

FILED
MAY 22 2020

K. BEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

By _____
d. Public Deputy Clerk

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SUMMONS ISSUED

PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT. 21 FOR ALL
PURPOSES

SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
UNLIMITED JURISDICTION

UNCLE SHARKII, LLC,

Plaintiff,

v.

FARMERS INSURANCE EXCHANGE,

Defendant.

Case No. C20-00901

CLASS ACTION COMPLAINT

- (1) Declaratory Judgment
- (2) Breach of Contract
- (3) Breach of Implied Covenant of
Good Faith and Fair Dealing

DEMAND FOR JURY TRIAL

1 Plaintiff Uncle Sharkii, LLC, individually and on behalf of all others similarly
2 situated, files suit against Famers Insurance Exchange and alleges as follows:

3 **INTRODUCTION**

4 1. Since March 19, 2020, California's "Stay at Home" order has instructed
5 all 40 million California residents to remain at home, with certain exceptions. Though
6 lifesaving, this mandate, which remains in place, ends in-house service at California
7 restaurants. This is not merely causing severe financial distress for restaurants and
8 their employees; such closures threaten the viability of California's restaurant
9 industry.

10 2. Plaintiff's restaurant Uncle Sharkii Poke Bar in Concord, California is
11 among the thousands of restaurants that have been forced by State orders to cease
12 operations as part of the Stay at Home order. Uncle Sharkii and many California
13 restaurants – none of whom bear fault for statewide closures – were responsible
14 business stewards, thus paying for business interruption insurance to protect against
15 a situation like this.

16 3. But insurance companies operating in California – despite collecting
17 premiums for such risks – are categorically denying claims from restaurants arising
18 from California's mandated interruption of business services. Those denials are often
19 made with little or no investigation and without due regard for the interests of
20 insureds.

21 4. Indeed, form letters denying coverage for such losses appear to rest on
22 crabbed readings of coverage language and overbroad readings of exclusions. That
23 gets insurance law exactly backwards – and raises the specter of bad-faith denials.

24 5. Uncle Sharkii's experience is no different. It has dutifully followed
25 California's mandates. Facing serious financial harm, it has filed a claim with Farmers
26 for business interruption coverage.

27 6. Farmers swiftly denied the claim. Though its reasons are cursory, the
28 denial appears to be based on an unreasonable reading of its policy, which tracks
form policies issued throughout California on a take-it-or-leave-it basis.

7. That leaves the Uncle Sharkii in financial straits – precisely the situation it sought to avoid when it obtained coverage for business interruptions.

8. Uncle Sharkii and other restaurants bought full-spectrum, comprehensive insurance for their *businesses* – not just for damage to their physical premises and equipment. And for good reason. Insurance coverage is important, if not vital for small businesses.

9. Uncle Sharkii and other California restaurants reasonably believed they had comprehensive coverage that would apply to business interruptions under circumstances like these, where they have done everything right to protect their businesses and the public. But insurance companies like Farmers are cutting those lifelines – despite having pocketed significant premiums for such relief.

10. Plaintiff thus brings this action, on behalf of itself and other California restaurants, seeking declaratory relief, insurance coverage owed under Farmers' policy, and damages.

PARTIES

11. Plaintiff Uncle Sharkii, LLC is a limited liability company formed under the laws of Delaware. Its principal place of business is Concord, California.

12. Defendant Farmers Insurance Exchange is an insurer organized under laws of California with its principal place of business in Woodland Hills, California. At all relevant times, Farmers operated in California, including in Concord, California.

JURISDICTION AND VENUE

13. The Court has jurisdiction over the subject matter of this action pursuant to Article VI, section 10 of the California Constitution and section 410.10 of the California Code of Civil Procedure.

14. Venue is proper in this court under Code of Civil Procedure section 395 because a substantial part of the conduct, events, and omissions giving rise to the violations of law giving rise to this lawsuit occurred in Contra Costa County.

