

1 JULIEN SWANSON (SBN 193957)
2 AUSTIN LAW GROUP
3 1811 Folsom Street
4 San Francisco, California 94103
5 Tel: (415) 282.4511
6 Fax: (415) 282.4536
7 swanson@austinlawgroup.com

8 Attorney for Plaintiff CTT Comedy

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

02/04/2021
Clerk of the Court

BY: RONNIE OTERO
Deputy Clerk

9 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

CGC-21-589647

11
12 CTT Comedy., a California nonprofit
13 corporation,

14 Plaintiff,

15 v.

16 NAUTILIS INSURANCE COMPANY, an
17 Arizona stock corporation; GREAT
18 DIVIDE INSURANCE COMPANY, a
19 California registered foreign stock
20 corporation; and BERKLEY INSURANCE
21 COMPANY, a California registered
22 foreign stock corporation; and DOES 1-50,
23 inclusive,

24 Defendants.

Case No.

PLAINTIFF'S COMPLAINT FOR DAMAGES
AND DEMAND FOR JURY TRIAL

1. **Breach of Contract;**
2. **Breach Of Covenant Of Good Faith
And Fair Dealing;**
3. **Bad Faith Denial of Insurance Claim;**
4. **Unfair Business Practices;**
5. **Declaratory Relief;**
6. **Injunctive Relief;**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTION

1. This action stems from the total loss of business income that resulted from the loss of use and forced closure of a small, nonprofit comedy club and theatre located in San Francisco California, entitled Cheaper Than Therapy, managed and run by a California nonprofit entitled CTT Comedy (“CTT”).

2. CTT’s performing arts venue and bar boasts an impressive 421 reviews on YELP dating back to 2015, with glowing 5-star reviews that represent the joy and entertainment that this venue has brought to its customers over the years.

3. As a non-profit, insuring the club against unforeseen events was deemed necessary, so CTT secured and maintained a comprehensive all-risk policy that included coverage for loss of Business Income due to either a loss of use of the insured property or damage to the premise or its immediate surroundings (“Policy”).

4. Attached is the governing policy. See **Exhibit A**.

5. Despite suffering a catastrophic loss as a result of government closure orders, which is a covered cause of loss, the insurance company denied the claim outright and has refused to pay.

6. Insurance companies like the Defendant here, are denying these types of claims across the country, claiming no physical damage has occurred so the policy terms are not applicable, leaving their insureds penniless and reliant on the minimal tax-payer funded loans and their employees reliant on unemployment insurance.

7. This is not why insurance policies are written and not why small businesses pay their premiums.

1 8. CTT has been shuttered since March 12, 2020, without payment on the denied
2 claim and files this suit for damages and declaratory relief.

3 **PARTIES**

4 9. Plaintiff CTT Comedy (“CTT”) is and was at all times herein, a California
5 nonprofit corporation with its principal place of business in San Francisco, California.
6

7 10. Plaintiff is informed and believes, that at all material times herein defendant
8 NAUTILIS INSURANCE COMPANY, an Arizona stock corporation, operated in
9 collaboration with the other defendants to sell insurance to businesses in California,
10 including to Plaintiff’s business in San Francisco.

11 11. Plaintiff is informed and believes, that at all material times herein defendant
12 GREAT DIVIDE INSURANCE COMPANY, a California registered foreign corporation,
13 operated in collaboration with the other defendants to sell insurance to businesses in
14 California, including to Plaintiff’s business in San Francisco.
15

16 12. Plaintiff is informed and believes, that at all material times herein defendant
17 BERKLEY INSURANCE COMPANY, a California registered foreign corporation,
18 operated in collaboration with the other defendants to sell insurance to businesses in
19 California, including to Plaintiff’s business in San Francisco.
20

21 13. DEFENDANT DOES 1 to 50, inclusive, are sued under fictitious names
22 pursuant to Code of Civil Procedure § 474.
23

24 14. PLAINTIFF is informed and believes, and on that basis alleges, that each of
25 the DEFENDANTS sued under fictitious names is in some manner responsible for the
26 wrongs and damages alleged below, in so acting was functioning as the agent, servant,
27 partner, and employee of the co-DEFENDANTS, and in taking the actions mentioned
28

1 below was acting within the course and scope of his or her authority as such agent,
2 servant, partner, and employee, with the permission and consent of the co-
3 DEFENDANTS. The named DEFENDANTS and Doe DEFENDANTS are sometimes
4 hereafter referred to, collectively and/or individually, as "DEFENDANTS."
5

