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SUPERIOR COURT
COUNTY OF SAN FRANCISCO

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE CITY AND COUNTY OF SAN FRANCISCO
11

12 EL NIXTAMAL LLC; ANGEL FOOD LLC;
13 DECADE LLC; EPICER LLC; and NOPALITO
LLC,

14 Plaintiffs,

15 vs.

16 MID-CENTURY INSURANCE COMPANY and
17 OREGON MUTUAL INSURANCE COMPANY
18

Defendants.
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Case No.: CGC-20-585510

COMPLAINT FOR BREACH OF
CONTRACT AND DECLARATORY
JUDGMENT

JURY TRIAL DEMANDED

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

ORIGINAL

FAXED

1 Plaintiffs El Nixtamal LLC; Angel Food LLC; Decade LLC; Epicer LLC; and Nopalito LLC
2 (collectively, "Plaintiffs"), for their Complaint against Defendants Mid-Century Insurance Company
3 ("Mid-Century") and Oregon Mutual Insurance Company ("Oregon Mutual") (collectively,
4 "Defendants" or "Insurers") allege as follows:

5 **NATURE OF THIS ACTION**

6 1. This is a case about Plaintiffs prudently purchasing Businessowners insurance and the
7 Insurers denying Plaintiffs the very protection they paid for, at a time when they needed it most.

8 2. In exchange for premiums paid, the Insurers promised Plaintiffs that their insurance
9 policies would provide coverage for and protect certain aspects of the Plaintiffs' businesses, including
10 loss of business income. Yet, in the face of the worst pandemic in the last century, the Insurers have
11 failed to live up to their promises.

12 3. Now, Plaintiffs seek damages for breach of contract against the Insurers for their failure
13 to honor their policy obligations. Plaintiffs also seek a judgment declaring the scope of the Insurers'
14 obligations to pay Plaintiffs' losses under the respective policies.

15 **THE PARTIES**

16 4. Plaintiff Nopalito LLC d/b/a Nopalito ("Nopalito (#1)")¹ is, and at all times relevant
17 hereto was, a limited liability company organized under the laws of the State of California, with its
18 principal place of business in San Francisco, California.

19 5. Plaintiff El Nixtamal LLC d/b/a Nopalito ("Nopalito (#2)") is, and at all times relevant
20 hereto was, a limited liability company organized under the laws of the State of California, with its
21 principal place of business in San Francisco, California.

22 6. Plaintiff Decade LLC d/b/a Liholiho Yacht Club ("Liholiho") is, and at all times
23 relevant hereto was, a limited liability company organized under the laws of the State of California,
24 with its principal place of business in San Francisco, California.

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28 ¹ There are two "Nopalito" restaurant locations in San Francisco. Nopalito #1 is located on Broderick
St.; Nopalito #2 is located on 9th Avenue.

1 7. Plaintiff Angel Food LLC d/b/a NOPA ("NOPA") is, and at all times relevant hereto
2 was, a limited liability company organized under the laws of the State of California, with its principal
3 place of business in San Francisco, California.

4 8. Plaintiff Epicer LLC d/b/a Dear Inga ("Dear Inga") is, and at all times relevant hereto
5 was, a limited liability company organized under the laws of the State of California, with its principal
6 place of business in San Francisco, California.

7 9. Plaintiffs' joinder in this single action is proper pursuant to California Code of Civil
8 Procedure section 378.

9 10. Defendant Mid-Century is a corporation organized and existing under the laws of the
10 State of California, with its principal place of business in Woodland Hills, California. Mid-Century
11 is an insurance company duly authorized to transact business in the State of California.

12 11. Defendant Oregon Mutual is a corporation organized and existing under the laws of the
13 State of Oregon, with its principal place of business in McMinnville, Oregon. Oregon Mutual is an
14 insurance company duly authorized to transact business in the State of California.

15 12. Defendants' joinder in this single action is proper pursuant to California Code of Civil
16 Procedure section 379.

17 **JURISDICTION AND VENUE**

18 13. Jurisdiction is proper in this Court pursuant to California Code of Civil Procedure
19 Section 410.0 because the Insurers do business in the State of California and County of San Francisco.

20 14. Venue is proper in this Court because the acts and/or omissions complained of took
21 place, in whole or in part, within the venue of this Court.

22 **FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS**

23 **A. PLAINTIFFS' SUCCESSFUL RESTAURANT OPERATIONS**

24 15. For more than 14 years, NOPA has been a critically acclaimed, James Beard Award
25 nominated restaurant, located in the neighborhood known as "North of the Panhandle" ("NoPa") in
26 San Francisco. Since its opening in 2006, NOPA has been an anchor in the neighborhood and the
27 community, as well as a popular gathering spot for exceptional food and drinks.