FACTUAL BACKGROUND

15. In January 2020 early media reports documented an outbreak of a novel strain of coronavirus – COVID-19 – in Wuhan, China. By late January, it was generally understood in the scientific and public health communities that COVID-19 was spreading through human-to-human transmission and could be transmitted by asymptomatic carriers.

16. On January 30, 2020, reports of the spread of COVID-19 outside China prompted the World Health Organization to declare the COVID-19 outbreak a “Public Health Emergency of International Concern.”

17. On March 11, the World Health Organization declared COVID-19 a global health pandemic based on existing and projected infection and death rates and concerns about the speed of transmission and ultimate reach of this virus.

18. Public health officials have recognized for decades that non-pharmaceutical interventions (NPIs) can slow and stop the transmission of certain diseases. Among these are screening and testing of potentially infected persons; contact tracing and quarantining infected persons; personal protection and prevention; and social distancing. Social distancing is the maintenance of physical space between people. Social distancing can be limited – *e.g.*, reducing certain types of conduct or activities like hand-shaking – or large-scale – *e.g.*, restricting the movements of the total population.

19. A lack of central planning, shortages of key medical supplies and equipment, and the unfortunate spread of misinformation and disinformation about the risks of COVID-19 has led to widespread confusion, unrest, and uncertainty regarding the likely trajectory of this pandemic and the appropriate counter-measures necessary to mitigate the damage it could potentially cause.

20. Beginning in late February, public health officials began advising various governments around the world that one of the most disruptive NPIs – population-wide social distancing – was needed to stop the transmission of COVID-19. Suddenly schools, offices, public transit, restaurants, bars, music venues, and

shops -- densely occupied spaces, heavily traveled spaces, and frequently visited spaces – were likely to become hot-spots for local transmission of COVID-19.

21. By mid-March, that advice was being implemented by state and local governments across the United States. In many respects, California led the way, becoming one of the first states to order widespread closures.

22. California’s Governor Gavin Newsom, on March 12, 2020, issued a statewide directive known as the Safer at Home order: “All residents are to heed any orders and guidance of state and local public health officials, including but not limited to the imposition of social distancing measures, to control the spread of COVID-19.”

23. Following closely on the heels of local closure orders, including in San Francisco, on March 19, 2020, the Governor issued another series of mandates (the Stay at Home Order) – which remain in effect to date – requiring restaurants to cease in-person services, though curbside sales or by delivery are now permitted.

PLAINTIFF’S EXPERIENCE

24. Plaintiff operates a restaurant called Uncle Sharkii Poke Bar in Concord, California, located in the Sunvalley Shopping Center. Uncle Sharkii sells poke bowls, a Hawaiian food that has become one of the most popular food concepts in the U.S. over the past five years.

25. Uncle Sharkii has complied with all applicable orders of California state and local authorities. Compliance with those orders has caused direct physical loss of Uncle Sharkii’s insured property in that the property has been made useless and/or uninhabitable; and its functionality has been severely reduced if not completely or nearly eliminated.

26. The impact of these orders is felt not simply in their direct application to Uncle Sharkii’s operations, but also in their application to neighboring businesses and properties, whose property has suffered similar direct physical loss as a result.

27. Even when California relaxes or revokes its mandates, Uncle Sharkii will encounter continued loss of business income due to those orders because, in

1 issuing those orders, government officials have stated that densely occupied public
2 spaces are dangerously unsafe, and continuing to operate the shop in the same
3 manner as before could expose Uncle Sharkii to the risk of contaminated premises as
4 well as exposing customers and workers to transmission and infection risks.

5 28. Plaintiff purchased comprehensive commercial liability and property
6 insurance from Farmers to insure against risks the business might face. Such coverage
7 includes business income with extra expense coverage for the loss, as well as
8 additional “civil authority” coverage. The coverage excludes loss “caused by or
9 resulting from” virus or bacteria. Once triggered, the policy pays actual losses
10 sustained for the business income and extra expense coverage.

