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**SUPRIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA**

SUTTER'S PLACE, INC, a California  
corporation, doing business as Bay 101  
Casino

Plaintiff,

vs.

ZURICH AMERICAN INSURANCE  
COMPANY, a New York corporation;  
and DOES 1-25, inclusive,

Defendants.

Case No.:

**PLAINTIFF'S COMPLAINT AND  
DEMAND FOR JURY TRIAL**

1. BREACH OF THE IMPLIED  
COVENANT OF GOOD FAITH AND  
FAIR DEALING
2. BREACH OF CONTRACT

I.

INTRODUCTION

1. Business Interruption coverage is an optional insurance benefit available to businesses to minimize their risk and sustain them when a suspension of business operations causes a loss of business income. This coverage allows businesses to pay continuing operating expenses, additional expenses incurred because of the suspension, and supplement their lost business income.

2. As California Insurance Commissioner Ricardo Lara stated in a notice on April 14, 2020 to all admitted and non-admitted insurance companies in California, “small and large California businesses purchase Business Interruption insurance to protect against the loss of income and other losses caused by an interruption to the normal operations of the business.” (Exhibit 1).

3. Sutter’s Place, Inc. (“Sutter’s Place”) is a premier card club founded more than 91 years ago in Alviso, California. During the widening of Highway 237 in 1992, the casino relocated its existing location in San Jose, California and has been profitable since its opening in 1994. For more than 26 years, Bay 101 Casino operates as one of the most prestigious casinos on the west coast with 49 gaming tables within its 72,000 square foot facility, which also includes 4 restaurants. Bay 101 Casino is notably renowned for continuing to host the *Shooting Star Tournament*, which was once historically one of only two Northern California stops on the esteemed World Poker Tour.

4. Sutter’s Place purchased, timely paid all premiums, and performed all duties required of it to be performed under an “All Risk” commercial insurance policy issued by Defendant, Zurich American Insurance Company (“Zurich”) Policy No. CPO 0272473-02 (the “Policy”). Under an “All Risk” policy, all risks of physical loss of or damage to property are covered unless specifically and unambiguously excluded. Stated differently, all non-excluded perils are covered.

1           5.       The Policy included “Business Income” coverage, through which Zurich  
2       promised it will “pay for the actual loss of Business Income [Sutter’s Place] sustain[s]  
3       due to the necessary ‘suspension’ of [its] ‘operations’ . . . caused by direct physical loss  
4       of or damage to property . . . .” (Exhibit 2).

5           6.       The novel coronavirus which causes a respiratory disease (“COVID-19”)  
6       originated in China in late 2019, spread to Europe, and eventually came to the United  
7       States. Although COVID-19 was present in California by late January 2020, all  
8       businesses, including Sutter’s Place were allowed to remain open throughout February  
9       and the first half of March. On January 30, 2020 the World Health Organization (the  
10      “W.H.O.”) declared a public health emergency of international concern. On March 4,  
11      2020, California Governor Gavin Newsom proclaimed a State of Emergency to exist in  
12      California “as a result of the threat of COVID 19” and one week later, on March 11,  
13      2020, the W.H.O. made the assessment that COVID-19 could be characterized as a  
14      pandemic.

15          7.       Notably, although some commercial insurance policies have included a  
16      specific exclusion for losses caused by virus, the policy purchased by Sutter’s Place  
17      contains no such exclusion.

18          8.       On March 16, 2020, the Health Officer for the County of Santa Clara issued  
19      orders for businesses to cease all non-essential operations, and prohibited access to the  
20      casino. Thereafter, on March 19, 2020, Governor Newsom issued Executive Order N-33-  
21      20, which ordered all individuals living in the State of California to stay at home or at  
22      their place of residence, except as needed to maintain continuity of operations in  
23      designated infrastructure sectors. (Exhibit 3).

24          9.       These Orders caused Sutter’s Place to suspend business operations at all  
25      its locations, which resulted in an immediate loss of business income.

26          10.      As a direct result of these Orders, Sutter’s Place promptly submitted a  
27      claim for its business income loss to Zurich.

