

1 GREGORY L. BENTLEY #151147 (*gbentley@bentleymore.com*)
2 MATTHEW W. CLARK #273950 (*mclark@bentleymore.com*)
3 FARNAZ SALESSI #327289 (*fsalessi@bentleymore.com*)
4 **BENTLEY & MORE LLP**
5 4931 Birch Street
6 Newport Beach, California 92660
7 Phone: (949) 870-3800
8 Facsimile: (949) 732-6291

9 Attorneys for Plaintiffs

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF ORANGE

12 **Assigned for All Purposes**
13 Judge Richard Lee

14 HOTEL ADVENTURES LLC, a California
15 limited liability company, HOTEL2SUITES
16 LLC, a California limited liability company,
17 ALMANSOR COURT INC., a California
18 corporation, OCMC INC., a California
19 corporation, POMONA VALLEY MINING
20 CO., a California corporation, QUIET
21 CANNON MONTEBELLO INC., a
22 California corporation, and MAVERICK
23 HOSPITALITY GROUP INC., a California
24 corporation,

25 Plaintiffs,

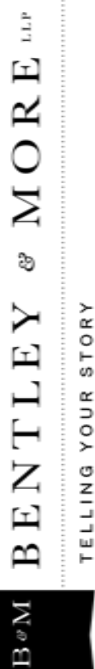
26 vs.

27 FIREMAN'S FUND INSURANCE
28 COMPANY, a California corporation,
BIZLINKS INSURANCE SERVICES, INC.
dba WESTERN ELITE INSURANCE
SOLUTIONS, a California corporation,
UNITED VALLEY INSURANCE
SERVICES, INC., a California corporation,
and DOES 1-100, inclusive,
Defendants.

Case No.: 30-2021-01188889-CU-CO-CJC

**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. The hospitality and restaurant industries in California have historically
3 been two of the nation’s busiest, serving a thriving and near-constant influx of tourists
4 and locals alike. Among the prominent figures in these industries are Hotel Adventures
5 LLC, Hotel2Suites LLC, Almansor Court Inc., OCMC Inc., Pomona Valley Mining Co.,
6 Quiet Cannon Montebello Inc., and Maverick Hospitality Group Inc. (hereinafter
7 collectively referred to as “Plaintiffs”), which operate multiple hotels, restaurants, and
8 conference and event centers throughout the counties of Los Angeles and Orange.
9 Plaintiffs’ businesses include the Hilton Garden Inn in Montebello, the Home2 Suites by
10 Hilton in Montebello, the Quiet Cannon Conference & Event Center in Montebello, the
11 Almansor Court banquet facility in Alhambra, the Orange County Mining Co.
12 restaurant and banquet hall in Santa Ana, and the Pomona Valley Mining Co.
13 restaurant and lounge in Pomona. Each of the Plaintiffs’ businesses have committed
14 themselves to providing outstanding service, and as a result have built strong customer
15 bases and enjoyed steady success.

16 2. But Plaintiffs’ busy hotels, restaurants, and conference and event centers—
17 which went unhindered until early March 2020—have now been devastated by the
18 governmental orders, mandated social distancing, and fear and panic surrounding the
19 emergence of the COVID-19 pandemic. Despite purchasing business interruption
20 insurance from Fireman’s Fund Insurance Company to cover *exactly* this kind of
21 setback, Plaintiffs have had their insurance claim denied without any reasonable
22 investigation, attempt to search for coverage, or other good faith conduct from their
23 insurer. Instead, Plaintiffs were left to weather the storm without the one product they
24 sorely needed—the insurance coverage they had spent years paying significant
25 premiums and counting on in the event of disaster.

26 3. Originating in Wuhan, China, and rapidly progressing worldwide,
27 COVID-19 (“the novel coronavirus”) is a respiratory disease mainly spread by airborne
28 droplets containing the SARS-CoV-2 virus, which are released when infected persons

1 speak, sneeze, or cough. The airborne droplets containing SARS-CoV-2 physically alter
2 and damage the air, including the air within buildings, such that the air is no longer
3 safe to breathe. These airborne droplets also attach themselves to surfaces and
4 properties, physically changing the condition of those surfaces and properties from safe
5 to unsafe and deadly, capable of causing the novel coronavirus.

6 4. Far more infectious than the flu or many other diseases, the novel
7 coronavirus has spread like wildfire—exploding in the span of a few months from a
8 limited, regional disease to a major, worldwide pandemic. In addition, the novel
9 coronavirus can be spread by asymptomatic carriers, making it particularly difficult to
10 confirm its presence (or absence) in a given location, business, or community.

11 5. On January 21, 2020, the first confirmed case of the novel coronavirus in
12 the United States was reported in Washington state. Despite the novel coronavirus
13 circulating unchecked in the United States for months (with new studies pushing the
14 first instance of community spread ever further back in time—and the first reported
15 case in LA County in January 2020), in March 2020 both formal and informal measures
16 were taken to stem the spread of SARS-CoV-2 and the novel coronavirus—including
17 almost unheard-of social distancing measures, severe curtailing or outright shutdowns
18 of businesses, and actions that have forever changed the face of the American economy.

19 6. Recognizing the severe threat to the population of Orange County and the
20 need for swift action, the Orange County Healthcare Agency declared a local health
21 emergency on February 26, 2020 to help ensure county government and the public were
22 prepared for the possibility that COVID-19 will appear within the county. Days later, on
23 March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency,
24 which noted it was imperative “to implement measures to mitigate the spread of
25 COVID-19” such that “state and local health departments must use all available
26 preventative measures to combat the spread of COVID-19.” Following suit, that same
27 day, the County of Los Angeles Department of Public Health declared a local health
28 emergency to help ensure county government and the public were prepared for the

1 possibility that COVID-19 will appear within the county.

2 7. On March 13, 2020, the surging global pandemic—which at that point had
3 infected over one thousand individuals within the United States, killing dozens and
4 contributing to over 118,000 infections and 4,291 deaths worldwide—was declared a
5 national emergency by President Donald Trump, echoing the World Health
6 Organization’s March 11, 2020 declaration of the disease as a global pandemic. But
7 notably, states, counties, and even cities were free to issue their *own* health guidance,
8 shutdown orders, or distancing requirements. On March 16, 2020, the County of Los
9 Angeles Health Officer issued a shelter-in-place order “prohibit[ing] all indoor public
10 and private gatherings and all outdoor public and private events within a confined
11 space, where at least 50 people are expected to be in attendance at the same time,” and
12 also requiring all permanent food facilities to limit their services to only preparing and
13 offering food to customers via delivery service, via pick up for takeout dining only, or
14 via drive-through. On March 18, 2020, the County of Orange Health Officer issued an
15 order prohibiting public or private gatherings—which included “any event or
16 convening that brings together people in a single room or single space at the same
17 time”—while also requiring all food to be served via delivery, pick-up, or drive-
18 through. In-person dining, conference spaces, travel, and other forms of social and
19 entertainment life were eliminated, essentially overnight. Plaintiffs’ hotels, restaurants,
20 and conference and events centers were thus effectively shut down.

