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13 GENTLE STAR MEDSPA MEDICAL
CORPORATION, BIG CITY BRICKS, LLC, TILDA,
14 LLC, BOULETTE'S LARDER, LLC, HINKY DINK,
LLC, HMS BEAGLE, LLC, REROUTE, LLC,
15 RESENDIZ, INC., AND SFJB SALT MINOR, LLC

CGC-22-598706

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF SAN FRANCISCO

18 GENTLE STAR MEDSPA MEDICAL
19 CORPORATION, BIG CITY BRICKS,
LLC, TILDA, LLC, BOULETTE'S
20 LARDER, LLC, HINKY DINK, LLC,
HMS BEAGLE, LLC, REROUTE, LLC,
21 RESENDIZ, INC., AND SFJB SALT
MINOR, LLC.

22 Plaintiffs,

23 v.

24 FARMERS GROUP INC., TRUCK
25 INSURANCE EXCHANGE, MID-
CENTURY INSURANCE COMPANY,
26 and Does 1 through 10, inclusive,

27 Defendants.
28

Case No.

COMPLAINT

DEMAND FOR JURY TRIAL

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

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

03/15/2022

Clerk of the Court

BY: LAURA SIMMONS

Deputy Clerk

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1 Plaintiffs Gentle Star Medspa Medical Corporation, Big City Bricks, LLC, Tilda, LLC,
2 Boulette's Larder, LLC, Hinky Dink, LLC, HMS Beagle, LLC, Reroute, LLC, Resendiz, Inc., and
3 SFJB Salt Minor, LLC, (collectively "Plaintiffs") file this Complaint Against Farmers Group,
4 Inc., Truck Insurance Exchange, Mid-Century Insurance Company, and Does 1 through 10,
5 inclusive (collectively "Defendants" or "Farmers"), and allege as follows:

6 **I. INTRODUCTION**

7 1. If an insurer promises that by taking out "business income coverage, your policy
8 helps replace the income lost while your company is closed," it needs to keep that promise. See
9 FARMERS INSURANCE, [https://www.farmers.com/learn/insurance-questions/business-](https://www.farmers.com/learn/insurance-questions/business-incomecoverage-definition/)
10 [incomecoverage- definition/](https://www.farmers.com/learn/insurance-questions/business-incomecoverage-definition/) (last accessed Jan. 27, 2022). Defendants understand that business
11 interruption insurance is critical because it helps keep capital flowing to "keep your company
12 running," including lost profits, payroll, taxes, and other operating expenses. *Id.*; *see also*
13 FARMERS INSURANCE, <https://www.farmers.com/business/property/> (last accessed Jan. 27,
14 2022).

15 2. In March of 2020, when California entered a State of Emergency due to the rapidly
16 developing COVID-19 pandemic, it issued a series of "Stay at Home" Orders forcing essential
17 and non-essential businesses to shutdown either fully or partially.

18 3. Plaintiffs are California businesses in the San Francisco and Los Angeles areas.
19 They operated restaurants, bars, and a spa. Plaintiffs dutifully paid their premiums to Defendants
20 annually and had valid business insurance contracts with Defendants at the time. Plaintiffs
21 suffered business income losses because of the forced government shut down orders that were
22 issued to slow the spread of the COVID-19 virus. These circumstances created a direct physical
23 loss of or damage to property at the Plaintiffs' insured premises.

24 4. After sustaining losses because of the governmental orders, Plaintiffs made timely
25 and proper insurance claims to Defendants to obtain the benefits afforded under the terms of its
26 insurance contract.

27 5. Properly construed, the terms of Farmers' policies provided Plaintiffs with
28 coverage for its claims, especially given that Farmers markets and describes its policy as

1 providing coverage for the loss of business income due to circumstances outside the control of the
2 insured.

3 6. Farmers' policies provides coverage for the loss of business income and extra
4 expenses sustained due the suspension of business operations and the extra expenses during the
5 period of restoration caused by direct physical loss or damage to the property at the insured
6 premises. Their policies includes coverage for all risks and does not exclude payment of benefits
7 for this type of governmental action.

8 7. Defendants' obligation to provide business income coverage in the circumstances
9 here—when government action shuts down or limits the business's access or use of property for
10 reasons outside the control of the insured—is supported by both the language of the policies and
11 representations made by Farmers' captive agents and in their written materials.

12 8. When COVID-19 hit the United States, governments across the country—state and
13 local—acted to protect the public health by entering orders that limited business operations, use
14 of or access to facilities, travel, and in-person social interactions. The governmental orders also
15 directed businesses to undertake certain affirmative actions, such as regular disinfecting and
16 cleaning of business premises. These orders caused Plaintiffs to suffer the very losses Defendants
17 promised to reimburse. These governmental orders are a quintessential, well-known exercise of
18 police powers. “The state’s inherent prerogative to protect the public’s health, safety, and welfare
19 is known as the police power.” *See* Gostin, Lawrence, and Wiley, *Public Health Law*,
20 University of California Press, p. 11. Using or accessing one’s real property or employing or
21 putting into service (or removing therefrom) one’s equipment and business property, is inherently
22 physical in nature. And ousting or precluding the use of or access to real property results in a loss
23 of a physical nature.

24 9. Without any investigation of the insured premises, Defendants denied Plaintiffs’
25 claims by interpreting the term “direct physical loss” to require a physical alteration and also by
26 applying an inapplicable virus exclusion.

27 10. Farmers' policies exclude only specific types of harm from governmental action,
28 meaning that, by excluding some but not all situations, certain governmental action is both a

1 covered risk and eligible for payment if the governmental-action exclusion does not apply. Here,
2 Defendants excluded only governmental action ordering the seizure or destruction of property,
3 indicating that all other governmental action is a covered cause of loss. Under Farmers’ policies’
4 business-income protection, Defendants agreed to cover, among other things, all suspensions of
5 business operations caused by direct physical loss to property on the premises. Defendants chose
6 not to define what “direct physical loss to property at the described premises” means, and now
7 construes in a manner that narrows coverage and is favorable to Defendants, contrary to standard
8 principles of contract interpretation.

9 11. Defendants’ interpretation of their policy language is wrong, and its denial of
10 coverage for losses caused by limitations on the physical use and access to insured’s property
11 breached the contract.

