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**FILED**  
Superior Court of California  
County of San Francisco

OCT 16 2020

CLERK OF THE COURT

BY:  Deputy Clerk

8 Attorney for Plaintiff ROYAL CUCKOO INC

9 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 Case No. **CGC-20-587390**

12 ROYAL CUCKOO INC., a California  
13 Corporation,

14 Plaintiff,

15 v.

16 CERTAIN UNDERWRITERS AT  
17 LLOYDS LONDON POLICY Nos. RTB-  
18 0000172-02 AND RTB-0000172-03; and  
DOES 1-50, inclusive,

19 Defendants.

**PLAINTIFF'S COMPLAINT FOR  
DAMAGES AND DEMAND FOR JURY  
TRIAL**

1. Breach of Contract;
2. Breach Of Covenant Of Good Faith  
And Fair Dealing;
3. Bad Faith Denial of Insurance Claim;
4. Unfair Business Practices;
5. Declaratory Relief;
6. Injunctive Relief;

**BY FAX**

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## INTRODUCTION

1. This action stems from the absolute loss of business income that resulted from the forced closure of a small, family owned and run, neighborhood business entitled the Royal Cuckoo Organ Lounge (“Royal Cuckoo Lounge”).

2. The good people behind the Royal Cuckoo Lounge, Paul Miller and his family, worked daily, grueling schedules for decades to build and maintain this historic neighborhood bar and music venue, which the community prizes.

3. Despite the changes to the City over the years, Miller and his magical organ lounge remained true to the artistic and adventurous spirit that is the heart of San Francisco.

4. On March 16, 2020, San Francisco City and County Officials mandated that the owner of the Royal Cuckoo Lounge suspend operations.

5. As a result, the Royal Cuckoo Lounge remained closed with 100% business income loss, until a partial re-opening was permitted by the City in late September 2020, leaving the business to operate partially, but at a tremendous loss.

6. Despite the recent ability to allow some customers to sit outside, and to conduct limited business on the property, it remains able to do only a fraction of the business it once did prior to the restrictions being put into place, and continues to suffer a loss of business income as a result of the loss of use of its property.

7. In thoughtful preparation, and to protect its investment of time and efforts, Royal Cuckoo Inc., the Plaintiff and registered owner of the business (“Royal Cuckoo”), purchased and maintained a comprehensive insurance policy that specifically contained

1 coverage for loss of Business Income due to either a loss of use of the property itself, or  
2 damage to the premise or its immediate surroundings (“Policy”).

3 8. The Royal Cuckoo made a timely claim on its policy when it suffered the above  
4 catastrophic loss of business income and related expenses incurred.

5  
6 9. Certain Underwriters of Lloyd’s of London, the insurance company that  
7 accepted each and every monthly premium from the Plaintiff (“Lloyd’s”), denied the claim  
8 outright and refused to adhere to the plain language of its policy.

9 10. When the Plaintiff made a request that the Defendant review its denial in  
10 good faith, that appeal was denied outright as well.

11  
12 11. Nevertheless, despite the timely, good faith monthly payment of insurance  
13 premiums for a policy that included coverage for situations just like the present one, they  
14 were forced to lay off their staff and lost all business income - as though they had no  
15 insurance at all.

16 12. Insurance companies like the Defendant here, are denying these types of  
17 claims across the country, claiming no physical damage has occurred so the policy terms  
18 are not applicable.

19  
20 13. Here, however, the Policy that covered Royal Cuckoo’s business, provides  
21 coverage for either physical damage OR loss of use.

22 14. The Plaintiff here suffered both the physical loss of, and damage to its  
23 property.

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25 15. Nonetheless, Lloyd’s denied the claims notwithstanding the plain language of  
26 the Policy, and they did (i) in bad faith, (ii) fraudulently, and (ii) in violation of California  
27 law.

PARTIES

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2           16. Plaintiff ROYAL CUCKOO INC. (the "ROYAL CUCKOO") is and was at all  
3 times herein, a California corporation with its principal place of business in San  
4 Francisco, California.

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6           17. Plaintiff is informed and believes, that at all material times herein defendant  
7 CERTAIN UNDERWRITERS AT LLOYDS LONDON POLICY Nos. RTB-0000172-02  
8 AND RTB-0000172-03 ("LLOYD'S") was and is a syndicate of insurance underwriters  
9 authorized to transact, and transacted insurance business in the State of California.

10           18. LLOYDS was authorized by the California Department of Insurance to do  
11 business in California in 2006 and remains so authorized.

12  
13           19. Plaintiff is further informed and believes that while LLOYD'S is identified in  
14 the Policy as the insurer, this is an unincorporated association of underwriters also known  
15 as Syndicate DTW 1991.

