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 21 *Sub-Class*

22 **IN THE UNITED STATES DISTRICT COURT**
 23 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

24 MONARCH BALLROOM, LLC,
 25
 26 Plaintiff,

27 vs.

28 FARMERS INSURANCE COMPANY, INC;
 FARMERS GROUP INC.; FARMERS
 INSURANCE EXCHANGE; FIRE
 INSURANCE EXCHANGE; TRUCK
 INSURANCE EXCHANGE AND DOES 1
 THROUGH 20, INCLUSIVE,
 Defendants.

Case No.: 2:20-cv-5493

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff, Monarch Ballroom, LLC (“Plaintiff”), on behalf of itself and a nationwide class
2 and California sub-class of all others similarly situated (defined below), brings this class action
3 against Farmers Insurance Company, Inc.; Farmers Group, Inc. Farmers Insurance Exchange;
4 Fire Insurance Exchange; Truck Insurance Exchange and Does 1 through 20, inclusive
5 (collectively, “Defendants” or “Farmers”), and alleges as follows:
6

7 **PRELIMINARY STATEMENT**

8 1. This is a civil action seeking relief arising from Plaintiff’s contract of insurance
9 with the Defendants.
10

11 2. Plaintiff and others across the United States purchased commercial property
12 insurance from Farmers to protect their businesses in the event that they had to temporarily shut
13 down. These businesses expected Defendants’ insurance policies to protect them and cover
14 business income losses in in the event that government officials ordered them to stop operations
15 and refrain from using the property. However, despite collecting billions of dollars in premiums
16 from Plaintiff and other similarly situated businesses, Farmers is now refusing to pay legitimate
17 business interruption claims.
18

19 3. In light of the novel Coronavirus strain which causes COVID-19, state and local
20 governments throughout the country have issued “stay-at-home” and “shelter-in-place” orders
21 requiring all non-essential businesses to cease operations and close all physical locations
22 (collectively, “COVID-19 Civil Authority Orders”). As a result of these COVID-19 Civil
23 Authority Orders, Plaintiff, which operates a dance studio and event space, closed its business on
24 March 16, 2020 and has remained closed for normal operations since then.
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1 informed and believes that each of the fictitiously named defendants are responsible in some
2 manner for the unlawful conduct alleged herein.

3 17. Farmers, through Farmers Insurance Exchange, issued Policy No. 60670-24-54 to
4 Plaintiff effective June 8, 2018. Plaintiff renewed the same Policy on June 8, 2019 and June 8,
5 2020. Plaintiff has faithfully paid all premium amounts when due and currently maintains the
6 same Policy.
7

8 **FACTUAL ALLEGATIONS**

9 **A. The Global COVID-19 Pandemic**

10 18. COVID-19 is an infectious disease caused by a recently discovered novel
11 Coronavirus known as SARS-CoV-2. The Coronavirus is extremely contagious and physically
12 infects and stays on surfaces of objects or materials for an extended period of time. For example,
13 the virus remains stable and transmittable in aerosols for up to three hours, up to four hours on
14 copper, up to 24 hours on cardboard, and up to two to three days on plastic and stainless steel.
15

16 19. The first case of COVID-19 in the United States was confirmed in the State of
17 Washington on January 20, 2020. *See First Case of 2019 Novel Coronavirus in the United*
18 *States*, THE NEW ENGLAND JOURNAL OF MEDICINE (Mar. 5, 2020),
19 <https://www.nejm.org/doi/full/10.1056/NEJMoa2001191>.
20

21 20. According to news reports, the United States Centers for Disease Control and
22 Prevention (“CDC”) confirmed the first COVID-19 case in California on January 26, 2020. *See*
23 *Two Confirmed Cases of Novel Coronavirus in California*, CALIFORNIA DEP’T OF HEALTH (Jan.
24 26, 2020), <https://www.cdph.ca.gov/Programs/OPA/Pages/NR20-001.aspx>.
25

1 nearly 65,000 cases and more than 2,500 deaths. *See COVID-19 By the Numbers*, CAL. DEP'T
2 PUBLIC HEALTH,
3 [https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx#COVID-](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx#COVID-19%20by%20the%20Numbers)
4 [19%20by%20the%20Numbers](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx#COVID-19%20by%20the%20Numbers) (last accessed June 9, 2020); *see also COVID-19 in Los Angeles*
5 *County*, COUNTY OF LOS ANGELES PUBLIC HEALTH,
6 <http://publichealth.lacounty.gov/media/coronavirus/> (last accessed June 9, 2020).

