

1 Paul S. Sigelman, SBN 45954
2 Stanton Lee Phillips, SBN 47063
3 433 N. Camden Dr., Ste. 970
4 Beverly Hills, CA 90210
5 Telephone: (310) 278-8011
6 Facsimile: (310) 278-2254

7 Attorney for Plaintiff

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10 BUTTER NAILS AND WAXING INC.,

11 Plaintiff,

12 vs.

13 UNDERWRITERS AT LLOYD'S OF
14 LONDON; and DOES 1-50 inclusive,

15 Defendants.

CASE NO:

COMPLAINT FOR DAMAGES

Causes of Action:

- (1) Declaratory Relief
- (2) Breach of Insurance Contract
- (3) Bad Faith Insurance Claims Practice

Unlimited Jurisdiction

PLAINTIFF ALLEGES:

General Pleadings

1. Action is commenced against Defendants Does 1-50 herein, pursuant to the provision §474 of the California Code of Civil Procedure. Each of the Defendant Does participated in or is responsible in some manner for the events, acts, omissions, and conduct, referred to herein, and as a proximate result caused damages as herein alleged, and/or is subject to the remedies of this Court.

1 2. At all times herein relevant, each of the Defendants was and is the agent,
2 employee, and/or representative of each of the other Defendants and was acting in such capacity
3 for the common benefit of himself and itself and the actions and conduct of each such Defendant,
4 whether designated by real or fictitious name, was with the full ratification and approval of each
5 of the others.

6 3. At all times herein mentioned, Defendants, and each of them, are individuals,
7 corporations, partnerships, associations, or other cognizable legal entities doing business or
8 carrying on business activities in the State of California and are thus subject to the jurisdiction of
9 the court in which this action is brought.

10 4. Demand is hereby made that Defendants preserve all electronically stored
11 information ("ESI"), as well as documents and tangible things, potentially relevant to the facts
12 and issues plead in this complaint, including by the way of example, correspondence,
13 memoranda, or record of occurrence pertaining to the underwriting, negotiation or issuing of any
14 insurance pertaining to the premises at 7777 W. Sunset Boulevard, Los Angeles, California
15 90046, along with the investigation and consideration of claim thereon, and be prepared to
16 produce such documents and ESI in discovery. ESI includes by the way of example information
17 electronically, magnetically or optically stored, such as digital communications, word processed
18 documents, calendar and diary entry data, backup and archival files, all as stored on Defendants'
19 computer systems and employee systems, or other media and devices, such as their personal is
20 digital assistants, voice-messaging systems, on-line repositories and cell phones. It is further
21 demanded that Defendants' management and counsel pursue immediate intervention to prevent
22 loss due to routine operations, to initiate a litigation hold for potentially relevant ESI, and to
23 prevent degradation of the ability to search ESI by electronic means. Such litigation hold is to
24 secure ESI on office work stations and servers, home and portable systems, to anticipate that
25 employees may seek to delete or destroy information that they regard as confidential or
26 embarrassing, and to secure documents which are required to access, interpret or search relevant
27 ESI (including logs, control sheets, specifications, naming protocols, diagrams, and user ID and
28 password rosters).

1 **Parties**

2 5. Butter Nails and Waxing Inc. ("Butter Nails"), a California corporation, is a nail
3 salon and spa, incorporated in California, known for its social atmosphere and media recognized
4 clientele who, by their presence at the premises alone, enhance the market for the company's
5 services. The company maintains premises at 7777 W. Sunset Boulevard, Los Angeles,
6 California 90046.

7 6. Defendant Underwriters at Lloyd's, London, England ("Lloyd's of London") sold
8 and issued the subject insurance policy, including but not limited to a specifically requested
9 endorsement for coverage of business income loss. Butter Nails purchased and paid for the
10 policy in full force and effect and providing coverage for business income loss at all times
11 relevant hereto.