28 16. Liholiho is also a critically acclaimed, Hawaiian-inspired, James Beard Award

1 recognized restaurant. Liholiho opened in 2015 in San Francisco's "Tender Nob" neighborhood.
2 Since opening, Liholiho has been widely recognized for its success by Food and Wine Magazine and
3 several other critics. Like NOPA, Liholiho has also become a local favorite and staple of its
4 neighborhood and the community at large.

5 17. Nopalito (#1) and Nopalito (#2) are two popular Michelin Guide restaurants,
6 emphasizing regional Mexican food. The restaurants are family-friendly and mainstays in each of
7 their respective San Francisco neighborhoods.

8 18. Dear Inga is another critically acclaimed, Eastern European-themed restaurant
9 operating in San Francisco's "Mission District." Upon opening, Dear Inga was an immediate success
10 and recognized by Eater Magazine as one of San Francisco's best new restaurants. Dear Inga quickly
11 developed a reputation for serving inspired dishes in a warm and lively setting.

12 19. Prior to the COVID-19 outbreak, the Plaintiff restaurants were commercial anchors in
13 each of their respective communities and each was a popular meeting place, serving food and alcohol
14 to locals and tourists, alike.

15 20. Prior to the COVID-19 outbreak, the Plaintiff restaurants, collectively, employed
16 approximately 200 San Franciscans.

17 **B. THE COVID-19 GLOBAL PANDEMIC**

18 21. During each of the relevant policy periods, a communicable disease ("COVID-19")
19 was first discovered in China. The disease made its way from China, to Europe, then the United States
20 and South America.

21 22. COVID-19 is a highly contagious and deadly disease that is easily transmitted from
22 person to person, particularly indoors and in group settings.

23 23. By no later than January 2020, the COVID-19 disease reached the United States and
24 then spread across the country. On February 26, 2020, the Centers for Disease Control and Prevention
25 ("CDC") advised that a person in California had tested positive for COVID-19, and that person had
26 no relevant travel history or exposure to another person with known COVID-19. The CDC raised the
27 concern of community spread or transmission. In other words, the CDC was concerned that COVID-
28 19 was spreading freely, without the ability to trace the origin of new infections.

1 24. On March 11, 2020, the World Health Organization (“WHO”) declared COVID-19 a
2 global pandemic.

3 25. The WHO states: “[t]he disease spreads primarily from person to person through small
4 droplets from the nose or mouth, which are expelled when a person with COVID-19 coughs, sneezes,
5 or speaks.”

6 26. According to the CDC, “everyone is at risk for getting COVID-19.” A person may
7 become infected by, among other things: (1) coming into close contact (about 6 feet) with a person
8 who has COVID-19; (2) coming into contact with respiratory droplets when an infected person talks,
9 sneezes, or coughs; and/or (3) touching surfaces or objects contaminated with COVID-19.

10 27. What distinguishes COVID-19 from other diseases is its propensity to spread via
11 persons who show no symptoms of the disease. Asymptomatic carriers of the disease are seemingly
12 healthy people, yet can unknowingly transmit the disease by spreading infected droplets through
13 speaking, breathing, and touching objects.

14 28. After news of COVID-19 first disseminated from China, the WHO declared a global
15 pandemic, but the United States’ public health systems and infrastructures failed to take sufficient
16 steps to prevent the spread of the disease, or to address it, in any meaningful way. It quickly became
17 apparent that the federal government was not able to curb the spread of the disease throughout the
18 general public, or in a manner that would have protected the Plaintiffs’ business locations from
19 becoming unsafe for their intended use.

20 29. In fact, even before COVID-19 was detected in China and made known throughout the
21 world, neither the federal government nor the United States’ public health systems were prepared to
22 handle a massive national healthcare emergency that would ultimately require stockpiles of medical
23 supplies, adequate hospital capacity, first responder staffing, and sufficient hospital facilities to handle
24 the influx of new patients, not to mention the already existing capacity of patients who were being
25 treated under normal circumstances.

26 30. The federal government and United States’ public health systems were similarly
27 unequipped to handle the spread of COVID-19 due to a lack of critical infrastructure for testing,
28 contact tracing, and quarantining for those found exposed to the disease, or those who came into

1 contact with someone confirmed to carry COVID-19. As a result, COVID-19 disseminated, largely
2 undetected, into an unsuspecting United States population.

3 31. As of July 17, 2020, there have been more than 3.5 million confirmed COVID-19 cases
4 in the United States, resulting in more than 138,000 deaths. In California, alone, there have been more
5 than 365,000 confirmed cases resulting in over 7,490 deaths. In San Francisco County, where the
6 Plaintiff restaurants are located, there have been more than 4,860 confirmed cases resulting in over 50
7 deaths.