8 **B. Civil Authority Proclamations and Orders by State and Local Governments**

9 28. On March 4, 2020 California Governor Gavin Newsom declared a state of
10 emergency and, on March 12, 2020, issued an executive order directing California residents to
11 cancel large, non-essential gatherings. *See State of California Executive Order N-25-20* (Mar. 4,
12 2020) available at [https://www.gov.ca.gov/wp-content/uploads/2020/03/3.12.20-EO-N-25-20-](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.12.20-EO-N-25-20-COVID-19.pdf)
13 [COVID-19.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.12.20-EO-N-25-20-COVID-19.pdf) (last accessed June 9, 2020).

15 29. On March 19, 2020, Governor Newsom issued Executive Order N-33-20,
16 requiring “all individuals living in the State of California to stay home or at their place of
17 residence except as needed” for essential services and mandating that individuals practice strict
18 social distancing. Order N-33-20 incorporated by reference California Government Code §8665,
19 which provides that “[a]ny person . . . who refuses or willfully neglects to obey any lawful
20 order . . . issued as provided in this chapter, shall be guilty of a misdemeanor and, upon
21 conviction thereof, shall be punishable by a fine of not to exceed one thousand dollars (\$1,000)
22 or by imprisonment for not to exceed six months or by both such fine and imprisonment.” As a
23 result, all California businesses which were not part of an essential critical infrastructure sector,
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1 including Plaintiff's business, were ordered to close their doors. *See* California Executive Order
2 N-33-20, <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf> (last accessed June 9, 2020).

3
4 30. On March 16, 2020, the County of Los Angeles issued the "Safer at Home Order
5 for Control of COVID-19," which required the closure of all non-essential businesses and
6 mandated that people socially distance from one another. The County's order banned indoor
7 gatherings of at least 50 people and immediately required the closure of numerous businesses,
8 including Plaintiff's. *See Health Officer Order For the Control of COVID-19*, LOS ANGELES
9 COUNTY (Mar. 16, 2020), <https://www.weho.org/home/showdocument?id=44008>.

10
11 31. The County's order has been revised from time to time in the past several months,
12 but, most recently, the Los Angeles County Department of Public Health issued its "Reopening
13 Safer at Work and in The Community for Control of COVID-19" Order on May 29, 2020. The
14 Order loosens some restrictions, but still provides that "[a]ll persons living within the County of
15 Los Angeles Public Health Jurisdiction should remain in their residences whenever
16 practicable . . . [and] gatherings of people who are not part of a single household or living unit
17 are prohibited" Furthermore, "all events and gatherings" to be hosted by businesses
18 continue to be prohibited. *See Reopening Safer at Work and in the Community for Control of*
19 *COVID-19*, COUNTY OF LOS ANGELES PUBLIC HEALTH (May 29, 2020),
20 [http://www.publichealth.lacounty.gov/media/Coronavirus/docs/HOO/HO_Order_COVID-](http://www.publichealth.lacounty.gov/media/Coronavirus/docs/HOO/HO_Order_COVID-19_Safer_at_Work_and_in_the_Community_05292020_FINAL_WithAppendices.pdf)
21 [19_Safer_at_Work_and_in_the_Community_05292020_FINAL_WithAppendices.pdf](http://www.publichealth.lacounty.gov/media/Coronavirus/docs/HOO/HO_Order_COVID-19_Safer_at_Work_and_in_the_Community_05292020_FINAL_WithAppendices.pdf).

22
23
24 32. On March 19, 2020, the City of Los Angeles, via Mayor Eric Garcetti, issued its
25 "Safer at Home" order "because, among other reasons, the COVID-19 virus can spread easily
26 from person to person and *it is physically causing property loss or damage due to its tendency*
27

1 *to attach to surfaces for prolonged periods of time.” See Safer at Home, CITY OF LOS ANGELES*
2 (Mar. 19, 2020) (emphasis added),

3 [https://www.lamayor.org/sites/g/files/wph446/f/page/file/20200527%20Mayor%20Public%20Or](https://www.lamayor.org/sites/g/files/wph446/f/page/file/20200527%20Mayor%20Public%20Order%20SAFER%20AT%20HOME%20ORDER%202020.03.19%20%28REV%202020.05.27%29.pdf)
4 [der%20SAFER%20AT%20HOME%20ORDER%202020.03.19%20%28REV%202020.05.27%](https://www.lamayor.org/sites/g/files/wph446/f/page/file/20200527%20Mayor%20Public%20Order%20SAFER%20AT%20HOME%20ORDER%202020.03.19%20%28REV%202020.05.27%29.pdf)
5 [29.pdf](https://www.lamayor.org/sites/g/files/wph446/f/page/file/20200527%20Mayor%20Public%20Order%20SAFER%20AT%20HOME%20ORDER%202020.03.19%20%28REV%202020.05.27%29.pdf).

