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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF STANISLAUS

AMERICAN TRADERS, INC. d/b/a RAMADA  
INN MODESTO,

Plaintiff,

vs.

MID-CENTURY INSURANCE COMPANY,  
FARMERS INSURANCE EXCHANGE, FIRE  
INSURANCE EXCHANGE, AND TRUCK  
INSURANCE EXCHANGE, and DOES 1  
THROUGH 20, INCLUSIVE,

Defendants.

Case No.:

**COMPLAINT FOR:**

1. **DECLARATORY RELIEF**
2. **BREACH OF CONTRACT**

JURY TRIAL REQUESTED

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**I. NATURE OF THE CASE**

1. This is a class action brought by insurance policyholders seeking a declaratory judgment ordering their insurance provider, Truck Insurance Exchange, together with certain related Farmers Insurance Group Entities (Farmers Insurance Exchange, Fire Insurance Exchange, and Mid-Century Insurance Company) and Does 1 through 20, inclusive (collectively, “Defendants” or “Farmers”), to honor a valid contract of insurance requiring payment for lost business income, extra expenses, and other business-related losses in light of action by governmental authority requiring closure of their covered businesses or premises. This Complaint also seeks damages for breach of contract for benefits due under the insurance policy contracts.

2. If an insurer promises that by taking out “business income coverage, your policy helps replace the income lost while your company is closed,” it needs to keep that promise. *See* FARMERS INSURANCE, <https://www.farmers.com/learn/insurance-questions/business-income-coverage-definition/> (last accessed Apr. 28, 2020). Defendants understand that business interruption insurance is critical because it helps keep capital flowing to “keep your company running,” including lost profits, payroll, taxes, and other operating expenses. *Id.*; *see also* FARMERS INSURANCE, <https://www.farmers.com/business/property/> (last accessed Apr. 28, 2020).

3. Though Defendants assure prospective customers that Farmers has “a solid reputation for doing the right thing for the right reason,” Defendants have proven during the COVID-19 pandemic that this reputation is undeserved. Defendants have reflexively denied or will reflexively deny coverage based on consideration of their own interests, in contravention of basic interpretation principles requiring exclusions to be construed narrowly and equal consideration to be given to the insureds’ interests, without a proper investigation, and with no disclosed outside counsel opinion supporting Defendants’ position.

1           4.       Plaintiff American Traders, Inc. d/b/a Ramada Inn Modesto (“Plaintiff”) brings this  
2 class action on behalf of all those insured under policies issued by Defendants that provide for  
3 business interruption coverage, also known as business income and extra expense protection.

4           5.       Defendants’ insureds dutifully paid premiums to Defendants—some doing so year-  
5 after-year, to the tune of thousands or even tens of thousands of dollars per year—so that when the  
6 unimaginable hit, they would be protected. All insureds included in the proposed class purchased  
7 an “all risks” policy that covered every one of those unimaginable risks unless the policy  
8 exclusions removed that risk from coverage.  
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10          6.       When the novel coronavirus hit the United States, governments across the  
11 country—state and local—acted to protect the public health by entering orders that limited  
12 business operations, use of or access to facilities, travel, and in-person social interactions. The  
13 governmental orders also directed businesses to undertake certain affirmative actions, such as  
14 routine disinfecting cleanings of their business premises. These orders, directly and indirectly,  
15 caused Defendants’ insureds to suffer the very losses Defendants promised to reimburse. These  
16 governmental orders are a quintessential, well-known exercise of police powers. “The state’s  
17 inherent prerogative to protect the public’s health, safety, and welfare is known as the police  
18 power.” *See* Gostin, Lawrence, and Wiley, *Lindsey, Public Health Law*, University of California  
19 Press, p. 11. Using or accessing one’s real property or employing or putting into service (or  
20 removing therefrom) one’s equipment and business property, is inherently physical in nature. And  
21 ousting or precluding the use of or access to real property results in a loss of a physical nature.  
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23          7.       Rather than giving equal consideration to the interests of the insureds, as  
24 Defendants must do, evaluating each claim based on all information that could be gathered from a  
25 fair and neutral individualized investigation, as Defendants also must do, or securing an outside  
26 counsel opinion on coverage to avoid bias, as industry standards require, Defendants decided their  
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1 denial decision was correct and that no other reasonable interpretation of the policy language to  
2 the contrary exists, and thus all claims related to governmental orders limiting the use of or access  
3 to insureds' property were invalid. In the policy language, however, Defendants did not choose to  
4 exclude all governmental action from coverage. Defendants instead chose to exclude only  
5 governmental action ordering the seizure or destruction of property, and to cover all suspensions  
6 of business operations caused by "direct physical loss," a term it chose not to define so that it has  
7 the meaning Defendants now assert against its insureds.

8  
9 8. Defendants' interpretation of the policy contract is wrong, and its denial of  
10 coverage for losses caused by limitations on the physical use and access to insureds' property  
11 breached the contract.

12  
13 9. Plaintiff seeks for itself and the Class compensatory damages, statutory damages,  
14 attorney's fees, interest, and declaratory relief.

## 15 II. JURISDICTION

16 10. Subject-matter jurisdiction is proper in the Superior Court of the State of California  
17 for the County of Stanislaus, which is a court of general jurisdiction.

18 11. Personal jurisdiction is proper over Defendants under California Code of Civil  
19 Procedure Section 410.10, which provides that California courts are authorized to exercise  
20 jurisdiction over parties "on any basis not inconsistent with the Constitution."  
21

22 12. Personal jurisdiction is proper over Defendants for the additional reasons that  
23 Defendants are headquartered and have their principal places of business in California, and/or  
24 Defendants entered into a contract of insurance with Plaintiff in California.