6 15. The DEFENDANTS compelled, coerced, aided, and/or abetted the neglect
7 alleged in this Complaint. The DEFENDANTS were responsible for the events and
8 damages alleged herein, including on the following bases: (a) The DEFENDANTS
9 committed the acts alleged; (b) at all relevant times, one or more of the DEFENDANTS
10 was the agent or employee, and/or acted under the control or supervision, of one or more of
11 the remaining DEFENDANTS and, in committing the acts alleged, acted within the
12 course and scope of such agency and employment and/or is or are otherwise liable for
13 PLAINTIFF's damages; (c) at all relevant times, there existed a unity of ownership and
14 interest between or among two or more of the DEFENDANTS such that any individuality
15 and separateness between or among those DEFENDANTS has ceased, and
16 DEFENDANTS are the alter egos of one another. The DEFENDANTS exercised
17 domination and control over one another to such an extent that any individuality or
18 separateness of DEFENDANTS does not, and at all times herein mentioned did not, exist.
19 Adherence to the fiction of the separate existence of DEFENDANTS would permit abuse
20 of the corporate privilege and would sanction fraud and promote injustice. All actions of
21 all DEFENDANTS were taken by employees, supervisors, executives, officers, and
22 directors during employment with all DEFENDANTS, were taken on behalf of all
23 DEFENDANTS, and were engaged in, authorized, ratified, and approved of by all other
24 DEFENDANTS.
25
26
27
28

1 23. The Policy’s coverage of business interruption at CTT can occur under a
 2 number of circumstances.

3 24. Here, the Policy was triggered when a complete cessation of the business’
 4 activities was the direct result of the Closure Orders issued by the City and County of San
 5 Francisco in conjunction with the state of California.

6 25. The business income loss has continued through the present day.

7 **Policy Provisions**

8 26. The Policy is an all-risk policy that insures losses that are not otherwise
 9 excluded.
 10

11 27. The Policy contains a provision entitled “BUSINESS INCOME (AND EXTRA
 12 EXPENSE) COVERAGE FORM” which explains,
 13

14 *We will pay for the actual loss of Business Income you sustain due to the*
 15 *necessary "suspension" of your "operations" during the "period of restoration".*

16 *The "suspension" must be caused by direct physical loss of or damage to*
 17 *property at premises which are described in the Declarations and for which a*
 18 *Business Income Limit of Insurance is shown in the Declarations.*

19 *The loss or damage must be caused by or result from a Covered Cause of Loss.*

20 28. Subsection 3 directs that “Covered Causes of Loss, Exclusions and
 21 Limitations” are found in the “applicable Causes of Loss Form as shown in the
 22 Declarations.”

23 29. The “Cause of Loss – Special Form” states that

24 *Risks Of Direct Physical Loss unless the loss is: 1. Excluded in Section B,*
 25 *Exclusions; or 2. Limited in Section C., Limitations; that follow*

26 30. A laundry list of exclusions follow, which include earthquakes, fungus, dry
 27 rot, water damage.
 28

1 31. At subsection 4, the exclusions related to the Business Income (And Extra
2 Expense) Coverage outlines specific exclusions (i.e., including loss of radio satellite or
3 television antennas, delays in rebuilding because of strikes or other persons, damage to
4 “finished stock,” etc.), none of which have any significance here.

5
6 32. Accordingly, the loss and direct physical damage claimed, is not specifically
7 excluded under this section.

8 33. Subsection 2, entitled Extra Expenses, at section (b) explains that

9 *Extra Expense means necessary expenses you incur during the "period of*
10 *restoration" that you would not have incurred if there had been no direct*
11 *physical loss or damage to property caused by or resulting from a*
12 *Covered Cause of Loss.*

13 *We will pay Extra Expense (other than the expense to repair or replace*
14 *property) to:*

15 *(1) Avoid or minimize the "suspension" of business and to continue operations*
16 *at the described premises or at replacement premises or temporary locations,*
17 *including relocation expenses and costs to equip and operate the replacement*
18 *location or temporary location.*

19 *(2) Minimize the "suspension" of business if you cannot continue "operations"*

20 34. Moreover, there is coverage for the actions of a Civil Authority which
21 prohibits access to the Property.

