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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF LOS ANGELES**

13 UNITED TALENT AGENCY, LLC,

14 Plaintiff,

15 v.

16 VIGILANT INSURANCE COMPANY;
17 FEDERAL INSURANCE COMPANY; and
DOES 1 through 10,

18 Defendants.

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Case No. **20STCV43745**

COMPLAINT FOR:

- 1. BREACH OF CONTRACT;
- 2. TORTIOUS BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; AND
- 3. DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

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Plaintiff United Talent Agency, LLC (“UTA”) brings this action against defendants Vigilant Insurance Company (“Vigilant”) and Federal Insurance Company (“Federal”) and alleges as follows:

NATURE OF THE ACTION

1. UTA is one of the largest talent agencies in the world. It represents actors, directors, producers, recording artists, writers, and other professionals in a variety of industries, including film, television, digital media, publishing, music, and video games.

PASICH^{LLP}

1 2. Like thousands of other businesses, UTA was forced to suspend its operations, and
2 had the use and functionality of its premises, as well as those premises upon which it relies,
3 substantially impaired due to SARS-CoV-2, COVID-19, the subsequent actions and orders of state
4 and local civil authorities, guidance from the Centers for Disease Control and Prevention, and the
5 need to mitigate its losses and damage. Additionally, UTA suffered losses as a result of cancelled
6 live events, as well as cancelled television and motion picture productions. As a result, UTA has
7 suffered, and continues to suffer, substantial financial losses, including lost profits, lost
8 commissions, and lost business opportunities.

9 3. When UTA turned to Vigilant, its commercial property and business interruption
10 insurer, UTA reasonably expected Vigilant to afford coverage for UTA’s financial losses.
11 However, instead of honoring its promises to UTA, Vigilant has wrongfully withheld the policy
12 benefits that UTA is entitled to receive—and that it needs to weather the circumstances associated
13 with the spread of SARS-CoV-2 and actions to “flatten the curve,” rebound from their financial
14 losses, and continue operating as productive members of California’s economy.

15 4. UTA is informed and believes, and on that basis alleges, that Federal also disputes
16 that UTA is entitled to any benefits under the policy that Federal issued to UTA. The Federal
17 policy is substantially similar to the policy issued by Vigilant and both insurers are part of the
18 Chubb group of insurance companies, which has adopted a universal practice of denying coverage
19 for all business interruption claims associated with SARS-CoV-2, Covid-19, and subsequent
20 events.

21 5. There is no merit to Vigilant’s and Federal’s position that their policies do not
22 insure the losses that UTA has suffered and is suffering. In selling their broad, “all risk” property
23 policies to UTA, Vigilant and Federal promised to insure financial losses attributable to “direct
24 physical loss or damage” to property unless an exclusion conspicuously, plainly and clearly
25 applies to bar coverage. Vigilant and Federal have known for decades that the phrase “direct
26 physical loss or damage to property” extends to damage or loss caused by the presence of a
27 hazardous substance in the airspace inside a building or on property, and losses that result when
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1 the use or function of property is substantially impaired, even if the property has not been
2 physically altered.

3 6. In fact, as Vigilant and Federal have long known, and California courts have
4 recognized since at least 1962, even if a building or structure is not physically or structurally
5 altered it will be deemed, for insurance purposes, to have suffered a “direct physical loss or
6 damage to property” if its function or purpose is substantially impaired.

7 7. Vigilant and Federal also have known for more than a decade that they and their
8 insureds face a substantial risk of loss from viruses and pandemics and often have included an
9 exclusion in their policies to limit or bar coverage for such losses. Indeed, the insurance industry
10 created a standard-form “virus or bacteria” exclusion in 2006 in an attempt to limit insurance for
11 such losses. However, in selling their policies to UTA, Vigilant and Federal decided not to
12 include any such exclusion. In fact, Vigilant and Federal did nothing in selling their policies to
13 limit their liability for virus- or pandemic-associated risks. Nor did Vigilant and Federal warn
14 UTA that even though they did not include a virus or pandemic exclusion, they would interpret
15 their policies as if they contained such an exclusion.

16 8. By this lawsuit, UTA seeks damages to compensate it for Vigilant’s contractual
17 breaches and bad faith conduct. It also seeks declaratory relief confirming that its losses are
18 covered.

19 THE PARTIES

20 9. UTA is a Delaware limited liability company with its principal place of business in
21 Beverly Hills, California. Its members include citizens of New York and New Jersey.

22 10. UTA is informed and believes, and on that basis alleges, that Vigilant is a New
23 York corporation, with its principal place of business in Whitehouse Station, New Jersey. At all
24 times material hereto, Vigilant was licensed to transact, and did transact, business in California
25 and the County of Los Angeles.

26 11. UTA is informed and believes, and on that basis alleges, that Federal is an Indiana
27 corporation, with its principal place of business in Whitehouse Station, New Jersey. At all times
28

1 material hereto, Federal was licensed to transact, and did transact, business in California and the
2 County of Los Angeles.

3 12. UTA is ignorant of the true names and capacities, whether individual, associate,
4 partnership, corporate, or otherwise, of the defendants fictitiously designated herein as Does 1
5 through 10, and therefore sues those defendants by these fictitious names. UTA will seek leave of
6 court to amend this complaint when the true names and capacities of these fictitiously designated
7 defendants have been ascertained. UTA is informed and believes, and on that basis alleges, that
8 Does 1 through 10, in some way unknown to UTA, have underwritten or provided insurance
9 coverage to it, or are otherwise responsible for losses alleged herein, and that Does 1 through 10
10 are authorized to, and do, transact insurance business in the State of California and the County of
11 Los Angeles.

12 13. UTA is informed and believes, and on that basis alleges, that Vigilant and Federal
13 are members of the Chubb group of insurance companies. UTA is informed and believes, and on
14 that basis alleges, that Vigilant, Federal, and the other Chubb companies are, and hold themselves
15 out as being, extremely sophisticated and knowledgeable in insuring against property and business
16 interruption losses and in investigating the risks they are insuring. UTA is informed and believes,
17 and on that basis alleges, that Vigilant, Federal, and the other Chubb companies participate in a
18 wide range of first-party property insurance programs and hold themselves out as being
19 knowledgeable, experienced, and reliable, and willing to insure, and capable of insuring,
20 substantial property and business interruption losses.

21 14. Vigilant, Federal, and other members of the Chubb group of insurance companies
22 operate under the name “Chubb” and make various representations as “Chubb” on behalf of
23 themselves and all members of the Chubb group of companies. Together as Chubb, they operate a
24 website located at <https://www.chubb.com/us-en/>. They use this website to market their insurance
25 products, to represent the nature of their insurance products, their policy underwriting, and their
26 claims handling, and to represent the quality of insurance and service their customers will get if
27 they do business with a Chubb company. In essence, Vigilant, Federal, and the other members of
28 the Chubb group of insurance companies use this website and their advertising to speak as a single

1 voice, boasting of their combined capabilities and strong financial foundation. UTA is informed
2 and believes, and on that basis alleges, that when “Chubb” says things through its website, through
3 its advertising, and through its statements, including annual reports and other financial statements,
4 it is speaking on behalf of, and is authorized to speak on behalf of, its member companies,
5 including Vigilant and Federal.

