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8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**

10 WELLNESS EATERY LA JOLLA LLC,) Case No. 37-2020-00018546-CU-BT-CTL
11 WELLNESS EATERY LITTLE ITALY LLC,)
12 and WELLNESS EATERY CARMEL)
VALLEY LLC,)

13)
14 vs.)
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THE HANOVER INSURANCE GROUP,)
CALIFORNIA CAPITAL INSURANCE CO.,)
and DOES 1 through 10, inclusive,)
Defendants.)

COMPLAINT FOR:

1. **BREACH OF CONTRACT;**
2. **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING;**
3. **BAD FAITH DENIAL OF INSURANCE CLAIM;**
4. **UNFAIR BUSINESS PRACTICES;**
5. **FRAUDULENT MISREPRESENTATION;**
6. **CONSTRUCTIVE FRAUD;**
7. **UNJUST ENRICHMENT;**
8. **DECLARATORY RELIEF; and**
9. **INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

1 Plaintiffs Wellness Eatery La Jolla LLC, Wellness Eatery Little Italy LLC, and Wellness
2 Eatery Carmel Valley LLC, all doing business as “Wellness Eatery,” (collectively “Plaintiffs”),
3 file this Complaint against defendants The Hanover Insurance Group and California Capital
4 Insurance Co. (collectively, “Hanover”), and Does 1 through 10, and allege as follows:

5 I. INTRODUCTION

6 1. Plaintiffs operate a business with three different locations in San Diego called
7 “Parakeet Café.” Parakeet Café is a successful, hip café, serving up health-conscious food,
8 coffee, tea, and freshly baked goods in San Diego’s La Jolla and Little Italy. On March 16,
9 2020, Parakeet Café was forced to close its doors to the public because of a series of orders
10 issued by the City and County of San Diego (“Closure Orders”). The Closure Orders prohibited
11 on-premises dining at Parakeet Café due to the Coronavirus Disease 2019 (“COVID-19”)
12 pandemic. As a result, Parakeet Café suffered substantial financial losses and had to let
13 workers go.

14 2. To protect its business and employees from the loss caused by a situation like
15 this, Wellness Eatery obtained Hanover Business Owner’s Policy No. 6-BOP-1-070001527 (the
16 “Policy”) from Hanover, which includes business interruption coverage. In breach of the
17 insurance obligations that Hanover undertook in exchange for receipt of Plaintiffs’ premium
18 payments — which Plaintiffs dutifully and regularly paid — Hanover denied Plaintiffs’
19 insurance claims arising from the interruption of Plaintiffs’ business caused by the Closure
20 Orders. Hanover denied the claims notwithstanding the plain language of the Policy, which
21 provides coverage for such losses, and they did so fraudulently in violation of California law.

22 II. COVID-19

23 3. On March 17, 2020, the New England Journal of Medicine, one of the world’s
24 leading peer-reviewed medical journals, published a study that describes severe acute
25 respiratory syndrome coronavirus 2 (SARS-CoV-2) (the “Coronavirus”), the official name for
26 the virus that causes COVID-19, as a virus that is transmitted by respiratory droplets that can
27 be suspended in the air for several hours. Over time, these droplets containing Coronavirus fall
28 onto and can physically remain on surfaces, such as metal, glass, plastic, and wood, for several

1 days. Persons who touch these surfaces, even days later, may become infected.

2 **III. CLOSURE ORDERS AND INSURANCE**

3 4. The COVID-19 pandemic is a public health crisis that has profoundly impacted
4 American society, including the public's ability to congregate in bars and restaurants.

5 5. In response to this pandemic, federal and state authorities have mandated social
6 distancing and limited the number of people that can gather in any setting.

7 6. On March 4, 2020 Governor Gavin Newsom proclaimed a State of Emergency to
8 exist in California as a result of the threat of COVID-19.

9 7. On March 16, 2020, in direct response to the COVID-19 outbreak, the California
10 Department of Public Health issued the Coronavirus Disease 2019 (COVID-19) and Retail
11 Food, Beverage, and Other Related Service Venues guidance which stated "Restaurants should
12 be closed for in-restaurant seated dining, and should be open only to drive-through or other
13 pick-up/delivery options." Although the guidance permitted such businesses to serve food and
14 beverages for off-premises consumption, it mandated that they ensure they have an
15 environment where patrons purchasing food or beverages "maintain adequate social
16 distancing." In addition, "Bars, wineries, breweries and pubs should be closed, except for
17 venues that are currently authorized to provide off sale beer and wine to be consumed off
18 premises are allowed."

19 8. On March 19, 2020 Governor Gavin Newsom issued statewide Executive Order
20 N-33-20 which directs all residents of the state to stay home except as needed to maintain
21 infrastructure sectors defined by the federal Department of Homeland Security (DHS). "To
22 preserve the public health and safety, and to ensure the healthcare delivery system is capable
23 of serving all, and prioritizing those at the highest risk and vulnerability, all residents are
24 directed to immediately heed the current State public health directives, which I ordered the
25 Department of Public Health to develop for the current statewide status of COVID-19." *Id.* The
26 Order of the State Public Health Officer stated, "To protect public health, I as State Public
27 Health Officer and Director of the California Department of Public Health order all individuals
28 living in the State of California to stay home or at their place of residence except as needed to

1 maintain continuity of operations of the federal critical infrastructure sectors.”

2 9. These orders and guidances are not laws or ordinances.

3 10. Since March 16, 2020, countless California bar and restaurant operators have
4 made claims under their property and casualty insurance policies for the business income they
5 lost as a result of COVID-19 and the resulting Executive Orders.

6 11. Insurers, including Hanover, have denied nearly every claim for lost business
7 income — claiming insureds have not suffered a “Direct Physical Loss” to their property, a
8 prerequisite for coverage.

