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County of San Francisco

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15 **SUPRIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF SAN FRANCISCO**

17 APPLE ANNIE, LLC, a California
18 Limited Liability Company,

19 Plaintiff,

20 vs.

21 OREGON MUTUAL INSURANCE
22 COMPANY, an Oregon corporation;
23 INCLINE INSURANCE SERVICES,
24 INC., a California corporation; and
25 DOES 1-50, inclusive,

26 Defendants.

Case No.:

CGC-20-585712

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

1. BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH AND
FAIR DEALING
2. BREACH OF CONTRACT
3. NEGLIGENCE

BY FAX

I.

INTRODUCTION

1. Business Interruption coverage is an optional insurance benefit available to businesses to minimize their risk and sustain them when a suspension of business operations causes a loss of business income. This coverage allows businesses to pay continuing operating expenses, additional expenses incurred because of the suspension, and supplement their lost business income.

2. As California Insurance Commissioner Ricardo Lara stated in a notice on April 14, 2020 to all admitted and non-admitted insurance companies in California, "small and large California businesses purchase Business Interruption insurance to protect against the loss of income and other losses caused by an interruption to the normal operations of the business." (Exhibit 1).

3. Apple Annie, LLC ("Apple Annie") is a restaurant group consisting of four restaurant locations in Sausalito, Santa Barbara, and San Francisco, CA. Apple Annie first opened Barrelhouse Tavern located in Sausalito on July 1, 2013, and it was profitable since the day it opened. It was the recipient of Hospitality Design Magazine's best casual restaurant design award. Apple Annie later opened Dawn Patrol located in Santa Barbara. Finally, Apple Annie bought Tommy's Joynt and Fisherman's Grotto both located in San Francisco. Collectively, it employs up to 250 people, many of which are fourth generation families that were at the restaurants from inception.

4. Apple Annie purchased, timely paid all premiums, and performed all duties required of it to be performed under an "All Risk" commercial insurance policy issued by Defendant, Oregon Mutual Insurance Company ("Oregon Mutual"), Policy No. BSP354988 (the "Policy"). Under an "All Risk" policy, all risks of physical loss of or damage to property are covered unless specifically and unambiguously excluded. Stated differently, all non-excluded perils are covered.

5. The Policy included "Business Income" coverage, through which Oregon Mutual promised it will "pay for the actual loss of Business Income [Apple Annie]

1 sustain[s] due to the necessary 'suspension' of [its] 'operations' . . . caused by direct
2 physical loss of or damage to property" (Exhibit 2).

3 6. The novel coronavirus which causes a respiratory disease ("COVID-19")
4 originated in China in late 2019, spread to Europe, and eventually came to the United
5 States. Although COVID-19 was present in California by late January 2020, all
6 businesses, including Apple Annie were allowed to remain open throughout February
7 and the first half of March. On January 30, 2020 the World Health Organization (the
8 "W.H.O.") declared a public health emergency of international concern. On March 4,
9 2020, California Governor Gavin Newsom proclaimed a State of Emergency to exist in
10 California "as a result of the threat of COVID 19" and one week later, on March 11,
11 2020, the W.H.O. made the assessment that COVID-19 could be characterized as a
12 pandemic.

13 7. Notably, although some commercial insurance policies have included a
14 specific exclusion for losses caused by virus, the policy purchased by Apple Annie
15 contains no such exclusion.

16 8. On March 16, 2020, the Departments of Public Health for the Counties of
17 San Francisco and Marin issued their Shelter in Place orders. Thereafter, on March 19,
18 2020, Governor Newsom issued Executive Order N-33-20, which ordered all individuals
19 living in the State of California to stay at home or at their place of residence, except as
20 needed to maintain continuity of operations in designated infrastructure sectors.
21 (Exhibit 3).

22 9. These Orders caused Apple Annie to suspend business operations at all its
23 locations, which resulted in an immediate loss of business income.

24 10. As a direct result of these Orders, Apple Annie promptly submitted a
25 claim for its business income loss to Oregon Mutual.

26 11. Engaging in the business of insurance in California imposes upon insurers
27 the legal obligation to promptly conduct fair, balanced and thorough investigations of
28 all bases of claims for benefits made by their insureds, with a view toward honoring the

1 claims. As part of these obligations, an insurance company is obligated to diligently
2 search for and consider evidence that supports coverage of the claimed loss, and in
3 doing so must give at least as much consideration to the interests of its insured as it
4 gives to its own interests.

