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7

8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10  
11 IN-N-OUT BURGERS, a California  
corporation,  
12 Plaintiff,

13 vs.

14 ZURICH AMERICAN INSURANCE  
COMPANY,  
15 Defendant.

Case No. 8:20-cv-1000

**COMPLAINT**

DEMAND FOR JURY TRIAL

16  
17 Plaintiff In-N-Out Burgers (“Plaintiff” or “In-N-Out”) complains against  
18 defendant Zurich American Insurance Company (“Zurich”) as follows:

19 **I. NATURE OF THE ACTION**

20 1. This action arises out of Zurich’s denial of coverage under an “all-risk”  
21 insurance policy for business interruption losses. The “all-risk” policy drafted by  
22 Zurich expressly includes coverage for many types of contamination, including  
23 radiation, ammonia, virus, pathogen or pathogenic organism, and disease-causing  
24 illness or agent. In-N-Out submitted a claim for business interruption and other  
25 covered losses arising in connection with the novel coronavirus and ongoing COVID-  
26 19 pandemic, but Zurich denied coverage.

27 2. In-N-Out seeks damages for breach of contract against Zurich for its  
28 failure to honor its policy obligations. In-N-Out further seeks a judgment declaring

1 the scope of Zurich's obligation to pay In-N-Out's losses under The Zurich Edge™  
2 commercial property insurance policy sold to In-N-Out.

3 **II. PARTIES**

4 3. In-N-Out is a California corporation with its principal place of business  
5 in Irvine, California. In-N-Out is a well-known and successful chain of quick-service  
6 restaurants specializing in award-winning hamburger and cheeseburger sandwiches.

7 4. In-N-Out is informed and believes, and based thereon alleges, that Zurich  
8 is a New York corporation with its principal place of business at 1299 Zurich Way,  
9 Schaumburg, IL 60196.

10 **III. JURISDICTION AND VENUE**

11 5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332  
12 because In-N-Out and Zurich are citizens of different states and the amount in  
13 controversy exceeds \$75,000 exclusive of interest and costs.

14 6. Venue is proper in this Court pursuant to 28 U.S.C. §1391(2) as a  
15 substantial amount or part of the events or omissions giving rise to the claim occurred  
16 in this district.

17 **IV. FACTUAL BACKGROUND**

18 **A. In-N-Out**

19 7. For over 70 years, In-N-Out has operated a highly recognizable and  
20 successful chain of quick-service restaurants specializing in the highest quality  
21 hamburger and cheeseburger sandwiches and other products and services.

22 8. It currently operates approximately 350 locations predominantly in  
23 California, and also in Arizona, Nevada, Utah, Oregon and Texas.

24 9. Celebrated for its fresh food and other high standards of quality, In-N-  
25 Out consistently rates with the press as the top quick service restaurant in customer  
26 satisfaction surveys.

27 10. In-N-Out's commitment to its associates has resulted in recognition as  
28 one of the best places in the country to work. This year, Glass Door recognized In-N-

1 Out as number four on its list of best places to work in the United States, ahead of  
2 Google, Southwest Airlines, John Deere, and many other highly regarded companies  
3 across all of American industry.

4 11. In-N-Out is known for its drive-through operations, but the vast majority  
5 of all In-N-Out locations have dining rooms and outdoor eating areas where customers  
6 walk up and place orders inside the restaurants, choosing to either dine at the  
7 restaurant or take their food to go.

8 12. As a part of its prudent business practices, In-N-Out maintains insurance  
9 coverage. In-N-Out specifically maintains “all risk” coverage with Zurich, covering  
10 not only more commonly known risks like fire, but also entirely unknown and novel  
11 risks that may arise which were not previously considered by the Company, Zurich or  
12 by the public at large. As described below in greater detail, the Zurich policy at issue  
13 here provides coverage for “*all risks of direct physical loss of or damage from any*  
14 *cause unless excluded.*” And the Zurich policy at issue here contains no exclusion for  
15 viruses or infectious diseases.

16 **B. The COVID-19 Pandemic**

17 13. COVID-19 is an infectious disease caused by a virus, known as the  
18 “novel coronavirus” or SARS-CoV-2. It is believed that the first instance of the  
19 disease spreading to humans was in or around December 2019.

