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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **COUNTY OF SAN FRANCISCO**

17 **JOHN’S GRILL, INC., and**
18 **JOHN KONSTIN,**

19 Plaintiffs,

20 v.

21 **THE HARTFORD FINANCIAL SERVICES**
22 **GROUP, INC.,**
23 **SENTINEL INSURANCE COMPANY, LTD.,**
24 **NORBAY INSURANCE SERVICES, INC.,**
25 **and Does 1 through 10, inclusive,**

26 Defendants.

Case No.

COMPLAINT FOR:

1. **BREACH OF CONTRACT,**
2. **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING,**
3. **BAD FAITH DENIAL OF INSURANCE CLAIM,**
4. **UNFAIR BUSINESS PRACTICES,**
5. **FRAUDULENT MISREPRESENTATION,**
6. **CONSTRUCTIVE FRAUD,**
7. **UNJUST ENRICHMENT,**
8. **DECLARATORY RELIEF, and**
9. **INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

TABLE OF CONTENTS

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

I. INTRODUCTION..... 3

II. COVID-19..... 3

III. CLOSURE ORDERS AND INSURANCE 4

IV. HARTFORD INSURANCE AND DENIAL..... 5

V. VIOLATIONS OF CALIFORNIA LAW 6

VI. PARTIES 6

 A. JOHN’S GRILL PLAINTIFFS 6

 B. HARTFORD DEFENDANTS..... 7

 C. DOE DEFENDANTS 8

VII. AIDING AND ABETTING AND CO-CONSPIRATORS 8

VIII. JURISDICTION AND VENUE..... 9

IX. FACTUAL BACKGROUND..... 9

 A. HISTORIC LANDMARK RESTAURANT 9

 B. PANDEMIC IN SAN FRANCISCO..... 10

 C. CLOSURE ORDERS ISSUED BY STATE, CITY, AND COUNTY CIVIL AUTHORITIES 11

 D. JOHN’S GRILL FORCED TO CLOSE AND RESULTING FINANCIAL LOSSES 13

 E. JOHN’S GRILL SUFFERS COVERED LOSS 14

 F. HARTFORD’S DENIAL OF PLAINTIFFS’ INSURANCE CLAIM..... 17

 FIRST CAUSE OF ACTION 17
 BREACH OF CONTRACT

 SECOND CAUSE OF ACTION 18
 BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

 THIRD CAUSE OF ACTION 19
 BAD FAITH DENIAL OF INSURANCE CLAIM

 FOURTH CAUSE OF ACTION 20
 UNFAIR BUSINESS PRACTICES UNDER BUS. & PROF. CODE § 17200, ET SEQ.

1	FIFTH CAUSE OF ACTION	21
	FRAUDULENT MISREPRESENTATION	
2		
3	SIXTH CAUSE OF ACTION	22
	CONSTRUCTIVE FRAUD	
4		
5	SEVENTH CAUSE OF ACTION	23
	UNJUST ENRICHMENT	
6		
7	EIGHTH CAUSE OF ACTION	24
	DECLARATORY RELIEF	
8		
9	NINTH CAUSE OF ACTION.....	25
	INJUNCTIVE RELIEF UNDER BUS. AND PROF. CODE § 17200, ET SEQ.	
10		
11	PRAYER FOR RELIEF	26
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		
	DEMAND FOR JURY TRIAL	27

1 Plaintiffs John’s Grill, Inc. and John Konstin (collectively, “Plaintiffs” or “John’s Grill”)
2 file this Complaint against defendants The Hartford Financial Services Group, Inc., Sentinel
3 Insurance Company, Ltd., and Norbay Insurance Services, Inc. (collectively, “Hartford”), and
4 Does 1 through 10, and allege as follows:

5 **I. INTRODUCTION**

6 1. Plaintiff John’s Grill is a historic, family-owned, landmark restaurant located in the
7 heart of downtown San Francisco. On **March 16, 2020**, John’s Grill was forced to close its doors
8 to the public because of a series of orders issued by the City and County of San Francisco
9 (“Closure Orders”). The Closure Orders **prohibited** on-premises dining at John’s Grill due to the
10 Coronavirus Disease 2019 (“COVID-19”) pandemic. As a result, John’s Grill suffered substantial
11 financial losses and had to let 54 workers go—waiters, busboys, bartenders, dishwashers, and
12 preps cooks, as well as a hostess, manager, general manager, and chef.

13 2. To protect its business and employees from the loss caused by a situation like this,
14 John’s Grill obtained Spectrum Business Owner’s Policy No. 57 SBA BM3821 (the “Policy”)
15 from Hartford, which includes business interruption coverage. In breach of the insurance
16 obligations that Hartford undertook in exchange for receipt of Plaintiffs’ premium payments—
17 which Plaintiffs dutifully and regularly paid—Hartford denied Plaintiffs’ insurance claims arising
18 from the interruption of Plaintiffs’ business caused by the Closure Orders. Hartford denied the
19 claims notwithstanding the plain language of the Policy, which provides coverage for such losses,
20 and they did so fraudulently in violation of California law.

21 **II. COVID-19**

22 3. On **March 17, 2020**, the New England Journal of Medicine, one of the world’s
23 leading peer-reviewed medical journals, published a study that describes severe acute respiratory
24 syndrome coronavirus 2 (SARS-CoV-2) (the “Coronavirus”), the official name for the virus that
25 causes COVID-19, as a virus that is transmitted by respiratory droplets that can be suspended in air
26 for several hours. Over time, these droplets containing Coronavirus fall onto and can physically
27 remain on surfaces, such as metal, glass, plastic, and wood, for several days. Persons who touch
28 these surfaces, even days later, may become infected.

1 **III. CLOSURE ORDERS AND INSURANCE**

2 4. In **mid-March 2020**, state and local civil authorities in the San Francisco Bay Area
3 issued orders requiring that independent restaurants immediately close for business due to the
4 widespread physical presence of the Coronavirus. The resulting economic harm has been
5 significant. According to the Independent Restaurant Coalition, “up to seven million people have
6 been laid off, and millions of our suppliers will have their bills go unpaid, creating an
7 unprecedented trickledown effect of economic damage to local restaurants and the small
8 businesses that rely on them.”

9 5. Many, if not most, of the independent restaurants forced to close their doors had
10 planned ahead by purchasing insurance to safeguard against the business interruption that results
11 from precisely these kinds of civil authority **closure orders**. In recent weeks, independent
12 restaurants and other businesses have filed claims for business interruption coverage with their
13 insurance carriers as a lifeline to save their businesses and, by extension, their employees and
14 communities. However, Hartford, and other insurance companies, have **summarily declined**
15 **coverage**.

16 6. According to persons knowledgeable about the insurance industry’s blanket denials
17 of such business interruption claims:

18 “The [insurance] tactic is always the same Deny everything you
19 [insurer] owe, slow the payments, don’t pay the emergency funds you owe,
20 and then, because there’s such carnage, the [insurance] industry goes with
21 their lobbyists, with their advocacy groups, and with the senators, and they
22 say [to the government] we need disaster relief funds.”

23 7. Moreover, “[a]ccording to data from ratings firm A.M. Best Co., the insurance
24 industry as a whole has \$18.4 billion in net reserves for future payouts. But industry trade groups
25 like the American Property Casualty Insurance Association (APCIA) say they don’t have the funds
26 to pay out the claims from a pandemic. ‘Pandemic outbreaks are uninsured because they are
27 uninsurable,’ says APCIA David A. Sampson. If insurance is forced to pay claims by legislation,
28 for example, their reinsurers might not cover *them*.” The denial of business interruption insurance

1 claims is precisely what is happening here to small, independent restaurants. For the insurance
2 industry, the goal is to generate revenues by charging high premiums for insurance while avoiding
3 paying anything on legitimate claims by small businesses like John’s Grill.

4 8. The Closure Orders **prohibited** on-premises dining at John’s Grill due to the
5 physical presence of COVID-19 in the community and on the surfaces of the property around
6 John’s Grill. As a result, John’s Grill was forced to close its doors and let 54 workers go, and
7 Plaintiffs continue to suffer substantial financial losses.

8 **IV. HARTFORD INSURANCE AND DENIAL**

9 9. In **November 2019**, Hartford entered into a contract of insurance with John’s Grill,
10 Spectrum Business Owner’s Policy No. 57 SBA BM3821, for the period of November 1, 2019,
11 through November 1, 2020. Under this Policy, John’s Grill agreed to pay insurance premiums to
12 Hartford in exchange for Hartford’s promise to cover John’s Grill for losses including, but not
13 limited to, business income losses according to the terms set forth in the Policy. Since the
14 inception of the Policy, John’s Grill has paid all premiums and the Policy has at all relevant times
15 remained in full force and effect.

16 10. The Policy specifically includes “**Civil Authority**” coverage for business
17 interruptions caused by “**order of a civil authority.**” It also includes “**Lost Business Income &**
18 **Extra Expense Coverage,**” “**Extended Business Income**” coverage, and “**Business Income**
19 **Extension for Essential Personnel**” coverage, as well as “**Limited Fungi, Bacteria, Or Virus**
20 **Coverage.**”

21 11. The Policy’s coverage of business interruption at John’s Grill can occur under a
22 number of circumstances. Here, the Policy was triggered when a complete cessation of the
23 restaurant’s activities was the direct result of the Closure Orders issued by the City and County of
24 San Francisco. The Civil Authority provision in Section A.5.q of the Policy’s Special Property
25 Coverage Form reads, in pertinent part:

26 **Civil Authority**

27 **(1)** This insurance is extended to apply to the actual loss of Business Income
28 you sustain when access to your “scheduled premises” is specifically

1 prohibited by order of a civil authority as the direct result of a Covered
2 Cause of Loss to property in the immediate area of your “scheduled
3 premises.”

4 12. The March 16, 2020 Order issued by the City and County of San Francisco
5 Department of Public Health, under the title “Order of the Health Officer No. C19-07,” states, in
6 pertinent part:

7 **Restaurants and cafes—regardless of their seating capacity—that serve**
8 **food are ordered closed except solely for takeout and delivery service.**

9 This Order revokes and replaces a previously issued Order of the Health Office No. C19-05b,
10 dated March 13, 2020. True and correct copies of Orders dated March 13 (No. C19-05b) and
11 March 16 (No. C19-07) are attached hereto as **Exhibits A and B**.

12 13. The March 16, 2020 Order was issued as a direct result of a Covered Cause of Loss
13 to property under the Policy, seeing as the Coronavirus that was proliferating onto virtually every
14 surface and object in, on, and around John’s Grill and its surrounding environs was then causing,
15 and is continuing to cause, **direct physical damage** and loss in and to the immediate area of
16 John’s Grill—the “scheduled premises.”

17 **V. VIOLATIONS OF CALIFORNIA LAW**

18 14. This Complaint sets forth in detail direct violations of California laws that are
19 intended to protect insurance policyholders who act in good faith with their insurance carriers.
20 The details below affect not only the named Plaintiffs, but also the **more than 50 California**
21 **residents** employed at John’s Grill.

