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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF ORANGE

12 SADDLEBACK MEDICAL MANAGEMENT,
13 INC.,

14 Plaintiff,

15 vs.

16 MID-CENTURY INSURANCE COMPANY,
17 FARMERS INSURANCE EXCHANGE, FIRE
18 INSURANCE EXCHANGE, TRUCK
19 INSURANCE EXCHANGE, and DOES 1
20 THROUGH 20, INCLUSIVE,

21 Defendants.

Case No.: 30-2020-01140970-CU-IC-CXC

COMPLAINT FOR:

- 1. **DECLARATORY RELIEF**
- 2. **BREACH OF CONTRACT**

JURY TRIAL REQUESTED

Assigned for all purposes to:

Judge William Claster

Dept: CX104

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I. NATURE OF THE CASE

1. This is a class action brought by insurance policyholders seeking a declaratory judgment ordering their insurance provider, Mid-Century Insurance Company, together with certain related Farmers Insurance Group entities (Farmers Insurance Exchange, Fire Insurance Exchange, and Truck Insurance Exchange) and Does 1 through 20, inclusive (collectively, “Defendants” or “Farmers”), to honor a valid contract of insurance requiring payment for lost business income, extra expenses, and other business-related losses in light of action by governmental authority requiring closure of their covered businesses or premises. This Complaint also seeks damages for breach of contract for benefits due under the insurance policy contracts.

2. If an insurer promises that by taking out “business income coverage, your policy helps replace the income lost while your company is closed,” it needs to keep that promise. *See* FARMERS INSURANCE, <https://www.farmers.com/learn/insurance-questions/business-income-coverage-definition/> (last accessed Apr. 28, 2020). Defendants understand that business interruption insurance is critical because it helps keep capital flowing to “keep your company running,” including lost profits, payroll, taxes, and other operating expenses. *Id.*; *see also* FARMERS INSURANCE, <https://www.farmers.com/business/property/> (last accessed Apr. 28, 2020).

3. Though Defendants assure prospective customers that Farmers has “a solid reputation for doing the right thing for the right reason,” Defendants have proven during the COVID-19 pandemic that this reputation is undeserved. Defendants have reflexively denied or will reflexively deny coverage based on consideration of their own interests, in contravention of basic interpretation principles requiring exclusions to be construed narrowly and equal consideration to be given to the insureds’ interests, without a proper investigation and with no disclosed outside counsel opinion supporting Defendants’ position.

1 4. Plaintiff Saddleback Medical Management, Inc. (“Plaintiff”) brings this class action
2 on behalf of all those insured under policies issued by Defendants that provide for business
3 interruption coverage, also known as business income and extra expense protection.

4 5. Defendants’ insureds dutifully paid premiums to Defendants—some doing so year-
5 after-year, to the tune of thousands or even tens of thousands of dollars per year—so that when the
6 unimaginable hit, they would be protected. All insureds included in the proposed Class purchased
7 an “all risks” policy that covered every one of those unimaginable risks unless the policy
8 exclusions removed that risk from coverage.
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10 6. When the novel coronavirus hit the United States, governments across the
11 country—state and local—acted to protect the public health by entering orders that limited
12 business operations, use of or access to facilities, travel, and in-person social interactions. The
13 governmental orders also directed businesses to undertake certain affirmative actions, such as
14 routine disinfecting cleanings of their business premises. These orders, directly and indirectly,
15 caused Defendants’ insureds to suffer the very losses Defendants promised to reimburse. These
16 governmental orders are a quintessential, well-known exercise of police power. “The state’s
17 inherent prerogative to protect the public’s health, safety, and welfare is known as the police
18 power.” *See* Gostin, Lawrence and Wiley, Lindsey, *Public Health Law*, University of California
19 Press, p. 11. Using or accessing one’s real property or employing or putting into service (or
20 removing therefrom) one’s equipment and business property, is inherently physical in nature. And
21 ousting or precluding the use of or access to real property results in a loss of a physical nature.
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24 7. Rather than giving equal consideration to the interests of the insureds, as
25 Defendants must do, evaluating each claim based on all information that could be gathered from a
26 fair and neutral individualized investigation, as Defendants also must do, or securing an outside
27 counsel opinion on coverage to avoid bias, as industry standards require, Defendants decided their
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1 denial decision was correct and that no other reasonable interpretation of the policy language to
2 the contrary exists, and thus all claims related to governmental orders limiting the use of or access
3 to insureds' property were invalid. In the policy language, however, Defendants did not choose to
4 exclude all governmental action from coverage. Defendants instead chose to exclude only
5 governmental action ordering the seizure or destruction of property, and to cover all suspensions
6 of business operations caused by "direct physical loss," a term it chose not to define so that it has
7 the meaning Defendants now assert against its insureds.

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9 8. Defendants' interpretation of the policy contract is wrong, and their denial of
10 coverage for losses caused by limitations on the physical use and access to insureds' property
11 breached the contract.

12 9. Plaintiff seeks for itself and the Class compensatory damages, statutory damages,
13 attorney's fees, interest, and declaratory relief.

14 **II. JURISDICTION**

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16 10. Subject-matter jurisdiction is proper in the Superior Court of the State of California
17 for the County of Orange, which is a court of general jurisdiction.

18 11. Personal jurisdiction is proper over Defendants under California Code of Civil
19 Procedure Section 410.10, which provides that California courts are authorized to exercise
20 jurisdiction over parties "on any basis not inconsistent with the Constitution."

21 12. Personal jurisdiction is proper over Defendants for the additional reasons that
22 Defendants are headquartered and have their principal places of business in California, and/or
23 Defendants entered into a contract of insurance with Plaintiff in California.
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III. VENUE

13. Venue is proper under California Code of Civil Procedure Section 395.5. Defendants are corporations that entered into and subsequently breached a contract of insurance with Plaintiff in the County of Orange.