11 29. To date, Plaintiff has paid all of the premiums required by Farmers to
12 keep its policy in full force. These premiums have totaled many thousands to date.

13 30. On or about March 24, 2020, Plaintiff reported a loss of business income
14 as of March 12, 2020, under Policy 0606771000.

15 31. On or about March 27, 2020, Farmers denied Plaintiff’s claim for
16 coverage. In a cursory denial letter, Farmers took the position that “[there is no
17 coverage found in your policy package for business income as there is no direct
18 physical loss of or damage to property at the described premises by a covered cause
19 of loss.” The letter also states that “[w]hile the government has closed business using
20 civil authority for containment of the coronavirus, access to the described premises
21 was nor prohibited due to direct physical loss of or damage to property away from
22 the described premises resulting from a covered cause of loss.” Farmers further
23 stated that the policy included “an exclusion for loss or damage caused by or
24 resulting from any virus that is capable of inducing physical distress, illness, or
25 disease.”

26 32. Farmers’ denial letter, on information and belief, appears to be a form
27 letter sent in response to business interruption claims arising from California’s Stay at
28 Home orders.

 33. Farmers’ denial is contrary to the terms and conditions of the policy and

1 applicable law, which gives effect to plain language, construes ambiguity in favor of
2 coverage, and narrowly construes exclusions, the applicability of which insurers have
3 the burden of proving.

4 34. Farmers' denial of coverage breached its obligation and responsibility to
5 provide coverage available through the policy to Plaintiff due to its covered loss of
6 business income because its premises are unusable and uninhabitable and have lost
7 all function.

8 35. As a result, Farmers' denial of coverage and breach of the insurance
9 policy it issued, Plaintiff has suffered and will continue to suffer damages.

10 36. A declaratory judgment determining that the coverage provided under
11 the policy and an order that such coverage is owed will prevent Plaintiff and Class
12 members from being wrongfully left without vital coverage acquired to ensure the
13 survival of its businesses in these circumstances. As a result of the Stay at Home
14 orders, Plaintiff has incurred and continues to incur a substantial loss of business
15 income and additional expenses covered under the policy.

16 **CLASS ALLEGATIONS**

17 37. Plaintiff re-alleges and incorporates by reference herein all of the
18 allegations contained above.

19 38. Business insurance policies purchased by small businesses like Uncle
20 Sharkii are not individually negotiated. At most, the prospective policyholder may
21 elect to add specialized coverage options to a basic business insurance policy. But the
22 substantive terms are set unilaterally by the insurer.

23 39. Plaintiff's policy includes common terms and phrases widely used by
24 the insurance industry. The insurance industry typically hews closely to
25 standardized insurance policy forms in addressing property and liability risks, and
26 Defendant did so here.

27 40. As the impact of the COVID-19 pandemic is emerging, leading
28 insurance industry associations have publicly stated that such standard business
insurance policies do not provide any coverage for the business losses related to

1 public health orders like the Stay at Home orders imposed by California. The denial
2 letter received by Plaintiff – issued without any investigation at Uncle Sharkii’s
3 premises and shortly after a claim was filed – appears to be a form letter that, on
4 information and belief, is sent automatically to any such business with comprehensive
5 business insurance that files a claim at this time.

6 41. Plaintiff brings this action on behalf of itself and the following Class (the
7 “Class”): All restaurants in California that purchased comprehensive business
8 insurance coverage from Defendant which includes coverage for business
9 interruption, filed a claim for lost business income following California’s Stay at
10 Home order, and were denied coverage by Defendant.

11 42. Excluded from the Class are Defendant, any entity in which Defendant
12 has a controlling interest, and Defendant’s officers, directors, legal representatives,
13 successors, subsidiaries, and assigns. Also excluded from the Class are any judge,
14 justice, or judicial officer presiding over this matter and the members of their
15 immediate families and judicial staff.