28

11. Engaging in the business of insurance in California imposes upon insurers the legal obligation to promptly conduct fair, balanced and thorough investigations of all bases of claims for benefits made by their insureds, with a view toward honoring the claims. As part of these obligations, an insurance company is obligated to diligently search for and consider evidence that supports coverage of the claimed loss, and in doing so must give at least as much consideration to the interests of its insured as it gives to its own interests.

12. During the COVID-19 Pandemic, Commissioner Lara issued a notice after the California Department of Insurance “ha[d] received numerous complaints from businesses, public officials, and other stakeholders asserting that certain insurers, agents, brokers, and *insurance company representatives* [we]re attempting to dissuade policyholders from filing a notice of claim under its Business Interruption insurance coverage, or *refusing to open and investigate these claims* upon receipt of a notice of claim” (Exhibit 1, p. 1, emphasis added).

13. The Commissioner’s notice reminded insurers facing these claims of the importance of complying with their obligations, citing the California Fair Claims Settlement Practices Regulations. (Cal. Code Regs., tit. 10, §§ 2695.1 *et seq.* (hereinafter referred to as “Regulations”)). His notice went on to state, “Therefore, Insurance Commissioner Ricardo Lara finds it necessary to issue this Notice to ensure that all agents, brokers, *insurance companies*, and other licensees accept, forward, acknowledge, and *fairly investigate all business interruption insurance claims* submitted by businesses” (Exhibit 1, p. 1-2, emphasis added). The Commissioner stated that “every insurer is required to conduct and diligently pursue a thorough, fair, and objective investigation of the reported claim.” (*Id.* at 2).

14. Amongst other information provided to insurers, the Commissioner further reminded them that “[i]f the claim is denied in whole or in part, the insurer is *required to communicate the denial in writing to the policyholder listing all the legal and factual bases* for such denial. (Regulations, § 2695.7(b)(1)). Where the denial of a first

1 party claim is based on a specific statute, applicable law or policy provision, condition,  
2 or exclusion, the written denial must include reference to and provide an explanation of  
3 the application of the statute, applicable law, or policy provisions, condition, or  
4 exclusion to the claim...Regulations, § 2695.7(b)(1)” (Exhibit 1, p. 3, emphasis added).

5 15. Consistent with all of these well-established and non-controversial  
6 California insurance claims handling standards, Sutter’s Place had the right to rely on  
7 Zurich to handle its insurance claim for business interruption losses in a manner  
8 consistent with these standards of good faith and fair dealing. Unfortunately for Sutter’s  
9 Place, Zurich failed in all respects and abruptly, unreasonably and with a callous  
10 disregard for the interests of its insured, denied the claim in its entirety on June 4, 2020.

11 16. In order to obtain the benefits promised under its Policy and required by  
12 California law, Sutter’s Place was compelled to institute this lawsuit to pursue all  
13 available remedies available to it.

## 14 II. 15 PARTIES

16 17. Plaintiff Sutter’s Place, Inc., doing business as Bay 101 Casino, is, and at all  
17 relevant times was, a California corporation.

18 18. Defendant Zurich American Insurance Company is, and at all relevant  
19 time was, a New York corporation with its principal place of business in the State of  
20 New York. At all times relevant to the allegations contained herein, Zurich was  
21 conducting business as an insurer in the State of California.

22 19. The true names or capacities, whether individual, corporate, associate, or  
23 otherwise, of defendants DOES 1 through 25, inclusive, are unknown to Sutter’s Place,  
24 who therefore sues said defendants by such fictitious names. Sutter’s Place is informed  
25 and believes and based on such information and belief alleges that each of the  
26 defendants sued herein as a Doe is legally responsible in some manner for the events  
27 and happenings referred to herein, and will ask leave of this Court to amend this  
28

1 complaint to insert their true names and capacities in place and instead of the fictitious  
2 names when the same become known to it.

3 20. Plaintiff is informed and believes and based thereon alleges that at all  
4 times mentioned herein, each of the defendants was the agent, partner, joint venturer,  
5 associate and/or employee of one or more of the other defendants and was acting in the  
6 course and scope of such agency, partnership, joint venture, association and/or  
7 employment when the acts giving rise to the cause of action occurred.

