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

15
16 NEW RESTAURANT GROUP LP, a
California limited partnership dba COI
17 RESTAURANT and ALTA ADAMS
RESTAURANT PROJECT, LLC, a
18 California limited liability company dba
ALTA ADAMS RESTAURANT and
19 ADAMS COFFEE SHOP,

20 Plaintiffs,

21 v.

22 FARMERS GROUP INC., a California
Corporation, MID-CENTURY
23 INSURANCE COMPANY, a
California Corporation, Does 1 through
24 10, inclusive

25 Defendant.

FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

APR 30 2020

CLERK OF THE COURT

BY:  Deputy Clerk

ANGELICA SUNGA

Case No.

CGC - 20 - 584269

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 New Restaurant Group LP, a California limited partnership DBA Coi Restaurant
2 in San Francisco, CA and Alta Adams Restaurant Project, LLC, a California limited liability
3 company DBA Alta Adams Restaurant of Los Angeles (collectively “Plaintiffs” or “the
4 Restaurants”) file this Complaint Against Farmers Group, Inc., Mid-Century Insurance Company,
5 and Does 1 through 10, inclusive (collectively “Defendants” or “Farmers”), and allege as follows:

6 **I. INTRODUCTION**

7 1. Plaintiff Coi Restaurant (“Coi”) is an internationally celebrated two Michelin star
8 restaurant in San Francisco that focuses on modern California cuisine. In its fourteen years of
9 operation, it has helped define a new style of California cuisine praised by major food
10 publications around the world.

11 2. About five weeks ago, Coi was forced to immediately and completely shut down.
12 This closure was ordered by state and local governments who required it, its workers, and its
13 customers to “shelter in place” and abide by strict “social distancing” guidelines. Since the
14 issuance of the first such order, on March 16, 2020, Coi has been completely shut down with no
15 business operations or income. At that time Coi had no meaningful financial reserves, having
16 depleted those during the period of reduced business that preceded the shutdown. As a result, the
17 shutdown—and accompanying loss of all sources of income, and mounting expenses—forced
18 them to immediately furlough all of their employees. Through online and private fundraising,
19 Coi has continued to fund the medical benefits of its employees for the last several weeks. But
20 those funds are running out. Absent a reversal of the order or financial support, Coi will no
21 longer be able to fund medical benefits for its furloughed employees, and may have to consider
22 even more drastic measures.

23 3. To protect its business (and employees) from having to make such terrible choices
24 in situations like this one, Coi purchased business interruption insurance from Defendants.
25 Indeed, when Coi furloughed its employees, it anticipated re-hiring them once Defendants began
26 providing insurance coverage for their business shutdown. Coi’s policy expressly provides
27 coverage for “Lost Business Income” and the consequences of actions by “Civil Authority.”
28 Accordingly, Coi understandably believed that this policy would help protect their business in the

1 unlikely event that the government forced them to shutter their restaurant and forgo any income
2 for a period of several weeks.

3 4. Notwithstanding these policies provisions, and the obligations Defendants
4 undertook in exchange for Coi's insurance premium payments, Defendants summarily denied
5 Coi's claim. Defendants issued this denial after less than 48 hours. This underscores the extent
6 to which this denial was part of a premeditated strategy to deny all claims related to the "shelter
7 in place" orders and COVID-19. It was untethered to the facts of the claim, which Defendants
8 did not investigate, and therefore violates California law.

9 5. Coi Restaurant was founded by internationally renowned chef Daniel Patterson,
10 who is also a founder of Plaintiff Alta Adams Restaurant ("Alta Adams"). Alta Adams is a more
11 casual restaurant in Los Angeles that opened at the end of 2018. It quickly became a popular
12 destination. Alta Adams was named one of the best new restaurants in Los Angeles by Los
13 Angeles Magazine, Angeleno Magazine, and Eater among others. Esquire Magazine and Thrillist
14 included it as one of the best new restaurants in the country, and the New York Times lauded its
15 fried chicken as one of its Ten Best Dishes of 2019. It also has an adjoining coffee shop called
16 Adams Coffee Shop, which is a local favorite. Like Coi, Alta Adams was forced to close
17 following orders from local authorities. Notwithstanding this, Defendants denied its claim, under
18 a similar policy, after less than 48 hours.¹ Left with no income, and mounting expenses, Alta
19 Adams was also forced to furlough all of its employees (while continuing to pay benefits).

