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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

WEST COVINA RESTAURANT
GROUP INC. D/B/A/ GAUCHO
GRILL WEST COVINA AND
DOWNEY RESTAURANT GROUP,
INC. D/B/A GAUCHO GRILL
DOWNEY

Plaintiffs,

v.

FARMERS INSURANCE EXCHANGE

Defendant.

Case No. _____

20STCV22451

COMPLAINT FOR DAMAGES

- (1) Declaratory Judgment
- (2) Breach of Contract
- (3) Breach of Implied Covenant of
Good Faith and Fair Dealing

DEMAND FOR JURY TRIAL

1 Plaintiffs WEST COVINA RESTAURANT GROUP, INC. D/B/A GAUCHO
2 GRILL WEST COVINA AND DOWNEY RESTAURANT GROUP, INC. D/B/A
3 GAUCHO GRILL DOWNEY ("Plaintiffs") file suit against FARMERS INSURANCE
4 EXCHANGE ("Farmers") and allege as follows.

5 INTRODUCTION

6 1. On March 16, 2020, in response to the worldwide COVID-19 pandemic,
7 Los Angeles County's Safer At Home Order For Control of Covid-19 ("Safer At Home
8 Order") banned all gatherings of 50 or more people. On March 19, 2020, California
9 Governor's Executive Order N-33-20 ("Stay At Home Order") instructed all 40 million
10 California residents to remain at home, except to go to an essential job or to shop for
11 essential needs. On March 21, 2020 Los Angeles County amended its Safer At Home
12 Order to align with the statewide Stay At Home Order. And although a limited
13 reopening of restaurants in Los Angeles County began on May 29, 2020 ("Safer at
14 Work and in the Community Order"), the rules in place prevent the possibility of
15 returning to full (or even half) of expected revenue had the Orders not been issued.

16 2. Plaintiffs, who own and operate two restaurants in Los Angeles County,
17 have dutifully followed the Orders issued by the County and the State. Though
18 lifesaving, these mandates, which remain largely in place, have forced Plaintiffs'
19 restaurants to cease seated operations entirely for almost two months and continues
20 to require strict limitations on the use of the restaurants for seated dining.

21 3. Plaintiffs—who bear no fault for state and countywide closures—are
22 also responsible business stewards, dutifully paying for insurance that includes
23 coverage for loss of income due to the necessary suspension of their business
24 operations, to protect them against just this type of situation.

25 4. Facing serious financial harm, Gaucho Grill Downey and Gaucho Grill
26 West Covina made a claim with Farmers seeking coverage for their business income
27 losses and extra expenses.

28 5. But, despite collecting premiums for such risks, Farmers swiftly denied

1 the claims, with little or no investigation and without due regard for the interests of
2 insureds. In fact, coverage was initially denied by the Farmers claims representative
3 over the telephone at the time the claims were reported, on March 24, 2020.

4 6. Plaintiffs' representative asked the Farmers' claims representative to
5 reconsider the denial via email dated March 26, 2020, asserting other policy
6 provisions that might provide coverage. The claims representative replied via phone
7 and email on March 27, 2020, informing the Plaintiffs that the decision to deny
8 coverage for Gaucho Grill West Covina and Gaucho Grill Downey would stand.

9 7. Meanwhile, the denial letters had already been mailed, as the denial
10 letter for Gaucho Grill West Covina is dated March 26, 2020 and the denial for Gaucho
11 Grill Downey is dated March 27, 2020.

12 8. Farmers (and other insurers) have acted so egregiously in preemptively
13 denying claims for business income and extra expense claims such as the ones
14 brought here that on April 14, 2020, the California Insurance Commissioner, Ricardo
15 Lara, issued a notice reminding insurance companies of their duty to comply with
16 their obligations to fairly investigate all business interruption claims caused by
17 COVID-19.

18 9. The reasons for the denial are cursory; in fact, the denial letters are
19 virtually identical and appear to be form letters which deny any coverage based on an
20 unreasonable reading of the policies Farmers issued on a take-it-or-leave-it basis.
21 That gets insurance law exactly backwards and raises the specter of bad-faith denials.

