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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SUNSTONE HOTEL INVESTORS, INC.,

Plaintiff,

vs.

ENDURANCE AMERICAN SPECIALTY INSURANCE COMPANY, a corporation,

Defendant.

Case No. 8:20-cv-02185-CJC-KES

Hon. Cormac J. Carney

SUNSTONE HOTEL INVESTORS, INC.'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS

Date: July 12, 2021
Time: 1:30 p.m.
Dept.: 9B
411 West Fourth Street
Santa Ana, CA 92701

Complaint Filed: Nov. 13, 2020

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Sunstone Hotel Investors, Inc. is a lodging real estate investment trust with numerous insured hotel properties, including the Marriott Boston Long Wharf. As this Court previously noted, "[a]fter the Centers for Disease Control and Prevention notified [Sunstone] on March 4, 2020 that three attendees tested positive for coronavirus, th[at] hotel closed as of March 12, 2020, and remained closed for months." Dkt. 21 at 2. This property was the literal epicenter of a "superspreader" event later linked to approximately 300,000 COVID-19 cases. *Id*.

Endurance American Specialty Insurance Company sold Sunstone a policy that provides coverage for **Business Interruption Losses** and **Extra Expenses** sustained during Sunstone's **Interruption Period** at each of its **Scheduled Locations**. Although Marriott Boston Long Wharf is the most publicly known example, it is only one of the numerous Sunstone properties that sustained similar losses.

At issue in this motion is Endurance's Eleventh Defense, the policy's definition of **Interruption Period**, including a specific articulation of the "period of time" in which it begins and later ends. Endurance seemingly devoted significant attention to drafting this definition. Indeed, governing California law required Endurance to do so because, as a limitation to coverage, the limitation (i) must be stated in conspicuous, plain, clear, and readily understandable language, (ii) must not be subject to any other reasonable interpretation, and (iii) and must be read in a way that does not render any word redundant, meaningless, or surplusage.

The problem for Endurance is that ambiguities abound in the language, which are only further highlighted by the legally unsupportable and factually inconsistent positions maintained by Endurance since Sunstone first submitted its claim for coverage. This Court previously held that the policy's business interruption coverage grant "contains strong language indicating that BI losses that directly

result from viruses on Scheduled Locations will be covered"; that the policy "gave [Sunstone] reasonable expectations that BI losses would be covered" and that this coverage grant is "at best ambiguous." *Id.* at 6-7. Not deterred, and in its continued quest to avoid any contractual obligation under this policy, Endurance filed a responsive pleading that includes dozens of improper and legally insufficient defenses. One of them is a recitation and invocation of the policy's definition of **Interruption Period**.

Endurance maintains that, a mere two days after being ordered to suspend operations at Marriott Boston Long Wharf, the SARS-CoV-2 virus and the disease it causes, COVID-19, "no longer [was] a source of the interruption to the **Insured**'s operations."

Endurance's notion is that the **Interruption Period** at the Marriott Boston Long Wharf is only two days and ended after two days because that was when the initial "cleaning of the property ended." This ignores the reality of the pandemic. For a year, there has been no guidance, policy or protocol promulgated that would even come close to suggesting that once a property is "cleaned," it is safe and can be re-opened. Nothing is farther from the truth. The mere nature of SARS-CoV-2 and the fact that it spreads whenever asymptomatic, presymptomatic, or symptomatic people breath, renders such a notion irrational. Endurance's interpretation simply is an unreasonable interpretation of the **Interruption Period** and is contrary to the terms and conditions of the policy as a whole when considered under governing California law.

The policy provides business interruption coverage for up to 12 months from the date of the claim even if that 12-month period extends beyond the expiration of the policy period. Endurance crafted a broad definition of **Interruption Period** and now asks this Court to construe it to be the narrowest possible. But nothing in the policy suggests, let alone clearly states, that Sunstone's **Interruption Period** ends after a property is "cleaned" and no science suggests that a "cleaned" property

remains "clean" once the public is subsequently permitted to enter. In fact, as noted, the science is indisputably to the contrary and Sunstone's operations were certainly interrupted for more than two days.

The policy, the law, and Sunstone's reasonable expectations show that Sunstone is entitled to coverage until it can resume full operations at pre-COVID levels that are not subject to government orders limiting those operations. Accordingly, Sunstone is entitled to judgment in its favor with respect to Endurance's Eleventh Defense.