IV. PARTIES

14. Plaintiff Saddleback Medical Management, Inc. contracted with Defendant Mid-Century Insurance Company for commercial property, liability, and other insurance, and the policy at issue was effective July 5, 2019. Plaintiff Saddleback Medical Management, Inc. is a California-based S corporation headquartered in Foothill Ranch, California and is a citizen of California.

15. Plaintiff operates a medical/healthcare management business located in Foothill Ranch, California (26700 Towne Centre Drive, Suite 250, Foothill Ranch, California, 92610).

16. Upon information and belief, Defendant Mid-Century Insurance Company is a California corporation with its principal place of business in Woodland Hills, California, writes policies for the multi-peril (non-liability part) line, and is a subsidiary or sister entity of Farmers Insurance Group or The Farmers Insurance Group of Companies.

17. Upon information and belief, Defendant Farmers Insurance Exchange is a California corporation with its principal place of business in Woodland Hills, California, writes policies for the multi-peril (non-liability part) line, and is a subsidiary or sister entity of Farmers Insurance Group or The Farmers Insurance Group of Companies.

18. Upon information and belief, Defendant Fire Insurance Exchange is a California corporation with its principal place of business in Woodland Hills, California, writes policies for the multi-peril (non-liability part) line, and is a subsidiary or sister entity of Farmers Insurance Group or The Farmers Insurance Group of Companies.

1 19. Upon information and belief, Defendant Truck Insurance Exchange is a California
2 corporation with its principal place of business in Woodland Hills, California. Upon information
3 and belief, Defendant Truck Insurance Exchange is a subsidiary of the Farmers Insurance Group
4 and The Farmers Insurance Group of Companies.

5 20. The Farmers Insurance Group of Companies has a relationship with Defendants
6 that results in their common action. Through Farmers Management Services, a unit in the Farmers
7 Insurance Group of Companies and/or Farmers Group, Inc., a wholly-owned subsidiary of the
8 Farmers Insurance Group of Companies (and its subsidiaries, Truck Underwriters Association and
9 Fire Underwriters Association), Defendants receive administrative, operational, and management
10 services. Farmers Group, Inc. receives fee income for providing services directly to Defendants.
11 The management and guidance of Farmers Group, Inc. and/or Farmers Management Service
12 results in the adoption of common practices, approaches, forms, and positions, including those
13 used and applied in adjusting claims related to damage from and governmental action associated
14 with COVID-19.
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16 21. Plaintiff is ignorant of the true names and capacities of the defendants sued herein
17 under the fictitious names Does 1 through 20, inclusive. Plaintiff is informed and believes, and
18 thereon alleges, that each of the fictitiously named defendants are responsible in some manner for
19 the unlawful conduct alleged herein.
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21 **V. COMMON FACTUAL ALLEGATIONS**

22 22. Plaintiff Saddleback Medical Management, Inc. manages providers of medical
23 services, including sports medicine, physical therapy, chiropractic, pain management, regenerative
24 injections, and stem-cell therapies.
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26 23. Plaintiff has provided healthcare services in its community since 2012.
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1 24. Plaintiff implemented new protocols and curtailed its business practices in order to
2 comply with state and local guidance on social distancing measures as promulgated by the Orange
3 County Health Care Agency. *See* County Officer’s Order (Mar. 18, 2020), *available at*
4 https://www.ochealthinfo.com/phs/about/epidasmt/epi/dip/prevention/covid_19_order (last
5 accessed May 18, 2020).

6 **A. Plaintiff’s Insurance Policy Covers All Risks Unless Expressly Limited or Excluded in**
7 **the Contract**

8 25. To protect its thriving business from interruption and other perils, Plaintiff
9 purchased business insurance from Defendants, including loss of income, extra expense, property,
10 liability, and other coverages.

11 26. Plaintiff’s policy is Policy Number 60628-77-53 (“Policy”).

12 27. Plaintiff paid \$1,506.00 annually for the Policy, paying in full and in advance year
13 after year. Plaintiff has purchased business insurance from Defendants, and has paid the requisite
14 premiums, for the majority of the business’s existence, which launched in 2012.

15 28. The Policy’s effective period is July 5, 2019 to July 5, 2020.

16 29. The Policy is a renewal policy. The prior policy contained material terms identical
17 to the Policy currently in effect.

18 30. Plaintiff’s Policy consists of the policy jacket and its policy provisions, the
19 declarations or information page, and the endorsements.

20 31. This businessowners coverage applies to the insured’s location identified in the
21 Policy Declarations. The location comprises the described premises and business personal
22 property covered by the Policy.

23 32. In exchange for payment of the premium, Defendants agreed to provide the
24 insurance coverage described in the Policy.

1 33. The Policy is an “all risks” policy. That is, the Policy covers the insured for any
2 peril, imaginable or unimaginable, unless expressly limited or excluded. In the event a covered
3 peril results in physical loss or damage to Plaintiff’s business premises or property, the Policy will
4 pay for lost business income and extra expenses. Business income means net income (net profit or
5 loss) that would have been earned had no physical loss or damage occurred, and continuing
6 normal operating expenses incurred (including payroll). Extra expense means the costs incurred
7 because of the physical loss or damage—that is, those costs that would have otherwise been
8 avoided. In the event of physical loss or damage, the Policy pays for both.

10 34. Specifically, as the property coverage form schedule indicates, the Policy provides
11 property coverage under Form BP 00 02 01 97, entitled Businessowners Special Property
12 Coverage Form. The Businessowners Special Property Coverage Form in turn sets forth coverage
13 for “Business Income” and “Extra Expense.” *See* Form BP 00 02 01 97, Paragraphs A.5.f and
14 A.5.g.

16 35. Under the Business Income coverage, Defendants must “pay for the actual loss of
17 Business Income you sustain due to the necessary suspension of your ‘operations’ during the
18 ‘period of restoration’.”

19 36. Under the Extra Expense coverage, Defendants must pay the “necessary Extra
20 Expense you incur during the ‘period of restoration’ that you would not have incurred if there had
21 been no direct physical loss or damage to property at the described premises.”