20 14. In January 2020, this virus and its resulting disease COVID-19 reached  
21 the United States and quickly spread across the country. As early as February 26,  
22 2020, the Center for Disease Control and Prevention (“CDC”) advised that COVID-19  
23 was spreading freely without the ability to trace the origin of new infections, also  
24 known as community transmission.

25 15. On March 11, 2020, the World Health Organization (“WHO”) declared  
26 COVID-19 to be a pandemic.

27 16. COVID-19 is highly contagious, uniquely resilient, and deadly.  
28

1           17. The WHO states “[t]he disease spreads primarily from person to person  
2 through small droplets from the nose or mouth, which are expelled when a person  
3 with COVID-19 coughs, sneezes, or speaks...People can catch COVID-19 if they  
4 breathe in these droplets from a person infected with the virus... These droplets can  
5 land on objects and surfaces around the person such as tables, doorknobs and  
6 handrails. People can become infected by touching these objects or surfaces, then  
7 touching their eyes, nose or mouth.”<sup>1</sup>

8           18. In the April 16, 2020 edition of the *New England Journal of Medicine*,  
9 researchers from UCLA, Princeton University, the National Institute of Allergy and  
10 Infectious Diseases and the Centers for Disease Control and Prevention reported a  
11 scientific study comparing the Aerosol and Surface Stability of SARS-CoV-2 (novel  
12 coronavirus) to an earlier coronavirus, SARS-CoV-1. The study reports that the novel  
13 coronavirus persisted in their tests up to 72 hours on plastic and stainless steel.

14           19. A CDC posting from March 27, 2020 reported that SARS-CoV-2 was  
15 identified on surfaces of the cabins on board the Diamond Princess cruise ship 17 days  
16 after the cabins were vacated but before they were disinfected. Numerous other  
17 scientific studies and articles have identified the persistence of coronavirus on  
18 doorknobs, toilets, faucets and other high touch points.

19           20. In a March 4, 2020 research letter published by the *Journal of the*  
20 *American Medical Association*, scientists from the National Centre for Infectious  
21 Disease and the DSO National Laboratories, both in Singapore, found novel  
22 coronavirus in the majority of uncleaned hospital rooms that had previously been  
23 occupied by patients infected with COVID-19. The researchers concluded that  
24 “SARS-CoV-2 through respiratory droplets and fecal shedding suggests the  
25 environment as a potential medium of transmission and supports the need for strict  
26

27  
28 <sup>1</sup> “How does COVID-19 spread?,” World Health Organization (last checked May 19,  
2020), [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-  
and-answersZurich](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answersZurich) -hub/q-a-detail/q-a-coronaviruses

1 adherence to environmental and hand hygiene.”

2 21. Via its corporate web pages, Zurich has admitted to the physical dangers  
3 associated with the novel coronavirus, advising its customers to rely on the same  
4 scientific studies by the New England Journal of Medicine, The Centers for Disease  
5 Control, and other such sources concerning how long the virus survives on surfaces  
6 and touch points like door handles and counters. Zurich has underscored the need to  
7 repeatedly disinfect these surfaces. *See, e.g.,*

8 [https://www.zurichna.com/knowledge/articles/2020/05/disinfecting-offices-and-](https://www.zurichna.com/knowledge/articles/2020/05/disinfecting-offices-and-facilities-during-the-covid-19-crisis)  
9 [facilities-during-the-covid-19-crisis](https://www.zurichna.com/knowledge/articles/2020/05/disinfecting-offices-and-facilities-during-the-covid-19-crisis) (last checked May 27, 2020).

10 22. A particular challenge with the novel coronavirus is that it is possible for  
11 a person to be infected with COVID-19, but be asymptomatic. Such seemingly  
12 healthy people unknowingly spread the virus via speaking, breathing, and touching  
13 objects.

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

19 24. At present, testing protocol and reporting faces significant challenges. It  
20 was widely reported in late May that the CDC has mixed up test data from individuals  
21 testing positive for the virus with individuals showing the presence of antibodies  
22 produced in response to the virus. Testing remains limited, and the accuracy of the  
23 tests are in doubt. The Food and Drug Administration reported in May that the Abbot  
24 ID NOW test used within the White House produces unreliable results.

25 25. At present, based on testing of only a very small proportion of the  
26 population, roughly 1.6 million people are confirmed to have been or are infected  
27 throughout the United States, resulting in approximately 100,000 deaths as of late  
28 May, 2020. In California, also based on limited testing, more than 82,000 cases have

1 been confirmed.

