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9 FERTILITY CENTERS OF ORANGE  
10 COUNTY, A MEDICAL GROUP, INC.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF ORANGE

13  
14 FERTILITY CENTERS OF ORANGE  
15 COUNTY, A MEDICAL GROUP, INC., a  
16 California corporation;

17 Plaintiff,

18 vs.

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20 TRANSPORTATION INSURANCE  
21 COMPANY, an Illinois corporation doing  
22 business in California, GOLDEN EMPIRE  
23 INSURANCE AGENCY, INC., a California  
24 corporation, and DOES 1-100, inclusive,

25 Defendants.  
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Case No.: 30-2020-01149485-CU-IC-CJC

Assigned for all purposes

Judge Glenn Salter

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

1. Breach of the Implied Covenant of Good Faith and Fair Dealing
2. Breach of Contract
3. Declaratory Relief
4. Negligence



I. INTRODUCTION

1  
2 1. Since 2016, Fertility Centers of Orange County, A Medical Group, Inc.  
3 (“FCOC”) has committed itself to providing the highest standard of assistive  
4 reproductive care to patients struggling to start or expand their families. As any patient  
5 suffering from infertility can attest, the assisted reproduction process is both physically  
6 and emotionally tolling, and patients spend extensive amounts of time with the  
7 practitioners they trust to assist them on their fertility journey. FCOC ensures patients a  
8 warm and supportive atmosphere, provides patients the opportunity to choose from a  
9 broad variety of treatment options, and creates a customized care plan to meet each  
10 patient’s specific needs. As a result, FCOC’s patients have experienced a high success  
11 rate, resulting in viable, healthy pregnancies for patients who have often struggled for  
12 years to conceive.

13 2. But FCOC’s busy assistive reproductive care practice—which went  
14 unhindered until early March 2020—has now been devastated by the governmental  
15 orders, mandated social distancing, and fear and panic surrounding the emergence of  
16 the COVID-19 pandemic. Despite purchasing business interruption insurance from  
17 Transportation Insurance Company to cover *exactly* this kind of setback, FCOC has had  
18 its insurance claim denied without any reasonable investigation, attempt to search for  
19 coverage, or other good faith conduct from its insurer. Instead, it was left to weather  
20 the storm without the one product it sorely needed—the insurance coverage it had  
21 spent years paying significant premiums and counting on in the event of disaster.

22 3. Originating in Wuhan, China, and rapidly progressing worldwide,  
23 COVID-19 (“the novel coronavirus”) is a respiratory disease mainly spread by airborne  
24 droplets released when infected persons speak, sneeze, or cough, infecting others via  
25 interpersonal contact or by contact with a contaminated surface. Far more infectious  
26 than the flu or many other diseases, it has spread like wildfire—exploding in the span  
27 of a few months from a limited, regional disease to a major, worldwide pandemic.

28 4. On January 21, 2020, the first confirmed case of the novel coronavirus in

1 the United States was reported in Washington state. Despite the novel coronavirus  
2 circulating unchecked in the United States for months (with new studies pushing the  
3 first instance of community spread ever further back in time), in March 2020 both  
4 formal and informal measures were taken to stem the spread of the disease—including  
5 almost unheard-of social distancing measures, severe curtailing of businesses, and  
6 actions that have forever changed the face of the American economy.

7 5. Recognizing the severe threat to the population of Orange County and the  
8 need for swift action, the Orange County Healthcare Agency declared a local health  
9 emergency on February 26, 2020 to help ensure county government and the public were  
10 prepared for the possibility that COVID-19 will appear within the county. Days later, on  
11 March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency,  
12 which noted it was imperative “to implement measures to mitigate the spread of  
13 COVID-19” such that “state and local health departments must use all available  
14 preventative measures to combat the spread of COVID-19.”

15 6. On March 13, 2020, the surging global pandemic—which at that point had  
16 infected over one thousand individuals within the United States, killing dozens and  
17 contributing to over 118,000 infections and 4,291 deaths worldwide—was declared a  
18 national emergency by President Donald Trump, echoing the World Health  
19 Organization’s March 11, 2020 declaration of the disease as a global pandemic. Five  
20 days later, Orange County issued its March 18, 2020 Order urging residents to remain  
21 home and engage in social distancing.

22 7. On March 19, 2020, implementing the most stringent methods yet used to  
23 prevent further spread of the global pandemic, Governor Newsom issued an executive  
24 order effectively requiring that all California citizens not identified as employees of  
25 critical infrastructure sectors stay at home, leaving only to obtain access to necessities,  
26 and even then at all times practicing social distancing by maintaining at least six feet of  
27 distance with others (“the stay at home order”). In addition, various entities, medical  
28 boards, CMS, and other bodies, including the American Society for Reproductive

1 Medicine, issued guidance that limited (or curtailed entirely) adult elective surgery and  
2 medical and surgical procedures, including many of the procedures and services  
3 provided by FCOC—drastically curtailing their business and patient services.

4 8. These national, state, and local measures effectively shuttered the majority  
5 of California businesses, particularly in Orange County, some of which had already  
6 closed or suffered dramatic slowdowns due to informal social distancing precautions  
7 and fear surrounding the global pandemic. One such affected business was that of  
8 Plaintiff.

9 9. Plaintiff, having purchased a businessowners policy specifically providing  
10 for business interruption coverage in the event of direct physical loss of or damage to  
11 the covered property, looked to its insurer, Defendant Transportation Insurance  
12 Company, to compensate it for the catastrophic loss of business, business income, and  
13 extra expense incurred to remedy direct and threatened physical losses of or damages  
14 to its property. However, Transportation Insurance Company denied Plaintiff’s claim  
15 on May 22, 2020 without conducting any investigation or even making a good faith  
16 attempt to look for coverage, and thus refusing to protect Plaintiff against its losses in  
17 this devastating time. Defendant did so in bad faith by erroneously claiming that  
18 Plaintiff did not suffer a “direct physical loss of or damage to” property, and further  
19 claiming, erroneously, that various exclusions within Plaintiff’s policy may preclude  
20 coverage even if Plaintiff did suffer direct physical loss of or damage to property.