16           20. DEFENDANT DOES 1 to 50, inclusive, are sued under fictitious names  
17 pursuant to Code of Civil Procedure § 474.

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19           21. PLAINTIFF is informed and believes, and on that basis alleges, that each of  
20 the DEFENDANTS sued under fictitious names is in some manner responsible for the  
21 wrongs and damages alleged below, in so acting was functioning as the agent, servant,  
22 partner, and employee of the co-DEFENDANTS, and in taking the actions mentioned  
23 below was acting within the course and scope of his or her authority as such agent,  
24 servant, partner, and employee, with the permission and consent of the co-  
25 DEFENDANTS. The named DEFENDANTS and Doe DEFENDANTS are sometimes  
26 hereafter referred to, collectively and/or individually, as "DEFENDANTS."  
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1           22.    The DEFENDANTS compelled, coerced, aided, and/or abetted the neglect  
2 alleged in this Complaint. The DEFENDANTS were responsible for the events and  
3 damages alleged herein, including on the following bases: (a) The DEFENDANTS  
4 committed the acts alleged; (b) at all relevant times, one or more of the DEFENDANTS  
5 was the agent or employee, and/or acted under the control or supervision, of one or more of  
6 the remaining DEFENDANTS and, in committing the acts alleged, acted within the  
7 course and scope of such agency and employment and/or is or are otherwise liable for  
8 PLAINTIFF's damages; (c) at all relevant times, there existed a unity of ownership and  
9 interest between or among two or more of the DEFENDANTS such that any individuality  
10 and separateness between or among those DEFENDANTS has ceased, and  
11 DEFENDANTS are the alter egos of one another. The DEFENDANTS exercised  
12 domination and control over one another to such an extent that any individuality or  
13 separateness of DEFENDANTS does not, and at all times herein mentioned did not, exist.  
14 Adherence to the fiction of the separate existence of DEFENDANTS would permit abuse  
15 of the corporate privilege and would sanction fraud and promote injustice. All actions of  
16 all DEFENDANTS were taken by employees, supervisors, executives, officers, and  
17 directors during employment with all DEFENDANTS, were taken on behalf of all  
18 DEFENDANTS, and were engaged in, authorized, ratified, and approved of by all other  
19 DEFENDANTS.  
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24           23.    Finally, at all relevant times mentioned herein, all DEFENDANTS acted as  
25 agents of all other DEFENDANTS in committing the acts alleged herein.

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JURISDICTION AND VENUE

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2           24.    This court has jurisdiction over this action because (i) The underwriters  
3 comprising LLOYD'S is authorized by the California Department of Insurance to conduct  
4 insurance business, and is conducting insurance business in the State of California; (ii)  
5 The insurance contract that is the subject matter of this action was entered into in  
6 California and is governed by California law; (iii) each cause of action is predicated on  
7 California law; and (iv) the wrongful acts described in this Complaint occurred in  
8 California.  
9

10           25.    Venue is proper in this Court because all of the events giving rise to the  
11 claims made herein occurred in the City and County of San Francisco, because each of the  
12 underwriters comprising LLOYD'S maintains offices and conducts business in San  
13 Francisco; the contract, or insurance policy at issue here is and was operative to cover the  
14 premises located in San Francisco California, and the Plaintiff ROYAL CUCKOO INC. is  
15 located in San Francisco California.  
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ALLEGATIONS OF FACT

26. Plaintiff is the owner of the bar and tavern by the same name, The Royal Cuckoo (the "ROYAL CUCKOO LOUNGE"), the San Francisco Bay Area's only organ lounge, which offers indoor and backyard seating, live music and specialty cocktails.



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27. The ROYAL CUCKOO LOUNGE is a family owned and operated lounge and nightclub in San Francisco, known and loved by its regulars.

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28. The ROYAL CUCKOO LOUNGE has recurring live musical performers and the tavern boasts a formidable record collection to bridge the live music it offers.



1           29.    The ROYAL CUCKOO, through its insurance agents, purchased policy RTB-  
2 0000172-02 on April 4, 2019 for coverage from April 2, 2019 through April 2, 2020 from  
3 LLOYDS (the “Policy”).<sup>1</sup>

4           30.    Under this Policy, The ROYAL CUCKOO agreed to pay insurance premiums  
5 to LLOYDS in exchange for the promise by LLOYDS to cover The ROYAL CUCKOO for  
6 interruption and loss of in business income under the terms of the Policy, which state, as a  
7 result of either the loss of use of or physical damage to its property.  
8

9           31.    Since inception of the Policy, The ROYAL CUCKOO has made all premium  
10 payments as required, and the Policy remained in full force and effect.  
11

12           32.    The Policy’s coverage of business interruption at The ROYAL CUCKOO can  
13 occur under a number of circumstances.

