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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 ALWAYS SMILING PRODUCTIONS,
14 LLC, a California limited liability
15 corporation,

16 Plaintiff,

17 vs.

18 CHUBB NATIONAL INSURANCE
19 COMPANY, an Indiana corporation,

20 Defendant.

Case No. 2:21-cv-05990

COMPLAINT FOR:

**BREACH OF CONTRACT AND
BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH
AND FAIR DEALING**

DEMAND FOR JURY TRIAL

21 Plaintiff Always Smiling Productions, LLC (“Always Smiling”) complains of
22 defendant Chubb National Insurance Company (“Chubb”) and alleges as follows:

NATURE OF THIS LAWSUIT

23 1. In March 2020, when the United States shut down due to the COVID-
24 19 pandemic, Always Smiling was in the midst of production on the second season
25 of *The Morning Show*. Like most production companies, Always Smiling had no
26 choice but to suspend and delay production of *The Morning Show* once it became
27 clear that continuing principal photography could subject its cast and crew to
28 potential exposure to SARS-CoV-2 and the risk of contracting COVID-19. Always
Smiling was also prohibited from continuing principal photography by the actions

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1 and orders of international, domestic, and local civil authorities and guidance from
2 the Centers for Disease Control and Prevention, also aimed at protecting people
3 from exposure to SARS-CoV-2 and “flattening the curve.” By shutting down
4 production, Always Smiling mitigated further loss. Still, the suspension and delay
5 of production caused Always Smiling to incur significant financial losses.

6 2. Like most entities involved in the production of motion pictures and
7 television shows, Always Smiling had purchased insurance that promised to protect
8 it against losses from production delays and threats to the well-being of cast
9 members. When Always Smiling turned to Chubb, its insurer, for its promised
10 insurance, it reasonably expected Chubb to cover its losses. But instead of honoring
11 its agreement with Always Smiling, Chubb adopted arbitrary restrictions on the
12 coverage available to Always Smiling and interpreted its insurance policy in a
13 manner to deprive Always Smiling of the financial protection it purchased. Always
14 Smiling is informed and believes, and on that basis alleges, that Chubb adopted
15 these restrictive interpretations as to Always Smiling and many of its other insureds,
16 even though its interpretations were contrary to industry custom and practice, the
17 terms of the insurance policies, and the law. Always Smiling is also informed and
18 believes, and on that basis alleges, that Chubb adopted these interpretations to save
19 itself hundreds of millions of dollars that it otherwise would owe Always Smiling
20 and its other insureds for their covered losses.

21 3. Chubb also asserted that to the extent any of its policy provisions refer
22 to “direct physical loss or damage to property” as a condition for payment of losses,
23 the actual or threatened presence of SARS-CoV-2 does not constitute such “direct
24 physical loss or damage.” However, in taking this position, Chubb ignored decades
25 of court decisions holding that the presence of a hazardous substance in or on
26 property constitutes such “direct physical loss or damage to property.” Chubb also
27 has known for more than a decade that it and its insureds face a substantial risk of
28 loss from viruses and pandemics and, since 2006, has had available to it an

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1 insurance industry standard-form exclusion applicable to certain losses caused by
2 viruses and bacteria. Yet, in selling the policy to Always Smiling, Chubb did not
3 include any such exclusion. In fact, Chubb did nothing in selling the policy to
4 Always Smiling to limit its liability for virus or pandemic-associated risks. Nor did
5 Chubb warn Always Smiling that even though it did not include a virus or pandemic
6 exclusion, it would interpret the policy as if it contained one.

7 4. Chubb also refused to acknowledge that, pursuant to its and the
8 insurance industry's long-established custom and practice and the relevant language
9 of its insurance policy, Always Smiling is entitled to an extension of the policy
10 beyond its stated policy expiration date through completion of production of *The*
11 *Morning Show* should production be delayed, as it was here, without a reduction of
12 any of its promised coverages and subject only to a pro rata premium adjustment.
13 By contending otherwise, Chubb deprived Always Smiling of the coverage that it
14 purchased and has further damaged Always Smiling by forcing Always Smiling to
15 buy additional insurance on less favorable terms.

16 5. Chubb's conduct is a breach of contract and a breach of the implied
17 covenant of good faith and fair dealing. Always Smiling is entitled to damages for
18 these breaches, plus punitive damages.

19 **JURISDICTION AND VENUE**

20 6. This Court has subject matter jurisdiction under 28 U.S.C. section 1332
21 based on complete diversity of citizenship between the parties and because the
22 amount in controversy, exclusive of costs and interest, exceeds \$75,000.

23 7. This Court has personal jurisdiction over Chubb because Chubb
24 conducts business in the County of Los Angeles.

25 8. Venue is proper in the Central District of California pursuant to 28
26 U.S.C. section 1391 because a substantial part of the events or omissions giving rise
27 to Always Smiling's loss occurred in this District, including negotiation and
28 delivery of the Policy at issue.

THE PARTIES

1
2 9. Always Smiling is a California limited liability corporation whose sole
3 member is an entity that is a citizen of California. Always Smiling produces the
4 television series *The Morning Show*. *The Morning Show* is a popular television
5 show starring Jennifer Aniston, Reese Witherspoon, and Steve Carell, that
6 premiered on Apple TV+ on November 1, 2019. *The Morning Show* has been
7 nominated for and won many awards, including the Critics Choice, Emmy, Golden
8 Globe, and Screen Actors Guild awards.

9 10. Chubb is a corporation organized and existing under the laws of
10 Indiana with its principal place of business in New Jersey. Always Smiling is
11 informed and believes, and on that basis alleges, that at all times material hereto,
12 Chubb was licensed to transact, and did transact, business in California and in this
13 District.

14 11. Always Smiling is informed and believes, and on that basis alleges, that
15 Chubb is part of the Chubb group of insurance companies. Chubb Limited is the
16 ultimate parent of Chubb and the other insurance companies that are part of the
17 Chubb Group of Insurance Companies (for convenience, Chubb and the other
18 Chubb companies hereinafter collectively are referred to as the “Chubb Group”).