21 10. Defendant’s denial of coverage directly contradicts decades of case law  
22 nationwide acknowledging that when an external force—such as toxic vapors, gases, or  
23 odors—causes a covered premises to become temporarily or permanently unusable or  
24 uninhabitable, that loss and loss of use is considered “direct physical loss of” the  
25 covered premises and has been deemed a covered loss under business interruption  
26 policies. Defendant’s claim that coverage may be precluded by various exclusions  
27 under Plaintiff’s policy is also incorrect, as Plaintiff’s losses were proximately caused by  
28 the general public fear surrounding the global pandemic, social distancing measures

1 taken by individuals and businesses, state, national, and local declarations of  
2 emergency, and the stay at home order issued by California, as well as the orders and  
3 guidance issued by various state, national, local, and medical entities, rather than any of  
4 the excluded perils which Defendant contends may be applicable to this claim. Each of  
5 the foregoing efficient proximate causes of Plaintiff's loss are *not* excluded under the  
6 terms of Plaintiff's policy, and thus, constitute covered perils for which Plaintiff is  
7 entitled to full policy benefits pursuant to California law.

8 11. Transportation Insurance Company, by its "shoot-from-the-hip" denial, its  
9 refusal to conduct *any* kind of investigation or even make a bare attempt at looking for  
10 coverage before denial, is thus a textbook example of an insurer placing its own  
11 financial interests ahead of its insured, and placing its own profits over the financial  
12 well-being of its insured.

## 13 II. THE PARTIES

14 12. Plaintiff Fertility Centers of Orange County, A Medical Group, Inc. is a  
15 California corporation with its insurance covered property in Irvine, California.

16 13. Plaintiff is informed and believes and thereupon alleges that Defendant  
17 Transportation Insurance Company is a corporation domiciled in the State of Illinois,  
18 with its principal place of business in Chicago, Illinois. Plaintiff is further informed and  
19 believes and thereupon alleges that at all relevant times, Transportation Insurance  
20 Company was authorized to transact business in the State of California, and  
21 Transportation Insurance Company was, and is, transacting the business of insurance in  
22 the State of California, including issuing, delivering, and providing the insurance policy  
23 at issue to a California resident in the state of California. The insurance policy at issue  
24 was negotiated, delivered, and issued to FCOC, with the expectation that it was to be  
25 performed (and policy benefits provided) in Orange County.

26 14. Defendant Golden Empire Insurance Agency, Inc. ("Golden Empire") is a  
27 California corporation with its principal place of business in Agoura Hills, California.  
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1 Plaintiff is informed and believes and thereupon alleges that at all relevant times,  
2 Golden Empire was authorized to transact business in the State of California, and  
3 Golden Empire was, and is, transacting the business of insurance in the State of  
4 California.

5 15. At all times relevant herein, Plaintiff is informed and believes, and  
6 thereupon alleges, that Does 1 through 100, inclusive, and each of them, were domiciled  
7 in the State of California, whether by incorporation, principal place of business, or by  
8 maintaining sufficient minimum contacts in the State of California to the extent  
9 necessary for this Court to exercise personal jurisdiction over them.

10 16. The true names and capacities of Does 1 through 100, inclusive, and each  
11 of them, whether individual, corporate, alter ego, partnership, joint-venture, associate  
12 or otherwise are presently unknown to Plaintiff, who therefore sues these defendants by  
13 fictitious names, and will seek leave of court to amend this complaint once the true  
14 names and capacities are ascertained.

15 17. At all times relevant, Plaintiff is further informed and believes, and  
16 thereupon alleges, that defendants, including Does 1 through 100, inclusive, and each of  
17 them, acted in the capacity of principal, agent, master, servant, employer, employee,  
18 whether general or special, independent contractor, joint-venture, partnership, or  
19 otherwise, and acted under the control of and at the direction of each other defendant,  
20 and that such agency relationship existed contractually, apparently, or ostensibly, and  
21 that each defendant acted within the course and scope of such agency and employment,  
22 and that each defendant as a principal is vicariously liable for the negligent conduct of  
23 each defendant acting as an agent within the course and scope of such agency, and that  
24 each defendant when acting as a principal was negligent, careless, or reckless in the  
25 selection, hiring, training, management, supervision, and entrustment of each and every  
26 other defendant, and ratified and approved of the unauthorized conduct of each  
27 defendant after it occurred, by conduct, inference or otherwise.

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### III. JURISDICTION AND VENUE

18. This superior court has general subject matter jurisdiction over this action, pursuant to California Constitution Article VI section 4. The sum in dispute greatly exceeds the minimum jurisdiction limit of the unlimited division of the Superior Court.

19. Venue in the Superior Court of this County is proper as it is the county in which the occurrences and events giving rise to Plaintiff's injuries occurred (including the county where many of the properties are located upon which insurance was written, where the insurance policy at issue was delivered (Westminster, CA, for insurance covered property located in Irvine, CA) and where the insurance policy at issue was to be performed by providing insurance policy benefits to the insured) pursuant to Code of Civil Procedure section 395(a).

### IV. GENERAL ALLEGATIONS

#### A. Plaintiff's business interruption policy

20. On or about January 29, 2020, Defendant Transportation Insurance Company entered into a contract of insurance with Plaintiff pursuant to businessowners policy number B 6020930597 ("the Policy"), whereby Plaintiff agreed to make significant premium payments to Transportation Insurance Company in exchange for Transportation Insurance Company's promise to indemnify Plaintiff for losses including, but not limited to, business income losses incurred during the policy period of January 29, 2020 to January 29, 2021. At issue here are at least four types of coverage provided by the Policy, as well as various other provisions, coverages, and extensions: Business Income, Extended Business Income, Business Income from Dependent Properties, and Civil Authority coverage.

21. The Policy's Coverage provision provides that the Policy "will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from a Covered Cause Of Loss." Plaintiff's premises in Irvine, California, constitutes the Covered Property.

