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13 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

14 **COUNTY OF LOS ANGELES**

15 PEZ SEAFOOD DTLA, LLC, dba PEZ
16 CANTINA and PEZ POWDER, a Limited
17 Liability Company;

18 Plaintiff,

19 vs.

20 THE TRAVELERS INDEMNITY
21 COMPANY, a Corporation; MUNTU
22 DAVIS, an individual; and DOES 1
23 through 25;

24 Defendants.

CASE NO. 20STCV15111

Assigned to Hon. Rafael A. Ongkeko, Dept. 73

**FIRST AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

Complaint filed: April 20, 2020
Trial Date: None Set

1 Plaintiff PEZ SEAFOOD DTLA, LLC dba PEZ CANTINA and PEZ POWDER, a Limited
2 Liability Company, (“Plaintiff”), by their undersigned counsel, allege as follows:

3 **PARTIES**

4 1. At all relevant times, Plaintiff PEZ SEAFOOD DTLA, LLC dba Pez Cantina and
5 Pez Powder, (“Pez Cantina” or “Plaintiff”), is a limited liability company, authorized to do
6 business in the State of California, County of Los Angeles. PEZ SEAFOOD DTLA, LLC owns,
7 operates, manages, and/or controls the restaurant Pez Cantina located at 401 S. Grand Avenue, Los
8 Angeles, CA 90071 (“Insured Property”).

9 2. At all relevant times, Defendant THE TRAVELERS INDEMNITY COMPANY,
10 (“TRAVELERS”), is a Connecticut corporation doing business in the State of California, County
11 of Los Angeles, subscribing to Policy Number 680-9M304995-20-42. TRAVELERS issued the
12 policy for Plaintiff’s property located at 401 S. Grand Avenue, Los Angeles, CA 90071 for the
13 period of January 29, 2020 to January 29, 2021.

14 3. At all relevant times, Defendant MUNTU DAVIS, (“DAVIS”), is an individual
15 residing in the County of Los Angeles, State of California. DAVIS is the Health Officer of the
16 County of Los Angeles and is being named in his official capacity.

17 4. TRAVELERS is transacting the business of insurance in the state of California and
18 the basis of this suit arises out of such conduct.

19 5. At all relevant times mentioned herein, the true names and capacities, whether
20 individual, corporate, associate or otherwise, of Defendants and DOES 1 through 25, inclusive, are
21 currently unknown to Plaintiff, who therefore brings suit against these Defendants by their
22 fictitious names and capacities. Plaintiff is informed and believes and thereupon alleges that each
23 fictitiously named Defendant, whether acting for itself or as an agent, corporation, association, or
24 otherwise, is liable or responsible to Plaintiff and proximately caused injuries and damages to
25 Plaintiff as alleged herein. While at this time Plaintiff is unaware of the true names and capacities
26 of the DOE Defendants, Plaintiff will amend its Complaint to show the true names and capacities
27 of DOES 1 through 25, inclusive, when those identities have been ascertained.

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1 15. The policy is currently in full effect, providing property, business personal property,
2 business income and extra expense, and additional coverages between the period of January 29,
3 2020 to January 29, 2021.

4 16. The insurance applies to the actual loss of business income sustained and necessary
5 and reasonable extra expenses incurred when the operations of the business are suspended due to
6 the direct physical loss of or damage to the Insured Premises that is not excluded or limited.

7 17. Under “Civil Authority” coverage is provided to pay for the actual loss of business
8 income and necessary extra expense caused by an action of civil authority that prohibits access to
9 the insured property due to direct physical loss of or damage unless the loss is otherwise excluded
10 or limited.

11 18. The Policy further provides for additional coverages regarding “Claim Data
12 Expense.” This includes expenses incurred in “preparing claim data to show the extent of loss” in
13 the amount of \$25,000.