6
7 33. The City of Los Angeles’ “Safer at Home” order has been revised numerous times
8 over the course of the past several months. Indeed, on June 1, 2020, Mayor Garcetti and the City
9 issued a slightly less restrictive “Safer L.A. Order,” which still generally encourages residents to
10 remain home, but does “allow more activities with certain modifications, based on health and
11 safety needs.” Still, “[a]ll public and private gatherings of any number of people occurring
12 outside a residence are prohibited.” See *SAFER L.A.*, CITY OF LOS ANGELES (June 1, 2020),

13 [https://www.lamayor.org/sites/g/files/wph446/f/SAFERLAORDER2020.03.19%28REV2020.06.](https://www.lamayor.org/sites/g/files/wph446/f/SAFERLAORDER2020.03.19%28REV2020.06.01%29.pdf)
14 [01%29.pdf](https://www.lamayor.org/sites/g/files/wph446/f/SAFERLAORDER2020.03.19%28REV2020.06.01%29.pdf).

15
16 34. The City of Torrance, where Plaintiff’s business is located, has issued a number
17 of executive orders, beginning on March 16, 2020 and extending through May 29, 2020,
18 providing numerous directives including, *inter alia*: the closure of movie theaters, live
19 performance venues, bars and nightclubs, and all restaurants (except for pick-up or delivery
20 service); the prohibition of all street fairs, block parties, community runs and cycling events, and
21 more; measures mandating social distancing and the usage of face covers, such as masks; and the
22 closure of numerous parks, beaches, and public parking lots. See *Executive Orders*, CITY OF
23 TORRANCE CALIFORNIA, <https://www.cityoftorranceca.com/executive-orders.html> (last accessed
24 June 9, 2020). The COVID-19 Civil Authority Orders issued by the City of Torrance were taken
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1 to “provide for protection of life or property” and have prevented Plaintiff from utilizing its
2 premises for normal business operations since March 16, 2020.

3 35. Altogether, 49 state governments have enacted at least one COVID-19 Civil
4 Authority Order prohibiting or severely limiting the operations of restaurants, event spaces, and
5 other non-essential businesses. In addition to California, all but six states have enacted a
6 COVID-19 Civil Authority Order, including “stay-at-home” or “shelter-in-place” orders; 35
7 states closed all non-essential businesses for some period of time, with other states taking
8 measures to limit business operations. All 50 states closed schools, and all but one state (South
9 Dakota) closed restaurants and bars for services other than take-out and delivery, although some
10 states are permitting some restaurants and bars to gradually re-open at limited capacity.
11
12

13 **C. Standard Commercial Policy Held By Plaintiff and Class Members**

14 36. The Policies issued to Plaintiff and other members of the Class are standard
15 commercial property “all-risk” policy that cover all loss or damage to Plaintiff’s and class
16 members’ covered premises, other than loss or damage which is expressly excluded.
17

18 37. The Policies are a standard form used by Farmers for all insureds with the
19 applicable commercial property coverage.

20 38. Plaintiff’s Policy is effective as of June 8, 2018 and provides various coverages,
21 including business income and extra expense coverage, which, generally, would indemnify
22 Plaintiff for lost income and profits in the case its business was shut down.
23

24 39. Specifically, Plaintiff’s Special Property Coverage Form, Form BP 00 02 01 97,
25 provides coverage as follows:
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1 **(1) Business Income**

2 We will pay for the actual loss of Business Income you sustain due to the necessary
3 suspension¹ of your “operations” during the “period of restoration.” The
4 suspension must be caused by direct physical loss of or damage to property at the
5 described premises. This loss or damage must be caused by or result from a
6 Covered Cause of Loss We will only pay for loss of Business Income that you
 sustain during the “period of restoration” and that occurs within 12 consecutive
 months² after the date of direct physical loss or damage.

7 **(2) Extended Business Income**

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

- 11 (a) Begins on the date property except finished stock is actually repaired,
 rebuilt or replaced and “operations” are resumed; and
- 12 (b) Ends on the earlier of:
- 13 i. The date you could restore your “operations,” with reasonable speed,
14 to the level which would generate the Business Income amount that
15 would have existed if no direct physical loss or damage had
16 occurred; or
- 17 ii. 30 consecutive days after the date determined in (2)(a) above.

18 See Exhibit 1, at 82-83.

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21
22 ¹ Plaintiff’s Policy contains an Endorsement, Form J7138, which amends the business income
23 coverage language to provide that “suspension means: (a) The partial slowdown or complete
24 cessation of your business activities; or (b) That a part or all of the described premises is
 rendered untenable, if coverage for Business Income applies.” Exhibit 1, at 103.

25 ² Plaintiff’s Policy contains an Endorsement, Form E6289101, which amends the standard
26 business income and extra expense coverage outlined in Form BP 00 02 01 97 and provides that
27 “[t]he maximum period for which we will pay for loss of Business Income that you sustain
28 during the ‘period of restoration’ is **18 consecutive months** after the date of direct physical loss
 or damage.” *Id.*, at 102 (emphasis added).