2 26. The CDC keeps track of known infections by county. Virtually every  
3 county where an In-N-Out restaurant is located has reported COVID-19 infections.  
4 Within the Company, In-N-Out has been informed that to date, more than 30 of its  
5 associates have been diagnosed with COVID-19.

6 **C. Government Orders and the Closure of In-N-Out Restaurants**

7 27. On March 16, 2020, the CDC and the national Coronavirus Task Force  
8 issued to the American public guidance titled “30 Days to Slow the Spread” of  
9 COVID-19. The guidance called for extreme social distancing measures, such as  
10 working from home, avoiding gatherings of more than 10 people, and staying away  
11 from bars and restaurants.

12 28. State governments across the nation recognized the unprecedented and  
13 catastrophic situation, with California, Arizona, Nevada, Utah, Oregon and Texas  
14 making “State of Emergency” declarations in early March. Within a short time, these  
15 states issued orders suspending or severely limiting business operations of non-  
16 essential businesses where people could potentially contract COVID-19 from others or  
17 the property itself. This included closing restaurant dining rooms.

18 29. Simultaneously or shortly thereafter, states across the country issued  
19 orders encouraging or requiring citizens to “shelter in place” or “stay at home.”

20 30. In many instances, city and county governments issued their own  
21 restrictive orders, which among other things closed restaurant dining rooms.

22 31. On March 19, 2020, the City of Los Angeles issued its “Safer at Home”  
23 order “because, among other reasons, the COVID-19 virus can spread easily from  
24 person to person and it is physically causing property loss or damage due to its  
25 tendency to attach to surfaces for prolonged periods of time.”<sup>2</sup>

26  
27  
28 <sup>2</sup> Public Order Under City of Los Angeles Emergency Authority, Issue Date March  
19, 2020. (last checked May 19, 2020)

1 32. On March 31, 2020, Dallas County, Texas issued an order stating that  
2 “the COVID-19 virus causes property loss or damage due to its ability to attach to  
3 surfaces for prolonged periods of time...”<sup>3</sup>

4 33. On March 17, 2020, Orange County issued its “Order of the Local Health  
5 Officer” prohibiting “all public and private gatherings of any number of people  
6 occurring outside a single household” and ordering that “all restaurants and other  
7 establishments that serve food shall close all on-site dining consistent with guidance  
8 provided by the California Department of Public Health...”<sup>4</sup>

9 34. On March 27, 2020, San Diego County issued its “Order of the Health  
10 Officer and Emergency Regulations” ordered all restaurants to close their dining  
11 rooms. The order also required essential service providers to follow a strict social  
12 distancing and sanitation protocol. The protocol requires the following mandatory  
13 procedures: “Disinfecting wipes that are effective against COVID-19 are available  
14 near shopping carts and shipping baskets; Employee(s) assigned to disinfect carts and  
15 baskets regularly; Hand sanitizer, soap, and water, or effective disinfectant is available  
16 to the public at or near the entrance of the facility, at checkout counters, and anywhere  
17 else inside the store or immediately outside where people have direct interactions;  
18 Disinfecting all payment portals, pens, and styluses after each use; [and] Disinfecting  
19 all high-contact surfaces frequently.”<sup>5</sup>

20  
21 <https://www.lamayor.org/sites/g/files/wph446/f/page/file/20200513%20Mayor%20Public%20Order%20SAFER%20AT%20HOME%20ORDER%202020.03.19%20%28REV3%202020.05.13%29X.pdf>

22  
23 <sup>3</sup> Amended Order of County Judge Clay Jenkins, Issue date March 31, 2020. (last checked May 19, 2020)

24 <https://www.dallascounty.org/Assets/uploads/docs/covid-19/orders-media/033120-DallasCountyOrder.pdf>

25 <sup>4</sup> Order of the Local Health Officer. Issue Date March 17, 2020. (last checked May 22, 2020)

26 <https://cms.ocgov.com/civicax/filebank/blobdload.aspx?BlobID=114362&fbclid=IwARIDksYgc1FkbpPnypqiHK8pNYojOnKaviWFjd6FIbqYVM8MsRxsMm9YoFw>

27 <sup>5</sup> “Order of the Health Officer and Emergency Regulations” issued March 17, 2020 and updated May 21, 2020. (last checked May 22, 2020)