12 **Insurance Policy**

13 7. Lloyd's of London proposed, undertook, and issued an all-risk insurance policy
14 by which all losses are covered unless specifically excluded. The policy, number UI/19-1705,
15 named the company, Butter Nails, as the insured party for the period of February 22, 2020 to
16 February 22, 2021, at a total premium cost of \$7,437.10, including Special Endorsements.

17 8. The Business income loss endorsement, Insurance Office No. SP CP 007 11 19,
18 provides:

19 "We will provide for loss of business income or extra expense and 'described premises'
20 caused by interruption of the business due to 'civil authority action' that requires
21 evacuation from the 'described premises...'"

22 "'...Civil authority' means a mandatory action from a government authority requiring
23 evacuation from the 'described premises.'"

24 9. On March 21, 2020, the County of Los Angeles issued a mandatory order
25 requiring the ...

26 "immediate closure of...commercial properties and business."

27 The order necessarily applied to Butter Nails. Two days earlier, the City of Los Angeles, on
28 March 19, 2020, had issued a similar order requiring the company to...

1 “cease operation that require in-person attendance by workers.”

2 The order, likewise, applied to Butter Nails. The company’s business, by its very nature, can
3 only operate and conduct its business by the in-person attendance of its workers. Any failure to
4 comply with these orders was and is a crime punishable by fine, imprisonment, or both. Butter
5 Nails, complying with the civil authority orders, closed out the salon business operations from
6 the premises, constituting an evacuation of the premises for not less than several months.

7 10. On April 21, 2020, Butter Nails served a claim on Lloyd’s of London for business
8 income loss. On April 22, 2020, the Lloyd’s claims management administrator acknowledged
9 receipt of the claim and took the matter under consideration.

10 11. On May 29, 2020, 39 days after claim, the Lloyd’s administrator denied coverage
11 for Butter Nails’ lost business income solely...

12 “...based upon the position that limited restriction of access to your property does not
13 qualify as an eviction.”

14 No other basis, provision, condition, or exclusion to the claim was stated for denial. By
15 California insurance regulation,

16 “[E]very insurer...shall immediately, but in no event more than forty (40) calendar days
17 later, accept or deny [a first party] claim...in writing and shall provide to the claimant a
18 statement *listing all* bases for such rejection or denial and the factual and legal bases for
19 each reason given for such rejection or denial which is then within the insurer’s
20 knowledge...based on policy provision, condition or exclusion, the written denial shall
include reference thereto and provide an explanation of the application of the provision,
condition or exclusion to the claim,” 10 CA ADC §2695.7(b), (emphasis added).

21 More than 40 days having elapsed since claim was made, any other factual or legal base is now
22 barred. Lloyd’s was and is under the quasi-fiduciary obligation to fully investigate, consider, and
23 not deceive, disallow, or later offer any other reason or excuse for denial. Lloyd’s cannot now
24 contend or plead a different basis to deny coverage for the purpose of avoiding liability to Butter
25 Nails. Denial was made on an unwarranted basis while under an obligation to act in good faith to
26 effectuate prompt, fair, and equitable settlement of a claim where liability was reasonably clear,
27
28

1 is in violation of Ins.C. §790.03(h). Thus, in accordance with Ins.C. §790.03(h), Lloyd's may not
2 now provide or attempt to provide additional basis for its denial.

3 **Breach**

4 12. The subject business income loss endorsement covered interruption of Butter
5 Nails' business under order of civil authority. Butter Nails complied with the civil authority
6 order for "immediate closure of...[its] commercial properties and business." Butter Nails, given
7 no choice, closed down and vacated its salon operations, personnel, and workers. Butter Nails is
8 and was covered by the subject indemnity endorsement. The claim was wrongfully denied.