1 40. Plaintiff's Special Property Coverage Form, Form BP 00 02 01 97, further
2 provides coverage as follows:

3 **i. Civil Authority**

4 We will pay for the actual loss of Business Income you sustain and necessary Extra
5 Expense caused by action of civil authority that prohibits access to the described
6 premises due to direct physical loss of or damage to property, other than at the
7 described premises, caused by or resulting from any Covered Cause of Loss.

8 The coverage for Business Income will begin 72 hours after the time of that action
9 and will apply for a period of up to three consecutive weeks after coverage begins.

10 The coverage for necessary Extra Expense will begin immediately after the time of
11 that action and ends:

12 (1) 3 consecutive weeks after the time of that action; or

13 (2) When your Business Income coverage ends;

14 whichever is later.

15 The definitions of Business Income and Extra Expense contained in the Business
16 Income and Extra Expense Additional Coverages also apply to this Civil Authority
17 Additional Coverage. The Civil Authority Additional Coverage is not subject to the
18 Limits of Insurance.

19 *See id.*, at 84.

20 41. In addition, Plaintiff's Special Property Coverage Form, Form BP 00 02 01 97,
21 further provides coverage as follows:

22 **g. Extra Expense**

23 (1) We will pay necessary Extra Expense you incur during the "period
24 of restoration" that you would not have incurred if there had been
25 no direct physical loss or damage to property at the described
26 premises. The loss or damage must be caused by or result from a
27 Covered Cause of Loss. With respect to loss of or damage to
28 personal property in the open or personal property in a vehicle, the
described premises include the area within 100 feet of the site at
which the described premises are located. With respect to the

1 requirements set forth in the preceding paragraph, if you occupy
2 only part of the site at which the described premises are located,
3 your premises means:

- 4 (a) The portion of the building which you rent, lease or
5 occupy; and
6 (b) Any area within the building or on the site at which the
7 described premises are located, if that area services, or is
8 used to gain access to, the described premises.

(2) Extra Expense means expense incurred:

- 9 (a) To avoid or minimize the suspension³ of business and to
10 continue “operations”:
11 (i) At the described premises; or
12 (ii) At replacement premises or at temporary locations,
13 including relocation expenses, and costs to equip
14 and operate the replacement or temporary locations.
15 (b) To minimize the suspension of business if you cannot
16 continue “operations”

17

18 We will only pay for Extra Expense that occurs within 12
19 consecutive months⁴ after the date of direct physical loss or
20 damage. This Additional Coverage is not subject to the Limits of
21 Insurance.

22
23 ³ Plaintiff’s Policy contains an Endorsement, Form J7138, which amends the extra expense
24 coverage language to provide that “suspension means: (a) The partial slowdown or complete
25 cessation of your business activities; or (b) That a part or all of the described premises is
26 rendered untenable, if coverage for Business Income applies.” *Id.*, at 103.

26 ⁴ Plaintiff’s Policy contains an Endorsement, Form E6289101, which amends the standard
27 business income and extra expense coverage outlined in Form BP 00 02 01 97 and provides that
28 “[w]e will only pay for Extra Expense that occurs within **18 consecutive months** after the date of
direct physical loss or damage.” *Id.*, at 102 (emphasis added).

1 *See id.*, at 83-84.

2 42. Under Plaintiff's Special Property Coverage Form, Form BP 00 02 01 97,
3 Business Income is defined as:

- 4 (i) Net Income (Net Profit or Loss before income taxes) that would have been
5 earned or incurred if no physical loss or damage has occurred, but not
6 including any Net Income that would likely have been earned as a result of
7 an increase in the volume of business due to favorable business conditions
8 caused by the impact of the Covered Cause of Loss on customers or on
9 other businesses; and
- (ii) Continuing normal operating expenses incurred, including payroll.

10 *See id.*, at 82.

11 43. The interruption of Plaintiff's and other class members' businesses was not
12 caused by any of the exclusions set forth in the applicable Policies, including Plaintiff's Policy.

13 44. Plaintiff's Policy contains a Mold and Microorganism Exclusion, standard
14 Endorsement Form E4009, which purports to exclude "[a]ny loss, cost or expense arising out the
15 abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying,
16 neutralizing, remediating or disposing of, or in any way responding to or assessing the effect of
17 'mold' or 'microorganism', by any insured or by any other person or entity." *See id.*, at 129.