9 12. Many, if not most, of the independent restaurants forced to close their doors had
10 planned ahead by purchasing insurance to safeguard against the business interruption that
11 results from precisely these kinds of civil authority closure orders. In recent weeks,
12 independent restaurants and other businesses have filed claims for business interruption
13 coverage with their insurance carriers as a lifeline to save their businesses and, by extension,
14 their employees and communities. However, Hanover, and other insurance companies, have
15 **summarily declined coverage.**

16 13. According to persons knowledgeable about the insurance industry’s blanket
17 denials of such business interruption claims:

18 “The [insurance] tactic is always the same. ... Deny everything you [insurer] owe,
19 slow the payments, don’t pay the emergency funds you owe, and then, because
20 there’s such carnage, the [insurance] industry goes with their lobbyists, with
21 their advocacy groups, and with the senators, and they say [to the government]
22 we need disaster relief funds.”

23 14. Moreover, “[a]ccording to data from ratings firm A.M. Best Co., the insurance
24 industry as a whole has \$18.4 billion in net reserves for future payouts. But industry trade
25 groups like the American Property Casualty Insurance Association (APCIA) say they don’t
26 have the funds to pay out the claims from a pandemic. ‘Pandemic outbreaks are uninsured
27 because they are uninsurable,’ says APCIA [president and CEO] David A. Sampson. If
28 insurance is forced to pay claims by legislation, for example, their reinsurers might not cover
them.” The denial of business interruption insurance claims is precisely what is happening

1 here to small, independent restaurants. For the insurance industry, the goal is to generate
2 revenues by charging high premiums for insurance while avoiding paying anything on
3 legitimate claims by small businesses like Wellness Eatery.

4 15. The Closure Orders prohibited on-premises dining at Parakeet Café due to the
5 physical presence of COVID-19 in the community and on the surfaces of the property around
6 Parakeet Café. As a result, Wellness Eatery was forced to close its doors and let workers go,
7 and Plaintiffs continue to suffer substantial financial losses.

8 **IV. HANOVER INSURANCE AND DENIAL**

9 16. In June 2019, Hanover renewed its contract of insurance with Wellness Eatery,
10 Business Owner’s Policy No. 6-BOP-1-070001527, for the period of June 20, 2019, through
11 June 20, 2020. Under this Policy, Wellness Eatery agreed to pay insurance premiums to
12 Hanover in exchange for Hanover’s promise to cover Wellness Eatery for losses including, but
13 not limited to, business income losses according to the terms set forth in the Policy. Since the
14 inception of the Policy, Wellness Eatery has paid all premiums and the Policy has at all
15 relevant times remained in full force and effect.

16 17. The Policy specifically includes “Civil Authority” coverage for business
17 interruptions caused by “order of a civil authority.” It also includes “Lost Business Income &
18 Extra Expense Coverage,” “Extended Business Income” coverage, and “Business Income
19 Extension for Essential Personnel” coverage, as well as “Limited Fungi, Bacteria, Or Virus
20 Coverage.”

21 18. The Policy’s coverage of business interruption at Parakeet Café can occur under a
22 number of circumstances. Here, the Policy was triggered when a complete cessation of the
23 restaurant’s activities was the direct result of the Closure Orders issued by the City and County
24 of San Diego. The Civil Authority provision in the Policy’s Special Property Coverage Form
25 reads, in pertinent part:

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Civil Authority

(1) This insurance is extended to apply to the actual loss of Business Income you sustain when access to your “scheduled premises” is specifically prohibited by order of a civil authority as the direct result of a Covered Cause of Loss to property in the immediate area of your “scheduled premises.”

19. The March 16, 2020 Order was issued as a direct result of a Covered Cause of Loss to property under the Policy, seeing as the Coronavirus that was proliferating onto virtually every surface and object in, on, and around Wellness Eatery and its surrounding environs was then causing, and is continuing to cause, direct physical damage and loss in and to the immediate area of Wellness Eatery – the “scheduled premises.”

V. VIOLATIONS OF CALIFORNIA LAW

20. This Complaint sets forth in detail direct violations of California laws that are intended to protect insurance policyholders who act in good faith with their insurance carriers. The details below affect not only the named Plaintiffs, but also the California residents employed at Parakeet Cafe.

VI. PARTIES

A. Wellness Eatery Plaintiffs

21. Plaintiff **Wellness Eatery La Jolla LLC** (“Wellness Eatery La Jolla”) is a limited liability corporation with its principal place of business at 7514 Girard Avenue, Suite 1601, La Jolla, California 92037. Wellness Eatery La Jolla owns, operates, manages, and/or controls the Parakeet Café located at 927 Silverado Street, La Jolla, California 92037.

22. Plaintiff **Wellness Eatery Little Italy LLC** (“Wellness Eatery Little Italy”) is a limited liability corporation with its principal place of business at 7514 Girard Avenue, Suite 1601, La Jolla, California 92037. Wellness Eatery Little Italy owns, operates, manages, and/or controls the restaurant known as Parakeet Café located at 1680 India Street, San Diego, California 92101.

23. Plaintiff **Wellness Eatery Carmel Valley LLC** (“Wellness Eatery Carmel Valley”) is a limited liability corporation with its principal place of business at 7514 Girard

1 Avenue, Suite 1601, La Jolla, California 92037. Wellness Eatery Carmel Valley owns, operates,
2 manages, and/or controls the Parakeet Café restaurant located at 3745 Paseo Place, #820, San
3 Diego, California 92103.

4 24. The restaurant locations owned and operated by Wellness Eatery La Jolla LLC,
5 Wellness Eatery Little Italy LLC, and Wellness Eatery Carmel Valley LLC are collectively
6 referred to as the “Insured Premises” or “Scheduled Premises”.

7 **B. Defendants**

8 25. Defendant **The Hanover Insurance Group** is an insurance company with its
9 principal place of business in Worcester, Massachusetts. Hanover is a holding company for
10 several property and casualty insurance companies. At all relevant times, Hanover has been
11 and is authorized to do business and is doing business in the state of California and in San
12 Diego County. At all relevant times, Hanover has been and is transacting the business of
13 insurance in the state of California and in San Diego County, and the basis of this suit arises
14 out of said conduct.