II. FACTUAL BACKGROUND

A. The Policy

Endurance sold Sunstone a Sompo Global Risk Solutions "Site Environmental Impairment Liability" policy, No. GER10011343500 for the period of June 22, 2017, to June 22, 2020. Dkt. 1-1 ("Policy"). The Policy's "Business Interruption and Extra Expense" coverage ("Coverage D") has a stated "Limit of Liability" in the amount of $25,000,000 subject to a three-day "Waiting Period." *Id*. Declarations, Item 7. It has a "Maximum Aggregate Limit of Liability" in the amount of $40,000,000. *Id*. Item 8.

Coverage D requires Endurance to "pay, up to the Limits of Liability as specified in the Declarations and after the **Waiting Period**, the **Insured's Business Interruption Losses** and **Extra Expenses** during the **Interruption Period** that directly result from . . . **Biological Agent Condition(s)**[.]" *Id*. § I(D). This coverage extends to conditions "[o]n or under a **Scheduled Location**" or "within five (5) miles of a **Scheduled Location**." *Id*.

The Policy defines **Business Interruption Losses** in pertinent part as

> [t]he actual loss . . . not to exceed the net income . . . that would have been earned or incurred by the **Insured** during the **Interruption Period** in the absence of suspension of the **Insured**'s operations; and b. [c]ontinuing normal

> operating expenses . . . due to the necessary suspension of business operations resulting directly from . . . **Biological Agent Condition(s)** at a **Scheduled Location** during the **Interruption Period**.

Id. § VIII(6).

Extra Expenses is defined in pertinent part as the

> reasonable and necessary expenses that the **Insured** incurs during the **Interruption Period** at the **Scheduled Location** over and above the **Insured**'s normal operating expenses that the **Insured** would not have incurred if there had been no interruption of the **Insured**'s operations directly resulting from a covered . . . **Biological Agent Condition(s)**, provided that, such expenses are incurred to avoid or minimize **Business Interruption Losses** and to continue operations at the **Scheduled Location**.

Id. § VIII(19).

The Policy defines **Biological Agent Condition(s)** in pertinent part as "the presence of **Biological Agents** at, upon or within a **Scheduled Location**[.]" *Id*. § VIII(4). **Biological Agents** includes "Viruses or other pathogens." *Id*. § VIII(3).

The beginning of the **Interruption Period** is the "period of time that . . . begins when a . . . **Biological Agent Condition**(s) directly interrupts the **Insured's** operations at a **Scheduled Location**[.]" *Id*. § VIII(24). For purposes of this motion, it ends at "the period of time that: . . . [the] **Biological Agent Condition(s)** no longer is a source of the interruption to the **Insured**'s operations, regardless of whether the interruption is continuing for any other reason after the . . . **Biological Agent Condition(s)** has been addressed[.]" *Id*.

The Policy also states the intent of the parties to provide broad coverage, not constrained by the policy period: "The expiration date of this **Policy** does not end

the **Interruption Period**." *Id*. To the contrary, the Policy obligates Endurance to pay Coverage D losses for "the period of twelve (12) calendar months from the date of the **Claim**" regardless of the Policy's expiration date. *Id*. § VIII(6).

B. This Court's Denial of Endurance's Rule 12(b)(6) Motion

On February 26, 2021, this Court denied Endurance's motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). Dkt. 21 ("Order"). The Court held that the phrase "covered under this Policy" as used in Coverage D is "at best ambiguous." *Id.* 6:25-27. The Court also held that "Coverage D contains strong language indicating that BI losses that directly result from viruses on Scheduled Locations will be covered" and that the Policy "gave [Sunstone] reasonable expectations that BI losses would be covered." *Id*. 7:3-10.

C. Endurance's Initial "Investigation" and Subsequent Defense Invoking the Policy's "Interruption Period"

As alleged in the Complaint, Sunstone notified Endurance of a claim involving many of its **Scheduled Locations**, including the Marriott Boston Long Wharf, on or about March 6, 2020. Dkt. 1 ("Complaint") ¶ 44. That **Scheduled Location** was the host of Biogen's international meeting of its leaders from approximately February 24 to February 27, 2020. *Id*. *See also* Order 1:24-28. Attendees of that conference tested positive for COVID-19 by March 4, 2020 and the property was closed on March 12, 2020. *Id*. *See also* Order 2:16-21. Sunstone suspended its operations for months, and operations remain interrupted to this day. *Id.* Since March 2020, more than 300,000 COVID-19 cases have been attributed to this Biogen conference at this **Scheduled Location**, making it the first and likely largest COVID-19 "super spreader event."[1]

