

1 J. Michael Hennigan (AZ Bar No. 2633)
2 mhennigan@mckoolsmithhennigan.com

3 **MCKOOL SMITH HENNIGAN, P.C.**

4 300 South Grand Avenue, Suite 2900
5 Los Angeles, California 90071

6 Telephone: (213) 694-1200

7 Facsimile: (213) 694-1234

8 Robin Cohen (*pro hac vice* to follow)

9 John Briody (*pro hac vice* to follow)

10 **MCKOOL SMITH, P.C.**

11 One Manhattan West

12 395 9th Avenue, 50th Floor

13 New York, NY 10001

14 Telephone: (212) 402-9400

15 Facsimile: (212) 402-9444

16 Patrick Pijls (*pro hac vice* to follow)

17 **MCKOOL SMITH, P.C.**

18 300 Crescent Court, Suite 1500

19 Dallas, TX 75201

20 Telephone: (214) 978-4000

21 Facsimile: (214) 978-4044

22 Andrew L Sandler (*pro hac vice* to follow)

23 Stephen M. LeBlanc (*pro hac vice* to follow)

24 Rebecca Guiterman (*pro hac vice* to follow)

25 **MITCHELL SANDLER LLC**

26 1120 20th Street NW, Suite 725

27 Washington, DC 20036

28 Telephone: (202) 886-5260

ATTORNEYS FOR PLAINTIFFS

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Chattanooga Professional Baseball §
LLC d/b/a Chattanooga Lookouts; §
Agon Sports and Entertainment LLC; §
Boise Hospitality and Food Services §
LLC; Boise Professional Baseball §
LLC; Columbia Concessions & §
Catering LLC; Columbia Fireflies §
LLC d/b/a Columbia Fireflies; Eugene §
Emeralds Baseball Club Inc. d/b/a §
Eugene Emeralds; Fort Wayne §
Professional Baseball LLC d/b/a Fort §
Wayne TinCaps; Fredericksburg §
Baseball LLC d/b/a Fredericksburg §
Nationals; Frisco Roughriders LP §
d/b/a Frisco Roughriders; §
Greenjackets Baseball LLC; §
Greenjackets Hospitality Food & §
Beverage Services LLC; Idaho Falls §
Baseball Club Inc. d/b/a Idaho Falls §
Chukars; Inland Empire 66ers §
Baseball Club of San Bernardino Inc. §
d/b/a Inland Empire 66ers; Jethawks §
Baseball LP d/b/a Lancaster §
Jethawks; Myrtle Beach Pelicans, LP §
d/b/a Myrtle Beach Pelicans; §
Panhandle Baseball Club Inc. d/b/a §
Amarillo Sod Poodles; SAJ Baseball §
LLC; San Antonio Missions Baseball §
Club Inc. d/b/a San Antonio Missions; §
7th Inning Stretch LLC d/b/a §
Stockton Ports; West Virginia §
Baseball, LLC d/b/a West Virginia §
Power. §

Plaintiffs, §

v. §

§

Case No: _____

1 §
 2 National Casualty Co.; Scottsdale §
 3 Indemnity Co.; Scottsdale Insurance §
 4 Co. §
 5 Defendants.

PLAINTIFFS' ORIGINAL COMPLAINT

8 Plaintiffs Chattanooga Professional Baseball LLC d/b/a Chattanooga
 9 Lookouts; Agon Sports and Entertainment LLC; Boise Hospitality and Food
 10 Services LLC; Boise Professional Baseball LLC; Columbia Concessions & Catering
 11 LLC; Columbia Fireflies LLC d/b/a Columbia Fireflies; Eugene Emeralds Baseball
 12 Club Inc. d/b/a Eugene Emeralds; Fort Wayne Professional Baseball LLC d/b/a Fort
 13 Wayne TinCaps; Fredericksburg Baseball LLC d/b/a Fredericksburg Nationals;
 14 Frisco Roughriders LP d/b/a Frisco Roughriders; Greenjackets Baseball LLC;
 15 Greenjackets Hospitality Food & Beverage Services LLC; Idaho Falls Baseball Club
 16 Inc. d/b/a Idaho Falls Chukars; Inland Empire 66ers Baseball Club of San
 17 Bernardino Inc. d/b/a Inland Empire 66ers; Jethawks Baseball LP d/b/a Lancaster
 18 Jethawks; Myrtle Beach Pelicans, LP d/b/a Myrtle Beach Pelicans; Panhandle
 19 Baseball Club Inc. d/b/a Amarillo Sod Poodles; SAJ Baseball LLC; San Antonio
 20 Missions Baseball Club Inc. d/b/a San Antonio Missions; 7th Inning Stretch LLC
 21 d/b/a Stockton Ports; and West Virginia Baseball, LLC d/b/a West Virginia Power
 22 (the "Teams"), by and through their undersigned attorneys, as and for their
 23 Complaint against Defendants National Casualty Co.; Scottsdale Indemnity Co.;
 24 and Scottsdale Insurance Co. (the "Insurers"), allege as follows:
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INTRODUCTION

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2 1. In 2019, for the 15th straight year, more than 40,000,000 fans
3 attended games played by 160 Minor League Baseball (“MiLB”) teams located in
4 smaller cities and communities throughout the United States. An excursion to the
5 minor league ballpark has been a low-cost American family tradition for more than
6 100 years. This is the first year in that entire period of time—through prior
7 pandemics, two world wars, and many other global and national crises—that those
8 magic words, “Play Ball,” will not be heard in any of the ballparks around the
9 country in which minor league baseball is played.
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12 2. There are several causes of the first-ever cessation of Minor League
13 Baseball in 2020. These include continuing concerns for the health and safety of
14 players, employees, and fans related to the SARS-CoV-2 virus; action and inaction
15 by federal and state governments related to controlling the spread of the virus; and
16 the decision by Major League Baseball (“MLB”) that its teams will not meet their
17 contractual obligations to provide players under contract to their affiliated minor
18 league teams.
19

20 3. The result of the cancellation of the MiLB season is catastrophic
21 financial losses for all minor league teams, including the Plaintiff Teams.
22

