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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION**

FILED
Superior Court of California
County of San Francisco

AUG 12 ~~2020~~

CLERK OF THE COURT
BY: _____ Deputy Clerk
ANGELICA SUNGA

CGC-20-585931

BW SAPONE PARTNERSHIP d/b/a
THE FLYING PIG BISTRO,

Plaintiff,

v.

FARMERS INSURANCE EXCHANGE,

Defendant.

Case No. _____

COMPLAINT

- (1) Declaratory Judgment
- (2) Breach of Contract
- (3) Breach of Implied Covenant of Good Faith and Fair Dealing

DEMAND FOR JURY TRIAL

FILED BY FAX

1 Plaintiff BW Sapone Partnership d/b/a The Flying Pig Bistro files suit against
2 Farmers Insurance Exchange and alleges as follows:

3 INTRODUCTION

4 1. Since March 19, 2020, California's "Stay at Home" order has instructed
5 all 40 million California residents to remain at home, with certain exceptions. Though
6 lifesaving, this mandate, which remains in place, ends in-person dining at California
7 restaurants and remains in place to this day, though localities are permitted to reopen
8 if they meet certain conditions for a variance from the statewide order. This is not
9 merely causing severe financial distress for retailers and their employees; such
10 closures threaten the viability of California's retail industry.

11 2. Plaintiff's restaurant in San Francisco, California is among the
12 thousands that were forced to cease in-person dining as part of the Stay at Home
13 order. The Flying Pig and many California restaurants – none of whom bear fault for
14 statewide closures – were responsible business stewards, thus paying for business
15 interruption insurance to protect against a situation like this.

16 3. But insurance companies operating in California are categorically
17 denying claims from restaurants arising from California's mandated interruption of
18 business services. Those denials are often made with little or no investigation and
19 without due regard for the interests of insureds.

20 4. Indeed, form letters denying coverage for such losses appear to rest on
21 crabbed readings of coverage language and overbroad readings of exclusions. That
22 gets insurance law exactly backwards – and raises the specter of bad-faith denials.

23 5. The Flying Pig's experience is no different. It has dutifully followed
24 California's mandates. Facing serious financial harm, it has filed a claim with Farmers
25 for business interruption coverage.

26 6. Defendant swiftly denied the claim. Though its reasons are cursory, the
27 denial appears to be based on an unreasonable reading of its policy, which tracks
28 form policies issued throughout California on a take-it-or-leave-it basis.

7. That leaves The Flying Pig in financial straits – precisely the situation it

1 sought to avoid when it obtained coverage for business interruptions.

2 8. The Flying Pig and other restaurants bought full-spectrum,
3 comprehensive insurance for their *businesses* – not just for tangible damage to their
4 premises and equipment. And for good reason. Insurance coverage is important, if
5 not vital, particularly for small businesses.

6 9. The Flying Pig reasonably believed it had comprehensive coverage that
7 would apply to business interruptions under circumstances like these, where it has
8 done everything right to protect its business and the public. But insurance companies
9 like Farmers are cutting those lifelines – despite having pocketed significant
10 premiums for Plaintiff's policy.

11 10. Plaintiff thus brings this action seeking declaratory relief and insurance
12 coverage owed under Farmers' policy, and damages.

13 PARTIES

14 11. Plaintiff BW Sapone Partnership d/b/a The Flying Pig Bistro is a
15 general partnership formed under the laws of California. Its principal place of
16 business is San Francisco, California.

17 12. Defendant Farmers Insurance Exchange is an insurer organized under
18 laws of California with its principal place of business in Woodland Hills, California.
19 At all relevant times, Farmers operated in California, including in Concord,
20 California.

21 JURISDICTION AND VENUE

22 13. The Court has jurisdiction over the subject matter of this action pursuant
23 to Article VI, section 10 of the California Constitution and section 410.10 of the
24 California Code of Civil Procedure.

25 14. Venue is proper in this court under Code of Civil Procedure section 395
26 because a substantial part of the conduct, events, and omissions giving rise to the
27 violations of law giving rise to this lawsuit occurred in San Francisco, California.

28 FACTUAL BACKGROUND

15. In January 2020 early media reports documented an outbreak of a novel

1 strain of coronavirus – COVID-19 – in Wuhan, China. By late January, it was
2 generally understood in the scientific and public health communities that COVID-19
3 was spreading through human-to-human transmission and could be transmitted by
4 asymptomatic carriers.