At first, Endurance contended that Sunstone's **Interruption Period** at the Marriott Boston Long Wharf lasted only two days—beginning on the day the

[1] https://science.sciencemag.org/content/371/6529/eabe3261.full

property closed (March 12, 2020) and ending on the day the property was "cleaned" (March 14, 2020). Complaint ¶¶ 45, 47.[2] It took no position on any of the other **Scheduled Locations** at that time, all of which sustained damages as a result of the need to suspend operations. *Id.* ¶ 48.

Not deterred by this Court's holding about Sunstone's reasonable expectations of coverage and the ambiguity that must be resolved in its favor, Endurance then interposed an Answer with 33 individual "defenses." Dkt. 22 ("Answer"). They are not, however, affirmative defenses. Instead, they are virtually all "negative defenses" or are not pled with the required level of specificity.[3] Among them is the invocation of the Policy's **Interruption Period**.

As noted, Endurance concluded that the **Interruption Period** at the Marriott Boston Long Wharf is "two days" and did not initially take a position on the **Interruption Period** at any other **Scheduled Location**. Its responsive pleading is also devoid of any particulars or grounds for the assertion of this defense. Instead, Endurance merely recites the definition as it appears in the Policy:

> **Eleventh Defense**
>
> **(Interruption Period)**
>
> Coverage under Coverage D – Business Interruption and Extra Expense is limited to **Business Interruption Losses** and **Extra Expenses** during the **Interruption Period**, as defined in the Policy. Section VIII.24 of the Policy

[2] Endurance's May 11, 2020, letter is referenced in Sunstone's Complaint and in this Court's Order. *Id.*; Order 3:1-3. *See* Declaration of Jeffrey L. Schulman, dated May 17, 2021 ("Schulman Decl.") Ex. A.

[3] This is precisely the "kitchen sink" approach discussed by this Court in *Miles v. Kirkland's Stores, Inc.*, Case. No.: EDCV 18-01559-CJC(SHKx), 2018 WL 10879443, at *2 (C.D. Cal. Sept. 12, 2018). In fact, virtually all of Endurance's defenses utilize the phrase "to the extent that," suggesting that Endurance still does not know whether they apply.

provides:

24. **Interruption Period** means the period of time that:

a. begins when a **Pollution Condition(s)** or **Biological Agent Condition(s)** directly interrupts the **Insured**'s operations at a **Scheduled Location**; and

b. ends upon the earliest of when:

i. The **Pollution Condition(s)** or **Biological Agent Condition(s)** no longer is a source of the interruption to the **Insured**'s operations, regardless of whether the interruption is continuing for any other reason after the **Pollution Condition(s)** or **Biological Agent Condition(s)** has been addressed; . . .

Interruption Period does not include any delay caused by the enforcement of any local or state ordinance or law regulating the construction, use or repair, or demolition of property. The expiration date of this **Policy** does not end the **Interruption Period**. With respect to b. i., the **Interruption Period** will be deemed to have ended (1) even if operations cannot resume at the **Scheduled Location** for regulatory reasons; (2) due to a breach, suspension or cancellation of, or the failure to obtain, maintain, renew or extend any permit, lease, license or contract, even if directly or indirectly related to a **Pollution Condition(s)** or **Biological Agent Condition(s)**; or (3) even if it is not physically possible for such operations to resume for reasons other than the physical presence of **Pollutant(s)** or **Biological Agents** at a **Scheduled Location.**

Policy § VIII(24).

III. ARGUMENT

A. Standard of Review

"After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). A Rule 12(c) motion is "substantially identical to a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) because both permit challenges to the legal sufficiency of the opposing party's pleadings." *Yokohama Rubber Co. v. Stamford Tyres Int'l PTE Ltd.*, Case No. SACV 07-00010-CJC(MGLx), 2010 WL 11523596, at *1 (C.D. Cal. Mar. 3, 2010). "The main difference between the two motions is timing: a 12(b)(6) motion is brought before filing an answer, whereas a motion for judgment on the pleadings is brought after the pleadings are closed." *Id.*

"Judgment on the pleadings is appropriate when, accepting as true all material allegations contained in the nonmoving party's pleadings, the moving party is entitled to judgment as a matter of law." *Id.* A Rule 12(c) motion can be granted on the pleadings for specific defenses in the defendant's answer. *Id.* *See also United States v. Real Prop. & Improvements Located at 2366 San Pablo Ave., Berkeley, California*, No. 13-CV-02027-JST, 2013 WL 6774082, at *1 (N.D. Cal. Dec. 23, 2013) (courts consider "motions for partial judgment on the pleadings with respect to a particular cause of action or affirmative defense").