12 12. The meaning of the term “direct physical loss of property at the described
13 premises” is ambiguous at best. There is no indication in Farmers’ policies that this term requires
14 a physical alteration. Reading the term in context of the language used elsewhere in the policies
15 supports coverage. The policies’ exclusions imply that but for the exclusion, payment would have
16 been made in situations where no physical alteration is present. For example, the policies
17 provides that Defendants “will not pay for loss or damage caused directly or indirectly by” things
18 such as nuclear reactions, radioactive contamination, and the failure of power or other utility
19 services. By stating that no payment will be made for these types of losses or harms indicates that,
20 but for the exclusion, they would be losses that would otherwise be paid. Yet, none of these
21 examples would constitute a physical alteration as Defendants use the term in denying Plaintiffs
22 benefits. The language of the exclusions supports that position that the term “direct physical loss
23 of property at the described premises” is not limited to physical alterations.

24 13. In addition to improperly requiring a physical alteration, Defendants have, since
25 Plaintiffs’ losses began to occur due to the COVID-19 pandemic nearly two years ago,
26 improperly attempted to escape responsibility for payment on Plaintiffs’ claims by applying an
27 inapplicable virus or bacteria exclusion endorsement in their policies. The virus exclusion is
28 irrelevant to Plaintiffs’ claim of direct physical loss resulting from governmental action.

1 Plaintiffs' claim rests on the risk of governmental action that is not included in the exclusion,
2 which renders it a risk that is covered. That the governmental action is related to a virus does not
3 transform the risk of governmental action into a different type of risk.

4 14. Plaintiffs seek compensatory damages, statutory damages, attorney's fees, interest,
5 and declaratory relief.

6 **II. PARTIES**

7 **A. Plaintiffs**

8 15. Plaintiff, Gentle Star Medspa Medical Corporation, is a California corporation that
9 does business as Gentle Star Medspa or "Gentle Star" with its principal place of business in San
10 Francisco, California. It operates a spa and luxury medical esthetics business with a highly
11 professional staff that includes nurse clinicians and esthetic nurses.

12 16. Plaintiff, Big City Bricks, LLC, is a California limited liability company with its
13 principal place of business in Los Angeles, California. It anticipated doing business as Parrot
14 House, to operate an event and co-working space, but construction was only 1/3 complete in
15 March 2020 and was unable to begin operating in May 2020 as planned. It also leased space to a
16 restaurant, to be run by Etti LLC (as DBA "Bacetti"), which was scheduled to begin operating in
17 April 2020 but, for the reasons described below, could not begin operating until November 2021.
18 It also leased space to Plaintiff Tilda LLC. It lost rental and business income from its own and its
19 tenant operations that are covered by Defendants.

20 17. Plaintiff, Tilda, LLC, is a California limited liability company that does business
21 as Tilda Wine, with its principal place of business in Los Angeles, California. It operates a wine
22 bar.

23 18. Plaintiff, Boulette's Larder, LLC, is a limited liability company that does business
24 as Boulette's Larder & Boulibar, with its principal place of business in San Francisco, California.
25 It operates a restaurant.

26 19. Plaintiff, Hinky Dink, LLC, is a California limited liability company that does
27 business as Last Rites, with its principal place of business in San Francisco, California. It operates
28 a bar.

1 20. Plaintiff, HMS Beagle, LLC, is a California limited liability company that does
2 business as Horsefeather, with its principal place of business in San Francisco, California. It
3 operates a restaurant.

4 21. Plaintiff, Reroute, LLC, is a California limited liability company that does
5 business as Prospect, with its principal place of business in San Francisco, California. It operates
6 a restaurant.

7 22. Plaintiff, Resendiz, Inc., is a California corporation that does business as
8 Tamarindo, with its principal place of business in San Clemente, California. It operates a
9 restaurant.

10 23. Plaintiff, SFJB Salt Minor, LLC, is a California limited liability company that does
11 business as B-Side, with its principal place of business in San Francisco, California. It operates a
12 restaurant.

13 **B. Defendants**

14 24. Farmers Group Inc. ("Farmers") is a California corporation with its headquarters
15 and principal place of business in Los Angeles, California. Farmers also does business in other
16 names including Farmers Underwriters Association, a California Corporation, and owns service
17 marks including "Farmers Insurance Group of Companies" and "Farmers Insurance Group."

18 25. Mid-Century Insurance Company is a California corporation that is a subsidiary
19 and member of Farmers Group, Inc. with its headquarters and principal place of business in Los
20 Angeles, California.

21 26. Truck Insurance Exchange is a California corporation that is a subsidiary and
22 member of Farmers Group, Inc. with its headquarters and principal place of business in Los
23 Angeles, California.

24 27. At all relevant times mentioned herein, Mid-Century Insurance Company and
25 Truck Insurance Exchange conducted business as Farmers Insurance and Farmers Group Inc.
26 through the names Mid-Century Insurance Company and Truck Insurance Exchange
27 (respectively).

1 28. At all relevant times mentioned herein, Farmers Group Inc. directed, authorized,
2 controlled, and/or participated in the conduct of Mid-Century Insurance Company and Truck
3 Insurance Exchange (to the extent any independent conduct can even be ascribed to Mid-Century
4 Insurance Company or Truck Insurance Exchange). Similarly, any acts taken by Mid-Century
5 Insurance Company and Truck Insurance Exchange were within the course, scope, and authority
6 of Farmers Group Inc.'s directions, authorizations, and controls. All actions of each Defendant
7 alleged in each cause of action into which this paragraph is incorporated by reference were
8 ratified and approved by the officers and/or managing agents of every other Defendant.

9 29. More specifically, Defendants issued policies to Plaintiffs, and corresponded with
10 them, ostensibly under the name of Mid-Century Insurance Company or Truck Insurance
11 Exchange but using the brand name(s), logo(s), office(s), equipment, and electronic and mailing
12 addresses of Farmers Group, Inc. In many cases, the correspondence appears to come from
13 Farmers rather than Mid-Century Insurance Company or Truck Insurance Exchange. The denial
14 letters sent to Plaintiffs also utilized the brand name and logos of Farmers Insurance, Inc. Those
15 letters also include farmersinsurance.com e-mail addresses and contact information throughout.