23 37. The Business Income and Extra Expense paragraphs also establish the applicable
24 Covered Causes of Loss, which is defined as “Risks of Direct Physical Loss unless the loss is: a.
25 Excluded in Section B, Exclusions; or b. Limited in Paragraph A.4, Limitations; that follow.” This
26 language covers all risks unless limited by Paragraph A.4 or excluded by Section B.

1 38. The Policy contains several exclusions, which identify risks that preclude coverage
2 for loss or damage caused by those risks. In denying coverage, Defendants pointed to two
3 exclusions in particular: one excluding consequential losses of delay, loss of use and loss of
4 market; and one excluding losses caused by or resulting from viruses.

5 39. Neither these nor any other exclusions in the Policy preclude coverage for the
6 governmental orders pursuant to which Plaintiff and Class members suspended their business
7 operations. The governmental orders therefore constitute a covered “direct physical loss” under
8 the Policy.
9

10 **B. The COVID-19 Pandemic Hits California**

11 40. The first public reports of COVID-19 appeared on December 31, 2019, indicating
12 the outbreak of the virus in Wuhan, China.

13 41. On January 21, 2020, the first American COVID-19 case was confirmed in the
14 State of Washington. *See* CENTERS FOR DISEASE CONTROL, [https://www.cdc.gov/media/—](https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html)
15 [releases/2020/p0121-novel-coronavirus-travel-case.html](https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html) (last accessed Apr. 28, 2020).
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17 42. According to news reports, shortly thereafter, by January 26, 2020, the United
18 States Centers for Disease Control (“CDC”) confirmed the first COVID-19 case in California. *See*
19 CALIFORNIA DEPARTMENT OF HEALTH, [https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx)
20 [Immunization/ncov2019.aspx](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx) (last accessed Apr. 28, 2020).

21 43. On February 26, 2020, the CDC announced the first reported California COVID-19
22 case resulting from community spread. *See* CENTERS FOR DISEASE CONTROL, [https://www.cdc.gov/](https://www.cdc.gov/media/releases/2020/s0226-COVID-19-spread.html)
23 [media/releases/2020/s0226-COVID-19-spread.html](https://www.cdc.gov/media/releases/2020/s0226-COVID-19-spread.html) (last accessed Apr. 28, 2020).
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25 44. On March 4, 2020, the first COVID-19 fatality was reported in California.
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1 45. By March 13, 2020, California’s total COVID-19 case count had risen to 198
2 confirmed cases. *See* CALIFORNIA HEALTHLINE (Mar. 13, 2020), [https://californiahealthline.org/
3 morning-briefing/friday-march-13-2020/](https://californiahealthline.org/morning-briefing/friday-march-13-2020/) (last accessed Apr. 28, 2020).

4 46. On March 13, 2020, the President of the United States declared a national
5 emergency.

6 47. Yet, throughout this entire period from December 2019 through March 13, 2020,
7 Plaintiff did not suffer an interruption or cessation of its thriving business.
8

9 **C. California Takes Governmental Action Forcing Plaintiff’s Businesses to Shutter**

10 48. When California’s state and local governments entered civil authority orders
11 beginning in March 2020, Plaintiff was forced to close or curtail its business operations.

12 49. As early as March 4, 2020, the Governor of the State of California, Gavin Newsom,
13 entered an order declaring “a State of Emergency to exist in California as a result of the threat of
14 COVID-19.” *See* State of California Executive Order N-25-20.

15 50. By March 12, 2020, the Governor began ordering compliance with state and local
16 social distancing measures. *Id.*

17 51. On March 15, 2020, the Governor issued guidelines calling for “profoundly
18 significant steps” to limit the spread of COVID-19. These guidelines required the self-isolation of
19 all residents 65 years of age or older and the closure of all “[b]ars, nightclubs, wineries, brew pubs
20 and the like.” The guidelines further required all restaurants to halve their capacities and keep
21 customers at least six feet from one another. *See* Cowan, Jill, *California Governor Orders Radical*
22 *Changes to Daily Life*, N.Y. TIMES (Mar. 16, 2020), [https://www.nytimes.com/2020/03/16/us/
23 california-newsom-bars-home-isolation.html](https://www.nytimes.com/2020/03/16/us/california-newsom-bars-home-isolation.html) (last accessed Apr. 29, 2020).
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25 52. The next day, on March 16, 2020, the Governor announced new directives to gyms,
26 health clubs, and movie theaters to close down. The Governor asked restaurants to shut their
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1 doors, or, at the restaurants’ option, to limit services to takeout only. *See* Perper, Rosie, *California*
2 *Asks All Dine-In Restaurants, Gyms, and Movie Theaters to Close to Curb the Coronavirus’*
3 *Spread*, BUSINESS INSIDER (Mar. 16, 2020, 9:47 PM), [https://www.businessinsider.com/california-](https://www.businessinsider.com/california-closes-restaurants-gyms-encourages-ban-on-social-gatherings-2020-3)
4 [closes-restaurants-gyms-encourages-ban-on-social-gatherings-2020-3](https://www.businessinsider.com/california-closes-restaurants-gyms-encourages-ban-on-social-gatherings-2020-3) (last accessed Apr. 29,
5 2020).

6 53. On March 19, 2020, less than two months after the first confirmed case of COVID-
7 19 appeared in California, the Governor took the dramatic step of ordering “all individuals living
8 in the State of California to stay at home or at their place of residence” subject to narrow
9 enumerated exceptions. The Governor also required that “[w]hen people need to leave their homes
10 or places of residence, whether to obtain or perform the [enumerated] functions . . . , or to
11 otherwise facilitate authorized necessary activities, they should at all times practice social
12 distancing.” By its own terms, this shelter order was necessary “[t]o preserve the public health and
13 safety, and to ensure the healthcare delivery system is capable of serving all,” as well as to “bend
14 the curve, and disrupt the spread of the virus.” The order was made enforceable pursuant to
15 California law, and violation of the order carried the threat of misdemeanor punishable by a fine,
16 imprisonment, or both. *See* State of California Executive Order N-33-20.