16 43. For the reasons stated below, this action has been brought and may
17 properly be maintained on behalf of California residents, pursuant to the provisions
18 of the Code of Civil Procedure Section 382 and Civil Code Sections 1750, *et seq.*

19 44. Plaintiff reserves the right to amend the Class definition if discovery and
20 further investigation reveal that the Class should be expanded, divided into
21 subclasses, or modified in any other way.

22 45. Although the precise number of members of the Class is unknown and
23 can only be determined through appropriate discovery, Plaintiff believes, and on that
24 basis alleges, that the members of the proposed Class are so numerous that joinder of
25 all members would be impracticable. There are tens of thousands of restaurants in
26 California which are governed by the Stay at Home order and attendant statewide
27 restrictions, and public reporting reveals that many have filed for coverage but have
28 been denied.

46. There is a well-defined community of interest in common questions of

1 law and fact which exists as to all members of the Class. Questions of law and fact
2 common to the Class exist that predominate over questions affecting only individual
3 members, including *inter alia*:

- 4 a. Whether Defendant's comprehensive business insurance policies
5 cover claims for lost business income under the circumstances
6 present here;
- 7 b. Whether the terms, definitions, and exclusions that Defendant
8 has relied on to deny coverage reasonably can be construed in the
9 manner Defendant claims, or are otherwise unenforceable as a
10 basis for Defendant's denials or, instead, must be construed to
11 provide coverage under California law;
- 12 c. Whether the virus exclusion endorsement excludes coverage for
13 the Stay at Home order;
- 14 d. Whether Defendant breached the implied covenant of good faith
15 and fair dealing in its handling of the claim; and
- 16 e. Whether the declaratory judgment sought is appropriate.

17 47. Plaintiff is a member of the putative Class. The claims asserted by the
18 Plaintiff in this action are typical of the claims of the members of the putative Class as
19 the claims arise from the same course of conduct by Defendant and the relief sought is
20 common.

21 48. Plaintiff will fairly and adequately represent and protect the interests of
22 the members of the putative Class, as its interests coincide with, and are not
23 antagonistic to, the other members of the Class. Plaintiff has retained counsel
24 competent and experienced in both consumer protection, insurance coverage, and
25 class-action litigation.

26 49. Certification of the Class is appropriate because:

- 27 a. Questions of law or fact common to the respective members of
28 the Class predominate over questions of law or fact affecting only
individual members. This predominance makes class litigation

1 superior to any other method available for the fair and efficient
2 adjudication of these claims including consistency of
3 adjudications. Absent a class action it would be highly unlikely
4 that the members of the Class would be able to protect their own
5 interests because the cost of litigation through individual
6 lawsuits might exceed the expected recovery;

7 b. A class action is a superior method for the adjudication of the
8 controversy in that it will permit a large number of claims to be
9 resolved in a single forum simultaneously, efficiently, and
10 without the unnecessary hardship that would result from the
11 prosecution of numerous individual actions and the duplication
12 of discovery, effort, expense, and the burden of the courts that
13 individual actions would create; and

14 c. The benefits of proceeding as a class action, including providing
15 a method for obtaining redress for claims that would not be
16 practical to pursue individually, outweigh any difficulties that
17 might be argued with regard to the management of the class
18 action.

19 50. The Class should also be certified because:

20 a. The prosecution of separate actions by the individual members of
21 the proposed class would create a risk of inconsistent
22 adjudications, which could establish incompatible standards of
23 conduct for Defendant;

24 b. The prosecution of individual actions could result in
25 adjudications, which as a practical matter, would be dispositive
26 of the interests of non-party class members or which would
27 substantially impair their ability to protect their interests; and

28 c. Defendant has acted or refused to act on grounds generally
applicable to the proposed Class, thereby making appropriate

1 final and injunctive relief with respect to the members of the
2 proposed Class as a whole.