14 19. Plaintiff faithfully paid policy premiums to TRAVELERS to specifically provide all
15 risk coverage, including the actual loss of business income due to the necessary interruption of
16 business operations due to direct physical loss of or direct physical damage to property as well as a
17 civil authority shutdown.

18 20. As now commonly known, an unprecedented event in the form of a world pandemic
19 is occurring. By March 11, 2020, the World Health Organization officially recognized the COVID-
20 19 pandemic.

21 21. It is the public policy intent and intent of each county to close businesses including
22 Plaintiff’s for the public good, welfare, and benefit.

23 22. In order to protect the public, on March 15, 2020, Mayor Eric Garcetti of Los
24 Angeles issued an order placing restrictions on certain establishments throughout the City of Los
25 Angeles. Within this order included the prohibition of dine-in food service. A true and correct copy
26 of Mayor Eric Garcetti’s Order (“Garcetti Order”) is attached hereto as Exhibit 2.

27 23. On April 1, 2020, Mayor Garcetti issued a revised order (“Revised Garcetti Order”).
28 The Revised Order specifically acknowledges that COVID-19 is “physically causing property loss

1 or damage due to its tendency to attach to surfaces for prolonged periods of time.” A true and
2 correct copy of Mayor Eric Garcetti’s Revised Order is attached hereto as Exhibit 3.

3 24. On April 10, 2020, Mayor Garcetti issued a further order extending the Revised
4 Garcetti Order to May 15, 2020. (“Garcetti Extension Order”). A true and correct copy of Mayor
5 Eric Garcetti’s Extension Order is attached hereto as Exhibit 4.

6 25. In order to protect the public, on March 16, 2020, the Health Officer of Los Angeles
7 County, Defendant Muntu Davis, M.D., MPH, issued an order directing all individuals living in the
8 county to stay at home except that they may leave to provide or receive certain essential services or
9 engage in certain essential activities (“Los Angeles Order”). A true and correct copy of the Los
10 Angeles Order is attached hereto as Exhibit 5.

11 26. It is the public policy intent and intent of each county and state to close businesses
12 including Plaintiff’s for the public good, welfare, and benefit. The Garcetti Order, Revised Garcetti
13 Order, Garcetti Extension Order, and Los Angeles Order (collectively “Orders”) were reasonably
14 necessary to protect the public good, welfare, and benefit. The Orders were specifically tailored to
15 the nature of the COVID-19 pandemic.

16 27. As a result of the Orders Plaintiff has had to completely shut down its business
17 operations and access to the insured property is specifically prohibited. Plaintiff has incurred
18 expenses due to the necessary interruption of its business operations at the Insured Property.

19 28. Plaintiff has sustained an actual loss of business income due to the necessary
20 suspension of Plaintiff’s business (“the loss”). The suspension of Plaintiff’s business was caused by
21 the Orders that prohibited access to the Insured Property.

22 29. A declaratory judgment interpreting the impact of the Orders on the insurance
23 coverage provided by TRAVELERS will prevent the Plaintiff from being left without vital
24 coverage acquired to ensure the survival of its business due to the shutdown caused by the civil
25 authorities’ response is necessary. As a result of this order, Plaintiff has incurred, and continues to
26 incur, a substantial loss of business income and additional expenses.

27 30. On April 30, 2020 TRAVELERS denied Plaintiff’s claim as not being covered by
28 The Policy. The denial of the claim is attached hereto as Exhibit 6.

SECOND CAUSE OF ACTION

BREACH OF CONTRACT

(Against TRAVELERS and DOES 1 to 25)

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

6 40. Pursuant to The Policy, TRAVELERS has a contractual obligation to fully
7 investigate and adjust the loss, and pay the full amount of Plaintiff's covered losses, including the
8 actual loss sustained for the necessary interruption of Plaintiff's businesses, including, but not
9 limited to, loss of business income and extra expense, less the applicable deductible.