5 12. During the COVID-19 Pandemic, Commissioner Lara issued a notice after
6 the California Department of Insurance “ha[d] received numerous complaints from
7 businesses, public officials, and other stakeholders asserting that certain insurers,
8 agents, brokers, and *insurance company representatives* [we]re attempting to dissuade
9 policyholders from filing a notice of claim under its Business Interruption insurance
10 coverage, or *refusing to open and investigate these claims* upon receipt of a notice of
11 claim” (Exhibit 1, p. 1, emphasis added).

12 13. The Commissioner’s notice reminded insurers facing these claims of the
13 importance of complying with their obligations, citing the California Fair Claims
14 Settlement Practices Regulations. (Cal. Code Regs., tit. 10, §§ 2695.1 *et seq.* (hereinafter
15 referred to as “Regulations”)). His notice went on to state, “Therefore, Insurance
16 Commissioner Ricardo Lara finds it necessary to issue this Notice to ensure that all
17 agents, brokers, *insurance companies*, and other licensees accept, forward, acknowledge,
18 and *fairly investigate all business interruption insurance claims* submitted by businesses”
19 (Exhibit 1, p. 1-2, emphasis added). The Commissioner stated that “every insurer is
20 required to conduct and diligently pursue a thorough, fair, and objective investigation
21 of the reported claim.” (*Id.* at 2).

22 14. Amongst other information provided to insurers, the Commissioner
23 further reminded them that “[i]f the claim is denied in whole or in part, the insurer is
24 *required to communicate the denial in writing to the policyholder listing all the legal and*
25 *factual bases* for such denial. (Regulations, § 2695.7(b)(1)). Where the denial of a first
26 party claim is based on a specific statute, applicable law or policy provision, condition,
27 or exclusion, the written denial must include reference to and provide an explanation of
28

1 the application of the statute, applicable law, or policy provisions, condition, or
2 exclusion to the claim...Regulations, § 2695.7(b)(1)" (Exhibit 1, p. 3, emphasis added).

3 15. Consistent with all of these well-established and non-controversial
4 California insurance claims handling standards, Apple Annie had the right to rely on
5 Oregon Mutual to handle its insurance claim for business interruption losses in a
6 manner consistent with these standards of good faith and fair dealing. Unfortunately
7 for Apple Annie, Oregon Mutual failed in all respects and abruptly, unreasonably and
8 with a callous disregard for the interests of its insured, denied the claim in its entirety
9 on April 8, 2020.

10 16. In order to obtain the benefits promised under its Policy and required by
11 California law, Apple Annie was compelled to institute this lawsuit to pursue all
12 available remedies available to it.

13 **II.**
14 **PARTIES**

15 17. Plaintiff Apple Annie, LLC is, and at all relevant times was, a California
16 Limited Liability Company whose members are citizens of, and who reside in, the State
17 of California.

18 18. Defendant Oregon Mutual Insurance Company is, and at all relevant
19 times was, an Oregon corporation with its principal place of business in the State of
20 Oregon. At all times relevant to the allegations contained herein, Oregon Mutual was
21 conducting business as an insurer in the State of California.

22 19. Defendant Incline Insurance Services, Inc. is, and at all relevant times was,
23 a California Corporation with its principal place of business in the State of California.

24 20. The true names or capacities, whether individual, corporate, associate, or
25 otherwise, of defendants DOES 1 through 50, inclusive, are unknown to Apple Annie,
26 who therefore sues said defendants by such fictitious names. Apple Annie is informed
27 and believes and based on such information and belief alleges that each of the
28 defendants sued herein as a Doe is legally responsible in some manner for the events

1 and happenings referred to herein, and will ask leave of this Court to amend this
2 complaint to insert their true names and capacities in place and instead of the fictitious
3 names when the same become known to it.

4 21. Plaintiff is informed and believes and based thereon alleges that at all
5 times mentioned herein, each of the defendants was the agent, partner, joint venturer,
6 associate and/or employee of one or more of the other defendants and was acting in the
7 course and scope of such agency, partnership, joint venture, association and/or
8 employment when the acts giving rise to the cause of action occurred.