23 4. The operating model for MiLB teams is entirely dependent on
24 receiving players, coaches, and other team personnel from the MLB team with
25 which they have an affiliation agreement requiring that MLB team to provide
26 players and other personnel. It is also dependent on being permitted by federal,
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1 state, and local governments to allow the admission of the thousands of fans who
 2 flock to every minor league game to enjoy a ball game, partake in the entertainment
 3 and food and beverage amenities associated with the minor league baseball
 4 experience, and purchase baseball caps and other merchandise sold in the ballpark.
 5 Though some MiLB teams have limited revenue from advertising and sponsorships,
 6 this revenue is largely tied to the number of fans the team can attract to the
 7 ballpark in a given year.
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9 5. The vast majority of MiLB teams' operating expenses, by contrast,
 10 bears little relationship to whether the teams are able to bring fans to the ballpark
 11 for ball games. The largest expense for many teams is the lease they pay to the
 12 municipal owners of the ballpark in which they play games. Most teams are
 13 responsible for a fixed lease payment of as much as one million dollars or more. In
 14 addition, MiLB teams generally have permanent employees needed to operate the
 15 team over an annual business cycle. The teams also have incurred many 2020
 16 expenses related to marketing and advertising and the purchase and stocking of
 17 merchandise and food and beverage in preparation for the 2020 baseball season.
 18 Thus, on average, MiLB teams incur more than \$2,000,000 in expenses to operate
 19 their teams without regard to whether they suffer interruption of their operations.
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22 6. Because of this business model, which requires variable revenue tied to
 23 game attendance but significant fixed operating expenses, and the fact that most
 24 MiLB team owners are small business owners or family businesses rooted in the
 25 community in which they own a team, the teams have little prospect for economic
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1 survival if the operation of their businesses is interrupted for any significant period
2 of time within a season. These dire economic consequences are worsened by the
3 obligation many teams will have to refund ticket, event, advertising, and
4 sponsorship revenue received in expectation that a full season of minor league
5 baseball would be played in 2020.
6

7 7. Given the business model for MiLB as described above, prudent
8 owners of MiLB teams, including the Plaintiff Teams, purchased business-
9 interruption insurance from the Defendant Insurers and paid significant premiums
10 to protect themselves from business interruption, including the cancellation of
11 games. These “all risks” policies cover the MiLB teams for business interruption in
12 circumstances where, as here, there has been direct physical loss or damage,
13 including, but not limited to loss of use, to the teams’ ballparks or elsewhere caused
14 by the SARS-CoV-2 virus, the governmental response to it, or the MiLB teams’
15 inability to obtain players. As described in detail below, however, the Insurers have
16 failed to meet their obligations, thereby placing the Teams in serious risk of
17 economic failure and jeopardizing the future of America’s Pastime as we know it.
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20 8. The Teams thus bring this action against the Insurers for breach of
21 contract, anticipatory breach of contract, and a declaratory judgement that they are
22 entitled to the full amount of coverage for which they paid premiums and of which
23 they badly need.
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THE PARTIES

I. THE TEAMS

9. The Teams fall into one of two categories—the Breach Plaintiffs or the Anticipatory-Breach Plaintiffs—depending on the steps their respective insurers have taken to avoid honoring their contractual commitments. The Breach Plaintiffs bring Counts I and III. The Anticipatory-Breach Plaintiffs bring Counts II and III.¹

A. The Breach Plaintiffs

10. Plaintiff Agon Sports and Entertainment LLC is a limited liability company whose members are citizens of Georgia. During the applicable period of loss, Agon Sports and Entertainment LLC provided services for the Augusta GreenJackets and Boise Hawks and was insured under the same Policy as the Augusta GreenJackets and Boise Hawks, National Casualty Co. Policy No. KKO0000007974200.

11. Plaintiff Boise Hospitality and Food Services LLC is a limited liability company whose members are citizens of Georgia. During the applicable period of loss, Boise Hospitality and Food Services LLC provided services for the Boise Hawks and was insured under the same Policy as the Boise Hawks, National Casualty Co. Policy No. KKO0000007974200.

12. Plaintiff Boise Professional Baseball LLC (“Boise Hawks”) is a limited liability company whose members are citizens of Alabama, California, Georgia, Idaho, New Jersey, and Virginia. During the applicable period of loss, the Boise

¹ Count I is for breach of contract, Count II is for anticipatory breach of contract, and Count III is for declaratory judgment.

1 Hawks were insured by National Casualty Co. under Policy No.
2 KKO0000007974200.

3 13. Plaintiff Chattanooga Professional Baseball LLC d/b/a Chattanooga
4 Lookouts (“Chattanooga Lookouts”) is a limited liability company whose members
5 are citizens of Alabama, California, Colorado, Florida, Georgia, Indiana, Maryland,
6 New Jersey, New York, North Carolina, South Carolina, Tennessee, and Virginia.
7 During the applicable period of loss, the Chattanooga Lookouts were insured by
8 National Casualty Co. under Policy No. KKO0000008089600.
9

10 14. Plaintiff Columbia Concessions & Catering LLC is a limited liability
11 company whose sole member is a citizen of Georgia. During the applicable period of
12 loss, Columbia Concessions & Catering LLC provided services for the Columbia
13 Fireflies and was insured under the same Policy as the Columbia Fireflies, National
14 Casualty Co. Policy No. KKO0000008089600.
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16 15. Plaintiff Columbia Fireflies LLC d/b/a Columbia Fireflies (“Columbia
17 Fireflies”) is a limited liability company whose members are citizens of Alabama,
18 California, Florida, Georgia, Indiana, Maryland, New Jersey, New York, South
19 Carolina, Tennessee, and Virginia. During the applicable period of loss, the
20 Columbia Fireflies were insured by National Casualty Co. under Policy No.
21 KKO0000008089600.
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23 16. Plaintiff Eugene Emeralds Baseball Club Inc. d/b/a Eugene Emeralds
24 (“Eugene Emeralds”) is a corporation organized under the laws of Colorado with its
25 principal place of business in Oregon. During the applicable period of loss, the
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1 Eugene Emeralds were insured by National Casualty Co. under Policy No.
2 KKO0000007910700.