6 15. Chubb asks on its website, “How is Chubb different?” It responds as follows:

7 We don’t just process claims, we make things right.

8 We hope you never need to file a claim with us. But if you do,
9 that’s our opportunity to show you what “craftsmanship” means in
10 service to you. It means a quick response when you need it most. It
11 means Chubb people working with empathy, integrity and our
12 legendary attention to detail to make you whole. It means we honor
13 the promises we’ve made to you. Your loved ones, your employees,
14 your home, your business reputation—these things matter. These
15 things are personal, for you and for us.

16 We’re here to help.¹

17 16. Chubb also long has represented to the public, “If being treated fairly and paid
18 quickly are important to your clients when they have a loss, you want Chubb. When your clients
19 insure with Chubb, they’re buying *real* insurance.”²

20 17. Chubb also represents on its website:

21 The insurance claims process can sometimes be, well, a process. At
22 Chubb, it’s different. That’s because we’re not just in the insurance
23 business, we’re in the people business. Our experienced claims
24 specialists are relentless about every detail in the most personal way
25 possible. Whether you have a business, homeowners or auto policy,
26 it’s our policy to make your life easier. . . . If a solution is possible,
27 we’ll find a way to make it happen.”³

28 18. Chubb claims to specifically appreciate and understand that “[t]he risks faced by
entertainment industry companies can be unique and vary widely. Chubb offers customized
coverage for property . . . to support your risk management strategy.”⁴

¹ <https://www.chubb.com/us-en/claims/claims-difference.aspx>.

² Chubb Ad, *Business Insurance*, at 11 (Apr. 4, 2008).

³ <https://www.chubb.com/us-en/claims/>.

⁴ <https://www.chubb.com/us-en/business-insurance/entertainment.aspx>.

1 19. Chubb also proclaims as follows with respect to SARS-CoV-2 and COVID-19:

2 Our hearts go out to those affected by the COVID-19 pandemic. We
3 have been – and stand ready to continue – supporting our clients,
4 distribution partners and communities.⁵

4 20. Chubb also states:

5 **We're here for you —**

6 **Financially** – Chubb has the financial strength and resources to
7 support our policies and the financial capacity to pay covered claims
8 even in these uncertain times.

8 **Operationally** – All of our claims networks and supporting systems
9 are fully operational and all Chubb employees can access these
10 systems from home.

10 **Resourcefully** – We know we will face unanticipated challenges,
11 but Chubb is committed to providing you with the high level of
12 claims service and responsiveness that you expect, and we will do
13 what is feasible to ensure that continues, all in compliance with the
14 fast-changing laws, rules and regulations. We plan for the
15 unexpected and remain agile and adaptable; including using
16 alternative means of adjusting claims as needed and feasible.

14 **While we are in a time of unprecedented uncertainty, Chubb is
15 well prepared and will be there for you, as always.**⁶

16 21. Chubb also states on behalf of Vigilant, Federal, and its other member companies:

17 **Doing our part**

18 Chubb takes pride in our continuing commitment to our clients.⁷

19 Chubb echoed these sentiments in a news release in April 2020, stating:

20 “We are committed to supporting people, business and communities
21 most impacted by this global crisis,” said Evan G. Greenberg,
22 Chairman and Chief Executive Officer.⁸

26 ⁵ <https://www.chubb.com/microsites/covid19-resource-center/index.aspx>.

27 ⁶ <https://www.chubb.com/microsites/covid19-resource-center/claims.aspx>.

27 ⁷ *Id.*

28 ⁸ <https://news.na.chubb.com/2020-04-05-Chubb-Commits-10-Million-to-Pandemic-Relief-Efforts-Globally-Company-Pledges-No-Covid-19-Layoffs>.

THE COVID-19 PANDEMIC AND
ENSUING CIVIL AUTHORITY ORDERS

1
2
3 22. COVID-19 is a disease caused by a recently discovered virus known as SARS-
4 CoV-2. The World Health Organization has named the virus and a resulting disease. As the
5 World Health Organization has stated:

6 Official names have been announced for the virus responsible for
7 COVID-19 (previously known as “2019 novel coronavirus”) and the
8 disease it causes. The official names are:

8 **Disease**

9 coronavirus disease
10 (COVID-19)

11 **Virus**

12 severe acute respiratory syndrome coronavirus 2
13 (SARS-CoV-2).⁹ .

14 23. The World Health Organization also has provided a straight-forward example of
15 the distinction between a virus and a disease:

16 Viruses, and the diseases they cause, often have different names.
17 For example, HIV is the virus that causes AIDS. People often know
18 the name of a disease, such as measles, but not the name of the virus
19 that causes it (rubeola). There are different processes, and purposes,
20 for naming viruses and diseases.¹⁰

21 24. The first reported cases of COVID-19 in humans were diagnosed in or around
22 December 2019 in Wuhan, the capital city of the Hubei Province in China. Since then, SARS-
23 CoV-2 and COVID-19 have spread throughout the world, prompting the World Health
24 Organization to declare a global pandemic.
25

26 25. As explained by the World Health Organization,

27 [p]eople can catch COVID-19 from others who have the [SARS-
28 CoV-2] virus. The disease spreads primarily from person to person
29 through small droplets from the nose or mouth, which are expelled
30 when a person with COVID-19 coughs, sneezes, or speaks. These
31 droplets are relatively heavy, do not travel far and quickly sink to
32 the ground. People can catch COVID-19 if they breathe in these
33 droplets from a person infected with the virus. . . . These droplets

⁹ [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it).

¹⁰ *Id.*

1 can land on objects and surfaces around the person such as tables,
2 doorknobs and handrails. People can become infected-by touching
these objects or surfaces, then touching their eyes, nose or mouth.¹¹

3 26. Aerosolized droplets exhaled by normal breathing can travel significant distances
4 and stay suspended in air for hours until gravity ultimately forces them to the nearest surface.
5 Studies suggest that the SARS-CoV-2 virus can remain on surfaces for at least 28 days.¹²

6 27. Since January 1, 2020, there have been more than 52,000,000 confirmed cases of
7 COVID-19 throughout the world, more than 1,200,000 of which have resulted in deaths as of the
8 date of filing of this Complaint.¹³ There have been more than 10,200,000 confirmed cases of
9 COVID-19 in the United States, more than 240,000 of which have resulted in deaths.¹⁴ Moreover,
10 due in part to the initial absence of available tests, it has been reported that at least in the United
11 States, the number of people infected with SARS-CoV-2 may be ten times higher than reported.¹⁵

12 28. In March 2020, in response to the pandemic and the worldwide spread of SARS-
13 CoV-2, civil authorities throughout the United States began issuing “stay home” and “shelter in
14 place” quarantine orders and requiring the suspension of non-essential business operations
15 (collectively, “Closure Orders”).

16 29. For example, in New York, Governor Cuomo issued Executive Order No. 202 on
17 March 7, 2020, Declaring a Disaster Emergency in the State of New York. On March 12, 2020,
18 Governor Cuomo issued Executive Order 202.1, which required large gatherings and events to be
19 cancelled or postponed if they had anticipated attendance in excess of 500 people.¹⁶ On March 16,

21 ¹¹ How does COVID-19 spread?,” World Health Organization (April 17, 2020), available at
22 [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-
a-detail/q-a-coronaviruses](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses).