21 8. On March 19, 2020, implementing the most stringent methods yet used to
22 prevent further spread of the global pandemic, Governor Newsom issued an executive
23 order effectively requiring that all California citizens not identified as employees of
24 critical infrastructure sectors stay at home, leaving only to obtain access to necessities,
25 and even then at all times practicing social distancing by maintaining at least six feet of
26 distance with others (“the stay at home order”). Los Angeles followed two days later,
27 on March 21, 2020, with its own “Safer At Home Order for Control of COVID-19,”
28 which served as a “temporary prohibition of all events and gatherings,” and the

1 “closure of non-essential businesses and areas.”

2 9. These national, state, and local measures effectively shuttered the majority
3 of California businesses, particularly in the counties of Los Angeles and Orange.
4 Plaintiffs’ businesses were among those that were affected by these measures.

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

17 11. Defendant’s denial of coverage directly contradicts decades of case law
18 nationwide acknowledging that when an external force—such as toxic vapors, gases, or
19 odors—causes a covered premises to become temporarily or permanently unusable or
20 uninhabitable, that loss and loss of use is considered “direct physical loss of” the
21 covered premises and has been deemed a covered loss under business interruption
22 policies. Defendant’s claim that coverage is precluded by various exclusions under
23 Plaintiffs’ policy is also incorrect, as Plaintiffs’ losses were proximately caused by the
24 general public fear surrounding the global pandemic, social distancing measures taken
25 by individuals and businesses, state, national, and local declarations of emergency, and
26 the stay at home order issued by California, as well as the orders and guidance issued
27 by various state, national, local, and other entities, rather than any of the excluded perils
28 that Defendant will likely contend may be applicable to this claim. Each of the

1 foregoing efficient proximate causes of Plaintiffs' losses are *not* excluded under the
2 terms of Plaintiffs' policy, and thus, constitute covered perils for which Plaintiffs are
3 entitled to full policy benefits pursuant to California law.

4 12. Fireman's Fund Insurance Company, by its "shoot-from-the-hip" denial,
5 and its refusal to conduct *any* kind of investigation or even make a bare attempt at
6 looking for coverage before denial, is thus a textbook example of an insurer placing its
7 own financial interests ahead of its insureds, and placing its own profits over the
8 financial well-being of its insureds.

9 10 II. THE PARTIES

11 13. Plaintiff Hotel Adventures LLC is a California limited liability company
12 with an entity address registered with the California Secretary of State located at 17662
13 Irvine Blvd., Ste. 4, Tustin, CA 92780, in the County of Orange, and with its insurance
14 covered property located in Montebello, California.

15 14. Plaintiff Hotel2Suites LLC is a California limited liability company with
16 an entity address registered with the California Secretary of State located at 17662 Irvine
17 Blvd., Ste. 4, Tustin, CA 92780, in the County of Orange, and with its insurance covered
18 property located in Montebello, California.

19 15. Plaintiff Almansor Court Inc. is a California corporation with an entity
20 address registered with the California Secretary of State located at 17662 Irvine Blvd.,
21 Ste. 4, Tustin, CA 92780, in the County of Orange, and with its insurance covered
22 property located in Alhambra, California.

23 16. Plaintiff OCMC Inc. is a California corporation with an entity address
24 registered with the California Secretary of State located at 17662 Irvine Blvd., Ste. 4,
25 Tustin, CA 92780, in the County of Orange, and with its insurance covered property
26 located in Santa Ana, California.

27 17. Plaintiff Pomona Valley Mining Co. is a California corporation with an
28 entity address registered with the California Secretary of State located at 17662 Irvine

1 Blvd., Ste. 4, Tustin, CA 92780, in the County of Orange, and with its insurance covered
2 property located in Pomona, California.

3 18. Plaintiff Quiet Cannon Montebello Inc. is a California corporation with an
4 entity address registered with the California Secretary of State located at 17662 Irvine
5 Blvd., Ste. 4, Tustin, CA 92780, in the County of Orange, and with its insurance covered
6 property located in Montebello, California.

7 19. Plaintiff Maverick Hospitality Group Inc. is a California corporation, with
8 its registered entity address located at 17662 Irvine Blvd., Ste. 4, Tustin, CA 92780, in the
9 County of Orange.

10 20. Plaintiffs are informed and believe and thereupon allege that Defendant
11 Fireman’s Fund Insurance Company is a corporation domiciled in the State of
12 California, with its principal place of business in Chicago, Illinois. Plaintiffs are further
13 informed and believe and thereupon allege that at all relevant times, Fireman’s Fund
14 Insurance Company was authorized to transact business in the State of California, and
15 Fireman’s Fund Insurance Company was, and is, transacting the business of insurance
16 in the State of California, including issuing, delivering, and providing the insurance
17 policy at issue to California residents in the state of California—specifically to California
18 insureds at their entity addresses in the County of Orange. The insurance policy at issue
19 was negotiated, delivered, and issued to Plaintiffs, with the expectation that it was to be
20 performed (and policy benefits provided) in the counties of Los Angeles and Orange.
21 Further, based upon information and belief, Fireman’s Fund maintains one of its
22 principal offices in California at 800 S. Figueroa Street, Los Angeles, CA 90017, and has
23 designated an agent for service of process with the California Department of Insurance
24 located at 818 W. 7th St., Suite 930, Los Angeles, CA 90017.

25 21. Defendant Bizlinks Insurance Services, Inc. is a California corporation
26 doing business as Western Elite Insurance Solutions (“Western Elite”), with its principal
27 place of business in Roseville, California. Plaintiffs are informed and believe and
28 thereupon allege that at all relevant times, Western Elite was authorized to transact

1 business in the State of California, and Western Elite was, and is, transacting the
2 business of insurance in the State of California, and specifically transacting the business
3 of insurance with insureds, including the Plaintiffs, located in the County of Orange.

4 22. Defendant United Valley Insurance Services, Inc. (“United Valley”) is a
5 California corporation with its principal place of business in Fresno, California.
6 Plaintiffs are informed and believe and thereupon allege that at all relevant times,
7 United Valley was authorized to transact business in the State of California, and United
8 Valley was, and is, transacting the business of insurance in the State of California, and
9 specifically transacting the business of insurance with insureds, including the Plaintiffs,
10 located in the County of Orange.

11 23. At all times relevant herein, Plaintiffs are informed and believe, and
12 thereupon allege, that Does 1 through 100, inclusive, and each of them, were domiciled
13 in the State of California, whether by incorporation, principal place of business, or by
14 maintaining sufficient minimum contacts in the State of California to the extent
15 necessary for this Court to exercise personal jurisdiction over them.

16 24. The true names and capacities of Does 1 through 100, inclusive, and each
17 of them, whether individual, corporate, alter ego, partnership, joint-venture, associate
18 or otherwise are presently unknown to Plaintiffs, who therefore sue these defendants by
19 fictitious names, and will seek leave of court to amend this complaint once the true
20 names and capacities are ascertained.