14           33.    Here, the Policy was triggered when a complete cessation of the business’  
15 activities was the direct result of the Closure Orders issued by the City and County of San  
16 Francisco.  
17

18           34.    The business income loss, however, has continued, despite the ROYAL  
19 CUCKOO presently being able to provide limited service to a small amount of customers,  
20 outside and socially distanced.

### 21   **Policy Provisions**

22           35.    The Policy is al all-risk policy that insures losses that are not otherwise  
23 excluded.  
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27 <sup>1</sup> The ROYAL CUCKOO purchased subsequent policy RTB-0000172-03 on April 3, 2020 for  
28 coverage from April 2, 2020 through April 2, 2021.



1 36. The Policy contains a provision entitled "BUSINESS INCOME (AND EXTRA  
2 EXPENSE) COVERAGE FORM" which explains,

3 *We will pay for the actual loss of Business Income you sustain due to the*  
4 *necessary "suspension" of your "operations" during the "period of restoration".*

5 *The "suspension" must be caused by direct physical loss of or damage to*  
6 *property at premises which are described in the Declarations and for which a*  
7 *Business Income Limit of Insurance is shown in the Declarations.*<sup>2</sup>

8 *The loss or damage must be caused by or result from a Covered Cause of Loss.*

9 37. Subsection 3 directs that "Covered Causes of Loss, Exclusions and  
10 Limitations" are found in the "applicable Causes of Loss Form as shown in the  
11 Declarations."

12 38. The "Cause of Loss – Special Form" states that

13 *Risks Of Direct Physical Loss unless the loss is: 1. Excluded in Section B.,*  
14 *Exclusions; or 2. Limited in Section C., Limitations; that follow*

15 39. At subsection 4, the exclusions related to the Business Income (And Extra  
16 Expense) Coverage outlines specific exclusions (i.e., including that Lloyd's will not pay for  
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18  
19 <sup>2</sup> The above Policy terms that are italicized, are defined at Subsection F within this section,  
20 as follows:

21 **2. "Operations"** means: a. Your business activities occurring at the described  
22 premises; and b. The tenantability of the described premises, if coverage for Business  
23 Income Including "Rental Value" or "Rental Value" applies.

24 **3. "Period of restoration"** means the period of time that: a. Begins: (1) 72 hours  
25 after the time of direct physical loss or damage for Business Income Coverage; or (2)  
26 Immediately after the time of direct physical loss or damage for Extra Expense  
27 Coverage; caused by or resulting from any Covered Cause of Loss at the described  
28 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 at a new permanent  
location

**6. "Suspension"** means: a. the slowdown or cessation of your business activities; or b.  
That a part or all of the described premises is rendered untenable, if coverage for  
Business Income Including "Rental Value" or "Rental Value" applies.

1 loss of radio satellite or television antennas, delays in rebuilding because of strikes or  
2 other persons, damage to "finished stock," etc.), none of which have any significance here.

3 40. Accordingly, the loss and direct physical damage claimed, is not specifically  
4 excluded by the Policy.

5 41. Subsection 2, entitled Extra Expenses, at section (b) explains that

6  
7 *Extra Expense means necessary expenses you incur during the "period of*  
8 *restoration" that you would not have incurred if there had been no direct*  
9 *physical loss or damage to property caused by or resulting from a*  
10 *Covered Cause of Loss.*

11 *We will pay Extra Expense (other than the expense to repair or replace*  
12 *property) to:*

13 *(1) Avoid or minimize the "suspension" of business and to continue operations*  
14 *at the described premises or at replacement premises or temporary locations,*  
15 *including relocation expenses and costs to equip and operate the replacement*  
16 *location or temporary location.*

17 *(2) Minimize the "suspension" of business if you cannot continue "operations"*

18 42. Moreover, there is coverage for the actions of a Civil Authority which result in  
19 the loss or damage to the Property.

20 43. The Civil Authority provision in Section A.5 explains that

21 *Civil Authority Coverage for Business Income will begin 72 hours after the*  
22 *time of the first action of civil authority that prohibits access to the described*  
23 *premises and will apply for a period of up to four consecutive weeks from the*  
24 *date on which such coverage began.*

25 *Civil Authority Coverage for Extra Expense will begin immediately after the*  
26 *time of the first action of civil authority that prohibits access to the described*  
27 *premises and will end:*

28 *(1) Four consecutive weeks after the date of that action; or*

*(2) When your Civil Authority Coverage for Business Income ends; whichever*  
*is later.*





1           58.     The examiner went on to state that while the policy also included Business  
2 Income coverage, this coverage was “*only afforded when there has been direct physical loss*  
3 *to your property or to an adjacent property (property within one mile of your property)*” and  
4 “[*t]here is no evidence that there has been physical damage to your property or to an*  
5 *adjacent property according to the Civil Authority directed by your government.*”  
6