9 **III.**

10 **INSURANCE**

11 22. Apple Annie purchased the Policy from Oregon Mutual for a coverage
12 period from January 17, 2020 to January 17, 2021.

13 23. Apple Annie timely paid all premiums that were due under the Policy.

14 24. In exchange for payment of the premiums, Oregon Mutual agreed to
15 provide the insurance coverage described in the Policy.

16 25. The commercial property insurance portion of the Policy includes a
17 coverage form for "Business Income (and Extra Expense)". (Exhibit 2).

18 26. The Policy provides "All Risk" coverage for Business Income and Extra
19 Expense coverage through the following provisions:

20 **f. Business Income**

21 **(1) Business Income**

22 We will pay for the actual loss of Business Income you sustain due
23 to the necessary suspension of your "operations" during the
24 "period of restoration". The suspension must be caused by direct
25 physical loss of or damage to property at the described premises.
26 The loss or damage must be caused by or result from a Covered
Cause of Loss"

27 . . .

1 g. Extra Expense

2 (1) We will pay necessary Extra Expense you incur during the
3 "period of restoration" that you would not have incurred if there
4 had been no direct physical loss or damage to property at the
5 described premises. The loss or damage must be caused by or result
6 from a Covered Cause of Loss.

7 27. A "Covered Cause of Loss" is defined in the Policy as "Risks of direct
8 physical loss unless the loss is (a) Excluded in Paragraph B; Exclusions in Section I; or
9 (b) Limited in Paragraph 4.Limitations in Section I."

10 28. The Declarations page for the Policy includes a schedule of locations,
11 which identifies all of Apple Annie's locations that suffered necessary suspensions of
12 operations as a result of State and Local Orders. (Id.).

13 29. All terms in the Policy which appear in quotation marks are specially
14 defined terms. Notably, Oregon Mutual chose not to define the term "direct physical
15 loss".

16 30. "Business Income" is defined in the Policy to mean:

17 Net Income (Net Profit or Loss before income taxes) that would
18 have been earned or incurred if no physical loss or damage had
19 occurred, but not including any Net Income that would likely have
20 been earned as a result of an increase in the volume of business due
21 to favorable conditions caused by the impact of the Covered Cause
22 of Loss on customers or on other businesses.

23 31. "Operations" is defined in the Policy to mean "your business
24 activities occurring at the described premises." (Id.)

25 32. "Period of restoration" is defined in the Policy as:

26 a. Means the period of time that:

27 (1) Begins:

28 (a) 72 hours after the time of direct physical loss or

1 damage for Business Income Coverage; or
2 (b) Immediately after the time of direct physical loss
3 or damage for Extra Expense Coverage;
4 caused by or resulting from any Covered Cause of Loss at
5 the described premises; and

6 (2). Ends on the earlier of:

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

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

12 ***
13 The expiration date of this policy will not cut short the "period of
14 restoration". (Id.)

15 33. The Policy also provides additional coverage for Civil Authority. This
16 coverage states:

17 i. **Civil Authority**

18 (1) We will pay for the actual loss of Business Income you sustain
19 and necessary Extra Expense caused by action of civil authority
20 that prohibits access to the described premises due to direct
21 physical loss of or damage to property, other than at the
22 described premises, caused by or resulting from any Covered
23 Cause of Loss.

24 The coverage for Business Income will begin 72 hours after the time of
25 that action and will apply for a period of up to three consecutive weeks
26 after coverage begins.

27 The coverage for necessary Extra Expense will begin immediately after the
28 time of that action and ends:

(1) 3 consecutive weeks after the time of that action; or

(2) When your Business Income coverage ends.

whichever is later. (Id.)

1 34. One of the exclusions in the Policy is for “Governmental Action.” But the
2 scope of the “Governmental Action” exclusion is expressly limited to governmental
3 orders regarding the “seizure or destruction of property.” (Id.) Specifically, the
4 “Governmental Action” exclusion reads as follows:

5
6 **c. Governmental Action**

7 Seizure or destruction of property by order of governmental
8 authority.

9 But we will pay for loss or damage caused by or resulting from acts
10 of destruction ordered by governmental authority and taken at the
11 time of a fire to prevent its spread, if the fire would be covered
12 under this policy.” (Id.)