This Court previously reaffirmed that it "may consider additional facts in materials of which the district court may take judicial notice . . . , as well as 'documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading.'" *Cahilig v. IKEA U.S. Retail, LLC*, Case No. CV 19-01182-CJC(ASx), 2019 WL 3852490, at * 1 (C.D. Cal. June 20, 2019) (citations omitted).

B. Sunstone Is Entitled to Judgment on the Pleadings as to Endurance's Eleventh Defense

This Court's adjudication of the dispute about the interpretation of the **Interruption Period** may be dispositive, given that Sunstone's Coverage D losses at Marriott Boston Long Wharf alone likely exceed the Coverage D sublimit and that its losses at all **Scheduled Locations** exceed the Policy's maximum aggregate limit of liability.

1. Governing Rules of Insurance Policy Construction and Interpretation

The California Supreme Court has observed that, "[w]hile insurance contracts have special features, they are still contracts to which the ordinary rules of contractual interpretation apply." *Bank of the W. v. Superior Court*, 2 Cal. 4th 1254, 1264 (1992). If the contractual language at issue "is clear and explicit," it governs. Cal. Civ. Code § 1638. However, if the language of a policy "is capable of more than one reasonable construction," it is ambiguous. *Cont'l Ins. Co. v. Superior Court*, 37 Cal. App. 4th 69, 82 (1995). In such cases, "ambiguous terms are resolved in the insureds' favor, consistent with the insureds' reasonable expectations." *Safeco Ins. Co. of Am. v. Robert S.*, 26 Cal. 4th 758, 763 (2001) ("[a] policy provision is ambiguous when it can have two or more reasonable constructions."); *AIU Ins. Co. v. Superior Court*, 51 Cal. 3d 807, 822 (1990) (if the policy's language is ambiguous, its words are to be construed in the insured's favor, consistent with the insured's reasonable expectations).When language is ambiguous, the court must either interpret the provision liberally, if it grants coverage, or narrowly, if it constricts coverage, to meet the objectively reasonable expectations of the insured. *Id.*

> [T]o be enforceable, any provision that takes away or limits coverage reasonably expected by an insured must be "conspicuous, plain and clear." Thus, any such limitation

> must be placed and printed so that it will attract the reader's attention. Such a provision also must be stated precisely and understandably, in words that are part of the working vocabulary of the average layperson. The burden of making coverage exceptions and limitations conspicuous, plain and clear rests with the insurer.

Travelers Prop. Cas. Co. v. Superior Court, 215 Cal. App. 4th 561, 575 (2013). A restriction on coverage is not sufficiently conspicuous unless it is "positioned in a place and printed in a form which would attract a reader's attention." *Ponder v. Blue Cross,* 145 Cal. App. 3d 709, 719 (1983).

In fact, the California Supreme Court has "declared time and again 'any exception to the performance of the basic underlying obligation must be so stated as clearly to apprise the insured of its effect.'" *Haynes v. Farmers Ins. Exch.,* 32 Cal. 4th 1198, 1204 (2004). "This means more than the traditional requirement that the contract terms be 'unambiguous.' Precision is not enough. Understandability is also required." *Id.* at 1211. Therefore, "coverage exclusions and limitations are 'strictly construed against the insurer and liberally interpreted in favor of the insured." *Meraz v. Farmers Ins. Exch.,* 92 Cal. App. 4th 321, 324 (2001).

In short, if policy language is reasonably susceptible to an interpretation favoring coverage, that interpretation governs, even if the insurer can offer another reasonable interpretation. *See, e.g.*, *MacKinnon v. Truck Ins. Exch.*, 31 Cal. 4th 635, 655 (2003) ("even if [an insurer's] interpretation is considered reasonable, it would still not prevail, for in order to do so it would have to establish that its interpretation is the *only* reasonable one"); *Ticketmaster, LLC v. Ill. Union Ins. Co.*, 524 F. App'x 329, 331 (9th Cir. 2013) (rejecting application of exclusion because insurer "failed to satisfy its burden of showing that . . . its interpretation . . . is the *only* reasonable one").

