
18 Lardner LLP, 555 California Street, Suite 1700, San Francisco, CA 94104-1520,” the entity and  
19 address upon which service of suit may be made under the Policy. Thus, this Notice is timely filed  
20 under 28 U.S.C. § 1446(b). *See* 28 U.S.C. § 1446(b); Fed. R. Civ. P. 6(a)(1).

21 10. Upon filing this Notice of Removal, Lexington will furnish written notice to Plaintiffs’  
22 counsel, and will file and serve a copy of this Notice with the Clerk of the Alameda County Superior  
23 Court, pursuant to 28 U.S.C. § 1446(d).

24 **II. THIS COURT HAS SUBJECT MATTER JURISDICTION PURSUANT TO THE CLASS**  
25 **ACTION FAIRNESS ACT OF 2005**

26 11. Removal is proper pursuant to 28 U.S.C. §§ 1441 and 1453 because this Court has  
27 subject matter jurisdiction over this action and all claims asserted against Lexington pursuant to the  
28 Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d).

12. CAFA pertains to “any class action before or after the entry of a class certification order by the court with respect to that action.” 28 U.S.C. § 1332(d)(8). This case is a putative “class action” under CAFA because it was brought under a state statute, California Code of Civil Procedure § 382, which authorizes an action to be brought by one or more representative persons as a class action. *See* 28 U.S.C. § 1332(d)(1)(B); *see also* Compl. ¶ 108.

**A. The Proposed Class Consists of 100 Members or More**

13. CAFA applies when a proposed class consists of 100 members or more. 28 U.S.C. § 1332(d)(5)(B). This requirement is met here. Plaintiffs allege in the Complaint that this action is brought “individually and on behalf of all others similarly situated,” and Plaintiffs seek to represent a “nationwide Class defined as all persons and entities insured under the Policy with claims due to COVID-19 and/or closure orders from the relevant authorities.” Compl. ¶¶ 108–09. Lexington, through Alliant and Tribal First, provides insurance coverage under the Policy to over 400 tribes, tribal corporations, and other tribal entities in the United States for the policy period from July 1, 2010, to July 1, 2020. Given the widespread proliferation of the COVID-19 virus and the resultant closure orders “issued by local, state and Tribal governments” throughout the country (*see, e.g., id.* ¶¶ 99–100), the proposed class exceeds the 100-member minimum.

**B. There Is Minimal Diversity Between Plaintiffs and Lexington**

14. CAFA requires minimal diversity of citizenship among the parties. Specifically, “any member of [the] class of plaintiffs” must be “a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A); *Mississippi ex rel. Hood v. AU Optronics Corp.*, 571 U.S. 161, 165 (2014). This requirement is met.

15. For purposes of diversity jurisdiction, a corporation organized under tribal law should be analyzed “as if it were a state or federal corporation.” *Cook v. AVI Casino Enters., Inc.*, 548 F.3d 718, 723 (9th Cir. 2008). Because a corporation is considered a citizen of the state in which it was incorporated and the state where it has its principal place of business, 28 U.S.C. § 1332(c), a corporation organized under tribal law is deemed “a citizen of the state where it has its principal place of business.” *Cook*, 548 F.3d at 723.

16. MCR is a tribal corporation that conducts “gaming and gaming related operations of the Menominee Tribe on the reservation,” which is located in Keshena, Wisconsin. *See* Compl. ¶¶ 1, 5, 27. Accordingly, for purposes of diversity jurisdiction, MCR is headquartered and maintains its principal place of business in Wisconsin. 28 U.S.C. § 1332(c)(1); *see also Hertz Corp. v. Friend*, 559 U.S. 77, 78–79 (2010) (holding that for diversity jurisdiction purposes, a corporation’s principal place of business is “the place where a corporation’s officers direct, control, and coordinate the corporation’s activities.”). MCR is therefore a citizen of Wisconsin. *See Cook*, 548 F.3d at 723–24 (concluding that tribal corporation was “a citizen of Nevada” for diversity jurisdiction purposes, because Nevada was “the location of its principal place of business”).

17. Wolf River is a tribal corporation that conducts the nongaming commercial activity of the Menominee Tribe “on the reservation,” which is located in Keshena, Wisconsin. *See* Compl. ¶¶ 1, 28. Accordingly, Wolf River is headquartered and maintains its principal place of business in Wisconsin and is a citizen of Wisconsin for diversity jurisdiction purposes. 28 U.S.C. § 1332(c)(1); *see also Hertz Corp.*, 559 U.S. at 78–79; *Cook*, 548 F.3d at 723–24.

18. Lexington is incorporated in the State of Delaware and has its principal place of business in Boston, Massachusetts. Compl. ¶ 20. Lexington is therefore a citizen of Delaware and Massachusetts for purposes of diversity jurisdiction. 28 U.S.C. § 1332(c)(1).<sup>1</sup>

19. The fact that one of the Plaintiffs, the Menominee Tribe, is a federally recognized Indian Tribal Entity, does not impact federal jurisdiction under CAFA. Because at least one Plaintiff is a citizen of a state different from at least one Defendant, the minimal diversity requirement is satisfied. *See* 28 U.S.C. § 1332(d)(2)(A); *see also Ponca Tribe of Indians of Okla. v. Cont’l Carbon*

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<sup>1</sup> In addition to Defendant Lexington, several other insurance companies headquartered and with principal places of business in various parts of the country and world are named as Defendants. Compl. ¶ 37 (Hallmark Specialty Insurance Company incorporated in Oklahoma with principal place of business in Dallas, Texas); *id.* ¶ 39 (Arch Specialty Insurance Company incorporated in Missouri with principal place of business in Jersey City, New Jersey); *id.* ¶ 40 (Evanston Insurance Company incorporated and with principal place of business in Illinois); *id.* ¶ 41 (Allied World National Assurance Company incorporated in New Hampshire with principal place of business in New York, New York); *id.* ¶ 42 (Liberty Mutual Fire Insurance Company incorporated and with principal place of business in Massachusetts); *id.* ¶ 43 (Landmark American Insurance Company incorporated in New Hampshire with principal place of business in Atlanta, Georgia); *id.* ¶¶ 30–35, 38 (several other Defendants organized under the laws of the United Kingdom or England with principal places of business in England).



Co., 439 F. Supp. 2d 1171, 1177–78 (W.D. Okla. 2006) (finding that presence of a Tribal plaintiff did not bar federal jurisdiction under CAFA because minimal diversity existed between the defendant and “at least one of the Class Plaintiffs”). By way of example only, for diversity purposes, Plaintiff Wolf River is a citizen of Wisconsin and Defendant Lexington is a citizen of Delaware and Massachusetts.

**C. The Amount in Controversy by the Class Claims Exceeds \$5 Million**

20. Under CAFA, diversity jurisdiction requires that the aggregate amount in controversy “exceeds the sum or value of \$5,000,000.” 28 U.S.C. § 1332(d)(2), (6). This requirement is met. When a complaint seeks damages but does not state a specific amount, a notice of removal “need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014). If the amount is contested, a court will determine whether the threshold is met by a preponderance of the evidence. *Id.* at 553; *see also Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 416 (9th Cir. 2018).

21. Here, the Complaint seeks various forms of relief and attorneys’ fees, but does not include a specific demand for damages or otherwise specify the amount in controversy. On a full and fair reading of the Complaint, however, the amount in controversy exceeds \$5 million.

22. First, the Complaint alleges that “Plaintiffs suffered a loss of business income occasioned directly by the presence of COVID-19 and the resulting inability or lessened ability to use” covered premises. Compl. ¶ 15. Plaintiffs also allege that these losses are covered under the Policy issued by Lexington, *id.* ¶¶ 12–18, 106, and seek this relief on behalf of themselves and a proposed Class of at least 100 members. Plaintiffs and the proposed Class members operate casinos, resorts, hotels, restaurants, and other high-revenue gaming and commercial enterprises across the country. *See id.* ¶ 4 (“The National Indian Gaming Commission found that Indian gaming revenue totaled \$33.7 billion in fiscal year 2018, generated from 501 gaming operations run by 241 federally recognized tribes across 29 states.”). Based on information provided by Plaintiffs and the members of the proposed Class to Lexington through Alliant and Tribal First in connection with the Policy’s issuance and/or renewal and regarding the value of covered property and businesses, the amount in controversy exceeds \$5 million. Indeed, Policy No. 017471589/06 (Dec 17) 9131, just one of several



1 policies issued to the Menominee Tribe, provides up to \$31,250,000 of coverage for “Combined  
2 Business Interruption and Rental Income,” as specified in the Evidence of Coverage attached to the  
3 Complaint.

4 23. Second, Plaintiffs request payment of losses “incurred and *to be incurred*” by the  
5 Class in relation to COVID-19, closure orders, and the interruption of their businesses as a result  
6 thereof. *Id.*, Request for Relief, subd. (d)(ii) (emphasis added). Plaintiffs further seek declaratory  
7 judgment that “losses incurred in connection with the Closure Orders and the interruption of their  
8 businesses stemming from the COVID-19 pandemic are insured losses under the Policy.” *Id.*,  
9 Request for Relief, subd. (d)(i). Thus, future losses alleged to be potentially covered under the Policy  
10 are at issue for not only Plaintiffs but also for at least 100 proposed Class members. *See Chavez v.*  
11 *JPMorgan Chase & Co.*, 888 F.3d 413, 417 (9th Cir. 2018) (where plaintiff alleges “future [losses],”  
12 it is appropriate to include all potential future losses in the amount in controversy); *Arias v. Residence*  
13 *Inn by Marriott*, 936 F.3d 920, 927 (9th Cir. 2019) (defendant may make “reasonable assumptions” in  
14 demonstrating amount in controversy (quotation marks and citation omitted)).

15 24. Third, Plaintiffs’ request for attorneys’ fees places additional money in controversy.

### 16 III. CONCLUSION

17 25. For the foregoing reasons, Lexington respectfully states that this action, previously  
18 pending in the Superior Court of the State of California for the County of Alameda, is properly  
19 removed to this Court, and Lexington respectfully requests that this Court proceed as if this case had  
20 been originally filed in this Court.

21  
22 Dated: January 11, 2021

GIBSON, DUNN & CRUTCHER LLP

23  
24 By: /s/ Richard J. Doren  
Richard J. Doren

25 Attorneys for Defendant LEXINGTON INSURANCE  
26 COMPANY



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**FILED**  
ALAMEDA COUNTY

NOV 12 2020

CLERK OF THE SUPERIOR COURT

By

  
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SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA

**MENOMINEE INDIAN TRIBE OF  
WISCONSIN, MENOMINEE INDIAN  
GAMING AUTHORITY d/b/a  
MENOMINEE CASINO RESORT, and  
WOLF RIVER DEVELOPMENT  
COMPANY**, individually and on behalf of  
all others similarly situated,

Plaintiffs,

vs.

**(1) LEXINGTON INSURANCE  
COMPANY;**

Case No.:

**CLASS ACTION  
COMPLAINT FOR:**

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

**DEMAND FOR JURY TRIAL**

- (2) UNDERWRITERS AT LLOYD'S –  
SYNDICATES: ASC 1414, XLC 2003,  
TAL 1183, MSP 318, ATL1861, KLN  
510, AGR 3268;
- (3) UNDERWRITERS AT LLOYD'S -  
SYNDICATE: CNP 4444;
- (4) UNDERWRITERS AT LLOYD'S -  
ASPEN SPECIALTY INSURANCE  
COMPANY;
- (5) UNDERWRITERS AT LLOYD'S -  
SYNDICATES: KLN 0510, ATL 1861,  
ASC 1414, QBE 1886, MSP 0318, APL  
1969, CHN 2015, XLC 2003;
- (6) UNDERWRITERS AT LLOYD'S –  
SYNDICATE: BRT 2987;
- UNDERWRITERS AT LLOYD'S -
- (7) SYNDICATES: KLN 0510, TMK 1880,  
BRT 2987, BRT 2988, CNP 4444, ATL  
1861, NEON WORLDWIDE  
PROPERTY CONSORTIUM, AUW  
0609, TAL 1183, AUL 1274;
- (8) HOMELAND INSURANCE  
COMPANY OF NEW YORK;
- (9) HALLMARK SPECIALTY  
INSURANCE COMPANY;
- ENDURANCE WORLDWIDE
- (10) INSURANCE LTD T/AS SOMPO  
INTERNATIONAL;
- (11) ARCH SPECIALTY INSURANCE  
COMPANY;
- (12) EVANSTON INSURANCE  
COMPANY;
- (13) ALLIED WORLD NATIONAL  
ASSURANCE COMPANY;
- (14) LIBERTY MUTUAL FIRE  
INSURANCE COMPANY;
- (15) LANDMARK AMERICAN  
INSURANCE COMPANY; and
- (16) SRU DOE INSURERS 1-20;

Defendants.