- 1           22.     The Policy's definition of Business Income is as follows:
- 2                     **b.** We will pay for the actual loss of Business Income you sustain due to
- 3                     the necessary "suspension" of your "operations" during the "period of
- 4                     restoration." The "suspension" must be caused by direct physical loss of or
- 5                     damage to property at the described premises. The loss or damage must be
- 6                     caused by or result from a Covered Cause of Loss. With respect to loss of
- 7                     or damage to personal property in the open or personal property in a
- 8                     vehicle, the described premises include the area within 1,000 feet of the
- 9                     site at which the described premises are located.
- 10           23.     The Policy's Extended Business Income coverage provides additional
- 11                     coverage for actual business income losses sustained for up to 30 additional days.
- 12           24.     The Policy provides Business Income from Dependent Properties coverage
- 13                     as follows:
- 14                     **Business Income and Extra Expense – Dependent Property**
- 15                     **1.** When the Declarations show that you have coverage for Business
- 16                     Income and Extra Expense, you may extend that insurance to apply to the
- 17                     actual loss of Business Income you sustain and reasonable and necessary
- 18                     Extra Expense you incur due to the "suspension" of your "operations"
- 19                     during the "period of restoration." The "suspension" must be caused by
- 20                     direct physical loss or damage at the premises of a Dependent Property,
- 21                     caused by or resulting from a Covered Cause of Loss.
- 22           25.     The Policy further provides Civil Authority coverage for actual loss of
- 23                     Business Income and necessary Extra Expense as follows:
- 24                     **Civil Authority**
- 25                     **1.** When the Declarations show that you have coverage for Business
- 26                     Income and Extra Expense, you may extend that insurance to apply to the
- 27                     actual loss of Business Income you sustain and reasonable and necessary
- 28                     Extra Expense you incur caused by action of civil authority that prohibits
- access to the described premises. The civil authority action must be due to
- direct physical loss of or damage to property at locations, other than
- described premises, caused by or resulting from a Covered Cause of Loss.
26.     The Policy's Covered Causes of Loss provision is as follows:
- 3. Covered Causes of Loss**
- RISKS OF DIRECT PHYSICAL LOSS unless the loss is:
- a.** Excluded in section B. EXCLUSIONS; paved surfaces; or
- b.** Limited in paragraph A.4. Limitations; or
- c.** Excluded or limited by other provisions of this policy.



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2 27. Finally, the Policy includes various inapplicable exclusions, hereinafter  
3 collectively referred to as "the Exclusions." The Exclusions include: (1) an exclusion for  
4 consequential loss, including "delay, loss of use or loss of market"; (2) an exclusion for  
5 "contamination by other than 'pollutants'"; (3) a Pollution Exclusion; and (4) a  
6 California Fungi, Wet Rot, Dry Rot and Microbe Exclusion. The Pollution Exclusion and  
7 the Policy's definition of "pollutants" provide as follows:

8 2. We will not pay for loss or damage caused by or resulting from any of  
9 the following:

10 **k. Pollution**

11 Discharge, dispersal, seepage, migration, release or escape of "pollutants"  
12 unless the discharge, dispersal, seepage, migration, release or escape is  
13 itself caused by any of the "specified causes of loss." But if the discharge,  
14 dispersal, seepage, migration, release or escape of "pollutants" results in a  
15 "specified cause of loss," we will pay for the loss or damage caused by  
16 that "specified cause of loss"

17 **21. "Pollutants"** means any solid, liquid, gaseous or thermal irritant or  
18 contaminant, including smoke, vapor, soot, fumes, acids, alkalis,  
19 chemicals, waste, and any unhealthful or hazardous building materials  
20 (including but not limited to asbestos and lead products or materials  
21 containing lead). Waste includes materials to be recycled, reconditioned or  
22 reclaimed.

23 28. The California Fungi, Wet Rot, Dry Rot and Microbe Exclusion and the  
24 Policy's definition of "fungi" and "microbe" provide as follows:

25 **A. Section B.1., EXCLUSIONS**, is amended to add the following  
26 provision:

27 **m. Fungi, Wet Rot, Dry Rot and Microbes**

28 Presence, growth, proliferation, spread or any activity of "fungi," wet or  
dry rot, or "microbes."

This exclusion does not apply when "fungi," wet or dry rot or "microbes"  
result from fire or lightning.

"Fungi" means any form of fungus, including but not limited to, yeast,  
mold, mildew, rust, smut or mushroom, and including any spores,  
mycotoxins, odors, or any other substances, products, or byproducts  
produced by, released by, or arising out of the current or past presence of

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"fungi." But "fungi" does not include any "fungi" intended by the insured for consumption.

**"Microbe(s)"** means any non-fungal micro-organism or non-fungal, colony-form organism that causes infection or disease. "Microbe" includes any spores, mycotoxins, odors, or any other substances, products, or byproducts produced by, released by, or arising out of the current or past presence of "microbes."

**B. The widespread social distancing, governmental orders, and worldwide fear and panic during the pandemic and the effect on Plaintiff's business**

29. On January 21, 2020, the first confirmed case of the novel coronavirus in the United States was reported in Washington state, and within weeks, both formal and informal measures were taken to stem the spread of the disease. At that point, the coronavirus had already infected thousands and continued largely unimpeded, threatening to overwhelm health care systems worldwide due to the ease with which it spread and its potentially fatal impact. Highly contagious, the novel coronavirus is mainly spread through airborne droplets released when infected persons speak, sneeze, or cough, contaminating others via interpersonal contact or via contact with a contaminated surface, on which the novel coronavirus can survive for days.

30. Recognizing the severe threat to the population of Orange County and the need for swift action, the Orange County Healthcare Agency declared a local health emergency on February 26, 2020 to help ensure county government and the public were prepared for the possibility that COVID-19 will appear within the county. Days later, on March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency, which noted it was imperative "to implement measures to mitigate the spread of COVID-19" such that "state and local health departments must use all available preventative measures to combat the spread of COVID-19."

31. On March 12, 2020, California Governor Gavin Newsom issued Executive Order N-25-20 ordering that: "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."

1           32.     On March 13, 2020, the surging global pandemic—which at that point had  
2 infected over one thousand individuals within the United States, killing dozens and  
3 contributing to over 118,000 infections and 4,291 deaths worldwide—was declared a  
4 national emergency by President Donald Trump, echoing the World Health  
5 Organization’s March 11, 2020 declaration of the disease as a global pandemic.

6           33.     On March 19, 2020, seeking to prevent the further spread of the global  
7 pandemic by both symptomatic and asymptomatic carriers, Governor Newsom issued  
8 an executive order effectively requiring that all citizens not identified as employees of  
9 critical infrastructure sectors stay at home, leave their homes only to obtain access to  
10 necessities and essential services, and even then at all times practicing social distancing  
11 by maintaining at least six feet of distance with others. Governor Newsom’s stay at  
12 home order was the first in the nation and effectively shuttered non-essential California  
13 businesses. Similar orders were quickly implemented by other governors, such that by  
14 April 6, 2020, forty-three states had issued stay at home orders.