7           59.     The examiner’s denial of coverage was appealed by written notice on May 4,  
8 2020, making clear that the denial failed to account for the alternative source of coverage  
9 for “loss of use of” the property, and that it erroneously focused only on the “physical  
10 damage” requirement, despite the plain language of the Policy, and the use therein of the  
11 word “OR” to separate the alternative requirements for coverage.  
12

13           60.     The written denial concluded that the claim failed because there was “*no*  
14 *evidence the business operations were suspended because of a direct physical loss.*”  
15

16           61.     This is not the case, as there was a mandated loss of use of the premises, that  
17 was effective the date of the claim and that has continued through the present date (to  
18 include the complete loss of use through mid September 2020, and the partial loss of use  
19 that remains in effect as of the date of this Complaint).  
20

21           62.     Under California law, the clause at issue in the policy here has been litigated.

22           63.     Where there is coverage when a suspension of operations is caused by either  
23 the “direct physical loss of or damage to the property,” the words OF and OR are each  
24 pivotal.

25           64.     There is as a result, no requirement that the loss of use “of” the property, be  
26 accompanied by physical damage to the property for the coverage to be operative.

27           65.     It need only be one or the other – physical loss “of” OR damage “to.”  
28

1           66. In *Total Intermodal Servs. v. Travelers Prop. Cas. Co. of Am.*, 2018 U.S. Dist.  
2 LEXIS 216917, \*11, the court held that the phrase "direct physical loss of" should be  
3 construed differently from 'direct physical loss to' or 'direct physical loss'. [...and that ] the  
4 phrase 'loss of' includes the permanent dispossession of something."

5           67. Here, the ROYAL CUCKOO LOUNGE had to totally suspend its operations  
6 and as a result, suffered a direct physical loss of its property, and this was as a result of  
7 the Closure Orders issued by a Civil Authority, a covered loss.  
8

9           68. Moreover, the law supports the interpretation that there is a direct physical  
10 loss when the property is rendered unusable by the insured.  
11

12           69. For instance, in *General Mills, Inc, v Gold Medal Ins.*, 2001 Minn App LEXIS  
13 139 (Feb. 6, 2001), the court determined that the requirement for "direct physical loss or  
14 damage" was met in the absence of tangible injury when government regulations rendered  
15 cereal unfit for sale, resulting in "an impairment of function and value" of insured  
16 property.  
17

18           70. Similarly, in *American Guarantee & Liability Ins. Co. v Ingram Micro, Inc.*,  
19 2000 U.S. Dist LEXIS 7299 (DC Ariz), the Arizona District Court held that the term  
20 "physical damage" included "loss of access, loss of use, and loss of functionality" of  
21 computer equipment during the loss of power (even though the computers were not  
22 technically damaged).  
23

24           71. As such, the denial of its claim and loss was made in error, and business  
25 interruption income and expense coverage should be extended.

26           72. This business has paid its premiums in good faith and it has avoided making  
27 claims to date, instead working and supporting the community and being a responsible  
28

1 small business – the type of business that should be protected and supported in these  
2 times.

3 73. It was ordered to cease operations, it did, and it has suffered a business  
4 income loss, which it in good faith has relied on its insurance company to cover.  
5

6 74. We are prepared to prove the amount of the loss, which is estimated to be  
7 approximately \$60,000-\$70,000 per month that the business was fully shuttered.

8 **CLAIM ONE**  
9 **Breach of Contract**  
10 **Against All DEFENDANTS**

11 75. PLAINTIFF incorporates herein by this reference the allegations contained in  
12 above paragraphs as if stated in full.

13 76. At all times relevant, Plaintiff has paid all premiums and performed all of its

14 77. obligations under the Policy.

15 78. Lloyd's has a contractual duty to provide Plaintiff with insurance coverage  
16 under specified provisions of the Policy, as alleged by Plaintiff herein.

17 79. In denying Plaintiff's insurance claim, Lloyd's breached that duty.

18 80. As a result of that breach, Plaintiff has been damaged in the amount of  
19 coverage to which it is entitled under the Policy, and in an amount to be proved at trial,  
20 and for which Plaintiff seeks compensatory damages with interest thereon.  
21

22 81. WHEREFORE PLAINTIFF prays for judgment as set forth below.

23 **CLAIM TWO**  
24 **Breach of Covenant of Good Faith and Fair Dealing**  
25 **Against all DEFENDANTS**

26 82. PLAINTIFF incorporates herein by this reference the allegations contained in  
27 above paragraphs as if stated in full.  
28

1           83.    When Lloyd's issued the Policy, they undertook and were bound to the  
2 covenants implied by law that they would deal fairly and in good faith with Plaintiff, and  
3 not to engage in any acts, conduct, or omissions that would impair or diminish the rights  
4 and benefits due Plaintiff, according to the terms of the Policy.  
5

6           84.    Upon information and belief, Lloyd's breached the implied covenant of good  
7 faith and fair dealing arising out of Policy by, unreasonably and in bad faith, denying  
8 Plaintiff's insurance coverage to which it is entitled under the Policy.

