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6 *Attorneys for Plaintiff Plan Check Downtown*
7 *III, LLC, and others similarly situated,*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10 PLAN CHECK DOWNTOWN III, LLC, a
California limited liability company and
11 others similarly situated,

12 *Plaintiff,*

13 v.

14 AMGUARD INSURANCE COMPANY, a
Pennsylvania company, and DOES 1 through
15 20,

16 *Defendants.*

Civil Action No:

COMPLAINT FOR:

- (1) DECLARATORY JUDGMENT
- (2) BREACH OF CONTRACT
- (3) BREACH OF IMPLIED
COVENANT OF GOOD FAITH
AND FAIR DEALING
- (4) UNFAIR BUSINESS PRACTICES
UNDER BUS. & PROF. CODE §
17200, ET SEQ.

[Demand for Jury Trial]

1 Plaintiff Plan Check Downtown III, LLC ("Plaintiff"), by its attorneys Hecht Partners
2 LLP, individually and on behalf of all others similarly situated, for its complaint against
3 defendant AmGUARD Insurance Company ("Defendant"), alleges as follows:

4 **I. NATURE OF ACTION**

5 1. This is an action to recover Business Income insurance coverage owed by
6 Defendant AmGuard under a policy it issued to Plaintiff. Plaintiff, like thousands of
7 restaurateurs in Los Angeles, and indeed across the United States, was forced to close its doors
8 to sit-down service as a result of government quarantining orders relating to the novel coronavirus
9 pandemic.

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

15 3. Plaintiff paid for this coverage to protect itself against a situation like this one: a
16 closure of its business imposed on it through no fault of its own. As California Insurance
17 Commissioner Ricardo Lara stated in a notice on April 14, 2020 to all admitted and non-admitted
18 insurance companies in California, "Many small and large California businesses purchase
19 Business Interruption insurance to protect against the loss of income and other losses caused by
20 an interruption to the normal operations of the business" (Exhibit A).

21 4. Yet instead of providing the support it bargained for, Defendant has chosen to
22 issue blanket denials to all of its insureds affected by the closures without so much as an
23 investigation. Plaintiff now seeks to vindicate its rights under the Policy, and those of similarly-
24 situated businessowners thrust into the cold by Defendant.

25 **II. JURISDICTION AND VENUE**

26 5. This is a class action brought pursuant to Section 382 of the California Code of
27 Civil Procedure. The damages sought exceed the minimal jurisdictional limits of this Court and
28 will be established at trial.

1 6. This Court has personal jurisdiction over Defendant because Defendant does
2 business in the State of California and has availed itself of the laws of the State of California.

3 7. Venue is proper in this Court because, upon information and belief, Plaintiff
4 accepted the offer of the contract with Defendant at issue in this action in Los Angeles County.

5 **III. PARTIES**

6 8. Plaintiff is, and at all relevant times was, a California corporation, with its
7 principal place of business in Los Angeles, California.

8 9. Plaintiff operates two restaurants in Los Angeles, one on Wilshire Blvd. and one
9 on Sawtelle Ave. These are family-style restaurants that serve food and alcoholic beverages.

10 10. Defendant is a Pennsylvania company, one of Berkshire Hathaway's subsidiary
11 "Guard Insurance" companies. Defendant is headquartered in Wilkes-Barre, Pennsylvania, and
12 at all relevant times was conducting business in the State of California as a licensed insurer.

13 11. Plaintiff is ignorant of their names but is informed and believes, and based
14 thereupon alleges, that each of the defendants designated herein as a DOES 1 through 20, was
15 responsible negligently, wrongfully, or in some other actionable manner, for the events and
16 happenings herein referred to which proximately caused the damages to Plaintiffs as hereinafter
17 alleged, either through said Defendant's own negligence or through the conduct of its agents,
18 servants, employees or representatives in some other manner.

19 12. Plaintiff is further informed and believes and thereupon alleges that at all times
20 mentioned herein the Defendants and each of them were the agents, servants, employees,
21 representatives and/or joint venturers of their co-defendants and were as such acting within the
22 course, scope and authority of said agency, services, employment, representation and/or joint
23 venture in that each and every defendant, as aforesaid when acting as principal, was negligent in
24 the selection and hiring of each and every other defendant as an agent, servant, employee,
25 representative and/or joint venturer.

26 13. Plaintiff is further informed and believes and based thereupon alleges that at all
27 times mentioned herein each of the defendants, including Defendant DOES 1 through 20,
28 inclusive, and each of them, were the agents, servants, employees, representatives of each of the

1 remaining defendants and were at all times material hereto acting within the authorized course
2 and scope of said agency, service, employment and/or representation, and/or that all of said acts,
3 conduct and omissions were subsequently ratified by their respective principals and the benefits
4 thereof accepted by such principals.