21 25. At all times relevant, Plaintiffs are further informed and believe, and
22 thereupon allege, that defendants, including Does 1 through 100, inclusive, and each of
23 them, acted in the capacity of principal, agent, master, servant, employer, employee,
24 whether general or special, independent contractor, joint-venture, partnership, or
25 otherwise, and acted under the control of and at the direction of each other defendant,
26 and that such agency relationship existed contractually, apparently, or ostensibly, and
27 that each defendant acted within the course and scope of such agency and employment,
28 and that each defendant as a principal is vicariously liable for the negligent conduct of

1 each defendant acting as an agent within the course and scope of such agency, and that
2 each defendant when acting as a principal was negligent, careless, or reckless in the
3 selection, hiring, training, management, supervision, and entrustment of each and every
4 other defendant, and ratified and approved of the unauthorized conduct of each
5 defendant after it occurred, by conduct, inference or otherwise.

7 III. JURISDICTION AND VENUE

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

11 27. Venue in the Superior Court of this County is proper as it is the county in
12 which the majority of the occurrences and events giving rise to Plaintiffs' injuries
13 occurred (including the county where the insurance policy was delivered—with *all* of
14 the insureds having an entity address location in Tustin, CA—and where some of the
15 actual insured properties are located, where the insureds suffered significant damages,
16 and the location in which the Defendants' actions caused harm) and where the
17 insurance policy at issue was to be largely performed by providing insurance policy
18 benefits to the insureds pursuant to Code of Civil Procedure section 395(a).

20 IV. GENERAL ALLEGATIONS

21 A. Plaintiffs' business interruption policy

22 28. On or about June 30, 2019, Defendant Fireman's Fund Insurance Company
23 entered into a contract of insurance with Plaintiffs pursuant to businessowners policy
24 number S 90 MZX 80997856 ("the Policy"), whereby Plaintiffs agreed to make
25 significant premium payments to Fireman's Fund Insurance Company in exchange for
26 Fireman's Fund Insurance Company's promise to indemnify Plaintiffs for losses
27 including, but not limited to, business income losses incurred during the policy period
28 of June 30, 2019 to June 30, 2020. Each of the Plaintiffs named in this action is a Named

1 Insured under the Policy. The Policy was delivered to the Plaintiffs at their business
2 address in Tustin, CA. At issue here are at least five types of coverage provided by the
3 Policy, as well as various other provisions, coverages, and extensions: Business Income,
4 Extended Business Income, and Civil Authority coverage, and potentially Crisis Event
5 Business Income and Extra Expense and Communicable Disease Extra Expense
6 coverage.

7 29. The Policy's Business Income Coverage provision provides that the Policy
8 "will pay for the actual loss of Business Income you sustain due to the necessary
9 suspension of your operations during the period of restoration. The suspension must be
10 caused by direct physical loss of or damage to property...caused by or resulting from
11 any Covered Cause of Loss." Plaintiffs' premises, including those in Montebello,
12 Alhambra, Santa Ana, and Pomona, CA, constitute the Covered Property.

13 30. The Policy's Extended Business Income coverage provides additional
14 coverage for actual business income losses sustained for up to 30 additional days.

15 31. The Policy further provides Civil Authority coverage for actual loss of
16 Business Income and necessary Extra Expense as follows:

17 **b. Civil Authority**

18 We will pay for the actual loss of Business Income you sustain and
19 necessary Extra Expense caused by action of civil authority that
20 prohibits access to the described premises due to direct physical
21 loss of or damage to property, other than at the described premises,
22 caused by or resulting from any Covered Cause of Loss. This
23 coverage will apply for a period of up to two consecutive weeks
24 from the date of that action.

25 32. The Policy's Special Causes of Loss (Special Form) provision is as follows:

26 **Special Causes of Loss (Special Form)**

27 When **Special** is shown in the Declarations, covered causes of loss
28 means the Basic Causes of Loss and Risks of Direct Physical Loss
not covered by the Basic Causes of Loss unless loss is excluded or
limited as stated in Sections B and C that follow.

33. Finally, the Policy includes various inapplicable exclusions, hereinafter

1 collectively referred to as “the Exclusions.” The Exclusions include: (1) an exclusion for
2 disease; and (2) an exclusion for “acts or decisions, including the failure to act or decide,
3 of any person, group, organization or governmental body.”

4
5 **B. The widespread social distancing, governmental orders, and worldwide fear
6 and panic during the pandemic and the effect on Plaintiffs’ businesses**

7 34. On January 21, 2020, the first confirmed case of the novel coronavirus in
8 the United States was reported in Washington state, and within weeks, both formal and
9 informal measures were taken to stem the spread of the disease. At that point, the
10 coronavirus had already infected thousands and continued largely unimpeded,
11 threatening to overwhelm health care systems worldwide due to the ease with which it
12 spread and its potentially fatal impact. Highly contagious, the novel coronavirus is
13 mainly spread through airborne droplets containing the SARS-CoV-2 virus that are
14 released when infected persons speak, sneeze, or cough, contaminating others via
15 interpersonal contact or via contact with a contaminated surface, on which SARS-CoV-2
16 can survive for days. The airborne droplets containing the SARS-CoV-2 virus
17 physically alter and damage the air, including the air within buildings, such that the air
18 is no longer safe to breathe. These airborne droplets also attach themselves to surfaces
19 and properties, physically changing the condition of those surfaces and properties from
20 safe to unsafe and deadly, capable of causing the novel coronavirus disease.

21 35. Particularly troublesome is the possibility of “asymptomatic spread,”
22 meaning that individuals can become contagious (and spread infective droplets to
23 others and onto surfaces) without knowing they are sick. This makes it particularly
24 difficult to track the virus, as well as to confirm the presence of the virus in a particular
25 location, building, or community. Though the first cases were reported in the United
26 States in January 2020 (with new research demonstrating community spread even
27 earlier), businesses such as those of the Plaintiffs were unaffected until the action by
28 government agencies and other entities in early March 2020.

36. Recognizing the severe threat to the population of Orange County and the

1 need for swift action, the Orange County Healthcare Agency declared a local health
2 emergency on February 26, 2020 to help ensure county government and the public were
3 prepared for the possibility that COVID-19 will appear within the county. Days later, on
4 March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency,
5 which noted it was imperative “to implement measures to mitigate the spread of
6 COVID-19” such that “state and local health departments must use all available
7 preventative measures to combat the spread of COVID-19.” Following suit, that same
8 day, the County of Los Angeles Department of Public Health declared a local health
9 emergency to help ensure county government and the public were prepared for the
10 possibility that COVID-19 will appear within the county.

11 37. On March 12, 2020, California Governor Gavin Newsom issued Executive
12 Order N-25-20 ordering that: “All residents are to heed any orders and guidance of state
13 and local public health officials, including but not limited to the imposition of social
14 distancing measures, to control the spread of COVID-19.”

15 38. Also on March 13, 2020, the surging global pandemic—which at that point
16 had 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.
20 Notably, states, counties, and cities were left to their own judgment as to what, if any,
21 social distancing, shutdown, or other orders were in the best interests of their citizens.

22 39. On March 16, 2020, the County of Los Angeles Health Officer issued a
23 shelter-in-place order “prohibit[ing] all indoor public and private gatherings and all
24 outdoor public and private events within a confined space, where at least 50 people are
25 expected to be in attendance at the same time,” and also requiring all permanent food
26 facilities to limit their services to only preparing and offering food to customers via
27 delivery service, pick-up for takeout dining only, or via drive-through. On March 18,
28 2020, the County of Orange Health Officer issued an order prohibiting public or private

1 gatherings—which included “any event or convening that brings together people in a
2 single room or single space at the same time” —while also requiring all food to be
3 served via delivery, pick-up or drive-through.