22 **VI. PARTIES**

23 **A. John’s Grill Plaintiffs**

24 15. Plaintiff **JOHN’S GRILL, INC.** (“John’s Grill”), is a California corporation with
25 its principal place of business in the City and County of San Francisco, California. John’s Grill
26 owns, operates, manages, and/or controls the restaurant known as John’s Grill located at 63 Ellis
27 Street, San Francisco, California 94102 (the “Insured Premises” or “Scheduled Premises”) and that
28 employs many people. At all relevant times, John’s Grill has owned, leased, managed, and/or

1 controlled the Insured Premises.

2 16. Plaintiff **JOHN KONSTIN** (“Konstin”) is a resident of California and the current
3 owner and operator of John’s Grill. The restaurant has been in the Konstin family for more than
4 half a century. John’s parents, Gus and Sydna, were classic San Francisco immigrant success
5 stories. Gus came from Greece in 1951 with no money and limited English and found work in San
6 Francisco restaurants, starting as a busboy, working hard, and steadily moving his way up. In
7 1955, he married Sydna Pantoja, an immigrant from Mexico, whom he had met in English classes
8 at Galileo High School. Together, in 1969, Gus and Sydna purchased John’s Grill. Gus served as
9 host, and Sydna was the restaurant’s tireless manager. Konstin grew up working alongside his
10 parents at John’s Grill, and in 1990 he took over the restaurant to continue serving the public and
11 employing many Bay Area residents.

12 **B. Hartford Defendants**

13 17. Defendant **THE HARTFORD FINANCIAL SERVICES GROUP, INC.**
14 (“Hartford Financial”), is a corporation incorporated in the state of Delaware with its principal
15 place of business in Connecticut. At all relevant times, Hartford Financial has been and is
16 authorized to do business and is doing business in the state of California and in San Francisco
17 County. At all relevant times, Hartford Financial has been and is transacting the business of
18 insurance in the state of California and in San Francisco County, and the basis of this suit arises
19 out of said conduct.

20 18. Defendant **SENTINEL INSURANCE COMPANY, LTD.** (“Sentinel”), is an
21 insurance company that is part of Hartford Financial and has its principal place of business in the
22 state of Connecticut. At all relevant times, Sentinel has been authorized to do business and is
23 doing business in the state of California and in San Francisco County. At all relevant times,
24 Sentinel has been and is transacting the business of insurance in the state of California and in San
25 Francisco County, and the basis of this suit arises out of said conduct.

26 19. Defendant **NORBAY INSURANCE SERVICES INC.** (“Norbay”), is a
27 California-licensed property insurance broker-agent and casualty insurance broker-agent. Norbay
28 is incorporated in the state of California and has its principal place of business in San Francisco,

1 California. Norbay sold John’s Grill the Policy at issue in this action and has joined in the denial
2 of the claim that is the subject of this lawsuit, regardless of any conduct by other Defendants.

3 **C. Doe Defendants**

4 20. Defendants DOES 1 through 10 (“Doe Defendants”) were, at all relevant times,
5 transacting or otherwise engaged in the business of insurance in the State of California and in San
6 Francisco County, and the basis of this suit arises out of said conduct. Though the true names and
7 capacities of the Doe Defendants are unknown to Plaintiffs, each of the Doe Defendants is, upon
8 information and belief, partially or wholly liable for the unlawful acts or omissions referred to
9 herein, and for the resulting harm to Plaintiffs. Many of Hartford’s agents reside and operate in
10 the City and County of San Francisco.

11 21. The Hartford and Doe Defendants are collectively referred to herein as Defendants.

12 22. Upon information and belief, each of Hartford defendants was, at all relevant times,
13 in any agency or joint-venture relationship with the other Hartford defendants, and was at all
14 relevant times acting within the purpose and scope of said relationship.

15 **VII. AIDING AND ABETTING and CO-CONSPIRATORS**

16 23. At all times relevant to this Complaint, Defendants and other potential Defendants
17 were acting as the agents, alter egos, servants, employees, and/or representatives of the Hartford
18 and other Defendants, and were acting within the course and scope of their agency, employment
19 and/or representation, with the full knowledge, consent, permission, authorization, and ratification,
20 either express or implied, of the other Defendants in performing the acts alleged in this Complaint.

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

25 25. Each of Hartford’s agents aided and abetted and rendered substantial assistance in
26 the wrongs complained of herein, and also acted in a knowing conspiracy to defraud Plaintiffs. In
27 taking such actions to substantially assist the commission of the wrongdoing complained of herein,
28 each Defendant, including the Doe Defendants, acted with knowledge of the primary wrongdoing,

1 substantially assisted in the accomplishment of that wrongdoing, and was aware of their overall
2 contribution to and furtherance of the wrongdoing.

3 **VIII. JURISDICTION AND VENUE**

4 26. This Court has subject matter jurisdiction over this action. The conduct giving rise
5 to this action took place, in whole or in part, in the City and County of San Francisco, California.
6 This action is based, in substantial part, on the breach of an insurance contract concerning a
7 California property and business and is based on violations of California law. The amount in
8 controversy exceeds the minimum jurisdictional amount of unlimited civil cases.

9 27. Venue is proper because the conduct giving rise to this action took place, in whole
10 or in part, in the City and County of San Francisco, California by the named Defendants and their
11 agents and co-conspirators.

12 **IX. FACTUAL BACKGROUND**

13 **A. Historic Landmark Restaurant**

14 28. John's Grill is a historic, landmark restaurant located in downtown San Francisco.
15 Created in 1908, it was the first restaurant to open its doors after the devastating 1906 San
16 Francisco earthquake, and it has been hosting local, state, and national political leaders, and
17 celebrities from around the world, ever since. Specializing in serving steaks and fresh seafood in
18 an interior that reflects its storied history, John's Grill serves lunch and dinner throughout the year,
19 in addition to hosting private events in a selection of dining rooms on its third floor. It employs
20 over 50 California residents as full- and part-time employees.





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16 **B. Pandemic in San Francisco**

17 29. COVID-19 is a deadly infectious disease caused by the recently discovered
18 Coronavirus known as SARS-CoV-2. It first emerged in or about December 2019. Because this
19 Coronavirus is highly transmissible, it has been and is rapidly spreading throughout the world,
20 including in San Francisco and other Bay Area counties.

21 30. According to the World Health Organization (“WHO”): “People can catch COVID-
22 19 from others who have the virus. The disease can spread from person to person through small
23 droplets from the nose or mouth which are spread when a person with COVID-19 coughs or
24 exhales. These droplets land on objects and surfaces around the person. Other people then catch
25 COVID-19 by touching these objects or surfaces, then touching their eyes, nose or mouth. People
26 can also catch COVID-19 if they breathe in droplets from a person with COVID-19 who coughs
27 out or exhales droplets.”¹ Because the Coronavirus that causes COVID-19 is contained in and
28

¹ WHO website, *Q&A on coronaviruses (COVID-19)*, “How does COVID-19 spread?,” available

1 transmitted by droplets that land indiscriminately on the surfaces of property with potentially fatal
2 consequences, it unquestionably causes physical damage and loss.

3 31. According to the U.S. Centers for Disease Control and Prevention (“CDC”):
4 “COVID-19 seems to be spreading easily and sustainably in the community (‘community spread’)
5 in many affected geographic areas” in the United States.² Relative to the rest of the State and
6 Country, populous urban areas, including San Francisco County and surrounding Bay Area
7 counties, have been particularly subject to community spread, and they have a correspondingly
8 high number of confirmed cases and deaths from COVID-19.

9 32. On **January 26, 2020**, the CDC announced California’s first positive test result for
10 COVID-19.

11 **C. Closure Orders Issued by State, City, and County Civil Authorities**

12 33. On **March 6, 2020**, the San Francisco Department of Public Health (“SFPDH”)
13 issued a Declaration of Local Health Emergency Regarding Novel Coronavirus Disease 2019
14 (COVID-19), noting that “it appears that this disease has become an epidemic and will continue to
15 spread through communities including the Bay Area.”

16 34. On **March 11, 2020**, the WHO declared the outbreak a global pandemic, and the
17 SFPDH issued Order of the Health Officer No. C19-05 (“**March 11 Order**”). The March 11
18 Order “prohibits all indoor public and private gatherings and outdoor gatherings within an
19 enclosed space of 1,000 persons or more anywhere in San Francisco.” The Order was effective
20 from March 11 until it was replaced by the SFPDH’s March 13 Order.

21 35. On **March 12, 2020**, California Governor Gavin Newsom issued Executive Order
22 N-25-20 (“**March 12 Executive Order**”), ordering that: “All residents are to heed any orders and
23 guidance of state and local public health officials, including but not limited to the imposition of
24 social distancing measures, to control the spread of COVID-19” (§ 1). This Order took effect on
25 March 12, 2020, and has remained continuously in effect through the date of this Complaint.

26
27 _____
28 at <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses> (last visited Apr. 15, 2020).
² CDC website, *Coronavirus Disease 2019 (COVID-19): Frequently Asked Questions*, “How
COVID-19 Spreads,” available at <https://www.cdc.gov/coronavirus/2019-ncov/faq.html# covid19-basics> (last visited Apr. 15, 2020).

1 36. On **March 13, 2020**, the SFPDH issued Order of the Health Officer No. C19-05b
2 (“**March 13 Order**”), which “revokes and replaces” the March 11 Order (¶ 1) and “prohibits all
3 indoor public and private gatherings and outdoor gatherings within an enclosed space that has a
4 maximum occupant load of 100 people or more anywhere in San Francisco” (p. 1). The March 13
5 Order was effective from March 13 at 5:00 p.m. (¶¶ 2, 14) until March 17 at 12:01 a.m., when it
6 was replaced by the SFPDH’s March 16 Order. *See* **Exhibit A**.

7 37. On **March 16, 2020**, the SFPDH issued Order of the Health Officer No. C19-07
8 (“**March 16 Order**”), which “revoke[d] and replace[d]” the March 13 Order. *See* **Exhibit B**.
9 The March 16 Order prohibits “[a]ll travel” and “[a]ll public and private gathers of any number of
10 people occurring outside a single household” (¶¶ 4, 5). As an exception to this prohibition, the
11 Marc 16 Order permits travel and gathering that is necessary to operate “Essential Business” (¶¶ 5,
12 10.d), which the Order defines to include “[r]estaurants and other facilities that prepare and serve
13 food, but only for delivery or carry out” (¶ 10.f.xiii). The March 16 Order further states:
14 **“Restaurants and cafes—regardless of their seating capacity—that serve food are ordered**
15 **closed except solely for takeout and delivery service”** (p. 2). The order also provides that
16 “[v]iolation of or failure to comply with this Order is a misdemeanor punishable by fine,
17 imprisonment, or both” (p. 1), and “requests that the Sheriff and the Chief of Police in the County
18 ensure compliance with and enforce this Order,” since “violation of any provision of this Order
19 constitutes an imminent threat and creates an immediate menace to public health (¶ 11). The
20 March 16 Order was effective from March 17 at 12:01 a.m. (¶ 12) until March 31 at 11:59 p.m.,
21 when it was superseded by the SFPDH’s Current SF Shelter Order (described below).