17 54. County and local governments across California have entered their own orders
18 mandating that residents shelter in place and that businesses limit or cease operations. Often these
19 municipal orders extend much further than the statewide orders, mandating more stringent
20 restrictions on the movement of people and the use or access of goods, services, and facilities.

21 55. For example, on March 18, 2020, the Orange County Health Officer issued an
22 order requiring all businesses able to continue operating under the terms of any governmental
23 order to abide by the strict social distancing guidelines promulgated by the California Department
24 of Public Health and to implement increased sanitation standards. *See* County Health Officer’s
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1 Order (Mar. 18, 2020), *available at* [https://www.ochealthinfo.com/phs/about/epidasmt/epi/dip/](https://www.ochealthinfo.com/phs/about/epidasmt/epi/dip/prevention/covid_19_order)
2 [prevention/covid_19_order](https://www.ochealthinfo.com/phs/about/epidasmt/epi/dip/prevention/covid_19_order) (last accessed May 18, 2020).

3 56. Other governmental entities have also imposed requirements on businesses and
4 employees operating in California..

5 57. For example, on April 5, 2020, the California Massage Therapy Council
6 (CAMTC)—an organization created by California’s Massage Therapy Act, Cal. Bus. & Prof.
7 Code § 4600, *et seq.*, to “provide for consistent statewide certification and oversight of massage
8 professionals”—issued a statement directing all certified massage therapists to immediately cease
9 operations or risk the revocation of their certification. *See Don’t Massage. Save Lives* (April 5,
10 2020), CALIFORNIA MASSAGE THERAPY COUNCIL (CAMTC), <https://www.camtc.org/> (last
11 accessed May 19, 2020).
12

13 58. The CAMTC’s directive constitutes governmental action of the kind contemplated
14 by the Policy. The CAMTC is a public benefit corporation, and in erecting the CAMTC, the
15 California legislature made its intent clear: to delegate to the CAMTC the authority to “assist local
16 governments and law enforcement in meeting their duty to maintain the highest standards of
17 conduct in massage establishments by vetting and disciplining certificate holders.” Cal. Bus. &
18 Prof. Code § 4600.5. Moreover, “meetings of the council shall be subject to the rules of the
19 Bagley-Keene Open Meeting Act.” *Id.* at § 4602(i). The Bagley-Keene Open Meeting Act, by its
20 own terms, governs meetings held by “state agencies” and “state bod[ies].” Cal. Gov. Code §§
21 11120, 11121.
22

23 59. Other state and local governments across California have entered civil authority
24 orders mandating compliance with substantially the same requirements as set forth above. By way
25 of example, as of March 17, 2020, the Department of Public Health for the City and County of San
26 Francisco mandated the closure of all bars and nightclubs, and of all “[r]estaurants and cafes—
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1 regardless of their seating capacity—that serve food . . . except solely for takeout and delivery
2 service.” *See* Order of the Health Officer No. C19-07.

3 **D. Defendants Deny Plaintiff’s Insurance Claim**

4 60. In light of the foregoing civil authority orders, Plaintiff submitted a claim for
5 related business losses and extra expenses. The claim indicated a loss date beginning on March 16,
6 2020. On April 30, 2020, Plaintiff was advised over the phone by Kent Huber, a Senior
7 Commercial Claims Specialist for Defendants, that Plaintiff’s claim was denied.
8

9 61. By letter dated May 5, 2020, Defendants then denied Plaintiff’s claim. *See* Exhibit
10 A (denial letter). The letter stated three relevant bases for the denial. First, Defendants found “no
11 direct physical loss or damage to property at the described premises from a covered cause of loss.”
12 Second, Defendants found that “access to the described premises was not prohibited due to direct
13 physical loss of or damage to property, other than at the described premises, resulting from a
14 covered cause of loss,” rendering the Policy’s civil authority provisions inapplicable. Third,
15 Defendants found that the Policy “is endorsed to exclude loss or damage caused by or resulting
16 from any virus that is capable of inducing physical distress, illness, or disease.”
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18 62. Defendants’ denial letter also quoted at length numerous provisions from the Policy
19 itself as justification for the denial, but without any explanation.

20 63. In reaching the foregoing determinations, Defendants conducted no investigation
21 into the covered premises to determine the precise physical loss or damage that resulted from the
22 governmental orders described herein. Defendants made no attempt to communicate with Plaintiff
23 between the time that Plaintiff filed its claim and the time Defendants advised Plaintiff
24 telephonically that a written denial was forthcoming, Defendants did not ask for any additional
25 information, and did not view in any way the covered premises.
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1 64. Plaintiff followed the requirements and guidance of all governmental orders
2 described herein, resulting in the curtailment or complete closure of its business operations.
3 Plaintiff enacted new social distancing and sanitization measures including (1) restricting available
4 appointment times to ensure no more than one patient is in the lobby at a time, (2) disinfecting all
5 common area surfaces between each patient visit, (3) storing masks on premises so they are
6 available to all staff members, and (4) increasing the number of hand-sanitization stations
7 throughout the described premises.
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9 65. Additionally, on April 5, 2020, the CAMTC issued a notice to all certified massage
10 therapists directing them to immediately cease massage services or risk revocation of their state-
11 recognized certification. The CAMTC certification is the only certification recognized by state law
12 in California. See *Frequently Asked Questions*, CAMTC, <https://www.camtc.org/faqs/#consumers>
13 (last accessed May 19, 2020). Plaintiff immediately suspended the operation of its certified
14 massage therapy business as a result.
15

16 66. The denial is wrong. The governmental action affecting Plaintiff's property—
17 executive orders that directly or indirectly limit direct physical access to or use of Plaintiff's real
18 property and business equipment—has caused a loss of income and an increase in expense. This
19 risk—of governmental action—is nowhere limited or excluded in the Policy.
20

CLASS ALLEGATIONS

21 67. This action is brought and may properly be maintained as a class action, as it
22 satisfies the commonality, numerosity, impracticability, and other requirements of California Rule
23 of Civil Procedure Section 382. Plaintiff brings all claims herein individually and as a class action
24 (for the classes defined below), under California Rule of Civil Procedure Section 382.
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1 68. Plaintiff brings this claim on behalf of the following Class:

2 All policyholders who are insured under a policy issued by
3 Defendants with coverage for Business Income, Extended Business
4 Income, and/or Extra Expense, who are citizens of the State of
5 California, and whose covered premises were the subject of a
6 government order relating to COVID-19.