28 <https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/HealthOfficerOrderCOVID19.pdf>

1 35. On March 16, 2020, the City and County of San Francisco issued its  
2 shelter in place “Order of the Health Officer No. C19-07” stating:

3 The virus that causes Coronavirus 2019 Disease (“COVID-19”) is easily  
4 transmitted, especially in group settings, and it is essential that the spread  
5 of the virus be slowed to protect the ability of public and private health  
6 care providers to handle the influx of new patients and safeguard public  
7 health and safety. Because of the risk of the rapid spread of the virus, and  
8 the need to protect all members of the community and the Bay Area  
9 region, especially including our members most vulnerable to the virus  
and also health care providers, this Order requires all individuals  
anywhere in San Francisco to shelter in place—that is, stay at home...

10 It further orders that all “[r]estaurants and cafes—regardless of their seating  
11 capacity—that serve food are ordered closed except solely for takeout and delivery  
12 service.”<sup>6</sup>

13 36. The counties of Santa Clara, San Mateo, Marin, Contra Costa, and  
14 Alameda issued near identical orders. On March 31, 2020, the City and County of  
15 San Francisco updated its order as follows:

16 It is now well established that the virus that causes Novel Coronavirus  
17 2019 Disease (“COVID-19”) is easily transmitted, especially in group  
18 settings, and that the disease can be extremely serious. It can require long  
19 hospital stays, and in some instances cause long-term health  
20 consequences or death. It can impact not only those known to be at high  
21 risk but also other people, regardless of age. This is a global pandemic  
22 causing untold societal, social, and economic harm. To mitigate the harm  
from the pandemic, on March, 16, 2020, the City and County of San  
Francisco, along with a group of five other Bay Area counties and the  
City of Berkeley, issued parallel health officer orders imposing shelter in

23  
24 *See also* “Social Distancing and Sanitation Protocol” issued May 21, 2020. (last  
checked May 22, 2020)  
25 [https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/covid19/SOCIAL\\_DISTANCING\\_AND\\_SANITATION\\_PROTOCOL\\_04022020\\_V1.pdf](https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/covid19/SOCIAL_DISTANCING_AND_SANITATION_PROTOCOL_04022020_V1.pdf)  
26

27 <sup>6</sup> “Order of the Health Officer No. C19-07” issued March 16, 2020. (last checked  
28 May 22, 2020).  
<https://www.sfdph.org/dph/alerts/files/HealthOrderC19-07-%20Shelter-in-Place.pdf>



1 place limitations across the Bay Area, requiring everyone to stay safe at  
2 home except for certain essential needs. Other jurisdictions in the Bay  
3 Area and ultimately the State have since joined in adopting stay safe at  
home orders.<sup>7</sup>

4 37. On March 17, 2020, Mayor Kate Gallego of Phoenix, issued the  
5 following proclamation “Based on input from healthcare professionals, business  
6 leaders,& community members, PHX is declaring a state of emergency forcing  
7 immediate closure of bars & moving restaurants to delivery/take-out/drive-thru only  
8 starting 8PM tonight.”<sup>8</sup>

9 38. On March 17, 2020, the City of Tucson issued its “Proclamation of the  
10 Mayor Declaring an Emergency or Local Emergency” stating:

11 Whereas, in the last several days, the Mayors of various Arizona cities  
12 and towns, including Flagstaff, Yuma, Prescott Valley, Gilbert and others  
13 have issued proclamations declaring a local emergency in connection  
14 with the COVID-19 outbreak;...and whereas, emergency management  
15 measures are required to reduce the severity of the local emergency and  
mitigate the spread of COVID-19; and to protect the health, safety and  
welfare of the people and property located in the City of Tucson...

