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JUN 07 2021

SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF HUMBOLDT

CV2100805

The Yurok Tribe and Yurok Economic
Development Corporation;

Plaintiffs,

v.

Lexington Insurance Company;
Underwriters at Lloyd's - Syndicates:
ASC1414, XLC 2003, TAL 1183, MSP
318, ATL1861, KLN 510, AGR 3268,
CNP 4444, Aspen Specialty Insurance
Company QBE 1886, APL 1969, CHN
2015, BRT 2987;
Homeland Insurance Company of NY (One
Beacon);

COMPLAINT

1. BREACH OF CONTRACT,
2. BREACH OF COVENANT OF GOOD
FAITH AND FAIR DEALING,
3. UNFAIR BUSINESS PRACTICES,
4. DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

Hallmark Specialty Insurance Company;
Endurance Worldwide Insurance Ltd t/as
Sompco International;
Arch Specialty Insurance Company;
Evanston Insurance Company;
Allied World National Assurance
Company;
RSUI - Landmark American Insurance
Company;
XL Insurance America, Inc.;

Defendants.

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1 Plaintiffs the Yurok Tribe and Yurok Economic Development Corporation file this
2 Complaint against Lexington Insurance Company and related carriers (listed in Paragraph 10)
3 (collectively "Defendants") and allege as follows:

4 **I. INTRODUCTION**

5 1. Plaintiffs operate several businesses, including but not limited to a hotel, casino,
6 and gas stations. Beginning in March of 2020, nearly all of the Plaintiffs' businesses were forced
7 to shut down because of the COVID-19 pandemic. These closures were a response to the
8 Coronavirus and necessary to protect the Yurok Tribe and its members. Furthermore, the closures
9 were ordered by state and local governments who required the Plaintiffs' businesses, their
10 workers, and their customers to "shelter in place" and abide by strict "social distancing"
11 guidelines. The Yurok Tribe issued corresponding orders in order to ensure the safety of its
12 members. The closures of most of the Plaintiffs' businesses and reduction of business at the
13 others resulted in millions of dollars of losses.

14 2. To protect their business (and employees) from having to make difficult choices in
15 situations like this one, the Plaintiffs had previously purchased insurance from Defendants that
16 included coverage for business interruption. The Plaintiffs' policies expressly provided coverage
17 for "Lost Business Income" and the consequences of actions by "Civil Authority." Accordingly,
18 the Plaintiffs understandably believed that their policies would help protect their businesses in the
19 unlikely event that the government ever ordered them to stop or severely restrict operations in
20 connection with a pandemic or any other covered peril.

21 3. Notwithstanding, and contrary to, the coverage provisions in their policies with
22 Defendants, and the obligations Defendants undertook in exchange for the Plaintiffs' insurance
23 premium payments, when Plaintiffs submitted claims with Defendants for coverage, Defendants
24 summarily denied its claims. These denials were part of a premeditated strategy by Defendants to
25 deny all claims related to COVID-19. They were untethered from the facts of the claims and the
26 specific coverage provided by the Plaintiffs' policies, and were therefore illegal.

1 **II. PARTIES**

2 **A. Plaintiffs**

3 4. Plaintiff the Yurok Tribe is a federally-recognized sovereign Indian tribe that
4 maintains a government-to-government relationship with the United States, and whose governing
5 body is recognized by the Secretary of the Interior. *See* Indian Entities Recognized by and
6 Eligible to Receive Services From the United States Bureau of Indian Affairs, 85 Fed. Reg. 5462,
7 5464 (Jan. 30, 2020).

8 5. The Yurok Tribe's principal address is 190 Klamath Boulevard, P.O. Box 1027,
9 Klamath, CA 95548.

10 6. The Yurok Tribe is the largest federally-recognized tribe within California's
11 borders, with a 56,000-acre reservation located on the lower Klamath River, surrounded by
12 Humboldt and Del Norte Counties in Northern California. The Yurok Tribe has approximately
13 6,242 members. Tribal members live throughout Humboldt and Del Norte counties and beyond,
14 although the Yurok Reservation is largely represented by two zip codes: 95548 and 95546.

15 7. Plaintiff Yurok Tribe does business as Redwood Hotel Casino, which is located at
16 171 Klamath Blvd, Klamath, CA 95548. The Redwood Hotel Casino includes the restaurant
17 Abalone Bar & Grill and an event catering service.

18 8. Plaintiff Yurok Economic Development Corporation ("YEDC") is a corporation
19 organized under the Yurok Business Corporation Code. YEDC is headquartered in Klamath,
20 California. YEDC's physical address is 144 Klamath Boulevard, Klamath, CA 95548, and its
21 mailing address is PO Box 1043, Klamath, CA 95548. YEDC operates businesses including
22 several RV parks, a jet boat rental, a canoe tour business, a hotel, a visitor center, and three gas
23 stations.

24 **B. Defendants**

25 9. Lexington Insurance Company is a Delaware Corporation with its principal place
26 of business in Boston, Massachusetts. Lexington Insurance Company is the insurer on Plaintiffs'
27 insurance policies described in this Complaint. Lexington is a wholly owned subsidiary of
28 American International Group, Inc. ("AIG").

1 10. The following Defendants are carriers for the insurance policies at issue in this
2 Complaint:

3 a. Underwriters at Lloyd's - Syndicates: ASC1414, XLC 2003, TAL 1183,
4 MSP 318, ATL1861, KLN 510, AGR 3268, CNP 4444, Aspen Specialty Insurance Company,
5 QBE 1886, APL 1969, CHN 2015, BRT 2987

6 b. Homeland Insurance Company of NY (One Beacon)

7 c. Hallmark Specialty Insurance Company

8 d. Endurance Worldwide Insurance LTD t/as Sompo International

9 e. Arch Specialty Insurance Company

10 f. Evanston Insurance Company

11 g. Allied World National Assurance Company

12 h. RSUI - Landmark American Insurance Company

13 i. XL Insurance America, Inc.

14 11. Underwriters at Lloyd's - Syndicates ASC1414, XLC 2003, TAL 1183, MSP 318,
15 ATL1861, KLN 510, and AGR 3268 are underwriters composed of separate syndicates, in turn
16 comprised of entities known as "Names," which underwrite insurance in a market known as
17 Lloyd's of London. The "Names" and syndicates are organized under the laws of the United
18 Kingdom and are located in and have their principal place of business in England.

19 12. Underwriters at Lloyd's - Syndicate: CNP 4444 is an underwriting syndicate
20 comprised of "Names," which underwrites insurance in the Lloyd's of London market. The
21 "Names" and syndicate are organized under the laws of the United Kingdom and are located in
22 and have their principal place of business in England.

