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7 *Cava, and others similarly situated,*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10 SHUSHA, INC. DBA LA CAVA, a
California corporation and others similarly
11 situated,

12 *Plaintiff,*

13 v.

14 CENTURY-NATIONAL INSURANCE
COMPANY, a California corporation, DOES
15 1 through 20,

16 *Defendant.*

Civil Action No:

COMPLAINT FOR:

- (1) **DECLARATORY JUDGMENT**
- (2) **BREACH OF CONTRACT**
- (3) **BREACH OF IMPLIED
COVENANT OF GOOD FAITH
AND FAIR DEALING**
- (4) **UNFAIR BUSINESS PRACTICES
UNDER BUS. & PROF. CODE §
17200, ET SEQ.**

17 **[Demand for Jury Trial]**

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COMPLAINT

1 Plaintiff Shusha, Inc. dba La Cava (“Plaintiff”), by its attorneys Hecht Partners LLP,
2 individually and on behalf of all others similarly situated, for its complaint against defendant
3 Century-National Insurance Company (“Defendant” or “Century-National”), alleges as follows:

4 **I. NATURE OF ACTION**

5 1. This is an action to recover Business Income insurance coverage owed by
6 Defendant Century-National under a policy it issued to Plaintiff. Plaintiff, like thousands of
7 restaurateurs in Los Angeles, and indeed across the United States, was forced to close its doors
8 to sit-down service as a result of government quarantining orders relating to the novel coronavirus
9 pandemic.

10 2. Business Income coverage is an optional insurance benefit available to businesses
11 to minimize their risk and sustain them when a suspension of business operations causes a loss
12 of business income. This coverage allows businesses to pay continuing operating expenses and
13 additional expenses incurred because of the suspension, and to supplement their lost business
14 income.

15 3. Plaintiff paid for this coverage to protect itself against a situation like this one: a
16 closure of its business imposed on it through no fault of its own. As California Insurance
17 Commissioner Ricardo Lara stated in a notice on April 14, 2020 to all admitted and non-admitted
18 insurance companies in California, “Many small and large California businesses purchase
19 Business Interruption insurance to protect against the loss of income and other losses caused by
20 an interruption to the normal operations of the business” (Exhibit A).

21 4. Yet instead of providing the support it bargained for, Defendant has chosen to
22 issue blanket denials to all of its insureds affected by the closures without so much as an
23 investigation. Plaintiff now seeks to vindicate its rights under the Policy, and those of similarly-
24 situated businessowners thrust into the cold by Defendant.

25 **II. JURISDICTION AND VENUE**

26 5. This is a class action brought pursuant to Section 382 of the California Code of
27 Civil Procedure. The damages sought exceed the minimal jurisdictional limits of this Court and
28 will be established at trial.

1 6. This Court has personal jurisdiction over Defendant because Defendant does
2 business in the State of California and has availed itself of the laws of the State of California.

3 7. Venue is proper in this Court because, upon information and belief, Plaintiff
4 operates a restaurant in Los Angeles County.

5 **III. PARTIES**

6 8. Plaintiff is, and at all relevant times was, a California corporation, with its
7 principal place of business in Los Angeles, California.

8 9. Plaintiff operates a restaurant known as La Cava in the Sherman Oaks
9 neighborhood of the City of Los Angeles. La Cava is a family-style restaurant that serves food
10 and alcoholic beverages.

11 10. Defendant is a California corporation with its principal place of business in the
12 County of Los Angeles.

13 11. Plaintiff is ignorant of their names but is informed and believes, and based
14 thereupon alleges, that each of the defendants designated herein as a DOES 1 through 20, was
15 responsible negligently, wrongfully, or in some other actionable manner, for the events and
16 happenings herein referred to which proximately caused the damages to Plaintiffs as hereinafter
17 alleged, either through said Defendant's own negligence or through the conduct of its agents,
18 servants, employees or representatives in some other manner.

19 12. Plaintiff is further informed and believes and thereupon alleges that at all times
20 mentioned herein the Defendants and each of them were the agents, servants, employees,
21 representatives and/or joint venturers of their co-defendants and were as such acting within the
22 course, scope and authority of said agency, services, employment, representation and/or joint
23 venture in that each and every defendant, as aforesaid when acting as principal, was negligent in
24 the selection and hiring of each and every other defendant as an agent, servant, employee,
25 representative and/or joint venturer.

