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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CTT COMEDY,
Plaintiff,

v.

NAUTILUS INSURANCE COMPANY,
Defendant.

Case No. 21-cv-03064-SK

**ORDER GRANTING MOTION TO
DISMISS**

Regarding Docket No. 8

This action was removed from San Francisco superior Court on April 27, 2021. (Dkts. 1, 5.) On May 4, 2021, Defendant filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (Dkt. 8.) Defendant noticed the motion for a hearing on June 21, 2021. (*Id.*) Plaintiff opposed the motion. (Dkt. 16.) However, the Court vacated the motion hearing and took the motion under submission on the papers pursuant to Civil Local Rule 7-1(b). (Dkt. 22.) All parties have consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636. (Dkts. 14, 15.) Having considered the submissions of the parties, the record in the case, and the relevant legal authorities, the Court HEREBY GRANTS Defendant’s motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), for the reasons set forth below.

BACKGROUND

Plaintiff CTT Comedy (“Plaintiff”) is the California non-profit entity that runs San Francisco comedy club Cheaper Than Therapy (the “Club”). (Dkt. 5-1 ¶ 1.) Plaintiff secured and maintained a comprehensive all risk insurance policy (the “Policy”) underwritten by Defendant Nautilus Insurance Company (“Defendant”), an Arizona stock corporation. (Dkt. 5-1 ¶¶ 3-4, 10, Ex. A.) Plaintiff alleges that local and state authorities mandated the closure of the Club due to the COVID-19 pandemic (“COVID-19”) in March 2020. (*Id.* ¶¶ 39-45.) In particular, on March 15, 2020, California Governor Gavin Newsom ordered all bars, nightclubs, wineries, and brewpubs to

United States District Court
Northern District of California

1 close, and on March 16, 2020, the San Francisco Department of Public Health issued a written
 2 order, *Order of the Health Officer No. C19-07*, which in part required “all businesses and
 3 governmental agencies to cease nonessential operations at physical locations in the county” and
 4 prohibited “all nonessential gatherings of any number of individuals.” (*Id.* ¶¶ 41-42.) Plaintiff
 5 closed the Club on March 11, 2020, as a result of COVID-19 and the closure orders (the “Stay-at-
 6 Home Orders”). (*Id.* ¶ 49.) Plaintiff made a claim for its COVID-19 closure-related losses on the
 7 Policy. (*Id.* ¶ 50.) Defendant issued a written denial of the claim on April 22, 2020. (*Id.* ¶ 52, Ex.
 8 B.) On May 15, 2020, Plaintiff requested a review of the denial. (*Id.* ¶ 54.) On June 4, 2020,
 9 Defendant affirmed its denial of the claim. (*Id.* ¶ 55, Ex. D.)

10 Plaintiff claims that it suffered loss of use and damage to its property under the definitions
 11 set forth in the Policy. (*Id.* ¶ 59.) Plaintiff brings claims against Defendant for its denial of
 12 coverage, including for breach of contract, breach of the implied covenant of good faith and fair
 13 dealing, bad faith denial of insurance claim and termination of coverage, and unfair business
 14 practices. (*Id.* ¶¶ 74-110.) Plaintiff seeks declaratory relief, injunctive relief, damages, and fees.
 15 (*Id.*) The provisions of the Policy that Plaintiff argues require coverage of losses related to
 16 COVID-19 read as follows, in relevant part:

17 **A. COVERAGE**

18 We will pay for direct physical loss of or physical damage to Covered
 19 Property at the premises described in the Declarations caused by or
 resulting from any Covered Cause of Loss. [...]

20 **3. Causes of Loss – Special Form**

21 **A. Covered Causes of Loss.**

22 [...] Covered Causes of Loss means direct physical loss unless the
 23 loss is excluded or limited in this policy.

24 **B. Exclusions.**

25 [...]

26 **4. Special Exclusions.**

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a. Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form, Or Extra Expense Coverage Form

Business Income (And Extra Expense) Coverage Form

A. Coverage.

1. Business Income.

[...] We 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 premises which are described in the Declarations [...] The loss or damage must be caused by or result from a Covered Cause of Loss.