16 It is proclaimed and ordered, effective immediately...to protect life  
17 and/or property and to promote public safety and welfare...all  
18 restaurants, food courts, cafes, coffeehouses, retail food facilities, and  
19 other similar business and establishes are prohibited from serving food  
and beverages for consumption on the premises.<sup>9</sup>

20 39. On March 29, 2020, Salt Lake County issued a “Public Health Order”  
21 ordering “[d]ine-in food service, whether inside or outside the establishment is  
22 prohibited.” The order further instructed essential businesses to practice enhanced  
23 sanitation as follows:

24 \_\_\_\_\_  
25 <sup>7</sup> “Order of the Health Officer No. C19-07b” issued March 31, 2020. (last checked  
26 May 22, 2020).  
<https://www.sfdph.org/dph/alerts/files/HealthOfficerOrder-C19-07b-ShelterInPlace-03312020.pdf>

27 <sup>8</sup> <https://twitter.com/MayorGallego/status/1240001629073469440>

28 <sup>9</sup> “Proclamation of the Mayor Declaring an Emergency or Local Emergency” issued  
March 17, 2020. (last check May 22, 2020).  
<https://www.tucsonaz.gov/files/PROCLAMATION.pdf>

1 Reinforcing key messages to all employees, including staying home  
2 when sick, using appropriate cough and sneezing etiquette, and practicing  
3 appropriate handwashing...Performing frequent and enhanced  
4 environmental cleaning of commonly touched surfaces, such as  
5 workstations, countertops, railings, door handles, and  
6 doorknobs...Businesses that must accept cash, checks, or credit cards  
7 shall use cleansing measures between transactions, including any best  
8 practices issued by the Health Department. Cash transactions are  
9 discouraged, but not prohibited...Having hand sanitizer and/or sanitizing  
10 products readily available for employees and customers.<sup>10</sup>

11 40. Government orders applicable across all of In-N-Out's locations have  
12 ordered that all restaurant dining rooms be closed.

13 41. As a result of the COVID-19 pandemic, the property damage caused by  
14 the novel coronavirus, and in compliance with government guidance and orders, In-N-  
15 Out was forced to close all of its restaurant dining rooms. Based on the phased  
16 reopening being permitted by numerous government agencies, it appears highly likely  
17 that the reopening of dining rooms will be allowed only in a phased approach that may  
18 vary by specific jurisdiction. In-N-Out has suffered and continues to suffer significant  
19 losses from the closures of its dining rooms and related losses from the COVID-19  
20 pandemic.

21 **D. The Zurich Edge™ “All Risk” Commercial Property Policy**

22 42. In exchange for a very substantial premium, Zurich sold In-N-Out policy  
23 number MLP9137890-13, effective from June 1, 2019 to June 1, 2020. The policy  
24 provides coverage for property losses, for business interruption losses (“Time  
25 Element” per the policy language), and other losses. The policy limit is \$250 million,  
26 which is subject to deductibles, sublimits, and other conditions described in relevant  
27 part below.

28 <sup>10</sup> “Public Health Order” issued March 29, 2020. (last checked May 22, 2020).  
<https://slco.org/globalassets/1-site-files/health/programs/covid/pho/pho3.pdf>

1           43. The policy contains sublimits for many losses, but other losses are simply  
2 subject to the full \$250 million policy limit. For example, the policy has no sublimit  
3 for Time Element (business interruption) meaning the full \$250 million in coverage is  
4 available. As other examples, the policy limits coverage to \$75 million for earth  
5 movement, \$2 million for fine arts, \$5 million per location for Contingent Time  
6 Element, and \$1 million for losses from ammonia contamination. The policy also  
7 contains some time limits on coverage. For example, coverage for gross earnings (part  
8 of Time Element) is limited to 24 months. Civil or Military Authority is limited \$2.5  
9 million per property and a 90-day time frame.

10           44. The insuring clause in the 162-page policy provides in relevant part that  
11 the policy “[i]nsures against direct physical loss of or damage caused by a **Covered**  
12 **Cause of Loss** to Covered Property, at an Insured Location. . .” The term “**Covered**  
13 **Cause of Loss**” is defined as “[a]ll risks of direct physical loss of or damage from any  
14 cause unless excluded.”

15           45. In several distinct ways, the policy explicitly recognizes that  
16 contamination of property constitutes “direct physical loss of or damage” to property:

17           (a) First, the policy contains a sublimit of \$1 million for ammonia  
18 contamination.

19           (b) Second, the policy extends coverage to radioactive contamination.

20           (c) Third, the policy contains an exclusion removing certain types of  
21 contamination from coverage while leaving other types of contamination as covered.  
22 In the base policy form, Zurich defined “Contamination” to include “pathogen or  
23 pathogenic organism, bacteria, virus, disease causing or illness causing agent. . .” The  
24 base policy form also defined “Contaminant” to include ammonia. But through an  
25 endorsement that was issued at the inception of coverage, the terms “contamination”  
26 and “contaminant” were redefined in relevant part to delete pathogen or pathogenic  
27 organism, bacteria, virus and disease-causing illness or agent and ammonia from the  
28 exclusion.