22 38. On **March 19, 2020**, the State of California issued an Order of the State Public
23 Health Officer, which set baseline statewide restrictions on non-essential business activities
24 effective until further notice. On that same date, Governor Newsom issued Executive Order N-33-
25 20, expressly requiring California residents to follow the March 19 Order of the State Public
26 Health Officer, and incorporating by reference California Government Code 8665, which provides
27 that “[a]ny person . . . who refuses or willfully neglects to obey any lawful order . . . issued as
28 provided in this chapter, shall be guilty of a misdemeanor and, upon conviction thereof, shall be

1 punishable by a fine of not to exceed one thousand dollars (\$1,000) or by imprisonment for not to
2 exceed six months or by both such fine and imprisonment” (Cal. Gov. Code § 8665). The March
3 19 Order of the State Public Health Officer and Executive Order N-33-20 (collectively, the
4 “**Statewide Shelter Orders**”) took immediate effect on March 19, 2020, and both have remained
5 continuously in effect through the date of this Complaint.

6 39. On **March 31, 2020**, the SFDPH issued Order of the Health Office No. C19-07b
7 (“**March 31 Order**” or “**Current SF Shelter Order**”), which “supersedes” and “clarifies,
8 strengthens, and extends certain terms of the Prior [SF] Shelter Order to increase social distancing
9 and reduce person-to-person contact to further slow transmission of [COVID-19]” (§ 1). As
10 concerns restaurants, the terms of the Prior SF Shelter Order and the March 31 Order are
11 substantially similar, with the March 31 Order noting that “[r]estaurants, cafes, coffee shops, and
12 other facilities that serve food—regardless of their seating capacity—must remain closed except
13 solely for takeout and delivery service” (p. 2), and continuing to define restaurants as Essential
14 Businesses “only for delivery or carry out” (§ 13.f.xvii). Like its predecessor, the March 31 Order
15 provides that “[v]iolation of or failure to comply with this Order is a misdemeanor punishable by
16 fine, imprisonment, or both” (p. 1), and further provides that “violation of any provision of this
17 Order constitutes an imminent threat and menace to public health” and “constitutes a public
18 nuisance” (§ 15). The March 31 Order is effective from March 31 at 11:59 p.m. through May 3,
19 2020, at 11:59 p.m. (§ 16), and it remains in effect as of the date of this Complaint.

20 **D. John’s Grill Forced to Close and Resulting Financial Losses**

21 40. On **March 16, 2020**, John’s Grill was forced to close its doors to the public and let
22 54 workers go. Each of the following three sets of orders required John’s Grill to close its
23 restaurant to on-premises dining: (a) the March 16 Order (supported by the March 12 Executive
24 Order), (b) the March 19 Statewide Shelter Orders on their own, and (c) the March 31 Order
25 (supported by March 12 Executive Order and Statewide Shelter Orders) (collectively, the
26 “**Closure Orders**”).

27 41. Due to the Closure Orders, John’s Grill has suffered and continues to suffer
28 substantial lost business income and other financial losses.

1 42. Due to the Closure Orders, John’s Grill had to let go 54 of its full-time employees,
2 resulting in lost wages for those employees.

3 43. These extraordinary losses of business income and lost wages for its full-time
4 employees are precisely why John’s Grill took out the business interruption Policy with Hartford,
5 and its losses are covered under the Policy.

6 **E. John’s Grill Suffers Covered Loss**

7 44. John’s Grill suffered covered loss as a result of the March 16, 2020 Order to shut
8 down issued by civil authority the City and County of San Francisco. John’s Grill is located in a
9 historic three-story Victorian building that was built in 1908, just two years after the 1906
10 earthquake, as a symbol of San Francisco’s resilience. The free-standing restaurant with the
11 Victorian façade stands majestically at 63 Ellis Street, which is in the middle of a narrow, one-
12 block strip of Ellis Street. Ellis Street is anchored on one end by Powell Street, which extends
13 from the renowned shops and sites in Union Square to the turn-around for the famed cable cars
14 from which one can hop off and walk to John’s Grill. The other end of Ellis Street terminates and
15 merges into the bustle of Market Street. This strip of Ellis Street is a crowded alley reminiscent of
16 days gone by. John’s Grill’s neighbors are a mix of retails shops, offices, a small hotel down the
17 street, and a large, multi-story parking garage looms large directly across the street. This street
18 and every building and object on it is a Coronavirus breeding ground.

19 45. According to the CDC, National Institutes of Health (“NIH”), other infectious
20 disease organizations around the world, and leading peer-reviewed medical journals such as the
21 New England Journal of Medicine, the Coronavirus spreads by droplets through person-to-person
22 contact and through contact with surfaces and objects.³ Although droplets containing Coronavirus
23 may not be visible to the human eye, the droplets are undeniably physical and have spread on
24 property surfaces.

25 46. The insidious nature of the Coronavirus is that it can remain infectious on a variety
26 of surfaces and objects from a few hours to several days. The CDC reports that the Coronavirus

27
28 ³ See, e.g., CDC website, “How COVID-19 Spreads,” available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited Apr. 15, 2020).

1 was detected on various surfaces inside the cruise ship cabins of both symptomatic and
2 asymptomatic passengers **17 days** after the cabins had been vacated.⁴ The Coronavirus can remain
3 on stainless steel and plastic up to 6 days; on glass, ceramics, silicon rubber, or paper up to 5 days;
4 on paper currency up to 3 days; and on cardboard up to 24 hours.⁵

5 47. Droplets containing Coronavirus can also travel and remain infectious while
6 suspended in the air. An MIT study found that the droplets from a cough can travel as far as 16
7 feet, and droplets from a sneeze can travel as far as 26 feet. According to a recent report in the
8 New York Times, “[a]n infected person talking five minutes in a poorly ventilated space can
9 produced as many viral droplets as one infectious cough. ‘If there are 10 people in there, it’s going
10 to be a build up,’ said Pratim Biswas, an aerosols experts at Washington University in St. Louis.”⁶

11 48. Here, the property loss to John’s Grill has been caused by the March 16 Order, and
12 by subsequent Closure Orders, that were issued due to droplets containing the Coronavirus being
13 on surfaces and objects in, on, around and in the immediate area of John’s Grill. These infected
14 surfaces and objects outside of John’s Grill include the façade, window glass, walls, doorknobs,
15 sidewalks, light posts, parking meters, trash bags, passersby, cars, trucks, buses, and scooters that
16 line Ellis Street.

17 49. Similarly, inside John’s Grill, every surface and object is implicated, including the
18 doors and door jambs, the hostess desk, countertops, tables, chairs, light fixtures, dishes, drinking
19 utensils, flatware, the entire kitchen and cookware, bathrooms, elevator, and artwork and photos.

20
21 ⁴ See Leah E. Moriary, et al., “Public Health Responses to COVID-19 Outbreaks on Cruise Ships
22 — Worldwide, February–March 2020,” 69 *Morbidity and Mortality Weekly Report* 347 (released
23 online Mar. 23, 2020), available at [https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6912e3-
H.pdf](https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6912e3-H.pdf) (last visited Apr. 15, 2020) (CDC journal article).

24 ⁵ See Alex W.H. Chin, et al., “Stability of SARS-CoV-2 in different environmental conditions,”
25 *The Lancet Microbe* (Apr. 2, 2020), available at [https://doi.org/10.1016/S2666-5247\(20\)30003-3](https://doi.org/10.1016/S2666-5247(20)30003-3)
26 (last visited Apr. 15, 2020); Neeltje van Doremalen, et al., “Aerosol and Surface Stability of
27 SARS-CoV-2 as Compared to SARS-CoV-1,” *New England Journal of Medicine* (Mar. 17, 2020),
28 available at <https://www.nejm.org/doi/pdf/10.1056/NEJMc2004973> (last visited Apr. 15, 2020);
Guenter Kampf, et al., “Persistence of coronaviruses on inanimate surfaces and their inactivation
with biocidal agents,” 104 *Journal of Hospital Infection* 246 (Feb. 6, 2020), available at
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7132493/pdf/main.pdf> (last visited Apr. 15,
2020).

⁶ See Yuliya Pashina-Kottas, et al., “This 3-D Simulation Shows Why Social Distancing Is So
Important,” *The New York Times* (Apr. 14, 2020), [https://www.nytimes.com/interactive/2020/04/14/
/science/coronavirus-transmission-cough-6-feet-ar-ul.html](https://www.nytimes.com/interactive/2020/04/14/science/coronavirus-transmission-cough-6-feet-ar-ul.html) (last visited Apr. 15, 2020) (3-D
visualization with commentary).

1 50. As noted above, the Civil Authority provision of the Policy makes clear that “[t]his
2 insurance is extended to apply to the actual loss of Business Income you [i.e., John’s Grill] sustain
3 when access to your ‘scheduled premises’ is specifically prohibited by order of a civil authority as
4 the direct result of a Covered Cause of Loss to property in the immediate area of your ‘scheduled
5 premises.’” Policy, Special Property Coverage Form § A.5.q.

6 51. The Policy also expressly provides coverage to pay for lost business income,
7 regardless of whether the loss was the result of a civil authority order. The Policy states, in
8 pertinent part:

9 **o. Business Income**

10 **(1)** We will pay for the actual loss of Business Income you sustain due
11 to the necessary suspension of your “operations” during the “period
12 of restoration”. The suspension must be caused by direct physical
13 loss of or physical damage to property at the “scheduled premises”,
14 including personal property in the open (or in a vehicle) within 1,000
15 feet of the “scheduled premises”, caused by or resulting from a
16 Covered Cause of Loss.

17 * * *

18 **(4)** Business Income means the:

19 **(a)** Net Income (Net Profit or Loss before income taxes) that would
20 have been earned or incurred if no direct physical loss or
21 physical damage had occurred; and

22 **(b)** Continuing normal operating expenses incurred, including
23 payroll.

24 **(5)** With respect to the coverage provided in this Additional Coverage,
25 suspension means:

26 **(a)** The partial slowdown or complete cessation of your business
27 activities

28 Policy, Special Coverage Property Form § A.5.o.

1 52. As a result of the March 16, 2020 Order, John’s Grill ceased all business, and filed
2 a claim for business interruption with Hartford. John’s Grill’s claim was denied.

3 **F. Hartford’s Denial of Plaintiffs’ Insurance Claim**

4 53. John’s Grill’s insurance Policy covers the extraordinary losses experienced by
5 John’s Grill and its employees during this crisis. The Policy specifically includes “**Civil**
6 **Authority**” coverage for business interruptions caused by “**order of a civil authority,**” “**Lost**
7 **Business Income & Extra Expense Coverage,**” “**Extended Business Income**” coverage, and
8 “**Business Income Extension for Essential Personnel**” coverage, as well as “**Limited Fungi,**
9 **Bacteria, Or Virus Coverage.**”

10 54. In **March 2020**, John’s Grill filed a claim with Hartford requesting coverage under
11 the Policy in connection with lost Business Income due to the Closure Orders and the damage
12 caused by the presence of the Coronavirus in and around the Insured Premises.

13 55. On **April 6, 2020**, Hartford issued written correspondence to John’s Grill stating
14 that it was denying the claim without any inspection or review of the Premises.

15 56. On information and belief, Hartford accepted the Policy premiums paid by John’s
16 Grill with no intention of providing any coverage under the Civil Authority and other provisions
17 providing coverage for losses from closure orders issued by civil authorities and from a virus.

18 57. On information and belief, Hartford rejected John’s Grill’s claims in bad faith as
19 part of a policy to limit its losses during this pandemic, notwithstanding that the Policy provides
20 coverage for losses from closure orders issued by civil authorities and from a virus.