16 30. Defendants DOES 1 through 10 ("Doe Defendants") were, at all relevant times,
17 transacting or otherwise engaged in the business of insurance in or relating to the State of
18 California, and the basis of this suit arises out of said conduct. The true names and capacities of
19 the Doe Defendants, whether individual, corporate, associate, or otherwise, are currently
20 unknown to Plaintiffs, who therefore bring suit against these Defendants by their fictitious names
21 and capacities. Each of the Doe Defendants is, upon information and belief, partially or wholly
22 liable for the unlawful acts or omissions referred to herein, and for the resulting harm to
23 Plaintiffs.

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

1 **III. JURISDICTION AND VENUE**

2 32. This Court has subject matter jurisdiction over this action. Substantial conduct
3 giving rise to this action took place, in whole or in part, in the County of San Francisco,
4 California. All insurance contracts giving rise to this action concern California businesses
5 operating in California, and the claims arise from violations of California law. The amounts in
6 controversy in this action exceed the minimum jurisdictional amount of unlimited civil cases.

7 33. Venue is proper because substantial conduct giving rise to this action took place,
8 in whole or in part, in the County of San Francisco, California.

9 **IV. FACTUAL BACKGROUND**

10 **A. Plaintiffs' Insurance Policy Covers All Risks Unless Expressly Limited Or**
11 **Excluded In The Contract**

12 34. To protect their thriving businesses from interruption and other perils, Plaintiffs
13 purchased business insurance from Defendants, including loss of income, extra expense, property,
14 liability, and other coverages.

15 35. Business Income (Business Interruption) coverage is an insurance product
16 marketed and sold by Farmers, as a coverage designed to minimize the risk of financial
17 uncertainty associated with suspensions of insured business operations.

18 36. This type of insurance specifically covers and pays out benefits to policyholders to
19 allow the policyholder to pay continuing operating expenses, additional expenses incurred
20 because of the suspension of their operations, and supplement its lost-business income.

21 37. The advertised purpose of the business income and extra expense coverage was to
22 keep insureds in business following a loss or disaster. *What is Business Income Coverage,*
23 FARMERS [https://www.farmers.com/learn/insurance-questions/business-income-](https://www.farmers.com/learn/insurance-questions/business-income-coveredefinition/)
24 [coveredefinition/](https://www.farmers.com/learn/insurance-questions/business-income-coveredefinition/) (last visited Feb. 4, 2022). Farmers notably advertises that its business income
25 product “not only helps you to cover expenses needed to keep a business operating after a loss,
26 but it also helps you to replace loss revenue.”

1 38. Upon information and belief, Farmers markets and describes its Business
2 Interruption product as providing coverage when the insured business is partially or fully
3 inoperable for reasons outside the insured’s control.

4 39. With that mindset, Farmers sold, and Plaintiffs purchased, business-income
5 replacement coverage to protect against “all risks.”

6 40. Plaintiffs promptly and dutifully paid their premiums and complied with all other
7 elements of their agreements with Defendants.

8 41. Before Plaintiffs entered their agreements, Plaintiffs spoke with their insurance
9 brokers and/or agents regarding the terms of coverage.

10 42. Based on marketing materials and representations made by their insurance brokers,
11 Plaintiffs understood that they were purchasing coverage for interruptions in their business
12 operations for risks outside of their control.

13 43. Farmers’ policies are “all risks” policies, meaning these policies covers the insured
14 for any peril, imaginable or unimaginable, unless expressly limited or excluded. In the event a
15 covered peril results in physical loss or damage to Plaintiffs’ business premises or properties,
16 Farmers’ policies will pay for lost business incomes and extra expenses. Business income means
17 net income (net profit or loss) that would have been earned had no physical loss or damage
18 occurred, and continuing normal operating expenses incurred (including payroll). Extra expense
19 means the costs incurred because of the physical loss or damage—that is, those costs that would
20 have otherwise been avoided. In the event of physical loss or damage, Farmers’ policies pay for
21 both.

22 44. Specifically, the Farmers’ policies provide property coverage under the
23 Businessowners Special Property Coverage Form. The Businessowners Special Property
24 Coverage Form includes coverage for “Business Income” and “Extra Expense.”

25 45. Under the Business Income coverage, Defendants must “pay for the actual loss of
26 Business Income you sustain due to the necessary suspension of your ‘operations’ during the
27 ‘period of restoration’.”

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

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

8 48. Farmers, upon information and belief, represented that business-income coverage
9 was simple to understand. Yet it was anything but that, and the average person, to ascertain if a
10 governmental shutdown of a business was covered, would have to analyze and parse through
11 complicated and often contradictory appellate holdings.

12 49. “Direct Physical Loss of property at the described premises” is undefined by the
13 Farmers’ policies. There is no indication in the Farmers policies that this term requires a physical
14 alteration. Indeed, reading the term in context of the language used elsewhere in the Farmers
15 policies indicates the opposite is true. For example, the Farmers policies provide that Defendants
16 “will not pay for loss or damage caused directly or indirectly by” things such as nuclear reactions,
17 radioactive contamination, and the failure of power or other utility services. By stating that no
18 payment will be made for these types of losses or harms indicates that, but for the exclusion, they
19 would be losses that would otherwise be paid. Yet, none of these examples would constitute a
20 physical alteration in the sense Defendants interpret it to deny Plaintiffs benefits. This language
21 supports that position that the term “direct physical loss of property at the described premises” is
22 not limited to physical alterations.

23 50. If Farmers wanted to limit “direct physical loss” to physical alterations, it had the
24 ability to set forth that limitation on the face of the Farmers policies and it would not have needed
25 to excluded the aforementioned risks that do not constitute a direct physical loss.

26 51. The Farmers policies provide extended coverage for loss of business income from
27 dependent properties, tips, and certain orders from a civil authority. These coverages have
28 independent limits of insurance benefits.

1 52. Farmers' policies contains several other exclusions, which identify exclusions,
2 which identify risks that preclude coverage for loss or damage caused by those risks.

3 53. None of the exclusions in the Farmers' policies preclude coverage for the
4 governmental orders pursuant to which Plaintiffs suspended its business operations. The
5 governmental orders therefore constitute a covered "direct physical loss" under Farmers' policies.