19 12. The Chubb Group makes statements and representations on behalf of
20 Chubb and its other member companies on its website.¹ The Chubb Group uses its
21 website to market its insurance products; represent the nature of its insurance
22 products, its policy underwriting, and its claims handling; and represent the quality
23 of insurance and services its customers will get if they do business with it.

24 13. The Chubb Group has long represented to the public and to its
25 customers, including Always Smiling, that it has special expertise in providing
26 insurance to companies and individuals in the entertainment industry. For example,
27

28 ¹ <https://www.chubb.com/us-en/home.html>.

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1 touting its experience in the entertainment industry, the Chubb Group states as
2 follows on its website:

3 With more than 50 years of experience in the entertainment
4 industry, we understand the challenges and opportunities
5 shaping the future, and we use our deep expertise,
6 specialized products and services, and strong claims
7 capabilities to help protect your businesses, regardless of its
8 size.²

9 14. Under the title “We know entertainment,” the Chubb Group states:
10 We understand the changes happening in your industry and
11 put our specialized knowledge to work for you, with
12 products and services tailored to address the unique needs
13 of entertainment businesses like yours.³

14 15. On its website, the Chubb Group poses the question: “How is Chubb,
15 different?” It answers as follows:

16 We don’t just process claims, we make things right. We
17 hope you never need to file a claim with us. But if you do,
18 that’s our opportunity to show you what “craftsmanship”
19 means in service to you. It means Chubb people working
20 with empathy, integrity, and our legendary attention to
21 detail to make you whole. ***It means we honor the promises***
22 ***we’ve made to you.*** Your loved ones, your employees, your
23 home, your business reputation—these things matter.
24 These things are persona, for you and for us.

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26
27 ² <https://www.chubb.com/us-en/campaign/pacific-campaign/pacific-tech/rediscover-entertainment/index.html>.

28 ³ *Id.*

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1 We're here to help.⁴

2 16. The Chubb Group understands that because of the pandemic and
3 subsequent orders, businesses, including Always Smiling, had to take steps to
4 mitigate or reduce losses. As the Chubb Group publicly stated on its website:

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

9 17. The Chubb Group also has represented, and represents to the public:

10 **“Unprecedented events require unprecedented service”**

11 For over 200 years, we have worked hand-in-hand with our
12 clients to help them rebuild – it’s in our DNA. In response
13 to the COVID-19 pandemic, we have created several
14 programs to support our clients and the communities where
15 they live.⁶

16 18. The Chubb Group further represents:

17 **“Our commitment to clients”**

18 We stand with our clients as partners in their business. In
19 2019 alone, we received 3.6 million new claims and made
20 more than \$18.3 billion in claims payments. And, as the
21 world changes – and new and never-before-seen threats
22 emerge – Chubb takes pride in our continuing commitment
23 to our clients.⁷

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25

26 ⁴ <https://www.chubb.com/us-en/claims/claims-difference.aspx> (emphasis added).

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

28 ⁶ <https://www.chubb.com/microsites/covid19-resource-center/doing-our-part.html>.

⁷ *Id.*

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1 19. Indeed, the Chubb Group itself has undertaken steps in connection with
2 its in-person events to protect against the spread of SARS-CoV-2 and COVID-19:

3 During the first quarter of 2020, worldwide social and
4 economic activity became severely impacted by the spread
5 and threat of COVID-19. We have taken actions to
6 minimize risk to our employees, including restricting travel
7 and instituting extensive work-from-home protocols.⁸

8 **CHUBB’S KNOWLEDGE OF THE RISK OF A PANDEMIC**

9 20. Chubb and other insurers were repeatedly warned over the years of the
10 potential impact of pandemics. In fact, in the months and years before the outbreak
11 of the COVID-19 pandemic, there were many publicly available reports about the
12 risks of pandemics and what insurers should do. For example, in March 2018, one
13 insurance industry publication cautioned:

14 Even with today’s technology, a modern severe pandemic
15 would cause substantive direct financial losses to the
16 insurance community. In addition, indirect losses would be
17 severe, most notably on the asset side of the balance sheet.⁹

18 21. One insurance industry repository shows the “tip of the iceberg” about
19 how much information was available to insurers on the risk of pandemics. The
20 Insurance Library Association of Boston, founded in 1887, describes itself as “the
21 leading resource for and provider of literature, information services, and quality
22 professional education for the insurance industry and related interests.¹⁰ The
23 Association states on its website:

24 _____
25 ⁸ https://s1.q4cdn.com/677769242/files/doc_financials/2020/q1/Chubb-Limited-1Q-2020-Form-10-Q.pdf.

26 ⁹ “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/>.

28 ¹⁰ <http://insurancelibrary.org/about-us/>.

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1 The past 20 years [have] seen the rise of a number of
2 pandemics. *Slate* recently published an article on what has
3 been learned about treating them in that time. We thought
4 it might be apt for us to take a look back and see what the
5 insurance industry has learned as well.¹¹

6 The Association then lists more than 20 articles, reports, and white papers published
7 since at least 2007, long before Chubb sold Always Smiling the policy at issue here.

8 22. One white paper warned as early as 2009 of a pandemic’s
9 consequences on the insurance industry:

10 It is highly unlikely that the insurance industry would have
11 the financial reserves to meet the worldwide claims arising
12 out of a pandemic of this size.¹²

13 23. Thus, Chubb has known, or should have known, for years that its
14 policies would be called on to pay perhaps hundreds of millions of dollars or more
15 to its insureds and, more specifically, knows that it could be obligated under its
16 policies to pay tens of millions of dollars to Always Smiling for losses associated
17 with viruses and pandemics.

18 24. Given the potential liability that insurers, including Chubb, faced under
19 their policies for losses from pandemics shortly after the outbreak of SARS in 2003,
20 the insurance industry undertook to draft exclusions applicable to losses from
21 viruses and bacteria. In 2006, the Insurance Services Office (“ISO”), the insurance
22 industry’s drafting organization, considered the need to draft an exclusion that
23 would bar coverage for losses caused by a virus.¹³

24
25 ¹¹ <http://insurancelibrary.org/pandemics-and-insurance/>.