23 13. Underwriters at Lloyd's - Aspen Specialty Insurance Company is an underwriting
24 syndicate formed by Aspen Specialty Insurance Company, which underwrites insurance in the
25 Lloyd's of London market. The syndicate is organized under the laws of the United Kingdom and
26 is located in and has its principal place of business in England.

1 14. Underwriters at Lloyd's - Syndicates: QBE 1886, APL 1969, and CHN 2015 are
2 underwriting syndicates comprised of "Names," which underwrite insurance in the Lloyd's of
3 London market. The "Names" and syndicates are organized under the laws of the United
4 Kingdom and are located in and have their principal place of business in England.

5 15. Underwriters at Lloyd's – Syndicate: BRT 2987 is an underwriting syndicate
6 comprised of "Names," which underwrites insurance in the Lloyd's of London market. The
7 "Names" and syndicate are organized under the laws of the United Kingdom and are located in
8 and have their principal place of business in England.

9 16. Homeland Insurance Company of New York is an insurance company organized
10 under the laws of the State of New York, with its principal place of business in Plymouth,
11 Minnesota. Homeland is an underwriting company of OneBeacon Insurance Group, Ltd., which is
12 a subsidiary of Intact Financial Corporation.

13 17. Hallmark Specialty Insurance Company is an insurance company organized under
14 the laws of the State of Oklahoma, with its principal place of business in Dallas, Texas.

15 18. Endurance Worldwide Insurance Ltd t/as Sompo International is an insurance
16 company incorporated in England, with its principal place of business in London, England.

17 19. Arch Specialty Insurance Company is an insurance company organized under the
18 laws of the State of Missouri, with its principal place of business in Jersey City, New Jersey.

19 20. Evanston Insurance Company is an insurance company organized under the laws
20 of the State of Illinois, with its principal place of business in Rosemont, Illinois.

21 21. Allied World National Assurance Company is an insurance company organized
22 under the laws of the State of New Hampshire, with its principal place of business in New York,
23 New York.

24 22. RSUI Landmark American Insurance Company is an insurance company
25 organized under the laws of the State of New Hampshire, with its principal place of business in
26 Atlanta, Georgia.

1 23. XL Insurance America, Inc. is an insurance company with its principal place of
2 business in Stamford, CT, and is a member of AXA XL, which is a part of the AXA SA group of
3 companies.

4 24. At all times relevant to this action, each Defendant conducted and transacted
5 business through the selling and issuing of insurance policies within California, including, but not
6 limited to, selling and issuing property coverage to Plaintiffs.

7 **III. JURISDICTION AND VENUE**

8 25. This Court has jurisdiction because the Defendants conduct business in California
9 and intentionally avail themselves of markets within California to conduct business, and because
10 the acts and omissions giving rise to this action occurred in substantial part in California.

11 26. Venue is proper in Humboldt County because the Defendants conduct business in
12 this County and because the acts and omissions giving rise to this action occurred in substantial
13 part in this County.

14 **IV. FACTUAL BACKGROUND**

15 **A. The Rapid Spread of Coronavirus**

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

19 28. According to the World Health Organization (“WHO”): “People can catch
20 COVID-19 from others who have the virus. The disease can spread from person to person
21 through small droplets from the nose or mouth which are spread when a person with COVID-19
22 coughs or exhales. These droplets land on objects and surfaces around the person. Other people
23 then catch COVID-19 by touching these objects or surfaces, then touching their eyes, nose or
24 mouth. People can also catch COVID-19 if they breathe in droplets from a person with COVID-
25 19 who coughs out or exhales droplets.”

26 29. This is problematic, *inter alia*, because a human sneeze can expel droplets of
27 mucus and saliva that travel at nearly a hundred miles an hour and can spread up to 27 feet.
28

1 30. According to a report in the New York Times, “[a]n infected person talking for
2 five minutes in a poorly ventilated space can also produce as many viral droplets as one infectious
3 cough.”¹ The more people in a conversation, the more droplets are dispersed.

4 31. Although these droplets are smaller and less visible than rust, mold, or paint (all of
5 which are dangerous to inhale), they are physical objects which can travel to other objects and
6 cause harm.

7 32. These droplets can spread Coronavirus when they reach humans directly, or when
8 they land on habitable surfaces where they can survive until that surface is touched by a potential
9 human host.

10 33. Droplets containing Coronavirus infect a variety of surfaces and objects for a
11 period of hours, days, or weeks, if not longer. After inspecting a cruise ship inhabited by
12 passengers infected with the Coronavirus, the CDC reported that Coronavirus was detectable on
13 various surfaces inside the cruise ship up to 17 days after passengers had vacated their cabins.

14 34. Recent scientific evidence shows that Coronavirus can survive and remain virulent
15 on stainless steel and plastic for three to six days, on glass and banknotes for three days, and on
16 wood and cloth for 24 hours.

17 35. Testing involving similar viruses in the Coronavirus family shows that
18 Coronavirus can likely survive on ceramics, silicon rubber, or paper for up to five days, if not
19 longer.

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

23 37. Coronavirus has spread throughout California and the United States. As of May 19,
24 2021, there have been over 3.77 million cases in California and over 33 million cases in the
25

26
27 ¹ See Yuliya Pashina-Kottas, et al., “This 3-D Simulation Shows Why Social Distancing Is So
28 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](https://www.nytimes.com/interactive/2020/04/14/science/coronavirus-transmission-cough-6-feet-ar-ul.html) (last visited April 21, 2020).

1 United States. The two counties in which the Yurok Tribe is located, Humboldt and Del Norte,
2 have had approximately 4,166 and 1,410 reported cases, respectively.

3 38. American Indians are disproportionately affected by COVID-19. They are
4 especially vulnerable because they suffer at a high rate from chronic diseases such as diabetes,
5 heart disease, and hypertension.

6 39. "The states collecting data on Native Americans who have died from the
7 coronavirus are reporting stark disparities in health outcomes. They are diagnosed with COVID-
8 19 at nearly twice the rate of white people, hospitalized almost four times as frequently, and die at
9 a rate of two and a half times that of white people. For example, Native Americans account for 16
10 percent of the Arizona's COVID-19 caused deaths, although they represent only 4.6 percent of
11 the state's population, according to the Arizona Department of Public Health. More than one-third
12 of the coronavirus cases in New Mexico involve Native Americans, who make up less than 11
13 percent of the state's population."²

14 40. In California, although approximately 9,000 American Indians have suffered from
15 COVID-19, with 163 deaths, the American Indian community believes those numbers are under-
16 counted due to racial misclassification by health care workers and others. For example, a 2016
17 CDC report found that nationally, American Indians were misclassified up to 40% of the time on
18 their death certificates.