15 26. Defendant **California Capital Insurance Co.** (“California Capital”) is an
16 insurance company that is part of Hanover and has its principal place of business in the state
17 of California. At all relevant times, California Capital has been authorized to do business and is
18 doing business in the state of California and in San Diego County. At all relevant times,
19 California Capital has been and is transacting the business of insurance in the state of
20 California and in San Diego County, and the basis of this suit arises out of said conduct.

21 **C. Doe Defendants**

22 27. Defendants Does 1 through 10 (“Doe Defendants”) were, at all relevant times,
23 transacting or otherwise engaged in the business of insurance in the State of California and in
24 San Diego County, and the basis of this suit arises out of said conduct. Though the true names
25 and capacities of the Doe Defendants are unknown to Plaintiffs, each of the Doe Defendants is,
26 upon information and belief, partially or wholly liable for the unlawful acts or omissions
27 referred to herein, and for the resulting harm to Plaintiffs. Many of Hanover’s agents reside
28 and operate in the City and County of San Diego.

1 28. The Hanover and Doe Defendants are collectively referred to herein as
2 “Defendants”.

3 29. Upon information and belief, each of the Hanover defendants was, at all relevant
4 times, in an agency or joint-venture relationship with the other Hanover defendants, and was
5 at all relevant times acting within the purpose and scope of said relationship.

6 **VII. AIDING AND ABETTING AND CO-CONSPIRATORS**

7 30. At all times relevant to this Complaint, Defendants and other potential
8 Defendants were acting as the agents, alter egos, servants, employees, and/or representatives
9 of the Hanover and other Defendants, and were acting within the course and scope of their
10 agency, employment and/or representation, with the full knowledge, consent, permission,
11 authorization, and ratification, either express or implied, of the other Defendants in
12 performing the acts alleged in this Complaint.

13 31. In committing the wrongful acts alleged herein, each of the Defendants pursued,
14 or joined in the pursuit of, a common course of conduct, and have acted in concert and/or
15 conspired with one another in furtherance of the improper acts and transactions that are the
16 subject of this Complaint.

17 32. Each of Hanover’s agents aided and abetted and rendered substantial assistance
18 in the wrongs complained of herein, and also acted in a knowing conspiracy to defraud
19 Plaintiffs. In taking such actions to substantially assist the commission of the wrongdoing
20 complained of herein, each Defendant, including the Doe Defendants, acted with knowledge of
21 the primary wrongdoing, substantially assisted in the accomplishment of that wrongdoing,
22 and was aware of their overall contribution to and furtherance of the wrongdoing.

23 **VIII. JURISDICTION AND VENUE**

24 33. This Court has subject matter jurisdiction over this action. The conduct giving
25 rise to this action took place, in whole or in part, in the County of San Diego, California. This
26 action is based, in substantial part, on the breach of an insurance contract concerning a
27 California property and business, and is based on violations of California law. The amount in
28 controversy exceeds the minimum jurisdictional amount of unlimited civil cases.

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B. Pandemic in San Diego

36. COVID-19 is a deadly infectious disease caused by the recently discovered Coronavirus known as SARS-CoV-2. It first emerged in or about December 2019. Because this Coronavirus is highly transmissible, it has been and is rapidly spreading throughout the world, including in San Diego and other California counties.

37. According to the World Health Organization (“WHO”): “People can catch COVID-19 from others who have the virus. The disease can spread from person to person through small droplets from the nose or mouth which are spread when a person with COVID-19 coughs or exhales. These droplets land on objects and surfaces around the person. Other people then catch COVID-19 by touching these objects or surfaces, then touching their eyes, nose or mouth. People can also catch COVID-19 if they breathe in droplets from a person with

1 COVID-19 who coughs out or exhales droplets.”¹ Because the Coronavirus that causes COVID-
2 19 is contained in and transmitted by droplets that land indiscriminately on the surfaces of
3 property with potentially fatal consequences, it unquestionably causes physical damage and
4 loss.

5 38. According to the U.S. Centers for Disease Control and Prevention (“CDC”):
6 “COVID-19 seems to be spreading easily and sustainably in the community (‘community
7 spread’) in many affected geographic areas” in the United States.² Relative to the rest of the
8 State and Country, populous urban areas, including San Diego County, have been particularly
9 subject to community spread, and they have a correspondingly high number of confirmed
10 cases and deaths from COVID-19.

11 39. On January 26, 2020, the CDC announced California’s first positive test result
12 for COVID-19.

13 **C. Closure Orders Issued by State, City, and County Civil Authorities**

14 40. On **March 4, 2020** California Governor Gavin Newsom proclaimed a State of
15 Emergency to exist in California as a result of the threat of COVID-19.

16 41. On **March 11, 2020**, the WHO declared the outbreak a global pandemic.

17 42. On **March 12, 2020**, Governor Gavin Newsom issued Executive Order N-25-20
18 (“March 12 Executive Order”), ordering that: “All residents are to heed any orders and
19 guidance of state and local public health officials, including but not limited to the imposition
20 of social distancing measures, to control the spread of COVID-19” (§ 1). This Order took effect
21 on March 12, 2020, and has remained continuously in effect through the date of this
22 Complaint.

23 43. On **March 16, 2020**, in direct response to the COVID-19 outbreak, the
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25 ¹ WHO website, *Q&A on coronaviruses (COVID-19)*, “How does COVID-19 spread?”
26 available at <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses> (last visited Apr.
15, 2020).

27 ² CDC website, *Coronavirus Disease 2019 (COVID-19): Frequently Asked*
28 Questions, “How COVID-19 Spreads,” available at
<https://www.cdc.gov/coronavirus/2019-ncov/faq.html# covid19-basics> (last visited Apr.
15, 2020).

1 California Department of Public Health issued the Coronavirus Disease 2019 (COVID-19) and
2 Retail Food, Beverage, and Other Related Service Venues guidance which stated “Restaurants
3 should be closed for in-restaurant seated dining, and should be open only to drive-through or
4 other pick-up/delivery options.” Although the guidance permitted such businesses to serve
5 food and beverages for off-premises consumption, it mandated that they ensure they have an
6 environment where patrons purchasing food or beverages “maintain adequate social
7 distancing.” In addition, “Bars, wineries, breweries and pubs should be closed, except for
8 venues that are currently authorized to provide off sale beer and wine to be consumed off
9 premises are allowed.”