**CLASS ACTION COMPLAINT**

Plaintiffs Menominee Indian Tribe of Wisconsin ("Menominee Tribe"), Menominee Indian Gaming Authority d/b/a Menominee Casino Resort ("Menominee Casino" or MCR) and Wolf River Development Company ("Wolf River") ("Plaintiffs"), individually and on behalf of the other members of the below-defined nationwide class of insureds under the Tribal First Tribal Property Insurance Program (collectively, the "Class"), bring this limited-fund class action against Defendants Lexington Insurance Company, *et al.*<sup>1</sup> (collectively, "Defendants" or the "Insurers") and in support thereof state the following:

**I. NATURE OF THE ACTION**

1. Plaintiff Menominee Tribe is a federally recognized Indian Tribal Entity located in Keshena, Wisconsin, composed of more than 9,000 enrolled members. The reservation consists of approximately 235,000 acres of land held in trust by the United States government for the benefit of the Tribe, along with other land held in fee by both Tribal members and non-Indians. Within certain restrictions imposed by the United States government, the Tribe has jurisdiction over activities occurring on the reservation and has rights to economic and other benefits resulting from use of the reservation property and resources.

2. The mission of the Menominee Tribe is to promote, protect, and preserve the rights, resources, and culture of the Tribe through responsible leadership and the judicious exercise of its sovereign powers. The Menominee Tribe value their children, elders, and each other, and value preserving their language, tradition, history, and culture.

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<sup>1</sup> Defendants are: (1) Lexington Insurance Company; (2) Underwriters at Lloyd's – Syndicates: ASC1414, XLC 2003, TAL 1183, MSP 318, ATL1861, KLN 510, AGR 3268; (3) Underwriters at Lloyd's - Syndicate: CNP 4444; (4) Underwriters at Lloyd's - Aspen Specialty Insurance Company; (5) Underwriters at Lloyd's - Syndicates: KLN 0510, ATL 1861, ASC 1414, QBE 1886, MSP 0318, APL 1969, CHN 2015, XLC 2003; (6) Underwriters at Lloyd's – Syndicate: BRT 2987; (7) Underwriters at Lloyd's - Syndicates: KLN 0510, TMK 1880, BRT 2987, BRT 2988, CNP 4444, ATL 1861, Neon Worldwide Property Consortium, AUW 0609, TAL 1183, AUL 1274; (8) Homeland Insurance Company of New York; (9) Hallmark Specialty Insurance Company; (10) Endurance Worldwide Insurance Ltd t/as Sompo International; (11) Arch Specialty Insurance Company; (12) Evanston Insurance Company; (13) Allied World National Assurance Company; (14) Liberty Mutual Fire Insurance Company; (15) Landmark American Insurance Company; and (16) SRU Doe Insurers 1-20.

3. Under the Indian Gaming Act of 1988, federally recognized tribes are permitted to conduct Class III casino gaming operations on tribal land, subject to negotiation of a gaming compact with the affected state. These gaming operations provide invaluable revenue for the maintenance and operation of tribal institutions and activities. The Menominee Tribe and the State of Wisconsin entered into the Gaming Compact of 1992 and later amended that compact on April 25, 2003, and on subsequent occasions. The Gaming Compact has been approved by the United States Department of the Interior and has permitted the Menominee Tribe to operate Class III gaming operations on tribal land for more than thirty years.

4. According to the Bureau of Indian Affairs, the Menominee Tribe is one of 574 federally recognized Indian Tribal Entities in the United States.<sup>2</sup> The National Indian Gaming Commission found that Indian gaming revenue totaled \$33.7 billion in fiscal year 2018, generated from 501 gaming operations run by 241 federally recognized tribes across 29 states.<sup>3</sup> Like many other recognized tribes, the Menominee Tribe relies upon revenue from its gaming operations and other commercial enterprises in order to fulfill its mission and to provide services to members of the tribe.

5. Plaintiffs own, operate, and receive both business revenue and tax revenue from the Menominee Casino Resort in Keshena, Wisconsin. MCR includes: a casino with table games, slots and bingo; restaurant; café; lounge; live entertainment space; gift shop; RV park; hotel with fitness center and indoor pool; and a convention and event center with banquet operations. In addition, the Five Clans Ballroom can host weddings for up to 500 guests. MCR has been welcoming guests for 33 years and is a popular destination for tourists and gaming enthusiasts throughout Wisconsin. Those properties, however, have suffered direct physical loss or damage from COVID-19 (a.k.a. the “coronavirus” or “SARS-CoV-2”).

<sup>2</sup> <https://www.govinfo.gov/content/pkg/FR-2020-01-30/pdf/2020-01707.pdf>

<sup>3</sup> <https://www.nigc.gov/news/detail/2018-indian-gaming-revenues-of-33.7-billion-show-a-4.1-increase>

1           6.       Plaintiffs also own, operate, and receive both business revenue and tax revenue  
2 from the Thunderbird Complex, located nine miles north of MCR. Thunderbird is a modern  
3 facility including a mini casino with slot machines, the Thunderbird restaurant, and a full bar, as  
4 well as a venue for seasonal outdoor entertainment. The Thunderbird's properties also have  
5 suffered direct physical loss or damage from COVID-19.

6           7.       The Menominee Tribe also owns, operates, and receives business revenues from  
7 the Menominee Tribal Clinic (the "Clinic"), which provides healthcare to the Menominee  
8 community. The skilled and dedicated professionals at the Clinic provide a broad range of  
9 healthcare services, including medical, dental, behavior health, optometry, pharmacy and  
10 laboratory services, as well as physical therapy, fitness, diabetes prevention and wellness  
11 programs. Due to COVID-19, the Clinic also has suffered direct physical loss or damage and, as  
12 a result, the Clinic's ability to provide services has been severely hampered, causing a significant  
13 drop in business and tax revenue.

14           8.       Menominee Tribe also owns, operates, and receives business and tax revenues from  
15 other businesses located within the Menominee Indian Reservation, many operated by Wolf River.  
16 These businesses have also have suffered direct physical loss or damage due to COVID-19,  
17 causing a loss in business and tax revenue for Plaintiffs.

18           9.       For the policy period July 1, 2010, to July 1, 2020, Plaintiffs and the Class  
19 purchased insurance coverage in a Tribal Property Insurance Program ("TPIP," "Master Policy,"  
20 or "Policy") prepared by Tribal First, which has its principal place of business in San Diego,  
21 California. Tribal First is a specialized program of Alliant Underwriting Services, Inc, a California  
22 corporation with its principal place of business in Newport Beach, California.

23           10.      The TPIP is comprised of insurance policies from more than a dozen insurance  
24 carriers, led by Defendant Lexington Insurance Company. The TPIP Policy is comprised of  
25 various layers of coverage such that a particular insurer is responsible for losses that fall between  
26 specified amounts. At least some of these layers of coverage have aggregate limits of coverage  
27 that may be exhausted by losses of any one or more of the Class members, such that if a loss of  
28

1 one Class member is paid, it reduces the insurance available in that layer to pay losses for other  
2 Class members. This situation creates a limited fund for which adjudication of one Class member's  
3 rights may, as a practical matter, be dispositive of the interests of other Class members or would  
4 substantially impair or impede their ability to protect their interests.

5 11. Tribal First made this insurance program available to tribes and tribal entities  
6 throughout the United States. Tribal First maintains a list of insureds under the program, including  
7 Plaintiff, who are subject to the same overall aggregate policy limits for one or more particular  
8 layers of coverage. "Notice of Loss" must be made in writing to Tribal First. The Master Policy  
9 that Tribal First brokered and that Defendants sold to Plaintiffs is memorialized in the Tribal First  
10 "Property Solutions" book, pages 1-113, which are attached hereto as Exhibit 1.

11 12. Among other provisions, the Master Policy provides coverage for "loss resulting  
12 directly from interruption of business, services, or rental value caused by direct physical loss or  
13 damage, as covered by this Policy to real and/or personal property insured by this Policy, occurring  
14 during the term of this Policy."

15 13. Due to COVID-19, Plaintiffs have suffered "direct physical loss or damage" to  
16 MCR, Thunderbird, the Clinic, and other businesses. COVID-19 made MCR, Thunderbird and  
17 the Clinic unusable in the way that they had been used before COVID-19. Instead of being able to  
18 fill MCR and Thunderbird with guests, gamblers, meeting attendees, and diners, MCR and  
19 Thunderbird were required to drastically reduce operations, and even to close entirely. To do  
20 anything else would have led to the emergence or reemergence of COVID-19 at MCR and  
21 Thunderbird. Until COVID-19 was brought even slightly under control, even such limited use as  
22 this was not possible.

23 14. COVID-19 also limited access, reduced usable space, and required the installation  
24 of physical barriers and increased cleaning and sanitizing at MCR, Thunderbird, and the Clinic.

25 15. This loss is "direct" — Plaintiffs suffered loss of business income occasioned  
26 directly by the presence of COVID-19 and the resulting inability or lessened ability to use MCR,  
27 Thunderbird and the Clinic.

28



1        16. This loss is physical. MCR, Thunderbird, and the Clinic are unable to use their  
 2 interior spaces in the manner in which they had previously used those spaces. The probability of  
 3 illness prevents the use of the space in the same way that a crumbling and open roof from the  
 4 aftermath of a tornado would make the interior space of a business unusable.<sup>4</sup>

5        17. This loss constitutes a loss under the Policy. Plaintiffs experienced loss of  
 6 functionality and diminishment of the usable physical space in the hotel, casino, dining and other  
 7 areas in MCR, Thunderbird, and the Clinic, causing impairment of the business function and  
 8 damage to MCR, Thunderbird and the Clinic.

9        18. The loss or damage is capable of repair, and repairs have been made such as those  
 10 listed in paragraph 14.

11        19. Plaintiffs purchased “all risk” property coverage to protect themselves in the event  
 12 that their hotel, casino, restaurant, healthcare or other businesses suddenly had to suspend  
 13 operations for reasons outside of their control, or if they had to act in order to prevent further  
 14 property damage. Plaintiffs obtained this coverage through the Policy, which includes coverage  
 15 described below for Property Damage, including insurance for Protection and Preservation of  
 16 Property, as well as several so-called “Time-Element” coverages applying to disruption of  
 17 business, including Business Interruption, Extra Expense, Ingress/Egress, Interruption by Civil  
 18 Authority (“Civil Authority”), Contingent Time Element and Tax Revenue Interruption coverages.

19        20. MCR, Thunderbird and the Clinic suffered a physical loss of property due to  
 20 COVID-19 and the Closure Orders (defined below), were forced to suspend business activities due  
 21 to COVID-19 and the Closure Orders, and incurred losses covered by Protection and Preservation

22 \_\_\_\_\_  
 23 <sup>4</sup> Note, however, that Plaintiffs are not seeking recovery for their loss of use. Plaintiffs are seeking  
 24 coverage for their loss of business income, rental value and tax revenue. As an example to illustrate  
 25 the difference, some law firms have been unable to use their office space because of COVID-19,  
 26 but the firms’ business income has nevertheless increased, and they thus have faced no loss of  
 27 business income. A claim by such a law firm for not being able to use its office space would be a  
 28 “loss of use” claim. The law firm would have no loss of business income claim. Here, Plaintiffs’  
 business has decreased because of the impairment of the hotel, casinos, restaurants and other  
 facilities at MCR and Thunderbird, and Plaintiffs are seeking the loss of business income, rental  
 value and tax revenue under the business interruption and other Time Element coverages of the  
 Policy.

