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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **COUNTY OF LOS ANGELES**

9 RA ORGANIC SPA,

CASE NO.:

10 Plaintiff,

11 vs.

12 TRUCK INSURANCE EXCHANGE, an
13 insurance exchange

COMPLAINT

14 Defendant.

16 Plaintiff RA ORGANIC SPA; by and through its attorneys, Bradley S. Wallace, Esq., Thomas
17 R. Burns, Esq., and The Wallace Firm, P.C., brings this Complaint, alleging against Defendant
18 TRUCK INSURANCE EXCHANGE, an insurance exchange, as follows:

19 **I. INTRODUCTION**

20
21 1. If an insurer promises that by taking out “business income coverage, your policy
22 helps replace the income lost while your company is closed,” it needs to keep that promise. *See*
23 FARMERS INSURANCE, [https://www.farmers.com/learn/insurance-questions/business-income-](https://www.farmers.com/learn/insurance-questions/business-income-coverage-definition/)
24 [coverage-definition/](https://www.farmers.com/learn/insurance-questions/business-income-coverage-definition/) (last accessed Jan. 27, 2022). Defendant understands that business interruption
25 insurance is critical because it helps keep capital flowing to “keep your company running,”
26 including lost profits, payroll, taxes, and other operating expenses. *Id.*; *see also* FARMERS
27 INSURANCE, <https://www.farmers.com/business/property/> (last accessed Jan. 27, 2022).
28

1 2. In March of 2020, when California entered a State of Emergency due to the rapidly
2 developing COVID-19 pandemic, it issued a series of “Stay at Home” Orders forcing essential and
3 non-essential businesses to shutdown either fully or partially.

4 3. Plaintiff is a California business that owns and operates a salon and spa in Burbank,
5 California. Plaintiff dutifully paid its premiums to Defendant to the tune of \$4,507 annually and had a
6 valid business insurance contract with Defendant at the time (the Farmers Policy). Plaintiff suffered
7 business income losses because of the forced government shut down orders that were issued to slow
8 the spread of the COVID-19 virus. These circumstances created a direct physical loss of or damage
9 to property at the Plaintiff’s insured premises.

10 4. After sustaining losses because of the governmental orders, Plaintiff made a timely
11 and proper insurance claim to Defendant to obtain the benefits afforded under the terms of its
12 insurance contract.

13 5. Properly construed, the terms of the Farmers Policy provided Plaintiff with coverage
14 for its claim, especially given that Farmers markets and describes its policy as providing coverage
15 for the loss of business income due to circumstances outside the control of the insured.

16 6. The Farmers Policy provides coverage for the loss of business income and extra
17 expenses sustained due the suspension of business operations and the extra expenses during the
18 period of restoration caused by direct physical loss or damage to the property at the insured
19 premises. The policy includes coverage for all risks and does not exclude payment of benefits for
20 this type of governmental action.

21 7. Defendant’s obligation to provide business income coverage in the circumstances
22 here—when government action shuts down or limits the business’s access or use of property for
23 reasons outside the control of the insured—is supported by both the language of the policy and
24 representations made by Farmers’ captive agents and in their written materials.

25 8. When COVID-19 hit the United States, governments across the country—state and
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1 local—acted to protect the public health by entering orders that limited business operations, use of or
2 access to facilities, travel, and in-person social interactions. The governmental orders also directed
3 businesses to undertake certain affirmative actions, such as regular disinfecting and cleaning of
4 business premises. These orders caused Plaintiff to suffer the very losses Defendant promised to
5 reimburse. These governmental orders are a quintessential, well-known exercise of police powers.
6 “The state’s inherent prerogative to protect the public’s health, safety, and welfare is known as the
7 police power.” *See* Gostin, Lawrence, and Wiley, Lindsey, *Public Health Law*, University of
8 California Press, p. 11. Using or accessing one’s real property or employing or putting into service (or
9 removing therefrom) one’s equipment and business property, is inherently physical in nature. And
10 ousting or precluding the use of or access to real property results in a loss of a physical nature.

11
12 9. Without any investigation of the insured premises, Defendant denied Plaintiff’s
13 claim by interpreting the term “direct physical loss” to require a physical alteration and also by
14 applying an inapplicable virus exclusion.

15
16 10. The policy excludes only specific types of harm from governmental action, meaning
17 that, by excluding some but not all situations, certain governmental action is both a covered risk
18 and eligible for payment if the governmental-action exclusion does not apply. Here, Defendant
19 excluded only governmental action ordering the seizure or destruction of property, indicating that
20 all other governmental action is a covered cause of loss. Under the policy’s business-income
21 protection, Defendant agreed to cover, among other things, all suspensions of business operations
22 caused by direct physical loss to property on the premises. Defendant chose not to define what
23 “direct physical loss to property at the described premises” means, and now construes in a manner
24 that narrows coverage and is favorable to Defendant, contrary to standard principles of contract
25 interpretation.
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27 11. Defendant’s interpretation of the policy language is wrong, and its denial of
28 coverage for losses caused by limitations on the physical use and access to insured’s property

1 breached the contract.