15           34.     In addition to the various governmental orders and proclamations of  
16 emergency implemented at the local, state, and national levels, the American Society of  
17 Reproductive Medicine (“the ASRM”) issued guidance on March 17, 2020 advising that  
18 assistive reproductive care practitioners suspend initiation of new treatment cycles,  
19 strongly consider cancellation of all embryo transfers, suspend elective surgeries and  
20 non-urgent diagnostic procedures, and minimize in-person interactions. The ASRM’s  
21 guidance was consistent with previous recommendations by the U.S. Surgeon General  
22 and the American College of Surgeons to postpone or cancel electively scheduled  
23 surgeries in order to reduce the risk of spreading the novel coronavirus.

24           35.     Plaintiff operates an assistive reproduction clinic from its premises in  
25 Irvine, California—the Covered Property—which was shuttered or severely curtailed  
26 due to informal social distancing precautions, fear surrounding the coronavirus, the  
27 stay at home order, the local County order, and the actions of the national, state, and  
28

1 local government. As a result, Plaintiff has experienced a significant reduction in its  
2 business activities and suffered extensive losses.

3  
4 **C. Plaintiff's business interruption claim**

5 36. As these devastating losses began to surface, Plaintiff filed a claim for  
6 insurance policy benefits with Defendant Transportation Insurance Company. On May  
7 22, 2020, Defendant denied Plaintiff's claim, apparently without investigation or even  
8 an attempt to search for coverage in favor of the insured. That denial was based on the  
9 erroneous coverage position that the worldwide pandemic, social distancing,  
10 governmental orders, and fear and panic that resulted in the shuttering of Plaintiff's  
11 business (the loss of use of the property as well as the dispossession and deprivation of  
12 that property) did not cause direct physical loss of or damage to Plaintiff's building that  
13 caused or resulted in a shut down from a Covered Cause of Loss. Defendant, further  
14 ignoring California law, stated that the purported lack of direct physical loss of or  
15 damage to Plaintiff's building precludes coverage under the Policy's Civil Authority  
16 provision, and further stated that even if Plaintiff proves direct physical loss of or  
17 damage to its building, the Exclusions may preclude coverage for loss of business  
18 income.

19 37. Defendant's claim that Plaintiff has not suffered direct physical loss of or  
20 damage to its property as required by the Policy is contrary to established case law  
21 nationwide. For more than 50 years, courts in this country have recognized that where  
22 an external force renders a covered premises temporarily or permanently unusable or  
23 uninhabitable, a "direct physical loss" of the covered premises results. (*Hughes v.*  
24 *Potomac Ins.* (1962) 18 Cal.Rptr. 650 ["common sense" dictated a physical loss of or  
25 damage to property, and thus coverage, when a building was "rendered completely  
26 useless to its owners"]; *Western Fire Insurance Co. v. First Presbyterian Church* (1968) 165  
27 Colo. 34 [finding that a church building's saturation with gasoline vapors constituted a  
28 "direct physical loss" when the building could no longer be occupied or used]; *Farmers*

1 *Insurance Co. of Oregon v. Trutanich* (1993) 123 Or. App. 6 [finding that pervasive and  
2 persistent odor from methamphetamine in the covered premises constituted direct  
3 physical loss]; *Sentinel Management Co. v. New Hampshire Insurance Co.* (1997) 563  
4 N.W.2d 296 [finding that contamination by asbestos fibers constituted a direct physical  
5 loss, as “a building’s function may be seriously impaired or destroyed and the property  
6 rendered useless by the presence of contaminants”]; *Murray v. State Farm* (W.Va. 1998)  
7 509 S.E.2d 1 [“losses covered by the policy, including those rendering the insured  
8 property unusable or uninhabitable, may exist in the absence of structural damage to  
9 the insured property”]; *Port Authority of New York and New Jersey v. Affiliated FM Ins. Co.*  
10 (3rd Cir.2002) 311 F.3d 226 [holding that the presence of large quantities of asbestos in a  
11 structure such that its function is nearly eliminated or destroyed, or such that the  
12 structure is made useless or uninhabitable, constitutes a “physical loss” or damage];  
13 *TRAVCO Ins. Co. v. Ward* (E.D.Va.2010) 715 F.Supp.2d 699 [holding that “direct physical  
14 loss” existed where a home was rendered uninhabitable by toxic gases released by  
15 drywall]; *Mellin v. Northern Security Insurance Co., Inc.* (2015) 167 N.H. 544 [holding that  
16 “[e]vidence that a change rendered the insured property temporarily or permanently  
17 unusable or uninhabitable” may support a finding of physical loss.] Yet Defendant  
18 failed to even make a bare attempt to search for coverage, seeking instead to deny as  
19 rapidly as possible to discourage its insured from making further claims for its  
20 mounting losses.

21 38. Defendant’s far-fetched attempt to claim that Plaintiff’s losses could  
22 potentially be barred by the Exclusions is further evidence of Defendant’s interpretation  
23 of the policy in bad faith. First, the Supreme Court of California has held that “[p]olicy  
24 exclusions are unenforceable to the extent that they conflict with section 530 [of the  
25 Insurance Code] and the efficient proximate cause doctrine.” (*Julian v. Hartford*  
26 *Underwriters Ins. Co.* (2005) 35 Cal.4th 747, 754.) Thus, where a covered peril serves as  
27 the efficient proximate cause of the insured’s loss, the insurer must provide coverage for  
28 the loss, even where the insurer has attempted to contract around the efficient

1 proximate cause doctrine through language stating that the policy will not cover any  
2 loss caused “directly or indirectly” by an excluded peril. (*Id.* at 753-755.) Here, the novel  
3 coronavirus served, at most, as a remote cause of Plaintiff’s losses, whilst the proximate  
4 causes of Plaintiff’s losses were the global pandemic and the general public fear  
5 surrounding that issue, required social distancing measures taken by individuals and  
6 businesses, state, national, and local declarations of emergency, the stay at home order,  
7 and the local county order shuttering nonessential businesses—none of which are  
8 excluded under the terms of the Policy, and thus, each of which constitute Covered  
9 Causes of Loss within the meaning of the Policy, thus entitling Plaintiff to  
10 indemnification for its losses.

