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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO

16
17 Flour & Water, LLC, a California limited
liability company, dba Flour + Water, and
18 Central Kitchen, LLC, a California limited
liability company, dba Central Kitchen,
19 Trick Dog, LLC, a California limited
liability company, dba Trick Dog,

20 Plaintiffs,

21 v.

22 FARMERS GROUP INC., a California
23 Corporation, MID-CENTURY
INSURANCE COMPANY, a California
24 Corporation, TRUCK INSURANCE
EXCHANGE, a California Corporation,
25 Does 1 through 10, inclusive,

26 Defendants.

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San Francisco County Superior Court

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FILE VIA FAX

Case No. **CGC-20-586389**

COMPLAINT & EXHIBITS 1-9

DEMAND FOR JURY TRIAL

1. BREACH OF CONTRACT,
2. BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING,
3. UNFAIR BUSINESS PRACTICES,
4. DECLARATORY RELIEF

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1 Plaintiffs Flour & Water, LLC, a California limited liability company, dba Flour + Water,
2 Central Kitchen, LLC, a California limited liability company, dba Central Kitchen, and Trick
3 Dog, LLC, a California limited liability company, dba Trick Dog, (collectively “Plaintiffs” or
4 “the Restaurants”) file this Complaint Against Farmers Group, Inc., Mid-Century Insurance
5 Company, Truck Insurance Exchange, and Does 1 through 10, inclusive (collectively
6 “Defendants” or “Farmers”), and allege as follows:

7 **I. INTRODUCTION**

8 1. Thomas McNaughton is an extremely accomplished and celebrated chef,
9 restaurateur, bar owner, and best-selling cookbook author. McNaughton’s restaurant group Ne
10 Timeas Restaurant Group, Inc. owns the highly acclaimed restaurants Flour + Water and Central
11 Kitchen, and the world renowned cocktail bar Trick Dog. McNaughton was nominated by the
12 James Beard Foundation for the Rising Star Chef award in 2011, 2012 and again in 2013, and his
13 restaurant group was a semifinalist for this year’s Outstanding Restaurateur award.¹ Founded in
14 the Bay Area over 10 years ago, and nominated as Best New Restaurant in 2010 by the James
15 Beard Foundation, Flour + Water serves pasta specialties influenced by regional traditions
16 throughout Italy with Northern Californian inspirations. Central Kitchen offers Northern
17 Californian cuisine with a seasonally driven menu using locally sourced ingredients, and its
18 premiere event space hosts private events and seasonal pasta classes. Trick Dog serves an eclectic
19 variety of “small plate” food offerings and has been named as one of the world’s 50 best bars,
20 with drink menus twice recognized as the “World’s Best Cocktail Menu,” and the bar is a finalist
21 for this year’s James Beard award for Outstanding Bar Program.² The three businesses are the
22 Plaintiffs in this matter.

23 2. More than five months ago, all three venues were forced to shut down. This
24 closure was ordered by state and local authorities who required them, their workers, and their
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26 ¹ <https://www.jamesbeard.org/blog/q-jbf-award-nominee-thomas-mcnaughton>;
27 <https://www.jamesbeard.org/blog/the-2020-james-beard-award-semifinalists>

28 ² <https://www.worlds50bestbars.com/the-list/trick-dog.html>;
<https://www.sfgate.com/food/article/trick-dog-mission-menu-cocktails-awards-14114006.php>;
<https://www.jamesbeard.org/blog/the-2020-james-beard-award-nominees>

1 customers to “shelter in place” and abide by strict “social distancing” guidelines. This closure
2 caused a near total loss of income, forcing the Restaurants to initially lay off their entire
3 workforce. Based largely on government assistance, and other attempts to mitigate their losses,
4 the Restaurants have rehired and retained the few employees they can. But with mounting
5 expenses, and uncertain prospects for future income, it is not clear if they will be able to retain
6 current staffing and benefits absent financial support.

7 3. To protect their businesses (and employees) from having to make such terrible
8 choices in situations like this one, the Restaurants purchased business interruption insurance from
9 Defendants. The Restaurants’ policies expressly provide coverage for “Lost Business Income”
10 and the consequences of actions by “Civil Authority.” Accordingly, the Restaurants
11 understandably believed that these policies would help protect their business in the unlikely event
12 that the government forced them to shutter their businesses.

13 4. Notwithstanding, and contrary to, the coverage provisions in their policies with
14 Defendants, and the obligations Defendants undertook in exchange for the Restaurants’ insurance
15 premium payments, when Plaintiffs submitted claims with Defendants for coverage, Defendants
16 summarily denied the Restaurants’ claims. These denials were part of a premeditated strategy by
17 Defendants to deny all claims related to the “shelter in place” orders and COVID-19. They were
18 untethered to the facts of the claims, which Defendants did not adequately investigate, or the
19 specific coverage provided by the Restaurants’ policies, and therefore violate California law.

20 **II. PARTIES**

21 **A. Plaintiffs**

22 5. Plaintiff Flour & Water, LLC is a California limited liability company that does
23 business as Flour + Water, which is located in San Francisco, California.

24 6. Plaintiff Central Kitchen, LLC is a California limited liability company that does
25 business as Central Kitchen, which is located in San Francisco, California.

26 7. Plaintiff Trick Dog, LLC is a California limited liability company that does
27 business as Trick Dog, which is located in San Francisco, California.

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1 addresses of Farmers Group, Inc. In many cases, the correspondence appears to come from
2 Farmers rather than Truck Insurance Exchange and/or Mid-Century Insurance Company. The
3 denial letters sent to Plaintiffs also utilized the brand name and logos of Farmers Insurance, Inc.
4 Ex. 1 at 1, Ex. 2 at 1, and Ex. 3 at 1. Those letters also include farmersinsurance.com e-mail
5 addresses and contact information throughout. *Id.*

6 14. Defendants DOES 1 through 10 (“Doe Defendants”) were, at all relevant times,
7 transacting or otherwise engaged in the business of insurance in or relating to the State of
8 California, and the basis of this suit arises out of said conduct. The true names and capacities of
9 the Doe Defendants, whether individual, corporate, associate, or otherwise, are currently
10 unknown to Plaintiffs, who therefore bring suit against these Defendants by their fictitious names
11 and capacities. Each of the Doe Defendants is, upon information and belief, partially or wholly
12 liable for the unlawful acts or omissions referred to herein, and for the resulting harm to
13 Plaintiffs.

14 15. In committing the wrongful acts alleged herein, each of the Defendants pursued, or
15 joined in the pursuit of, a common course of conduct, and have acted in concert and/or conspired
16 with one another in furtherance of the improper acts and transactions that are the subject of this
17 Complaint.

18 **III. JURISDICTION AND VENUE**

19 16. This Court has subject matter jurisdiction over this action. Substantial conduct
20 giving rise to this action took place, in whole or in part, in the County of San Francisco,
21 California. All insurance contracts giving rise to this action concern California businesses
22 operating in California, and the claims arise from violations of California law. The amounts in
23 controversy in this action exceed the minimum jurisdictional amount of unlimited civil cases.

