

ORIGINAL

**FILED**  
Superior Court of California  
County of Los Angeles

**MAY 18 2020**

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20 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
21 FOR THE COUNTY OF LOS ANGELES

22 BULK, LLC,

23 Plaintiff,

24 vs.

25 TRUCK INSURANCE EXCHANGE,  
26 FARMERS INSURANCE EXCHANGE, FIRE  
27 INSURANCE EXCHANGE, MID-CENTURY  
28 INSURANCE COMPANY, and DOES 1  
THROUGH 20, INCLUSIVE,  
Defendants.

Case No.: **20STCV19129**

CLASS ACTION

**COMPLAINT FOR:**

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

JURY TRIAL REQUESTED

BY FAX

## I. NATURE OF THE CASE

1  
2 1. This is a class action brought by insurance policyholders seeking a declaratory  
3 judgment ordering their insurance provider, Truck Insurance Exchange, together with certain  
4 related Farmers Insurance Group Entities (Farmers Insurance Exchange, Fire Insurance Exchange,  
5 and Mid-Century Insurance Company) and Does 1 through 20, inclusive (collectively,  
6 “Defendants” or “Farmers”), to honor a valid contract of insurance requiring payment for lost  
7 business income, extra expenses, and other business-related losses in light of action by  
8 governmental authority requiring closure of their covered businesses or premises. This Complaint  
9 also seeks damages for breach of contract for benefits due under the insurance policy contracts.  
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11 2. An insurer that promises business income coverage will “help[] replace the income  
12 lost while your company is closed,” must keep that promise. *See* FARMERS INSURANCE,  
13 <https://www.farmers.com/learn/insurance-questions/business-income-coverage-definition/> (last  
14 accessed Apr. 28, 2020). Defendants understand that business interruption insurance is critical  
15 because it helps keep capital flowing to “keep your company running,” including lost profits,  
16 payroll, taxes, and other operating expenses. *Id.*; *see also* FARMERS INSURANCE,  
17 <https://www.farmers.com/business/property/> (last accessed Apr. 28, 2020).  
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19 3. Though Defendants assure prospective customers that Farmers has “a solid  
20 reputation for doing the right thing for the right reason,” Defendants have proven during the  
21 COVID-19 pandemic that this reputation is undeserved. Defendants have reflexively denied or  
22 will reflexively deny coverage based on consideration of their own interests, in contravention of  
23 basic interpretation principles requiring exclusions to be construed narrowly and equal  
24 consideration to be given to the insureds’ interests, without a proper investigation, and with no  
25 disclosed outside counsel opinion supporting Defendants’ position.  
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1           4.       Plaintiff Bulk, LLC (“Plaintiff”) brings this class action on behalf of all those  
2 insured under policies issued by Defendants that provide for business interruption coverage, also  
3 known as business income and extra expense protection.

4           5.       Plaintiff and the Class dutifully paid premiums to Defendants—some doing so  
5 year-after-year, to the tune of thousands or even tens of thousands of dollars per year—so that  
6 when the unimaginable hit, they would be protected. All insureds included in the proposed class  
7 purchased an “all risks” policy that purports to cover every one of those unimaginable risks unless  
8 the policy exclusions removed that risk from coverage.

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10          6.       When the novel coronavirus (COVID-19) hit the United States, governments across  
11 the country acted to protect public health by entering orders limiting business operations, use of or  
12 access to facilities, travel, and in-person social interactions. The governmental orders also directed  
13 businesses to undertake certain affirmative actions, such as routine disinfecting cleanings of their  
14 business premises. These orders, directly and indirectly, caused Defendants’ insureds to suffer the  
15 very losses Defendants promised to reimburse. These governmental orders are a quintessential,  
16 well-known exercise of police powers. “The state’s inherent prerogative to protect the public’s  
17 health, safety, and welfare is known as the police power.” *See* Gostin, Lawrence and Wiley,  
18 Lindsey, *Public Health Law*, University of California Press, p. 11. Using or accessing one’s real  
19 property or employing or putting into service (or removing therefrom) one’s equipment and  
20 business property, is inherently physical in nature. And ousting or precluding the use of or access  
21 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 unilaterally  
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1 decided their denial decision was correct and that no other reasonable interpretation of the policy  
2 language to the contrary exists, and thus all claims related to governmental orders limiting the use  
3 of or access to insureds' property were invalid. In the policy language, however, Defendants did  
4 not choose to exclude all governmental action from coverage. Defendants instead chose to exclude  
5 only governmental action ordering the seizure or destruction of property, and to cover all  
6 suspensions of business operations caused by "direct physical loss," a term it chose not to define  
7 in a way that would give it the meaning Defendants now assert against its insureds.  
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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 9. Plaintiff seeks for itself and the Class compensatory damages, statutory damages,  
13 attorney's fees, interest, and declaratory relief.