22 10. The denials also leave Plaintiffs in dire financial straits—precisely the
23 situation they sought to avoid when they obtained coverage for loss of business
24 income.

25 11. Plaintiffs bought full-spectrum, comprehensive insurance for their
26 *businesses*—not just for damage to their physical premises and equipment. And for
27 good reason. Interruptions to business and the attendant loss of business income are a
28 particular concern of the restaurant industry. Insurance coverage is important, if not

06/15/2020

1 vital, because profit margins in the restaurant industry are slim and, unlike the
2 insurance industry, reserve funds tend to be low.

3 12. Plaintiffs reasonably believed they had purchased comprehensive
4 insurance coverage that would apply to losses of business income under
5 circumstances like these, where they have done everything right to protect their
6 businesses and the public. But Farmers is cutting the lifelines, despite having taken
7 significant premiums in exchange for such coverage.

8 13. Plaintiffs thus bring this action, seeking declaratory relief, insurance
9 coverage owed under Farmers' policies, and damages.

10 PARTIES

11 14. Plaintiff West Covina Restaurant Group, Inc. d/b/a Gaucho Grill West
12 Covina is a corporation formed under the laws of California. Its principal place of
13 business is in West Covina, CA.

14 15. Plaintiff Downey Restaurant Group, Inc. d/b/a Gaucho Grill Downey is
15 a corporation formed under the laws of California. Its principal place of business is in
16 Downey, CA.

17 16. Defendant Farmers Insurance Exchange is an insurer organized under
18 the laws of California with its principal place of business in Woodland Hills,
19 California. At all relevant times, Farmers operated in California, including in Los
20 Angeles County.

21 JURISDICTION AND VENUE

22 17. This Court has subject matter jurisdiction over this action pursuant to
23 Article VI, section 10, of the California Constitution and Section 410.10 of the
24 California Code of Civil Procedure.

25 18. Venue is appropriate in this Court pursuant to under Code of Civil
26 Procedure section 395 because a substantial part of the conduct, events, and omissions
27 giving rise to the violations of law giving rise to this lawsuit occurred in Los Angeles
28 County.

1 FACTUAL BACKGROUND

2 19. In January 2020 early media reports documented an outbreak of a novel
3 strain of coronavirus – COVID-19 – in Wuhan, China. By late January, it was
4 generally understood in the scientific and public health communities that COVID-19
5 was spreading through human-to-human transmission and could be transmitted by
6 asymptomatic carriers.

7 20. On January 30, 2020, reports of the spread of COVID-19 outside China
8 prompted the World Health Organization to declare the COVID-19 outbreak a
9 “Public Health Emergency of International Concern.”

10 21. On March 11, the World Health Organization declared COVID-19 a
11 global health pandemic based on existing and projected infection and death rates and
12 concerns about the speed of transmission and ultimate reach of this virus.

13 22. Public health officials have recognized for decades that non-
14 pharmaceutical interventions (NPIs) can slow and stop the transmission of certain
15 diseases. Among these are screening and testing of potentially infected persons;
16 contact tracing and quarantining infected persons; personal protection and
17 prevention; and social distancing. Social distancing is the maintenance of physical
18 space between people. Social distancing can be limited – *e.g.*, reducing certain types
19 of conduct or activities like hand-shaking – or large-scale – *e.g.*, restricting the
20 movements of the total population.

21 23. A lack of central planning, shortages of key medical supplies and
22 equipment, and the unfortunate spread of misinformation and disinformation about
23 the risks of COVID-19 has led to widespread confusion, unrest, and uncertainty
24 regarding the likely trajectory of this pandemic and the appropriate counter-measures
25 necessary to mitigate the damage it could potentially cause.

26 24. Beginning in late February, public health officials began advising
27 various governments around the world that one of the most disruptive NPIs –
28 population-wide social distancing – was needed to stop the transmission of COVID-

1 19. Suddenly schools, offices, public transit, restaurants, and shops -- densely
2 occupied spaces, heavily traveled spaces, and frequently visited spaces -- were likely
3 to become hot-spots for local transmission of COVID-19.

4 25. By mid-March, that advice was being implemented by state and local
5 governments across the United States. In many respects, California led the way,
6 becoming one of the first states to order widespread closures.

