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12 609 HAYES CDG LLC

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO
15

16 Atelier 1 2/3 Restaurant LLC, a
17 California limited liability company,
dba Atelier Crenn, 3131 Fillmore CDG
18 LLC, a California limited liability
company, dba Bar Crenn, 609 Hayes
19 CDG LLC, a California limited liability
company, dba Petit Crenn

20 Plaintiffs,

21 v.

22 FARMERS GROUP INC., a California
23 Corporation, TRUCK INSURANCE
EXCHANGE, a California Corporation,
24 Does 1 through 10, inclusive

25 Defendant.
26
27
28

FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

JUN 15 2020

CLERK OF THE COURT

BY: 
Deputy Clerk
ANGELICA SUNGA

Case No. **CGC-20-584762**

COMPLAINT

DEMAND FOR JURY TRIAL

1. BREACH OF CONTRACT,
2. BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING,
3. UNFAIR BUSINESS PRACTICES,
4. DECLARATORY RELIEF

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1 Plaintiffs Atelier 1 2 3 Restaurant LLC, a California limited liability company, dba Atelier
2 Crenn, 3131 Fillmore CDG LLC, a California limited liability company, dba Bar Crenn,
3 609 Hayes CDG LLC, a California limited liability company, dba Petit Crenn (collectively
4 “Plaintiffs” or “the Restaurants”) file this Complaint Against Farmers Group, Inc., Truck
5 Insurance Exchange, and Does 1 through 10, inclusive (collectively “Defendants” or “Farmers”),
6 and allege as follows:

7 **I. INTRODUCTION**

8 1. Dominique Crenn is an extremely accomplished and celebrated chef. She is the
9 only female chef in America who has attained three Michelin stars.¹ She also won the 2018 James
10 Beard Award for Best Chef on the west coast² and was named the best female chef in the world at
11 the 2016 World’s 50 Best Restaurant Awards.³ She founded and runs two restaurants, Atelier
12 Crenn and Petit Crenn, and a wine bar, Bar Crenn. Those three businesses are the Plaintiffs in this
13 matter.

14 2. Almost three months ago, all three venues suddenly and completely shut down.
15 This closure was ordered by state and local authorities who required them, their workers, and
16 their customers to “shelter in place” and abide by strict “social distancing” guidelines. At that
17 time, the Restaurants had no meaningful financial reserves, having depleted those during the
18 period of reduced business that preceded the shutdown. The closure—and accompanying loss of
19 income—forced them to begin laying off employees. Based largely on government assistance,
20 the Restaurants have retained the employees they can. But with mounting expenses, and
21 uncertain prospects for future income, it is not clear if they will be able to retain current staffing
22 or continue funding medical benefits absent financial support.

23 3. To protect their businesses (and employees) from having to make such terrible
24 choices in situations like this one, the Restaurants purchased business interruption insurance from
25 Defendants. The Restaurants’ policies expressly provide coverage for “Lost Business Income”

26
27 ¹ <https://variety.com/2016/tv/spotlight/dominique-crenn-chefs-table-emmys-1201793375/>

² <https://www.jamesbeard.org/blog/the-2018-james-beard-award-winners>

28 ³ <https://www.today.com/food/meet-dominique-crenn-world-s-best-female-chef-t98331>

1 and the consequences of actions by “Civil Authority.” Accordingly, the Restaurants
2 understandably believed that these policies would help protect their business in the unlikely event
3 that the government forced them to shutter their businesses.

4 4. Notwithstanding, and contrary to, the coverage provisions in their policies with
5 Defendant, and the obligations Defendant undertook in exchange for the Restaurants’ insurance
6 premium payments, when Plaintiffs submitted claims with Defendant for coverage, Defendant
7 summarily denied the Restaurants’ claims. These denials were part of a premeditated strategy by
8 Defendant to deny all claims related to the “shelter in place” orders and COVID-19. They were
9 untethered to the facts of the claims, which Defendant did not adequately investigate, or the
10 specific coverage provided by the Restaurants’ policies, therefore violate California law.

11 **II. PARTIES**

12 **A. Plaintiffs**

13 5. Plaintiff Atelier 1 2 3 Restaurant LLC is a California limited liability company that
14 does business as Atelier Crenn, which is located in San Francisco, California.

15 6. Plaintiff 3131 Fillmore CDG LLC is a California limited liability company that
16 does business as Bar Crenn, which is located in San Francisco, California.

17 7. Plaintiff 609 Hayes CDG LLC is a California limited liability company that does
18 business as Petit Crenn, which is located in San Francisco, California.

19 **B. Defendants**

20 8. Farmers Group Inc. (“Farmers”) is a California corporation with its headquarters
21 and principal place of business in Los Angeles, California. Farmers also does business in other
22 names including Farmers Underwriters Association, a California Corporation, and owns service
23 marks including “Farmers Insurance Group of Companies” and “Farmers Insurance Group.”

24 9. Truck Insurance Exchange is a California corporation that is a subsidiary and
25 member of Farmers Group, Inc. with its headquarters and principal place of business in Los
26 Angeles, California.⁴

27
28 ⁴ <https://www.farmers.com/companies/state/>

1 10. At all relevant times mentioned herein, Truck Insurance Exchange conducted
2 business as Farmers Insurance and Farmers Group Inc. conducted business through the name
3 Truck Insurance Exchange.

4 11. At all relevant times mentioned herein, Farmers Group Inc. directed, authorized,
5 controlled, and/or participated in the conduct of Truck Insurance Exchange (to the extent any
6 independent conduct can even be ascribed to Truck Insurance Exchange). Similarly, any acts
7 taken by Truck Insurance Exchange acts were within the course, scope, and authority of Farmers
8 Group Inc.'s directions, authorizations, and controls. All actions of each Defendant alleged in
9 each cause of action into which this paragraph is incorporated by reference were ratified and
10 approved by the officers and/or managing agents of every other Defendant.

11 12. More specifically, Defendants issued policies to Plaintiffs, and corresponded with
12 them, ostensibly under the name of Truck Insurance Exchange but using the brand name(s),
13 logo(s), office(s), equipment, and electronic and mailing addresses of Farmers Group, Inc.. In
14 many cases, the correspondence appears to come from Farmers rather than Truck Insurance
15 Exchange. The denial letters sent to Plaintiffs also utilized the brand name and logos of Farmers
16 Insurance, Inc.. Those letters also include farmersinsurance.com e-mail addresses and contact
17 information throughout.

18 13. Defendants DOES 1 through 10 ("Doe Defendants") were, at all relevant times,
19 transacting or otherwise engaged in the business of insurance in or relating to the State of
20 California, and the basis of this suit arises out of said conduct. The true names and capacities of
21 the Doe Defendants, whether individual, corporate, associate, or otherwise, are currently
22 unknown to Plaintiffs, who therefore bring suit against these Defendants by their fictitious names
23 and capacities. Each of the Doe Defendants is, upon information and belief, partially or wholly
24 liable for the unlawful acts or omissions referred to herein, and for the resulting harm to
25 Plaintiffs.