5 **IV. INSURANCE**

6 14. Plaintiff purchased, timely paid all premiums for, and performed all duties
7 required of it to be performed under a "Businessowner's" commercial property and general
8 liability insurance policy issued by Defendant, Policy No. PLBP159547 (the "Original Policy").
9 A true and correct copy of the Original Policy is attached hereto as Exhibit B. That policy was
10 later amended; the amended policy is attached hereto as Exhibit C. Though the original and
11 amended policy reflect the purchase of Businessowner's insurance, the Businessowner's
12 Coverage Form was not attached to the policy materials provided by Defendant to Plaintiff. That
13 form was retrieved from Defendant's website and is attached hereto as Exhibit D. The Original
14 Policy, amended policy, and Businessowner's Coverage Form shall be referred to collectively
15 herein as the "Policy."

16 15. In exchange for payment of the premiums Defendant agreed to provide the
17 insurance coverage described in the Policy. The premium totaled \$52,120.00.¹

18 16. All risks of physical loss or damage are covered under the Businessowner's Policy
19 unless expressly subject to one of the Policy's exclusions or limitations. Stated differently, all
20 non-excluded perils are covered.

21 17. The Policy provides coverage from February 27, 2020 to February 27, 2021
22 (Exhibit B, p. 5, ¶ 3).

23 18. The Policy provides coverage for, among other things, the loss of business income
24 due to the necessary suspension of business operation caused by physical loss of or damage to
25 the premises.

26
27
28 ¹ This amount was later adjusted pursuant to the amended policy attached as Exhibit C.

1 19. Specifically, Section I.A.5.f.(1)(a) of the Policy, 'Business Income,' provides in
2 relevant part that:

3 We will pay for the actual loss of Business Income you sustain due to the
4 necessary suspension of your "operations" during the "period of restoration." The
5 suspension must be caused by direct physical loss of or damage to property at the
6 described premises. The loss or damage must be caused by or result from a
Covered Cause of Loss. (Exhibit C).

7 20. "Suspension" is defined in the Policy to include a partial slowdown of business.
8 Section I.A.5.f.(3) provides that "With respect to this coverage provided in this Additional
9 Coverage, suspension means: (a) The partial slowdown or complete cessation of your business
10 activities; or (b) That a part or all of the described premises is rendered untenable, if coverage
11 for Business Income applies." Exhibit C. California case law holds that "suspension" means a
12 suspension of all business absent a contrary definition, but given this provision that case law does
13 not seem relevant.

14 21. With the closure of its restaurants on the order of the Mayor and Governor,
15 Plaintiff suffered a direct physical loss of or damage to its properties causing a "suspension" of
16 its "operations," as those terms are defined in the Policy.

17 22. In addition, Section I.A.5.i of the Policy, "Civil Authority" provides in relevant
18 part that:

19 When a Covered Cause of Loss causes damage to property other than property at
20 the described premises, we will pay for the actual loss of Business Income you
21 sustain and necessary Extra Expense caused by action of civil authority that
prohibits access to the described premises. (Exhibit C).

22 23. The Policy included a "Business Income, Extra Expense and Related Coverages
23 Limit Of Insurance" endorsement (form BP 99 41 08 16), which sets a coverage limit of \$500,000
24 for each restaurant site in the event of a covered loss.

1 **V. FACTUAL BACKGROUND**

2 **A. The COVID-19 Pandemic Begins, But Does Not In Itself Cause Plaintiff To**
3 **Suspend Operations.**

4 24. The novel coronavirus originated in China in late 2019, spread to Europe, and
5 eventually came to the United States.

6 25. It has been widely reported that the novel coronavirus, and COVID-19, the illness
7 it causes, have their origins in Wuhan, China. The first public reports were on December 31,
8 2019 of an “outbreak of respiratory illness.”

9 26. By January 8, 2020, the United States Centers for Disease Control and Prevention
10 (“CDC”) issued warnings to American travelers going to China for a “pneumonia of unknown
11 etiology” (<https://emergency.cdc.gov/han/han00424.asp>, last accessed May 19, 2020).

12 27. Starting January 17, 2020, the CDC and the United States Department of
13 Homeland Security’s Customs and Border Protection implemented enhanced health screenings
14 for passengers who came from or connected through Wuhan, China
15 (<https://www.cdc.gov/media/releases/2020/p0117-coronavirus-screening.html>, last accessed
16 May 19, 2020).