19 41. The Yurok Tribe is particularly vulnerable to COVID-19 because approximately
20 60% of Yurok citizens living on the reservation are either elderly or living with health conditions
21 such as high blood pressure and diabetes. Additionally, the Plaintiffs' businesses are popular with
22 tourists, and therefore pose significant risk of spreading COVID-19.

23
24
25
26 ² "Yurok Tribe Castigates Del Norte Supervisor for Supporting Restaurants Opening in Violation
27 of Tribal, State, and County Health Orders," North Coast Journal (May 4, 2020)
28 <https://www.northcoastjournal.com/NewsBlog/archives/2020/05/04/yurok-tribe-castigates-del-norte-supervisor-for-supporting-restaurants-opening-in-violation-of-tribal-state-and-county-health-orders> (citing Indianz.com).

1 **B. Governments Order Everyone to Shelter in Place**

2 42. As the virus spread in California, state and local officials began discussing wide
3 scale business closures.

4 43. As described below, damage caused by the presence of COVID-19, including
5 within 10 miles of Plaintiffs' properties, and the resulting threat of further damage to property and
6 to health, prompted the issuance of several civil authority orders. These orders in turn prohibited
7 patrons' access to Plaintiffs' property and caused Plaintiffs to incur further loss.

8 44. On March 13, 2020, President Trump declared the COVID-19 outbreak a national
9 emergency.
10

11 45. On March 16, 2020, the Centers for Disease Control and Prevention, and members
12 of the national Coronavirus Task Force issued guidance to the American public, styled as "30
13 Days to Slow the Spread", concerning measures to slow the spread of COVID-19. This guidance
14 advocated for far-reaching social distancing measures, such as working from home, avoiding
15 shopping trips and gatherings of more than 10 people, and staying away from bars, restaurants,
16 and food courts.
17

18 46. Following this advice, and recognizing that there had been numerous confirmed
19 cases of COVID-19 in their jurisdictions, many state government administrations across the
20 nation recognized the need to take steps to protect their residents from the spread of COVID-19.
21 As a result, many governmental administrations entered civil authority orders suspending or
22 severely curtailing business operations of non-essential businesses that interact with the public
23 and provide gathering places for individuals.

24 47. To help create a framework for the implementation of such policies in California,
25 on March 12, 2020, Governor Newsom issued Executive Order N-25-20 ("March 12 Executive
26 Order"), ordering that: "All residents are to heed any orders and guidance of state and local public
27 health officials, including but not limited to the imposition of social distancing measures, to
28

1 control the spread of COVID-19” (§ 1). This Order took effect on March 12, 2020, and has
2 remained continuously in effect through the date of this Complaint.

3 48. On March 19, 2020, the State of California issued an Order of the State Public
4 Health Officer, which set baseline statewide restrictions on non-essential business activities,
5 effective until further notice. On that same date, California Governor Newsom issued Executive
6 Order N-33-20, expressly requiring California residents to follow the March 19th Order of the
7 State Public Health Officer, and incorporating by reference California Government Code 8665.
8 **Exhibit 1.** That order provides that “[a]ny person . . . who refuses or willfully neglects to obey
9 any lawful order . . . issued as provided in this chapter, shall be guilty of a misdemeanor and,
10 upon conviction thereof, shall be punishable by a fine of not to exceed one thousand dollars
11 (\$1,000) or by imprisonment for not to exceed six months or by both such fine and
12 imprisonment” (Cal. Gov. Code § 8665). The March 19th Order of the State Public Health
13 Officer and Executive Order N-33-20 (collectively, the “Statewide Shelter Orders”) took
14 immediate effect on March 19, 2020, and both have remained continuously in effect through the
15 date of this Complaint.

16 49. Local governments throughout California and the country have experienced
17 confirmed infections in their jurisdictions, required large scale business closures, and imposed
18 other limitations on customer and employee movement that prevent businesses from operating
19 and/or force them to suffer losses.

20 50. The Plaintiffs’ businesses are located in Del Norte County and Humboldt County.
21 On March 17, 2020, Del Norte County’s Public Health Officer declared a Local Health
22 Emergency and ordered all citizens and organizations to follow orders and guidance from the
23 State. **Exhibit 2.**

24 51. On March 19, 2020, Humboldt County Department of Health & Human Services
25 issued an order requiring individuals to shelter in place and most businesses to cease all activities.
26 The order required closure of non-essential businesses, including casinos, RV parks, visitor
27 centers, and jet boat rentals, and prohibited dining in restaurants. Humboldt County issued an
28

1 additional order on March 30, 2020 in order to extend those requirements indefinitely.³ Humboldt
2 County issued a supplemental order on June 17, 2020 that required residents to continue "to limit
3 activity outside their home to slow the spread of COVID-19 to the maximum extent possible."⁴
4

5 52. As a federally-recognized sovereign Indian tribe that maintains a government-to-
6 government relationship with the United States, the Yurok Tribe monitors state and local
7 regulations that may impact its members. In addition to compelling the closure of its businesses,
8 the preceding orders from the state of California, Del Norte County, and Humboldt County did
9 have such an effect. To ensure that all elements of these orders were followed, and to avoid
10 unnecessary conflicts over state and local rights to regulate the Yurok Tribe, the Yurok Tribe
11 issued parallel regulations (as it often does) to ensure that the state and local regulations were
12 fully implemented. As Virginia Hedrick of the California Consortium for Urban Indian Health
13 explained "[i]t's important that messages [about social distancing] come from tribal leadership" to
14 ensure that tribal citizens trust the guidance.⁵

15 53. The Yurok Tribal Council declared an emergency on March 13, 2020. Shortly
16 following the initial orders from the State and Humboldt and Del Norte Counties, the Yurok Tribe
17 took further governmental action consistent with the state and county restrictions and
18 recommendations from the Centers for Disease Control and World Health Organization. The
19 Yurok Tribal Council closed the Yurok Reservation to non-essential personnel effective April 4,
20 2020. At the same time, the Tribal Council instituted shelter-in-place and a curfew. The Yurok
21 Tribe COVID-19 Temporary Closure Order prohibited most non-residents from entering the
22 reservation. "Normally, we welcome visitors with open arms as treating guests with hospitality is
23 a traditional Yurok value. Right now, we need to take advantage of every opportunity to protect

24 ³ Available at <https://humboldt.gov/DocumentCenter/View/84938/Shelter-in-Place---Redlined-March-30> (last visited August 26, 2020).

