

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

PATRICK & GEOFF INVESTMENTS INC  
d/b/a THE HIDEAWAY STEAKHOUSE,

Plaintiff,

v.

SENTINEL INSURANCE COMPANY,  
LIMITED,

Defendant.

Case No. 2:20-cv-05140

**AMENDED COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff Patrick & Geoff Investments Inc d/b/a The Hideaway Steakhouse (“Hideaway” or “Plaintiff”) brings this Amended Complaint against Defendant Sentinel Insurance Company, Limited (“Sentinel” or “Defendant”) and, upon information and belief, alleges as follows:

**NATURE OF THE CASE**

1. This is a civil action seeking declaratory relief arising from Plaintiff’s contracts of insurance with Defendant.
2. In light of the Plaintiff’s inability to safely use or operate its property due to the coronavirus, as well as state and local orders requiring all non-life-sustaining businesses in California to cease operations and close all physical locations, Plaintiff shut its doors on March 16, 2020, at the close of business.
3. Due to COVID-19, Plaintiff has suffered “direct physical loss of or damage” to its restaurant property. Among other things, COVID-19 made the business locations unusable in the way that it had been used before COVID-19, rendered the properties substantially unusable and uninhabitable, intruded upon the property, damaged the property, prevented physical access to and use of the property, and caused a suspension of business operations at the property.

4. Instead of being able to operate its business, Plaintiff was forced to physically alter and drastically reduce operations at its location, and even to close entirely. To do anything else would lead to the emergence or reemergence of COVID-19 at the property of Plaintiff. Given the widespread prevalence of COVID-19 in California, even limited use was not possible for extended periods.

5. This loss is physical. The businesses was unable to use the interior space in the manner in which they had previously used the space. The high probability of illness and contamination prevents the full physical use of the property.

6. Plaintiff's insurance policy provides coverage for all non-excluded business losses, including Business Income that would have otherwise been earned, and thus provides coverage here.

7. As a result, Plaintiff is entitled to declaratory relief that its business is covered for all business losses that have been incurred in an amount greater than \$150,000.00.

#### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, because there is complete diversity of citizenship between Plaintiff and Defendant. Plaintiff has suffered business losses at each restaurant in an amount greater than \$150,000.00. The amount in controversy necessary for diversity jurisdiction over a declaratory judgment action is measured by the value of those business losses. *Id.* § 1332(a).

9. This Court has personal jurisdiction over Defendant. Defendant has engaged in substantial business in this District, including the formation of the Policies underlying Plaintiff's claims, and Defendant has therefore personally availed itself of jurisdiction in this District.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District, including the formation of the Policies underlying Plaintiff's claims.

### **PARTIES**

11. Plaintiff is a California corporation that owns and operates a restaurant, The Hideaway Steakhouse, located at 4137 E Anaheim Street, Long Beach, CA 90804. Plaintiff is owned by Patrick Malone, Geoffery Rau, and Susan Hartert, who are all citizens of California.

12. Defendant Sentinel Insurance Company, Limited ("Sentinel") is an insurance carrier that has provided business interruption insurance to Plaintiff. Defendant Sentinel is headquartered at One Hartford Plaza, Hartford, Connecticut 06155. Defendant Sentinel is a citizen of Connecticut.

### **FACTUAL ALLEGATIONS**

#### **I. Insurance Coverage**

13. At all relevant times, Defendant issued a policy to Plaintiff to cover business interruption loss from December 11, 2019 until December 11, 2020 for its restaurant at 4137 E Anaheim Street, Long Beach, CA 90804 (the "Insured Property"). The policy number is 57 SBA BM4526 DX. This policy was intended to cover losses to business interruption. *See* Declaration, attached hereto as Exhibit A.

14. The Policy is currently in full effect in providing, among other things, personal property, business income and extra expense, contamination coverage and additional coverage.

