

1 GUY O. KORNBLUM (39974)
gkornblum@kcehlaw.com
2 MUKESH ADVANI (117974)
madvani@kcehlaw.com
3 YAELE E. SHAHAM (294775)
yshaham@kcehlaw.com
4 **KORNBLUM, COCHRAN,**
5 **ERICKSON & HARBISON, LLP**
1388 Sutter Street, Suite 505
6 San Francisco, California 94109
Telephone: (415) 440-7800
7 Fax: (415) 440-7898

8 CHARLES D. COCHRAN (98064)
ccochran@kcehlaw.com
9 RACHAEL R. J. ERICKSON (217445)
rerickson@kcehlaw.com
10 **KORNBLUM, COCHRAN,**
11 **ERICKSON & HARBISON, LLP**
50 Old Courthouse Square, St. 601
12 Santa Rosa, California 95404
Telephone: (415) 544-9006
13 Fax: (415) 544-7213

14 Attorneys for Plaintiffs

15 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
16
17 COUNTY OF SONOMA

18
19 BERLIN FISHER, an individual d/b/a BERLIN
SF WEST SONOMA STYLE BAR, and WEST
20 SONOMA STYLE BAR, LLC, a California
corporation,

21
22 Plaintiffs,

23 v.

24 HISCOX INSURANCE COMPANY, INC., an
Illinois corporation; HISCOX, INC., a Delaware
25 corporation; and DOES 1 to 20, inclusive;

26 Defendants.

Case No. SCV-266435

COMPLAINT FOR:
1) BREACH OF CONTRACT
2) DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

1 Come now, Plaintiffs, who allege as follows:

2 **THE PARTIES, JURISDICTION AND VENUE**

3 1. At all times relevant hereto, Plaintiff BERLIN FISHER d/b/a BERLIN SF WEST
4 SONOMA STYLE BAR was and is an individual and the sole owner of Plaintiff WEST SONOMA
5 STYLE BAR, LLC, which, at all times relevant hereto, was and is a California limited liability company
6 operating in the counties of Sonoma and San Francisco providing hair styling and other similar services.
7 Plaintiffs BERLIN FISHER d/b/a BERLIN SF WEST SONOMA STYLE BAR and WEST SONOMA
8 STYLE BAR, LLC are hereafter referred to as "Plaintiffs."

9 2. At all times relevant hereto, HISCOX INSURANCE COMPANY, INC. was and is a
10 corporation formed under the laws of the State of Illinois and operating as an insurance company in the
11 State of California to provide property insurance services such as the property insurance coverage
12 described herein. At all times relevant hereto, HISCOX, INC. was and is a corporation formed under
13 the laws of the State of Delaware and operating as an insurance company in the State of California to
14 provide property insurance services such as the property insurance coverage described herein.
15 Defendants HISCOX INSURANCE COMPANY, INC. and HISCOX, INC. are hereafter referred to as
16 "the Hiscox Defendants" or "Defendants."

17 3. The true names or capacities, whether individual, corporate, associate, or otherwise, of
18 Defendants DOES 1 through 20, inclusive, are unknown to Plaintiffs, who therefore sue them as
19 fictitiously named Defendants. Plaintiffs will amend this Complaint to allege their true names and
20 capacities when ascertained. Each of these Defendants designated as a DOE legally and proximately
21 caused injury and damages to Plaintiffs as herein alleged and are, therefore, responsible to Plaintiffs, as
22 alleged herein for all damages requested by any Plaintiff.

23 4. Plaintiffs are informed and believe, and therefor allege, that at all relevant times
24 described herein, Defendants, and each of them, were the agents, servants and employees of each of the
25 remaining Defendants, and were at all times acting within the purpose, scope and authority of said
26 agency, service and employment. In addition, each Defendant has ratified and approved the acts of each
27 other Defendant acting for and on behalf of the former. There exists, and at all times herein mentioned
28 has existed, a unity of interest and ownership between Defendants such that any separateness between

1 them has ceased to exist in that the Hiscox Defendants are controlled, dominated, managed, and
2 operated the other Defendants to suit its convenience. There was such a unity of interest and ownership
3 among Defendants that the individuality, or separateness, of them has ceased, and that the facts are such
4 that an adherence to the fiction of the separate existence of these entities would, under the particular
5 circumstances, sanction a fraud or promote injustice.

6 5. Pursuant to Code of Civil Procedure §395(a), venue is appropriate in this Court since the
7 policy of insurance described herein was entered into in this County and the obligations to be performed
8 as described herein were to be performed there.

9 **GENERAL ALLEGATIONS**

10 6. Effective November 12, 2019, through November 12, 2020, in return for an agreement by
11 Plaintiffs to pay a premium, the Hiscox Defendants and DOES 1-20 issued to Plaintiffs a
12 “Businessowners Policy” No. UDC-4328308-BOP-19 (“the Policy”) providing, *inter alia*, insurance
13 coverage for “Business Income and Extra Expense” – sometimes referred to as “business interruption”
14 coverage – resulting from “direct physical loss of or damage to property at the described premises.” A
15 copy of what Plaintiffs are informed and believe is the Policy providing this insurance coverage is
16 attached hereto and incorporated herein by this reference as **EXHIBIT 1**.