26 13. Plaintiff is further informed and believes and based thereupon alleges that at all
27 times mentioned herein each of the defendants, including Defendant DOES 1 through 20,
28 inclusive, and each of them, were the agents, servants, employees, representatives of each of the

1 remaining defendants and were at all times material hereto acting within the authorized course
2 and scope of said agency, service, employment and/or representation, and/or that all of said acts,
3 conduct and omissions were subsequently ratified by their respective principals and the benefits
4 thereof accepted by such principals.

5 **IV. INSURANCE**

6 14. Plaintiff purchased, timely paid all premiums for, and performed all duties
7 required of it to be performed under an “Business Owner’s” commercial property and general
8 liability insurance policy issued by Defendant, Policy No. 77A3002491-06 (the “Policy”). The
9 Policy provides coverage for the loss of business income due to the necessary suspension of
10 business operation caused by physical loss of or damage to the premises. “Suspension” is defined
11 to include a partial slowdown of business. All risks of physical loss or damage are covered unless
12 specifically and unambiguously excluded. Stated differently, all non-excluded perils are covered.
13 A true and correct copy of the Policy is attached hereto as Exhibit B.

14 15. In exchange for payment of the premiums Defendant agreed to provide the
15 insurance coverage described in the Policy. The premium totaled \$5,249.00.

16 16. All risks of physical loss or damage are covered under the Businessowner’s Policy
17 unless expressly subject to one of the Policy’s exclusions or limitations. Stated differently, all
18 non-excluded perils are covered.

19 17. The Policy provides coverage from November 22, 2019 to November 22, 2020
20 (Exhibit B).

21 18. The Policy provides coverage for, among other things, the loss of business income
22 due to the necessary suspension of business operation caused by physical loss of or damage to
23 the premises.

24 19. The “Business Income (and Extra Expense) Coverage Form” (the “Business
25 Income Form”) is one of the coverage forms stated in the commercial property insurance portion
26 of the Policy (Exhibit B).

27 20. The Policy provides “Business Income (and Extra Expense)” coverage for up to
28 twelve months following the date of loss.

1 21. Specifically, Section A.1. of the Business Income Form provides in relevant part
2 that:

3 We will pay for the actual loss of Business Income you sustain due to the
4 necessary "suspension" of your "operations" during the "period of restoration."
5 The "suspension" must be caused by direct physical loss of or damage to property
6 at premises which are described in the Declarations and for which a Business
7 Income Limit of Insurance is shown in the Declarations. The loss or damage must
8 be caused by or result from a Covered Cause of Loss. (Exhibit B, Business Income
9 Form, § A.1).

10 22. "Suspension" is defined in the Policy to include a "slowdown or cessation of your
11 business activities." (Exhibit B, Business Income Form, § F.6.a) California case law holds that
12 "suspension" means a suspension of all business absent a contrary definition, but given this
13 provision that case law does not seem relevant.

14 23. With the closure of its restaurant on the order of the Mayor and Governor, Plaintiff
15 suffered a direct physical loss of or damage to its properties causing a "suspension" of its
16 "operations," as those terms are defined in the Policy.

17 24. In addition, Section A.5.a of the Business Income Form, "Civil Authority"
18 provides in relevant part that:

19 We will pay for the actual loss of Business Income you sustain and necessary Extra
20 Expense caused by action of civil authority that prohibits access to the described
21 premises due to direct physical loss of or damage to property, other than at the
22 described premises, caused by or resulting from any Covered Cause of Loss.
23 (Exhibit B, Business Income Form, § A.5.a.)

24 **V. FACTUAL BACKGROUND**

25 **A. The COVID-19 Pandemic Begins, But Does Not In Itself Cause Plaintiff To
26 Suspend Operations.**

27 25. The novel coronavirus originated in China in late 2019, spread to Europe, and
28 eventually came to the United States.

29 26. It has been widely reported that the novel coronavirus, and COVID-19, the illness
30 it causes, have their origins in Wuhan, China. The first public reports were on December 31,
31 2019 of an "outbreak of respiratory illness."

1 27. By January 8, 2020, the United States Centers for Disease Control and Prevention
2 (“CDC”) issued warnings to American travelers going to China for a “pneumonia of unknown
3 etiology” (<https://emergency.cdc.gov/han/han00424.asp>, last accessed May 19, 2020).

4 28. Starting January 17, 2020, the CDC and the United States Department of
5 Homeland Security’s Customs and Border Protection implemented enhanced health screenings
6 for passengers who came from or connected through Wuhan, China
7 (<https://www.cdc.gov/media/releases/2020/p0117-coronavirus-screening.html>, last accessed
8 May 19, 2020).