9           85.    In committing the above-referenced breach, Lloyd's intended to and did vex,  
10 damage, annoy, and injure Plaintiff.  
11

12           86.    Said conduct was intentional, willful, and with conscious disregard of  
13 Plaintiff's rights, and was malicious, oppressive and/or fraudulent under California Civil  
14 Code section 3294, thereby entitling Plaintiff to punitive and exemplary damages against  
15 the Lloyd's Defendant.  
16

17           87.    As a direct and proximate result of the above-referenced breach, Plaintiff has  
18 had to retain attorneys to enforce its right to the insurance coverage to which it is entitled  
19 under the Policy and has thereby been injured and damaged.

20           88.    Plaintiff therefore, are entitled to recover and seeks in connection with this  
21 Cause of Action: (a) an award of general damages and other monetary damages, including  
22 all foreseeable consequential and incidental damages for diminution in value, loss of use,  
23 and other incidental damages and out-of-pocket expenses, plus interest, in an amount to  
24 be determined at trial; (b) punitive and exemplary damages in an amount to be  
25 determined at trial; (c) Plaintiff's costs of suit; and (d) Plaintiff's reasonable attorney's  
26 fees in connection with this action.  
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**CLAIM THREE**  
**Bad Faith Denial Of Insurance Claim**  
**Against All DEFENDANTS**

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3       89. Plaintiff re-alleges and incorporates by reference into this cause of action all  
4 allegations set forth in this Complaint as though fully set forth herein.

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6       90. Defendants have put their own interests above those of Plaintiff and have, in  
7 bad faith, failed or refused to perform their obligations under the Policy and under the  
8 laws of California.

9       91. Defendants denied Plaintiff's claim in bad faith by, among other conduct, (a)  
10 failing or refusing to perform a fair, objective, and thorough investigation of the claim as  
11 required by the California Insurance Code; (b) asserting coverage defenses that were  
12 legally and/or factually invalid and thereby delaying resolution of Plaintiff's claims; (c)  
13 placing unduly restrictive interpretations on the Policy terms for the purpose of denying  
14 coverage due under the Policy; (d) failing to give Plaintiff's interests equal consideration  
15 with its own; and (e) forcing Plaintiff to institute litigation to recover amounts due under  
16 the Policy.  
17

18  
19       92. Plaintiff alleges on information and belief that there are numerous other  
20 individuals and groups insured by Defendants who were or are similarly situated to  
21 Plaintiff and who are also being denied benefits under the same unlawful and non-  
22 applicable policy provisions and/or exclusions being applied to Plaintiff.  
23

24       93. At such time as Plaintiff learns the names of such persons, Plaintiff may seek  
25 leave of court to join such persons as plaintiffs in this action.

26       94. Based on the above, Plaintiff alleges that Defendants have committed  
27 institutional bad faith that is part of a repeated pattern of unfair practices and not an  
28

1 isolated occurrence. The pattern of unfair practices constitutes a conscious course of  
2 wrongful conduct that is firmly grounded in Defendants' established company policy.

3 95. As a proximate result of the aforementioned bad faith conduct by Defendants,  
4 Plaintiff has suffered and will continue to suffer damages.

5 96. These damages include interest on the withheld and unreasonably delayed  
6 payments due under the Policy and other special economic and consequential damages, of  
7 a total amount to be shown at trial.

8 97. As a further proximate result Defendants' bad faith conduct, Plaintiff was  
9 compelled to retain legal counsel to obtain the benefits due under its Policy.

10 98. Therefore, Defendants are liable to Plaintiff for those attorney fees, witness  
11 fees, and costs of litigation reasonably necessary and incurred by Plaintiff in order to  
12 obtain the benefits of the Policy.

13 99. Defendants carried out their bad-faith conduct with a willful and conscious  
14 disregard of Plaintiff's rights or subjected Plaintiff to cruel and unjust hardship in  
15 conscious disregard of its rights.

16 100. Alternatively, Defendants' conduct constituted an intentional  
17 misrepresentation, deceit, or concealment of a material fact known to Defendants with the  
18 intention of depriving Plaintiff of property or legal rights, or of causing Plaintiff other  
19 injury.

20 101. Defendants' conduct constitutes malice, oppression, or fraud under California  
21 Civil Code section 3294, entitling Plaintiff to punitive damages in an amount appropriate  
22 to punish or set an example of Defendants and to deter future similar conduct.  
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**CLAIM FOUR**  
**Unfair Business Practices Under Bus. & Prof. Code § 17200, Et. Seq.**  
**Against All DEFENDANTS**

102. Plaintiff re-alleges and incorporates by reference into this cause of action all

103. allegations set forth in this Complaint as though fully set forth herein.