22 35. The Civil Authority provision in Section A.5 explains that

23 *Civil Authority Coverage for Business Income will begin 72 hours after the*
24 *time of the first action of civil authority that prohibits access to the described*
25 *premises and will apply for a period of up to four consecutive weeks from the*
26 *date on which such coverage began.*

27 *Civil Authority Coverage for Extra Expense will begin immediately after the*
28 *time of the first action of civil authority that prohibits access to the described*
29 *premises and will end:*

30 *(1) Four consecutive weeks after the date of that action; or*

31 *(2) When your Civil Authority Coverage for Business Income ends; whichever*
32 *is later.*

1
2 36. This is an all-risk Policy that provides coverage for direct physical loss of, or
3 damage to, the Covered Property that is not expressly excluded or limited by the Policy.

4 37. Under the Commercial General Liability Coverage Form, at Section V,
5 definitions governing the Policy are included, and specify at section 17 that “**Property**
6 **Damage**” is defined as either:

8 (a) “*Physical injury to tangible property, including all resulting loss of use of that*
9 *property*”, or

10 (b) “*Loss of use of tangible property that is not physically injured. All such loss of use*
11 *shall be deemed to occur at the time of the "occurrence" that caused it.*”
12

13 38. The plain language of the Policy promises coverage for the catastrophic loss of
14 use of and the damage to the Plaintiff’s insured Property, resulting in loss of business
15 income and expenses, as a direct result of the Closure Orders, as mandated by the City
16 and County of San Francisco and the State of California, as detailed below.
17

18 **The Closure Orders.**

19 39. On March 11, 2020, in an effort to decrease the risk of overburdening
20 hospitals and emergency medical providers in general, to protect the healthcare systems
21 in place throughout the highly populated urban area, and in response to physical damage
22 to surrounding properties in the urban area, San Francisco City and County Officials
23 prohibited large gatherings of 1000 or more.
24

25 40. On March 13, 2020, San Francisco further limited gatherings to less than 100.

26 41. On March 15, 2020, Governor Gavin Newsom orders all bars, nightclubs,
27 wineries, and brewpubs to close, tells adults age 65 and over and those with chronic
28

1 health conditions to stay home, allows restaurants to stay open but to reduce capacity so
2 customers are socially distanced, and the people of San Francisco were ordered to shelter
3 in place.

4 42. On March 16, 2020, the San Francisco Department of Public Health issued a
5 written order, entitled “Order of the Health Officer No. C19-07” which ordered in part
6 “...all businesses and governmental agencies to cease nonessential operations at physical
7 locations in the county; [and] prohibiting all non-essential gatherings of any number of
8 individuals....”

9
10 43. The order mandated what is commonly called “social distancing,” requiring
11 that people to stay home and a safe distance away from other people that are not their co-
12 habitants), and that only essential businesses were allowed to remain open, preventing
13 bars and nightclub-lounges from operating.

14
15 44. Violation of the San Francisco Order is a misdemeanor punishable by fine,
16 imprisonment, or both. (California Health and Safety Code § 120295, et seq.; California
17 Penal Code §§ 69, 148(a)(1); San Francisco Administrative Code section 7.17(b).)

18
19 45. The San Francisco closure order was consistent with the order of California
20 Governor Gavin Newsom, dated one day prior, March 15, 2020, similarly ordering the
21 closure of all bars and nightclubs in the state (the “Closure Orders”).

22
23 46. The Closure Orders mandated the loss of use of the CTT’s property, which was
24 the sole cause of the interruption of its business income.

25
26 47. If CTT did not suffer the property loss at issue, and sustain the disruption in
27 business income, it would be committing a misdemeanor and violating the mandates of
28 the social distancing orders that were in effect across the Bay Area at the time of the loss.

1 48. The resulting loss of use of the Property was in compliance with the
2 government's orders only. CTT would otherwise have stayed open and continued to
3 operate under the guidance of the Centers for Disease Control.
4

5 **The Covered Loss.**

6 49. CTT closed March 11, 2020 as a result of the above government orders.

7 50. CTT made a timely claim on its policy when it suffered the above catastrophic
8 loss of business income and related expenses incurred.