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

23 29. According to news reports, shortly thereafter, by January 26, 2020, the CDC
24 confirmed the first COVID-19 case in California
25 ([https://web.archive.org/web/20200128205456/https://www.cdph.ca.gov/Programs/CID/DCDC](https://web.archive.org/web/20200128205456/https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx)
26 [/Pages/Immunization/ncov2019.aspx](https://web.archive.org/web/20200128205456/https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx), last accessed May 19, 2020).

1 30. On January 30, 2020, the W.H.O declared a “public health emergency of
2 international concern.” The following day, on January 31, 2020, certain travel from China to the
3 United States was blocked.

4 31. Although COVID-19 was present in California by late January 2020, all
5 businesses and restaurants, including Plaintiff’s, were allowed to remain open throughout
6 February and the first half of March.

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

13 33. COVID-19 also continued to spread throughout California during February 2020.
14 In early February, several COVID-19 cases were announced in Northern California. During
15 February, the number of reported COVID-19 cases in California increased. On February 26,
16 2020, the CDC announced the first reported California COVID-19 case resulting from
17 community spread (<https://www.cdc.gov/media/releases/2020/s0226-Covid-19-spread.html>, last
18 accessed May 19, 2020).

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

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

23 36. On March 11, 2020, travel from Europe to the United States was restricted, and
24 the W.H.O. declared COVID-19 a pandemic.

25 37. On March 13, 2020, the President of the United States declared a national
26 emergency.

27 38. Throughout this entire period, from December 2019 until March 15, 2020,
28 Plaintiff had not suffered an interruption of its thriving business despite the pandemic.

1 **B. Orders of the State of California and City of Los Angeles Force Plaintiff to**
2 **Close Its Doors, Resulting in a Suspension of Business.**

3 39. On March 15, 2020, more than ten weeks after the first reported COVID-19 case,
4 Los Angeles Mayor Eric Garcetti limited social interactions by issuing a “Public Order under
5 City of Los Angeles Emergency Authority” (the “March 15, 2020 Order,” attached as Exhibit E)
6 effective at midnight that evening which, among other things, prohibited restaurants from serving
7 individuals food and alcohol on their premises where individuals would not be socially distanced:

8 3. All restaurants and retail food facilities in the City of Los Angeles
9 shall be prohibited from serving food for consumption on premises.
10 Restaurants and retail food facilities may continue to operate for
11 purposes of preparing and offering food to customers via delivery
12 service, to be picked up or for drive-thru. For those establishments
13 offering food pickup options, proprietors are directed to establish
14 social distancing practices for those patrons in the queue for pick-
15 up (Exhibit E).

16 40. On March 19, 2020, governor of the State of California Gavin Newsom, issued
17 an order requiring residents to stay in their homes (the “Stay at Home Order”). (See Exhibit F).
18 Mayors of cities throughout California, including Los Angeles, issued similar stay-at-home
19 orders all of which required restaurants to close to in-person dining (See Exhibit G). (Exhibits E
20 through G shall be referred to collectively herein as the “Orders”).

21 41. The Orders effectively caused the loss of business income from Plaintiff’s
22 restaurants and others similarly situated, by excluding individuals from on-premises dining, and
23 caused a “suspension” of its “operations,” as those terms are defined in the Policy.

24 42. The Orders were the predominant cause of Plaintiff’s loss.

25 43. After imposition of the Orders, Plaintiff suspended all operations at its Downtown
26 Los Angeles location. Plaintiff’s West Los Angeles location closed until May 1, 2020 at which
27 time it re-opened for take-out and delivery only, severely restricting its ability to serve customers
28 and drastically reducing its income.

1 44. On May 30, 2020, restaurants were permitted to serve customers on-site but only
2 with modifications restricting individuals' distances resulting in limited capacity seating.
3 Accordingly, Plaintiff's restaurants continue to lose income as a result of non-use.

4 **C. Plaintiff Submits Its Insurance Claim and Defendant Denies It Without**
5 **Justification or Proper Investigation.**

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

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

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

27 48. Amongst other information provided to insurers, the Commissioner further
28 reminded them that "[i]f the claim is denied in whole or in part, the insurer is required to

1 communicate the denial in writing to the policyholder listing all the legal and factual bases for
2 such denial. (Regulations, § 2695.7(b)(1).) Where the denial of a first party claim is based on a
3 specific statute, applicable law or policy provision, condition, or exclusion, the written denial
4 must include reference to and provide an explanation of the application of the statute, applicable
5 law, or policy provisions, condition, or exclusion to the claim...Regulations, § 2695.7(b)(1)"
6 (Exhibit A, p. 3, emphasis added).