3 17. Plaintiff Fort Wayne Professional Baseball LLC d/b/a Fort Wayne
4 TinCaps (“Fort Wayne TinCaps”) is a limited liability company whose members are
5 citizens of California, Florida, Georgia, Indiana, Maryland, New Jersey, New York,
6 South Carolina, Tennessee, and Virginia. During the applicable period of loss, the
7 Fort Wayne TinCaps were insured by National Casualty Co. under Policy No.
8 KKO0000008089600.

9 18. Plaintiff Frisco Roughriders LP (“Frisco Roughriders”) is a limited
10 partnership whose members are citizens of Texas, Pennsylvania, and New York.
11 During the applicable period of loss, the Frisco Roughriders were insured by
12 National Casualty Co. under Policy No. KKO0000008164100.

13 19. Plaintiff Greenjackets Baseball LLC (“Augusta GreenJackets”) is a
14 limited liability company whose members are citizens of Alabama, California,
15 Georgia, Maryland, Massachusetts, and South Carolina. During the applicable
16 period of loss, the Augusta GreenJackets were insured by National Casualty Co.
17 under Policy No. KKO0000007974200.

18 20. Plaintiff Greenjackets Hospitality Food & Beverage Services LLC is a
19 limited liability company whose members are citizens of Georgia. During the
20 applicable period of loss, Greenjackets Hospitality Food & Beverage Services LLC
21 provided services for the Augusta GreenJackets and was insured under the same
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1 Policy as the Augusta GreenJackets, National Casualty Co. Policy No.
2 KKO0000007974200.

3 21. Plaintiff Idaho Falls Baseball Club Inc. d/b/a Idaho Falls Chukars
4 (“Idaho Falls Chukars”) is a corporation organized under the laws of Idaho with its
5 principal place of business in Idaho. During the applicable period of loss, the Idaho
6 Falls Chukars were insured by National Casualty Co. under Policy No.
7 KKO0000007910700.

8 22. Plaintiff Inland Empire 66ers Baseball Club of San Bernardino Inc.
9 d/b/a Inland Empire 66ers (“Inland Empire 66ers”) is a corporation organized under
10 the laws of California with its principal place of business in California. During the
11 applicable period of loss, the Inland Empire 66ers were insured by Scottsdale
12 Indemnity Co. under Policy No. KKO0000007910400.

13 23. Plaintiff Jethawks Baseball LP d/b/a Lancaster Jethawks (“Lancaster
14 Jethawks”) is a limited partnership whose members are citizens of British
15 Columbia, Canada. During the applicable period of loss, the Lancaster Jethawks
16 were insured by Scottsdale Indemnity Co. under Policy No. KKI0000008299500.

17 24. Plaintiff Myrtle Beach Pelicans, LP d/b/a Myrtle Beach Pelicans
18 (“Myrtle Beach Pelicans”) is a limited partnership whose members are citizens of
19 Pennsylvania, South Carolina, Texas, North Carolina, Florida, and New Jersey.
20 During the applicable period of loss, the Myrtle Beach Pelicans were insured by
21 National Casualty Co. under Policy No. KKO0000008383900.
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1 25. Plaintiff Panhandle Baseball Club Inc. d/b/a Amarillo Sod Poodles
2 (“Amarillo Sod Poodles”) is a corporation organized under the laws of Texas with its
3 principal place of business in Texas. During the applicable period of loss, the
4 Amarillo Sod Poodles were insured by National Casualty Co. under Policy No.
5 KKO0000007910700.
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7 26. Plaintiff San Antonio Missions Baseball Club Inc. d/b/a San Antonio
8 Missions (“San Antonio Missions”) is a corporation organized under the laws of
9 Colorado with its principal place of business in Texas. During the applicable period
10 of loss, the San Antonio Missions were insured by National Casualty Co. under
11 Policy No. KKO0000007910700.
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13 **B. The Anticipatory-Breach Plaintiffs**

14 27. Plaintiff Fredericksburg Baseball LLC d/b/a Fredericksburg Nationals
15 (successor to Potomac Baseball LLC) (“Fredericksburg Nationals”) is a limited
16 liability company whose members are citizens of Florida, Maryland, and Virginia.
17 During the applicable period of loss, the Fredericksburg Nationals were insured by
18 Scottsdale Insurance Co. under Policy No. KKS0000008192600.
19

20 28. Plaintiff SAJ Baseball LLC is a limited liability company whose
21 members are citizens of Florida, Maryland, and Virginia. During the applicable
22 period of loss, SAJ Baseball LLC provided services to the Fredericksburg Nationals
23 and was insured under the same Policy as the Fredericksburg Nationals, Scottsdale
24 Insurance Co. Policy No. KKS0000008192600.
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1 29. Plaintiff 7th Inning Stretch LLC d/b/a Stockton Ports (“Stockton
2 Ports”) is a limited liability company whose members are citizens of California and
3 Texas. During the applicable period of loss, the Stockton Ports were insured by
4 Scottsdale Indemnity Co. under Policy No. KKI0000008310300.
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6 30. Plaintiff West Virginia Baseball, LLC d/b/a West Virginia Power
7 (“West Virginia Power”) is a limited liability company whose members are citizens
8 of West Virginia. During the applicable period of loss, West Virginia Power was
9 insured by National Casualty Company under Policy No. KKO0000008194400.
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11 **II. THE INSURERS**

12 31. Defendant National Casualty Co. is a corporation organized under the
13 laws of Ohio with its principal place of business in Arizona.

14 32. Defendant Scottsdale Indemnity Co. is a corporation organized under
15 the laws of Ohio with its principal place of business in Arizona.

16 33. Defendant Scottsdale Insurance Co. is a corporation organized under
17 the laws of Ohio with its principal place of business in Arizona.