## 14 II. JURISDICTION

15 10. Subject-matter jurisdiction is proper in the Superior Court of the State of California  
16 for the County of Los Angeles, which is a court of general jurisdiction.  
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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.  
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**III. VENUE**

13. Venue is proper under California Code of Civil Procedure Section 395.5. Defendants are corporations that entered into and subsequently breached a contract of insurance with Plaintiff in the County of Los Angeles.

**IV. PARTIES**

14. Plaintiff Bulk, LLC contracted with Defendant Truck Insurance Exchange for commercial property, liability, and other insurance, and the policy at issue was effective April 8, 2020. Plaintiff Bulk, LLC is a California domestic limited-liability company headquartered in San Pedro, California and is a citizen of California.

15. Plaintiff operates three covered premises: a retail business location in Long Beach, California (419 Shoreline Village Drive, Suite 1, Long Beach, California, 90802); a retail business location in Venice Beach, California (1825 Ocean Front Walk, Venice, California, 90291); and a retail and warehouse business location in San Pedro, California (1931 North Gaffey Street, Suite E, San Pedro, California, 09731).

16. Upon information and belief, Defendant Truck Insurance Exchange is a California corporation with its principal place of business in Woodland Hills, California.

17. Upon information and belief, Defendant Truck Insurance Exchange is a subsidiary of the Farmers Insurance Group and The Farmers Insurance Group of Companies.

18. 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.

19. 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 20. 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, and is a subsidiary or sister entity of Farmers  
6 Insurance Group or The Farmers Insurance Group of Companies.

7 21. 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 22. Plaintiff is ignorant of the true names and capacities of the defendants sued herein  
18 under the fictitious names Does 1 through 20, inclusive. Plaintiff is informed and believes, and  
19 thereon alleges, that each of the fictitiously named defendants are responsible in some manner for  
20 the unlawful conduct alleged herein.

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24 **V. COMMON FACTUAL ALLEGATIONS**

25 23. Plaintiff Bulk, LLC owns and operates three retail jerky stores in the Los Angeles  
26 area: Venice Beach, Long Beach, and San Pedro. Plaintiff sells varieties of jerky, including vegan  
27 jerky, alongside a collection of dried fruits and nuts, and even jerky-like treats for pets.

1           24.     Plaintiff launched Bulk, LLC in 2004.

2           25.     The Long Beach and Venice Beach retail stores are located in densely-populated  
3 and highly-trafficked tourist areas. The San Pedro retail store doubles as a warehouse for storing  
4 and shipping Plaintiff's products.

5           26.     Each location also operates as a "tasting room" which customers frequent to sample  
6 Plaintiff's products prior to purchasing, or even as a novel and entertaining activity.

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

9           27.     To protect its thriving business from interruption and other perils, Plaintiff  
10 purchased business insurance from Defendants, including loss of income, extra expense, property,  
11 liability, and other coverages.

12           28.     Plaintiff is insured under policy number 60631-52-18, which consists of various  
13 standardized endorsements and forms used by Defendants, together with other specific documents  
14 indicating Plaintiff's coverage (collectively, the "Policy"). A complete and accurate copy of the  
15 Policy is attached as Exhibit A.

16           29.     Plaintiff paid \$4,370.00 annually for the Policy, dutifully making payments every  
17 month by autodraft. Plaintiff has purchased business insurance from Defendants, and has paid the  
18 requisite premiums, for the majority of the business's existence, which launched in 1995.  
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20           30.     The Policy's effective period is April 8, 2020 to January 10, 2021.

21           31.     The Policy is a renewal policy. The prior policy, which provided coverage from at  
22 least January 1, 2020, through April 7, 2020, contained material terms identical to the Policy  
23 currently in effect.

24           32.     Plaintiff's Policy consists of the policy jacket and its policy provisions, the  
25 declarations or information page, and the endorsements.  
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1           33.     Plaintiff paid \$4,290.00 for the applicable period of coverage under the Policy's  
2 Businessowners Coverage Part. This businessowners coverage applies to all three retail locations  
3 as specifically identified in the Policy Declarations – Retail Primary Policy page. All three  
4 locations comprise buildings and business personal property covered by the Policy.

5           34.     In exchange for payment of the premium, Defendants agreed to provide the  
6 insurance coverages described in the Policy.