8 **III.**

9 **INSURANCE**

10 21. Sutter's Place purchased the Policy from Zurich for a coverage period  
11 from December 1, 2019 to December 1, 2020.

12 22. Sutter's Place timely paid all premiums that were due under the Policy.

13 23. In exchange for payment of the premiums, Zurich agreed to provide the  
14 insurance coverage described in the Policy.

15 24. The commercial property insurance portion of the Policy includes a  
16 coverage form for "Business Income (and Extra Expense)". (Exhibit 2).

17 25. The Policy provides "All Risk" coverage for Business Income and Extra  
18 Expense coverage through the following provisions:

19 **A. Business Income**

20 We will pay for the actual loss of Business Income you  
21 sustain due to the necessary suspension of your  
22 "operations" during the "period of restoration". The  
23 "suspension" must be caused by direct physical loss to  
24 property at a "premises" of or damage to property at the  
25 described premises.... The loss or damage must be directly  
caused by a "covered cause of loss" . . .

26 **B. Extra Expense**

27 We will pay for the actual and necessary "extra expense" you  
28 incur due to direct physical loss of or damage to property at

a "premises" at which a Limit of Insurance is shown for Extra Expense on the Declarations. The loss or damage must be directly caused by a "covered cause of loss".

26. A "Covered Cause of Loss" is defined in the Policy as "a fortuitous cause or event, not otherwise excluded, which actually occurs during this policy period."

27. All terms in the Policy which appear in quotation marks are specially defined terms. Notably, Zurich chose not to define the term "direct physical loss".

28. "Business Income" is defined in the Policy to mean: (a) "Net income", plus (b) "Continuing expenses".

29. "Operations" is defined in the Policy to mean (a) "Your business activities occurring at the covered location prior to the physical loss or damage"; and (b) "The covered location is tenantable prior to the physical loss or damages"

30. "Period of restoration" is defined in the Policy as "the period of time that begins when:

(a) The direct physical loss or damage that causes "suspension" of your "operations" occurs; or

(b) The date "operations" would have begun if the start of "operations" is delayed because of loss of or damage to any of the following:

1. "Real property", whether complete or under construction;
2. Alterations or additions to "real property"; or...

...

The expiration date of this policy will not cut short the "period of restoration". (Id.)

31. The Policy also provides additional coverage for Civil Authority. This coverage states:

"We will pay for the actual loss of "business income" you sustain for up to the number of days shown on the Declarations for Civil Authority resulting from the necessary "suspension", or delay in the start, of your "operations" if the "suspension" or delay is caused by order of civil authority that prohibits access to the "premises" or "reported unscheduled premises". That order must result from a civil authority's response to direct physical loss of or damage to property located within one mile from

the "premises" or "reported unscheduled premises" which sustains a "business income" loss. The loss or damage must be directly caused by a "covered cause of loss".

**A. Civil Authority**

We will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises due to direct physical loss of or damage to property, other than at the described premises, caused by or resulting from any Covered Cause of Loss.

32. One of the exclusions in the Policy is for "Idle Periods", which provides that, We will not pay for "extra expense" incurred during any period in which business would not or could not have been conducted for any reason other than:
- (a) Direct physical loss of or damage to property as described in Section A. Coverage, above;
  - (b) A civil authority prohibiting access to the "premises" or "reported unscheduled premises" as described in the Civil Authority Additional Coverage above; or

...

33. The Policy contains an exclusion for Microorganisms, which states the following:

"We will not pay for loss or damage consisting of, directly or indirectly caused by, contributed to, or aggravated by the presence, growth, proliferation, spread, or any activity of "microorganisms", unless resulting from fire or lighting. Such loss is excluded regardless of any other cause or event, including a "mistake", "malfunction", or weather condition, that contributes concurrently or in any sequence to the loss, even if such other cause of event would otherwise be covered.

But if a result of one of these excluded causes of loss is a "specified cause of loss", other than fire or lighting, we will pay that portion of the loss or damage which was solely caused by that "specified cause of loss".