18 34. On information belief, all Defendants are part of the Nationwide
19 Family of Companies, affiliated with Nationwide Mutual Insurance Company.
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JURISDICTION AND VENUE

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2 35. The Court has subject-matter jurisdiction over this action under 28
3 U.S.C. § 1332 because there is complete diversity of citizenship among the parties to
4 the action and because the amount in controversy exceeds \$75,000, exclusive of
5 interest and costs.
6

7 36. The Court has general personal jurisdiction over each of these claims
8 because National Casualty Co., Scottsdale Indemnity Co., and Scottsdale Insurance
9 Co. maintain their principal places of business in Arizona.
10

11 37. The Court is a proper venue for this action under 28 U.S.C. § 1391
12 because Defendants are subject to the Court’s personal jurisdiction.
13

FACTUAL ALLEGATIONS

14 **I. THE NATURE OF THE COVID-19 PANDEMIC**

15 38. COVID-19 is an infectious disease caused by a recently discovered
16 novel coronavirus, formally known as SARS-CoV-2. The first instances of the
17 disease spreading to humans were diagnosed in China in or around December 2019,
18 and the first reported case in the United States was in January 2020.
19

20 39. The impact of the virus and the resulting pandemic on life and
21 property has been staggering. Though testing has been severely limited, as of the
22 filing date of this Complaint, more than 2,000,000 Americans have had confirmed
23 cases of COVID-19, and more than 120,000 have died from it.
24

25 40. The virus is easily transmitted from person to person and from surface
26 to person. According to the World Health Organization (the “WHO”), the virus can
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1 spread from person to person through small droplets from the nose or mouth that
2 are spread when a person with COVID-19 coughs or exhales. These droplets land on
3 objects and surfaces around the person. Other people then catch the virus by
4 touching these objects or surfaces, then touching their eyes, noses, or mouths.
5
6 People can also catch the virus if they breathe in droplets from a person infected
7 with the virus who coughs or exhales droplets.²

8 41. Infected individuals can be completely asymptomatic—and thus
9 unaware that they may be spreading the virus through the mere touching of objects
10 and surfaces. Indeed, studies have estimated that more than 40% of infected
11 individuals may never develop any symptoms.³ But even individuals who appear
12 healthy and present no identifiable symptoms of the disease might still spread the
13 virus by breathing, speaking, or touching objects and surfaces.

14
15 42. According to a report in *The New York Times*, “[a]n infected person
16 talking for five minutes in a poorly ventilated space can also produce as many viral
17 droplets as one infectious cough.”⁴ And one human sneeze can expel droplets that
18 can travel up to 27 feet at nearly a hundred miles an hour.⁵

21 ² *Q&A on Coronaviruses (COVID-19)*, World Health Organization (April 17, 2020),
<https://www.who.int/news-room/q-a-detail/q-acoronaviruses>.

22 ³ Erika Edwards, *Asymptomatic COVID-19 Cases May Be More Common Than Suspected* (May 27,
23 2020, 12:43 PM), <https://www.nbcnews.com/health/health-news/asymptomatic-covid-19-cases-may-be-more-common-suspected-n1215481>.

24 ⁴ See Yuliya Pashina-Kottas, et al., This 3-D Simulation Shows Why Social Distancing Is So
25 Important, *The New York Times* (April 21, 2020), available at
<https://www.nytimes.com/interactive/2020/04/14/science/coronavirus-transmission-cough-6-feet-ar-ul.html> (last visited June 12, 2020).

26 ⁵ Sarah Gibbens, “See how a sneeze can launch germs much farther than 6 feet,” *National*
27 *Geographic* (April 17, 2020), available at www.nationalgeographic.com/science/2020/04/coronavirus-covid-sneeze-fluid-dynamics-in-photos/ (last visited June 12, 2020).

1 respective states have issued such orders, and many of these orders observe the
2 virus's threat to property.

3 47. For these reasons, it is statistically certain that the virus is present at
4 the Teams' ballparks and nearby properties or that the threat of the virus's
5 presence at the ballparks is imminent. Moreover, the ballparks are incapable of
6 their intended function—serving as a venue for ball games attended by fans.
7

8 48. The nature of the virus, and the social distancing required to mitigate
9 its spread, have contributed to cancellations of the Teams' MiLB games.
10

11 **II. GOVERNMENTS' RESPONSES TO THE PANDEMIC**

12 49. On December 31, 2019, the Chinese government notified the WHO of a
13 "pneumonia of unknown cause" discovered in China's Wuhan province. On January
14 3, 2020, the U.S. federal government received its first formal notification of the
15 outbreak in China. The United States reported its first COVID-19 case on January
16 20, and on January 30, the WHO declared the COVID-19 pandemic a "Public Health
17 Emergency of International Concern." Yet in the first few months of 2020, the
18 federal government failed to recognize the severity of the pandemic and did not
19 contain the virus.
20

21 50. By the beginning of February, 11,000,000 people in China's Wuhan
22 province were under quarantine, and the extent of human-to-human transmission
23 was clear. Aside from limiting travel from Wuhan, however, the U.S. federal
24 government took little action. Even though funding and medical equipment were
25 being depleted by the day, the U.S. federal government did not authorize new funds
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1 or require the production of testing kits, ventilators, or personal protective
2 equipment for healthcare workers.

3 51. In February, the virus spread throughout the United States largely
4 undetected. Though the CDC began shipping testing kits to laboratories on
5 February 5, the kits were later determined to be flawed, rendering the test
6 unreliable. By February 26, the CDC were still testing fewer than 100 patients
7 daily, notwithstanding that the CDC were telling state and local officials that their
8 testing capacity was more than adequate to meet current testing demands.
9

10 52. On March 13, 2020, the U.S. federal government declared a national
11 emergency. Three days later, the CDC and members of the national Coronavirus
12 Task Force issued public guidance, styled as “30 Days to Slow the Spread,” that
13 advocated for the first time far-reaching social-distancing measures, such as
14 working from home; avoiding shopping trips and gatherings of more than 10 people;
15 and staying away from bars, restaurants, and food courts.
16
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18 53. The failure of the federal government to build an effective wall
19 preventing the continued migration of the virus from states that were hit early to
20 the rest of the country meant that states took the lead in combating the virus’s
21 spread. State after state imposed sweeping restrictions on citizens’ daily lives to
22 protect them and stop the spread. Most states restricted or prohibited the operation
23 of non-essential businesses, prohibited public gatherings, or required individuals to
24 stay at home except for essential purposes.
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1 54. According to a Columbia University study, if the government had
2 imposed social-distancing measures just one week earlier—on March 8 instead of
3 March 15—the United States would have avoided 703,975 confirmed cases (62%)
4 and 35,927 reported deaths (55%) as of May 3.⁹ And if social distancing and
5 lockdowns had begun just two weeks earlier—on March 1—the country would have
6 seen a reduction of 960,937 (84%) cases and 53,990 (83%) deaths.
7