2 12. The meaning of the term “direct physical loss of property at the described premises”
3 is ambiguous at best. There is no indication in the policy that this term requires a physical
4 alteration. Reading the term in context of the language used elsewhere in the policy supports
5 coverage. The policy’s exclusions imply that but for the exclusion, payment would have been made
6 in situations where no physical alteration is present. For example, the policy provides that
7 Defendant “will not pay for loss or damage caused directly or indirectly by” things such as nuclear
8 reactions, radioactive contamination, and the failure of power or other utility services. By stating
9 that no payment will be made for these types of losses or harms indicates that, but for the exclusion,
10 they would be losses that would otherwise be paid. Yet, none of these examples would constitute a
11 physical alteration as Defendant uses the term in denying Plaintiff benefits. The language of the
12 exclusions supports that position that the term “direct physical loss of property at the described
13 premises” is not limited to physical alterations.

14
15 13. In addition to improperly requiring a physical alteration, Defendant has, since
16 Plaintiffs’ losses began to occur due to the COVID-19 pandemic over one year ago, improperly
17 attempted to escape responsibility for payment on Plaintiff’s claims by applying an inapplicable
18 virus or bacteria exclusion endorsement in the policy. The virus exclusion is irrelevant to Plaintiff’s
19 claim of direct physical loss resulting from governmental action. Plaintiff’s claim rests on the risk
20 of governmental action that is not included in the exclusion, which renders it a risk that is covered.
21 That the governmental action is related to a virus does not transform the risk of governmental
22 action into a different type of risk.

23
24 14. Plaintiff seeks compensatory damages, statutory damages, attorney’s fees, interest,
25 and declaratory relief.
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27 II. PARTIES

28 15. At all relevant times, RA ORGANIC SPA (“Ra”) is a corporation authorized to do

1 business in the State of California, County of Los Angeles. Ra owns, operates, manages, and/or controls
2 a spa located at 119 N. San Fernando Blvd. Burbank, CA 91502-1208. The insured location is listed as
3 an insured location in Ra's policy.

4 16. At all relevant times, Defendant Truck Insurance Exchange ("Truck"), is and was a
5 reciprocal or inter-insurance exchange, and member of the Farmers Insurance Group of Companies,
6 and a corporation doing business in the County of Los Angeles, State of California.

7 17. Defendant's place of business is 6301 Owensmouth Ave, Woodland Hills, CA 91367.

8 18. At all relevant times mentioned herein, the true names and capacities, whether individual,
9 corporate, associate or otherwise, of Defendants and DOES 1 through 50, inclusive, are currently
10 unknown to Plaintiff, who therefore bring suit against these Defendants by their fictitious names and
11 capacities. Plaintiff is informed and believes and thereupon alleges that each factiously named
12 Defendant, whether acting for itself or as an agent, corporation, association, or otherwise, is liable or
13 responsible to Plaintiff and proximately caused injuries and damages to Plaintiff as alleged herein. While
14 at this time Plaintiff is unaware of the true names and capacities of the DOE Defendants, Plaintiff will
15 amend its Complaint to show the true names and capacities of DOES 1 through 50, inclusive, when
16 those identities have been ascertained.

17 19. All allegations in this Complaint are based on information and belief and/or are likely
18 to have evidentiary support after a reasonable opportunity for further investigation or discovery.
19 Whenever allegations in this Complaint are contrary or inconsistent, such allegations shall be deemed
20 alternative.
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22 III. JURISDICTION AND VENUE

23 20. Jurisdiction is proper pursuant to Cal. Code Civ. Proc. §§ 410.10, 410.50 and 1060.

24 21. Venue is proper in this judicial district pursuant to Cal. Code Civ. Proc. § 395.
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IV. FACTUAL BACKGROUND

A. Plaintiff's insurance policy covers all risks unless expressly limited or excluded in the contract.

22. To protect its thriving business from interruption and other perils, Plaintiff purchased business insurance from Defendant, including loss of income, extra expense, property, liability, and other coverages.

23. Business Income (Business Interruption) coverage is an insurance product marketed and sold by Farmers, as a coverage designed to minimize the risk of financial uncertainty associated with suspensions of insured business operations.

24. This type of insurance specifically covers and pays out benefits to policyholders to allow the policyholder to pay continuing operating expenses, additional expenses incurred because of the suspension of their operations, and supplement its lost-business income.

25. The advertised purpose of the business income and extra expense coverage was to keep insureds in business following a loss or disaster. *What is Business Income Coverage, FARMERS* <https://www.farmers.com/learn/insurance-questions/business-income-coverage-definition/> (last visited Feb. 4, 2022). Farmers notably advertises that its business income product "not only helps you to cover expenses needed to keep a business operating after a loss, but it also helps you to replace loss revenue."

26. Upon information and belief Farmers markets and describes its Business Interruption product as providing coverage when the insured business is partially or fully inoperable for reasons outside the insured's control.

27. With that mindset, Farmers sold, and Plaintiff purchased, business-income replacement coverage to protect against "all risks."

28. Plaintiff's policy is Policy Number 60480-04-38 issued to Plaintiff Ra Organic Spa. A true and accurate copy of Ra's Policy is attached hereto as **Exhibits 1** ("Policy").

1 29. Plaintiff paid \$4,507.00 for the Policy annually as required by the contract. Plaintiff
2 purchased business insurance from Defendant and paid the requisite premiums in exchange for
3 “insurance as stated in the policy.”

4 30. The Policy’s effective period is March 1, 2020 to March 1, 2021.

5 31. The Policy is a renewal policy. The prior policy contained material terms identical to
6 the Policy currently in effect.

7 32. Plaintiff’s Policy consists of the policy jacket and its policy provisions, the
8 declarations or information page, and the endorsements.