1 of Property, Business Interruption, Extra Expense, Ingress/Egress, Civil Authority, Contingent  
2 Time Element and Tax Revenue Interruption provisions due to COVID-19 and the Closure Orders.

3 21. Upon information and belief, Lexington and the other Insurers have, on a uniform  
4 basis, refused to pay claims for losses and costs due to COVID-19 and the resultant Closure Orders  
5 covered by the insurance provisions identified in this Class Action Complaint to all Class members  
6 under the Policy. Indeed, Lexington, through its affiliate at AIG Claims, Inc, has repudiated  
7 coverage for Plaintiffs' claim under the Policy.

## 8 **II. JURISDICTION AND VENUE**

9 22. This Court has subject matter jurisdiction over the matters alleged herein.

10 23. This Court has personal jurisdiction over each of the defendants named in this  
11 action. Each of the defendant insurance companies regularly issued policies in California, and did,  
12 in fact issue policies in California to Plaintiffs and the Class as part of the TPIP developed and  
13 coordinated by Tribal First. Tribal First organized the TPIP from its office in California, and  
14 communications concerning the establishment and purchase of the TPIP program from Class  
15 members around the country, including Plaintiffs, were received in California. Premium payments  
16 under the TPIP program were and continue to be mailed to Tribal First in California.

17 24. Although the TPIP program is centered in California, none of the individual  
18 defendants has its principal place of business in California. Instead, through the TPIP, each of the  
19 Defendants has agreed to accept service of process for any suit based upon the Policy in San  
20 Francisco, California, at the offices of Foley & Lardner.

21 25. Venue is also proper in this Court pursuant to California Code of Civil Procedure  
22 section 395(a) ("If none of the defendants reside in the state ..., the action may be tried in the  
23 superior court in any county that the plaintiff may designate in his or her complaint ...").

24 ///

25 ///

26 ///

## 27 **III. THE PARTIES**

28

1 ***Plaintiffs***

2       26. Menominee Indian Tribe of Wisconsin is a federally recognized Indian Tribe  
3 located in Keshena, Wisconsin.

4       27. The Menominee Indian Gaming Authority d/b/a Menominee Casino Resort holds  
5 a business Charter from the Tribal Government of the Menominee Tribe and was formed for the  
6 purpose of conducting the gaming and gaming related operations of the Menominee Tribe on the  
7 reservation.

8       28. Wolf River holds a Charter from the Tribal Government of the Menominee Tribe  
9 as a tribal business and was formed for the purpose of conducting the nongaming commercial  
10 activity of the Menominee Tribe on the reservation.

11 ***Defendants***

12       29. Lexington Insurance Company (“Lexington”) is an insurance company organized  
13 under the laws of the State of Delaware, with its principal place of business in Boston,  
14 Massachusetts. Lexington is a wholly owned subsidiary of American International Group, Inc.  
15 (“AIG”). At all times material hereto, Lexington conducted and transacted business through the  
16 selling and issuing of insurance policies within California, including, but not limited to, selling  
17 and issuing property coverage to Plaintiffs. As a component of the Tribal First Property Insurance  
18 Program sold to Plaintiffs, Lexington issued Policy Nos. 017471589/06, 38412453, 38412468 and  
19 011660435/07 to Plaintiffs, effective July 1, 2019, to July 1, 2020.

20       30. Underwriters at Lloyd’s – Syndicates ASC1414, XLC 2003, TAL 1183, MSP 318,  
21 ATL1861, KLN 510, and AGR 3268 are underwriters composed of separate syndicates, in turn  
22 comprised of entities known as “Names,” which underwrite insurance in a market known as  
23 Lloyd’s of London. The “Names” and syndicates are organized under the laws of the United  
24 Kingdom and are located in and have their principal place of business in England. At all times  
25 material hereto, these underwriters conducted and transacted business through the selling and  
26 issuing of insurance policies within California, including, but not limited to, selling and issuing  
27 property coverage to Plaintiffs. As a component of the Tribal First Property Insurance Program  
28

1 sold to Plaintiffs, the underwriters identified in this paragraph issued Policy No. PJ193647 to  
2 Plaintiffs, effective July 1, 2019, to July 1, 2020.

3 31. Underwriters at Lloyd's - Syndicate: CNP 4444 is an underwriting syndicate  
4 comprised of "Names," which underwrites insurance in the Lloyd's of London market. The  
5 "Names" and syndicate are organized under the laws of the United Kingdom and are located in  
6 and have their principal place of business in England. At all times material hereto, these  
7 underwriters conducted and transacted business through the selling and issuing of insurance  
8 policies within California, including, but not limited to, selling and issuing property coverage to  
9 Plaintiffs. As a component of the Tribal First Property Insurance Program sold to Plaintiffs, the  
10 underwriters identified in this paragraph issued Policy No. PJ1900131 to Plaintiffs, effective July  
11 1, 2019, to July 1, 2020.

12 32. Underwriters at Lloyd's - Aspen Specialty Insurance Company ("Aspen") is an  
13 underwriting syndicate formed by Aspen Specialty Insurance Company, which underwrites  
14 insurance in the Lloyd's of London market. The syndicate is organized under the laws of the  
15 United Kingdom and is located in and has its principal place of business in England. At all times  
16 material hereto, Aspen conducted and transacted business through the selling and issuing of  
17 insurance policies within California, including, but not limited to, selling and issuing property  
18 coverage to Plaintiffs. As a component of the Tribal First Property Insurance Program sold to  
19 Plaintiffs, Aspen issued Policy No. PX006CP19 to Plaintiffs, effective July 1, 2019, to July 1,  
20 2020.

21 33. Underwriters at Lloyd's - Syndicates: KLN 0510, ATL 1861, ASC 1414, QBE  
22 1886, MSP 0318, APL 1969, CHN 2015, and XLC 2003 are underwriting syndicates comprised  
23 of "Names," which underwrite insurance in the Lloyd's of London market. The "Names" and  
24 syndicates are organized under the laws of the United Kingdom and are located in and have their  
25 principal place of business in England. At all times material hereto, these underwriters conducted  
26 and transacted business through the selling and issuing of insurance policies within California,  
27 including, but not limited to, selling and issuing property coverage to Plaintiffs. As a component  
28

1 of the Tribal First Property Insurance Program sold to Plaintiffs, the underwriters identified in this  
2 paragraph issued Policy No. PJ1933021 to Plaintiffs, effective July 1, 2019, to July 1, 2020.

3 34. Underwriters at Lloyd's – Syndicate: BRT 2987 is an underwriting syndicate  
4 comprised of "Names," which underwrites insurance in the Lloyd's of London market. The  
5 "Names" and syndicate are organized under the laws of the United Kingdom and are located in  
6 and have their principal place of business in England. At all times material hereto, these  
7 underwriters conducted and transacted business through the selling and issuing of insurance  
8 policies within California, including, but not limited to, selling and issuing property coverage to  
9 Plaintiffs. As a component of the Tribal First Property Insurance Program sold to Plaintiffs, the  
10 underwriters identified in this paragraph issued Policy No. PD-10363-05 to Plaintiffs, effective  
11 July 1, 2019, to July 1, 2020.

12 35. Underwriters at Lloyd's - Syndicates: KLN 0510, TMK 1880, BRT 2987, BRT  
13 2988, CNP 4444, ATL 1861, Neon Worldwide Property Consortium, AUW 0609, TAL 1183,  
14 AUL 1274 are underwriting syndicates comprised of "Names," which underwrite insurance in the  
15 Lloyd's of London market. The "Names" and syndicates are organized under the laws of the  
16 United Kingdom and are located in and have their principal place of business in England. At all  
17 times material hereto, these underwriters conducted and transacted business through the selling  
18 and issuing of insurance policies within California, including, but not limited to, selling and issuing  
19 property coverage to Plaintiffs. As a component of the Tribal First Property Insurance Program  
20 sold to Plaintiffs, the underwriters identified in this paragraph issued Policy No. PJ1900067 to  
21 Plaintiffs, effective July 1, 2019, to July 1, 2020.

22 36. Homeland Insurance Company of New York ("Homeland") is an insurance  
23 company organized under the laws of the State of New York, with its principal place of business  
24 in Plymouth, Minnesota. Homeland is an underwriting company of OneBeacon Insurance Group,  
25 Ltd., which is a subsidiary of Intact Financial Corporation. At all times material hereto, Homeland  
26 conducted and transacted business through the selling and issuing of insurance policies within  
27 California, including, but not limited to, selling and issuing property coverage to Plaintiffs. As a  
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1 component of the Tribal First Property Insurance Program sold to Plaintiffs, Homeland issued  
2 Policy No. 798000237 to Plaintiffs, effective July 1, 2019, to July 1, 2020.

3 37. Hallmark Specialty Insurance Company ("Hallmark") is an insurance company  
4 organized under the laws of the State of Oklahoma, with its principal place of business in Dallas,  
5 Texas. At all times material hereto, Hallmark conducted and transacted business through the  
6 selling and issuing of insurance policies within California, including, but not limited to, selling  
7 and issuing property coverage to Plaintiffs. As a component of the Tribal First Property Insurance  
8 Program sold to Plaintiffs, Hallmark issued Policy Nos. 73PRX19A1B7 and 73PRX19A1EF to  
9 Plaintiffs, effective July 1, 2019, to July 1, 2020.

10 38. Endurance Worldwide Insurance Ltd t/as Sompo International ("Endurance") is an  
11 insurance company incorporated in England, with its principal place of business in London,  
12 England. At all times material hereto, Endurance conducted and transacted business through the  
13 selling and issuing of insurance policies within California, including, but not limited to, selling  
14 and issuing property coverage to Plaintiffs. As a component of the Tribal First Property Insurance  
15 Program sold to Plaintiffs, Endurance issued Policy No. PJ1900134 to Plaintiffs, effective July 1,  
16 2019, to July 1, 2020.

17 39. Arch Specialty Insurance Company ("Arch") is an insurance company organized  
18 under the laws of the State of Missouri, with its principal place of business in Jersey City, New  
19 Jersey. At all times material hereto, Arch conducted and transacted business through the selling  
20 and issuing of insurance policies within California, including, but not limited to, selling and issuing  
21 property coverage to Plaintiffs. As a component of the Tribal First Property Insurance Program  
22 sold to Plaintiffs, Arch issued Policy No. ESP7303914-02 to Plaintiffs, effective July 1, 2019, to  
23 July 1, 2020.

24 40. Evanston Insurance Company ("Evanston") is an insurance company organized  
25 under the laws of the State of Illinois, with its principal place of business in Rosemont, Illinois.  
26 At all times material hereto, Evanston conducted and transacted business through the selling and  
27 issuing of insurance policies within California, including, but not limited to, selling and issuing  
28



1 property coverage to Plaintiffs. As a component of the Tribal First Property Insurance Program  
2 sold to Plaintiffs, Evanston issued Policy No. MKLV14XP012536 to Plaintiffs, effective July 1,  
3 2019, to July 1, 2020.

4 41. Allied World National Assurance Company ("Allied") is an insurance company  
5 organized under the laws of the State of New Hampshire, with its principal place of business in  
6 New York, New York. At all times material hereto, Allied conducted and transacted business  
7 through the selling and issuing of insurance policies within California, including, but not limited  
8 to, selling and issuing property coverage to Plaintiffs. As a component of the Tribal First Property  
9 Insurance Program sold to Plaintiffs, Allied issued Policy No. 0310-8171-1N to Plaintiffs,  
10 effective July 1, 2019, to July 1, 2020.

11 42. Liberty Mutual Fire Insurance Company ("Liberty Mutual" or "LMFIC") is an  
12 insurance company organized under the laws of the state of Massachusetts, with its principal place  
13 of business in Boston, Massachusetts. At all times material hereto, Liberty Mutual conducted and  
14 transacted business through the selling and issuing of insurance policies within California,  
15 including, but not limited to, selling and issuing property coverage to Plaintiffs. As a component  
16 of the Tribal First Property Insurance Program sold to Plaintiffs, Liberty Mutual issued a Policy to  
17 Plaintiffs, effective July 1, 2019, to July 1, 2020.

