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9 Attorneys for Plaintiffs,  
10 WEST COAST HOTEL MANAGEMENT, LLC, and  
11 WEST COAST ORANGE GROUP

12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 WEST COAST HOTEL  
15 MANAGEMENT, LLC dba  
16 UNIVERSITY SQUARE HOTEL OF  
17 FRESNO; and WEST COAST  
18 ORANGE GROUP, LLC dba THE  
19 HOTEL FRESNO,

20 Plaintiffs,

21 v.

22 BERKSHIRE HATHAWAY GUARD  
23 INSURANCE COMPANIES, a  
24 Pennsylvania Company; AMGUARD  
25 INSURANCE COMPANY, a  
26 Pennsylvania Corporation; and DOES  
27 1-50, inclusive,

28 Defendants.

Case No.

**COMPLAINT FOR DECLARATORY  
RELIEF**

Plaintiffs WEST COAST HOTEL MANAGEMENT, LLC dba UNIVERSITY SQUARE HOTEL OF FRESNO (“University Square”) and WEST COAST ORANGE GROUP, LLC dba THE HOTEL FRESNO (“Hotel Fresno”) (collectively as “Plaintiffs”) bring this Complaint, alleging against Defendants BERKSHIRE

1 HATHAWAY GUARD INSURANCE COMPANIES (“Berkshire”), AMGUARD  
2 INSURANCE COMPANY (“Amguard”) and DOES 1-50 (collectively as  
3 “Defendants”) as follows:

4 **THE PARTIES**

5 1. At all relevant times, Plaintiff University Square was a limited liability  
6 company organized and authorized to do business and doing business in the State of  
7 California. University Square owns, operates, and/or manages a hotel located at 4961  
8 N. Cedar Ave., Fresno, CA 93726.

9 2. At all relevant times, Plaintiff Hotel Fresno was a limited liability  
10 company organized and authorized to do business and doing business in the State of  
11 California. Hotel Fresno owns, operates, and/or manages a hotel located at 3737 N.  
12 Blackstone Ave., Fresno, CA 93726.

13 3. On information and belief, at all relevant times, Defendant Berkshire was  
14 a corporation organized in the State of Pennsylvania but licensed and authorized to do  
15 business and doing business in the State of California. Berkshire is in the business of  
16 selling both residential and commercial insurance policies to individuals and  
17 businesses. On information and belief, Berkshire is a subsidiary of Amguard.

18 4. On information and belief, at all relevant times, Defendant Amguard was  
19 a corporation organiaed in the State of Pennsylvania but licensed and authorized to do  
20 business and doing business in the State of California. Amguard is in the business of  
21 selling both residential and commercial insurance policies to individuals and  
22 businesses. On information and belief, Amguard is the parent corporation of Berkshire.

23 5. The true names and capacities of Defendants sued as DOES 1 to 50,  
24 inclusive, are presently unknown to Plaintiff. Plaintiff is informed and believes, and  
25 thereon alleges that each such Defendant is in some way responsible and liable for the  
26 events or happenings alleged in this Complaint. Plaintiff will amend this Complaint to  
27 allege their true names and capacities when ascertained.

28 6. Plaintiff is informed and believes, and thereon alleges that at all times

1 relevant hereto, Defendants, and each of them, were the agents, employees, managing  
2 agents, supervisors, coconspirators, parent corporation, joint employers, alter ego,  
3 and/or joint ventures of the other Defendants, and each of them, and in doing the things  
4 alleged herein were acting at least in part within the course and scope of said agency,  
5 employment, conspiracy, joint employer, alter ego status, and/or joint venture and with  
6 the permission and consent of each of the other Defendants.

7 7. Plaintiff is informed and believes, and thereon alleges that as a result of  
8 the acts and omissions complained of herein, Defendants are jointly and severally  
9 liable, for all relief sought by Plaintiff against Defendants herein.

#### 10 **JURISDICTION AND VENUE**

11 8. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332  
12 because Plaintiffs and Berkshire are citizens of different states and the amount in  
13 controversy exceeds \$75,000.00 exclusive of interest and costs.