26 14. In committing the wrongful acts alleged herein, each of the Defendants pursued, or
27 joined in the pursuit of, a common course of conduct, and have acted in concert and/or conspired
28

1 with one another in furtherance of the improper acts and transactions that are the subject of this
2 Complaint.

3 **III. JURISDICTION AND VENUE**

4 15. This Court has subject matter jurisdiction over this action. Substantial conduct
5 giving rise to this action took place, in whole or in part, in the City and County of San Francisco,
6 California. All insurance contracts giving rise to this action concern California businesses
7 operating in California, and the claims arise from violations of California law. The amounts in
8 controversy in this action exceed the minimum jurisdictional amount of unlimited civil cases.

9 16. Venue is proper because substantial conduct giving rise to this action took place,
10 in whole or in part, in the City and County of San Francisco, California.

11 **IV. FACTUAL BACKGROUND**

12 **A. The Rapid Spread of COVID-19**

13 17. COVID-19 is an infectious disease caused by a recently discovered novel
14 coronavirus known as SARS-CoV-2 (“Coronavirus”). The first instances of the disease spreading
15 to humans were diagnosed in or around December 2019.

16 18. According to the World Health Organization (“WHO”): “People can catch
17 COVID19 from others who have the virus. The disease can spread from person to person through
18 small droplets from the nose or mouth which are spread when a person with COVID-19 coughs or
19 exhales. These droplets land on objects and surfaces around the person. Other people then catch
20 COVID-19 by touching these objects or surfaces, then touching their eyes, nose or mouth. People
21 can also catch COVID-19 if they breathe in droplets from a person with COVID-19 who coughs
22 out or exhales droplets.”⁵

23 19. This is problematic because a human sneeze can expel droplets of mucus and
24 saliva that travel at nearly a hundred miles an hour and can spread up to 27 feet.⁶

25 ⁵ See Q&A on coronaviruses (COVID-19), “How does COVID-19 spread?,” World Health
26 Organization (April 16, 2020), *available at* [https://www.who.int/news-room/q-a-detail/q-a-](https://www.who.int/news-room/q-a-detail/q-a-coronaviruses)
coronaviruses (last visited April 21, 2020).

27 ⁶ Sarah Gibbens, “See how a sneeze can launch germs much farther than 6 feet,” *National*
28 *Geographic* (April 17, 2020), *available at* [www.nationalgeographic.com/science/2020/04/](http://www.nationalgeographic.com/science/2020/04/coronavirus-covid-sneeze-fluid-dynamics-in-photos/)
coronavirus-covid-sneeze-fluid-dynamics-in-photos/ (last visited April 20, 2020).

20. According to a recent report in the New York Times, “[a]n infected person talking five minutes in a poorly ventilated space can also produce as many viral droplets as one infectious cough.”⁷ The more people in a conversation, the more droplets are dispersed.

21. Although these droplets are smaller and less visible than other contaminants like rust, mold, or paint they are physical objects which can travel to other objects and cause harm.

22. These droplets can spread Coronavirus when they reach humans directly, or when they land on habitable surfaces where they can survive until that surface is touched by a potential human host.⁸

23. Droplets containing Coronavirus infect a variety of surfaces and objects for a period of a few hours to several days. After inspecting a cruise ship inhabited by passengers carrying the Coronavirus, the CDC reported that the virus was detectable on various surfaces inside the cruise ship up to 17 days after passengers had vacated the cabins.⁹

24. Recent scientific evidence shows that Coronavirus can survive and remain virulent on stainless steel and plastic for 3 to 6 days; on glass and banknotes for 3 days; and on wood and cloth for 24 hours.¹⁰

25. Testing involving similar viruses in the Coronavirus family shows that Coronavirus can likely survive on ceramics, silicon rubber, or paper up to 5 days.¹¹

⁷ See Yuliya Pashina-Kottas, et al., “This 3-D Simulation Shows Why Social Distancing Is So 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 April 21, 2020).

⁸ See, e.g., CDC website, “How COVID-19 Spreads,” 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited April 21 2020).

⁹ See Leah E. Moriarty, et al., “Public Health Responses to COVID-19 Outbreaks on Cruise Ships — Worldwide, February–March 2020,” 69 *Morbidity and Mortality Weekly Report* 347 (March 23, 2020), available at <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6912e3-H.pdf> (last visited April 21, 2020).

¹⁰ See Neeltje van Doremalen, et al., “Aerosol and Surface Stability of SARS-CoV-2 as Compared to SARS-CoV-1,” *New England Journal of Medicine* (Mar. 17, 2020), available at <https://www.nejm.org/doi/pdf/10.1056/NEJMc2004973> (last visited April 21, 2020); Alex W.H. Chin, et al., “Stability of SARS-CoV-2 in different environmental conditions,” *The Lancet Microbe* (April 2, 2020), available at [https://doi.org/10.1016/S2666-5247\(20\)30003-3](https://doi.org/10.1016/S2666-5247(20)30003-3) (last visited April 21, 2020).

¹¹ See Guenter Kampf, et al., “Persistence of coronaviruses on inanimate surfaces and their inactivation with biocidal agents,” 104 *Journal of Hospital Infection* 246 (Feb. 6, 2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7132493/pdf/main.pdf> (last visited Apr. 21,

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1 26. When public areas containing such surfaces may have been exposed to
2 Coronavirus, a number of countries including China, Italy, France, and Spain have required such
3 areas to be fumigated prior to re-opening.¹²

4 27. Because of its virulence, each person infected with Coronavirus can infect multiple
5 new hosts, allowing the disease to spread exponentially.

6 28. This Coronavirus has spread throughout the world, including in the San Francisco
7 metropolitan area.

8 **B. The Policy Choice to Close Businesses**

9 29. As the Coronavirus spread in the United States, governments began ordering
10 citizens to shelter in place and close all non-essential businesses. Although many of these orders
11 are mandatory, the decision to issue them was not. It was a specific policy choice made by
12 federal, state, and local governments. By the time they made that choice, it was arguably the best
13 choice available. But between the onset of the Coronavirus in the Chinese province of Wuhan in
14 December 2020, and the forced closing of two restaurants in California metropolises three months
15 later, lay a plethora of policy options which could have yielded different outcomes.

16 30. The decisions made during that time period, prior to and including the shelter in
17 place orders, could have produced a variety of results, with varying economic effects and
18 durations. In other words, the closure of Plaintiffs restaurants cannot be described as the
19 inevitable response to the Coronavirus.

20
21

Footnote continued from previous page
22 2020).