11 39. Second, in regard to the exclusion for consequential loss, including “delay,  
12 loss of use or loss of market,” neither the delay or loss of market exclusions are  
13 applicable to the claim at hand. Plaintiff’s loss has in no way been caused, either  
14 proximately or remotely, by a delay of any type. Moreover, courts have held that loss of  
15 market exclusions apply solely to economic changes, which are not a proximate cause of  
16 Plaintiff’s loss, and arguably not even a remote cause of Plaintiff’s loss. (*Duane Reade,*  
17 *Inc. v. St. Paul Fire & Marine Insurance Company* (S.D.N.Y. 2003) 279 F.Supp.2d 235, 240  
18 [rejecting the insurer’s argument that the insured’s claimed loss of property due to the  
19 9/11 attacks was barred by the policy’s loss of market exclusion, as “the loss of market  
20 exclusion relates to losses resulting from economic changes occasioned by, e.g.,  
21 competition, shifts in demand, or the like; it does not bar recovery for loss of ordinary  
22 business caused by a physical destruction or other covered peril.”] [citing *Boyd Motors*  
23 *Inc. v. Employers Ins. of Wausau* (10th Cir. 1989) 880 F.2d 270].)

24 40. Insofar as Defendant claims that the “loss of use” exclusion bars coverage  
25 for loss of use of the covered property resulting from a Covered Cause of Loss, such an  
26 assertion would constitute an unreasonable interpretation of the Policy. Accepted  
27 principles of policy interpretation require that insurance coverage be interpreted  
28 broadly so as to afford the greatest possible protection to the insured, with this rule

1 “appl[ying] with particular force when the coverage portion of the insurance policy  
2 would lead an insured to reasonably expect coverage for the claim purportedly  
3 excluded.” (*MacKinnon v. Truck Ins. Exchange* (2003) 31 Cal.4th 635, 648 [citing *White v.*  
4 *Western Title Ins. Co.* (1985) 40 Cal.3d 870, 881 and *Gray v. Zurich Ins. Co.* (1966) 65 Cal.2d  
5 263, 272-273].) Here, the Policy provides coverage for “direct physical loss of or damage  
6 to property,” language which has been held by courts in California and across the  
7 nation to include loss of use of property due to an external force, and which Plaintiff  
8 thus reasonably expected to include loss of use of property due to an external force.  
9 Thus, if Defendant’s argument that the “loss of use” exclusion bars coverage that the  
10 Policy specifically provides for were to be accepted, the entire purpose of the Policy  
11 would be rendered void pursuant to an interpretation that would violate commonly  
12 accepted interpretation principles and the reasonable expectations of Plaintiff.

13 41. Third, in regard to the Pollutants Exclusion, Plaintiff’s losses are in no way  
14 a direct result of the “discharge, dispersal, seepage, migration, release or escape of  
15 ‘pollutants,’” as Plaintiff’s losses were, at most, remotely caused by the novel  
16 coronavirus, which is not spread by discharge, dispersal, seepage, migration, release or  
17 escape, but rather by transmission via infected persons or contaminated surfaces.

18 Fourth and finally, in regard to the California Fungi, Wet Rot, Dry Rot and Microbe  
19 Exclusion, Defendant’s contention that the policy’s definition of “microbe” may  
20 encompass the novel coronavirus is contrary to the plain meaning of that term, which is  
21 commonly accepted to refer to living organisms, rather than non-living organisms such  
22 as viruses. (See Oxford Advanced American Dict. [defining “microbe” as “an extremely  
23 small living thing that you can only see under a microscope and that may cause  
24 disease”].<sup>1</sup>) Moreover, any reference to this inapplicable exclusion ignores the fact that  
25 Plaintiff’s losses were, at most, remotely caused by the novel coronavirus.

26 42. In effect, Defendant Transportation Insurance Company has joined a slew  
27 of insurers, their marketing arms, and their favored defense counsel nationwide in an

28 \_\_\_\_\_  
<sup>1</sup> [https://www.oxfordlearnersdictionaries.com/us/definition/american\\_english/microbe](https://www.oxfordlearnersdictionaries.com/us/definition/american_english/microbe)

1 attempt to discourage insureds from even making claims, in addition to immediately  
2 denying them when they do—without investigation, a good faith search for coverage  
3 under the policy, or even the barest hint of factoring the insured’s financial interests  
4 into the coverage decision. Instead, Defendant has joined other insurers in routinely  
5 denying business interruption claims from insureds who have been financially crippled  
6 by formal and informal measures taken in response to the global pandemic, and who  
7 purchased and continue to pay premiums for business interruption policies with the  
8 expectation that they would be protected against such losses. The apparent calculus  
9 behind these categorical denials falls in-line with an age-old tactic to allow these claims  
10 and lawsuits to pile up in order to leverage the dire situation of the insureds for  
11 governmental bailout proceeds.

12 43. Defendant’s interpretation of the Policy is in bad faith and contrary to  
13 widely established principles of contract interpretation and California law, places  
14 Defendant’s financial interests far above those of the Plaintiff, and Plaintiff is ultimately  
15 entitled to the business interruption protection it purchased.

### 17 FIRST CAUSE OF ACTION

#### 18 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

19 PLAINTIFF FERTILITY CENTERS OF ORANGE COUNTY, A MEDICAL  
20 GROUP, INC. FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS  
21 TRANSPORTATION INSURANCE COMPANY AND DOES 1 THROUGH 75,  
22 INCLUSIVE, FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND  
23 FAIR DEALING, ALLEGES:

24 44. Plaintiff refers to each and every paragraph of this complaint and  
25 incorporates those paragraphs as though set forth in full in this cause of action.

26 45. In every insurance contract, a covenant of good faith and fair dealing is  
27 implied, including Plaintiff’s businessowners policy. That is in part because  
28 Transportation Insurance Company, like all insurers, is a purveyor of a vital service—



1 insurance, which insureds across the state and across the country purchase to ensure  
2 peace of mind. It is one of the very few products that consumers purchase, hoping  
3 never to have to use it. But when it is needed, the need is desperate, and insurers must  
4 act in good faith.

5 46. As a provider of insurance, Transportation Insurance Company must give  
6 at least as much consideration to the interests of its policyholders as it does to its own  
7 interests. The obligations of Transportation Insurance Company go beyond meeting  
8 reasonable expectations of coverage; the obligations of good faith and fair dealing  
9 encompass qualities of decency and humanity inherent in the responsibilities of an  
10 insurer. Indeed, insurers hold themselves out as fiduciaries and holders of the public's  
11 trust, and therefore, must perform their obligations in good faith.