10 44. On **March 19, 2020**, the State of California issued an Order of the State Public
11 Health Officer, which set baseline statewide restrictions on non-essential business activities
12 effective until further notice. On that same date, Governor Newsom issued Executive Order N-
13 33-20, expressly requiring California residents to follow the March 19 Order of the State Public
14 Health Officer, and incorporating by reference California Government Code § 8665, which
15 provides that “[a]ny person ... who refuses or willfully neglects to obey any lawful order ...
16 issued as provided in this chapter, shall be guilty of a misdemeanor and, upon conviction
17 thereof, shall be punishable by a fine of not to exceed one thousand dollars (\$1,000) or by
18 imprisonment for not to exceed six months or by both such fine and imprisonment” (CAL. GOV.
19 CODE § 8665). The March 19 Order of the State Public Health Officer and Executive Order N-
20 33-20 (collectively, the “Statewide Shelter Orders”) took immediate effect on March 19, 2020,
21 and both have remained continuously in effect through the date of this Complaint.

22 45. These orders and guidances are not laws or ordinances.

23 46. Since March 16, 2020, countless California bar and restaurant operators have
24 made claims under their property and casualty insurance policies for the business income they
25 have lost as a result of COVID-19 and the resulting Orders.

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1 **D. Plaintiffs Are Forced to Close Their Operations, Resulting in**
2 **Financial Losses**

3 47. On **March 16, 2020**, Parakeet Café was forced to close its doors to the public
4 and let many of its workers go. Each of the following three sets of orders required Parakeet
5 Café to close its cafes to on-premises dining: (a) the March 16 Order (supported by the March
6 12 Executive Order), (b) the March 19 Statewide Shelter Orders on their own, and (c) the
7 March 31 Order (supported by March 12 Executive Order and Statewide Shelter Orders)
8 (collectively, the “Closure Orders”).

9 48. Due to the Closure Orders, Parakeet Café has suffered and continues to suffer
10 substantial lost business income and other financial losses.

11 49. Due to the Closure Orders, Parakeet Café had to let go many of its full-time
12 employees, resulting in lost wages for those employees.

13 50. These extraordinary losses of business income and lost wages for their full-time
14 employees are precisely why Plaintiffs took out the business interruption Policy with Hanover,
15 and their losses are covered under the Policy.

16 **E. Plaintiffs Suffer Covered Loss**

17 51. Parakeet Café suffered covered loss as a result of the March 16, 2020 Order to
18 shut down issued by civil authority the City and County of San Diego. Parakeet Café is located
19 at 927 Silverado Street, La Jolla, California 92037 and at 1680 India Street, San Diego,
20 California 92101 where it is surrounded by neighboring shops, boutiques, and restaurants. The
21 surrounding streets and every building and object of these neighborhoods are a Coronavirus
22 breeding ground.

23 52. According to the CDC, National Institutes of Health (“NIH”), other infectious
24 disease organizations around the world, and leading peer-reviewed medical journals such as
25 the New England Journal of Medicine, the Coronavirus spreads by droplets through person-
26 to-person contact and through contact with surfaces and objects.³ Although droplets

27 ³ See, e.g., CDC website, “How COVID-19 Spreads,” available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited Apr. 15,
28 2020).

1 containing Coronavirus may not be visible to the human eye, the droplets are undeniably
2 physical and have spread on property surfaces.

3 53. The insidious nature of the Coronavirus is that it can remain infectious on a
4 variety of surfaces and objects from a few hours to several days. The CDC reports that the
5 Coronavirus was detected on various surfaces inside the cruise ship cabins of both
6 symptomatic and asymptomatic passengers 17 days after the cabins had been vacated.⁴ The
7 Coronavirus can remain on stainless steel and plastic up to 6 days; on glass, ceramics, silicon
8 rubber, or paper up to 5 days; on paper currency up to 3 days; and on cardboard up to 24
9 hours.⁵

10 54. Droplets containing Coronavirus can also travel and remain infectious while
11 suspended in the air. An MIT study found that the droplets from a cough can travel as far as 16
12 feet, and droplets from a sneeze can travel as far as 26 feet. According to a recent report in the
13 New York Times, “[a]n infected person talking five minutes in a poorly ventilated space can
14 produce as many viral droplets as one infectious cough. ‘If there are 10 people in there, it’s
15 going to be a buildup,’ said Pratim Biswas, an aerosols expert at Washington University in St.
16 Louis.”⁶

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18 ⁴ See Leah E. Moriary, *et al.*, “Public Health Responses to COVID-19 Outbreaks on
19 Cruise Ships — Worldwide, February – March 2020,” *69 Morbidity and Mortality Weekly*
20 *Report* 347 (released online Mar. 23, 2020), available at
<https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6912e3-H.pdf> (last visited Apr. 15,
2020) (CDC journal article).

21 ⁵ See Alex W.H. Chin, *et al.*, “Stability of SARS-CoV-2 in different environmental
22 conditions,” *The Lancet Microbe* (Apr. 2, 2020), available at
[https://doi.org/10.1016/S2666-5247\(20\)30003-3](https://doi.org/10.1016/S2666-5247(20)30003-3) (last visited Apr. 15, 2020); Neeltje van
23 Doremalen, *et al.*, “Aerosol and Surface Stability of SARS-CoV-2 as Compared to SARS-
24 CoV-1,” *New England Journal of Medicine* (Mar. 17, 2020), available at
<https://www.nejm.org/doi/pdf/10.1056/NEJMc2004973> (last visited Apr. 15, 2020);
25 Guenter Kampf, *et al.*, “Persistence of coronaviruses on inanimate surfaces and their
26 inactivation with biocidal agents,” *104 Journal of Hospital Infection* 246 (Feb. 6, 2020),
available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7132493/pdf/main.pdf> (last
visited Apr. 15, 2020).