23 ¹² See Mike Bird, et al., "China Is Open for Business, but the Postcoronavirus Reboot Looks Slow
24 and Rocky," *The Wall Street Journal* (March 26, 2020), available at
25 [www.wsj.com/articles/china-is-open-for-business-but-the-post-coronavirus-reboot-looks-slow-](http://www.wsj.com/articles/china-is-open-for-business-but-the-post-coronavirus-reboot-looks-slow-and-rocky-11585232600)
26 [and-rocky-11585232600](http://www.wsj.com/articles/china-is-open-for-business-but-the-post-coronavirus-reboot-looks-slow-and-rocky-11585232600) (last visited April 22, 2020); Jason Horowitz, "In Italy, Going Back to
27 Work May Depend on Having the Right Antibodies," *The New York Times* (April 4, 2020),
28 available at www.nytimes.com/2020/04/04/world/europe/italy-coronavirus-antibodies.html (last
visited April 22, 2020); Sarah Elzas, "French Teachers Push Back against Reopening Schools in
May," *RFI* (released online Apr. 14, 2020), available at [www.rfi.fr/en/france/20200414-french-](http://www.rfi.fr/en/france/20200414-french-teachers-push-back-against-reopening-schools-in-may)
teachers-push-back-against-reopening-schools-in-may (last visited April 22, 2020); Claudia
Nuñez, "On the Front Line of the Coronavirus Threat in Spain, Tractors Scatter the Streets with
Hope," *Los Angeles Times* (March 27, 2020), available at [www.latimes.com/world-](http://www.latimes.com/world-nation/story/2020-03-27/on-the-front-line-of-the-pandemic-tractors-scatter-the-streets-with-hope)
nation/story/2020-03-27/on-the-front-line-of-the-pandemic-tractors-scatter-the-streets-with-hope
(last visited April 22, 2020).

1 31. For example, in early 2020, as governments in South Korea, Taiwan, Hong Kong,
2 and Singapore became aware that the Coronavirus was spreading, they took quick action.
3 Through self-quarantines, widespread testing, and contact tracing, these four countries were able
4 to effectively contain the spread of the virus without the need for an extended shutdown of nearly
5 all businesses in their metropolises.¹³

6 32. At the same time, Coronavirus was also spreading in the United States. But
7 American governments did not aggressively to isolate incoming Coronavirus cases as they
8 developed.¹⁴ Although attempts to combat the virus were certainly made, they were insufficient
9 to stop exponential increases in infections.¹⁵ By March 2020, it became clear that the United
10 States authorities had failed to contain the Coronavirus and would need to find a way to mitigate
11 it.¹⁶

12 33. Federal, state, and local authorities decided to reduce the rate of infections as part
13 of strategies colloquially referred to as “flattening the curve.”¹⁷

14 34. Although flattening the curve is likely to also reduce the total number of
15 Americans infected in the long term, its primary function is to reduce stress on the health care
16 system by using “social distancing” to draw out the time over which the infections will spread
17 and multiply.¹⁸

18 ¹³ See Hannah Beech, “Tracking the Coronavirus: How Crowded Asian Cities Tackled an
19 Epidemic,” *The New York Times*, March 17, 2020, updated April 21, 2020, *available at*
20 <https://www.nytimes.com/2020/03/17/world/asia/coronavirus-singapore-hong-kong-taiwan.html>
21 (last visited Apr. 21, 2020); Michael J. Ahn, “Combating COVID-19: Lessons from South
22 Korea,” Brookings Institute, April 13, 2020, *available at* <https://www.brookings.edu/blog/techtank/2020/04/13/combating-covid-19-lessons-from-south-korea/> (last visited April 21, 2020);
23 Annelies Wilder-Smith et al., “Can we contain the COVID-19 outbreak with the same measures
24 as for SARS?,” *The Lancet*, March 5, 2020, [https://www.thelancet.com/journals/laninf/article/PIIS1473-3099\(20\)30129-8/fulltext](https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(20)30129-8/fulltext) (last accessed April 22, 2020),
25 [https://www.thelancet.com/journals/laninf/article/PIIS1473-3099\(20\)30129-8/fulltext](https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(20)30129-8/fulltext).

26 ¹⁴ Meg Anderson, “U.S. Sees Exponential Growth In Coronavirus Death Toll,” *NPR*, (Mar. 29,
27 2020), *available at* <https://www.npr.org/sections/coronavirus-live-updates/2020/03/29/823497607/u-s-sees-exponential-growth-in-coronavirus-death-toll> (last visited Apr. 23, 2020).

28 ¹⁵ *Id.*

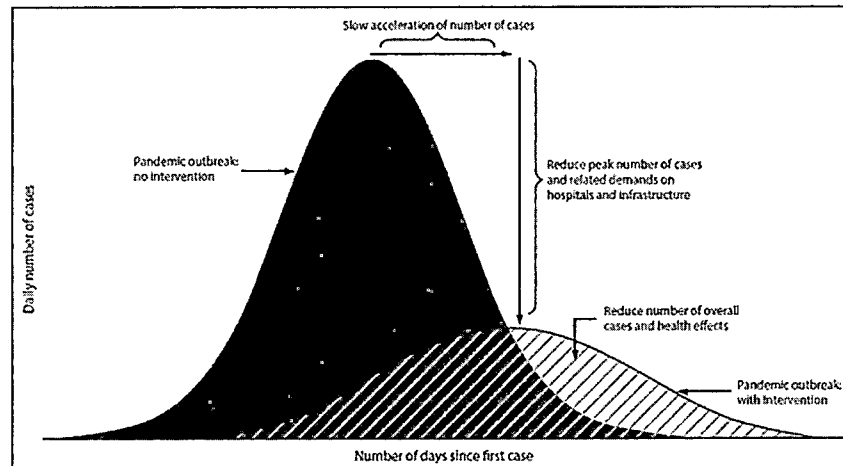
¹⁶ *Id.*

¹⁷ Specktor, Brandon, Coronavirus: What is 'flattening the curve,' and will it work?, *Live Science*,
March 16, 2020, *available at* www.livescience.com/coronavirus-flatten-the-curve.html (last
visited Apr. 22, 2020).

¹⁸ *Id.*

1 35. Social distancing is neither a direct response to the Coronavirus, nor a form of
2 quarantine. It is an inherently prophylactic policy that can be readily distinguished from a direct
3 reaction to the Coronavirus because it targets healthy people, not sick people.

4 36. As illustrated by the following diagram, flattening the curve is a public health
5 intervention designed to alter the trajectory of the Coronavirus.¹⁹



13 37. Absent the social distancing-based intervention(s), the Coronavirus would
14 continue to multiply rapidly, spreading quickly throughout the population until it begins to run
15 out of suitable hosts who have never had the disease. At that point, the infection rate would fall
16 rapidly until the disease runs out of people to infect and “burns out.”²⁰

17 38. A social distancing-based intervention reduces the number of potential contacts
18 that an infectee can infect, thereby lowering the multiplication rate of the disease. Following the
19 intervention, Coronavirus continues to spread but does so significantly more slowly, and therefore
20 takes substantially longer to “burn out” (or, eventually, be cured by a vaccine).²¹

24 ¹⁹ *Id.*; “Stay Home Public Health Order, updated March 31, 2020,” *SFGov.com* (April 1, 2020).
25 available at <https://sf.gov/information/stay-home-public-health-order-updated-march-31-2020>
(last accessed April 22, 2020).