7 Government Order means any order issued by any governmental authority in the State of
8 California, including but limited to those orders entered by the Governor or any county or
9 municipal authority, or any board, commission, or council, on or after February 1, 2020, that
10 restricts a policyholders' use or access to covered premises for purposes of protecting public
11 health or safety in light of the spread of COVID-19, including but not limited to the governmental
12 orders described herein. Excluded from this Class are Defendants and any of their members,
13 affiliates, parents, subsidiaries, officers, directors, employees, successors, and assigns;
14 governmental entities; Class counsel and their employees; and the judicial officers and Court staff
15 assigned to this case and their immediate families.

16 69. While the exact number of Class members cannot be determined, the Class consists
17 of at least thousands of persons. The members of the Class are therefore so numerous that joinder
18 of all members is impracticable. The exact number of Class members can readily be determined by
19 documents produced by Defendants.

20 70. There are questions of fact and law common to the Class, including:

- 21 a. Whether the Policy covers the risk of governmental action;
- 22 b. Whether the Policy's governmental-action exclusion is limited to orders of
23 seizure and destruction other than the express exemption from the exclusion
24 for preventing the spread of a fire;
- 25 c. Whether the Policy's "loss of use" exclusion is limited to consequential,
26 indirect injuries rather than losses directly caused by or resulting from
27 governmental action;
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- d. Whether losses caused by limits or bans on using or accessing one's real property or employing or putting into service (or removing therefrom) one's equipment/business property are physical losses;
- e. Whether the Policy was breached when Defendants denied coverage based on government orders that precluded or limited access to Covered Property without seizing or destroying it;
- f. Whether Defendants' breaches or wrongs injured Plaintiff and the Class;
- g. Whether Plaintiff and the Class may have an award of compensatory damages;
- h. Whether Plaintiff and the Class may have an award of attorney's fees; and
- i. Whether Plaintiff and the Class may have declaratory relief.

71. Plaintiff has the same interests as all other members of the Class, and Plaintiff's claims are typical of those of all members. Plaintiff's claims are coincident with and not antagonistic to those of other Class members it seeks to represent. Plaintiff and all Class members have sustained damages arising out of Defendants' common course of conduct as outlined herein. The damages of each Class member were caused by Defendants' wrongful conduct.

72. Plaintiff will pursue this action and has retained competent Class counsel experienced in insurance litigation and class action litigation. Plaintiff will fairly and adequately represent the interests of the Class members.

73. Class certification is appropriate under California Rule of Civil Procedure Section 382 because Defendants' actions generally apply to the Class as a whole, and Plaintiff seeks equitable remedies regarding the Class as a whole.

74. Class certification is appropriate under California Rule of Civil Procedure Section 382 because the common questions of law and fact enumerated above predominate over questions affecting only individual members of the Class, and a class action is the superior method for fair and efficient adjudication of the controversy. The likelihood that individual members of the Class will prosecute separate actions is remote due to the time and expense necessary to conduct such

1 litigation. Plaintiff's counsel, highly experienced in insurance and class action litigation, foresee
2 little difficulty in the management of this matter as a class action.

3 75. Plaintiff cannot be certain of the form and manner of Class notice it will propose
4 until the Class is finally defined and further discovery concerning the identity of Class members is
5 undertaken. Based on the experience of their counsel in previous cases, Plaintiff anticipates that
6 notice by email and mail will be given to all Class members who can be specifically identified and
7 that this notice will be supplemented by notice published in appropriate periodicals and on the
8 internet and by press releases and similar communications.
9

10 **CLAIMS FOR RELIEF**

11 **FIRST CLAIM FOR RELIEF**
12 **(Declaratory Judgment Against All Defendants)**

13 76. Plaintiff re-alleges and incorporates the preceding paragraphs as if set forth herein.

14 77. Plaintiff brings this cause of action for itself and the Class under California Rule of
15 Civil Procedure Section 1060, *et seq.*, seeking a declaration that, for those who maintain an
16 insurance policy with Defendants, it violates California state law and the insurance contracts for
17 Defendants to ignore the narrow nature of the governmental-action exclusion and to adopt a
18 narrow interpretation of what must cause a suspension of business. The Policy requires that a
19 "suspension" be caused by "direct physical loss of or damage to property at the described
20 premises."
21

22 78. Defendants' interpretation that the requirement of "physical loss" is not satisfied by
23 losing physical access or use and quiet enjoyment of Plaintiff's property is wrong. The undefined
24 phrase "direct physical loss" is reasonably construed to mean the direct loss of the ability to
25 physically access or use property. Losing the ability to access or use one's property is a loss of
26 physical, material rights and advantages, substantial and important. Considering that exclusions to
27 coverage must be narrowly construed, that language drafted by the insurer with ambiguity should
28

1 ordinarily be construed against the drafter, and that Plaintiff’s interpretation is supported by
2 dictionary definitions of the terms, coverage should be afforded.

3 79. Under the Business Income coverage, Defendants must “pay for the actual loss of
4 Business Income you sustain due to the necessary suspension of your ‘operations’ during the
5 ‘period of restoration.’”

6 80. Under the Extra Expense coverage, Defendants must pay the “necessary Extra
7 Expense you incur during the ‘period of restoration’ that you would not have incurred if there had
8 been no direct physical loss or damage to property at the described premises.”

9 81. The Policy does not define the term “suspension.” According to the Randomhouse
10 Unabridged Dictionary, the term means: “temporary abrogation or withholding, as of a law,
11 privilege, decision, belief, etc.” *See* “Suspension,” RANDOMHOUSE UNABRIDGED DICTIONARY,
12 available at <https://www.dictionary.com/browse/suspension> (last accessed May 13, 2020).