24 17. Venue is proper because substantial conduct giving rise to this action took place,
25 in whole or in part, in the County of San Francisco, California.

1 **IV. FACTUAL BACKGROUND**

2 **A. The Rapid Spread of COVID-19**

3 18. COVID-19 is an infectious disease caused by a recently discovered novel
4 coronavirus known as SARS-CoV-2 ("Coronavirus"). The first instances of the disease spreading
5 to humans were diagnosed in or around December 2019.

6 19. According to the World Health Organization ("WHO"): "People can catch
7 COVID-19 from others who have the virus. The disease can spread from person to person
8 through small droplets from the nose or mouth which are spread when a person with COVID-19
9 coughs or exhales. These droplets land on objects and surfaces around the person. Other people
10 then catch COVID-19 by touching these objects or surfaces, then touching their eyes, nose or
11 mouth. People can also catch COVID-19 if they breathe in droplets from a person with COVID-
12 19 who coughs out or exhales droplets."⁵

13 20. This is problematic because a human sneeze can expel droplets of mucus and
14 saliva that travel at nearly a hundred miles an hour and can spread up to 27 feet.⁶

15 21. According to a recent report in the *New York Times*, "[a]n infected person talking
16 five minutes in a poorly ventilated space can also produce as many viral droplets as one infectious
17 cough."⁷ The more people in a conversation, the more droplets are dispersed.

18 22. Although these droplets are smaller and less visible than other contaminants like
19 rust, mold, or paint, they are physical objects which can travel to other objects and cause harm.

20 23. These droplets can spread Coronavirus when they reach humans directly, or when
21 they land on habitable surfaces where they can survive until that surface is touched by a potential
22 human host.⁸

23 ⁵ See Q&A on coronaviruses (COVID-19), "How does COVID-19 spread?," World Health
24 Organization (April 16, 2020), *available at* [https://www.who.int/news-room/q-a-detail/q-a-](https://www.who.int/news-room/q-a-detail/q-a-coronaviruses)
coronaviruses (last visited April 21, 2020).

25 ⁶ Sarah Gibbens, "See how a sneeze can launch germs much farther than 6 feet," *National*
26 *Geographic* (April 17, 2020), *available at* [www.nationalgeographic.com/science/2020/04/](http://www.nationalgeographic.com/science/2020/04/coronavirus-covid-sneeze-fluid-dynamics-in-photos/)
coronavirus-covid-sneeze-fluid-dynamics-in-photos/ (last visited April 20, 2020).

27 ⁷ See Yuliya Pashina-Kottas, et al., "This 3-D Simulation Shows Why Social Distancing Is So
28 Important," *The New York Times* (April 21, 2020), *available at* [https://www.nytimes.com/interactive/2020/04/14/science/coronavirus-transmission-cough-6-feet-](https://www.nytimes.com/interactive/2020/04/14/science/coronavirus-transmission-cough-6-feet-ar-ul.html)
ar-ul.html (last visited April 21, 2020).

24. Droplets containing Coronavirus infect a variety of surfaces and objects for a period of a few hours to several days. After inspecting a cruise ship inhabited by passengers carrying the Coronavirus, the CDC reported that the virus was detectable on various surfaces inside the cruise ship up to 17 days after passengers had vacated the cabins.⁹

25. Recent scientific evidence shows that Coronavirus can survive and remain virulent on stainless steel and plastic for 3 to 6 days; on glass and banknotes for 3 days; and on wood and cloth for 24 hours.¹⁰

26. Testing involving similar viruses in the Coronavirus family shows that Coronavirus can likely survive on ceramics, silicon rubber, or paper up to 5 days.¹¹

27. When public areas containing such surfaces may have been exposed to Coronavirus, a number of countries including China, Italy, France, and Spain have required such areas to be fumigated prior to re-opening.¹²

Footnote continued from previous page

⁸ See, e.g., CDC website, "How COVID-19 Spreads," 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited April 21, 2020).

⁹ See Leah E. Moriarty, et al., "Public Health Responses to COVID-19 Outbreaks on Cruise Ships — Worldwide, February–March 2020," 69 *Morbidity and Mortality Weekly Report* 347 (March 23, 2020), available at <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6912e3-H.pdf> (last visited April 21, 2020).

¹⁰ See Neeltje van Doremalen, et al., "Aerosol and Surface Stability of SARS-CoV-2 as Compared to SARS-CoV-1," *New England Journal of Medicine* (Mar. 17, 2020), available at <https://www.nejm.org/doi/pdf/10.1056/NEJMc2004973> (last visited April 21, 2020); Alex W.H. Chin, et al., "Stability of SARS-CoV-2 in different environmental conditions," *The Lancet Microbe* (April 2, 2020), available at [https://doi.org/10.1016/S2666-5247\(20\)30003-3](https://doi.org/10.1016/S2666-5247(20)30003-3) (last visited April 21, 2020).

¹¹ See Guenter Kampf, et al., "Persistence of coronaviruses on inanimate surfaces and their inactivation with biocidal agents," 104 *Journal of Hospital Infection* 246 (Feb. 6, 2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7132493/pdf/main.pdf> (last visited Apr. 21, 2020).

¹² See Mike Bird, et al., "China Is Open for Business, but the Postcoronavirus Reboot Looks Slow and Rocky," *The Wall Street Journal* (March 26, 2020), available at www.wsj.com/articles/china-is-open-for-business-but-the-post-coronavirus-reboot-looks-slow-and-rocky-11585232600 (last visited April 22, 2020); Jason Horowitz, "In Italy, Going Back to Work May Depend on Having the Right Antibodies," *The New York Times* (April 4, 2020), available at www.nytimes.com/2020/04/04/world/europe/italy-coronavirus-antibodies.html (last visited April 22, 2020); Sarah Elzas, "French Teachers Push Back against Reopening Schools in May," *RFI* (released online Apr. 14, 2020), available at www.rfi.fr/en/france/20200414-french-teachers-push-back-against-reopening-schools-in-may (last visited April 22, 2020); Claudia Nuñez, "On the Front Line of the Coronavirus Threat in Spain, Tractors Scatter the Streets with Hope," *Los Angeles Times* (March 27, 2020), available at www.latimes.com/world-nation/story/2020-03-27/on-the-front-line-of-the-pandemic-tractors-scatter-the-streets-with-hope (last visited April 22, 2020).

1 28. Because of its virulence, each person infected with Coronavirus can infect multiple
2 new hosts, allowing the disease to spread exponentially.

3 29. This Coronavirus has spread throughout the world, including in the San Francisco
4 metropolitan area.

5 **B. The Policy Choice to Close Businesses**

6 30. As the Coronavirus spread in the United States, governments began ordering
7 citizens to shelter in place and close all non-essential businesses. Although many of these orders
8 are mandatory, the decision to issue them was not. It was a specific policy choice made by
9 federal, state, and local governments. By the time they made that choice, it was arguably the best
10 choice available. But between the onset of the Coronavirus in the Chinese province of Wuhan in
11 December 2019, and the forced closing of two restaurants and a bar in California metropolises
12 three months later, lay a plethora of policy options that could have yielded different outcomes.