26 ²⁰ *Id.*; Eric Lofgren et al., *The Epidemiological Implications of Incarceration Dynamics in Jails*
27 *for Community, Corrections Officer, and Incarcerated Population Risks from COVID-19*.
28 10.1101/2020.04.08.20058842, 2020, available at <https://www.medrxiv.org/content/10.1101/2020.04.08.20058842v1.full.pdf> (last accessed, April 22, 2020)

²¹ *Id.*

1 39. Consequently, flattening the curve also extends the total length of the epidemic.
2 The changes to American society that accompany it (and their economic consequences) are likely
3 to persist for an extended period.

4 40. Recent events in other countries confirm that extended business closures were not
5 inevitable. Countries like Sweden have prohibited events with more than 50 attendees and
6 developed other policy responses without ordering large scale restaurant closures.²² Similarly,
7 businesses are open or re-opening in South Korea, Taiwan, Singapore, and even harder-hit
8 European countries like Germany, the Czech Republic, and Austria.²³

9 41. This underscores that the Coronavirus did not cause business interruptions and
10 closures in the United States; government policies did.

11 **C. Local Orders Beginning in San Francisco**

12 42. Prior to the shelter in place order, the San Francisco Department of Public Health
13 ("SFDPH") issued several orders limiting large gatherings, including orders on March 6, 2020
14 March 11, 2020.

15 43. In support of these and other efforts, on March 12, 2020, Governor Newsom
16 issued Executive Order N-25-20 ("March 12 Executive Order"), ordering that: "All residents are
17 to heed any orders and guidance of state and local public health officials, including but not
18 limited to the imposition of social distancing measures, to control the spread of COVID-19" (§ 1).
19 This Order took effect on March 12, 2020, and has remained continuously in effect through the
20 date of this Complaint.

21 44. On March 13, 2020, the SFDPH issued Order of the Health Officer No. C19-05b
22 ("March 13 Order"), which "prohibits all indoor public and private gatherings and outdoor

23 ²² See James Asquith, "No Lockdowns In Sweden As Stockholm Remains Open – Parks and
24 Open-Air Museums Operating," *Forbes* (Apr. 4, 2020), available at
25 <https://www.forbes.com/sites/jamesasquith/2020/04/04/no-lockdowns-in-sweden-as-stockholm-remains-open-parks-and-open-air-museums-operating/#6535278b707a> (last viewed Apr. 28, 2020).

26 ²³ See Beech, *supra*; Rick Noack et al., "Nations credited with fast response to coronavirus are
27 moving to gradually reopen businesses," *The Washington Post* (April 20, 2020), available at
28 <https://wapo.st/2VLQZxm> (last visited April 22, 2020); Luke Harding, "Germany opens some shops as Merkel warns of second wave of coronavirus," *The Guardian*, April 20, 2020, available at <https://www.theguardian.com/world/2020/apr/20/german-shops-open-angela-merkel-warns-second-wave-coronavirus> (last visited April 22, 2020).

1 gatherings within an enclosed space that has a maximum occupant load of 100 people or more
2 anywhere in San Francisco” (p. 1). This order expressly includes restaurant dining rooms § 13(e–
3 f). It was in effect for three to four days (from approximately 5:00 p.m. on March 13 until March
4 17 at 12:01 a.m.).

5 45. On March 16, 2020, the SFPD issued Order of the Health Officer No. C19-07
6 (“March 16 Order”), which “revoke[d] and replace[d]” the March 13 Order. Ex. 1 at 2. The
7 March 16 Order states: “Restaurants and cafes—regardless of their seating capacity—that serve
8 food are *ordered closed* except solely for takeout and delivery service.” *Id.* at 2.²⁴ It also
9 “requires all individuals anywhere in San Francisco to shelter in place—that is, stay at home—
10 except for certain essential activities and work to provide essential business.” *Id.* at 1. This
11 includes refraining from “[a]ll travel” and “[a]ll public and private gatherings of any number of
12 people occurring outside a single household” or “outside the home.” *Id.* at 1 & ¶¶ 4, 5. As an
13 exception to this prohibition, the March 16 Order permits travel and gathering that is necessary to
14 operate “Essential Business” (*Id.* at ¶¶ 5, 10.d), which the Order defines to include “[r]estaurants
15 and other facilities that prepare and serve food, but only for delivery or carry out” (¶ 10.f.xiii).
16 Thus the order commands that “All persons may leave their residences only for Essential
17 Activities, Essential Governmental Functions, or to operate Essential Businesses.” *Id.* at ¶ 2.
18 Even when leaving the home is permissible, strict social distancing guidelines must be observed.
19 The order provides that “[v]iolation of or failure to comply with this Order is a misdemeanor
20 punishable by fine, imprisonment, or both” (*Id.* at 1), and “requests that the Sheriff and the Chief
21 of Police in the County ensure compliance with and enforce this Order,” since “violation of any
22 provision of this Order constitutes an imminent threat and creates an immediate menace to public
23 health” (*Id.* ¶ 11).

24 46. On March 19, 2020, the State of California issued an Order of the State Public
25 Health Officer, which set baseline statewide restrictions on non-essential business activities
26 effective until further notice. On that same date, Governor Newsom issued Executive Order N-

27 ²⁴ This and other citations to page numbers from orders in this complaint, refer to the summaries
28 preceding the numbered paragraphs:

1 33- 20, expressly requiring California residents to follow the March 19 Order of the State Public
2 Health Officer, and incorporating by reference California Government Code 8665, which
3 provides that “[a]ny person . . . who refuses or willfully neglects to obey any lawful order . . .
4 issued as provided in this chapter, shall be guilty of a misdemeanor and, upon conviction thereof,
5 shall be punishable by a fine of not to exceed one thousand dollars (\$1,000) or by imprisonment
6 for not to exceed six months or by both such fine and imprisonment” (Cal. Gov. Code § 8665).
7 The March 19 Order of the State Public Health Officer and Executive Order N-33-20
8 (collectively, the “Statewide Shelter Orders”) took immediate effect on March 19, 2020, and both
9 have remained continuously in effect through the date of this Complaint.

