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 8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **COUNTY OF LOS ANGELES**

21STCV09852

11	INTERNATIONAL COFFEE & TEA, LLC, a)	CASE NO. XXX
	Delaware Limited Liability Company,)	
12)	[Assigned to Hon. X, Dept. XX]
	Plaintiffs,)	
13)	COMPLAINT FOR DAMAGES FOR:
14	vs.)	1. BREACH OF CONTRACT;
)	2. BAD FAITH
15	CONTINENTAL CASUALTY COMPANY, a)	3. DECLARATORY RELIEF
	Stock Insurance Company and Illinois)	
16	corporation; CNA FINANCIAL)	DEMAND FOR JURY TRIAL
	CORPORATION, an Illinois corporation; DOES)	
17	1 through 50, inclusive.)	Complaint Filed: March 12, 2021
	Defendants.)	Trial Date: None set

INTRODUCTION

20 1. Plaintiff INTERNATIONAL COFFEE & TEA, LLC, has been engaged since 1963 in
 21 the operation of retail coffee and tea emporiums under the name The Coffee Bean & Tea Leaf
 22 (“CBTL”) serving a variety of fresh roasted coffees, specialty teas, blended ice drinks, bakery items
 23 and other goods. It has about 275 company-owned locations, concentrated in Southern California, and
 24 together with franchisees operates more than 1,000 coffee shops worldwide. CBTL is the oldest and
 25 largest privately-held specialty coffee and tea retailer in the United States.

26 2. To be competitive in the retail coffee and tea business, CBTL locations offer an inviting
 27 environment that encourages customers not only to visit frequently but to linger in shops, to socialize,
 28 to use internet services and take personal time there, all aimed at enhancing the experience of visiting

1 a CBTL shop beyond the beverage itself. This business depends on maintaining premises in a clean,
2 safe, and hygienic condition that encourages customers to come in, sit and work, talk with friends, and
3 enjoy food and drinks in a safe and welcoming environment.

4 3. Like other retailers and restaurants which depend upon high-volume foot traffic and a
5 welcoming, enticing environment to attract in-store visits, CBTL shops suffered enormous losses and a
6 catastrophic drop-off in sales as a result of the COVID-19 pandemic and the resulting inability to
7 conduct normal business beginning in or about March 2020. Many CBTL locations were forced to
8 close their doors, and others lost the bulk of their business because of the impossibility of operating in
9 a profitable manner due to the severe risk of contamination and because of physical loss and damage,
10 resulting in substantial monetary losses.

11 4. The coronavirus and COVID-19 caused direct physical loss of and/or damage to
12 Plaintiff's properties and to Plaintiff's interests in such properties throughout Southern California, and
13 to surrounding and adjacent properties, by altering the physical conditions of properties such that
14 properties were no longer safe or fit for occupancy or use. Coronavirus and COVID-19 physically
15 alters and damages the air within buildings such that the air is unsafe to breathe. Coronavirus attaches
16 itself to surfaces and properties and causes a physical change in the condition of the surfaces and
17 properties—from safe and touchable to unsafe and deadly. Coronavirus creates conditions in which
18 the sale and consumption of coffee, tea, and other beverages and items, and personal visits by potential
19 customers to the premises, are unsafe.

20 5. Based on this physical loss of and damage to property and interests therein rendering
21 properties unsafe for the continued brewing, sale, and consumption of coffee, tea, and other items,
22 starting in March 2020, the State of California, the Counties of Los Angeles and Orange, and other
23 public authorities issued orders prohibiting Plaintiff from accessing and operating its shops and other
24 properties. The physical loss and damage and [from?] these orders resulted in losses of millions of
25 dollars in business income, as well as other expenses Plaintiff would not otherwise have incurred.