9 51. While some businesses were later able to resume partial re-opening, this was
10 not the case for CTT, which has remained unable to use its Property through the present
11 day – again as a result only of the government orders.
12

13 52. On April 22, 2020, some six (6) weeks after the claim was made, the
14 Defendant insurance companies that accepted each and every monthly premium from the
15 Plaintiff (these companies shall be collectively referred to herein as "BERKLEY"), refused
16 to adhere to the plain language of its policy and issued a written denial of the claim. See
17 **Exhibit B.**

18 53. The denial cited most of the Policy verbatim, and concluded that "*Great Divide*
19 *must hereby decline coverage to CTT in this matter as there is no claim being made for*
20 *direct physical loss or damage to property. Also, the Exclusion of Loss Due to Virus or*
21 *Bacteria, endorsement CP 01 40 07 06, specifically applies to preclude coverage in this*
22 *matter. The other exclusions cited above may also apply.* "
23

24 54. On May 15, 2020, Plaintiff requested BERKLEY review its denial and pointed
25 to the relevant provisions and definitions, explaining that
26

27 CTT properly submitted a Business Income (and Extra Expense) claim with the
28 Covered Cause of Loss being "Civil Authority." As you know, Civil Authority

1 coverage is triggered when a governmental body (the City and County of San
2 Francisco) restricts access to the policyholder's property. The City's mandate is the
3 cause of CTT's loss of access to its property and subsequent business interruption,
4 not a virus or bacteria. Therefore, the CTT's loss is covered and CTT should be
5 compensated in full per the terms of Berkley Entertainment's policy.

6 CTT has experienced a "direct physical loss" and has appropriately filed a claim for
7 this loss. As such, it is Berkley Entertainment's responsibility to insure CTT against
8 this loss. The definition of "Property Damage" is not limited to physical damage and
9 includes instances where the property may not be used for its insured purpose. The
10 applicable definition from Section V very specifically makes this point: "*17. Property
11 Damage means: b. Loss of use of tangible property that is not physically injured. All
12 such loss of use shall be deemed to occur at the time of the "occurrence" that caused
13 it.*" While CTT's leased property has not been damaged, it is entirely inaccessible,
14 and therefore CTT has lost use of the property and cannot generate business income.
15 This loss of use is considered "Property Damage" under CTT's policy and CTT has
16 made a claim for recovery accordingly.

17 The Exclusion of Loss Due to Virus or Bacteria does not apply because the reason
18 that the loss of use occurred has nothing to do with any virus or bacteria. Unlike
19 what is stated in your letter, COVID-19 is not the "occurrence" in this situation.

20 The term "occurrence" in Section V.13. is very narrowly defined, but the "occurrence"
21 in question is not a virus or bacteria. Despite the existence of COVID-19, CTT could
22 have continued to operate before the City of San Francisco mandated the closure of
23 all non-essential businesses. This closure included CTT's insured property and is the
24 cause of the loss of business income that CTT has experienced. No member of CTT's
25 staff or performers became ill with a virus or bacteria and, were it not for the City of
26 San Francisco's mandate preventing CTT from accessing its property, could reopen
27 and perform today.

28 (See **Exhibit C**),

55. On June 4, 2020, BERKELY re-affirmed its denial of the claim. See **Exhibit**

D.

56. Despite the timely, good faith monthly payment of insurance premiums for a
policy that included coverage for situations just like the present one, this non-profit was
forced to close and lose 100% of its income and was unable to fulfill tickets sold and to pay
its contract comedians - as though they had no insurance at all.

1 57. Insurance companies like the Defendant here, are denying these types of
2 claims across the country, claiming no physical damage has occurred so the policy terms
3 are not applicable, or that the ambiguous virus exclusions overlay all other aspects of the
4 Policy and its definitions to bar any related claim(s).

5
6 58. Here, however, the Policy that covered TCC provides coverage for either
7 physical loss of OR damage to, the covered Property, while the loss of use and damage to
8 Plaintiff's Property were not caused by a virus, rather, they were caused as a result of
9 government orders. Indeed, the orders at issue here are in direct conflict with government
10 orders from other states and areas within California, as well as the federal government's
11 approach of not requiring social distancing at all - thus were arbitrary themselves.

12
13 59. The Plaintiff suffered both loss of use of, and damage to its Property according
14 to the definition of the Policy itself.

15 60. Nonetheless, BERKLEY denied the claims notwithstanding the plain
16 language of the Policy, and they did (i) in bad faith, (ii) fraudulently, and (ii) in violation of
17 California law.

18
19 61. Here, beginning in March 2020, CTT had to totally, suspend its operations
20 and as a result, suffered a direct physical loss of its property, and this was as a result of
21 the Closure Orders issued by a Civil Authority, a covered loss.

22 62. Under California law, the clause at issue in the policy here has been litigated.