### III. VENUE

13. Venue is proper under California Code of Civil Procedure Section 395.5.

#### IV. PARTIES

14. Plaintiff American Traders, Inc. d/b/a Ramada Inn Modesto contracted with Truck Insurance Company for commercial property, liability, and other insurance, and the policy at issue was effective before the losses herein described were sustained. Plaintiff American Traders, Inc. is a California-based general stock corporation (CA corporate number C3421219) headquartered in Modesto, California and is a citizen of California.

15. Plaintiff operates a full-service hotel called the Modesto Hotel located in Modesto, California (1720 Sisk Road, Modesto, California, 95350-2500).

16. Upon information and belief, Defendant Truck Insurance Exchange is a California corporation with its principal place of business in Woodland Hills, California. Upon information and belief, Defendant Truck Insurance Exchange is a subsidiary of the Farmers Insurance Group and The Farmers Insurance Group of Companies, and a sister entity of the other defendants named herein.

17. Upon information and belief, Defendant Farmers Insurance Exchange is a California corporation with its principal place of business in Woodland Hills, California, writes policies for the multi-peril (non-liability part) line, and is a subsidiary or sister entity of Farmers Insurance Group or The Farmers Insurance Group of Companies.

18. Upon information and belief, Defendant Fire Insurance Exchange is a California corporation with its principal place of business in Woodland Hills, California, writes policies for

1 the multi-peril (non-liability part) line, and is a subsidiary or sister entity of Farmers Insurance  
2 Group or The Farmers Insurance Group of Companies.

3 19. Upon information and belief, Defendant Mid-Century Insurance Company is a  
4 California corporation with its principal place of business in Woodland Hills, California, writes  
5 policies for the multi-peril (non-liability part) line.  
6

7 20. The Farmers Insurance Group of Companies has a relationship with Defendants  
8 that results in their common action. Through Farmers Management Services, a unit in the Farmers  
9 Insurance Group of Companies and/or Farmers Group, Inc., a wholly-owned subsidiary of the  
10 Farmers Insurance Group of Companies (and its subsidiaries, Truck Underwriters Association and  
11 Fire Underwriters Association), Defendants receive administrative, operational, and management  
12 services. Farmers Group Inc. receives fee income for providing services directly to Defendants.  
13 The management and guidance of Farmers Group, Inc. and/or Farmers Management Service  
14 results in the adoption of common practices, approaches, forms, and positions, including those  
15 used and applied in adjusting claims related to damage from and governmental action associated  
16 with COVID-19.  
17

18 21. Plaintiff is ignorant of the true names and capacities of the defendants sued herein  
19 under the fictitious names Does 1 through 20, inclusive. Plaintiff is informed and believes, and  
20 thereon alleges, that each of the fictitiously named defendants are responsible in some manner for  
21 the unlawful conduct alleged herein.  
22

## 23 V. COMMON FACTUAL ALLEGATIONS

24 22. Plaintiff American Traders, Inc. owns and manages a full-service 125-room hotel,  
25 which includes the operation of a full-service restaurant, bar, pool and spa, and exercise/fitness  
26 room.  
27  
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1           23.     The Hotel Modesto has served the community of Modesto since 1989. Plaintiff  
2 purchased the hotel in 2013, taking over hotel operations and making various improvements to the  
3 property over the years.

4           24.     Plaintiff's hotel offers different room types, including executive rooms and suites,  
5 and hosts conferences and other large-scale events. The hotel also provides its guests with a pool  
6 and spa, an exercise room, and a continental breakfast.

7           25.     Plaintiff's hotel staff took numerous sanitization measures pursuant to state and  
8 local guidance, including: (1) requiring masks for staff and guest protection; (2) applying  
9 disinfectants to the front desk after each guest approaches; (3) applying disinfectants to key cards  
10 between each use; (4) installing Plexiglas at the front desk; (5) regularly applying disinfectants to  
11 all common area surfaces in the lobby, (6) applying bleach to clean the hotel rooms between each  
12 stay; and (7) installing hand-sanitization stations throughout the hotel. Plaintiff incurred great  
13 expense enacting these measures.

14           26.     Plaintiff also closed its pool and spa and breakfast room to ensure physical distance  
15 between guests and to discourage them from gathering on the premises.

16           27.     Further, as "non-essential" workers, hotel employees were ordered to stay at home  
17 unless the hotel was used for COVID-19 mitigation, treatment, or containment measures. *See* State  
18 of California Executive Orders N-25-20 (Mar. 12, 2020) and N-33-20 (Mar. 19, 2020); *Guidance*  
19 *of the Essential Critical Infrastructure Workforce* (Mar. 19, 2020), [https://www.cisa.gov/sites/](https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.pdf)  
20 [default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-](https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.pdf)  
21 [508c.pdf](https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.pdf) (last accessed June 1, 2020). This restriction on its employees limited the hotel to use for  
22 COVID-19 mitigation, containment, or treatment.

1 **A. Plaintiff's Insurance Policy Covers All Risks Unless Expressly Limited or Excluded in**  
2 **the Contract**

3 28. To protect its thriving business from interruption and other perils, Plaintiff  
4 purchased business insurance from Defendants, including loss of income, extra expense, property,  
5 liability, and other coverages.

6 29. Plaintiff's policy is Policy Number 60628-25-08 ("Policy").

7 30. Plaintiff paid \$31,070.00 for the Policy, paying in full in advance. Plaintiff  
8 purchased business insurance from Defendants and paid the requisite premiums in exchange for  
9 "insurance as stated in the policy."  
10

11 31. The Policy's effective period is June 27, 2019 to June 27, 2020.

12 32. The Policy is a renewal policy. The prior policy contained material terms identical  
13 to the Policy currently in effect.

14 33. Plaintiff's Policy consists of the policy jacket and its policy provisions, the  
15 declarations or information page, and the endorsements.