3 51. Likewise, particular issues are appropriate for certification because such
4 claims present only particular, common issues, the resolution of which would
5 advance the disposition of this matter and the parties' interests therein. Such
6 particular issues include, but are not limited to:

- 7 a. Whether the comprehensive business insurance policies issued by
8 Defendant cover class members' direct physical loss of property
9 and lost business income following California's Stay at Home
10 order;
- 11 b. Whether the coverages for direct physical loss of property and
12 lost business income provided by the comprehensive business
13 insurance policies are precluded by exclusions or other
14 limitations in those policies;
- 15 c. Whether Defendant breached contracts by denying
16 comprehensive business insurance coverage to Plaintiff and Class
17 members;
- 18 d. Whether summary denial of claims for direct physical loss of
19 property and lost business income, including by invoking an
20 exclusion for viruses, without any investigation or inquiry
21 constitutes bad faith and therefore a breach of the implied
22 covenant of good faith and fair dealing to act in good faith and
23 with reasonable efforts to perform their contractual duties and
24 not to impair the rights of other parties to receive the rights,
25 benefits, and reasonable expectations under the contracts;
- 26 e. Whether the handling of the claim with the knowledge that
27 Defendant would not provide coverage for business interruptions
28 associated with public health measures such as California's Stay
at Home order constitutes a breach of the implied covenant of

1 good faith and fair dealing; and
2 f. Whether Plaintiff and Class members are entitled to actual
3 damages and/or injunctive relief as a result of Defendant's
4 wrongful conduct.

5 **FIRST CAUSE OF ACTION**

6 **Declaratory Judgment**

7 52. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

8 53. Plaintiff purchased a comprehensive business insurance policy from
9 Defendant.

10 54. Plaintiff paid all premiums required to maintain its comprehensive
11 business insurance policy in full force.

12 55. The comprehensive business insurance policy includes provisions that
13 provide coverage for the direct physical loss of or damage to the premises as well as
14 actual loss of business income and extra expenses sustained during the suspension of
15 operations as a result of such loss or damage.

16 56. On or about March 19, California issued the Stay at Home order,
17 mandating that all Californians remain at home, with certain exceptions. This
18 mandate required restaurants to cease all non-essential services. This mandate also
19 applied to neighboring businesses, thus causing widespread closures surrounding
20 Plaintiff's business premises.

21 57. As a result of this mandate, the covered property of Plaintiff lost some
22 or all of its functionality and/or became useless or uninhabitable, resulting in
23 substantial loss of business income.

24 58. These losses are insured losses under several provisions of Plaintiff's
25 comprehensive business insurance policy including business income and expense
26 coverage, and coverage for civil authority orders.

27 59. There are no applicable, enforceable exclusions or definitions in the
28 insurance policies that preclude coverage for these losses.

 60. WHEREFORE, Plaintiff seeks a declaration for itself and similarly

1 situated restaurants that its business income losses are covered and not precluded by
2 exclusions or other limitations in its comprehensive business insurance policy.

3 **SECOND CAUSE OF ACTION**

4 **Breach of Contract**

5 61. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

6 62. Plaintiff purchased a comprehensive business insurance policy from
7 Defendant to insure against all risks (unless specifically excluded) a business might
8 face. This policy was a binding contract that afforded Plaintiff comprehensive
9 business insurance under the terms and conditions of the policy.

10 63. Plaintiff met all or substantially all of its contractual obligations,
11 including paying all the premiums required by Defendant.

12 64. On or about March 19, California issued the Stay at Home order,
13 mandating that all Californians remain at home, with certain exceptions. This
14 mandate required restaurants, including that owned by Plaintiff, to cease all in-person
15 services. This mandate also applied to neighboring businesses, thus causing
16 widespread closures surrounding Plaintiff's business premises.

17 65. Beginning on March 16, 2020, and continuing through the date of the
18 filing of this Complaint, Plaintiff suffered the direct physical loss of property and lost
19 business income following California's Stay at Home order – losses which were
20 covered under the comprehensive business insurance policy purchased from
21 Defendant.

22 66. There are no applicable, enforceable exclusions in Plaintiff's
23 comprehensive business insurance policy that precludes coverage.