5. Additional Coverages.

a. Civil Authority.

[...] When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense Caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

- (1) access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
- (2) the action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

[...]

c. Extended Business Income

(1) If the necessary suspension of your “operations” produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:

- (a)** Begins on the date property is actually repaired, rebuilt or replaced and “operations” are resumed; . . .

[...]

F. Definitions.

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- 3. “Period of Restoration” means the period of time that:
 - a. Begins
 - (1) **72 hours after the time of direct physical loss or damage for Business Income Coverage;**
 - (2) immediately after the time of direct physical loss or damage for Extra Expense Coverage;
- Caused by or resulting from any Covered Cause of Loss at the described premises; and
- b. ends on the earlier of:
 - (1) the date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
 - (2) the date when business is resumed at a new permanent location.

[...]

Exclusion of Loss Due to Virus or Bacteria

[...]

B. We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.

[...]

4. “Extra Expense” means necessary and reasonable expenses you incur to avoid or minimize the suspension of business that you would not have incurred if there had been no direct physical loss or damage caused by or resulting from a Covered Cause of Loss.

(Dkt. 5-1 (Ex. A.))

DISCUSSION

A. Legal Standards.

Defendant brings its motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). Rule 12(b)(6) authorizes a motion to dismiss where the pleadings fail to state a claim upon which relief can be granted. When considering a motion to dismiss under Rule 12(b)(6), the Court construes the allegations in the complaint in the light most favorable to the non-moving party and takes as true all material allegations in the complaint. *Sanders v. Kennedy*, 794 F.2d 478, 481 (9th Cir. 1986). Even under the liberal pleading standard of Rule

1 8(a)(2), “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires
2 more than labels and conclusions, and a formulaic recitation of the elements of a cause of action
3 will not do.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citing *Papasan v. Allain*,
4 478 U.S. 265, 286 (1986)). Rather, a plaintiff must instead allege “enough facts to state a claim to
5 relief that is plausible on its face.” *Id.* at 570.

6 “The plausibility standard is not akin to a probability requirement, but it asks for more than
7 a sheer possibility that a defendant has acted unlawfully. . . . When a complaint pleads facts that
8 are merely consistent with a defendant’s liability, it stops short of the line between possibility and
9 plausibility of entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting
10 *Twombly*, 550 U.S. at 557) (internal quotation marks omitted). If the allegations are insufficient to
11 state a claim, a court should grant leave to amend, unless amendment would be futile. *See, e.g.*,
12 *Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990); *Cook, Perkiss & Lieche, Inc. v. N.*
13 *Cal. Collection Serv., Inc.*, 911 F.2d 242, 246-47 (9th Cir. 1990).

14 “A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for
15 all purposes.” Fed. R. Civ. P. 10(c). When deciding a motion to dismiss, the district court must
16 limit itself to the evidence in the pleadings or convert the Rule 12(b)(6) motion into a Rule 56
17 motion for summary judgment. *United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003). In
18 weighing a motion to dismiss, courts may consider “certain materials – documents attached to the
19 complaint, documents incorporated by reference in the complaint, or matters of judicial notice –
20 without converting the motion to dismiss into a motion for summary judgment.” *Id.* at 908 (citing
21 *Van Buskirk v. CNN*, 284 F.3d 977, 980 (9th Cir. 2002); *Barron v. Reich*, 13 F.3d 1370, 1377 (9th
22 Cir. 1994); 2 James Wm. Moore et al., *Moore’s Federal Practice* § 12.34[2] (3d ed. 1999)). Even
23 where a document is not attached to a complaint, it may be incorporated by reference if the
24 plaintiff extensively refers to the document or the document forms the basis for the plaintiff’s
25 claim. *Id.*; *Van Buskirk*, 284 F.3d at 980.