16 34. This businessowners coverage applies to the insured's covered location identified  
17 in the Policy Declarations as 1720 Sisk Road, Modesto, California 95350. The location comprises  
18 the described premises and business personal property covered by the Policy.  
19

20 35. In exchange for payment of the premium, Defendants agreed to provide the  
21 insurance coverages described in the Policy.

22 36. The Policy is an "all risks" policy. That is, the policy covers the insured for any  
23 peril, imaginable or unimaginable, unless expressly limited or excluded. In the event a covered  
24 peril results in physical loss or damage to Plaintiff's business premises or property, the Policy will  
25 pay for lost business income and extra expenses. Business income means net income (net profit or  
26 loss) that would have been earned had no physical loss or damage occurred, and continuing  
27 normal operating expenses incurred (including payroll). Extra expense means the costs incurred  
28



1 because of the physical loss or damage—that is, those costs that would have otherwise been  
2 avoided. In the event of physical loss or damage, the Policy pays for both.

3         37.       Specifically, the Policy provides property coverage under the Businessowners  
4 Special Property Coverage Form. The Businessowners Special Property Coverage Form in turn  
5 sets forth coverage for “Business Income” and “Extra Expense.”  
6

7         38.       Under the Business Income coverage, Defendants must “pay for the actual loss of  
8 Business Income you sustain due to the necessary suspension of your ‘operations’ during the  
9 ‘period of restoration’.”

10        39.       Under the Extra Expense coverage, Defendants must pay the “necessary Extra  
11 Expense you incur during the ‘period of restoration’ that you would not have incurred if there had  
12 been no direct physical loss or damage to property at the described premises.”  
13

14        40.       The Business Income and Extra Expense paragraphs also establish the applicable  
15 Covered Causes of Loss, which is defined as “Risks of Direct Physical Loss unless the loss is: a.  
16 Excluded in Section B, Exclusions; or b. Limited in Paragraph A.4, Limitations; that follow.” This  
17 language covers all risks unless limited by Paragraph A.4 or excluded by Section B.

18        41.       The Policy provides extended coverage for loss of business income from dependent  
19 properties, tips, and certain orders from a civil authority. These coverages have independent limits  
20 of insurance benefits.  
21

22        42.       The Policy contains several exclusions, which identify risks that preclude coverage  
23 for loss or damage caused by those risks.

24        43.       Neither these nor any other exclusions in the Policy preclude coverage for the  
25 governmental orders pursuant to which Plaintiff and Class members suspended their business  
26 operations. The governmental orders therefore constitute a covered “direct physical loss” under  
27 the Policy.  
28

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

2 44. The first public reports of COVID-19 appeared on December 31, 2019, indicating  
3 the outbreak of the virus in Wuhan, China.

4 45. On January 21, 2020, the first American COVID-19 case was confirmed in the  
5 State of Washington. *See* CENTERS FOR DISEASE CONTROL, [https://www.cdc.gov/media/—](https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html)  
6 [releases/2020/p0121-novel-coronavirus-travel-case.html](https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html) (last accessed Apr. 28, 2020).

7 46. According to news reports, shortly thereafter, by January 26, 2020, the United  
8 States Centers for Disease Control (“CDC”) confirmed the first COVID-19 case in California. *See*  
9 CALIFORNIA DEPARTMENT OF HEALTH, [https://www.cdph.ca.gov/Programs/CID/DCDC/](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx)  
10 [Pages/Immunization/ncov2019.aspx](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx) (last accessed Apr. 28, 2020).

11 47. On February 26, 2020, the CDC announced the first reported California COVID-19  
12 case resulting from community spread. *See* CENTERS FOR DISEASE CONTROL, [https://www.cdc.gov](https://www.cdc.gov/media/releases/2020/s0226-COVID-19-spread.html)  
13 [/media/releases/2020/s0226-COVID-19-spread.html](https://www.cdc.gov/media/releases/2020/s0226-COVID-19-spread.html) (last accessed Apr. 28, 2020).

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

15 49. By March 13, 2020, California’s total COVID-19 case count had risen to 198  
16 confirmed cases. *See* CALIFORNIA HEALTHLINE (Mar. 13, 2020), [https://californiahealthline.org/](https://californiahealthline.org/morning-briefing/friday-march-13-2020/)  
17 [morning-briefing/friday-march-13-2020/](https://californiahealthline.org/morning-briefing/friday-march-13-2020/) (last accessed Apr. 28, 2020).

18 50. On March 13, 2020, the President of the United States declared a national  
19 emergency.

20 51. Yet, throughout this entire period from December 2019 through March 13, 2020,  
21 Plaintiff did not suffer an interruption or cessation of its thriving business.

22 **C. California Takes Governmental Action Forcing Plaintiff’s Business to Shutter**

23 52. It was when California’s state and local governments entered civil authority orders  
24 beginning in March 2020 that Plaintiff was forced to close or curtail its business operations.

1           53.     As early as March 4, 2020, the Governor of the State of California, Gavin Newsom,  
2 entered an order declaring “a State of Emergency to exist in California as a result of the threat of  
3 COVID-19.” *See* State of California Executive Order N-25-20 (Mar. 4, 2020) *available at*  
4 <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.12.20-EO-N-25-20-COVID-19.pdf> (last  
5 accessed June 1, 2020).  
6

7           54.     By March 12, 2020, the Governor began ordering compliance with state and local  
8 social distancing measures. *Id.* The Governor further empowered the California Health and Human  
9 Services Agency and the Office of Emergency Services to identify and make available hotels  
10 “suitable for use as places of temporary residence or medical facilities as necessary for  
11 quarantining, isolating, or treating individuals who test positive for COVID-19.” *Id.*  
12