104. California's Unfair Competition Law, as codified by California Business & Professions Code sections 17200, et seq., protects both consumers and competitors by promoting fair competition in commercial markets for goods and services. California's Unfair Competition Law is interpreted broadly and provides a cause of action for any unlawful, unfair, or fraudulent business act or practice. Any unlawful, unfair, or fraudulent business practice that causes injury to consumers falls within the scope of California's Unfair Competition Law.

105. Defendants' acts and practices, as described herein, constitute unlawful or unfair business practices against Plaintiffs in violation of California Business and Professions Code section 17200, et seq.

106. These acts include but are not limited to charging Plaintiff premiums in exchange for purported coverage for business income losses without any intention of satisfying those claims in the most critical of times when Plaintiff needed the coverage most.

107. Any claimed justification for Defendants' conduct is outweighed by the gravity of the consequences to Plaintiff.

108. Defendants' acts and practices are immoral, unethical, oppressive, unconscionable, or substantially injurious to Plaintiffs, and/or have a tendency to deceive Plaintiff.

1 109. By reason of Defendant's fraudulent, deceptive, unfair, and other wrongful  
2 conduct as alleged herein, said Defendant violated California Business and Professions  
3 Code sections 17200, et seq., by consummating an unlawful, unfair, and fraudulent  
4 business practice, designed to deprive Plaintiff of the benefits of Defendants' financial  
5 products and services.  
6

7 110. Defendants perpetrated these acts and practices against Plaintiff, and as a  
8 direct and proximate result of the foregoing, Plaintiff has suffered and continue to suffer  
9 damages in a sum which is, as of yet, unascertained.  
10

11 111. Pursuant to California Business and Professions Code section 17203,  
12 Plaintiffs are entitled to restitution of all the monies paid to Defendants for retaining  
13 benefits that were due and owing to Plaintiff (with interest thereon), to disgorgement of  
14 all Defendants' profits arising out of their unlawful conduct (with interest thereon), and to  
15 be paid benefits due to Plaintiff under the Policy that Defendants wrongfully retained by  
16 means of its unlawful business practices.  
17

18 112. Pursuant to California Code of Civil Procedure section 1021.5, Plaintiff is  
19 entitled to recover their reasonable attorney's fees in connection with Defendants' unfair  
20 competition claims, the substantial benefit doctrine, and/or the common fund doctrine.  
21

22 **CLAIM FIVE**  
23 **Declaratory Relief**  
24 **California Code of Civil Procedure § 1062**  
25 **Against All DEFENDANTS**

26 113. Plaintiff re-alleges and incorporates by reference into this cause of action all  
27 allegations set forth in this Complaint as though fully set forth herein.  
28

1           114. Under California Code of Civil Procedure section 1060, et seq., the court may  
2 declare rights, duties, statuses, and other legal relations, regardless of whether further  
3 relief is or could be claimed.

4           115. An actual controversy has arisen between Plaintiff and Defendants as to their  
5 respective rights and obligations/duties under the Policy.  
6

7           116. Resolution of the parties' respective rights and duties under the Policy by  
8 declaration of the Court is necessary, as there exists no adequate remedy at law.

9           117. Plaintiff alleges and contends, with respect to the Policy's Civil Authority  
10 coverage, that each of the Closure Orders triggers that coverage because (a) each of the  
11 Closure Orders is an order of a civil authority, (b) each of the Closure Orders specifically  
12 prohibits access to the insured property by prohibiting all potential on-premises dining  
13 customers and workers from accessing it, (c) said prohibition of access by each of the  
14 Closure Orders has been continuous and ongoing since the Orders were issued, such that  
15 access has not subsequently been fully permitted, (d) each of the Closure Orders prohibits  
16 said access as the direct result of a Covered Cause of Loss (i.e., a risk of direct physical  
17 loss of property) in the immediate area of the insured property, (e) no Policy coverage  
18 exclusions or limitations apply to exclude or limit coverage, (f) Plaintiff has suffered actual  
19 and covered loss of Business Income in an amount to be determined at trial, and (g)  
20 coverage should begin as of March 13, 2020.  
21  
22

23           118. Plaintiffs allege and contend that the Policy's Lost Business Income and Extra  
24 Expense Coverage is triggered because (a) Plaintiff has sustained actual loss of Business  
25 Income due to the closure of the Royal Cuckoo Lounge, (b) said closure constitutes a  
26 necessary suspension of its operations under the Policy, (c) this suspension has been and  
27  
28

1 is caused by direct physical loss of or physical damage to property at the insured premises,  
2 and (d) some or all of the period of Plaintiff's closure is within the period of restoration  
3 under the Policy.

