

1 David M. Lilienstein, SBN 218923
david@dllawgroup.com
2 Katie J. Spielman, SBN 252209
katie@dllawgroup.com
3 **DL LAW GROUP**
345 Franklin St.
4 San Francisco, CA 94102
Telephone: (415) 678-5050
5 Facsimile: (415) 358-8484

6 Attorneys for Plaintiff,
Occidental Grill Cigar Club, LLC

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

03/15/2021
Clerk of the Court
BY: RONNIE OTERO
Deputy Clerk

7 **IN THE SUPERIOR COURT OF CALIFORNIA**
8 **COUNTY OF SAN FRANCISCO**

9 **CGC-21-590411**

10 OCCIDENTAL GRILL CIGAR CLUB,
11 LLC dba OCCIDENTAL GRILL CIGAR
12 CLUB

13 Plaintiff,

14 v.

15 CRUSADER INSURANCE COMPANY;
16 and DOES 1 through 10,

17 Defendants.

Case No.

**COMPLAINT FOR BREACH OF
CONTRACT; BREACH OF THE
COVENANT OF GOOD FAITH AND
FAIR DEALING; DECLARATORY
RELIEF; JURY TRIAL DEMANDED**

18
19 **I. INTRODUCTION**

20 Plaintiff Occidental Grill Cigar Club, LLC dba Occidental Grill Cigar Club (“Plaintiff”
21 or “Cigar Club”) hereby requests a jury trial on all issues in this action against Defendants
22 Crusader Insurance Company (“Defendant” or “Crusader”); and DOES 1 through 10.

23 Plaintiff alleges as follows:

24 **II. PARTIES**

25 1. Plaintiff is a California limited liability company, doing business in San
26 Francisco, California.
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1 2. Defendant Crusader Insurance Company (“Defendant” or “Crusader”) is a
2 California corporation authorized to transact and at all times relevant transacting the business of
3 insurance in the State of California, including the County of San Francisco.

4 3. The true names or capacities, whether individual, corporate, associate, or
5 otherwise, of defendants DOES 1 through 10, inclusive, are unknown to Plaintiff who therefore
6 sues said defendants by such fictitious names. Plaintiff is informed and believes and on such
7 information and belief alleges that each of the defendants sued herein as a DOE is legally
8 responsible in some manner for the events and happenings referred to herein, and will ask leave
9 of this court to amend this Complaint to insert their true names and capacities in place and
10 instead of the fictitious names when the same become known to Plaintiff.

11 4. At all times relevant, the DOE defendants, and each of them, were, subject to the
12 discovery of new facts, the agents, employees or joint venturers of the remaining defendants, and
13 were at all times acting within the purpose and scope of said relationship, and each defendant has
14 ratified and approved the acts of the other.

15 5. This Court has subject matter jurisdiction over this action. The conduct giving
16 rise to this action took place in whole or in part, in the County of San Francisco. This action is
17 based, in substantial part, on breach of an insurance contract concerning a California property
18 and business, and is based on violations of California law.

19 6. The amount in controversy exceeds the minimal jurisdictional amount for
20 unlimited civil cases in the Superior Court for the State of California, County of San Francisco
21

22 **III. FIRST CAUSE OF ACTION**
23 **(Breach of Contract against CRUSADER; and DOES 1-10)**

24 As for the FIRST CAUSE OF ACTION, Plaintiff complains against Defendants
25 CRUSADER; and DOES 1 through 10 and alleges:

26 7. Plaintiff incorporates by refence each and every paragraph of this Complaint as
27 though set forth in full in this cause of action.
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1 8. Plaintiff purchased insurance policy no. CIC-236679 (“the Policy”) from
2 Crusader, which provides, *inter alia*, general liability, business income loss, and property
3 coverage.

4 9. At all relevant times, all Policy premiums were paid by and through Plaintiff.

5 10. At all relevant times, Plaintiff performed all terms, conditions and obligations
6 required of it under the Policy.

7 11. At all times herein mentioned, the Policy was in full force and effect.

8 12. The Policy covers direct physical loss of or damage to covered property at the
9 insured’s business caused by or resulting from any cause of loss or damage covered under the
10 Policy.

11 13. The Policy also covers the actual loss of business income sustained by the named
12 insured due to the necessary suspension or disruption of part or all of the named insured’s
13 operations during the period of restoration.