25 ⁴ Available at <https://humboldt.gov/DocumentCenter/View/87253/Supplement-to-Shelter-in-Place---Revised-Effective-June-17-until-Rescinded> (last visited August 26, 2020).

26 ⁵ Laura Klivans, "How One Native American Group is Protecting Its Community from COVID-
27 19", KQED (Apr. 27, 2020) <https://www.kqed.org/science/1963054/how-one-native-american-group-is-protecting-its-community-from-covid-19> (last visited September 3, 2020).
28

1 our most vulnerable citizens." Chairman Joseph L. James said.⁶ The Yurok Tribe assembled an
2 Incident Command team to address the direct and indirect impacts of COVID-19 on the
3 community. In addition, the Yurok Office of Emergency Services developed four targeted task
4 forces to support the Tribe while the shelter-in-place order was in effect. The Yurok Tribe has
5 devoted significant resources to the COVID-19 response, including supplying food to elders and
6 providing payments to citizens experiencing financial difficulty.

7 54. On March 28, 2020, the United States Department of Homeland Security issued a
8 memorandum concerning the "Identification of Essential Critical Infrastructure Workers During
9 Covid-19 Response."⁷ This memorandum provided guidance for the implementation and
10 standardization of all state shelter in place orders and the restrictions they place on different
11 essential and non-essential businesses.

12 55. Collectively, the above-referenced orders of the State of California, Humboldt
13 County, Del Norte County, and the Yurok Tribe are referred to herein as the "Orders."

14 56. The Orders were issued in response to the physical presence of the coronavirus at
15 properties in California, including property within a 10-mile radius of Plaintiffs' properties, and
16 the imminent threat of further physical spread of the virus and resulting danger to individuals.

17 57. The Orders were issued due to direct physical loss of and/or direct physical
18 damage to properties. For example, Humboldt County's March 30, 2020 order asserted that it was
19 "given because of the propensity of the virus to spread person to person and also because the
20 virus is causing property loss and damage."⁸ In each jurisdiction, there were numerous
21 individuals who tested positive for COVID-19, and the number of positive tests continues to
22

23
24 ⁶ "Yurok Tribe Gives Update on its COVID-19 Response; Expands Services to Those Living Off-
25 Reservation in Humboldt and Del Norte," Lost Coast Outpost (Apr. 16, 2020)
26 <https://lostcoastoutpost.com/2020/apr/16/yurok-tribe-gives-update-it-covid-19-repsonse/> (last
visited September 3, 2020).

27 ⁷ [https://www.cisa.gov/sites/default/files/publications/Version_3.0_CISA_Guidance_on_
Essential_Critical_Infrastructure_Workers_1.pdf](https://www.cisa.gov/sites/default/files/publications/Version_3.0_CISA_Guidance_on_Essential_Critical_Infrastructure_Workers_1.pdf)

28 ⁸ Available at [https://humboldt.gov/DocumentCenter/View/84938/Shelter-in-Place---
Redlined-March-30](https://humboldt.gov/DocumentCenter/View/84938/Shelter-in-Place---Redlined-March-30) (last visited August 26, 2020).

1 grow. Further, COVID-19 was and is present in these areas because, for example, it has attached
2 to properties and surfaces on, at, or within properties; and because COVID-19 was and is being
3 transmitted in or between properties throughout these areas, including but not limited to
4 transmission through the air, through ventilation systems, or through contact with contaminated
5 surfaces. The presence of COVID-19 resulted in and continues to result in direct physical loss,
6 including but not limited to Coronavirus attaching itself to surfaces and spreading throughout
7 business property. The Orders were issued by governmental entities due to these types of direct
8 physical loss of, and/or direct physical damage to, properties within their respective jurisdictions.
9

10 58. To the extent the Orders were issued to reduce future infections, reducing property
11 damage is and was part and parcel of that strategy, because the spread of Coronavirus onto
12 surfaces in high-traffic areas is an important vector for disease spread.
13

14 **C. The Plaintiffs' Businesses Close**

15 59. As Coronavirus spread, the areas in which the Plaintiffs' businesses are located
16 became breeding grounds for the disease. At least hundreds of people in each county tested
17 positive for Coronavirus as it was assuredly being transmitted in or between properties throughout
18 the areas near the Plaintiffs' businesses, including but not limited to transmission through the air,
19 shared buildings and facilities, through ventilation systems, or through contact with contaminated
20 surfaces.

21 60. Members of the Yurok Tribe have been exposed to and contracted Coronavirus,
22 and on information and belief, have then entered onto the premises of some of the Plaintiffs'
23 businesses at issue in this Complaint. At least five residents of the Yurok Reservation tested
24 positive for COVID-19 in 2020 on the Yurok tribal lands surrounding the businesses at issue in
25 this Complaint.

26 61. The Coronavirus and its pernicious spread created inherently dangerous conditions
27 where the Plaintiffs' businesses and property within them were at immediate and imminent risk of
28 exposure to the Coronavirus. This rendered most of the Plaintiffs' businesses untenable and

1 forced the Plaintiffs to close them. Those businesses that remained open saw significant
2 reductions in business due to Coronavirus.

3 62. Based on the preceding conditions, and confirmed instances of infections near the
4 businesses by persons who were likely to visit the businesses (or come into contact with persons
5 who visited the businesses) it is likely that customers, employees, vendors, or other persons
6 infected with or carrying Coronavirus particles entered the businesses, or that Coronavirus
7 otherwise infected surfaces, air, or people at the businesses. This caused physical damage to or
8 loss of property.

9 63. For example, in one instance customers brought Coronavirus into one of Plaintiffs'
10 businesses, the Pem May Fuel Mart. The Coronavirus case was confirmed and relevant public
11 health officials were contacted. The premises of the Pem May Fuel Mart, and its employees and
12 other customers, were exposed to Coronavirus particles. The business closed in order to
13 decontaminated its premises and make sure its employees and customers were safe. Under the
14 Orders by recognized civil authorities and the ongoing and worsening pandemic, the Plaintiffs
15 were forced to close most of their businesses to the public, thereby prohibiting access to, use of,
16 and operations at the businesses. Covid-19 was present within 10 miles of the Plaintiffs'
17 businesses.

18 64. Under the Orders, customers were prohibited by social distancing guidelines and
19 shelter in place orders from accessing and utilizing the Plaintiffs' businesses, thereby prohibiting
20 access to, use of, and operations at the businesses.

21 65. Under the Orders, the Plaintiffs' businesses' employees were prohibited from
22 traveling to work and from working in close proximity to each other, thereby prohibiting access
23 to, use of, and operations at the Plaintiffs' businesses. This includes, but is not limited to, social
24 distancing requirements and other safety requirements that are not compatible with professional
25 use of business facilities like kitchens, securities facilities, and storage areas.
26
27
28

1 66. As a result, most of the Plaintiffs' businesses were rendered untenable and
2 suffered and continue to suffer substantial lost business income and other financial losses. Those
3 losses amount to millions of dollars.