13 31. The decisions made during that time period, prior to and including the shelter in
14 place orders, could have produced a variety of results, with varying economic effects and
15 durations. In other words, the closure of Plaintiffs' restaurants and bar cannot be described as the
16 inevitable response to the Coronavirus.

17 32. For example, in early 2020, as governments in South Korea, Taiwan, Hong Kong,
18 and Singapore became aware that the Coronavirus was spreading, they took quick action.
19 Through self-quarantines, widespread testing, and contact tracing, these four countries were able
20 to effectively contain the spread of the virus without the need for an extended shutdown of nearly
21 all businesses in their metropolises.¹³

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24 ¹³ See Hannah Beech, "Tracking the Coronavirus: How Crowded Asian Cities Tackled an
25 Epidemic," *The New York Times*, March 17, 2020, updated April 21, 2020, *available at*
26 <https://www.nytimes.com/2020/03/17/world/asia/coronavirus-singapore-hong-kong-taiwan.html>
27 (last visited Apr. 21, 2020); Michael J. Ahn, "Combating COVID-19: Lessons from South
28 Korea," Brookings Institute, April 13, 2020, *available at* <https://www.brookings.edu/blog/techtank/2020/04/13/combating-covid-19-lessons-from-south-korea/> (last visited April 21, 2020);
Annelies Wilder-Smith et al., "Can we contain the COVID-19 outbreak with the same measures
as for SARS?," *The Lancet*, March 5, 2020, [https://www.thelancet.com/journals/laninf/article/PIIS1473-3099\(20\)30129-8/fulltext](https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(20)30129-8/fulltext) (last visited April 22, 2020),
[https://www.thelancet.com/journals/laninf/article/PIIS1473-3099\(20\)30129-8/fulltext](https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(20)30129-8/fulltext).

1 33. At the same time, Coronavirus was also spreading in the United States. But
2 American governments did not aggressively isolate incoming Coronavirus cases as they
3 developed.¹⁴ Although attempts to combat the virus were certainly made, they were insufficient
4 to stop exponential increases in infections.¹⁵ By March 2020, it became clear that the United
5 States authorities had failed to contain the Coronavirus and would need to find a way to mitigate
6 it.¹⁶

7 34. Federal, state, and local authorities decided to reduce the rate of infections as part
8 of strategies colloquially referred to as “flattening the curve.”¹⁷

9 35. Although flattening the curve is likely to also reduce the total number of
10 Americans infected in the long term, its primary function is to reduce stress on the health care
11 system by using “social distancing” to draw out the time over which the infections will spread
12 and multiply.¹⁸

13 36. Social distancing is neither a direct response to the Coronavirus, nor a form of
14 quarantine. It is an inherently prophylactic policy that can be readily distinguished from a direct
15 reaction to the Coronavirus because it targets healthy people, not sick people.

16 37. As illustrated by the following diagram, flattening the curve is a public health
17 intervention designed to alter the trajectory of the Coronavirus.¹⁹

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19
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21
22 ¹⁴ Meg Anderson, “U.S. Sees Exponential Growth In Coronavirus Death Toll,” *NPR*, (Mar. 29,
23 2020), *available at* <https://www.npr.org/sections/coronavirus-live-updates/2020/03/29/823497607/u-s-sees-exponential-growth-in-coronavirus-death-toll> (last visited Apr. 23, 2020).

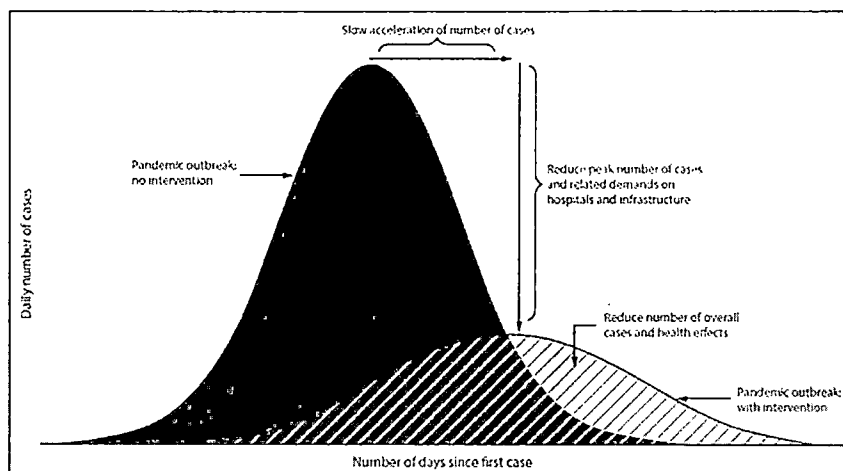
24 ¹⁵ *Id.*

25 ¹⁶ *Id.*

26 ¹⁷ Specktor, Brandon, Coronavirus: What is 'flattening the curve,' and will it work?, *Live Science*,
27 March 16, 2020, *available at* www.livescience.com/coronavirus-flatten-the-curve.html (last
28 visited Apr. 22, 2020).

¹⁸ *Id.*

¹⁹ *Id.*; “Stay Home Public Health Order, updated March 31, 2020,” *SFGov.com* (April 1, 2020).
available at <https://sf.gov/information/stay-home-public-health-order-updated-march-31-2020>
(last visited April 22, 2020).



38. Absent the social distancing-based intervention(s), the Coronavirus would continue to multiply rapidly, spreading quickly throughout the population until it begins to run out of suitable hosts who have never had the disease. At that point, the infection rate would fall rapidly until the disease runs out of people to infect and “burns out.”²⁰

39. A social distancing-based intervention reduces the number of potential contacts that an infectee can infect, thereby lowering the multiplication rate of the disease. Following the intervention, Coronavirus continues to spread but does so significantly more slowly, and therefore takes substantially longer to “burn out” (or, eventually, be cured by a vaccine).²¹

40. Consequently, flattening the curve also extends the total length of the epidemic. The changes to American society that accompany it (and their economic consequences) are likely to persist for an extended period.

41. Recent events in other countries confirm that extended business closures were not inevitable. Countries like Sweden have prohibited events with more than 50 attendees and developed other policy responses without ordering large scale restaurant closures.²² Similarly,

²⁰ *Id.*; Eric Lofgren et al., *The Epidemiological Implications of Incarceration Dynamics in Jails for Community, Corrections Officer, and Incarcerated Population Risks from COVID-19*, 10.1101/2020.04.08.20058842, 2020, available at <https://www.medrxiv.org/content/10.1101/2020.04.08.20058842v1.full.pdf> (last visited, April 22, 2020)

²¹ *Id.*

²² See James Asquith, “No Lockdowns In Sweden As Stockholm Remains Open – Parks and Open-Air Museums Operating,” *Forbes* (April 4, 2020), available at <https://www.forbes.com/sites/jamesasquith/2020/04/04/no-lockdowns-in-sweden-as-stockholm-remains-open-parks-and-open-air-museums-operating/#6535278b707a> (last visited April 28, 2020).