26 ¹² Allan Manning, White Paper on Infectious Disease Cover (updated 2009),
27 http://www.lmigroup.com/Documents/Articles/White%20Paper%20on%20Infectious%20Disease%20Cover.pdf?mc_cid=f0cee24803&mc_eid=41023ebc2c.

28 ¹³ “ISO is a non-profit trade association that provides rating, statistical, and actuarial

1 25. On July 6, 2006, ISO prepared a circular that included a standard
2 exclusion of loss due to viruses and bacteria as part of its filing with state insurance
3 regulators.¹⁴ In that circular, it noted that examples of “viral and bacterial
4 contaminants are rotavirus, SARS, [and] influenza,” observing that “[t]he universe
5 of disease-causing organisms is always in evolution.”¹⁵ ISO further recognized that
6 viruses could cause property damage:

7 Disease-causing agents may render a product impure
8 (change its quality or substance) or enable the spread of
9 disease by their presence on interior building surfaces or the
10 surfaces of personal property. When disease-causing viral
11 or bacterial contamination occurs, potential claims involve
12 the cost of replacement of property (for example, the milk),
13 the cost of decontamination (for example, interior building
14 surfaces), and business interruption (time element) losses.¹⁶

15 26. In fact, ISO expressly warned that “the specter of pandemic or hitherto
16 unorthodox transmission of infectious material raises the concern that insurers
17 employing [property] policies may face claims in which there are efforts to expand
18 coverage and create sources of recovery for such losses, contrary to policy intent.”¹⁷
19

20 _____
21 policy forms and related drafting services to approximately 3,000 nationwide
22 property or casualty insurers. Policy forms developed by ISO are approved by its
23 constituent insurance carriers and then submitted to state agencies for review. Most
24 carriers use the basic ISO forms, at least as the starting point for their general
25 liability policies.” *Montrose Chem. Corp. v. Admiral Ins. Co.*, 10 Cal. 4th 645,671
26 n.13 (1995).

27 ¹⁴ See ISO Circular, “New Endorsements Filed to Address Exclusion of Loss Due to
28 Virus or Bacteria,” (July 6, 2006),

<https://www.propertyinsurancecoveragelaw.com/files/2020/03/ISO-Circular-LI-CF-2006-175-Virus.pdf>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

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1 ISO introduced a standard-form exclusion entitled “Exclusion Of Loss Due to Virus
2 or Bacteria” (Form CP 01 40 07 06 and, in certain jurisdictions, Form CP 01 75 07
3 06).

4 27. Thus, since 2006, Chubb could have used a “virus or bacteria”
5 exclusion approved for use throughout the United States. As one recent article
6 succinctly stated, “Insurers knew the damage a viral pandemic could wreak on
7 businesses. So they excluded coverage.”¹⁸

8 28. However, even though Chubb was aware of the massive losses that its
9 insureds, including Always Smiling, could face from a virus-related pandemic, it
10 still sold Always Smiling the policy without a virus, pandemic, or any other
11 potentially applicable exclusion.

12 **THE POLICY**

13 29. Chubb sold Always Smiling Film Producer’s Risk Policy No. 7997-45-
14 17 (the “Policy”) for the stated period of November 7, 2019, to November 7, 2020.
15 A true and correct copy of the Policy is attached hereto as Exhibit A and
16 incorporated herein by reference. Always Smiling purchased the Policy for the
17 purpose of insuring against loss in the event that production of *The Morning Show*
18 was disrupted or delayed for a covered cause of loss.

19 30. The Policy provides \$125,000,000 in Cast coverage and \$1,000,000 for
20 each of the Imminent Peril, Civil or Military Authority, and Ingress And Egress
21 coverages. *See* Ex. A, Declarations. These limits of liability apply separately to
22 each “occurrence.”

23
24
25

26 ¹⁸ Todd Frankel, “Insurers knew the damage a viral pandemic could wreak on
27 businesses. So they excluded coverage,” *Washington Post* (Apr. 2, 2020), *available*
28 *at* <https://www.washingtonpost.com/business/2020/04/02/insurers-knew-damage-viral-pandemic-could-wreak-businesses-so-they-excluded-coverage/>.

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1 31. The Policy contains a “Due Diligence” clause. This clause states that
2 Always Smiling “shall use due diligence to avoid or diminish a loss or circumstance
3 that may give rise to a loss or damage” *Id.*, Conditions.

4 32. The Policy also contains a condition stating that Always Smiling is to
5 “[t]ake every reasonable step to protect the property from further damage, and to
6 avoid or minimize any loss or damage.” *Id.*, Conditions. The Policy states that
7 Chubb “will pay such expenses to the extent such loss or damage is reduced.” *Id.*

8 33. Under the Cast coverage, Chubb agrees to “pay for the actual
9 **production loss** you incur due to the inability of an **essential element** or other
10 **declared person** to commence, continue or complete their duties or performances in
11 an **insured production** as a result of a **covered cause of loss** of such **essential**
12 **element** or other **declared person**. . . .” *Id.*, Cast Coverage.

13 34. **Production loss** means “additional **production costs** you necessarily
14 incur to complete an **insured production** in essentially the same manner and within
15 the specifications submitted to us prior to a loss” *Id.*, Definitions.

16 35. **Production costs** mean “all costs directly chargeable to an **insured**
17 **production**, including overhead charges included in the budget for the **insured**
18 **production**” *Id.*

19 36. **Covered Cause of Loss** is defined as “death, injury, sickness, kidnap,
20 or compulsion by physical force or threat of physical force.” *Id.*, Cast Coverage.

21 37. The Property and Production Media coverage includes insurance for
22 losses attributed to Civil or Military Authority, Imminent Peril, and Ingress and
23 Egress.