23 63. Where there is coverage when a suspension of operations is caused by either
24 the "direct physical loss of or damage to the property," the words OF and OR are each
25 pivotal.
26
27
28

1 64. There is as a result, no requirement that the loss of use “of” the property, be
2 accompanied by physical damage to the property for the coverage to be operative. It need
3 only be one or the other – physical loss “of” OR damage “to.”

4 65. In *Total Intermodal Servs. v. Travelers Prop. Cas. Co. of Am.*, 2018 U.S. Dist.
5 LEXIS 216917, *11, the court held that the phrase “direct physical loss of” should be
6 construed differently from ‘direct physical loss to’ or ‘direct physical loss’.[...and that] the
7 phrase ‘loss of’ includes the permanent dispossession of something.”

8 66. There is no requirement that the “dispossession” or loss of use is permanent,
9 absent limiting policy language. That is, loss of use is different than loss of property.
10 *Collin v. American Empire Ins. Co.*, 21 Cal. App. 4th 787, 814.

11 67. Moreover, the law supports the interpretation that there is a direct physical
12 loss when the property is rendered unusable by the insured.

13 68. For instance, in *General Mills, Inc, v Gold Medal Ins.*, 2001 Minn App LEXIS
14 139 (Feb. 6, 2001), the court determined that the requirement for "direct physical loss or
15 damage" was met in the absence of tangible injury when government regulations rendered
16 cereal unfit for sale, resulting in "an impairment of function and value" of insured
17 property.
18
19
20

21 69. Similarly, in *American Guarantee & Liability Ins. Co. v Ingram Micro, Inc.*,
22 2000 U.S. Dist LEXIS 7299 (DC Ariz), the Arizona District Court held that the term
23 "physical damage" included "loss of access, loss of use, and loss of functionality" of
24 computer equipment during the loss of power (even though the computers were not
25 technically damaged).
26
27
28

1 70. As such, the denial of its claim and loss was made in error, and business
2 interruption income and expense coverage should be extended.

3 71. This business has paid its premiums in good faith and it has avoided making
4 claims to date, instead working and supporting the community and being a responsible
5 small business – the type of business that should be protected and supported in these
6 times.
7

8 72. It was ordered to cease operations, it did, and it has suffered a business
9 income loss, which it in good faith has relied on its insurance company to cover.

10 73. We are prepared to prove the amount of the loss, which is estimated to be
11 approximately \$60,000-\$100,000 per month that the business was fully shuttered.
12

13 **CLAIM ONE**
14 **Breach of Contract**
 Against All DEFENDANTS

15 74. PLAINTIFF incorporates herein by this reference the allegations contained in
16 above paragraphs as if stated in full.

17 75. At all times relevant, Plaintiff has paid all premiums and performed all of its
18 obligations under the Policy.

19 76. BERKLEY has a contractual duty to provide Plaintiff with insurance coverage
20 under specified provisions of the Policy, as alleged by Plaintiff herein.
21

22 77. In denying Plaintiff's insurance claim, BERKLEY breached that duty.

23 78. As a result of that breach, Plaintiff has been damaged in the amount of
24 coverage to which it is entitled under the Policy, and in an amount to be proved at trial,
25 and for which Plaintiff seeks compensatory damages with interest thereon.
26

27 79. WHEREFORE PLAINTIFF prays for judgment as set forth below.
28

CLAIM TWO
Breach of Covenant of Good Faith and Fair Dealing
Against all DEFENDANTS

1
2
3 80. PLAINTIFF incorporates herein by this reference the allegations contained in
4 above paragraphs as if stated in full.

5
6 81. When BERKLEY issued the Policy, they undertook and were bound to the
7 covenants implied by law that they would deal fairly and in good faith with Plaintiff, and
8 not to engage in any acts, conduct, or omissions that would impair or diminish the rights
9 and benefits due Plaintiff, according to the terms of the Policy.

10
11 82. Upon information and belief, BERKLEY breached the implied covenant of
12 good faith and fair dealing arising out of Policy by, unreasonably and in bad faith, denying
13 Plaintiff's insurance coverage to which it is entitled under the Policy.

14
15 83. In committing the above-referenced breach, BERKLEY intended to and did
16 vex, damage, annoy, and injure Plaintiff.

17
18 84. Said conduct was intentional, willful, and with conscious disregard of
19 Plaintiff's rights, and was malicious, oppressive and/or fraudulent under California Civil
20 Code section 3294, thereby entitling Plaintiff to punitive and exemplary damages against
21 the BERKLEY Defendant.