7           35.     The Policy is an “all risks” policy. That is, the policy covers the insured for any  
8 peril, imaginable or unimaginable, unless expressly limited or excluded. In the event a covered  
9 peril results in physical loss or damage to Plaintiff's business premises or property, the Policy will  
10 pay for lost business income and extra expenses. Business income means net income (net profit or  
11 loss) that would have been earned had no physical loss or damage occurred, and continuing  
12 normal operating expenses incurred (including payroll). Extra expense means the costs incurred  
13 because of the physical loss or damage—that is, those costs that would have otherwise been  
14 avoided. In the event of physical loss or damage, the Policy pays for both.

15           36.     Specifically, as the property coverage form schedule indicates, *see* 56-2047 1-15,  
16 the Policy provides property coverage under Form BP 00 02 01 97, entitled Businessowners  
17 Special Property Coverage Form. The Businessowners Special Property Coverage Form in turn  
18 sets forth coverage for “Business Income” and “Extra Expense.” *See* Form BP 00 02 01 97,  
19 Paragraphs A.5.f and A.5.g.

20           37.     Under the Business Income coverage, Defendants must “pay for the actual loss of  
21 Business Income you sustain due to the necessary suspension of your ‘operations’ during the  
22 ‘period of restoration.’”  
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1           38. Under the Extra Expense coverage, Defendants must pay the “necessary Extra  
2 Expense you incur during the ‘period of restoration’ that you would not have incurred if there had  
3 been no direct physical loss or damage to property at the described premises.”

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

8           40. The Policy contains several exclusions, which identify risks that preclude coverage  
9 for loss or damage caused by those risks. In denying coverage, Defendants pointed to two  
10 exclusions in particular: one excluding consequential losses of delay, loss of use and loss of  
11 market; and one excluding losses caused by or resulting from viruses.

12           41. Neither these nor any other exclusions in the Policy preclude coverage for the  
13 governmental orders pursuant to which Plaintiff and Class members suspended their business  
14 operations. The governmental orders therefore constitute a covered “direct physical loss” under  
15 the Policy.  
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18 **B. The COVID-19 Pandemic Hits California**

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

21           43. On January 21, 2020, the first American COVID-19 case was confirmed in the  
22 State of Washington. *See* CENTER FOR DISEASE CONTROL, [https://www.cdc.gov/](https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html)  
23 [media/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).  
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25           44. According to news reports, shortly thereafter, by January 26, 2020, the United  
26 States Centers for Disease Control (“CDC”) confirmed the first COVID-19 case in California. *See*  
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1 CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, <https://www.cdph.ca.gov/Programs/CID/DCDC>  
2 /Pages/Immunization/ncov2019.aspx (last accessed Apr. 28, 2020).

3 45. On February 26, 2020, the CDC announced the first reported California COVID-19  
4 case resulting from community spread. *See* CENTER FOR DISEASE CONTROL,  
5 <https://www.cdc.gov/media/releases/2020/s0226-Covid-19-spread.html> (last accessed Apr. 28,  
6 2020).

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

8 47. By March 13, 2020, California's total COVID-19 case count had risen to 198  
9 confirmed cases. *See* <https://californiahealthline.org/morning-briefing/friday-march-13-2020/> (last  
10 accessed Apr. 28, 2020).

11 48. On March 13, 2020, the President of the United States declared a national  
12 emergency.

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

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17 **C. California Takes Governmental Action Forcing Plaintiff's Businesses to Shutter**

18 50. It was when California's state and local governments entered civil authority orders  
19 beginning in March 2020 that Plaintiff was forced to close or curtail its business operations.

20 51. As early as March 4, 2020, the Governor of the State of California, Gavin Newsom,  
21 entered an order declaring "a State of Emergency to exist in California as a result of the threat of  
22 COVID-19." *See* State of California Executive Order N-25-20.

23 52. By March 12, 2020, the Governor began ordering compliance with state and local  
24 social distancing measures. *Id.*

25 53. On March 15, 2020, the Governor issued guidelines calling for "profoundly  
26 significant steps" to limit the spread of COVID-19. These guidelines required the self-isolation of  
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1 all residents 65 years of age or older and the closure of all “[b]ars, nightclubs, wineries, brew pubs  
2 and the like.” The guidelines further required all restaurants to halve their capacities and keep  
3 customers at least six feet from one another. *See* Cowan, Jill, *California Governor Orders Radical*  
4 *Change to Daily Life*, N.Y. TIMES (Mar. 16, 2020),  
5 <https://www.nytimes.com/2020/03/16/us/california-newsom-bars-home-isolation.html> (last  
6 accessed Apr. 29, 2020).