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

#### 17 **FACTUAL ALLEGATIONS**

18 10. On or about December 21, 2018, Plaintiff University Square entered into  
19 a contract of insurance with Berkshire, whereby University Square agreed to make  
20 payments to Berkshire in exchange for Berkshire's promise to indemnify University  
21 Square for losses including, but not limited to, business income losses at its hotel  
22 located at 4961 N. Cedar Ave., Fresno, CA 93726. On or about December 20, 2019,  
23 Plaintiff University Square renewed this insurance policy for another year and Plaintiff  
24 Hotel Fresno, located at 3737 N. Blackstone Ave., Fresno, CA 93726, was added as an  
25 additional insured property to the existing policy. These two hotels will herein be  
26 referred to collectively as the "Insured Properties."

27 11. The Insured Properties consist of two hotels with multiple buildings.  
28 Plaintiffs rely economically on people paying to stay at the Insured Properties.

1           12. The Insured Properties are covered under an insurance policy issued by  
2 Berkshire bearing Policy Number WEBP079586 (the “Policy”). A true and correct  
3 copy of the Policy is attached hereto as Exhibit 1.

4           13. The Policy is in full effect, providing property, business personal  
5 property, business income and extra expense, and additional coverages between the  
6 period of December 21, 2018 through December 21, 2020 (the Policy was renewed on  
7 or about December 20, 2019 for another year).

8           14. Plaintiffs faithfully paid policy premiums to Berkshire, specifically to  
9 provide additional coverages for “Business Income and Extra Expense Coverage” in  
10 the event of business closures by order of Civil Authority. In fact, this specific  
11 coverage was one of Plaintiffs’ primary reasons for purchasing the Policy.

12           15. Under the Policy, insurance is extended to apply to the actual loss of  
13 business income sustained and the actual, necessary, and reasonable extra expenses  
14 incurred when access to the scheduled premises is specifically prohibited by order of  
15 Civil Authority as the direct result of covered cause of loss to property in the immediate  
16 area of Plaintiff’s scheduled premises. This additional coverage is identified as  
17 coverage under “Civil Authority” and specifically states that “the Civil Authority  
18 additional coverage is not subject to the Limits of Insurance.”

19           16. The Policy is an all-risk policy, insofar as it provides that a covered cause  
20 of loss under the policy means direct physical loss or direct physical damage unless  
21 the loss is specifically excluded or limited in the Policy.

22           17. The Policy’s Civil Authority Coverage Section extends coverage to direct  
23 physical loss or damage that results in a covered cause of loss to the property in the  
24 immediate area of the “scheduled premises.”

25           18. Based on information and belief, Berkshire has accepted the policy  
26 premiums with no intention of providing any coverage under the Policy’s Civil  
27 Authority Coverage Section due to a loss and shutdown from a virus pandemic.

28           19. COVID-19 is an infectious disease caused by a virus. It is believed that

1 the first instance of disease spreading to humans was in or around December 2019.

2 20. In January 2020, this virus and its resulting disease COVID-19 reached  
3 the United States and quickly spread across the country. As early as February 26, 2020,  
4 the Center for Disease Control and Prevention (“CDC”) advised that COVID-19 was  
5 spreading freely without the ability to trace the origin of new infections.

6 21. Plaintiffs were economically impacted by COVID-19 as early as January  
7 2020 as COVID-19 began to run rampant internationally, forcing closures of airports  
8 and deterring people from traveling and staying at hotels. As such, due to the COVID-  
9 19 outbreak, Plaintiffs experienced a significant decline in hotel reservations and  
10 suffered significant economic losses as early as January 2020.

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

13 23. On or about March 16, 2020, the Mayor of Fresno County, Lee Brand,  
14 issued a safer-at-home Executive Order, directing all “non-essential” businesses to be  
15 closed in Fresno County. Brand’s Order came on the heels of California Governor  
16 Gavin Newsom’s similar state-wide order issued earlier that week. Brand’s Order  
17 specifically referenced that it was being issued based on the dire risks of exposure with  
18 the contraction of COVID-19 and evidence of physical damage to property. Just prior  
19 to Brand’s Order, Governor Newsom issued a state-wide “Stay-at-Home Order” for all  
20 residents of California. In this case, the properties that are damaged are in the  
21 immediate area of the Insured Properties.

22 24. As a direct and proximate result of this civil authority, Plaintiffs have  
23 suffered immense financial losses. Due to these Orders, public access to the Insured  
24 Properties was prohibited. As such, Plaintiffs’ economic losses in March 2020 and  
25 onward were significantly greater than Plaintiffs’ economic losses in January and  
26 February 2020.