22
23 85. As a direct and proximate result of the above-referenced breach, Plaintiff has
24 had to retain attorneys to enforce its right to the insurance coverage to which it is entitled
25 under the Policy and has thereby been injured and damaged.

26
27 86. Plaintiff therefore, are entitled to recover and seeks in connection with this
28 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,

1 and other incidental damages and out-of-pocket expenses, plus interest, in an amount to
2 be determined at trial; (b) punitive and exemplary damages in an amount to be
3 determined at trial; (c) Plaintiff's costs of suit; and (d) Plaintiff's reasonable attorney's
4 fees in connection with this action.

5
6 **CLAIM THREE**
7 **Bad Faith Denial Of Insurance Claim and Termination of Coverage**
8 **Against All DEFENDANTS**

9 87. Plaintiff re-alleges and incorporates by reference into this cause of action all
10 allegations set forth in this Complaint as though fully set forth herein.

11 88. Defendants have put their own interests above those of Plaintiff and have, in
12 bad faith, failed or refused to perform their obligations under the Policy and under the
13 laws of California.

14 89. Defendants denied Plaintiff's claim in bad faith by, among other conduct, (a)
15 failing or refusing to perform a fair, objective, and thorough investigation of the claim as
16 required by the California Insurance Code; (b) asserting coverage defenses that were
17 legally and/or factually invalid and thereby delaying resolution of Plaintiff's claims; (c)
18 placing unduly restrictive interpretations on the Policy terms for the purpose of denying
19 coverage due under the Policy; (d) failing to give Plaintiff's interests equal consideration
20 with its own; and (e) forcing Plaintiff to institute litigation to recover amounts due under
21 the Policy.
22

23 90. Plaintiff recently learned that after filing this claim and action, Defendant
24 has terminated its coverage.
25

26 91. Plaintiff alleges on information and belief that there are numerous other
27 individuals and groups insured by Defendants who were or are similarly situated to
28

1 Plaintiff and who are also being denied benefits under the same unlawful and non-
2 applicable policy provisions and/or exclusions being applied to Plaintiff.

3 92. At such time as Plaintiff learns the names of such persons, Plaintiff may seek
4 leave of court to join such persons as plaintiffs in this action.

5 93. Based on the above, Plaintiff alleges that Defendants have committed
6 institutional bad faith that is part of a repeated pattern of unfair practices and not an
7 isolated occurrence. The pattern of unfair practices constitutes a conscious course of
8 wrongful conduct that is firmly grounded in Defendants' established company policy.
9

10 94. As a proximate result of the aforementioned bad faith conduct by Defendants,
11 Plaintiff has suffered and will continue to suffer damages.
12

13 95. These damages include interest on the withheld and unreasonably delayed
14 payments due under the Policy and other special economic and consequential damages, of
15 a total amount to be shown at trial.

16 96. As a further proximate result Defendants' bad faith conduct, Plaintiff was
17 compelled to retain legal counsel to obtain the benefits due under its Policy.
18

19 97. Therefore, Defendants are liable to Plaintiff for those attorney fees, witness
20 fees, and costs of litigation reasonably necessary and incurred by Plaintiff in order to
21 obtain the benefits of the Policy.
22

23 98. Defendants carried out their bad-faith conduct with a willful and conscious
24 disregard of Plaintiff's rights or subjected Plaintiff to cruel and unjust hardship in
25 conscious disregard of its rights.

26 99. Alternatively, Defendants' conduct constituted an intentional
27 misrepresentation, deceit, or concealment of a material fact known to Defendants with the
28

1 intention of depriving Plaintiff of property or legal rights, or of causing Plaintiff other
2 injury.

3 100. Defendants' conduct constitutes malice, oppression, or fraud under California
4 Civil Code section 3294, entitling Plaintiff to punitive damages in an amount appropriate
5 to punish or set an example of Defendants and to deter future similar conduct.
6

7 **CLAIM FOUR**
8 **Unfair Business Practices Under Bus. & Prof. Code § 17200, Et. Seq.**
9 **Against All DEFENDANTS**

10 101. Plaintiff re-alleges and incorporates by reference into this cause of action all
11 allegations set forth in this Complaint as though fully set forth herein.