6 54. Because Farmers' policies excluded the payment of benefits for several categories
7 of harm that inherently do not alter property physically, and because Defendants represented that
8 its coverage would apply if the suspension of business resulted from something outside of
9 Plaintiffs' control, Plaintiffs reasonably expected that their insured business would be covered
10 during suspensions of business for reasons outside of its control.

11 55. The language of the Farmers policies, Defendants' own marketing materials,
12 statements made by Defendants' agents, and a commonsense analysis of the coverage language,
13 indicates that Plaintiffs' inability to access or use specific property is a direct physical loss and
14 eligible for resultant business-income losses.

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

16 56. The first public reports of COVID-19 appeared on December 31, 2019, indicating
17 the outbreak of the virus in Wuhan, China.

18 57. On January 21, 2020, the first American COVID-19 case was confirmed in the
19 State of Washington. See CENTERS FOR DISEASE CONTROL, [https://www.cdc.gov/media/—
20 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).

21 58. According to news reports, shortly thereafter, by January 26, 2020, the United
22 States Centers for Disease Control ("CDC") confirmed the first COVID-19 case in California. *See*
23 CALIFORNIA DEPARTMENT OF HEALTH, [https://www.cdph.ca.gov/Programs/CID/DCDC/
24 Pages/Immunization/ncov2019.aspx](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx) (last accessed Apr. 28, 2020).

25 59. On February 26, 2020, the CDC announced the first reported California COVID-
26 19 case resulting from community spread. *See* CENTERS FOR DISEASE CONTROL,
27 <https://www.cdc.gov/media/releases/2020/s0226-COVID-19-spread.html> (last accessed Apr. 28,
28 2020).

1 60. On March 4, 2020, the first COVID-19 fatality was reported in California.

2 61. By March 13, 2020, California’s total COVID-19 case count had risen to 198
3 confirmed cases. *See* CALIFORNIA HEALTHLINE (Mar. 13, 2020),
4 <https://californiahealthline.org/morning-briefing/friday-march-13-2020/> (last accessed Apr. 28,
5 2020).

6 62. On March 13, 2020, the President of the United States declared a national
7 emergency.

8 63. Yet, throughout this entire period from December 2019 through March 13, 2020,
9 Plaintiffs did not suffer an interruption or cessation of their businesses.

10 **C. California Takes Governmental Action Forcing Plaintiffs’ Business To**
11 **Shutter**

12 64. It was when California’s state and local governments entered civil authority orders
13 beginning in March 2020 that Plaintiffs were forced to close or curtail their business operations.

14 65. As early as March 4, 2020, the Governor of the State of California, Gavin
15 Newsom, entered an order declaring “a State of Emergency to exist in California as a result of the
16 threat of COVID-19.” See State of California Executive Order N-25-20 (Mar. 4, 2020) available
17 at <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.12.20-EO-N-25-20-COVID-19.pdf>
18 (last accessed June 1, 2020).

19 66. By March 11, 2020, the World Health Organization officially recognized the
20 spread of COVID-19 as a pandemic.¹

21 67. By March 12, 2020, the Governor began ordering compliance with state and local
22 social distancing measures. The Governor further empowered the California Health and Human
23 Services Agency and the Office of Emergency Services to identify and make available hotels
24 “suitable for use as places of temporary residence or medical facilities as necessary for
25 quarantining, isolating, or treating individuals who test positive for COVID-19.”

26
27 ¹ *See* World Health Organization, *WHO Director-General’s opening remarks at the media*
28 *briefing on COVID-19 - 11March 2020* (Mar. 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

1 68. On March 15, 2020, the Governor issued guidelines calling for “profoundly
2 significant steps” to limit the spread of COVID-19. These guidelines required the self-isolation of
3 all residents 65 years of age or older and the closure of all “[b]ars, nightclubs, wineries, brew
4 pubs and the like.” @CAGovernor, TWITTER (Mar. 15, 2020, 1:45 PM)
5 <https://twitter.com/CAGovernor/status/1239291671939919872>.

6 69. The next day, on March 16, 2020, the Governor announced new directives to
7 gyms, health clubs, and movie theaters to close down. See California COVID Update,
8 FACEBOOK, <https://www.facebook.com/watch/live/?v=560533608146352&ref=watch>
9 [_permalink](#) (last accessed June 3, 2020); *see also* Perper, Rosie, California Asks All Dine-In
10 Restaurants, Gyms, and Movie Theaters to Close to Curb the Coronavirus’ Spread, BUSINESS
11 INSIDER (Mar. 16, 2020, 9:47PM), [https://www.businessinsider.com/california-closes-](https://www.businessinsider.com/california-closes-restaurants-gyms-encourages-ban-on-socialgatherings-2020-3)
12 [restaurants-gyms-encourages-ban-on-socialgatherings-2020-3](#) (last accessed Apr. 29, 2020). That
13 same day, the California Department of Public Health issued guidance reflecting Governor
14 Newsom’s remarks. See Sonia Y. Angell, MD, MPH, Coronavirus Disease 2019 (COVID-19)
15 and Retail Food, Beverage, and Other Related Service Venues (Mar. 16, 2020),
16 [https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/RetailFoodBeverageandOther)
17 [19/RetailFoodBeverageandOther](#)
[RelatedServiceVenues.aspx](#).

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

1 71. Governor Newsom’s March 19, 2020 order further directed the California
2 Department of Public Health to issue statewide public health directives regarding permissible
3 essential activities. The California of Department Health complied and identified 16 critical
4 infrastructure sectors, ordering Californians working in those 16 sectors “to continue their work
5 because of the importance of these sectors to Californians’ health and well-being.” Bars, spas,
6 salons, and dine-in restaurants were not included in these sectors.

7 72. Municipal and local governments across California have entered their own orders
8 mandating that residents shelter in place and that businesses limit or cease operations. Often these
9 municipal orders extend much further than the statewide orders, mandating more stringent
10 restrictions on the movement of people and the use or access of goods, services, and facilities.

11 73. On March 13, 2020, the SFDPH issued Order of the Health Officer No. C19-05b,
12 which “prohibits all indoor public and private gatherings and outdoor gatherings within an
13 enclosed space that has a maximum occupant load of 100 people or more anywhere in San
14 Francisco.” This order expressly includes restaurant dining rooms § 13(e–f). It was in effect for
15 three to four days (from approximately 5:00 p.m. on March 13 until March 17 at 12:01 a.m.).