13           55.     On March 15, 2020, the Governor issued guidelines calling for “profoundly  
14 significant steps” to limit the spread of COVID-19. These guidelines required the self-isolation of  
15 all residents 65 years of age or older and the closure of all “[b]ars, nightclubs, wineries, brew pubs  
16 and the like.” @CAGovernor, TWITTER (Mar. 15, 2020, 1:45 PM) <https://twitter.com/CAGovernor/status/1239291671939919872>. The guidelines further required all restaurants to halve their  
17 capacities and keep customers at least six feet from one another. *Id.* These guidelines applied to  
18 restaurants, bars, nightclubs, and other such facilities operating within or as part of hotel facilities.  
19  
20 *See Id.*, *see also* Cowan, Jill, *California Governor Orders Radical Changes to Daily Life*, N.Y.  
21 TIMES (Mar. 16, 2020), [https://www.nytimes.com/2020/03/16/us/california-newsom-bars-home-](https://www.nytimes.com/2020/03/16/us/california-newsom-bars-home-isolation.html)  
22 [isolation.html](https://www.nytimes.com/2020/03/16/us/california-newsom-bars-home-isolation.html) (last accessed Apr. 29, 2020).  
23

24           56.     The next day, on March 16, 2020, the Governor announced new directives to gyms,  
25 health clubs, and movie theaters to close down. The Governor asked restaurants to shut their  
26 doors, or, at the restaurants’ option, to limit services to takeout only. These directives applied to  
27 restaurants, gyms, and health clubs operating within or as part of hotel facilities. *See California*  
28

1 COVID Update, FACEBOOK, <https://www.facebook.com/watch/live/?v=560533608146352>  
2 &ref=watch\_permalink (last accessed June 3, 2020); *see also* Perper, Rosie, *California Asks All*  
3 *Dine-In Restaurants, Gyms, and Movie Theaters to Close to Curb the Coronavirus' Spread*,  
4 BUSINESS INSIDER (Mar. 16, 2020, 9:47PM), [https://www.businessinsider.com/california-closes-](https://www.businessinsider.com/california-closes-restaurants-gyms-encourages-ban-on-social-gatherings-2020-3)  
5 [restaurants-gyms-encourages-ban-on-social-gatherings-2020-3](https://www.businessinsider.com/california-closes-restaurants-gyms-encourages-ban-on-social-gatherings-2020-3) (last accessed Apr. 29, 2020). That  
6 same day, the California Department of Public Health issued guidance reflecting Governor  
7 Newsom's remarks. *See* Sonia Y. Angell, MD, MPH, *Coronavirus Disease 2019 (COVID-19) and*  
8 *Retail Food, Beverage, and Other Related Service Venues* (Mar. 16, 2020), [https://www.cdph.](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/RetailFoodBeverageandOtherRelatedServiceVenues.aspx)  
9 [ca.gov/Programs/CID/DCDC/Pages/COVID-19/RetailFoodBeverageandOtherRelatedService](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/RetailFoodBeverageandOtherRelatedServiceVenues.aspx)  
10 [Venues.aspx](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/RetailFoodBeverageandOtherRelatedServiceVenues.aspx).  
11

12           57.     On March 19, 2020, less than two months after the first confirmed case of COVID-  
13 19 appeared in California, the Governor took the dramatic step of ordering “all individuals living  
14 in the State of California to stay at home or at their place of residence” subject to narrow  
15 enumerated exceptions. The Governor also required that “[w]hen people need to leave their homes  
16 or places of residence, whether to obtain or perform the [enumerated] functions . . . , or to  
17 otherwise facilitate authorized necessary activities, they should at all times practice social  
18 distancing.” By its own terms, this shelter order was necessary “[t]o preserve the public health and  
19 safety, and to ensure the healthcare delivery system is capable of serving all,” as well as to “bend  
20 the curve, and disrupt the spread of the virus.” The order was made enforceable pursuant to  
21 California law, and violation of the order carried the threat of misdemeanor punishable by a fine,  
22 imprisonment, or both. *See* State of California Executive Order N-33-20.  
23

24           58.     Governor Newsom's March 19, 2020 order further directed the California  
25 Department of Public Health to issue statewide public health directives regarding permissible  
26 essential activities. *Id.* The California of Department Health complied and identified 16 critical  
27  
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1 infrastructure sectors, ordering Californians working in those 16 sectors “to continue their work  
2 because of the importance of these sectors to Californians’ health and well-being.” *Id.* Hotel  
3 workers were deemed essential, but only to the extent the hotels at which they worked “are used  
4 for COVID-19 mitigation and containment measures, treatment measures, provide accommodation  
5 for essential workers, or providing housing solutions, including measures to protect homeless  
6 populations.” *See* Essential Workforce, California Department of Public Health, *available at*  
7 <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf> (last visited May 13, 2020).  
8

9         59.       Municipal and local governments across California have entered their own orders  
10 mandating that residents shelter in place and that businesses limit or cease operations. Often these  
11 municipal orders extend much further than the statewide orders, mandating more stringent  
12 restrictions on the movement of people and the use or access of goods, services, and facilities.  
13

14         60.       On March 12, 2020, the Stanislaus County Public Health Officer issued an order  
15 prohibiting the gathering of 1,000 or more people whether indoor or outdoor. The order was made  
16 enforceable by punishment by fine, imprisonment, or both, under California Health and Safety  
17 Code § 120295. *See* Stanislaus County Public Health Order (Mar. 12, 2020), *available at*  
18 <http://www.schsa.org/publichealth/pages/corona-virus/pdf/health-order.pdf> (last accessed May 13,  
19 2020).  
20