9 33. This businessowners coverage applies to the insured’s covered location identified in
10 the Policy Declarations as 119 N. San Fernando Blvd. Burbank, CA 91502-1208. The location
11 comprises the described premises and business personal property covered by the Policy.
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13 34. The Policy covers the following property: buildings and structures at the described
14 premises as well as business personal property located in or on the buildings at the described
15 premises or in the open within 100 feet of the described premises.
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17 35. In exchange for payment of the premium, Defendant agreed to provide the insurance
18 coverages described in the Policy.

19 36. Before Plaintiff entered the Policy, Plaintiff spoke with its insurance broker
20 regarding the terms of coverage.

21 37. Based on marketing materials and representations made by its insurance broker,
22 Plaintiff understood that it was purchasing coverage for interruptions in its business operations for
23 risks outside of its control.
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25 38. The Policy is an “all risks” policy, meaning the policy covers the insured for any
26 peril, imaginable or unimaginable, unless expressly limited or excluded. In the event a covered peril
27 results in physical loss or damage to Plaintiff’s business premises or property, the Policy will pay
28 for lost business income and extra expenses. Business income means net income (net profit or loss)

1 that would have been earned had no physical loss or damage occurred, and continuing normal
2 operating expenses incurred (including payroll). Extra expense means the costs incurred because of
3 the physical loss or damage—that is, those costs that would have otherwise been avoided. In the
4 event of physical loss or damage, the Policy pays for both.

5 39. Specifically, the Policy provides property coverage under the Businessowners
6 Special Property Coverage Form. The Businessowners Special Property Coverage Form includes
7 coverage for “Business Income” and “Extra Expense.”

8 40. Under the Business Income coverage, Defendant must “pay for the actual loss of
9 Business Income you sustain due to the necessary suspension of your ‘operations’ during the
10 ‘period of restoration’.”

11 41. Under the Extra Expense coverage, Defendant must pay the “necessary Extra
12 Expense you incur during the ‘period of restoration’ that you would not have incurred if there had
13 been no direct physical loss or damage to property at the described premises.”

14 42. The Business Income and Extra Expense paragraphs also establish the applicable
15 Covered Causes of Loss, which is defined as “Risks of Direct Physical Loss unless the loss is: a.
16 Excluded in Section B, Exclusions; or b. Limited in Paragraph A.4, Limitations; that follow.” This
17 language covers all risks unless limited by Paragraph A.4 or excluded by Section B.

18 43. Farmers, upon information and belief, represented that business-income coverage was
19 simple to understand. Yet it was anything but that, and the average person, to ascertain if a
20 governmental shutdown of a business was covered, would have to analyze and parse through
21 complicated and often contradictory appellate holdings.

22 44. “Direct Physical Loss of property at the described premises” is undefined by the
23 policy. There is no indication in the policy that this term requires a physical alteration. Indeed,
24 reading the term in context of the language used elsewhere in the policy indicates the opposite is
25 true. For example, the policy provides that Defendant “will not pay for loss or damage caused
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1 directly or indirectly by” things such as nuclear reactions, radioactive contamination, and the failure
2 of power or other utility services. By stating that no payment will be made for these types of losses
3 or harms indicates that, but for the exclusion, they would be losses that would otherwise be paid.
4 Yet, none of these examples would constitute a physical alteration in the sense Defendant interprets
5 it to deny Plaintiff benefits. This language supports that position that the term “direct physical loss
6 of property at the described premises” is not limited to physical alterations.

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8 45. If Farmers wanted to limit “direct physical loss” to physical alterations, it had the
9 ability to set forth that limitation on the face of the policy and it would not have needed to excluded
10 the aforementioned risks that do not constitute a direct physical loss.

11 46. The Policy provides extended coverage for loss of business income from dependent
12 properties, tips, and certain orders from a civil authority. These coverages have independent limits
13 of insurance benefits.

14 47. The Policy contains several other exclusions, which identify risks that preclude
15 coverage for loss or damage caused by those risks.

16 48. None of the exclusions in the Policy preclude coverage for the governmental orders
17 pursuant to which Plaintiff suspended its business operations. The governmental orders therefore
18 constitute a covered “direct physical loss” under the Policy.

19 49. Because the policy excluded the payment of benefits for several categories of harm
20 that inherently do not alter property physically, and because Defendant represented that its coverage
21 would apply if the suspension of business resulted from something outside of Plaintiff’s control,
22 Plaintiff reasonably expected that its insured business would be covered during suspensions of
23 business for reasons outside of its control.

24 50. The language of the Farmers Policy, Defendant’s own marketing materials,
25 statements made by Defendant’s agents, and a commonsense analysis of the coverage language,
26 indicates that Plaintiff’s inability to access or use specific property is a direct physical loss and
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1 eligible for resultant business-income losses.

2 **B. The COVID-19 pandemic hits California.**

3 51. The first public reports of COVID-19 appeared on December 31, 2019, indicating
4 the outbreak of the virus in Wuhan, China.