9 29. On January 20, 2020, the W.H.O. reported the first confirmed cases outside
10 mainland China in Japan, South Korea and Thailand
11 (<https://www.nytimes.com/article/coronavirus-timeline.html>, last accessed May 19, 2020). The
12 following day, on January 21, 2020, the first American COVID-19 case was confirmed in the
13 State of Washington ([https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-
14 travel-case.html](https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html), last accessed May 19, 2020).

15 30. According to news reports, shortly thereafter, by January 26, 2020, the CDC
16 confirmed the first COVID-19 case in California
17 ([https://web.archive.org/web/20200128205456/https://www.cdph.ca.gov/Programs/CID/DCDC
18 /Pages/Immunization/ncov2019.aspx](https://web.archive.org/web/20200128205456/https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx), last accessed May 19, 2020).

19 31. On January 30, 2020, the W.H.O declared a “public health emergency of
20 international concern.” The following day, on January 31, 2020, certain travel from China to the
21 United States was blocked.

22 32. Although COVID-19 was present in California by late January 2020, all
23 businesses and restaurants, including Plaintiff’s, were allowed to remain open throughout
24 February and the first half of March.

25 33. During February, COVID-19 began spreading rapidly throughout Europe, with
26 Italy initially becoming the most impacted country. That same month, an increasing number of
27 cases were being reported in the United States, with the largest concentration of cases in the
28 Seattle area of Washington State. The first cluster of COVID-19 cases was reported at a nursing

1 home in Kirkland, Washington in late February, where the first COVID-19 death was announced
2 on February 28, 2020.

3 34. COVID-19 also continued to spread throughout California during February 2020.
4 In early February, several COVID-19 cases were announced in Northern California. During
5 February, the number of reported COVID-19 cases in California increased. On February 26,
6 2020, the CDC announced the first reported California COVID-19 case resulting from
7 community spread (<https://www.cdc.gov/media/releases/2020/s0226-Covid-19-spread.html>, last
8 accessed May 19, 2020).

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

10 36. As COVID-19 cases continued to increase in certain areas of the United States,
11 on March 4, 2020 Congress passed emergency funding of \$8.3 billion to aid in the immediate
12 health response to COVID-19.

13 37. On March 11, 2020, travel from Europe to the United States was restricted, and
14 the W.H.O. declared COVID-19 a pandemic.

15 38. On March 13, 2020, the President of the United States declared a national
16 emergency.

17 39. Throughout this entire period, from December 2019 until March 15, 2020,
18 Plaintiff had not suffered an interruption of its thriving business despite the pandemic.

19 **B. Orders of the State of California and City of Los Angeles Force Plaintiff to**
20 **Close Its Doors, Resulting in a Suspension of Business.**

21 40. On March 15, 2020, more than ten weeks after the first reported COVID-19 case,
22 Los Angeles Mayor Eric Garcetti limited social interactions by issuing a “Public Order under
23 City of Los Angeles Emergency Authority” (the “March 15, 2020 Order,” attached as Exhibit C)
24 effective at midnight that evening which, among other things, prohibited restaurants from serving
25 individuals food and alcohol on their premises where individuals would not be socially distanced:

26 3. All restaurants and retail food facilities in the City of Los Angeles
27 shall be prohibited from serving food for consumption on premises.

28 Restaurants and retail food facilities may continue to operate for

1 purposes of preparing and offering food to customers via delivery
2 service, to be picked up or for drive-thru. For those establishments
3 offering food pickup options, proprietors are directed to establish
4 social distancing practices for those patrons in the queue for pick-
5 up (Exhibit C).

6 41. On March 19, 2020, governor of the State of California Gavin Newsom, issued
7 an order requiring residents to stay in their homes (the "Stay at Home Order"). (See Exhibit D).
8 Mayors of cities throughout California, including Los Angeles, issued similar stay-at-home
9 orders all of which required restaurants to close to in-person dining (See Exhibit E). (Exhibits C
10 through E shall be referred to collectively herein as the "Orders").

11 42. The Orders effectively caused the loss of business income from Plaintiff's
12 restaurant and others similarly situated, by excluding individuals from on-premises dining, and
13 caused a "suspension" of its "operations," as those terms are defined in the Policy.

14 43. After imposition of the Orders, Plaintiff suspended all operations until April 1,
15 2020, at which time its restaurant reopened for take-out and delivery only, severely restricting its
16 ability to serve customers and drastically reducing its income.