4 40. On March 19, 2020, seeking to prevent the further spread of the global
5 pandemic by both symptomatic and asymptomatic carriers, Governor Newsom issued
6 an executive order effectively requiring that all citizens not identified as employees of
7 critical infrastructure sectors stay at home, leave their homes only to obtain access to
8 necessities and essential services, and even then at all times practicing social distancing
9 by maintaining at least six feet of distance with others. Governor Newsom’s stay at
10 home order was the first in the nation and effectively shuttered non-essential California
11 businesses. Los Angeles followed two days later, on March 21, 2020, with its own “Safer
12 At Home Order for Control of COVID-19,” which served as a “temporary prohibition of
13 all events and gatherings,” and the “closure of non-essential businesses and areas.”
14 Similar orders were quickly implemented by other governors, such that by April 6,
15 2020, forty-three states had issued stay at home orders.

16 41. Plaintiffs operate hotels, restaurants, and conference and event centers
17 from their premises in Montebello, Alhambra, Santa Ana, and Pomona, California—the
18 Covered Properties—which were shuttered or severely curtailed due to informal social
19 distancing precautions, fear surrounding the coronavirus, the stay at home order, the
20 local County orders, and the actions of the national, state, and local government, health
21 departments, and other entities. As a result, Plaintiffs have experienced a significant
22 reduction in their business activities and suffered extensive losses. Indeed, Plaintiffs
23 were required to curtail non-essential business activities and close their restaurants to
24 dine-in customers, severely hampering their businesses. They were deprived of the
25 ability to open and operate their businesses, were deprived of the ability to access their
26 property for their normal business pursuits, and were dispossessed of their businesses
27 and their buildings by the significant governmental orders, fear and panic, mandated
28 social distancing, and other issues discussed throughout this complaint. As a result,

1 Plaintiffs have experienced a significant reduction in their business activities and
2 suffered extensive losses.

3 42. Moreover, at the time that the Plaintiffs' businesses were shuttered or
4 severely curtailed, SARS-CoV-2 and the novel coronavirus were present on and around
5 the Covered Properties. At all relevant times, SARS-CoV-2 and the novel coronavirus
6 were prevalent in the counties of Orange and Los Angeles, as well as neighboring
7 counties. Plaintiffs' businesses are frequented by thousands of individuals a day,
8 including employees and customers infected with the novel coronavirus. These
9 individuals released SARS-CoV-2 into the air by breathing, while at the same time
10 contaminating countless other surfaces on Plaintiffs' Covered Properties with SARS-
11 CoV-2 by touching them—including furniture, doors, and other surfaces.

12 43. Upon the gradual reopening of Plaintiffs' businesses, Plaintiffs had to
13 implement additional cleaning and sanitization measures in order to prevent the spread
14 of SARS-CoV-2 and the novel coronavirus, in accordance with public health orders
15 from the counties of Orange and Los Angeles—all at significant cost to Plaintiffs.
16

17 **C. Plaintiffs' business interruption claim**

18 44. As these devastating losses began to surface, Plaintiffs filed a claim for
19 insurance policy benefits with Defendant Fireman's Fund Insurance Company. On July
20 20, 2020, apparently without investigation or even an attempt to search for coverage in
21 favor of the insureds, Defendant denied Plaintiffs' claim. That denial was based on the
22 erroneous coverage position that the worldwide pandemic, social distancing,
23 governmental orders, and fear and panic that resulted in the shuttering of Plaintiffs'
24 businesses (the loss of use of the properties as well as the dispossession and deprivation
25 of the properties) did not cause direct physical loss of or damage to Plaintiffs' buildings
26 that caused or resulted in a shut down from a Covered Cause of Loss. Defendant,
27 further ignoring California law, claims that the purported lack of direct physical loss of
28 or damage to property other than at the covered premises precludes coverage under the

1 Policy's Civil Authority provision, and further claims that the Exclusions preclude
2 coverage for loss of business income.

3 45. Defendant's claim that Plaintiffs have not suffered direct physical loss of
4 or damage to their property as required by the Policy is contrary to established case law
5 nationwide. For more than 50 years, courts in this country have recognized that where
6 an external force renders a covered premises temporarily or permanently unusable or
7 uninhabitable, a "direct physical loss" of the covered premises results. (*Hughes v.*
8 *Potomac Ins.* (1962) 18 Cal.Rptr. 650 ["common sense" dictated a physical loss of or
9 damage to property, and thus coverage, when a building was "rendered completely
10 useless to its owners"]; *Western Fire Insurance Co. v. First Presbyterian Church* (1968) 165
11 Colo. 34 [finding that a church building's saturation with gasoline vapors constituted a
12 "direct physical loss" when the building could no longer be occupied or used]; *Farmers*
13 *Insurance Co. of Oregon v. Trutanich* (1993) 123 Or. App. 6 [finding that pervasive and
14 persistent odor from methamphetamine in the covered premises constituted direct
15 physical loss]; *Sentinel Management Co. v. New Hampshire Insurance Co.* (1997) 563
16 N.W.2d 296 [finding that contamination by asbestos fibers constituted a direct physical
17 loss, as "a building's function may be seriously impaired or destroyed and the property
18 rendered useless by the presence of contaminants"]; *Murray v. State Farm* (W.Va. 1998)
19 509 S.E.2d 1 ["losses covered by the policy, including those rendering the insured
20 property unusable or uninhabitable, may exist in the absence of structural damage to
21 the insured property"]; *Port Authority of New York and New Jersey v. Affiliated FM Ins. Co.*
22 (3rd Cir.2002) 311 F.3d 226 [holding that the presence of large quantities of asbestos in a
23 structure such that its function is nearly eliminated or destroyed, or such that the
24 structure is made useless or uninhabitable, constitutes a "physical loss" or damage];
25 *TRAVCO Ins. Co. v. Ward* (E.D.Va.2010) 715 F.Supp.2d 699 [holding that "direct physical
26 loss" existed where a home was rendered uninhabitable by toxic gases released by
27 drywall]; *Mellin v. Northern Security Insurance Co., Inc.* (2015) 167 N.H. 544 [holding that
28 "[e]vidence that a change rendered the insured property temporarily or permanently

1 unusable or uninhabitable” may support a finding of physical loss].) Yet Defendant
2 failed to even make a bare attempt to search for coverage, seeking instead to deny as
3 rapidly as possible to discourage its insureds from making further claims for their
4 mounting losses.

5 46. Defendant’s denial also fails to take into account the fact that SARS-CoV-2
6 has caused “direct physical loss of or damage to” Plaintiffs’ Covered Properties, in that
7 SARS-CoV-2 has caused a distinct, demonstrable, physical alteration of the Covered
8 Properties by contaminating the air within and surrounding the buildings, the surfaces
9 of the buildings themselves, and countless surfaces within them, turning them from safe
10 to unsafe and deadly, capable of spreading the novel coronavirus. Such “distinct,
11 demonstrable, physical alteration[s]” of property are considered direct physical losses
12 pursuant to *MRI Healthcare Center of Glendale v. State Farm General Ins. Co.* (2010) 187
13 Cal.App.4th 766, 779.