2. Endurance Was Required to Provide a Plain, Clear, and Unambiguous Definition of **Interruption Period** Because it Limits Coverage

As noted above, limitations on coverage must be both conspicuous and "plain and clear in order to be given effect." *Travelers*, 215 Cal. App. 4th at 575. Moreover, limitations on coverage are "strictly construed against the insurer and liberally interpreted in favor of the insured." *Delgado v. Heritage Life Ins. Co*., 157 Cal. App. 3d. 262, 271 (1984); *Haynes*, 32 Cal. 4th at 1212 (provisions that constrict coverage otherwise available under the policy are subject to the "closest possible scrutiny."). Similarly, if there is any ambiguity regarding the term at issue, it must be resolved in favor of coverage. *Safeco*, 26 Cal. 4th at 765.

3. At Best for Endurance, **Interruption Period** is Ambiguous

The purpose of the **Interruption Period** is to limit the time period during which Endurance is liable for Sunstone's **Business Interruption Losses** and **Extra Expenses**. The phrase **Interruption Period** operates as a limitation on coverage, and Endurance affirmatively invokes it as a limitation to Sunstone's coverage. Thus, the phrase should be interpreted as such.

Endurance was free to define **Interruption Period** any way it deemed appropriate and as narrowly as it desired. It was obligated, however, to express that desire and memorialize its intent in clear and unmistakable language, leaving no room for a second reasonable interpretation of its words. There are multiple examples of Endurance's failure to reconcile the words in the Policy with its purported intent. Endurance sold a Policy rife with ambiguity.

First, Endurance could have narrowly defined the beginning and end of the **Interruption Period** as particular events or dates. For example, it could have defined the end of the period as the ***date*** on which "[t]he cleaning of the property ended" as it now claims. Schulman Decl. Ex. A. Instead, it elected to broadly

define both the start and end in terms of a "***period*** of time," which is not synonymous with, and is far broader than, a "date."[4]

Second, once it elected to use "periods of time" as the parameters, it was free to define those periods of time any way it deemed appropriate. Endurance elected to define the beginning as the period of time "when a . . . **Biological Agent Condition(s)** ***directly interrupts*** the **Insured's** operations at a **Scheduled Location**." Policy § VIII(24) (emphasis added). In this particular case, Endurance's omission of a definition or any indication as to what it intended "directly interrupts" to mean is of no moment. That is because Endurance argues that the **Interruption Period** at the Marriott Boston Long Wharf began on March 12, 2020—the date it was closed by the Boston Public Health Commission. Schulman Decl. Ex. A.[5]

Endurance could then have defined the ending "period of time" to be consistent with the period of time triggering its commencement by stating that the **Interruption Period** ends the same way it begins: when a . . . **Biological Agent Condition**(s) no longer directly interrupts the **Insured's** operations at a **Scheduled Location**. Endurance did not do so. Instead, Endurance chose to define the ending period of time as the time when the "**Biological Agent Condition(s)** ***no longer is a source of the interruption*** to the **Insured's** operations, regardless of whether the interruption is continuing for any other reason after the . . . **Biological Agent Condition(s)** has been addressed." Policy § VIII(24) (emphasis added). The

[4] Endurance knows how to more narrowly define a "period of time" when it so chooses. For example, **Waiting Period** (the Coverage D self-insured retention) is defined as "***the number of days*** shown in the Declarations that need to expire before payment[.]" *Id.* § VIII(48) (emphasis added).

[5] In other words, according to Endurance, the "direct interruption" was the result of an order requiring the suspension of its operations. Yet, as discussed below, Endurance does not believe that the interruption continues until, at a minimum, that order is lifted.

chosen and specified definition was not unintentional and certainly not a mistake. The definition was intended to provide reasonable and ongoing business interruption coverage related to a specific covered event that caused a prolonged interruption to Sunstone's operations. Something, as this Court previously noted, was a reasonable expectation for Sunstone and precisely that for which Sunstone paid significant premiums.

Like with "directly interrupts," Endurance also neglected to define "no longer is a source of the interruption" or any individual words therein. Whatever Endurance intended these phrases to mean, they cannot be synonymous. *See, e.g.*, *Fireman's Fund Ins. Cos. v. Atl. Richfield Co*., 94 Cal. App. 4th 842, 852 (2001) (An "insurance company's failure to use available language to exclude certain types of liability gives rise to the inference that the parties intended not to so limit coverage."); *ACL Techs., Inc. v. Northbrook Prop. & Cas. Ins. Co.,* 17 Cal. App. 4th 1773, 1785 (1993) (insurance policies are interpreted "to avoid rendering terms surplusage").