13 35. The Policy does not contain any exclusion for loss of covered property or
14 damage to covered property caused by or related to viruses.

15 **IV.**

16 **FACTUAL BACKGROUND**

17 **A. Apple Annie**

18 36. Apple Annie has four restaurant locations in Sausalito, Santa Barbara, and
19 San Francisco. Its first location, Barrelhouse Tavern, opened on July 1, 2013, and was
20 honored for its design. Apple Annie later opened its Dawn Patrol location in Santa
21 Barbara, and finally, Apple Annie bought Tommy’s Joynt and Fisherman’s Grotto
22 which are both located in San Francisco. Collectively, it employs up to 250 people, many
23 of which are fourth generation families that were at the restaurants from inception.

24 37. Apple Annie shutdown operations as a result of the government-
25 mandated shut downs, prompting Apple Annie’s to make a legitimate claim to its
26 insurance company for the help and protection it had been promised. However, Oregon
27 Mutual rejected the claim without a fair, balanced, and thorough investigation,
28 violating California insurance law, regulations, and standards.

1 **B. The COVID-19 Pandemic**

2 38. It has been widely reported that COVID-19 has its origins in Wuhan,
3 China. The first public reports were on December 31, 2019 of an “outbreak of
4 respiratory illness.”

5 39. By January 8, 2020, the United States Centers for Disease Control and
6 Prevention (“CDC”) issued warnings to American travelers going to China for a
7 “pneumonia of unknown etiology” (<https://emergency.cdc.gov/han/han00424.asp>, last
8 accessed April 17, 2020).

9 40. Starting January 17, 2020, the CDC and the United States Department of
10 Homeland Security’s Customs and Border Protection implemented enhanced health
11 screenings for passengers who came from or connected through Wuhan, China
12 (<https://www.cdc.gov/media/releases/2020/p0117-coronavirus-screening.html>, last
13 accessed April 17, 2020).

14 41. On January 20, 2020, the W.H.O. reported the first confirmed cases outside
15 mainland China in Japan, South Korea and Thailand ([https://www.nytimes.com/article/](https://www.nytimes.com/article/coronavirus-timeline.html)
16 [coronavirus-timeline.html](https://www.nytimes.com/article/coronavirus-timeline.html), last accessed April 17, 2020). The following day, on January
17 21, 2020, the first American COVID-19 case was confirmed in the State of Washington
18 (<https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html>,
19 last accessed April 17, 2020).

20 42. On January 30, 2020, the W.H.O declared a public health emergency of
21 international concern. The following day, on January 31, 2020, all travel from China to
22 the United States was blocked.

23 43. During February, COVID-19 began spreading rapidly throughout Europe,
24 with Italy initially becoming the most impacted country. That same month, an
25 increasing number of cases were being reported in the United States, with the largest
26 concentration of cases in the Seattle area of Washington State. The first cluster of
27 COVID-19 cases was reported at a nursing home in Kirkland, Washington in late
28 February, where the first COVID-19 death was announced on February 28, 2020.

1 44. COVID-19 also continued to spread throughout California during
2 February 2020. In early February, several COVID-19 cases were announced in Northern
3 California. During February, the number of reported COVID-19 cases in California
4 increased. On February 26, 2020, the CDC announced the first reported California
5 COVID-19 case resulting from community spread ([https://www.cdc.gov/media/
6 releases/2020/s0226-Covid-19-spread.html](https://www.cdc.gov/media/releases/2020/s0226-Covid-19-spread.html), last accessed April 17, 2020).

7 45. On March 4, 2020, the first COVID-19 fatality was reported in California.

8 46. As COVID-19 cases continued to increase in certain areas of the United
9 States, on March 4, 2020 Congress passed emergency funding of \$8.3 billion to aid in the
10 immediate health response to COVID-19.

11 47. Also on March 4, 2020, Governor Newsom proclaimed a State of
12 Emergency to exist in California “as a result of the threat of COVID 19.”

13 48. On March 11, 2020, travel from Europe to the United States was restricted,
14 and the W.H.O. declared COVID-19 a pandemic. The term “pandemic” does not appear
15 anywhere as an excluded peril in this “All Risk” Policy.

16 49. On March 13, 2020, the President of the United States declared a national
17 emergency.