23 ¹² See, e.g., CNBC, *Virus that causes Covid-19 can survive for 28 days on common surfaces,*
24 *research says* (Oct. 12, 2020), [https://www.cnbc.com/2020/10/12/virus-that-causes-covid-19-can-
survive-for-28-days-on-surfaces-research-says.html](https://www.cnbc.com/2020/10/12/virus-that-causes-covid-19-can-survive-for-28-days-on-surfaces-research-says.html); Shane Riddell, Sarah Goldie, Andrew Hill,
25 Debbie Eagles, & Trevor W. Drew, *The effect of temperature on persistence of SARS-CoV-2 on
common surfaces*, 17 *Virology J.*, Art. No. 145 (2020),
<https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7>.

26 ¹³ <https://covid19.who.int/>.

¹⁴ *Id.*

27 ¹⁵ Fiona P. Havers, Carrie Reed, Travis Lim, et. al, *Seroprevalence of Antibodies to SARS-CoV-2*
28 *in 10 Sites in the United States, March 23-May 12, 2020*, *JAMA Internal Medicine* (July 21,
2020), <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2768834>.

¹⁶ Section 8.202.1. Executive Order No. 202.1: Continuing Temporary Suspension and

1 2020, Governor Cuomo issued Executive Order 202.3, which reduced the anticipated attendance
2 threshold to 50 people.¹⁷

3 30. On March 16, 2020, New York City Mayor de Blasio issued Emergency Executive
4 Order No. 100 in which he declared that “the virus physically is causing property loss and
5 damage.” In that same Executive Order, the Mayor of New York City directed that “all
6 entertainment venues, including those with seating capacity below 500, are hereby closed effective
7 Monday, March 16, 2020 at 8:00 PM.”¹⁸

8 31. In California, Governor Gavin Newsom issued Executive Order N-25-20, ordering
9 that: “All residents are to heed any orders and guidance of state and local public health officials,
10 including but not limited to the imposition of social distancing measures, to control the spread of
11 COVID-19.” Executive Order N-25-20 took effect on March 12, 2020.¹⁹

12 32. On March 19, 2020, the State of California issued an Order of the State Public
13 Health Officer, which required all individuals living in the state to stay at home or at their place of
14 residence “except as needed to maintain continuity of operations of the federal critical
15 infrastructure sectors.” On that same date, California Governor Newsom issued Executive Order
16 N-33-20,²⁰ expressly requiring California residents to follow the March 19, 2020, Order of the
17 State Public Health Officer, and incorporating by reference California Government Code section
18 8665. Section 8665 provides:

19 Any person . . . who refuses or willfully neglects to obey any lawful
20 order . . . issued as provided in this chapter, shall be guilty of a
21 misdemeanor and, upon conviction thereof, shall be punishable by a
22 fine of not to exceed one thousand dollars (\$1,000) or by

23 <https://www.governor.ny.gov/news/no-2021-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

24 ¹⁷ Section 8.202.3. Executive Order No. 202.3: Continuing Temporary Suspension and
25 Modification of Laws Relating to the Disaster Emergency, 9 NYCRR 8.202.3, March 16, 2020.
<https://www.governor.ny.gov/news/no-2023-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

26 ¹⁸ <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-100.pdf>

27 ¹⁹ Executive Order Further Enhancing State and Local Government’s Ability to Respond to
28 COVID-19 Pandemic, 2019 CA EO 25-20, March 12, 2020. <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.12.20-EO-N-25-20-COVID-19.pdf>

²⁰ Stay at Home Order, 2019 CA EO33-20, March 19, 2020.
<https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>

1 imprisonment for not to exceed six months or by both such fine and
2 imprisonment.

3 33. On March 15, 2020, Los Angeles Mayor Eric Garcetti issued a public order
4 prohibiting all dining in restaurants, prohibiting other large gatherings, and strongly discouraging
5 religious gatherings.²¹

6 34. On March 16, 2020, the County of Los Angeles Department of Public Health
7 issued an order prohibiting gatherings of greater than 50 people.²²

8 35. On March 19, 2020, the County of Los Angeles amended its prior order and
9 mandated the closure of all businesses operating in the County, subject to certain exceptions for
10 “essential” businesses and business activities. The County of Los Angeles stated that this order
11 was issued in direct response to the “continued rapid spread of COVID-19 and the need to protect
12 the most vulnerable members of our community.” It added that the order was “based upon
13 scientific evidence and best practices, as currently known and available, to protect members of the
14 public from avoidable risk of serious illness and death resulting from the spread of COVID-19 . . .
15 . . .” The March 19, 2020, Order further recognized that, as of that date, there were “at least 231
16 cases of COVID-19 and 2 deaths reported in Los Angeles County,” noting that “[t]here remains a
17 strong likelihood of significant and increasing number of suspected cases of community
18 transmission.”²³

19 36. Also on March 19, 2020, Mayor Garcetti issued a Public Order Under City of Los
20 Angeles Emergency Authority with the subject “Safer at Home.” Mayor Garcetti’s Order stated
21 that “all persons living within the City of Los Angeles are hereby ordered to remain in their
22 homes” and “all businesses within the City of Los Angeles are ordered to cease operations that
23

24 ²¹ Public Order Under City of Los Angeles Emergency Authority, New City Measures to Address
25 COVID-19, March 15, 2020.
<https://www.lamayor.org/sites/g/files/wph446/f/article/files/Mayor%20Garcetti%20Emergency%20Order%20-%20March%2015%202020.pdf>

26 ²² Los Angeles County Department of Public Health Temporary Prohibition of Group Events and
27 Gatherings, Required Social Distancing Measures, and Closure of Certain Businesses, March 16,
2020.
<http://www.publichealth.lacounty.gov/phcommon/public/media/mediapubhpdetail.cfm?prid=2269>

28 ²³ http://file.lacounty.gov/SDSInter/lac/1070029_COVID-19_SaferAtHome_HealthOfficerOrder_20200319_Signed.pdf

1 require in-person attendance by workers at a workplace . . .” Mayor Garcetti’s Order included
2 certain exceptions for “essential” businesses and business activities.²⁴

3 37. On March 21, 2020, the County of Los Angeles Department of Public Health
4 amended and superseded its March 16 and 19, 2020 Orders to “comply with Executive Order N-
5 33-20 issued by Governor Gavin Newsom.”²⁵ This March 21 Order “specifically requires all
6 businesses to cease in-person operations and close to the public, unless the business is defined as
7 an Essential Business by this Order.”

8 38. On April 1, 2020, Mayor Garcetti further revised his March 19, 2020, Order.²⁶
9 Mayor Garcetti’s April 1, 2020, Order reiterated that all Los Angeles residents were required to
10 stay home and mandated the continued closure of non-essential in-person businesses. The April 1,
11 2020, Order explicitly recognizes that the SARS-CoV-2 virus can spread easily from person to
12 person and “it is physically causing property loss or damage due to its tendency to attach to
13 surfaces for prolonged periods of time.”