5 16. On January 30, 2020, reports of the spread of COVID-19 outside China
6 prompted the World Health Organization to declare the COVID-19 outbreak a
7 “Public Health Emergency of International Concern.”

8 17. On March 11, the World Health Organization declared COVID-19 a
9 global health pandemic based on existing and projected infection and death rates and
10 concerns about the speed of transmission and ultimate reach of this virus.

11 18. Public health officials have recognized for decades that non-
12 pharmaceutical interventions (NPIs) can slow and stop the transmission of certain
13 diseases. Among these are screening and testing of potentially infected persons;
14 contact tracing and quarantining infected persons; personal protection and
15 prevention; and social distancing. Social distancing is the maintenance of physical
16 space between people. Social distancing can be limited – *e.g.*, reducing certain types
17 of conduct or activities like hand-shaking – or large-scale – *e.g.*, restricting the
18 movements of the total population.

19 19. A lack of central planning, shortages of key medical supplies and
20 equipment, and the unfortunate spread of misinformation and disinformation about
21 the risks of COVID-19 has led to widespread confusion, unrest, and uncertainty
22 regarding the likely trajectory of this pandemic and the appropriate counter-measures
23 necessary to mitigate the damage it could potentially cause.

24 20. Beginning in late February, public health officials began advising
25 various governments around the world that one of the most disruptive NPIs –
26 population-wide social distancing – was needed to stop the transmission of COVID-
27 19. Suddenly schools, offices, public transit, restaurants, bars, music venues, and
28 shops -- densely occupied spaces, heavily traveled spaces, and frequently visited
spaces – were likely to become hot-spots for local transmission of COVID-19.

1 manner as before could expose The Flying Pig to the risk of contaminated premises as
2 well as exposing customers and workers to transmission and infection risks.

3 28. Plaintiff purchased comprehensive commercial liability and property
4 insurance from Farmers to insure against risks the business might face. Such coverage
5 includes business income with extra expense coverage for the loss, as well as
6 additional "civil authority" coverage. Once triggered, the policy pays actual losses
7 sustained for the business income and extra expense coverage.

8 29. To date, Plaintiff has paid all of the premiums required by Farmers to
9 keep its policy in full force. These premiums have totaled many thousands to date.

10 30. On or about March 19, 2020, Plaintiff reported a loss of business income
11 as of March 18, 2020, under Policy 0605512992.

12 31. On or about March 22, Farmers denied Plaintiff's claim for coverage. In
13 a cursory denial letter, Farmers took the position that "while the government has
14 closed some businesses using civil authority for containment of the coronavirus,
15 access to described premises was not prohibited due to direct physical loss of or
16 damage to property resulting from a covered cause of loss." Farmers further stated
17 that The Flying Pig's "policy is endorsed excluding loss or damage caused by or
18 resulting from any virus that is capable of inducing any physical distress, illness or
19 disease" and consequently denied the claim.

20 32. Farmers' denial letter, on information and belief, appears to be a form
21 letter sent in response to business interruption claims arising from California's Stay at
22 Home orders.

23 33. Farmers' denial is contrary to the terms and conditions of the policy and
24 applicable law, which gives effect to plain language, construes ambiguity in favor of
25 coverage, and narrowly construes exclusions and construes ambiguity in favor of
26 coverage. Insurers have the burden of proving the applicability of exclusions.

27 34. Farmers' denial of coverage breached its obligation and responsibility to
28 provide coverage available through the policy to Plaintiff due to its covered loss of
business income.

1 insurance policy including business income and extra expense coverage.

2 44. Defendant cannot meet its burden of proving that there are applicable,
3 enforceable exclusions or limitations of coverage in the insurance policies that
4 preclude coverage for these losses.

5 45. WHEREFORE, Plaintiff seeks a declaration that its business income
6 losses are covered and not precluded by exclusions or other limitations in its
7 comprehensive business insurance policy.

8 **SECOND CAUSE OF ACTION**

9 **Breach of Contract**

10 46. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

11 47. Plaintiff purchased a comprehensive business insurance policy from
12 Defendant to insure against all risks (unless specifically excluded) a business might
13 face. This policy was a binding contract that afforded Plaintiff comprehensive
14 business insurance under the terms and conditions of the policy.

15 48. Plaintiff met all or substantially all of its contractual obligations,
16 including paying all the premiums required by Defendant.