18 50. Yet, throughout the entire period from December 2019 until March 16,
19 2020, Apple Annie had not suffered an interruption of its thriving business.

20
21 **C. Apple Annie Suffers a Suspension of its Operations due to Government**
22 **Orders**

23 51. On March 16, 2020, the Shelter in Place order was issued by the City and
24 County of San Francisco.

25 52. On March 19, 2020, California Governor Gavin Newsom issued Executive
26 Order N-33-20, which ordered all individuals living in the State of California to heed
27 State public health directives to stay at home, except as needed to maintain continuity
28 of operations in essential critical infrastructure sectors. (Exhibit 3).

1 53. As a result of the State and local orders, Apply Annie, has not been able to
2 resume its operations to the level it had provided before Executive Order N-33-20 was
3 issued.

4 54. Also, to comply with California's guidelines allowing restaurants to
5 reopen, Apple Annie was required to incur extra expenses including, but not limited to,
6 equipment, construction, services, and supplies necessary to abide by social distancing
7 and sanitation rules.

8 55. These Orders by State and Local government constitute a predominant
9 cause of Apple Annie's losses, which continue to this day.

10
11 **D. Oregon Mutual Denies Apple Annie's Claim Without a Thorough**
12 **Investigation.**

13 56. On or around March 16, 2020, Apple Annie tendered a claim to Oregon
14 Mutual under its Policy for business interruption loss resulting from the government-
15 ordered suspension of its operations.

16 57. Without performing a full, fair, and balanced investigation, Oregon
17 Mutual denied Apple Annie's claim on April 8, 2020. (Exhibit 4). In the letter, Oregon
18 Mutual stated, "Your loss appears to have been caused by the COVID-19 event. Our
19 investigation determined that there was no direct physical loss of or damage to
20 property. Because there is no direct physical loss or damage to property, there is no
21 coverage for your claim for loss of business income. Also, because there is no direct
22 physical loss or damage to covered property, there is no coverage for any claim for loss
23 of personal property or for any loss to your building." (Id).

24 58. Oregon Mutual's denial was erroneously based on the COVID-19 event,
25 and failed to acknowledge the losses caused by the governmental orders which were
26 the basis of Apple Annie's claim.

27 59. Moreover, Oregon Mutual misrepresented the language of its own Policy
28 with respect to coverage. The Policy does not limit itself to "direct physical loss or

1 damage", but also covers "direct physical loss of or damage to" property in both its
2 Property Coverage and Business Income and Extra Expense coverages. Finally, while
3 Oregon Mutual also raised potential exclusions including those for "Governmental
4 Action", "Pollution", and "Consequential Losses", it provided no analysis concerning
5 the applicability of those exclusions.

6 60. Pursuant to Title 10, Section 2695.7(b)(1) of the California Code of
7 Regulations, Oregon Mutual was required to state in its April 278, 2020 denial letter all
8 the factual, contractual, and legal grounds for denying the claim, thus forfeiting the
9 right to raise additional grounds to attempt to justify its denial of Apple Annie's claim.

10 61. As a result of Oregon Mutual's wrongful denial of the claim, Apple Annie
11 has been compelled to retain counsel and pursue this litigation in order to obtain the
12 benefits promised under the Policy.

13 **FIRST CAUSE OF ACTION**

14 PLAINTIFF, APPLE ANNIE, FOR A FIRST CAUSE OF ACTION AGAINST
15 DEFENDANTS OREGON MUTUAL AND DOES 1 THROUGH 25, INCLUSIVE, FOR
16 BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING,
17 ALLEGES:

18 62. Apple Annie incorporates by reference all paragraphs above as if set forth
19 in full in this cause of action.