14 39. States, municipalities, and other civil authorities issued similar orders across the
15 United States.²⁷ In relevant part, the Closure Orders all required citizens to stay at home,
16 prohibited large gatherings, and mandated the continued closure of all non-essential in-person
17 businesses.

18 **THE VIGILANT AND FEDERAL POLICIES**

19 40. Vigilant and Federal each issued UTA a Customarq Series Entertainment Insurance
20 Program, which includes a Property Insurance Section and a Liability Insurance Section. Vigilant
21

22 ²⁴ Public Order Under City of Los Angeles Emergency Authority, Safer At Home, March 19,
2020.

23 [https://www.lamayor.org/sites/g/files/wph446/f/page/file/20200527%20Mayor%20Public%20Ord
24 \[er%20SAFER%20AT%20HOME%20ORDER%202020.03.19%20%28REV%202020.05.27%29.
pdf\]\(https://www.lamayor.org/sites/g/files/wph446/f/page/file/20200527%20Mayor%20Public%20Order%20SAFER%20AT%20HOME%20ORDER%202020.03.19%20%28REV%202020.05.27%29.pdf\)](https://www.lamayor.org/sites/g/files/wph446/f/page/file/20200527%20Mayor%20Public%20Order%20SAFER%20AT%20HOME%20ORDER%202020.03.19%20%28REV%202020.05.27%29.pdf)

25 ²⁵ Safer at Home Order for Control of COVID-19, County of Los Angeles Department of Public
Health, Order of the Health Officer, March 21, 2020.

26 <https://www.westcovina.org/home/showdocument?id=18058>

27 ²⁶ Public Order Under City of Los Angeles Emergency Authority, Safer At Home, March 19,2020
(Revised April 1, 2020).

28 [https://www.lamayor.org/sites/g/files/wph446/f/page/file/SAFER%20AT%20HOME%20ORDER
%202020.03.19%20%28REV%202020.04.01%29.pdf](https://www.lamayor.org/sites/g/files/wph446/f/page/file/SAFER%20AT%20HOME%20ORDER%202020.03.19%20%28REV%202020.04.01%29.pdf)

29 ²⁷ See, e.g, The Council of State Governments, COVID-19 Resources for State Leaders,
<https://web.csg.org/covid19/executive-orders/>.

1 sold the first policy for the period of March 18, 2019, to March 18, 2020 (the “Vigilant Policy”).
2 Federal sold the second policy for the period of March 18, 2020, to March 18, 2021 (the “Federal
3 Policy”) (collectively, the “Policies”). True and correct copies of the Vigilant Policy and the
4 Federal Policy are attached hereto as Exhibits A and B, respectively, and incorporated herein by
5 reference. Before selling the Policies to UTA, Vigilant and Federal engaged in, or had reasonable
6 opportunities to engage in, extensive underwriting investigation, and became familiar and
7 knowledgeable regarding the nature and scope of UTA’s business and the nature of the risks that it
8 was insuring against.

9 41. The Property Insurance Section of the Policies is an “all risk” property insurance
10 policy—that is, a policy that covers all risks of physical loss and damage except those plainly,
11 clearly, conspicuously, and expressly excluded. Unlike “enumerated perils” property insurance
12 policies, which cover only certain causes of loss, “all risk” property insurance policies provide
13 broad coverage for unprecedented and unanticipated risks of loss.

14 42. The Policies are comprised of a number of forms and endorsements that define the
15 scope of coverage. Like most commercial property insurance policies, the Policies insure not only
16 against physical loss or damage to covered property, but also for resulting economic and financial
17 losses. This coverage is referred to in the Policy as “Business Income With Extra Expense”
18 coverage. *See* Exs. A & B, Property Insurance – Business Income With Extra Expense.

19 43. The Policies’ Business Income With Extra Expense coverage is designed,
20 understood, stated, and intended to cover UTA for economic losses, including losses from the
21 interruption and/or reduction of its business, suffered as a result of “direct physical loss or
22 damage” to covered property. Under this coverage, Vigilant and Federal agreed to pay for UTA’s
23 actual loss of Business Income sustained due to the “impairment” of UTA’s operations. *Id.*

24 44. The “Extra Expense” portion of this coverage grant is designed, understood, stated,
25 and intended to cover UTA for losses from “the actual or potential impairment” of its
26 “operations.” *Id.*

27 45. Within the Business Income With Extra Expense coverage, the Policies provide an
28 “Additional Coverage” for “Civil Authority,” which obligates Vigilant and Federal to pay UTA’s

1 “**business income** loss” and “**extra expense**” “incur[red] due to the actual impairment of [its]
2 **operations**, directly caused by the prohibition of access to: [its] premises; or a **dependent**
3 **business premises**, by a civil authority.” *Id.* The “prohibition of access by a civil authority must
4 be the direct result of direct physical loss or damage to property away from such premises or such
5 **dependent business premises** by a **covered peril**, provided such property is within: one mile . . .
6 from such premises or **dependent business premises**” *Id.*

7 46. The Policies also provide an “Additional Coverage” for “Dependent Business
8 Premises,” which obligates Vigilant and Federal to pay UTA’s “**business income** loss . . . due to
9 the actual impairment of [its] **operations**” and its “**extra expense** . . . due to the actual or potential
10 impairment of [its] **operations**.” *Id.* The “actual or potential impairment of **operations** must be
11 caused by or result from direct physical loss or damage by a **covered peril** to **property** . . . at a
12 **dependent business premises**.” *Id.*

13 47. The Policies define “dependent business premises” as premises operated by others
14 on whom UTA depends to “deliver materials or services to you or to others for your account
15 (contributing premises); [and] accept your products or services (recipient premises)” *Id.*

16 48. Critically, unlike many policies that provide Business Income coverage, the
17 Policies do not include, and are not subject to, any exclusion for losses caused by or resulting from
18 the spread of viruses, communicable diseases, or pandemics. Because losses caused by or
19 resulting from viruses, communicable diseases, and pandemics are not expressly excluded under
20 the Policies, they are, as a matter of law and pursuant to decades of insurance industry custom and
21 practice, Covered Perils.

22 49. UTA is informed and believes, and on that basis alleges, that when Vigilant and
23 Federal sold UTA the Policies they knew that there were standard-form exclusions available in the
24 insurance market place that could exclude coverage for losses caused by viruses and pandemics
25 and that other insurers had included such exclusions in policies they sold.

26 50. Additionally, well before Vigilant and Federal sold UTA the Policies, they knew of
27 the possibility of a pandemic and the potential losses that could be associated with a pandemic. In
28 fact, Vigilant and Federal have long known that if there were a pandemic, they could be obligated

1 to pay substantial amounts under their policies. For years, including for the fiscal year ended
2 December 31, 2019, Chubb stated as follows in its Form 10-K filed with the United States
3 Securities and Exchange Commission:

4 We have substantial exposure to losses resulting from . . .
5 catastrophic events, *including pandemics*.²⁸

6 51. Chubb further stated in this annual filing that “catastrophes” “including a global or
7 other wide-impact pandemic” may result in “substantial” “losses.” Chubb routinely represented in
8 this annual filing that the “forward-looking” “risks” it contemplated included “infection rates and
9 severity of pandemics and their effects on our business operations and claim activity.”