9
10 13. Lloyds administrator unjustly based denial on "limited access" for people to *get* to
11 the Butter Nails property, whereas the Lloyd's insurance endorsement encompasses government
12 authority requiring "evacuation" of "business" operations *from* their property. The administrator
13 states that a limited restriction of access of getting to Butter Nails front door may not amount to
14 the court process of "eviction," the administrator's chosen word; whereas here, the County
15 Department of Public Health order was for mandatory removal of the company's business
16 operation from the property by "closure of commercial properties and businesses" which is a
17 "civil authority action" that requires evacuation," the policy contract's chosen words for
18 indemnity. "Evacuation" in any manner of civil authority is part of the subject endorsement, and
19 by California law, an endorsement is to be read and understood in the most inclusive sense for
20 the benefit of the insured. Lloyd's of London wrote an all-risk endorsement and made no
21 exclusion.

22
23
24 14. The Lloyd's denial made no mention of the amount of business loss coverage, but
25 the insurance policy does. The declaration to the insurance policy does state what coverage
26 is being purchased and provides as follows:

27 //
28

COMMERCIAL PROPERTY COVERAGE PART
DECLARATION PAGE

OPTIONAL COVERAGES

Applicable Only When Entries Are Made in The Schedule Below

Prem/Bldg. No.	COVERAGE	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINSURANCE	RATES
1/1	BUSINESS INCOME WITH EXTRA EXPENSE	\$360,000	SPECIAL		VRS
Prem/Bldg. No.	***MONTHLY LIMIT OF INDEMNITY (FRACTION)	MAXIMUM PERIOD INDEMNITY (X)	***EXTENDED PERIOD OF INDEMNITY (DAYS)		
1/1	1/12				

Form: IOS Form: SB CP 0071119

Butter Nails thus purchased the SPECIAL coverage for BUSINESS INCOME of up to \$360,000, with a MONTHLY LIMIT of "1/12" (\$30,000). Butter Nails paid for that coverage at the stated \$7,437.10 premium cost. These provisions preceded approximately 100 pages of fine print prolix, which buried the contradiction to the Declaration:

The most we will pay in any one occurrence for loss under this extension is \$10,000 at each "described premises."

California does not permit interpretation of a contract which gives effect to the remotely stated "\$10,000" limitation, ignoring the \$360,000 Declaration OF Special Coverage and is strictly construed against the insurer, Lloyd's of London.

Loss

15. Butter Nails' business loss due to the evacuation of its business exceeds the \$30,000 coverage per month for loss under the indemnity terms of the Declaration to the policy. The income loss has been and will continue during the suspension of business by civil authority and thereafter, as loss will persist as a result of the company's lost recognition in the market place amongst its clientele, which may not be readily regained, prolonging loss.

//

1 **FIRST CAUSE OF ACTION**

2 **[Declaratory Relief]**

3 16. Plaintiff incorporates paragraphs 1-15 above.

4 17. An actual controversy has arisen and now exists between Plaintiff and Defendants
5 concerning the right of Butter Nails and the obligation of Lloyd's of London to pay for loss
6 under its written special endorsement for Business income and Extra Expense and its subsequent
7 denial of that coverage.

8 18. Pursuant to CCP §1060, Plaintiff seeks a judicial determination of its right of
9 indemnity pursuant to the business income and extra expense endorsement of the Lloyd's of
10 London insurance policy.

11 19. An actual controversy has arisen and now exists between the Plaintiff and
12 Defendant to pay for losses up to a \$360,000 limit of insurance, with a monthly limit of
13 indemnity of 1/12 thereof, as written for the covered cause of loss of business income.

14 20. Pursuant to CCP §1060, Plaintiff seeks a judicial determination of the obligation
15 of Lloyd's of London for the \$360,000 declaration page insurance policy limit.

16 **SECOND CAUSE OF ACTION**

17 **[Breach of Insurance Contract]**

18 21. Plaintiff incorporates paragraphs 1-20 above.

19 22. In consideration of the insurance policy premium paid by Plaintiff, Lloyd's of
20 London issued an insurance policy bearing the number UI/19-1705, for the policy period
21 February 22, 2020 to February 22, 2021. The policy covered business income loss or damage to
22 Butter Nails, which was represented and understood by Butter Nails to provide coverage on such
23 damage to its commercial property and business.