7 49. Consistent with all of these well-established and non-controversial California
8 insurance claims handling standards, Plaintiff had the right to rely on Defendant to handle its
9 insurance claim for business income losses in a manner consistent with these standards of good
10 faith and fair dealing.

11 50. Upon suspending its operations beginning March 16, 2020, on March 18, 2020,
12 Plaintiff submitted a claim to Defendant via telephone for the income lost as a result of the
13 Orders.

14 51. In making its claim, Plaintiff did not limit its claim to any particular insuring
15 agreement. Rather, Plaintiff sought coverage under the Policy for whichever insurance(s) would
16 apply to its situation.

17 52. On April 8, 2020, Defendant responded by letter denying coverage on several
18 grounds. A copy of the letter is attached hereto as Exhibit H. The denial incorrectly assumed the
19 claim was being made based solely on the Civil Authority provision of the Policy. Based in large
20 part on this incorrect assumption, Defendant concluded that a virus exclusion precluded the claim
21 despite the proximate cause of the claim being the State and City's Orders, rather than the virus
22 itself.

23 53. Pursuant to § 2695.7(b)(1) of the Regulations, Defendant was required to state in
24 its April 1, 2020 denial letter all the factual, contractual, and legal grounds for denying the claim,
25 thus forfeiting the right to raise additional grounds to attempt to justify its denial of Plaintiff's
26 claim.

1 54. Defendant's denial letter, on information and belief, appears to be a form letter
2 sent in response to business income claims arising from the Orders. It is clear from the letter that
3 there was no investigation of Plaintiff's claim prior to the denial.

4 55. Defendant's denial is contrary to the terms and conditions of the Policy and
5 applicable law, which gives effect to plain language, construes ambiguity in favor of coverage,
6 and narrowly construes exclusions, the applicability of which insurers have the burden of
7 proving.

8 56. As a result of the Stay at Home Order and related local orders, Plaintiff has
9 incurred and continues to incur a substantial loss of business income and additional expenses
10 covered under the policy.

11 57. In order to obtain the benefits promised under its Policy and required by California
12 law, Plaintiff was compelled to retain counsel and institute this lawsuit to pursue all available
13 legal and equitable remedies available to it and obtain the benefits promised under the Policy.

14 58. Plaintiff thus brings this action, on behalf of itself and other California restaurants
15 similarly situated, seeking declaratory relief, insurance coverage owed under Defendant's policy,
16 and damages.

17 **VI. CLASS ALLEGATIONS**

18 59. Plaintiff re-alleges and incorporates by reference herein all of the allegations
19 contained above.

20 60. Business insurance policies purchased by small businesses like restaurants are not
21 individually negotiated. At most, the prospective policyholder may elect to add specialized
22 coverage options to a basic business insurance policy. But the substantive terms are set
23 unilaterally by the insurer. These are contracts of adhesion.

24 61. Plaintiff's Policy includes common terms and phrases widely used by the
25 insurance industry. The insurance industry typically hews closely to standardized insurance
26 policy forms in addressing property and liability risks, and Defendant did so here.

27 62. Moreover, it is evident from the Policy that all Businessowner's Policies issued
28 by AmGuard contain the same operative language at issue in Plaintiff's claim. The basic

1 Businessowners Coverage Form (form BP 00 03 01 10) contains the insuring agreements for the
2 policy, including for the Business Income coverage, and related definitions, limitations and
3 exclusions (Exhibit B). Plaintiff's policy incorporates widely-used forms and is not a manuscript
4 policy written specifically for Plaintiff. Legal and factual issues concerning the applicability of
5 coverage issued by AmGuard to business owners under the circumstances of the uniform closure
6 of restaurants in Los Angeles by Mayor Garcetti and Governor Newsom thus can be decided
7 uniformly.

8 63. As the impact of the COVID-19 pandemic is emerging, leading insurance industry
9 associations have publicly stated that such standard business insurance policies do not provide
10 any coverage for the business losses related to public health orders like the Stay at Home Order
11 imposed by California. The denial letter received by Plaintiff—issued without any investigation
12 at the restaurant shortly after a claim was filed—appears to be a form letter that, on information
13 and belief, is sent automatically to any such business with comprehensive business insurance that
14 files a claim at this time.

15 64. Plaintiff brings this action pursuant to Section 382 of the California Code of Civil
16 Procedure on behalf of a proposed class of persons (the "Class") defined as: All restaurants in
17 California that purchased comprehensive business insurance coverage from Defendant which
18 includes coverage for business income, filed a claim for lost business income following
19 California's Stay at Home Order, and were denied coverage by Defendant on the same or similar
20 grounds.