18 43. Landmark American Insurance Company ("Landmark") is an insurance company  
19 organized under the laws of the State of New Hampshire, with its principal place of business in  
20 Atlanta, Georgia. At all times material hereto, Landmark conducted and transacted business  
21 through the selling and issuing of insurance policies within California, including, but not limited  
22 to, selling and issuing property coverage to Plaintiffs. As a component of the Tribal First Property  
23 Insurance Program sold to Plaintiffs, Landmark issued Policy No. LHQ424636 to Plaintiffs,  
24 effective July 1, 2019, to July 1, 2020.

25 44. SRU Doe Insurers 1-20 are insurance companies who insure through Specialty Risk  
26 Underwriters ("SRU"). At all times material hereto, SRU conducted and transacted business  
27 through the selling and issuing of insurance policies within California, including, but not limited  
28



1 to, selling and issuing property coverage to Plaintiffs. As a component of the Tribal First Property  
 2 Insurance Program sold to Plaintiffs, SRU issued Policy No. AQS-190984 to Plaintiffs, effective  
 3 July 1, 2019, to July 1, 2020.

#### 4 IV. FACTUAL BACKGROUND

##### 5 A. *The Master Policy*

6 45. In return for the payment of a substantial premium, the Insurers issued to Plaintiffs  
 7 and other members of the Class the Master Policy contained in TPIP USA Form No. 15, including  
 8 each of the policies identified therein and described in Paragraphs 29 to 43 of this Class Action  
 9 Complaint. Plaintiffs have performed all of their obligations under the Master Policy, including  
 10 the payment of premiums, and on information and belief other Class Members have as well. With  
 11 respect to Plaintiffs, covered property includes Menominee Tribal property, such as the casino,  
 12 hotel, restaurant, healthcare and other property at MCR, Thunderbird and the Clinic.

13 46. The Policy “insures Real and Personal Property within the United States of  
 14 America” and covers damage to “all property of every description both real and personal.”

15 47. Coverage under the Policy extends to “Miscellaneous Unnamed Locations,”  
 16 including “property at locations (including buildings, or structures, owned, occupied or which the  
 17 Named Insured is obligated to maintain insurance)” within the United States.

18 48. Under the Policy, Named Insureds are shown on the Declarations Page provided to  
 19 each Named Insured, and a schedule of all Named Insureds is maintained by Tribal First.  
 20 Menominee Indian Tribe of Wisconsin and Menominee Indian Economic Development Authority  
 21 are Named Insureds shown on the Declarations Page of the copy issued to them.

22 49. Named Insureds or Insureds also include agencies, organizations, enterprises or  
 23 individuals “for whom the Named Insured is required or has agreed to provide coverage, or as so  
 24 named in the ‘Named Insured Schedule’ on file with Tribal First, ... and which are owned,  
 25 financially controlled or actively managed by the herein named interest.” Policy § 1.B. MCR and  
 26 the Clinic are each an agency, organization or enterprise for whom Menominee Indian Tribe of  
 27  
 28

1 Wisconsin is required or has agreed to provide coverage, and are owned, financially controlled or  
2 actively managed by Menominee Tribe.

3 50. Insureds also include lessors and other parties of interest “in all property of every  
4 description ... for their respective rights and interests,” and mortgages “to whom certificates of  
5 coverage have been issued.”

6 51. Under the Policy, “occurrence” is defined as “a loss, incident or series of losses or  
7 incidents not otherwise excluded by [the] Policy and arising out of a single event or originating  
8 cause and includes all resultant or concomitant insured losses.”

9 52. In many parts of the world, property insurance is sold on a specific peril basis. Such  
10 policies cover a risk of loss if that risk of loss is specifically listed (*e.g.*, hurricane, earthquake,  
11 H1N1, etc.). Most property policies sold in the United States, however, including those sold by  
12 Defendant, are all-risk property damage policies. These types of policies cover all risks of loss  
13 except for risks that are expressly and specifically excluded.

14 53. Under the heading, “Perils Covered,” the Insurers promised that: “Subject to the  
15 terms, conditions and exclusions stated elsewhere herein, this Policy provides insurance against  
16 all risk of direct physical loss or damage occurring during the period of this Policy.” Subject to  
17 these terms and conditions, none of which relieve the Insurers of their obligations for the claims  
18 made herein, the covered cause of loss under the Policy is therefore “all risk of direct physical loss  
19 or damage.”

20 54. Unlike many policies that provide business interruption and related coverages, the  
21 Policy sold by the Insurers does not include, and is not subject to, any exclusion for losses caused  
22 by viruses or communicable diseases.

23 55. The Insurers did not exclude or limit coverage for losses from the spread of virus  
24 in the Protection and Preservation of Property, Business Interruption, Extra Expense,  
25 Ingress/Egress, Civil Authority, Contingent Time Element, or Tax Revenue Interruption coverages  
26 of the Policy, or any other coverages of the Policy.

27

28

1       56. The policy expressly excludes “fungus, mold(s), mildew or yeast,” as well as  
2 “spores or toxins” created or produced by such “fungus, mold(s), mildew or yeast,” but the  
3 exclusion does not cover viruses, which are in a completely different biological category.  
4 Furthermore, the exclusion highlights that the Insurers can list excluded pathogens if they wish to  
5 exclude them.

6       57. The policy also contains an exclusion for seepage, pollution, or contamination, but  
7 this exclusion likewise does not refer or apply to a virus or communicable disease, nor does the  
8 policy extend the undefined term “contamination” to viruses.

9       58. Losses due to COVID-19 are therefore a covered cause of loss, and losses due to  
10 COVID-19 fall within the “Perils Covered” under the Policy.

11       59. The Property Damage coverage in Section II of the Policy includes “Protection and  
12 Preservation of Property” coverage that pays the cost of actions taken by insureds due to “actual  
13 or imminent physical loss or damage” to covered property. Policy § II.B.16. The Insurers agreed  
14 to pay “the expenses incurred by the Named Insured in taking reasonable and necessary actions  
15 for the temporary protection and preservation” of covered property. In this same “Protection and  
16 Preservation of Property” provision, the Insurers required that insureds “shall endeavor to protect  
17 covered property from further damage” “[i]n the event of loss likely to be covered” by the Policy.

18       60. The Time Element coverages in Section III of the Policy include Business  
19 Interruption, Extra Expense, Ingress/Egress, Civil Authority, Contingent Time Element and Tax  
20 Revenue Interruption coverages, each of which applies here.

21       61. In the Policy, the Insurers agreed to pay for actual “Business Interruption” “loss  
22 resulting directly from interruption of business, services or rental value caused by direct physical  
23 loss or damage” to covered property during the “period of restoration.” Policy § III.A.1.

24       62. Insured Business Interruption losses include loss of Gross Earnings, which are the  
25 sum of: (a) “total net sales,” plus (b) “other earnings derived from the operation of the business,”  
26 minus the cost of: (c) “merchandise sold including packaging,” (d) “materials and supplies  
27 consumed directly in supplying” services, and (e) services “purchased from outside (not employees  
28

1 of the Named Insured) for resale that does not continue under contract.” “No other cost shall be  
2 deducted in determining gross earnings.”

3 63. Rental value is comprised of several categories of loss, including “total anticipated  
4 gross rental income from tenant occupancy.” “In determining rental value, due consideration shall  
5 be given to the experience before the date of loss or damage and the probable experience thereafter  
6 had no loss occurred.”

7 64. The period of restoration during which Business Interruption losses accrue begins  
8 “on the date direct physical loss occurs and interrupts normal business operations and ends on the  
9 date that the damaged property should have been repaired, rebuilt or replaced with due diligence  
10 and dispatch, but not limited by the expiration of this policy.” The coverage period is 12 months.

11 65. As described below, Plaintiffs’ and the other Class Members’ hotels, casinos,  
12 restaurants, healthcare facilities and other business properties, as well as their tax generating  
13 properties, have suffered direct physical loss or damage. Due to COVID-19, these properties have  
14 become unsafe for their intended purpose and thus have suffered physical loss or damage. The  
15 business functions of their hotels, casinos, restaurants, healthcare facilities and other properties, as  
16 well as their tax generating properties, have been impaired. If they were to conduct business as  
17 usual, the disease and virus would appear, and guests, gamblers, meeting attendees, diners,  
18 patients, and others would get sick. This is not a non-physical or remote loss such as one  
19 occasioned by a breach of contract, loss of market, or the imposition of a governmental penalty.  
20 It is a direct physical loss. In their current condition, Plaintiffs’ and the other Class members’  
21 hotels, casinos, restaurants, healthcare facilities and other properties, as well as their tax generating  
22 properties, are not yet functional for their business purposes, but Plaintiffs and the other Class  
23 members are conducting repairs to make the properties usable once again

24 66. Moreover, the presence of virus or disease can constitute physical damage to  
25 property, as the insurance industry has recognized since at least 2006. When preparing so-called  
26 “virus” exclusions to be placed in some policies, but not others, the insurance industry drafting

27

28

1 arm, The Insurance Services Office ("ISO"), circulated a statement to state insurance regulators  
2 that included the following:

3           Disease-causing agents may render a product impure (change its quality  
4           or substance), or enable the spread of disease by their presence on  
5           interior building surfaces or the surfaces of personal property. When  
6           disease-causing viral or bacterial contamination occurs, potential claims  
7           involve the cost of replacement of property (for example, the milk), cost  
8           of decontamination (for example, interior building surfaces), and  
9           business interruption (time element) losses. Although building and  
          personal property could arguably become contaminated (often  
          temporarily) by such viruses and bacteria, the nature of the property  
          itself would have a bearing on whether there is actual property damage.  
          An allegation of property damage may be a point of disagreement in a  
          particular case.

10           67.     The presence of virus or disease has resulted in physical damage to property in that  
11           manner in this case and in addition has infested the air or imminently threatens to infest the air in  
12           the properties.

13           68.     In the Policy, in addition to Business Interruption losses, the Insurers agreed to  
14           pay reasonable and necessary "Extra Expense" losses incurred to continue the normal operation of  
15           business "as nearly as practicable" following damage to covered property by a covered cause of  
16           loss during the "period of restoration." Policy § III.A.2.

17           69.     In the Policy, the Insurers also agreed to provide Ingress/Egress coverage, which  
18           applies to loss sustained for up to 30 days when "direct physical loss or damage ... occurring at  
19           property located within a 10 mile radius of covered property" prevents ingress to or egress from  
20           covered property. Policy § III.B.1.

21           70.     The Insurers further agreed to provide "Civil Authority" coverage, which applies  
22           to loss sustained for up to 30 days when a civil authority issues an order that prohibits access to  
23           covered property due to property damage "at a property located within a 10-mile radius of covered  
24           property." Policy § III.B.2.

25           71.     COVID-19 caused damage to property within a 10-mile radius of the covered  
26           property of Plaintiffs and the other Class members in the same manner that it did with Plaintiffs'  
27           covered property, as described in this Class Action Complaint.

1        72. In the Policy, the Insurers also agreed to “Contingent Time Element” coverage,  
 2 which applies to losses caused by property damage at the properties of the business partners of  
 3 Plaintiffs or Class members. Under these Contingent Time Element coverages, the Insurers agreed  
 4 to pay losses for Business Interruption, rental income, or Extra Expenses due to property damage  
 5 “at direct supplier or direct customer locations” that (a) prevents suppliers from supplying goods  
 6 or services to insureds, or (b) prevents customers from accepting goods or services from insureds.  
 7 Policy § III.B.4.

8        73. In the Policy, the Insurers further agreed to pay “Tax Revenue Interruption” losses  
 9 “resulting directly from necessary interruption of sales, property or other tax revenue ... collected  
 10 by or due” insureds caused by damage to property which is not operated by insureds, “and which  
 11 wholly or partially prevents the generation of revenue for the account of” insureds. Tax revenue  
 12 covered by this provision includes “Tribal Incremental Municipal Services Payments,” as well as  
 13 other sales tax, property tax, and other tax revenue. Policy § III.B.5.

14        74. The time period for “Tax Revenue Interruption” coverage begins “with the date of  
 15 damage to the contributing property” and continues “for only the length of time as would be  
 16 required with exercise of due diligence and dispatch to rebuild, replace or repair the contributing  
 17 property,” but is “not limited by the expiration date” of the Policy.