27 25. In January 2020, Plaintiffs submitted, in good faith, a claim to Berkshire  
28 seeking indemnification for business income loss due to civil authority.

1           26. In response, Berkshire sent Plaintiff a denial letter wherein Berkshire  
2 stated they would not indemnify Plaintiff’s business income losses because Plaintiffs  
3 “are not claiming that property sustained any direct physical loss or damage.” A true  
4 and correct copy of Berkshire’s denial letter is attached hereto as Exhibit 2.

5           27. However, there was direct physical loss of or damage to the Insured  
6 Properties.

7           28. The WHO states “[t]he disease spreads primarily from person to person  
8 through small droplets from the nose or mouth, which are expelled when a person with  
9 COVID-19 coughs, sneezes, or speaks... people can catch COVID-19 if they breathe  
10 in these droplets from a person infected with the virus... these droplets can land on  
11 objects and surfaces around the person such as tables, doorknobs, and handrails. People  
12 can become infected by touching these objects or surfaces, then touching their eyes,  
13 nose, or mouth.”

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

20           30. A CDC posting from March 27, 2020 reported that SARS-CoV-2 (also  
21 known as COVID-19) was identified on surfaces of the cabins on board the Diamond  
22 Princess cruise ship 17 days after the cabins were vacated but before they were  
23 disinfected. Numerous other scientific studies and articles have identified the  
24 persistence of coronavirus on doorknobs, toilets, faucets, and other high touch points.

25           31. A particular challenge with the novel coronavirus is that it is possible for  
26 a person to be infected with COVID-19, but be asymptomatic. Still, such seemingly  
27 healthy people unknowingly spread the virus via speaking, breathing, and touching  
28 objects.

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

6           33. At present, there are approximately 142,000 confirmed cases of COVID-  
7 19 and nearly 5,000 deaths in California. Approximately 4,000 of those cases are  
8 located in Fresno County, where the Insured Properties reside. Due to limited and/or  
9 faulty testing, these numbers are likely much higher.

10           34. The civil authority Orders were issued in an effort to halt the physical  
11 spread of COVID-19 by inhibiting access to public areas and property so as to limit  
12 COVID-19's damage/infection of public areas and property.

13           35. Due these Orders, the public was denied access to the Insured Properties,  
14 thereby rendering the Insured Properties economically unviable and causing Plaintiffs  
15 to suffer significant business income losses. Accordingly, Plaintiffs have suffered  
16 business income loss as a direct result of civil authority that prohibited access to the  
17 Insured Properties due to physical loss of and/or damage to property.

18           36. Any effort by Berkshire to deny the reality that the novel coronavirus  
19 disease causes physical loss and damage would constitute a false and potentially  
20 fraudulent misrepresentation that could endanger policyholders, such as Plaintiffs, and  
21 the public at large.

22           37. Though Plaintiffs' Policy excludes "Virus or Bacteria" as a covered cause  
23 of loss, this exclusion was included as three sentences (comprising approximately 1/6<sup>th</sup>  
24 of one page) in a 100+ page insurance policy packet and does not specify or include  
25 pandemics. See page 69 of Exhibit 1.

26           38. This virus exclusion "provision" was not reviewed with or explained to  
27 Plaintiffs whatsoever at any time before Plaintiffs purchased the Policy. The first time  
28 this exclusion was brought to Plaintiffs' attention, or even mentioned to Plaintiffs, was

1 in Berkshire’s denial letter sent in or around March 2020 in response to Plaintiffs’  
2 request for indemnification.

3 39. In fact, Plaintiffs relied on Berkshire and its agents and/or employees to  
4 guide and advise them in selecting the right insurance policy as Plaintiffs are not versed  
5 or familiar with insurance or legal documents whatsoever. However, Defendants failed  
6 to advise or explain key provisions of the Policy to Plaintiffs, leading Plaintiffs to  
7 believe they would be covered under the Policy in case of a scenario like the one  
8 Plaintiffs are currently facing.

9 40. One of the primary reasons Plaintiff purchased the Policy was to insure  
10 against business income loss as a result of civil authority, which is exactly what  
11 happened here. The additional coverage is identified as coverage under “Civil  
12 Authority” and specifically states the “the Civil Authority additional coverage is not  
13 subject to the Limits of Insurance.”