27 ⁶ See Yuliya Pashina-Kottas, *et al.*, “This 3-D Simulation Shows Why Social
28 Distancing Is So Important,” *The New York Times* (Apr. 14, 2020),
[https://www.nytimes.com/interactive/2020/04/14/science/coronavirus-transmission-
cough-6-feet-ar-ul.html](https://www.nytimes.com/interactive/2020/04/14/science/coronavirus-transmission-cough-6-feet-ar-ul.html) (last visited Apr. 15, 2020) (3-D visualization with commentary).

1 55. Here, the property loss to Wellness Eatery has been caused by the March 16
2 Order, and by subsequent Closure Orders, that were issued due to droplets containing the
3 Coronavirus being on surfaces and objects in, on, around and in the immediate area of the
4 Parakeet Café locations. These infected surfaces and objects outside of the Parakeet Café
5 locations include the façade, window glass, walls, doorknobs, sidewalks, light posts, parking
6 meters, trash bags, passersby, cars, trucks, buses, and scooters that line the surrounding
7 streets.

8 56. Similarly, inside the Parakeet Café locations, every surface and object are
9 implicated, including the doors and door jambs, the hostess desk, countertops, tables, chairs,
10 light fixtures, dishes, drinking utensils, flatware, the entire kitchen and cookware, bathrooms,
11 elevator, and artwork and photos.

12 57. As noted above, the Civil Authority provision of the Policy makes clear that
13 “[t]his insurance is extended to apply to the actual loss of Business Income you [*i.e.*, Wellness
14 Eatery] sustain when access to your ‘scheduled premises’ is specifically prohibited by order of
15 a civil authority as the direct result of a Covered Cause of Loss to property in the immediate
16 area of your ‘scheduled premises.’” Policy, Business Income (And Extra Expense) - Actual Loss
17 Sustained Coverage Form 411-0581 04/14.

18 58. The Policy also expressly provides coverage to pay for lost business income,
19 regardless of whether the loss was the result of a civil authority order. The Policy states, in
20 pertinent part:

21 **Business Income**

22 We will pay for the actual loss of Business Income you sustain due to the
23 necessary “suspension” of your “operations” during the “period of restoration”.
24 The “suspension” must be caused by direct physical loss of or damage to
25 property at premises which are described in the Declarations. The loss or
26 damage must be caused by or result from a Covered Cause of Loss.

27 Business Income means the:

- 28 a. Net Income (Net Profit or Loss before income taxes) that would have
 been earned or incurred; [and]
 b. Continuing normal operating expenses incurred, including payroll.

1 **5. Additional Coverages**

2 **a. Civil Authority**

3 We will pay for the actual loss of Business Income you sustain and necessary
4 Extra Expense caused by action of civil authority that prohibits access to the
5 described premises due to direct physical loss of or damage to property,
6 other than at the described premises, caused by or resulting from any
7 Covered Cause of Loss. The coverage for Business Income will begin 72
8 hours after the time of that action and will apply for a period of up to three
9 consecutive weeks after coverage begins. The coverage for Extra Expense will
10 begin immediately after the time of that action and will end:

11 (1) 3 consecutive weeks after the time of that action; or

12 (2) When your Business Income coverage ends;

13 whichever is later.

14 59. As a result of the March 16, 2020 Order, Wellness Eatery ceased all business, and
15 filed a claim for business interruption with Hanover. Wellness Eatery's claim was denied.

16 **F. Defendants' Denial of Plaintiffs' Insurance Claim**

17 60. Wellness Eatery's insurance Policy covers the extraordinary losses experienced
18 by Wellness Eatery and its employees during this crisis. The Policy specifically includes "**Civil**
19 **Authority**" coverage for business interruptions caused by "**order of a civil authority,**"
20 "**Lost Business Income & Extra Expense Coverage,**" "**Extended Business Income**"
21 coverage, and "**Business Income Extension for Essential Personnel**" coverage, as well
22 as "**Limited Fungi, Bacteria, Or Virus Coverage.**"

23 61. In **March 2020**, Wellness Eatery filed a claim with Hanover requesting
24 coverage under the Policy in connection with lost Business Income due to the Closure Orders
25 and the damage caused by the presence of the Coronavirus in and around the Insured
26 Premises.

27 62. On **April 14, 2020**, Hanover issued written correspondence to Wellness Eatery
28 stating that it was denying the claim without any inspection or review of the Insured Premises.

 63. On **April 23, 2020**, Plaintiffs sent a Pre-Suit Notification Letter to Defendants
 via Federal Express. The letter provided detailed reasons why Defendants' denial of the claim

1 was wrongful, requesting an actual physical inspection of the premises, and indicating that
2 Plaintiffs were attempting to work in good faith with Defendants to resolve the dispute without
3 the need for litigation.

4 64. On April 30, 2020, Defendants provided a written response to Plaintiffs' April
5 23, 2020 letter, in which Defendants again denied the claim and refused to perform an
6 inspection of the premises. In addition, Defendants attempted to amend the policy after the
7 fact by purporting to amend the policy to eliminate the policy's reference to "bacteria" in the
8 coverages sections. The letter stated:

9 "The following provisions in this Coverage Part or are hereby amended to remove
10 reference to bacteria: 1. Exclusion of "Fungus", Wet Rot, Dry Rot And Bacteria; and 2.
11 Additional Coverage - Limited Coverage for "Fungus", Wet Rot, Dry Rot And Bacteria,
12 including any endorsement increasing the scope or amount of coverage."

13 65. On information and belief, Hanover accepted the Policy premiums paid by
14 Wellness Eatery with no intention of providing any coverage under the Civil Authority and
15 other provisions providing coverage for losses from closure orders issued by civil authorities
16 and from a virus. In addition, as demonstrated above, after Plaintiffs' filed their claim and
17 attempted to negotiate in good faith with Defendants to resolve the coverage dispute without
18 the need for litigation, Defendants acted in bad faith by attempting to unilaterally amend the
19 policy's coverage provisions to eliminate coverage for losses related to "bacteria."