8 55. The governmental response to the virus is a cause of the Teams’
9 business interruptions.
10

11 **III. MAJOR LEAGUE BASEBALL DOES NOT PROVIDE PLAYERS**

12 56. Fans come to MiLB baseball games to see the players. But the Teams
13 do not employ or manage the baseball players who draw fans to the park. Rather,
14 Major League Baseball teams supply the players to each Team through player
15 development contracts.
16

17 57. Each Team manages the business aspects of its operations, such as
18 marketing and promotions and sales of tickets, parking, advertising, concessions,
19 and merchandise. But under the player development contracts, the parent Major
20 League Baseball club controls and makes all decisions related to the players,
21 including paying their salaries and determining which teams they play for and
22 when.
23
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26 ⁹ Jeffrey Shaman et al., *Differential Effects of Intervention Timing on COVID-19 Spread in the*
27 *United States*, MedRxiv (May 29, 2020),
<https://www.medrxiv.org/content/10.1101/2020.05.15.20103655v2.full.pdf+html>.

1 58. The Teams' players are thus under the exclusive control of the parent
2 club, which decides which players the Team receives and, indeed, whether it
3 receives any players at all.

4 59. The Professional Baseball Agreement entered into between Major
5 League and Minor League Baseball and the Player Development Contract between
6 MLB and MiLB teams set forth the contractual obligations of MLB teams to supply
7 players to MiLB teams. Pursuant to those agreements, MLB teams were required to
8 provide players to MiLB teams to enable the start of the MiLB season in early-April
9 2020. However, MLB has informed MiLB that it will not be providing MiLB with
10 players for the 2020 season. As a result, MiLB's 2020 season has been cancelled.

11 60. MLB's denial of players to MiLB teams is a cause of the Teams'
12 business interruptions.

13 **IV. THE TEAMS SUFFER BUSINESS-INCOME LOSSES**

14 61. As a result of the virus, the governmental response, and Major League
15 Baseball's failure to provide baseball players, the Teams have been deprived of their
16 primary source of revenue—fans coming to the ballpark and paying for game
17 tickets, merchandise, food and beverage, and partaking in other amenities. Though
18 some MiLB teams have limited revenue from advertising and sponsorships, this
19 revenue is largely tied to the number of fans the team can attract to the ballpark in
20 a given year.

21 62. 2019, for example, was a stellar year for MiLB. More than 40,000,000
22 fans attended such games, marking the 15th consecutive season that MiLB's teams
23
24

1 drew more than 40,000,000 fans. The 2019 season also marked MiLB's largest year-
2 over-year increase in attendance since the 2006 season and marked the 9th-largest
3 single-season total in MiLB's history.

4
5 63. This year, however, there are no games and no fans. As such, the
6 Teams' primary income streams have come to a halt. Yet the fixed costs of operating
7 a baseball stadium remain, such as fixed lease payments and payroll for permanent
8 employees needed to operate the team over an annual business cycle.

9
10 64. The Teams have therefore suffered, and will continue to suffer,
11 significant business-income losses, expenses, and damages in a number of forms,
12 including, but not limited to:

- 13 a. Loss of or diminished ticket sales;
14 b. Loss of or diminished parking sales;
15 c. Loss of or diminished concessions sales;
16 d. Loss of or diminished merchandise sales; and
17 e. Loss of or diminished advertising sales.
18

19 65. The Teams have incurred, and will continue to incur, further losses,
20 expenses, and damages in the form of normal operating expenses, including, but not
21 limited to, lease payments and payroll costs.

22
23 66. With no players, no games, and no fans, the Teams' losses of business
24 income for the 2020 MiLB baseball season have been near total. With virtually no
25 source of income, and accruing expenses, the Teams face catastrophic financial
26 losses.

1 **V. THE POLICIES PROVIDE COVERAGE**

2 67. In exchange for substantial premiums, the Insurers sold the Policies
3 covering the Teams as the named insureds.

4 68. The Teams' Policies are materially similar. Each is a commercial all-
5 risk first-party property & casualty policy with similar, if not identical, grants of
6 coverage for "business income" losses. To simplify presentation of the coverage
7 disputes at issue in this suit, the Teams set forth relevant provisions of the Policy of
8 Fredericksburg Nationals (the "Policy," **Exhibit A**). The parallel provisions of the
9 other Teams' Policies are cited herein, and all Policies are exhibited in their
10 entireties to this Complaint. *See Exhibits B-I*.

11
12
13 69. The Policy's period of coverage is from November 1, 2019 to November
14 1, 2020. *See KRS-D-1*.¹⁰

15 70. The Policy provides coverage per occurrence. *See CP 00 30 10 12 at 4*.¹¹

16
17 71. The Policy is divided into, among other types of coverage, a "Building
18 and Personal Property Coverage Form," *see CP 00 10 10 12 at 1-14*,¹² and a
19 "Business Income (and Extra Expense) Coverage Form," *see CP 00 30 10 12 at 1-8*.¹³

21 ¹⁰ Agon Sports and Entertainment LLC, Boise Hospitality and Food Services LLC, Boise Professional
22 Baseball LLC, Greenjackets Baseball LLC, and Greenjackets Hospitality Food & Beverage Services
23 LLC (May 08, 2019 to May 08, 2020); Chattanooga Professional Baseball LLC, Columbia Concessions
24 & Catering LLC, Columbia Fireflies LLC, and Fort Wayne Professional Baseball LLC (August 1,
25 2019 to August 1, 2020); Eugene Emeralds Baseball Club Inc., Idaho Falls Baseball Club Inc.,
26 Panhandle Baseball Club Inc., and San Antonio Missions Baseball Club Inc. (March 31, 2019 to
March 31, 2020); Frisco Roughriders LP (October 1, 2019 to October 1, 2020); Inland Empire 66ers
Baseball Club of San Bernardino Inc. (March 31, 2019 to March 31, 2020); Jethawks Baseball LP
(January 28, 2020 to January 28, 2021); Myrtle Beach Pelicans, LP (April 1, 2020 to April 1, 2021);
7th Inning Stretch LLC (January 28, 2020 to January 28, 2021); and West Virginia Baseball LLC
(November 1, 2019 to November 1, 2020).