18        75. COVID-19 caused damage to such “contributing property” in the same manner that  
 19 it did with Plaintiffs’ other covered property, resulting in the interruption of Tribal Incremental  
 20 Municipal Services Payments, sales tax, property tax, and other tax revenue.

21        76. Losses caused by COVID-19 and the related Closure Orders issued by local, state  
 22 and Tribal authorities therefore triggered the Protection and Preservation of Property, Business  
 23 Interruption, Extra Expense, Ingress/Egress, Civil Authority, Contingent Time Element, and Tax  
 24 Revenue Interruption coverage provisions of the Policy.

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

26        77. The threat and presence of COVID-19 is direct physical loss or damage to property  
 27 and has caused civil authorities across the United States to issue orders requiring the suspension  
 28



1 or restriction of business at a wide range of establishments. Those authorities include Tribal  
 2 authorities with direct jurisdiction over MCR, Thunderbird, and the Clinic. Indeed, many  
 3 governmental bodies specifically found that COVID-19 causes property damage when issuing stay  
 4 at home orders. *See* N.Y.C. Emergency Exec. Order No. 100, at 2 (Mar. 16, 2020)<sup>5</sup> (emphasizing  
 5 the virulence of COVID-19 and that it “physically is causing property loss and damage”); N.Y.C.  
 6 Emergency Exec. Order No. 103, at 1 (Mar. 25, 2020)<sup>6</sup> (actions taken to prevent spread of COVID-  
 7 19 “have led to property loss and damage”); Broward Cty. Fla. Administrator’s Emergency Order  
 8 No. 20-01, at 2 (Mar. 22, 2020)<sup>7</sup> (noting that COVID-19 “constitutes a clear and present threat to  
 9 the lives, health, welfare, and safety of the people of Broward County”); Harris Cty. Tex. Office  
 10 of Homeland Security & Emergency Mgmt., Order of Cty. J. Lina Hidalgo, at 2 (Mar. 24, 2020)<sup>8</sup>  
 11 (emphasizing that the COVID-19 virus can cause “property loss or damage” due to its contagious  
 12 nature and transmission through “person-to-person contact, especially in group settings”); Napa  
 13 Cty. Cal. Health & Human Service Agency, Order of the Napa Cty. Health Officer (Mar. 18, 2020)<sup>9</sup>  
 14 (issuing restrictions based on evidence of the spread of COVID-19 within the Bay Area and Napa  
 15 County “and the physical damage to property caused by the virus”); City of Key West Fla. State  
 16 of Local Emergency Directive 2020-03, at 2 (Mar. 21, 2020)<sup>10</sup> (COVID-19 is “causing property  
 17 damage due to its proclivity to attach to surfaces for prolonged periods of time”); City of Oakland  
 18 Park Fla. Local Public Emergency Action Directive, at 2 (Mar. 19, 2020)<sup>11</sup> (COVID-19 is  
 19 “physically causing property damage”); Panama City Fla. Resolution No. 20200318.1 (Mar. 18,

21 <sup>5</sup> <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eeo-100.pdf>

22 <sup>6</sup> <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eeo-103.pdf>

23 <sup>7</sup> <https://www.broward.org/CoronaVirus/Documents/BerthaHenryExecutiveOrder20-01.pdf>

24 <sup>8</sup> [https://www.taa.org/wp-content/uploads/2020/03/03-24-20-Stay-Home-Work-Safe-Order\\_Harris-County.pdf](https://www.taa.org/wp-content/uploads/2020/03/03-24-20-Stay-Home-Work-Safe-Order_Harris-County.pdf)

25 <sup>9</sup> <https://www.countyofnapa.org/DocumentCenter/View/16687/3-18-2020-Shelter-at-Home-Order>

26 <sup>10</sup> [https://www.cityofkeywest-fl.gov/egov/documents/1584822002\\_20507.pdf](https://www.cityofkeywest-fl.gov/egov/documents/1584822002_20507.pdf)

27 <sup>11</sup> <https://oaklandparkfl.gov/DocumentCenter/View/8408/Local-Public-Emergency-Action-Directive-19-March-2020-PDF>



2020)<sup>12</sup> (stating that the resolution is necessary because of COVID-19’s propensity to spread person to person and because the “virus physically is causing property damage”); Exec. Order of the Hillsborough Cty. Fla. Emergency Policy Group, at 2 (Mar. 27, 2020)<sup>13</sup> (in addition to COVID-19’s creation of a “dangerous physical condition,” it also creates “property or business income loss and damage in certain circumstances”); Colorado Dep’t of Pub. Health & Env’t, Updated Public Health Order No. 20-24, at 1 (Mar. 26, 2020)<sup>14</sup> (emphasizing the danger of “property loss, contamination, and damage” due to COVID-19’s “propensity to attach to surfaces for prolonged periods of time”); Sixth Supp. to San Francisco Mayoral Proclamation Declaring the Existence of a Local Emergency, 26 (Mar. 27, 2020)<sup>15</sup> (“This order and the previous orders issued during this emergency have all been issued ... also because the virus physically is causing property loss or damage due to its proclivity to attach to surfaces for prolonged periods of time”); and City of Durham NC, Second Amendment to Declaration of State of Emergency, at 8 (effective Mar. 26, 2020)<sup>16</sup> (prohibiting entities that provide food services from allowing food to be eaten at the site where it is provided “due to the virus’s propensity to physically impact surfaces and personal property”).

**C. The COVID-19 Pandemic**

78. According to the CDC, “COVID-19 is caused by a coronavirus called SARS-CoV-2. Coronaviruses are a large family of viruses that are common in people and [many] different species of animals, including camels, cattle, cats, and bats. Rarely, animal coronaviruses can infect people and then spread between people.”<sup>17</sup> “The virus that causes COVID-19 is thought to spread mainly from person to person, mainly through respiratory droplets produced when an infected

<sup>12</sup> <https://www.pcgov.org/AgendaCenter/ViewFile/Item/5711?fileID=16604>

<sup>13</sup> <https://www.hillsboroughcounty.org/library/hillsborough/media-center/documents/administrator/epg/saferathomeorder.pdf>

<sup>14</sup> <https://www.pueblo.us/DocumentCenter/View/26395/Updated-Public-Health-Order---032620>

<sup>15</sup> [https://sfgov.org/sunshine/sites/default/files/sotf\\_061020\\_item3.pdf](https://sfgov.org/sunshine/sites/default/files/sotf_061020_item3.pdf)

<sup>16</sup> [https://durhamnc.gov/DocumentCenter/View/30043/City-of-Durham-Mayor-Emergency-Dec-Second-Amdmt-3-25-20\\_FINAL](https://durhamnc.gov/DocumentCenter/View/30043/City-of-Durham-Mayor-Emergency-Dec-Second-Amdmt-3-25-20_FINAL)

<sup>17</sup> <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Coronavirus-Disease-2019-Basics>.

1 person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby  
 2 or possibly be inhaled into the lungs. Spread is more likely when people are in close contact with  
 3 one another (within about 6 feet).<sup>18</sup>

4 79. “It may be possible that a person can get COVID-19 by touching a surface or object  
 5 that has the virus on it and then touching their own mouth, nose, or possibly their eyes.”<sup>19</sup> A  
 6 scientific study investigating the stability of COVID-19 in different environmental conditions  
 7 found that, following COVID-19 contamination, the virus could be detected hours later for tissues  
 8 and paper, days later for wood, cloth and glass, or even a week later for stainless steel and plastic.<sup>20</sup>

9 80. The CDC advised travelers:

10 CDC recommends you stay home as much as possible and avoid close  
 11 contact, especially if you are at higher risk of severe illness. Staying in  
 12 temporary accommodations (hotels, motels, and rental properties) may  
 expose you to the virus through person-to-person contact and possibly  
 through contact with contaminated surfaces and objects.<sup>21</sup>

13 The CDC advised businesses to “[u]se videoconferencing or teleconferencing when possible for  
 14 work-related meetings and gatherings,” and to “[c]ancel, adjust, or postpone large work-related  
 15 meetings or gatherings that can only occur in-person in accordance with state and local regulations  
 16 and guidance.”<sup>22</sup>

17 81. There is sustained transmission of COVID-19 on six continents. The United States  
 18 has reported the most cases and deaths, with cases in all 50 states.

19  
 20  
 21 <sup>18</sup> *Id.*

22 <sup>19</sup> <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

23 <sup>20</sup> See Alex W.H. Chin, et al., “Stability of SARS-CoV-2 in different environmental conditions,”  
 24 *The Lancet Microbe* (April 2, 2020), available at [https://doi.org/10.1016/S2666-5247\(20\)30003-3](https://doi.org/10.1016/S2666-5247(20)30003-3).

25 <sup>21</sup> *Coronavirus Disease 2019, Considerations for Travelers – Coronavirus in the US*,  
 26 <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html>.

27 <sup>22</sup> *Coronavirus Disease 2019, Interim Guidance for Businesses and Employers Responding to*  
 28 *Coronavirus Disease 2019 (COVID-19)*, (May 2020),  
<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>.

1        82. The threat and presence of COVID-19 has caused civil authorities throughout the  
2 country to issue orders requiring the suspension of business at a wide range of establishments (the  
3 “Closure Orders”).

4 ***D. The Wisconsin Closure Orders***

5        83. Authorities in Wisconsin have issued several Closure Orders with a variety of  
6 restrictions impacting business activities of Plaintiffs, including the following:

7        84. On March 12, 2020, Wisconsin Governor Tony Evers issued Executive Order 72,  
8 “Declaring a Health Emergency in Response to the COVID-19 Coronavirus.”

9        85. At the direction of Governor Evers, Wisconsin then issued Emergency Order 4,  
10 Effective March 17, 2020, ordering “a statewide moratorium on mass gatherings of 50 people or  
11 more to mitigate the spread of COVID-19.” Restaurants and bars were limited to “50 percent of  
12 seating capacity or 50 total people, whichever is less,” and were required to maintain “distancing  
13 of 6 feet between tables, booths, bar stools, and ordering counters.”

14        86. On March 17, 2020, Wisconsin issued Emergency Order 5, effective at 5:00 pm on  
15 March 17, 2020, prohibiting gatherings of “10 or more people in a single room or single confined  
16 space at the same time.” Restaurants were allowed to “remain open for take-out or delivery service  
17 only,” and were required to “preserve social distancing of six feet between customers during pick  
18 up.”

19        87. On March 20, 2020, Wisconsin issued Emergency Order 8, “Updated Mass  
20 Gathering Ban,” further detailing the limit on bars and restaurants to take-out and delivery (with  
21 no delivery of alcoholic beverages to retail customers unless they paid in person).

22        88. On March 24, 2020, Wisconsin issued Emergency Order 12, a “Safer At Home  
23 Order.” The Order stated: “Despite prior emergency orders banning mass gatherings, the rates of  
24 infection continue to drastically increase, necessitating additional measures to slow the rate of  
25 infection and save lives.” The Order closed all Non-Essential Businesses and Operations and  
26 required Essential Businesses and Operations to comply with Social Distancing Guidelines. All  
27 individuals present within the state were ordered “to stay at home or their place of residence,” with  
28

1 certain exceptions. Bars and restaurants remained limited to take-out and delivery (with no  
2 delivery of alcoholic beverages to retail customers).

3 89. Many of the restrictions in Emergency Order 12 were renewed through May 26,  
4 2020, in Emergency Order 28. Although the new order exempted tribal members acting within  
5 their own reservation, it emphasized that tribal authorities could issue their own orders providing  
6 similar restrictions or otherwise affecting those tribal members. Specifically, the order stated that  
7 “Activities by Tribal members within the boundaries of their Tribal reservations ... are exempt  
8 from the restrictions in this Order but may be subject to restrictions by tribal authorities.” As  
9 described below, the Menominee Tribe had already issued restrictions that applied to tribal  
10 members and that remained in force.

11 90. Furthermore, Emergency Order 28 continued to apply to non-tribal members who  
12 may have wished to travel to a reservation in order to visit a casino, to eat at a restaurant, to stay  
13 in a hotel, or participate in other recreational or business opportunities available on the reservation.  
14 Emergency Order 28 expressly stated: “Non-tribal members should be respectful of and avoid  
15 nonessential travel to Tribal territory.”