10 52. Thus, UTA is informed and believes, and on that basis alleges, that Vigilant and
11 Federal knew that the policies they were selling would cover losses associated with pandemics. In
12 fact, as these disclosures show, instead of warning their insureds, including UTA, that their
13 policies would not cover pandemic-associated losses, Vigilant, Federal, and other members of the
14 Chubb group of insurance companies warned the public and their shareholders that the amounts
15 they might have to pay for such losses could affect their financial condition.

16 53. There were many other publicly available reports about the risks of pandemics and
17 what insurers should do in the months and years before Vigilant and Federal sold UTA the
18 Policies.²⁹

19 54. One insurance industry repository demonstrates the proverbial “tip of the iceberg”
20 about how much information was available to insurers regarding the risks of pandemics. The
21 Insurance Library Association of Boston, founded in 1887, describes itself as “the leading
22 resource for and provider of literature, information services, and quality professional education for
23 the insurance industry and related interests.”³⁰ The Association states on its website:

24

25

²⁸ Chubb Limited, 2019 Form 10-K, at 19 (emphasis added).

26 ²⁹ See, e.g., “What the 1918 Flu Pandemic Can Teach Today’s Insurers,” *AIR* (Mar. 29, 2018),
27 [https://www.air-worldwide.com/publications/air-currents/2018/What-the-1918-Flu-Pandemic-
Can-Teach-Today-s-Insurers/](https://www.air-worldwide.com/publications/air-currents/2018/What-the-1918-Flu-Pandemic-Can-Teach-Today-s-Insurers/) (“Even with today’s technology, a modern severe pandemic would
28 cause substantive direct financial losses to the insurance community. In addition, indirect losses
would be severe, most notably on the asset side of the balance sheet.”).

³⁰ <http://insurancelibrary.org/about-us/>.

1 The past 20 years has seen the rise of a number of
2 pandemics. Slate recently published an article on what has been
3 learned about treating them in that time. We thought it might be apt
4 for us to take a look back and see what the insurance industry has
5 learned as well.³¹

6 The Association lists more than 15 publications available to the insurance industry since at least
7 early 2007, long *before* Vigilant and Federal sold UTA the Policies.

8 55. Thus, even though Vigilant and Federal were aware of the massive losses that its
9 insureds, including UTA, could face from a virus-related pandemic, they still sold UTA the
10 Policies without any potentially applicable exclusion.

11 **VIGILANT'S BREACHES AND BAD FAITH CONDUCT**

12 56. UTA has sustained covered Business Income and Extra Expense losses as defined
13 in the Policies. These Business Income and Extra Expense losses were sustained due to the
14 "impairment" of UTA's business operations as a result "direct physical loss or damage" to insured
15 premises and "dependent business premises." These Business Income and Extra Expense losses
16 were also caused by the Closure Orders issued throughout the United States, each of which
17 constitute a "prohibition of access by a civil authority" as that phrase is used in the Policies.

18 57. The Closure Orders were issued due to the presence of SARS-CoV-2 and the desire
19 to avoid the spread of SARS-CoV-2 and COVID-19, the disease that it causes. Because the
20 SARS-CoV-2 virus can adhere to surfaces of property for at least 28 days and can linger in the air
21 in buildings for several hours, the presence of SARS-CoV-2 on or around property amounts to
22 "direct physical loss or damage to property" as that phrase is used in the Policies. In fact, given
23 the manner in which SARS-CoV-2 lingers in the air and on surfaces and its manner of
24 transmission, and the desire to "flatten the curve," UTA's premises and the premises upon which it
25 depends were and are not capable of performing their essential functions. Accordingly, the
26 Closure Orders substantially impaired the premises, constituting "direct physical loss or damage."
27 They also amount to the "prohibition of access by a civil authority" that is "the direct result of
28

³¹ <http://insurancelibrary.org/pandemics-and-insurance/>.

1 direct physical loss or damage to property away from such premises” as required to trigger Civil
2 Authority coverage under the Policies.

3 58. SARS-CoV-2 was present on and in the vicinity of UTA’s premises that were
4 insured under the Policies, as well as on and in the vicinity of premises upon which UTA depends
5 to deliver and accept services. At least 13 UTA employees, five spouses, and some of their
6 dependents have tested positive for COVID-19. As a result of the presence of SARS-CoV-2 and
7 the Closure Orders, UTA suffered losses from cancelled live events—including cancelled tours by
8 Guns N’ Roses, Post Malone, Toby Keith, Pitbull, Burna Boy, Monsta X, and 3 Doors Down—
9 and cancelled television and motion picture production. UTA currently estimates that its financial
10 losses, including lost profits, lost commissions, and lost business opportunities, approximate
11 \$150,000,000, and are continuing.

12 59. Although UTA has sustained Business Income and Extra Expense losses falling
13 squarely within their Policies’ coverages, Vigilant has failed and refused to acknowledge coverage
14 for UTA’s losses.

15 60. Worse yet, Vigilant and Federal predetermined their coverage decisions for
16 business interruption claims relating to SARS-CoV-2, Covid-19, and subsequent events in March,
17 without any investigation into their insureds’ claims. The Chubb website contains a “Final –
18 March 26, 2020” notice stating in part:

19 Business interruption insurance generally covers losses to your
20 business’ income that result from disruption of your business. The
21 disruption must be caused by physical loss or damage to your
22 property by a ‘covered peril.’ The presence of an infectious agent or
23 communicable disease at a location where there is covered property
24 generally will not mean that property has suffered “physical loss or
25 damage” under your policy. Generally, “physical loss or damage”
26 means that the physical structure or physical characteristics of the
27 property have been altered by a “covered peril”. Loss of use, or
28 diminished value of property that has not been physically altered
will not be considered “physical loss or damage.”³²

25 61. Vigilant and Federal also took the same position through their trade association, the
26 American Property Casualty Insurance Association, in a letter to the United States House of

27
28 ³² https://www.chubb.com/microsites/covid19-resource-center/_assets/pdf/covid-commercial-property-policyholder-notice-4-1-2020.pdf.

1 Representatives Committee on Business. The Association wrote on March 18, 2020, stating:
2 “Business interruption policies do not, and were not designed to, provide coverage against
3 communicable diseases such as COVID-19.”³³

4 62. Vigilant was required under California law and insurance industry custom and
5 practice to conduct a thorough investigation of facts that might support UTA’s claim before
6 denying coverage. Notwithstanding its obligations, on May 26, 2020, Vigilant sent UTA a letter
7 with four generic questions about the basis for UTA’s claim. A true and correct copy of this letter
8 is attached hereto as Exhibit D and incorporated by reference.

9 63. On August 28, 2020, UTA sent Vigilant a letter in which it asked if Vigilant was
10 adopting Chubb’s predetermined coverage position for claims relating to SARS-CoV-2, COVID-
11 19, and the subsequent events, and, if so, why Vigilant was asking for information from its insured
12 that it knew was irrelevant to its position. A true and correct copy of UTA’s August 27, 2020,
13 letter, which was sent on August 28, 2020, is attached hereto as Exhibit E and incorporated herein
14 by reference.