17 44. On May 30, 2020, restaurants were permitted to serve customers on-site but only
18 with modifications restricting individuals' distances resulting in limited capacity seating. The
19 City has since reinstated the ban on indoor dining. Accordingly, Plaintiff's restaurant continues
20 to lose income as a result of non-use.

21 **C. Plaintiff Submits Its Insurance Claim and Defendant Denies It Without**
22 **Justification or Proper Investigation.**

23 45. Engaging in the business of insurance in California imposes upon insurers the
24 legal obligation to promptly conduct fair, balanced and thorough investigations of all bases of
25 claims for benefits made by their insureds, with a view toward honoring the claims. As part of
26 these obligations, an insurance company is obligated to diligently search for and consider
27 evidence that supports coverage of the claimed loss, and in doing so must give at least as much
28 consideration to the interests of its insured as it gives to its own interests.

1 46. During the COVID-19 Pandemic, Commissioner Lara issued a notice after the
2 California Department of Insurance “ha[d] received numerous complaints from businesses,
3 public officials, and other stakeholders asserting that certain insurers, agents, brokers, and
4 insurance company representatives [we]re attempting to dissuade policyholders from filing a
5 notice of claim under its Business Interruption insurance coverage, or refusing to open and
6 investigate these claims upon receipt of a notice of claim” (Exhibit A, p. 1, emphasis added).

7 47. The Commissioner’s notice reminded insurers facing these claims of the
8 importance of complying with their obligations, citing the California Fair Claims Settlement
9 Practices Regulations (Cal. Code Regs., tit. 10, §§ 2695.1 et seq. (“Regulations”)). His notice
10 went on to state, “Therefore, Insurance Commissioner Ricardo Lara finds it necessary to issue
11 this Notice to ensure that all agents, brokers, insurance companies, and other licensees accept,
12 forward, acknowledge, and fairly investigate all business interruption insurance claims submitted
13 by businesses” (Exhibit A, p. 1-2, emphasis added). The Commissioner stated that “every insurer
14 is required to conduct and diligently pursue a thorough, fair, and objective investigation of the
15 reported claim” (Id. at 2).

16 48. Amongst other information provided to insurers, the Commissioner further
17 reminded them that “[i]f the claim is denied in whole or in part, the insurer is required to
18 communicate the denial in writing to the policyholder listing all the legal and factual bases for
19 such denial. (Regulations, § 2695.7(b)(1).) Where the denial of a first party claim is based on a
20 specific statute, applicable law or policy provision, condition, or exclusion, the written denial
21 must include reference to and provide an explanation of the application of the statute, applicable
22 law, or policy provisions, condition, or exclusion to the claim...Regulations, § 2695.7(b)(1)”
23 (Exhibit A, p. 3, emphasis added).

24 49. Consistent with all of these well-established and non-controversial California
25 insurance claims handling standards, Plaintiff had the right to rely on Defendant to handle its
26 insurance claim for business income losses in a manner consistent with these standards of good
27 faith and fair dealing.

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1 50. Upon suspending its operations beginning March 16, 2020, on March 18, 2020,
2 Plaintiff submitted a claim to Defendant via telephone for the income lost as a result of the virus
3 and related Orders.

4 51. In making its claim, Plaintiff did not limit its claim to any particular insuring
5 agreement. Rather, Plaintiff sought coverage under the Policy for whichever insurance(s) would
6 apply to its situation.

7 52. On April 9, 2020, Defendant responded by letter denying coverage on the grounds
8 that (1) there was no physical loss or damage to the covered premises, and (2) the civil order did
9 not prohibit access to the covered premises or result from a physical loss or damage to a property
10 other than the covered premises. A copy of the letter is attached hereto as Exhibit F.

11 53. Pursuant to § 2695.7(b)(1) of the Regulations, Defendant was required to state in
12 its April 9, 2020 denial letter all the factual, contractual, and legal grounds for denying the claim,
13 thus forfeiting the right to raise additional grounds to attempt to justify its denial of Plaintiff's
14 claim.

15 54. Defendant's denial letter, on information and belief, appears to be a form letter
16 sent in response to business income claims arising from the Orders. It is clear from the letter that
17 there was no investigation of Plaintiff's claim prior to the denial.

18 55. Defendant's denial is contrary to the terms and conditions of the Policy and
19 applicable law, which gives effect to plain language, construes ambiguity in favor of coverage,
20 and narrowly construes exclusions, the applicability of which insurers have the burden of
21 proving.