26 6. To protect itself against risks such as these, and to ensure that it could continue as a
27 functioning business in the event of circumstances preventing customary operations, Plaintiff
28 purchased property insurance policies from the defendant insurer which covered business income loss

1 and extra expenses incurred. This policy consisted of a “CNA Property Policy,” Policy No.
2 6023397758, in effect from August 1, 2019, to August 1, 2020, purchased by Plaintiff from
3 Continental Casualty Company, which includes coverage of up to \$43,564,530 for business
4 interruption and business income losses, and additional sums for associated losses or expenses (the
5 “CNA/CCC Policy”).

6 7. The insurance industry created a standard-form “virus or bacteria” exclusion in 2006 in
7 an attempt to limit insurance for losses resulting from such sources. However, in selling the
8 CNA/CCC Policy to Plaintiff, the defendant insurers decided *not* to include any such exclusion in the
9 CNA/CCC Policy, and in fact did nothing to limit liability for virus- or pandemic-associated risks,
10 though exclusions purporting to exclude coverage for losses caused by or resulting from any virus that
11 induces or is capable of inducing physical distress, illness, or disease have been widely available to
12 insurers since 2006 and are included in other policies.

13 8. Defendants have wrongfully breached their obligations under the CNA/CCC Policy
14 they sold to Plaintiff, depriving their insured of crucial revenue needed to maintain Plaintiff’s business
15 operations. Plaintiff files this action to recover the amounts owed to it under the CNA/CCC Policy for
16 which it paid substantial premiums, to obtain a declaration of its rights to coverage, and to recover
17 other damages and amounts incurred as a result of the defendant insurers’ breaches, including breaches
18 of the implied covenant of good faith and fair dealing.

19 **THE PARTIES**

20 9. Plaintiff CBTL is and at all times herein mentioned was a limited liability company
21 organized and existing under the laws of the State of Delaware, authorized to do and doing business in
22 the State of California, with its principal place of business in the City of Los Angeles, County of Los
23 Angeles.

24 10. Defendant CONTINENTAL CASUALTY COMPANY (hereinafter “CCC”) is and at
25 all times herein mentioned a Stock Insurance Company and corporation organized and existing under
26 the laws of the State of Illinois, authorized to do and doing business in the State of California, with its
27 principal place of business in the City of Los Angeles, County of Los Angeles.

28 11. Defendant CNA FINANCIAL CORPORATION (hereinafter “CNA”) is and at all

1 times herein mentioned was a corporation organized and existing under the laws of the State of
2 Illinois, authorized to do and doing business in the State of California, with its principal place of
3 business in the City of Los Angeles, County of Los Angeles.

4 12. The full extent of the facts linking the fictitiously-designated defendants with this
5 action are unknown to Plaintiff, or the true names or capacities, whether individual, plural, corporate,
6 partnership, associate, or otherwise, of defendants DOES 1 through 50 are unknown to Plaintiff.
7 Plaintiff therefore sues said Defendants by such fictitious names. Plaintiff is informed, believes, and
8 thereon alleges that each of the Defendants designated herein as a DOE is negligently, wantonly,
9 recklessly, tortiously, and unlawfully responsible in some manner for the events and happenings herein
10 referred to and negligently, wantonly, recklessly, tortiously, and unlawfully proximately caused injury
11 and damages to Plaintiff as herein alleged. Plaintiff will ask leave of Court to amend this Complaint to
12 show said Defendants' true names and capacities after the same have been ascertained.

13 13. Plaintiff is informed and believes and thereupon alleges that at all times relevant
14 Defendants, including DOES 1 through 50 inclusive, and each of them, were the agents, servants,
15 employees and/or joint venturers of their Co-Defendants, and each was, as such, acting within the
16 course, scope, and authority of said agency, employment, and/or venture, and that each and every
17 Defendant aforesaid, when acting as a principal, was negligent in the selection and hiring of each and
18 every other Defendant as agent, employee and/or joint venturer

19 **STATEMENT OF FACTS**

20 **A. The COVID-19 Pandemic**

21 14. The world is experiencing an unprecedented pandemic as a highly-contagious
22 infectious disease caused by a virus has quickly spread around the globe. This disease has been
23 designated “coronavirus disease 2019,” abbreviated “COVID-19,” with the causative virus, SARS-
24 CoV-2, belonging to a large family of viruses known as coronaviruses.