15 64. On September 14, 2020, after only a perfunctory “investigation,” Vigilant denied
16 UTA’s claim, incorrectly asserting that it was “unaware of physical loss or damage that would
17 implicate coverage in this matter.” A true and correct copy of Vigilant’s September 14, 2020,
18 denial letter is attached hereto as Exhibit F and incorporated herein by reference. Vigilant took
19 this position notwithstanding the fact that the Closure Orders were issued in response to the
20 presence of SARS-CoV-2 and even though the presence of SARS-CoV-2 on or around property
21 amounts to “direct physical loss or damage” under the governing rules of insurance policy
22 interpretation and California law.

23 65. UTA is informed and believes, and on that basis alleges, that Vigilant denied
24 coverage on this basis even though it has known for decades that many courts have held that the
25

26 _____
27 ³³ March 18, 2020, Letter, American Property Casualty Insurance Association, The Council of
28 Insurance Agents & Brokers, Big Independent Insurance Agents & Brokers of America, and
National Association of Mutual Insurance Companies to House Committee on Small Business. A
true and correct copy of this letter is attached hereto as Exhibit C and incorporated herein by
reference.

1 presence of a hazardous substance in property, including the airspace inside buildings, constitutes
2 property damage and that there may be “direct physical loss” to property even if the property is
3 not structurally damaged. As Vigilant has known, or should have known, the many decisions
4 include the following:

- 5 • *AIU Insurance Co. v. Superior Court*, 51 Cal. 3d 807, 842 (1990): “contamination
6 of the environment satisfies” the requirement of property damage.
- 7 • *Aetna Casualty & Surety Co. v. Pintlar Corp.*, 948 F.2d 1507, 1514 (9th Cir. 1981):
8 “The insurers further concede that contamination of the soil and water by hazardous
9 substances constitutes injury to property An ordinary person would find that
10 the environmental contamination alleged . . . falls within the plain meaning of
11 ‘property damage’ as that term is used in the policies.”
- 12 • *Arbeiter v. Cambridge Mut. Fire Ins. Co.*, 1996 WL 1250616, at *2 (Mass. Super.
13 Ct. Mar. 15, 1996): presence of oil fumes in building constituted “physical loss” to
14 building.
- 15 • *Essex Ins. Co. v. BloomSouth Flooring Corp.*, 562 F.3d 399, 406 (1st Cir. 2009):
16 odor from carpet and adhesive “can constitute physical injury to property.”
- 17 • *Farmers Ins. Co. v. Trutanich*, 123 Or. App. 6, 9-11 (1993): “[T]he odor produced
18 by the methamphetamine lab had infiltrated the house. The cost of removing the
19 odor is a direct physical loss.”
- 20 • *Gregory Packaging, Inc. v. Travelers Prop. Cas. Co.*, 2014 WL 6675934, at *5
21 (D.N.J. Nov. 25, 2014): closure of facility because of accidentally released
22 ammonia; while “structural alteration provides the most obvious sign of physical
23 damage, . . . property can sustain physical loss or damage without experiencing
24 structural alteration.”
- 25 • *Matzner v. Seaco Ins. Co.*, 1998 WL 566658 (Mass. Super. Ct. Aug. 12, 1998):
26 building with unsafe levels of carbon monoxide sustained direct physical loss.
- 27 • *Mellin v. Northern Security Ins. Co.*, 167 N.H. 544, 550-51 (2015): cat urine odor
28 inside condominium constitutes direct physical loss; “‘physical loss’ need not be

1 read to include only tangible changes to the property that can be seen or touched,
 2 but can also encompass changes that are perceived by the sense of smell.” . . . a
 3 property policy insures “physical loss [which] may include not only tangible
 4 changes to the insured property, but also changes that are perceived by the sense of
 5 smell” and may “exist in the absence of structural damage . . . to the insured
 6 property.”

- 7 • *Oregon Shakespeare Festival Ass’n v. Great Am. Ins. Co.*, 2016 WL 3267247, at *9
 8 (D. Ore. June 7, 2016): smoke infiltration in theatre caused direct property loss or
 9 damage by causing the property to be uninhabitable and unusable for its intended
 10 purpose.
- 11 • *Port Authority of New York & New Jersey v. Affiliated FM Ins. Co.*, 311 F.3d 226,
 12 236 (3d Cir. 2002): property sustained a direct physical loss because it was
 13 rendered uninhabitable by the presence of asbestos fibers.
- 14 • *Sentinel Mgmt. Co. v. Aetna Cas. & Sur. Co.*, 1999 WL 540466, at *7 (Minn. Ct.
 15 App. July 27, 1999): “If rental property is contaminated by asbestos fibers and
 16 presents a health hazard to the tenants, its function is seriously impaired.”
- 17 • *Sentinel Mgmt. Co. v. New Hampshire Ins. Co.*, 563 N.W.2d 296, 300 (Minn. Ct.
 18 App. 1997): “Although asbestos contamination does not result in tangible injury to
 19 the physical structure of a building, a building's function may be seriously impaired
 20 or destroyed and the property rendered useless by the presence of contaminants. . . .
 21 Under these circumstances, we must conclude that contamination by asbestos may
 22 constitute a direct, physical loss to property under an all-risk insurance policy.”
- 23 • *Western Fire Ins. Co. v. First Presbyterian Church*, 165 Colo. 34, 39-40 (1968):
 24 direct physical loss when gasoline contaminated church building making it
 25 dangerous to use.

26 66. Because Vigilant long has been licensed to sell insurance to California insureds, it
 27 has known, or should have known, that a California Court of Appeal addressed in 1962—58 years
 28 ago—the question of whether a property insurance policy could cover loss or damage to a

1 structure that had no physical damage or alteration. In *Hughes v. Potomac Insurance Co.*, 199
2 Cal. App. 2d 239 (1962), the insureds' house had been left partially overhanging a cliff after a
3 landslide. The house suffered no physical damage. However, the court rejected the insurer's
4 argument that there was no "direct physical loss." The court explained why, and what an insurer
5 should do if it did not want to cover such losses:

6 Despite the fact that a 'dwelling building' might be rendered
7 completely useless to its owners, [the insurer] would deny that any
8 loss or damage had occurred unless some tangible injury to the
9 physical structure itself could be detected. Common sense requires
10 that a policy should not be so interpreted in the absence of a
11 provision specifically limiting coverage in this manner. [The
12 insureds] correctly point out that a 'dwelling' or 'dwelling building'
13 connotes a place fit for occupancy, a safe place in which to dwell or
14 live. It goes without question that [the insureds'] 'dwelling
15 building' suffered real and severe damage when the soil beneath it
16 slid away and left it overhanging a 30-foot cliff. Until such damage
17 was repaired and the land beneath the building stabilized, the
18 structure could scarcely be considered a 'dwelling building' in the
19 sense that rational persons would be content to reside there.

20 *Id.* at 248-49.