10 47. On March 31, 2020, the SFDPH issued Order of the Health Office No. C19-07b
11 (“March 31 Order” or “Current SF Shelter Order”), which “supersedes” and “clarifies,
12 strengthens, and extends certain terms of the Prior [SF] Shelter Order to increase social distancing
13 and reduce person-to-person contact to further slow transmission of [COVID-19].” Ex. 2. ¶ 1. As
14 concerns restaurants, the terms of the Prior SF Shelter Order and the March 31 Order are
15 substantially similar, with the March 31 Order noting that “[r]estaurants, cafes, coffee shops, and
16 other facilities that serve food—regardless of their seating capacity—must remain closed except
17 solely for takeout and delivery service” (*Id.* at 2), and continuing to define restaurants as Essential
18 Businesses “only for delivery or carry out” (*Id.* at ¶ 13.f.xvii). Like its predecessor, the March 31
19 Order also limits the movement and gatherings of individuals for non-essential purposes (and
20 requires social distancing at all times). It also provides that “[v]iolation of or failure to comply
21 with this Order is a misdemeanor punishable by fine, imprisonment, or both” (*Id.* at 1), and
22 further provides that “violation of any provision of this Order constitutes an imminent threat and
23 menace to public health” and “constitutes a public nuisance” (*Id.* at ¶ 15). The March 31 Order is
24 effective from March 31 at 11:59 p.m. through May 3, 2020, at 11:59 p.m. (*Id.* at ¶ 16), and it
25 remains in effect as of the date of this Complaint. Collectively all of these San Francisco orders,
26 and subsequent related orders, shall be referred to as the “San Francisco Orders”.

27 48. On March 19, 2020 Governor Newsom issued an executive order requiring “all
28 individuals living in the State of California to stay home or at their place of residence except as

1 needed” for essential services and needs and engage in strict social distancing. *Id.* at ¶ 1.²⁵ This
2 order has also been extended and relevant provisions are substantially in effect as of the date of
3 this Complaint. Collectively, this order, along with the San Francisco Orders, shall be referred to
4 as the “Shelter in Place Orders” or the “Orders.”

5 49. The Orders were issued in response to direct physical loss of and/or direct physical
6 damage to properties. In San Francisco, there were numerous individuals who tested positive for
7 COVID-19, and the number of positive tests continues to grow. Further, COVID-19 was and is
8 present in these areas because, for example, it has attached to properties and surfaces on, at, or
9 within properties; and because COVID-19 was and is being transmitted in or between properties
10 throughout these areas, including but not limited to transmission through the air, through
11 ventilation systems, or through contact with contaminated surfaces.

12 50. On April 10, 2020, the City and County of San Francisco indicated that it issued
13 all of the orders “because of the propensity of the virus to spread person to person and also
14 because the virus physically is causing property loss or damage due to its proclivity to attach to
15 surfaces for prolonged periods of time.” Ex. 3 at 2.

16 51. On April 29, 2020 the County of San Francisco extended the previous orders (with
17 modifications not relevant here) to May 31, 2020. They were subsequently extended again and
18 are substantially in effect as of the date of this Complaint.

19 **D. The Restaurants Close**

20 52. Under the Orders, the Restaurants were forced to close their serving areas²⁶ to the
21 public, thereby prohibiting access to, use of, and operations at the Restaurants.

22 53. Under the Orders, the Restaurants were forced to suspend dine-in food and/or
23 drink offerings at the Restaurants and service of dine-in food and/or drinks to customers, thereby
24 prohibiting access to, use of, and operations the Restaurants.

25
26 ²⁵ Available at <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf> (last visited April 22, 2020).

27 ²⁶ Serving areas are spaces where patrons enjoy food and/or drink served and consumed inside an
28 establishment.

1 54. Under the Orders, customers were prohibited from accessing and using the
2 Restaurants' serving areas, thereby prohibiting access to, use of, and operations at the
3 Restaurants.

4 55. Under the Orders, the Restaurants' employees were prohibited from traveling to or
5 accessing the Restaurants for purposes of preparing and serving dine-in food and/or drinks,
6 thereby prohibiting access to, use of, and operations at the Restaurants.

7 56. Under the Orders, the Restaurants' employees were prohibited from traveling to or
8 accessing portions of the Restaurants utilized exclusively for preparing and serving dine-in food
9 and/or drinks, thereby prohibiting access to, use of, and operations at the Restaurants.

10 57. Under the Orders, the Restaurants' employees were prohibited from working in
11 close proximity to each other, thereby prohibiting access to, use of, and operations at the
12 Restaurants. This includes, but is not limited to, social distancing requirements and other safety
13 requirements that are not compatible with professional use of a kitchen (or other food or drink
14 preparation facilities).

15 58. Under the Orders, the Restaurants lost access to the Restaurants, lost use of the
16 Restaurants, lost necessary use of necessary facilities at the Restaurants, and suspended
17 operations at the Restaurants.

18 59. After shutting down, the Restaurants suffered and continue to suffer substantial
19 lost business income and other financial losses.

20 60. These extraordinary losses of business income (and concern for their employees'
21 welfare) are precisely why the Restaurants took out the business interruption policies with
22 Defendants, which were meant to cover these losses.

23 **E. The Losses From These Closures Are Covered Business Interruptions**

24 61. The Restaurants purchased business interruption (and other related) insurance
25 policies from Defendants.

26 62. Atelier Crenn has insurance under policy number 0606250598.

27 63. Petit Crenn has insurance under policy number 0606233031.

28 64. Bar Crenn has insurance under policy number 0606738784.

1 65. The Restaurants have promptly and dutifully paid their premiums and complied
2 with all other elements of its agreements with Defendants.

3 66. The policies provide coverage for Lost Business Income, promising that
4 Defendants “will pay for the actual loss of Business Income you sustain due to the necessary
5 suspension of your ‘operations’ during the ‘period of restoration’. The suspension must be caused
6 by direct physical loss of or physical damage to property at the ‘described premises’ . . . caused
7 by or resulting from a Covered Cause of Loss.” Ex. 4 at 88; Ex. 5 at 81; Ex. 6 at 79.

8 67. The policies define suspension as including “partial slowdown or complete
9 cessation of your business activities” or the insured premises being “rendered untenable.” Ex.
10 4 at 124; Ex. 5 at 116; Ex. 6 at 114.

11 68. The Orders resulted in Plaintiffs and their customers physically losing access to
12 and the ability to utilize the Restaurants, and particularly their serving areas.

13 69. The Orders required the suspension of business operations in the Restaurants’
14 serving areas.

15 70. The Orders also restricted Plaintiffs’ use of their kitchens (and drink preparation
16 areas), suspending operations there, by prohibiting certain business functions, like the preparation
17 of ready to eat food (and/or drink), practices, like employees working in close proximity. This
18 was amplified by the Orders’ restrictions on employees commuting to work and working to fulfill
19 the full bevy of orders typically placed at the Restaurants.

20 71. As a result of this physical harm, it became necessary for the Restaurants to
21 suspend operations, lose business income, and suffer other related covered losses (including but
22 not limited to extended business income and extra expenses).