17 7. Effective March 17, 2020, an Order was issued by the Public Health Officer, Sonoma
18 County, for all people in Sonoma County to shelter in place at their residences and, further, for all
19 businesses in Sonoma County to cease all but specified limited operations at facilities located within the
20 Country of Sonoma.

21 8. Effective March 17, 2020, and amended March 31, 2020, an Order was issued by the
22 Department of Public Health, City and County of San Francisco, for all people in San Francisco to
23 shelter in place at their residences and, further, for all businesses in San Francisco to cease all but
24 specified limited operations at facilities located within the Country of San Francisco.

25 9. Effective March 19, 2020, the Public Health Officer of the State of California issued
26 Executive Order N-33-20, generally mandating that all individuals living in the State of California stay
27 home or at their place of residence but for limited essential outings.
28

1 10. The aforementioned orders were issued for public health reasons as a result of a
2 pandemic of a disease called coronavirus 2019, or COVID-19. Plaintiffs did not suffer from this virus
3 nor was there evidence that it existed or even threatened their business establishments.

4 11. Because of these governmental orders, Plaintiffs were physically unable to utilize their
5 business premises and thus loss the physical use thereof.

6 12. As a result of the above, Plaintiffs made a claim to Defendants for business interruption
7 coverage.

8 13. While Plaintiffs' claim should have been honored and paid, Defendants denied such and
9 failed and refused to pay Plaintiffs the sums which they were due, as promised, under the Policy, and
10 continue to do so to this day.

11 **FIRST CAUSE OF ACTION: BREACH OF CONTRACT**

12 14. Each and every allegation above in Paragraphs 1 through 13 is incorporated herein as part
13 of this First Cause of Action.

14 15. Under the Policy, there existed between the Plaintiffs and Defendants a contractual
15 relationship whereby Defendants had a duty to pay for Plaintiffs' "actual loss of Business Income . . .
16 sustain[ed] due to the necessary suspension of [their] 'operations' during a 'period of restoration' . . .
17 caused by direct physical loss of *or* damage to the [insured property]." (Emphasis added.) "Business
18 Income" includes "Net Income (Net Profit or Loss before income taxes)" and "[c]ontinuing normal
19 operating expenses incurred, including payroll."

20 16. Plaintiffs were and are entitled to payments under the aforementioned "business
21 interruption" coverage described herein because of the shutdown. Nonetheless, Defendants have failed
22 and refused to pay said sums, which are now due and owing. This failure and refusal to pay is a breach
23 of the provisions of the Policy as an insurance contract.

24 17. Plaintiffs performed all of their obligations under the Policy, except for those, if any, they
25 were excused from performing.

26 18. As a direct, proximate and legal result of these Defendants' breaches of contract, and the
27 failure to pay the sums described, Plaintiffs are, have been, and will continue to be damaged in that
28

1 amount, as well as other damages caused by the failure to pay the promised sum. Plaintiffs seek and are
2 owed those damages which Defendants have refused to pay.

3 WHEREFORE, Plaintiffs pray for the relief as set forth herein.

4 **SECOND CAUSE OF ACTION: DECLARATORY RELIEF**

5 19. Each and every allegation above in Paragraphs 1 through 18 is incorporated herein as part
6 of this Second Cause of Action.

7 20. Under California Code of Civil Procedure, §§1050 *et seq.*, this Court may declare rights,
8 status, and other legal obligations whether or not further relief is or could be claimed. Accordingly,
9 Plaintiffs claim relief as set forth in this Second Cause of Action.

10 21. An actual controversy has arisen and now exists between Plaintiffs and Defendants
11 concerning their respective rights and duties in that Plaintiffs contend they are entitled to the Policy
12 proceeds, benefits, and damages claimed herein, whereas Defendants dispute these contentions and
13 contend that they are not.

14 22. Plaintiffs desire a judicial determination of their rights regarding the Policy and a
15 declaration from the court affirming them. Thus, a judicial declaration is necessary and appropriate at
16 this time in order that Plaintiffs may ascertain those rights and duties and enforce them under the law.
17 Further, time is of the essence in that Plaintiffs continue to suffer business/economic losses which
18 threaten their business and may require closure if they are not promptly paid what Defendants owe under
19 the Policy, and thus Plaintiffs will suffer substantial and significant injury if the relief herein requested is
20 not granted.

21 WHEREFORE, Plaintiffs pray for relief as follows:

22 //

23 //

24 //

25 //

26 //

27 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER

1. For general and special damages according to proof,
2. For a Declaration of Rights as set forth herein,
3. For Prejudgment and Post-judgment interest as permitted by law and according to proof,
4. For costs of suit herein incurred, and
5. For such other and further relief as the Court may deem proper.

DATED: May 27, 2020

KORNBLUM, COCHRAN, ERICKSON &
HARBISON, LLP

By



GUY O. KORNBLUM
Attorneys for PLAINTIFFS