15. Plaintiff faithfully paid policy premiums to Defendant, specifically to provide, among other things, additional coverages in the event of business interruption or closures by order of Civil Authority and for business loss for property damage.

16. Defendant entered into a contract of insurance with Plaintiff, whereby Plaintiff agreed to make payments to Defendant in exchange for Defendant's promise to indemnify Plaintiff for losses including, but not limited to, business income losses at Plaintiff's Insured Properties. Plaintiff owns a restaurant in Long Beach, California.

17. The Insured Properties are covered under the Policy issued by Defendant.

18. The Policy provides, among other things property, business personal property, business income and extra expense, contamination coverage, and additional coverages.

19. Plaintiff faithfully paid Policy premiums to Defendant, specifically to provide, among other things, coverage in the event of business interruption or closures for a variety of reasons, including by order of Civil Authority.

20. Under the Policy, insurance is extended to apply to the actual loss of business income sustained and the actual, necessary and reasonable extra expenses incurred when access to the business is specifically prohibited by order of Civil Authority. This additional coverage is identified as coverage under "Civil Authority."

21. The Policy is an all-risk Policy, meaning that it covers all risks of direct physical loss or damage unless the risk is specifically excluded or limited in the Policy.

22. Plaintiff's all-risk policy includes coverage for business interruption, which is standard in most all-risk commercial property insurance policies, along with coverage for extended expenses.

23. Plaintiff purchased the aforementioned Policy expecting to be insured against losses, including, but not limited to, business income losses.

24. Plaintiff purchased, among other coverages, business interruption coverage for closure by Order of Civil Authority.

25. Plaintiff's properties have suffered direct physical loss or damage. Due to COVID-19, their properties have become unsafe, uninhabitable and unusable for its intended purpose and thus has suffered physical loss or damage. Their properties' business functions have been impaired. If Plaintiff were to conduct business as usual, the disease and virus would almost certainly reemerge, creating acute health risks to staff and customers and forcing the permanent closure of the business.

26. Upon information and belief, the Policy provided by Defendant included language that is essentially standardized language adopted from and/or developed by the ISO ("Insurance Service Office"). The ISO, founded in 1971, provides a broad range of services to the property and casualty insurance industry. In addition to form policies, ISO collects and manages databases containing large amounts of statistical, actuarial, underwriting, and claims information, fraud-identification tools, and other technical services. ISO describes itself as follows: "ISO provides advisory services and information to many insurance companies. ... ISO develops and publishes policy language that many insurance companies use as the basis for their products." ISO General Questions, Verisk, <https://www.verisk.com/insurance/about/faq/> (last visited June 5, 2020); *see also* Insurance Services Office (ISO), Verisk, <https://www.verisk.com/insurance/brands/iso/> (last visited June 5, 2020).

27. The language in the Policy is language that is "adhesionary" in that Plaintiff was not a participant in negotiating or drafting its content and provisions.

28. Plaintiff possessed no leverage or bargaining power to alter or negotiate the terms of the Policy, and more particularly, Plaintiff had no ability to alter, change or modify standardized language derived from the ISO format.

29. Plaintiff was not a participant in negotiating or drafting the Policy's content and provisions.

30. Upon information and belief, Virus Exclusion language in insurance policies was never intended by the ISO nor Defendant to pertain to a situation like the present global Pandemic of the Coronavirus and therefore does not apply to exclude coverage in this matter.

31. Upon information and belief, the Virus Exclusion in the policy was developed by the ISO in response to the SARS situation that occurred in or around 2005-2006, which was not a Pandemic and not a global Pandemic as is the present COVID-19 Pandemic situation, and therefore was never intended to exclude coverage for a circumstance as presented in this matter.

32. To the extent Defendant adopted the Virus Exclusion language that the ISO developed in response to the SARS situation described above, Defendant was not intending such Virus Exclusion language that it included in its Policy to exclude coverage for a Pandemic as occurring in the COVID-19 situation.