20 6. Over the last five weeks, Alta Adams has developed a "pivot" plan to partially re-
21 open in order to serve take-out meals to emergency workers, hospital personnel, and others in
22 need. This service will be subsidized by a statewide government supported plan called "High
23 Road Kitchens," which Alta Adams' non-profit affiliate, The Cooking Project, helped to create.
24 It will sell meals at a sliding scale of \$0-20 to both create jobs and help feed those in need. This
25 will hopefully allow Alta Adams to provide work for up to 20% of its employees. When this
26 program begins in the coming days, it is not expected to be profitable, providing a mere fraction

27 ¹ Indeed, according to the timeline in Defendants' subsequent denial letter, they denied the claim
28 in a phone call the day after it was filed. Ex. 6 at 1.

1 of monthly revenues which will not suffice to meet mounting expenses. Like Coi, Alta Adams
2 now has no choice but to come to this Court for relief.

3 **II. PARTIES**

4 **A. Plaintiffs**

5 7. New Restaurant Group LP is a California limited partnership that does business as
6 and owns Coi Restaurant, a business that (until recently) operated in San Francisco, California.

7 8. Alta Adams Restaurant Project, LLC is a California limited liability company that
8 does business as and owns Alta Adams Restaurant, a business that (until recently) operated in Los
9 Angeles, California.

10 **B. Defendants**

11 9. Farmers Group Inc. ("Farmers") is a California corporation with its headquarters
12 and principal place of business in Los Angeles, California. Farmers also does business as Farmers
13 Underwriters Association, a California Corporation, and owns the service marks "Farmers
14 Insurance Group of Companies" and "Farmers Insurance Group."

15 10. Mid-Century Insurance Company is a California corporation that is a subsidiary
16 and member of Farmers Group, Inc. with its headquarters and principal place of business in Los
17 Angeles, California.²

18 11. At all relevant times mentioned herein, Mid-Century Insurance Company
19 conducted business as Farmers Insurance and Farmers Group Inc. conducted business through the
20 name Mid-Century Insurance Company.

21 12. At all relevant times mentioned herein, Farmers Group Inc. directed, authorized,
22 controlled, and/or participated in the conduct of Mid-Century Insurance Company (to the extent
23 any independent conduct can even be ascribed to Mid-Century Insurance Company). Similarly,
24 any acts taken by Mid-Century Insurance Company acts were within the course, scope, and
25 authority of Farmers Group Inc.'s directions, authorizations, and controls. All actions of each
26

27
28 ² <https://www.farmers.com/companies/state/>

1 Defendant alleged in each cause of action into which this paragraph is incorporated by reference
2 were ratified and approved by the officers or managing agents of every other Defendant.

3 13. More specifically, Defendants issued policies to Plaintiffs, and corresponded with
4 them, in the name of Mid-Century, using the brand name(s), logo(s), office(s), equipment, and
5 electronic and mailing addresses of Farmers Group, Inc.. The denial letters sent to Plaintiffs also
6 utilized the brand name and logos of Farmers Insurance, Inc.. Those letters also list the e-mail
7 address of myclaim@farmersinsurance.com in the top right hand corner of the letterhead as part
8 of a list that includes mailing address, fax, and telephonic contact information. The telephone
9 number at the top of these letters is (800) 435-7764. Calls to this phone number are answered by
10 an electronic voice which says "Thank you for calling Farmers claim center." Each denial letter
11 is also signed by an employee whose e-mail address is listed at the domain name
12 farmersinsurance.com.

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

21 15. In committing the wrongful acts alleged herein, each of the Defendants pursued, or
22 joined in the pursuit of, a common course of conduct, and have acted in concert and/or conspired
23 with one another in furtherance of the improper acts and transactions that are the subject of this
24 Complaint.

25 **III. JURISDICTION AND VENUE**

26 16. This Court has subject matter jurisdiction over this action. Substantial conduct
27 giving rise to this action took place, in whole or in part, in the City and County of San Francisco,
28 California. Both insurance contracts giving rise to this action concern California businesses

operating in California, and the claims arise from violations of California law. The amounts in controversy in this action exceed the minimum jurisdictional amount of unlimited civil cases.