16 74. On March 16, 2020, the SFDPH issued Order of the Health Officer No. C19-07,
17 which “revoke[d] and replace[d]” the March 13 Order. [https://sfgsa.org/sites/default/files/
18 Document/OrderC19-07ShelterinPlace.pdf](https://sfgsa.org/sites/default/files/Document/OrderC19-07ShelterinPlace.pdf) (last accessed March 9, 2022). The March 16 Order
19 closed all bars, nightclubs, gyms, and recreation facilities. It also states that “Restaurants and
20 cafes—regardless of their seating capacity—that serve food are *ordered closed* except solely for
21 takeout and delivery service.” It also “requires all individuals anywhere in San Francisco to
22 shelter in place—that is, stay at home—except for certain essential activities and work to provide
23 essential business.” This includes refraining from “[a]ll travel” and “[a]ll public and private
24 gatherings of any number of people occurring outside a single household” or “outside the home.”
25 As an exception to this prohibition, the March 16 Order permits travel and gathering that is
26 necessary to operate “Essential Business”, which the Order defines to include “[r]estaurants and
27 other facilities that prepare and serve food, but only for delivery or carry out.” Thus the order
28 commands that “All persons may leave their residences only for Essential Activities, Essential

1 Governmental Functions, or to operate Essential Businesses.” Even when leaving the home is
2 permissible, strict social distancing guidelines must be observed. The order provides that
3 “[v]iolation of or failure to comply with this Order is a misdemeanor punishable by fine,
4 imprisonment, or both,” and “requests that the Sheriff and the Chief of Police in the County
5 ensure compliance with and enforce this Order,” since “violation of any provision of this Order
6 constitutes an imminent threat and creates an immediate menace to public health.”

7 75. On March 31, 2020, the SFDPH issued Order of the Health Officer No. C19-07b,
8 which “supersedes” and “clarifies, strengthens, and extends certain terms of the Prior [SF] Shelter
9 Order to increase social distancing and reduce person-to-person contact to further slow
10 transmission of [COVID-19].” As concerns restaurants, the terms of the Prior SF Shelter Order
11 and the March 31 Order are substantially similar, with the March 31 Order noting that
12 “[r]estaurants, cafes, coffee shops, and other facilities that serve food—regardless of their seating
13 capacity—must remain closed except solely for takeout and delivery service”, and continuing to
14 define restaurants as Essential Businesses “only for delivery or carry out.” The March 31 Order
15 adds more stringent social distancing requirements for Essential Businesses, directing them to
16 “prepare, post, and implement a Social Distancing Protocol.” Like its predecessor, the March 31
17 Order also limits the movement and gatherings of individuals for non-essential purposes (and
18 requires social distancing at all times). It also provides that “[v]iolation of or failure to comply
19 with this Order is a misdemeanor punishable by fine, imprisonment, or both”, and further
20 provides that “violation of any provision of this Order constitutes an imminent threat and menace
21 to public health” and “constitutes a public nuisance.”

22 76. On April 29, 2020 the County of San Francisco extended the previous orders (with
23 modifications not relevant here) to May 31, 2020. They were subsequently revised and extended
24 again several more times including (but not limited to) May 17, 2020, June 11, 2020, July 13,
25 2020, July 20, 2020, August 14, 2020, and September 1, 2020. Additional related orders were
26 also issued in 2021.

1 77. On March 4, 2020, the Mayor of the City of Los Angeles (“Los Angeles”), Eric
2 Garcetti, entered an order declaring the existence of a local emergency in light of the COVID-19
3 crisis. *See* Los Angeles Order dated March 4, 2020.

4 78. On March 12, 2020, Los Angeles entered an order postponing or cancelling,
5 among other things, all nonessential public community events or group activities that require
6 close contact among fifty or more participants, and all like events requiring close contact of any
7 vulnerable persons. *See* Los Angeles Order dated March 12, 2020.

8 79. On March 15, 2020, following the Governor’s lead, Los Angeles entered an order
9 “to slow the pace of community spread and avoid unnecessary strain on our medical system.” The
10 order mandated the following:

11 All restaurants and retail food facilities in the City of Los Angeles
12 shall be prohibited from serving food for consumption on premises. Restaurants and retail food facilities may continue to operate for
13 purposes of preparing and offering food to customers via delivery service, to be picked up or for drive-thru. For those establishments
14 offering food pick-up options, proprietors are directed to establish social distancing practices for those patrons in the queue for pick-
15 up.

16 The order further mandated the closure of all bars and nightclubs that do not serve food,
17 and the closure of all theaters, live performance venues, bowling alleys, arcades, and gyms and
18 fitness centers. The order was made enforceable by misdemeanor prosecution under Los Angeles
19 Administrative Code Section 8.77 by fine, imprisonment, or both. *See* Los Angeles Order dated
20 March 15, 2020.

21 80. Los Angeles followed on March 19, 2020 with the “Safer at Home” order
22 imposing sweeping restrictions on a wide variety of business and personal activities. The Safer at
23 Home order was issued “because, among other reasons, the COVID-19 virus can spread easily
24 from person to person and it is physically causing property loss or damage due to its tendency to
25 attach to surfaces for prolonged periods of time.” *See* Los Angeles Order dated March 19, 2020.

26 81. The Safer at Home order required all persons living in Los Angeles to remain in
27 their homes; all businesses in Los Angeles to cease operations requiring in-person attendance by
28 workers at a workplace; all public and private gatherings of any number of people outside any

1 residence to cease occurring; and the suspension of all travel. These restrictions were made
2 subject to enumerated exceptions for certain defined “essential” activities. Failure to comply with
3 the order constituted a misdemeanor subject to fines and imprisonment, and the Los Angeles
4 Police Department and the City Attorney were urged “to vigorously enforce” the order.
5 Noncompliant businesses were subject to having their water and power shut off by municipal
6 authorities.