21 **FIRST CAUSE OF ACTION**

22 **BREACH OF CONTRACT**

23 58. Plaintiffs re-allege and incorporate by reference into this cause of action all
24 allegations set forth in this Complaint as though fully set forth herein.

25 59. At all times relevant, Plaintiffs have paid all premiums and performed all its
26 obligations under the Policy.

27 60. Hartford has a contractual duty to provide Plaintiffs with insurance coverage under
28 specified provisions of the Policy, as alleged by Plaintiffs herein.

1 61. In denying Plaintiffs' insurance claim, Hartford breached that duty.

2 62. As a result of that breach, Plaintiffs have been damaged in the amount of coverage
3 to which it is entitled under the Policy, and in an amount to be proved at trial, and for which
4 Plaintiffs seek compensatory damages with interest thereon.

5 **SECOND CAUSE OF ACTION**

6 **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

7 63. Plaintiffs re-allege and incorporate by reference into this cause of action all
8 allegations set forth in this Complaint as though fully set forth herein.

9 64. When Hartford issued the Policy, they undertook and were bound to the covenants
10 implied by law that they would deal fairly and in good faith with Plaintiffs, and not to engage in
11 any acts, conduct, or omissions that would impair or diminish the rights and benefits due Plaintiffs,
12 according to the terms of the Policy.

13 65. Upon information and belief, Hartford breached the implied covenant of good faith
14 and fair dealing arising out of Policy by, unreasonably and in bad faith, denying Plaintiffs
15 insurance coverage to which they are entitled under the Policy.

16 66. In committing the above-referenced breach, Hartford intended to and did vex,
17 damage, annoy, and injure Plaintiffs. Said conduct was intentional, willful, and with conscious
18 disregard of Plaintiffs' rights, and was malicious, oppressive and/or fraudulent under California
19 Civil Code section 3294, thereby entitling Plaintiffs to punitive and exemplary damages against the
20 Hartford Defendants.

21 67. As a direct and proximate result of the above-referenced breach, Plaintiffs have had
22 to retain attorneys to enforce its right to the insurance coverage to which it is entitled under the
23 Policy and has thereby been injured and damaged.

24 68. Plaintiffs, therefore, are entitled to recover and seeks in connection with this Cause
25 of Action: (a) an award of general damages and other monetary damages, including all foreseeable
26 consequential and incidental damages for diminution in value, loss of use, and other incidental
27 damages and out-of-pocket expenses, plus interest, in an amount to be determined at trial;
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1 (b) punitive and exemplary damages in an amount to be determined at trial; (c) Plaintiffs' costs of
2 suit; and (d) Plaintiffs' reasonable attorney's fees in connection with this action.

3 **THIRD CAUSE OF ACTION**

4 **BAD FAITH DENIAL OF INSURANCE CLAIM**

5 69. Plaintiffs re-allege and incorporate by reference into this cause of action all
6 allegations set forth in this Complaint as though fully set forth herein.

7 70. Defendants have put their own interests above those of Plaintiffs and have, in bad
8 faith, failed or refused to perform their obligations under the Policy and under the laws of
9 California.

10 71. Defendants denied Plaintiffs' claim in bad faith by, among other conduct, (a) failing
11 or refusing to perform a fair, objective, and thorough investigation of the claim as required by the
12 California Insurance Code; (b) asserting coverage defenses that were legally and/or factually
13 invalid and thereby delaying resolution of Plaintiffs' claim; (c) placing unduly restrictive
14 interpretations on the Policy terms for the purpose of denying coverage due under the Policy; (d)
15 failing to give Plaintiffs' interests equal consideration with its own; and (e) forcing Plaintiffs to
16 institute litigation to recover amounts due under the Policy.

17 72. Plaintiffs allege on information and belief that there are numerous other individuals
18 and groups insured by Defendants who were or are similarly situated to Plaintiffs and who are also
19 being denied benefits under the same unlawful and non-applicable policy provisions and/or
20 exclusions being applied to Plaintiffs. At such time as Plaintiffs learn the names of such persons,
21 Plaintiffs may seek leave of court to join such persons as plaintiffs in this action.

22 73. Based on the above, Plaintiffs allege that Defendants have committed institutional
23 bad faith that is part of a repeated pattern of unfair practices and not an isolated occurrence. The
24 pattern of unfair practices constitutes a conscious course of wrongful conduct that is firmly
25 grounded in Defendants' established company policy.

26 74. As a proximate result of the aforementioned bad faith conduct by Defendants,
27 Plaintiffs have suffered and will continue to suffer damages. These damages include interest on
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1 the withheld and unreasonably delayed payments due under the Policy and other special economic
2 and consequential damages, of a total amount to be shown at trial.

3 75. As a further proximate result Defendants' bad faith conduct, Plaintiffs were
4 compelled to retain legal counsel to obtain the benefits due under its Policy. Therefore,
5 Defendants are liable to Plaintiffs for those attorney fees, witness fees, and costs of litigation
6 reasonably necessary and incurred by Plaintiffs in order to obtain the benefits of the Policy.

7 76. Defendants carried out their bad-faith conduct with a willful and conscious
8 disregard of Plaintiffs' rights or subjected Plaintiffs to cruel and unjust hardship in conscious
9 disregard of its rights. Alternatively, Defendants' conduct constituted an intentional
10 misrepresentation, deceit, or concealment of a material fact known to Defendants with the
11 intention of depriving Plaintiffs of property or legal rights, or of causing Plaintiffs other injury.
12 Defendants' conduct constitutes malice, oppression, or fraud under California Civil Code section
13 3294, entitling Plaintiffs to punitive damages in an amount appropriate to punish or set an example
14 of Defendants and to deter future similar conduct.

15 **FOURTH CAUSE OF ACTION**

16 **UNFAIR BUSINESS PRACTICES UNDER BUS. & PROF. CODE § 17200, ET SEQ.**

17 77. Plaintiffs re-allege and incorporate by reference into this cause of action all
18 allegations set forth in this Complaint as though fully set forth herein.

19 78. California's Unfair Competition Law, as codified by California Business &
20 Professions Code sections 17200, *et seq.*, protects both consumers and competitors by promoting
21 fair competition in commercial markets for goods and services. California's Unfair Competition
22 Law is interpreted broadly and provides a cause of action for any unlawful, unfair, or fraudulent
23 business act or practice. Any unlawful, unfair, or fraudulent business practice that causes injury to
24 consumers falls within the scope of California's Unfair Competition Law.

25 79. Defendants' acts and practices, as described herein, constitute unlawful or unfair
26 business practices against Plaintiffs in violation of California Business and Professions Code
27 section 17200, *et seq.*

28

1 80. These acts include but are not limited to charging Plaintiffs premiums in exchange
2 for purported coverage for losses caused by Order of Civil Authority, a virus, and other business
3 interruptions without any intention of satisfying those claims in an emergency such as the
4 COVID-19 pandemic and the related Closure Orders.

5 81. Any claimed justification for Defendants' conduct is outweighed by the gravity of
6 the consequences to Plaintiffs. Defendants' acts and practices are immoral, unethical, oppressive,
7 unconscionable, or substantially injurious to Plaintiffs, and/or have a tendency to deceive
8 Plaintiffs.

9 82. By reason of Defendants' fraudulent, deceptive, unfair, and other wrongful conduct
10 as alleged herein, said Defendants violated California Business and Professions Code sections
11 17200, *et seq.*, by consummating an unlawful, unfair, and fraudulent business practice, designed to
12 deprive Plaintiffs of the benefits of Defendants' financial products and services.

13 83. Defendants perpetrated these acts and practices against Plaintiffs, and as a direct
14 and proximate result of the foregoing, Plaintiffs have suffered and continue to suffer damages in a
15 sum which is, as of yet, unascertained. Pursuant to California Business and Professions Code
16 section 17203, Plaintiffs are entitled to restitution of all the monies paid to Defendants for
17 retaining benefits that were due and owing to Plaintiffs (with interest thereon), to disgorgement of
18 all Defendants' profits arising out of their unlawful conduct (with interest thereon), and to be paid
19 benefits due to Plaintiffs under the Policy that Defendants wrongfully retained by means of its
20 unlawful business practices.

21 84. Pursuant to California Code of Civil Procedure section 1021.5, Plaintiffs are
22 entitled to recover their reasonable attorney's fees in connection with Defendants' unfair
23 competition claims, the substantial benefit doctrine, and/or the common fund doctrine.

24 **FIFTH CAUSE OF ACTION**

25 **FRAUDULENT MISREPRESENTATION**

26 85. Plaintiffs re-allege and incorporate by reference into this cause of action all
27 allegations set forth in this Complaint as though fully set forth herein.

28 86. Defendants committed actionable fraud against Plaintiffs by way of affirmative

1 misrepresentations and the concealment of material facts. For example, Defendants affirmatively
2 misrepresented that there was full coverage for business interruption whenever there was a
3 business interruption cause by physical damage. At all relevant times, Defendants knew and
4 concealed from the Plaintiffs that there was a policy that Hartford would not pay any claims during
5 a pandemic, notwithstanding the express provision for such coverage in the Policy.

6 87. Defendants made or approved materially false and misleading statements to
7 Plaintiffs when it sold Plaintiffs the Policy.

8 88. Defendants made the foregoing false statements and misrepresentations that omitted
9 and concealed material facts despite being aware of their falsity.

10 89. Plaintiffs reasonably and actually relied on Defendants' misrepresentations and
11 concealments.

12 90. As a direct and proximate result of such unlawful conduct, Plaintiffs have suffered,
13 and will continue to suffer, damages in an amount to be proven at trial.

14 91. Defendants' acts were undertaken intentionally and in conscious disregard of
15 Plaintiffs' rights, and were malicious, fraudulent, and oppressive.

16 92. Plaintiffs are entitled to damages, and they should be awarded exemplary and
17 punitive damages in an appropriate amount to punish Defendants and to deter similar fraudulent
18 conduct in the future.

19 **SIXTH CAUSE OF ACTION**

20 **CONSTRUCTIVE FRAUD**

21 93. Plaintiffs re-allege and incorporate by reference into this cause of action all
22 allegations set forth in this Complaint as though fully set forth herein.

23 94. Defendants owe fiduciary and quasi-fiduciary duties to Plaintiffs, including duties
24 of loyalty, due care, good faith, and fair dealing in connection with their actions under the Policy.

25 95. By the conduct alleged herein, Defendants took unfair advantage of and did not act
26 in or consider the best interests of Plaintiffs, but rather acted solely in their own interests.

27 96. As a direct and proximate result of Defendants' constructive fraud, Plaintiffs have
28 suffered and will continue to suffer damages in an amount to be proven at trial.

1 97. Defendants' acts were also malicious, fraudulent, and oppressive, and undertaken
2 intentionally and in conscious disregard of Plaintiffs' rights.

3 98. Plaintiffs are entitled to damages, and should be awarded exemplary and punitive
4 damages in an appropriate amount to punish Defendants and to deter similar fraudulent conduct in
5 the future.

6 **SEVENTH CAUSE OF ACTION**

7 **UNJUST ENRICHMENT**

8 99. Plaintiffs re-allege and incorporate by reference into this cause of action all
9 allegations set forth in this Complaint as though fully set forth herein.