5 52. On January 21, 2020, the first American COVID-19 case was confirmed in the State
6 of Washington. *See* CENTERS FOR DISEASE CONTROL, [https://www.cdc.gov/media/](https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html)
7 [releases/2020/p0121-novel-coronavirus-travel-case.html](https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html) (last accessed Apr. 28, 2020).
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9 53. According to news reports, shortly thereafter, by January 26, 2020, the United States
10 Centers for Disease Control (“CDC”) confirmed the first COVID-19 case in California. *See*
11 CALIFORNIA DEPARTMENT OF HEALTH, [https://www.cdph.ca.gov/Programs/CID/DCDC/](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx)
12 [Pages/Immunization/ncov2019.aspx](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx) (last accessed Apr. 28, 2020).
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14 54. On February 26, 2020, the CDC announced the first reported California COVID-19
15 case resulting from community spread. *See* CENTERS FOR DISEASE CONTROL, [https://www.cdc.gov](https://www.cdc.gov/media/releases/2020/s0226-COVID-19-spread.html)
16 [/media/releases/2020/s0226-COVID-19-spread.html](https://www.cdc.gov/media/releases/2020/s0226-COVID-19-spread.html) (last accessed Apr. 28, 2020).
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18 55. On March 4, 2020, the first COVID-19 fatality was reported in California.

19 56. By March 13, 2020, California’s total COVID-19 case count had risen to 198
20 confirmed cases. *See* CALIFORNIA HEALTHLINE (Mar. 13, 2020), [https://californiahealthline.org/](https://californiahealthline.org/morning-briefing/friday-march-13-2020/)
21 [morning-briefing/friday-march-13-2020/](https://californiahealthline.org/morning-briefing/friday-march-13-2020/) (last accessed Apr. 28, 2020).
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23 57. On March 13, 2020, the President of the United States declared a national
24 emergency.

25 58. Yet, throughout this entire period from December 2019 through March 13, 2020,
26 Plaintiff did not suffer an interruption or cessation of its thriving business.

27 **C. California takes governmental action forcing Plaintiff’s business to shutter.**

28 59. It was when California’s state and local governments entered civil authority orders
beginning in March 2020 that Plaintiff was forced to close or curtail its business operations.

1 60. As early as March 4, 2020, the Governor of the State of California, Gavin Newsom,
2 entered an order declaring “a State of Emergency to exist in California as a result of the threat of
3 COVID-19.” See State of California Executive Order N-25-20 (Mar. 4, 2020) available at
4 <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.12.20-EO-N-25-20-COVID-19.pdf> (last
5 accessed June 1, 2020).

6 61. By March 11, 2020, the World Health Organization officially recognized the spread of
7 COVID-19 as a pandemic.¹

8 62. By March 12, 2020, the Governor began ordering compliance with state and local
9 social distancing measures. *Id.* The Governor further empowered the California Health and Human
10 Services Agency and the Office of Emergency Services to identify and make available hotels “suitable
11 for use as places of temporary residence or medical facilities as necessary for quarantining, isolating,
12 or treating individuals who test positive for COVID-19.” *Id.*

13 63. On March 15, 2020, the Governor issued guidelines calling for “profoundly significant
14 steps” to limit the spread of COVID-19. These guidelines required the self-isolation of all residents 65
15 years of age or older and the closure of all “[b]ars, nightclubs, wineries, brew pubs and the like.”
16 @CAGovernor, TWITTER (Mar. 15, 2020, 1:45 PM) [https://twitter.com/CAGovernor/
17 status/1239291671939919872](https://twitter.com/CAGovernor/status/1239291671939919872).

18 64. The next day, on March 16, 2020, the Governor announced new directives to gyms,
19 health clubs, and movie theaters to close down. See California COVID Update, FACEBOOK,
20 https://www.facebook.com/watch/live/?v=560533608146352&ref=watch_permalink (last accessed
21 June 3, 2020); see also Perper, Rosie, California Asks All Dine-In Restaurants, Gyms, and Movie
22 Theaters to Close to Curb the Coronavirus’ Spread, BUSINESS INSIDER (Mar. 16, 2020, 9:47PM),
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28 ¹ See World Health Organization, *WHO Director-General’s opening remarks at the media briefing on COVID-19 - 11 March 2020* (Mar. 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

1 [https://www.businessinsider.com/california-closes-restaurants-gyms-encourages-ban-on-social-](https://www.businessinsider.com/california-closes-restaurants-gyms-encourages-ban-on-social-gatherings-2020-3)
2 [gatherings-2020-3](https://www.businessinsider.com/california-closes-restaurants-gyms-encourages-ban-on-social-gatherings-2020-3) (last accessed Apr. 29, 2020). That same day, the California Department of Public
3 Health issued guidance reflecting Governor Newsom’s remarks. See Sonia Y. Angell, MD, MPH,
4 Coronavirus Disease 2019 (COVID-19) and Retail Food, Beverage, and Other Related Service Venues
5 (Mar. 16, 2020), [https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/RetailFoodBeverageandOtherRelatedServiceVenues.aspx)
6 [19/RetailFoodBeverageandOtherRelatedServiceVenues.aspx](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/RetailFoodBeverageandOtherRelatedServiceVenues.aspx).

