

1 Eric H. Gibbs (SBN 178658)  
 2 ehg@classlawgroup.com  
 3 Michael L. Schrag (SBN 185832)  
 4 mls@classlawgroup.com  
 5 Andre M. Mura (SBN 298541)  
 6 amm@classlawgroup.com  
 7 Karen Barth Menzies (SBN 180234)  
 8 kbm@classlawgroup.com  
 9 Amy M. Zeman (SBN 273100)  
 10 amz@classlawgroup.com  
 11 Steve Lopez (SBN 300540)  
 12 sal@classlawgroup.com

**GIBBS LAW GROUP LLP**  
 505 14<sup>th</sup> Street, Suite 1110  
 Oakland, CA 94612  
 Telephone: (510) 350-9700  
 Facsimile: (510) 350-9701

*Attorneys for Plaintiff*

*[Additional counsel on signature page]*

**IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

PAGNOL ET CIE., INC. dba CHEZ  
 PANISSE RESTAURANT,

Plaintiff,

v.

AMCO INSURANCE COMPANY,

Defendant.

Case No. \_\_\_\_\_

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Pagnol et Cie., Inc. dba Chez Panisse Restaurant files suit against  
2 AMCO Insurance Company 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 and remains in place to this day, though localities are permitted to reopen  
8 if they meet certain conditions for a variance from the statewide order. This is not  
9 merely causing severe financial distress for restaurants and their employees; such  
10 closures threaten the viability of California’s restaurant industry.

11 2. Plaintiff’s restaurant in Berkeley, California is among the thousands of  
12 restaurants that have been forced to cease operations as part of the Stay at Home  
13 order. Chez Panisse and many California restaurants – none of whom bear fault for  
14 statewide closures – were responsible business stewards, thus paying for business  
15 interruption insurance to protect against 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. Chez Panisse’s experience is no different. It has dutifully followed  
25 California’s mandates. Facing serious financial harm, it has filed a claim with AMCO  
26 for business interruption coverage.

27 6. AMCO 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.



1 15. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b) as a  
2 substantial part of the events or omissions giving rise to the instant action occurred in  
3 Berkeley, California.

4 **INTRADISTRICT ASSIGNMENT**

5 16. Assignment to the San Francisco or Oakland Divisions would be proper  
6 because Defendant has conducted business there and a substantial part of the events  
7 or omissions which give rise to the claims alleged herein occurred in Alameda County  
8 California.

9 **FACTUAL BACKGROUND**

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

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

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

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

21. A lack of central planning, shortages of key medical supplies and

1 equipment, and the unfortunate spread of misinformation and disinformation about  
2 the risks of COVID-19 has led to widespread confusion, unrest, and uncertainty  
3 regarding the likely trajectory of this pandemic and the appropriate counter-measures  
4 necessary to mitigate the damage it could potentially cause.

5 22. Beginning in late February, public health officials began advising  
6 various governments around the world that one of the most disruptive NPIs -  
7 population-wide social distancing - was needed to stop the transmission of COVID-  
8 19. Suddenly schools, offices, public transit, restaurants, bars, music venues, and  
9 shops -- densely occupied spaces, heavily traveled spaces, and frequently visited  
10 spaces - were likely to become hot-spots for local transmission of COVID-19.

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

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

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

24 **PLAINTIFF'S EXPERIENCE**

25 26. Plaintiff operates a restaurant called Chez Panisse in a converted  
26 craftsman home in Berkeley, California. Founded in 1971, Chez Panisse was created to  
27 reflect the feeling of having an intimate dinner party at home and focuses on  
28 highlighting sustainably sourced, organic, and peak-of-their season ingredients. Chez  
Panisse was one of the original innovators that helped spark the farm-to-table

1 movement in the restaurant industry.

2 27. Chez Panisse has complied with all applicable orders of California state  
3 and local authorities. Compliance with those orders has caused direct physical loss of  
4 Chez Panisse's insured property in that the property has been made useless and/or  
5 uninhabitable; and its functionality has been severely reduced if not completely or  
6 nearly eliminated.