13 82. Under the Policy, “‘Operations’ means your business activities occurring at the
14 described premises.”

15 83. Under the Policy, “‘Period of restoration’ for Business Income coverage means the
16 period of time that begins 72 hours after the time of direct physical loss, and for Extra Expense
17 coverage means the period of time that begins at the time of direct physical loss.

18 84. Additionally, under Business Income and Extra Expense coverage, the loss or
19 damage must be caused by “direct physical loss.”

20
21
22 **A. Loss of Access or Use Constitutes Direct Physical Loss**

23 85. The Policy does not define the phrase “direct physical loss.”

24 86. Common usage of the words in the phrase dictates that ouster and
25 prohibition/interdiction of access and use by insureds and others (agents, tenants, customers, etc.)
26
27
28

1 are physical losses. Such losses are direct in that ouster of and prohibition/interdiction of access
2 and use by all nonessential people results directly in a physical loss.

3 87. Physical means relating to “material things” that are “perceptible especially through
4 the senses.” *See Physical*, MERRIAM-WEBSTER (2020), [https://www.merriam-webster.com/](https://www.merriam-webster.com/dictionary/physical)
5 [dictionary/physical](https://www.merriam-webster.com/dictionary/physical) (last accessed Apr. 24, 2020). It is also defined in a way that is tied to the
6 body: “of or relating to the body.” *Id.* Another Merriam-Webster Dictionary refines the concept of
7 material this way: “of or relating to natural or material things as opposed to things mental, moral,
8 spiritual, or imaginary.” *See Physical*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY,
9 (Unabr. 2020) Web. 24 Apr. 2020.

11 88. Prohibiting the physical presence on the premises of all persons (except for those
12 facilitating minimal maintenance) and the prohibition of the physical use of equipment, fixtures
13 and furniture constitutes a physical loss that caused the suspension of business operations.

14 **B. Governmental Action Resulted in Plaintiff’s Loss of Use or Access to the Premises or**
15 **Business Personal Property, a Non-Excluded Direct Physical Loss**

16 89. Coverage under the “all risks” Policy is provided for any risk of direct physical loss
17 unless expressly limited or excluded.

18 90. One risk addressed in the Paragraph B exclusions is governmental action. *See Form*
19 *BP 00 02 01 97*, Paragraph B.1.c.

21 91. By recognizing governmental action in the Paragraph B exclusions, the Policy
22 confirms governmental action as a risk of direct physical loss and a Covered Cause of Loss.

23 92. The Policy excludes some but not all governmental action from coverage. The
24 Policy excludes coverage for governmental orders requiring seizure and destruction only.
25 Specifically, this provision excludes any loss or damage caused directly or indirectly by
26 governmental action that consists of seizure or destruction of property by order of governmental
27 authority unless the destruction was done to prevent the spread of a fire. As ordinarily used,
28

1 “seizure” means “taking possession of person or property by legal process.” The provision
2 excludes no other governmental action from coverage (i.e., governmental orders not seeking
3 seizure or destruction).

4 93. The governmental orders affecting Plaintiff and the Class’ property do not require
5 seizure or destruction because the government did not destroy the property of Plaintiff and Class
6 Members or take physical possession of, or title to, such property. Instead, the orders limit access
7 to and use of covered property at the premises described in the Policy declarations.
8

9 94. The Policy does not exclude the governmental action described herein.

10 95. The business-income losses, extra expenses, and other losses sustained by Plaintiff
11 and the Class were caused by or resulted from the aforementioned governmental orders, a Covered
12 Cause of Loss.

13 96. The Policy further requires that the business-income losses be incurred because of
14 the necessary suspension of operations during the period of restoration. Plaintiff and the Class
15 suffered losses because of suspension of operations during the period of restoration.
16

17 97. The direct loss of physical access to and use of the premises listed in the
18 Declarations, and business property thereon, for tenants and their vendors, agents, employees, and
19 customers caused the suspension of the operations by the Plaintiff and the Class.

20 98. Because the Policy covers all risks, including governmental action that, for the
21 good of the public, does no more than limit physical access to and use of property (real and
22 personal), coverage is required.
23

24 99. The governmental action affecting Plaintiff’s property—executive orders that
25 directly or indirectly limit direct physical access to Plaintiff’s real and personal property—has
26 caused a loss of income and an increase in expense, exactly the “outside force” that interrupts
27 business and causes insureds to close their doors for a period of time, that requires that capital
28

1 continue to flow to keep the business afloat and to help replace lost income and pay expenses such
2 as salaries and mortgages. This governmental action is precisely the unexpected jolt that motivates
3 the purchase of insurance.

4 **C. No Other Exclusions Apply to Preclude Coverage**

5 100. No other applicable exclusions or limitations apply to preclude coverage for the
6 direct physical losses caused by or resulting from the governmental action described herein. *See*
7 Paragraphs A.4 and B, Form BP 00 02 01 97.

8 101. The existing virus exclusion is inapplicable because Plaintiff's losses were caused
9 by governmental action, not the physical presence of the virus on the covered premises.
10 Defendants conducted no investigation and have no evidence to satisfy their burden of showing
11 the physical presence of a virus on the insured properties, which is required when asserting an
12 exclusion. Defendants denied all claims without investigating the relevant properties.

13 102. Coverage begins at the time of governmental action. Plaintiff's property was
14 subject to governmental orders in California that did not seek to seize or destroy the property. The
15 governmental orders do not constitute governmental seizures because at no point did any
16 governmental entity in California take physical possession of the property or legal title to the
17 property. The orders properly exercised the police powers of their respective state and local
18 governments to protect public health, affecting Plaintiff's property, which caused a loss of the
19 ability to physically access and use the insured property.

20 103. Under each successive order, Plaintiff's property was limited to the minimum
21 necessary operations or required closure. The governmental action also prohibited, via stay-at-
22 home orders or travel restrictions, all nonessential movement by all residents. These governmental
23 orders resulted in losing physical access to and physical use and enjoyment of Plaintiff's property
24 by its owners, customers, vendors, employees, and others.