8 32. Because COVID-19 spreads easily from person-to-person through various means, and
9 also can survive on surfaces and remain in the air for prolonged periods of time, including migration
10 through indoor ventilation systems, if not successfully contained by the public health system,
11 restaurants and bars are particularly susceptible to facilitating the spread of COVID-19. In fact, the
12 CDC has identified in-door dining as being in the “highest risk” category for disease spread. When
13 restaurants cannot be kept safe and sanitary for groups of individuals to congregate without the risk of
14 becoming ill or injured, the restaurant locations cannot be used for their intended purposes, and as a
15 result, suffer physical loss.

16 33. Given the propensity of COVID-19 to spread easily from person-to-person, the federal
17 government’s and public health agencies’ inability to stop the spread of the disease throughout the
18 community, and the inadequacies in the public healthcare systems that prevented the safe treatment of
19 infected individuals, it became untenable and unsafe for business locations to allow individuals to
20 gather in groups.

21 34. Furthermore, if COVID-19 infected large numbers of Californians simultaneously,
22 California’s healthcare system would become inundated with COVID-19 patients. Thus, the spread
23 of COVID-19 throughout the community created a dangerous situation, not just with respect to the
24 spread of the disease, but also with respect to non-COVID-19 injured individuals’ ability to receive
25 necessary healthcare treatment. For example, due to the strain COVID-19 has placed on California’s
26 healthcare system, a restaurant customer who lost consciousness from choking on food, or individuals
27 injured in a fire at a crowded business, might not have been able to obtain the medical treatment they
28 needed, including from first responders. Scarce resources used to treat a massive number of COVID-

1 19 cases would not be available for the treatment of other sick and injured people. For this additional
2 reason, it became impossible for businesses, like the Plaintiffs' restaurants, to operate safely in the
3 manner intended.

4 **C. STATE AND LOCAL GOVERNMENTS' CLOSURE ORDERS AND PLAINTIFFS' RELATED**
5 **LOSSES.**

6 35. Once it became clear that COVID-19 had reached the United States, the federal, state,
7 and local authorities were grossly unprepared to contain the spread of COVID-19.

8 36. The public health system in the United States began to respond to the pandemic only
9 after the pandemic had taken root in the country and had begun to wreak serious devastation in certain
10 geographic regions. By then it was too late for federal, state, and local governments to take focused
11 and effective measures to avoid the spread of COVID-19 to the population at large. The unprepared
12 status of the public health system, both before and after the start of the crisis, led to the unrestrained
13 spread of COVID-19, and resulted in Plaintiffs' businesses becoming untenable to operate for their
14 intended purpose.

15 37. On March 16, 2020, the federal government issued public guidance titled "30 Days to
16 Slow the Spread" of COVID-19. The guidance called for extreme social distancing measures, such as
17 working from home, avoiding gatherings of more than 10 people, and avoiding bars and restaurants.

18 38. State and local governments across the United States, including California, also
19 responded to the catastrophic healthcare emergency by issuing various types of orders. These orders
20 suspended or severely limited operations of "nonessential" businesses where people could potentially
21 contract COVID-19 from others or from contaminated property. These orders, almost uniformly,
22 included closing restaurants for in-person dining.

23 39. Simultaneously, state and local municipalities across the country also issued orders
24 encouraging or requiring citizens to "shelter in place" or "stay at home." In many instances, city and
25 county governments issued their own restrictive orders, which also closed restaurants for in-person
26 dining.

27 40. For example, on February 25, 2020, San Francisco Mayor London Breed declared a
28 local emergency and on March 5, 2020, San Francisco announced its first presumptive positive cases

1 of COVID-19 in two San Francisco residents.

2 41. A few weeks later on March 16, 2020, the City and County of San Francisco issued its
3 shelter in place “Order of the Health Officer No. C19-07.” Among other directives, the order declared
4 that all “[r]estaurants and cafes—regardless of their seating capacity—that serve food are ordered
5 closed except solely for takeout and delivery service.”

6 42. On March 19, 2020, California Governor Gavin Newsom announced a statewide order
7 to shelter at home, affecting 40 million Californians. The order restricted all non-essential travel and
8 activities outside the home.

9 43. Since March 2020, the COVID-19 pandemic has worsened throughout California and
10 the United States. On July 13, 2020, in an attempt to slow the spread of the disease, protect the public,
11 and ease the burden COVID-19 has placed on California’s healthcare systems, California’s Governor
12 issued a statewide order mandating the indefinite closure of all *indoor* restaurants, bars, movie theaters,
13 wineries, zoos, museums, cardrooms and family entertainment centers.

14 44. The foregoing governmental actions and orders underscore the fact that restaurant
15 locations have become unsafe for their intended use as locations for individuals to gather.