7 82. The Safer at Home order also imposed additional social distancing protocols on a
8 wide variety of businesses and other facilities. These protocols required, among other things:

9 a. limiting the number of people who may enter into a facility at any one time
10 to ensure that people in the facility can easily maintain, at all times, a minimum six-foot distance
11 from others;

12 b. designating where lines may form at a facility, marking six-foot increments
13 at a minimum, establishing where individuals should stand to maintain adequate social distancing;

14 c. providing hand sanitizer, soap and water, or effective disinfectant at or near
15 the entrance of the facility and in other appropriate areas;² for use by the public and employees;²

16 d. posting a sign in a conspicuous place at all public entries that instructs
17 members of the public to not enter if they are experiencing symptoms of respiratory illness,
18 including fever or cough, and to maintain social distancing from one another;

19 e. disinfecting regularly high-touch surfaces, including, without limitation all
20 payment portals, pens, and styluses after each use. Businesses engaged in essential activities and
21 essential infrastructure were encouraged to offer touch-less payment mechanisms, if feasible;

22 f. adhering to communicable disease control recommendations provided by
23 the Los Angeles County Department of Public Health, including guidance for cleaning and
24 disinfecting the site.

25 The Safer at Home order further encouraged the installation of plexiglass inside all retail

26 _____
27 ² Pursuant to guidance issued by the Los Angeles County Department of Public Health, the
28 sanitizer provided must be comprised of at least 60% alcohol. See COUNTY OF LOS ANGELES
PUBLIC HEALTH, [http://www.publichealth.lacounty.gov/media/Coronavirus/docs/food/
GuidanceFoodFacilities.pdf](http://www.publichealth.lacounty.gov/media/Coronavirus/docs/food/GuidanceFoodFacilities.pdf) (last accessed May 1, 2020).

1 businesses to separate cashiers and customers at points of sale.

2 83. The Safer at Home order further closed all “park facilities” to the public, including
3 the Venice Boardwalk (except as necessary to travel to an essential business).

4 84. The Los Angeles County Department of Public Health also issued “Guidance for
5 Food Facilities” prohibiting product sampling. *See* COUNTY OF LOS ANGELES PUBLIC
6 HEALTH, [http://www.publichealth.lacounty.gov /media/Coronavirus/docs/food/GuidanceFood](http://www.publichealth.lacounty.gov/media/Coronavirus/docs/food/GuidanceFoodFacilities.pdf)
7 [Facilities.pdf](http://www.publichealth.lacounty.gov/media/Coronavirus/docs/food/GuidanceFoodFacilities.pdf) (last accessed May 3, 2020).

8 85. Orange county officials and health authorities issued similar orders including (but
9 not limited to) the County of Orange Public Health’s “Stay at Home” Order and amended orders
10 issued on and around March 18, 2020. *See* [https://web.archive.org/web/20200330002659](https://web.archive.org/web/20200330002659/https://ocCOVID19.ochealthinfo.com/oc-health-officers-orders-0)
11 [/https://ocCOVID19.ochealthinfo.com/oc-health-officers-orders-0](https://ocCOVID19.ochealthinfo.com/oc-health-officers-orders-0) (last accessed March 9, 2022).

12 86. Since March of 2020, there have been numerous governmental orders impacting
13 Plaintiffs’ businesses to varying degrees. Each of these successive orders has restricted the
14 manner in which Plaintiffs have been permitted to operate its business and use its property.

15 87. Plaintiffs have sustained, and continues to sustain, losses as a result of following
16 state, county, and city orders as well as industry standards set by regulatory agencies and
17 city/local municipalities.

18 **D. Defendants Deny Plaintiffs’ Insurance Claims**

19 88. In light of the foregoing governmental orders, circumstances well outside of
20 Plaintiffs’ control, they had to cease and/or limit their business operations. Plaintiffs submitted
21 claims for related business losses and extra expenses.

22 89. Plaintiffs understood that they were entitled to coverage based on the description
23 of coverage provided by their Farmers agents and/or brokers and because of the nature of the
24 exclusions from payments for losses that inherently do not involve alteration of the physical
25 property in the way Defendants construe the term.

26 90. Defendants denied Plaintiffs’ claims and made clear that they would categorically
27 deny all claims in any way related to Coronavirus.

1 91. In reaching its denial decisions, Defendants conducted no investigation into the
2 representations that were made to Plaintiffs regarding coverage. Defendants often made no
3 attempt to communicate with Plaintiffs from the time that Plaintiffs filed their claims and the time
4 Defendants informed Plaintiffs denials were forthcoming and did not attempt to view the covered
5 premises. Where they did ask for additional information, the questions were not material to
6 coverage, which Defendants had already decided to decline and which they communicated to
7 Plaintiffs would be denied.

8 92. Plaintiffs followed the requirements and guidance of all governmental orders
9 described herein, resulting in the curtailment or complete closure of its business operations.

10 93. The responsive measures taken to comply with the governmental orders included:
11 (1) complete closure of the business during multiple different periods; (2) installing plexiglass;
12 (3) installing barriers to ensure social distancing; (4) applying corrosive chemicals to all surfaces;
13 (5) installing UV lights to kill germs; (6) installing air purifiers throughout the premises;
14 (7) adding hand sanitizing stations throughout the premises; and (8) installing drive-through
15 intercom system and modifying the facility with new takeout window. Some businesses like
16 Gentle Star and Big City Bricks LLC also had to invest in six commercial grade HEPA filters and
17 modifications of HVAC systems.

18 94. Additionally, Plaintiffs were prohibited from offering several of their businesses’
19 standard services. For instance, saunas and customer relaxation remain closed and relevant
20 business area no longer able to offer more than one treatment to a single customer during one
21 visit. Other businesses were no longer able to offer catering, facial skin treatment, or other
22 services that are not permitted or feasible under governmental orders.

23 95. These denials were wrong. The governmental action affecting Plaintiffs’
24 properties—executive orders that directly or indirectly limit direct physical access to or use of
25 Plaintiffs’ real property and business equipment—has caused a loss of income and an increase in
26 expense. This risk—governmental action that does not destroy or seize property—is nowhere
27 limited or excluded in Farmers’ policies.