1 104. Nor does the provision entitled “Consequential Losses” that excludes “Delay, loss
2 of use or loss of market” preclude coverage.

3 105. Consequential damages are special or indirect damages. Put differently,
4 consequential damages are “[l]osses that do not flow directly and immediately from an injurious
5 act but that result indirectly from the act. — Also termed *indirect damages*.” *See Consequential*
6 *Damages*, BLACK’S LAW DICTIONARY (11th ed. 2019) (emphasis in original).

7
8 106. The exclusion for “loss of use” therefore applies only if that “loss of use” is itself
9 consequential. That is not the case here. The insured-against peril—governmental action—resulted
10 directly and immediately in Plaintiff’s physical loss of access or use.

11 107. Limiting the “loss of use” exclusion to consequential losses also renders sensible an
12 exclusion that otherwise swallows the entire Policy.

13 **D. Declaratory Relief**

14 108. Plaintiff, for itself and on behalf of the Class, seeks a declaration of rights under
15 Defendants’ Policy language and a declaration of the rights and liabilities of the parties herein.

16
17 109. This Court has the power to declare the rights of the Defendants’ policyholders
18 whether or not the policyholders have made claims related to losses relating to COVID-19.

19 110. Plaintiff seeks a Declaratory Judgment finding that the Policy covers Business
20 Income and Extra Expense during the period of restoration caused by or resulting from
21 governmental action that forced Plaintiff to suspend operations, subject to no limitations or
22 exclusions under the Policy.

23
24 **SECOND CLAIM FOR RELIEF**
25 **(Breach of Contract Against All Defendants)**

26 111. Plaintiff re-alleges and incorporates the preceding paragraphs as if set forth herein.

27 112. Plaintiff has a valid contract for insurance with Defendants, whereby Plaintiff
28 agreed to make and did make premium payments to Defendants in exchange for Defendants’

1 promise to indemnify the policyholders for losses including, but not limited to, Business Income
2 and Extra Expense.

3 113. Plaintiff is current on all premiums required under the Policy and the Policy is in
4 full effect.

5 114. The Policy requires payment of losses incurred caused by or resulting from the
6 forced suspension of operations mandated by government orders issued in California, including
7 but not limited to Business Income and Extra Expense. Coverage for these losses is in no way
8 limited or excluded under the Policy terms.

9
10 115. Despite the Policy affording coverage, Defendants deny the Policy affords
11 coverage and denied or will deny coverage to Plaintiff and the Class.

12 116. In addition, Defendants have uniformly taken the position, without seeking
13 independent coverage advice, that the Policy's language does not afford coverage where
14 governmental action limited or prohibited certain use, access, and deployment of insureds'
15 property and that such claim would, as a business practice, be denied. Defendants' entire decision
16 was rendered based on its reading of the contract language, and not by any specifics relating to
17 each insured (as no investigation occurred here). By making their decision known, Defendants
18 have anticipatorily breached the contracts.

19
20 117. Defendants' failures to affirm coverage and pay benefits breach the contract and
21 represent a systematic failure to pay the benefits required by the contract.

22
23 118. As a result of Defendants' breach of contract, Plaintiff and the Class have suffered
24 and will continue to suffer monetary losses, and without prompt relief will be forced to shutter
25 indefinitely.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for the following judgment:

- 3 A. An Order certifying this action as a class action under California law;
- 4 B. An Order appointing Plaintiff as class representative and appointing the
- 5 undersigned counsel to represent the Class;
- 6 C. Declaratory relief, as described herein;
- 7 D. An Order finding Defendants to have breached the Policy contract;
- 8 E. Compensatory damages;
- 9 F. An award of attorney’s fees and costs, as provided by law and/or as would be
- 10 reasonable from any recovery of monies recovered for or benefits bestowed upon the Class;
- 11 G. Pre- and post-judgment interest at the highest rate allowed by law; and
- 12 H. Such other and further relief as this Court may deem just, equitable, or proper,
- 13 including a designation that any unclaimed monies may go to the next best use.

14 **JURY DEMAND**

15 Plaintiff demands a trial by jury of the claims asserted in this complaint so triable.

16
17 RESPECTFULLY SUBMITTED this the 21st day of May, 2020.

18 THE PAYNTER LAW FIRM, PLLC

19 /s/ Stuart M. Paynter

20 Stuart M. Paynter (SBN 226147)

21 Email: stuart@paynterlaw.com

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24 Washington, D.C. 20005

25 Telephone: (919) 245-3116

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*Attorneys for Plaintiff Saddleback Medical
Management, Inc.*

EXHIBIT A



Toll Free: (800) 435-7764
Email: myclaim@farmersinsurance.com
National Document Center
P.O. Box 268994
Oklahoma City, OK 73126-8994
Fax: (877) 217-1389

May 5, 2020

SADDLEBACK MEDICAL MANAGEMENT
DBA TOWNE CENTRE MEDICAL GROUP
26700 TOWNE CENTRE DR STE 250
FOOTHILL RANCH CA 92610-2854

RE:	Insured:	Saddleback Medical Management
	Claim Unit Number:	3013426653-1-1
	Policy Number:	0606287753
	Loss Date:	03/16/2020
	Location of Loss:	26700 Towne Centre Dr Ste 250, Foothill Rnch, CA
	Subject:	Claim Outcome Letter

Dear Jeromy Ratzlaff:

Thank you for choosing us to provide for your insurance needs. We value you as a customer and appreciate the opportunity to be of service.

We've completed our evaluation of your claim which was reported for an income loss due to COVID-19.

As we discussed on April 30, 2020, we have reviewed your claim and determined that there is no coverage for this loss. You reported the government has shut down or limited the operating capacity of your chiropractic business resulting in a business income loss and loss of perishable items. Unfortunately, there is no coverage found in your policy package for the business interruption as there is no direct physical loss of or damage to property at the described premises from a covered cause of loss.