4 67. The Plaintiffs' businesses (excluding the gas stations) were forced to close early in
5 the pandemic period following California Executive Order N-33-20. Except for one brief attempt
6 to reopen, most of Plaintiffs' businesses remain closed at the time of this filing. The hotel is now
7 open in a limited capacity,⁹ but the casino, restaurant, RV parks, visitor center, canoe tour
8 business, and jet boat rental remain closed.

9 68. These extraordinary losses of business income (and concern for its employees'
10 welfare) are precisely why the Plaintiffs purchased insurance policies from Defendants that
11 included business interruption coverage, which was meant to cover these losses.

12 **D. The Plaintiffs' Losses Are Covered Losses**

13 69. The Plaintiffs purchased insurance policies from Defendants that included business
14 interruption (and other related) insurance coverage. Business interruption policies promise to
15 indemnify the policyholder for actual business losses incurred when business operations are
16 suspended, interrupted, curtailed, when public access is prohibited because of direct physical loss
17 or damage to the property, or by a civil authority order that restricts or prohibits access to the
18 property.

19 70. Redwood Hotel Casino and YEDC each purchased insurance policies from
20 Defendants through Alliant Underwriting Solutions' Tribal Property Insurance Program.

21 71. Redwood Hotel Casino's policy number is 017471589/06 (Dec 37) 9654 (the
22 "Hotel Casino Policy"). The Hotel Casino Policy is attached as **Exhibit 3**.

23 72. YEDC's policy number is 017471589/06 (Dec 37) 9693 (the "YEDC Policy")
24 (together with the Hotel Casino Policy, "the Policies"). The YEDC Policy is attached as **Exhibit**
25 **4**.

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28 ⁹ The hotel was closed from January 26, 2021 through February 8, 2021, and from March 9, 2021
through March 19, 2021.

1 73. Plaintiffs have promptly and dutifully paid premiums and complied with all other
2 elements of its agreements with Defendants.

3 74. In many countries, property insurance is sold on a specific peril basis. Such
4 policies only cover losses from causes that are expressly covered like an earthquake, fire, or
5 terrorist attack. But most property policies sold in the United States are all-risk property damage
6 policies which cover losses from all causes that are not expressly excluded. Business interruption
7 coverage is standard in most all-risk commercial property insurance policies.

8 75. The Policies are all-risk property damage policies because their terms indicate that
9 they cover all risks which can cause harm to physical property except for risks that are expressly
10 and specifically excluded. Section IV. A. of each policy, titled "Perils Covered," provides,
11 "Subject to the terms, conditions and exclusions stated elsewhere herein, this Policy provides
12 insurance against all risk of direct physical loss or damage occurring during the period of this
13 Policy." **Exhibit 3** at 71;¹⁰ **Exhibit 4** at 69.

14 76. The Policies provide business interruption coverage "[a]gainst loss resulting
15 directly from interruption of business, services or rental value." **Exhibit 3** at 66; **Exhibit 4** at 64.
16 The loss must be "caused by direct physical loss or damage." *Id.* Under the policies, in the event
17 of such business interruption, the Defendants are obligated to pay "for the actual loss sustained by
18 the Named Insured for gross earnings as defined herein and rental value as defined herein
19 resulting from such interruption of business, services, or rental value; less all charges and
20 expenses which do not necessarily continue during the period of restoration." *Id.* The Policies also
21 cover "extra expenses" incurred "in order to continue as nearly as practicable the normal
22 operation of the Named Insured's business." *Id.*

23 77. The presence of the Coronavirus and the Orders prohibited certain physical access
24 to, use of, and operations at and by the Plaintiffs' businesses, their employees, and their
25 customers. This includes, among other things, loss of the ability to offer the physical dining
26 experience of eating at the restaurant, loss of the ability to offer physical access to the casino and
27 visitor center, loss of the ability to offer jet boat rentals, loss of the ability to offer RV park
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¹⁰ All page numbers refer to pages of the PDF document rather than internal pagination.

1 services, and use any of the physical property associated with these activities. As a result of the
2 presence of the Coronavirus and the Orders, physical components of the Plaintiffs' businesses
3 became unusable, damaged, and/or lost the ability to generate income.

4 78. As a result of this physical loss or damage, Plaintiffs' businesses were forced to
5 close, lost business income, and suffered other related covered losses (including but not limited to
6 extended business income and extra expenses). Plaintiffs have suffered a direct physical loss of
7 and damage to their property because Plaintiffs have been unable to use their property for its
8 intended purpose.

9 79. In addition, Plaintiffs have incurred cleaning costs necessary to continue the
10 operation of at least one of their gas stations. Those cleaning costs constitute covered extra
11 expense under the Policies' business interruption coverage because they were necessary to
12 continue business operation after damage caused by the presence of COVID-19.

13 80. The Policies include coverage for interruption by civil authority. "This Policy is
14 extended to include the actual loss sustained by the Named Insured, as covered hereunder during
15 the length of time, not exceeding 30 days, when as a direct result of damage to or destruction of
16 property by a covered peril(s) occurring at a property located within a 10 mile radius of covered
17 property, access to the covered property is specifically prohibited by order of a civil authority."
18 **Exhibit 3** at 67; **Exhibit 4** at 65.

19 81. The presence of COVID-19 resulted in and continues to result in direct physical
20 loss, including but not limited to loss of use of properties, as well as direct physical damage to
21 properties, and this direct physical loss and/or direct physical damage prompted the issuance of
22 the Orders. Underscoring this, prior to the issuance of the Orders, government authorities had
23 been limiting access to other properties on the basis of the Coronavirus, including (but not limited
24 to) sporting arenas, concert venues, and other places where large numbers of people may gather.

25 82. The prohibitions and limitations imposed by the Orders prohibited access to, use
26 of, and operations at and by the Plaintiffs' businesses, their employees, and their customers. As a
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1 result of the Orders, components of the Plaintiffs' businesses became unusable and/or lost the
2 ability to generate income.

3 83. As a result, the Plaintiffs lost business income and suffered other related covered
4 losses (including but not limited to extended business income and extra expenses).

5 84. The Policies include coverage for tax revenue interruption. "Except as hereinafter
6 or heretofore excluded, this Policy insures against loss resulting directly from necessary
7 interruption of sales, property or other tax revenue, including but not limited to Tribal
8 Incremental Municipal Services Payments collected by or due the Named Insured caused by
9 damage, or destruction by a peril not excluded from this Policy to property which is not operated
10 by the Named Insured and which wholly or partially prevents the generation of revenue for the
11 account of the Named Insured." **Exhibit 3** at 68; **Exhibit 4** at 66.