26 Under California law, “interpretation of an insurance policy is a question of law that is
27 decided under settled rules of contract interpretation.” *State v. Continental Ins. Co.*, 55 Cal. 4th
28 186, 195 (2012). “The fundamental goal of contractual interpretation is to give effect to the

1 mutual intention of the parties.” *Bank of the West v. Super. Ct.*, 2 Cal. 4th 1254, 1264 (1992).
 2 “Such intent is to be inferred, if possible, solely from the written provisions of the contract.” *AIU*
 3 *Ins. Co. v. Super. Ct.*, 51 Cal. 3d 807, 822 (1990). “If contractual language is clear and explicit, it
 4 governs.” *Bank of the West*, 2 Cal. 4th at 1264. Courts must interpret coverage clauses “broadly
 5 so as to afford the greatest possible protection to the insured” and interpret “exclusionary clauses .
 6 . . . narrowly against the insurer.” *State Farm Mut. Auto. Ins. Co. v. Partridge*, 10 Cal.3d 94, 101-
 7 02 (1973). Any doubt must be resolved in the insured’s favor. *Horace Mann Ins. Co. v. Barbara*
 8 *B.*, 4 Cal.4th 1076, 1081 (1993).

9 **B. Analysis.**

10 The Court interprets the policy under California law to determine whether Plaintiff has
 11 stated a plausible claim for relief. In so doing, the Court concludes that Plaintiff has not shown
 12 coverage under the relevant insurance contract provisions. *See Aydin Corp v. First State Ins. Co.*,
 13 18 Cal. 4th 1183, 1188 (1998).

14 **1. Coverage for Direct Physical Loss.**

15 Plaintiff’s losses due to COVID-19 do not constitute a direct physical loss within the plain
 16 meaning of the Policy, and thus the losses do not qualify for coverage. Numerous courts have
 17 considered whether allegations similar to Plaintiff’s constitute a “direct physical loss of . . .
 18 property, and the overwhelming majority have concluded that temporarily closing a business due
 19 to government closure orders during the pandemic does not constitute a direct loss of property
 20 under insurance policies with the same coverage provision. *See, e.g., 10E, LLC v. Travelers*
 21 *Indem. Co. of Connecticut*, --- F. Supp. 3d ---, 2020 WL 5359653, at *4-5 (C.D. Cal. Sept. 2,
 22 2020) (“An insured cannot recover by attempting to artfully plead temporary impairment to
 23 economically valuable use of property as physical loss or damage.”); *Pappy’s Barber Shops, Inc.*
 24 *v. Farmers Grp., Inc.*, --- F. Supp. 3d ---, 2020 WL 5500221, *4-5 (S.D. Cal. Sept. 11, 2020)
 25 (“*Pappy’s P*”) (“Most courts have rejected these claims, finding that the government orders did not
 26 constitute direct physical loss or damage to property.”); *Mudpie, Inc.*, --- F.Supp.3d ---, 2020 WL
 27 5525171, *4 (N.D. Cal. Sept. 14, 2020); *Mark’s Engine Co. No. 28 Rest., LLC v. Travelers*
 28 *Indem. Co. of Connecticut*, --- F. Supp. 3d ---, 2020 WL 5938689, at *3-5 (C.D. Cal. Oct. 2,

2020); *Seifert v. IMT Ins. Co.*, --- F. Supp. 3d ---, 2020 WL 6120002, *3 (D. Minn. Oct. 16, 2020);
Hillcrest Optical, Inc. v. Cont'l Cas. Co., --- F. Supp. 3d ---, 2020 WL 6163142, *6-8 (S.D. Ala.
 Oct. 21, 2020); *Real Hosp., LLC v. Travelers Cas. Ins. Co. of Am.*, --- F. Supp. 3d ---, 2020 WL
 6503405, *5-8 (S.D. Miss. Nov. 4, 2020); *Water Sports Kauai, Inc. v. Fireman's Fund Ins. Co.*, ---
 F. Supp. 3d ---, 2020 WL 6562332, at *5-7 (N.D. Cal. Nov. 9, 2020); *Palmer Holdings &*
Investments, Inc. v. Integrity Ins. Co., --- F. Supp. 3d ---, 2020 WL 7258857, *8-11 (S.D. Iowa
 Dec. 7, 2020); *Michael Cetta, Inc. v. Admiral Indem. Co.*, --- F. Supp. 3d ---, 2020 WL 7321405,
 *6-11 (S.D.N.Y. Dec. 11, 2020) (“nearly every court to address this issue has concluded that loss
 of use of a premises due to a governmental closure order does not trigger business income
 coverage premised on physical loss to property.”)