20 63. Oregon Mutual and DOES 1 to 25, inclusive, have breached their duty of
21 good faith and fair dealing owed to Apple Annie in the following respects:

- 22 a. Unreasonably acting or failing to act in a manner that deprives Apple
23 Annie of the benefits of the Policy;
- 24 b. Unreasonably engaging in a pattern and practice of acting or failing to
25 act in a manner that deprives its insureds of the benefits of policies it
26 issues;
- 27 c. Unreasonably failing to conduct a prompt, fair, balanced and thorough
28 investigation of all of the bases of Apple Annie's claim;

- d. Unreasonably engaging in a pattern and practice of failing to conduct a prompt, fair, balanced and thorough investigation of all of the bases of claims made under policies it issues;
- e. Unreasonably failing to diligently search for and consider evidence that supports coverage of Apple Annie's claim;
- f. Unreasonably engaging in a pattern and practice of failing of failing to diligently search for and consider evidence that supports coverage of claims;
- g. Unreasonably failing to conduct an investigation to determine the efficient proximate cause (predominant cause) of Apple Annie's loss;
- h. Unreasonably engaging in a pattern and practice of failing to conduct an investigation to determine the efficient proximate cause (predominant cause) on claims made by insureds;
- i. Unreasonably failing to give at least as much consideration to the interests of Apple Annie as it gives to its own interests;
- j. Unreasonably engaging in a pattern and practice of failing to give at least as much consideration to the interests of its insureds as it gives to its own interests;
- k. Unreasonably placing its own financial interests above the interests of Apple Annie;
- l. Unreasonably engaging in a pattern and practice of placing its own financial interests above the interests of its insureds;
- m. Unreasonably failing to comply with the Regulations, including Section 2695.7(b)(1);
- n. Unreasonably failing to apply the Policy's definitions and terms to determine whether Apple Annie's claim was covered; and
- o. Unreasonably compelling Apple Annie to institute this action to obtain benefits due under the Policy.

1 64. Apple Annie is informed and believes, and thereon alleges, that the
2 foregoing unreasonable, malicious, oppressive and/or fraudulent misconduct was not
3 limited to Oregon Mutual's and DOES 1 to 25, inclusive, evaluation of this particular
4 claim, but represents an ongoing pattern and practice, which they apply to all of their
5 policyholders, that is specifically designed by Oregon Mutual and DOES 1 to 25,
6 inclusive, to earn illicit profits at the expense of their policyholders' rights. This ongoing
7 pattern of conduct constitutes institutional bad faith.

8 65. Oregon Mutual's and DOES 1 to 25, inclusive, institutional bad faith
9 constitutes reprehensible conduct because it is part of a repeated pattern of unfair
10 practices and not an isolated occurrence. The pattern of unfair practices constitutes a
11 conscious course of wrongful conduct that is firmly grounded in Oregon Mutual's and
12 DOES 1 to 25, inclusive, established company policies and practices. Apple Annie is
13 informed and believes and thereon alleges that Apple Annie and DOES 1 to 25,
14 inclusive, have engaged in similar wrongful conduct as to other insureds and that they
15 have substantially increased its profits as a result of causing similar harm to others.

16 66. As a proximate result of the aforementioned conduct of Oregon Mutual
17 and DOES 1 to 25, inclusive, Apple Annie has suffered, and will continue to suffer in
18 the future, damages under the Policy, plus interest and other economic and
19 consequential damages, for a total amount to be shown at the time of trial.

20 67. As a further proximate result of the aforementioned unreasonable conduct
21 of Oregon Mutual and DOES 1 to 25, inclusive, Apple Annie was compelled to retain
22 legal counsel to obtain the benefits due under the Policy. Therefore Oregon Mutual and
23 DOES 1 to 25, inclusive, are liable to Apple Annie for the attorneys' fees reasonably
24 necessary and incurred by Apple Annie in order to obtain the Policy benefits.

25 68. The conduct of Oregon Mutual and DOES 1 to 25, inclusive, was intended
26 by them to cause injury to Apple Annie, and/or was despicable conduct carried on by
27 them with a willful and conscious disregard of apple Annie's rights, subjected Apple
28 Annie to cruel and unjust hardship in conscious disregard of its rights; and/or

1 constituted an intentional misrepresentation or concealment of a material fact known to
2 Oregon Mutual and DOES 1 to 25, inclusive, with the intention to deprive Apple Annie
3 of property or legal rights or to otherwise cause injury, such as to constitute malice,
4 oppression or fraud under California Civil Code section 3294. Apple Annie is therefore
5 entitled to an award of punitive damages in an amount appropriate to punish and set
6 an example for other similarly situated insurers.