22 56. As a result of the Stay at Home Order and related local orders, Plaintiff has
23 incurred and continues to incur a substantial loss of business income and additional expenses
24 covered under the policy.

25 57. In order to obtain the benefits promised under its Policy and required by California
26 law, Plaintiff was compelled to retain counsel and institute this lawsuit to pursue all available
27 legal and equitable remedies available to it and obtain the benefits promised under the Policy.

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1 58. Plaintiff thus brings this action, on behalf of itself and other California restaurants
2 similarly situated, seeking declaratory relief, insurance coverage owed under Defendant's policy,
3 and damages.

4 **VI. CLASS ALLEGATIONS**

5 59. Plaintiff re-alleges and incorporates by reference herein all of the allegations
6 contained above.

7 60. Business insurance policies purchased by small businesses like restaurants are not
8 individually negotiated. At most, the prospective policyholder may elect to add specialized
9 coverage options to a basic business insurance policy. But the substantive terms are set
10 unilaterally by the insurer. These are contracts of adhesion.

11 61. Plaintiff's Policy includes common terms and phrases widely used by the
12 insurance industry. The insurance industry typically hews closely to standardized insurance
13 policy forms in addressing property and liability risks, and Defendant did so here.

14 62. Moreover, it is evident from the Policy that all Businessowner's Policies issued
15 by Century-National contain the same operative language at issue in Plaintiff's claim. The
16 Business Income Form contains the relevant insuring agreements for the policy, and related
17 definitions, limitations and exclusions (Exhibit B). Plaintiff's policy incorporates widely-used
18 forms and is not a manuscript policy written specifically for Plaintiff. Legal and factual issues
19 concerning the applicability of coverage issued by Century-National to business owners under
20 the circumstances of the uniform closure of restaurants in Los Angeles by Mayor Garcetti and
21 Governor Newsom thus can be decided uniformly.

22 63. As the impact of the COVID-19 pandemic is emerging, leading insurance industry
23 associations have publicly stated that such standard business insurance policies do not provide
24 any coverage for the business losses related to public health orders like the Stay at Home Order
25 imposed by California. The denial letter received by Plaintiff—issued without any investigation
26 at the restaurant shortly after a claim was filed—appears to be a form letter that, on information
27 and belief, is sent automatically to any such business with comprehensive business insurance that
28 files a claim at this time.

1 64. Plaintiff brings this action pursuant to Section 382 of the California Code of Civil
2 Procedure on behalf of a proposed class of persons (the "Class") defined as: All restaurants in
3 California that purchased comprehensive business insurance coverage from Defendant which
4 includes coverage for business income, filed a claim for lost business income following
5 California's Stay at Home Order, and were denied coverage by Defendant on the same or similar
6 grounds.

7 65. Excluded from the Class are Defendant, any entity in which Defendant has a
8 controlling interest, and Defendant's officers, directors, legal representatives, successors,
9 subsidiaries, and assigns. Also excluded from the Class are any judge, justice, or judicial officer
10 presiding over this matter and the members of their immediate families and judicial staff.

11 66. This action has been brought and may properly be maintained as a class action as
12 it satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority
13 requirements.

14 67. Plaintiff reserves the right to amend the Class definition if discovery and further
15 investigation reveal that the Class should be expanded, divided into subclasses, or modified in
16 any other way.

17 68. Although the precise number of members of the Class is unknown and can only
18 be determined through appropriate discovery, Plaintiff believes, and on that basis alleges, that
19 the members of the proposed Class are so numerous that joinder of all members would be
20 impracticable. There are thousands of restaurants in California which are governed by the Stay
21 at Home Order and attendant statewide and local restrictions, and public reporting reveals that
22 many have filed for coverage but have been denied.

23 69. Questions of law and fact common to the Class exist that predominate over
24 questions affecting only individual members, including inter alia:

25 a) Whether Defendant's comprehensive business insurance policies cover claims
26 for lost business income under the circumstances present here;

27 b) Whether the terms, definitions, and exclusions that Defendant has relied on to
28 deny coverage reasonably can be construed in the manner Defendant claims, or

- 1 are otherwise unenforceable as a basis for Defendant's denials or, instead, must
2 be construed to provide coverage under California law;
- 3 c) More specifically, whether Plaintiff's and the class's loss of Business Income
4 arises from a Covered Cause of Loss under the Policy;
- 5 d) Whether any applicable exclusion in the Policy applies to Business Income
6 losses;
- 7 e) Whether Defendant breached the implied covenant of good faith and fair
8 dealing by engaging in unreasonable conduct in its handling of the claim;
- 9 f) Whether Defendant acted unreasonably and in bad faith in denying claims for
10 lost business income without investigation or due consideration of those claims;
11 and
- 12 g) Whether the declaratory judgment sought is appropriate.