21         61.       On March 31, 2020, the Stanislaus County Public Health Officer issued the  
22 county’s own stay at home order, requiring all individuals to stay at home except for certain  
23 essential activities, directing all businesses to cease all non-essential operations at physical  
24 locations within the county, prohibiting all non-essential gatherings of any number of individuals,  
25 and ordering cessation of all non-essential travel. The order incorporated Governor Newsom’s  
26 designation of critical and essential infrastructure workers, which itself excluded hotel workers as  
27 enumerated above. The order further prohibited travel even *into* the county except for essential  
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1 activities. Finally, the order required that any businesses continuing to operate abide by strict  
2 social distancing guidelines, including: “maintaining at least six-foot social distancing from other  
3 individuals, washing hands with soap and water for at least twenty seconds as frequently as  
4 possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands),  
5 regularly cleaning high touch surfaces, and not shaking hands.” The order was made enforceable  
6 by punishment by fine, imprisonment, or both, under California Health and Safety Code § 120295.  
7 *See* Stanislaus County Public Health Order (Mar. 31, 2020), *available at* [http://www.schsa.org/](http://www.schsa.org/PublicHealth/pages/corona-virus/pdf/health-order-mar-31.pdf)  
8 [PublicHealth/pages/corona-virus/pdf/health-order-mar-31.pdf](http://www.schsa.org/PublicHealth/pages/corona-virus/pdf/health-order-mar-31.pdf) (last accessed May 13, 2020).

10         62.       On April 24, 2020, Stanislaus County entered an order requiring individuals to stay  
11 at home except to engage in essential activities, to perform work in an essential critical  
12 infrastructure sector, or to perform minimum basic operations. *See* Stanislaus County Public  
13 Health Order (Apr. 22, 2020), *available at* [http://www.schsa.org/PublicHealth/pages/corona-](http://www.schsa.org/PublicHealth/pages/corona-virus/pdf/health-order-apr-22-en.pdf)  
14 [virus/pdf/health-order-apr-22-en.pdf](http://www.schsa.org/PublicHealth/pages/corona-virus/pdf/health-order-apr-22-en.pdf) (last accessed May 13, 2020). The order imposed numerous  
15 and specific affirmative requirements on *any* business operations, including:

- 17                 a.       “All businesses shall prepare, post, and comply with a Social Distancing  
18 Protocol, no later than 11:59 p.m., April 27, 2020, for each of their facilities  
19 in the County. The Social Distancing Protocol must follow the format of the  
20 form in Appendix A of this Order. The Protocol must be posted at or near  
21 the entrance of the relevant facility, and shall be easily viewable by the  
22 public and employees. A copy of the Protocol must also be provided to each  
23 employee, volunteer, and contractor performing work at the facility. All  
24 businesses shall implement their Protocol and provide evidence of the  
25 implementation upon request to any authority enforcing this Order.”  
26  
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- 1           b.     “Limiting the number of people who can enter the facility at any one time to  
2                 ensure that people in the facility can easily maintain a minimum 6-foot  
3                 distance from one another at all times, except as required to complete the  
4                 business activity;”
- 5           c.     “Where lines may form at a facility, marking 6-foot increments at a  
6                 minimum, establishing where individuals should stand to maintain adequate  
7                 social distancing;”
- 8           d.     “Providing soap and water, hand sanitizer, or effective disinfectant at or  
9                 near the entrance of the facility and in other appropriate areas for use by  
10                customers and employees, and in locations where there is high-frequency  
11                employee interaction with members of the public such as at check-out;”
- 12           e.     “Providing for payment systems that do not require contact or, if this is not  
13                feasible, providing for disinfection of all payment portals, pens, and styluses  
14                after each use;”
- 15           f.     “Regularly disinfecting other high-touch surfaces;”
- 16           g.     “Posting a sign at the entrance of the facility informing all employees and  
17                customers that they should not enter if they have a cough or fever, should  
18                stay at least 6 feet away from others, should cough or sneeze into their  
19                sleeve, should not shake hands, and should not engage in any unnecessary  
20                physical contact.”

21           The order was made enforceable by law enforcement agencies. *Id.*

22           63.     Other municipal and local governments across California have entered civil  
23           authority orders mandating compliance with substantially the same requirements as set forth by  
24           the State of California and the County and City of Stanislaus. By way of example, as of March 17,  
25

1 2020, the Department of Public Health for the City and County of San Francisco mandated the  
2 closure of all bars and nightclubs, and of all “[r]estaurants and cafes—regardless of their seating  
3 capacity—that serve food . . . except solely for takeout and delivery service.” *See* Order of the  
4 Health Officer No. C19-07.

5  
6 **D. Defendants Deny Plaintiff’s Insurance Claim**

7 64. In light of the foregoing civil authority orders, Plaintiff submitted a claim for  
8 related business losses and extra expenses. The claim indicated a loss date beginning in mid-  
9 March, 2020. On or about May 1, 2020, Plaintiff was advised by phone that its claim was denied.

10 65. By letter in May 2020, Defendants then denied Plaintiff’s claim.

11 66. In reaching their denial decision, Defendants conducted no investigation into the  
12 covered premises to determine the precise physical loss or damage that resulted from the  
13 governmental orders described herein. Defendants made no attempt to communicate with Plaintiff  
14 from the time that Plaintiff filed its claim and the time Defendant informed Plaintiff a denial was  
15 forthcoming, did not ask for any additional information, and did not view in any way the covered  
16 premises.

17  
18 67. Plaintiff followed the requirements and guidance of all governmental orders  
19 described herein, resulting in the curtailment or complete closure of its business operations.

20 68. Plaintiff’s hotel staff took numerous sanitization measures pursuant to state and  
21 local guidance, including: (1) requiring masks for staff and guest protection; (2) applying  
22 disinfectants to the front desk after each guest approaches; (3) applying disinfectants to key cards  
23 between each use; (4) installing Plexiglas at the front desk; (5) regularly applying disinfectants to  
24 all common area surfaces in the lobby, (6) applying bleach to clean the hotel rooms between each  
25 stay; and (7) installing hand-sanitization stations throughout the hotel. Plaintiff incurred great  
26 expense enacting these measures.  
27  
28



69. Plaintiff also enacted measures to ensure social distancing such as locking up the pool and spa area so it is not available for use and closing the breakfast/dining area to discourage gatherings.