16 45. The above orders and social distancing guidelines make clear that indoor public
17 gathering venues such as restaurants and bars, including the restaurants operated by Plaintiffs, became
18 dangerously unsafe for their intended use and could not be operated as usual in a safe manner. This
19 was due, at least in part, to the inability of the public health system to prevent the spread of COVID-
20 19 once it reached the United States. Had the federal government been better equipped to handle the
21 crisis, less onerous measures could have been implemented, including aggressive testing, contact
22 tracing, and/or isolating those who became infected with COVID-19 (as was done in other countries),
23 so that the public at large could continue to go about their daily activities, including safely patronizing
24 restaurants and bars. As a result of this situation, since at least March 16, 2020, and continuing to the
25 present, Plaintiffs have suffered a complete loss of functionality of their covered properties, as they
26 were considered unsafe for their intended use.

27 46. Plaintiffs were forced to suspend their operations and suffered significant losses.
28 Further, due to the current state of the COVID-19 pandemic and the fact that there is not yet a vaccine

1 for COVID-19, Plaintiffs' restaurant operations and associated losses and expenses will continue
2 indefinitely. The health and safety concerns presented by the spread of COVID-19 make it untenable
3 for Plaintiffs' locations to be used as they were intended, and have resulted in the physical loss or
4 damage to these locations.

5 47. The situation described above has caused physical loss or damage, including at
6 Plaintiffs' business locations, which became unsafe for their intended use as gathering places for
7 individuals. The increased risks of disease transmission and contracting COVID-19 through the
8 proximity of individuals at indoor locations, such as Plaintiffs' restaurants, coupled with the increased
9 strain on the healthcare system outlined above, rendered Plaintiffs' restaurant locations unsafe for their
10 intended use, as evidenced by the government closure orders and social distancing guidelines and
11 requirements discussed herein.

12 48. Although Plaintiffs purchased insurance to protect them from these losses, the Insurers
13 have abandoned Plaintiffs when they most needed that protection.

14 **D. THE MID-CENTURY POLICIES**

15 49. Nopalito (#1); Nopalito (#2); Liholiho; and NOPA purchased insurance policies from
16 Defendant Mid-Century, to protect against business interruption and related losses such as those at
17 issue in this case.

18 50. Mid-Century issued Policy No. 60675-99-67 to Nopalito (#1). The policy period runs
19 from September 1, 2019 through September 1, 2020.

20 51. Mid-Century issued Policy No. 60675-99-80 to Nopalito (#2). The policy period runs
21 from September 1, 2019 through September 1, 2020.

22 52. Mid-Century issued Policy No. 60675-99-73 to Liholiho. The policy period runs from
23 September 1, 2019 through September 1, 2020.

24 53. Mid-Century issued Policy No. 60382-03-70 to NOPA. The policy period runs from
25 September 1, 2019 through September 1, 2020.

26 54. Nopalito (#1)'s; Nopalito (#2)'s; Liholiho's; and NOPA's insurance policies cited in
27 Paragraphs 50 through 53 herein are collectively referred to as the "Mid-Century Policies."

28 55. The Mid-Century Policies all provide substantially identical coverage and contain

1 substantially identical terms and conditions.

2 56. Through its policies, Mid-Century promises Plaintiffs that it will:

3 [P]ay for direct physical loss of or damage to Covered Property at the
4 premises described in the Declarations caused by or resulting from any
Covered Cause of Loss.

5 Mid-Century Policies at Coverage A.

6 57. Mid Century also promises the Plaintiffs that it will:

7 [P]ay for the actual loss of Business Income you sustain due to the necessary
8 suspension of your "operations" during the "period of restoration." The
9 suspension must be caused by direct physical loss of or damage to property
at the described premises. The loss or damage must be caused by or result
from a Covered Cause of Loss.

10 *Id.* at Section A(5)(f)(1).

11 58. In each of the Mid-Century Policies, "Business Income" means:

- 12 (i) Net income (Profit or Loss before income taxes) that would have
13 been earned or incurred if no physical loss, damage or incident had
14 occurred...; and
(ii) Continuing normal operating expenses incurred, including payroll.

15 *Id.* at Section A(5)(f)(1)(i) and (ii).

16 59. In each of the Mid-Century Policies, "suspension" means with respect to Business
17 Income and Extra Expense:

- 18 (a) The partial slowdown or complete cessation of your business activities; or
19 (b) That a part or all of the described premises is rendered untenable, if coverage
20 for Business Income applies.

21 *Id.* at Business Income and Extra Expense Endorsement.

22 60. In each of the Mid-Century Policies, "Operations" is defined broadly to mean
23 Plaintiffs' "business activities occurring at the described premises." *Id.* at Section H(2).

24 61. In each of the Mid-Century Policies, "Period of restoration" means the period of time
25 that:

26 (a) Begins:

- 27 (1) 72 hours after the time of direct physical loss or damage for the
28 Business Income Coverage; or

(2) Immediately after the time of direct physical loss or damage for Extra Expense Coverage;

caused by or resulting from any Covered Cause of Loss at the described premises; and

(b) Ends on the earlier of:

(1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or

(2) The date when business is resumed.

