

HAEGGQUIST & ECK, LLP

1 AMBER L. ECK (177882)  
2 ambere@haelaw.com  
3 ALREEN HAEGGQUIST (221858)  
4 alreenh@haelaw.com  
5 ROBERT PRINE (312432)  
6 robertp@haelaw.com  
7 HAEGGQUIST & ECK, LLP  
8 225 Broadway, Suite 2050  
9 San Diego, CA 92101  
10 Telephone: (619) 342-8000  
11 Facsimile: (619) 342-7878

12 Attorneys for Plaintiff and the Proposed Class

13 UNITED STATES DISTRICT COURT  
14 SOUTHERN DISTRICT OF CALIFORNIA

15 JAJ GROUP, INC. d/b/a EARL OF  
16 SANDWICH, on Behalf of Itself and  
17 All Others Similarly Situated,

18 Plaintiff,

19 vs.

20 LIBERTY MUTUAL INSURANCE  
21 COMPANY,

22 Defendant.

Case No.: '20CV1620 JM MDD

CLASS ACTION

COMPLAINT FOR DECLARATORY  
JUDGMENT, BREACH OF  
CONTRACT, AND UNFAIR  
BUSINESS PRACTICES

DEMAND FOR JURY TRIAL

23  
24  
25  
26  
27  
28

HAEGGQUIST & ECK, LLP

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I. NATURE OF THE ACTION..... 1

II. THE PARTIES ..... 3

    A. Plaintiff..... 3

    B. Defendant ..... 3

III. JURISDICTION AND VENUE..... 3

IV. FACTUAL BACKGROUND ..... 5

    A. The COVID-19 Pandemic..... 5

    B. Governments Across the Country Order Everyone to “Stay at Home” and Non-Essential Businesses to Close..... 6

    C. The Losses from These Business Closures Are Covered Business Interruptions Under Liberty Mutual’s Insurance Policies ..... 8

    D. Exclusions ..... 11

    E. Liberty Mutual’s Denial of Plaintiff’s and Other Policyholders’ Insurance Claims ..... 13

V. CLASS ACTION ALLEGATIONS..... 15

    A. Numerosity: Rule 23(a)(1)..... 16

    B. Typicality: Rule 23(a)(3) ..... 17

    C. Adequacy: Rule 23(a)(4)..... 17

    D. Commonality and Predominance: Rule 23(a)(2)..... 17

    E. Superiority of Class Action: Rule 23(b)(3)..... 18

    F. Rule 23(b)(2) Certification..... 20

VI. CAUSES OF ACTION ..... 20

        COUNT I – Declaratory Judgment – Business Income Coverage  
                (On Behalf of the Nationwide Class and California Sub-  
                Class) ..... 20

HAEGGQUIST & ECK, LLP

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

COUNT II – Breach of Contract – Business Income Coverage (On  
Behalf of the Nationwide Class and California Sub-Class) ..... 22

COUNT III – Declaratory Judgment – Civil Authority Coverage  
(On Behalf of the Nationwide Class and California Sub-  
Class)..... 23

COUNT IV – Breach of Contract – Civil Authority Coverage (On  
Behalf of the Nationwide Class and California Sub-  
Class)..... 25

COUNT V – Declaratory Judgment – Extra Expense Coverage  
(On Behalf of the Nationwide Class and California Sub-  
Class)..... 26

COUNT VI – Breach of Contract – Extra Expense Coverage (On  
Behalf of the Nationwide Class and California Sub-  
Class)..... 28

COUNT VII – Unfair Business Practices Under Bus. & Prof. Code  
§17200, *et seq.* (On Behalf of Plaintiff and the California  
Sub-Class)..... 29

VII. PRAYER FOR RELIEF ..... 31

VIII. JURY DEMAND ..... 32

1 Plaintiff JAJ Group, Inc. d/b/a Earl of Sandwich (“Earl of Sandwich” or  
2 “Plaintiff”), on behalf of itself and all others similarly situated, brings this class action  
3 against Defendant Liberty Mutual Insurance Company (“Defendant” or “Liberty  
4 Mutual”), and alleges as follows based on personal knowledge as to itself and upon  
5 information and belief as to other matters based on their counsel’s investigation.  
6 Plaintiff believes additional evidentiary support exists for its allegations, given an  
7 opportunity for discovery.

8 **I. NATURE OF THE ACTION**

9 1. Plaintiff and other businesses nationwide purchased commercial  
10 property insurance to protect their businesses if they had to temporarily shut down.  
11 They reasonably believed their policies would help protect their businesses in the  
12 unlikely event the government ordered them to stop or severely restrict operations (in  
13 connection with a pandemic or any other Covered Cause of Loss). However, after  
14 collecting billions of dollars in premiums, Defendant and other insurers are now  
15 categorically refusing to pay these legitimate claims for business interruption  
16 coverage.

17 2. California and the vast majority of states across the country have entered  
18 civil authority orders requiring residents to “stay-at-home” or “shelter-in-place” and  
19 suspending or severely limiting business operations of non-essential businesses that  
20 interact with the public and/or provide social gathering places (collectively, the  
21 “COVID-19 Civil Authority Orders”).