We will also not pay for loss, cost, or expense arising out of any request, demand, order, or statutory or regulatory requirement that requires any insured or others to test for, monitor, clean up, remove, treat, detoxify, or neutralize, or in any way respond to, or assess the effects of “microorganisms”.

34. A “Specific Cause of Loss” is defined by the Policy to mean “Fire, lightning, explosion, windstorm or hail, smoke, aircraft or vehicles, riot or civil commotion, vandalism, leakage from fire equipment, sinkhole collapse, volcanic action, falling objects, weight of snow, ice, or sleet, accidental discharge or leakage of water or steam from any part of a system or appliance containing water or steam, and equipment breakdown.”

35. The Policy does not contain a specific exclusion for loss of covered property or damage to covered property caused by or related to viruses.

#### **IV. FACTUAL BACKGROUND**

##### **A. Sutter’s Place**

36. Sutter’s Place is a historic and prestigious card club that originated in Alviso, California in 1929. After 63 years of success, the casino was forced to be relocated in 1992 and reopened in 1994 as Bay 101 Casino. The casino is a highly coveted venue hosting the World Poker Tour tournament for more than a decade.

37. Sutter’s Place ceased operations as a result of the government-mandated shut downs, prompting Sutter’s Place’s to make a legitimate claim to its insurance company for the help and protection it had been promised. However, Zurich rejected the claim without a fair, balanced, and thorough investigation, violating California insurance law, regulations, and standards.

**B. The COVID-19 Pandemic**

38. It has been widely reported that COVID-19 has its origins in Wuhan, China. The first public reports were on December 31, 2019 of an “outbreak of respiratory illness.”

39. By January 8, 2020, the United States Centers for Disease Control and Prevention (“CDC”) issued warnings to American travelers going to China for a “pneumonia of unknown etiology” (<https://emergency.cdc.gov/han/han00424.asp>, last accessed April 17, 2020).

40. Starting January 17, 2020, the CDC and the United States Department of Homeland Security’s Customs and Border Protection implemented enhanced health screenings for passengers who came from or connected through Wuhan, China (<https://www.cdc.gov/media/releases/2020/p0117-coronavirus-screening.html>, last accessed April 17, 2020).

41. On January 20, 2020, the W.H.O. reported the first confirmed cases outside mainland China in Japan, South Korea and Thailand (<https://www.nytimes.com/article/coronavirus-timeline.html>, last accessed April 17, 2020). The following day, on January 21, 2020, the first American COVID-19 case was confirmed in the State of Washington (<https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html>, last accessed April 17, 2020).

42. On January 30, 2020, the W.H.O declared a public health emergency of international concern. The following day, on January 31, 2020, all travel from China to the United States was blocked.

43. During February, COVID-19 began spreading rapidly throughout Europe, with Italy initially becoming the most impacted country. That same month, an increasing number of cases were being reported in the United States, with the largest concentration of cases in the Seattle area of Washington State. The first cluster of COVID-19 cases was reported at a nursing home in Kirkland, Washington in late February, where the first COVID-19 death was announced on February 28, 2020.

1           44.     COVID-19 also continued to spread throughout California during  
2     February 2020. In early February, several COVID-19 cases were announced in Northern  
3     California. During February, the number of reported COVID-19 cases in California  
4     increased. On February 26, 2020, the CDC announced the first reported California  
5     COVID-19 case resulting from community spread ([https://www.cdc.gov/media/  
6     releases/2020/s0226-Covid-19-spread.html](https://www.cdc.gov/media/releases/2020/s0226-Covid-19-spread.html), last accessed April 17, 2020).

7           45.     On March 4, 2020, the first COVID-19 fatality was reported in California.

8           46.     As COVID-19 cases continued to increase in certain areas of the United  
9     States, on March 4, 2020 Congress passed emergency funding of \$8.3 billion to aid in the  
10    immediate health response to COVID-19.

11          47.     Also on March 4, 2020, Governor Newsom proclaimed a State of  
12    Emergency to exist in California “as a result of the threat of COVID 19.”

13          48.     On March 11, 2020, travel from Europe to the United States was restricted,  
14    and the W.H.O. declared COVID-19 a pandemic. The term “pandemic” does not appear  
15    anywhere as an excluded peril in this “All Risk” Policy.