24 38. Under the Civil Or Military Authority coverage, Chubb agreed to
25 insure

26 the actual **production loss** you incur due to the actual or
27 potential impairment of an **insured production** directly
28 caused by the action of a civil or military authority . . . that:

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1 revokes your permission to use; or prohibits access to,
2 property or facilities which are used or to be used in an
3 **insured production”**

4 *Id.*, Property and Production Media, Civil or Military Authority coverage.

5 39. Under the Imminent Peril coverage, Chubb is obligated to
6 pay for the: reasonable and necessary costs you incur to
7 protect persons and property at a **location** from imminent
8 direct physical loss or damage caused by or resulting from
9 a peril not otherwise excluded; and **production loss** you
10 incur due to the actual or potential impairment of an **insured**
11 **production** due to actions you must take to protect persons
12 or property at a **location** from imminent direct physical loss
13 or damage caused by or resulting from a peril not otherwise
14 excluded

15 *Id.*, Property and Production Media, Imminent Peril coverage.

16 40. Under the Ingress and Egress coverage, Chubb agreed to
17 pay for the actual **production loss** you incur due to the
18 actual or potential impairment of an **insured production**
19 when ingress to or egress from a **location** is prevented due
20 to direct physical loss or damage to property at a premises
21 contiguous to such **location** caused by or resulting from a
22 peril not otherwise excluded

23 *Id.*, Property and Production Media, Ingress and Egress coverage

24 41. **Location** means “shooting locations, locations used for developing of
25 negatives and editing of the **insured production**; and locations used for storage of
26 property to be used in the **insured production.**” *Id.*, Definitions.

27 42. The Cast coverage form contains a provision stating that coverage ends
28 when “the policy expires or is terminated,” or upon “completion of the **insured**

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1 **production,”** whichever occurs first. *Id.*, Cast Coverage. This provision is
2 reasonably understood and historically represented to mean, and in accord with
3 custom and practice means, that the Policy would not expire on the stated expiration
4 date if production were delayed, but instead would expire only upon completion of
5 the production.

6 43. The Property and Production Media coverage form includes an
7 “Attachment and Determination Of Production Media Coverage” provision. This
8 provision states that the Production Media Coverage

9 ends when the first of the following occurs:

- 10 1. the date on which a protection copy has been
- 11 completed and stored in an area physically separated from
- 12 the original **production media**;
- 13 2. 30 days after completion of post-production;
- 14 3. the expiration date shown in the Declarations; or
- 15 4. the policy is cancelled.

16 *Id.*, Production and Media Coverage. This provision also is reasonably understood
17 and historically represented to mean, and in accord with custom and practice means,
18 that the Policy would not expire on the stated expiration date if production were
19 delayed, but instead would expire only upon completion of the production.

20 Furthermore, the Policy’s declarations do not include an expiration date as to the
21 Production Media coverage.

22 **THE COVID-19 PANDEMIC**

23 **AND THE ENSUING CIVIL AUTHORITY ORDERS**

24 44. In 2020, SARS-CoV-2 and the disease it causes, COVID-19, spread
25 throughout the world, prompting the World Health Organization to declare a global
26 pandemic.

27 45. As explained by the World Health Organization:
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1 COVID-19 is caused by the SARS-CoV-2 virus which
2 spreads between people, mainly when an infected person
3 is in close contact with another.

4 The virus can spread from an infected person's mouth or
5 nose in small liquid particles when they cough, sneeze,
6 speak, sing, or breathe heavily. These liquid particles
7 are different sized, ranging from larger 'respiratory
8 droplets' to smaller 'aerosols'.

9 Other people can catch COVID-19 when the virus gets
10 into their mouth, nose or eyes, which is more likely to
11 happen when people are in direct or close contact (less
12 than 1 metre apart) with an infected person.

13 Current evidence suggests that the main way the virus
14 spreads is by respiratory droplets among people who are
15 in close contact with each other.

16 Aerosol transmission can occur in specific settings,
17 particularly in indoor, crowded and inadequately
18 ventilated spaces, where infected person(s) spend long
19 period of time with others, such as restaurants, choir
20 practices, fitness classes, nightclubs, offices, and/or
21 places of worship. More studies are underway to better
22 understand the conditions in which aerosol transmission
23 is occurring outside of medical facilities where specific
24 medical procedures, called aerosol generating
25 procedures, are conducted.

26 The virus can also spread after infected people sneeze,
27 cough on, or touch surfaces, or objects such as tables,
28 doorknobs and handrails. Other people may become

1 infected by touching these contaminated surfaces, then
 2 touching their eyes, noses or mouths without having
 3 cleaned their hands first.¹⁹

4 46. Published reports state that the spread of SARS-CoV-2 is insidious
 5 because it can be readily transmitted by asymptomatic individuals—about 40% of
 6 all individuals who have COVID-19 are asymptomatic.²⁰ Additionally, reports state
 7 that pre-symptomatic persons carry the greatest viral-load (i.e., the quantity of virus
 8 in an individual’s system) among all infected persons, meaning their ability to
 9 transmit SARS-CoV-2 is greater than that of symptomatic persons.²¹

10 47. Moreover, it is widely recognized that “confirmed” cases of COVID-19
 11 do not tell the full story. It is well-recognized that many individuals infected with
 12 SARS-CoV-2 are asymptomatic and therefore do not get tested for the disease.
 13 Because of the initial absence of available tests, asymptomatic infection, and
 14 differential symptomatic diagnosis, it is believed that the true number of individuals
 15 infected with SARS-CoV-2 is significantly higher than the reported numbers might
 16 suggest.²²

17 _____
 18 ¹⁹ See <https://www.who.int/news-room/q-a-detail/q-acoronaviruses>.

19 ²⁰ Ellen Cranley, *40% of people infected with COVID-19 are asymptomatic, a new*
 20 *CDC estimate says*, Business Insider (July 12, 2020),
 21 [https://www.businessinsider.com/cdc-estimate-40-percent-infected-with-covid-19-](https://www.businessinsider.com/cdc-estimate-40-percent-infected-with-covid-19-asymptomatic-2020-7)
 22 [asymptomatic-2020-7](https://www.businessinsider.com/cdc-estimate-40-percent-infected-with-covid-19-asymptomatic-2020-7).