7 26. On March 16, 2020, Los Angeles County issued the Safer At Home
8 Order, which banned gatherings of 50 or more people. On March 19, 2020 Los
9 Angeles County amended its Safer At Home order to prohibit gatherings of 10 or
10 more people.

11 27. On March 19, 2020, California's Governor Gavin Newsom issued the
12 Stay at Home Order. This Order directed "All residents . . . to immediately heed the
13 current State public health directives," which, per the State Public Health Officer,
14 ordered "all individuals living in the State of California to stay home or at their place
15 of residence," except in certain circumstances. On March 21, 2020, Los Angeles
16 County's Safer At Home Order was amended a third time to comply with the
17 statewide Stay At Home Order. The Safer at Home and Stay at Home Orders required
18 restaurants to cease dine-in service, though take-out was permitted if certain safety
19 measures were in place.

20 28. And although a limited reopening of restaurants in Los Angeles County
21 began on May 29, 2020 ("Safer at Work and in the Community Order"), the rules in
22 place severely restrict the number of patrons that the restaurant can seat and will not
23 result in the return of even half of expected revenue had the Orders not been issued.

24 PLAINTIFFS' EXPERIENCE

25 29. Plaintiff West Covina Restaurant Group, Inc. operates Gaucho Grill
26 West Covina, located at 1129 West Covina Parkway, West Covina, CA 91790. Gaucho
27 Grill West Covina serves modern Argentine cuisine, cocktails, and craft beers,
28 offering a contemporary twist on the classic Argentine Steakhouse.

1 30. Plaintiff Downey Restaurant Group, Inc. operates the Gaucho Grill
2 Downey, which is located at 8830 Apollo Way, Suite 100 Downey, CA 90242. Gaucho
3 Grill Downey also serves modern Argentine cuisine, cocktails, and craft beers,
4 offering a contemporary twist on the classic Argentine Steakhouse.

5 31. Plaintiffs have complied with all applicable orders of California state
6 and local authorities, including the Stay At Home Order and Safer At Home Order,
7 and are currently complying with the Safer at Work and in the Community Order.
8 Compliance with those orders has caused direct physical loss of both Plaintiffs'
9 insured property in that all or part of the property has been made useless and/or
10 uninhabitable and removed the ability to earn business income from such parts; the
11 functionality of both restaurants has been severely reduced and at times completely
12 or nearly eliminated.

13 32. The impact of these orders is felt not simply in their direct application to
14 Plaintiffs' operations, but also in their application to neighboring businesses and
15 properties, whose property has suffered similar direct physical loss as a result.

16 33. Even as California relaxes and eventually revokes the various orders,
17 Plaintiffs will encounter continued loss of business income and face considerable
18 extra expense because ongoing measures that reduce expected business income will
19 be required to help slow the transmission of the virus.

20 34. Plaintiffs purchased comprehensive commercial liability and property
21 insurance from Farmers to insure against all of the risks their restaurants might face.
22 The insurance coverage purchased from the Defendant includes business income with
23 extra expense coverage for the loss, as well as additional "civil authority" coverage.
24 Both Plaintiffs' policies exclude losses "caused by or resulting from" virus or bacteria.
25 Once triggered, the policies pay actual losses sustained for the business income and
26 extra expense coverage for up to eighteen (18) months, as well as twenty-one (21)
27 days of civil authority coverage for lost business income and extra expense.

28 35. To date, Plaintiffs have paid all of the premiums required by Farmers to

1 keep their policies in full force.

2 36. On March 24, 2020 Plaintiffs' representative reported a loss of business
3 income as of March 16, 2020 for Gaucho Grill West Covina under Restaurant Premier
4 Policy No. 60671-15-43 for the policy period of August 10, 2019 to August 10, 2020
5 (the "Gaucho Grill West Covina Policy").

6 37. During the same conversation, Plaintiffs' representative also reported a
7 loss of business income beginning March 16 for Gaucho Grill Downey, under
8 Restaurant Premier Policy No. 60667-23-82, for the policy period of June 15, 2019 to
9 June 15, 2020 (the "Gaucho Grill Downey Policy").