21 65. Excluded from the Class are Defendant, any entity in which Defendant has a
22 controlling interest, and Defendant's officers, directors, legal representatives, successors,
23 subsidiaries, and assigns. Also excluded from the Class are any judge, justice, or judicial officer
24 presiding over this matter and the members of their immediate families and judicial staff.

25 66. This action has been brought and may properly be maintained as a class action as
26 it satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority
27 requirements.

28

1 67. Plaintiff reserves the right to amend the Class definition if discovery and further
2 investigation reveal that the Class should be expanded, divided into subclasses, or modified in
3 any other way.

4 68. Although the precise number of members of the Class is unknown and can only
5 be determined through appropriate discovery, Plaintiff believes, and on that basis alleges, that
6 the members of the proposed Class are so numerous that joinder of all members would be
7 impracticable. There are thousands of restaurants in California which are governed by the Stay
8 at Home Order and attendant statewide and local restrictions, and public reporting reveals that
9 many have filed for coverage but have been denied.

10 69. Questions of law and fact common to the Class exist that predominate over
11 questions affecting only individual members, including inter alia:

12 a) Whether Defendant's comprehensive business insurance policies cover claims
13 for lost business income under the circumstances present here;

14 b) Whether the terms, definitions, and exclusions that Defendant has relied on to
15 deny coverage reasonably can be construed in the manner Defendant claims, or
16 are otherwise unenforceable as a basis for Defendant's denials or, instead, must
17 be construed to provide coverage under California law;

18 c) More specifically, whether Plaintiff's and the class's loss of Business Income
19 arises from a Covered Cause of Loss under the Policy;

20 d) Whether the Orders were the predominant cause of the loss of Plaintiff's and
21 the class's loss of Business Income;

22 e) Whether the Virus or Bacteria exclusion in the Policy applies where the
23 Orders were the proximate cause of the loss of Business Income;

24 f) Whether Defendant breached the implied covenant of good faith and fair
25 dealing by engaging in unreasonable conduct in its handling of the claim;

26 g) Whether Defendant acted unreasonably and in bad faith in denying claims for
27 lost business income without investigation or due consideration of those claims;
28 and

1 h) Whether the declaratory judgment sought is appropriate.

2 70. Plaintiff is a member of the putative Class. The claims asserted by the Plaintiff in
3 this action are typical of the claims of the members of the putative Class as the claims arise from
4 the same course of conduct by Defendant and the relief sought is common.

5 71. Plaintiff will fairly and adequately represent and protect the interests of the
6 members of the putative Class, as its interests coincide with, and are not antagonistic to, the other
7 members of the Class. Plaintiff has retained counsel competent and experienced in both consumer
8 protection, insurance coverage, and class-action litigation.

9 72. Certification of the Class is appropriate pursuant to Section 382 of the California
10 Code of Civil Procedure because:

11 a) Questions of law or fact common to the respective members of the Class
12 predominate over questions of law or fact affecting only individual members.
13 This predominance makes class litigation superior to any other method available
14 for the fair and efficient adjudication of these claims including consistency of
15 adjudications. Absent a class action it would be highly unlikely that the
16 members of the Class would be able to protect their own interests because the
17 cost of litigation through individual lawsuits might exceed the expected
18 recovery;

19 b) A class action is a superior method for the adjudication of the controversy in
20 that it will permit a large number of claims to be resolved in a single forum
21 simultaneously, efficiently, and without the unnecessary hardship that would
22 result from the prosecution of numerous individual actions and the duplication
23 of discovery, effort, expense, and the burden of the courts that individual actions
24 would create; and

25 c) The benefits of proceeding as a class action, including providing a method for
26 obtaining redress for claims that would not be practical to pursue individually,
27 outweigh any difficulties that might be argued with regard to the management of
28 the class action.

1 73. The Class should also be certified pursuant to Section 382 of the California Code
2 of Civil Procedure because:

- 3 a) The prosecution of separate actions by the individual members of the
4 proposed class would create a risk of inconsistent adjudications, which could
5 establish incompatible standards of conduct for Defendant;
6 b) The prosecution of individual actions could result in adjudications, which as a
7 practical matter, would be dispositive of the interests of non-party class
8 members or which would substantially impair their ability to protect their
9 interests; and
10 c) Defendant has acted or refused to act on grounds generally applicable to the
11 proposed Class, thereby making appropriate final and injunctive relief with
12 respect to the members of the proposed Class as a whole.