70. Additionally, as non-essential workers, hotel employees were ordered to stay at home except where hotels provided for COVID-19 mitigation, treatment, or containment measures. Accordingly, Plaintiff closed its doors for several days. The hotel opened again, to operate as a lodging facility for those engaged in COVID-19 mitigation, treatment, or containment. This restricted operation—even after reopening for the limited purposes—resulted in a loss of business income.

71. The denial is wrong. The governmental action affecting Plaintiff's property—executive orders that directly or indirectly limit direct physical access to or use of Plaintiff's real property and business equipment—has caused a loss of income and an increase in expense. This risk—of governmental action—is nowhere limited or excluded in the Policy.

## CLASS ALLEGATIONS

72. This action is brought and may properly be maintained as a class action, as it satisfies the commonality, numerosity, impracticability, and other requirements of California Rule of Civil Procedure Section 382. Plaintiff brings all claims herein individually and as a class action (for the classes defined below), under California Rule of Civil Procedure Section 382.

73. Plaintiff brings this claim on behalf of the following Class:

All policyholders who are insured under a policy issued by Defendants with coverage for Business Income, Extended Business Income, Civil Authority, Tips Included, Dependent Property and/or Extra Expense, who are citizens of the State of California, and whose covered premises were the subject of a government order relating to COVID-19.

Government Order means any order issued by any governmental authority in the State of California, including but limited to those orders entered by the Governor or any county or

1 municipal authority on or after February 1, 2020, that restricts a policyholders' use or access to  
2 covered premises for purposes of protecting public health or safety in light of the spread of  
3 COVID-19, including but not limited to the governmental orders described herein. Excluded from  
4 this Class are Defendants and any of their members, affiliates, parents, subsidiaries, officers,  
5 directors, employees, successors, and assigns; governmental entities; Class counsel and their  
6 employees; and the judicial officers and Court staff assigned to this case and their immediate  
7 families.  
8

9       74. While the exact number of Class members cannot be determined, the Class consists  
10 of at least thousands of persons. The members of the Class are therefore so numerous that joinder  
11 of all members is impracticable. The exact number of Class members can readily be determined by  
12 documents produced by Defendants.  
13

14       75. There are questions of fact and law common to the Class, including:

- 15       a. Whether the Policy covers the risk of governmental action;
- 16       b. Whether the Policy's governmental-action exclusion is limited to orders of  
17 seizure and destruction other than the express exemption from the exclusion  
18 for preventing the spread of a fire;
- 19       c. Whether the Policy's "loss of use" exclusion is limited to consequential,  
20 indirect injuries rather than losses directly caused by or resulting from  
21 governmental action;
- 22       d. Whether losses caused by limits or bans on using or accessing one's real  
23 property or employing or putting into service (or removing therefrom) one's  
24 equipment/business property are physical losses; ;  
25  
26  
27  
28

- e. Whether the Policy was breached when Defendants denied coverage based on government orders that precluded or limited access to Covered Property without seizing or destroying it;
- f. Whether Defendants' breaches or wrongs injured Plaintiff and the Class;
- g. Whether Plaintiff and the Class may have an award of compensatory damages;
- h. Whether Plaintiff and the Class may have an award of attorney's fees;
- i. Whether Plaintiff and the Class may have declaratory relief.

76. Plaintiff has the same interests as all other members of the Class, and Plaintiff's claims are typical of those of all members. Plaintiff's claims are coincident with and not antagonistic to those of other Class members it seeks to represent. Plaintiff and all Class members have sustained damages arising out of Defendants' common course of conduct as outlined herein. The damages of each Class member were caused by Defendants' wrongful conduct.

77. Plaintiff will pursue this action and has retained competent Class counsel experienced in insurance litigation and class action litigation. Plaintiff will fairly and adequately represent the interests of the Class members.

78. Class certification is appropriate under California Rule of Civil Procedure Section 382 because Defendants' actions generally apply to the Class as a whole, and Plaintiff seeks equitable remedies regarding the Class as a whole.

79. Class certification is appropriate under California Rule of Civil Procedure Section 382 because the common questions of law and fact enumerated above predominate over questions affecting only individual members of the Class, and a class action is the superior method for fair and efficient adjudication of the controversy. The likelihood that individual members of the Class will prosecute separate actions is remote due to the time and expense necessary to conduct such

litigation. Plaintiff's counsel, highly experienced in insurance and class action litigation, foresee little difficulty in the management of this matter as a class action.

80. Plaintiff cannot be certain of the form and manner of Class notice it will propose until the Class is finally defined and further discovery concerning the identity of Class members is undertaken. Based on the experience of their counsel in previous cases, Plaintiff anticipates that notice by email and mail will be given to all Class members who can be specifically identified and that this notice will be supplemented by notice published in appropriate periodicals and on the internet and by press releases and similar communications.

## CLAIMS FOR RELIEF

**FIRST CLAIM FOR RELIEF**  
**(Declaratory Judgment Against All Defendants)**

81. Plaintiff re-alleges and incorporates the preceding paragraphs as if set forth herein.

82. Plaintiff brings this cause of action for itself and the Class under California Rule of Civil Procedure Section 1060 *et seq.*, seeking a declaration that, for those who maintain an insurance policy with Defendants, it violates California state law and the insurance contracts for Defendants to ignore the narrow nature of the governmental-action exclusion and to adopt a narrow interpretation of what must cause a suspension of business. The Policy requires that a “suspension” be caused by “direct physical loss of or damage to property at the described premises.”