10 38. Plaintiffs' representative spoke with a Farmers claims specialist, who
11 denied coverage over the telephone for the losses reported for Gaucho Grill West
12 Covina and Gaucho Grill Downey in that March 24 conversation.

13 39. On March 26, 2020, Plaintiffs' representative sent an email to Farmers,
14 asking the company to reconsider the verbal denial of coverage the claims examiner
15 made regarding the losses reported on behalf of both Plaintiffs, pointing to other
16 provisions of the policies that might provide coverage for some or all of the losses that
17 the Plaintiffs were sustaining.

18 40. The very next day, on March 27, 2020, the claims examiner called and
19 emailed Plaintiffs' representative to relate the message that the prior claims decision
20 still stands and Farmers would not be providing coverage for the Plaintiffs' losses
21 under either policy. Meanwhile, it is clear no reconsideration or further investigation
22 was undertaken, as the denial letter for Gaucho Grill West Covina was dated the *prior*
23 day, and the denial for Gaucho Grill Downey was dated the same day as Farmers'
24 follow-up email and call; March 27.

25 41. Farmers' basis for denying coverage for loss of income and extra
26 expenses under the Gaucho Grill West Covina Policy and the Gaucho Grill Downey
27 Policy appears to be based on the same grounds that Farmers is asserting to deny all
28 such claims made by California restaurants, and the letters to each Plaintiff denying

1 coverage are identical in all relevant regards. Both letters deny coverage because,
2 according to the claim examiner:

- 3 a) There was no direct physical loss of or damage to property at the
4 insured premises;
- 5 b) While the government's civil authority orders "may have caused an
6 interruption or a slowdown to [Plaintiffs'] business[es], access to
7 the described premise[s] was not prohibited due to direct physical
8 loss of or damage to property";
- 9 c) Spoilage from extended closure is not a covered cause of spoilage
10 under Plaintiffs' Spoilage Coverage (while ignoring the fact that
11 both policies list "perishable goods" as covered property via
12 endorsement); and
- 13 d) The policies were unilaterally amended with an Endorsement that
14 purports to exclude loss or damage caused by or resulting from any
15 virus that is capable of inducing physical distress, illness or disease.

16 42. Farmers' reasons for denying coverage to Gaucho Grill West Covina and
17 Gaucho Grill Downey are contrary to the terms and conditions of the policies and
18 applicable law, which gives effect to plain language, construes ambiguity in favor of
19 coverage, and narrowly construes exclusions, the applicability of which insurers have
20 the burden of proving. Additionally, California law requires that insurance policy
21 terms be construed broadly in favor of coverage, and that any ambiguity in scope be
22 resolved in favor of coverage. On the other hand, exclusions must be read narrowly,
23 in favor of extending the insureds the coverage the insuring agreement provides.

24 43. Under California law, insurance companies are required to conduct a
25 reasonable investigation before reaching a coverage determination, yet Farmers
26 performed no investigation in this case, denying coverage via telephone for both
27 Plaintiffs' claims.

28 44. Farmers' denial of coverage to the Plaintiffs breached its obligation and

responsibility to provide coverage available under the policies to Plaintiffs for their covered losses of business income and property, and the extra expenses being incurred, as a result of the insured premises becoming unusable as full-service casual dining establishments, which is what both policies purport to cover. Farmers is aware that the Plaintiffs' business incomes are generated through providing food and beverage service at a full-service dining establishment, which is what the Plaintiffs purchased insurance to protect.

45. As a result of Farmers' improper denial of coverage and breach of the Gaucho Grill West Covina Policy and Gaucho Grill Downey Policy, Plaintiffs have suffered and will continue to suffer damages.

46. A declaratory judgment determining that the policies provide coverage for the losses of business income and extra expenses that Gaucho Grill West Covina and Gaucho Grill Downey are experiencing will prevent the Plaintiffs from being left without the vital coverage they need and which was acquired to ensure the survival of their businesses in circumstances like the present. As a result of the Stay At Home Order, the Safer At Home Order, and the Safer at Work and in the Community Order, the Plaintiffs have incurred and continue to incur substantial losses of business income and are forced to pay extra expenses, all of which are covered under the policies issued to them by Farmers.