33. To the extent Defendant drafted its own Virus Exclusion language, upon information and belief, such language was nevertheless based on and/or derived from the Virus Exclusion language developed by the ISO and Defendant had no different intent with regard to the language than did the ISO when it developed the form of that language in response to SARS described above.

34. Further, upon information and belief, the Virus Exclusion was first permitted by state insurance departments based on misleading and fraudulent statements by the ISO that property insurance policies do not and were not intended to cover losses caused by viruses, and so the Virus Exclusion offers mere clarification of existing law. To the contrary, before the ISO made such baseless assertions, courts considered contamination by a virus to be physical damage.

Defendant's reliance on the Virus Exclusion to deny coverage here where the Virus Exclusion was purportedly not changing coverage and merely clarifying coverage, when in fact it is now being used to deny coverage where coverage previously existed, shows that the Virus Exclusion was fraudulently adopted, adhesionary, and unconscionable. *See* <https://www.propertycasualty360.com/2020/04/07/here-we-go-again-virus-exclusion-for-covid-19-and-insurers/> (last visited June 12, 2020).

35. The Virus Exclusion applies only to “loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.”

36. Plaintiff purchased the Policy with an expectation that it was purchasing a policy that would provide coverage in the event of business interruption and extended expenses, such as that suffered by Plaintiff as a result of COVID-19.

37. At no time had Defendant, or its agents, notified Plaintiff that the coverage that Plaintiff had purchased pursuant to an all-risk policy that included business interruption coverage, had exclusions and provisions that purportedly undermined the very purpose of the coverage, of providing benefits in the occurrence of business interruption and incurring extended expenses.

38. The purported exclusions of the Policy that Defendant have or is expected to raise in defense of Plaintiff's claim under the Civil Authority coverage of the Policy are contradictory to the provision of Civil Authority Order coverage and violates public policy of the State of California as a contract of adhesion and hence not enforceable against Plaintiff.

39. Access to Plaintiff's business was prohibited by Civil Authority Orders and the Policy provides for coverage for actual loss of business sustained and actual expenses incurred as

a covered loss caused by the prohibitions of the Civil Authority Orders in the area of Plaintiff's Insured Properties.

40. In the Business Income (and Extra Expense) Coverage Form, Defendant agreed to pay for Plaintiff's actual loss of Business Income sustained due to the necessary suspension of its operations during the "period of restoration" caused by direct physical loss or damage. (*See Exhibit B at 37*) (The Policy). A "partial suspension or complete cessation" of business activities at the Covered Properties is a "suspension" under the policy, for which Defendant agreed to pay for loss of Business Income. (*See Exhibit B at 37*).

41. "Business Income" means net income Plaintiff would have earned if no physical loss or damage had occurred as well as continuing normal operating expenses incurred, including payroll. (*See Exhibit B at 37*).

42. In the Business Income (and Extra Expense) Coverage Form, Defendant also agreed to pay necessary Extra Expense that its insureds incur during the "period of restoration" that the insureds would not have incurred if there had been no direct physical loss or damage to the Property at the described premises. (*See Exhibit B at 37*).

43. "Extra Expense" includes expenses to avoid or minimize the suspension of business, continue operations, and to repair or replace property. (*See Exhibit B at 37*).

44. In the Business Income (and Extra Expense) Coverage Form, Defendant also agreed to "pay for the actual loss of Business Income" Plaintiff sustains when access to the premises is "specifically prohibited by order of a civil authority."(*See Exhibit B at 38*).

45. Losses caused by the COVID-19 pandemic and the related orders issued by local, state, and federal authorities triggered the Business Income, Extra Expense, and Civil Authority provisions of the Policy.



46. The reasonable expectation of Plaintiff was that the business interruption coverage included coverage when a civil authority forced closure of the business for an issue of public safety in the immediate area surrounding the Insured Properties.