83. Defendants' interpretation that the requirement of "physical loss" is not satisfied by losing physical access or use and quiet enjoyment of Plaintiff's property is wrong. The undefined phrase "direct physical loss" is reasonably construed to mean the direct loss of the ability to physically access or use property. Losing the ability to access or use one's property is a loss of physical, material rights and advantages, substantial and important. Considering that exclusions to coverage must be narrowly construed, that language drafted by the insurer with ambiguity should

ordinarily be construed against the drafter, and that Plaintiff's interpretation is supported by dictionary definitions of the terms, coverage should be afforded.

84. Under the Business Income coverage, Defendants must "pay for the actual loss of Business Income you sustain due to the necessary suspension of your 'operations' during the 'period of restoration.'"

85. Under the Extra Expense coverage, Defendants must pay the "necessary Extra Expense you incur during the 'period of restoration' that you would not have incurred if there had been no direct physical loss or damage to property at the described premises."

86. The Policy does not define the term "suspension." According to the Randomhouse Unabridged Dictionary, the term means "temporary abrogation or withholding, as of a law, privilege, decision, belief, etc." *See Suspension*, RANDOMHOUSE UNABRIDGED DICTIONARY, available at <https://www.dictionary.com/browse/suspension> (last accessed May 25, 2020).

87. Under the Policy, "'Operations' means your business activities occurring at the described premises."

88. Under the Policy, "Period of restoration" for Business Income coverage means the period of time that begins 72 hours after the time of direct physical loss, and for Extra Expense coverage means the period of time that begins at the time of direct physical loss.

89. Additionally, under Business Income and Extra Expense coverage, the loss or damage must be caused by "direct physical loss."

**A. Loss of Access or Use Constitutes Direct Physical Loss**

90. The Policy does not define the phrase "direct physical loss."

91. Common usage of the words in the phrase dictates that ouster and prohibition/interdiction of access and use by insureds and others (agents, tenants, customers, etc.)

1 are physical losses. Such losses are direct in that ouster of and prohibition/interdiction of access  
2 and use by all nonessential people results directly in a physical loss.

3 92. Physical means relating to “material things” that are “perceptible especially through  
4 the senses.” *See Physical*, MERRIAM-WEBSTER (2020), [https://www.merriam-webster.com/](https://www.merriam-webster.com/dictionary/physical)  
5 dictionary/physical (last accessed May. 24, 2020). It is also defined in a way that is tied to the  
6 body: “of or relating to the body.” *Id.* Another Merriam-Webster Dictionary refines the concept of  
7 material this way: “of or relating to natural or material things as opposed to things mental, moral,  
8 spiritual, or imaginary.” *See Physical*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY,  
9 (Unabr. 2020) Web. 24 Apr. 2020.

11 93. Prohibiting the physical presence on the premises of all persons (except for those  
12 facilitating minimal maintenance) and the prohibition of the physical use of equipment, fixtures  
13 and furniture constitutes a physical loss that caused the suspension of business operations.

15 **B. Governmental Action Resulted in Plaintiff’s Loss of Use or Access to the Premises or  
16 Business Personal Property, a Non-Excluded Direct Physical Loss**

17 94. Coverage under the “all risks” Policy is provided for any risk of direct physical loss  
18 unless expressly limited or excluded.

19 95. One risk addressed in the Paragraph B exclusions is governmental action. *See Form*  
20 *BP 00 02 01 97*, Paragraph B.1.c.

21 96. By recognizing governmental action in the Paragraph B exclusions, the Policy  
22 confirms governmental action as a risk of direct physical loss and a Covered Cause of Loss.

23 97. The Policy excludes some but not all governmental action from coverage. The  
24 Policy excludes coverage for governmental orders requiring seizure and destruction only.  
25 Specifically, this provision excludes any loss or damage caused directly or indirectly by  
26 governmental action that consists of seizure or destruction of property by order of governmental  
27 authority unless the destruction was done to prevent the spread of a fire. As ordinarily used,  
28

1 “seizure” means “taking possession of person or property by legal process.” The provision  
2 excludes no other governmental action from coverage (i.e., governmental orders not seeking  
3 seizure or destruction).

4 98. The governmental orders affecting Plaintiff and the Class’ property do not require  
5 seizure or destruction because the government did not destroy the property of Plaintiff and Class  
6 Members or take physical possession of, or title to, such property. Instead, the orders limit access  
7 to and use of covered property at the premises described in the Policy declarations.

9 99. The Policy does not exclude the governmental action described herein.

10 100. The business-income losses, extra expenses, and other losses sustained by Plaintiff  
11 and the Class were caused by or resulted from the aforementioned governmental orders, a Covered  
12 Cause of Loss.

13 101. The policy further requires that the business-income losses be incurred because of  
14 the necessary suspension of operations during the period of restoration. Plaintiff and the Class  
15 suffered losses because of suspension of operations during the period of restoration.

16 102. The direct loss of physical access to and use of the premises listed in the  
17 Declarations, and business property thereon, for tenants and their vendors, agents, employees, and  
18 customers caused the suspension of the operations by the Plaintiff and the Class.

19 103. Because the Policy covers all risks, including governmental action that, for the  
20 good of the public, does no more than limit physical access to and use of property (real and  
21 personal), coverage is required.

22 104. The governmental action affecting Plaintiff’s property—executive orders that  
23 directly or indirectly limit direct physical access to Plaintiff’s real and personal property—has  
24 caused a loss of income and an increase in expense, exactly the “outside force” that interrupts  
25 business and causes insureds to close their doors for a period of time, that requires that capital  
26  
27  
28

1 continue to flow to keep the business afloat and to help replace lost income and pay expenses such  
2 as salaries and mortgages. This governmental action is precisely the unexpected jolt that motivates  
3 the purchase of insurance.