10 100. As a result of Defendants' conduct, as set forth above, Plaintiffs may lose the
11 financial benefit of the amounts that Plaintiffs paid for those portions of the Policy that were
12 illegal, unfair, or deceptive.

13 101. By their wrongful acts and omissions, Defendants, and each of them, were unjustly
14 enriched at the expense of and to the detriment of Plaintiffs.

15 102. Defendants were unjustly enriched through the offering of insurance coverages
16 within the Policy that purport and appear at first glance to provide certain coverages, such the
17 Limited Virus Coverage, but when read according their plain meaning, lead to absurd requirements
18 that are impossible to satisfy, such as only covering losses caused virus that were created by
19 windstorms, hail, aircraft, falling objects, and other phenomena and events that are categorically
20 incapable of creating a virus.

21 103. In the event such plain meaning of the Policy is applied (it should not be), it would
22 be against equity to permit Defendants to retain the payments that they received from Plaintiffs for
23 any such aspect of the Policy. This is because it is an illegal, deceptive, unfair, and/or fraudulent
24 business practice to induce Plaintiffs or any other businesses to purchase insurance coverage that
25 will never cover a loss.

26 104. As a direct and proximate result of Defendants' conduct, Plaintiffs have been
27 damaged and are entitled to restitution in an amount to be determined at trial. Plaintiffs seek
28

1 restitution from Defendants and seek an order from this Court disgorging all monies paid to
2 Defendants as a result of the illegal, deceptive, unfair, and/or fraudulent business practices.

3 105. Plaintiffs have no adequate remedy at law.

4 **EIGHTH CAUSE OF ACTION**

5 **DECLARATORY RELIEF**

6 106. Plaintiffs re-allege and incorporate by reference into this cause of action all
7 allegations set forth in this Complaint as though fully set forth herein.

8 107. Under California Code of Civil Procedure section 1060, *et seq.*, the court may
9 declare rights, duties, statuses, and other legal relations, regardless of whether further relief is or
10 could be claimed.

11 108. An actual controversy has arisen between Plaintiffs and Defendants as to their
12 respective rights and duties under the Policy.

13 109. Resolution of the parties' respective rights and duties under the Policy by
14 declaration of the Court is necessary, as there exists no adequate remedy at law.

15 110. Plaintiffs allege and contend, with respect to the Policy's Civil Authority coverage,
16 that each of the Closure Orders triggers that coverage because (a) each of the Closure Orders is an
17 order of a civil authority, (b) each of the Closure Orders specifically prohibits access to the
18 Scheduled Premises by prohibiting all potential on-premises dining customers and workers from
19 accessing the Scheduled Premises, (c) said prohibition of access by each of the Closure Orders has
20 been continuous and ongoing since the Orders were issued, such that access has not subsequently
21 been permitted, (d) each of the Closure Orders prohibits said access as the direct result of a
22 Covered Cause of Loss (i.e., a risk of direct physical loss of property) in the immediate area of the
23 Scheduled Premises, (e) no Policy coverage exclusions or limitations apply to exclude or limit
24 coverage, (f) Plaintiffs have suffered actual and covered loss of Business Income in an amount to
25 be determined at trial, and (g) coverage should begin as of March 16, 2020.

26 111. Plaintiffs allege and contend that the Policy's Lost Business Income and Extra
27 Expense Coverage is triggered because (a) Plaintiffs have sustained actual loss of Business Income
28 due to the closure of John's Grill, (b) said closure constitutes a necessary suspension of John's

1 Grill's operations under the Policy, (c) this suspension has been and is caused by direct physical
2 loss of or physical damage to property at the Scheduled Premises, including personal property in
3 the open (or in a vehicle) within 1,000 feet of the Scheduled Premises, due to the presence of
4 Coronavirus, (d) the presence of Coronavirus is a Covered Cause of Loss, and (e) some or all of
5 the period of John's Grill's closure is within the period of restoration under the Policy.

6 112. Plaintiffs allege and contend that the Policy's Business Income for Essential
7 Personnel Coverage is triggered with respect to each of its full-time employees that it had no
8 choice but to let go on or about March 16, 2020, as a direct, proximate, and inevitable result of the
9 issuance and maintenance of the Closure Orders and of the presence of Coronavirus in, on, and
10 around the Scheduled Premises.

11 113. Plaintiffs allege and contend that the presence of the Coronavirus in and on the
12 Insured Premises triggers the Policy's Limited Virus Coverage for substantially the same reasons
13 as those set forth above.

14 114. Plaintiffs allege and content that the Policy's Extended Business Income coverage
15 applies or will apply for substantially the same reasons as those set forth above.

16 115. Plaintiffs allege and contend that Hartford wrongly denied coverage with respect to
17 all the foregoing provisions.

18 116. Upon information and belief, Plaintiffs allege that Defendants dispute and deny
19 each of Plaintiffs' contentions set forth in this Cause of Action.

20 117. Plaintiffs, therefore, seek a declaratory judgment regarding each of Plaintiffs'
21 contentions set forth in this Cause of Action. A declaratory judgment determining that Plaintiffs
22 are due coverage under the Policy, as set forth above, will help to ensure the survival of its
23 business during this prolonged closure made necessary by the Closure Orders and by the presence
24 of Coronavirus at and around the Insured Premises during this global pandemic.

25 **NINTH CAUSE OF ACTION**

26 **INJUNCTIVE RELIEF UNDER BUS. AND PROF. CODE § 17200, ET SEQ.**

27 118. Plaintiffs re-allege and incorporate by reference into this cause of action all
28 allegations set forth in this Complaint as though fully set forth herein.

1 119. Upon information and belief, Plaintiffs allege that, unless enjoined by order of the
2 Court, Defendants will continue to operate their companies for their sole benefit and to the
3 detriment of Plaintiffs. No adequate remedy exists at law for the injuries alleged herein, and
4 Plaintiffs will suffer great and irreparable injury if Defendants' conduct is not immediately
5 enjoined and restrained.

6 120. Defendants wrongfully denied Plaintiffs' insurance claim based on erroneous
7 interpretations of the Policy, in order avoid their financial obligations to Plaintiffs thereunder.
8 Given the likely extended time period of the regional presence of the Coronavirus and COVID-19
9 cases, and the likely continued effect of the Closure Orders, Plaintiffs will almost certainly have
10 similar insurance claims in the future, and Defendants will almost certainly apply the same or
11 similar erroneous interpretations of the Policy to wrongfully deny coverage. If Defendants'
12 conduct in this manner is not restrained and enjoined, Plaintiffs will suffer great and irreparable
13 harm, as it has already paid for the Policy in full, and Defendants seem committed to continuing
14 their unfair and unlawful business practices of erroneously denying Plaintiffs' claims. Defendants
15 will continue to act in their own self-interest and to commit the acts that have damaged Plaintiffs,
16 and that continue to do so.

17 121. Plaintiffs have no adequate remedy at law for the threatened injury.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants, as
20 follows:

- 21 A. For a declaration adopting each of Plaintiffs' contentions set forth in the above
22 Cause of Action for Declaratory Relief;
- 23 B. For injunctive relief enjoining and restraining Defendants' unlawful conduct as
24 alleged herein, including but not limited to their unfair and unlawful business
25 practices and their wrongful denials of coverage under the Policy;
- 26 C. For general and compensatory damages in an amount to be determined at trial;
- 27 D. For exemplary and punitive damages in an amount to be determined at trial;
- 28 E. For Plaintiffs' costs of suit;

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- F. For Plaintiffs' reasonable attorney's fees incurred in this action pursuant to statute;
- G. For pre-judgment interest on all other interest to which Plaintiffs are entitled; and
- H. For such other relief as the Court may deem proper.

Dated: April 15, 2020

COTCHETT, PITRE, & McCARTHY, LLP

By: 
NANCI E. NISHIMURA
Counsel for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs John's Grill, Inc., and John Konstin hereby demand a jury trial on all issues so triable.

Dated: April 15, 2020

COTCHETT, PITRE, & McCARTHY, LLP


By: 
NANCI E. NISHIMURA
Counsel for Plaintiffs

Exhibit A



ORDER OF THE HEALTH OFFICER No. C19-05b (revised)

DATE ORDER ISSUED: March 13, 2020
(Original Order was dated March 11, 2020)

Please read this Order carefully. Violation of or failure to comply with this Order constitutes a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code §§ 120295, *et seq.*)

Summary: The virus that causes Coronavirus 2019 Disease (“COVID-19”) is easily transmitted, especially in group settings, and it is essential that the spread of the virus be slowed to protect the ability of public and private health care providers to handle the influx of new patients and safeguard public health and safety. Because of the risk of the rapid spread of the virus, and the need to protect all members of the community, especially including the most vulnerable and health care providers, this Order prohibits all indoor public and private gatherings and outdoor gatherings within an enclosed space that has a maximum occupant load of 100 people or more anywhere in San Francisco beginning at 5 p.m. on March 13, 2020 and continuing for seven weeks through April 30, 2020, subject to the limited exceptions and under the terms and conditions more particularly set forth below. For all other gatherings, and for the entire duration of this Order, the Health Officer strongly recommends following the social distancing protocols attached to this Order, including: (i) canceling, rescheduling, or not attending non-essential events; (ii) avoiding social gatherings under 100 people where social distancing of six feet is not possible; (iii) for people with medical conditions, regardless of age, that put them at higher risk of serious complications should they get COVID-19, avoiding gatherings of more than 10 people when possible; and (iv) for employers in San Francisco that do not provide essential public services, taking all steps necessary for employees to work remotely from home to the extent possible. These recommendations are based on the California Department of Public Health and United States Centers for Disease Control and Prevention guidelines issued March 11, 2020. The Health Officer may revise this Order as the situation evolves, and facilities must stay updated by checking the City Administrator’s website (sfgsa.org) regularly.

**UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE
SECTIONS 101040, 101085, AND 120175, THE HEALTH OFFICER OF THE CITY AND
COUNTY OF SAN FRANCISCO (“HEALTH OFFICER”) ORDERS:**

- 1. This Order revokes and replaces Order Number C19-05, originally issued March 11, 2020. That order is no longer in effect as of the effective date and time of this Order.**
- 2. Effective as of 5:00 p.m. on Friday, March 13, 2020, and continuing until 11:59 p.m. on Thursday, April 30, 2020, public or private Mass Gatherings (as defined in Section 13 below) are prohibited anywhere in the City and County of San Francisco (the “City”) for the reasons listed below.**



ORDER OF THE HEALTH OFFICER No. C19-05b

- 3. As an additional protection for the health of all members of the public, the Health Officer strongly recommends that all people within the City follow the social distancing practices issued by the San Francisco Department of Public Health on March 6, 2020 and updated on March 13, 2020 (the “Social Distancing Recommendations”), a copy of which is attached to this Order and incorporated by this reference, as well as the guidance regarding gatherings issued by the California Department of Public Health (“CDPH”) on March 11, 2020 (available online at https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/Gathering_Guidance_03.11.20.pdf) and the “Implementation of Mitigation Strategies for Communities with Local COVID-19 Transmission” issued by the United States Centers for Disease Control and Prevention (“CDC”) on or around March 11, 2020 (available online at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf>), including as these items are updated in the future.**
- 4. Every person in the City is responsible to help slow the spread of COVID-19. The best way to do that is to avoid gatherings of any size where sufficient social distancing is not possible. Accordingly, in addition to the strict prohibition on Mass Gatherings, the Health Officer strongly recommends that gatherings under 100 people not occur for the duration of this Order if social distancing of six feet per person is not possible. For sake of clarity, while not a requirement subject to fine or imprisonment under this Order, the Health Officer strongly recommends that large entertainment or social gatherings below 100 people be postponed or canceled.**
- 5. The CDPH and CDC guidance cited in Section 3 above also includes recommendations for employers, and the Health Officer strongly recommends that employers comply with those guidelines. For sake of clarity, while not a requirement subject to fine or imprisonment under this Order, the Health Officer strongly recommends that employers that do not provide essential public services take all steps necessary for employees to work remotely from home to the extent possible.**
- 6. Both CDPH and CDC guidelines now recommend that gatherings of people at higher-risk for severe illness from COVID-19 should be limited to no more than 10 people. This Order does not prohibit gatherings of more than 10 people for high-risk people because individual organizations and service providers that work with these groups are best able to determine when gatherings may need to occur. But the Health Officer, again without creating a requirement subject to fine or imprisonment under this Order, strongly encourages individuals and organizations/facilities not to permit or attend gatherings of more than 10 people that include high-risk individuals unless such gatherings are deemed necessary. As of the date of this Order, the categories of underlying medical conditions that put people at higher risk of serious COVID-19 illness per CDC guidance includes the following, regardless of age, and this Order automatically adopts any revisions**



ORDER OF THE HEALTH OFFICER No. C19-05b

made by the CDC in the future:

- **Blood disorders (e.g., sickle cell disease or on blood thinners).**
 - **Chronic kidney disease as defined by the person's doctor. This includes a patient who has been told to avoid or reduce the dose of medications because of kidney disease, or is under treatment for kidney disease, including receiving dialysis.**
 - **Chronic liver disease as defined by the person's doctor (e.g., cirrhosis, chronic hepatitis). This includes when the person has been told to avoid or reduce the dose of medications because of liver disease or is under treatment for liver disease.**
 - **Compromised immune system (immunosuppression) (e.g., seeing a doctor for cancer and treatment such as chemotherapy or radiation, received an organ or bone marrow transplant, taking high doses of corticosteroids or other immunosuppressant medications, or has HIV or AIDS).**
 - **Current pregnancy or recent pregnancy in the last two weeks.**
 - **Endocrine disorders (e.g., diabetes mellitus).**
 - **Metabolic disorders (such as inherited metabolic disorders and mitochondrial disorders).**
 - **Heart disease (such as congenital heart disease, congestive heart failure and coronary artery disease).**
 - **Lung disease including asthma or chronic obstructive pulmonary disease (chronic bronchitis or emphysema) or other chronic conditions associated with impaired lung function or that require home oxygen.**
 - **Neurological and neurologic and neurodevelopment conditions, including disorders of the brain, spinal cord, peripheral nerve, and muscle such as cerebral palsy, epilepsy (seizure disorders), stroke, intellectual disability, moderate to severe developmental delay, muscular dystrophy, or spinal cord injury.**
- 7. This Order is issued based on evidence of increasing occurrence of COVID-19 within the City and throughout the Bay Area, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, and evidence that the age, condition, and health of a significant portion of the population of the City places them at risk for serious health complications, including death, from COVID-19. Due to the outbreak of the COVID-19 virus in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout the City. Making the problem worse, some individuals who contract the COVID-19 virus have no symptoms or have mild symptoms, which means they may not be aware they carry the virus. Because even people without symptoms can transmit the disease, and because evidence shows the disease is easily spread, large gatherings can result in preventable transmission of the virus. The scientific evidence shows that at this stage of the emergency, it is essential to slow virus**



ORDER OF THE HEALTH OFFICER No. C19-05b

transmission as much as possible to protect the most vulnerable and to prevent the health care system from being overwhelmed. One proven way to slow the transmission is to limit mass gatherings in the early stages of the emergency. By reducing the spread of the COVID-19 virus, this Order helps preserve critical and limited healthcare capacity in the City.

8. This Order also is issued in light of the existence of 21 cases of COVID-19 in the City, as well as at least 117 reported cases and at least one death in the Bay Area, as of 10:00 a.m. on March 13, 2020, including a significant and increasing number of assumed cases of community transmission and likely further significant increases in transmission. Widespread testing for COVID-19 is not yet available but is expected to increase in the coming days. This Order is necessary to slow the rate of spread and the Health Officer will re-evaluate it as further data becomes available.
9. This Order is issued to prevent circumstances often present in Mass Gatherings that are likely to exacerbate the spread of COVID-19. Those circumstances include, without limitation: (a) the increased likelihood that Mass Gatherings will attract people from a broad geographic area; (b) the prolonged time period during which large numbers of people are in close proximity; (c) the difficulty in tracing exposure when large numbers of people attend a single event; (d) the inability to ensure that attendees follow adequate hygienic and social distancing practices like those described in the attached Social Distancing Recommendations; and (e) the possibility that a person with the virus may be in attendance.
10. This Order is issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom, the February 25, 2020 Proclamation by the Mayor Declaring the Existence of a Local Emergency issued by Mayor London Breed, as supplemented on March 11, 2020, the March 6, 2020 Declaration of Local Health Emergency Regarding Novel Coronavirus 2019 (COVID-19) issued by the Health Officer, and the CDPH guidance referred to in Section 3 above, as each of them have been and may be supplemented.
11. This Order is also issued in accordance with, and incorporates by reference the March 12, 2020 Executive Order (Executive Order N-25-20) issued by Governor Gavin Newsom. Executive Order N-25-20 expressly orders that “[a]ll residents are to heed any orders and guidance of state and local public health officials, including but not limited to the imposition of social distancing measures, to control the spread of COVID-19.”
12. The Health Officer will continue to assess the quickly evolving situation and may, at any time or from time to time, modify or extend this Order, or issue additional orders, related to COVID-19.



ORDER OF THE HEALTH OFFICER No. C19-05b

13. Covered Mass Gatherings:

- a. For purposes of this Order, a “Mass Gathering” is any event, convening, or collection of people, subject to the exceptions and clarifications below, in any space with a maximum occupant load of 100 people or more. These spaces include, by way of example and without limitation, an auditorium, theater, stadium (indoor or outdoor), arena or event center, meeting hall, conference center, large cafeteria, or any other confined indoor or confined outdoor space as further described in subparagraph b.
- b. For the sake of clarity, a Mass Gathering includes events in confined outdoor spaces where 100 or more people are together at the same time. For purposes of this Order, a confined outdoor space is an outdoor space that (i) is enclosed by a fence, physical barrier, or other structure and (ii) where people are present and they are within arm’s length of one another for extended periods.
- c. This Order does not prohibit gatherings of people within an office building or other structure that has multiple, separate enclosed spaces so long as no room or space having a maximum occupant load of 100 people or more is being used for gatherings. For any gathering covered by this subparagraph c, the Health Officer strongly encourages compliance with the attached Social Distancing Recommendations, including providing hand sanitizer and tissues and increasing cleaning of commonly-touched surfaces. But Theaters, as provided in subparagraph g below, have special rules.
- d. A Mass Gathering also does not include gatherings that occur in the following venues unless otherwise prohibited by this Order: (i) San Francisco International Airport, which is not located within the City; (ii) public or private schools; (iii) museums (so long as visitors are generally are not within arm’s length of one another for extended periods); (iv) spaces where 100 or more people may be in transit or waiting for transit such as bus, ferry, or subway stations or terminals; (v) office space, hotels, or residential buildings (subject to subparagraph c above); (vi) grocery stores, shopping malls, or other retail establishments where large numbers of people are present but it is unusual for them to be within arm’s length of one another for extended periods; (vii) hospitals and medical facilities; and (viii) places of worship; and (ix) facilities that provide food and other necessities of life for economically disadvantaged individuals and shelter facilities (which will be addressed separately by the Health Officer and the Department of Public Health). In all such settings listed in this subparagraph d, the Health Officer recommends following the attached Social Distancing Recommendations, and harm reduction measures such as hand sanitizer and tissues should be provided when possible. Except for spaces covered by clauses (iv), (viii), and



ORDER OF THE HEALTH OFFICER No. C19-05b

(ix) above, any specific large gathering space that is part of any building included in this subparagraph d is subject to the prohibition on Mass Gatherings if the space has a maximum occupant load of 100 or more people. For any place of worship included in clause (viii) above, any gathering for a religious service that occurs in a room that has a maximum occupant load of 100 or more people is limited to a total attendance of 100 people. A Mass Gathering also includes events held in a cruise ship while that ship is docked at any City port.

- e. For purposes of clarity, a Mass Gathering includes any gathering or collection of people in a restaurant, cafe, bar, night club, or other social gathering space within any building where the space or venue has a maximum occupant load of 100 or more people. For clarity, restaurants or other establishments that have a maximum occupant load of 100 or more people may still sell or provide food on a pick-up or takeout basis so long as patrons are not eating on-premises.
- f. Solely for restaurants and cafes that have a maximum occupant load between 100 and 500 people, each such facility that wishes to operate during the effect of this Order may do so by operating at 50 percent of their maximum occupant load up to a maximum of 100 patrons, for the duration of this Order. For example, if a room had a maximum occupant load of 150, under this Order it would be permitted to have a gathering of up to 75 people, and if a room had a maximum occupant load of 350, under this Order it would be permitted to have a gathering of up to 100 people.
- g. Theaters (as defined below) pose a special risk of allowing COVID-19 transmission because large numbers of people are in close quarters, sit together in one space for long periods of time, and have frequent turn-over. This results in many avenues for transmission of the COVID-19 virus during each seating and between seatings. For purposes of this Order, a “Theater” is any enclosed space that has seats, whether fixed or movable, and a stage or screen, such as a movie theater or a theater for live performances (each a “Theater”). For each Theater, the Theater may not be used for any gathering if the room has a maximum occupant load of 100 or more people. For any other Theater to operate, the owner, manager, or operator of the Theater must (i) clean all hard surfaces in the Theater, such as chair armrests, door handles, and accessible seat surfaces with a disinfectant between each performance or seating, (ii) provide hand sanitizer at entrances, (iii) have hand washing facilities available in restrooms or other locations on site, and (iv) comply with a written social distance plan that each Theater develops that ensures at least six feet is maintained between people (such as skipping rows or putting empty seats between every attendee). For the sake of clarity, each Theater, whether it is a single room or within a



ORDER OF THE HEALTH OFFICER No. C19-05b

multiplex that contains multiple Theaters, must comply with this subparagraph g.