27 ¹¹ National Casualty Co., *see CP 00 30 10 12 at 4*; Scottsdale Indemnity Co., *see CP 00 30 10 12 at 4*.

1 72. The Property Coverage Form covers “direct physical loss of or damage
2 to Covered Property at the premises described in the Declarations caused by or
3 resulting from any Covered Cause of Loss.”¹⁴ See CP 00 10 10 12 at 1.¹⁵

4 73. The limit of insurance applies per occurrence. See CP 00 10 10 12 at 8–
5 9.¹⁶

6 74. The Property Coverage Form provides “Additional Coverages.” See CP
7 00 10 10 12 at 3–6.¹⁷

8 75. The Business Income (and Extra Expense) Coverage Form covers “the
9 actual loss of Business Income [the policyholder] sustain[s] due to the necessary
10 ‘suspension’ of [the policyholder’s] ‘operations’ during the ‘period of restoration’. The
11 ‘suspension’ must be caused by direct physical loss of or damage to property at
12 premises which are described in the Declarations.” See CP 00 30 10 12 at 1.¹⁸

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20 ¹² National Casualty Co., see CP 00 10 10 12 at 1–14; Scottsdale Indemnity Co., see CP 00 10 10 12 at 1–14.

21 ¹³ National Casualty Co., see CP 00 30 10 12 at 1–8; Scottsdale Indemnity Co., see CP 00 30 10 12 at 1–8.

22 ¹⁴ “Covered Causes of Loss means direct physical loss unless the loss is excluded or limited in th[e]
23 [P]olicy.” CP 10 30 09 17 at 1; National Casualty Co., see CP 10 30 09 17 at 1; Scottsdale Indemnity
24 Co., see CP 10 30 09 17 at 1.

25 ¹⁵ National Casualty Co., see CP 00 10 10 12 at 1; Scottsdale Indemnity Co.; see CP 00 10 10 12 at 1.

26 ¹⁶ National Casualty Co., see CP 00 10 10 12 at 8–9; Scottsdale Indemnity Co., see CP 00 10 10 12 at 8–9.

27 ¹⁷ National Casualty Co., see CP 00 10 10 12 at 3–6; Scottsdale Indemnity Co., see CP 00 10 10 12 at 3–6.

28 ¹⁸ National Casualty Co., see CP 00 30 10 12 at 1; Scottsdale Indemnity Co., see CP 00 30 10 12 at 1.

1 76. “Business Income means the: **a.** Net Income (Net Profit or Loss before
2 income taxes) that would have been earned or incurred; and **b.** Continuing normal
3 operating expenses incurred, including payroll.” *See* CP 00 30 10 12 at 1.¹⁹

4 77. The Business Income with Extra Expense Coverage Form provides
5 “Additional Coverages.” *See* CP 00 30 10 12 at 2–4.²⁰

6 78. The Additional Coverages include certain Extra Expenses. “Extra
7 Expense means necessary expenses [the policyholder] incur[s] during the ‘period of
8 restoration’ that [the policyholder] would not have incurred if there had been no
9 direct physical loss or damage to property caused by or resulting from a Covered
10 Cause of Loss.” *See* CP 00 30 10 12 at 1–2.²¹

11 79. The Additional Coverages include “the actual loss of Business Income
12 [the policyholder] sustain[s] and necessary Extra Expense caused by action of civil
13 authority that prohibits access to the described premises.” *See* CP 00 30 10 12 at 2.²²

14 80. The Policy purports to exclude from coverage “loss or damage caused
15 by or resulting from any virus, bacterium or other microorganism that induces or is
16 capable of inducing physical distress, illness or disease [the ‘Exclusion’].” *See* CP 01
17 40 07 06 at 1.²³ That Exclusion does not preclude the Teams’ claims for coverage
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23 ¹⁹ National Casualty Co., *see* CP 00 30 10 12 at 1; Scottsdale Indemnity Co., *see* CP 00 30 10 12 at 1.

24 ²⁰ National Casualty Co., *see* CP 00 30 10 12 at 2–4; Scottsdale Indemnity Co., *see* CP 00 30 10 12 at 2–4.

25 ²¹ National Casualty Co., *see* CP 00 30 10 12 at 1–2; Scottsdale Indemnity Co., *see* CP 00 30 10 12 at 1–2.

26 ²² National Casualty Co., *see* CP 00 30 10 12 at 2; Scottsdale Indemnity Co., *see* CP 00 30 10 12 at 2.

27 ²³ National Casualty Co., *see* CP 01 40 07 06 at 1; Scottsdale Indemnity Co., *see* CP 01 40 07 06 at 1.

1 because, among other reasons, it is void, unenforceable, and inapplicable. Nor does
2 any other policy provision exclude the Teams' claims for coverage.

