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8 **UNITED STATES DISTRICT COURT**

9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 MIRJANA ILIC, dba IL SOGNO  
11 AT EL PASEO, aka IL SOGNO,  
12 INC., aka IL SOGNO, a California  
resident,

13 Plaintiff

14 v.

15  
16 LIBERTY MUTUAL  
17 INSURANCE, aka LIBERTY  
18 MUTUAL INSURANCE  
19 COMPANY, a Massachusetts  
20 corporation; and DOES 1  
THROUGH 5, inclusive,

21 Defendants.

Case No.:

**COMPLAINT FOR:**

- 1. **DECLARATORY JUDGEMENT**
- 2. **BREACH OF CONTRACT**
- 3. **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

**DEMAND FOR JURY TRIAL**

22 Plaintiff brings the following causes of action against Defendants.  
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1 **I. FEDERAL JURISDICTION**

2 1. Plaintiff alleges the amount in controversy in this action exceeds  
3 \$75,000. Because Plaintiff is a California resident and Liberty Mutual Insurance  
4 aka Liberty Mutual Insurance Company is a Massachusetts corporation. This  
5 court has **diversity jurisdiction** over this matter under 28 U.S.C section 1332.  
6  
7

8 **II. THE PARTIES**

9 **A. Plaintiff**

10 2. MIRJANA ILIC, dba IL SOGNO AT EL PASEO, aka IL SOGNO,  
11 INC., aka IL SOGNO, a California resident (“Plaintiff”), owns and operates a  
12 dine-in restaurant located in Palm Desert, California. Plaintiff purchased a  
13 comprehensive business policy from Defendants, policy number BZS60892184,  
14 which is the policy at issue in this lawsuit.  
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18 **B. Defendants**

19 3. Defendant LIBERTY MUTUAL INSURANCE, aka LIBERTY  
20 MUTUAL INSURANCE COMPANY (“Liberty Mutual”) is a Massachusetts  
21 corporation regularly and systematically does business in this jurisdiction.  
22

23 4. The true names and capacities, whether individual, corporate,  
24 associate, or otherwise, of Defendants sued here in as DOES 1 through 10,  
25 inclusive, are currently unknown to Plaintiff, who therefore sues such  
26 Defendant(s) by such fictitious names. Plaintiff is informed and believes, and  
27  
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1 based thereon alleges, that Defendants designated herein as a DOE are legally  
2 responsible in some manner for the unlawful acts referred to herein. Plaintiff will  
3 seek leave of court to amend this complaint to reflect the true names and  
4 capacities of the Defendants designated hereinafter as DOES when such identities  
5 become known. Liberty Mutual and Doe Defendants are hereinafter referred to as  
6  
7 “Defendants.”  
8

9  
10 **II. GENERAL ALLEGATIONS**

11 5. This is an insurance coverage action based on Defendants’ denial  
12 of coverage for business interruption to Plaintiff caused by the COVID-19  
13 government shutdown.  
14

15 6. In January 2020, media reports began to document an outbreak of a  
16 novel strain of coronavirus called COVID-19 in China. By late January, it was  
17 generally understood in the scientific and public health communities that COVID-  
18 19 was spreading through human-to-human transmission and could be transmitted  
19 by asymptomatic carriers. On January 30, 2020, reports of the spread of COVID-  
20 19 outside China prompted the World Health Organization to declare the COVID-  
21 19 outbreak a “Public Health Emergency of International Concern.”  
22  
23

24 7. Beginning in late February, public health officials with various  
25 governments around the world began advising that population-wide social  
26 distancing was needed to stop the transmission of COVID-19. Suddenly schools,  
27  
28

1 offices, public transit, restaurants, bars, music venues, and retail shops were likely  
2 to become hot spots for local transmission of COVID-19.  
3

4 8. In mid-March of 2020, California became one of the first states to  
5 order widespread closures of non-essential businesses. On March 12, 2020,  
6 California's Governor, Gavin Newsom, issued a statewide directive known as the  
7 Safer at Home order, which stated: "All residents are to heed any orders and  
8 guidance of state and local public health officials, including but not limited to the  
9 imposition of social distancing measures, to control the spread of COVID-19."  
10