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

IV. FACTUAL BACKGROUND

A. The Rapid Spread of COVID-19

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

19. According to the World Health Organization (“WHO”): “People can catch COVID19 from others who have the virus. The disease can spread from person to person through small droplets from the nose or mouth which are spread when a person with COVID-19 coughs or exhales. These droplets land on objects and surfaces around the person. Other people then catch COVID-19 by touching these objects or surfaces, then touching their eyes, nose or mouth. People can also catch COVID-19 if they breathe in droplets from a person with COVID-19 who coughs out or exhales droplets.”³

20. This is problematic because a human sneeze can expel droplets of mucus and saliva that travel at nearly a hundred miles an hour and can spread up to 27 feet.⁴

21. 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.”⁵ The more people in a conversation, the more droplets are dispersed.

³ See Q&A on coronaviruses (COVID-19), “How does COVID-19 spread?,” World Health Organization (April 16, 2020), *available at* <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses> (last visited April 21, 2020).

⁴ Sarah Gibbens, “See how a sneeze can launch germs much farther than 6 feet,” *National Geographic* (April 17, 2020), *available at* www.nationalgeographic.com/science/2020/04/coronavirus-covid-sneeze-fluid-dynamics-in-photos/ (last visited April 20, 2020).

⁵ 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).

22. 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.

23. 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.⁶

24. 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.⁷

25. 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.⁸

26. Testing involving similar viruses in the Coronavirus family shows that Coronavirus can likely survive on ceramics, silicon rubber, or paper up to 5 days.⁹

27. When public areas containing such surfaces may have been exposed to Coronavirus, a number of countries including China, Italy, France, and Spain have required such areas to be fumigated prior to re-opening.¹⁰

⁶ 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).

⁷ 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).

⁸ 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).

⁹ 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, 2020).

¹⁰ See Mike Bird, et al., "China Is Open for Business, but the Postcoronavirus Reboot Looks Slow and Rocky," *The Wall Street Journal* (March 26, 2020), *available at* 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

Footnote continued on next page

1 28. Because of its virulence, each person infected with Coronavirus can infect multiple
2 new hosts, allowing the disease to spread exponentially.

3 29. This Coronavirus has spread throughout the world, including in the San Francisco
4 and Los Angeles metropolitan areas.

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

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

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

17 32. For example, in early 2020, as governments in South Korea, Taiwan, Hong Kong,
18 and Singapore became aware that the Coronavirus was spreading, they took quick action.
19 Through self-quarantines, widespread testing, and contact tracing, these four countries were able
20 to effectively contain the spread of the virus without the need for an extended shutdown of nearly
21 all businesses in their metropolises.¹¹

22 *Footnote continued from previous page*

23 Work May Depend on Having the Right Antibodies,” *The New York Times* (April 4, 2020),
24 available at www.nytimes.com/2020/04/04/world/europe/italy-coronavirus-antibodies.html (last
25 visited April 22, 2020); Sarah Elzas, “French Teachers Push Back against Reopening Schools in
26 May,” *RFI* (released online Apr. 14, 2020), available at [www.rfi.fr/en/france/20200414-french-
teachers-push-back-against-reopening-schools-in-may](http://www.rfi.fr/en/france/20200414-french-teachers-push-back-against-reopening-schools-in-may) (last visited April 22, 2020); Claudia
Núñez, “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-
nation/story/2020-03-27/on-the-front-line-of-the-pandemic-tractors-scatter-the-streets-with-hope](http://www.latimes.com/world-
nation/story/2020-03-27/on-the-front-line-of-the-pandemic-tractors-scatter-the-streets-with-hope)
(last visited April 22, 2020).

27 ¹¹ See Hannah Beech, “Tracking the Coronavirus: How Crowded Asian Cities Tackled an
28 Epidemic,” *The New York Times*, March 17, 2020, updated April 21, 2020, available at
<https://www.nytimes.com/2020/03/17/world/asia/coronavirus-singapore-hong-kong-taiwan.html>

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33. At the same time, Coronavirus was also spreading in the United States. But American governments did not aggressively to isolate incoming Coronavirus cases as they developed.¹² Although attempts to combat the virus were certainly made, they were insufficient to stop exponential increases in infections.¹³ By March 2020, it became clear that the United States authorities had failed to contain the Coronavirus and would need to find a way to mitigate it.¹⁴

34. Federal, state, and local authorities decided to reduce the rate of infections as part of strategies colloquially referred to as “flattening the curve.”¹⁵

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

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

37. As illustrated by the following diagram, flattening the curve is a public health intervention designed to alter the trajectory of the Coronavirus.¹⁷

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(last visited Apr. 21, 2020); Michael J. Ahn, “Combating COVID-19: Lessons from South 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); Annelies Wilder-Smith et al., “Can we contain the COVID-19 outbreak with the same measures 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), [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).