7 54. The next day, on March 16, 2020, the Governor announced new directives to gyms,  
8 health clubs, and movie theaters to close down. The Governor asked restaurants to shut their  
9 doors, or, at the restaurants’ option, to limit services to takeout only. *See* Perper, Rosie, *California*  
10 *Asks All Dine-In Restaurants, Gyms, and Movie Theaters to Close to Curb the Coronavirus’*  
11 *Spread*, BUSINESS INSIDER (Mar. 16, 2020, 9:47PM), [https://www.businessinsider.com/california-](https://www.businessinsider.com/california-closes-restaurants-gyms-encourages-ban-on-social-gatherings-2020-3)  
12 [closes-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,  
13 2020).

14 55. On March 19, 2020, less than two months after the first confirmed case of COVID-  
15 19 appeared in California, the Governor took the dramatic step of ordering “all individuals living  
16 in the State of California to stay at home or at their place of residence” subject to narrow  
17 enumerated exceptions. The Governor also required that “[w]hen people need to leave their homes  
18 or places of residence, whether to obtain or perform the [enumerated] functions . . . , or to  
19 otherwise facilitate authorized necessary activities, they should at all times practice social  
20 distancing.” By its own terms, this shelter order was necessary “[t]o preserve the public health and  
21 safety, and to ensure the healthcare delivery system is capable of serving all,” as well as to “bend  
22 the curve, and disrupt the spread of the virus.” The order was made enforceable pursuant to  
23 California law, and violation of the order carried the threat of misdemeanor punishable by a fine,  
24 imprisonment, or both. *See* State of California Executive Order N-33-20.  
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1           56.     Municipal and local governments across California have entered their own orders  
2 mandating that residents shelter in place and that businesses limit or cease operations. Often these  
3 municipal orders extend much further than the statewide orders, mandating more stringent  
4 restrictions on the movement of people and the use or access of goods, services, and facilities.

5           57.     On March 4, 2020, the Mayor of the City of Los Angeles (“Los Angeles”), Eric  
6 Garcetti, entered an order declaring the existence of a local emergency in light of the COVID-19  
7 crisis. *See* Los Angeles Order dated March 4, 2020.

8           58.     On March 12, 2020, Los Angeles entered an order postponing or cancelling, among  
9 other things, all nonessential public community events or group activities that require close  
10 contact among fifty or more participants, and all like events requiring close contact of any  
11 vulnerable persons. *See* Los Angeles Order dated March 12, 2020.

12           59.     On March 15, 2020, following the Governor’s lead, Los Angeles entered an order  
13 “to slow the pace of community spread and avoid unnecessary strain on our medical system.” The  
14 order mandated the following:  
15

16                   All restaurants and retail food facilities in the City of Los Angeles  
17 shall be prohibited from serving food for consumption on premises.  
18 Restaurants and retail food facilities may continue to operate for  
19 purposes of preparing and offering food to customers via delivery  
20 service, to be picked up or for drive-thru. For those establishments  
21 offering food pick-up options, proprietors are directed to establish  
22 social distancing practices for those patrons in the queue for pick-up.

23           The order further mandated the closure of all bars and nightclubs that do not serve food, and the  
24 closure of all theaters, live performance venues, bowling alleys, arcades, and gyms and fitness  
25 centers. The order was made enforceable by misdemeanor prosecution under Los Angeles  
26 Administrative Code Section 8.77 by fine, imprisonment, or both. *See* Los Angeles Order dated  
27 March 15, 2020.  
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1           60.     Los Angeles followed on March 19, 2020 with the “Safer at Home” order imposing  
2 sweeping restrictions on a wide variety of business and personal activities. The Safer at Home  
3 order was issued “because, among other reasons, the COVID-19 virus can spread easily from  
4 person to person and it is physically causing property loss or damage due to its tendency to attach  
5 to surfaces for prolonged periods of time.” *See* Los Angeles Order dated March 19, 2020.