20 66. On information and belief, Hanover rejected Wellness Eatery's claims in bad
21 faith as part of a policy to limit its losses during this pandemic, notwithstanding that the Policy
22 provides coverage for losses from closure orders issued by civil authorities and from a virus.

23 **FIRST CAUSE OF ACTION**

24 **Breach of Contract**
25 **(Against All Defendants)**

26 67. Plaintiffs re-allege and incorporate by reference into this cause of action all
27 allegations set forth in this Complaint as though fully set forth herein.

28 68. At all times relevant, Plaintiffs have paid all premiums and performed all of their

1 obligations under the Policy.

2 69. Defendants have a contractual duty to provide Plaintiffs with insurance coverage
3 under specified provisions of the Policy, as alleged by Plaintiffs herein.

4 70. In denying Plaintiffs' insurance claim, Defendants breached that duty.

5 71. As a result of that breach, Plaintiffs have been damaged in the amount of
6 coverage to which it is entitled under the Policy, and in an amount to be proved at trial, and for
7 which Plaintiffs seek compensatory damages with interest thereon.

8 **SECOND CAUSE OF ACTION**
9 **Breach of Covenant of Good Faith and Fair Dealing**
10 **(Against All Defendants)**

11 72. Plaintiffs re-allege and incorporate by reference into this cause of action all
12 allegations set forth in this Complaint as though fully set forth herein.

13 73. When Defendants issued the Policy, they undertook and were bound to the
14 covenants implied by law that they would deal fairly and in good faith with Plaintiffs, and not
15 to engage in any acts, conduct, or omissions that would impair or diminish the rights and
16 benefits due Plaintiffs, according to the terms of the Policy.

17 74. Upon information and belief, Defendants breached the implied covenant of good
18 faith and fair dealing arising out of the Policy by, unreasonably and in bad faith, denying
19 Plaintiffs insurance coverage to which they are entitled under the Policy.

20 75. In committing the above-referenced breach, Defendants intended to and did vex,
21 damage, annoy, and injure Plaintiffs. Said conduct was intentional, willful, and with conscious
22 disregard of Plaintiffs' rights, and was malicious, oppressive and/or fraudulent under
23 California Civil Code § 3294, thereby entitling Plaintiffs to punitive and exemplary damages
24 against the Hanover Defendants.

25 76. As a direct and proximate result of the above-referenced breach, Plaintiffs have
26 had to retain attorneys to enforce their right to the insurance coverage to which they are
27 entitled under the Policy, and have thereby been injured and damaged.

28 77. Plaintiffs therefore, are entitled to recover and seek in connection with this

1 Cause of Action: (a) an award of general damages and other monetary damages, including all
2 foreseeable consequential and incidental damages for diminution in value, loss of use, and
3 other incidental damages and out-of-pocket expenses, plus interest, in an amount to be
4 determined at trial; (b) punitive and exemplary damages in an amount to be determined at
5 trial; (c) Plaintiffs' costs of suit; and (d) Plaintiffs' reasonable attorneys' fees in connection
6 with this action.

7
8 **THIRD CAUSE OF ACTION**
9 **Bad Faith Denial of Insurance Claim**
10 **(Against All Defendants)**

11 78. Plaintiffs re-allege and incorporate by reference into this cause of action all
12 allegations set forth in this Complaint as though fully set forth herein.

13 79. Defendants have put their own interests above those of Plaintiffs and have, in
14 bad faith, failed or refused to perform their obligations under the Policy and under the laws of
15 California.

16 80. Defendants denied Plaintiffs' claim in bad faith by, among other conduct,
17 (a) failing or refusing to perform a fair, objective, and thorough investigation of the claim as
18 required by the California Insurance Code; (b) asserting coverage defenses that were legally
19 and/or factually invalid and thereby delaying resolution of Plaintiffs' claim; (c) placing unduly
20 restrictive interpretations on the Policy terms for the purpose of denying coverage due under
21 the Policy; (d) failing to give Plaintiffs' interests equal consideration with their own; and
22 (e) forcing Plaintiffs to institute litigation to recover amounts due under the Policy.

23 81. Plaintiffs allege on information and belief that there are numerous other
24 individuals and groups insured by Defendants who were or are similarly situated to Plaintiffs
25 and who are also being denied benefits under the same unlawful and non-applicable policy
26 provisions and/or exclusions being applied to Plaintiffs. At such time as Plaintiffs learn the
27 names of such persons, Plaintiffs may seek leave of court to join such persons as a plaintiff in
28 this action.

82. Based on the above, Plaintiffs allege that Defendants have committed

1 institutional bad faith that is part of a repeated pattern of unfair practices and not an isolated
2 occurrence. The pattern of unfair practices constitutes a conscious course of wrongful conduct
3 that is firmly grounded in Defendants' established company policy.

4 83. As a proximate result of the aforementioned bad faith conduct by Defendants,
5 Plaintiffs have suffered and will continue to suffer damages. These damages include interest
6 on the withheld and unreasonably delayed payments due under the Policy and other special
7 economic and consequential damages, of a total amount to be shown at trial.

8 84. As a further proximate result of Defendants' bad faith conduct, Plaintiffs were
9 compelled to retain legal counsel to obtain the benefits due under their Policy. Therefore,
10 Defendants are liable to Plaintiffs for those attorneys' fees, witness fees, and costs of litigation
11 reasonably necessary and incurred by Plaintiffs in order to obtain the benefits of the Policy.

12 85. Defendants carried out their bad-faith conduct with a willful and conscious
13 disregard of Plaintiffs' rights or subjected Plaintiffs to cruel and unjust hardship in conscious
14 disregard of their rights. Alternatively, Defendants' conduct constituted an intentional
15 misrepresentation, deceit, or concealment of a material fact known to Defendants with the
16 intention of depriving Plaintiffs of property or legal rights, or of causing Plaintiffs other injury.
17 Defendants' conduct constitutes malice, oppression, or fraud under California Civil Code §
18 3294, entitling Plaintiffs to punitive damages in an amount appropriate to punish or set an
19 example of Defendants and to deter future similar conduct.