21 ²¹ Xi He, *et al.*, *Temporal dynamics in viral shedding and transmissibility of*
 22 *COVID- 19*, 26 NATURE MED. 672, 674 (Apr. 15, 2020),
 23 <https://www.nature.com/articles/s41591-020-0869-5> (“We detected high viral loads
 24 soon after symptom onset, which then gradually decreased towards the detection
 25 limit at about day 21. . . . Our analysis suggests that viral shedding may begin 5 to 6
 26 days before the appearance of the first symptoms. After symptom onset, viral loads
 27 decreased monotonically, consistent with two recent studies.”)

26 ²² Smith-Schoenwalder, *CDC Study: Coronavirus Infection Numbers May Be up to*
 27 *24 Times Higher Than Reported*, U.S. NEWS (July 21, 2020),
 28 [https://www.usnews.com/news/national-news/articles/2020-07-21/cdc-study-](https://www.usnews.com/news/national-news/articles/2020-07-21/cdc-study-coronavirus-infection-numbers-may-be-up-to-24-times-higher-than-reported)
[coronavirus-infection-numbers-may-be-up-to-24-times-higher-than-reported;](https://www.usnews.com/news/national-news/articles/2020-07-21/cdc-study-coronavirus-infection-numbers-may-be-up-to-24-times-higher-than-reported)

1 48. Published reports also state that aerosolized droplets exhaled by normal
 2 breathing can travel significant distances and stay suspended in the air and infective
 3 for 16 hours, until gravity ultimately forces them on to the nearest surface.²³ These
 4 reports and studies explain that SARS-CoV-2 spreads primarily through fine
 5 aerosolized viral droplets that are expelled into the air when infected individuals
 6 breathe, talk, sing, cough, or sneeze.

7 49. Scientists have likened the ubiquitous aerosolized droplets of the virus
 8 to smoke, present in the air long after the source of its dissemination has gone.²⁴
 9 Thus, according to studies and reports, entering a location where the SARS-CoV-2
 10 virus is physically present in the air poses an imminent and severe risk to human
 11 health.

12 50. As of the filing of this Complaint, there have been more than
 13 191,773,590 confirmed cases of COVID-19 throughout the world, with more than
 14 4,127,900 deaths.²⁵ In the United States, there have been more than 34,221,500
 15 confirmed cases of COVID-19 with more than 609,500 deaths.²⁶ Moreover, due in
 16 part to the initial absence of available tests, it has been reported that, at least in the
 17 United States, the number of people infected within SARS-CoV-2 may be ten times
 18 higher than reported.²⁷

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 20 _____
 21 Johansson, Michael A et al., *SARS-CoV-2 Transmission From People Without*
 22 *COVID-19 Symptoms*, J. AM. MEDICAL ASS'N (Jan. 7, 2021),
 23 <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2774707>.

24 ²³ See Leslie Tate, *Virus Survives In Air For Hours*, Tulanian (Fall 2020),
 25 <https://tulanian.tulane.edu/fall-2020/virus-survives-in-air-for-hours>.

26 ²⁴ See "Airborne Transmission of SARS-CoV-2," *Science* (Oct. 16, 2020),
 27 <https://science.sciencemag.org/content/370/6514/303.2>.

28 ²⁵ See <https://covid19.who.int/>.

²⁶ See <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

²⁷ Fiona P. Havers, Carrie Reed, Travis Lim, et al., Seroprevalence of Antibodies to
 SARS-CoV-2 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>.

1 51. Since the outbreak of SARS-CoV-2 and COVID-19, and in response to
 2 it, civil authorities throughout the world issued “stay-at-home” and “shelter-in-
 3 place” orders, travel restrictions, quarantines, and other orders, including orders
 4 requiring the suspension of non-essential business operations (collectively, “Closure
 5 Orders”).²⁸ In relevant part, the Closure Orders required citizens to stay at home,
 6 prohibited large gatherings, and mandated the continued closure of all non-essential
 7 in-person businesses, including television productions.

8 52. On March 4, 2020, Governor Newsom declared a state of emergency in
 9 California. On March 11, 2020, Governor Newsom announced that all gatherings of
 10 250 people or more should be rescheduled or cancelled.²⁹ On March 12, 2020,
 11 Governor Newsom issued Executive Order No. N-25-20, ordering that: “All
 12 residents were to heed any orders and guidance of state and local public health
 13 officials, including but not limited to the imposition of social distancing measures,
 14 to control the spread of COVID-19.”³⁰

15 53. Civil authorities continued to issue orders thereafter. On March 16,
 16 2020, the Los Angeles County Health Officer issued a civil authority order that
 17 prohibited “all indoor and outdoor, public and private events and gatherings within a
 18 confined space, where 50 or more members of the public [were] expected to gather
 19 at the same time.”³¹ Additionally, on March 19, 2020, the Los Angeles Health
 20 Officer issued a “Safer at Home Order for Control of Covid-19,” which prohibited
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 22

23 ²⁸ See, e.g., The Council of State Governments, COVID-19 Resources for State
 24 Leaders, <https://web.csg.org/covid19/executive-orders/>.

25 ²⁹ [https://www.gov.ca.gov/2020/03/11/california-public-health-experts-
 massgatherings-should-be-postponed-or-canceled-statewide-to-slow-the-spread-of-
 covid-19/](https://www.gov.ca.gov/2020/03/11/california-public-health-experts-massgatherings-should-be-postponed-or-canceled-statewide-to-slow-the-spread-of-covid-19/).

26 ³⁰ [https://www.gov.ca.gov/wp-content/uploads/2020/03/3.12.20-EO-N-25-20-
 COVID-19.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.12.20-EO-N-25-20-COVID-19.pdf).

27 ³¹ [https://covid19.lacounty.gov/covid19-news/public-health-issues-order-to-prohibit-
 28 group-events/](https://covid19.lacounty.gov/covid19-news/public-health-issues-order-to-prohibit-group-events/).