13 70. Plaintiff is a member of the putative Class. The claims asserted by the Plaintiff in
14 this action are typical of the claims of the members of the putative Class as the claims arise from
15 the same course of conduct by Defendant and the relief sought is common.

16 71. Plaintiff will fairly and adequately represent and protect the interests of the
17 members of the putative Class, as its interests coincide with, and are not antagonistic to, the other
18 members of the Class. Plaintiff has retained counsel competent and experienced in both consumer
19 protection, insurance coverage, and class-action litigation.

20 72. Certification of the Class is appropriate pursuant to Section 382 of the California
21 Code of Civil Procedure because:

- 22 a) Questions of law or fact common to the respective members of the Class
23 predominate over questions of law or fact affecting only individual members.
24 This predominance makes class litigation superior to any other method available
25 for the fair and efficient adjudication of these claims including consistency of
26 adjudications. Absent a class action it would be highly unlikely that the
27 members of the Class would be able to protect their own interests because the
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cost of litigation through individual lawsuits might exceed the expected recovery;

b) A class action is a superior method for the adjudication of the controversy in that it will permit a large number of claims to be resolved in a single forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense, and the burden of the courts that individual actions would create; and

c) The benefits of proceeding as a class action, including providing a method for obtaining redress for claims that would not be practical to pursue individually, outweigh any difficulties that might be argued with regard to the management of the class action.

73. The Class should also be certified pursuant to Section 382 of the California Code of Civil Procedure because:

a) The prosecution of separate actions by the individual members of the proposed class would create a risk of inconsistent adjudications, which could establish incompatible standards of conduct for Defendant;

b) The prosecution of individual actions could result in adjudications, which as a practical matter, would be dispositive of the interests of non-party class members or which would substantially impair their ability to protect their interests; and

c) Defendant has acted or refused to act on grounds generally applicable to the proposed Class, thereby making appropriate final and injunctive relief with respect to the members of the proposed Class as a whole.

74. Likewise, particular issues are appropriate for certification under Section 382 of the California Code of Civil Procedure because such claims present only particular, common issues, the resolution of which would advance the disposition of this matter and the parties' interests therein. Such particular issues include, but are not limited to:

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- a) Whether the comprehensive business insurance policies issued by Defendant cover class members' direct physical loss of property and lost business income following California's Stay at Home Order;
- b) Whether the coverages for direct physical loss of property and lost business income provided by the comprehensive business insurance policies are precluded by exclusions or other limitations in those policies;
- c) Whether Defendant breached contracts by denying comprehensive business insurance coverage to Plaintiff and Class members;
- d) Whether summary denial of claims for direct physical loss of property and lost business income, including by invoking an exclusion for viruses, without any investigation or inquiry constitutes bad faith and therefore a breach of the implied covenant of good faith and fair dealing to act in good faith and with reasonable efforts to perform their contractual duties and not to impair the rights of other parties to receive the rights, benefits, and reasonable expectations under the contracts;
- e) Whether the handling of the claim with the knowledge that Defendant would not provide coverage for business income losses associated with public health measures such as California's Stay at Home Order constitutes a breach of the implied covenant of good faith and fair dealing; and
- f) Whether Plaintiff and Class members are entitled to actual damages and/or injunctive relief as a result of Defendant's wrongful conduct.

FIRST CLAIM FOR RELIEF

Declaratory Judgment

- 75. Plaintiff re-alleges the paragraphs 1 through 74 above as if fully set forth herein.
- 76. Plaintiff purchased a comprehensive business insurance policy from Defendant.
- 77. Plaintiff paid all premiums required to maintain its comprehensive business insurance policy in full force.

1 87. Plaintiff purchased the Policy from Defendant to insure against all risks (unless
2 specifically excluded) a business might face including losses resulting from a necessary
3 suspension of its operations and losses associated with Civil Authority orders. This Policy was a
4 binding contract that afforded Plaintiff comprehensive business insurance under the terms and
5 conditions of the Policy.

6 88. Plaintiff met all or substantially all of its contractual obligations, including paying
7 all the premiums required by Defendant.