18 45. The Mold and Microorganism Exclusion in Plaintiff's Policy does not exclude
19 coverage for Plaintiff's business income and extra expense losses because the covered cause of
20 loss was not mold or microorganism but the prevention of the spread of COVID-19.
21 Specifically, Plaintiff is unable to utilize its business premises for normal operations because
22 COVID-19 Civil Authority Orders were issued to prevent the potential spread of COVID-19 in
23 the future, not because Coronavirus was found on or in the vicinity of Plaintiff's covered
24 premises.
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1 46. Plaintiff's Policy also contains an Exclusion of Loss Due to Virus or Bacteria,
2 standard Endorsement Form J6316, which excludes "loss or damage caused by or resulting from
3 any virus, bacterium or other microorganism that induces or is capable of inducing physical
4 distress, illness or disease." *See id.*, at 130.
5

6 47. The Virus or Bacteria Exclusion in Plaintiff's Policy does not exclude coverage
7 for Plaintiff's business income and extra expense losses because the covered cause of loss was
8 not bacteria or the Coronavirus, but instead the prevention of the spread of COVID-19.

9 Specifically, Plaintiff is unable to utilize its business premises for normal operations because
10 COVID-19 Civil Authority Orders were issued to prevent the potential spread of COVID-19 in
11 the future, not because Coronavirus was found on or in the vicinity of Plaintiff's covered
12 premises.
13

14 48. Plaintiff's Policy also contains a Limited Coverage for Fungi, Wet Rot, Dry Rot,
15 and Bacteria provision, which excludes from coverage:
16

17 (a) The enforcement of any ordinance or law which requires demolition, repair,
18 replacement, reconstruction, remodeling or remediation of property due to
19 contamination by "pollutants" or due to the presence, growth, proliferation,
20 spread or any activity of "fungi," wet or dry rot or bacteria; or

21 (b) The costs associated with the enforcement of any ordinance or law which requires
22 any insured or others to test for, monitor, clean up, remove, contain, treat,
23 detoxify or neutralize, or in any way respond to, or assess the effects of
24 "pollutants", "fungi", wet or dry rot or bacteria.

25 *See id.*, at 134.

26 49. Plaintiff's Limited Coverage for Fungi, Wet Rot, Dry Rot, and Bacteria does not
27 exclude Plaintiff's losses because the covered cause of loss was not fungi, wet rot, dry rot, or
28 bacteria, but instead the prevention of the spread of COVID-19. Specifically, Plaintiff is unable

1 to utilize its business premises for normal operations because COVID-19 Civil Authority Orders
2 were issued to prevent the potential spread of COVID-19 in the future, not because Coronavirus
3 was found on or in the vicinity of Plaintiff's covered premises.

4
5 **D. Farmers' Denial of Plaintiff's Claim**

6 50. Plaintiff's owner, David Estrada, first reached out to his Farmers agent on March
7 16, 2020 to discern whether he could obtain coverage under Plaintiff's Farmers policy for lost
8 business income in the form of, *inter alia*, cancelled lessons, classes, and venue rentals.

9 51. After being told that Farmers likely would deny any potential claim, Plaintiff's
10 claim was filed with Farmers on May 4, 2020, seeking business interruption coverage. A day
11 later, on May 5, 2020, Farmers formally denied Plaintiff's claim.

12 52. Farmers denied Plaintiff's claim without any inspection or review of Plaintiff's
13 physical location and has thereby waived any right to do so at a later date.

14 53. In the formal denial letter, Farmers indicated that there could not be coverage
15 because there is no direct physical loss of or damage to property at the described premises from a
16 covered cause of loss.

17 54. Farmers' rejection of Plaintiff's claim is unfounded because, as explained, the
18 loss of access to the Plaintiff's covered premises for normal business operations is caused by
19 COVID-19 Civil Authority Orders, which were issued to prevent the potential spread of COVID-
20 19 in the future, not because Coronavirus was found on or in the vicinity of Plaintiff's covered
21 premises. Indeed, Plaintiff's and class members' Policies define "Covered Cause of Loss" as
22 "Risks of Direct Physical Loss unless the loss is: a. Excluded . . . or b. Limited." Exhibit 1, at
23 80.
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1 55. Furthermore, Plaintiff’s and Class members’ Policies provide coverage “for the
2 actual loss of Business Income you sustain and the necessary Extra Expense *caused by action of*
3 *civil authority that prohibits access to the described premises* due to direct physical loss of or
4 damage to property, other than at the described premises, *caused by or resulting from any*
5 *Covered Cause of Loss.*” *Id.*, at 84 (emphasis added). The COVID-19 Civil Authority Orders
6 have prohibited Plaintiff’s and class members’ access to their premises for carrying out normal
7 business operations. The direct physical loss of the property is caused, not by the actual presence
8 of Coronavirus on Plaintiff’s or class members’ properties, but, instead, by the need to prevent
9 the future spread of the Coronavirus.
10

11
12 **E. Farmers Has Denied Insureds’ Claims Nationwide**

13 56. The Coronavirus and COVID-19 are negatively impacting private commercial
14 property throughout the United States and California, threatening the survival of thousands of
15 restaurants, event spaces, retail establishments, and other businesses that have had their
16 operations suspended due to COVID-19 Civil Authority Orders.
17