3 **VI. THE INSURERS DENY THE TEAMS' CLAIMS FOR COVERAGE**

4 81. All Teams have made claims for coverage with their respective
5 Insurers. With minor variations in their positions, the Insurers have all denied or
6 will all deny the Teams' claims for coverage on the grounds that the Team's losses
7 (1) do not result from direct physical loss or damage to property and (2) are barred
8 by the Exclusion.
9

10 82. National Casualty Co., in denying the claims of Agon Sports and
11 Entertainment LLC, Boise Hospitality and Food Services LLC, Boise Professional
12 Baseball LLC, Greenjackets Baseball LLC, and Greenjackets Hospitality Food &
13 Beverage Services LLC; Chattanooga Professional Baseball LLC, Myrtle Beach
14 Pelicans; Columbia Concessions & Catering LLC, Columbia Fireflies LLC, and Fort
15 Wayne Professional Baseball LLC; and Eugene Emeralds Baseball Club Inc., Idaho
16 Falls Baseball Club Inc., Amarillo Sod Poodles, and San Antonio Missions, and
17 Frisco Roughriders, took the position that the Teams' losses were not attributable to
18 any physical loss or damage, whether at the insured locations or elsewhere.
19

20 Accordingly, National Casualty Co. denied coverage under the policies' grants of
21 coverage related to property, business interruption, and civil authority. National
22 Casualty Co. further denied coverage because it deemed the Exclusion applicable.
23

24 83. Scottsdale Indemnity Co., in denying the claim of Inland Empire 66ers
25 and Lancaster Jethawks, took the position that the Team's losses were not
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1 attributable to any physical loss or damage, whether at the insured location or
2 elsewhere. Accordingly, Scottsdale Indemnity Co. denied coverage under the policy's
3 grants of coverage related to property, business interruption, and civil authority.
4 Scottsdale Indemnity Co. further denied coverage because it deemed the Exclusion
5 applicable.
6

7 84. Scottsdale Indemnity Co.'s position on the claim of Inland Empire
8 66ers is representative of the position it will take with respect to that of 7th Inning
9 Stretch LLC, the other Team it insures.
10

11 85. Scottsdale Insurance Co. has not yet denied the claim of any Team. Yet
12 its position with respect to those of Fredericksburg Nationals, which it insures, will
13 plausibly align with the positions taken by all other Insurers that have denied
14 claims. Indeed, every Insurer to deny coverage has relied on the same grounds—the
15 supposed lack of physical loss or damage and the Exclusion. In fact, Scottsdale
16 Insurance Co. itself has taken the exact same position with respect to other claims
17 for coverage related to or arising out of the pandemic. *See, e.g., Ybarra Investments,*
18 *Inc. v. Scottsdale Ins. Co.*, No. 4:20-cv-01818 (S.D. Tex. filed May 26, 2020).
19

20 86. The Insurers' positions denying coverage to the Teams are wrong. As
21 set forth herein, there has been direct physical loss or damage, including, but not
22 limited to, loss of use, at the Teams' ballparks or elsewhere caused by the SARS-
23 CoV-2 virus, the governmental response to it, or the Teams' inability to obtain
24 players. Moreover, the Exclusion does not defeat the Teams' claims for coverage
25 because, among other reasons, it is void, unenforceable, and inapplicable.
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FIRST CAUSE OF ACTION
(Breach of Contract)

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87. This cause of action is brought by the Breach Plaintiffs against their respective Defendant-Insurers.

88. The Breach Plaintiffs repeat and reallege the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

89. The Policies constitute valid and enforceable contracts between the Breach Plaintiffs, as the named insureds, and the respective Defendants, as the companies providing the insurance under the Policies.

90. As described above, the Breach Plaintiffs have sustained, and are continuing to sustain, losses covered under the Policies and during the Policy periods.

91. The Breach Plaintiffs provided prompt notice of their losses, performed all obligations required of them under the respective Policies, and were ready, willing, and able to perform their obligations under the Policies.

92. The breaches occurred when the respective Defendants denied some or all coverage owed to the Breach Plaintiffs under the Policies:

	Breach Plaintiff	Defendant	Policy No.	Date of Denial
1				
2	Agon Sports and	National Casualty Co.	KKO0000007974200	May 8, 2020
3	Entertainment			
4	LLC,			
5	Boise Hospitality			
6	and Food Services			
7	LLC, Boise			
8	Professional			
9	Baseball LLC,			
10	Greenjackets			
11	Baseball LLC, and			
12	Greenjackets			
13	Hospitality Food			
14	& Beverage			
15	Services LLC			
16	Chattanooga	National Casualty Co.	KKO0000008089600	April 17, 2020
17	Professional			
18	Baseball LLC,			
19	Columbia			
20	Concessions &			
21	Catering LLC,			
22	Columbia Fireflies			
23	LLC, and Fort			
24	Wayne			
25	Professional			
26	Baseball LLC			
27	Eugene Emeralds	National Casualty Co.	KKO0000007910700	May 7, 2020
28	Baseball Club			
29	Inc., Idaho Falls			
30	Baseball Club			
31	Inc., Panhandle			
32	Baseball Club			
33	Inc., and San			
34	Antonio Missions			
35	Baseball Club Inc.			
36	Frisco	National Casualty Co.	KKO0000008164100	June 11, 2020
37	Roughriders			
38	Myrtle Beach	National Casualty Co.	KKO0000008383900	June 25, 2020
39	Pelicans			
40	Inland Empire	Scottsdale Indemnity	KKO0000007910400	May 7, 2020
41	66ers Baseball	Co.		
42	Club of San			
43	Bernardino Inc.			

1	Lancaster	Scottsdale Indemnity	KKI0000008299500	May 11, 2020
2	Jethawks	Co.		

3 93. Under the terms of the Policies, the respective Defendants must pay up
4 to the Policies' limits of insurance for any loss covered under the Policies, subject
5 only to sublimits, time limits, or deductibles for specific coverages.

6 94. The respective Defendants have not paid any or all amounts due to the
7 Breach Plaintiffs in connection with their claims. Instead, the respective
8 Defendants have asserted various inapplicable bases to wrongfully deny coverage
9 for the Breach Plaintiffs' claims.
10

11 95. As a direct and proximate result of the respective Defendants' breaches
12 of contract, the Breach Plaintiffs have suffered and will continue to suffer damages
13 in an amount to be determined at trial, plus consequential damages, attorneys' fees,
14 and pre- and post-judgment interest to the extent permitted by law.
15

16 **SECOND CAUSE OF ACTION**
17 **(Anticipatory Breach of Contract)**

18 96. This cause of action is brought by the Anticipatory-Breach Plaintiffs
19 against their respective Defendant-Insurers.