14 47. As to the Policy’s Disease exclusion, provisions that take away coverage
15 must be “conspicuous, plain and clear” to be enforceable. (*De May v. Interinsurance Exch.*
16 *Of Auto. Club of Southern Calif.* (1995) 32 Cal.App.4th 1133, 1137.) In addition, exclusions
17 in an insurance policy are strictly construed against an insurer, and are liberally
18 interpreted in favor of the insured. (*E.M.M.I. Inc. v. Zurich American Ins. Co.* (2004) 32
19 Cal.4th 465, 471.) If there is *any* ambiguity as to whether the exclusion applies,
20 California courts construe the exclusion against the insurer and in favor of the insured.
21 (*Id.*) And even *unambiguous* exclusions will not defeat coverage if they are not
22 “conspicuous” and understandable to a layperson. (*Steven v. Fidelity & Cas. Co. of New*
23 *York* (1962) 58 Cal.2d 862, 878.) Fireman’s Fund Insurance Company’s purported
24 exclusion fails that test, and cannot be enforceable to preclude Plaintiffs’ losses. It also
25 fails to unambiguously and clearly provide that it excludes losses caused by something
26 like COVID-19—a global, worldwide pandemic that spreads invisibly, by asymptomatic
27 spread, by infected surfaces, and that is not encompassed within the purported disease
28 exclusion. The Disease exclusion also fails to unambiguously and clearly provide that it

1 excludes losses caused by a virus such as SARS-CoV-2. Importantly, “disease” — a term
2 left undefined by the Policy — is defined by the Merriam Webster dictionary as “a
3 condition of the living animal or plant body or of one of its parts that impairs normal
4 functioning and is typically manifested by distinguishing signs and symptoms.”¹ Thus,
5 a disease is *not* a virus, but is rather a condition that may affect living things upon
6 exposure to a virus. Though Fireman’s Fund Insurance Company had the opportunity
7 to exclude losses stemming from viruses through use of a standard ISO “virus or
8 bacteria” exclusion that has been in use since 2006, it opted against such an exclusion —
9 and in doing so, did nothing to limit liability for virus-associated risks.

10 48. Even if the Disease exclusion was enforceable, the Supreme Court of
11 California has held that “[p]olicy exclusions are unenforceable to the extent that they
12 conflict with section 530 [of the Insurance Code] and the efficient proximate cause
13 doctrine.” (*Julian v. Hartford Underwriters Ins. Co.* (2005) 35 Cal.4th 747, 754.) Thus,
14 where a covered peril serves as the efficient proximate cause of the insured’s loss, the
15 insurer must provide coverage for the loss, even where the insurer has attempted to
16 contract around the efficient proximate cause doctrine through language stating that the
17 policy will not cover any loss caused “directly or indirectly” by an excluded peril. (*Id.* at
18 753-755.) Here, the novel coronavirus served as merely one cause of Plaintiffs’ losses,
19 whilst the additional proximate causes of Plaintiffs’ losses were the general public fear
20 surrounding the global pandemic, required social distancing measures taken by
21 individuals and businesses, state, national, and local declarations of emergency, the stay
22 at home order, the local county orders shuttering nonessential businesses, and the
23 SARS-CoV-2 virus — none of which are excluded under the terms of the Policy, and
24 thus, each of which constitute Covered Causes of Loss within the meaning of the Policy,
25 thus entitling Plaintiffs to indemnification for their losses.

26 49. Second, in regard to the exclusion for loss due to “acts or decisions,
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28 ¹ “Disease,” Merriam-Webster.com Dictionary, Merriam-Webster, <<https://www.merriam-webster.com/dictionary/disease>> (as of March 10, 2021).

1 including the failure to act or decide, of any person, group, organization or
2 governmental body,” the exclusion is inapplicable to the claim at hand per the Policy’s
3 Commercial Property Conditions form, which specifically provides that “[a]ny act or
4 neglect of any person other than you beyond your direction or control *will not affect*
5 *this insurance.*” (Emphasis added.) Here, the Plaintiffs’ losses were caused by required
6 social distancing measures taken by individuals and businesses, state, national, and
7 local declarations of emergency, the stay at home order, and the local county orders
8 shuttering nonessential businesses—actions which were and continue to be entirely
9 beyond Plaintiffs’ direction or control, and which thus remain Covered Causes of Loss
10 under the Policy, thus entitling Plaintiffs to indemnification for their losses.

11 50. In effect, Defendant Fireman’s Fund Insurance Company has joined a slew
12 of insurers, their marketing arms, and their favored defense counsel nationwide in an
13 attempt to discourage insureds from even making claims, in addition to immediately
14 denying them when they do—without investigation, a good faith search for coverage
15 under the policy, or even the barest hint of factoring the insured’s financial interests
16 into the coverage decision. Instead, Defendant has joined other insurers in routinely
17 denying business interruption claims from insureds who have been financially crippled
18 by formal and informal measures taken in response to the global pandemic, and who
19 purchased and continue to pay premiums for business interruption policies with the
20 expectation that they would be protected against such losses. The apparent calculus
21 behind these categorical denials falls in-line with an age-old tactic to allow these claims
22 and lawsuits to pile up in order to leverage the dire situation of the insureds for
23 governmental bailout proceeds.

24 51. Defendant’s interpretation of the Policy is in bad faith and contrary to
25 widely established principles of contract interpretation and California law, places
26 Defendant’s financial interests far above those of the Plaintiffs, and Plaintiffs are
27 ultimately entitled to the business interruption protection they purchased.

28

1 **FIRST CAUSE OF ACTION**

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

3 PLAINTIFFS HOTEL ADVENTURES LLC, HOTEL2SUITES LLC, ALMANSOR
4 COURT INC., OCMC INC., POMONA VALLEY MINING CO., QUIET CANNON
5 MONTEBELLO INC., AND MAVERICK HOSPITALITY GROUP INC. FOR A FIRST
6 CAUSE OF ACTION AGAINST DEFENDANTS FIREMAN’S FUND INSURANCE
7 COMPANY AND DOES 1 THROUGH 75, INCLUSIVE, FOR BREACH OF THE
8 IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING, ALLEGE:

9 52. Plaintiffs refer to each and every paragraph of this complaint and
10 incorporate those paragraphs as though set forth in full in this cause of action.

11 53. In every insurance contract, a covenant of good faith and fair dealing is
12 implied, including Plaintiffs’ businessowners policy. That is in part because Fireman’s
13 Fund Insurance Company, like all insurers, is a purveyor of a vital service—insurance,
14 which insureds across the state and across the country purchase to ensure peace of
15 mind. It is one of the very few products that consumers purchase, hoping never to have
16 to use it. But when it is needed, the need is desperate, and insurers must act in good
17 faith.

18 54. As a provider of insurance, Fireman’s Fund Insurance Company must
19 give at least as much consideration to the interests of its policyholders as it does to its
20 own interests. The obligations of Fireman’s Fund Insurance Company go beyond
21 meeting reasonable expectations of coverage; the obligations of good faith and fair
22 dealing encompass qualities of decency and humanity inherent in the responsibilities of
23 an insurer. Indeed, insurers hold themselves out as fiduciaries and holders of the
24 public’s trust, and therefore, must perform their obligations in good faith.