7 28. The impact of these orders is felt not simply in their direct application to  
8 Chez Panisse's operations, but also in their application to neighboring businesses and  
9 properties, whose property has suffered similar direct physical loss as a result.

10 29. Even when California relaxes or revokes its mandates, Chez Panisse will  
11 encounter continued loss of business income due to those orders because, in issuing  
12 those orders, government officials have stated that densely occupied public spaces are  
13 dangerously unsafe, and continuing to operate the shop in the same manner as before  
14 could expose Chez Panisse to the risk of contaminated premises as well as exposing  
15 customers and workers to transmission and infection risks.

16 30. Plaintiff purchased comprehensive commercial liability and property  
17 insurance from AMCO to insure against risks the business might face. Such coverage  
18 includes business income with extra expense coverage for the loss, as well as  
19 additional "civil authority" coverage. Once triggered, the policy pays actual losses  
20 sustained for the business income and extra expense coverage.

21 31. To date, Plaintiff has paid all of the premiums required by AMCO to  
22 keep its policy in full force. These premiums have totaled many thousands to date.

23 32. On or about May 7, 2020, Plaintiff reported a loss of business income as  
24 of March 16, 2020, under Policy ACP BPF 3009566824.

25 33. On or about May 14, 2020, AMCO denied Plaintiff's claim for coverage.  
26 In a cursory denial letter, AMCO took the position that Chez Panisse's "loss was  
27 caused by governmental action, due to the recent outbreak of the coronavirus  
28 (COVID-19)" and as a result, AMCO's policy does not provide coverage for this loss.  
Specifically, AMCO took the position that coverage was not warranted because "there

1 was no direct physical loss of or damage to property at the described premises.”  
2 AMCO further stated that the policy included “an Exclusion for damage caused by  
3 Virus or Bacteria.”

4 34. AMCO’s denial letter, on information and belief, appears to be a form  
5 letter sent in response to business interruption claims arising from California’s Stay at  
6 Home orders.

7 35. AMCO’s denial is contrary to the terms and conditions of the policy and  
8 applicable law, which gives effect to plain language, construes ambiguity in favor of  
9 coverage, and narrowly construes exclusions, the applicability of which insurers have  
10 the burden of proving.

11 36. AMCO’s denial of coverage breached its obligation and responsibility to  
12 provide coverage available through the policy to Plaintiff due to its covered loss of  
13 business income because its premises are unusable and uninhabitable and have lost  
14 all function.

15 37. As a result of AMCO’s denial of coverage and breach of the insurance  
16 policy it issued, Plaintiff has suffered and will continue to suffer damages.

17 38. A declaratory judgment determining that the coverage provided under  
18 the policy and an order that such coverage is owed will prevent Plaintiff from being  
19 wrongfully left without vital coverage acquired to ensure the survival of its businesses  
20 in these circumstances. As a result of the Stay at Home orders, Plaintiff has incurred  
21 and continues to incur a substantial loss of business income and additional expenses  
22 covered under the policy.

23  
24 **FIRST CAUSE OF ACTION**

25 **Declaratory Judgment**

26 39. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

27 40. Plaintiff purchased a comprehensive business insurance policy from  
28 Defendant.

41. Plaintiff paid all premiums required to maintain its comprehensive

1 business insurance policy in full force.

2 42. The comprehensive business insurance policy includes provisions that  
3 provide coverage for the direct physical loss of or damage to the premises as well as  
4 actual loss of business income and extra expenses sustained during the suspension of  
5 operations as a result of such loss or damage.

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

11 44. As a result of this mandate, the covered property of Plaintiff lost some  
12 or all of its functionality and/or became useless or uninhabitable, resulting in  
13 substantial loss of business income.

14 45. These losses are insured losses under Plaintiff's comprehensive business  
15 insurance policy including business income and expense coverage.

16 46. There are no applicable, enforceable exclusions or definitions in the  
17 insurance policies that preclude coverage for these losses.

18 47. WHEREFORE, Plaintiff seeks a declaration that its business income  
19 losses are covered and not precluded by exclusions or other limitations in its  
20 comprehensive business insurance policy.