47. The Policy does not exclude the losses suffered by Plaintiff and therefore, the Policy does provide coverage for the losses incurred by Plaintiff.

48. Plaintiff suffered direct physical loss or damage within the definitions of the Policy as loss of use of property, as here, constitutes loss or damage.

49. Any bacteria related exclusions do not apply because Plaintiff's losses were not caused by bacteria.

50. The Policy at issue does not contain any limitations or exclusions which would apply to allow Defendant to deny coverage for losses caused by COVID-19 and related actions of civil authorities taken in response to COVID-19.

51. Accordingly, because the Policy is an all-risk policy and does not specifically exclude the losses that Plaintiff has suffered, those losses are covered.

52. Plaintiff submitted a claim for a date of loss pursuant to its Policy seeking coverage under this policy. Defendant rejected Plaintiff's claim for coverage for business loss and business interruption and other claims, contending, *inter alia*, that Plaintiff did not suffer physical damage to its property directly and stating other reasons why Plaintiff purportedly is not entitled to coverage for the losses and damages. Defendant also claimed the Policy does not cover losses due to the Virus Exclusion Clause.

53. Based on information and belief, Defendant have accepted the Policy premiums with no intention of providing any coverage for business losses or the Civil Authority extension

due to a loss and shutdown from a virus pandemic. Plaintiff contacted its insurance agent about making a claim under the Policy and was told that Defendant would reject the claim.

## **II. The Coronavirus Pandemic**

54. The scientific community, and those personally affected by the virus, recognize the Coronavirus as a cause of real physical loss and damage. It is clear that contamination of the Insured Property would be a direct physical loss requiring remediation to clean the surfaces of the business.

55. The virus that causes COVID-19 remains stable and transmittable in aerosols for up to three hours, up to four hours on copper, up to 24 hours on cardboard and up to two to three days on plastic and stainless steel. *See* <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last visited April 9, 2020).

56. The CDC has issued a guidance that gatherings of more than 10 people must not occur. People in congregate environments, which are places where people live, eat, and sleep in close proximity, face increased danger of contracting COVID-19.

57. On March 11, 2020 the World Health Organization (“WHO”) made the assessment that COVID-19 shall be characterized as a pandemic. *See* <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

58. The global Coronavirus pandemic is exacerbated by the fact that the deadly virus physically infects and stays on surfaces of objects or materials, “fomites,” for up to twenty-eight (28) days.

59. A particular challenge with the novel coronavirus is that it is possible for a person to be infected with COVID-19 but be asymptomatic. Thus, seemingly healthy people unknowingly

spread the virus via speaking, breathing, and touching objects, particularly through droplets and from the Coronavirus being aerosolized.

60. According to the CDC, “COVID-19 is caused by a coronavirus called SARS-CoV-2. Coronaviruses are a large family of viruses that are common in people and [many] different species of animals, including camels, cattle, cats, and bats. Rarely, animal coronaviruses can infect people and then spread between people.”<sup>1</sup> “The virus that causes COVID-19 is thought to spread mainly from person to person, mainly through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. Spread is more likely when people are in close contact with one another (within about 6 feet).”<sup>2</sup>

61. “It may be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes.”<sup>3</sup> A scientific study investigating the stability of COVID-19 in different environmental conditions found that, following COVID-19 contamination, the virus could be detected hours later for tissues and paper, days later for wood, cloth and glass, or even a week later for stainless steel and plastic.<sup>4</sup>

62. While infected droplets and particles carrying COVID-19 may not be visible to the naked eye, they are physical objects which travel to other objects and cause harm. Habitable surfaces on which COVID-19 has been shown to survive include, but are not limited to, stainless steel, plastic, wood, paper, glass, ceramic, cardboard, and cloth.

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<sup>1</sup> <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Coronavirus-Disease-2019-Basics>.