13 74. Likewise, particular issues are appropriate for certification under Section 382 of
14 the California Code of Civil Procedure because such claims present only particular, common
15 issues, the resolution of which would advance the disposition of this matter and the parties'
16 interests therein. Such particular issues include, but are not limited to:

- 17 a) Whether the comprehensive business insurance policies issued by Defendant
18 cover class members' direct physical loss of property and lost business income
19 following California's Stay at Home Order;
20 b) Whether the coverages for direct physical loss of property and lost business
21 income provided by the comprehensive business insurance policies are
22 precluded by exclusions or other limitations in those policies;
23 c) Whether Defendant breached contracts by denying comprehensive business
24 insurance coverage to Plaintiff and Class members;
25 d) Whether summary denial of claims for direct physical loss of property and
26 lost business income, including by invoking an exclusion for viruses, without
27 any investigation or inquiry constitutes bad faith and therefore a breach of the
28 implied covenant of good faith and fair dealing to act in good faith and with

1 reasonable efforts to perform their contractual duties and not to impair the rights
2 of other parties to receive the rights, benefits, and reasonable expectations under
3 the contracts;

4 e) Whether the handling of the claim with the knowledge that Defendant would
5 not provide coverage for business income losses associated with public health
6 measures such as California's Stay at Home Order constitutes a breach of the
7 implied covenant of good faith and fair dealing; and

8 f) Whether Plaintiff and Class members are entitled to actual damages and/or
9 injunctive relief as a result of Defendant's wrongful conduct.

10 **FIRST CLAIM FOR RELIEF**

11 **Declaratory Judgment**

12 75. Plaintiff re-alleges the paragraphs 1 through 74 above as if fully set forth herein.

13 76. Plaintiff purchased a comprehensive business insurance policy from Defendant.

14 77. Plaintiff paid all premiums required to maintain its comprehensive business
15 insurance policy in full force.

16 78. The comprehensive business insurance policy includes provisions that provide
17 coverage for the direct physical loss of or damage to the premises, including for suspension of
18 business operations at the property, as well as actual loss of business income and extra expenses
19 sustained during the suspension of operations as a result of such loss or damage.

20 79. On or about March 19, 2020, California issued the Stay at Home Order, mandating
21 that all Californians remain at home, with certain exceptions. This mandate required restaurants
22 to cease all on-premises dining. This mandate also applied to neighboring businesses, thus
23 causing widespread closures surrounding Plaintiff's business premises. As set forth herein,
24 similar orders were issued by the City of Los Angeles.

25 80. As a result of the Orders, the covered property of Plaintiff lost some or all of its
26 functionality and/or became useless or uninhabitable, resulting in substantial loss of business
27 income.

1 81. Plaintiff contends that these losses are insured losses under several provisions of
2 Plaintiff's Policy including business income and expense coverage, and coverage for civil
3 authority orders.

4 82. Plaintiff further contends that there are no applicable, enforceable or unambiguous
5 exclusions or definitions in the Policy that preclude coverage for these losses.

6 83. Defendant contends that the losses claimed by Plaintiff are not covered by the
7 Policy.

8 84. Accordingly, an actual and justiciable controversy exists as to whether the Policy
9 covers claims for lost business income resulting from the Orders of state and local authorities.

10 85. WHEREFORE, Plaintiff seeks a declaration for itself and similarly situated
11 restaurants that its business income losses are covered and not precluded by exclusions or other
12 limitations in its comprehensive business insurance policy.

13 **SECOND CLAIM FOR RELIEF**

14 **Breach of Contract**

15 86. Plaintiff re-alleges paragraphs 1 through 85 above as if fully set forth herein.

16 87. Plaintiff purchased the Policy from Defendant to insure against all risks (unless
17 specifically excluded) a business might face including losses resulting from a necessary
18 suspension of its operations and losses associated with Civil Authority orders. This Policy was a
19 binding contract that afforded Plaintiff comprehensive business insurance under the terms and
20 conditions of the Policy.

21 88. Plaintiff met all or substantially all of its contractual obligations, including paying
22 all the premiums required by Defendant.

23 89. On or about March 19, 2020, California issued the Stay at Home Order, mandating
24 that all Californians remain at home, with certain exceptions. This mandate required restaurants,
25 including those owned by Plaintiff, to cease all on-premises dining. As set forth herein, similar
26 Orders were issued by the City of Los Angeles. These Orders also applied to neighboring
27 businesses throughout the City of Los Angeles, thus causing widespread closures surrounding
28 Plaintiff's business premises.

90. Beginning on March 16, 2020, and continuing through the date of the filing of this Complaint, Plaintiff suffered the direct physical loss of property and lost business income following California's Stay at Home Order—losses which were covered under the Policy purchased from Defendant.