14 14. The Policy contains a Civil Authority provision, which provides that Defendant
15 will pay for the actual loss of business income sustained by the named insured caused by action
16 of civil authority that prohibits access to the described premises due to direct physical loss of or
17 damage to property, other than at the described premises, caused by or resulting from any peril
18 insured against.

19 15. A novel coronavirus, named Severe Acute Respiratory Syndrome coronavirus
20 (SARS-CoV-2) was identified as the cause of an outbreak of respiratory illness first detected in
21 Wuhan, China in late 2019. The illness cause by this virus has been named coronavirus disease
22 2019 (COVID-19). Throughout this Complaint, SARS-CoV-2, also known as the novel
23 coronavirus, and resulting disease named COVID-19 will be collectively referred to as “COVID-
24 19.”

25 16. On March 16, 2020 San Francisco County issued a Shelter In Place Order which,
26 *inter alia*, directed all businesses to cease non-essential operations at physical locations in the
27 county, and prohibiting all non-essential gatherings of any number of individuals.
28

1 17. On March 19, 2020, California Governor Newsom issued Executive Order N-33-
2 20 which directed all Californians to stay at home.

3 18. COVID-19 can be transmitted in several ways, including via human-to-human
4 contact, airborne viral particles in ambient air, and touching surfaces or objects. COVID-19
5 spreads easily from person to person and person to surface or object, primarily through small,
6 physical droplets expelled from the nose or mouth when an infected person speaks, yells, sings,
7 coughs, or sneezes. According to research published in the Journal of the American Medical
8 Association, a person who sneezes can release a cloud of pathogen-bearing droplets that can
9 span as far as 23 to 27 feet.¹

10 19. Physical droplets containing the coronavirus can land on objects and surfaces.
11 After landing on objects and surfaces, the coronavirus can remain present and dangerous for
12 periods ranging from hours to many days.

13 20. Research has indicated that the coronavirus can be detected on certain surfaces
14 even weeks after infected persons are present at a given location.

15 21. The National Institutes of Health published a news release warning of the virus'
16 ability to remain viable on surfaces for several hours and even days: "The scientists found that
17 severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) was detectable in aerosols for
18 up to three hours, up to four hours on copper, up to 24 hours on cardboard and up to two to three
19 days on plastic and stainless steel."²

20 22. Research has also indicated that COVID-19 can spread through the air. Airborne
21 particles are known to have spread into a facility's heating and ventilation ("HVAC") system,
22 leading to transmission of the coronavirus from person to person.

23 23. Accordingly, COVID-19 and the coronavirus cause physical loss and damage by,
24 among other things, destroying, distorting, corrupting, attaching to, and physically altering
25 property, including its surfaces, and by rendering property unusable, uninhabitable, unfit for
26 intended function, dangerous and unsafe.

27 ¹ "Turbulent Gas Clouds and Respiratory Pathogen Emissions: Potential Implications for Reducing Transmission of
28 COVID-19," <https://jamanetwork.com/journals/jama/fullarticle/2763852>

² National Institutes of Health News Release: "New Coronavirus stable for hours on surfaces,"
<https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaceslili>

1 24. COVID-19 has caused such direct physical loss of and damage to Plaintiff's
2 business property insured by the Policy.

3 25. Respiratory droplets expelled from infected individuals land on, attach, and
4 adhere to surfaces and objects. In doing so, they physically change the property and its surface
5 by becoming a part of that surface. This physical alteration makes physical contact with those
6 previously safe, inert surfaces unsafe.

7 26. When individuals carrying COVID-19 breathe, talk, cough, or sneeze, they expel
8 aerosolized droplet nuclei that remain in the air and make the premises unsafe and affirmatively
9 dangerous. This process alters the physical properties of air in buildings from safe and
10 breathable to unsafe and dangerous.

11 27. Fomites, droplets, droplet nuclei, and aerosols containing the coronavirus are not
12 theoretical, informational, or incorporeal, but rather are dangerous physical substances that have
13 a material, tangible existence.

14 28. When COVID-19 attaches to and adheres on surfaces and materials, it becomes a
15 part of those surfaces and materials, converting the surfaces and materials to fomites.³ This
16 represents a physical change in the affected surface or material, which constitutes physical loss
17 and damage.