Additionally, while the government has closed businesses using civil authority for containment of COVID-19, access to the described premises was not prohibited due to direct physical loss of or damage to property other than at the described premises resulting from a covered cause of loss. Therefore, there is no coverage under the Civil Authority section of your policy.

Spoilage may result from the extended closure causing perishable items (or food) to deteriorate, and unfortunately deterioration is specifically excluded.

Lastly, your policy is endorsed to exclude loss or damage caused by or resulting from any virus that is capable of inducing physical distress, illness or disease. Due to the below stated policy provisions we will not be able to extend coverage and we must respectfully deny your claim.

You may wish to review these provisions of your Businessowners Special Property Coverage Form, BP 00 02 01 97 policy. They form the basis for our decision:

A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property, as used in this policy, means the type of property as described in this section, A.1., and limited in A.2., **PROPERTY NOT COVERED**, if a Limit of Insurance is shown in the Declarations for that type of property.

3. Covered Causes Of Loss

Risks of Direct Physical Loss unless the loss is;

- a. Excluded in Section B., EXCLUSIONS; or
- b. Limited in Paragraph A.4., LIMITATIONS; that follow.

5. Additional Coverages

f. Business Income

(1) Business Income

We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your “operations” during the “period of restoration.” The suspension must be caused by direct physical loss of or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in a vehicle, the described premises include the area within 100 feet of the site at which the described premises are located.

i. Civil Authority

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

B. Exclusions

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

b. Consequential Losses

Delay, loss of use or loss of market.

k. Other Types Of Loss

(1) Wear and tear;

(2) Rust, corrosion, fungus, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself

3. We will not pay for loss or damage caused by or resulting from any of the following **B.3.a.** through **B.3.c.** But if an excluded cause of loss that is listed in **B.3.a.** through **B.3.c.** results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

b. Acts or Decisions

Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

H. Property Definitions

2. "Operations" means your business activities occurring at the described premises.
3. "Period of restoration" means the period of time that:
 - a. Begins:
 - (1) 72 hours after the time of direct physical loss or damage for Business Income Coverage; or
 - (2) Immediately after the time of direct physical loss or damage for Extra Expense Coverage;

caused by or resulting from any Covered Cause of Loss at the described premises; and

- b. Ends on the earlier of:
 - (1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
 - (2) The date when business is resumed at a new permanent location.

"Period of restoration" does not include any increased period required due to the enforcement of any ordinance or law that:

- (1) Regulates the construction, use or repair, or requires the tearing down of any property; or
- (2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants."

The expiration date of this policy will not cut short the "period of restoration."

We refer you to the following language in your J7138 1st - BUSINESS INCOME AND EXTRA EXPENSE - PARTIAL SLOWDOWN COVERAGE endorsement.

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM
BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM

- B. Section A.5. Additional Coverages of the Businessowners Special Property Coverage Form is amended as follows:
1. The following is added to Paragraphs 5.f. Business Income and 5.g. Extra Expense:
 - (3) With respect to the coverage provided in this Additional Coverage, suspension means:
 - (a) The partial slowdown or complete 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.
 2. The last sentence of Paragraph 5.f. Business Income is replaced by the following:
 - (4) This Additional Coverage is not subject to the Limits of Insurance.
 3. The last two sentences of Paragraph 5.g. Extra Expense are replaced by the following:
 - (4) We will only pay for Extra Expense that occurs within 12 consecutive months after the date of direct physical loss or damage. This Additional Coverage is not subject to the Limits of Insurance.

We refer you to the following language in your Exclusion of Loss Due to Virus or Bacteria, J6316 1st Edition endorsement:

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM
APARTMENT OWNERS PROPERTY COVERAGE FORM
CONDOMINIUM PROPERTY COVERAGE FORM

- A. The exclusion set forth in Paragraph B. applies to all coverage under Section A - Coverage in all forms and endorsements that comprise this policy, except as provided in Paragraph C. This includes but is not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority.
- B. We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.

Based on the facts of this loss as well as all information known to us at this present time, we regret to inform you that we are unable to pay this claim.

We wish to inform you there are time limits as found in the Conditions language of your policy. These limits may have been extended by statute in your state. The time period set forth in the Conditions section is the shortest period which may apply.

E. **Property Loss Conditions**

4. **Legal Action Against Us**

No one may bring a legal action against us under this insurance unless:

- a. There has been full compliance with all of the terms of this insurance; and
- b. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

Please note, on occasion, policies are updated with newer editions. We encourage you to reference your policy and included endorsements for any updates.

Even though only parts of your policy are mentioned and quoted in this letter, additional portions may apply. If they are found to be relevant and applicable, they will be applied. Because of this, we recommend you review your entire policy.

By writing this letter, we do not waive any of the terms, conditions or provisions of the insurance policy, all of which are expressly retained and reserved. We expressly retain all available defenses now and hereafter.

If you believe your claim has been wrongfully rejected or denied, in whole or in part, please contact us for further clarification. The state of California requires that we provide you with the following notice: You may also have the matter reviewed by writing to the California Department of Insurance, Consumer Services and Market Conduct Branch, Claims Services Bureau, 300 South Spring Street, South Tower, Los Angeles, CA 90013 or by calling 1-800-927-4357 or 1-213-897-8921.

If you have any questions about your claim, or additional information that you feel we may have overlooked, please contact me at (714) 457-9004.

Thank you.

Mid-Century Insurance Company



Kent Huber

Senior Commercial Claims Specialist

kent.huber@farmersinsurance.com

(714) 457-9004

COVID-19 Notice – In light of the national health emergency, I am currently working from home. I can be reached by telephone and e-mail; my phone number and email address have not changed. E-mail communications are preferred to avoid any potential delays caused by mailing. If you are unable to email and hard copies of communications are required, they may be sent to our National Document Center at P.O. Box 268994, Oklahoma City, OK 73126-8994. We are unable to receive deliveries at any location from FedEx, UPS or any other courier at this time, as our claims office locations have been temporarily closed.

CC: VINCENT POLITO