1 businesses are open or re-opening in South Korea, Taiwan, Singapore, and in even harder-hit
2 European countries like Germany, the Czech Republic, and Austria.²³

3 42. This underscores that the Coronavirus did not cause business interruptions and
4 closures in the United States; government policies did.

5 **C. Local Orders Beginning in San Francisco**

6 43. Prior to the shelter in place order, the San Francisco Department of Public Health
7 (“SFPDPH”) issued several orders limiting large gatherings, including orders on March 6, 2020
8 and March 11, 2020.

9 44. In support of these and other efforts, on March 12, 2020, Governor Newsom
10 issued Executive Order N-25-20 (“March 12 Executive Order”), ordering that: “All residents are
11 to heed any orders and guidance of state and local public health officials, including but not
12 limited to the imposition of social distancing measures, to control the spread of COVID-19” (§ 1).
13 This Order took effect on March 12, 2020, and has remained continuously in effect through the
14 date of this Complaint.

15 45. On March 13, 2020, the SFPDPH issued Order of the Health Officer No. C19-05b
16 (“March 13 Order”), which “prohibits all indoor public and private gatherings and outdoor
17 gatherings within an enclosed space that has a maximum occupant load of 100 people or more
18 anywhere in San Francisco” (p. 1). This order expressly includes restaurant dining rooms § 13(e–
19 f). It was in effect for three to four days (from approximately 5:00 p.m. on March 13 until March
20 17 at 12:01 a.m.).

21 46. On March 16, 2020, the SFPDPH issued Order of the Health Officer No. C19-07
22 (“March 16 Order”), which “revoke[d] and replace[d]” the March 13 Order. Ex. 4 at 2. The
23 March 16 Order states: “Restaurants and cafes—regardless of their seating capacity—that serve
24 food are *ordered closed* except solely for takeout and delivery service.” *Id.* at 2.²⁴ It also

25 ²³ See Beech, *supra*; Rick Noack et al., “Nations credited with fast response to coronavirus are
26 moving to gradually reopen businesses,” *The Washington Post* (April 20, 2020), *available at*
27 <https://wapo.st/2VLQZxm> (last visited April 22, 2020); Luke Harding, “Germany opens some
shops as Merkel warns of second wave of coronavirus,” *The Guardian*, April 20, 2020, *available*
28 [at https://www.theguardian.com/world/2020/apr/20/german-shops-open-angela-merkel-warns-](https://www.theguardian.com/world/2020/apr/20/german-shops-open-angela-merkel-warns-second-wave-coronavirus)
second-wave-coronavirus (last visited April 22, 2020).

²⁴ This and other citations to page numbers from orders in this complaint, refer to the summaries
- 10 -
Footnote continued on next page

1 “requires all individuals anywhere in San Francisco to shelter in place—that is, stay at home—
2 except for certain essential activities and work to provide essential business.” *Id.* at 1. This
3 includes refraining from “[a]ll travel” and “[a]ll public and private gatherings of any number of
4 people occurring outside a single household” or “outside the home.” *Id.* at 1 & ¶¶ 4, 5. As an
5 exception to this prohibition, the March 16 Order permits travel and gathering that is necessary to
6 operate “Essential Business” (*Id.* ¶¶ 5, 10.d), which the Order defines to include “[r]estaurants
7 and other facilities that prepare and serve food, but only for delivery or carry out.” *Id.* ¶ 10.f.xiii.
8 Thus the order commands that “All persons may leave their residences only for Essential
9 Activities, Essential Governmental Functions, or to operate Essential Businesses.” *Id.* ¶ 2. Even
10 when leaving the home is permissible, strict social distancing guidelines must be observed. The
11 order provides that “[v]iolation of or failure to comply with this Order is a misdemeanor
12 punishable by fine, imprisonment, or both” (*Id.* at 1), and “requests that the Sheriff and the Chief
13 of Police in the County ensure compliance with and enforce this Order,” since “violation of any
14 provision of this Order constitutes an imminent threat and creates an immediate menace to public
15 health.” *Id.* ¶ 11.

16 47. On March 19, 2020, the State of California issued an Order of the State Public
17 Health Officer, which set baseline statewide restrictions on non-essential business activities
18 effective until further notice. On that same date, Governor Newsom issued Executive Order
19 N-33-20, expressly requiring California residents to follow the March 19 Order of the State
20 Public Health Officer, and incorporating by reference California Government Code 8665, which
21 provides that “[a]ny person . . . who refuses or willfully neglects to obey any lawful order . . .
22 issued as provided in this chapter, shall be guilty of a misdemeanor and, upon conviction thereof,
23 shall be punishable by a fine of not to exceed one thousand dollars (\$1,000) or by imprisonment
24 for not to exceed six months or by both such fine and imprisonment” (Cal. Gov. Code § 8665).
25 The order also requires that “[w]hen people need to leave their homes . . . to obtain [or help
26 provide food] . . . they should at all times practice social distancing.” The March 19 Order of the

27
28 *Footnote continued from previous page*
preceding the numbered paragraphs.

1 State Public Health Officer and Executive Order N-33-20 (collectively, the “Statewide Shelter
2 Orders”) took immediate effect on March 19, 2020, and both have remained continuously in
3 effect through the date of this Complaint.

4 48. On March 31, 2020, the SFDPH issued Order of the Health Officer No. C19-07b
5 (“March 31 Order”), which “supersedes” and “clarifies, strengthens, and extends certain terms of
6 the Prior [SF] Shelter Order to increase social distancing and reduce person-to-person contact to
7 further slow transmission of [COVID-19].” Ex. 5. ¶ 1. As concerns restaurants, the terms of the
8 Prior SF Shelter Order and the March 31 Order are substantially similar, with the March 31 Order
9 noting that “[r]estaurants, cafes, coffee shops, and other facilities that serve food—regardless of
10 their seating capacity—must remain closed except solely for takeout and delivery service” (*Id.* at
11 2), and continuing to define restaurants as Essential Businesses “only for delivery or carry out”
12 *Id.* ¶ 13.f.xvii. The March 31 Order adds more stringent social distancing requirements for
13 Essential Businesses, directing them to “prepare, post, and implement a Social Distancing
14 Protocol.” *Id.* ¶ 5, 13.h., Appendix A. Like its predecessor, the March 31 Order also limits the
15 movement and gatherings of individuals for non-essential purposes (and requires social distancing
16 at all times). It also provides that “[v]iolation of or failure to comply with this Order is a
17 misdemeanor punishable by fine, imprisonment, or both” (*Id.* at 1), and further provides that
18 “violation of any provision of this Order constitutes an imminent threat and menace to public
19 health” and “constitutes a public nuisance” *Id.* ¶ 15. Collectively all of these San Francisco
20 orders, and subsequent related orders, shall be referred to as the “San Francisco Orders”.