Moreover, Endurance cannot dispute that whatever "no longer is a source of the interruption" may mean, it is broader than "directly interrupts." This is critical because, if the imposition of an order requiring the suspension of operations at the Marriott Boston Long Wharf was a "direct interruption" triggering the start of the **Interruption Period** (as Endurance argues) then, by definition, the **Interruption Period** cannot end until, at a minimum, that order is lifted and at least some operations are permitted. Advancing this to its logical conclusion, Endurance must also then concede that the **Interruption Period** does not and cannot end after two days due to the "cleaning of the property."[6]

[6] The scientific community agrees. According to the CDC, "surface disinfection once- or twice-per-day had little impact on reducing estimated risks" of COVID-19 transmission. *Science Brief: SARS-CoV-2 and Surface (Fomite) Transmission for Indoor Community Environments*, CDC (updated Apr. 5, 2021),

Third, Endurance expanded the **Interruption Period** by defining its end as the period of time when the virus is no longer "***a***" source of the interruption of Sunstone's operations. It could have defined it as the period of time starting when the virus is no longer "***the***" source of the interruption. This might arguably be more consistent with its present position that the mere cleaning of the property permanently removes the virus and once cleaned, is no longer "the" source of the interruption. Instead, Endurance acknowledged the reality that the presence of a virus in the airspace and/or surfaces inside a **Scheduled Location** might be "a" source of the interruption just as a closure order related to that virus may be another source of that interruption. The broader definition as it appears in the Policy belies the grounds on which Endurance denied any coverage obligation under that Policy.[7]

Finally, Endurance knows how to limit coverage based on the actual "physical presence" of a **Biological Agent Condition(s)** at a **Scheduled Location** rather than that condition merely being "a source" of the interruption:

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https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html (citing A. K. Pitol & T. R. Julian, *Community transmission of SARS-CoV-2 by fomites: Risks and risk reduction strategies*, ENV'T SCI. & TECH. LETTERS (2020) (last visited May 14, 2021). Other studies show that COVID-19 is "much more resilient to cleaning than other respiratory viruses so tested." Nevio Cimolai MD, *Environmental and decontamination issues for human coronaviruses and their potential surrogates*, 92 J.MED. VIROLOGY 11, 2498-510 (June 12, 2020), https://onlinelibrary.wiley.com/doi/10.1002/jmv.26170 (last visited May 14, 2021).

[7] Because the Policy does not define "source," it must be interpreted according to its plain meaning. Cal. Civ. Code § 1644. To interpret the plain meaning of words, courts often turn to the dictionary definitions. *Scott v. Cont'l Ins. Co.*, 44 Cal. App. 4th 24, 29 (1996). "Source" is defined as "a generative force: CAUSE" and "a point of origin or procurement: BEGINNING." *Source*, *Merriam-Webster Dictionary*, https://www.merriam-webster.com/dictionary/source (last visited May 14, 2021). There is no fact or science-based support for the notion that the virus ceased being a source of Sunstone's interruption after a two-day cleaning and, as noted, it remained both a source and "direct" cause of Sunstone's interruption, at a minimum, until the closure order was lifted and Sunstone could resume operations in a limited capacity.

> With respect to b.i., the **Interruption Period** will be deemed to have ended . . . even if it is not physically possible for such operations to resume for reasons other than the ***physical presence*** of . . . **Biological Agents** at a **Scheduled Location**.

Id. § VIII(24) (emphasis added). Endurance elected not to start the **Interruption Period** on the date when there was "physical presence" of a virus or end the **Interruption Period** on the date when it was no longer physically present. Endurance elected to start that period during the period of time when a virus "directly interrupts" operations and end that period when the virus "no longer is a source" of the interruption. There can be no real dispute that it remains a source of Sunstone's business interruption to this day.

IV. CONCLUSION

For the reasons stated above, Sunstone is entitled to judgment on the pleadings as to Endurance's Eleventh Defense. Sunstone requests that its motion be granted in its entirety and without leave to amend.

DATED: May 17, 2021

PASICH LLP

By: */s/ Kirk Pasich*
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