Id. at Section H(3).

62. Mid Century also promises Plaintiffs that it will:

[P]ay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises due to direct physical loss of or damage to property, other than at the described premises, caused by or resulting from any Covered Cause of Loss.

Id. at Section A(5)(i).

63. "Extra Expense" means expenses incurred:

- a. To avoid or minimize the suspension of business and to continue operations; or
- b. To minimize the suspension of business if you cannot immediately continue operations; or
- c. To:
 - (i) Repair or replace any property; or
 - (ii) Research, replace or restore the lost information on damaged "valuable papers and records."

Id. at Section A(5)(g)(2).

64. In each of the Mid-Century Policies, a Covered Cause of Loss means:

Risks Of Direct Physical Loss unless the loss is:

- a. Excluded in Section B., Exclusions; or
- b. Limited in Paragraph A. 4, Limitations; that follow.

Id. at Section A(3).

1 65. The risks described herein are not excluded, and even if an excluded cause might have
2 contributed to the loss, the efficient proximate cause of the loss is not excluded.

3 66. Each of the Mid-Century Policies also contain a “Control of Property” provision that
4 states:

5 Any act or neglect of any person other than
6 you beyond your direction or control will not
7 affect this insurance.

8 The breach of any condition of this Coverage
9 Form at any one or more locations will not
10 affect coverage at any location where, at the
 time of loss or damage, the breach of condition
 does not exist.

11 *Id.* at Section F(1).

12 67. All conditions imposed by the Mid-Century Policies, including the payment of
13 premiums and notice of claims, have been satisfied, waived, or otherwise excused by the behavior of
14 Mid-Century or by operation of law, including by Mid-Century breaching the policies through its
15 wrongful denial of coverage to Nopalito (#1); Nopalito (#2); Liholiho; and NOPA.

16 **E. THE OREGON MUTUAL POLICY**

17 68. Dear Inga purchased an insurance policy from Defendant Oregon Mutual, to protect
18 against business interruption and related losses such as those at issue in this case.

19 69. Oregon Mutual issued Policy No. BSP354630 to Dear Inga (“Oregon Mutual Policy”).
20 The policy period runs from September 4, 2019 through September 4, 2020.

21 70. Similar to the Mid-Century Policies, the Oregon Mutual Policy promises Dear Inga that
22 it will:

23 [P]ay for the actual loss of Business Income you sustain due to the necessary
24 suspension of your “operations” during the “period of restoration.” The
25 suspension must be caused by direct physical loss of or damage to property
 at the described premises.

26 Oregon Mutual Policy at Section I(A)(5)(f)(1)(a).

27 71. Pursuant to the Oregon Mutual Policy, “Business Income” means:

28 (i) “Net Income (Net Profit or Loss before income taxes) that would have

1 been earned or incurred if no physical loss or damage had occurred . . .; and

2 (ii) Continuing normal operating expenses incurred, including pay-roll.”

3 *Id.* at Section I(A)(5)(f)(1)(c).

4 72. With respect to “Extra Expenses,” Oregon Mutual promised Dear Inga that it would:

5 [P]ay necessary Extra Expense you incur during the “period of restoration”
6 that you would not have incurred if there had been no direct physical loss
7 or damage to property at the described premises. The loss or damage must
8 be caused by or result from a Covered Cause of Loss.

8 *Id.* at Section I(A)(5)(g)(1).

9 73. “Operations” is defined broadly to mean “business activities occurring at the
10 [restaurants].” *Id.* at Section I(H)(7).

11 74. “Period of restoration” means, [t]he period of time that:

12 (1) Begins:

13 (a) 72 hours after the time of direct physical loss or damage for
14 Business Income Coverage; or

15 (b) Immediately after the time of direct physical loss or damage for
16 Extra Expenses Coverage;

17 caused by or resulting from any Covered Cause of Loss at the described
18 premises; and

19 (2) Ends the earlier of:

20 (a) The date when the property at the described premises should be
21 repaired, rebuilt or replaced with reasonable speed and similar
22 quality; or

23 (b) The date when business is resumed at a new permanent location.

24 *Id.* at Section H(8).

25 75. The Oregon Mutual Policy also provides coverage to Dear Inga for “loss of Business
26 Income” sustained and “necessary Extra Expense caused by action of civil authority that prohibits
27 access to the described premises due to direct physical loss of or damage to property...” *Id.* at Section
28 I(A)(5)(i).

29 76. The Oregon Mutual Policy identifies Covered Causes of Loss as:

30 Risks of direct physical loss unless the loss is:

d. Excluded in Paragraph B. Exclusions in Section I; or

e. Limited in Paragraph 4. Limitations in Section I.