25 15. In or around January 2020, SARS-CoV-2 (referred to herein as “the coronavirus”) and
26 COVID-19 reached the United States and quickly began to spread across the country. On March 11,
27 2020, the World Health Organization (“WHO”), “deeply concerned both by the alarming levels of
28 spread and severity, and by the alarming levels of inaction” by governments, characterized COVID-19

1 as a pandemic. As of February 2021, there have been over 112 million confirmed cases of COVID-19
2 world-wide, with over 28.3 million confirmed cases and over 500,000 confirmed deaths in the United
3 States alone.

4 16. The WHO and the Centers for Disease Control and Prevention (“CDC”) have
5 recognized the ability of the coronavirus to attach to objects and surfaces, “such as tables, doorknobs,
6 and handrails.” The CDC has confirmed that the coronavirus “may remain viable for hours to days on
7 surfaces made from a variety of materials.” Numerous scientific studies have discovered that the
8 coronavirus can survive and persist on surfaces and inside buildings for nearly a month, resulting in
9 transmission through contact with an article or surface that has become contaminated, and through
10 airborne transmission infection is spread by exposure to virus-containing respiratory droplets in
11 confined spaces.

12 17. The CDC has recognized that the coronavirus and COVID-19 can spread through
13 contact with surfaces and objects, and consequently recommended measures to “routinely clean and
14 disinfect frequently touched surfaces.” The CDC also has acknowledged that the coronavirus and
15 COVID-19 spread through indoor airborne transmission. Floating respiratory droplets, called
16 aerosols, contain the live coronavirus. The coronavirus lives in “small droplets and particles that can
17 linger in the air for minutes to hours,” and thus can infect persons who are “further than 6 feet away”
18 and even “after that person has left the space.” It is thus widely recognized in the scientific
19 community that limiting occupancy and enforcing social distancing are essential in retail
20 establishments, restaurants, and other buildings and properties which accumulate both surface-born
21 and airborne virus indoors, all of which plays a significant role in community transmission.

22 18. The persistent presence of this deadly live coronavirus on surfaces and in the air
23 renders buildings and properties damaged, lost, unsafe, unfit, and uninhabitable for occupancy or use.
24 Virologists, scientists, and researchers have confirmed that the coronavirus lives and is active on
25 physical surfaces and in the air. Researchers have detected the coronavirus on properties and surfaces
26 and thus are developing technology to test buildings and properties for the coronavirus and COVID-
27 19. The scientific community has confirmed that coronavirus and COVID-19 alter the conditions of
28 properties and buildings such that the premises are no longer safe and habitable for normal use.

1 19. The novel coronavirus and COVID-19 accordingly caused direct physical loss of and
2 damage to buildings and properties. The coronavirus, which has a material existence and is contained
3 in respiratory droplets, adheres to, attaches to, and alters the surfaces of the property and surfaces upon
4 which these physical droplets land and physically changes these once safe surfaces to “fomites.”
5 Fomites are objects, previously safe to touch, that now serve as agents and mechanisms for
6 transmissions of deadly, infectious viruses and diseases. Thus, the coronavirus and COVID-19
7 physically change properties and surfaces such that contact with these properties and surfaces, which
8 previously would have been safe, are now deadly and dangerous. This constitutes physical loss of or
9 damage to such properties.

10 20. The coronavirus and COVID-19 also caused direct physical loss of and damage to
11 properties and buildings by altering the physical condition of air in buildings from safe and breathable,
12 to unsafe and dangerous. The coronavirus and COVID-19 are able to live in aerosols and accumulate
13 in buildings, which render the properties and premises damaged, lost, and unsafe and unfit for
14 occupancy.

15 21. As of February 2021, California has more than 3,500,000 confirmed COVID-19 cases
16 and 50,000 deaths, the highest total of confirmed cases of any state in the United States.