1           46. As noted above, Zurich deleted the exclusion for ammonia  
2 contamination, and applied a \$1 million sublimit to that loss only. With respect to  
3 pathogen or pathogenic organism, bacteria, virus and disease-causing illness or agent,  
4 the policy does not apply a sublimit, meaning the entire \$250 million limit is  
5 available.

6           47. The policy covers In-N-Out's Time Element losses up to \$250 million,  
7 subject to the applicable deductible, based on the novel coronavirus and direct  
8 physical loss of or damage to property.

9           48. The novel coronavirus has caused "direct physical loss of or damage to"  
10 In-N-Out property insured under the policy.

11           49. The policy contains deductibles of \$200,000 for Time Element per  
12 occurrence. The policy contains a deductible of \$200,000 for Contingent Time  
13 Element per location. The policy contains other deductibles for specific properties and  
14 circumstances.

15           50. The policy contains a section entitled "Time Element Coverages" which  
16 insures In-N-Out's gross earnings. Within that section, coverage is extended for  
17 "Extra Expense" which covers the cost to resume normal business operations with a  
18 \$10 million limit.

19           51. The policy also contains what are described as "Special Coverages."  
20 These include items such as "Civil or Military Authority," "Contingent Time  
21 Element," "Decontamination Costs," "Ingress/Egress," and many others.

22           52. "Civil or Military Authority" coverage insures the Time Element Loss  
23 (gross earnings) resulting from "the necessary **Suspension** of the **Insured's** business  
24 activities at an Insured Location if the Suspension is caused by order of civil or  
25 military authority that prohibits access to the Location. That order must result from a  
26 civil authority's response to direct physical loss of or damage caused by a Covered  
27 Cause of Loss to property not owned, occupied, leased or rented by the insured" and  
28 within one mile of an insured location. As alleged above, state and local governments

1 issued orders closing In-N-Out's dining rooms in order to control spread of the virus  
2 and specifically because the virus is causing property loss or damage everywhere,  
3 including many places within one mile of In-N-Out locations. As a result of those civil  
4 orders, In-N-Out has suffered loss insured under the policy.

5 53. "Contingent Time Element" coverage covers the gross earning loss  
6 "directly resulting from the necessary **Suspension** of the Insured's business activities  
7 at an Insured Location if the **Suspension** results from the direct physical loss of or  
8 damage caused by [any non-excluded cause] to Property . . . at **Direct Dependent**  
9 **Time Element Locations, Indirect Dependent Time Element Locations,** and  
10 **Attraction Properties** located worldwide . . . ." Attraction Properties are defined as  
11 properties that attract customers to the insured's business. In plain English, the policy  
12 provides coverage for In-N-Out's losses if certain types of neighboring properties  
13 suffer property loss or damage of the type not excluded under the policy. For example,  
14 In-N-Out operates stores near numerous universities and is highly popular with  
15 students. The closure of classes at UCLA, UC Irvine and elsewhere by reason of the  
16 coronavirus has resulted in covered loss of business for In-N-Out.

17 54. "Decontamination Costs" are covered to the sublimit where a law or  
18 ordinance regulating contamination results in increased cost of decontamination.

19 55. The insuring clause covers "loss of or damage to property," with the  
20 word "or" signifying that those are two different concepts. There is no requirement  
21 that the loss of property be permanent or complete. Here, In-N-Out is suffering both a  
22 "loss of" its dining rooms, *and* property damage based on the scientific studies quoted  
23 above.

24 56. Beginning with its introduction in 2008, Zurich marketed its Edge policy  
25 form as offering uniquely "broader coverage and greater flexibility." Zurich CEO  
26 made this announcement and lauded the clarity of the form.

## 27 **E. In-N-Out's Losses**

28 57. A large percentage of In-N-Out's business derives from on-site dining in

1 its dining rooms and via walk-up sales for its outside eating areas. Since mid-March,  
2 those dining rooms have been closed resulting in a substantial Time Element loss of  
3 the Company's "gross earnings" as insured under the policy.

4 58. In-N-Out has incurred and will incur "Decontamination Costs" under the  
5 policy.