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8 65. On March 19, 2020, less than two months after the first confirmed case of COVID-19
9 appeared in California, the Governor took the dramatic step of ordering “all individuals living in the
10 State of California to stay at home or at their place of residence” subject to narrow enumerated
11 exceptions. The Governor also required that “[w]hen people need to leave their homes or places of
12 residence, whether to obtain or perform the [enumerated] functions . . . , or to otherwise facilitate
13 authorized necessary activities, they should at all times practice social distancing.” By its own terms,
14 this shelter order was necessary “[t]o preserve the public health and safety, and to ensure the healthcare
15 delivery system is capable of serving all,” as well as to “bend the curve, and disrupt the spread of the
16 virus.” The order was made enforceable pursuant to California law, and violation of the order carried
17 the threat of misdemeanor punishable by a fine, imprisonment, or both. See State of California
18 Executive Order N-33-20.
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20 66. Governor Newsom’s March 19, 2020 order further directed the California Department
21 of Public Health to issue statewide public health directives regarding permissible essential activities.
22 *Id.* The California of Department Health complied and identified 16 critical infrastructure sectors,
23 ordering Californians working in those 16 sectors “to continue their work because of the importance of
24 these sectors to Californians’ health and well-being.” *Id.* Spas and salons were not included in these
25 sectors.
26

27 67. Municipal and local governments across California have entered their own orders
28 mandating that residents shelter in place and that businesses limit or cease operations. Often these

1 municipal orders extend much further than the statewide orders, mandating more stringent restrictions
2 on the movement of people and the use or access of goods, services, and facilities.

3 68. On March 4, 2020, the Mayor of the City of Los Angeles (“Los Angeles”), Eric
4 Garcetti, entered an order declaring the existence of a local emergency in light of the COVID-19
5 crisis. *See* Los Angeles Order dated March 4, 2020.

6 69. On March 12, 2020, Los Angeles entered an order postponing or cancelling, among
7 other things, all nonessential public community events or group activities that require close contact
8 among fifty or more participants, and all like events requiring close contact of any vulnerable
9 persons. *See* Los Angeles Order dated March 12, 2020.

10 70. On March 15, 2020, following the Governor’s lead, Los Angeles entered an order
11 “to slow the pace of community spread and avoid unnecessary strain on our medical system.” The
12 order mandated the following:

13
14 All restaurants and retail food facilities in the City of Los Angeles
15 shall be prohibited from serving food for consumption on premises.
16 Restaurants and retail food facilities may continue to operate for
17 purposes of preparing and offering food to customers via delivery
18 service, to be picked up or for drive-thru. For those establishments
19 offering food pick-up options, proprietors are directed to establish
20 social distancing practices for those patrons in the queue for pick-up.

21 The order further mandated the closure of all bars and nightclubs that do not serve food, and
22 the closure of all theaters, live performance venues, bowling alleys, arcades, and gyms and fitness
23 centers. The order was made enforceable by misdemeanor prosecution under Los Angeles
24 Administrative Code Section 8.77 by fine, imprisonment, or both. *See* Los Angeles Order dated
25 March 15, 2020.

26 71. Los Angeles followed on March 19, 2020 with the “Safer at Home” order imposing
27 sweeping restrictions on a wide variety of business and personal activities. The Safer at Home order
28 was issued “because, among other reasons, the COVID-19 virus can spread easily from person to

1 person and it is physically causing property loss or damage due to its tendency to attach to surfaces
2 for prolonged periods of time.” See Los Angeles Order dated March 19, 2020.

3 72. The Safer at Home order required all persons living in Los Angeles to remain in
4 their homes; all businesses in Los Angeles to cease operations requiring in-person attendance by
5 workers at a workplace; all public and private gatherings of any number of people outside any
6 residence to cease occurring; and the suspension of all travel. These restrictions were made subject
7 to enumerated exceptions for certain defined “essential” activities. Failure to comply with the order
8 constituted a misdemeanor subject to fines and imprisonment, and the Los Angeles Police
9 Department and the City Attorney were urged “to vigorously enforce” the order. Noncompliant
10 businesses were subject to having their water and power shut off by municipal authorities. *Id.*

11
12 73. The Safer at Home order also imposed additional social distancing protocols on a
13 wide variety of businesses and other facilities. These protocols required, among other things:

- 14 a. limiting the number of people who may enter into a facility at any one time to ensure
15 that people in the facility can easily maintain, at all times, a minimum six-foot
16 distance from others;
- 17 b. designating where lines may form at a facility, marking six-foot increments at a
18 minimum, establishing where individuals should stand to maintain adequate social
19 distancing;
- 20 c. providing hand sanitizer, soap and water, or effective disinfectant at or near the
21 entrance of the facility and in other appropriate areas for use by the public and
22 employees;²
- 23 d. posting a sign in a conspicuous place at all public entries that instructs members of
24 the public to not enter if they are experiencing symptoms of respiratory illness,
25 including fever or cough, and to maintain social distancing from one another;
- 26 e. disinfecting regularly high-touch surfaces, including, without limitation all payment
27 portals, pens, and styluses after each use. Businesses engaged in essential activities
28 and essential infrastructure were encouraged to offer touch-less payment
mechanisms, if feasible;

² Pursuant to guidance issued by the Los Angeles County Department of Public Health, the sanitizer provided must be comprised of at least 60% alcohol. See COUNTY OF LOS ANGELES PUBLIC HEALTH, <http://www.publichealth.lacounty.gov/media/Coronavirus/docs/food/GuidanceFoodFacilities.pdf> (last accessed May 1, 2020).

1 f. adhering to communicable disease control recommendations provided by the Los
2 Angeles County Department of Public Health, including guidance for cleaning and
3 disinfecting the site.

4 The Safer at Home order further encouraged the installation of plexiglass inside all retail
5 businesses to separate cashiers and customers at points of sale. *Id.*

6 74. The Safer at Home order further closed all “park facilities” to the public, including
7 the Venice Boardwalk (except as necessary to travel to an essential business).