18 57. Farmers does not intend to cover losses caused by the COVID-19 pandemic as
19 part of business interruption coverage. Farmers denied Plaintiff’s claim within a day of filing,
20 and earlier conversations between Plaintiff and its Farmers agent demonstrate that Farmers has
21 planned to deny claims such as Plaintiff’s as part of a uniform course of action.
22

23 58. As a result, many small businesses that maintain commercial insurance policies
24 with business interruption coverage will have significant uninsured losses absent declaratory
25 relief from this Court. Indeed, even if state and local governments re-open, small businesses will
26 continue to experience diminishing revenues due to the loss of covered property and will almost
27

1 certainly still be under social-distancing mandates, especially inside event spaces like Plaintiff's,
2 where people congregate together.

3 59. A declaratory judgment determining that the business income loss and extra
4 expense coverage provided in standard Farmers' commercial property insurance policies applies
5 to the suspension, curtailment, and interruption of business operations resulting from measures
6 put into place by civil authorities is necessary to prevent Plaintiff and similarly situated class
7 members from being denied critical coverage for which they have paid premiums.
8

9 **CLASS ACTION ALLEGATIONS**

10 60. Plaintiff brings this action pursuant to Federal Rules of Civil Procedure 23(a),
11 23(b)(1), 23(b)(2), and 23(b)(3) as a class action on behalf of itself and all others similarly
12 situated for the purpose of asserting claims alleged in this Complaint on a common basis.
13

14 61. Plaintiff seeks certification of the following nationwide class ("Nationwide
15 Class," collectively, with the "Sub-Class" defined below, "Class" or "Classes"):

16 All persons and entities who have entered into a standard
17 commercial property insurance policy with a Farmers insurance
18 carrier to insure property in the United States, where such policy
19 provides for business income loss and extra expense coverage, and
20 who have suffered losses due to measures put in place by a COVID-
19 Civil Authority Order.

21 62. Plaintiff also seeks certification of the following Sub-Class:

22 All persons and entities who have entered into a standard
23 commercial property insurance policy with a Farmers insurance
24 carrier to insure property in California, where such policy provides
25 for business income loss and extra expense coverage, and who have
26 suffered losses due to measures put in place by a COVID-19 Civil
27 Authority Order.

1 63. Excluded from the Class are Defendants, any entity in which Defendants have a
2 controlling interest, and Defendants' officers, directors, legal representatives, successors,
3 subsidiaries, and assigns. Also excluded from the Class are any judicial officers presiding over
4 this matter, members of their immediate family, members of their judicial staff, and any Judge
5 sitting in the presiding court system who may hear an appeal of any judgment entered.
6

7 64. Plaintiff reserves the right to amend or modify the Class or Sub-Class definitions
8 with greater specificity or division after having had an opportunity to conduct discovery.
9

10 65. **Risk of Inconsistent or Varying Adjudications. Fed. R. Civ. P. 23(b)(1).** As
11 the proposed Classes include at least thousands of persons or entities who are insured for
12 business income losses, there is a significant risk of inconsistent or varying adjudications with
13 respect to individual members of the Classes that would establish incompatible standards of
14 conduct for the Defendants. For example, declaratory relief may be entered in multiple cases,
15 but the ordered relief may vary, causing Defendants to have to choose the court order with which
16 they will comply.
17

18 66. **Numerosity. Fed. R. Civ. P. 23(a)(1).** Consistent with Rule 23(a)(1), the
19 members of the Classes are so numerous that the joinder of all members is impractical. While
20 the exact numbers of members in the Classes are unknown to Plaintiff at this time, it is believed
21 that the Class is comprised of tens of thousands of persons and entities geographically dispersed
22 throughout the United States and the Sub-Class is comprised of thousands of persons and entities
23 spread throughout the State of California. The names and addresses of Class and Sub-Class
24 members are available from Defendants' records, and members of the Class and Sub-Class may
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1 be notified of the pendency of this action by recognized, court-approved notice dissemination
2 methods, which may include electronic mail, U.S. Mail, internet notice, and/or published notice.