11  
12 9. On March 19, 2020, California's "Stay at Home" order instructed all  
13 40 million California residents to remain at home, with certain exceptions. This  
14 mandate essentially ended in-house service at California retailers and restaurants.  
15 The Governor then issued another series of mandates requiring restaurants and  
16 retailers to cease in-person services, though curbside sales or by delivery were  
17 permitted.  
18

19  
20 10. Plaintiff owns and operates a dine-in restaurant in Palm Springs,  
21 California. Plaintiff complied with all applicable orders of California state and  
22 local authorities. This resulted in Plaintiff's restaurant being forced to cease  
23 operations as a direct result of the Stay at Home order.  
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1 11. Plaintiff alleges compliance with these orders caused direct physical  
2 loss to Plaintiff's property in that the property was made useless and/or  
3 uninhabitable. Plaintiff alleges Plaintiff's restaurant's functionality and use of its  
4 property were severely reduced if not completely or nearly destroyed.  
5

6 12. The impact of these orders was felt not simply in their direct  
7 application to Plaintiff's operations, but also in their application to neighboring  
8 businesses and properties, whose property has suffered similar direct physical loss  
9 as a result. Even when California relaxed its mandates for a time, Plaintiff still  
10 encountered continued loss of business income due to those orders because  
11 government officials continued to state that densely occupied public spaces are  
12 dangerously unsafe, and continuing to operate a restaurant such as Plaintiff's in  
13 the same manner as before could expose customers workers to the risk of  
14 contaminated premises, as well as transmission and infection risks.  
15  
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19 13. This did not merely cause severe financial distress for restaurants and  
20 their employees - these closures have threatened the viability of California's entire  
21 restaurant industry.  
22

23 14. Prior to the pandemic, Plaintiff purchased business interruption  
24 insurance to protect against a situation like this.  
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1 15. Plaintiff bought full-spectrum, comprehensive insurance for  
2 Plaintiff's *business* – not just for damage to Plaintiff's physical premises and  
3 equipment. Insurance coverage is important, if not vital for a small businesses.  
4 Plaintiff reasonably believed Plaintiff had comprehensive coverage that would  
5 apply to business interruptions under circumstances like these, where they had  
6 done everything right to protect their business and the public.  
7

9 16. Plaintiff purchased comprehensive commercial liability and property  
10 insurance policy from Defendants to insure against risks the business might face.  
11 This insurance policy includes coverage for loss of business income, as well as  
12 additional "civil authority" coverage for extra expense caused by the action of a  
13 civil authority.  
14

15  
16 17. Once triggered, the policy pays actual losses sustained for the  
17 business income and extra expense coverage. To date, Plaintiff has paid all of the  
18 premiums required to keep its policy in full force.  
19

20 18. On or about March 17, 2020, Plaintiff reported a loss of business  
21 income and otherwise made a claim for coverage under Plaintiff's policy with  
22 Defendants.  
23

24 19. Despite collecting premiums for such risks, Defendants categorically  
25 denied Plaintiff's claims arising from California's mandated interruption of  
26 Plaintiff's business services.  
27  
28

1 20. On March 29, 2020, Defendants denied Plaintiff's claim for  
2 coverage via a cursory denial letter, the majority of which simply quotes the  
3 policy.  
4

5 21. Plaintiff alleges Defendants' denial was made with little or no  
6 investigation and without due regard for the interests of Plaintiff. The coverage  
7 denial letter received by Plaintiff rests on an erroneous and misplaced reading of  
8 coverage language, and an overbroad reading of the policy's exclusions. Plaintiff  
9 alleges this denial letter raises the specter of a bad faith denial.  
10  
11

12 22. Although Plaintiff's policy also includes civil authority coverage, and  
13 while Defendants acknowledge that a civil authority had prohibited access to  
14 Plaintiff's premises, Defendants still wrongfully denied coverage.  
15

16 23. Defendants' denial letter, on information and belief, appears to be a  
17 form letter sent in response to business interruption claims arising from  
18 California's Stay at Home orders. Defendants' denial is contrary to the terms and  
19 conditions of the policy and applicable law, which gives effect to plain language,  
20 construes ambiguity in favor of coverage, and narrowly construes exclusions, the  
21 applicability of which insurers have the burden of proving.  
22  
23