8 75. The Los Angeles County Department of Public Health also issued “Guidance for
9 Food Facilities” prohibiting product sampling. *See* COUNTY OF LOS ANGELES PUBLIC HEALTH,
10 [http://www.publichealth.lacounty.gov /media/Coronavirus/docs/food/GuidanceFoodFacilities.pdf](http://www.publichealth.lacounty.gov/media/Coronavirus/docs/food/GuidanceFoodFacilities.pdf)
11 (last accessed May 3, 2020).

12 76. Since March of 2020, there have been numerous governmental orders impacting
13 Plaintiff’s business to varying degrees. Each of these successive orders has restricted the manner in
14 which Plaintiff has been permitted to operate its business and use its property.

15 77. Plaintiff has sustained, and continues to sustain, losses as a result of following state,
16 county, and city orders as well as industry standards set by regulatory agencies and city/local
17 municipalities.
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19 **D. Defendant denies Plaintiff’s insurance claim.**

20 78. In light of the foregoing civil authority orders, circumstances well outside of
21 Plaintiff’s control, it had to cease and/or limit its business operations. Plaintiff submitted a claim for
22 related business losses and extra expenses
23

24 79. Plaintiff understood that it was entitled to coverage based on the description of
25 coverage provided by the Farmer’s agent and because of the nature of the exclusions from payment
26 for losses that inherently do not involve alteration of the physical property in the way Defendant
27 construes the term.
28

1 80. Defendant denied Plaintiff's claim.

2 81. In reaching its denial decision, Defendant conducted no investigation into the
3 representations that were made to Plaintiff regarding coverage. Defendant made no attempt to
4 communicate with Plaintiff from the time that Plaintiff filed its claim and the time Defendant
5 informed Plaintiff a denial was forthcoming, did not ask for any additional information, and did not
6 view in any way the covered premises.

7 82. Plaintiff followed the requirements and guidance of all governmental orders
8 described herein, resulting in the curtailment or complete closure of its business operations.

9 83. The responsive measures taken to comply with the governmental orders included:
10 (1) complete closure of the business on three different occasions; (2) installing plexiglass; (3)
11 installing barriers to ensure social distancing; (4) applying corrosive chemicals to all surfaces; (5)
12 installing UV lights to kill germs; (6) installing air purifiers throughout the premises; and (7)
13 adding hand sanitizing stations throughout the premises.

14 84. Additionally, Plaintiff was prohibited from offering several of its business's standard
15 services. For instance, the saunas and customer relaxation remain closed and the business is no
16 longer able to offer more than one treatment to a single customer during one visit.

17 85. The denial is wrong. The governmental action affecting Plaintiff's property—
18 executive orders that directly or indirectly limit direct physical access to or use of Plaintiff's real
19 property and business equipment—has caused a loss of income and an increase in expense. This
20 risk—governmental action that does not destroy or seize property—is nowhere limited or excluded
21 in the Policy.

22 **E. Improper application of the virus exclusion.**

23 86. In denying coverage, Defendant cited the virus exclusion in the policy as a secondary
24 basis for its denial.

25 87. The virus exclusion precludes coverage for losses resulting from the physical presence
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1 of a virus/bacteria on the insured premises. Even if this were not the case, Defendant did not inspect
2 the covered premises—and therefore has no support one way or the other about the presence of COVI-
3 19—before improperly applying the virus exclusion to deny Plaintiff’s claim.

4 88. Plaintiff’s claim is based on the loss of its ability to use, access, and maintain its
5 business property due to governmental orders, not because there was a virus on the property.

6 89. Defendant’s application of the virus exclusion to deny coverage is wrong.

7 **FIRST CAUSE OF ACTION**

8 **Declaratory Relief**

9 90. Plaintiff re-alleges and incorporates by reference into this cause of action each and
10 every allegation set forth in each and every paragraph of this Complaint.

11 91. Plaintiff brings this cause of action for itself and the Class under California Rule of Civil
12 Procedure Section 1060 *et seq.*, seeking a declaration that, for those who maintain an insurance policy
13 with Defendant, it violates California state law and the insurance contracts for Defendant to ignore the
14 narrow nature of the governmental-action exclusion and to adopt a narrow interpretation of what must
15 cause a suspension of business. The Policy requires that a “suspension” be caused by “direct physical
16 loss of or damage to property at the described premises.”

17 92. Defendant’s interpretation that the requirement of “physical loss” is not satisfied by
18 losing physical access or use and quiet enjoyment of Plaintiff’s property is wrong. The undefined phrase
19 “direct physical loss” is reasonably construed to mean the direct loss of the ability to physically access
20 or use property. Losing the ability to access or use one’s property is a loss of physical, material rights
21 and advantages, substantial and important. Considering that: (1) Farmers markets its product as covering
22 all suspensions of business due to circumstances outside of the insured’s control, (2) the policy excludes
23 payment for losses that inherently do not involve alteration of the physical property, (3) ambiguous
24 language drafted by the insurer should ordinarily be construed against the drafter, and (4) that Plaintiff’s
25 interpretation is supported by dictionary definitions of the terms, coverage should be afforded.
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1 93. Under the Business Income coverage, Defendant must “pay for the actual loss of
2 Business Income you sustain due to the necessary suspension of your ‘operations’ during the ‘period of
3 restoration.’”

4 94. Under the Extra Expense coverage, Defendant must pay the “necessary Extra Expense
5 you incur during the ‘period of restoration’ that you would not have incurred if there had been no direct
6 physical loss or damage to property at the described premises.”