6           61.     The Safer at Home order required all persons living in Los Angeles to remain in  
7 their homes; all businesses in Los Angeles to cease operations requiring in-person attendance by  
8 workers at a workplace; all public and private gatherings of any number of people outside any  
9 residence to cease occurring; and the suspension of all travel. These restrictions were made subject  
10 to enumerated exceptions for certain defined “essential” activities. Failure to comply with the  
11 order constituted a misdemeanor subject to fines and imprisonment, and the Los Angeles Police  
12 Department and the City Attorney were urged “to vigorously enforce” the order. Noncompliant  
13 businesses were subject to having their water and power shut off by municipal authorities. *Id.*

14           62.     The Safer at Home order also imposed additional social distancing protocols on a  
15 wide variety of businesses and other facilities. These protocols required, among other things:  
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- 18           a.     limiting the number of people who may enter into a facility at any one time  
19                 to ensure that people in the facility can easily maintain, at all times, a  
20                 minimum six-foot distance from others;
- 21           b.     designating where lines may form at a facility, marking six-foot increments  
22                 at a minimum, establishing where individuals should stand to maintain  
23                 adequate social distancing;
- 24           c.     providing hand sanitizer, soap and water, or effective disinfectant at or near  
25                 the entrance of the facility and in other appropriate areas for use by the  
26                 public and employees;<sup>1</sup>

27 <sup>1</sup> Pursuant to guidance issued by the Los Angeles County Department of Public Health, the  
28 sanitizer provided must be comprised of at least 60% alcohol. *See* COUNTY OF LOS ANGELES  
PUBLIC HEALTH, [http://www.publichealth.lacounty.gov/media/Coronavirus/docs/food/  
GuidanceFoodFacilities.pdf](http://www.publichealth.lacounty.gov/media/Coronavirus/docs/food/GuidanceFoodFacilities.pdf) (last accessed May 1, 2020).

- d. posting a sign in a conspicuous place at all public entries that instructs members of the public to not enter if they are experiencing symptoms of respiratory illness, including fever or cough, and to maintain social distancing from one another;
- e. disinfecting regularly high-touch surfaces, including, without limitation all payment portals, pens, and styluses after each use. Businesses engaged in essential activities and essential infrastructure were encouraged to offer touch-less payment mechanisms, if feasible;
- f. adhering to communicable disease control recommendations provided by the Los Angeles County Department of Public Health, including guidance for cleaning and disinfecting the site.

The Safer at Home order further encouraged the installation of plexiglass inside all retail businesses to separate cashiers and customers at points of sale. *Id.*

63. The Safer at Home order further closed all “park facilities” to the public, including the Venice Boardwalk (except as necessary to travel to an essential business).

64. The Los Angeles County Department of Public Health also issued “Guidance for Food Facilities” prohibiting product sampling. *See* COUNTY OF LOS ANGELES PUBLIC HEALTH, <http://www.publichealth.lacounty.gov/media/Coronavirus/docs/food/GuidanceFoodFacilities.pdf> (last accessed May 3, 2020).

65. Other municipal and local governments across California have entered civil authority orders mandating compliance with substantially the same requirements as set forth by the State of California and the County and City of Los Angeles. By way of example, as of March 17, 2020, the Department of Public Health for the City and County of San Francisco mandated the closure of all bars and nightclubs, and of all “[r]estaurants and cafes—regardless of their seating capacity—that serve food . . . except solely for takeout and delivery service.” *See* Order of the Health Officer No. C19-07.



1 **D. Defendants Deny Plaintiff's Insurance Claim**

2 66. In mid-March 2020, and in light of the foregoing civil authority orders, Plaintiff  
3 submitted a claim for related business losses and extra expenses. The claim indicated a loss date  
4 beginning March 13, 2020.

5 67. By letter dated March 24, 2020, Defendants denied Plaintiff's claim. *See* Exhibit B  
6 (denial letter). The letter stated three relevant bases for the denial. First, Defendants found "no  
7 direct physical loss or damage to property at the described premises from a covered cause of loss."  
8 Second, Defendants found that "access to the described premises was not prohibited due to direct  
9 physical loss of or damage to property, other than at the described premises, resulting from a  
10 covered cause of loss," rendering the Policy's civil authority provisions inapplicable. Third,  
11 Defendants found that the Policy "is endorsed excluding loss or damage by or resulting from any  
12 virus that is capable of inducing physical distress, illness, or disease."  
13

14 68. Defendants' denial letter also quoted at length numerous provisions from the Policy  
15 itself as justification for the denial, but without any explanation.  
16

17 69. In reaching the foregoing determinations, Defendants conducted no investigation  
18 into the covered premises to determine the precise physical loss or damage that resulted from the  
19 governmental orders described herein. Defendants made no attempt to communicate with Plaintiff  
20 from the time that Plaintiff filed its claim and the time Defendants denied the claim, did not ask  
21 for any additional information, and did not view in any way the covered premises.  
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23 70. Plaintiff followed the requirements and guidance of all governmental orders  
24 described herein, resulting in the curtailment of its business operations. For example, at the San  
25 Pedro retail and warehouse business location, Plaintiff ceased all retail operations and continued  
26 curtailed warehouse operations while ensuring all social distancing protocols were met. Plaintiff  
27 also disinfected all exposed surfaces routinely, sometimes as often as every thirty minutes, using  
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1 the required alcohol-based disinfectant chemical solutions. Plaintiff further ensured all individuals  
2 on the premises wore masks and gloves at all times, that all required notices were visibly posted,  
3 and that disinfectant chemical solutions, wipes, and hand sanitizers were made available at  
4 multiple points all throughout the premises.