24 24. Defendants' denial of coverage breached its obligation and  
25 responsibility to provide coverage available through the policy to Plaintiff due to  
26 Plaintiff's covered loss of business income because its premises were unusable  
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1 and uninhabitable and had essentially lost all function as a dine-in restaurant. As a  
2 result, Defendants' denial of coverage and breach of the insurance policy it issued,  
3 Plaintiff has suffered and will continue to suffer damages. A declaratory  
4 judgment determining that the coverage provided under the policy and an order  
5 that such coverage is owed will prevent Plaintiff from being wrongfully left  
6 without vital coverage acquired to ensure the survival of its businesses in these  
7 circumstances. As a result of the Stay at Home orders, Plaintiff has incurred and  
8 continues to incur a substantial loss of business income and additional expenses  
9 covered under the policy. Plaintiff reserves the right to amend this complaint to  
10 allege additional damages should the government issue additional orders which  
11 also limit the use and functionality of Plaintiff's business.

12 25. Plaintiff thus brings this action seeking declaratory relief, insurance  
13 coverage owed under its policy, and damages.  
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19 **III. CAUSES OF ACTION**

20 **FIRST CAUSE OF ACTION**

21 **Declaratory Judgment**

22  
23 26. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

24 27. Plaintiff purchased a comprehensive business insurance policy from  
25 Defendants.  
26

27 28. Plaintiff paid all premiums required to maintain its comprehensive  
28



1 business insurance policy in full force. The comprehensive business insurance  
2 policy includes provisions that provide coverage for the direct physical loss of or  
3 damage to the premises as well as actual loss of business income and extra  
4 expenses sustained during the suspension of operations as a result of such loss or  
5 damage.  
6  
7

8 29. On or about March 19, 2020, California issued the Stay at Home  
9 order mandating that all Californians remain at home, with certain exceptions.  
10 This mandate required retailers to cease all non-essential services. This mandate  
11 also applied to neighboring businesses, thus causing widespread closures  
12 surrounding Plaintiff's business premises.  
13

14 30. As a result of this mandate, the covered property of Plaintiff lost  
15 some or all of its functionality and/or became useless or uninhabitable, resulting in  
16 substantial loss of business income.  
17

18 31. These losses are insured losses under several provisions of Plaintiff's  
19 comprehensive business insurance policy including business income and expense  
20 coverage, and coverage for civil authority orders.  
21

22 32. There are no applicable, enforceable exclusions or definitions in the  
23 insurance policies that reasonably preclude coverage for these losses.  
24

25 33. WHEREFORE, Plaintiff seeks a declaration that its business income  
26  
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28

1 losses are covered and not precluded by exclusions or other limitations in  
2 Plaintiff's comprehensive business insurance policy with Defendants.  
3

4  
5 **SECOND CAUSE OF ACTION**

6 **Breach of Contract**

7 34. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

8 35. Plaintiff purchased a comprehensive business insurance policy from  
9 Defendants to insure against all risks (unless specifically excluded) a business  
10 might face.  
11

12 36. This policy was a binding contract that afforded Plaintiff  
13 comprehensive business insurance under the terms and conditions of the policy.  
14 Plaintiff met all or substantially all of its contractual obligations, including paying  
15 all the premiums required by Defendants.  
16  
17

18 37. On or about March 19, 2020, California issued the Stay at Home order  
19 mandating that all Californians remain at home, with certain exceptions. This  
20 mandate required restaurants, including the one owned by Plaintiff, to cease all in-  
21 person services. This mandate also applied to neighboring businesses, thus causing  
22 widespread closures surrounding Plaintiff's business premises.  
23  
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25 38. Beginning on about March 19, 2020, and continuing through the date  
26 of the filing of this Complaint, Plaintiff suffered and continues to suffer the direct  
27 physical loss of property and lost business income following California's Stay at  
28

1 Home order—losses which were covered under the comprehensive business  
2 insurance policy Plaintiff purchased from Defendants.  
3

4 39. There are no applicable, enforceable exclusions in Plaintiff's  
5 comprehensive business insurance policy that preclude coverage.  
6

7 40. Defendants breached its contract by denying comprehensive business  
8 insurance coverage to Plaintiff.