7 69. Oregon Mutual's and DOES 1 to 25, inclusive, conduct was undertaken by
8 its corporate officers, directors or managing agents, identified herein as DOES 15 to 25,
9 who were responsible for claims supervision and operations, underwriting,
10 communications, and/or decisions; and/or this conduct was authorized by one or more
11 of Oregon Mutual's officers, directors or managing agents, and/or one or more Oregon
12 Mutual's officers, directors or managing agents knew of the actions and adopted or
13 approved that conduct after it occurred. This conduct was, therefore, undertaken on
14 behalf of Oregon Mutual and DOES 15 to 25, inclusive.

15 SECOND CAUSE OF ACTION

16 PLAINTIFF, APPLE ANNIE, FOR A SECOND CAUSE OF ACTION AGAINST
17 DEFENDANTS OREGO MUTUAL AND DOES 1 THROUGH 25, INCLUSIVE, FOR
18 BREACH OF CONTRACT ALLEGES:

19 70. Apple Annie incorporates by reference all paragraphs above as if set forth
20 in full in this cause of action.

21 71. Apple Annie entered into a contract, the Policy, with Oregon Mutual and
22 DOES 1 through 25, inclusive. Oregon Mutual and DOES 1 through 25, inclusive, owed
23 duties and obligations to Apple Annie under the Policy.

24 72. Apple Annie did all, or substantially all, of the significant things that the
25 Policy required it to do.

26 73. Oregon Mutual's and DOES 1 through 25, inclusive, denial of Apple
27 Annie's claim is not in accordance with the terms of the Policy and California law.
28

1 74. As a direct and proximate result of Oregon Mutual's and DOES 1 through
2 25, inclusive, conduct and breach of their contractual obligations, Apple Annie has
3 suffered damages under the Policy in an amount to be determined according to proof at
4 the time of trial, plus pre-judgment interest pursuant to California Civil Code section
5 3289(b), and other foreseeable and consequential damages according to proof and in
6 amounts to be determined at the time of trial.

7 **THIRD CAUSE OF ACTION**

8 **(Negligence)**

9 PLAINTIFF APPLE ANNIE FOR A THIRD CAUSE OF ACTION AGAINST
10 DEFENDANTS INCLINE INSURANCE SERVICES, INC. AND DOES 26 THROUGH
11 50, INCLUSIVE, FOR NEGLIGENCE ALLEGES:

12 75. Apple Annie incorporates by reference all paragraphs above as if set forth
13 in full in this cause of action.

14 76. Apple Annie brings this third cause of action in the alternative to its first
15 and second causes of action.

16 77. As set forth in Apple Annie's first and second causes of action and the
17 factual allegations of this Complaint, it asserts that there is full coverage under the
18 Policy for its loss. However, to the extent that there is a finding that the Policy does not
19 provide coverage, then Apple Annie alleges in the alternative that Incline Insurance
20 Services, Inc. ("Incline") was negligent in the procurement of the Policy.

21 78. At all relevant times, Incline, by and through its authorized employees,
22 and DOES 26 through 50, inclusive, represented to be registered, licensed and
23 authorized insurance brokers, who undertook the obligations to place insurance
24 coverage for Apple Annie and to assist it with any questions or concerns it had about
25 the Policy.

26 79. In that process, Incline and DOES 26 through 50, inclusive had a duty to
27 use reasonable care, diligence and judgment in procuring the insurance that Apple
28 Annie requested.

1 80. Incline and DOES 26 through 50, inclusive, sold the Policy to Apple
2 Annie. In the process, they held themselves out to be experts in the field of insurance,
3 and in particular, experts in the field of insurance for restaurants.

4 81. For example, Incline dedicates a section of its website to “Restaurants &
5 Retail” and state, “Restaurant owners face immense amounts of risks such as liability
6 lawsuits, property damage, injured staff, and loss of income. That’s where we come in.
7 Protect your San Francisco business expenditures with incline Insurance.”
8 (inclineinsurance.com/business-insurance/restaurant-retail/), last visited July 10, 2020).
9 Incline therefore advertises its expertise in insuring restaurants such as Apple Annie’s
10 locations.

11 82. During the procurement process of the Policy, Incline assumed additional
12 duties by express agreement and/or holding itself out as an expert in procuring business
13 interruption coverage for restaurants.