7 95. The Policy does not define the term “suspension.” According to the Randomhouse
8 Unabridged Dictionary, the term means “temporary abrogation or withholding, as of a law, privilege,
9 decision, belief, etc.” See *Suspension*, RANDOMHOUSE UNABRIDGED DICTIONARY, available
10 at <https://www.dictionary.com/browse/suspension> (last accessed May 25, 2020).

11 96. Under the Policy, “‘Operations’ means your business activities occurring at the described
12 premises.”

13 97. Under the Policy, “‘Period of restoration’ for Business Income coverage means the period
14 of time that begins 72 hours after the time of direct physical loss, and for Extra Expense coverage means
15 the period of time that begins at the time of direct physical loss.
16

17 98. Additionally, under Business Income and Extra Expense coverage, the loss or damage
18 must be caused by “direct physical loss.”
19

20 **A. Loss of access or use constitutes direct physical loss.**

21 99. The Policy does not define the phrase “direct physical loss.”

22 100. There is no indication in the Policy that this term requires a physical alteration and the
23 representations made by Farmers agents and in marketing materials create a reasonable expectation of
24 broad coverage that would help an insured cover operating expenses while its business is closed or
25 after a loss.
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27 101. Common usage of the words in the phrase “direct physical loss” dictates that ouster and
28 prohibition/interdiction of access and use by insureds and others (agents, tenants, customers, etc.) are

1 physical losses. Such losses are direct in that ouster of and prohibition/interdiction of access and use by
2 all nonessential people results directly in a physical loss.

3 102. Physical means relating to “material things” that are “perceptible especially through the
4 senses.” See Physical, MERRIAM-WEBSTER (2020), [https://www.merriam-webster.com/
5 dictionary/physical](https://www.merriam-webster.com/dictionary/physical) (last accessed May. 24, 2020). It is also defined in a way that is tied to the body:
6 “of or relating to the body.” Id. Another Merriam-Webster Dictionary refines the concept of material
7 this way: “of or relating to natural or material things as opposed to things mental, moral, spiritual, or
8 imaginary.” See *Physical*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY, (Unabr.
9 2020) Web. 24 Apr. 2020.

10 103. Additionally, the Policy excludes payment for losses caused by nuclear radiation,
11 governmental seizure of property, and the failure of power or other utility services. By stating that
12 no payment will be made for these types of losses or harms indicates that, but for the exclusion,
13 they would be losses that would otherwise be paid. Yet, none of these examples would constitute a
14 physical alteration in the sense Defendant interprets it to deny Plaintiff benefits. This language
15 supports that position that the term “direct physical loss of property at the described premises” is
16 not limited to physical alterations.

17 104. Prohibiting the physical presence on the premises of all persons (except for those
18 facilitating minimal maintenance) and the prohibition of the physical use of equipment, fixtures and
19 furniture constitutes a physical loss that caused the suspension of business operations.

20 **B. Governmental action resulted in Plaintiff’s loss of use or access to the premises
21 and business personal property, a non-excluded direct physical loss.**

22 105. Coverage under the “all risks” Policy is provided for any risk of direct physical loss
23 unless expressly limited or excluded.

24 106. One risk addressed in the Paragraph B exclusions is governmental action. See Form BP
25 00 02 01 97, Paragraph B.1.c.
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1 107. By recognizing governmental action in the Paragraph B exclusions, the Policy confirms
2 governmental action as a risk of direct physical loss and a Covered Cause of Loss.

3 108. The Policy excludes some but not all governmental action from coverage. The Policy
4 excludes coverage for governmental orders requiring seizure and destruction only. Specifically, this
5 provision excludes any loss or damage caused directly or indirectly by governmental action that consists
6 of seizure or destruction of property by order of governmental authority unless the destruction was done
7 to prevent the spread of a fire. As ordinarily used, "seizure" means "taking possession of person or
8 property by legal process." The provision excludes no other governmental action from coverage (i.e.,
9 governmental orders not seeking seizure or destruction).

10 109. The governmental orders affecting Plaintiff's property do not require seizure or
11 destruction because the government did not destroy the property of Plaintiff or take physical possession
12 of, or title to, such property. Instead, the orders limit access to and use of covered property at the premises
13 described in the Policy declarations.

14 110. The Policy does not exclude the governmental action described herein.

15 111. The business-income losses, extra expenses, and other losses sustained by Plaintiff were
16 caused by or resulted from the aforementioned governmental orders, a Covered Cause of Loss.

17 112. The policy further requires that the business-income losses be incurred because of the
18 necessary suspension of operations during the period of restoration. Plaintiff suffered losses because of
19 suspension of operations during the period of restoration.

20 113. The direct loss of physical access to and use of the premises listed in the Declarations,
21 and business property thereon, for tenants and their vendors, agents, employees, and customers caused
22 the suspension of the operations by the Plaintiff.

23 114. Because the Policy covers all risks, including governmental action that, for the good of
24 the public, does no more than limit physical access to and use of property (real and personal), coverage
25 is required.

1 115. The governmental action affecting Plaintiff’s property—executive orders that directly or
2 indirectly limit direct physical access to Plaintiff’s real and personal property—has caused a loss of
3 income and an increase in expense, exactly the “outside force” that interrupts business and causes
4 insureds to close their doors for a period of time, that requires that capital continue to flow to keep the
5 business afloat and to help replace lost income and pay expenses such as salaries and mortgages. This
6 governmental action is precisely the unexpected jolt that motivates the purchase of insurance.