16 91. Emergency Orders 12 and 28 provide that violations are punishable by up to 30  
17 days in jail and/or a fine not to exceed \$250.00.

18 ***E. Menominee Closure Orders***

19 92. On March 12, 2020, the Menominee Tribal Legislature issued a Declaration of State  
20 of Emergency due to COVID-19.

21 93. On March 19, 2020, the Menominee Tribal Legislature approved a motion to  
22 “automatically adopt state guidelines including all emergency orders by the State of Wisconsin  
23 relating to COVID-19 as they are released.” By amended motion, the Tribal Legislature  
24 established that the Wisconsin guidelines would be the minimal guidelines for the Tribe, though  
25 guidelines would need to respect the sovereignty of the Tribe. Adoption of the guidelines set forth  
26 by Wisconsin began no later than Wisconsin Emergency Order 5 and continued through  
27 subsequent Orders.

28

1        94. On June 3, 2020, the Tribal Legislature approved a “Moving Safer Forward Plan”  
 2 for restarting businesses, which set forth criteria for reopening but also maintained significant  
 3 restrictions on commercial activity for businesses that chose to reopen.

4        95. In response to the continuing incidence of COVID-19 in the State of Wisconsin,  
 5 the Menominee Indian Tribe’s COVID-19 Incident Command issued Emergency Order 1,  
 6 effective July 29, 2020, through August 31, 2020, imposing an overnight curfew from 10:00 p.m.  
 7 until 6:00 a.m.

8        96. Shortly thereafter, the Menominee Indian Tribe’s COVID-19 Incident Command  
 9 issued Emergency Order 2, Effective July 31, 2020, closing “casino gaming operations, bars and  
 10 restaurants, and farmers markets,” including gaming operations at MCR and Thunderbird. All  
 11 bars were closed, and restaurants within the gaming establishments were closed except for takeout.  
 12 In an August 6, 2020, Order of Extension, these closures were extended until 7:00 a.m. on August  
 13 17, 2020.

14        97. Effective July 31, 2020, the Menominee Indian Tribe’s COVID-19 Incident  
 15 Command issued Emergency Order 3, which required six-foot social distancing in all businesses.

16        98. Effective September 16, 2020, through September 28, 2020, the Menominee Indian  
 17 Tribe’s COVID-19 Incident Command issued Emergency Order 4, which closed MCR and  
 18 Thunderbird, except for restaurant takeout, the gift shop, convenience store and gas station. The  
 19 Order also closed all bars, and imposed an overnight curfew from 10:00 p.m. until 6:00 a.m. The  
 20 closure was subsequently extended to October 5, and then to October 12.

21 ***F. Closure Orders Throughout the United States***

22        99. Closure Orders were also issued by local, state and Tribal governments throughout  
 23 the United States. The list includes Alaska, Oklahoma, New Mexico, Montana, Washington,  
 24 Wisconsin and 37 other states, plus the District of Columbia. In addition, six other states issued  
 25 Closure Orders with social distancing, limits on the size of gatherings, and closure of certain non-  
 26 essential businesses, even if they did not expressly order that residents must Stay Home. This list  
 27 includes, for example, South Dakota.

1           100. Many Indian Tribes, Nations or Bands also issued Closure Orders, including  
 2 Cherokee, Chippewa, Choctaw, Colorado River, Crow, Menominee, Mission, Muscogee (Creek),  
 3 Navajo, Northern Cheyenne, Seminole, Southern Ute, Suquamish, and Tulalip.

4           101. All of the Closure Orders described in this Class Action Complaint were issued in  
 5 response to the rapid spread of COVID-19.

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

7           102. The threat and presence of COVID-19 caused direct physical loss or damage to the  
 8 covered property under the Policy, by impairing the function of and damaging the covered  
 9 property, and by causing the “interruption of business, services or rental value” during a “period  
 10 of restoration.”

11           103. The Closure Orders, including the issuance of the Wisconsin and Menominee  
 12 Closure Orders, prohibited access to MCR and Thunderbird and to the covered property of other  
 13 Class Members, and the 10-mile radius surrounding all of that covered property, in response to  
 14 dangerous physical conditions described above resulting from a covered cause of loss (*i.e.*,  
 15 resulting from a cause within “Perils Covered”).

16           104. The Closure Orders, including the issuance of the Wisconsin and Menominee  
 17 Closure Orders, restricted the use of the Clinic and the healthcare facilities of other Class Members.  
 18 These restrictions reduced elective patient flow and revenue and required increased spending for  
 19 physical barriers, cleaning and sanitizing and other measures.

20           105. As a consequence of COVID-19 and the Closure Orders, MCR closed on March  
 21 19, 2020, and only partially reopened with restricted capacity on May 27, 2020. (The affiliated  
 22 gift shop opened slightly earlier, on May 1, 2020). MCR closed again on July 31, 2020, and only  
 23 partially reopened with restricted capacity on August 17, 2020. MCR, except for the gift shop,  
 24 closed again on September 16, 2020, and only partially reopened later that month. Similarly, the  
 25 Thunderbird Restaurant closed for on-site dining (with operations restricted to carry out only).  
 26 The Closure Orders also forced the mini casino to close and, later, to open at reduced capacity.  
 27 The Clinic was also required to reduce its capacity to see patients.

28

106. As a result of the presence of COVID-19 and the Closure Orders, Plaintiff and the other Class members suffered losses covered by Protection and Preservation of Property, Business Interruption, Extra Expense, Ingress/Egress, Civil Authority, Contingent Time Element and Tax Revenue Interruption protections.

107. Plaintiffs submitted a claim for loss to the Insurers under the Policy due to the presence of COVID-19 and the Closure Orders, and the Insurers denied that claim.

#### V. CLASS ACTION ALLEGATIONS

108. **Class Definition.** Plaintiffs bring this action pursuant to California Code of Civil Procedure section 382, individually and on behalf of all others similarly situated. There are questions of common or general interest, and it is impracticable to bring all of the numerous parties before the Court.

109. Plaintiffs seek to represent a nationwide Class defined as all persons and entities insured under the Policy with claims due to COVID-19 and/or closure orders from the relevant authorities, including persons and entities that:

- (a) Incurred reasonable and necessary expense to temporarily protect or preserve covered property due to “actual or imminent physical loss or damage” to covered property; or
- (b) suffered an interruption of business and sustained loss of Gross Earnings; or
- (c) suffered an interruption of business and sustained loss of rental value; or
- (d) incurred reasonable and necessary Extra Expense to continue the normal operation of business “as nearly as practicable” following damage to covered property by a covered cause of loss, during a “period of restoration”; or
- (e) suffered an actual loss due to “direct physical loss or damage ... occurring at property located within a 10-mile radius of covered property,” thereby preventing ingress to or egress from covered property; or
- (f) suffered an actual loss when a civil authority issued an order that specifically prohibited access to covered property, due to



property damage "at a location within a 10-mile radius of covered property; or

(g) suffered Business Interruption, rental income or Extra Expense losses due to property damage at direct supplier and direct customer locations, preventing supply of goods or services from suppliers to insureds or from insureds to customers; or

(h) incurred Tax Revenue Interruption losses due to damage to contributing property not operated by insureds.

110. Excluded from the Class are Defendants and any of their members, affiliates, parents, subsidiaries, officers, directors, employees, successors, or assigns; governmental entities; and the Court staff assigned to this case and their immediate family members. Plaintiffs reserve the right to modify or amend the Class definition, as appropriate, during the course of this litigation.

111. **Numerous and Ascertainable Class Members.** The members of the defined Class are so numerous that individual joinder of all Class Members is impracticable. While Plaintiffs are informed and believe that there are dozens of Class Members, the precise number of Class Members is unknown to Plaintiffs but may be ascertained from the books and records of Tribal First or the Defendants. Class Members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, internet postings, and/or published notice.

112. **Commonality and Predominance.** This action involves common questions of law and fact, which predominate over any questions affecting only individual Class members, including, without limitation:

- (a) The Insurers issued the all-risk Policy in exchange for payment of premiums by or for Plaintiffs and other Class Members;
- (b) whether the Class suffered a covered loss based on the Policy;
- (c) whether the Insurers wrongfully denied all claims based on COVID-19 and the Closure Orders;

- 1 (d) whether the Policy's Protection and Preservation of Property coverage applies
- 2 to reasonable and necessary expenses caused by COVID-19 and the Closure
- 3 Orders;
- 4 (e) whether the Policy's Business Interruption coverage applies to an interruption
- 5 caused by COVID-19 and the Closure Orders;
- 6 (f) whether the Policy's Extra Expense coverage applies to a business loss caused
- 7 by COVID-19 and the Closure Orders;
- 8 (g) whether the Policy's Ingress/Egress coverage applies to a business loss
- 9 caused by COVID-19 and the Closure Orders;
- 10 (h) whether the Policy's Civil Authority coverage applies to an interruption due
- 11 to the Closure Orders;
- 12 (i) whether the Policy's Contingent Time Element coverage applies to an
- 13 interruption caused by COVID-19 and the Closure Orders;
- 14 (j) whether the Policy's Tax Revenue Interruption coverage applies to an
- 15 interruption due to COVID-19 and the Closure Orders;
- 16 (k) whether the Insurers have breached their contract of insurance through a
- 17 blanket denial of all claims based on business interruption, business losses,
- 18 costs or closures related to COVID-19 and the Closure Orders; and
- 19 (l) whether Plaintiffs and the other Class Members are entitled to an award of
- 20 reasonable attorney fees, interest and costs.

21 113. **Typicality.** Plaintiffs' claims are typical of the other Class Members' claims  
 22 because Plaintiffs and the other Class Members are all similarly affected by Defendants' refusal  
 23 to pay under its Protection and Preservation of Property, Business Interruption, Extra Expense,  
 24 Ingress/Egress, Civil Authority, Contingent Time Element and Tax Revenue Interruption  
 25 coverages. Plaintiffs' claims are based upon the same legal theories as those of the other Class  
 26 Members. Plaintiffs and the other Class Members sustained damages as a direct and proximate  
 27 result of the same wrongful practices in which Defendants engaged.

1           **114. Adequacy of Representation.** Plaintiffs are adequate Class representative because  
2 their interests do not conflict with the interests of the other Class Members who they seek to  
3 represent, Plaintiff has retained counsel competent and experienced in complex class action  
4 litigation, including successfully litigating class action cases similar to this one, where insurers  
5 breached contracts with insureds by failing to pay the amounts owed under their policies, and  
6 Plaintiffs intend to prosecute this action vigorously. The interests of the above-defined Classes  
7 will be fairly and adequately protected by Plaintiffs and their counsel.

8           **115. Inconsistent or Varying Adjudications and the Risk of Impediments to Other**  
9 **Class Members' Interests.** Plaintiffs seek class-wide adjudication as to the interpretation, and  
10 resultant scope, of Defendants' Protection and Preservation of Property, Business Interruption,  
11 Extra Expense, Ingress/Egress, Civil Authority, Contingent Time Element and Tax Revenue  
12 Interruption coverages. The prosecution of separate actions by individual Class Members would  
13 create an immediate risk of inconsistent or varying adjudications that would establish incompatible  
14 standards of conduct for the Defendants. Moreover, the adjudications sought by Plaintiffs could,  
15 as a practical matter, substantially impair or impede the ability of other Class Members, who are  
16 not parties to this action, to protect their interests.

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

24           **117. Declaratory and Injunctive Relief.** Defendants acted or refused to act on grounds  
25 generally applicable to Plaintiffs and the other Class Members, thereby making appropriate final  
26 injunctive relief and declaratory relief, as described below, with respect to the Class Members.

27 ///

VI. CLAIMS FOR RELIEF

COUNT I

BREACH OF CONTRACT – PROPERTY DAMAGE, PROTECTION AND  
PRESERVATION OF PROPERTY COVERAGE

118. Plaintiffs repeat and reallege Paragraphs 1-117 as if fully set forth herein.

119. Plaintiffs bring this Count individually and on behalf of the Class.

120. The Policy is a contract under which Plaintiffs and the other Class Members paid premiums, in exchange for the Insurers' promise to pay their losses for claims covered by the Policy.