Id. at Section I(A)(3).

77. The risks described herein are not excluded, and even if an excluded cause might have contributed to the loss, the efficient proximate cause of the loss is not excluded.

78. The Oregon Mutual Policy also contains a “Control of Property” provision that states:

Any act or neglect of any person other than
you beyond your direction or control will not
affect this insurance.

The breach of any condition of this Coverage
Form at any one or more locations will not
affect coverage at any location where, at the
time of loss or damage, the breach of condition
does not exist.

Id. at Section F(1).

79. All conditions imposed by the Oregon Mutual Policy, including the payment of premiums and notice of claims, have been satisfied, waived, or otherwise excused by the behavior of Oregon Mutual or by operation of law, including by Oregon Mutual breaching the policy through its wrongful denial of coverage to Dear Inga.

F. THE INSURERS’ IMMEDIATE DENIAL OF PLAINTIFFS’ CLAIMS

80. On or about March 18, 2020, NOPA provided Mid-Century notice of its COVID-19 claim. Three days later, on March 21, 2020, Mid-Century denied NOPA’s claim stating there was no coverage under the policy. Mid-Century denied coverage without conducting any investigation.

81. On or about April 16, 2020, Nopalito (#1), Nopalito (#2), and Liholiho also provided Mid-Century notice of their COVID-19 claim. A few days later on April 20 and 21, again without conducting any investigation, Mid-Century denied these claims stating, in nearly *identical* form letters, that there was no coverage under the respective policies.

82. On or about April 4, 2020, Dear Inga provided Oregon Mutual notice of its COVID-19 losses. Two business days later on April 7, 2020, without conducting any investigation, Oregon Mutual denied Dear Inga’s claim stating there was no coverage under the policy.

84. The Notice reminded all insurance companies that they are “required to comply with ... the obligations set forth in the California Fair Claims Settlement Practices Regulations (Cal. Code Regs. tit. 10’ sections 2695.1, *et seq.*)” (the “Regulations”). Included in the Regulations is the requirement that “every insurer [] conduct and diligently pursue a thorough, fair and objective investigation of the reported claim.” Only “[a]fter conducting a thorough, fair and objective investigation of the claim,” may the insurer accept or deny the claim, in whole or in part.

85. Neither Mid-Century nor Oregon Mutual conducted, or diligently pursued, a thorough, fair or objective investigation of the Plaintiffs' claims. This is evidenced by the fact that Mid-Century issued its denial of coverage four or five days after it received notice of its insureds' claims. It is also evidenced by the fact that Oregon Mutual issued its denial of coverage two business days after receiving its insured's claim. In no instance did the insurers contact the Plaintiffs to obtain information about their noticed claims.

86. Even in the instances where the California Insurance Commissioner issued the Notice after the insurer denied the claim (as is the case here with Oregon Mutual), the insurer was still obligated to conduct a thorough and fair investigation, and based on the Insurance Commissioner's reminder, should have reopened their investigation of this claim and any other claims that were precipitously denied. Oregon Mutual failed to honor this obligation.

22 || 87. The Insurers' denials of coverage constitute breaches under the respective policies.

FIRST CAUSE OF ACTION

(Breach of Contract by Nopalito (#1) Against Mid-Century)

25 || 88. Plaintiffs incorporate by reference the allegations in Paragraphs 1 through 87.

89. Policy No. 60675-99-67 is a valid and enforceable written contract between Nopalito (#1) and Mid-Century.

28 90. Nopalito (#1) has performed all obligations under the policy, and any and all conditions

1 precedent to coverage under the policy have been satisfied or waived.

2 91. Nopalito (#1) has incurred losses, as defined in the policy.

3 92. As set forth above and in Policy No. 60675-99-67, Mid-Century contracted to insure
4 Nopalito (#1) for its "Business Income" and "Extra Expense" losses arising from property damage.

5 93. Mid-Century breached the policy by wrongfully denying coverage to Nopalito (#1).

6 94. No exclusions, conditions, or other limitation provisions in the policy excuse Mid-
7 Century's obligation to provide coverage to Nopalito (#1). Any such exclusions relied on by Mid-
8 Century do not apply or Mid-Century should be estopped from relying on them. Since exclusions,
9 conditions, and limitations of coverage must be plead by Mid-Century as an affirmative defense,
10 Plaintiffs reserve all rights to respond to any such defenses once they are asserted.

11 95. As a direct and proximate cause of Mid-Century's breach, Nopalito (#1) has been
12 denied the benefits of insurance coverage to which it is entitled as an insured under the policy.

13 96. As a direct and proximate cause of Mid-Century's breach, Nopalito (#1) has already
14 incurred monetary damages in excess of the jurisdictional limit, exclusive of interest and costs
15 associated with this lawsuit, and Mid-Century's continuing breach will result in substantial further
16 monetary damages.