- h. This Order applies to public meetings of policy bodies for the purposes of conducting the government's business, such as meetings of the Board of Supervisors, committees of the Board of Supervisors, City commissions and other policy bodies. Meetings of City policy bodies are subject to compliance with the Mayor's Emergency Declarations and Governor's Emergency Declarations described in Sections 10 and 11 above. But for meetings of policy bodies in government owned buildings, such as City Hall, up to 100 people may be in a room at any one time even if the maximum capacity of that room allows for more than 100 people. This subparagraph h supersedes the Health Officer's order dated March 7, 2020 to the extent it allowed City policy bodies to continue to meet as normal. The Health Officer strongly recommends that the City and other government agencies that meet in the City cancel all policy body meetings during the effect of this Order if those meetings are not necessary to make decisions essential to the continuity of governmental operations and services and the promotion of the health, safety, and welfare of the public. For City policy body meetings in rooms, the people responsible for the meeting shall ensure that: (i) the building has hand washing capabilities, (ii) hand sanitizer and tissues are available during the meeting, (iii) high-touch surface areas like door handles, countertops, tables, and handrails in the meeting area are frequently cleaned, and (iv) attendees comply with a social distance plan that ensures at least six feet is maintained between people.**
- i. For purposes of this Order, rooms with a maximum occupant load of 100 or more people in facilities owned or operated by (i) the California State Government, (ii) any state or federal courts, or (iii) the United States Government, may be used for official purposes, but not for social or entertainment purposes. When used for official purposes, the Health Officer strongly recommends compliance with the Social Distancing Recommendations.**
- 14. This Order shall be effective until 11:59 p.m. on April 30, 2020, or until it is earlier rescinded, superseded, or amended by the Health Officer or by the State Public Health Officer, in writing.**
- 15. Pursuant to Sections 26602 and 41601 of the California Government Code and Section 101029 of the California Health and Safety Code, the Health Officer requests that the Sheriff and the Chief of Police in the City ensure compliance with and enforce this Order.**



ORDER OF THE HEALTH OFFICER No. C19-05b

16. The City must promptly provide copies of this Order as follows: (1) by posting on the City Administrator's website (sfgsa.org) and the Department of Public Health website (sfdph.org); (2) by posting at City Hall, located at 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102; and (3) by providing to any member of the public requesting a copy. In addition, the owner, manager, or operator of any facility that is likely to be impacted by this Order is strongly encouraged to post a copy of this Order onsite and to provide a copy to any member of the public asking for a copy. Because serving copies of this Order on every entity may not be feasible, the owner, manager, or operator of any facility that is subject to this Order or that becomes aware of or receives a copy of the Order in any manner is ordered to check the City Administrator's website (sfgsa.org) on a regular basis in order to look for updates to this Order and is required to comply with any updates until this Order is terminated.
17. If any subsection, sentence, clause, phrase, or word of this Order or any application of it to any person, structure, gathering, or circumstance is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, then such decision will not affect the validity of the remaining portions or applications of this Order.

IT IS SO ORDERED:

Tomás Aragón

Tomás J. Aragón, MD, DrPH,
Health Officer of the
City and County of San Francisco

Date: March 13, 2020



PUBLIC HEALTH SOCIAL DISTANCING RECOMMENDATIONS
AS OF MARCH 13, 2020 (revised)

NOTE that any order of the San Francisco Health Officer controls over these recommendations.

1) Vulnerable Populations: Limit Outings

- Vulnerable populations include people who are:
 - 60 years old and older.
 - People with certain health conditions such as heart disease, lung disease, diabetes, kidney disease and weakened immune systems.
 - People who are pregnant or were pregnant in the last two weeks.
- For vulnerable populations, don't go to gatherings (of 10 people or more) unless it is essential. If you can telecommute, you should. Avoid people who are sick.

2) Workplace and Businesses: Minimize Exposure

- Suspend nonessential employee travel.
- Minimize the number of employees working within arm's length of one another, including minimizing or canceling large in-person meetings and conferences.
- Urge employees to stay home when they are sick and maximize flexibility in sick leave benefits.
- Do not require a doctor's note for employees who are sick.
- Consider use of telecommuting options and implement whenever possible.
- Some people need to be at work to provide essential services of great benefit to the community. They and their employers should take steps in their workplace to minimize risk.

3) Gatherings: Cancel Events

- Cancel large gatherings of 100 people or more, such as concerts, sporting events, conventions or large community events.
- Smaller gatherings held in venues that do not allow social distancing of six feet per person should be postponed or canceled. This includes gatherings in crowded auditoriums, rooms or other venues.
- Do not attend any events or gatherings if sick.
- For events that aren't cancelled, we recommend:
 - Having hand washing capabilities, hand sanitizers and tissues available.
 - Frequently cleaning high touch surface areas like counter tops and hand rails.
 - Finding ways to create physical space to minimize close contact as much as possible.

4) Schools: Safety First

- If there is a confirmed case of COVID-19 at a school, DPH will work with the school to determine the best measures including potential school closure.
- Do not go to school if sick.
- If you have a child with chronic health conditions, consult your doctor about school attendance.
- Equip all schools and classrooms with hand sanitizers and tissues.
- Recommend rescheduling or cancelling medium to large events that are not essential.
- Explore remote teaching and online options to continue learning.
- Schools should develop a plan for citywide school closures, and families should prepare for



City and County of San Francisco Department of Public Health

PUBLIC HEALTH SOCIAL DISTANCING RECOMMENDATIONS AS OF MARCH 13, 2020 (revised)

potential closures.

5) Transit: Cleaning and Protection

- Increase cleaning of vehicles and high touch surface areas.
- Provide hand washing/hand sanitizers and tissues in stations and on vehicles.

6) Health Care Settings: Avoid as possible, protect the vulnerable

- Long term care facilities must have a COVID-19 plan in accordance with DPH guidelines.
- Long term care facilities must screen all staff and visitors for illness and turn away those with symptoms.
- Some facilities, including skilled nursing facilities, have been ordered not to permit visitors during this emergency subject to certain exceptions.
- The general public should avoid going to medical settings such as hospitals, nursing homes and long-term care facilities, even if you are not ill.
- If you are ill, call your health care provider ahead of time, and you may be able to be served by phone.
- Do not visit emergency rooms unless it is essential.

7) Everyone: Be responsible and do your part

The best way for all San Franciscans to reduce their risk of getting sick, as with seasonal colds or the flu, still applies to prevent COVID-19:

- Wash hands with soap and water for at least 20 seconds.
- Cover your cough or sneeze.
- Stay home if you are sick.
- Avoid touching your face.
- Try alternatives to shaking hands, like an elbow bump or wave.
- If you have recently returned from a country, state or region with ongoing COVID-19 infections, monitor your health and follow the instructions of public health officials.
- There is no recommendation to wear masks at this time to prevent yourself from getting sick.

You can also prepare for the possible disruption caused by an outbreak. Preparedness actions include:

- Prepare to work from home if that is possible for your job, and your employer.
- Make sure you have a supply of all essential medications for your family.
- Prepare a child care plan if you or a care giver are sick.
- Make arrangements about how your family will manage a school closure.
- Plan for how you can care for a sick family member without getting sick yourself.
- Take care of each other and check in by phone with friends, family and neighbors that are vulnerable to serious illness or death if they get COVID-19.
- Keep common spaces clean to help maintain a healthy environment for you and others. Frequently touched surfaces should be cleaned regularly with disinfecting sprays, wipes or common household cleaning products.

Keep up to date at www.sfdph.org, by calling 311, and by signing up for the City's new alert service for official updates: text COVID19SF to 888-777. Also see the "Implementation of Mitigation Strategies for Communities with Local COVID-19 Transmission" issued by the United States Centers for Disease Control and Prevention ("CDC") on or around March 11, 2020 (available online at www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf).

ATTACHMENT TO HEALTH OFFICER ORDER NO. C19-05b

Exhibit B



ORDER OF THE HEALTH OFFICER No. C19-07

**ORDER OF THE HEALTH OFFICER
OF THE CITY AND COUNTY OF SAN FRANCISCO DIRECTING
ALL INDIVIDUALS LIVING IN THE COUNTY TO SHELTER AT THEIR
PLACE OF RESIDENCE EXCEPT THAT THEY MAY LEAVE TO
PROVIDE OR RECEIVE CERTAIN ESSENTIAL SERVICES OR
ENGAGE IN CERTAIN ESSENTIAL ACTIVITIES AND WORK FOR
ESSENTIAL BUSINESS AND GOVERNMENT SERVICES; EXEMPTING
INDIVIDUALS EXPERIENCING HOMELESSNESS FROM THE
SHELTER IN PLACE ORDER BUT URGING THEM TO FIND SHELTER
AND GOVERNMENT AGENCIES TO PROVIDE IT; DIRECTING ALL
BUSINESSES AND GOVERNMENTAL AGENCIES TO CEASE NON-
ESSENTIAL OPERATIONS AT PHYSICAL LOCATIONS IN THE
COUNTY; PROHIBITING ALL NON-ESSENTIAL GATHERINGS OF
ANY NUMBER OF INDIVIDUALS; AND ORDERING CESSATION OF
ALL NON-ESSENTIAL TRAVEL**

(SHELTER IN PLACE)

DATE OF ORDER: March 16, 2020

Please read this Order carefully. Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295, *et seq.*; California Penal Code §§ 69, 148(a)(1); San Francisco Administrative Code section 7.17(b).)

Summary: The virus that causes Coronavirus 2019 Disease (“COVID-19”) is easily transmitted, especially in group settings, and it is essential that the spread of the virus be slowed to protect the ability of public and private health care providers to handle the influx of new patients and safeguard public health and safety. Because of the risk of the rapid spread of the virus, and the need to protect all members of the community and the Bay Area 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—except for certain essential activities and work to provide essential business and government services or perform essential public infrastructure construction, including housing. This order begins at 12:01 a.m. on March 17, 2020 and will continue for three weeks through April 7, 2020, subject to the limited exceptions and under the terms and conditions more particularly set forth below.

Gatherings of individuals outside the home are generally prohibited, with certain exceptions for essential activities or essential travel or to perform work for essential businesses and government agencies or perform essential infrastructure work. Consistent



ORDER OF THE HEALTH OFFICER No. C19-07

with the directive issued by Governor Gavin Newsom on March 15, 2020, all bars and nightclubs are ordered closed. Restaurants and cafes—regardless of their seating capacity—that serve food are ordered closed except solely for takeout and delivery service. Additionally, all gyms and recreation facilities are ordered closed. Homeless individuals are not subject to the shelter in place order but are strongly urged to find shelter and government agencies are urged to take steps needed to provide shelter for those individuals.

Under any of the limited circumstances in which individuals are allowed to interact in person outside their residence, the Health Officer orders individuals to abide by the following requirements: (i) maintain at least six feet from other individuals, wash hands with soap and water for at least 20 seconds as frequently as possible or using hand sanitizer, cover coughs or sneezes, and not shake hands; (ii) for people with medical conditions, regardless of age, that put them at higher risk of serious complications should they get COVID-19, and other than health care workers and other essential providers, avoid leaving their homes to the extent possible; and (iii) for employers in San Francisco that do not provide essential businesses or government services, take all steps necessary for employees to work remotely from home to the extent possible. These requirements build on the California Department of Public Health and United States Centers for Disease Control and Prevention guidelines issued March 11, 2020, extended as necessary to address the health emergency affecting the Bay Area region. No individual who is sick may go to the workplace or be outside the home except as necessary to seek or receive medical care in accordance with guidance from public health officials. The Health Officer may revise this Order as the situation evolves, and facilities must stay updated by checking the City Administrator’s website (sfgsa.org) regularly.