¹² Meg Anderson, “U.S. Sees Exponential Growth In Coronavirus Death Toll,” *NPR*, (Mar. 29, 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).

¹³ *Id.*

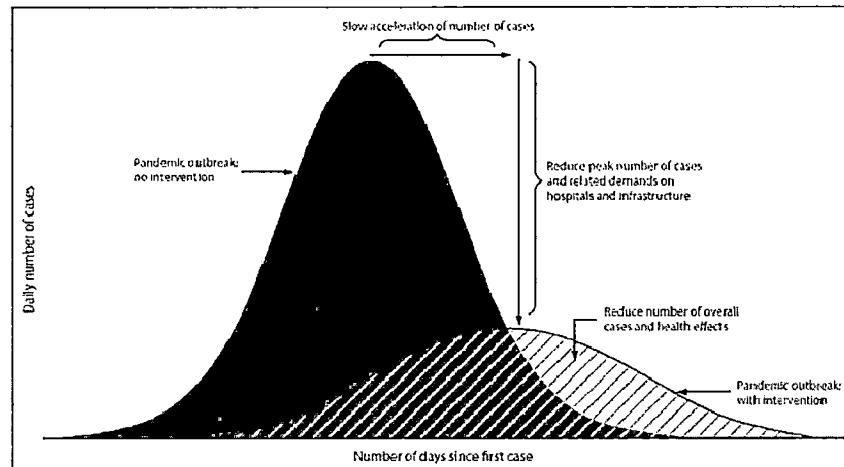
¹⁴ *Id.*

¹⁵ 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).

¹⁶ *Id.*

¹⁷ *Id.*; “Stay Home Public Health Order, updated March 31, 2020,” *SFGov.com* (April 1, 2020), *available at* <https://sf.gov/information/stay-home-public-health-order-updated-march-31-2020>

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38. Absent the social distancing-based intervention(s), the Coronavirus would continue to multiply rapidly, spreading quickly throughout the population until it begins to run out of suitable hosts who have never had the disease. At that point, the infection rate would fall rapidly until the disease runs out of people to infect and “burns out.”¹⁸

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

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

41. Recent events in other countries confirm that extended business closures were not inevitable. Countries like Sweden have prohibited events with more than 50 attendees and developed other policy responses without ordering large scale restaurant closures.²⁰ Similarly,

Footnote continued from previous page
(last accessed April 22, 2020).

¹⁸ *Id.*; Eric Lofgren et al., *The Epidemiological Implications of Incarceration Dynamics in Jails for Community, Corrections Officer, and Incarcerated Population Risks from COVID-19*, 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)

¹⁹ *Id.*

²⁰ See James Asquith, “No Lockdowns In Sweden As Stockholm Remains Open – Parks and Open-Air Museums Operating,” *Forbes* (Apr. 4, 2020), available at <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).

1 businesses are open or re-opening in South Korea, Taiwan, Singapore, and even harder-hit
2 European countries like Germany, the Czech Republic, and Austria.²¹

3 42. This underscores that the Coronavirus did not cause business interruptions and
4 closures in the United States; government policies did.

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

6 43. Prior to the shelter in place order, the San Francisco Department of Public Health
7 (“SFPDH”) issued several orders limiting large gatherings, including orders on March 6, 2020
8 March 11, 2020.

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

15 45. On March 13, 2020, the SFPDH issued Order of the Health Officer No. C19-05b
16 (“March 13 Order”), which “prohibits all indoor public and private gatherings and outdoor
17 gatherings within an enclosed space that has a maximum occupant load of 100 people or more
18 anywhere in San Francisco” (p. 1). This order expressly includes restaurant dining rooms § 13(e–
19 f). It was in effect for three to four days (from approximately 5:00 p.m. on March 13 until March
20 17 at 12:01 a.m.).