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1 all indoor and outdoor gatherings of ten or more persons, and closed all non-
2 essential businesses.³²

3 54. Because COVID-19 led to a global pandemic and SARS-CoV-2 is
4 statistically certain to be carried by a number of individuals who work at and visit
5 Always Smiling’s sets and locations, SARS-CoV-2 is continually reintroduced to
6 the air, airspace, and surfaces of covered properties and the property of third parties.

7 55. The entertainment industry was hit particularly hard by the pandemic,
8 orders of civil authorities, and the need to mitigate losses and damages.³³ By the
9 end of March 2020, nearly all media productions were forced to shut down and
10 suspend operations indefinitely.³⁴ As SARS-CoV-2 and COVID-19 spread around
11 the world, Always Smiling suffered losses and damages covered by the Policy when
12 it was forced to suspend and postpone production due to that spread.

13 **CHUBB’S BREACHES AND WRONGFUL CONDUCT**

14 *Always Smiling’s Claim for Coverage*

15 56. On March 12, 2020, Always Smiling timely notified Chubb that it was
16 shutting down production of the second season of *The Morning Show* after a 12-
17 week prep and filming the first 13 days of principal photography.

18 57. On April 15, 2020, Chubb responded to the notice of loss. Chubb’s
19 stated position was that all of Always Smiling’s losses arising from the pandemic,
20 orders of civil authorities, and the need to mitigate are covered only under the
21 Policy’s Civil Authority Or Military coverage, which has a \$1,000,000 limit of
22 liability per occurrence.

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25 ³² [http://file.lacounty.gov/SDSInter/lac/1070029_COVID-
19_SaferAtHome_HealthOfficerOrder_20200319_Signed.pdf](http://file.lacounty.gov/SDSInter/lac/1070029_COVID-19_SaferAtHome_HealthOfficerOrder_20200319_Signed.pdf).

26 ³³ <https://www.cnbc.com/2020/04/24/hollywoods-small-businesses-in-crisis.html>.

27 ³⁴ [https://www.theguardian.com/film/2020/mar/19/loss-of-jobs-income-
28 filmindustry-
hollywood-coronavirus-pandemic-covid-19](https://www.theguardian.com/film/2020/mar/19/loss-of-jobs-income-filmindustry-hollywood-coronavirus-pandemic-covid-19).

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1 58. Over several months, Always Smiling provided Chubb with
2 information pertaining to its losses.

3 59. On September 1, 2020, Always Smiling sent a letter to Chubb stating:

4 As you and Chubb know, late last year there was an
5 outbreak of a virus and disease in Wuhan, China. The virus
6 and disease were subsequently identified by the World
7 Health Organization as SARS-CoV-2 and COVID-19.
8 Thereafter, as SARS-CoV-2 spread around the world,
9 various organizations and government entities issued
10 directives and orders, including travel restrictions, “stay-at-
11 home” directives and closure orders.

12 These various events and our need to protect the cast and
13 crew have caused us to incur substantial losses and expenses
14 associated with the disruption of and delays in the
15 production of *The Morning Show*. We continue to incur
16 losses and expenses, including mitigation expenses to
17 prevent and/or reduce the risk of declared persons
18 contracting COVID-19. We believe that these losses and
19 expenses are insured under our policy, and we hereby
20 request coverage under all potentially applicable coverages,
21 including Cast (\$125,000,000 per occurrence), Civil Or
22 Military Authority (\$1,000,000 per occurrence), Imminent
23 Peril (\$1,000,000 per occurrence), Ingress and Egress
24 (\$1,000,000 per occurrence), the “Due Diligence” and
25 “Insured’s Duties In The Event Of Loss Or Damage”
26 conditions, and the common law doctrine of mitigation.

27 60. Always Smiling also provided Chubb with the rough order of
28 magnitude of its losses at that time: approximately \$34,900,000. This amount was

1 comprised of various expenses, including costs to shoot new elements, to restart
2 production, and for COVID-19-related safety protocols.

3 61. On September 30, 2020, Chubb sent a letter essentially denying
4 coverage for most aspects of Always Smiling’s loss. Chubb refused to acknowledge
5 that any coverage other than Civil or Military Authority—the coverage with the
6 lowest potentially applicable limit—applied. Chubb wrongly asserted that Cast,
7 Imminent Peril, and Ingress and Egress coverages did not apply. Chubb wrongly
8 asserted that there was no Cast coverage because there were no reported cases of
9 “death, injury, sickness, kidnap, or compulsion by physical force or threat of
10 physical force.” Chubb also took the position that there was no Imminent Peril
11 coverage because even though SARS-CoV-2 is highly contagious and the resulting
12 disease, COVID-19, already had killed hundreds of thousands of people, the
13 presence of SARS-CoV-2 did not constitute “direct physical loss or damage” to
14 persons or property. Chubb’s rationale for not providing Ingress and Egress
15 coverage was because a location was not impaired by any direct physical loss or
16 damage despite the likely or threatened presence of SARS-CoV-2. Chubb also
17 stated, in total disregard of the guidance of the world’s leading health and medical
18 authorities, that it did not see how incurring costs for COVID-19-related safety
19 protocols, such as personal protective equipment, would reduce a covered loss.

20 62. Additionally, Chubb proclaimed, in its September 30, 2020, denial, that
21 of the categories of expenses submitted by Always Smiling, only costs to shoot new
22 elements would be included in the claim. Chubb wrongly took the position that
23 costs to restart production and for COVID-19 related safety protocols “are not
24 directly caused by an action of civil or military authority revoking [Always
25 Smiling’] permission to use or prohibiting access to property or facilities used in an
26 insured production.” In taking this position, Chubb improperly adopted a new
27 requirement not found in the Policy—that the loss must be “*directly* caused” by an
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1 action of civil or military authority. Chubb did not further explain how those costs
2 were not caused by the shutdown due to civil authority orders.