10 41. The Policy is an insurance contract under which TRAVELERS was paid premiums
11 in exchange for its promise to pay Plaintiff's losses for claims covered by The Policy, such as
12 business losses incurred as a result of the Orders forcing Plaintiff to suspend their businesses.

13 42. Plaintiff has performed all conditions precedent to their right to recovery under The
14 Policy.

15 43. TRAVELERS has refused and continues to refuse to pay for all of the benefits
16 under the Policy including, but not limited to, loss of business income and extra expenses, forcing
17 Plaintiff to litigate.

18 44. TRAVELERS' refusal to pay the full amount of Plaintiff's loss is in breach of The
19 Policy.

20 45. TRAVELERS further breached its contract with Plaintiff by:

- 21 a. failing to fully investigate the loss;
- 22 b. conducting a biased and outcome-oriented investigation of the loss;
- 23 c. not promptly paying Plaintiff all benefits owed as a result of the covered
24 loss;
- 25 d. failing to pay for all consequential damage; and
- 26 e. not putting Plaintiff in the position it would have been in had TRAVELERS
27 timely performed all of its contractual duties.

28 46. As a direct and proximate result of TRAVELERS' breach of contract, Plaintiff:

- 1 a. suffered and will continue to suffer loss of business income and extra
- 2 expenses;
- 3 b. incurred and will incur in the future loss of business income and extra
- 4 expenses;
- 5 c. suffered and will continue to suffer consequential damages;
- 6 d. is entitled to an award of prejudgment interest, taxable costs, and
- 7 investigatory fees; and
- 8 e. incurred other expenses as a result of TRAVELERS' breach of contract.

THIRD CAUSE OF ACTION

(For Breach of the Implied Covenant of Good Faith and Fair Dealing (Insurance Bad Faith)

As to TRAVELERS and DOES 1 to 25)

12 47. Plaintiff hereby re-alleges and incorporates the preceding paragraphs as though set
13 forth in full herein.

14 48. Plaintiff is informed and believes and thereon alleges that the Policy was executed,
15 issued and approved in the State of California.

16 49. Plaintiff is informed and believe and thereon alleges that the Policy was
17 administered in, and intended to be discharged in, the State of California.

18 50. The Policy was issued in exchange for good and valuable consideration, and the
19 Subject Policy was in full force and effect at all relevant times mentioned herein.

20 51. In every contract of insurance, there is an implied duty of good faith and fair dealing
21 that the insurance company will not do anything to unfairly interfere with the rights of the insured,
22 like Plaintiff, to receive the benefit of the Subject Policy.

23 52. Defendant TRAVELERS, having issued the Policy to Plaintiff, was at all times
24 materially bound to said implied covenant of good faith and fair dealing

25 53. Defendant breached its duty of good faith and fair dealing owed to Plaintiff,
26 including but not limited to, the following respects:

- 27 a. Unreasonably and in bad faith, placed its own financial interests ahead of its insured
- 28 in violation of California's statutory, regulatory and common law;

1 b. Unreasonably and in bad faith failed and refused to give at least as much
2 consideration to the interests of its insured as it gave its own interests;

3 c. Unreasonably and in bad faith withheld payment of sums due and owing Plaintiff;

4 d. Unreasonably and in bad faith failed to reasonably investigate and process
5 Plaintiff's claim for benefits;

6 54. Plaintiff was entitled to benefits from Defendant under the Policy for full coverage
7 of the Insured Property .

8 55. Defendant denied Plaintiff's claim and failed to pay benefits owed to Plaintiff owed
9 under the Policy.

10 56. In the course of failing and/or refusing to provide benefits to Plaintiff under the
11 Policy, TRAVELERS acted unreasonably and without good cause.

12 57. By its actions and inactions, TRAVELERS has breached the covenant of good faith
13 and fair dealing implied in the Policy.

14 58. Plaintiff is informed, believes, and alleges that Defendant breached its duty of good
15 faith and fair dealing by other acts and omissions of which they are presently unaware of but which
16 will be showing according to proof at trial.