17 22. Beginning in March 2020, California and various counties and cities therein issued a
18 series of public health orders in response to the coronavirus and COVID-19 to protect persons and
19 property from the physical dangers, loss, and damage caused by the coronavirus and COVID-19. In
20 particular, on March 4, 2020, Gavin Newsom, Governor of California, declared a state of emergency
21 to exist in California due to COVID-19. On March 19, 2020, Governor Newsom issued Executive
22 Order N-33-20, ordering all residents of California to stay at home unless they worked in one of the
23 “critical infrastructure sectors.”

24 23. Various counties and cities in which CBTL operates its retail businesses have issued
25 orders prohibiting non-essential public and private gatherings, closing restaurants and other non -
26 essential business for varying periods, and directing residents to stay at home, with the express
27 purpose of protecting persons and property from damage and injury caused by the coronavirus and
28 COVID-19. For example, the Mayor of Los Angeles proclaimed that the city’s “Safer at Home” order

1 was “necessary for the protection of life and property,” as COVID-19 “is physically causing property
2 loss or damage due to its tendency to attach to surfaces for prolonged periods of time.” Similarly, the
3 Mayor of San Bernardino’s order declared that “conditions of extreme peril to the safety of persons
4 and property have arisen within the City of San Bernardino caused by the worldwide spread of
5 respiratory illness due to the novel coronavirus known as COVID-19.” And, the Public Health Officer
6 for San Diego County promulgated the county’s orders “as a regulation for the protection of life and
7 property.”

8 24. On March 17, 2020, Orange County, Ventura County, San Bernardino County, and
9 Monterey County in California issued governmental orders prohibiting on-site person dining. On
10 March 19, 2020, Los Angeles County, Sacramento County, and Placer County issued governmental
11 orders prohibiting on-site dining. On March 27, 2020, San Diego County issued a governmental order
12 prohibiting all on-site dining beginning on March 29, 2020.

13 25. These governmental orders caused an interruption and suspension to the business
14 operations of CBTL by preventing all on-premises sales, marketing, consumption, dining, gathering
15 and events, and severely impacted Plaintiff’s business income (since CBTL’s business model is
16 centered on the in-store experience), and/or have severely reduced the capacity of CBTL’s operations
17 and beverage services. At the time CBTL was required to close, and did close, its retail stores and
18 operations, the coronavirus and COVID-19 were present on and around CBTL’s properties, including
19 insured premises which were frequented by thousands of individuals a day, including customers,
20 employees, visitors, vendors, and other individuals carrying the virus, breathing coronavirus into the
21 air and touching countless surfaces and objects in the insured premises.

22 26. The threat of COVID-19 to CBTL’s business, and its presence in or near CBTL’s stores
23 was not merely theoretical. After the Orders referenced above, at least 150 company employees had a
24 positive COVID-19 test, often requiring company stores to be shut down completely and thoroughly
25 sanitized. Moreover, positive COVID-19 tests in the area(s) surrounding the stores required the
26 closure of campuses, buildings, or malls within which company stores were located, thereby
27 mandating the closure of those company stores as well. All of the foregoing constituted the “physical
28 loss of” those covered locations as being available for business use, and the loss of property interests
foundational to the value of those properties to CBTL.

1 27. As a direct result of these orders and the contamination which was the cause of such
2 orders, CBTL suffered a suspension of its operations, which resulted in an immediate loss of business
3 income.

4 28. The civil authority orders discussed above were issued as a result of direct physical loss
5 of or damage to Plaintiff's store properties and to Plaintiff's interests in such properties caused by the
6 coronavirus and COVID-19. As the relevant health authorities noted, the civil authority orders were in
7 response to "conditions of extreme peril to the safety of persons and property," which altered the
8 physical condition of surfaces and air in buildings from safe and breathable to unsafe and deadly, and
9 physically attached to and altered the conditions of exterior and interior walls, doors, furniture,
10 facilities, equipment, tables, inventory, and supplies, by converting these once safe and usable surfaces
11 and premises to unsafe and deadly vehicles of transmission for the dangerous coronavirus and
12 COVID-19.