12 47. In this case, Defendants Transportation Insurance Company and Does 1  
13 through 75, inclusive, and each of them, have breached their duty of good faith and fair  
14 dealing owed to Plaintiff under the Policy as follows:

- 15 (a) Unreasonably failing to conduct a fair, balanced, and thorough  
16 investigation, including the failure to adequately evaluate, investigate,  
17 and review Plaintiff's claim of loss prior to denial of Plaintiff's claim;
- 18 (b) Unreasonably refusing to make payments to Plaintiff, knowing  
19 Plaintiff's claim for benefits under the Policy was valid;
- 20 (c) Unreasonably delaying benefits under the Policy to Plaintiff, at a time  
21 when Defendants knew that Plaintiff was entitled to such benefits  
22 under the terms of the Policy;
- 23 (d) Unreasonably delaying and denying Plaintiff the benefits it was  
24 promised under the Policy through the unreasonable and illegitimate  
25 delay and denial of payments that Plaintiff was entitled to;
- 26 (e) Unreasonably placing Transportation Insurance Company's own  
27 financial interests above the interests of its insured;
- 28

- 1 (f) Unreasonably engaging in a course of conduct designed to prevent  
2 Plaintiff from obtaining the coverage it was entitled to under the  
3 Policy;
- 4 (g) Failing and refusing to give at least as much consideration to Plaintiff's  
5 interests as Transportation Insurance Company gave to its own  
6 interests;
- 7 (h) Unreasonably and in bad faith interpreting the Policy in a way that  
8 contravenes California law and principles of interpretation, all in an  
9 effort to avoid paying rightly owed policy benefits;
- 10 (i) Unreasonably and in bad faith failing to pay full and final benefits due  
11 under the Business Income provisions of the Policy;
- 12 (j) Unreasonably and in bad faith failing to pay full and final benefits due  
13 under the Civil Authority provision of the Policy.

14 48. Plaintiff is informed and believes and thereupon alleges that Defendants  
15 Transportation Insurance Company and Does 1 through 75, inclusive, and each of them,  
16 have breached their duty of good faith and fair dealing owed to Plaintiff by other acts or  
17 omissions of which Plaintiff is presently unaware and which will be shown according to  
18 proof at the time of trial.

19 49. As a proximate result of the aforementioned unreasonable and bad faith  
20 conduct of Defendants Transportation Insurance Company and Does 1 through 75,  
21 inclusive, and each of them, Plaintiff has suffered, and will continue to suffer in the  
22 future, economic and other consequential damages, for a total amount to be shown at  
23 the time of trial.

24 50. As a further proximate result of the aforementioned wrongful conduct of  
25 Defendants Transportation Insurance Company and Does 1 through 75, inclusive, and  
26 each of them, Plaintiff was compelled to retain legal counsel to obtain the benefits due  
27 under the Policy and benefits of its bargain with Transportation Insurance Company.  
28 Therefore, Defendants Transportation Insurance Company and Does 1 through 75,

1 inclusive, and each of them, are liable to Plaintiff for those attorneys' fees, witness fees,  
2 and costs of litigation reasonably necessary and incurred by Plaintiff in order to obtain  
3 Policy benefits and the cost to adequately rebuild, repair, or replace their homes in a  
4 sum to be determined at trial.

5 51. Defendants Transportation Insurance Company's and Does 1 through  
6 75's, conduct described herein was intended by these Defendants to cause injury to  
7 Plaintiff, or was despicable conduct carried on by these Defendants with a willful and  
8 conscious disregard of the rights of Plaintiff, or subjected Plaintiff to cruel and unjust  
9 hardship in conscious disregard of Plaintiff's rights, or was an intentional  
10 misrepresentation, deceit, or concealment of a material fact known to these Defendants  
11 with the intention to deprive Plaintiff of property, legal rights, or to otherwise cause  
12 injury, such as to constitute malice, oppression, or fraud under California Civil Code  
13 section 3294, thereby entitling Plaintiff to punitive damages in an amount appropriate  
14 to punish or set an example of Defendants Transportation Insurance Company and  
15 Does 1 through 75.

16 52. Defendants Transportation Insurance Company's and Does 1 through  
17 75's, conduct as previously alleged evidences that these Defendants consciously  
18 engaged in a pattern of intentionally undersetting policy limits, delaying and  
19 intentionally wrongfully withholding benefits from Plaintiff, unreasonably failing to  
20 thoroughly investigate and evaluate Plaintiff's claims, and knowingly failing to give  
21 their insured's interests at least as much consideration as their own. These Defendants'  
22 pattern of conduct to unreasonably delay, underset limits, and failure to provide  
23 benefits under the Policy as previously alleged, forced the Plaintiff to suffer losses  
24 which should have been covered by the Policy.

25 53. Defendants Transportation Insurance Company and Does 1 through 75,  
26 knowingly and wrongfully elevated their financial interests above those of Plaintiff in  
27 this case, and acted with a willful and conscious disregard of Plaintiff's rights to timely  
28 receive benefits as provided by the Policy. Defendants Transportation Insurance

1 Company and Does 1 through 75, willfully and intentionally sought to deprive Plaintiff  
2 of benefits which it was entitled to receive under the Policy or should have been entitled  
3 to receive had Transportation Insurance Company accurately and adequately  
4 performed its duties as an insurer.

5 54. Defendant Transportation Insurance Company's and Does 1 through 75's  
6 conduct described herein was undertaken by these corporate Defendants' officers or  
7 managing agents, who were responsible for policy underwriting, policy limit setting,  
8 claims supervision and operations, underwriting, policy interpretation,  
9 communications, and/or decisions. The aforementioned conduct of said managing  
10 agents and individuals was therefore undertaken on behalf of these corporate  
11 Defendants. These corporate Defendants further had advanced knowledge of the  
12 actions and conduct of said individuals whose actions and conduct were ratified,  
13 authorized, and approved by managing agents whose precise identities are unknown to  
14 Plaintiff at this time and are therefore identified and designated herein as Does 1  
15 through 75, inclusive.

## 17 SECOND CAUSE OF ACTION

### 18 **(Breach of Contract)**

19 PLAINTIFF FERTILITY CENTERS OF ORANGE COUNTY, A MEDICAL  
20 GROUP, INC. FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS  
21 TRANSPORTATION INSURANCE COMPANY AND DOES 1 THROUGH 75,  
22 INCLUSIVE, FOR BREACH OF CONTRACT, ALLEGES:

23 55. Plaintiff refers to each and every paragraph of this complaint and  
24 incorporates those paragraphs as though set forth in full in this cause of action.

25 56. Plaintiff has fully and completely performed all its duties and obligations  
26 under the Policy, including the timely payment of all premiums.

27 57. Defendants Transportation Insurance Company and Does 1 through 75,  
28 inclusive, and each of them, owed duties and obligations to Plaintiff under the Policies.