9 41. As a direct and proximate result of Defendants' denial of  
10 comprehensive business insurance coverage to Plaintiff, Plaintiff suffered  
11 damages.  
12

13 42. WHEREFORE, Plaintiff seeks: (a) a judgment for itself and similarly  
14 situated retailers that Defendants breached its contracts with Plaintiff; and (b)  
15 corresponding damages for that breach.  
16  
17

18 **THIRD CAUSE OF ACTION**

19 **Breach of Implied Covenant of Good Faith and Fair Dealing**

20 43. Plaintiff re-alleges the paragraphs above as if fully set forth herein.  
21

22 44. Plaintiff contracted with Defendants to provide it with comprehensive  
23 business insurance to ensure against all risks (unless specifically excluded) a  
24 business might face.  
25

26 45. This contract was subject to an implied covenant of good faith and fair  
27 dealing that all parties would act in good faith and with reasonable efforts to  
28

1 perform their contractual duties—both explicit and fairly implied—and not to  
2 impair the rights of other parties to receive the rights, benefits, and reasonable  
3 expectations under the contracts. These included the covenant that Defendants  
4 would act fairly and in good faith in carrying out its contractual obligations to  
5 provide Plaintiff with comprehensive business insurance.  
6  
7

8 46. Defendants breached the implied covenant of good faith and fair  
9 dealing by:

- 10 a. Selling Plaintiff a policy that appears to provide liberal coverage  
11 for loss of property and lost business income with the intent of  
12 interpreting undefined or poorly defined terms, and ambiguously  
13 written exclusions to deny coverage under circumstances foreseen by  
14 Defendants;  
15  
16
- 17 b. Denying coverage for loss of property use and lost business  
18 income unreasonably, and without proper cause, by applying  
19 undefined ambiguous, and contradictory terms contrary to applicable  
20 rules of policy construction and the plain terms and purpose of the  
21 policy;  
22  
23
- 24 c. Denying Plaintiff's claim for loss of property and loss of  
25 business income without conducting a fair, unbiased and thorough  
26 investigation or inquiry, arbitrarily and capriciously, and/or with  
27  
28

1 knowledge that the denial was unreasonable under the policy;

2  
3 d. Misrepresenting policy terms; and

4  
5 e. Compelling Plaintiff to initiate litigation to recover policy  
6 benefits to which Plaintiff is entitled.

7  
8 47. Plaintiff met all or substantially all of Plaintiff's contractual  
9 obligations, including by paying all the premiums required by Defendants.

10 Defendants' failure to act in good faith in providing comprehensive business  
11 insurance coverage to Plaintiff denied Plaintiff the full benefit of the bargain.

12  
13 48. Accordingly, Plaintiff has been injured as a result of  
14 Defendants' breach of the covenant of good faith and fair dealing and is entitled to  
15 damages in an amount to be proven at trial.

16  
17 49. WHEREFORE, Plaintiff seeks: (a) a judgment for itself and  
18 similarly situated retailers that Defendants have breached the covenant of good  
19 faith and fair dealing implied in its contract with Plaintiff; and (b) corresponding  
20 damages for that breach.  
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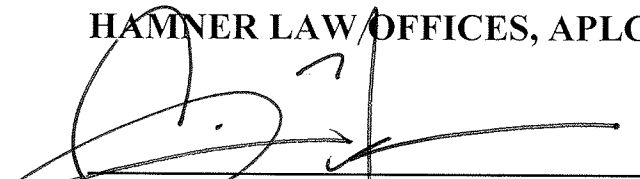
22  
23 **IV. PRAYER FOR RELIEF**

24  
25 50. **WHEREFORE**, Plaintiff requests that the Court enter a judgment  
26 awarding the following relief:  
27  
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- 1 a. A declaration that Plaintiff's losses are covered under  
2 Defendants' comprehensive business insurance policy; and  
3  
4 b. Plaintiff also requests damages, attorney's fees and costs, and  
5 such other and further relief as is just and proper as compensation for  
6 Defendants' breach of contract and breach of the implied covenant of  
7 good faith and fair dealing.  
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11 **DATED:** July 9, 2020

**HAMNER LAW OFFICES, APLC**

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15 Christopher J. Hamner  
16 Attorney for Plaintiff  
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