17 49. On or about March 19, California issued the Stay at Home order,
18 mandating that all Californians remain at home, with certain exceptions. This
19 mandate required retailers, including that owned by Plaintiff, to cease all in-person
20 services. This mandate also applied to neighboring businesses, thus causing
21 widespread closures surrounding Plaintiff's business premises.

22 50. Beginning on March 16, 2020, and continuing through the date of the
23 filing of this Complaint, Plaintiff suffered the direct physical loss of property and lost
24 business income alleged above – losses which were covered under the comprehensive
25 business insurance policy purchased from Defendant.

26 51. Defendant cannot meet its burden of proving that there are applicable,
27 enforceable exclusions or limitations of coverage in Plaintiff's comprehensive business
28 insurance policy that precludes coverage.

52. Defendant breached its contract by denying comprehensive business

1 insurance coverage to Plaintiff.

2 53. As a direct and proximate result of Defendant's denial of comprehensive
3 business insurance coverage to Plaintiff, Plaintiff has and will continue to suffer
4 damages.

5 54. WHEREFORE, Plaintiff seeks: (a) a judgment for itself that Defendant
6 breached its contract with Plaintiff; and (b) corresponding damages for that breach.

7 THIRD CAUSE OF ACTION

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

9 55. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

10 56. Plaintiff contracted with Defendant to provide it with comprehensive
11 business insurance to insure against all risks (unless specifically excluded) a business
12 might face.

13 57. This contract was subject to an implied covenant of good faith and fair
14 dealing that all parties would act in good faith and with reasonable efforts to perform
15 their contractual duties – both explicit and fairly implied – and not to impair the
16 rights of other parties to receive the rights, benefits, and reasonable expectations
17 under the contracts. These included the covenant that Defendant would act fairly and
18 in good faith in carrying out its contractual obligations to provide Plaintiff with
19 comprehensive business insurance.

20 58. Defendant breached the implied covenant of good faith and fair dealing
21 by:

- 22 a. Selling policies that appear to provide liberal coverage for loss of
23 property and lost business income with the intent of interpreting
24 undefined or poorly defined terms, undefined terms, and
25 ambiguously written exclusions to deny coverage under
26 circumstances foreseen by Defendant;
- 27 b. Denying coverage for loss of property and lost business income
28 unreasonably, and without proper cause, by applying undefined,
ambiguous, and contradictory terms contrary to applicable rules

1 of policy construction and the plain terms and purpose of the
2 policy;

3 c. Denying Plaintiff's claim for loss of property and loss of business
4 income without conducting a fair, unbiased and thorough
5 investigation or inquiry;

6 d. Failing to provide a written explanation of the legal and factual
7 basis for its denials; and

8 e. Compelling policyholders, including Plaintiff, to initiate litigation
9 to recover policy benefits to which they are entitled.

10 59. Plaintiff met all or substantially all of its contractual obligations,
11 including by paying all the premiums required by Defendant.

12 60. Defendant's failure to act in good faith in providing comprehensive
13 business insurance coverage to Plaintiff denied Plaintiff the full benefit of its bargain.

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

17 62. WHEREFORE, Plaintiff seeks: (a) a judgment for itself and similarly
18 situated restaurants that Defendant has breached the covenant of good faith and fair
19 dealing implied in its contract with Plaintiff; and (b) corresponding damages for that
20 breach.

21 PRAYER FOR RELIEF

22 WHEREFORE, Plaintiff requests that the Court enter a judgment awarding the
23 following relief:

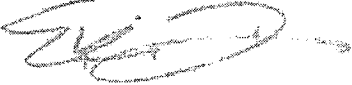
24 a. A declaration that Plaintiff's losses are covered under Defendant's
25 comprehensive business insurance policy; and

26 b. Plaintiff also requests damages, attorney's fees and costs, and such
27 other and further relief as is just and proper as compensation for
28 Defendant's breach of contract and breach of the implied covenant of
good faith and fair dealing.

1
2 Dated: August 12, 2020

Respectfully submitted,

3 **GIBBS LAW GROUP LLP**

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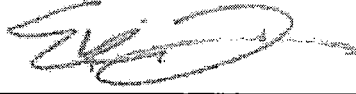
1 **JURY DEMAND**

2 Plaintiff demands a trial by jury for all issues so triable under the law.

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5 Dated: August 12, 2020

Respectfully submitted,

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