<sup>2</sup> *Id.*

<sup>3</sup> <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

<sup>4</sup> See Alex W.H. Chin, et al., “Stability of SARS-CoV-2 in different environmental conditions,” *The Lancet Microbe* (April 2, 2020), available at [https://doi.org/10.1016/S2666-5247\(20\)30003-3](https://doi.org/10.1016/S2666-5247(20)30003-3).

63. The CDC has noted that it may be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes but that this is not thought to be the main way the virus spreads, but we [the CDC] are still learning more about how this virus spreads.

64. The CDC has said that the best way to prevent illness is to avoid being exposed to this virus and that steps can be taken to slow its spread: Maintain good social distance (about 6 feet). This is very important in preventing the spread of COVID-19; Wash your hands often with soap and water. If soap and water are not available, use a hand sanitizer that contains at least 60% alcohol; Routinely clean and disinfect frequently touched surfaces; and Cover your mouth and nose with a cloth face covering when around others.

65. The CDC has noted that the primary and most important mode of transmission for COVID-19 is through close contact from person-to-person. Based on data from lab studies on COVID-19 and what we [the CDC] know about similar respiratory diseases, it may be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes, but this isn't thought to be the main way the virus spreads. <https://www.cdc.gov/media/releases/2020/s0522-cdc-updates-covid-transmission.html>(last edited May 23, 2020).

66. Compliance with the CDC recommendations, along with compliance with the Civil Authority Orders of California (see below), effectively made it impossible for Plaintiff to operate its business in the usual and customary manner causing the retail stores to suffer business losses and added expenses as provided for and covered under the Policy.

67. China, Italy, France, and Spain have implemented the cleaning and fumigating of public areas prior to allowing them to re-open publicly due to the intrusion of microbials.

68. A French Court has determined that business interruption coverage applies to the COVID-19 Pandemic. See <https://www.insurancejournal.com/news/international/2020/05/22/569710.htm>.

69. Similarly, on September 15, 2020, the United Kingdom’s High Court found that the ‘disease’ and/or ‘denial of access’ clauses in the various insurance policy wordings provide coverage in the circumstances of the COVID-19 pandemic, and that the trigger for coverage caused policyholders’ losses. The High Court further noted,

The fact that a provision in a contract is expressed as an exception does not necessarily mean that it should be approached with a pre-disposition to construe it narrowly. Like any other provision in a contract, words of exception or exemption must be read in the context of the contract as a whole and with due regard for its purpose. As a matter of general principle, it is well established that that if one party, otherwise liable, wishes to exclude or limit his liability to the other party, he must do so in clear words; and that the contract should be given the meaning it would convey to a reasonable person having all the background knowledge which is reasonably available to the person or class of persons to whom the document is addressed.

<https://www.fca.org.uk/publication/corporate/bi-insurance-test-case-judgment.pdf> (last visited September 16, 2020).

70. The determination by a Court of another country that coverage exists is consistent with public policy that in the presence of a worldwide Pandemic, such as COVID-19, businesses that possess business interruption insurance coverage should recover their losses from the insurance carriers.

### **III. Civil Authority**

71. Various civil authorities with jurisdiction over Plaintiff’s insured properties—including but not limited to the State of California and the City of Long Beach—have issued orders that, in pertinent part, severely restricted and/or outright prohibited access to and use of Plaintiff’s property. Below is a non-exhaustive description and summary of these government orders.

72. On March 4, 2020, the State of California declared a State of Emergency for the entire state of California as a result of COVID-19.

73. On March 11, 2020, the State of California set restrictions on large gatherings.

74. On March 16, 2020, the State of California prohibited all gatherings regardless of size. This order effectively shut down all non-essential businesses.

75. On March 17, 2020, the State of California issued a stay at home order that all non-essential workers must stay at home as a result of COVID-19. This order has been extended indefinitely.

76. On May 7, 2020, Governor Newsom loosened restrictions, but only to curbside retail, childcare, manufacturing and logistics. *See* Order of the State of Public Health, attached herein as Exhibit C, and <https://covid19.ca.gov/roadmap/> (last visited May 16, 2020).