21 46. On March 16, 2020, the SFPDH issued Order of the Health Officer No. C19-07
22 (“March 16 Order”), which “revoke[d] and replace[d]” the March 13 Order. Ex. 1. The March 16
23 Order states: “Restaurants and cafes—regardless of their seating capacity—that serve food are
24

25 ²¹ See Beech, *supra*; Rick Noack et al., “Nations credited with fast response to coronavirus are
26 moving to gradually reopen businesses,” *The Washington Post* (April 20, 2020), available at
27 <https://wapo.st/2VLQZxm> (last visited April 22, 2020); Luke Harding, “Germany opens some
28 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 *ordered closed* except solely for takeout and delivery service.” *Id.* at 2.²² It also “requires all
2 individuals anywhere in San Francisco to shelter in place—that is, stay at home—except for
3 certain essential activities and work to provide essential business.” *Id.* at 1. This includes
4 refraining from “[a]ll travel” and “[a]ll public and private gatherings of any number of people
5 occurring outside a single household” or “outside the home.” *Id.* at 1 & ¶¶ 4, 5. As an exception
6 to this prohibition, the March 16 Order permits travel and gathering that is necessary to operate
7 “Essential Business” (*Id.* at ¶¶ 5, 10.d), which the Order defines to include “[r]estaurants and
8 other facilities that prepare and serve food, but only for delivery or carry out” (¶ 10.f.xiii). Thus
9 the order commands that “All persons may leave their residences only for Essential Activities,
10 Essential Governmental Functions, or to operate Essential Businesses.” *Id.* at ¶ 2. Even when
11 leaving the home is permissible, strict social distancing guidelines must be observed. The order
12 provides that “[v]iolation of or failure to comply with this Order is a misdemeanor punishable by
13 fine, imprisonment, or both” (*Id.* at 1), and “requests that the Sheriff and the Chief of Police in the
14 County ensure compliance with and enforce this Order,” since “violation of any provision of this
15 Order constitutes an imminent threat and creates an immediate menace to public health (*Id.* ¶ 11).

16 47. On March 19, 2020, the State of California issued an Order of the State Public
17 Health Officer, which set baseline statewide restrictions on non-essential business activities
18 effective until further notice. On that same date, Governor Newsom issued Executive Order N-
19 33- 20, expressly requiring California residents to follow the March 19 Order of the State Public
20 Health Officer, and incorporating by reference California Government Code 8665, which
21 provides that “[a]ny person . . . who refuses or willfully neglects to obey any lawful order . . .
22 issued as provided in this chapter, shall be guilty of a misdemeanor and, upon conviction thereof,
23 shall be punishable by a fine of not to exceed one thousand dollars (\$1,000) or by imprisonment
24 for not to exceed six months or by both such fine and imprisonment” (Cal. Gov. Code § 8665).
25 The March 19 Order of the State Public Health Officer and Executive Order N-33-20
26

27 ²² This and other citations to page numbers from orders in this complaint, refer to the summaries
28 preceding the numbered paragraphs.

1 (collectively, the “Statewide Shelter Orders”) took immediate effect on March 19, 2020, and both
2 have remained continuously in effect through the date of this Complaint.

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

20 49. On April 27, 2020 the County of San Francisco and other bay area county
21 governments issued a press release indicating that this order would be extended “through May.”
22 Ex. 3 at 1.

23 50. Similarly, on March 15, 2020, Mayor Eric Garcetti of Los Angeles issued an order
24 restricting similar activities throughout the City and County of Los Angeles. Ex. 4. The order
25 indicates that “[a]ll restaurants and retail food facilities in the City of Los Angeles shall be
26 prohibited from serving food for consumption on premises.” *Id.* at ¶ 2. On March 16, 2020, the
27 Health Officer of Los Angeles County, Muntu Davis, M.D., MPH, issued an order directing all
28 individuals living in the county to stay at home except that they may leave to provide or receive

1 certain essential services or engage in certain essential activities. Collectively these two orders,
2 and subsequent related orders, shall be referred to as the “Los Angeles Orders.”

3 51. On March 19, 2020 Governor Newsom issued an executive order requiring “all
4 individuals living in the State of California to stay home or at their place of residence except as
5 needed” for essential services and needs and engage in strict social distancing. *Id.* at ¶ 1.²³
6 Collectively, this order, along with the San Francisco Orders and Los Angeles Orders, shall be
7 referred to as the “Shelter in Place Orders” or the “Orders.”

8 **D. The Restaurants Close**

9 52. Following the Orders, the Restaurants were forced to close their dining rooms to
10 the public.

11 53. Following the Orders, customers were prohibited from accessing the Restaurants’
12 dining rooms.