3
4 **67. Predominance of Common Issues. Fed. R. Civ. P. 23(a)(2) and (b)(3).**

5 Consistent with Rule 23(a)(2) and with 23(b)(3)'s predominance requirement, this action
6 involves common questions of law and fact that predominate over any questions affecting
7 individual members of the Classes. The common questions include:

8 a. Whether the Policy covers losses created by COVID-19 Civil Authority
9 Orders;

10 b. Whether the need to reduce and/or prevent the spread of the COVID-19
11 pandemic is excluded from Plaintiff's and Class members' standard commercial property
12 insurance Policies;

13 c. Whether the need to reduce and/or prevent the spread of COVID-19
14 constituted physical loss or damage and is a Covered Cause of Loss under the Policy;

15 d. Whether Farmers has repudiated and breached the insurance Policies with
16 business interruption coverage by denying or intending to deny claims for coverage;

17 e. Whether Farmers' violations of the standard commercial property
18 insurance Policies were committed intentionally, recklessly, or negligently; and

19 f. Whether Plaintiff and Class members have suffered damages as a result of
20 Farmers' breach.
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24 **68. Typicality. Fed. R. Civ. P. 23(a)(3).** Plaintiff's claims are typical of the claims
25 of Class members because Plaintiff and members of the Classes have been subjected to the same
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1 unlawful conduct and damaged in the same way. Defendants' conduct that has given rise to the
2 claims of Plaintiff and other insureds is the same for all members of the Classes.

3 **69. Adequacy. Fed. R. Civ. P. 23(a)(4).** Consistent with Rule 23(a)(4), Plaintiff is
4 an adequate representative of the Classes because Plaintiff is a member of the Classes and is
5 committed to pursuing this matter against Defendant to obtain relief for all of the Insureds.
6 Plaintiff has no conflicts of interest with the Classes and entered into a Policy that is largely
7 similar to the Policies that Class members entered into with Farmers. Plaintiff's counsel are
8 competent and experienced in litigating class actions, including extensive experience in litigating
9 consumer claims. Plaintiff intends to vigorously prosecute this case and will fairly and
10 adequately protect the interests of the Classes.
11

12 **70. Superiority. Fed. R. Civ. P. 23(b)(3).** Consistent with Rule 23(b)(3), a class
13 action is superior to any other available means for the fair and efficient adjudication of this
14 controversy, and no unusual difficulties are likely to be encountered in the management of this
15 class action. The purpose of the class action mechanism is to permit litigation against
16 wrongdoers even when damages to individual plaintiffs and class members may not be sufficient
17 to justify individual litigation. Here, the damages suffered by Plaintiff and the members of the
18 Classes are relatively small compared to the burden and expense required to individually litigate
19 their claims against Defendants, and thus, individual litigation to redress Defendants' wrongful
20 conduct would be impracticable. Individual litigation by each member of the Classes would also
21 strain the court system. Moreover, individual litigation creates the potential for inconsistent or
22 contradictory judgments, and increases the delay and expense to all parties and the court system.
23 By contrast, the class action device presents far fewer management difficulties and provides the
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1 76. Under Plaintiff’s and Class members’ extra expense coverage, Defendants must
2 pay for expenses incurred “to avoid or minimize the suspension of business and to continue
3 ‘operations’ . . . [and those incurred] to minimize the suspension of business if you cannot
4 continue ‘operations.’” Again, Defendants must pay for expenses which Plaintiff and Class
5 members “would not have incurred if there had been no direct physical loss or damage to
6 property” *See id.*, at 83.

8 77. Under Plaintiff’s and Class members’ civil authority coverage, Defendants must
9 pay for “the actual loss of Business Income you sustain and necessary Extra Expense caused by
10 action of civil authority that prohibits access to the described premises due to direct physical loss
11 of or damage to property, other than at the described premises, caused by or resulting from any
12 Covered Cause of Loss.” *See id.*, at 84.

14 78. Defendants’ interpretation that the requirement of “physical loss” is not satisfied
15 by losing physical access or use of Plaintiff’s property is wrong. The undefined phrase “direct
16 physical loss” is reasonably construed to mean the direct loss of the ability to physically access
17 or use property. Prohibiting the ability to access or use commercial property for normal business
18 operations constitutes a physical loss of said property. Since exclusions of coverage must be
19 narrowly construed, the language drafted by the insurer with ambiguity should ordinarily be
20 construed against the drafter and in favor of Plaintiff and members of the Classes.
21

22 79. An actual controversy has arisen between Plaintiff and members of the Class and
23 Defendants as to the rights, duties, responsibilities, and obligations of the parties under the
24 Policies in that Plaintiff and members of the Classes contend, and Defendants dispute and deny,
25 that:
26

- 1 a. The COVID-19 Civil Authority Orders constitute a prohibition to and
2 physical loss of access to Plaintiff's business premises;
- 3 b. The prohibition of access and use for normal business operations by the
4 Orders has specifically prevented access to insureds' properties as defined
5 in the Policies;
- 6 c. The COVID-19 Civil Authority Orders issued by governmental official
7 trigger coverage under the Policies;
- 8 d. The Policies include coverage for losses caused by the need to prevent the
9 spread of the Coronavirus;
- 10 e. The Policies provide coverage to Plaintiff and members of the Classes for
11 any current and future COVID-19 Civil Authority Order which closes
12 businesses due to the need to prevent the spread of the Coronavirus under
13 the civil authority coverage parameters of the Policy; and
- 14 f. Resolution of the duties, responsibilities, and obligations under the
15 Policies is necessary as no adequate remedy at law exists and declaration
16 of the Court is needed to resolve the dispute and controversy.