FIRST CAUSE OF ACTION

Declaratory Judgment

47. Plaintiffs re-allege the paragraphs above as if fully set forth herein.

48. Plaintiffs purchased comprehensive business insurance policies from Defendant.

49. Plaintiffs paid all premiums required to maintain their comprehensive business insurance policies in full force.

50. The comprehensive business insurance policies issued by Farmers include provisions that provide coverage for the direct physical loss of or damage to

the covered premises as well as actual loss of business income and extra expenses sustained during the suspension of operations as a result of such loss or damage for a period of up to eighteen (18) months.

51. On March 16, 2020, Los Angeles County issued the Safer At Home Order, which banned gatherings of 50 or more people. On March 19, 2020 Los Angeles County amended its Safer At Home order to prohibit gatherings of 10 or more people. Also on or about March 19, 2020 California issued the Stay At Home Order, mandating that all Californians remain at home, with certain exceptions. On March 21, 2020 Los Angeles County amended its Safer At Home Order to comply with the statewide Stay At Home Order. These mandates required restaurants, including those owned by Plaintiffs, to cease all dine-in services. These mandates also applied to neighboring businesses, thus causing widespread closures surrounding Plaintiffs' business premises.

52. A limited reopening of restaurants in Los Angeles County began with the Safer at Work and in the Community Order which took effect on May 29, 2020, although this order still severely restrict the number of patrons that the restaurant can seat and will not result in the return to even half of expected revenue had the Orders not been issued.

53. As a result of these mandates, Plaintiffs' covered property lost some or all of its functionality and/or became useless or uninhabitable, as full-service casual dining establishments, resulting in substantial loss of business income. Preparing for the limited reopening has also resulted in quite a bit of extra expense to comply with the new safety procedures, in addition to the ongoing losses of business income.

54. These losses are insured losses under several provisions of Plaintiffs' comprehensive business insurance policies issued by Farmers, including business income and extra expense coverage and coverage for civil authority orders, and potentially other provisions as well.

55. There are no applicable, enforceable exclusions or definitions in the

1 insurance policies that preclude coverage for these losses.

2 56. WHEREFORE, Plaintiffs seek a declaration that their business income
3 losses and extra expenses incurred are covered and not precluded by exclusions or
4 other limitations in their comprehensive business insurance policies.

5 SECOND CAUSE OF ACTION

6 **Breach of Contract**

7 57. Plaintiffs re-allege the paragraphs above as if fully set forth herein.

8 58. Plaintiffs purchased comprehensive business insurance policies from
9 Defendant to ensure against all risks (unless specifically excluded) a business might
10 face. These policies are binding contracts which afforded Plaintiffs comprehensive
11 business insurance under their respective terms and conditions.

12 59. Plaintiffs met all or substantially all of their contractual obligations,
13 including paying all the premiums required by Defendant.

14 60. On March 16, 2020, Los Angeles County issued the Safer At Home
15 Order, which banned gatherings of 50 or more people. On March 19, 2020 Los
16 Angeles County amended its Safer At Home order to prohibit gatherings of 10 or
17 more people. Also on or about March 19, 2020 California issued the Stay At Home
18 Order, mandating that all Californians remain at home, with certain exceptions. On
19 March 21, 2020 Los Angeles County amended its Safer At Home Order to comply
20 with the statewide Stay At Home Order. These mandates required restaurants,
21 including those owned by Plaintiffs, to cease all dine-in services. These mandates also
22 applied to neighboring businesses, thus causing widespread closures surrounding
23 Plaintiffs' business premises.

24 61. A limited reopening of restaurants in Los Angeles County began with
25 the Safer at Work and in the Community Order which took effect on May 29, 2020,
26 although this order still severely restrict the number of patrons that the restaurant can
27 seat and will not result in the return to even half of expected revenue had the Orders
28 not been issued.

62. Beginning on or about March 16, 2020 and continuing through the date of the filing of this Complaint, Plaintiffs suffered the direct physical loss of property and lost business income following the Stay At Home and Safer At Home Orders—losses which are covered under the comprehensive business insurance policies purchased from Defendant. These losses are continuing under the safer at Work and in the Community Order, and extra expenses continue to pile up.