3 63. By taking these positions, Chubb is depriving Always Smiling of the
4 full coverage to which it is entitled under its Policy, including \$125,000,000 per
5 occurrence for Declared Persons under the Cast Insurance, \$1,000,000 per
6 occurrence for Imminent Peril coverage, and \$1,000,000 per occurrence under
7 Ingress and Egress coverage. Chubb also is depriving Always Smiling of the
8 promised coverage for the expenses that Always Smiling has incurred, and is
9 incurring, to avoid or minimize loss.

10 64. Always Smiling is entitled to Cast coverage under the Policy for the
11 losses incurred from the suspensions and delays in production of *The Morning*
12 *Show*, as well as the costs and losses it incurred and continue to incur in its
13 reasonable efforts to minimize, prevent, and mitigate losses otherwise insured under
14 the Policy. Production was postponed because of the widely reported dangers posed
15 by SARS-CoV-2 and COVID-19 and the issuance of the orders of civil authorities.
16 Always Smiling was also required “to avoid or diminish a loss or circumstance that
17 may give rise to a loss or damage.” By halting production, Always Smiling did
18 exactly that.

19 65. Further, Always Smiling was obligated to protect persons from
20 imminent direct physical loss or damage. Always Smiling did so and is entitled to
21 be paid for the costs incurred to protect persons as well as for the production loss
22 incurred due to the impairment of the production of *The Morning Show*.

23 66. The likely presence of SARS-CoV-2 around shooting locations
24 rendered those areas potentially dangerous and potentially unsafe to enter. Always
25 Smiling was unable to access its insured locations because of the proliferation of
26 SARS-CoV-2 and the resulting damage it caused at premises contiguous to shooting
27 locations. Therefore, Always Smiling is entitled to Ingress and Egress coverage.

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1 70. On October 1, 2020, Always Smiling wrote to Chubb, stating:
2 As you know, Always Smiling Productions, Inc. disagrees
3 with Chubb’s positions regarding an extension of policy’s
4 stated expiration date, the loss we have submitted, and other
5 issues. For example, Always Smiling believes that The
6 Morning Show is covered through completion of the
7 planned production under the terms of the current policy.
8 Given Chubb’s positions, and in an effort to mitigate its
9 damages, Always Morning is willing to consider renewal
10 terms without prejudice to, and subject a full reservation of,
11 all rights and remedies.

12 71. Chubb never offered to extend the Policy’s period or to offer a policy
13 with comparable terms. Instead, Chubb offered only a possible policy at a
14 substantially higher price with substantially lesser coverage, which included a
15 “communicable disease” exclusion that would deprive Always Smiling of coverage
16 for losses causes by any “communicable disease,” not merely losses caused by
17 SARS-CoV-2 or COVID-19. By refusing, without prior warning, to honor the long-
18 established custom and practice of extending policy periods beyond a policy’s stated
19 expiration date when productions are delayed, Chubb has sought to deprive Always
20 Smiling of the coverage promised by the Policy. In order to mitigate its damages,
21 Always Smiling was forced to purchase a new policy, but that purchase was
22 expressly subject to a full reservation, and non-waiver, of Always Smiling’s rights
23 and claims

24 72. On November 11, 2020, the broker involved with procuring the Policy
25 wrote to Chubb, stating:

26 [Always Smiling’s] Chubb policy covers the production
27 losses on The Morning Show (Season Two), including those
28 losses associated with COVID-19, the orders of civil

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1 authority, and their steps to mitigate those losses As
 2 you also know, we believe that the Chubb policy covers
 3 ongoing and future losses associated with *The Morning*
 4 *Show* because of the delays in production caused by events
 5 insured under the Chubb policy. However, because of
 6 Chubb’s failures to confirm coverage and its position that it
 7 would not insure any losses related to any “communicable
 8 diseases” including microorganisms and bacterial issues
 9 going forward, we believed that was necessary to purchase
 10 a policy . . . to further mitigate their potential losses. This
 11 will further confirm that your insured and client is reserving
 12 all their rights against Chubb for coverage for their losses,
 13 as well as for the additional premium they are paying for the
 14 [other] policy.

15 73. Always Smiling is informed and believes, and on that basis alleges, that
 16 when Chubb sold Always Smiling its Policy, Chubb knew, and should have known,
 17 that Always Smiling was relying on the Chubb and the industry’s custom and
 18 practice and that the policy period would be extended beyond its stated date if
 19 needed to complete the production.

20 74. Always Smiling is informed and believes, and on that basis alleges, that
 21 when Chubb took the positions referenced above, it knew that because of the
 22 pandemic, Always Smiling would be unable to procure replacement insurance
 23 comparable to that provided by the Policy, including insurance without a COVID-19
 24 exclusion or other substantial limitations on coverage as to losses associated with
 25 COVID-19, and would, in any event, be required to pay a substantially higher
 26 premium for narrower and less coverage, thereby jeopardizing Always Smiling’s
 27 ability to proceed with *The Morning Show*. Chubb also knew that because Always
 28 Smiling would attempt to mitigate its damages by procuring replacement coverage,

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1 it would incur additional expense in doing so. Despite these facts, Chubb continued
2 its wrongful conduct.

3 75. Despite the fact that production was shut down from March 15, 2020,
4 until November 20, 2020, Chubb did not provide or offer any refund of premium,
5 pro-rated or otherwise, for this period. Therefore, Chubb both refused to extend the
6 Policy's expiration date or refund premium for this period, thereby creating a
7 forfeiture of Always Smiling's coverage.

8 76. To the extent not waived or otherwise excused, Always Smiling has
9 complied with the provisions in the Policy. Always Smiling is therefore entitled, to
10 all benefits of insurance provided by the Policy.

11 **FIRST CAUSE OF ACTION**

12 **(Breach of Contract for Refusal to Provide the Full Promised Insurance)**

13 77. Always Smiling realleges and incorporates by reference paragraphs 1
14 through 76 above.