8 89. On or about March 19, 2020, California issued the Stay at Home Order, mandating
9 that all Californians remain at home, with certain exceptions. This mandate required restaurants,
10 including that owned by Plaintiff, to cease all on-premises dining. As set forth herein, similar
11 Orders were issued by the City of Los Angeles. These Orders also applied to neighboring
12 businesses throughout the City of Los Angeles, thus causing widespread closures surrounding
13 Plaintiff's business premises.

14 90. Beginning on March 16, 2020, and continuing through the date of the filing of
15 this Complaint, Plaintiff suffered the direct physical loss of property and lost business income
16 following California's Stay at Home Order—losses which were covered under the Policy
17 purchased from Defendant.

18 91. There are no exclusions in Plaintiff's Policy that expressly preclude coverage.

19 92. Plaintiff made a timely demand to Defendant for payment under the Policy to
20 cover its business income losses.

21 93. Defendant breached its contract by denying coverage to Plaintiff and by failing to
22 adequately investigate its claim prior to issuing the denial.

23 94. As a direct and proximate result of Defendant's denial of comprehensive business
24 insurance coverage to Plaintiff, Plaintiff suffered damages.

25 95. WHEREFORE, Plaintiff seeks damages and prejudgment interest for itself and
26 similarly situated restaurants that incurred as a result of Defendants' breach of the insurance
27 contract.

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1 **THIRD CLAIM FOR RELIEF**

2 **Bad Faith Breach of Implied Covenant of Good Faith and Fair Dealing**

3 96. Plaintiff re-alleges paragraphs 1 through 95 above as if fully set forth herein.

4 97. Plaintiff purchased the Policy from Defendant to insure against all risks (unless
5 specifically excluded) a business might face including losses resulting from a necessary
6 suspension of its business operations and losses associated with Civil Authority orders. This
7 policy was a binding contract that afforded Plaintiff comprehensive business insurance under the
8 terms and conditions of the Policy.

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

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

17 100. Beginning on March 16, 2020, and continuing through the date of the filing of
18 this Complaint, Plaintiff suffered the direct physical loss of property, including suspension of
19 business operations at the property, and lost business income following California's Stay at
20 Home order and related local orders—losses which were covered under the Policy purchased
21 from Defendant.

22 101. Plaintiff made a timely demand to Defendant for payment under the Policy to
23 cover its business income losses. Defendant acted unreasonably by denying coverage to Plaintiff
24 and by failing to adequately investigate its claim prior to issuing the denial.

25 102. Defendant's conduct breached the implied covenant of good faith and fair dealing
26 by:

- 27 a. Selling policies that appear to provide liberal coverage for loss of
28 property and lost business income with the intent of interpreting undefined or

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poorly defined terms, undefined terms, and ambiguously written exclusions to deny coverage under circumstances foreseen by Defendant;

b. Denying coverage for loss of property and lost business income unreasonably, and without proper cause, by applying undefined, ambiguous, and contradictory terms contrary to applicable rules of policy construction and the plain terms and purpose of the policy;

c. Denying Plaintiff's claim for loss of property and loss of business income unreasonably and without conducting a fair, unbiased and thorough investigation or inquiry, arbitrarily and capriciously, and/or with knowledge that the denial was unreasonable under the policy; and

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

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

104. Defendant's conduct alleged herein is immoral, unethical, oppressive, unscrupulous, unconscionable, fraudulent, malicious, and/or substantially injurious to Plaintiff and the Class.

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

106. WHEREFORE, Plaintiff seeks compensatory damages, punitive damages and prejudgment interest for itself and similarly situated restaurants that incurred damages as a result of Defendants' breach of the insurance contract.

FOURTH CLAIM FOR RELIEF

Unfair Business Practices Under Bus. & Prof. Code § 17200, et seq.

107. Plaintiff re-alleges paragraphs 1 through 106 above as if fully set forth herein.

1 108. By its conduct alleged herein, Defendant has engaged in unlawful, unfair, and
2 fraudulent business practices in violation of California Business & Professions Code §§ 17200
3 *et seq.* (“UCL”).

4 109. Defendant’s conduct alleged herein violates the “unlawful” prong of the UCL
5 because it violated the letter and spirit of California’s Insurance Code, including California
6 Insurance Code section 790, *et seq.* because, *inter alia*, Defendant failed or refused to perform a
7 fair, objective, and thorough investigation of the Plaintiff’s and class members’ claims. As
8 alleged herein, Defendant denied Plaintiff’s and the class members’ claims as part of Defendant’s
9 policy of categorically denying all or at least the vast majority of business income claims related
10 to the novel coronavirus, and ignored other California requirements concerning the proper and
11 fair evaluation of claims and interpretations of its policies.