18 29. The presence of COVID-19 within a property causes direct physical loss and
19 damage by necessitating remedial measures that include, *inter alia*, extensive cleaning and
20 disinfecting, repairing or replacing air filtration systems, remodeling and reconfiguring physical
21 spaces, and other measures to reduce or eliminate the presence of cases of COVID-19 on site.

22 30. The presence of COVID-19 within a property causes direct physical loss and
23 damage by transforming the property from one that is usable and safe for humans into one that is
24 unsatisfactory for use, uninhabitable, unfit for its intended purpose, and extremely dangerous and
25 potentially deadly for humans.

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27
28 ³ "Transmission of SARS-CoV-2: implications for infection prevention precautions," World Health Organization, <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

1 31. The physical losses and physical damages described herein occurred at
2 Defendant's property, leading to losses and business income interruption caused by the Policy.

3 32. In response to the presence of COVID-19 on the property as well as the
4 government shut-down orders, Plaintiff ceased business operations.

5 33. Plaintiff has suffered direct physical loss of its insured property in that the
6 property has been made useless and/or uninhabitable and its functionality has been eliminated.

7 34. The public health shut-down and stay-at-home orders have impacted not only
8 Plaintiff, but also its neighboring businesses and properties, whose property has suffered similar
9 direct physical loss as a result.

10 35. Plaintiff filed a claim with Defendant for the closure of the Cigar Club due to
11 COVID-19 and the related public health orders.

12 36. Defendant issued a denial letter to Plaintiff, taking the position that Plaintiff
13 suffered no physical damage as a result of COVID-19, civil authority order coverage was not
14 triggered because the public health orders did not result from a peril insured against, and the
15 Policy's Mold Exclusion barred coverage.

16 37. Plaintiff sent correspondence to Defendant appealing the denial of coverage.

17 38. Defendant initially responded to Plaintiff's appeal with no less than four letters
18 over the course of several months stating that it was reviewing Plaintiff's appeal and would be
19 requiring additional time to review the matter.

20 39. Finally, having conducted no additional investigation, Defendant denied
21 Plaintiff's appeal of its denial of coverage based on the same misleading, inaccurate and/or false
22 statements contained in its initial denial letter.

23 40. Defendant has a duty to provide Plaintiff with insurance coverage under the
24 Policy, as alleged herein.

25 41. Defendant's denial of coverage is contrary to the terms and conditions of the
26 policy and applicable law, which give effect to plain language, construe ambiguity in favor of
27 coverage, and narrowly construe exclusions.
28

1 42. As a direct and proximate result of Defendant’s claim denials, Plaintiff has
2 suffered and will continue to suffer damages.

3 43. As a direct and proximate result, of Defendants’ claim denials, Plaintiff has been
4 damaged in an amount equal to the coverage to which it is entitled under the Policy, plus
5 interest, that amount increasing monthly, and in an amount to be proved at trial, as a result of the
6 conduct alleged herein.

7 44. In denying the claim set forth above, Defendants Crusader and DOES 1 through
8 10, and each of them, have breached and continue to breach the insurance contract that is the
9 subject of this litigation.

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11 **IV. SECOND CAUSE OF ACTION**
12 **(Breach of the Covenant of Good Faith and Fair Dealing (Insurance Bad Faith)**
13 **Against CRUSADER, and DOES 1 through 10)**

14 45. Plaintiff incorporates by reference each and every paragraph of this Complaint as
15 though set forth in this cause of action.

16 46. At all times herein relevant, Defendants, and each of them, agreed to act in good
17 faith and deal fairly with Plaintiff. Defendants thereby assumed a special relationship with and
18 fiduciary-like obligations to Plaintiff and agreed to abide by said duties. Nevertheless,
19 Defendants refused and failed to act in good faith and deal fairly with Plaintiff, and breached
20 said obligations, as is set forth more particularly in this Complaint.

21 47. In the absence of a reasonable basis for doing so, and with full knowledge and/or
22 conscious disregard of the consequences, Defendants failed and refused to provide Plaintiff the
23 benefits promised under the Policy, under the laws of California.