21 67. Given the potential liability that insurers faced under their policies for losses from
22 pandemics, shortly after the outbreak of SARS in 2003, the insurance industry undertook to draft
23 exclusions applicable to losses from viruses and bacteria. In 2006, the Insurance Services Office
24 ("ISO"), the insurance industry's drafting organization, considered the need to draft an exclusion
25 that would bar coverage for losses caused by a virus.³⁴

26 68. On July 6, 2006, ISO prepared a circular as part of its filing with state insurance
27 regulators of a standard exclusion of loss due to viruses and bacteria.³⁵ In that circular, it noted
28 that examples of "viral and bacterial contaminants are rotavirus, SARS, [and] influenza,"

34 "ISO is a non-profit trade association that provides rating, statistical, and actuarial policy forms and related drafting services to approximately 3,000 nationwide property or casualty insurers. Policy forms developed by ISO are approved by its constituent insurance carriers and then submitted to state agencies for review. Most carriers use the basic ISO forms, at least as the starting point for their general liability policies." *Montrose Chem. Corp. v. Admiral Ins. Co.*, 10 Cal. 4th 645,671 n.13 (1995).

35 See ISO Circular, "New Endorsements Filed to Address Exclusion of Loss Due to Virus or Bacteria," (July 6, 2006), <https://www.propertyinsurancecoveragelaw.com/files/2020/03/ISO-Circular-LI-CF-2006-175-Virus.pdf>.

1 observing, “The universe of disease-causing organisms is always in evolution.”³⁶ ISO recognized
2 that viruses could cause property damage, stating:

3 Disease-causing agents may render a product impure (change its
4 quality or substance), or enable the spread of disease by their
5 presence on interior building surfaces or the surfaces of personal
6 property. When disease-causing viral or bacterial contamination
7 occurs, potential claims involve the cost of replacement of property
8 (for example, the milk), cost of decontamination (for example,
9 interior building surfaces), and business interruption (time element)
10 losses.³⁷

11 69. In fact, ISO expressly warned that “the specter of pandemic or hitherto unorthodox
12 transmission of infectious material raises the concern that insurers employing [property] policies
13 may face claims in which there are efforts to expand coverage and to create sources of recovery
14 for such losses, contrary to policy intent.”³⁸ Therefore, ISO introduced a standard-form exclusion
15 that it entitled “Exclusion Of Loss Due To Virus Or Bacteria” (form CP 01 40 07 06 and, in
16 certain jurisdictions, form CP 01 75 07 06).

17 70. Thus, Vigilant, Federal, and other insurers have had a “virus or bacteria” exclusion
18 since 2006 that is approved for use throughout the United States. As one recent article succinctly
19 stated, “Insurers knew the damage a viral pandemic could wreak on businesses. So they excluded
20 coverage.”³⁹

21 71. However, UTA is informed and believes, and on that basis alleges, that even
22 though they knew they could be liable for losses from viruses and pandemics if they did not
23 include an appropriate exclusion in their policies, Vigilant and Federal still sold many policies
24 (including the Policies) without including such an exclusion. Therefore, it should be no surprise to
25 Vigilant and Federal that they would be obligated to pay for losses when they did not include such
26 an exclusion. In fact, in reporting on the financial condition and performance of Vigilant, Federal,

27 ³⁶ *Id.*

28 ³⁷ *Id.*

³⁸ *Id.*

³⁹ Todd Frankel, “Insurers knew the damage a viral pandemic could wreak on businesses. So they excluded coverage,” *Washington Post* (April 2, 2020). This statement might be true for many policies, but it is not true as to the policy here—Vigilant did not exclude coverage for viruses and pandemics.

1 and the other Chubb companies, Chubb Limited warned investors of the potential negative impact
2 on their financial results and condition from this exposure—and did so well before Vigilant and
3 Federal sold the Policies to UTA. For example, Chubb Limited stated the following warning in its
4 2017 Annual Report:

5 **Our results of operations or financial condition could be**
6 **adversely affected by the occurrence of natural and man-made**
7 **disasters.**

8 We have substantial exposure to losses resulting from natural
9 disasters . . . such as . . . catastrophic events, including pandemics.
10 This could impact a variety of our businesses, including our
11 commercial and personal lines Catastrophes can be
12 caused by various events, including . . . natural or man-made
13 disasters, including a global or other wide-impact pandemic
14 The occurrence of claims from catastrophic events could result in
15 substantial volatility in our results of operations or financial
16 condition for any fiscal quarter or year. The historical incidence for
17 events such as . . . pandemics . . . is infrequent and may not be
18 representative of contemporary exposures and risks. . . . [T]he
19 occurrence of one or more catastrophic events could have an adverse
20 effect on our results of operations and financial condition.⁴⁰

21 72. In denying coverage for UTA’s losses, Vigilant also reserved the right to rely on
22 certain exclusions. However, the Policies do not include any exclusions conspicuously, plainly,
23 clearly, and unambiguously barring coverage for losses attributable to viruses, communicable
24 diseases, or pandemics. UTA is informed and believes, and on that basis alleges, that Vigilant and
25 Federal consciously decided not to include in the Policies the 2006 standard-from ISO “virus or
26 bacteria” exclusion or any other exclusion conspicuously, plainly, clearly, and unambiguously
27 barring coverage for losses attributable to viruses, communicable diseases, or pandemics.
28 Therefore, UTA reasonably expected, and was led by Vigilant and Federal to believe, that the
Policies would cover losses such as those associated with the COVID-19 pandemic and the orders
of civil authorities thereafter.

⁴⁰ Chubb Limited, 2017 Annual Report, at 19,
https://s1.q4cdn.com/677769242/files/doc_financials/2018/AGM/Chubb_Limited_2017_Annual_Report.pdf.

1 **FIRST CAUSE OF ACTION**

2 ***(Breach of Contract Against Vigilant)***

3 73. UTA realleges and incorporates by reference paragraphs 1 through 72 above.

4 74. To the extent not waived or otherwise excused, UTA has complied with all terms
5 and conditions precedent contained in the Vigilant Policy. Therefore, UTA is entitled to all
6 benefits of insurance provided by the Vigilant Policy.

7 75. Vigilant breached its duties under the Vigilant Policy by unreasonably stating that
8 UTA sustained no “physical loss or damage” and by denying coverage for all of UTA’s losses.

9 76. As a direct and proximate result of Vigilant’s breaches, UTA has sustained, and
10 continues to sustain, substantial damages for which Vigilant is liable, in amounts to be established
11 at trial. UTA also is entitled to interest on its damages at the legal rate. UTA continues to suffer
12 damages because of Vigilant’s contractual breaches and will seek leave to amend this complaint
13 once it ascertains the full extent of its damages.

14 **SECOND CAUSE OF ACTION**

15 ***(Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing Against Vigilant)***

16 77. UTA realleges and incorporates by reference paragraphs 1 through 72, 74, and 75
17 above.

18 78. Implied in the Vigilant Policy was a covenant that Vigilant would act in good faith
19 and deal fairly with UTA, that Vigilant would do nothing to interfere with the right of UTA to
20 receive benefits due under the Vigilant Policy, and that Vigilant would give at least the same level
21 of consideration to the interests of UTA as it gave to its own interests.

22 79. Vigilant also had a duty under the Vigilant Policy, the law, and insurance industry
23 custom, practice, and standards to conduct a prompt and thorough investigation, including as to all
24 bases that might support UTA’s claims for insurance coverage before reserving rights to deny, and
25 denying, coverage.