121. In the Policy, the Insureds agreed to pay for Plaintiffs' and the other Class Members' expenses for "reasonable and necessary actions for the temporary protection and preservation" of covered property, including expenses for actions taken due to "actual or imminent physical loss or damage" to covered property, and for actions taken to "protect covered property from further damage."

122. Plaintiffs and the other Class Members incurred reasonable and necessary expenses "for the temporary protection and preservation" of covered property as a result of "actual or imminent physical loss or damage" to covered property caused by COVID-19.

123. Plaintiffs and the other Class Members incurred reasonable and necessary expenses to "protect covered property from further damage" caused by COVID-19.

124. Class Members have complied with all applicable provisions of the Policy and/or those provisions have been waived by the Insurers or the Insurers are estopped from asserting them, and yet the Insurers have abrogated their insurance coverage obligations pursuant to the Policy's clear and unambiguous terms.

125. By denying coverage for any Protection and Preservation of Property losses incurred by the Class in connection with the COVID-19 pandemic, the Insurers have breached their coverage obligations under the Policy.

126. As a result of the Insurers' breach of the Policy, the Class has sustained substantial damages for which the Insurers are liable, in an amount to be established at trial.

**COUNT II**

**BREACH OF CONTRACT -- BUSINESS INTERRUPTION COVERAGE**

127. Plaintiffs repeat and reallege Paragraphs 1-126 as if fully set forth herein.

128. Plaintiffs bring this Count individually and on behalf of the Class.

129. The Policy is a contract under which Plaintiffs and the other Class Members paid premiums, in exchange for the Insurers' promise to pay their losses for claims covered by the Policy.

130. In the Policy, the Insurers agreed to pay for Plaintiffs' and the other Class Members' actual "loss resulting directly from interruption of business, services or rental value caused by direct physical loss or damage" to covered property during the "period of restoration." These losses include lost Gross Earnings and lost rental value.

131. The "period of restoration begins "on the date direct physical loss occurs and interrupts normal business operations and ends on the date that the damaged property should have been repaired, rebuilt or replaced with due diligence and dispatch." The "period of restoration" is "not limited by the expiration" of the Policy, and the coverage period is 12 months.

132. COVID-19 caused direct physical loss and damage to the covered property of Class Members, requiring interruption of business activities at their covered property. Losses caused by COVID-19 thus triggered the Business Interruption provision of the Policy.

133. Class Members have complied with all applicable provisions of the Policy and/or those provisions have been waived by the Insurers or the Insurers are estopped from asserting them, and yet the Insurers have abrogated their insurance coverage obligations pursuant to the Policy's clear and unambiguous terms.

134. By denying coverage for any Business Interruption losses incurred by the Class in connection with the COVID-19 pandemic, the Insurers have breached their coverage obligations under the Policy.

135. As a result of the Insurers' breach of the Policy, the Class has sustained substantial damages for which the Insurers are liable, in an amount to be established at trial.

**COUNT III**

**BREACH OF CONTRACT – EXTRA EXPENSE COVERAGE**

136. Plaintiffs repeat and reallege Paragraphs 1-135 as if fully set forth herein.

137. Plaintiffs bring this Count individually and on behalf of the Class.

138. The Policy is a contract under which Plaintiffs and the other Class Members paid premiums, in exchange for the Insurers' promise to pay their losses for claims covered by the Policy.

139. In the Policy, the Insurers agreed to pay reasonable and necessary Extra Expense incurred by Plaintiffs and other Class Members to continue the normal operation of business "as nearly as practicable" following damage to covered property by a covered cause of loss, during the "period of restoration."

140. Due to COVID-19 and the Closure Orders, Class Members incurred Extra Expense at covered property.

141. Class Members have complied with all applicable provisions of the Policy and/or those provisions have been waived by the Insurers or the Insurers are estopped from asserting them, and yet the Insurers have abrogated their insurance coverage obligations pursuant to the Policy's clear and unambiguous terms.

142. By denying coverage for any Extra Expense losses incurred by the Class in connection with the COVID-19 pandemic, the Insurers have breached their coverage obligations under the Policy.

143. As a result of the Insurers' breach of the Policy, the Class has sustained substantial damages for which the Insurers are liable, in an amount to be established at trial.

**COUNT IV**

**BREACH OF CONTRACT – INGRESS/EGRESS COVERAGE**

144. Plaintiffs repeat and reallege Paragraphs 1-143 as if fully set forth herein.

145. Plaintiffs bring this Count individually and on behalf of the Class.

146. The Policy is a contract under which Plaintiffs and the other Class Members paid premiums, in exchange for the Insurers' promise to pay their losses for claims covered by the Policy.

1           147. In the Policy, the Insurers agreed to pay for the actual loss sustained by Plaintiffs  
2 and other Class Members for up to 30 days when “direct physical loss or damage ... occurring at  
3 property located within a 10-mile radius of covered property” prevents ingress to or egress from  
4 covered property.

5           148. COVID-19 triggered the Ingress/Egress provision of the Policy. COVID-19 caused  
6 direct physical loss or damage to property within a ten-mile radius of covered property in the same  
7 manner that it caused direct physical loss or damage to covered property described herein.

8           149. Class Members have complied with all applicable provisions of the Policy and/or  
9 those provisions have been waived by the Insurers or the Insurers are estopped from asserting  
10 them, and yet the Insurers have abrogated their insurance coverage obligations pursuant to the  
11 Policy’s clear and unambiguous terms.

12           150. By denying coverage for any Ingress/Egress losses incurred by the Class in  
13 connection with the COVID-19 pandemic, the Insurers have breached their coverage obligations  
14 under the Policy.

15           151. As a result of the Insurers’ breach of the Policy, the Class has sustained substantial  
16 damages for which the Insurers are liable, in an amount to be established at trial.

#### 17           COUNT V

#### 18           BREACH OF CONTRACT – INTERRUPTION BY CIVIL AUTHORITY COVERAGE

19           152. Plaintiffs repeat and reallege Paragraphs 1-151 as if fully set forth herein.

20           153. Plaintiffs bring this Count individually and on behalf of the Class.

21           154. The Policy is a contract under which Plaintiffs and the other Class Members paid  
22 premiums, in exchange for the Insurers’ promise to pay their losses for claims covered by the  
23 Policy.

24           155. In the Policy, the Insurers agreed to pay for the actual loss sustained by Plaintiffs  
25 and other Class Members for up to 30 days when a civil authority issues an order that specifically  
26 prohibits access to covered property, due to property damage “at a property located within a 10-  
27 mile radius of covered property.”  
28



1           156. The Closure Orders triggered the Civil Authority provision of the Policy. COVID-  
2 19 caused direct physical loss or damage to property within a ten-mile radius of covered property  
3 in the same manner described herein that it caused direct physical loss or damage to covered  
4 property. The Closure Orders were actions taken in response to the dangerous physical conditions  
5 resulting from the direct physical loss or damage to such properties, and the Closure Orders  
6 prohibited access within a ten-mile radius area that included covered property.

157. Class Members have complied with all applicable provisions of the Policy and/or those provisions have been waived by the Insurers or the Insurers are estopped from asserting them, and yet the Insurers have abrogated their insurance coverage obligations pursuant to the Policy's clear and unambiguous terms.

11 158. By denying coverage for any Civil Authority losses incurred by the Class in  
12 connection with the COVID-19 pandemic, the Insurers have breached their coverage obligations  
13 under the Policy.

14           159. As a result of the Insurers' breach of the Policy, the Class has sustained substantial  
15 damages for which the Insurers are liable, in an amount to be established at trial.

## COUNT VI

**BREACH OF CONTRACT – CONTINGENT TIME ELEMENT COVERAGE**

17 160. Plaintiffs repeat and reallege Paragraphs 1-159 as if fully set forth herein.

18 161. Plaintiffs bring this Count individually and on behalf of the Class.

19           162. The Policy is a contract under which Plaintiffs and the other Class Members paid  
20 premiums, in exchange for the Insurers' promise to pay their losses for claims covered by the  
21 Policy.

163. In the Policy, the Insurers agreed to pay Plaintiffs' and the other Class Members' "Contingent Time Element" Business Interruption, rental income, and Extra Expense losses due to property damage "at direct supplier or direct customer locations" that (a) prevents suppliers from supplying goods or services to insureds, or (b) prevents customers from accepting goods or services from insureds.

1           164. COVID-19 triggered the Contingent Time Element provision of the Policy.  
2 COVID-19 caused direct physical loss or damage to direct supplier or direct customer property in  
3 the same manner that it caused direct physical loss or damage to covered property, as described  
4 herein.

165. Class Members have complied with all applicable provisions of the Policy and/or those provisions have been waived by the Insurers or the Insurers are estopped from asserting them, and yet the Insurers have abrogated their insurance coverage obligations pursuant to the Policy's clear and unambiguous terms.

166. By denying coverage for any Contingent Time Element losses incurred by the Class in connection with the COVID-19 pandemic, the Insurers have breached their coverage obligations under the Policy.

12           167. As a result of the Insurers' breach of the Policy, the Class has sustained substantial  
13 damages for which the Insurers are liable, in an amount to be established at trial.

## COUNT VII

**BREACH OF CONTRACT – TAX REVENUE INTERRUPTION COVERAGE**

15 168. Plaintiffs repeat and reallege Paragraphs 1-167 as if fully set forth herein.

169. Plaintiffs bring this Count individually and on behalf of the Class.

17           170. The Policy is a contract under which Plaintiffs and the other Class Members paid  
18 premiums, in exchange for the Insurers' promise to pay their losses for claims covered by the  
19 Policy.

171. In the Policy, the Insurers agreed to pay Plaintiffs' and the other Class Members' actual Tax Revenue Interruption losses "resulting directly from necessary interruption of" Tribal Incremental Municipal Services Payments, sales tax, property tax, and other tax revenue collected by or due Class Members, caused by damage to property which is not operated by Class Members, "and which wholly or partially prevents the generation of revenue for the account of" Class Members.

172. The Insurers agreed to pay these Tax Revenue Interruption losses beginning “with  
the date of damage to the contributing property” and continuing “for only the length of time as

1 would be required with exercise of due diligence and dispatch to rebuild, replace or repair the  
2 contributing property.”

3 173. COVID-19 caused damage to contributing property in the same manner that it did  
4 with Plaintiffs’ covered property, as described herein, resulting in interruption of Tribal  
5 Incremental Municipal Services Payments, sales tax, property tax, and other tax revenue.

6 174. Class Members have complied with all applicable provisions of the Policy and/or  
7 those provisions have been waived by the Insurers or the Insurers are estopped from asserting  
8 them, and yet the Insurers have abrogated their insurance coverage obligations pursuant to the  
9 Policy’s clear and unambiguous terms.

10 175. By denying coverage for any Tax Revenue Interruption losses incurred by the Class  
11 in connection with the COVID-19 pandemic, the Insurers have breached their coverage obligations  
12 under the Policy.

13 176. As a result of the Insurers’ breach of the Policy, the Class has sustained substantial  
14 damages for which the Insurers are liable, in an amount to be established at trial.

15 **COUNT VIII**  
16 **DECLARATORY JUDGMENT – PROPERTY DAMAGE, PROTECTION AND**  
17 **PRESERVATION OF PROPERTY COVERAGE**

17 177. Plaintiffs repeat and reallege Paragraphs 1-176 as if fully set forth herein.

18 178. Plaintiffs bring this Count individually and on behalf of the Class.

19 179. The Policy is a contract under which Plaintiffs and the other Class Members paid  
20 premiums, in exchange for the Insurers’ promise to pay their losses for claims covered by the  
21 Policy.

22 180. Class Members have complied with all applicable provisions of the Policy and/or  
23 those provisions have been waived by the Insurers, or the Insurers are estopped from asserting  
24 them, and yet the Insurers have abrogated their insurance coverage obligations pursuant to the  
25 Policy’s clear and unambiguous terms and have wrongfully and illegally refused to provide  
26 coverage to which Class Members are entitled.

1 181. The Insurers have denied coverage related to COVID-19 on a uniform and class  
2 wide basis, without individual bases or investigations, such that the Court can render declaratory  
3 judgment irrespective of whether members of the Class have filed a claim.