21 49. Collectively, the Statewide Shelter Orders, along with the San Francisco Orders,
22 shall be referred to as the “Shelter in Place Orders” or the “Orders.”

23 50. The Orders were issued in response to direct physical loss of and/or direct physical
24 damage to properties. In San Francisco, there were numerous individuals who tested positive for
25 COVID-19, and the number of positive tests continues to grow. Further, COVID-19 was and is
26 present in these areas because, for example, it has attached to properties and surfaces on, at, or
27 within properties; and because COVID-19 was and is being transmitted in or between properties
28

1 throughout these areas, including but not limited to transmission through the air, through
2 ventilation systems, or through contact with contaminated surfaces.

3 51. On April 10, 2020, the City and County of San Francisco indicated that it issued
4 all of the orders “because of the propensity of the virus to spread person to person and also
5 because the virus physically is causing property loss or damage due to its proclivity to attach to
6 surfaces for prolonged periods of time.” Ex. 6 at 2. Other nearby counties have reached similar
7 conclusions. *See also* Ex. 7 (reflecting similar findings in Sonoma County).

8 52. On April 29, 2020 the County of San Francisco extended the previous orders (with
9 modifications not relevant here) to May 31, 2020. They were subsequently revised and extended
10 again on May 17, 2020, June 11, 2020, July 13, 2020, July 20, 2020, and August 14, 2020.

11 53. On July 13, 2020 the SFDPH issued Order of the Health Officer No. C19-07f,
12 revised on July 20, 2019 (“July 20 Order”) updating and replacing its previous orders. Ex. 8 at 1.
13 Individuals are currently “ordered to stay in their place of Residence to the extent possible” (*Id.* ¶
14 4.a) and “public and private gatherings of any number of people occurring outside a single
15 Household are prohibited, except as expressly permitted.” *Id.* ¶ 4.f. The July 20 Order commands
16 that “operators of all Businesses allowed to operate must comply with the requirements of the
17 Social Distancing Protocol ... and must complete a Social Distancing Protocol checklist.” *Id.*
18 ¶ 5.d. The Order also continues to prohibit indoor dining and defines restaurants as Essential
19 Businesses “only for delivery or carry out.” *Id.* ¶ 8.a.xvi. The Order permits “outdoor dining” for
20 restaurants and bars that serve food subject to significant limitations and conditions, including
21 requiring restaurants to limit seating so that “patrons are at least six feet apart from other patrons”
22 and limit the number of patrons at a table *Id.* at Appendix C-1 ¶ 8. The SFDPH updated and
23 replaced the July 20 Order with order No. C19-07g on August 14, 2020, with modifications not
24 relevant here (“Current SF Shelter Order”). Ex. 9. The Current SF Shelter Order is effective as of
25 12:00 p.m. on August 14, 2020 “without a specific expiration date, for so long as the threat of the
26 pandemic continues, or until this Order is otherwise extended, rescinded, superseded, or amended
27 in writing by the Health Officer,” (*Id.* at 5), and is in effect as of the date of this Complaint.

1 **D. The Restaurants Close**

2 54. On or around March 15, 2020 the Restaurants closed in anticipation of the March
3 16, 2020 Order.

4 55. Under the Orders, the Restaurants were forced to close their serving areas²⁵ to the
5 public, thereby prohibiting access to, use of, and operations at the Restaurants.

6 56. Under the Orders, the Restaurants were forced to suspend dine-in food and/or
7 drink offerings at the Restaurants and service of dine-in food and/or drinks to customers, thereby
8 prohibiting access to, use of, and operations the Restaurants.

9 57. Under the Orders, customers were prohibited from accessing and using the
10 Restaurants' serving areas, thereby prohibiting access to, use of, and operations at the
11 Restaurants.

12 58. Under the Orders, the Restaurants' employees were prohibited from traveling to or
13 accessing the Restaurants for purposes of preparing and serving dine-in food and/or drinks,
14 thereby prohibiting access to, use of, and operations at the Restaurants.

15 59. Under the Orders, the Restaurants' employees were prohibited from traveling to or
16 accessing portions of the Restaurants utilized exclusively for preparing and serving dine-in food
17 and/or drinks, thereby prohibiting access to, use of, and operations at the Restaurants.

18 60. Under the Orders, the Restaurants' employees were prohibited from working in
19 close proximity to each other, thereby prohibiting access to, use of, and operations at the
20 Restaurants. This includes, but is not limited to, social distancing requirements and other safety
21 requirements that are not compatible with professional use of a kitchen (or other food or drink
22 preparation facilities).

23 61. Under the Orders, the Restaurants lost access to the Restaurants, lost use of the
24 Restaurants, lost necessary use of necessary facilities at the Restaurants, and suspended
25 operations at the Restaurants.

26
27 _____
28 ²⁵ Serving areas are spaces where patrons enjoy food and/or drink served and consumed inside an establishment.

62. After shutting down, the Restaurants suffered and continue to suffer substantial lost business income and other financial losses.

63. These extraordinary losses of business income (and concern for their employees' welfare) are precisely why the Restaurants took out the business interruption policies with Defendants, which were meant to cover these losses.

64. The Restaurants also incurred extra expenses that were reasonable and necessary to minimize income losses as a result of the Orders, including (but not limited to) expenses associated with the preservation of property and adaptation of business models to provide new or augmented sources of income.

E. The Losses From These Closures Are Covered Business Interruptions

65. The Restaurants purchased business interruption (and other related) insurance policies from Defendants.

66. Flour & Water, LLC (Flour + Water) has insurance under policy number 0604734927.

67. Central Kitchen, LLC (Central Kitchen) has insurance under policy number 0605093787.

68. Trick Dog, LLC (Trick Dog) has insurance under policy number 0606666530.

69. The Restaurants have promptly and dutifully paid their premiums and complied with all other elements of their agreements with Defendants.

70. The policies provide coverage for Lost Business Income, promising that Defendants “will pay for the actual loss of Business Income you sustain due to the necessary suspension of your ‘operations’ during the ‘period of restoration’. The suspension must be caused by direct physical loss of or damage to property at the described premises . . . caused by or result[ing] from a Covered Cause of Loss.” Ex. 10 at 34; Ex. 11 at 34; Ex. 12 at 68.

71. The policies define suspension as including “partial slowdown or complete cessation of your business activities” or the insured premises being “rendered untenable.” Ex. 10 at 71; Ex. 11 at 71; Ex. 12 at 104.

1 72. The Orders resulted in Plaintiffs and their customers physically losing access to
2 and the ability to utilize the Restaurants, and particularly their serving areas.

3 73. The Orders required the suspension of business operations in the Restaurants'
4 serving areas.

5 74. The Orders also restricted Plaintiffs' use of their kitchens (and drink preparation
6 areas), suspending operations there, by prohibiting certain business functions, like the preparation
7 of ready-to-eat food (and/or drink), and practices, like employees working in close proximity.
8 This was amplified by the Orders' restrictions on employees commuting to work and working to
9 fulfill the full bevy of orders typically placed at the Restaurants.