13 54. Following the Orders, customers were prohibited by social distancing guidelines
14 from utilizing the Restaurants’ dining rooms.

15 55. Following the Orders, the Restaurants were unable to serve food to customers
16 wishing to eat at their Restaurants.

17 56. As a result, immediately following the orders, both Restaurants closed entirely.

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

20 58. Over the last five weeks, Alta Adams has developed a “pivot” plan to partially re-
21 open in order to serve take-out meals. This service will be a government supported program and
22 meals will be sold using a sliding scale in order to ensure that they are accessible to emergency
23 workers, hospital personnel, and others in need.

24 59. This service is small scale, and is not anticipated to involve more than 20% of Alta
25 Adams’s employees. It is expected to provide mere fraction of prior monthly revenues, and be
26 insufficient to pay down mounting expenses. Most of the revenue will be used to pay the

27 ²³ Available at [https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf)
28 [20-COVID-19-HEALTH-ORDER.pdf](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).

1 employees this business can provide (partial) support to, including many who are in job training
2 for first time jobs for the previously incarcerated. The restaurant employs heavily from the
3 surrounding neighborhood, which sits in the historical Adams section of Los Angeles along the
4 border of Compton.

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

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

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

11 62. Coi has been insured by Defendants since at least 2013. Since that time it has
12 promptly and dutifully paid its premiums and complied with all other elements of its agreements
13 with Defendants. Coi's policy number is 0605460761.

14 63. Alta Adams first purchased its policy in or around 2018. Since that time it has
15 promptly and dutifully paid its premiums and complied with all other elements of its agreements
16 with Defendants. Alta Adams Adam's policy number is 0606719050.

17 64. The policies provide coverage for Lost Business Income, promising that
18 Defendants "will pay for the actual loss of Business Income you sustain due to the necessary
19 suspension of your 'operations' during the 'period of restoration'. The suspension must be caused
20 by direct physical loss of or physical damage to property at the 'described premises' . . . caused
21 by or resulting from a Covered Cause of Loss." Ex. 7 at 48; Ex. 8 at 90.

22 65. The Orders resulted in Plaintiffs and their customers physically losing access to
23 and the ability to utilize the Restaurants, and specifically their dining areas.

24 66. The Order required the suspension of business operations in the Restaurants'
25 dining areas.

26 67. The Orders also restricted Plaintiffs' use of their kitchens, suspending operations
27 there, by prohibiting certain business functions, like the preparation of ready to eat food,
28 practices, like employees working in close proximity. This was amplified by the orders

1 restrictions on employees commuting to work and working to fulfill the full bevy of orders
2 typically placed at the restaurant.

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

6 69. The Restaurants' policies also provide Civil Authority coverage, promising that
7 Defendants "will pay for the actual loss of Business Income you sustain and necessary Extra
8 Expense caused by action of civil authority that prohibits access to the described premises due to
9 direct physical loss of or damage to property, other than at the described premises, caused by or
10 resulting from any Covered Cause of Loss." Ex. 7 at 50; Ex. 8 at 92.

11 70. Coi is located on Broadway in San Francisco, near Montgomery Street, and two
12 blocks from Columbus Avenue. Similarly Adams Restaurant is located on West Adams
13 Boulevard two blocks from the interstate "10" Freeway running from Santa Monica, California to
14 Jacksonville, Florida. As the Coronavirus spread, these large high-trafficked thruways, and the
15 buildings and objects in and around them, became a breeding ground for the disease.

16 71. The Orders were issued as a result of physical loss and damage occurring in
17 properties near the Restaurants and all around the Bay and Los Angeles metropolitan areas. Prior
18 to the issuance of the Orders, government authorities had been limiting access to other properties
19 on the basis of the Coronavirus, including (but not limited to) sporting arenas, concert venues,
20 and other places where large numbers of people may gather.

21 72. The Orders prohibited Plaintiffs and their customers from accessing and utilizing
22 their Restaurants, specifically their dining areas.

23 73. The Orders also restricted Plaintiffs' access to and use of their kitchens, by
24 prohibiting certain business functions, like the preparation of ready to eat food, practices, like
25 employees working in close proximity, and operations, like having all employees commute to
26 work, work during all regular business hours, and fulfill all orders typically placed at the
27 restaurant.

1 74. As a result of this prohibition, the Restaurants lost business income and suffered
2 other related covered losses (including but not limited to extended business income and extra
3 expenses).