1 Defendants Transportation Insurance Company and Does 1 through 75, inclusive, and  
2 each of them, breached those duties and obligations by denying Plaintiff's claim for  
3 policy benefits without investigation and without a reasonable attempt to search for  
4 coverage, ultimately depriving Plaintiff of the business-saving policy benefits which it is  
5 owed.

6 58. As a direct and proximate result of Defendants' conduct and material  
7 breach of their contractual obligations, Plaintiff has suffered damages under the Policy  
8 in an amount to be determined according to proof at the time of trial, plus interest and  
9 other foreseeable, consequential, and incidental damages according to proof, and in  
10 amounts to be determined at the time of trial.

### 11 THIRD CAUSE OF ACTION

#### 12 (Declaratory Relief)

13  
14 PLAINTIFF FERTILITY CENTERS OF ORANGE COUNTY, A MEDICAL  
15 GROUP, INC. FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS  
16 TRANSPORTATION INSURANCE COMPANY AND DOES 1 THROUGH 75,  
17 INCLUSIVE, FOR DECLARATORY RELIEF, ALLEGES:

18 59. Plaintiff refers to each and every paragraph of this complaint and  
19 incorporates those paragraphs as though set forth in full in this cause of action.

20 60. Under California Code of Civil Procedure section 1060 et seq., the court  
21 may declare the rights, status, and other legal relations whether or not further relief is  
22 or could be claimed.

23 61. An actual controversy has arisen between Plaintiff and Defendants  
24 Transportation Insurance Company and Does 1 through 75 as to the rights, duties,  
25 responsibilities and obligations of the parties in that Plaintiff contends and, based on  
26 information and belief and the denial of policy benefits prepared by Defendants  
27 Transportation Insurance Company and Does 1 through 75, who dispute and deny,  
28 that:

- 1 (a) the state, national, and local governmental action and medical board and  
2 other entities' forced shuttering of nonessential businesses and the general  
3 public fear and panic surrounding the COVID-19 pandemic rendered  
4 Plaintiff's covered premises to become temporarily or permanently  
5 unusable or uninhabitable;
- 6 (b) this governmental action, pandemic, and community fear specifically  
7 constitute a "direct physical loss of" covered property under the Policy;
- 8 (c) this governmental action and community fear triggers coverage because  
9 these issues are the efficient proximate cause of Plaintiff's loss;
- 10 (d) no Policy coverage exclusions or limitations apply to exclude or limit  
11 coverage;
- 12 (e) Plaintiff has suffered an actual and covered loss in an amount to be  
13 determined at trial;
- 14 (f) some or all of the period of Plaintiff's covered loss is within the period of  
15 restoration under the Policy; and
- 16 (g) the Policy provides coverage to Plaintiff for any future governmental  
17 action and community fear surrounding the COVID-19 pandemic which  
18 results in the shuttering nonessential businesses and thereby causing a  
19 physical loss of the covered premises.

20 62. Resolution of the duties, responsibilities and obligation of the parties is  
21 necessary as no adequate remedy at law exists and a declaration of the Court is needed  
22 to resolve the dispute and controversy.

23 63. Plaintiff seeks a Declaratory Judgement to determine whether the state,  
24 national, and local governmental action shuttering nonessential businesses and the  
25 general public fear surrounding the COVID-19 pandemic rendered Plaintiff's covered  
26 premises to become temporarily or permanently unusable or uninhabitable so as to  
27 constitute a "direct physical loss of or damage to" property under the Policy.

28

1           64. Plaintiff further seeks a Declaratory Judgment to affirm that such  
 2 governmental action and community fear triggers coverage under the Policy because  
 3 these issues are the efficient proximate cause of Plaintiff's loss, and no Policy coverage  
 4 exclusions or limitations otherwise apply to exclude or limit coverage under these  
 5 circumstances.

6           65. Plaintiff further seeks a Declaratory Judgment to affirm that Plaintiff has  
 7 suffered an actual and covered loss within the period of restoration under the Policy  
 8 beginning on or about March 4, 2020.

9           66. Plaintiff further seeks a Declaratory Judgment to affirm that the policy  
 10 provides coverage to Plaintiff for the current and any future governmental action and  
 11 widespread fear surrounding the COVID-19 pandemic which results in the shuttering  
 12 nonessential businesses and thereby causing a physical loss of the covered premises.

13           67. Plaintiff, through this cause of action only, does not seek any  
 14 determination of whether the novel coronavirus is physically in the covered premises,  
 15 amount of damages, or any other remedy other than declaratory relief.  
 16

17   **FOURTH CAUSE OF ACTION**

18   **(Negligence)**

19           PLAINTIFF FERTILITY CENTERS OF ORANGE COUNTY, A MEDICAL  
 20 GROUP, INC. FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANTS  
 21 GOLDEN EMPIRE INSURANCE AGENCY, INC., AND DOES 76 THROUGH 100,  
 22 INCLUSIVE, FOR NEGLIGENCE, ALLEGES:

23           68. Plaintiff refers to each and every paragraph of this complaint and  
 24 incorporates those paragraphs as though set forth in full in this cause of action. This  
 25 cause of action is brought in the alternative to the First, Second, and Third Causes of  
 26 Action regarding the insurance procured by and through Defendants Golden Empire  
 27 and Does 76 through 100, inclusive.  
 28

1           69. Defendants Golden Empire and Does 76 through 100, inclusive, and each  
2 of them, held themselves out to Plaintiff as specialists in the business interruption and  
3 business policyholder insurance arena and in obtaining comprehensive insurance  
4 coverage.

5           70. Defendants, due to that claimed expertise, thus owed duties of reasonable  
6 care, diligence and loyalty, and judgment to Plaintiff in procuring insurance and to  
7 assure that coverage as requested and promised was in place to protect Plaintiff.

8           71. Plaintiff specifically requested that Defendants Golden Empire and Does  
9 76 through 100, inclusive, obtain full and adequate insurance to protect against the risks  
10 of future loss. These Defendants agreed to provide such insurance coverage to  
11 adequately and fully protect Plaintiff should it suffer business interruption losses.

12           72. Defendants Golden Empire and Does 76 through 100, inclusive, owed  
13 Plaintiff a duty of care to see that Plaintiff's interests were fully protected by the  
14 coverage they sought and obtained for Plaintiff.