25 55. In this case, Defendants Fireman’s Fund Insurance Company and Does 1
26 through 75, inclusive, and each of them, have breached their duty of good faith and fair
27 dealing owed to Plaintiffs under the Policy as follows:

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- 1 (a) Unreasonably failing to conduct a fair, balanced, and thorough
2 investigation, including the failure to adequately evaluate, investigate,
3 and review Plaintiffs' claim of loss prior to denial of Plaintiffs' claim;
4 (b) Unreasonably refusing to make payments to Plaintiffs, knowing
5 Plaintiffs' claims for benefits under the Policy were valid;
6 (c) Unreasonably delaying benefits under the Policy to Plaintiffs, at a time
7 when Defendants knew that Plaintiffs were entitled to such benefits
8 under the terms of the Policy;
9 (d) Unreasonably delaying and denying Plaintiffs the benefits they were
10 promised under the Policy through the unreasonable and illegitimate
11 delay and denial of payments that Plaintiffs were entitled to;
12 (e) Unreasonably placing Fireman's Fund Insurance Company's own
13 financial interests above the interests of its insureds;
14 (f) Unreasonably engaging in a course of conduct designed to prevent
15 Plaintiffs from obtaining the coverage they were entitled to under the
16 Policy;
17 (g) Failing and refusing to give at least as much consideration to Plaintiffs'
18 interests as Fireman's Fund Insurance Company gave to its own
19 interests;
20 (h) Unreasonably and in bad faith interpreting the Policy in a way that
21 contravenes California law and principles of interpretation, all in an
22 effort to avoid paying rightly owed policy benefits;
23 (i) Unreasonably and in bad faith failing to pay full and final benefits due
24 under the Business Income provisions of the Policy; and
25 (j) Unreasonably and in bad faith failing to pay full and final benefits due
26 under the Civil Authority provision of the Policy.

27 56. Plaintiffs are informed and believe and thereupon allege that Defendants
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1 Fireman’s Fund Insurance Company and Does 1 through 75, inclusive, and each of
2 them, have breached their duty of good faith and fair dealing owed to Plaintiffs by
3 other acts or omissions of which Plaintiffs are presently unaware and which will be
4 shown according to proof at the time of trial.

5 57. As a proximate result of the aforementioned unreasonable and bad faith
6 conduct of Defendants Fireman’s Fund Insurance Company and Does 1 through 75,
7 inclusive, and each of them, Plaintiffs have suffered, and will continue to suffer in the
8 future, economic and other consequential damages, for a total amount to be shown at
9 the time of trial.

10 58. As a further proximate result of the aforementioned wrongful conduct of
11 Defendants Fireman’s Fund Insurance Company and Does 1 through 75, inclusive, and
12 each of them, Plaintiffs were compelled to retain legal counsel to obtain the benefits due
13 under the Policy and benefits of their bargain with Fireman’s Fund Insurance
14 Company. Therefore, Defendants Fireman’s Fund Insurance Company and Does 1
15 through 75, inclusive, and each of them, are liable to Plaintiffs for those attorneys’ fees,
16 witness fees, and costs of litigation reasonably necessary and incurred by Plaintiffs in
17 order to obtain Policy benefits.

18 59. Defendants Fireman’s Fund Insurance Company’s and Does 1 through
19 75’s conduct described herein was intended by these Defendants to cause injury to
20 Plaintiffs, or was despicable conduct carried on by these Defendants with a willful and
21 conscious disregard of the rights of Plaintiffs, or subjected Plaintiffs to cruel and unjust
22 hardship in conscious disregard of Plaintiffs’ rights, or was an intentional
23 misrepresentation, deceit, or concealment of a material fact known to these Defendants
24 with the intention to deprive Plaintiffs of property, legal rights, or to otherwise cause
25 injury, such as to constitute malice, oppression, or fraud under California Civil Code
26 section 3294, thereby entitling Plaintiffs to punitive damages in an amount appropriate
27 to punish or set an example of Defendants Fireman’s Fund Insurance Company and
28 Does 1 through 75.

1 60. Defendants Fireman’s Fund Insurance Company’s and Does 1 through
2 75’s conduct as previously alleged evidences that these Defendants consciously
3 engaged in a pattern of intentionally undersetting policy limits, delaying and
4 intentionally wrongfully withholding benefits from Plaintiffs, unreasonably failing to
5 thoroughly investigate and evaluate Plaintiffs’ claims, and knowingly failing to give
6 their insureds’ interests at least as much consideration as their own. These Defendants’
7 pattern of conduct to unreasonably delay, underset limits, and failure to provide
8 benefits under the Policy as previously alleged, forced the Plaintiffs to suffer losses
9 which should have been covered by the Policy.

10 61. Defendants Fireman’s Fund Insurance Company and Does 1 through 75
11 knowingly and wrongfully elevated their financial interests above those of Plaintiffs in
12 this case, and acted with a willful and conscious disregard of Plaintiffs’ rights to timely
13 receive benefits as provided by the Policy. Defendants Fireman’s Fund Insurance
14 Company and Does 1 through 75, willfully and intentionally sought to deprive
15 Plaintiffs of benefits which they were entitled to receive under the Policy or should have
16 been entitled to receive had Fireman’s Fund Insurance Company accurately and
17 adequately performed its duties as an insurer.

18 62. Defendants Fireman’s Fund Insurance Company’s and Does 1 through
19 75’s conduct described herein was undertaken by these corporate Defendants’ officers
20 or managing agents, who were responsible for policy underwriting, policy limit setting,
21 claims supervision and operations, underwriting, policy interpretation,
22 communications, and/or decisions. The aforementioned conduct of said managing
23 agents and individuals was therefore undertaken on behalf of these corporate
24 Defendants. These corporate Defendants further had advanced knowledge of the
25 actions and conduct of said individuals whose actions and conduct were ratified,
26 authorized, and approved by managing agents whose precise identities are unknown to
27 Plaintiffs at this time and are therefore identified and designated herein as Does 1
28 through 75, inclusive.

SECOND CAUSE OF ACTION

(Breach of Contract)

PLAINTIFFS HOTEL ADVENTURES LLC, HOTEL2SUITES LLC, ALMANSOR COURT INC., OCMC INC., POMONA VALLEY MINING CO., QUIET CANNON MONTEBELLO INC., AND MAVERICK HOSPITALITY GROUP INC. FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS FIREMAN’S FUND INSURANCE COMPANY AND DOES 1 THROUGH 75, INCLUSIVE, FOR BREACH OF CONTRACT, ALLEGE:

63. Plaintiffs refer to each and every paragraph of this complaint and incorporate those paragraphs as though set forth in full in this cause of action.

64. Plaintiffs have fully and completely performed all their duties and obligations under the Policy, including the timely payment of all premiums.

65. Defendants Fireman’s Fund Insurance Company and Does 1 through 75, inclusive, and each of them, owed duties and obligations to Plaintiffs under the Policy. Defendants Fireman’s Fund Insurance Company and Does 1 through 75, inclusive, and each of them, breached those duties and obligations by denying Plaintiffs’ claim for policy benefits without investigation and without a reasonable attempt to search for coverage, ultimately depriving Plaintiffs of the business-saving policy benefits which they are owed.