As the court in *Mudpie* explained, the terms “direct physical loss of . . . property” requires
 either a physical change in the condition of the property or a permanent dispossession. 2020 WL
 5525171, at *4. *Mudpie* could regain possession of its storefront when the Stay-at-Home Orders
 are lifted, and neither its physical storefront nor inventory had been “misplaced” or become
 “unrecoverable.” Therefore, the court concluded that it had not suffered a direct physical loss of
 property. *Id.* The court noted that surrounding provisions in the insurance policy confirmed this
 interpretation. *Id.* (citing *Sony Comput. Entertain. Amer. Inc. v. Amer. Home Assur. Co.*, 532 F.3d
 1007, 1012 (9th Cir. 2008) (“The terms in an insurance policy must be read in context and in
 reference to the policy as a whole, with each clause helping to interpret the other.”)):

The insurance policy states that the “period of restoration” –
 applicable to both Business Income and Extra Expense coverage –
 “[b]egins 24 hours after the time of direct physical loss or damage”
 and “[e]nds on the date when the property . . . should be repaired,
 rebuilt or replaced with reasonable speed and similar quality.”
 The words “[r]ebuild,’ ‘repair’ and ‘replace’ all strongly suggest that
 the damage contemplated by the Policy is physical in nature.”
Philadelphia Parking Auth. v. Fed. Ins. Co., 385 F. Supp. 2d 280, 287
 (S.D.N.Y. 2005). But here, there is nothing to fix, replace, or even
 disinfect for *Mudpie* to regain occupancy of its property,

Id.; see also *Water Sports Kauai*, 2020 WL 6562332, at *6 (N.D. Cal. Nov. 9, 2020) (“The cases
 consistently conclude that there needs to be some *physical* tangible injury (like a total deprivation
 of property) to support “loss of property” or a *physical* alteration or active presence of a

1 contaminant to support “damage to” property.”) (emphasis in original); *Real Hospitality*, 2020 WL
2 6503405 (interpreting “loss of” prong in “direct physical loss of or damage to” to mean total
3 dispossession of property); *Hillcrest Optical*, 2020 WL 6163142, *6-8 (temporary inability to use
4 property due to governmental intervention did not constitute a direct physical loss of property,
5 noting “there is a difference between a loss of physical possession and a loss of use”).

6 As another court observed, the insured business did not suffer complete “direct physical
7 loss of” its property from the governmental order because “it always had complete access to the
8 premises even after the order was issued.” *Mark’s Engine*, 2020 WL 5938689, at *5. While
9 perhaps customers could potentially claim “direct physical loss of” access to the premises,
10 customers were not the insured entity; the policy was between the business and the insurance
11 company, not the customers and the insurance company. *Id.*

12 Other court have cautioned that interpreting “direct physical loss of property” to include
13 changes to what activities can physically occur in the space would be a “sweeping expansion of
14 insurance coverage without any manageable bounds.” *Plan Check Downtown III, LLC v.*
15 *AmGuard Ins. Co.*, 2020 WL 5742712, at *6 (C.D. Cal. Sept. 10, 2020); *see also Mark’s Engine*,
16 2020 WL 5938689, at *4 (“such an interpretation of any insurance policy would be without any
17 manageable bounds.”). The court in *Plan Check* provided different scenarios which would be
18 included if “physical loss” included mere changes in permitted physical activities:

19 (1) a city changes its maximum occupancy codes to lower the caps,
20 meaning that a particular restaurant can no longer seat as many
21 customers as it used to; (2) a city amends an ordinance requiring
22 restaurants located in residential zones to cease operations between
23 1:00 a.m. and 5:30 a.m. to expand the window to 12:00 a.m. to 6:00
24 a.m.; (3) a city issues a mandatory evacuation order to all of its
25 residents due to nearby wildfires (a consequence of this is that all
26 businesses must suspend operations), but lifts the order three weeks
27 later when the wildfires are extinguished without, fortunately, any
28 destruction of property.