23 72. The Restaurants’ policies also provide Civil Authority coverage, promising that
24 Defendants “will pay for the actual loss of Business Income you sustain and necessary Extra
25 Expense caused by action of civil authority that prohibits access to the described premises due to
26 direct physical loss of or damage to property, other than at the described premises, caused by or
27 resulting from any Covered Cause of Loss.” Ex. 4 at 90; Ex. 5 at 83; Ex. 6 at 81.

1 73. The Restaurants are located in San Francisco. As the Coronavirus spread, the
2 streets on which the Restaurants are located, and the buildings and objects in and around it,
3 became a breeding ground for the disease. Numerous individuals tested positive for Coronavirus,
4 and those numbers continue to grow. Coronavirus was and is present in these areas because, for
5 example, it has attached to properties and surfaces on, at, or within properties near the
6 Restaurants; and because Coronavirus was and is being transmitted in or between properties
7 throughout the areas near the Restaurants, including but not limited to transmission through the
8 air, through ventilation systems, or through contact with contaminated surfaces.

9 74. The Orders were issued in response to physical loss and damage occurring in
10 properties near the Restaurants and all around San Francisco. Prior to the issuance of the Orders,
11 government authorities had been limiting access to other properties on the basis of the
12 Coronavirus, including (but not limited to) sporting arenas, concert venues, and other places
13 where large numbers of people may gather.

14 75. The Orders prohibited Plaintiffs and their customers from accessing and utilizing
15 their Restaurants, specifically their serving areas.

16 76. The Orders also restricted Plaintiffs' access to and use of their kitchens (and other
17 food and/or drink preparation areas), by prohibiting certain business functions, like the
18 preparation of ready to eat food and/or drink, practices, like employees working in close
19 proximity, and operations, like having all employees commute to work, work during all regular
20 business hours, and fulfill all orders typically placed at the Restaurants.

21 77. As a result of this prohibition, the Restaurants lost business income and suffered
22 other related covered losses (including but not limited to extended business income and extra
23 expenses).

24 78. In correspondence with Plaintiffs, Defendants have indicated that their policies
25 contain an exclusion related to viruses. Ex. 7 at 1; Ex. 8 at 1; Ex. 9 at 1. This exclusion provides
26 that Defendants "will not pay for loss or damage caused by or resulting from any virus, bacterium
27 or other microorganism that induces or is capable of inducing physical distress, illness or
28 disease," (the "Virus Exclusion"). Ex. 7 at 7; Ex. 8 at 7; Ex. 9 at 7.

1 79. This exclusion does not apply and is not enforceable.

2 80. One key reason (of many) why the Virus Exclusion does not apply is that it is
3 limited to harm “caused by or resulting” from a virus.

4 81. This means independent actions taken in connection with the virus, by
5 governmental authorities, customers, suppliers, employees, and others, are not covered by the
6 exclusion.

7 82. Defendants are aware of and utilize broader causation-related language like
8 “arising under” and “directly or indirectly” in their business interruption insurance policies.

9 83. The Restaurants’ policies (Ex. 4 at 93-94; Ex. 5 at 86-87; Ex. 6 at 84-85) contain
10 exclusions for harm “however caused, arising directly or indirectly out of” all of the following:

- 11 a. War
- 12 b. Undeclared War
- 13 c. Civil war
- 14 d. Warlike action by a military force
- 15 e. Warlike action hindering against an actual attack
- 16 f. Warlike action hindering against an expected attack
- 17 g. Warlike action defending against an actual attack
- 18 h. Warlike action defending against an expected attack
- 19 i. Insurrection
- 20 j. Rebellion
- 21 k. Revolution
- 22 l. Usurped power
- 23 m. Action taken by governmental authority in hindering any of the above
- 24 n. Action taken by governmental authority in defending against any of the
25 above.

26 84. Defendants intentionally chose not to use similar language in the Virus Exclusion.

27 85. Defendants intentionally chose not to add a global pandemic to the above list
28 concerning war and other catastrophes or add an express global pandemic exclusion.

1 86. Defendants are aware of and utilize a policy exclusion for harm “caused directly or
2 indirectly” by acts of terrorism and attempted acts of terrorism which includes “dispersal or
3 application of *pathogenic* or poisonous biological or chemical materials,” (emphasis added).

4 87. These policy exclusions are part of the Restaurants’ policies. Ex. 4 at 29; Ex. 5 at
5 23; Ex. 6 at 22.

6 88. This terrorism (and bioterrorism) exclusion also expressly covers “loss or damage
7 caused directly or indirectly by ‘terrorism,’ including *action in hindering or defending against* an
8 actual or expected incident of terrorism.” *Id.* (emphasis added).

9 89. Defendants intentionally chose not to use similar language in the Virus Exclusion.

10 90. Defendants are aware of contractual force majeure clauses that suspend duties to
11 perform in the event of a global pandemic.

12 91. Defendants are parties to contracts which have force majeure provisions that apply
13 in the event of a global pandemic.

14 92. Defendants intentionally chose not to use force majeure clauses in their insurance
15 policies with the Restaurants.

16 **F. Defendants’ Denial of Plaintiffs’ Insurance Claim**

17 93. Atelier Crenn filed a claim for and requested business interruption insurance
18 coverage from Defendants. This claim was later assigned the identification number 3013439046-
19 1-1.

20 94. Petit Crenn also filed a claim for and requested business interruption insurance
21 coverage from Defendants. This claim was later assigned the identification number 3013439050-
22 1-1.

23 95. Bar Crenn also filed a claim for and requested business interruption insurance
24 coverage from Defendants. This claim was later assigned the identification number 3013400139-
25 1-1.

26 96. Defendants denied these claims without any inspection or review of the
27 Restaurants’ physical locations or documents concerning their business activities in 2020.
28

1 97. Defendants have thereby waived any right to inspect those premises or deny
2 coverage or raise any defense related to conditions at those locations or facts specific to the
3 Restaurants.

4 98. Defendants' hasty and indiscriminate denial of these claims is reflected in their
5 denial letters, which are littered with errors. This is apparent from the beginning of the letters; the
6 letter to Bar Crenn addresses its manager using an incorrect last name. Ex. 9 at 1. The letter to
7 Petit Crenn begins by misspelling the restaurant's name. Ex. 8 at 1.

8 99. Defendants did not and could not have engaged in a good faith or reasonable
9 investigation of the claim which included assessment of facts or issues relevant to the
10 Restaurants.

11 100. On information and belief, Defendants accepted the premiums paid by the
12 Restaurants with no intention of providing any lost business income, physical damage, civil
13 authority, or other applicable coverage for claims arising from the spread of Coronavirus or
14 societal, business, or governmental responses to it.

15 101. On information and belief, Defendants rejected the Restaurants' claims in bad faith
16 as part of a policy to limit their losses during this pandemic, notwithstanding that the policies
17 provide coverage for losses from closure orders issued by civil authorities (among other
18 coverage).