24 67. Defendant breached its contract by denying comprehensive business
25 insurance coverage to Plaintiff.

26 68. As a direct and proximate result of Defendant's denial of comprehensive
27 business insurance coverage to Plaintiff, Plaintiff suffered damages.

28 69. WHEREFORE, Plaintiff seeks: (a) a judgment for itself and similarly
situated restaurants that Defendant breached its contracts with Plaintiff; and (b)

1 corresponding damages for that breach.

2 **THIRD CAUSE OF ACTION**

3 **Breach of Implied Covenant of Good Faith and Fair Dealing**

4 70. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

5 71. Plaintiff contracted with Defendant to provide it with comprehensive
6 business insurance to ensure against all risks (unless specifically excluded) a business
7 might face.

8 72. This contract was subject to an implied covenant of good faith and fair
9 dealing that all parties would act in good faith and with reasonable efforts to perform
10 their contractual duties – both explicit and fairly implied – and not to impair the
11 rights of other parties to receive the rights, benefits, and reasonable expectations
12 under the contracts. These included the covenant that Defendant would act fairly and
13 in good faith in carrying out its contractual obligations to provide Plaintiff with
14 comprehensive business insurance.

15 73. Defendant breached the implied covenant of good faith and fair dealing
16 by:

- 17 a. Selling policies that appear to provide liberal coverage for loss of
18 property and lost business income with the intent of interpreting
19 undefined or poorly defined terms, undefined terms, and
20 ambiguously written exclusions to deny coverage under
21 circumstances foreseen by Defendant;
- 22 b. Denying coverage for loss of property and lost business income
23 unreasonably, and without proper cause, by applying undefined,
24 ambiguous, and contradictory terms contrary to applicable rules
25 of policy construction and the plain terms and purpose of the
26 policy;
- 27 c. Denying Plaintiff's claim for loss of property and loss of business
28 income without conducting a fair, unbiased and thorough
investigation or inquiry, arbitrarily and capriciously, and/or with

1 knowledge that the denial was unreasonable under the policy;

2 d. Misrepresenting policy terms; and

3 e. Compelling policyholders, including Uncle Sharkii, to initiate
4 litigation to recover policy benefits to which they are entitled.

5 74. Plaintiff met all or substantially all of its contractual obligations,
6 including by paying all the premiums required by Defendant.

7 75. Defendant's failure to act in good faith in providing comprehensive
8 business insurance coverage to Plaintiff denied Plaintiff the full benefit of its bargain.

9 76. Accordingly, Plaintiff has been injured as a result of Defendant's breach
10 of the covenant of good faith and fair dealing and is entitled to damages in an amount
11 to be proven at trial.

12 77. WHEREFORE, Plaintiff seeks: (a) a judgment for itself and similarly
13 situated restaurants that Defendant has breached the covenant of good faith and fair
14 dealing implied in its contract with Plaintiff; and (b) corresponding damages for that
15 breach.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff requests, on behalf of itself and the Class, that the
18 Court enter a judgment awarding the following relief:

19 a. An order certifying this action as a class action, defining the Class as
20 requested herein, appointing Gibbs Law Group LLP and Cohen
21 Milstein Sellers & Toll PLLC, as Class Counsel, and finding that
22 Plaintiff is a proper representative of the Class requested herein;

23 b. A declaration that Plaintiff's and Class members' losses are covered
24 under Defendant's comprehensive business insurance policy; and

25 c. Plaintiff also requests damages, attorney's fees and costs, and such
26 other and further relief as is just and proper as compensation for
27 Defendant's breach of contract and breach of the implied covenant of
28 good faith and fair dealing.

1 Dated: May 21, 2020

Respectfully submitted,

2 **GIBBS LAW GROUP LLP**

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1 **JURY DEMAND**

2 Plaintiff demands a trial by jury for all issues so triable under the law.

3
4 Dated: May 21, 2020

Respectfully submitted,

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