77. However, with the loosening of restrictions the City of Long Beach saw a spike in cases and on June 29, 2020 the City banned indoor dining but permitted carry-out and outdoor dining. <http://www.longbeach.gov/globalassets/health/media-library/documents/diseases-and-condition/information-on/novel-coronavirus/health-orders/appendix-h---dine-in-restaurant-protocols> (last visited September 17, 2020).

78. Plaintiff's business was unable to operate due to the stay-at-home orders for public safety issued by the State of California (the "Orders"). Plaintiff has submitted a claim to its insurance carriers related to such losses, but Defendant denied Plaintiff's claims.

79. Further, on April 10, 2020, President Trump seemed to support insurance coverage for business loss like that suffered by the Plaintiff.

REPORTER: Mr. President may I ask you about credit and debt as well. Many American individuals, families, have had to tap their credit cards during this period of time. And businesses have had to draw down their credit lines. Are you concerned Mr. President that

that may hobble the U.S. economy, all of that debt number one? And number two, would you suggest to credit card companies to reduce their fees during this time?

PRESIDENT TRUMP: Well it's something that we've already suggested, we're talking to them. Business interruption insurance, I'd like to see these insurance companies—you know you have people that have paid. When I was in private I had business interruption. When my business was interrupted through a hurricane or whatever it may be, I'd have business where I had it, I didn't always have it, sometimes I had it, sometimes, I had a lot of different companies. But if I had it I'd expect to be paid. You have people. I speak mostly to the restaurateurs, where they have a restaurant, they've been paying for 25, 30, 35 years, business interruption. They've never needed it. All of a sudden they need it. And I'm very good at reading language. I did very well in these subjects, OK. And I don't see the word pandemic mentioned. Now in some cases it is, it's an exclusion. But in a lot of cases I don't see it. I don't see it referenced. And they don't want to pay up. I would like to see the insurance companies pay if they need to pay, if it's fair. And they know what's fair, and I know what's fair, I can tell you very quickly. But business interruption insurance, that's getting a lot money to a lot of people. And they've been paying for years, sometimes they just started paying, but you have people that have never asked for business interruption insurance, and they've been paying a lot of money for a lot of years for the privilege of having it, and then when they finally need it, the insurance company says 'we're not going to give it.' We can't let that happen.

See [https://youtu.be/\\_cMeG5C9TjU](https://youtu.be/_cMeG5C9TjU) (last visited on April 17, 2020) (emphasis added).

80. The President is articulating a few core points:
  - a. Business interruption is a common type of insurance. It applies to a variety of business establishments.
  - b. Businesses pay in premiums for this coverage and should reasonably expect they'll receive the benefit of the coverage.
  - c. This pandemic should be covered unless there is a specific exclusion for pandemics.
  - d. If insurers deny coverage, they would be acting in bad faith.
  - e. Public policy considerations support a finding that coverage exists and that a denial of coverage would be in violation of public policy.

81. These Orders and proclamations, as they relate to the closure of all “non-life-sustaining businesses,” evidence an awareness on the part of both state and local governments that COVID-19 causes damage to property. This is particularly true in places where business is conducted, such as Plaintiff’s, as the requisite contact and interaction causes a heightened risk of the property becoming contaminated.

82. Plaintiff did not have the ability or right to ignore these Orders and proclamations as doing so would expose Plaintiff to fines and sanctions.

83. Plaintiff’s adherence to the requirements of these Orders and proclamations was in furtherance of the protecting the public, the public’s good and supportive of public policy to attempt to minimize the risk of spread of COVID-19.

84. Plaintiff’s business was unable to open its doors as a direct consequence of the Civil Authority stay-at-home orders for public safety issued by the Governor of California and the State of California, generally. Accordingly, Plaintiff has a claim with Defendant related to such losses.