16          49.     On March 13, 2020, the President of the United States declared a national  
17    emergency.

18          50.     Yet, throughout the entire period from December 2019 until March 16,  
19    2020, Sutter’s Place had not suffered an interruption of its thriving business.

20  
21    **C.     Sutter’s Place Suffers a Suspension of its Operations due to Government**  
22    **Orders**

23          51.     On March 16, 2020, the Shelter in Place order was issued by the County of  
24    Santa Clara.

25          52.     On March 19, 2020, California Governor Gavin Newsom issued Executive  
26    Order N-33-20, which ordered all individuals living in the State of California to heed  
27    State public health directives to stay at home, except as needed to maintain continuity  
28    of operations in essential critical infrastructure sectors. (Exhibit 3).

53. As a result of the State and local orders, Sutter's Place, has not been able to resume its operations to the level it had provided before Executive Order N-33-20 was issued.

54. Also, to comply with California's guidelines to reopen, Sutter's Place was required to incur extra expenses including, but not limited to, equipment, construction, services, and supplies necessary to abide by social distancing and sanitation rules.

55. These Orders by State and Local government constitute a predominant cause of Sutter's Place's losses, which continue to this day.

**D. Zurich Denies Sutter's Place's Claim Without a Thorough Investigation.**

56. On or around April 9, 2020, Sutter's Place tendered a claim to Zurich under its Policy for business interruption loss resulting from the government-ordered suspension of its operations.

57. Without performing a full, fair, and balanced investigation, Zurich denied Sutter's Place's claim on June 4, 2020. (Exhibit 4). In the letter, Zurich stated, "[t]he presence of the COVID-19 virus does not constitute "direct physical loss or damage" to property and, in any event, it does not appear that the order of civil authority affecting Sutter's Place, Inc resulted from any direct physical loss or damage within the distance limit as set forth in the Declarations. Significantly, as addressed above, the presence of the COVID-19 virus is excluded as a cause of loss; accordingly, the order of civil authority affecting Sutter's Place, Inc does not result from a covered cause of loss."

58. Zurich's denial was erroneously based on the COVID-19 event, and failed to acknowledge the losses caused by the governmental orders which were the basis of Sutter's Place's claim.

59. Moreover, Zurich misrepresented the language of its own Policy with respect to coverage. The Policy does not limit itself to "direct physical loss or damage", but also covers "direct physical loss of or damage to" property in both its Property Coverage and Business Income and Extra Expense coverages. Finally, while Zurich also

1 raised potential exclusions including those for “Microorganisms”, it provided no  
2 analysis concerning the applicability of that exclusion.

3 60. Pursuant to Title 10, Section 2695.7(b)(1) of the California Code of  
4 Regulations, Zurich was required to state in its June 4, 2020 denial letter all the factual,  
5 contractual, and legal grounds for denying the claim, thus forfeiting the right to raise  
6 additional grounds to attempt to justify its denial of Sutter’s Place’s claim.

7 61. As a result of Zurich’s wrongful denial of the claim, Sutter’s Place has  
8 been compelled to retain counsel and pursue this litigation in order to obtain the  
9 benefits promised under the Policy.

10 **FIRST CAUSE OF ACTION**

11 PLAINTIFF, SUTTER’S PLACE, FOR A FIRST CAUSE OF ACTION AGAINST  
12 DEFENDANTS ZURICH AND DOES 1 THROUGH 25, INCLUSIVE, FOR BREACH OF  
13 THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING, ALLEGES:

14 62. Sutter’s Place incorporates by reference all paragraphs above as if set forth  
15 in full in this cause of action.