2020 WL 5742712, at *6.

The Court finds these cases persuasive and similarly finds that direct physical loss of
property does not include the temporary loss of use due to the governmental Stay-at-Home Orders.
Notably, Plaintiff does not allege that it lost access to the properties, but merely that it was not

1 allowed to operate its business out of the properties. *Mark's Engine*, 2020 WL 5938689, at *5
2 (finding insured business did not suffer complete “direct physical loss of” its property because “it
3 always had complete access to the premises even after the order was issued.”).

4 The Court is further persuaded by the language in the business income provision providing
5 that business income is covered for the “period of restoration.” (Dkt. 5-1 (Ex. A).) The Policy
6 defines “period of restoration” as beginning on the date of direct physical loss and ending when
7 the property “should be repaired, rebuilt or replaced . . .” (*Id.*) There are no repairs or
8 replacements needed to be made here. Plaintiff may resume operating its business as soon as the
9 Stay-at-Home Orders are lifted. Interpreting direct physical loss of property to include Plaintiff’s
10 loss of use would render the language “period of restoration” meaningless.

11 Even if Plaintiff had included allegations regarding the virus being present on and
12 damaging the property, they would not be plausible. *Pappy's Barber Shops, Inc. v. Farmers*
13 *Group, Inc.*, --- F. Supp. 3d ---, 2020 WL 5847570, at *1 (S.D. Ca. Oct. 1, 2020) (“*Pappy's IP*”
14 (even assuming presence of virus at plaintiffs’ business premises, business income losses were
15 caused by precautionary measures taken by the state to prevent the spread of COVID-19 rather
16 than by direct physical loss of or damage to property); *Uncork & Create LLC v. Cincinnati Ins.*
17 *Co.*, --- F. Supp. 3d ---, 2020 WL 6436948, at *5 (S.D.W. Va. Nov. 2, 2020) (“no coverage
18 because “COVID-19 does not threaten the inanimate structures covered by property insurance
19 policies, and its presence on surfaces can be eliminated with disinfectant.”); *Terry Black's*
20 *Barbecue, LLC v. State Auto. Mut. Ins. Co.*, 2020 WL 7351246, at *7 (W.D. Tex. Dec. 14, 2020)
21 (same). The virus COVID-19 harms people, not property. *Uncork & Create*, 2020 WL 6436948,
22 at *5 (“In short, the pandemic impacts human health and human behavior, not physical
23 structures.”). Plaintiff does not and could not plausibly allege that its properties have been
24 physically damaged by the virus and that the virus’s physical damage to property caused its
25 business losses. Instead, Plaintiff alleges that the government orders to prevent the spread of
26 COVID-19 to people caused its business losses. Therefore, the Court finds that Plaintiff has not
27 and cannot allege direct physical loss of property as required under the Policy to recover business
28 income or extended business income.

1 **2. Civil Authority.**

2 The Policy also provides coverage for loss of business income sustained when a civil
3 authority prohibits access to the covered premises:

4 When a Covered Cause of Loss causes damage to property other
5 than property at the described premises, we will pay for the actual
6 loss of Business Income you sustain and necessary Extra Expense
7 Caused by action of civil authority that prohibits access to the
8 described premises, provided that both of the following apply:

- 9 (1) access to the area immediately surrounding the damaged
10 property is prohibited by civil authority as a result of the
11 damage, and the described premises are within that area but
12 are not more than one mile from the damaged property; and
- 13 (2) the action of civil authority is taken in response to dangerous
14 physical conditions resulting from the damage or continuation
15 of the Covered Cause of Loss that caused the damage, or the
16 action is taken to enable a civil authority to have unimpeded
17 access to the damaged property.