85. Plaintiff’s adherence to the requirements of these Civil Authority Orders and proclamations was in furtherance of the protecting the public, the public’s good, supportive of public policy to attempt to minimize the risk of spread of COVID-19 and consistent with them complying with the Civil Authority Orders entered.

#### **IV. Impact on Plaintiff**

86. As a result of COVID-19 and the above-described Civil Authority Orders, Plaintiff was in fact precluded from keeping its restaurant open to the public.

87. Plaintiff’s business loss occurred when the State of California issues its order on March 16, 2020 banning any gatherings at an establishment.



88. Plaintiff could not use its property for its intended purpose. Therefore, the novel coronavirus has caused “direct physical loss of or damage to” Plaintiff’s property insured under the policy.

89. Plaintiff’s business is highly susceptible to rapid person-to-property transmission of the virus, and vice-versa, because the activities of the customers and the staff require them to work in close proximity to the property.

90. COVID-19 caused direct physical loss of and/or damage to the covered premises under the Policy by, among other things, damaging the properties, intruding upon the properties, denying access to the properties, preventing customers from physically occupying the properties, causing the properties to be physically uninhabitable by customers, causing its function to be nearly eliminated or destroyed, causing the property to become substantially unusable, and/or causing a suspension of business operations on the premises.

91. The Civil Authority Orders entered by the state and local government were in the exercise of authority to protect the public and minimize the risk of spread of disease.

92. The Civil Authority Actions prohibiting public access to the covered premises and the surrounding area were issued in response to dangerous physical conditions and caused a suspension of business operations on the covered premises.

93. Even with the entry of these Civil Authority Orders there remained physical impact not only in and within Plaintiff’s business property but in and around the surrounding location of Plaintiff’s business property in light of COVID-19 presence not being detectable other than through microscopic means, and occurrence of illness.

94. The entry of the Civil Authority Orders to mitigate health risks to the public by attempting to prevent COVID-19 contamination, through the closing businesses and ordering persons to stay at home resulted in a physical impact on Plaintiff's business and Insured Properties.

95. Plaintiff specifically sought coverage for business interruption losses and extended expenses and paid premiums for such coverage and with an expectation that the Policy Plaintiff purchased provided such coverage, with no disclosures to the contrary being made to Plaintiff by Defendant or its agents.

96. Plaintiff had no choice but to comply with the Civil Authority Orders, for failure to do so would have exposed Plaintiff and his business to fines and sanctions. Plaintiff's compliance with mandates resulted in Plaintiff suffering business losses, business interruption and extended expenses of the nature that the Policy covers and for which Plaintiff's reasonable expectation was that coverage existed in exchange for the premiums paid.

97. A declaratory judgment determining that the coverage provided under the Policy will prevent Plaintiff from being left without vital coverage acquired to ensure the survival of the business due to the shutdown caused by the civil authorities' response is necessary. As a result of these Orders, Plaintiff has incurred, and continues to incur, among other things, a substantial loss of business income and additional expenses covered under the Policy.

98. Any effort by the Defendant to deny the reality that the Plaintiff has suffered physical loss and damage would constitute a false and potentially fraudulent misrepresentation done in bad faith that could endanger the Plaintiff and the public.

99. As a result of these Orders, Plaintiff has incurred, and continues to incur, among other things, a substantial loss of business income and additional expenses covered under the Policy.

**CAUSE OF ACTION**

**DECLARATORY RELIEF**

100. Plaintiff re-alleges and incorporates by reference into this cause of action each and every allegation set forth in each and every paragraph of this Amended Complaint.

101. The Declaratory Judgment Act, 28 U.S.C. § 2201(a), provides that in “a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a).