12 85. COVID-19 and the associated closures and reductions in business resulted in the
13 Plaintiffs' collection of transient occupancy tax being wholly prevented. Significant reductions in
14 sales at the gas stations due to COVID-19 resulted in Plaintiffs' collection of alcohol and sales
15 taxes being partially prevented.

16 86. The Policies also include coverage for prevention of ingress or egress. "This
17 Policy is extended to insure the actual loss sustained during the period of time not exceeding 30
18 days, when as a direct result of physical loss or damage caused by a covered peril(s) specified by
19 this Policy and occurring at a property located within a 10 mile radius of covered property,
20 ingress to or egress from the covered property covered by this Policy is prevented." **Exhibit 3** at
21 66; **Exhibit 4** at 65.

22 87. The presence of COVID-19 has prevented and continues to prevent ingress to the
23 Plaintiffs' businesses.

24 88. COVID-19 is a peril covered under the Policies.

25 89. The Policies' General Conditions include additional exclusions, but do not exclude
26 losses due to viruses or pandemics. **Exhibit 3** at 69; **Exhibit 4** at 67. Although some business
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1 interruption policies include exclusions for losses due to viruses or pandemics, the Policies at
2 issue in this action do not.

3 90. The Insurance Services Office ("ISO") is a company that drafts standard policy
4 language for use in insurance contracts used by insurers around the country.

5 91. In 2006, the ISO drafted a new endorsement, CP 01 40 07 06, acknowledging that
6 claims for business interruption losses would be filed under existing policy language for losses
7 resulting from the presence of disease-causing agents. Endorsement CP 01 40 07 06, which other
8 insurers have since incorporated in policies, provides that the insurer "will not pay for loss or
9 damage caused by or resulting from any virus, bacterium or other microorganism that induces or
10 is capable of inducing physical distress, illness or disease."

11 92. When preparing CP 01 40 07 06, ISO circulated a statement to state insurance
12 regulators that included the following acknowledgement:

13 Disease-causing agents may render a product impure (change its
14 quality or substance), or enable the spread of disease by their
15 presence on interior building surfaces or the surfaces of personal
16 property. When disease-causing viral or bacterial contamination
17 occurs, potential claims involve the cost of replacement of property
18 (for example, the milk), cost of decontamination (for example,
19 interior building surfaces), and business interruption (time element)
20 losses. Although building and personal property could arguably
21 become contaminated (often temporarily) by such viruses and
22 bacteria, the nature of the property itself would have a bearing on
23 whether there is actual property damage. An allegation of property
24 damage may be a point of disagreement in a particular case.

25 93. The insurance industry has thus recognized that the presence of virus or disease
26 can constitute physical damage to property since at least 2006.

27 94. Defendants did not include CP 01 40 07 06 or similar language in the Policies.

28 95. The Policies contain exclusions for any loss caused by acts of biological terrorism,
including "malicious use of pathogenic or poisonous biological or chemical materials." **Exhibit 3**
at 74; **Exhibit 4** at 72. These exclusions are not applicable to the losses suffered by the Plaintiffs
described herein.

1 96. Defendants chose not to include similar language in the Policies that would cover
2 catastrophic disease outbreaks that are unrelated to terrorism, like pandemics.

3 97. Defendants are aware of contractual force majeure clauses that suspend duties to
4 perform in the event of a global pandemic.

5 98. Defendants did not include force majeure clauses in the Policies.

6 **E. Defendants' Denial of Plaintiffs' Insurance Claims**

7 99. On or around April 9, 2020, Plaintiff the Yurok Tribe, doing business as Redwood
8 Hotel Casino, requested insurance coverage from Defendants.

9 100. Defendant Lexington Insurance Company issued a declination of payment for the
10 claim via email on June 30, 2020 (the "Hotel Casino Denial"). That denial is attached as **Exhibit**
11 **5.**

12 101. The Hotel Casino Denial confirms that, as alleged in this Complaint, Redwood
13 Hotel Casino was forced to close its businesses by the March 19, 2020 California Executive
14 Order.

15 102. The Hotel Casino Denial asserts that no section of the Hotel Casino Policy covers
16 Redwood Hotel Casino's losses, and that COVID-19 falls under an exclusion for "any kind or
17 description of ... contamination."

18 103. On or around April 9, 2020, Plaintiff YEDC requested insurance coverage from
19 Defendants. This claim was later assigned the identifying number 254891.

20 104. Defendant Lexington Insurance Company issued a declination of payment for the
21 claim via email on June 30, 2020 (the "YEDC Denial"). The YEDC Denial is attached as **Exhibit**
22 **6.**

23 105. Based on these denials, and Defendants' categorical denials of business
24 interruption claims arising from Coronavirus, it was (and is) clear that Defendants would (and
25 will) deny any future business interruption claims arising from Coronavirus.

26 106. The YEDC Denial confirms that, as alleged in this Complaint, YEDC was forced
27 to close its businesses by the March 19, 2020 California Executive Order.
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1 107. The YEDC Denial asserts that no section of the YEDC Policy covers YEDC's
2 losses, and that COVID-19 falls under an exclusion for "any kind or description of ...
3 contamination."

4 108. Defendants accepted the premiums paid by the Plaintiffs with no intention of
5 providing lost business income, physical damage, civil authority, or other applicable coverage for
6 claims like those submitted by Plaintiffs and denied by Defendant.

7 109. Defendants' rejections of the Plaintiffs' claims were part of a plan by Defendants
8 to limit their losses during this pandemic, notwithstanding that the Policies provide coverage for
9 losses due to loss of use of property and from closure orders issued by civil authorities (among
10 other coverage).

11 110. Although industry trade groups have argued that insurance companies do not have
12 the funds to pay claims related to the Coronavirus and will require government assistance, the
13 reality is that insurers are simply trying to minimize their exposure. "According to data from
14 ratings firm A.M. Best Co., the insurance industry as a whole has \$18.4 billion in net reserves for
15 future payouts."¹¹

16 111. Defendants appear to be categorically denying claims brought by businesses
17 ordered to close due to the Coronavirus, including those brought by the Plaintiffs. This deliberate
18 strategy and common policy, and the insurance industry's public requests for government
19 assistance, suggest strongly that their true goal is minimizing payments by any means necessary.