20 **FOURTH CAUSE OF ACTION**

21 **Unfair Business Practices Under BUS. & PROF. CODE § 17200, *et seq.***
22 **(Against All Defendants)**

23 86. Plaintiffs re-allege and incorporate by reference into this cause of action all
24 allegations set forth in this Complaint as though fully set forth herein.

25 87. California's Unfair Competition Law, as codified by California Business &
26 Professions Code section 17200, *et seq.*, protects both consumers and competitors by
27 promoting fair competition in commercial markets for goods and services. California's Unfair
28 Competition Law is interpreted broadly and provides a cause of action for any unlawful,

1 unfair, or fraudulent business act or practice. Any unlawful, unfair, or fraudulent business
2 practice that causes injury to consumers falls within the scope of California's Unfair
3 Competition Law.

4 88. Defendants' acts and practices, as described herein, constitute unlawful or unfair
5 business practices against Plaintiffs in violation of California Business and Professions Code
6 section 17200, *et seq.*

7 89. These acts include but are not limited to charging Plaintiffs premiums in
8 exchange for purported coverage for losses caused by an Order of Civil Authority, a virus, and
9 other business interruptions without any intention of satisfying those claims in an emergency
10 such as the COVID-19 pandemic and the related Closure Orders.

11 90. Any claimed justification for Defendants' conduct is outweighed by the gravity of
12 the consequences to Plaintiffs. Defendants' acts and practices are immoral, unethical,
13 oppressive, unconscionable, or substantially injurious to Plaintiffs, and/or have a tendency to
14 deceive Plaintiffs.

15 91. By reason of Defendants' fraudulent, deceptive, unfair, and other wrongful
16 conduct as alleged herein, said Defendants violated California Business and Professions Code
17 section 17200, *et seq.*, by consummating an unlawful, unfair, and fraudulent business practice
18 designed to deprive Plaintiffs of the benefits of Defendants' financial products and services.

19 92. Defendants perpetrated these acts and practices against Plaintiffs, and as a direct
20 and proximate result of the foregoing, Plaintiffs have suffered and continue to suffer damages
21 in a sum which is, as of yet, unascertained. Pursuant to California Business and Professions
22 Code § 17203, Plaintiffs are entitled to restitution of all the monies paid to Defendants for
23 retaining benefits that were due and owing to Plaintiffs (with interest thereon), to
24 disgorgement of all Defendants' profits arising out of their unlawful conduct (with interest
25 thereon), and to be paid benefits due to Plaintiffs under the Policy that Defendants wrongfully
26 retained by means of its unlawful business practices.

27 93. Pursuant to California Code of Civil Procedure section 1021.5, Plaintiffs are
28 entitled to recover their reasonable attorneys' fees in connection with Defendants' unfair

1 competition claims, the substantial benefit doctrine, and/or the common fund doctrine.

2 **FIFTH CAUSE OF ACTION**
3 **Fraudulent Misrepresentation**
4 **(Against All Defendants)**

5 94. Plaintiffs re-allege and incorporate by reference into this cause of action all
6 allegations set forth in this Complaint as though fully set forth herein.

7 95. Defendants committed actionable fraud against Plaintiffs by way of affirmative
8 misrepresentations and the concealment of material facts. For example, Defendants
9 affirmatively misrepresented that there was full coverage for business interruption whenever
10 there was a business interruption caused by physical damage. At all relevant times, Defendants
11 knew and concealed from the Plaintiffs that there was a policy that Defendants would not pay
12 for any claims during a pandemic, notwithstanding the express provision for such coverage in
13 the Policy.

14 96. Defendants made or approved materially false and misleading statements to
15 Plaintiffs when it sold Plaintiffs the Policy.

16 97. Defendants made the foregoing false statements and misrepresentations that
17 omitted and concealed material facts despite being aware of their falsity.

18 98. Plaintiffs reasonably and actually relied on Defendants' misrepresentations and
19 concealments.

20 99. As a direct and proximate result of such unlawful conduct, Plaintiffs have
21 suffered, and will continue to suffer, damages in an amount to be proven at trial.

22 100. Defendants' acts were undertaken intentionally and in conscious disregard of
23 Plaintiffs' rights, and were malicious, fraudulent, and oppressive.

24 101. Plaintiffs are entitled to damages, and they should be awarded exemplary and
25 punitive damages in an appropriate amount to punish Defendants and to deter similar
26 fraudulent conduct in the future.

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1 the Limited Virus Coverage, but when read according to their plain meaning, lead to absurd
2 requirements that are impossible to satisfy, such as only covering losses caused by viruses that
3 were created by windstorms, hail, aircraft, falling objects, and other phenomena and events
4 that are categorically incapable of creating a virus.

5 112. In the event that such plain meaning of the Policy is applied (it should not be), it
6 would be against equity to permit Defendants to retain the payments that they received from
7 Plaintiffs for any such aspect of the Policy. This is because it is an illegal, deceptive, unfair,
8 and/or fraudulent business practice to induce Plaintiffs or any other businesses to purchase
9 insurance coverage that will never cover a loss.

10 113. As a direct and proximate result of Defendants' conduct, Plaintiffs have been
11 damaged and are entitled to restitution in an amount to be determined at trial. Plaintiffs seek
12 restitution from Defendants and seek an order from this Court disgorging all monies paid to
13 Defendants as a result of the illegal, deceptive, unfair, and/or fraudulent business practices.

14 114. Plaintiffs have no adequate remedy at law.

15 **EIGHTH CAUSE OF ACTION**
16 **Declaratory Relief**
17 **(Against All Defendants)**

18 115. Plaintiffs re-allege and incorporate by reference into this cause of action all
19 allegations set forth in this Complaint as though fully set forth herein.

20 116. Under California Code of Civil Procedure § 1060, *et seq.*, the court may declare
21 rights, duties, statuses, and other legal relations, regardless of whether further relief is or
22 could be claimed.