21 **SECOND CAUSE OF ACTION**

22 **Breach of Contract**

23 48. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

24 49. Plaintiff purchased a comprehensive business insurance policy from  
25 Defendant to insure against all risks (unless specifically excluded) a business might  
26 face. This policy was a binding contract that afforded Plaintiff comprehensive  
27 business insurance under the terms and conditions of the policy.

28 50. Plaintiff met all or substantially all of its contractual obligations,  
including paying all the premiums required by Defendant.



1 in good faith in carrying out its contractual obligations to provide Plaintiff with  
2 comprehensive business insurance.

3 60. Defendant breached the implied covenant of good faith and fair dealing  
4 by:

5 a. Selling policies that appear to provide liberal coverage for loss of  
6 property and lost business income with the intent of interpreting  
7 undefined or poorly defined terms, undefined terms, and  
8 ambiguously written exclusions to deny coverage under  
9 circumstances foreseen by Defendant;

10 b. Denying coverage for loss of property and lost business income  
11 unreasonably, and without proper cause, by applying undefined,  
12 ambiguous, and contradictory terms contrary to applicable rules  
13 of policy construction and the plain terms and purpose of the  
14 policy;

15 c. Denying Plaintiff's claim for loss of property and loss of business  
16 income without conducting a fair, unbiased and thorough  
17 investigation or inquiry, arbitrarily and capriciously, and/or with  
18 knowledge that the denial was unreasonable under the policy;  
19 and

20 d. Compelling policyholders, including Chez Panisse, to initiate  
21 litigation to recover policy benefits to which they are entitled.

22 61. Plaintiff met all or substantially all of its contractual obligations,  
23 including by paying all the premiums required by Defendant.

24 62. Defendant's failure to act in good faith in providing comprehensive  
25 business insurance coverage to Plaintiff denied Plaintiff the full benefit of its bargain.

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

64. WHEREFORE, Plaintiff seeks: (a) a judgment for itself that Defendant

1 has breached the covenant of good faith and fair dealing implied in its contract with  
2 Plaintiff; and (b) corresponding damages for that breach.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff requests that the Court enter a judgment awarding the  
5 following relief:

- 6 a. A declaration that Plaintiff's losses are covered under Defendant's  
7 comprehensive business insurance policy; and  
8 b. Plaintiff also requests damages, attorney's fees and costs, and such  
9 other and further relief as is just and proper as compensation for  
10 Defendant's breach of contract and breach of the implied covenant of  
11 good faith and fair dealing.

12  
13 **JURY DEMAND**

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

15  
16 Dated: July 7, 2020

Respectfully submitted,

17 **GIBBS LAW GROUP LLP**

18  
19 By: /s/ Eric H. Gibbs

20 Eric H. Gibbs  
21 Michael L. Schrag  
22 Andre M. Mura  
23 Karen Barth Menzies  
24 Amy M. Zeman  
25 Steve Lopez  
26 505 14<sup>th</sup> Street, Suite 1110  
27 Oakland, CA 94612  
28 Telephone: (510) 350-9700  
ehg@classlawgroup.com  
mls@classlawgroup.com  
amm@classlawgroup.com  
kbm@classlawgroup.com

1 amz@classlawgroup.com  
2 sal@classlawgroup.com

3 Andrew N. Friedman (*pro hac vice forthcoming*)  
4 Victoria S. Nugent (*pro hac vice forthcoming*)  
5 Julie Selesnick (*pro hac vice forthcoming*)  
6 Geoffrey Graber (SBN 211547)  
7 Eric Kafka (*pro hac vice forthcoming*)  
8 Karina G. Puttieva (SBN 317702)  
9 **COHEN MILSTEIN SELLERS & TOLL PLLC**  
10 1100 New York Ave. NW, Fifth Floor  
11 Washington, DC 20005  
12 Telephone: (202) 408-4600  
13 Facsimile: (202) 408-4699  
14 afriedman@cohenmilstein.com  
15 vnugent@cohenmilstein.com  
16 jselesnick@cohenmilstein.com  
17 ggraber@cohenmilstein.com  
18 ekafka@cohenmilstein.com  
19 kputtieva@cohenmilstein.com

20  
21  
22  
23  
24  
25  
26  
27  
28  

*Attorneys for Plaintiff*