10 75. As a result of this physical harm, it became necessary for the Restaurants to
11 suspend operations, lose business income, and suffer other related covered losses (including but
12 not limited to extended business income and extra expenses).

13 76. The Restaurants' policies also provide Civil Authority coverage, promising that
14 Defendants "will pay for the actual loss of Business Income you sustain and necessary Extra
15 Expense caused by action of civil authority that prohibits access to the described premises due to
16 direct physical loss of or damage to property, other than at the described premises, caused by or
17 resulting from any Covered Cause of Loss." Ex. 10 at 36; Ex. 11 at 36; Ex. 12 at 70.

18 77. The Restaurants are located in San Francisco. As the Coronavirus spread, the
19 streets on which the Restaurants are located, and the buildings and objects in and around it,
20 became a breeding ground for the disease. Numerous individuals tested positive for Coronavirus,
21 and those numbers continue to grow. Coronavirus was and is present in these areas because, for
22 example, it has attached to properties and surfaces on, at, or within properties near the
23 Restaurants; and because Coronavirus was and is being transmitted in or between properties
24 throughout the areas near the Restaurants, including but not limited to transmission through the
25 air, through ventilation systems, or through contact with contaminated surfaces.

26 78. The Orders were issued in response to physical loss and damage occurring in
27 properties near the Restaurants and all around San Francisco. Prior to the issuance of the Orders,
28 government authorities had been limiting access to other properties on the basis of the

1 Coronavirus, including (but not limited to) sporting arenas, concert venues, and other places
2 where large numbers of people may gather.

3 79. The Orders prohibited Plaintiffs and their customers from accessing and utilizing
4 their Restaurants, specifically their serving areas.

5 80. The Orders also restricted Plaintiffs' access to and use of their kitchens (and other
6 food and/or drink preparation areas), by prohibiting certain business functions, like the
7 preparation of ready to eat food and/or drink, practices, like employees working in close
8 proximity, and operations, like having all employees commute to work, work during all regular
9 business hours, and fulfill all orders typically placed at the Restaurants.

10 81. As a result of this prohibition, the Restaurants lost business income and suffered
11 other related covered losses (including but not limited to extended business income and extra
12 expenses).

13 82. In correspondence with Plaintiffs, Defendants have indicated that their policies
14 contain an exclusion related to viruses. Ex. 1 at 1; Ex. 2 at 1; Ex. 3 at 1. This exclusion provides
15 that Defendants "will not pay for loss or damage caused by or resulting from any virus, bacterium
16 or other microorganism that induces or is capable of inducing physical distress, illness or
17 disease," (the "Virus Exclusion"). Ex. 10 at 106; Ex. 11 at 108; Ex. 12 at 136.

18 83. This exclusion does not apply and is not enforceable.

19 84. One key reason (of many) why the Virus Exclusion does not apply is that it is
20 limited to harm "caused by or resulting" from a virus.

21 85. This means independent actions taken in connection with the virus, by
22 governmental authorities, customers, suppliers, employees, and others, are not covered by the
23 exclusion.

24 86. Defendants are aware of and utilize broader causation-related language like
25 "arising under" and "directly or indirectly" in their business interruption insurance policies.

26 87. The Restaurants' policies (Ex. 10 at 40, 57; Ex. 11 at 40, 57; Ex. 12 at 74, 91)
27 contain exclusions for harm "however caused, arising directly or indirectly out of" all of the
28 following:

- 1 a. War
2 b. Undeclared War
3 c. Civil war
4 d. Warlike action by a military force
5 e. Warlike action hindering against an actual attack
6 f. Warlike action hindering against an expected attack
7 g. Warlike action defending against an actual attack
8 h. Warlike action defending against an expected attack
9 i. Insurrection
10 j. Rebellion
11 k. Revolution
12 l. Usurped power
13 m. Action taken by governmental authority in hindering any of the above
14 n. Action taken by governmental authority in defending against any of the
15 above.

16 88. Defendants intentionally chose not to use similar language in the Virus Exclusion.

17 89. Defendants intentionally chose not to add a global pandemic to the above list
18 concerning war and other catastrophes or add an express global pandemic exclusion.

19 90. Defendants are aware of and utilize a policy exclusion for harm “caused directly or
20 indirectly” by acts of terrorism and attempted acts of terrorism which includes “dispersal or
21 application of *pathogenic* or poisonous biological or chemical materials,” (emphasis added).

22 91. These policy exclusions are part of the Restaurants’ policies. Ex. 10 at 18; Ex. 11
23 at 18; Ex. 12 at 25.

24 92. This terrorism (and bioterrorism) exclusion also expressly covers “loss or damage
25 caused directly or indirectly by ‘terrorism,’ including *action in hindering or defending against* an
26 actual or expected incident of ‘terrorism’.” *Id.* (emphasis added).

27 93. Defendants intentionally chose not to use similar language in the Virus Exclusion.

1 94. Defendants are aware of contractual force majeure clauses that suspend duties to
2 perform in the event of a global pandemic.

3 95. Defendants are parties to contracts which have force majeure provisions that apply
4 in the event of a global pandemic.

5 96. Defendants intentionally chose not to use force majeure clauses in their insurance
6 policies with the Restaurants.

7 **F. Defendants' Denial of Plaintiffs' Insurance Claim**

8 97. Flour + Water filed a claim for and requested business interruption insurance
9 coverage from Defendants. This claim was later assigned the identification number 3013379515-
10 1-1.

11 98. Central Kitchen filed a claim for and requested business interruption insurance
12 coverage from Defendants. This claim was later assigned the identification number 3013379529-
13 1-1.

14 99. Trick Dog also filed a claim for and requested business interruption insurance
15 coverage from Defendants. This claim was later assigned the identification number 3013377388-
16 1-1.

17 100. Defendants denied these claims without any inspection or review of the
18 Restaurants' physical locations or documents concerning their business activities in 2020.

19 101. Defendants have thereby waived any right to inspect those premises or deny
20 coverage or raise any defense related to conditions at those locations or facts specific to the
21 Restaurants.

22 102. Defendants did not and could not have engaged in a good faith or reasonable
23 investigation of the claim which included assessment of facts or issues relevant to the
24 Restaurants.

25 103. On information and belief, Defendants accepted the premiums paid by the
26 Restaurants with no intention of providing any lost business income, physical damage, civil
27 authority, or other applicable coverage for claims arising from the spread of Coronavirus or
28 societal, business, or governmental responses to it.

104. On information and belief, Defendants rejected the Restaurants' claims in bad faith as part of a policy to limit their losses during this pandemic, notwithstanding that the policies provide coverage for losses from closure orders issued by civil authorities (among other coverage).