91. There are no exclusions in Plaintiff's Policy that expressly preclude coverage.

92. Plaintiff made a timely demand to Defendant for payment under the Policy to cover its business income losses.

93. Defendant breached its contract by denying coverage to Plaintiff and by failing to adequately investigate its claim prior to issuing the denial.

94. As a direct and proximate result of Defendant's denial of comprehensive business insurance coverage to Plaintiff, Plaintiff suffered damages.

95. WHEREFORE, Plaintiff seeks damages and prejudgment interest for itself and similarly situated restaurants that incurred as a result of Defendants' breach of the insurance contract.

THIRD CLAIM FOR RELIEF

Bad Faith Breach of Implied Covenant of Good Faith and Fair Dealing

96. Plaintiff re-alleges paragraphs 1 through 95 above as if fully set forth herein.

97. Plaintiff purchased the Policy from Defendant to insure against all risks (unless specifically excluded) a business might face including losses resulting from a necessary suspension of its business operations and losses associated with Civil Authority orders. This policy was a binding contract that afforded Plaintiff comprehensive business insurance under the terms and conditions of the Policy.

98. This contract was subject to an implied covenant of good faith and fair dealing that all parties would act in good faith and with reasonable efforts to perform their contractual duties—both explicit and fairly implied—and not to impair the rights of other parties to receive the rights, benefits, and reasonable expectations under the contracts. These included the covenant that Defendant would act fairly and in good faith in carrying out its contractual obligations to provide Plaintiff with comprehensive business insurance.

1 99. Plaintiff met all or substantially all of its contractual obligations, including by
2 paying all the premiums required by Defendant.

3 100. Beginning on March 16, 2020, and continuing through the date of the filing of
4 this Complaint, Plaintiff suffered the direct physical loss of property, including suspension of
5 business operations at the property, and lost business income following California's Stay at
6 Home order and related local orders—losses which were covered under the Policy purchased
7 from Defendant.

8 101. Plaintiff made a timely demand to Defendant for payment under the Policy to
9 cover its business income losses. Defendant acted unreasonably by denying coverage to Plaintiff
10 and by failing to adequately investigate its claim prior to issuing the denial.

11 102. Defendant's conduct breached the implied covenant of good faith and fair dealing
12 by:

13 a. Selling policies that appear to provide liberal coverage for loss of
14 property and lost business income with the intent of interpreting undefined or
15 poorly defined terms, undefined terms, and ambiguously written exclusions to
16 deny coverage under circumstances foreseen by Defendant;

17 b. Denying coverage for loss of property and lost business income
18 unreasonably, and without proper cause, by applying undefined, ambiguous, and
19 contradictory terms contrary to applicable rules of policy construction and the
20 plain terms and purpose of the policy;

21 c. Denying Plaintiff's claim for loss of property and loss of business
22 income unreasonably and without conducting a fair, unbiased and thorough
23 investigation or inquiry, arbitrarily and capriciously, and/or with knowledge that
24 the denial was unreasonable under the policy; and

25 e. Compelling policyholders, including Plaintiff, to initiate litigation to
26 recover policy benefits to which they are entitled.

27 103. Defendant's failure to act in good faith in providing comprehensive business
28 insurance coverage to Plaintiff denied Plaintiff the full benefit of its bargain.

1 104. Defendant's conduct alleged herein is immoral, unethical, oppressive,
2 unscrupulous, unconscionable, fraudulent, malicious, and/or substantially injurious to Plaintiff
3 and the Class.

4 105. Accordingly, Plaintiff has been injured as a result of Defendant's breach of the
5 covenant of good faith and fair dealing and is entitled to damages in an amount to be proven at
6 trial.

7 106. WHEREFORE, Plaintiff seeks compensatory damages, punitive damages and
8 prejudgment interest for itself and similarly situated restaurants that incurred damages as a result
9 of Defendants' breach of the insurance contract.

10 **FOURTH CLAIM FOR RELIEF**

11 **Unfair Business Practices Under Bus. & Prof. Code § 17200, et seq.**

12 107. Plaintiff re-alleges paragraphs 1 through 106 above as if fully set forth herein.

13 108. By its conduct alleged herein, Defendant has engaged in unlawful, unfair, and
14 fraudulent business practices in violation of California Business & Professions Code §§ 17200
15 et seq. ("UCL").

16 109. Defendant's conduct alleged herein violates the "unlawful" prong of the UCL
17 because it violated the letter and spirit of California's Insurance Code, including California
18 Insurance Code section 790, et seq. because, *inter alia*, Defendant failed or refused to perform a
19 fair, objective, and thorough investigation of the Plaintiff's and class members' claims. As
20 alleged herein, Defendant denied Plaintiff's and the class members' claims as part of Defendant's
21 policy of categorically denying all or at least the vast majority of business income claims related
22 to the novel coronavirus, and ignored other California requirements concerning the proper and
23 fair evaluation of claims and interpretations of its policies.