5 71. Plaintiff also ceased all operations of its three tasting rooms, a central part of its  
6 business model, marketing model, and business revenue stream. Continued operation of the tasting  
7 rooms was prohibited by the governmental orders described herein. Thus, Plaintiff barricaded or  
8 cordoned off the tasting rooms with colored tape, and posted visible signs indicating to customers  
9 and employees that the tasting rooms are closed and off limits.

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

## 16 VI. CLASS ALLEGATIONS

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

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

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

26 Government Order means any order issued by any governmental authority in the State of  
27 California, including but limited to those orders entered by the Governor or any county or  
28

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

- 14 a. Whether the Policy covers the risk of governmental action;
- 15 b. Whether the Policy's governmental-action exclusion is limited to orders of  
16 seizure and destruction other than the express exemption from the exclusion  
17 for preventing the spread of a fire;
- 18 c. Whether the Policy's "loss of use" exclusion is limited to consequential,  
19 indirect injuries rather than losses directly caused by or resulting from  
20 governmental action;
- 21 d. Whether losses caused by limits or bans on using or accessing one's real  
22 property or employing or putting into service (or removing therefrom) one's  
23 equipment/business property are physical losses; ;
- 24 e. Whether the Policy was breached when Defendants denied coverage based  
25 on government orders that precluded or limited access to Covered Property  
26 without seizing or destroying it;
- 27 f. Whether Defendants' breaches or wrongs injured Plaintiff and the Class;
- 28 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;

1 i. Whether Plaintiff and the Class may have declaratory relief.

2 77. Plaintiff has the same interests as all other members of the Class, and Plaintiff's  
3 claims are typical of those of all members. Plaintiff's claims are coincident with and not  
4 antagonistic to those of other Class members it seeks to represent. Plaintiff and all Class members  
5 have sustained damages arising out of Defendants' common course of conduct as outlined herein.  
6 The damages of each Class member were caused by Defendants' wrongful conduct.  
7

8 78. Plaintiff will pursue this action and has retained competent Class counsel  
9 experienced in insurance litigation and class action litigation. Plaintiff will fairly and adequately  
10 represent the interests of the Class members.  
11

12 79. Class certification is appropriate under California Rule of Civil Procedure Section  
13 382 because Defendants' actions generally apply to the Class as a whole, and Plaintiff seeks  
14 equitable remedies regarding the Class as a whole.

15 80. Class certification is appropriate under California Rule of Civil Procedure Section  
16 382 because the common questions of law and fact enumerated above predominate over questions  
17 affecting only individual members of the Class, and a class action is the superior method for fair  
18 and efficient adjudication of the controversy. The likelihood that individual members of the Class  
19 will prosecute separate actions is remote due to the time and expense necessary to conduct such  
20 litigation. Plaintiff's counsel, highly experienced in insurance and class action litigation, foresee  
21 little difficulty in the management of this matter as a class action.  
22

23 81. Plaintiff cannot be certain of the form and manner of Class notice it will propose  
24 until the Class is finally defined and further discovery concerning the identity of Class members is  
25 undertaken. Based on the experience of their counsel in previous cases, Plaintiff anticipates that  
26 notice by email and mail will be given to all Class members who can be specifically identified and  
27  
28

1 that this notice will be supplemented by notice published in appropriate periodicals and on the  
2 internet and by press releases and similar communications.