22 3. These broad COVID-19 Civil Authority Orders have been financially  
23 devastating for most non-essential businesses, especially salons, restaurants, retail  
24 stores, entertainment venues, and other small, medium, and large businesses who have  
25 been forced to close, furlough employees, and submit to a sudden shutdown of  
26 operations and cash flow that threatens their survival.

27  
28



1 business income coverage; (2) breach of contract regarding business income  
2 coverage; (3) declaratory judgment regarding civil authority coverage; (4) breach of  
3 contract regarding civil authority coverage; (5) declaratory judgment regarding extra  
4 expense coverage; (6) breach of contract regarding extra expense coverage; and (7)  
5 unfair business practices under Business & Professions Code §17200, *et seq.*

6 **II. THE PARTIES**

7 **A. Plaintiff**

8 9. Plaintiff JAJ Group, Inc. d/b/a Earl of Sandwich's principal place of  
9 business is at 690 First Avenue, San Diego, California 92101. Earl of Sandwich is  
10 owned by JAJ Group, Inc., and was forced to close entirely on March 19, 2020 due to  
11 the applicable COVID-19 Civil Authority Orders.

12 **B. Defendant**

13 10. Defendant Liberty Mutual Insurance Company is a Massachusetts  
14 corporation with its principal place of business at 175 Berkeley Street, Boston,  
15 Massachusetts 02116. Liberty Mutual owns subsidiaries, directly and indirectly, that  
16 issue, among other things, property insurance.

17 11. Liberty Mutual issued the Liberty Mutual Policy No. BZS (21) 59 08 27  
18 60 to Earl of Sandwich for the policy period of February 18, 2020 to February 18,  
19 2021 (the "Policy").

20 **III. JURISDICTION AND VENUE**

21 12. This Court has original jurisdiction over this action under 28 U.S.C.  
22 §1332(a) as well as the Class Action Fairness Act of 2005, 28 U.S.C. §1332(d)(2), as  
23 to the named Plaintiff and every member of the Nationwide Class and California Sub-  
24 Class, because both of the proposed Classes contain more than 100 members, the  
25 aggregate amount in controversy exceeds \$5 million, and Class members reside in  
26

HAEGGQUIST & ECK, LLP

1 California and are therefore diverse from Defendant. The Court has supplemental  
2 jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. §1367(a).

3 13. This Court has personal jurisdiction over Plaintiff because Plaintiff  
4 submits to the Court's jurisdiction for the purpose of this Complaint. This Court has  
5 personal jurisdiction over Defendant because it does a substantial amount of business  
6 in California, including in this District, is authorized to conduct business in California,  
7 including in this District, and/or has intentionally availed itself of the laws and  
8 markets of this District through the use, promotion, sale, marketing, and/or  
9 distribution of its products and services at issue in this Complaint. Defendant's  
10 liability to Plaintiff, the Nationwide Class, and the California Sub-Class arises from  
11 and relates to Defendant's conduct within the state of California. As set forth herein,  
12 Defendant acted within California to sell various business insurance policies within  
13 the state of California. Thus, Defendant has purposefully availed itself of the benefits  
14 and protections of the state of California in conducting its unlawful enterprise, which  
15 purposeful availment constitutes sufficient minimum contacts with the state of  
16 California that the exercise of personal jurisdiction over Defendant with regard to the  
17 claims of Plaintiff, the Nationwide Class, and the California Sub-Class, and does not  
18 violate Due Process.

19 14. Venue is proper in this District pursuant to 28 U.S.C. §1391(b), because  
20 a substantial part of the events or omissions giving rise to the claims occurred in this  
21 District. Venue is also proper under 18 U.S.C. §1965(a), because Defendant transacts  
22 a substantial amount of its business in this District. Alternatively, venue is proper  
23 under 28 U.S.C. §1391(b)(3) because this Court has personal jurisdiction over  
24 Defendant.

25  
26  
27  
28

1 **IV. FACTUAL BACKGROUND**

2 **A. The COVID-19 Pandemic**

3 15. COVID-19 is an infectious disease caused by a recently discovered novel  
4 coronavirus known as SARS-CoV-2 (“Coronavirus” or “COVID-19”). The first  
5 instances of the disease spreading to humans were diagnosed in or around December  
6 2019.

7 16. On January 30, 2020, the World Health Organization (“WHO”) declared  
8 that the Coronavirus outbreak constituted a public health emergency of international  
9 concern.

10 17. On March 11, 2020, the WHO declared Coronavirus a worldwide  
11 pandemic.

12 18. On March 13, 2020, President Trump declared the COVID-19 pandemic  
13 to be a national emergency.

14 19. On March 16, 2020, the Centers for Disease Control and Prevention  
15 (“CDC”) and national Coronavirus Task Force issued guidance to the American  
16 public advising individuals to adopt social distancing measures.

17 20. As of August 18, 2020, the number of confirmed cases of COVID-19 is  
18 over 21 million worldwide, with nearly 800,000 deaths,<sup>1</sup> with the United States  
19 dealing with nearly 5.5 million confirmed cases and over 169,000 reported deaths –  
20 more than any other country in the world.<sup>2</sup>

21  
22  
23  
24 <sup>1</sup> See *Coronavirus disease (COVID-19) Situation Report – 209*, World Health  
25 Organization, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>  
(last visited August 18, 2020).

26 <sup>2</sup> See *Cases in the U.S.*, Center for Disease Control and Prevention,  
27 <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last  
28 visited August 18, 2020).