1 96. Extended business closures were not inevitable. During this same time period,
2 countries like Sweden merely prohibited events with more than 50 attendees and developed other
3 policy responses that did not require large scale restaurant or business closures.³ Similarly,
4 businesses remained open or re-opened earlier in South Korea, Taiwan, Singapore, and in even
5 harder-hit European countries like Germany, the Czech Republic, and Austria.⁴ Moreover,
6 businesses were increasingly open in 2021 and 2022 even at times when Coronavirus infection
7 rates were significantly higher than they were during relevant parts of 2020. This underscores that
8 the Coronavirus did not cause business interruptions and closures in the United States;
9 government policies did.

10 **E. Improper Application Of The Virus Exclusion**

11 97. In denying coverage, Defendants cited the virus exclusion in its policies as a
12 secondary basis for its denial.

13 98. The virus exclusion precludes coverage for losses resulting from the physical
14 presence of a virus/bacteria on the insureds' premises. Even if this were not the case, Defendants
15 did not inspect the covered premises—and therefore has no support one way or the other about
16 the presence of COVI-19—before improperly applying the virus exclusion to deny Plaintiffs'
17 claims.

18 99. Plaintiffs' claims are based on the loss of their ability to use, access, and maintain
19 their business properties due to governmental orders, not because there was a virus on the
20 properties.

21 100. Defendants' application of the virus exclusion to deny coverage is wrong.

23 ³ See James Asquith, "No Lockdowns In Sweden As Stockholm Remains Open – Parks and
24 Open-Air Museums Operating," *Forbes* (April 4, 2020), available at
25 <https://www.forbes.com/sites/jamesasquith/2020/04/04/no-lockdowns-in-sweden-as-stockholm-remains-open-parks-and-open-air-museums-operating/#6535278b707a> (last visited April 28,
2020).

26 ⁴ See Beech, *supra*; Rick Noack et al., "Nations credited with fast response to coronavirus are
27 moving to gradually reopen businesses," *The Washington Post* (April 20, 2020), available at
28 <https://wapo.st/2VLQZxm> (last visited April 22, 2020); Luke Harding, "Germany opens some shops as Merkel warns of second wave of coronavirus," *The Guardian*, April 20, 2020, available at <https://www.theguardian.com/world/2020/apr/20/german-shops-open-angela-merkel-warns-second-wave-coronavirus> (last visited April 22, 2020).

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**
3 **Declaratory Relief**

4 101. Plaintiffs re-allege and incorporate by reference into this cause of action each and
5 every allegation set forth in paragraphs 1 through 100 of this Complaint.

6 102. Plaintiffs bring this cause of action seeking a declaration that Defendants violated
7 California state law and the insurance contracts for Defendants to ignore the narrow nature of the
8 governmental-action exclusion and to adopt a narrow interpretation of what must cause a
9 suspension of business. Defendants' policies requires that a "suspension" be caused by "direct
10 physical loss of or damage to property at the described premises."

11 103. Defendants' interpretation that the requirement of "physical loss" is not satisfied
12 by losing physical access or use and quiet enjoyment of Plaintiffs' properties is wrong. The
13 undefined phrase "direct physical loss" is reasonably construed to mean the direct loss of the
14 ability to physically access or use property. Losing the ability to access or use one's property is a
15 loss of physical, material rights and advantages, substantial and important. Considering that:
16 (1) Farmers markets its product as covering all suspensions of business due to circumstances
17 outside of the insured's control, (2) its policies excludes payment for losses that inherently do not
18 involve alteration of the physical property, (3) ambiguous language drafted by the insurer should
19 ordinarily be construed against the drafter, and (4) that Plaintiffs' interpretation is supported by
20 dictionary definitions of the terms, coverage should be afforded.

21 104. Under the Business Income coverage, Defendants must "pay for the actual loss of
22 Business Income you sustain due to the necessary suspension of your 'operations' during the
23 'period of restoration.'"

24 105. Under the Extra Expense coverage, Defendants must pay the "necessary Extra
25 Expense you incur during the 'period of restoration' that you would not have incurred if there had
26 been no direct physical loss or damage to property at the described premises."

27 106. Farmers' policies do not define the term "suspension." According to the
28 Randomhouse Unabridged Dictionary, the term means "temporary abrogation or withholding, as

1 of a law, privilege, decision, belief, etc.” *See Suspension*, RANDOMHOUSE UNABRIDGED
2 DICTIONARY, available at <https://www.dictionary.com/browse/suspension> (last accessed May
3 25, 2020).

4 107. Under Farmers’ Policies, “‘Operations’ means your business activities occurring at
5 the described premises.”

6 108. Under Farmers’ Policies, “Period of restoration” for Business Income coverage
7 means the period of time that begins 72 hours after the time of direct physical loss, and for Extra
8 Expense coverage means the period of time that begins at the time of direct physical loss.

9 109. Additionally, under Business Income and Extra Expense coverage, the loss or
10 damage must be caused by “direct physical loss.”

11 **A. Loss Of Access Or Use Constitutes Direct Physical Loss**

12 110. Farmers’ policies do not define the phrase “direct physical loss.”

13 111. There is no indication in Farmers’ policies that this term requires a physical
14 alteration and the representations made by Farmers agents and in marketing materials create a
15 reasonable expectation of broad coverage that would help an insured cover operating expenses
16 while its business is closed or after a loss.

17 112. Common usage of the words in the phrase “direct physical loss” dictates that
18 ouster and prohibition/interdiction of access and use by insureds and others (agents, tenants,
19 customers, etc.) are physical losses. Such losses are direct in that ouster of and
20 prohibition/interdiction of access and use by all nonessential people results directly in a physical
21 loss.

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

1 114. Additionally, Farmers’ policies excludes payment for losses caused by nuclear
2 radiation, governmental seizure of property, and the failure of power or other utility services. By
3 stating that no payment will be made for these types of losses or harms indicates that, but for the
4 exclusion, they would be losses that would otherwise be paid. Yet, none of these examples would
5 constitute a physical alteration in the sense Defendants interprets it to deny Plaintiffs benefits.
6 This language supports that position that the term “direct physical loss of property at the
7 described premises” is not limited to physical alterations.

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

11 **B. Governmental Action Resulted In Plaintiffs’ Loss Of Use Or Access To The**
12 **Premises And Business Personal Property, A Non-Excluded Direct Physical**
13 **Loss**

14 116. Coverage under the “all risks” Policy is provided for any risk of direct physical
15 loss unless expressly limited or excluded.