3 **VII. CLAIMS FOR RELIEF**

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

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

7 83. Plaintiff brings this cause of action for itself and the Class under California Rule of  
8 Civil Procedure Section 1060, *et seq.*, seeking a declaration that, for those who maintain an  
9 insurance policy with Defendants, it violates California state law and the insurance contracts for  
10 Defendants to ignore the narrow nature of the governmental-action exclusion and to adopt a  
11 narrow interpretation of what must cause a suspension of business. The Policy requires that a  
12 “suspension” be caused by “direct physical loss of or damage to property at the described  
13 premises.”  
14

15 84. Defendants’ interpretation that the requirement of “physical loss” is not satisfied by  
16 losing physical access or use and quiet enjoyment of Plaintiff’s property is wrong. The undefined  
17 phrase “direct physical loss” is reasonably construed to mean the direct loss of the ability to  
18 physically access or use property. Losing the ability to access or use one’s property is a loss of  
19 physical, material rights and advantages, substantial and important. Considering that exclusions to  
20 coverage must be narrowly construed, that language drafted by the insurer with ambiguity should  
21 be construed against the drafter, and that Plaintiff’s interpretation is supported by dictionary  
22 definitions of the terms, coverage should be afforded.  
23

24 85. Under the Business Income coverage, Defendants must “pay for the actual loss of  
25 Business Income you sustain due to the necessary suspension of your ‘operations’ during the  
26 ‘period of restoration.’”  
27  
28



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

4           87. Under the Policy, “suspension means: (a) The partial slowdown or complete  
5 cessation of your business activities; or (b) That a part or all of the described premises is rendered  
6 untenable, if coverage for Business Income applies.”

7           88. Under the Policy, “‘Operations’ means your business activities occurring at the  
8 described premises.”

9           89. Under the Policy, “‘Period of restoration’ for Business Income coverage means the  
10 period of time that begins 72 hours after the time of direct physical loss, and for Extra Expense  
11 coverage means the period of time that begins at the time of direct physical loss.  
12

13           90. Additionally, under Business Income and Extra Expense coverage, the loss or  
14 damage must be caused by “direct physical loss.”

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

16           91. The Policy does not define the phrase “direct physical loss.”

17           92. Common usage of the words in the phrase dictates that ouster and  
18 prohibition/interdiction of access and use by insureds and others (agents, tenants, customers, etc.)  
19 are physical losses. Such losses are direct in that ouster of and prohibition/interdiction of access  
20 and use by all nonessential people results directly in a physical loss.  
21

22           93. Physical means relating to “material things” that are “perceptible especially through  
23 the senses.” See “Physical.” Merriam-Webster.com Dictionary, Merriam-Webster,  
24 <https://www.merriam-webster.com/dictionary/physical> (last accessed Apr. 24, 2020). It is also  
25 defined in a way that is tied to the body: “of or relating to the body.” *Id.* Another Merriam-  
26 Webster Dictionary refines the concept of material this way: “of or relating to natural or material  
27  
28

1 things as opposed to things mental, moral, spiritual, or imaginary.” *See* “Physical.” Webster’s  
2 Third New International Dictionary, Unabridged. 2020. Web. 24 Apr. 2020.

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

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

8 95. Coverage under the “all risks” Policy is provided for any risk of direct physical loss  
9 unless expressly limited or excluded.

10 96. One risk addressed in the Paragraph B exclusions is governmental action. *See* Form  
11 BP 00 02 01 97, Paragraph B.1.c.

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

14 98. The Policy excludes some but not all governmental action from coverage. The  
15 Policy excludes coverage for governmental orders requiring seizure and destruction only.  
16 Specifically, this provision excludes any loss or damage caused directly or indirectly by  
17 governmental action that consists of seizure or destruction of property by order of governmental  
18 authority unless the destruction was done to prevent the spread of a fire. As ordinarily used,  
19 “seizure” means “taking possession of person or property by legal process.” The provision  
20 excludes no other governmental action from coverage (i.e., governmental orders not seeking  
21 seizure or destruction).

22 99. The governmental orders affecting Plaintiff and the Class’s property do not require  
23 seizure or destruction because the government did not destroy the property of Plaintiff and Class  
24 Members or take physical possession of, or title to, such property. Instead, the orders limit access  
25 to and use of covered property at the premises described in the Policy declarations.  
26  
27  
28

1           100. The Policy does not exclude the governmental action described herein.

2           101. The business-income losses, extra expenses, and other losses sustained by Plaintiff  
3 and the Class were caused by or resulted from the aforementioned governmental orders, a Covered  
4 Cause of Loss.

5           102. The policy further requires that the business-income losses be incurred because of  
6 the necessary suspension of operations during the period of restoration. Plaintiff and the Class  
7 suffered losses because of suspension of operations during the period of restoration.