17 59. As a direct and proximate result of Defendant's breach, Plaintiff has sustained
18 damages in an amount according to proof at trial for amounts paid out of pocket, unpaid interest
19 thereon, consequential damages, and past and future attorneys' fees and costs incurred by Plaintiff
20 in pursuing Defendants to recover, among other sums, its unpaid benefits as set forth above.

21 60. Defendant acted with reckless, willful or callous disregard for Plaintiff's rights and
22 with malice, fraud or oppression toward Plaintiff, thereby entitling Plaintiff to an award of punitive
23 damages in accordance with proof at trial.

24 61. To date, Defendant consciously disregarded Plaintiff's interests by refusing to
25 provide coverage under the Policy, even though Plaintiff has fulfilled all of its obligations.

26 62. As alleged herein, TRAVELERS' conduct with respect to Plaintiff was with willful
27 disregard of Plaintiff's rights and an attempt by them to take positions which were inconsistent
28 with interpretations of other policies, based coverage decisions on misinterpretations of the policy,

1 or in an effort to cover up for their own failures to place the proper policy for Plaintiffs.
2 TRAVELERS also delayed responding to Plaintiff's demands for coverage under the Subject
3 Policy, has never been forthcoming as to its position on coverage, and/or has failed to rectify its
4 failure to place the proper policy. Consequently, Plaintiff is entitled to recover punitive damages
5 both to punish TRAVELERS' transgressions and to deter others from engaging in similar wrongful
6 conduct.

7 63. Upon information and belief, Plaintiff alleges that the conduct described herein was
8 authorized and ratified by Defendant.

9 64. Based on the preceding paragraphs, Defendant acted with reckless, willful or callous
10 disregard for Plaintiff's rights and with malice, fraud or oppression toward Plaintiff, thereby
11 entitling Plaintiff to an award of punitive damages in accordance with proof at trial.

12 65. On information and belief, Defendant has engaged in a continued pattern and
13 practice of unjustly and unreasonably delaying and withholding policy benefits due to their
14 insureds, of which the instant action is only one example.

15
16 **PRAYER FOR RELIEF**

17 Wherefore, Plaintiff herein, PEZ SEAFOOD DTLA, LLC, dba PEZ CANTINA and PEZ
18 POWDER, a Limited Liability Company, prays as follows:

- 19 1) For a declaration that the necessary suspension of Plaintiff's business operations caused
20 by the Orders constitute a direct physical loss as defined in the Policy.
21 2) For a declaration that the Orders constitute a prohibition of access to Plaintiff's Insured
22 Premises by a Civil Authority as defined in the Policy.
23 3) For a declaration that the Orders trigger coverage under The Policy if Plaintiff can
24 prove that there has been a direct physical loss of or damage to the property.
25 4) For a declaration that claim expense coverage is available in the amount of \$25,000 for
26 making a claim under The Policy.
27 5) For such other relief as the Court may deem proper.
28 6) Compensatory damages;

- 1 7) General damages;
- 2 8) Pre-judgment and post-judgment interest as allowed by law;
- 3 9) Costs according to proof;
- 4 10) For exemplary and/or punitive damages against Defendant as to the Second Cause of
- 5 Action for Insurance Bad Faith;
- 6 11) Attorneys' fees pursuant to *Brandt v. Superior Court (Standard Ins. Co.)*, (1985) 37
- 7 Cal.3d 813, 817; and
- 8 12) Such other and further legal and equitable relief as the Court deems just and proper.

9
10 DATED: May 20, 2020

KABATECK LLP



11
12 By:

13 Brian S. Kabateck
 14 Christopher B. Noyes
 15 Marina R. Pacheco
 Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial for all claims and issues so triable.

DATED: May 20, 2020

KABATECK LLP



By: _____

Brian S. Kabateck
Christopher B. Noyes
Marina R. Pacheco
Attorneys for Plaintiff