18 (Dkt. 5-1 (Ex. A).) Covered Causes of Loss must cause the damage resulting in closure by the
19 civil authority under this provision. In turn, Covered Causes of Loss are limited to direct physical
20 loss which are not excluded or limited, as described above. The Court finds that Plaintiff does not
21 allege and could not allege for the reasons discussed above that there was damage to property, as
22 required by this clause.

23 Instead, the Stay-at-Home Orders were issued to prevent the spread of COVID-19 to
24 *people*. See *Mudpie*, 2020 WL 5525171, at *7 (finding no coverage under civil authority
25 provision because government closure orders were intended to prevent the spread of COVID-19
26 and thus plaintiff failed to establish requisite causal link between damage to adjacent property and
27 denial of access to its store); *Pappy's II*, 2020 WL 5847570, at *1 (civil authority provision did
28 not apply because orders were precautionary measures taken to prevent the spread of COVID-19
and not issued as a result of loss or damage to property); *Mortar and Pestle Corp. v. Atain
Specialty Ins. Co.*, 2020 WL 7495180, at *5 (N.D. Cal. Dec. 21, 2020) (finding it was “apparent
from the plain language of the cited civil authority orders that such directives were issued to stop
the spread of COVID-19 and not as a result of any physical loss of or damage to property”).

1 **3. Virus Exclusion.**

2 Finally, as Plaintiff acknowledges, the Policy contains an express exclusion for loss caused

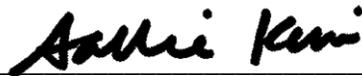
1 by virus or bacteria. The exclusion “applies to all coverage under all forms and endorsements”
 2 and states that the insurer “will not pay for loss or damage caused by or resulting from any virus,
 3 bacterium, or other microorganism that induces or is capable of inducing physical distress, illness
 4 or disease.” (Dkt. 5-1 (Ex. A).) This exclusion plainly applies to all coverage under the Policy
 5 and places losses due to a virus or bacteria outside the remit of the required coverage. *See, e.g.,*
 6 *LA County Museum of Nat. History Found. v. Travelers Indem. Co.*, No. 2:21-cv-01497-SVW-
 7 JPR, 2021 U.S. Dist. LEXIS 83317, at *11 (C.D. Cal. Apr. 15, 2021) (holding that identical virus
 8 exclusion barred recovery due to COVID-19-related public health orders); *Travelers Cas. Ins. Co.*
 9 *v. Geragos & Geragos*, No. CV 20-3619 PSG (Ex), 2021 WL 1659844, at *5-6 (C.D. Cal. Apr.
 10 27, 2021) (same); *Mayssami Diamond, Inc. v. Travelers Cas. Ins. Co. of Am.*, No. 3:20-cv-1230-
 11 AJB-RBB, 2021 WL 1226447 at *4 (S. D. Cal. Mar. 30, 2021) (same); *10E, LLC v. Travelers*
 12 *Indem. Co. of Conn.*, 2:20-cv-04418-SVW-AS, 2020 WL 6749361, at *2-3 (C.D. Cal. Nov. 13,
 13 2020) (“10E II”) (same); *Mark’s Eng. Co. No. 28 Rest., LLC v. Travelers Indem. Co. of Conn.*,
 14 No. 2:20-cv-04423-AB, 2020 WL 5938689 at *5 (same).

15 CONCLUSION

16 For the reasons set forth above, the Court finds that Plaintiff’s losses due to COVID-19 do
 17 not constitute losses that are covered within the plain meaning of the Policy. Accordingly,
 18 Plaintiff has failed to state a claim for relief pursuant to Federal Rule of Civil Procedure 12(b)(6).
 19 The Court therefore GRANTS Defendant’s motion to dismiss.

20 **IT IS SO ORDERED.**

21 Dated: July 13, 2021

22 

23 SALLIE KIM
 24 United States Magistrate Judge