4 75. In correspondence with Plaintiffs, Defendants have indicated that their policies
5 contain an exclusion related to communicable diseases. Ex. 5 at 1; Ex. 6 at 1. This exclusion
6 provides that Defendants “will not pay for loss or damage caused by or resulting from any virus,
7 bacterium or other microorganism that induces or is capable of inducing physical distress, illness
8 or disease,” (the “Virus Exclusion”). Ex. 5 at 6; Ex. 6 at 5.

9 76. This exclusion does not apply and is not enforceable.

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

12 78. This means independent actions taken in connection with the virus, by
13 governmental authorities, customers, suppliers, employees, and others, are not covered by the
14 exclusion.

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

17 80. The Restaurants’ policies (Ex. 7 at 54; Ex. 8 at 96) contain exclusions for harm
18 “however caused, arising directly or indirectly out of” all of the following:

- 19 a. War
- 20 b. Undeclared War
- 21 c. Civil war
- 22 d. Warlike action by a military force
- 23 e. Warlike action hindering against an actual attack
- 24 f. Warlike action hindering against an expected attack
- 25 g. Warlike action defending against an actual attack
- 26 h. Warlike action defending against an expected attack
- 27 i. Insurrection
- 28 j. Rebellion

- 1 k. Revolution
- 2 l. Usurped power
- 3 m. Action taken by governmental authority in hindering any of the above.
- 4 n. Action taken by governmental authority in defending against any of the
- 5 above.
- 6 81. Defendants intentionally chose not to use similar language in the Virus Exclusion.
- 7 82. Defendants intentionally chose not to add a global pandemic to the above list
- 8 concerning war and other catastrophes or add an express global pandemic exclusion.
- 9 83. Defendants are aware of and utilize a policy exclusion for harm “caused directly or
- 10 indirectly” by acts of terrorism and attempted acts of terrorism which includes “dispersal or
- 11 application of *pathogenic* or poisonous biological or chemical materials,” (emphasis added).
- 12 84. These policy exclusions are part of the Restaurants’ policies. Ex. 7 at 18; Ex. 8 at
- 13 34.
- 14 85. This terrorism (and bioterrorism) exclusion also expressly covers “loss or damage
- 15 caused directly or indirectly by ‘terrorism,’ including *action in hindering or defending against* an
- 16 actual or expected incident of terrorism.” *Id.* (emphasis added).
- 17 86. Defendants intentionally chose not to use similar language in the Virus Exclusion.
- 18 87. Defendants are aware of contractual force majeure clauses that suspend duties to
- 19 perform in the event of a global pandemic.
- 20 88. Defendants are parties to contracts which have force majeure provisions that apply
- 21 in the event of a global pandemic.
- 22 89. Defendants intentionally chose not to use force majeure clauses in their insurance
- 23 policies with the Restaurants.

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

25 90. On or around March 17, 2020, Coi filed a claim for and requested business

26 interruption insurance coverage from Defendants. This claim was later assigned the identification

27 number 3013384555.

28

1 91. On or around March 17, 2020 Alta Adams filed a claim for and requested business
2 interruption insurance coverage from Defendants. This claim was later assigned the identification
3 number 3013384601.

4 92. On or around March 18 or 19, 2020 Defendants' Claims Representative Kenneth
5 Yim called the Restaurants to inform them that their claims were denied.²⁴

6 93. Defendants denied these claims without any inspection or review of the
7 Restaurants' physical locations or documents concerning their business activities in 2020.

8 94. Defendants have thereby waived any right to inspect those premises or deny
9 coverage or raise any defense related to conditions at those locations or facts specific to the
10 Restaurants.

11 95. This, and the speed with which Defendants denied Plaintiffs claims, indicate that
12 they could not have engaged in a good faith or reasonable investigation of the claim which
13 included assessment of facts or issues relevant to either Restaurant.

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

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

22 98. Although industry trade groups have argued that insurance companies do not have
23 the funds to pay claims related to the Coronavirus and will require government assistance, the
24 reality is that insurers are simply trying to minimize their exposure. "According to data from
25
26

27 ²⁴ Defendants' denial letters provide conflicting information as to the date of this call. *Compare*
28 Ex. 5 at 1 *with* Ex. 6 at 1.