14 41. Further, the novelty of the COVID-19 pandemic indicates that such a  
15 widespread and devastating pandemic was not contemplated as part of the Virus  
16 Exclusion provision and thus should not apply to the COVID-19 pandemic. In fact, the  
17 Virus Exclusion provision says “we will not pay for loss or damage caused by or  
18 resulting from any virus, bacterium or other microorganism that induces or is capable  
19 of inducing physical distress, illness or disease.” A pandemic, such as the present  
20 COVID-19 pandemic, was not contemplated or excluded in the Policy and thus should  
21 not bar indemnification of Plaintiff.

22 42. As a result of the COVID-19 pandemic, the property damage caused by  
23 the novel coronavirus, and in compliance with government guidance and orders,  
24 Plaintiffs were forced to close off the Insured Properties from access by the public.  
25 Plaintiffs have suffered, and continue to suffer, significant losses from the closure of  
26 their Insured Properties and related losses due to the COVID-19 pandemic.

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1 **FIRST CAUSE OF ACTION**

2 **DECLARATORY RELIEF**

3 **(By Plaintiffs Against All Defendants and DOES 1 to 50)**

4 43. Plaintiffs reallege and incorporate by reference, inclusive, as though set  
5 forth fully herein, all of the allegations and statements contained in the preceding  
6 paragraphs.

7 44. Under California Code of Civil Procedure § 1060 et seq., the court may  
8 declare rights, status, and other legal relations whether or not further relief is or could  
9 be claimed. An actual controversy has arisen between Plaintiffs and Berkshire as to the  
10 rights, duties, responsibilities, and obligations of the parties in that Plaintiffs contend  
11 and, on information and belief, Berkshire disputes and denies that: (1) civil authority  
12 prohibited (or at least significantly limited) access to Plaintiffs' Insured Properties; (2)  
13 the prohibition (or significant limitation) of access by the civil authority is specifically  
14 prohibited access as defined in the Policy; (3) access to the Insured Properties resulted  
15 from direct physical loss of or damage to property; (4) the civil authority triggers  
16 coverage under the Policy despite the Virus Exclusion provision because it is  
17 misleading and was not reviewed with or explained to Plaintiffs and would essentially  
18 frustrate Plaintiffs' primary purpose of purchasing the Policy; and (5) the Policy  
19 provides coverage to Plaintiffs for any current and future civil authority closures of  
20 commercial buildings in California due to physical loss or damage from COVID-19  
21 under the Civil Authority coverage parameters and the Policy provides business  
22 income coverage in the event that the novel coronavirus has caused a loss or damage  
23 at the Insured Properties or immediate area(s) of the Insured Properties. Resolution of  
24 the duties, responsibilities, and obligations of the parties is necessary as no adequate  
25 remedy at law exists and a declaration of the Court is needed to resolve this dispute  
26 and controversy.

27 45. Plaintiffs seek a Declaratory Judgment establishing that the business  
28 income losses suffered by Plaintiffs as described herein are covered by the Policy and

1 that Plaintiffs are entitled to indemnification by Berkshire for their business income  
2 losses as a result of civil authority due to the novel coronavirus pandemic.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of  
5 them as follows:

6 1. For a declaration that the various safer-at-home/stay-at-home Orders  
7 issued throughout California constitute civil authority that prohibits access (or  
8 significantly limits access) to Plaintiffs' Insured Properties located at 4961 N. Cedar  
9 Ave., Fresno, CA 93726 and 3737 N. Blackstone Ave., Fresno, CA 93726.

10 2. For a declaration that such prohibition of access pursuant to civil  
11 authority is a covered cause of loss as defined in the Policy.

12 3. For a declaration that such prohibition of access was necessitated by  
13 physical loss of or damage to the Insured Properties.

14 4. For a declaration that this civil authority prohibiting access to the Insured  
15 Properties triggers coverage under the Policy as business income loss despite the  
16 Virus Exclusion provision (due to its unexplained, unreviewed, and misleading  
17 nature).

18 5. For a declaration that the Policy provides coverage to Plaintiffs for any  
19 current and future civil authority closures of commercial buildings in California due  
20 to physical loss or damage from the novel coronavirus under the Civil Authority  
21 coverage parameters and the Policy provides business income loss coverage in the  
22 event that COVID-19 has caused a loss or damage at the insured premises or  
23 immediate area of the insured premises.

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6. For such other relief as the Court may deem just and proper.

Dated: June 24, 2020

**RICHE LITIGATION, PC**

By: 

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