16 63. Zurich and DOES 1 to 25, inclusive, have breached their duty of good faith  
17 and fair dealing owed to Sutter’s Place in the following respects:

- 18 a. Unreasonably acting or failing to act in a manner that deprives Sutter’s  
19 Place of the benefits of the Policy;
- 20 b. Unreasonably engaging in a pattern and practice of acting or failing to  
21 act in a manner that deprives its insureds of the benefits of policies it  
22 issues;
- 23 c. Unreasonably failing to conduct a prompt, fair, balanced and thorough  
24 investigation of all of the bases of Sutter’s Place’s claim;
- 25 d. Unreasonably engaging in a pattern and practice of failing to conduct a  
26 prompt, fair, balanced and thorough investigation of all of the bases of  
27 claims made under policies it issues;
- 28

- e. Unreasonably failing to diligently search for and consider evidence that supports coverage of Sutter's Place's claim;
- f. Unreasonably engaging in a pattern and practice of failing to diligently search for and consider evidence that supports coverage of claims;
- g. Unreasonably failing to conduct an investigation to determine the efficient proximate cause (predominant cause) of Sutter's Place's loss;
- h. Unreasonably engaging in a pattern and practice of failing to conduct an investigation to determine the efficient proximate cause (predominant cause) on claims made by insureds;
- i. Unreasonably failing to give at least as much consideration to the interests of Sutter's Place as it gives to its own interests;
- j. Unreasonably engaging in a pattern and practice of failing to give at least as much consideration to the interests of its insureds as it gives to its own interests;
- k. Unreasonably placing its own financial interests above the interests of Sutter's Place;
- l. Unreasonably engaging in a pattern and practice of placing its own financial interests above the interests of its insureds;
- m. Unreasonably failing to comply with the Regulations, including Section 2695.7(b)(1);
- n. Unreasonably failing to apply the Policy's definitions and terms to determine whether Sutter's Place's claim was covered; and
- o. Unreasonably compelling Sutter's Place to institute this action to obtain benefits due under the Policy.

64. Sutter's Place is informed and believes, and thereon alleges, that the foregoing unreasonable, malicious, oppressive and/or fraudulent misconduct was not limited to Zurich's and DOES 1 to 25, inclusive, evaluation of this particular claim, but

1 represents an ongoing pattern and practice, which they apply to all of their  
2 policyholders, that is specifically designed by Zurich and DOES 1 to 25, inclusive, to  
3 earn illicit profits at the expense of their policyholders' rights. This ongoing pattern of  
4 conduct constitutes institutional bad faith.

5 65. Zurich's and DOES 1 to 25, inclusive, institutional bad faith constitutes  
6 reprehensible conduct because it is part of a repeated pattern of unfair practices and not  
7 an isolated occurrence. The pattern of unfair practices constitutes a conscious course of  
8 wrongful conduct that is firmly grounded in Zurich's and DOES 1 to 25, inclusive,  
9 established company policies and practices. Sutter's Place is informed and believes and  
10 thereon alleges that Sutter's Place and DOES 1 to 25, inclusive, have engaged in similar  
11 wrongful conduct as to other insureds and that they have substantially increased its  
12 profits as a result of causing similar harm to others.

13 66. As a proximate result of the aforementioned conduct of Zurich and DOES  
14 1 to 25, inclusive, Sutter's Place has suffered, and will continue to suffer in the future,  
15 damages under the Policy, plus interest and other economic and consequential  
16 damages, for a total amount to be shown at the time of trial.

17 67. As a further proximate result of the aforementioned unreasonable conduct  
18 of Zurich and DOES 1 to 25, inclusive, Sutter's Place was compelled to retain legal  
19 counsel to obtain the benefits due under the Policy. Therefore Zurich and DOES 1 to 25,  
20 inclusive, are liable to Sutter's Place for the attorneys' fees reasonably necessary and  
21 incurred by Sutter's Place in order to obtain the Policy benefits.

22 68. The conduct of Zurich and DOES 1 to 25, inclusive, was intended by them  
23 to cause injury to Sutter's Place, and/or was despicable conduct carried on by them with  
24 a willful and conscious disregard of Sutter's Place's rights, subjected Sutter's Place to  
25 cruel and unjust hardship in conscious disregard of its rights; and/or constituted an  
26 intentional misrepresentation or concealment of a material fact known to Zurich and  
27 DOES 1 to 25, inclusive, with the intention to deprive Sutter's Place of property or legal  
28 rights or to otherwise cause injury, such as to constitute malice, oppression or fraud

1 under California Civil Code section 3294. Sutter's Place is therefore entitled to an award  
2 of punitive damages in an amount appropriate to punish and set an example for other  
3 similarly situated insurers.