This Order revokes and replaces Order Number C19-05b, issued March 13, 2020, and C19-02, issued March 7, 2020. Those orders are no longer in effect as of the effective date and time of this Order. This Order does not revoke Order Numbers C19-01b, C19-03, C19-04, or C19-06.

**UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE
SECTIONS 101040, 101085, AND 120175, THE HEALTH OFFICER OF THE CITY AND
COUNTY OF SAN FRANCISCO (“HEALTH OFFICER”) ORDERS:**

- 1. The intent of this Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the maximum extent possible. When people need to leave their places of residence, whether to obtain or perform vital services, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times reasonably possible comply with Social Distancing Requirements as defined in Section 10 below. All provisions of this Order should be interpreted to effectuate this intent. Failure to**



ORDER OF THE HEALTH OFFICER No. C19-07

comply with any of the provisions of this Order constitutes an imminent threat and creates an immediate menace to public health.

2. All individuals currently living within the City and County of San Francisco (the “County”) are ordered to shelter at their place of residence. To the extent individuals are using shared or outdoor spaces, they must at all times as reasonably possible maintain social distancing of at least six feet from any other person when they are outside their residence. All persons may leave their residences only for Essential Activities, Essential Governmental Functions, or to operate Essential Businesses, all as defined in Section 10. Individuals experiencing homelessness are exempt from this Section, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to make such shelter available as soon as possible and to the maximum extent practicable (and to use COVID-19 risk mitigation practices in their operation).
3. All businesses with a facility in the County, except Essential Businesses as defined below in Section 10, are required to cease all activities at facilities located within the County except Minimum Basic Operations, as defined in Section 10. For clarity, businesses may also continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home). All Essential Businesses are strongly encouraged to remain open. To the greatest extent feasible, Essential Businesses shall comply with Social Distancing Requirements as defined in Section 10 below, including by maintaining six-foot social distancing for both employees and members of the public, including, but not limited to, when any customers are standing in line.
4. All public and private gatherings of any number of people occurring outside a single household or living unit are prohibited, except for the limited purposes as expressly permitted in Section 10. Nothing in this Order prohibits the gathering of members of a household or living unit.
5. All travel, including, but not limited to, travel on foot, bicycle, scooter, motorcycle, automobile, or public transit, except Essential Travel and Essential Activities as defined below in Section 10, is prohibited. People must use public transit only for purposes of performing Essential Activities or to travel to and from work to operate Essential Businesses or maintain Essential Governmental Functions. People riding on public transit must comply with Social Distancing Requirements as defined in Section 10 below, to the greatest extent feasible. This Order allows travel into or out of the County to perform Essential Activities, operate Essential Businesses, or maintain Essential Governmental Functions.
6. This Order is issued based on evidence of increasing occurrence of COVID-19 within the County and throughout the Bay Area, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, and evidence that the



ORDER OF THE HEALTH OFFICER No. C19-07

age, condition, and health of a significant portion of the population of the County places it at risk for serious health complications, including death, from COVID-19. Due to the outbreak of the COVID-19 virus in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout the County. Making the problem worse, some individuals who contract the COVID-19 virus have no symptoms or have mild symptoms, which means they may not be aware they carry the virus. Because even people without symptoms can transmit the disease, and because evidence shows the disease is easily spread, gatherings can result in preventable transmission of the virus. The scientific evidence shows that at this stage of the emergency, it is essential to slow virus transmission as much as possible to protect the most vulnerable and to prevent the health care system from being overwhelmed. One proven way to slow the transmission is to limit interactions among people to the greatest extent practicable. By reducing the spread of the COVID-19 virus, this Order helps preserve critical and limited healthcare capacity in the County.

7. This Order also is issued in light of the existence of 37 cases of COVID-19 in the County, as well as at least 258 confirmed cases and at least three deaths in neighboring Bay Area counties, as of 10:00 a.m. on Sunday, March 16, 2020, including a significant and increasing number of suspected cases of community transmission and likely further significant increases in transmission. Widespread testing for COVID-19 is not yet available but is expected to increase in the coming days. This Order is necessary to slow the rate of spread and the Health Officer will re-evaluate it as further data becomes available.
8. This Order is issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom, the February 25, 2020 Proclamation by the Mayor Declaring the Existence of a Local Emergency issued by Mayor London Breed, as supplemented on March 11, 2020, the March 6, 2020 Declaration of Local Health Emergency Regarding Novel Coronavirus 2019 (COVID-19) issued by the Health Officer, and guidance issued by the California Department of Public Health, as each of them have been and may be supplemented.
9. This Order is also issued in accordance with, and incorporates by reference the March 12, 2020 Executive Order (Executive Order N-25-20) issued by Governor Gavin Newsom. Executive Order N-25-20 expressly orders that “[a]ll residents are to heed any orders and guidance of state and local public health officials, including but not limited to the imposition of social distancing measures, to control the spread of COVID-19.” This Order is also based on statements by Governor Newsom during a press conference on March 15, 2020, indicating the guidance of the State of California that all nightclubs, bars, wineries, and brewpubs close and that persons 65 years old and older isolate at home.



ORDER OF THE HEALTH OFFICER No. C19-07

10. Definitions and Exemptions.

- a. For purposes of this Order, individuals may leave their residence only to perform any of the following “Essential Activities.” But people at high risk of severe illness from COVID-19 and people who are sick are urged to stay in their residence to the extent possible except as necessary to seek medical care.
 - i. To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (including, but not limited to, pets), such as, by way of example only and without limitation, obtaining medical supplies or medication, visiting a health care professional, or obtaining supplies they need to work from home.
 - ii. To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products, and products necessary to maintain the safety, sanitation, and essential operation of residences.
 - iii. To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements as defined in this Section, such as, by way of example and without limitation, walking, hiking, or running.
 - iv. To perform work providing essential products and services at an Essential Business or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations.
 - v. To care for a family member or pet in another household.
- b. For purposes of this Order, individuals may leave their residence to work for or obtain services at any “Healthcare Operations” including hospitals, clinics, dentists, pharmacies, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, or any related and/or ancillary healthcare services. “Healthcare Operations” also includes veterinary care and all healthcare services provided to animals. This exemption shall be construed broadly to avoid any impacts to the delivery of healthcare, broadly defined. “Healthcare Operations” does not include fitness and exercise gyms and similar facilities.



ORDER OF THE HEALTH OFFICER No. C19-07

- c. For purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operations and maintenance of “Essential Infrastructure,” including, but not limited to, public works construction, construction of housing (in particular affordable housing or housing for individuals experiencing homelessness), airport operations, water, sewer, gas, electrical, oil refining, roads and highways, public transportation, solid waste collection and removal, internet, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services), provided that they carry out those services or that work in compliance with Social Distancing Requirements as defined this Section, to the extent possible.**
- d. For purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, and law enforcement personnel, and others working for or to support Essential Businesses are categorically exempt from this Order. Further, nothing in this Order shall prohibit any individual from performing or accessing “Essential Governmental Functions.” Essential Governmental Functions means all services needed to ensure the continuing operation of the government agencies and provide for the health, safety and welfare of the public. All Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements as defined this Section, to the extent possible.**
- e. For the purposes of this Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function they perform, or its corporate or entity structure.**
- f. For the purposes of this Order, “Essential Businesses” means:**

 - i. Healthcare Operations and Essential Infrastructure;**
 - ii. Grocery stores, certified farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products (such as cleaning and personal care products). This includes stores that sell groceries and also sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences;**
 - iii. Food cultivation, including farming, livestock, and fishing;**



ORDER OF THE HEALTH OFFICER No. C19-07

- iv. Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;**
- v. Newspapers, television, radio, and other media services;**
- vi. Gas stations and auto-supply, auto-repair, and related facilities;**
- vii. Banks and related financial institutions;**
- viii. Hardware stores;**
- ix. Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses;**
- x. Businesses providing mailing and shipping services, including post office boxes;**
- xi. Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible;**
- xii. Laundromats, dry cleaners, and laundry service providers;**
- xiii. Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and take-away basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site;**
- xiv. Businesses that supply products needed for people to work from home;**
- xv. Businesses that supply other essential businesses with the support or supplies necessary to operate;**



ORDER OF THE HEALTH OFFICER No. C19-07

- xvi. **Businesses that ship or deliver groceries, food, goods or services directly to residences;**
 - xvii. **Airlines, taxis, and other private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order;**
 - xviii. **Home-based care for seniors, adults, or children;**
 - xix. **Residential facilities and shelters for seniors, adults, and children;**
 - xx. **Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities;**
 - xxi. **Childcare facilities providing services that enable employees exempted in this Order to work as permitted. To the extent possible, childcare facilities must operate under the following mandatory conditions:**
 - 1. **Childcare must be carried out in stable groups of 12 or fewer (“stable” means that the same 12 or fewer children are in the same group each day).**
 - 2. **Children shall not change from one group to another.**
 - 3. **If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other.**
 - 4. **Childcare providers shall remain solely with one group of children.**
- g. For the purposes of this Order, “Minimum Basic Operations” include the following, provided that employees comply with Social Distancing Requirements as defined this Section, to the extent possible, while carrying out such operations:**
- i. **The minimum necessary activities to maintain the value of the business’s inventory, ensure security, process payroll and employee benefits, or for related functions.**
 - ii. **The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.**



ORDER OF THE HEALTH OFFICER No. C19-07

- h. For the purposes of this Order, “Essential Travel” includes travel for any of the following purposes. Individuals engaged in any Essential Travel must comply with all Social Distancing Requirements as defined in this Section.**

 - i. Any travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses, or Minimum Basic Operations.**
 - ii. Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.**
 - iii. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.**
 - iv. Travel to return to a place of residence from outside the jurisdiction.**
 - v. Travel required by law enforcement or court order.**
 - vi. Travel required for non-residents to return to their place of residence outside the County. Individuals are strongly encouraged to verify that their transportation out of the County remains available and functional prior to commencing such travel.**
 - i. For purposes of this order, residences include hotels, motels, shared rental units, and similar facilities.**
 - j. For purposes of this order Social Distancing Requirements includes maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.**
- 11. Pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029, the Health Officer requests that the Sheriff and the Chief of Police in the County ensure compliance with and enforce this Order. The violation of any provision of this Order constitutes an imminent threat and creates an immediate menace to public health.**
- 12. This Order shall become effective at 12:01 a.m. on March 17, 2020 and will continue to be in effect until 11:59 p.m. on April 7, 2020, or until it is extended, rescinded, superseded, or amended in writing by the Health Officer.**



ORDER OF THE HEALTH OFFICER No. C19-07

- 13. The City must promptly provide copies of this Order as follows: (1) by posting on the City Administrator's website (sfgsa.org) and the Department of Public Health website (sfdph.org); (2) by posting at City Hall, located at 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102; and (3) by providing to any member of the public requesting a copy. In addition, the owner, manager, or operator of any facility that is likely to be impacted by this Order is strongly encouraged to post a copy of this Order onsite and to provide a copy to any member of the public asking for a copy.**
- 14. If any provision of this Order or its application to any person or circumstance is held to be invalid, then the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.**

IT IS SO ORDERED:

A handwritten signature in blue ink that reads "Tomás Aragón".

Tomás J. Aragón, MD, DrPH,
Health Officer of the
City and County of San Francisco

Dated: March 16, 2020