24 110. Defendant's conduct alleged herein violates the "unfair" prong of the UCL,
25 including but not limited to Defendant's: (a) categorical and wrongful denial of Plaintiff's and
26 the class members' claims under the circumstances described in this complaint; (b) failure and
27 refusal to perform a fair, objective, good-faith, and thorough investigation of the claims as
28 directed by the California Insurance Code; (c) denial of Plaintiff's and the class members' claims

1 as part of a policy of categorically denying claims related to the novel coronavirus; and (d) and
2 failing to interpret its policies in an equitable manner and/or up to the standards required by
3 California law (including but not limited to Cal. Ins. Code section 790 et seq.).

4 111. Defendant's conduct alleged herein is immoral, unethical, oppressive,
5 unscrupulous, unconscionable, fraudulent, malicious, unfair, unlawful and/or substantially
6 injurious to Plaintiff and the Class. There is no utility to Defendant's conduct, and even if there
7 were any utility, it would be significantly outweighed by the gravity of the harm to consumers
8 caused by Defendant's conduct alleged herein.

9 112. Defendant's conduct alleged herein also violates California public policy,
10 including as such policy is reflected in Cal. Ins. Code § 790 et seq. and elsewhere in the California
11 Insurance Code.

12 113. Defendant's conduct alleged herein violates the "fraudulent" prong of the UCL.
13 Among other things, Defendant: (a) promised Plaintiff and the class coverage that was not
14 provided and that Defendant had no intention of providing; (b) promised to evaluate each claim
15 individually, reasonably, and in good faith, which Defendant did not do with respect to Plaintiff's
16 and the class members' claims; falsely and misleadingly indicated to Plaintiff and class that it
17 was investigating in good faith (and had investigated in good faith) their claims which Defendant
18 did not do and knew that it did not do. Defendant collected Plaintiff's and the class members'
19 premiums in exchange for coverage that was not provided, induced those premiums by promising
20 to evaluate each claim individually reasonably, and in good faith and did not, and denied
21 Plaintiff's and the class members' claim as part of a policy of categorically denying claims related
22 to the novel coronavirus as part of a strategy to reduce its total insurance payments related to the
23 novel coronavirus.

24 114. Defendant's fraudulent and deceptive conduct alleged herein was false and
25 misleading had a tendency to deceive reasonable insureds, and did deceive Plaintiff and the class.
26 Plaintiff and the class members reasonably relied on Defendant's deceptions and omissions
27 alleged herein, including but not limited to by paying premiums to Defendant.

28

1 115. By reason of Defendant's unlawful, unfair, and fraudulent conduct in violation of
2 the UCL, Plaintiff and the class members have lost the benefits for which they bargained, as well
3 as the premiums they have paid to Defendant.

4 116. Plaintiff and the class are entitled to restitution from Defendant (with interest
5 thereon), to disgorgement of all Defendant's profits arising out of its violations of the UCL (with
6 interest thereon), and to be paid benefits due to Plaintiff and the class members that Defendant
7 has wrongfully retained by means of its violations of the UCL. There is no adequate remedy at
8 law.

9 117. Pursuant to California Code of Civil Procedure section 1021.5, Plaintiff is entitled
10 to recover its reasonable attorney's fees.

11 118. WHEREFORE, Plaintiff seeks: (a) a judgment for itself and similarly situated
12 restaurants that Defendant violated the UCL; and (b) restitution and reasonable attorney's fees.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff requests, on behalf of itself and the Class, that the Court enter
15 a judgment awarding the following relief:

- 16 a. An order certifying this action as a class action under Section 382 of the
17 California Code of Civil Procedure, defining the Class as requested herein,
18 appointing Hecht Partners LLP, as Class Counsel, and finding that Plaintiff is a
19 proper representative of the Class requested herein.
20 b. A declaration that Plaintiff's and Class members' losses are covered under the
21 Policy;
22 c. Plaintiff also requests compensatory damages, punitive damages, restitution,
23 disgorgement, attorney's fees and costs, and such other and further relief as is
24 just and proper as compensation for Defendant's breach of contract, breach of
25 the implied covenant of good faith and fair dealing, and violations of UCL.
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JURY DEMAND

Plaintiff demands a trial by jury for all issues so triable under the law.

Dated: June 16, 2020

Hecht Partners LLP

By: _____

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III, LLC, and others similarly situated,*