20 112. Defendants' wrongful denials of the Plaintiffs' claims were not isolated incidents.
21 Rather, on information and belief, Defendants have engaged in the same misconduct, alleged
22 herein with respect to the Plaintiffs, in connection with claims submitted by numerous of
23 Defendants' insureds who have suffered losses related to the Coronavirus pandemic and submitted
24 claims that were categorically denied.

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27 ¹¹ Leslie Scism, "U.S. Businesses Gear Up for Legal Disputes With Insurers Over Coronavirus
28 Claims," *Wall Street Journal* (March 6, 2020), available at https://www.wsj.com/articles/u-s-businesses-gear-up-for-legal-disputes-with-insurers-over-coronavirus-claims-11583465668?mod=article_inline (last accessed May 4, 2020).

1 113. Plaintiffs' claims arise from a single course of conduct by Defendants: systematic
2 and blanket refusal to provide any coverage for business losses related to the COVID-19
3 pandemic and the related actions taken by civil authorities to suspend business operations.

4 114. Defendants' wrongful conduct alleged herein has caused significant damage, and if
5 left unchecked will continue to cause significant damage to the Plaintiffs.

6 115. Defendants' categorical treatment, failure to investigate in good faith, and denial of
7 Plaintiffs' claims appears to be part of a broader strategy being employed by the insurance
8 industry generally, to broadly deny claims for business interruption coverage related to the
9 Coronavirus pandemic, as has been widely reported by the media and resulted in numerous
10 lawsuits brought by businesses against property insurance companies throughout the country.

11 **V. CAUSES OF ACTION**

12 **FIRST CAUSE OF ACTION**
13 **Breach of Contract**

14 116. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs
15 1-115 of this Complaint.

16 117. At all times relevant, Plaintiffs have paid all premiums and fulfilled or performed
17 all obligations they have to Defendants, including those under all relevant insurance policies
18 described in this Complaint.

19 118. Defendants had contractual duties to provide Plaintiffs with insurance coverage, as
20 alleged herein.

21 119. By their conduct alleged herein, including denying Plaintiffs' insurance claims and
22 refusing to perform under the contract, Defendants breached those duties.

23 120. As a result of Defendants' breaches, Plaintiffs have been damaged in the amount of
24 coverage to which they are entitled by their insurance agreements, the premiums they paid, and in
25 an amount to be proved at trial. Plaintiffs seek compensatory damages with interest thereon.

26 121. Plaintiffs have been unable to mitigate the losses of income.
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SECOND CAUSE OF ACTION
Breach of Covenant of Good Faith and Fair Dealing

122. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1-115 of this Complaint.

123. When Defendants entered their agreements with Plaintiffs, Defendants 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 or defeat the reasonable expectations of Plaintiffs under their agreements with Defendants.

124. By their conduct alleged herein, Defendants breached the implied covenant of good faith and fair dealing arising out of their agreements with Plaintiffs including but not limited to by: (a) unreasonably and in bad faith denying Plaintiffs insurance coverage to which they are entitled; (b) failing and refusing to perform a fair, objective, good faith, and thorough investigation of the claims; (c) asserting coverage defenses that were legally and/or factually invalid and thereby delaying resolution of Plaintiffs' claims; and (d) placing unduly restrictive interpretations on the terms of its insurance policies for the purpose of denying coverage due.

125. In committing their breaches, Defendants have acted with malice, shown a reckless and outrageous indifference to a highly unreasonable risk of harm, and acted with a conscious indifference to Plaintiffs' rights and welfare, thereby entitling Plaintiffs to punitive and exemplary damages against the Defendants. As a direct and proximate result of the above-referenced breach, Plaintiffs have had to retain attorneys to enforce their rights to the insurance coverage to which they are entitled and have thereby been injured and damaged.

126. Plaintiffs, therefore, are entitled to recover and seek 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 trial; (b) punitive and exemplary damages in an amount to be determined at trial; (c) costs of suit; and (d) reasonable attorneys' fees in connection with this action.

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

127. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1-115 of this Complaint.

128. By their conduct alleged herein, Defendants have engaged in unlawful, unfair, and fraudulent business practices in violation of California Business & Professions Code §§ 17200 *et seq.* (“UCL”).

129. Defendants’ conduct alleged herein violates the “unlawful” prong of the UCL because it violated the letter and spirit of California’s Insurance Code, including California Insurance Code section 790, *et seq.* because, *inter alia*, Defendants failed or refused to perform a fair, objective, and thorough investigation of the Plaintiffs’ claims. As alleged herein, Defendants denied Plaintiffs’ claims as part of Defendants’ policy of categorically denying all, or at least the vast majority of, business interruption claims related to the Coronavirus, and ignored other California requirements concerning the proper and fair evaluation of claims and interpretations of its policies. Defendants’ conduct alleged herein also constituted breaches of contract and breaches of the implied covenant of good faith and fair dealing, in violation of California common law.

130. Defendants’ conduct alleged herein violates the “unfair” prong of the UCL, including but not limited to Defendants’: (a) categorical and wrongful denial of Plaintiffs’ claims under the circumstances described in this Complaint; (b) failure and refusal to perform a fair, objective, good-faith, and thorough investigation of the claims as directed by the California Insurance Code; (c) denial of Plaintiffs’ claims as part of a strategy of categorically denying claims related to the Coronavirus; and (d) failing to interpret its policies in an equitable manner and/or up to the standards required by California law (including but not limited to Cal. Ins. Code section 790 *et seq.*).

131. Defendants’ conduct alleged herein is immoral, unethical, oppressive, unscrupulous, unconscionable, and/or substantially injurious to Plaintiffs. There is no utility to Defendants’ conduct, and even if there were any utility, it would be significantly outweighed by the gravity of the harm to consumers caused by Defendants’ conduct alleged herein.

1 132. Defendants' conduct alleged herein also violates California public policy,
2 including as such policy is reflected in Cal. Ins. Code § 790 *et seq.* and elsewhere in the
3 California Insurance Code.

4 133. Defendants' conduct alleged herein violates the "fraudulent" prong of the UCL.
5 Among other things, Defendants: (a) promised Plaintiffs coverage that was not provided and that
6 Defendants had no intention of providing; (b) promised to evaluate each claim individually,
7 reasonably, and in good faith, which Defendants did not do with respect to Plaintiffs' claims; and
8 (c) falsely and misleadingly indicated to Plaintiffs that they were investigating in good faith (and
9 had investigated in good faith) their claims, which Defendants did not do and knew that they did
10 not do. Defendants collected Plaintiffs' premiums in exchange for coverage that was not
11 provided, induced those premiums by promising to evaluate each claim individually, reasonably,
12 and in good faith but did not do so, and denied Plaintiffs' claims as part of a strategy of
13 categorically denying claims related to the Coronavirus, as part of a strategy to reduce its total
14 insurance payments related to the Coronavirus.