1 ratings firm A.M. Best Co., the insurance industry as a whole has \$18.4 billion in net reserves for
2 future payouts.”²⁵

3 99. Farmers collected more than \$20 billion in insurance premiums for property
4 related insurance in 2018 alone.²⁶ Notwithstanding this, they appear to be categorically denying
5 claims brought by businesses ordered to close following the Coronavirus. This strategy, and their
6 public requests for government assistance, suggest strongly that their true goal is minimizing
7 payments by any means necessary.

8 **V. CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION**
10 **Breach of Contract**

11 100. Plaintiffs re-allege and incorporate by reference into this cause of action all
12 allegations set forth in paragraphs 1–99 of this Complaint.

13 101. At all times relevant herein, Plaintiffs have paid all premiums and fulfilled or
14 performed all obligations they have to Defendants, including (but not limited to) under any under
15 insurance policy number 0605460761, insurance policy number 0606719050, and any other
16 insurance policy described in this complaint.

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

19 103. In denying Plaintiffs’ insurance claims, and refusing to perform under the contract,
20 Defendants breached those duties.

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

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

²⁶ 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).

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

105. Plaintiffs re-allege and incorporate by reference into this cause of action all allegations set forth in paragraphs 1–99 of this Complaint.

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

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

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

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

110. Plaintiffs, therefore, are entitled to recover and seeks in connection with this Cause of Action: (a) an award of general damages and other monetary damages, including all foreseeable consequential and incidental damages for diminution in value, loss of use, and other incidental damages and out-of-pocket expenses, plus interest, in an amount to be determined at

1 trial; (b) punitive and exemplary damages in an amount to be determined at trial; (c) Plaintiffs'
2 costs of suit; and (d) Plaintiffs' reasonable attorney's fees in connection with this action.

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

5 111. Plaintiffs re-allege and incorporate by reference into this cause of action all
6 allegations set forth in paragraphs 1–99 of this Complaint.

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

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

21 114. Defendants' acts and practices, as described herein, constitute unfair violations of
22 California Business and Professions Code section 17200, *et seq.* because they failed or refused to
23 perform a fair, objective, and thorough investigation of the claim as required by the California
24 Insurance Code, denied Plaintiffs claim as part of a policy of categorically denying claims related
25 to the Coronavirus, and failed to interpret their policy in an equitable manner and/or up to the
26 standards required by California law (including but not limited to Cal. Ins. Code section 790 *et*
27 *seq.*).
28

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

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

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

20 118. Any claimed justification for Defendants' conduct is outweighed by the gravity of
21 the consequences to Plaintiffs. Defendants' acts and practices are immoral, unethical, oppressive,
22 or unconscionable to the extent that they deceived Plaintiffs about the coverage provided by the
23 policy, investigation of the claim, and interpretation of the policy, and procedures for doing so.
24 This culminated in a denial of the claim as part of a policy of categorically denying claims related
25 to the Coronavirus as part of a strategy to reduce their total insurance payments related to the
26 Coronavirus. This attempt to maximize Defendant's profits was substantially injurious to
27 Plaintiffs who are local entrepreneurs who relied on their insurance to protect their business and
28 its employees in the event of disaster.

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

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

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

FOURTH CAUSE OF ACTION

Declaratory Relief

122. Plaintiffs re-allege and incorporate by reference into this cause of action all allegations set forth in paragraphs 1–99 of this Complaint.

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

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

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

126. Plaintiffs allege and contend, with respect to Plaintiffs' Civil Authority coverage, that each of the Closure Orders triggers that coverage because (a) each of the Orders is an order

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

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

19 128. Plaintiffs allege and contend that Defendants wrongly denied coverage with
20 respect to all the foregoing provisions.

21 129. Upon information and belief, Plaintiffs allege that Defendants dispute and deny
22 each of Plaintiffs' contentions set forth in this Cause of Action.

23 130. Plaintiffs, therefore, seek a declaratory judgment regarding each of Plaintiffs'
24 contentions set forth in this Cause of Action. A declaratory judgment determining that Plaintiffs
25 are due coverage under their insurance policies, as set forth above, will help to ensure the survival
26 of its business during this prolonged closure made necessary by the Orders and by the presence of
27 Coronavirus around the Restaurants during this global pandemic.

1 **VII. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants, as
3 follows:

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

16 **VIII. JURY TRIAL DEMAND**

17 Plaintiff demands a trial by jury.

18
19 Dated: April 28, 2020

/s/Robert J. Nelson
Robert J. Nelson

20
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