66. As a direct and proximate result of Defendants’ conduct and material breach of their contractual obligations, Plaintiffs have suffered damages under the Policy in an amount to be determined according to proof at the time of trial, plus interest and other foreseeable, consequential, and incidental damages according to proof, and in amounts to be determined at the time of trial.

THIRD CAUSE OF ACTION

(Declaratory Relief)

PLAINTIFF HOTEL ADVENTURES LLC, HOTEL2SUITES LLC, ALMANSOR COURT INC., OCMC INC., POMONA VALLEY MINING CO., QUIET CANNON MONTEBELLO INC., AND MAVERICK HOSPITALITY GROUP INC. FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS FIREMAN’S FUND INSURANCE COMPANY AND DOES 1 THROUGH 75, INCLUSIVE, FOR DECLARATORY RELIEF, ALLEGE:

67. Plaintiffs refer to each and every paragraph of this complaint and incorporate those paragraphs as though set forth in full in this cause of action.

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

69. An actual controversy has arisen between Plaintiffs and Defendants Fireman’s Fund Insurance Company and Does 1 through 75 as to the rights, duties, responsibilities and obligations of the parties in that Plaintiffs contend and, based on information and belief and the denial of policy benefits prepared by Defendants Fireman’s Fund Insurance Company and Does 1 through 75, who dispute and deny, that:

- (a) the state, national, and local governmental orders and directives shuttering nonessential businesses, the global pandemic, and the general public fear and panic surrounding the COVID-19 pandemic rendered Plaintiffs’ covered premises to become temporarily or permanently unusable or uninhabitable;
- (b) these orders, directives, and community fear and the pandemic specifically constitute a “direct physical loss of or damage to” covered property under the Policy;

- 1 (c) these orders, directives, pandemic and community fear trigger coverage
2 because these issues are the efficient proximate cause of Plaintiffs' loss;
3 (d) no Policy coverage exclusions or limitations apply to exclude or limit
4 coverage;
5 (e) Plaintiffs have suffered an actual and covered loss in an amount to be
6 determined at trial;
7 (f) some or all of the period of Plaintiffs' covered loss is within the period of
8 restoration under the Policy; and
9 (g) the Policy provides coverage to Plaintiffs for any future governmental or
10 entity orders and directives and community fear surrounding the COVID-
11 19 pandemic which results in the shuttering of nonessential businesses
12 and thereby causing a physical loss of the covered premises.

13 70. Resolution of the duties, responsibilities and obligation of the parties is
14 necessary as no adequate remedy at law exists and a declaration of the Court is needed
15 to resolve the dispute and controversy.

16 71. Plaintiffs seek a Declaratory Judgement to determine whether the state,
17 national, and local governmental orders, the shuttering of nonessential businesses, the
18 pandemic itself and the general public fear surrounding the COVID-19 pandemic
19 rendered Plaintiffs' covered premises to become temporarily or permanently unusable
20 or uninhabitable so as to constitute a "direct physical loss of or damage to" property
21 under the Policy.

22 72. Plaintiffs further seek a Declaratory Judgement to affirm that such
23 governmental orders, medical directives, pandemic, and community fear trigger
24 coverage under the Policy because these issues are the efficient proximate cause of
25 Plaintiffs' loss, and no Policy coverage exclusions or limitations otherwise apply to
26 exclude or limit coverage under these circumstances.

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1 73. Plaintiffs further seek a Declaratory Judgment to affirm that Plaintiffs
2 have suffered an actual and covered loss within the period of restoration under the
3 Policy beginning on or about March 4, 2020.

4 74. Plaintiffs further seek a Declaratory Judgment to affirm that the Policy
5 provides coverage to Plaintiffs for the current and any future governmental orders,
6 pandemic issues, and widespread fear surrounding the COVID-19 pandemic which
7 results in the shuttering nonessential businesses and thereby causing a physical loss of
8 the covered premises.

9 75. Plaintiffs, through this cause of action only, do not seek any determination
10 of whether the novel coronavirus is physically in the covered premises, amount of
11 damages, or any other remedy other than declaratory relief.

12
13 **FOURTH CAUSE OF ACTION**

14 **(Negligence)**

15 PLAINTIFFS HOTEL ADVENTURES LLC, HOTEL2SUITES LLC, ALMANSOR
16 COURT INC., OCMC INC., POMONA VALLEY MINING CO., QUIET CANNON
17 MONTEBELLO INC., AND MAVERICK HOSPITALITY GROUP INC. FOR A FOURTH
18 CAUSE OF ACTION AGAINST DEFENDANTS BIZLINKS INSURANCE SERVICES,
19 INC. DBA WESTERN ELITE INSURANCE SOLUTIONS, UNITED VALLEY
20 INSURANCE AGENCY, INC., AND DOES 76 THROUGH 100, INCLUSIVE, FOR
21 NEGLIGENCE, ALLEGE:

22 76. Plaintiffs refer to each and every paragraph of this complaint and
23 incorporate those paragraphs as though set forth in full in this cause of action. This
24 cause of action is brought in the alternative to the First, Second, and Third Causes of
25 Action regarding the insurance procured by and through Defendants Western Elite,
26 United Valley, and Does 76 through 100, inclusive.

27 77. Defendant Western Elite is a member of United Valley, a network of
28 insurance agencies. Upon information and belief, United Valley procures insurance for

1 policyholders on behalf of its members, including Western Elite. While operating as a
2 member of United Valley, and through the course and scope of that membership,
3 partnership, agency, or other relationship, Western Elite procured the Policy for
4 Plaintiffs, with the producer on the Policy listed as United Valley.

5 78. Defendants Western Elite, United Valley, and Does 76 through 100,
6 inclusive, and each of them, held themselves out to Plaintiffs as specialists in the
7 business interruption and business policyholder insurance arena and in obtaining
8 comprehensive insurance coverage, particularly with respect to those in the hospitality
9 industry, such as Plaintiffs. For example, and among other representations, Western
10 Elite advertises that “experience, insight, and commitment are hallmarks of an
11 organization focused on being the best in its industry . . . by creating *tailored solutions* for
12 employers, associations, and groups.” (<https://westerneliteins.com/our-company/>,
13 emphasis added.) It promises to “provide our clients with a unique insurance program,
14 targeted, detailed and customized according to the individual needs of each client.” (*Id.*)
15 Its “key to success” is the “intensive focus on specific industry segments and the ability
16 to control the risk management and safety for those organizations.” (*Id.*) Plaintiffs
17 utilized that claimed expertise, and relied upon, in selecting both their insurance
18 brokers as well as the insurance products recommended and pushed by Defendants.

19 79. Defendants, due to that claimed expertise, thus owed duties of reasonable
20 care, diligence and loyalty, and judgment to Plaintiffs in procuring insurance and to
21 assure that coverage as requested and promised was in place to protect Plaintiffs.