19 102. Although industry trade groups have argued that insurance companies do not have
20 the funds to pay claims related to the Coronavirus and will require government assistance, the
21 reality is that insurers are simply trying to minimize their exposure. "According to data from
22 ratings firm A.M. Best Co., the insurance industry as a whole has \$18.4 billion in net reserves for
23 future payouts."²⁷

24
25
26 ²⁷ See Leslie Scism, "U.S. Businesses Gear Up for Legal Disputes With Insurers Over
27 Coronavirus Claims," *Wall Street Journal* (March 6, 2020), available at
28 https://www.wsj.com/articles/u-s-businesses-gear-up-for-legal-disputes-with-insurers-over-coronavirus-claims-11583465668?mod=article_inline (last accessed April 28, 2020).

103. Farmers collected more than \$20 billion in insurance premiums for property related insurance in 2018 alone.²⁸ Notwithstanding this, they appear to be categorically denying claims brought by businesses ordered to close following the Coronavirus. This strategy, and their public requests for government assistance, suggests strongly that their true goal is minimizing payments by any means necessary.

V. CAUSES OF ACTION

**FIRST CAUSE OF ACTION
Breach of Contract**

104. Plaintiffs re-allege and incorporate by reference into this cause of action all allegations set forth in paragraphs 1–103 of this Complaint.

105. At all times relevant herein, Plaintiffs have paid all premiums and fulfilled or performed all obligations they have to Defendants, including (but not limited to) those under all relevant insurance policies described in this complaint.

106. Defendants had contractual duties to provide Plaintiffs with insurance coverage, as alleged by Plaintiffs herein.

107. In denying Plaintiffs' insurance claims, and refusing to perform under the contract, Defendants breached those duties.

108. As a result of those breaches, Plaintiffs have been damaged in the amount of coverage to which they are entitled their insurance agreements, the premiums they paid, and in an amount to be proved at trial, and for which Plaintiffs seek compensatory damages with interest thereon.

109. The Restaurants attempted to mitigate their lost income but were not able to. Several weeks after shutting down, Atelier Crenn began offering take away "Crenn Kits." Sales from these efforts are extremely modest and not remotely comparable to those prior to the Orders. These Kits were also advertised on the Bar Crenn website and certain Bar Crenn personnel and

²⁸ See *Insurance Information Institute* website, "Facts + Statistics – Industry overview," available at <https://www.iii.org/fact-statistic/facts-statistics-industry-overview> (last visited April 28, 2020).

1 facilities were involved in their preparation. After more than two months of closure, Petit Crenn
2 recently began offering Crenn Kits as well.

3 **SECOND CAUSE OF ACTION**
4 **Breach of Covenant of Good Faith and Fair Dealing**

5 110. Plaintiffs re-allege and incorporate by reference into this cause of action all
6 allegations set forth in paragraphs 1–103 of this Complaint.

7 111. When Defendants entered their agreements with Plaintiffs, and with an successive
8 amendments thereto, they undertook and were bound to covenants implied by law that they would
9 deal fairly and in good faith with Plaintiffs, and not engage in any acts, conduct, or omissions that
10 would diminish the rights and benefits due Plaintiffs, according to the terms of their agreements.

11 112. Upon information and belief, Defendants breached the implied covenant of good
12 faith and fair dealing arising out of their agreements with Plaintiffs by, unreasonably and in bad
13 faith, denying Plaintiffs insurance coverage to which they are entitled. Specifically, among other
14 conduct Defendants, (a) failed or refused to perform a fair, objective, and thorough investigation
15 of the claim as required by the California Insurance Code; (b) asserted coverage defenses that
16 were legally and/or factually invalid and thereby delaying resolution of Plaintiffs' claim; and (c)
17 placed unduly restrictive interpretations on the terms of their insurance policies for the purpose of
18 denying coverage due.

19 113. In committing the above-referenced breach, Defendants intended to and did vex,
20 damage, annoy, and injure Plaintiffs. Said conduct was intentional, willful, and with conscious
21 disregard of Plaintiffs' rights, and was malicious, oppressive and/or fraudulent under California
22 Civil Code section 3294, thereby entitling Plaintiffs to punitive and exemplary damages against
23 the Defendants.

24 114. As a direct and proximate result of the above-referenced breach, Plaintiffs have
25 had to retain attorneys to enforce its right to the insurance coverage to which it is entitled and has
26 thereby been injured and damaged.

27 115. Plaintiffs, therefore, are entitled to recover and seeks in connection with this Cause
28 of Action: (a) an award of general damages and other monetary damages, including all

1 foreseeable consequential and incidental damages for diminution in value, loss of use, and other
2 incidental damages and out-of-pocket expenses, plus interest, in an amount to be determined at
3 trial; (b) punitive and exemplary damages in an amount to be determined at trial; (c) Plaintiffs'
4 costs of suit; and (d) Plaintiffs' reasonable attorney's fees in connection with this action.

5 **THIRD CAUSE OF ACTION**
6 **Unfair Business Practices Under Bus. & Prof. Code § 17200, *et seq.***

7 116. Plaintiffs re-allege and incorporate by reference into this cause of action all
8 allegations set forth in paragraphs 1–103 of this Complaint.

9 117. California's Unfair Competition Law, as codified by California Business &
10 Professions Code sections 17200, *et seq.*, protects both consumers and competitors by promoting
11 fair competition in commercial markets for goods and services. California's Unfair Competition
12 Law is interpreted broadly and provides a cause of action for any unlawful, unfair, or fraudulent
13 business act or practice. Any unlawful, unfair, or fraudulent business practice that causes injury
14 to consumers falls within the scope of California's Unfair Competition Law.

15 118. Defendants' acts and practices, as described herein, constitute unlawful violations
16 of California Business and Professions Code section 17200, *et seq.* because they violated
17 California's Insurance Code, including California Insurance Code section 790, *et seq.* because,
18 *inter alia*, they failed or refused to perform a fair, objective, and thorough investigation of the
19 claims. On information and belief, Defendants denied Plaintiffs' claims as part of a policy of
20 categorically denying all business interruption claims related to the Coronavirus, and ignored
21 other California requirements concerning their evaluation of claims and interpretations of their
22 policies.

23 119. Defendants' acts and practices, as described herein, constitute unfair violations of
24 California Business and Professions Code section 17200, *et seq.* because they failed or refused to
25 perform a fair, objective, and thorough investigation of the claim as required by the California
26 Insurance Code, denied Plaintiffs claim as part of a policy of categorically denying claims related
27 to the Coronavirus, and failed to interpret their policy in an equitable manner and/or up to the
28

standards required by California law (including but not limited to Cal. Ins. Code section 790 et seq.).