4 119. Plaintiff alleges and contends that the Policy's Business Income for Essential  
5 Personnel Coverage is triggered with respect to each of its full-time employees that it had  
6 no choice but to let go on or about March 13, 2020, as a direct, proximate, and inevitable  
7 result of the issuance and maintenance of the Closure Orders.  
8

9 120. Plaintiff alleges and contends that the Policy's Extended Business Income  
10 coverage applies or will apply for substantially the same reasons as those set forth above.  
11

12 121. Plaintiff alleges and contends that Lloyd's wrongly denied coverage with  
13 respect to all the foregoing provisions.

14 122. Upon information and belief, Plaintiff alleges that Defendants dispute and  
15 deny each of Plaintiffs' contentions set forth in this Cause of Action.

16 123. Plaintiff, therefore, seeks a declaratory judgment regarding each of Plaintiffs'  
17 contentions set forth in this Cause of Action.  
18

19 124. A declaratory judgment determining that Plaintiffs are due coverage under  
20 the Policy, as set forth above, will help to ensure the survival of its business during this  
21 prolonged closure made necessary by the Closure Orders and the ongoing direct physical  
22 loss of the use of the insured premises.  
23

24 **CLAIM SIX**  
25 **Injunctive Relief**  
26 **Against All DEFENDANTS**

27 125. Plaintiff re-alleges and incorporates by reference into this cause of action all  
28 allegations set forth in this Complaint as though fully set forth herein.

1           126. Upon information and belief, Plaintiff alleges that, unless enjoined by order of  
2 the Court, Defendants will continue to operate their companies for their sole benefit and  
3 to the detriment of Plaintiff.

4           127. No adequate remedy exists at law for the injuries alleged herein, and  
5 Plaintiff will suffer great and irreparable injury if Defendants' conduct is not immediately  
6 enjoined and restrained.

7           128. Defendants wrongfully denied Plaintiff's insurance claim based on erroneous  
8 interpretations of the Policy, in order avoid their financial obligations to Plaintiff  
9 thereunder.

10           129. Given the extended time period of the Closure Orders and the physical loss,  
11 Plaintiffs has and will almost certainly continue to have similar insurance claims in the  
12 future, and Defendants will almost certainly apply the same or similar erroneous  
13 interpretations of the Policy to wrongfully deny coverage.

14           130. If Defendants' conduct in this manner is not restrained and enjoined,  
15 Plaintiffs will suffer great and irreparable harm, as it has already paid for the Policy in  
16 full, and Defendants seem committed to continuing their unfair and unlawful business  
17 practices of erroneously denying Plaintiff's claims.

18           131. Defendants will continue to act in their own self-interest and to commit the  
19 acts that have damaged Plaintiff, and that continue to do so.

20           132. Plaintiffs have no adequate remedy at law for the threatened injury  
21 WHEREFORE PLAINTIFF prays for judgment as set forth below.

- 22
- 23 1. For a declaration adopting each of Plaintiffs' contentions set forth in the above
  - 24 2. Cause of Action for Declaratory Relief;

1           3.     For injunctive relief enjoining and restraining Defendants' unlawful conduct  
2 as alleged herein, including but not limited to their unfair and unlawful business practices  
3 and their wrongful denials of coverage under the Policy;

4           4.     For general and compensatory damages in an amount to be determined at  
5 trial;

6           5.     For exemplary and punitive damages in an amount to be determined at trial;

7           6.     For Plaintiffs' costs of suit;

8           7.     For Plaintiffs' reasonable attorney's fees incurred in this action pursuant to  
9 statute;

10          8.     For pre-judgment interest on all other interest to which Plaintiffs are entitled;  
11 and

12          9.     For such other relief as the Court may deem proper.  
13  
14  
15  
16

17 DATED: October 15, 2020

Respectfully submitted,

AUSTIN LAW GROUP

18  
19  
20  
21  
22 By: 

Julien Swanson, Esq.

Attorney for Plaintiff ROYAL CUCKOO INC



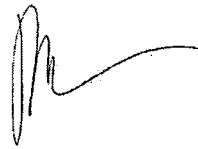
JURY TRIAL DEMAND

PLAINTIFF hereby demands a trial by jury on all issues so triable in this action.

DATED: October 15, 2020

Respectfully submitted,

AUSTIN LAW GROUP



By: \_\_\_\_\_

Julien Swanson, Esq.

Attorney for Plaintiff ROYAL CUCKOO INC

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Julien Swanson (SBN 193957)
1811 Folsom Street
San Francisco, CA 94103
TELEPHONE NO.: (415) 282-4511 FAX NO. (Optional):
ATTORNEY FOR (Name): Plaintiff Royal Cuckoo Inc.