7
8 **C. No other exclusions apply to preclude coverage.**

9 116. No other applicable exclusions or limitations apply to preclude coverage for the direct
10 physical losses caused by or resulting from the governmental action described herein. *See* Paragraph B,
11 Form BP00090197.

12 117. The existing virus exclusion is inapplicable because Plaintiff’s losses were caused by
13 governmental action, not the physical presence of the virus on the covered premises. The exclusion only
14 applies to viruses/bacteria physically present on the insured premises.

15 118. Defendant conducted no investigation and has no evidence to satisfy its burden of
16 showing the physical presence of a virus on the insured properties, which is required when asserting an
17 exclusion. Defendant denied the claim without investigating the property.

18 119. Coverage begins at the time of governmental action. Plaintiff’s property was subject to
19 governmental orders in California that did not seek to seize or destroy the property. The governmental
20 orders do not constitute governmental seizures because at no point did any governmental entity in
21 California take physical possession of the property or legal title to the property. The orders properly
22 exercised the police powers of their respective state and local governments to protect public health,
23 affecting Plaintiff’s property, which caused a loss of the ability to physically access and use the insured
24 property.

25 120. Under each successive order, Plaintiff’s property was limited to the minimum necessary
26 operations or required closure. The governmental action also prohibited, via stay-at-home orders or
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1 travel restrictions, all nonessential movement by all residents. These governmental orders resulted in
2 losing physical access to and physical use and enjoyment of Plaintiff's property by its owners, customers,
3 vendors, employees, and others.

4 121. Nor does the provision entitled "Consequential Losses" that excludes "Delay, loss of use
5 or loss of market" preclude coverage.

6 122. Consequential damages are special or indirect damages. Put differently, consequential
7 damages are "[l]osses that do not flow directly and immediately from an injurious act but that result
8 indirectly from the act. — Also termed *indirect damages*." See *Consequential Damages*, Black's Law
9 Dictionary (11th ed. 2019) (emphasis in original).

10 123. The exclusion for "loss of use" therefore applies only if that "loss of use" is itself
11 consequential. That is not the case here. The insured-against peril—governmental action—resulted
12 directly and immediately in Plaintiff's physical loss of access or use.

13 124. Limiting the "loss of use" exclusion to consequential losses also renders sensible an
14 exclusion that otherwise swallows the entire Policy

15 **D. Declaratory relief.**

16 125. Plaintiff seeks a declaration of rights under Defendant's Policy language and a
17 declaration of the rights and liabilities of the parties herein.

18 126. This Court has the power to declare the rights of the Defendant's policyholders whether
19 or not the policyholders have made claims related to losses relating to COVID-19.

20 127. Plaintiff seeks a Declaratory Judgment finding that the Policy covers Business Income
21 and Extra Expense during the period of restoration caused by or resulting from governmental action
22 that forced Plaintiff to suspend operations, subject to no limitations or exclusions under the Policy.

23 **SECOND CAUSE OF ACTION**

24 **Breach of Contract**

25 128. Plaintiff re-alleges and incorporates by reference into this cause of action each and
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1 every allegation set forth in each and every paragraph of this Complaint.

2 129. Plaintiff has a valid contract of insurance with Defendant, whereby Plaintiff agreed to
3 make and did make premium payments to Defendant in exchange for Defendant's promise to indemnify
4 the policyholders for losses including, but not limited to, Business Income and Extra Expense.

5 130. Plaintiff is current on all premiums required under the Policy and the Policy is in full
6 effect.

7 131. The Policy requires payment of losses incurred caused by or resulting from the forced
8 suspension of operations mandated by government orders issued in California, including but not limited
9 to Business Income and Extra Expense. Coverage for these losses is in no way limited or excluded under
10 the Policy terms.

11 132. Plaintiff reasonably expected that the "all risks" policy afforded it coverage for all
12 closures of or curtailments to its business for reasons outside of its control.

13 133. Despite the Policy affording coverage, Defendant denies the Policy affords coverage and
14 denied coverage to Plaintiff.

15 134. In addition, Defendant has uniformly taken the position, without seeking independent
16 coverage advice or investigating representations made to its insureds, that the Policy's language does
17 not afford coverage where governmental action limited or prohibited certain use, access, and deployment
18 of insureds' property and that such claim would, as a business practice, be denied. Defendant's entire
19 decision was rendered based on its reading of the contract language, and not by any specifics relating to
20 each insured (as no investigation occurred here). By making its decision known, Defendant has
21 anticipatorily breached the contracts.

22 135. Defendant's failures to affirm coverage and pay benefits breach the contract and
23 represent a systematic failure to pay the benefits required by the contract.

24 136. As a result of Defendant's breach of contract, Plaintiff has suffered and will continue to
25 suffer monetary losses, and without prompt relief will be forced to shutter indefinitely.

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PRAYER FOR RELIEF


Wherefore, Plaintiff prays for the following judgment:

1. Declaratory relief as described herein;
2. An Order finding Defendant to have breached the Policy contract;
3. Compensatory damages;
4. An award of attorney’s fees and costs, as provided by law and/or as would be reasonable from any recovery of monies recovered for or benefits bestowed upon the Class;
5. Pre- and post-judgment interest at the highest rate allowed by law; and
6. For such other and further relief as the Court may deem just and proper.

Dated: February 7, 2022

THE WALLACE FIRM, PC

By:


BRADLEY S. WALLACE, ESQ.,
THOMAS R. BURNS, ESQ.
Attorney for Plaintiffs
RA ORGANIC SPA