12 110. Defendant’s conduct alleged herein violates the “unfair” prong of the UCL,
13 including but not limited to Defendant’s: (a) categorical and wrongful denial of Plaintiff’s and
14 the class members’ claims under the circumstances described in this complaint; (b) failure and
15 refusal to perform a fair, objective, good-faith, and thorough investigation of the claims as
16 directed by the California Insurance Code; (c) denial of Plaintiff’s and the class members’ claims
17 as part of a policy of categorically denying claims related to the novel coronavirus; and (d) and
18 failing to interpret its policies in an equitable manner and/or up to the standards required by
19 California law (including but not limited to Cal. Ins. Code section 790 *et seq.*).

20 111. Defendant’s conduct alleged herein is immoral, unethical, oppressive,
21 unscrupulous, unconscionable, fraudulent, malicious, unfair, unlawful and/or substantially
22 injurious to Plaintiff and the Class. There is no utility to Defendant’s conduct, and even if there
23 were any utility, it would be significantly outweighed by the gravity of the harm to consumers
24 caused by Defendant’s conduct alleged herein.

25 112. Defendant’s conduct alleged herein also violates California public policy,
26 including as such policy is reflected in Cal. Ins. Code § 790 *et seq.* and elsewhere in the California
27 Insurance Code.

28

1 113. Defendant's conduct alleged herein violates the "fraudulent" prong of the UCL.
2 Among other things, Defendant: (a) promised Plaintiff and the class coverage that was not
3 provided and that Defendant had no intention of providing; (b) promised to evaluate each claim
4 individually, reasonably, and in good faith, which Defendant did not do with respect to Plaintiff's
5 and the class members' claims; falsely and misleadingly indicated to Plaintiff and class that it
6 was investigating in good faith (and had investigated in good faith) their claims which Defendant
7 did not do and knew that it did not do. Defendant collected Plaintiff's and the class members'
8 premiums in exchange for coverage that was not provided, induced those premiums by promising
9 to evaluate each claim individually reasonably, and in good faith and did not, and denied
10 Plaintiff's and the class members' claim as part of a policy of categorically denying claims related
11 to the novel coronavirus as part of a strategy to reduce its total insurance payments related to the
12 novel coronavirus.

13 114. Defendant's fraudulent and deceptive conduct alleged herein was false and
14 misleading had a tendency to deceive reasonable insureds, and did deceive Plaintiff and the class.
15 Plaintiff and the class members reasonably relied on Defendant's deceptions and omissions
16 alleged herein, including but not limited to by paying premiums to Defendant.

17 115. By reason of Defendant's unlawful, unfair, and fraudulent conduct in violation of
18 the UCL, Plaintiff and the class members have lost the benefits for which they bargained, as well
19 as the premiums they have paid to Defendant.

20 116. Plaintiff and the class are entitled to restitution from Defendant (with interest
21 thereon), to disgorgement of all Defendant's profits arising out of its violations of the UCL (with
22 interest thereon), and to be paid benefits due to Plaintiff and the class members that Defendant
23 has wrongfully retained by means of its violations of the UCL. There is no adequate remedy at
24 law.

25 117. Pursuant to California Code of Civil Procedure section 1021.5, Plaintiff is entitled
26 to recover its reasonable attorney's fees.

27 118. WHEREFORE, Plaintiff seeks: (a) a judgment for itself and similarly situated
28 restaurants that Defendant violated the UCL; and (b) restitution and reasonable attorney's fees.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests, on behalf of itself and the Class, that the Court enter a judgment awarding the following relief:

- a. An order certifying this action as a class action under Section 382 of the California Code of Civil Procedure, defining the Class as requested herein, appointing Hecht Partners LLP, as Class Counsel, and finding that Plaintiff is a proper representative of the Class requested herein.
- b. A declaration that Plaintiff's and Class members' losses are covered under the Policy;
- c. Plaintiff also requests compensatory damages, punitive damages, restitution, disgorgement, attorney's fees and costs, and such other and further relief as is just and proper as compensation for Defendant's breach of contract, breach of the implied covenant of good faith and fair dealing, and violations of UCL.

JURY DEMAND

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

Dated: July 6, 2020

Hecht Partners LLP

By:  _____

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Attorneys for Plaintiff Shusha, Inc. dba La Cava, and others similarly situated,