16 117. One risk addressed in the Paragraph B exclusions is governmental action. *See*
17 Form BP 00 02 01 97, Paragraph B.1.c.

18 118. By recognizing governmental action in the Paragraph B exclusions, Farmers’
19 policies confirms governmental action as a risk of direct physical loss and a Covered Cause of
20 Loss.

21 119. Farmers’ policies excludes some but not all governmental action from coverage.
22 Its policies excludes coverage for governmental orders requiring seizure and destruction only.
23 Specifically, this provision excludes any loss or damage caused directly or indirectly by
24 governmental action that consists of seizure or destruction of property by order of governmental
25 authority unless the destruction was done to prevent the spread of a fire. As ordinarily used,
26 “seizure” means “taking possession of person or property by legal process.” The provision
27 excludes no other governmental action from coverage (i.e., governmental orders not seeking
28 seizure or destruction).

1 120. The governmental orders affecting Plaintiffs’ property do not require seizure or
2 destruction because the government did not destroy the property of Plaintiffs or take physical
3 possession of, or title to, such property. Instead, the orders limit access to and use of covered
4 property at the premises described in policy declarations.

5 121. Farmers’ policies do not exclude the governmental action described herein.

6 122. The business-income losses, extra expenses, and other losses sustained by
7 Plaintiffs were caused by or resulted from the aforementioned governmental orders, a Covered
8 Cause of Loss.

9 123. Farmers’ policies further requires that the business-income losses be incurred
10 because of the necessary suspension of operations during the period of restoration. Plaintiffs
11 suffered losses because of suspension of operations during the period of restoration.

12 124. The direct loss of physical access to and use of the premises listed in the
13 Declarations, and business property thereon, for tenants and their vendors, agents, employees, and
14 customers caused the suspension of the operations by the Plaintiff.

15 125. Because Farmers’ policies covers all risks, including governmental action that, for
16 the good of the public, does no more than limit physical access to and use of property (real and
17 personal), coverage is required.

18 126. The governmental action affecting Plaintiffs’ property—executive orders that
19 directly or indirectly limit direct physical access to Plaintiffs’ real and personal property—has
20 caused a loss of income and an increase in expense, exactly the “outside force” that interrupts
21 business and causes insureds to close their doors for a period of time, that requires that capital
22 continue to flow to keep the business afloat and to help replace lost income and pay expenses
23 such as salaries and mortgages. This governmental action is precisely the unexpected jolt that
24 motivates the purchase of insurance.

25 **C. No Other Exclusions Apply To Preclude Coverage**

26 127. No other applicable exclusions or limitations apply to preclude coverage for the
27 direct physical losses caused by or resulting from the governmental action described herein. *See*
28 Paragraph B, Form BP00090197.

1 128. The existing virus exclusion is inapplicable because Plaintiffs’ losses were caused
2 by governmental action, not the physical presence of the virus on the covered premises. The
3 exclusion only applies to viruses/bacteria physically present on the insured premises.

4 129. Defendants conducted no investigation and has no evidence to satisfy its burden of
5 showing the physical presence of a virus on the insured properties, which is required when
6 asserting an exclusion. Defendants denied the claim without investigating the property.

7 130. Coverage begins at the time of governmental action. Plaintiffs’ properties were
8 subject to governmental orders in California that did not seek to seize or destroy their properties.
9 The governmental orders do not constitute governmental seizures because at no point did any
10 governmental entity in California take physical possession of the properties or legal title to the
11 properties. The orders properly exercised the police powers of their respective state and local
12 governments to protect public health, affecting Plaintiffs’ properties, which caused a loss of the
13 ability to physically access and use the insured properties.

14 131. Under each successive order, Plaintiffs’ properties were limited to the minimum
15 necessary operations or required closure. The governmental action also prohibited, via stay-at-
16 home orders or travel restrictions, all nonessential movement by all residents. These
17 governmental orders resulted in losing physical access to and physical use and enjoyment of
18 Plaintiffs’ properties by their owners, customers, vendors, employees, and others.

19 132. Nor does the provision entitled “Consequential Losses” that excludes “Delay, loss
20 of use or loss of market” preclude coverage.

21 133. Consequential damages are special or indirect damages. Put differently,
22 consequential damages are “[l]osses that do not flow directly and immediately from an injurious
23 act but that result indirectly from the act. — Also termed *indirect damages*.” See *Consequential*
24 *Damages*, Black’s Law Dictionary (11th ed. 2019) (emphasis in original).

25 134. The exclusion for “loss of use” therefore applies only if that “loss of use” is itself
26 consequential. That is not the case here. The insured-against peril—governmental action—
27 resulted directly and immediately in Plaintiffs’ physical loss of access or use.

1 144. Despite their policies affording coverage, Defendants deny the policies affords
2 coverage and denied coverage to Plaintiffs.

3 145. In addition, Defendants has uniformly taken the position, without seeking
4 independent coverage advice or investigating representations made to its insureds, that their
5 policies' language does not afford coverage where governmental action limited or prohibited
6 certain use, access, and deployment of insureds' property and that such claim would, as a
7 business practice, be denied. Defendants' entire decision was rendered based on its reading of the
8 contract language, and not by any specifics relating to each insured (as no investigation occurred
9 here). By making its decision known, Defendants have anticipatorily breached the contracts.

10 146. Defendants' failures to affirm coverage and pay benefits breach the contract and
11 represent a systematic failure to pay the benefits required by the contract.

12 147. As a result of Defendants' breach of contract, Plaintiffs have suffered and will
13 continue to suffer monetary losses, and without prompt relief will be forced to shutter
14 indefinitely.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs prays for the following judgment:

- 17 a. Declaratory relief as described herein;
- 18 b. An Order finding Defendants to have breached their insurance agreements
19 with Plaintiffs;
- 20 c. Compensatory damages;
- 21 d. An award of attorney's fees and costs, as provided by law and/or as would
22 be reasonable from any recovery of monies recovered for or benefits bestowed upon Plaintiffs;
- 23 e. Pre- and post-judgment interest at the highest rate allowed by law; and
- 24 f. For such other and further relief as the Court may deem just and proper.

25 **JURY TRIAL DEMAND**

26 Plaintiffs demand a trial by jury.

27

28

1 Dated: March 15, 2022



2
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