15           73. Defendants Golden Empire and Does 76 through 100 also owed duties to  
16 Plaintiff to obtain the coverage requested by Plaintiff; to obtain appropriate coverage  
17 suited to the specific needs of Plaintiff; to accurately represent and report the coverage  
18 obtained; and to properly assist and report in the claim for benefits to the insurer.

19           74. Defendants Golden Empire and Does 76 through 100, inclusive, breached  
20 that duty, by failing to properly and accurately ensure the amount of coverage obtained  
21 for Plaintiff; by failing to obtain the appropriate coverage as requested by Plaintiff; by  
22 failing to accurately represent and report the coverage obtained; and by failing to  
23 properly warn Plaintiff of potential coverage limitations, gaps, or exclusions.

24           75. At all relevant times, Defendants Golden Empire and Does 76 through  
25 100, inclusive, knew that Plaintiff was relying upon their experience, skill, accuracy,  
26 good faith, and expertise as insurance specialists for business interruption insurance  
27 such as that obtained for Plaintiff.

28



1 76. Defendants Golden Empire and Does 76 through 100, inclusive, failed to  
2 exercise the skill and care that a reasonably careful insurance agent or broker would  
3 have used in similar circumstances.

4 77. Plaintiff is informed and believes and thereupon alleges that Defendants  
5 Golden Empire, and Does 76 through 100, inclusive, were negligent in other acts or  
6 omissions of which Plaintiff is presently unaware.

7 78. As a proximate result of the negligence of Defendants Golden Empire and  
8 Does 76 through 100, inclusive, Plaintiff has suffered, and will continue to suffer,  
9 general and special damages to be determined at trial. These include the limits available  
10 under the Business Income and Civil Authority provisions of the Policy, the fees to  
11 procure counsel to litigate this dispute, and other damages as awardable by the Court.

12  
13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of  
15 them, as follows:

16 **AS TO THE FIRST CAUSE OF ACTION AGAINST DEFENDANTS**  
17 **TRANSPORTATION INSURANCE COMPANY AND DOES 1 THROUGH 75,**  
18 **INCLUSIVE, FOR BREACH OF THE DUTY OF GOOD FAITH AND FAIR**  
19 **DEALING:**

- 20 1. Damages for failure to provide the full benefits, both past and future,  
21 under the Policy, plus interest, in a sum to be determined at the time of  
22 trial;
- 23 2. For prejudgment interest on all damages awarded to Plaintiff in  
24 accordance with California Civil Code section 3287;
- 25 3. For attorneys' fees, witness fees, and costs of litigation incurred by  
26 Plaintiff to obtain the Policy benefits in an amount to be determined at  
27 trial;

28

- 1 4. For economic and consequential damages arising out of these Defendants'
- 2 unreasonable failure to provide benefits under the Policy;
- 3 5. For punitive and exemplary damages in an amount appropriate to punish
- 4 or set an example of these Defendants pursuant to Cal. Civ. Code § 3345;
- 5 6. For emotional distress and other general damages to be determined at
- 6 trial;
- 7 7. For costs of suit incurred herein; and
- 8 8. For such other and further relief as the Court deems just and proper.
- 9

10 **AS TO THE SECOND CAUSE OF ACTION AGAINST DEFENDANTS**  
11 **TRANSPORTATION INSURANCE COMPANY AND DOES 1 THROUGH 75,**  
12 **INCLUSIVE, FOR BREACH OF CONTRACT:**

- 13 1. Damages under the Policy, including past and future policy benefits due,
- 14 plus interest, and other economic and consequential damages, in an
- 15 amount to be determined according to proof at the time of trial;
- 16 2. For prejudgment interest on all damages awarded to Plaintiff in
- 17 accordance with California Civil Code section 3287;
- 18 3. For costs of suit incurred herein; and
- 19 4. For such other and further relief as the Court deems just and proper.
- 20

21 **AS TO THE THIRD CAUSE OF ACTION AGAINST DEFENDANTS**  
22 **TRANSPORTATION INSURANCE COMPANY AND DOES 1 THROUGH 75,**  
23 **INCLUSIVE, FOR DECLARATORY RELIEF:**

- 24 1. For a declaration that the state, national, and local governmental action
- 25 shuttering nonessential businesses and the general public fear
- 26 surrounding the COVID-19 pandemic rendered Plaintiff's covered
- 27 premises to become temporarily or permanently unusable or
- 28 uninhabitable;

- 1           2.     For a declaration that the governmental action and community fear, panic,  
2                     and social distancing specifically constitute a “direct physical loss of”  
3                     covered property under the Policy;
- 4           3.     For a declaration that the governmental action and community fear are the  
5                     efficient proximate cause of Plaintiff’s loss;
- 6           4.     For a declaration that no Policy coverage exclusions or limitations apply to  
7                     exclude or limit coverage under these circumstances;
- 8           5.     For a declaration that Plaintiff has suffered an actual and covered loss in  
9                     an amount to be determined at trial;
- 10          6.     For a declaration that some or all of the period of Plaintiff’s covered loss is  
11                     within the period of restoration under the Policy; and
- 12          7.     For a declaration that the Policy provides coverage to Plaintiff for any  
13                     future governmental action and community fear surrounding the COVID-  
14                     19 pandemic which results in the shuttering nonessential businesses and  
15                     thereby causing a physical loss of the covered premises.

16  
17                     **AS TO THE FOURTH CAUSE OF ACTION AGAINST DEFENDANTS**

18                     **GOLDEN EMPIRE INSURANCE AGENCY, INC., AND DOES 76 THROUGH 100,**  
19                     **INCLUSIVE, FOR NEGLIGENCE:**

- 20           1.     For economic and consequential damages arising out of these Defendants’  
21                     negligence;
  - 22           2.     For costs of suit incurred herein;
  - 23           3.     For prejudgment interest on all damages awarded to Plaintiff in  
24                     accordance with California Civil Code §3287 and/or §3288; and
  - 25           4.     For such other and further relief as the Court deems just and proper.
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Dated: June 26, 2020

BENTLEY & MORE LLP

By: 

GREGORY L. BENTLEY  
MATTHEW W. CLARK  
FARNAZ SALESSI  
Attorneys for Plaintiff, Fertility Centers  
of Orange County, A Medical Group,  
Inc.



DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: June 26, 2020

BENTLEY & MORE LLP

By: 

GREGORY L. BENTLEY

MATTHEW W. CLARK

FARNAZ SALESSI

Attorneys for Plaintiff, Fertility Centers  
of Orange County, A Medical Group,  
Inc.



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