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

11           104. Because the Policy covers all risks, including governmental action that, for the  
12 good of the public, limits physical access to and use of property (real and personal), coverage is  
13 required.  
14

15           105. The governmental action affecting Plaintiff's property—executive orders that  
16 directly or indirectly limit direct physical access to Plaintiff's real and personal property—has  
17 caused a loss of income and an increase in expense, exactly the "outside force" that interrupts  
18 business and causes insureds to close their doors for a period of time, that requires that capital  
19 continue to flow to keep the business afloat and to help replace lost income and pay expenses such  
20 as salaries and mortgages. This governmental action is precisely the unexpected jolt that motivates  
21 the purchase of insurance.  
22

23 **C. No Other Exclusions Apply to Preclude Coverage**  
24

25           106. No other applicable exclusions or limitations apply to preclude coverage for the  
26 direct physical losses caused by or resulting from the governmental action described herein. *See*  
27 Paragraphs A.5 and B, Form MP T1 02 02 05.  
28

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

6           108. Coverage is owed from the time governmental action forced Plaintiff to curtail its  
7 businesses practices. Plaintiff's property was subject to governmental orders in California that did  
8 not seek to seize or destroy the property. The governmental orders do not constitute governmental  
9 seizures because at no point did any governmental entity in California take physical possession of  
10 the property or legal title to the property. The orders properly exercised the police powers of their  
11 respective state and local governments to protect public health, affecting Plaintiff's property,  
12 which caused a loss of the ability to physically access and use the insured property.

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

18           110. Nor does the provision entitled "Consequential Losses" that excludes "Delay, loss  
19 of use or loss of market" preclude coverage.

20           111. Consequential damages are special or indirect damages. Put differently,  
21 consequential damages are "[l]osses that do not flow directly and immediately from an injurious  
22 act but that result indirectly from the act. — Also termed *indirect damages*." See *Consequential*  
23 *Damages*, Black's Law Dictionary (11th ed. 2019) (emphasis in original).  
24  
25  
26  
27  
28

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

4           113. Limiting the “loss of use” exclusion to consequential losses also renders sensible an  
5 exclusion that otherwise swallows the entire Policy.

6       **D. Declaratory Relief**

7           114. Plaintiff, for itself and on behalf of the Class, seeks a declaration of rights under  
8 Defendants’ Policy language and a declaration of the rights and liabilities of the parties herein.

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

11           116. Plaintiff seeks a Declaratory Judgment finding that the Policy covers Business  
12 Income and Extra Expense during the period of restoration caused by or resulting from  
13 governmental action that forced Plaintiff to suspend operations, subject to no limitations or  
14 exclusions under the Policy.  
15

16  
17                       **SECOND CLAIM FOR RELIEF**  
18                       **(Breach of Contract Against All Defendants)**

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

20           118. Plaintiff has a valid contract of insurance with Defendants, whereby Plaintiff  
21 agreed to make and did make premium payments to Defendants in exchange for Defendants’  
22 promise to indemnify the policyholders for losses including, but not limited to, Business Income  
23 and Extra Expense.

24           119. Plaintiff is current on all premiums required under the Policy and the Policy is in  
25 full effect.

26           120. The Policy requires payment of losses incurred caused by or resulting from the  
27 forced suspension of operations mandated by government orders issued in California, including  
28



1 but not limited to Business Income and Extra Expense. Coverage for these losses is in no way  
2 limited or excluded under the Policy terms.

3 121. Despite the Policy affording coverage, Defendants deny the Policy affords  
4 coverage and denied or will deny coverage to Plaintiff and the Class.

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

13 123. Defendants' failures to affirm coverage and pay benefits breach the contract and  
14 represent a systematic failure to pay the benefits required by the contract.  
15

16 124. As a result of Defendants' breach of contract, Plaintiff and the Class have suffered  
17 and will continue to suffer monetary losses, and without prompt relief will be forced to shutter  
18 indefinitely.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays for the following judgment:

- 21 A. An Order certifying this action as a class action under California law;  
22 B. An Order appointing Plaintiff as class representative and appointing the  
23 undersigned counsel to represent the Class;  
24 C. Declaratory relief, as described herein;  
25 D. An Order finding Defendants to have breached the Policy contract;  
26 E. Compensatory damages;  
27  
28

1 F. An award of attorney's fees and costs, as provided by law and/or as would be  
2 reasonable from any recovery of monies recovered for or benefits bestowed upon the Class;

3 G. Pre- and post-judgment interest at the highest rate allowed by law; and

4 H. Such other and further relief as this Court may deem just, equitable, or proper,  
5 including a designation that any unclaimed monies may go to the next best use.

6 **JURY DEMAND**

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

8 Respectfully submitted,

9 DATED: May 18, 2020

HAGENS BERMAN SOBOL SHAPIRO LLP

11  
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