23 117. An actual controversy has arisen between Plaintiffs and Defendants as to their
24 respective rights and duties under the Policy.

25 118. Resolution of the parties' respective rights and duties under the Policy by
26 declaration of the Court is necessary, as there exists no adequate remedy at law.

27 119. Plaintiffs allege and contend, with respect to the Policy's Civil Authority
28 coverage, that each of the Closure Orders triggers that coverage because (a) each of the Closure

1 Orders is an order of a civil authority, (b) each of the Closure Orders specifically prohibits
2 access to the Scheduled Premises by prohibiting all potential on-premises dining customers
3 and workers from accessing the Scheduled Premises, (c) said prohibition of access by each of
4 the Closure Orders has been continuous and ongoing since the Orders were issued, such that
5 access has not subsequently been permitted, (d) each of the Closure Orders prohibits said
6 access as the direct result of a Covered Cause of Loss (*i.e.*, a risk of direct physical loss of
7 property) in the immediate area of the Scheduled Premises, (e) no Policy coverage exclusions
8 or limitations apply to exclude or limit coverage, (f) Plaintiffs have suffered actual and covered
9 loss of Business Income in an amount to be determined at trial, and (g) coverage should begin
10 as of March 16, 2020.

11 120. Plaintiffs allege and contend that the Policy's Lost Business Income and Extra
12 Expense Coverage is triggered because (a) Plaintiffs have sustained actual loss of Business
13 Income due to the closure of the Parakeet Café locations, (b) said closure constitutes a
14 necessary suspension of Wellness Eatery's operations under the Policy, (c) this suspension has
15 been and is caused by direct physical loss of or physical damage to property at the Scheduled
16 Premises, including personal property in the open (or in a vehicle) within 1,000 feet of the
17 Scheduled Premises, due to the presence of Coronavirus, (d) the presence of Coronavirus is a
18 Covered Cause of Loss, and (e) some or all of the period of the Parakeet Café's closures is
19 within the period of restoration under the Policy.

20 121. Plaintiffs allege and contend that the Policy's Business Income for Essential
21 Personnel Coverage is triggered with respect to each of its full-time employees that it had no
22 choice but to let go in or about March 2020, as a direct, proximate, and inevitable result of the
23 issuance and maintenance of the Closure Orders and of the presence of Coronavirus in, on,
24 and around the Scheduled Premises.

25 122. Plaintiffs allege and contend that the presence of the Coronavirus in and on the
26 Insured Premises triggers the Policy's Limited Virus Coverage for substantially the same
27 reasons as those set forth above.

28 123. Plaintiffs allege and contend that the Policy's Extended Business Income

1 coverage applies or will apply for substantially the same reasons as those set forth above.

2 124. Plaintiffs allege and contend that Defendants wrongly denied coverage with
3 respect to all the foregoing provisions.

4 125. Upon information and belief, Plaintiffs allege that Defendants dispute and deny
5 each of Plaintiffs' contentions set forth in this Cause of Action.

6 126. Plaintiffs, therefore, seek a declaratory judgment regarding each of Plaintiffs'
7 contentions set forth in this Cause of Action. A declaratory judgment determining that
8 Plaintiffs are due coverage under the Policy, as set forth above, will help to ensure the survival
9 of their business during this prolonged closure made necessary by the Closure Orders and by
10 the presence of Coronavirus at and around the Insured Premises during this global pandemic.

11 **NINTH CAUSE OF ACTION**
12 **Injunctive Relief Under BUS. and PROF. CODE § 17200, *et seq.***
13 **(Against All Defendants)**

14 127. Plaintiffs re-allege and incorporate by reference into this cause of action all
15 allegations set forth in this Complaint as though fully set forth herein.

16 128. Upon information and belief, Plaintiffs allege that, unless enjoined by order of
17 the Court, Defendants will continue to operate their companies for their sole benefit and to the
18 detriment of Plaintiffs. No adequate remedy exists at law for the injuries alleged herein, and
19 Plaintiffs will suffer great and irreparable injury if Defendants' conduct is not immediately
20 enjoined and restrained.

21 129. Defendants wrongfully denied Plaintiffs' insurance claim based on erroneous
22 interpretations of the Policy, in order to avoid their financial obligations to Plaintiffs
23 thereunder.

24 130. Given the likely extended time period of the regional presence of the Coronavirus
25 and COVID-19 cases, and the likely continued effect of the Closure Orders, Plaintiffs will
26 almost certainly have similar insurance claims in the future, and Defendants will almost
27 certainly apply the same or similar erroneous interpretations of the Policy to wrongfully deny
28 coverage. If Defendants' conduct in this manner is not restrained and enjoined, Plaintiffs will

1 suffer great and irreparable harm, as they have already paid for the Policy in full, and
2 Defendants seem committed to continuing their unfair and unlawful business practices of
3 erroneously denying Plaintiffs' claims. Defendants will continue to act in their own self-
4 interest and to commit the acts that have damaged Plaintiffs, and that continue to do so.

5 131. Plaintiffs have no adequate remedy at law for the threatened injury.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants, as
8 follows:

9 A. For a declaration adopting each of Plaintiffs' contentions set forth in the
10 above Cause of Action for Declaratory Relief;

11 B. For injunctive relief enjoining and restraining Defendants' unlawful conduct
12 as alleged herein, including but not limited to their unfair and unlawful business practices
13 and their wrongful denials of coverage under the Policy;

14 C. For general and compensatory damages in an amount to be determined at
15 trial;

16 D. For exemplary and punitive damages in an amount to be determined at trial;

17 E. For Plaintiffs' costs of suit;

18 F. For Plaintiffs' reasonable attorneys' fees incurred in this action pursuant to
19 statute;

20 G. For pre-judgment interest on all other interest to which Plaintiffs are
21 entitled; and

22 H. For such other relief as the Court may deem proper.

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JURY DEMAND

Plaintiffs demand a trial by jury on all counts for which a jury trial is permitted.

DATED: May 11, 2020

BOTTINI & BOTTINI, INC.
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Albert Y. Chang
Yury A. Kolesnikov

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