4 182. An actual case or controversy exists regarding Class Members' rights and the  
5 Insurers' obligations under the Policy to reimburse the full amount of reasonable and necessary  
6 costs incurred by the Class "for the temporary protection and preservation" of covered property:  
7 (a) as a result of "actual or imminent physical loss or damage" to covered property caused by  
8 COVID-19, and (b) "to protect covered property from further damage" caused by COVID-19.

9 183. Pursuant to California Code of Civil Procedure section 1060 *et seq.*, Plaintiffs seek  
10 a declaratory judgment from this Court declaring the following:

- 11 i. Class Members' Property Damage, Protection and Preservation of Property losses  
12 incurred in connection with the COVID-19 pandemic are insured losses under the  
13 Policy; and
- 14 ii. The Insurers are obligated to pay the Class for the full amount of the Property  
15 Damage, Protection and Preservation of Property losses incurred by their  
16 businesses stemming from the COVID-19 pandemic.

17 **COUNT IX**  
18 **DECLARATORY JUDGMENT – BUSINESS INTERRUPTION COVERAGE**

19 184. Plaintiffs repeat and reallege Paragraphs 1-183 as if fully set forth herein.

20 185. Plaintiffs bring this Count individually and on behalf of the Class.

21 186. The Policy is a contract under which Plaintiffs and the other Class Members paid  
22 premiums, in exchange for the Insurers' promise to pay their losses for claims covered by the  
23 Policy.

24 187. Class Members have complied with all applicable provisions of the Policy and/or  
25 those provisions have been waived by the Insurers, or the Insurers are estopped from asserting  
26 them, and yet the Insurers have abrogated their insurance coverage obligations pursuant to the  
27 Policy's clear and unambiguous terms and have wrongfully and illegally refused to provide  
28 coverage to which Class Members are entitled.

188. The Insurers have denied coverage 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.

189. An actual case or controversy exists regarding Class Members' rights and the Insurers' obligations under the Policy to reimburse the full amount of Business Interruption losses incurred by the Class in connection with interruption of their businesses stemming from the COVID-19 pandemic.

190. Pursuant to California Code of Civil Procedure section 1060 *et seq.*, Plaintiffs seek a declaratory judgment from this Court declaring the following:

- i. Class Members' Business Interruption losses incurred in connection with the Closure Orders and the interruption of their businesses stemming from the COVID-19 pandemic are insured losses under the Policy; and
- ii. The Insurers are obligated to pay the Class for the full amount of the Business Interruption losses incurred in connection with the Closure Orders during the period of restoration and the interruption of their businesses stemming from the COVID-19 pandemic.

#### COUNT X

#### DECLARATORY JUDGMENT – EXTRA EXPENSE COVERAGE

191. Plaintiffs repeat and reallege Paragraphs 1-190 as if fully set forth herein.

192. Plaintiffs bring this Count individually and on behalf of the Class.

193. The Policy is a contract under which Plaintiffs and the other Class Members paid premiums, in exchange for the Insurers' promise to pay their losses for claims covered by the Policy.

194. Class Members have complied with all applicable provisions of the Policy and/or those provisions have been waived by the Insurers, or the Insurers are estopped from asserting them, and yet the Insurers have abrogated their insurance coverage obligations pursuant to the Policy's clear and unambiguous terms and have wrongfully and illegally refused to provide coverage to which Class Members are entitled.

1 195. The Insurers have denied coverage related to COVID-19 on a uniform and class  
2 wide basis, without individual bases or investigations, such that the Court can render declaratory  
3 judgment irrespective of whether members of the Class have filed a claim.

196. An actual case or controversy exists regarding Class Members' rights and the Insurers' obligations under the Policy to reimburse the full amount of Extra Expense losses incurred by the Class in connection with interruption of their businesses stemming from the COVID-19 pandemic.

197. Pursuant to California Code of Civil Procedure section 1060 *et seq.*, Plaintiffs seek  
a declaratory judgment from this Court declaring the following:

i. Class Members' Extra Expense losses incurred in connection with the Closure Orders and the interruption of their businesses stemming from the COVID-19 pandemic are insured losses under the Policy; and

3           ii.    The Insurers are obligated to pay the Class for the full amount of the Extra Expense  
4           losses incurred in connection with the Closure Orders during the period of  
5           restoration and the interruption of their businesses stemming from the COVID-19  
6           pandemic.

**COUNT XI**  
**DECLARATORY JUDGMENT – INGRESS/EGRESS COVERAGE**

198. Plaintiffs repeat and reallege Paragraphs 1-197 as if fully set forth herein.

199. Plaintiffs bring this Count individually and on behalf of the Class.

1        200. The Policy is a contract under which Plaintiffs and the other Class Members paid  
2 premiums, in exchange for the Insurers' promise to pay their losses for claims covered by the  
Policy.

201. Class Members have complied with all applicable provisions of the Policy and/or those provisions have been waived by the Insurers, or the Insurers are estopped from asserting them, and yet the Insurers have abrogated their insurance coverage obligations pursuant to the Policy's clear and unambiguous terms and have wrongfully and illegally refused to provide coverage to which Class Members are entitled.

1        202. The Insurers have denied coverage related to COVID-19 on a uniform and class  
2 wide basis, without individual bases or investigations, such that the Court can render declaratory  
3 judgment irrespective of whether members of the Class have filed a claim.

4        203. An actual case or controversy exists regarding Class Members' rights and the  
5 Insurers' obligations under the Policy to reimburse the full amount of Ingress/Egress losses  
6 incurred by the Class in connection with interruption of their businesses stemming from the  
7 COVID-19 pandemic.

8        204. Pursuant to California Code of Civil Procedure section 1060 *et seq.*, Plaintiffs seek  
9 a declaratory judgment from this Court declaring the following:

- 10        i. Class Members' Ingress/Egress losses incurred in connection with the Closure  
11 Orders and the interruption of their businesses stemming from the COVID-19  
12 pandemic are insured losses under the Policy; and
- 13        ii. The Insurers are obligated to pay the Class for the full amount of the Ingress/Egress  
14 losses incurred in connection with the Closure Orders during the period of  
15 restoration and the interruption of their businesses stemming from the COVID-19  
16 pandemic.

## 17        **COUNT XII**

### 18        **DECLARATORY JUDGMENT – CIVIL AUTHORITY COVERAGE**

19        205. Plaintiffs repeat and reallege Paragraphs 1-204 as if fully set forth herein.

20        206. Plaintiffs bring this Count individually and on behalf of the Class.

21        207. The Policy is a contract under which Plaintiffs and the other Class Members paid  
22 premiums, in exchange for the Insurers' promise to pay their losses for claims covered by the  
23 Policy.

24        208. Class Members have complied with all applicable provisions of the Policy and/or  
25 those provisions have been waived by the Insurers, or the Insurers are estopped from asserting  
26 them, and yet the Insurers have abrogated their insurance coverage obligations pursuant to the  
27 Policy's clear and unambiguous terms and have wrongfully and illegally refused to provide  
28 coverage to which Class Members are entitled.



211. Pursuant to California Code of Civil Procedure section 1060 *et seq.*, Plaintiffs seek  
a declaratory judgment from this Court declaring the following:

- 17 **COUNT XIII**  
18 **DECLARATORY JUDGMENT – CONTINGENT TIME ELEMENT COVERAGE**

213. Plaintiffs bring this Count individually and on behalf of the Class.

24 215. Class Members have complied with all applicable provisions of the Policy and/or  
25 those provisions have been waived by the Insurers, or the Insurers are estopped from asserting  
26 them, and yet the Insurers have abrogated their insurance coverage obligations pursuant to the  
27 Policy's clear and unambiguous terms and have wrongfully and illegally refused to provide  
coverage to which Class Members are entitled.

217. An actual case or controversy exists regarding Class Members' rights and the Insurers' obligations under the Policy to reimburse the full amount of Contingent Time Element losses incurred by the Class in connection with interruption of their businesses stemming from the COVID-19 pandemic.

218. Pursuant to California Code of Civil Procedure section 1060 *et seq.*, Plaintiffs seek  
a declaratory judgment from this Court declaring the following:

- 10 i. Class Members' Contingent Time Element losses incurred in connection with the  
11 Closure Orders and the interruption of their businesses stemming from the COVID-  
12 19 pandemic are insured losses under the Policy; and  
13 ii. The Insurers are obligated to pay the Class for the full amount of the Contingent  
14 Time Element losses incurred in connection with the Closure Orders during the  
15 period of restoration and the interruption of their businesses stemming from the  
16 COVID-19 pandemic.

220. Plaintiffs bring this Count individually and on behalf of the Class.

22           221. The Policy is a contract under which Plaintiffs and the other Class Members paid  
23 premiums, in exchange for the Insurers' promise to pay their losses for claims covered by the  
Policy.

25 222. Class Members have complied with all applicable provisions of the Policy and/or  
26 those provisions have been waived by the Insurers, or the Insurers are estopped from asserting  
27 them, and yet the Insurers have abrogated their insurance coverage obligations pursuant to the

**COUNT XIV**

## **DECLARATORY JUDGMENT – TAX REVENUE INTERRUPTION COVERAGE**

1 Policy's clear and unambiguous terms and have wrongfully and illegally refused to provide  
2 coverage to which Class Members are entitled.

3 223. The Insurers have denied coverage related to COVID-19 on a uniform and class  
4 wide basis, without individual bases or investigations, such that the Court can render declaratory  
5 judgment irrespective of whether members of the Class have filed a claim.

6 224. An actual case or controversy exists regarding Class Members' rights and the  
7 Insurers' obligations under the Policy to reimburse the full amount of Tax Revenue Interruption  
8 losses incurred by the Class in connection with interruption of their businesses stemming from the  
9 COVID-19 pandemic.

10 225. Pursuant to California Code of Civil Procedure section 1060 *et seq.*, Plaintiffs seek  
11 a declaratory judgment from this Court declaring the following:

- 12 i. Class Members' Tax Revenue Interruption losses incurred in connection with the  
13 Closure Orders and the interruption of their businesses stemming from the COVID-  
14 19 pandemic are insured losses under the Policy; and
- 15 ii. The Insurers are obligated to pay the Class for the full amount of the Tax Revenue  
16 Interruption losses incurred in connection with the Closure Orders during the period  
17 of restoration and the interruption of their businesses stemming from the COVID-  
18 19 pandemic.

## 19 **VII. REQUEST FOR RELIEF**

20 WHEREFORE, Plaintiffs, individually and on behalf of all Class Members, respectfully  
21 requests that the Court enter judgment in their favor and against Defendants as follows:

22 a. Entering an order certifying the proposed nationwide Class, as requested herein,  
23 designating Plaintiffs as Class representatives, and appointing Plaintiffs' undersigned attorneys as  
24 Counsel for the Class;

25 b. Entering an interim order attaching any layer of coverage that is subject to an  
26 aggregate limit that is shared among the Class members under the TPIP, such that one or more of  
27 Defendants may not pay the loss of one Class member to the detriment of other Class members;

28

c. Entering judgment on Counts I-VII in favor of the Class and awarding damages for breach of contract in an amount to be determined at trial;

d. Entering declaratory judgments on Counts VIII-XIV in favor of the Class, as follows;

i. Class Members' Protection and Preservation of Property, Business Interruption, Extra Expense, Ingress/Egress, Interruption by Civil Authority, Contingent Time Element and Tax Revenue Interruption losses incurred in connection with the Closure Orders and the interruption of their businesses stemming from the COVID-19 pandemic are insured losses under the Policy; and

ii. Defendants are obligated to pay for the foregoing losses incurred and to be incurred by the Class related to COVID-19, the Closure Orders and the interruption of their businesses stemming from the COVID-19 pandemic;

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

f. Ordering Defendants to pay attorneys' fees and costs of suit;

g. Ordering Defendants to pay multiple damages where required under state law; and

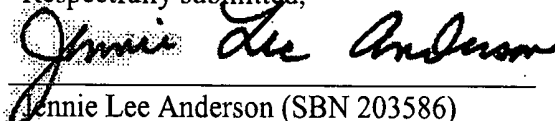
h. Ordering such other and further relief as may be just and proper.

#### VIII. JURY DEMAND

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

Dated: November 11, 2020

Respectfully submitted,

  
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