102. An actual controversy has arisen between Plaintiff and Defendant as to the rights, duties, responsibilities and obligations of the parties under the Policy in that Plaintiff contends and, on information and belief, Defendant disputes and denies, *inter alia*, that:

- a. The Orders constitute a prohibition of access to Plaintiff’s Insured Properties;
- b. The prohibition of access by the Orders has specifically prohibited access as defined in the Policy;
- c. The Orders trigger coverage;
- d. The Policy provides coverage to Plaintiff for any current and future closures in Los Angeles County due to physical loss or damage directly or indirectly from the Coronavirus and/or pandemic circumstance under the Civil Authority coverage parameters;
- e. The Policy’s exclusions for virus and bacteria do not apply to the circumstances presented in the lawsuit and the kind and types of damages and losses suffered by Plaintiff;
- f. Defendant’ denial of coverage for losses sustained that were caused by the entry of the Civil Authority Orders referenced, and Plaintiff’s adherence to the Civil Authority Orders violates public policy;
- g. The under the circumstances of this Pandemic and the entry of the Civil Authority Orders referenced, Plaintiff’s had no choice but to comply with the Civil Authority Orders, and that Plaintiff’s compliance resulting in Plaintiff suffering business losses, business interruption and extended expenses is therefore a covered expense;

- h. The Policy provides business income coverage in the event that Coronavirus has directly or indirectly caused a loss or damage at the insured premises or immediate area of the Insured Properties; and
- i. Resolution of the duties, responsibilities and obligation of the parties is necessary as no adequate remedy at law exists and a declaration of the Court is needed to resolve the dispute and controversy.

103. Plaintiff seeks a Declaratory Judgment to determine whether the Orders constitute a prohibition of access to Plaintiff's Insured Properties.

104. Plaintiff further seeks a Declaratory Judgment to affirm that the Orders trigger coverage.

105. Plaintiff further seeks a Declaratory Judgment to affirm that the Policy provides coverage to Plaintiff for any current and future closures of businesses such as Plaintiff's in Los Angeles County due to physical loss or damage from the Coronavirus and/or the pandemic and the policy provides business income coverage in the event that Coronavirus has caused a loss or damage at the Insured Properties.

106. Plaintiff does not seek any determination of whether the Coronavirus is physically in or at the Insured Properties, amount of damages, or any other remedy other than declaratory relief.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for a judgment against Defendant as follows:

- a. For a declaration that the Orders constitute a prohibition of access to Plaintiff's Insured Properties.
- b. For a declaration that the prohibition of access by the Orders is specifically prohibited access as defined in the Policy.
- c. For a declaration that the Orders trigger coverage under the Policy.
- d. For a declaration that the Policy provides coverage to Plaintiff for any current and future closures in Los Angeles County due to physical loss or damage

directly or indirectly from the Coronavirus and/or pandemic circumstance under the Civil Authority coverage parameters.

- e. For a declaration that the Policy's exclusions for virus and bacteria do not apply to the circumstances presented in the lawsuit and the kind and types of damages and losses suffered by Plaintiff.
- f. For a declaration that Defendant's denial of coverage for losses sustained that were caused by the entry of the Civil Authority Orders referenced, and Plaintiff's adherence to the Civil Authority Orders violates public policy.
- g. For a declaration that under the circumstances of this Pandemic and the entry of the Civil Authority Orders referenced, Plaintiff's had no choice but to comply with the Civil Authority Orders, and that Plaintiff's compliance resulting in Plaintiff suffering business losses, business interruption and extended expenses is therefore a covered expense.
- h. For a declaration that the Policy provides coverage to Plaintiff for any current, future and continued closures of non-essential businesses due to physical loss or damage directly or indirectly from the Coronavirus.
- i. For a declaration that the Policy provides business income coverage in the event that Coronavirus has directly or indirectly caused a loss or damage at the Plaintiff's Insured Properties or the immediate area of the Plaintiff's Insured Properties.
- j. For such other relief as the Court may deem proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands trial by jury.

Dated: September 18, 2020

Respectfully submitted,

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