120. Defendants' acts and practices, as described herein, constitute deceptive violations of California Business and Professions Code section 17200, *et seq.* because they promised Plaintiffs coverage that was not provided, promised to evaluate each claim individually, reasonably, and in good faith and did not, indicated they were investigating (and had investigated) Plaintiffs' claim but not did investigate the claim, failed or refused to perform the fair, objective, and thorough investigation of the claim required by their policy and the California Insurance Code, and denied Plaintiffs claim as part of a policy of categorically denying claims related to the Coronavirus.

121. Defendants' acts and practices, as described herein, constitute fraudulent violations of California Business and Professions Code section 17200, *et seq.* because they collected Plaintiffs' premiums in exchange for coverage that was not provided, induced those premiums by promising to evaluate each claim individually, reasonably, and in good faith and did not, and denied Plaintiffs claim as part of a policy of categorically denying claims related to the Coronavirus as part of a strategy to reduce their total insurance payments related to the Coronavirus.

122. These acts include but are not limited to charging Plaintiffs premiums in exchange for purported coverage for losses in the event of lost income, loss of use of physical property, limitation on use by a civil authority, or physical damage to property, without any intention of satisfying those claims in an emergency.

123. Any claimed justification for Defendants' conduct is outweighed by the gravity of the consequences to Plaintiffs. Defendants' acts and practices are immoral, unethical, oppressive, or unconscionable to the extent that they deceived Plaintiffs about the coverage provided by the policy, investigation of the claim, and interpretation of the policy, and procedures for doing so. This culminated in a denial of the claim as part of a policy of categorically denying claims related to the Coronavirus as part of a strategy to reduce their total insurance payments related to the Coronavirus. This attempt to maximize Defendant's profits was substantially injurious to

1 Plaintiffs who are local entrepreneurs who relied on their insurance to protect their business and
2 its employees in the event of disaster.

3 124. By reason of Defendants' fraudulent, deceptive, unfair, and other wrongful
4 conduct as alleged herein, said Defendants violated California Business and Professions Code
5 sections 17200, et seq., by consummating an unlawful, unfair, and fraudulent business practice,
6 designed to deprive Plaintiffs of the benefits of Defendants' financial products and services.

7 125. Defendants perpetrated these acts and practices against Plaintiffs, and as a direct
8 and proximate result of the foregoing, Plaintiffs have suffered and continue to suffer damages in a
9 sum which is, as of yet, unascertained. Pursuant to California Business and Professions Code
10 section 17203, Plaintiffs are entitled to restitution of all the monies paid to Defendants for
11 retaining benefits that were due and owing to Plaintiffs (with interest thereon), to disgorgement of
12 all Defendants' profits arising out of their unlawful conduct (with interest thereon), and to be paid
13 benefits due to Plaintiffs that Defendants wrongfully retained by means of its unlawful business
14 practices.

15 126. Pursuant to California Code of Civil Procedure section 1021.5, Plaintiffs are
16 entitled to recover their reasonable attorney's fees in connection with Defendants' unfair
17 competition claims.

18 **FOURTH CAUSE OF ACTION**
19 **Declaratory Relief**

20 127. Plaintiffs re-allege and incorporate by reference into this cause of action all
21 allegations set forth in paragraphs 1-103 of this Complaint.

22 128. Under California Code of Civil Procedure section 1060, et seq., the court may
23 declare rights, duties, statuses, and other legal relations, regardless of whether further relief is or
24 could be claimed.

25 129. An actual controversy has arisen between Plaintiffs and Defendants as to their
26 respective rights and duties under Plaintiffs' insurance policies.

27 130. Resolution of the parties' respective rights and duties under Plaintiffs' insurance
28 policies by declaration of the Court is necessary, as there exists no adequate remedy at law.

1 131. Plaintiffs allege and contend, with respect to Plaintiffs' Civil Authority coverage,
2 that each of the Closure Orders triggers that coverage because (a) each of the Orders is an order
3 of a civil authority, (b) each of the Orders specifically prohibits access to the Scheduled Premises
4 by prohibiting all potential on-premises dining customers and workers from accessing the
5 Scheduled Premises, (c) said prohibition of access by each of the Closure Orders has been
6 continuous and ongoing since the Orders were issued, such that access has not subsequently been
7 permitted, (d) each of the Closure Orders prohibits said access as the direct result of a Covered
8 Cause of Loss (i.e., a risk of direct physical loss of property) in the immediate area of the
9 Scheduled Premises, (e) no Policy coverage exclusions or limitations apply to exclude or limit
10 coverage, (f) Plaintiffs have suffered actual and covered loss of Business Income in an amount to
11 be determined at trial, and (g) coverage should begin as of March 16, 2020.

12 132. Plaintiffs allege and contend that Plaintiffs' Lost Business Income Coverage is
13 triggered because (a) Plaintiffs have sustained actual loss of Business Income due to the closure
14 of the Restaurants, (b) said closure constitutes a necessary suspension of the Restaurants'
15 operations under Plaintiffs' insurance policies, (c) this suspension has been and is caused by
16 direct physical loss of or physical damage to property at the Scheduled Premises, including
17 personal property in the open (or in a vehicle) within 1,000 feet of the Scheduled Premises, due to
18 the presence of Coronavirus, (d) the presence of Coronavirus is a Covered Cause of Loss, and
19 (e) some or all of the period of the Restaurants' closure is within the period of restoration under
20 Plaintiffs' insurance policies.

21 133. Plaintiffs allege and contend that Defendants wrongly denied coverage with
22 respect to all the foregoing provisions.

23 134. Upon information and belief, Plaintiffs allege that Defendants dispute and deny
24 each of Plaintiffs' contentions set forth in this Cause of Action.

25 135. Plaintiffs, therefore, seek a declaratory judgment regarding each of Plaintiffs'
26 contentions set forth in this Cause of Action. A declaratory judgment determining that Plaintiffs
27 are due coverage under their insurance policies, as set forth above, will help to ensure the survival
28

1 of its business during this prolonged closure made necessary by the Orders and by the presence of
2 Coronavirus around the Restaurants during this global pandemic.

3 **VII. PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants, as
5 follows:

- 6 a. For a declaration adopting each of Plaintiffs' contentions set forth in the above
7 Cause of Action for Declaratory Relief;
- 8 b. For injunctive relief enjoining and restraining Defendants' unlawful conduct as
9 alleged herein, including but not limited to their unfair and unlawful business
10 practices and their wrongful denials of coverage under Plaintiffs' insurance
11 policies;
- 12 c. For general and compensatory damages in an amount to be determined at trial;
- 13 d. For exemplary and punitive damages in an amount to be determined at trial;
- 14 e. For Plaintiffs' costs of suit;
- 15 f. For Plaintiffs' reasonable attorney's fees incurred in this action pursuant to statute;
- 16 g. For pre judgment interest on all other interest to which Plaintiffs are entitled; and
- 17 h. For such other relief as the Court may deem proper.

18 **VIII. JURY TRIAL DEMAND**

19 Plaintiffs demand a trial by jury.

20
21 Dated: June 15, 2020


Robert J. Nelson

22
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