105. Although industry trade groups have argued that insurance companies do not have the funds to pay claims related to the Coronavirus and will require government assistance, the reality is that insurers are simply trying to minimize their exposure. "According to data from ratings firm A.M. Best Co., the insurance industry as a whole has \$18.4 billion in net reserves for future payouts."²⁶

106. Farmers collected more than \$20 billion in insurance premiums for property related insurance in 2018 alone.²⁷ Notwithstanding this, they appear to be categorically denying claims brought by businesses ordered to close following the Coronavirus. This strategy, and their public requests for government assistance, suggests strongly that their true goal is minimizing payments by any means necessary.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION Breach of Contract

107. Plaintiffs re-allege and incorporate by reference into this cause of action all allegations set forth in paragraphs 1–106 of this Complaint.

108. At all times relevant herein, Plaintiffs have paid all premiums and fulfilled or performed all obligations they have to Defendants, including (but not limited to) those under all relevant insurance policies described in this complaint.

109. Defendants had contractual duties to provide Plaintiffs with insurance coverage, as alleged by Plaintiffs herein.

²⁶ See Leslie Scism, "U.S. Businesses Gear Up for Legal Disputes With Insurers Over Coronavirus Claims," *Wall Street Journal* (March 6, 2020), available at https://www.wsj.com/articles/u-s-businesses-gear-up-for-legal-disputes-with-insurers-over-coronavirus-claims-11583465668?mod=article_inline (last visited April 28, 2020).

²⁷ See *Insurance Information Institute* website, "Facts + Statistics – Industry overview," available at <https://www.iii.org/fact-statistic/facts-statistics-industry-overview> (last visited April 28, 2020).

110. In denying Plaintiffs' insurance claims, and refusing to perform under the contract, Defendants breached those duties.

111. As a result of those breaches, Plaintiffs have been damaged in the amount of coverage to which they are entitled their insurance agreements, the premiums they paid, and in an amount to be proved at trial, and for which Plaintiffs seek compensatory damages with interest thereon.

112. The Restaurants attempted to mitigate their lost income but were not able to. Several weeks after shutting down, Flour + Water reopened for takeout and delivery, which are services the restaurant never provided prior to the Orders. Flour + Water has also recently built a small street-side "parklet" in the hope to offer outdoor dining, which was previously unavailable at the restaurant. Central Kitchen remains closed and is not equipped to offer takeout, delivery, or outdoor dining. Its adjoining delicatessen business has been repurposed to serve as the "Flour + Water Pasta Shop." This is an entirely new business that offers retail grocery items and pasta meal-kits for takeout and utilizes the delicatessen's limited sidewalk seating. Trick Dog remains closed, being unable to find a sustainable business model that would support offering takeout, delivery, or outdoor dining.²⁸ All of the mitigation efforts required the Restaurants to incur extra expenses and experiment with new takeaway products, menus, and business models. Sales from these efforts are extremely modest and not remotely comparable to those prior to the Orders.

SECOND CAUSE OF ACTION
Breach of Covenant of Good Faith and Fair Dealing

113. Plaintiffs re-allege and incorporate by reference into this cause of action all allegations set forth in paragraphs 1–106 of this Complaint.

114. When Defendants entered their agreements with Plaintiffs, and with an successive amendments thereto, they undertook and were bound to covenants implied by law that they would deal fairly and in good faith with Plaintiffs, and not engage in any acts, conduct, or omissions that would diminish the rights and benefits due Plaintiffs, according to the terms of their agreements.

²⁸ The bar's business and creative partners, Bon Vivants, have recently created a "Bottle Club" venture (separate from Trick Dog, LLC) using Trick Dog's brand and inventory, however the sales have been minimal.

115. Upon information and belief, Defendants breached the implied covenant of good faith and fair dealing arising out of their agreements with Plaintiffs by, unreasonably and in bad faith, denying Plaintiffs insurance coverage to which they are entitled. Specifically, among other conduct Defendants, (a) failed or refused to perform a fair, objective, and thorough investigation of the claim as required by the California Insurance Code; (b) asserted coverage defenses that were legally and/or factually invalid and thereby delaying resolution of Plaintiffs' claim; and (c) placed unduly restrictive interpretations on the terms of their insurance policies for the purpose of denying coverage due.

116. In committing the above-referenced breach, Defendants intended to and did vex, damage, annoy, and injure Plaintiffs. Said conduct was intentional, willful, and with conscious disregard of Plaintiffs' rights, and was malicious, oppressive and/or fraudulent under California Civil Code section 3294, thereby entitling Plaintiffs to punitive and exemplary damages against the Defendants.

117. As a direct and proximate result of the above-referenced breach, Plaintiffs have had to retain attorneys to enforce their right to the insurance coverage to which they are entitled and have thereby been injured and damaged.

118. Plaintiffs, therefore, are entitled to recover and seeks in connection with this Cause of Action: (a) an award of general damages and other monetary damages, including all foreseeable consequential and incidental damages for diminution in value, loss of use, and other incidental damages and out-of-pocket expenses, plus interest, in an amount to be determined at trial; (b) punitive and exemplary damages in an amount to be determined at trial; (c) Plaintiffs' costs of suit; and (d) Plaintiffs' reasonable attorney's fees in connection with this action.

THIRD CAUSE OF ACTION
Unfair Business Practices Under Bus. & Prof. Code § 17200, *et seq.*

119. Plaintiffs re-allege and incorporate by reference into this cause of action all allegations set forth in paragraphs 1–106 of this Complaint.

120. California's Unfair Competition Law, as codified by California Business & Professions Code sections 17200, *et seq.*, protects both consumers and competitors by promoting

1 fair competition in commercial markets for goods and services. California's Unfair Competition
2 Law is interpreted broadly and provides a cause of action for any unlawful, unfair, or fraudulent
3 business act or practice. Any unlawful, unfair, or fraudulent business practice that causes injury
4 to consumers falls within the scope of California's Unfair Competition Law.

5 121. Defendants' acts and practices, as described herein, constitute unlawful violations
6 of California Business and Professions Code section 17200, *et seq.* because they violated
7 California's Insurance Code, including California Insurance Code section 790, *et seq.* because,
8 *inter alia*, they failed or refused to perform a fair, objective, and thorough investigation of the
9 claims. On information and belief, Defendants denied Plaintiffs' claims as part of a policy of
10 categorically denying all business interruption claims related to the Coronavirus, and ignored
11 other California requirements concerning their evaluation of claims and interpretations of their
12 policies.

13 122. Defendants' acts and practices, as described herein, constitute unfair violations of
14 California Business and Professions Code section 17200, *et seq.* because they failed or refused to
15 perform a fair, objective, and thorough investigation of the claim as required by the California
16 Insurance Code, denied Plaintiffs' claim as part of a policy of categorically denying claims
17 related to the Coronavirus, and failed to interpret their policy in an equitable manner and/or up to
18 the standards required by California law (including but not limited to Cal. Ins. Code section 790
19 *et seq.*).