22 80. Plaintiffs specifically requested that Defendants Western Elite, United
23 Valley, and Does 76 through 100, inclusive, obtain full and adequate insurance to
24 protect against the risks of future loss. These Defendants agreed to provide such
25 insurance coverage to adequately and fully protect Plaintiffs should they suffer business
26 interruption losses, and sold Plaintiffs the Policy pursuant to the representation and
27 understanding that Plaintiffs would be covered and protected from any business
28 interruption loss and loss of income, except for losses arising from earthquake, war, or

1 terrorism. In addition, and in reassuring Plaintiffs that their insurance products were
2 selected with Defendants' expertise and were sufficient and available to provide for the
3 potential losses due to the coronavirus pandemic, on or about March 2020, and in light
4 of the commencement of the novel coronavirus pandemic, Defendants Western Elite,
5 United Valley, and Does 76 through 100, by and through Western Elite sales executive
6 Dawn Adams, represented to Plaintiffs that they would be covered and compensated
7 for *any and all* lost income and business interruption losses caused by or in any way
8 related to the novel coronavirus from March 2020 through February 2021. Plaintiffs
9 relied on those representations and expertise in both selecting and maintaining their
10 insurance products through Defendants.

11 81. Defendants Western Elite, United Valley, and Does 76 through 100,
12 inclusive, owed Plaintiffs a duty of care to see that Plaintiffs' interests were fully
13 protected by the coverage they sought and obtained for Plaintiffs.

14 82. Defendants Western Elite, United Valley, and Does 76 through 100 also
15 owed duties to Plaintiffs to obtain the coverage requested by Plaintiffs; to obtain
16 appropriate coverage suited to the specific needs of Plaintiffs; to accurately represent
17 and report the coverage obtained; and to properly assist and report in the claim for
18 benefits to the insurer.

19 83. Defendants Western Elite, United Valley, and Does 76 through 100,
20 inclusive, breached that duty, by failing to properly and accurately ensure the amount
21 of coverage obtained for Plaintiffs; by failing to obtain the appropriate coverage as
22 requested by Plaintiffs; by failing to accurately represent and report the coverage
23 obtained; and by failing to properly warn Plaintiffs of potential coverage limitations,
24 gaps, or exclusions.

25 84. At all relevant times, Defendants Western Elite, United Valley, and Does
26 76 through 100, inclusive, knew that Plaintiffs were relying upon their experience, skill,
27 accuracy, good faith, and expertise as insurance specialists for business interruption
28 insurance such as that obtained for Plaintiffs.

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

4 86. Plaintiffs are informed and believe and thereupon allege that Defendants
5 Western Elite, United Valley, and Does 76 through 100, inclusive, were negligent in
6 other acts or omissions of which Plaintiffs are presently unaware.

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

13 88. Plaintiffs are informed and believe and thereupon allege that Defendants
14 Does 76 through 86 controlled Defendant Western Elite and owned all of Defendant
15 Western Elite's corporate stock at all relevant times, such that Defendants Does 76
16 through 86 may be held liable for Defendant Western Elite's negligence and Plaintiffs'
17 general and special damages suffered therefrom.

18
19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of
21 them, as follows:

22 **AS TO THE FIRST CAUSE OF ACTION AGAINST DEFENDANTS**
23 **FIREMAN'S FUND INSURANCE COMPANY AND DOES 1 THROUGH 75,**
24 **INCLUSIVE, FOR BREACH OF THE DUTY OF GOOD FAITH AND FAIR**
25 **DEALING:**

- 26 1. Damages for failure to provide the full benefits, both past and future,
27 under the Policy, plus interest, in a sum to be determined at the time of
28 trial;

- 1 2. For prejudgment interest on all damages awarded to Plaintiffs in
- 2 accordance with California Civil Code section 3287;
- 3 3. For attorneys' fees, witness fees, and costs of litigation incurred by
- 4 Plaintiffs to obtain the Policy benefits in an amount to be determined at
- 5 trial;
- 6 4. For economic and consequential damages arising out of these Defendants'
- 7 unreasonable failure to provide benefits under the Policy;
- 8 5. For punitive and exemplary damages in an amount appropriate to punish
- 9 or set an example of these Defendants pursuant to Cal. Civ. Code § 3345;
- 10 6. For emotional distress and other general damages to be determined at
- 11 trial;
- 12 7. For costs of suit incurred herein; and
- 13 8. For such other and further relief as the Court deems just and proper.
- 14

15 AS TO THE SECOND CAUSE OF ACTION AGAINST DEFENDANTS
16 FIREMAN'S FUND INSURANCE COMPANY AND DOES 1 THROUGH 75,
17 INCLUSIVE, FOR BREACH OF CONTRACT:

- 18 1. Damages under the Policy, including past and future policy benefits due,
- 19 plus interest, and other economic and consequential damages, in an
- 20 amount to be determined according to proof at the time of trial;
- 21 2. For prejudgment interest on all damages awarded to Plaintiffs in
- 22 accordance with California Civil Code section 3287;
- 23 3. For costs of suit incurred herein; and
- 24 4. For such other and further relief as the Court deems just and proper.
- 25

26 AS TO THE THIRD CAUSE OF ACTION AGAINST DEFENDANTS
27 FIREMAN'S FUND INSURANCE COMPANY AND DOES 1 THROUGH 75,
28 INCLUSIVE, FOR DECLARATORY RELIEF:

1 For a declaration that:

- 2 (a) the state, national, and local governmental orders shuttering nonessential
3 businesses, cancelling non-emergency procedures and services, the global
4 pandemic, and the general public fear and panic surrounding the COVID-
5 19 pandemic rendered Plaintiffs' covered premises to become temporarily
6 or permanently unusable or uninhabitable;
- 7 (b) these orders, directives, and community fear and the pandemic
8 specifically constitute a "direct physical loss of" covered property under
9 the Policy;
- 10 (c) these orders, directives, pandemic and community fear triggers coverage
11 because these issues are the efficient proximate cause of Plaintiffs' loss;
- 12 (d) no Policy coverage exclusions or limitations apply to exclude or limit
13 coverage;
- 14 (e) Plaintiffs have suffered an actual and covered loss in an amount to be
15 determined at trial;
- 16 (f) some or all of the period of Plaintiffs' covered loss is within the period of
17 restoration under the Policy; and
- 18 (g) the Policy provides coverage to Plaintiffs for any future governmental or
19 entity orders and directives and community fear surrounding the COVID-
20 19 pandemic which results in the shuttering of nonessential businesses
21 and cancelling of non-emergency procedures and treatments and thereby
22 causing a physical loss of the covered premises.


23
24 **AS TO THE FOURTH CAUSE OF ACTION AGAINST DEFENDANTS**
25 **BIZLINKS INSURANCE SERVICES, INC. DBA WESTERN ELITE INSURANCE**
26 **SOLUTIONS, UNITED VALLEY INSURANCE AGENCY, INC., AND DOES 76**
27 **THROUGH 100, INCLUSIVE, FOR NEGLIGENCE:**
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1. For economic and consequential damages arising out of these Defendants' negligence;
2. For costs of suit incurred herein;
3. For prejudgment interest on all damages awarded to Plaintiffs in accordance with California Civil Code §3287 and/or §3288; and
4. For such other and further relief as the Court deems just and proper.

Dated: March 11, 2021

BENTLEY & MORE LLP

By: 
GREGORY L. BENTLEY
MATTHEW W. CLARK
FARNAZ SALESSI
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

Dated: March 11, 2021

BENTLEY & MORE LLP



By: _____

GREGORY L. BENTLEY
MATTHEW W. CLARK
FARNAZ SALESSI
Attorneys for Plaintiffs

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