15 134. Defendants' fraudulent and deceptive conduct alleged herein was false and
16 misleading, had a tendency to deceive reasonable insureds, and did deceive Plaintiffs. Plaintiffs
17 reasonably relied on Defendants' deceptions and omissions alleged herein, including but not
18 limited to by paying premiums to Defendants.

19 135. To the extent Defendants' insurance policies offer coverage that is entirely or
20 almost entirely excluded by other provisions of the policies, their offers of coverage and related
21 communications are fraudulent, unfair, and unlawful. Specifically, they deliberately and
22 fraudulently induced Plaintiffs to purchase insurance based on false premises, which they would
23 have known that Plaintiffs would reasonably rely upon. Such conduct is particularly deceptive
24 and unfair to the extent that the true nature of the illusory coverage is not readily discernable,
25 particularly to a layperson, from the language of the policy. Indeed, based on the decision to
26 include certain coverages in a policy, a purchaser of insurance would reasonably assume that
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1 there is no exclusion which effectively nullifies that coverage. Such deception in the sale of
2 insurance is also illegal under California law. *See, e.g.* Cal. Ins. Code § 790 *et seq.*

3 136. By reason of Defendants' unlawful, unfair, and fraudulent conduct in violation of
4 the UCL, Plaintiffs suffered and continue to suffer damages, including but not limited to
5 premiums they paid to Defendants and the non-receipt of insurance benefits that are owed to them
6 by Defendants.

7 137. Plaintiffs are entitled to restitution from Defendants (with interest thereon), to
8 disgorgement of all Defendants' profits arising out of its violations of the UCL (with interest
9 thereon), and to be paid benefits due to Plaintiffs that Defendants have wrongfully retained by
10 means of their violations of the UCL.

11 138. Pursuant to California Code of Civil Procedure section 1021.5, Plaintiffs are
12 entitled to recover their reasonable attorneys' fees.

13 **FOURTH CAUSE OF ACTION**
14 **Declaratory Relief**

15 139. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs
16 1-115 of this Complaint.

17 140. The Court may declare rights, duties, statuses, and other legal relations, regardless
18 of whether further relief is or could be claimed.

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

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

23 143. Plaintiffs allege and contend, with respect to Plaintiffs' Civil Authority coverage,
24 that the above-described Orders trigger that coverage because (a) they are orders of a civil
25 authority, (b) the Orders specifically prohibit access to the premises in question, including
26 prohibiting potential on-premises customers and workers from accessing the premises in question,
27 (c) such access prohibition has been continuous and ongoing since the Orders were issued, such
28 that the prohibited access has not subsequently been permitted, (d) the Orders prohibit access as

1 the direct result of direct physical loss of or damage to property, other than at the premises in
2 question, within 10 miles of the property, caused by or resulting from a covered peril (e) no
3 coverage exclusions or limitations apply to exclude or limit coverage, (f) Plaintiffs have suffered
4 actual and covered loss of business income in an amount to be determined at trial, and (g)
5 coverage should begin as of dates to be determined at trial.

6 144. Plaintiffs allege and contend that Plaintiffs' lost business income coverage is
7 triggered because (a) Plaintiffs have sustained actual loss of business income due to the closure of
8 their businesses and reduction in sales at their gas stations, (b) this loss has been and is caused by
9 direct physical loss of or physical damage to property at the premises in question, including
10 personal property in the open (or in a vehicle) within 1,000 feet of the premises in question, due
11 to the presence of Coronavirus, (c) the presence of Coronavirus is a Covered Cause of Loss,
12 (d) some or all of the periods of the Plaintiffs' closures and other losses are within the period of
13 restoration under its insurance policies, and (e) Plaintiffs incurred extra expenses in the form of
14 cleaning costs necessary to continue normal operation of their businesses.

15 145. Plaintiffs allege and contend that Plaintiffs' tax revenue interruption coverage is
16 triggered because (a) Plaintiffs' generation of tax revenue has been wholly or partially prevented,
17 and (b) said loss is the result of damage caused by the presence of Coronavirus, which is a
18 covered peril.

19 146. Plaintiffs allege and contend that Plaintiffs' Ingress/Egress coverage is triggered
20 because (a) Plaintiffs have sustained actual loss due to closure because of ingress to their
21 businesses being prevented, (b) said loss is the direct result of physical loss or damage caused by
22 the presence of Coronavirus, which is a covered peril, and (c) Coronavirus has been present
23 within a 10-mile radius of Plaintiffs' businesses, preventing ingress into said businesses.

24 147. Plaintiffs allege and contend that exclusions concerning "contamination" do not
25 apply to COVID-19 and the causes of loss that harmed Plaintiffs, and that there are no exclusions
26 which apply to any of the above coverage.
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1 148. Plaintiffs allege and contend that Defendants wrongly denied coverage with
2 respect to all the foregoing provisions, as to Plaintiffs.

3 149. Upon information and belief, Plaintiffs allege that Defendants dispute and deny
4 each of Plaintiffs' contentions set forth in this Cause of Action.

5 150. Plaintiffs, therefore, seek a declaratory judgment regarding each of the contentions
6 set forth in this Cause of Action. A declaratory judgment determining that Plaintiffs are due
7 coverage under their insurance policies, as set forth above, will help to ensure the survival of
8 these businesses during this prolonged closure made necessary by the orders and by the presence
9 of Coronavirus around the businesses during this global pandemic.

10 **VII. PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs pray for judgment in its favor and against Defendants, as
12 follows:

- 13 a. For a declaration adopting each of Plaintiffs' contentions set forth in the above
14 Cause of Action for Declaratory Relief;
- 15 b. For injunctive relief enjoining and restraining Defendants' unlawful, unfair, and/or
16 deceptive conduct as alleged herein, including but not limited to their unlawful,
17 unfair, and/or deceptive business practices and its wrongful denials of coverage
18 under Plaintiffs' insurance policies;
- 19 c. For specific performance of the insurance policies;
- 20 d. For general and compensatory damages, restitution, and disgorgement, in an
21 amount to be determined at trial;
- 22 e. For exemplary and punitive damages in an amount to be determined at trial;
- 23 f. For costs of suit;
- 24 g. For reasonable attorneys' fees incurred in this action pursuant to statute or as
25 otherwise recoverable;
- 26 h. For pre-judgment and post-judgment interest; and
- 27 i. For such other relief as the Court may deem proper.
- 28

1 **VIII. JURY TRIAL DEMAND**

2 Plaintiffs demand a trial by jury.

3
4 Dated: June 7, 2021

/s/ Robert J. Nelson
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