12 102. California's Unfair Competition Law, as codified by California Business &
13 Professions Code sections 17200, et seq., protects both consumers and competitors by
14 promoting fair competition in commercial markets for goods and services. California's
15 Unfair Competition Law is interpreted broadly and provides a cause of action for any
16 unlawful, unfair, or fraudulent business act or practice. Any unlawful, unfair, or
17 fraudulent business practice that causes injury to consumers falls within the scope of
18 California's Unfair Competition Law.
19

20 103. Defendants' acts and practices, as described herein, constitute unlawful or
21 unfair business practices against Plaintiffs in violation of California Business and
22 Professions Code section 17200, et seq.
23

24 104. These acts include but are not limited to charging Plaintiff premiums in
25 exchange for purported coverage for business income losses without any intention of
26 satisfying those claims in the most critical of times when Plaintiff needed the coverage
27 most.
28

1 105. Any claimed justification for Defendants' conduct is outweighed by the gravity
2 of the consequences to Plaintiff.

3 106. Defendants' acts and practices are immoral, unethical, oppressive,
4 unconscionable, or substantially injurious to Plaintiffs, and/or have a tendency to deceive
5 Plaintiff.

6 107. By reason of Defendant's fraudulent, deceptive, unfair, and other wrongful
7 conduct as alleged herein, said Defendant violated California Business and Professions
8 Code sections 17200, et seq., by consummating an unlawful, unfair, and fraudulent
9 business practice, designed to deprive Plaintiff of the benefits of Defendants' financial
10 products and services.

11 108. Defendants perpetrated these acts and practices against Plaintiff, and as a
12 direct and proximate result of the foregoing, Plaintiff has suffered and continue to suffer
13 damages in a sum which is, as of yet, unascertained.

14 109. Pursuant to California Business and Professions Code section 17203,
15 Plaintiffs are entitled to restitution of all the monies paid to Defendants for retaining
16 benefits that were due and owing to Plaintiff (with interest thereon), to disgorgement of
17 all Defendants' profits arising out of their unlawful conduct (with interest thereon), and to
18 be paid benefits due to Plaintiff under the Policy that Defendants wrongfully retained by
19 means of its unlawful business practices.

20 110. Pursuant to California Code of Civil Procedure section 1021.5, Plaintiff is
21 entitled to recover their reasonable attorney's fees in connection with Defendants' unfair
22 competition claims, the substantial benefit doctrine, and/or the common fund doctrine.
23
24
25
26
27
28

1 **CLAIM FIVE**
2 **Declaratory Relief**
3 **California Code of Civil Procedure § 1062**
4 **Against All DEFENDANTS**

5 111. Plaintiff re-alleges and incorporates by reference into this cause of action all
6 allegations set forth in this Complaint as though fully set forth herein.

7 112. Under California Code of Civil Procedure section 1060, et seq., the court may
8 declare rights, duties, statuses, and other legal relations, regardless of whether further
9 relief is or could be claimed.

10 113. An actual controversy has arisen between Plaintiff and Defendants as to their
11 respective rights and obligations/duties under the Policy.

12 114. Resolution of the parties' respective rights and duties under the Policy by
13 declaration of the Court is necessary, as there exists no adequate remedy at law.

14 115. Plaintiff alleges and contends, with respect to the Policy's Civil Authority
15 coverage, that each of the Closure Orders triggers that coverage because (a) each of the
16 Closure Orders is an order of a civil authority, (b) each of the Closure Orders specifically
17 prohibits access to the insured property by prohibiting all potential on-premises dining
18 customers and workers from accessing it, (c) said prohibition of access by each of the
19 Closure Orders has been continuous and ongoing since the Orders were issued, such that
20 access has not subsequently been fully permitted, (d) each of the Closure Orders prohibits
21 said access as the direct result of a Covered Cause of Loss (i.e., a risk of direct physical
22 loss of property) in the immediate area of the insured property, (e) no Policy coverage
23 exclusions or limitations apply to exclude or limit coverage, (f) Plaintiff has suffered actual
24 and covered loss of Business Income in an amount to be determined at trial, and (g)
25 coverage should begin as of March 13, 2020.
26
27
28

1 116. Plaintiffs allege and contend that the Policy's Lost Business Income and Extra
2 Expense Coverage is triggered because (a) Plaintiff has sustained actual loss of Business
3 Income due to the closure of CTT Lounge, (b) said closure constitutes a necessary
4 suspension of its operations under the Policy, (c) this suspension has been and is caused
5 by direct physical loss of or physical damage to property at the insured premises, and (d)
6 some or all of the period of Plaintiff's closure is within the period of restoration under the
7 Policy.
8