26 80. Instead of complying with these duties, Vigilant acted in bad faith by, among other
27 things:

- 1 a. failing to conduct a full and thorough investigation of UTA's claim for
2 insurance coverage and asserting grounds for denying coverage without
3 conducting such investigation;
- 4 b. wrongfully and unreasonably asserting grounds for denying coverage that
5 Vigilant knew, or should have known, are not supported by, and in fact are
6 contrary to, the terms of the Vigilant Policy, the law, insurance industry
7 custom and practice, and the facts;
- 8 c. failing to fully inquire into the bases that might support coverage for UTA's
9 claim;
- 10 d. failing to conduct an adequate investigation of the losses suffered by UTA,
11 and asserting grounds for disputing coverage based on its inadequate
12 investigation;
- 13 e. creating and implementing a course of action to automatically deny
14 coverage for all business interruption claims relating to SARS-CoV-2,
15 COVID-19, and subsequent events;
- 16 f. unreasonably failing and refusing to honor its promises and representations
17 in the Policy it issued to UTA;
- 18 g. giving greater consideration to its own interests than it gave to the interests
19 of UTA; and
- 20 h. otherwise acting as alleged above.

21 81. In breach of the implied covenant of good faith and fair dealing, Vigilant did the
22 things and committed the acts alleged above for the purpose of consciously withholding from
23 UTA the rights and benefits to which it is and are entitled under the Vigilant Policy.

24 82. Vigilant's actions are inconsistent with the reasonable expectations of UTA, are
25 contrary to established industry custom and practice, are contrary to legal requirements, are
26 contrary to the express terms of the Vigilant Policy, and constitute bad faith.

27 83. As a direct and proximate result of Vigilant's actions, UTA has been damaged in an
28 amount exceeding the Court's jurisdictional limits. Also, pursuant to *Brandt v. Superior Court*, 37

1 Cal. 3d 813 (1985), UTA is entitled to recover all attorneys' fees it reasonably incurred, and
2 continues to incur, in the efforts to obtain the benefits due under the Vigilant Policy that Vigilant has
3 withheld, and is withholding, in bad faith. UTA is entitled to interest at the maximum legal rate.

4 84. UTA is informed and believes, and on that basis alleges, that Vigilant, acting
5 through one or more of its officers, directors, or other corporate employees with substantial
6 independent and discretionary authority over significant aspects of its business, performed,
7 authorized, or ratified the bad faith conduct alleged above.

8 85. Vigilant's conduct is despicable and has been done with a conscious disregard of
9 the rights of UTA, constituting oppression, fraud, or malice. Vigilant engaged in a series of acts
10 designed to deny UTA the benefits due under the Vigilant Policy. Specifically, Vigilant, by acting
11 as alleged above, in light of information, facts, and relevant law to the contrary, consciously
12 disregarded UTA's respective rights and forced UTA to incur substantial financial losses, thereby
13 inflicting substantial financial damage on UTA. Vigilant ignored UTA's interests and concerns
14 with the requisite intent to injure within the meaning of California Civil Code section 3294.
15 Therefore, UTA is entitled to recover punitive damages from Vigilant in an amount sufficient to
16 punish and make an example of Vigilant and to deter similar conduct in the future.

17 **THIRD CAUSE OF ACTION**

18 ***(Declaratory Relief Against Vigilant)***

19 86. UTA realleges and incorporates by reference paragraphs 1 through 72 above.

20 87. UTA contends that it is entitled to coverage under the Vigilant Policy for Business
21 Income losses suffered and/or Extra Expense incurred as a result of the presence of SARS-CoV-2
22 and the Closure Orders. UTA is informed and believes, and on that basis alleges, that Vigilant
23 disputes that UTA is entitled to such coverage. Therefore, an actual and justiciable controversy
24 exists between UTA, on the one hand, and Vigilant, on the other.

25 88. UTA therefore seeks a judicial declaration from this Court confirming that UTA's
26 contentions, as stated above, are correct. A declaration is necessary in order that the parties'
27 dispute may be resolved and that they may be aware of their respective rights and duties.

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1 **FOURTH CAUSE OF ACTION**

2 ***(Declaratory Relief Against Federal)***

3 89. UTA realleges and incorporates by reference paragraphs 1 through 72 above.

4 90. UTA contends that it is entitled to coverage under the Federal Policy for Business
5 Income losses suffered and/or Extra Expense incurred as a result of the presence of SARS-CoV-2
6 and the Closure Orders. UTA is informed and believes, and on that basis alleges, that Federal
7 disputes that UTA is entitled to such coverage. Therefore, an actual and justiciable controversy
8 exists between UTA, on the one hand, and Federal, on the other.

9 91. UTA therefore seeks a judicial declaration from this Court confirming that UTA’s
10 contentions, as stated above, are correct. A declaration is necessary in order that the parties’
11 dispute may be resolved and that they may be aware of their respective rights and duties.

12 **FIFTH CAUSE OF ACTION**

13 ***(Declaratory Relief Against Does 1 through 10)***

14 92. UTA realleges and incorporates by reference paragraphs 1 through 72 above.

15 93. UTA contends it is entitled to insurance coverage for the losses it has suffered as a
16 result of the presence of SARS-CoV-2 and the Closure Orders. UTA is informed and believes,
17 and on that basis alleges, that Does 1 through 10 dispute that UTA is entitled to such coverage.
18 Therefore, an actual and justiciable controversy exists between UTA and Does 1 through 10
19 concerning the matters alleged herein.

20 94. UTA therefore seeks a judicial declaration as to the duties of Does 1 through 10
21 and confirming that UTA’s contentions, as stated above, are correct. A declaration is necessary in
22 order that the parties’ dispute may be resolved and that they may be aware of their respective
23 rights and duties.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, UTA prays for relief as follows:

26 **ON THE FIRST CAUSE OF ACTION**

27 1. For damages according to proof at the time of trial, plus interest;

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ON THE SECOND CAUSE OF ACTION

- 2. For damages according to proof at the time of trial, including reasonable attorneys' fees incurred in obtaining the benefits due under the Policy issued by Vigilant to UTA, plus interest; and
- 3. For punitive damages in an amount to be determined at the time of trial;

ON THE THIRD CAUSE OF ACTION

- 4. For declarations in accord with UTA's contentions stated above;

ON THE FOURTH CAUSE OF ACTION

- 5. For declarations in accord with UTA's contentions stated above;

ON THE FIFTH CAUSE OF ACTION


- 6. For declarations in accord with UTA's contentions stated above;

ON ALL CAUSES OF ACTION:

- 7. For the costs of this lawsuit; and
- 8. For such other, further, or different relief as the Court may deem just and proper.

Dated: November 13, 2020

PASICH LLP

By: 
 Kirk Pasich

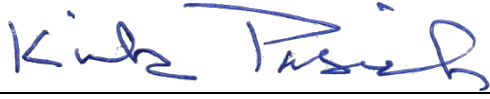
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

United Talent Agency, LLC hereby demands a trial by jury in this action.

Dated: November 13, 2020

PASICH LLP

By: 
Kirk Pasich

Attorneys for Plaintiff

PASICH^{LLP}

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