24 48. Defendants engaged and continue to engage in conduct to further their own
25 economic interest and in violation of its contractual and fiduciary obligations to Plaintiff,
26 including but not limited to:

- 27 a. Unreasonably denying the benefits of the Policy;
- 28 b. Misrepresenting pertinent Policy provisions and coverages at issue;
- c. Misrepresenting scientific evidence;

- 1 d. Repeated requests for additional time to review the claim, while failing to conduct
2 any additional investigation;
- 3 e. Failing to place the financial interests of its insureds on an equal par with
4 Defendants' own financial interests;
- 5 f. Failing to objectively evaluate Plaintiff's claim and attempting to find reasons not
6 to pay its claim;
- 7 g. Misrepresenting information provided by Plaintiff in order to deny coverage;
- 8 h. Misrepresenting the Policy coverage in order to confuse Plaintiff and make
9 Plaintiff believe that its COVID-19 claim could not trigger coverage;
- 10 i. Failing to conduct a full and fair investigation;
- 11 j. Shifting the burden of investigation onto their insureds.
- 12 k. Engaging in an unlawful pattern of practice for denying COVID-19 claims in
13 order to save money and increase profits.

14 49. In doing the acts listed above, Defendants breached the covenant of good faith
15 and fair dealing, and engaged in unfair claim settlement practices.

16 50. Defendants continue to engage in the aforementioned acts and said conduct and
17 bad faith constitutes a continuing tort and continuing bad faith to Plaintiff, causing continued
18 damage as described herein beyond the date of the filing of this action.

19 51. As a direct and proximate result of the aforementioned conduct of Defendants,
20 Plaintiff has been damaged in an amount in excess of the jurisdiction of this Court, to be
21 determined at trial.

22 52. In committing the above referenced acts, Defendants intended to and did in fact,
23 damage, anno, and injury Plaintiff.

24 53. As a further, direct and proximate result of the aforementioned conduct of
25 Defendants, Plaintiff has been obliged to expend or incur liability for costs of suit, attorneys'
26 fees and related expenses in an amount not yet fully ascertained, but which will be submitted at
27 the time of trial.

28

1 54. As a further, direct and proximate result of the aforementioned conduct of
2 Defendants, Plaintiff has suffered other special damages in amounts according to proof at the
3 time of trial which include, but are not limited to, Plaintiff's inability to replace the Policy under
4 the terms and conditions represented to them.

5 55. In doing the acts set forth above, Defendants acted fraudulently, maliciously,
6 oppressively, and in conscious disregard of Plaintiff's rights in a despicable fashion. Plaintiff is
7 therefore entitled to punitive damages in a sum sufficient to punish and deter Defendants so that
8 such conduct will not take place again.

9 **V. THIRD CAUSE OF ACTION**
10 **(Declaratory Relief**
11 **Against CRUSADER, and DOES 1 through 10)**

12 56. Plaintiff incorporates by reference each and every paragraph of this Complaint as
13 though set forth in this cause of action.

14 57. Under California Code of Civil Procedure Section 1060, et seq., the court may
15 declare rights, duties, statuses, and other legal relations.

16 58. An actual controversy has arisen between Plaintiff and Defendants as to the
17 respective rights and duties under the Policy.

18 59. Plaintiff contends that benefits are due under the Policy for, *inter alia*, physical
19 loss and damage to the business property, and loss of business income. Upon information and
20 believe, Plaintiff alleges that Defendants dispute Plaintiff's contention.

21 60. Resolution of the parties' respective rights and duties under the Policy by
22 declaration of the Court is necessary.

23 61. Plaintiff asserts a legally protectable interest that is ripe for determination.

24 **VI. PRAYER FOR RELIEF**
25 **AS TO ALL CAUSES OF ACTION**

26 **WHEREFORE**, Plaintiff prays that the Court grant the following relief as against Defendants,
27 and each of them, as follows:

28 62. General damages for the failure to provide the promised benefits under the subject
contract of insurance in a sum to be determined at the time of trial;

- 1 63. General and compensatory damages in a sum to be determined at trial;
2 64. Punitive and exemplary damages;
3 65. Special damages in an amount according to proof;
4 66. For costs of suit herein incurred;
5 67. For reasonable attorneys' fees;
6 68. For prejudgment interest;
7 69. For a declaration of the parties' rights, obligations and liabilities with respect to
8 the Policy; and
9 70. For such other and further relief as the Court deems just and proper.

10 **JURY TRIAL IS HEREBY DEMANDED**

11
12 Dated: March 15, 2021

12 Respectfully submitted,

13 **DL LAW GROUP**

14
15 By: 

16 David M. Lilienstein

17 Katie J. Spielman

18 Attorneys for Plaintiff, Occidental Grill Cigar Club,
19 LLC
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