17 SECOND CAUSE OF ACTION

18 (Breach of Contract by Nopalito (#2) Against Mid-Century)

19 97. Plaintiffs incorporate by reference the allegations in Paragraphs 1 through 96.

20 98. Policy No. 60675-99-80 is a valid and enforceable written contract between Nopalito
21 (#2) and Mid-Century.

22 99. Nopalito (#2) has performed all obligations under the policy, and any and all conditions
23 precedent to coverage under the policy have been satisfied or waived.

24 100. Nopalito (#2) has incurred losses, as defined in the policy.

25 101. As set forth above and in Policy No. 60675-99-80, Mid-Century contracted to insure
26 Nopalito (#2) for its "Business Income" and "Extra Expense" losses arising from property damage.

27 102. Mid-Century breached the policy by wrongfully denying coverage to Nopalito (#2).

28 103. No exclusions, conditions, or other limitation provisions in the policy excuse Mid-

Century's obligation to provide coverage to Nopalito (#2). Any such exclusions relied on by Mid-Century do not apply or Mid-Century should be estopped from relying on them. Since exclusions, conditions, and limitations of coverage must be plead by Mid-Century as an affirmative defense, Plaintiffs reserve all rights to respond to any such defenses once they are asserted.

104. As a direct and proximate cause of Mid-Century's breach, Nopalito (#2) has been denied the benefits of insurance coverage to which it is entitled as an insured under the policy.

105. As a direct and proximate cause of Mid-Century's breach, Nopalito (#2) has already incurred monetary damages in excess of the jurisdictional limit, exclusive of interest and costs associated with this lawsuit, and Mid-Century's continuing breach will result in substantial further monetary damages.

THIRD CAUSE OF ACTION

(Breach of Contract by Liholiho Against Mid-Century)

106. Plaintiffs incorporate by reference the allegations in Paragraphs 1 through 105.

107. Policy No. 60675-99-73 is a valid and enforceable written contract between Liholiho and Mid-Century.

108. Liholiho has performed all obligations under the policy, and any and all conditions precedent to coverage under the policy have been satisfied or waived.

109. Liholiho has incurred losses, as defined in the policy.

110. As set forth above and in Policy No. 60675-99-73, Mid-Century contracted to insure Liholiho for its "Business Income" and "Extra Expense" losses arising from property damage.

111. Mid-Century breached the policy by wrongfully denying coverage to Liholiho.

112. No exclusions, conditions, or other limitation provisions in the policy excuse Mid-Century's obligation to provide coverage to Liholiho. Any such exclusions relied on by Mid-Century do not apply or Mid-Century should be estopped from relying on them. Since exclusions, conditions, and limitations of coverage must be plead by Mid-Century as an affirmative defense, Plaintiffs reserve all rights to respond to any such defenses once they are asserted.

113. As a direct and proximate cause of Mid-Century's breach, Liholiho has been denied the benefits of insurance coverage to which it is entitled as an insured under the policy.

1 114. As a direct and proximate cause of Mid-Century's breach, Liholiho has already
2 incurred monetary damages in excess of the jurisdictional limit, exclusive of interest and costs
3 associated with this lawsuit, and Mid-Century's continuing breach will result in substantial further
4 monetary damages.

5 **FOURTH CAUSE OF ACTION**

6 **(Breach of Contract by NOPA Against Mid-Century)**

7 115. Plaintiffs incorporate by reference the allegations in Paragraphs 1 through 114.

8 116. Policy No. 60382-03-70 is a valid and enforceable written contract between NOPA and
9 Mid-Century.

10 117. NOPA has performed all obligations under the policy, and any and all conditions
11 precedent to coverage under the policy have been satisfied or waived.

12 118. NOPA has incurred losses, as defined in the policy.

13 119. As set forth above and in Policy No. 60382-03-70, Mid-Century contracted to insure
14 NOPA for its "Business Income" and "Extra Expense" losses arising from property damage.

15 120. Mid-Century breached the policy by wrongfully denying coverage to NOPA.

16 121. No exclusions, conditions, or other limitation provisions in the policy excuse Mid-
17 Century's obligation to provide coverage to NOPA. Any such exclusions relied on by Mid-Century
18 do not apply or Mid-Century should be estopped from relying on them. Since exclusions, conditions,
19 and limitations of coverage must be plead by Mid-Century as an affirmative defense, Plaintiffs reserve
20 all rights to respond to any such defenses once they are asserted.

21 122. As a direct and proximate cause of Mid-Century's breach, NOPA has been denied the
22 benefits of insurance coverage to which it is entitled as an insured under the policy.