14 83. Incline and DOES 26 through 50, inclusive, undertook the obligation and
15 assumed a duty to place business interruption insurance coverage for Apple Annie.
16 Accordingly, they owed Apple Annie a duty of due care to see that its interests were
17 fully protected by the coverage that was requested by Apple Annie and promised by
18 Incline and DOES 26-50, inclusive. However, if Oregon Mutual’s interpretation is
19 upheld, Incline and DOES 26 through 50, inclusive, misrepresented the nature, extent or
20 scope of the coverage being offered and then ultimately provided under the Policy.

21 84. Incline and DOES 26 through 50, inclusive, knew that Apple Annie would
22 rely, and it did justifiably rely, upon the experience, skill, and expertise of Incline, its
23 office employees and DOES 26 through 50, inclusive, to obtain and place sufficient
24 coverage for the restaurant, even in the event of government orders related to a
25 pandemic.

26 85. Incline and DOES 26 through 50, inclusive, represented that they were
27 ready and willing to perform the professional service of procuring insurance coverage
28

1 for Apple Annie, which desired to obtain business interruption coverage that would
2 protect it against losses, including pandemic and government shutdown orders.

3 86. To the extent the coverage procured by Incline and DOES 26 through 50,
4 inclusive, for Apple Annie does not provide coverage for the damages suffered as
5 alleged in this Complaint, Incline and DOES 26 through 50, inclusive, were negligent in
6 their procurement and placement of the insurance.

7 87. As a proximate result of the aforementioned negligent conduct of Incline
8 and DOES 26 through 50, inclusive, Apple Annie has suffered damages, including
9 economic losses, for a total amount to be shown at the time of trial.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Apple Annie prays for judgment against Defendants as follows:

12 **AS TO THE FIRST CAUSE OF ACTION AGAINST DEFENDANTS OREGON**
13 **MUTUAL AND DOES 1 THROUGH 25, INCLUSIVE, FOR BREACH OF THE**
14 **IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING:**

15 1. For damages for failure to pay benefits owed under the Policy, plus
16 interest, in a sum to be determined at trial;

17 2. For prejudgment interest on all damages awarded to Apple Annie in
18 accordance with California Civil Code section 3287;

19 3. For attorneys' fees, witness fees, and costs of litigation incurred by Apple
20 Annie to obtain the Policy benefits in an amount to be determined at trial;

21 4. For economic and consequential damages arising out of Oregon Mutual's
22 and DOES 1 through 25's, inclusive, unreasonable failure to pay benefits owed under
23 the Policy;

24 5. For punitive and exemplary damages in an amount appropriate to punish
25 or set an example of Oregon Mutual and DOES 1 through 25, inclusive;

26 6. For costs of suit herein; and

27 7. For such other relief as the Court deems just and proper.

28

1 AS TO THE SECOND CAUSE OF ACTION AGAINST DEFENDANTS
2 OREGON MUTUAL AND DOES 1 THROUGH 25, INCLUSIVE, FOR BREACH OF
3 CONTRACT:

- 4 1. For economic and consequential damages, in an amount to be determined
5 according to proof at trial;
6 2. For prejudgment interest on all damages awarded to Apple Annie in
7 accordance with California Civil Code section 3289(b);
8 3. For costs of suit incurred herein; and
9 4. For such other and further relief as the Court deems just and proper.

10 AS TO THE THIRD CAUSE OF ACTION AGAINST DEFENDANTS
11 INCLINE INSURANCE SERVICES, INC. AND DOES 26 THROUGH 50,
12 INCLUSIVE, FOR NEGLIGENCE:

- 13 1. For damages, including economic losses, in an amount to be determined
14 according to proof at the time of trial;
15 2. For an award of interests and costs; and
16 3. For such other and further relief as the Court deems just and proper.

17
18
19 Dated: July 29, 2020

SHERNOFF BIDART ECHEVERRIA LLP

20
21
22 By: _____

23 MICHAEL J. BIDART
24 RICARDO ECHEVERRIA
25 Attorneys for Plaintiff
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JURY DEMAND

Plaintiff hereby demands a jury trial.

Dated: July 29, 2020

SHERNOFF BIDART ECHEVERRIA LLP

By: 
MICHAEL J. BIDART
RICARDO ECHEVERRIA
Attorneys for Plaintiff

 SHERNOFF BIDART
ECHEVERRIA ^{LLP}
LAWYERS FOR INSURANCE POLICYHOLDERS