63. There are no applicable, enforceable exclusions in Plaintiffs' comprehensive business insurance policies that preclude coverage.

64. Defendant breached the insurance contracts by denying coverage to Plaintiffs.

65. As a direct and proximate result of Defendant's denial of insurance coverage for the loss of business income and the extra expenses that the Plaintiffs are incurring, Plaintiffs suffered and continue to suffer damages.

66. WHEREFORE, Plaintiffs seek: (a) a judgment that Defendant has breached its insurance contracts with Plaintiffs; and (b) corresponding damages for those breaches.

THIRD CAUSE OF ACTION

Breach of Implied Covenant of Good Faith and Fair Dealing

91. Plaintiffs re-allege the paragraphs above as if fully set forth herein.

92. Plaintiffs contracted with Defendant to provide them with comprehensive business insurance to ensure against all risks (unless specifically excluded) a business might face.

93. These contracts are subject to implied covenants of good faith and fair dealing that all parties will act in good faith and with reasonable efforts to perform their contractual duties—both explicit and fairly implied—and not to impair the rights of other parties to receive the rights, benefits, and reasonable expectations under the contracts. This includes the covenants that Defendant will act fairly and in good faith in carrying out their contractual obligations to provide Plaintiffs with the

1 comprehensive business insurance coverage they purchased.

2 94. Defendant breached the implied covenant of good faith and fair dealing
3 by:

- 4 a. Selling policies that appear to provide liberal coverage for loss of
5 property and lost business income with the intent of interpreting
6 undefined or poorly defined terms and ambiguously written
7 exclusions to deny coverage under circumstances foreseen by
8 Defendant;
- 9 b. Denying coverage for loss of property and lost business income
10 unreasonably, and without proper cause, by applying undefined,
11 ambiguous, and contradictory terms contrary to applicable rules of
12 policy construction and the plain terms and purpose of the policies;
- 13 c. Denying Plaintiffs' claims for loss of property and loss of business
14 income without conducting a fair, unbiased and thorough
15 investigation or inquiry, arbitrarily and capriciously, and/or with
16 knowledge that the denial was unreasonable under the policy;
- 17 d. Denying Plaintiffs' claims for loss of property, business income and
18 extra expenses a second time after Plaintiffs requested
19 reconsideration, again failing to conduct an fair, unbiased and
20 thorough investigation or inquiry, arbitrarily and capriciously,
21 and/or with knowledge that the denial was unreasonable under the
22 policy.
- 23 e. Compelling Plaintiffs to initiate litigation to recover policy benefits
24 to which they are entitled.

25 95. Plaintiffs have met all or substantially all of their contractual
26 obligations, including by paying all the premiums required by Defendant.

27 96. Defendant's failure to act in good faith in providing comprehensive
28 business insurance coverage to Plaintiffs denied the Plaintiffs of the full benefit of

1 their bargain.

2 97. Accordingly, Plaintiffs have been injured as a result of Defendant's
3 breach of the covenant of good faith and fair dealing and are entitled to damages in
4 an amount to be proven at trial.

5 98. WHEREFORE, Plaintiffs seek: (a) a judgment that Defendant has
6 breached the covenant of good faith and fair dealing implied in their contracts with
7 Plaintiffs; and (b) corresponding damages for that breach.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs request that the Court enter a judgment awarding the
10 following relief:

- 11 a. A declaration that Plaintiffs' losses are covered under Defendant's
12 comprehensive business insurance policies;
13 b. Damages, attorney's fees and costs, and such other and further relief as
14 is just and proper as compensation for Defendant's breach of contract
15 and breach of the implied covenant of good faith and fair dealing.


16 **JURY TRIAL DEMAND**

17 Pursuant to Article I, Section 16 of the California Constitution, Plaintiffs hereby
18 demand trial by jury in this action of all issues so triable.

19
20 Dated: June 9, 2020

Respectfully submitted,

21 **GIBBS LAW GROUP LLP**

22
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1 **JURY DEMAND**

2 Plaintiffs demand a trial by jury for all issues so triable under the law.

3 Dated: June 9, 2020

Respectfully submitted,

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