20 123. Defendants' acts and practices, as described herein, constitute deceptive violations
21 of California Business and Professions Code section 17200, *et seq.* because they promised
22 Plaintiffs coverage that was not provided, promised to evaluate each claim individually,
23 reasonably, and in good faith and did not, indicated they were investigating (and had investigated)
24 Plaintiffs' claim but not did investigate the claim, failed or refused to perform the fair, objective,
25 and thorough investigation of the claim required by their policy and the California Insurance
26 Code, and denied Plaintiffs' claim as part of a policy of categorically denying claims related to
27 the Coronavirus.

1 124. Defendants' acts and practices, as described herein, constitute fraudulent violations
2 of California Business and Professions Code section 17200, *et seq.* because they collected
3 Plaintiffs' premiums in exchange for coverage that was not provided, induced those premiums by
4 promising to evaluate each claim individually, reasonably, and in good faith and did not, and
5 denied Plaintiffs' claim as part of a policy of categorically denying claims related to the
6 Coronavirus as part of a strategy to reduce their total insurance payments related to the
7 Coronavirus.

8 125. These acts include but are not limited to charging Plaintiffs premiums in exchange
9 for purported coverage for losses in the event of lost income, loss of use of physical property,
10 limitation on use by a civil authority, or physical damage to property, without any intention of
11 satisfying those claims in an emergency.

12 126. Any claimed justification for Defendants' conduct is outweighed by the gravity of
13 the consequences to Plaintiffs. Defendants' acts and practices are immoral, unethical, oppressive,
14 or unconscionable to the extent that they deceived Plaintiffs about the coverage provided by the
15 policy, investigation of the claim, and interpretation of the policy, and procedures for doing so.
16 This culminated in a denial of the claim as part of a policy of categorically denying claims related
17 to the Coronavirus as part of a strategy to reduce their total insurance payments related to the
18 Coronavirus. This attempt to maximize Defendant's profits was substantially injurious to
19 Plaintiffs who are local entrepreneurs who relied on their insurance to protect their business and
20 their employees in the event of disaster.

21 127. By reason of Defendants' fraudulent, deceptive, unfair, and other wrongful
22 conduct as alleged herein, said Defendants violated California Business and Professions Code
23 sections 17200, *et seq.*, by consummating an unlawful, unfair, and fraudulent business practice,
24 designed to deprive Plaintiffs of the benefits of Defendants' financial products and services.

25 128. Defendants perpetrated these acts and practices against Plaintiffs, and as a direct
26 and proximate result of the foregoing, Plaintiffs have suffered and continue to suffer damages in a
27 sum which is, as of yet, unascertained. Pursuant to California Business and Professions Code
28 section 17203, Plaintiffs are entitled to restitution of all the monies paid to Defendants for

1 retaining benefits that were due and owing to Plaintiffs (with interest thereon), to disgorgement of
2 all Defendants' profits arising out of their unlawful conduct (with interest thereon), and to be paid
3 benefits due to Plaintiffs that Defendants wrongfully retained by means of its unlawful business
4 practices.

5 129. Pursuant to California Code of Civil Procedure section 1021.5, Plaintiffs are
6 entitled to recover their reasonable attorney's fees in connection with Defendants' unfair
7 competition claims.

8 **FOURTH CAUSE OF ACTION**
9 **Declaratory Relief**

10 130. Plaintiffs re-allege and incorporate by reference into this cause of action all
11 allegations set forth in paragraphs 1–106 of this Complaint.

12 131. Under California Code of Civil Procedure section 1060, *et seq.*, the court may
13 declare rights, duties, statuses, and other legal relations, regardless of whether further relief is or
14 could be claimed.

15 132. An actual controversy has arisen between Plaintiffs and Defendants as to their
16 respective rights and duties under Plaintiffs' insurance policies.

17 133. Resolution of the parties' respective rights and duties under Plaintiffs' insurance
18 policies by declaration of the Court is necessary, as there exists no adequate remedy at law.

19 134. Plaintiffs allege and contend, with respect to Plaintiffs' Civil Authority coverage,
20 that each of the Closure Orders triggers that coverage because (a) each of the Orders is an order
21 of a civil authority, (b) each of the Orders specifically prohibits access to the Scheduled Premises
22 by prohibiting all potential on-premises dining customers and workers from accessing the
23 Scheduled Premises, (c) said prohibition of access by each of the Closure Orders has been
24 continuous and ongoing since the Orders were issued, such that access has not subsequently been
25 permitted, (d) each of the Closure Orders prohibits said access as the direct result of a Covered
26 Cause of Loss (i.e., a risk of direct physical loss of property) in the immediate area of the
27 Scheduled Premises, (e) no Policy coverage exclusions or limitations apply to exclude or limit
28

1 coverage, (f) Plaintiffs have suffered actual and covered loss of Business Income in an amount to
2 be determined at trial, and (g) coverage should begin as of March 16, 2020.

3 135. Plaintiffs allege and contend that Plaintiffs' Lost Business Income Coverage is
4 triggered because (a) Plaintiffs have sustained actual loss of Business Income due to the closure
5 of the Restaurants, (b) said closure constitutes a necessary suspension of the Restaurants'
6 operations under Plaintiffs' insurance policies, (c) this suspension has been and is caused by
7 direct physical loss of or physical damage to property at the Scheduled Premises, including
8 personal property in the open (or in a vehicle) within 1,000 feet of the Scheduled Premises, due to
9 the presence of Coronavirus, (d) the presence of Coronavirus is a Covered Cause of Loss, and
10 (e) some or all of the period of the Restaurants' closure is within the period of restoration under
11 Plaintiffs' insurance policies.

12 136. Plaintiffs allege and contend that Defendants wrongly denied coverage with
13 respect to all the foregoing provisions.

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

16 138. Plaintiffs, therefore, seek a declaratory judgment regarding each of Plaintiffs'
17 contentions set forth in this Cause of Action. A declaratory judgment determining that Plaintiffs
18 are due coverage under their insurance policies, as set forth above, will help to ensure the survival
19 of their business during this prolonged closure made necessary by the Orders and by the presence
20 of Coronavirus around the Restaurants during this global pandemic.

21 **VII. PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants, as
23 follows:

- 24 a. For a declaration adopting each of Plaintiffs' contentions set forth in the above
25 Cause of Action for Declaratory Relief;
26 b. For injunctive relief enjoining and restraining Defendants' unlawful conduct as
27 alleged herein, including but not limited to their unfair and unlawful business
28

practices and their wrongful denials of coverage under Plaintiffs' insurance policies;

- c. For general and compensatory damages in an amount to be determined at trial;
- d. For exemplary and punitive damages in an amount to be determined at trial;
- e. For Plaintiffs' costs of suit;
- f. For Plaintiffs' reasonable attorney's fees incurred in this action pursuant to statute;
- g. For pre judgment interest on all other interest to which Plaintiffs are entitled; and
- h. For such other relief as the Court may deem proper.

1 **VIII. JURY TRIAL DEMAND**

2 Plaintiffs demand a trial by jury.

3
4 Dated: August 27, 2020



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