9 117. Plaintiff alleges and contends that the Policy's Business Income for Essential
10 Personnel Coverage is triggered with respect to each of its full-time employees that it had
11 no choice but to let go on or about March 13, 2020, as a direct, proximate, and inevitable
12 result of the issuance and maintenance of the Closure Orders.
13

14 118. Plaintiff alleges and contends that the Policy's Extended Business Income
15 coverage applies or will apply for substantially the same reasons as those set forth above.
16

17 119. Plaintiff alleges and contends that BERKLEY wrongly denied coverage with
18 respect to all the foregoing provisions.

19 120. Upon information and belief, Plaintiff alleges that Defendants dispute and
20 deny each of Plaintiffs' contentions set forth in this Cause of Action.

21 121. Plaintiff, therefore, seeks a declaratory judgment regarding each of Plaintiffs'
22 contentions set forth in this Cause of Action.
23

24 122. A declaratory judgment determining that Plaintiffs are due coverage under
25 the Policy, as set forth above, will help to ensure the survival of its business during this
26 prolonged closure made necessary by the Closure Orders and the ongoing direct physical
27 loss of the use of the insured premises.
28

CLAIM SIX
Injunctive Relief
Against All DEFENDANTS

1
2
3 123. Plaintiff re-alleges and incorporates by reference into this cause of action all
4 allegations set forth in this Complaint as though fully set forth herein.

5
6 124. Upon information and belief, Plaintiff alleges that, unless enjoined by order of
7 the Court, Defendants will continue to operate their companies for their sole benefit and
8 to the detriment of Plaintiff.

9 125. No adequate remedy exists at law for the injuries alleged herein, and
10 Plaintiff will suffer great and irreparable injury if Defendants' conduct is not immediately
11 enjoined and restrained.

12
13 126. Defendants wrongfully denied Plaintiff's insurance claim based on erroneous
14 interpretations of the Policy in order avoid their financial obligations to Plaintiff
15 thereunder.

16 127. Given the extended time period of the Closure Orders and the physical loss,
17 Plaintiffs has and will almost certainly continue to have similar insurance claims in the
18 future, and Defendants will almost certainly apply the same or similar erroneous
19 interpretations of the Policy to wrongfully deny coverage.

20
21 128. Indeed, a second closure order occurred December 2020, which Plaintiff has
22 suffered a loss of use of the Property as a result thereof.

23
24 129. If Defendants' conduct in this manner is not restrained and enjoined,
25 Plaintiffs will suffer great and irreparable harm, as it has already paid for the Policy in
26 full, and Defendants seem committed to continuing their unfair and unlawful business
27 practices of erroneously denying Plaintiff's claims.

1 130. Defendants will continue to act in their own self-interest and to commit the
2 acts that have damaged Plaintiff, and that continue to do so.

3 131. Plaintiffs have no adequate remedy at law for the threatened injury

4 WHEREFORE PLAINTIFF prays for judgment as set forth below.
5

6 1. For a declaration adopting each of Plaintiffs' contentions set forth in the above

7 2. Cause of Action for Declaratory Relief;

8 3. For injunctive relief enjoining and restraining Defendants' unlawful conduct
9 as alleged herein, including but not limited to their unfair and unlawful business practices
10 and their wrongful denials of coverage under the Policy;

11 4. For general and compensatory damages in an amount to be determined at
12 trial;

13 5. For exemplary and punitive damages in an amount to be determined at trial;

14 6. For Plaintiffs' costs of suit;

15 7. For Plaintiffs' reasonable attorney's fees incurred in this action pursuant to
16 statute;

17 8. For pre-judgment interest on all other interest to which Plaintiffs are entitled;
18 and

19 9. For such other relief as the Court may deem proper.

20 DATED: February 3, 2021

Respectfully submitted,

AUSTIN LAW GROUP

21
22
23
24 By: 

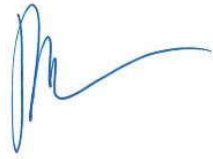
Julien Swanson, Esq.
Attorney for Plaintiff CTT

JURY TRIAL DEMAND

PLAINTIFF hereby demands a trial by jury on all issues so triable in this action.

DATED: February 3, 2020

Respectfully submitted,
AUSTIN LAW GROUP



By: _____
Julien Swanson, Esq.
Attorney for Plaintiff CTT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28