4 69. Zurich's and DOES 1 to 25, inclusive, conduct was undertaken by its  
5 corporate officers, directors or managing agents, identified herein as DOES 15 to 25,  
6 who were responsible for claims supervision and operations, underwriting,  
7 communications, and/or decisions; and/or this conduct was authorized by one or more  
8 of Zurich's officers, directors or managing agents, and/or one or more Zurich's officers,  
9 directors or managing agents knew of the actions and adopted or approved that  
10 conduct after it occurred. This conduct was, therefore, undertaken on behalf of Zurich  
11 and DOES 15 to 25, inclusive.

## 12 SECOND CAUSE OF ACTION

13 PLAINTIFF, SUTTER'S PLACE, FOR A SECOND CAUSE OF ACTION  
14 AGAINST DEFENDANTS OREGO MUTUAL AND DOES 1 THROUGH 25,  
15 INCLUSIVE, FOR BREACH OF CONTRACT ALLEGES:

16 70. Sutter's Place incorporates by reference all paragraphs above as if set forth  
17 in full in this cause of action.

18 71. Sutter's Place entered into a contract, the Policy, with Zurich and DOES 1  
19 through 25, inclusive. Zurich and DOES 1 through 25, inclusive, owed duties and  
20 obligations to Sutter's Place under the Policy.

21 72. Sutter's Place did all, or substantially all, of the significant things that the  
22 Policy required it to do.

23 73. Zurich's and DOES 1 through 25, inclusive, denial of Sutter's Place's claim  
24 is not in accordance with the terms of the Policy and California law.

25 74. As a direct and proximate result of Zurich's and DOES 1 through 25,  
26 inclusive, conduct and breach of their contractual obligations, Sutter's Place has  
27 suffered damages under the Policy in an amount to be determined according to proof at  
28



the time of trial, plus pre-judgment interest pursuant to California Civil Code section 3289(b), and other foreseeable and consequential damages according to proof and in amounts to be determined at the time of trial.

**PRAYER FOR RELIEF**

WHEREFORE, Sutter's Place prays for judgment against Defendants as follows:

**AS TO THE FIRST CAUSE OF ACTION AGAINST DEFENDANTS ZURICH AND DOES 1 THROUGH 25, INCLUSIVE, FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING:**

1. For damages for failure to pay benefits owed under the Policy, plus interest, in a sum to be determined at trial;
2. For prejudgment interest on all damages awarded to Sutter's Place in accordance with California Civil Code section 3287;
3. For attorneys' fees, witness fees, and costs of litigation incurred by Sutter's Place to obtain the Policy benefits in an amount to be determined at trial;
4. For economic and consequential damages arising out of Zurich's and DOES 1 through 25's, inclusive, unreasonable failure to pay benefits owed under the Policy;
5. For punitive and exemplary damages in an amount appropriate to punish or set an example of Zurich and DOES 1 through 25, inclusive;
6. For costs of suit herein; and
7. For such other relief as the Court deems just and proper.

**AS TO THE SECOND CAUSE OF ACTION AGAINST DEFENDANTS ZURICH AND DOES 1 THROUGH 25, INCLUSIVE, FOR BREACH OF CONTRACT:**

1. For economic and consequential damages, in an amount to be determined according to proof at trial;
2. For prejudgment interest on all damages awarded to Sutter's Place in accordance with California Civil Code section 3289(b);

3. For costs of suit incurred herein; and
4. For such other and further relief as the Court deems just and proper.

Dated: September 3, 2020

SHERNOFF BIDART ECHEVERRIA LLP

By: \_\_\_\_\_



MICHAEL J. BIDART

RICARDO ECHEVERRIA

Attorneys for Plaintiff

### JURY DEMAND

Plaintiff hereby demands a jury trial.

Dated: September 3, 2020

SHERNOFF BIDART ECHEVERRIA LLP

By: \_\_\_\_\_



MICHAEL J. BIDART

RICARDO ECHEVERRIA

Attorneys for Plaintiff