15 78. By acting as alleged above, including by limiting the number of
16 occurrences for Civil Or Military Authority coverage to one, and by failing and
17 refusing to pay Always Smiling for the full amount of its losses under each
18 applicable coverage, Chubb breached its duties under the Policy.

19 79. As a direct and proximate result of Chubb's breaches, Always Smiling
20 has sustained, and continues to sustain, damages in an amount to be proven at trial
21 above this Court's jurisdictional limit.

22 **SECOND CAUSE OF ACTION**

23 **(Breach of Contract for Failure to Extend the Policy Period)**

24 80. Always Smiling realleges and incorporates by reference paragraphs 1
25 through 76 above.

26 81. Chubb has and had a duty under the Policy, the law, and industry
27 custom and practice to extend the period of the Policy beyond its stated expiration
28 date if the completion of production is delayed beyond that stated expiration date.

1 82. Chubb breached its duties under the Policy by, among other things,
2 refusing to extend the Policy's term beyond the Policy's stated expiration date.

3 83. As a direct and proximate result of Chubb's breaches, Always Smiling
4 has sustained, and continues to sustain, substantial damages for which Chubb is
5 liable, in an amount to be proven at trial above this Court's jurisdictional limit.

6 **THIRD CAUSE OF ACTION**

7 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

8 84. Always Smiling realleges and incorporates by reference paragraphs 1
9 through 76, 78, 81, and 82 above.

10 85. Implied in the Policy is a covenant that Chubb would act in good faith
11 and deal fairly with Always Smiling, that Chubb would not interfere with the rights
12 of Always Smiling to receive benefits due under the Policy, and that Chubb would
13 give at least the same level of consideration to Always Smiling's interests as it gave
14 its own interests.

15 86. Chubb also had a duty under the Policy, the law, and insurance industry
16 custom, practice, and standards to honor the terms of insurance promised under the
17 Policy.

18 87. Instead of complying with these duties, Chubb acted in bad faith by,
19 among other things,

- 20 a) restricting the insurance available under the Policy to only that
21 insurance available under the Civil Authority coverage;
22 b) insisting that Always Smiling's losses under Civil Authority
23 coverage only include shutdown costs and not restart costs or the
24 costs to comply with COVID-19 safety protocols;
25 c) failing to promptly conduct a full and thorough investigation of the
26 bases that would support Always Smiling's claim for coverage and
27 request that the period of the Policy be extended beyond the
28 Policy's stated expiration date;

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- 1 d) creating and implementing a pattern and course of action to restrict
- 2 coverage for all production claims relating to SARS-CoV-2,
- 3 COVID-19, and subsequent events, and to seek to pay less on those
- 4 claims than it is obligated to pay under the Policy;
- 5 e) unreasonably failing and refusing to honor its promises and
- 6 representations in the Policy;
- 7 f) unreasonably refusing to pay the full amount due under the Policy;
- 8 g) putting its interests above those of Always Smiling; and
- 9 h) otherwise acting as alleged above.

10 88. In breach of the implied covenant of good faith and fair dealing, Chubb
11 did the things and committed the acts alleged above for the purpose of consciously
12 withholding from Always Smiling the rights and benefits which it was, and is,
13 entitled to under the Policy.

14 89. Chubb's acts are inconsistent with the reasonable expectations of
15 Always Smiling, are contrary to the express and implied terms of the Policy and
16 constitute bad faith.

17 90. As a direct and proximate result of Chubb's breach of the implied
18 covenant of good faith and fair dealing, Always Smiling has sustained, and
19 continues to sustain, damages in an amount to be proven at trial. Always Smiling is
20 also entitled to recover all attorneys' fees that it reasonably incurred, and continue to
21 incur, in its efforts to obtain the benefits due under the Policy that Chubb wrongfully
22 withheld, and is withholding, in bad faith. Always Smiling is further entitled to
23 interest thereon at the maximum legal rate. Always Smiling continues to suffer
24 damages because of Chubb's bad faith.

25 91. Always Smiling is informed and believes, and on that basis alleges, that
26 Chubb—acting through one or more of its officers, directors, or other corporate
27 employees with substantial independent discretionary authority over significant
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1 aspects of Chubb’s business—performed, authorized, and/or ratified the bad faith
2 conduct alleged above.

3 92. Chubb’s conduct is contemptible and has been done with a conscious
4 disregard of Always Smiling’s rights, constituting oppression, fraud, and/or malice.
5 Chubb has engaged in a series of acts designed to deny Always Smiling the benefits
6 due under the Policy. Specifically, Chubb, by acting as alleged above, consciously
7 disregarded Always Smiling’s rights and forced Always Smiling to incur substantial
8 financial losses, thereby inflicting substantial financial damage. Chubb ignored
9 Always Smiling’s interests and concerns with the requisite intent to injure under
10 California Civil Code section 3294. Always Smiling is therefore entitled to recover
11 punitive damages from Chubb in an amount sufficient to punish Chubb and to deter
12 similar conduct in the future.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Always Smiling prays for relief as follows:

15 **ON THE FIRST CAUSE OF ACTION**

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

17 **ON THE SECOND CAUSE OF ACTION**

- 18 2. For damages, plus interest, according to proof at the time of trial;

19 **ON THE THIRD CAUSE OF ACTION**

- 20 3. For damages, including attorneys’ fees, plus interest, according to proof
21 at the time of trial;

- 22 4. For punitive damages in an amount to be determined at the time of trial;

23 **ON ALL CAUSES OF ACTION**

- 24 5. For the costs of this lawsuit; and

- 25 6. For such other, further, and/or different relief as may be deemed just
26 and proper.

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DATED: July 23, 2021

Kirk Pasich
Anamay M. Carmel

By: /s/ Anamay M. Carmel
Attorneys for Plaintiff

Deadline

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DEMAND FOR JURY TRIAL

Plaintiff Always Smiling Productions, LLC. hereby demands a trial by jury in this action.

DATED: July 23, 2021

Kirk Pasich
Anamay M. Carmel
PASICH LLP

By: /s/ Anamay M. Carmel
Attorneys for Plaintiff

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Deadline