6 59. While potentially and at least partially overlapping with its Time Element  
7 Loss, the gross earnings loss as covered under the policy is also resulting as  
8 Contingent Time Element Loss given the closure of nearby properties, and Civil  
9 Authority loss as a result of Civil Orders as alleged above.

10 60. As the nation works to determine a path forward to reopening business,  
11 In-N-Out expects that it will incur Extra Expense as insured under the policy. In-N-  
12 Out also expects that with the calculation of its full losses when better known,  
13 additional coverages under the policy may be applicable.

14 **F. Zurich's Denial of Claim**

15 61. On or about April 20, 2020, In-N-Out gave notice to Zurich of its  
16 coronavirus loss. To date, Zurich's known investigation effort regarding In-N-Out is  
17 limited to a short email containing a handful of questions regarding COVID-19  
18 diagnoses and the amount of loss, to which In-N-Out responded.

19 62. Within one week of receiving notice, a senior Zurich employee informed  
20 In-N-Out that he believed Zurich would not cover the loss. Instead, Zurich announced  
21 to the world press that it denies there is coverage for virtually all business interruption  
22 losses arising from the novel coronavirus. On or about May 14, 2020, Zurich's CFO  
23 George Quinn announced Zurich's position that virtually all (more than 99%) of its  
24 policies in the United States exclude losses for virus (even though its broadly  
25 marketed Edge form does not exclude virus losses). He further claimed that Zurich's  
26 worldwide business interruption claims due to COVID-19 would be about \$450  
27 million (60% of \$750 million) in 2020, with the bulk of those claims payments being  
28 in Europe. <https://www.zurich.com/en/media/news-releases/2020/2020-0514-01> ,

1 <https://www.insurancejournal.com/news/international/2020/05/14/568567.htm> (both  
2 last checked May 28, 2020).

3 63. On May 29, 2020, a claims representative from Zurich telephoned In-N-  
4 Out and said that Zurich was denying the claim. She said a written letter would be  
5 forthcoming, but that Zurich took the position that the policy excludes loss relating to  
6 virus despite the plain policy language to the contrary.

7 **V. CAUSES OF ACTION**

8 **FIRST CAUSE OF ACTION**

9 **(Breach of Contract)**

10 64. In-N-Out incorporates the above Paragraphs 1-45 by reference.

11 65. In-N-Out paid for the policy and otherwise performed all of its  
12 obligations owed under that policy or was excused from performance. In denying  
13 coverage for In-N-Out's insurance claim as alleged above, Zurich breached the  
14 contract. As a result, In-N-Out has suffered and continues to suffer damage in an  
15 amount to be proven at trial.

16 **SECOND CAUSE OF ACTION**

17 **(Declaratory Relief)**

18 66. Plaintiff incorporates the above Paragraphs by reference.

19 67. An actual controversy exists between the parties within the meaning of  
20 California Code of Civil Procedure Section 1060.

21 68. As such, this Court has the authority to issue a declaratory judgment  
22 concerning the respective rights and duties of In-N-Out and Zurich under the policy.

23 69. In-N-Out is entitled the declaratory relief establishing that the losses it  
24 has suffered are covered by Policy.

25 **VI. PRAYER FOR RELIEF**

26 WHEREFORE, In-N-Out prays for judgment as follows:

27 1. On the First Cause of Action for Breach of Contract:  
28

1 (a) For damages in an amount up to the policy limit less a proper  
2 deductible;

3 (b) For costs of suit; and

4 (c) Interest at the maximum legal rate on all amounts owed under the  
5 Policy, accruing from the date upon which amounts should have been paid.

6 2. On the Second Cause of Action for Declaratory Relief:

7 (a) That this Court declare the rights, obligations and liabilities of the  
8 parties herein and specifically declare, as In-N-Out contends, that the events and  
9 losses incurred as described in this complaint are covered by the policy.

10 3. On all causes of action:

11 (a) For costs of suit incurred herein; and

12 (b) For such other relief as the Court may deem just and proper.

13  
14 Dated: May 29, 2020

PILLSBURY WINTHROP SHAW  
PITTMAN LLP

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17 By:           /s/ Robert L. Wallan            
18 Robert L. Wallan  
19 Rebecca Tierney  
20 Attorneys for Plaintiff IN-N-OUT  
21 BURGERS  
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