24 23. Plaintiff has fully performed all terms and conditions required to be performed by
25 it under the insurance policy agreement.

26 24. Defendants have breached the said policy and agreement and contract between
27 Plaintiff and Defendants.
28

1 25. As a direct and proximate result of such breach, Plaintiff has suffered and
2 continues to suffer damages caused by the aforesaid breach in an amount not yet fully
3 ascertained, but proof of which will be offered at trial.

4 **THIRD CAUSE OF ACTION**

5 **[Bad Faith Insurance Claims Practice]**

6 26. Plaintiff incorporates paragraphs 1-25 above.

7 27. Defendants received notice of claim with ample time to investigate.

8 28. Defendants breached their contractual obligation and the implied covenant of
9 good faith and fair dealing obligation of a quasi-fiduciary to Plaintiff by:

- 10 (a) Not giving at least as much consideration to the interests of Butter Nails as
11 given to its own interests;
12 (b) Delay in and failure to pay the benefits due under the insurance policy;
13 (c) Failure to conduct a full, fair, prompt, and thorough investigation of all
14 the basis of the claim;
15 (d) Failure to diligently search for and consider evidence that supported
16 coverage of the claimant loss of business;
17 (e) Failure to reasonably inform Butter Nails of the rights under the policy;
18 and
19 (f) Failure to act with proper cause for its conduct.

20 29. Defendants' conduct violated California insurance regulation by conduct,
21 including:

- 22 (a) Failure to disclose all possible coverage requiring timely response, 10 CA
23 ADC §2695.4(b);
24 (b) Failure to provide reasonable assistance including information which may
25 lead to coverage under various provisions of the policy, §2695(e);
26 (c) Failure to state all basis for acceptance or rejection of a claim with
27 reference to each possible policy provision of coverage, §2695.7(b); and
28

(d) Failure to conduct and diligently pursue a fair and objective investigation, §2695.7(d).

30. Defendants obtained an unjust enrichment to themselves by not paying the policy amount due and intentionally leaving Plaintiff in a position of financial distress, while attempting to conceal coverage and failing the obligation to process and handle claims without damage to their own policy holder.

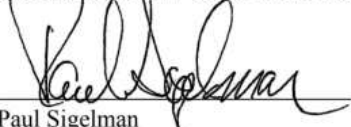
31. By reason of the facts alleged and Defendants' oppressive, wrongful, intentional, and despicable conduct, malice, and fraud, Plaintiff is entitled to damage by way of compensation, including consequential harm and cost of attorney fees to recover the insurance policy benefits, and punitive damages as justified against Defendants.

WHEREFORE, Plaintiff demands judgment as follows:

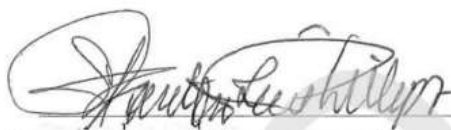
- (A) On the First Cause of Action, declaratory judgment as to rights, duties, and obligations of the Defendants, and that the court order a speedy hearing of the declaratory relief sought herein, pursuant to CCP §1062.3 and motion thereunder for Compensatory damages and consequential damages according to proof in trial;
- (B) On the Second and Third Causes of Action for compensatory damages and consequential damages, and interest according to law, pursuant to CCP §3289, or as determined by a jury, pursuant to CC §3288;
- (C) On the Third Cause of Action for compensatory, punitive, and exemplary damages, attorneys' fees incurred in pursuit of the action; and
- (D) For costs and other just relief as appropriate.

Dated: June 11, 2020

SIGELMAN LAW CORPORATION


Paul Sigelman
Attorney for Butter Nails and Waxing Inc.

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



Stanton Lee Phillips
Attorney for Butter Nails and Waxing Inc.