4 **C. No Other Exclusions Apply to Preclude Coverage**

5 105. No other applicable exclusions or limitations apply to preclude coverage for the  
6 direct physical losses caused by or resulting from the governmental action described herein. *See*  
7 Paragraph B, Form BP00090197.

8 106. The existing virus exclusion is inapplicable because Plaintiff's losses were caused  
9 by governmental action, not the physical presence of the virus on the covered premises.  
10 Defendants conducted no investigation and have no evidence to satisfy their burden of showing  
11 the physical presence of a virus on the insured properties, which is required when asserting an  
12 exclusion. Defendants denied all claims without investigating the relevant properties.

13 107. Coverage begins at the time of governmental action. Plaintiff's property was  
14 subject to governmental orders in California that did not seek to seize or destroy the property. The  
15 governmental orders do not constitute governmental seizures because at no point did any  
16 governmental entity in California take physical possession of the property or legal title to the  
17 property. The orders properly exercised the police powers of their respective state and local  
18 governments to protect public health, affecting Plaintiff's property, which caused a loss of the  
19 ability to physically access and use the insured property.

20 108. Under each successive order, Plaintiff's property was limited to the minimum  
21 necessary operations or required closure. The governmental action also prohibited, via stay-at-  
22 home orders or travel restrictions, all nonessential movement by all residents. These governmental  
23 orders resulted in losing physical access to and physical use and enjoyment of Plaintiff's property  
24 by its owners, customers, vendors, employees, and others.



1           109. Nor does the provision entitled “Consequential Losses” that excludes “Delay, loss  
2 of use or loss of market” preclude coverage.

3           110. Consequential damages are special or indirect damages. Put differently,  
4 consequential damages are “[l]osses that do not flow directly and immediately from an injurious  
5 act but that result indirectly from the act. — Also termed *indirect damages*.” *See Consequential*  
6 *Damages*, Black’s Law Dictionary (11th ed. 2019) (emphasis in original).

7           111. The exclusion for “loss of use” therefore applies only if that “loss of use” is itself  
8 consequential. That is not the case here. The insured-against peril—governmental action—resulted  
9 directly and immediately in Plaintiff’s physical loss of access or use.  
10

11           112. Limiting the “loss of use” exclusion to consequential losses also renders sensible an  
12 exclusion that otherwise swallows the entire Policy.  
13

14 **D. Declaratory Relief**

15           113. Plaintiff, for itself and on behalf of the Class, seeks a declaration of rights under  
16 Defendants’ Policy language and a declaration of the rights and liabilities of the parties herein.

17           114. This Court has the power to declare the rights of the Defendants’ policyholders  
18 whether or not the policyholders have made claims related to losses relating to COVID-19.  
19

20           115. Plaintiff seeks a Declaratory Judgment finding that the Policy covers Business  
21 Income and Extra Expense during the period of restoration caused by or resulting from  
22 governmental action that forced Plaintiff to suspend operations, subject to no limitations or  
23 exclusions under the Policy.

24 **SECOND CLAIM FOR RELIEF**  
25 **(Breach of Contract Against All Defendants)**

26           116. Plaintiff re-alleges and incorporates the preceding paragraphs as if set forth herein.

27           117. Plaintiff has a valid contract of insurance with Defendants, whereby Plaintiff  
28 agreed to make and did make premium payments to Defendants in exchange for Defendants’

1 promise to indemnify the policyholders for losses including, but not limited to, Business Income  
2 and Extra Expense.

3 118. Plaintiff is current on all premiums required under the Policy and the Policy is in  
4 full effect.

5 119. The Policy requires payment of losses incurred caused by or resulting from the  
6 forced suspension of operations mandated by government orders issued in California, including  
7 but not limited to Business Income and Extra Expense. Coverage for these losses is in no way  
8 limited or excluded under the Policy terms.

9 120. Despite the Policy affording coverage, Defendants deny the Policy affords  
10 coverage and denied or will deny coverage to Plaintiff and the Class.

11 121. In addition, Defendants have uniformly taken the position, without seeking  
12 independent coverage advice, that the Policy's language does not afford coverage where  
13 governmental action limited or prohibited certain use, access, and deployment of insureds'  
14 property and that such claim would, as a business practice, be denied. Defendants' entire decision  
15 was rendered based on its reading of the contract language, and not by any specifics relating to  
16 each insured (as no investigation occurred here). By making its decision known, Defendants have  
17 anticipatorily breached the contracts.

18 122. Defendants' failures to affirm coverage and pay benefits breach the contract and  
19 represent a systematic failure to pay the benefits required by the contract.

20 123. As a result of Defendants' breach of contract, Plaintiff and the Class have suffered  
21 and will continue to suffer monetary losses, and without prompt relief will be forced to shutter  
22 indefinitely.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for the following judgment:

- 3 A. An Order certifying this action as a class action under California law;
- 4 B. An Order appointing Plaintiff as class representative and appointing the
- 5 undersigned counsel to represent the Class;
- 6
- 7 C. Declaratory relief, as described herein;
- 8 D. An Order finding Defendants to have breached the Policy contract;
- 9 E. Compensatory damages;
- 10 F. An award of attorney's fees and costs, as provided by law and/or as would be
- 11 reasonable from any recovery of monies recovered for or benefits bestowed upon the Class;
- 12
- 13 G. Pre- and post-judgment interest at the highest rate allowed by law; and
- 14 H. Such other and further relief as this Court may deem just, equitable, or proper,
- 15 including a designation that any unclaimed monies may go to the next best use.

16 **JURY DEMAND**

17 Plaintiff demands a trial by jury of the claims asserted in this complaint so triable.

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1 RESPECTFULLY SUBMITTED this the 4<sup>th</sup> day of June, 2020.

2 HAGENS BERMAN SOBOL SHAPIRO LLP

3  
4 By: /s/ Elaine T. Byszewski

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