17 80. Plaintiff, individually and on behalf of members of the Class and Sub-Class, seeks
18 a Declaratory Judgment finding that the Policies cover business income and extra expenses
19 during the period of restoration caused by or resulting from governmental action that forced
20 Plaintiff and members of the Classes to suspend operations, subject to no limitations or
21 exclusions under the Policies.

22 **SECOND CAUSE OF ACTION**
23 **(Breach of Contract Against All Defendants)**

24 81. Plaintiff realleges and incorporates by reference the preceding paragraphs above
25 as if fully set forth herein.

26 82. Plaintiff brings this Cause of Action individually and on behalf of the other
27 members of the Classes.

1 83. Plaintiff's Policy, as well as those Policies of other Class members, are contracts
2 under which Farmers was paid premiums in exchange for its promise to pay Plaintiff's, and the
3 other Class members', losses for claims covered by the Policy.
4

5 84. As described herein, the business income losses and extra expenses incurred by
6 Plaintiff and Class members are covered losses under the Policies.

7 85. As part of standard business interruption and extra expense coverages, Farmers
8 agreed to pay for Plaintiff's and Class members' loss of business income and extra expenses
9 incurred due to the necessary suspension of its operations during the "period of restoration."
10 "Business Income" under the Policies means the "Net Income (Net Profit or Loss before income
11 taxes) that would have been earned or incurred," as well as "[c]ontinuing normal operating
12 expenses incurred, including payroll." "Extra Expense" under the Policies are those expenses
13 incurred "to avoid or minimize the suspension of business and to continue 'operations' . . . [and
14 those incurred] to minimize the suspension of business if you cannot continue 'operations.'" *See*
15 *id.*, at 83.
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18 86. The COVID-19 Civil Authority Orders caused direct physical loss and damage to
19 Plaintiff's and Class members' commercial premises, requiring the suspension of normal
20 business operations. Accordingly, losses caused by the COVID-19 Civil Authority Orders
21 triggered the business income and extra expense provisions of the Policies.
22

23 87. The Policies also provides for "Civil Authority" coverage, which promises to pay
24 "the actual loss of Business Income you sustain and necessary Extra Expense caused by action of
25 civil authority that prohibits access to the described premises due to direct physical loss of or
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1 damage to property, other than at the described premises, caused by or resulting from any
2 Covered Cause of Loss.” *See id.*, at 84.

3 88. The COVID-19 Civil Authority Orders have prohibited Plaintiff and Class
4 members to engage in normal business operations at their commercial premises and have caused
5 Plaintiff and Class members to lose business income and incur extra expenses. Accordingly, the
6 COVID-19 Civil Authority Orders triggered the civil authority provision of Plaintiff’s and other
7 Class members’ Policies.
8

9 89. Plaintiff and other Class members have complied with all applicable provisions of
10 the Policies and/or those provisions have been waived by Farmers and/or Farmers is estopped
11 from asserting them. Yet Farmers has abrogated its insurance coverage obligations under the
12 clear and unambiguous terms of the Policies.
13

14 90. By denying coverage for any business losses and expenses incurred by Plaintiff
15 and other members of the Classes in connection with the COVID-19 Civil Authority Orders,
16 Farmers has breached its coverage obligations under the Policies.
17

18 91. As a result of Farmers’ breaches of contract, Plaintiff and other members of the
19 Classes have sustained substantial damages for which Farmers is liable, in an amount to be
20 established at trial.
21

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff, individually and on behalf of all similarly situated individuals
24 and entities, prays for relief and judgment against Defendants as follows:
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1 A. Determining that this action is a proper class action under one or more provisions
2 of Federal Rule of Civil Procedure 23, appointing Plaintiff to serve as a Class Representative and
3 appointing its counsel to serve as Class Counsel;

4 B. Issuing a Declaratory Judgment declaring the parties' rights and obligations under
5 the insurance Policy at issue;

6 C. Awarding Plaintiff and the Classes compensatory damages against Defendants,
7 jointly and severally, for all damages sustained as a result of Defendants' breach of the Policies,
8 in an amount to be proven at trial, including interest thereon;

9 D. Awarding Plaintiff and the Classes pre-judgment and post-judgment interest, as
10 well as reasonable attorneys' fees incurred in this action; and

11 E. Awarding such other relief as the Court may deem just and proper.

12 **JURY DEMAND**

13 Plaintiff demands a trial by jury on all issues so triable.

14 DATED: June 19, 2020

15 **SHEPHERD, FINKELMAN, MILLER
16 & SHAH, LLP**

17 */s/ James C. Shah*

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