20 97. The Anticipatory-Breach Plaintiffs repeat and reallege the allegations
21 set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.
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23 98. The Policies constitute valid and enforceable contracts between the
24 Anticipatory-Breach Plaintiffs, as the named insureds, and the respective
25 Defendants, as the companies providing the insurance under the Policies.
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1 99. As described above, the Anticipatory-Breach Plaintiffs have sustained,
2 and are continuing to sustain, losses covered under the Policies and during the
3 Policy periods.

4 100. The Anticipatory-Breach Plaintiffs provided prompt notice of their
5 losses, performed all obligations required of them under the respective Policies, and
6 were ready, willing, and able to perform their obligations under the Policies.
7

8 101. The anticipatory breaches occurred when the respective Defendants
9 absolutely repudiated their contractual obligations by declaring an unconditional
10 intent not to perform the Policies according to their terms.
11

12 102. Under the terms of the Policies, the respective Defendants must pay up
13 to the Policies' limits of insurance for any loss covered under the Policies, subject
14 only to sublimits, time limits, or deductibles for specific coverages.
15

16 103. The respective Defendants have not paid any or all amounts due to the
17 Anticipatory-Breach Plaintiffs in connection with their claims. Instead, the
18 Defendants have asserted various inapplicable bases to wrongfully deny coverage
19 for the Anticipatory-Breach Plaintiffs' claims.

20 104. As a direct and proximate result of the respective Defendants'
21 anticipatory breaches of contract, the Anticipatory-Breach Plaintiffs have suffered
22 and will continue to suffer damages in an amount to be determined at trial, plus
23 consequential damages, attorneys' fees, and pre- and post-judgment interest to the
24 extent permitted by law.
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THIRD CAUSE OF ACTION
(Declaratory Judgement)

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3 105. Plaintiffs repeat and reallege the allegations set forth in the foregoing
4 paragraphs of this Complaint as if fully set forth herein.

5 106. This cause of action is brought by all Plaintiffs against all Defendants.

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7 107. Pursuant to the terms of the Policies, the Insurers are obligated to pay,
8 up to the limit of liability or any applicable sublimit or time period, for property
9 damage or business-interruption losses covered under the Policies and not
10 otherwise excluded from coverage.

11 108. As detailed above, the Teams' losses are covered under multiple
12 coverages of the Policies and are not excluded from coverage.

13
14 109. The Insurers dispute, or the Teams reasonably believe the Insurers
15 will dispute, their respective legal obligations to pay the Teams' claims.

16 110. Pursuant to 28 U.S.C. § 2201, the Teams are entitled to a declaration
17 by this Court of their respective Insurers' obligations under the Policies.

18
19 111. An actionable and justiciable controversy exists or will exist between
20 the Teams and their respective Insurers concerning the proper construction of the
21 Policies, and the rights and obligations of the parties thereto, with respect to the
22 Teams' claims for expenses or losses arising out of the coronavirus pandemic.

23 112. Pursuant to 28 U.S.C. § 2201, this Court should enter a declaratory
24 judgment in favor of the Teams and against their respective Insurers, declaring that
25 there is coverage available for the Teams' claims up to the full limits or applicable
26 sublimits of the Policies and, pursuant to 28 U.S.C. § 2202, declaring any other
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1 relief this Court deems proper. Such a declaration would resolve the current
2 controversy between the Teams and their respective Insurers.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, the Teams pray for relief as follows:

5
6 (a) On the First Cause of Action, the Breach Plaintiffs request that
7 the Court enter judgment against the respective Defendants, awarding the
8 Breach Plaintiffs damages in an amount to be determined at trial, but more
9 than \$75,000, plus consequential damages, attorneys’ fees, and pre- and post-
10 judgment interest to the extent permitted by law;

11
12 (b) On the Second Cause of Action, the Anticipatory-Breach
13 Plaintiffs request that the Court enter judgment against the respective
14 Defendants, awarding the Anticipatory-Breach Plaintiffs damages in an
15 amount to be determined at trial, but more than \$75,000, plus consequential
16 damages, attorneys’ fees, and pre- and post-judgment interest to the extent
17 permitted by law;

18
19 (c) On the Third Cause of Action, Plaintiffs request that the Court
20 enter a declaratory judgment in favor of the Teams against their respective
21 Insurers that the Teams’ losses are covered under the Policies, declaring that
22 their respective Insurers are required to pay the Teams, up to the applicable
23 limits of the Policies, for claimed amounts under the Policies;
24

(d) For all Causes of Action, all pre-judgment and post-judgment interest as allowed by law and all the Teams' costs incurred as a consequence of having to prosecute this lawsuit, including attorneys' fees; and

(e) The Teams request such other and further relief as the Court deems just and proper.

JURY DEMAND

The Teams hereby demand a trial by jury on all issues so triable.

Date: July 2, 2020

Respectfully submitted,

/s/ J. Michael Hennigan
J. Michael Hennigan (AZ Bar No. 2633)
mhennigan@mckoolsmithhennigan.com
MCKOOL SMITH HENNIGAN, P.C.
300 South Grand Avenue, Suite 2900
Los Angeles, California 90071
Telephone: (213) 694-1200
Facsimile: (213) 694-1234

/s/ Andrew L Sandler
Andrew L Sandler (*pro hac vice* to follow)
Stephen M. LeBlanc (*pro hac vice* to follow)
Rebecca Guiterman (*pro hac vice* to follow)
MITCHELL SANDLER LLC
1120 20th Street NW, Suite 725
Washington, DC 20036
Telephone: (202) 886-5260

Robin Cohen (*pro hac vice* to follow)
John Briody (*pro hac vice* to follow)
McKool Smith, P.C.
One Manhattan West
395 9th Avenue, 50th Floor
New York, NY 10001
Telephone: (212) 402-9400
Facsimile: (212) 402-9444

Attorneys for Plaintiffs

Patrick Pijls (*pro hac vice* to follow)
McKool Smith, P.C.
300 Crescent Court, Suite 1500
Dallas, TX 75201
Telephone: (214) 978-4000
Facsimile: (214) 978-4044

Attorneys for Plaintiffs