FOR COURT USE ONLY
FILED
Superior Court of California
County of San Francisco
OCT 16 2020
CLERK OF THE COURT
BY: ANGELICA SUNGA Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
STREET ADDRESS:
MAILING ADDRESS: 400 McAllister Street
CITY AND ZIP CODE: San Francisco 94102
BRANCH NAME:

CASE NAME:
Royal Cuckoo v Lloyd's of London ET. AL.

CIVIL CASE COVER SHEET
[checked] Unlimited (Amount demanded exceeds \$25,000)
[ ] Limited (Amount demanded is \$25,000)

Complex Case Designation
[ ] Counter [ ] Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
CGC-20-587390
JUDGE:
DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
Auto Tort: [ ] Auto (22), [ ] Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort: [ ] Asbestos (04), [ ] Product liability (24), [ ] Medical malpractice (45), [ ] Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort: [ ] Business tort/unfair business practice (07), [ ] Civil rights (08), [ ] Defamation (13), [ ] Fraud (16), [ ] Intellectual property (19), [ ] Professional negligence (25), [ ] Other non-PI/PD/WD tort (35)
Employment: [ ] Wrongful termination (36), [ ] Other employment (15)
Contract: [checked] Breach of contract/warranty (06), [ ] Rule 3.740 collections (09), [ ] Other collections (09), [ ] Insurance coverage (18), [ ] Other contract (37)
Real Property: [ ] Eminent domain/Inverse condemnation (14), [ ] Wrongful eviction (33), [ ] Other real property (26)
Unlawful Detainer: [ ] Commercial (31), [ ] Residential (32), [ ] Drugs (38)
Judicial Review: [ ] Asset forfeiture (05), [ ] Petition re: arbitration award (11), [ ] Writ of mandate (02), [ ] Other judicial review (39)
Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403): [ ] Antitrust/Trade regulation (03), [ ] Construction defect (10), [ ] Mass tort (40), [ ] Securities litigation (28), [ ] Environmental/Toxic tort (30), [ ] Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment: [ ] Enforcement of judgment (20)
Miscellaneous Civil Complaint: [ ] RICO (27), [ ] Other complaint (not specified above) (42)
Miscellaneous Civil Petition: [ ] Partnership and corporate governance (21), [ ] Other petition (not specified above) (43)

2. This case [ ] is [checked] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
a. [ ] Large number of separately represented parties
b. [ ] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. [ ] Substantial amount of documentary evidence
d. [ ] Large number of witnesses
e. [ ] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. [ ] Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. [checked] monetary b. [checked] nonmonetary; declaratory or injunctive relief c. [checked] punitive

4. Number of causes of action (specify): 6
5. This case [ ] is [checked] is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)
Date: 10/15/2020
Julien Swanson

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
File this cover sheet in addition to any cover sheet required by local court rule.
If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

**Auto Tort**

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/Wrongful Death
- Product Liability *(not asbestos or toxic/environmental)* (24)
- Medical Malpractice (45)
  - Medical Malpractice—Physicians & Surgeons
- Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress

**Non-PI/PD/WD (Other) Tort**

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice *(not medical or legal)*
- Other Non-PI/PD/WD Tort (35)

**Employment**

- Wrongful Termination (36)
- Other Employment (15)

**Contract**

- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease
    - Contract *(not unlawful detainer or wrongful eviction)*
  - Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
  - Collection Case—Seller Plaintiff
  - Other Promissory Note/Collections Case
- Insurance Coverage *(not provisionally complex)* (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

**Real Property**

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
  - Writ of Possession of Real Property
  - Mortgage Foreclosure
  - Quiet Title
- Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

**Unlawful Detainer**

- Commercial (31)
- Residential (32)
- Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

**Judicial Review**

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ—Administrative Mandamus
  - Writ—Mandamus on Limited Court Case Matter
- Writ—Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal—Labor Commissioner Appeals

**Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)**

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

**Enforcement of Judgment**

- Enforcement of Judgment (20)
  - Abstract of Judgment (Out of County)
- Confession of Judgment *(non-domestic relations)*
- Sister State Judgment
- Administrative Agency Award *(not unpaid taxes)*
- Petition/Certification of Entry of Judgment on Unpaid Taxes
- Other Enforcement of Judgment Case

**Miscellaneous Civil Complaint**

- RICO (27)
- Other Complaint *(not specified above)* (42)
  - Declaratory Relief Only
  - Injunctive Relief Only *(non-harassment)*
  - Mechanics Lien
  - Other Commercial Complaint Case *(non-tort/non-complex)*
  - Other Civil Complaint *(non-tort/non-complex)*

**Miscellaneous Civil Petition**

- Partnership and Corporate Governance (21)
- Other Petition *(not specified above)* (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief From Late Claim
  - Other Civil Petition

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