23 123. As a direct and proximate cause of Mid-Century's breach, NOPA has already incurred
24 monetary damages in excess of the jurisdictional limit, exclusive of interest and costs associated with
25 this lawsuit, and Mid-Century's continuing breach will result in substantial further monetary damages.

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FIFTH CAUSE OF ACTION

(Breach of Contract by Dear Inga Against Oregon Mutual)

124. Plaintiffs incorporate by reference the allegations in Paragraphs 1 through 123.

125. The Oregon Mutual Policy is a valid and enforceable written contract between Dear Inga and Oregon Mutual.

126. Dear Inga has performed all obligations under the policy, and any and all conditions precedent to coverage under the policy have been satisfied or waived.

127. Dear Inga has incurred losses, as defined in the policy.

128. As set forth above and in the Oregon Mutual Policy, Oregon Mutual contracted to insure Dear Inga for its "Business Income" and "Extra Expense" losses arising from property damage.

129. Oregon Mutual breached the policy by wrongfully denying coverage to Dear Inga.

130. No exclusions, conditions, or other limitation provisions in the policy excuse Oregon Mutual's obligation to provide coverage to Dear Inga. Any such exclusions relied on by Oregon Mutual do not apply or Oregon Mutual should be estopped from relying on them. Since exclusions, conditions, and limitations of coverage must be plead by Oregon Mutual as an affirmative defense, Plaintiffs reserve all rights to respond to any such defenses once they are asserted.

131. As a direct and proximate cause of Oregon Mutual's breach, Dear Inga has been denied the benefits of insurance coverage to which it is entitled as an insured under the policy.

132. As a direct and proximate cause of Oregon Mutual's breach, Dear Inga has already incurred monetary damages in excess of the jurisdictional limit, exclusive of interest and costs associated with this lawsuit, and Oregon Mutual's continuing breach will result in substantial further monetary damages.

SIXTH CAUSE OF ACTION

**(Declaratory Judgment by Nopalito (#1); Nopalito (#2);
Liholiho; and NOPA against Mid-Century)**

133. Plaintiffs incorporate by reference the allegations in Paragraphs 1 through 132.

134. Nopalito (#1); Nopalito (#2); Liholiho; and NOPA seek a declaratory judgment, pursuant to California Code of Civil Procedure Section 1060, of the respective rights and obligations

1 of Nopalito (#1); Nopalito (#2); Liholiho; and NOPA and Mid-Century under the Mid-Century
2 Policies.

3 135. An actual justiciable controversy exists between Nopalito (#1); Nopalito (#2);
4 Liholiho; and NOPA and Mid-Century concerning the Mid-Century Policies, in that Nopalito (#1);
5 Nopalito (#2); Liholiho; and NOPA contend that the policies provide coverage for their claims, and
6 Mid-Century contends that the policies do not.

7 136. Nopalito (#1); Nopalito (#2); Liholiho; and NOPA are entitled to declaratory relief
8 establishing that their losses are covered under their respective policies.

9 **SEVENTH CAUSE OF ACTION**

10 **(Declaratory Judgment by Dear Inga against Oregon Mutual)**

11 137. Plaintiffs incorporate by reference the allegations in Paragraphs 1 through 136.

12 138. Dear Inga seeks a declaratory judgment, pursuant to California Code of Civil Procedure
13 Section 1060, of the respective rights and obligations of itself and Oregon Mutual under the Oregon
14 Mutual Policy.

15 139. An actual justiciable controversy exists between Dear Inga and Oregon Mutual
16 concerning the Oregon Mutual Policy, in that Dear Inga contends that the policy provides coverage
17 for its claim, and Oregon Mutual contends that the policy does not.

18 140. Dear Inga is entitled to declaratory relief establishing that its losses are covered under
19 its policy.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, in consideration of the foregoing, Plaintiffs request the entry of a judgment in
22 their favor and against the Insurers on all claims in this Complaint, and pray for relief as follows:

23 1. On the First, Second, Third, Fourth, and Fifth Causes of Action for Breach of Contract:

- 24 a. For damages in an amount to be established at trial;
- 25 b. For costs of suit; and
- 26 c. Interest at the maximum legal rate on all amounts owed under the respective
- 27 policies, accruing from the date upon which amounts should have been paid.

28 2. On the Sixth and Seventh Causes of Action for Declaratory Relief:

- 1 a. That this Court declare the rights, obligations, and liabilities of the parties
2 herein and specifically declare, as Plaintiffs contend, that the events and
3 losses incurred as described in the complaint are covered by the policies.

4 3. On all Causes of Action:

- 5 a. For costs of suit incurred herein; and
6 b. For such other relief as the Court may deem just and proper.

7 **JURY DEMAND**

8 Plaintiffs hereby demand a trial by jury as to all issues so triable.

9
10 DATED: July 17, 2020

11 REED SMITH LLP

12
13 By: 
14 *Attorneys for Plaintiffs*