13 29. As a result of the civil authority orders, CBTL sustained substantial losses, including
14 lost business revenue, from the inability to access and use its retail properties and operations. CBTL
15 has also incurred substantial costs in an attempt to mitigate the suspension of its retail operations,
16 including but not limited to expenses incurred for decontamination, reconfiguration of premises, and
17 increased sanitization procedures. CBTL would not have incurred those costs but for the direct
18 physical loss of or damage caused by the coronavirus and COVID-19 to covered properties and
19 interests.

20 **B. The CNA/CCC Policy and Claims**

21 30. Plaintiff CBTL obtained CNA/CCC Property Policy No. 6023397758, in effect from
22 August 1, 2019, to August 1, 2020, from Defendants and has timely paid all premiums due under the
23 Policy.

24 31. In exchange for payment of the premiums, Defendants agreed to provide the insurance
25 coverage described in the Policy. The insuring clause provides as follows:

26 Except as hereafter excluded and subject to the LIMITS OF LIABILITY in
27 Section I.4. and all other policy provisions, this policy insures against risks of
28 direct physical loss of or damage to property and/or interests described herein
 at covered Locations. Unless otherwise indicated, all items contained herein
 are part of and not in addition to the POLICY LIMIT shown in Section I.4.

1 32. The policy's business interruption clause provides as follows:

2 a. This policy covers against loss resulting from necessary interruption of
3 business caused by direct physical loss of or damage to covered property,
4 except Finished Stock, by the peril(s) insured against and occurring during the
term of this policy at covered Locations occupied by the Insured, subject to
the sublimit specified in Section I.4. of this policy.

5 b. In the event of such physical loss or damage the Company shall be liable
6 for the actual loss sustained by the Insured resulting directly from such
7 interruption of business, but not exceeding the reduction in Gross Earnings as
8 set forth below less charges and expenses which do not necessarily continue
9 during the interruption of business, for only such length of time as would be
10 required with the exercise of due diligence and dispatch to rebuild, repair or
replace such part of the property herein described as has been damaged or
destroyed, commencing with the date of such damage or destruction and not
limited by the date of expiration of this policy, but in no event to exceed the
number of months specified in Section I.5. TIME LIMITS if a Business
Interruption Period of Indemnity limit is specified.

11 33. The policy's decontamination expense clause provides as follows:

12 DECONTAMINATION EXPENSE

13 Subject to the Decontamination Expense sublimit in Section I.4., if covered
14 property is contaminated as a direct result of physical damage caused by perils
15 insured against, or if the damaged covered property inherently contains
16 Contaminants or Pollutants, and there is in force at the time of such damage
17 any law or ordinance regulating contamination, including but not limited to
pollution, then this policy covers, as a result of enforcement of such law or
ordinance, the increased cost of decontamination of the covered property and
debris removal of such property in a manner to satisfy the minimum
requirements of such law or ordinance.

18 DISEASE CONTAMINATION COVERAGE – PROPERTY DAMAGE
AND BUSINESS INTERRUPTION COMBINED ENDORSEMENT

19 a. If as a result of an evacuation or decontamination order at a location by the
20 National Center for Disease Control, authorized public health official or
21 governmental authority because of the discovery or suspicion of a
communicable disease or the threat of the spread of a communicable disease,
the Company will pay for:

- 22 1) direct physical loss of or damage to covered property; and
23 2) the necessary and reasonable costs incurred by the Insured:
24 a) to evacuate the contaminated location, if required by the
25 governmental authority;
26 b) to decontaminate or dispose of contaminated covered property;
c) to test after disposal, repair, replacement or restoration of damaged
property is completed; and
d) for employee overtime costs associated with providing additional
care to residents affected by a communicable disease.

27 The Company will not pay the costs or expenses incurred:

- 28 1) in the normal maintenance, monitoring or testing of property or
employees (including leased and temporary employees) for disease or
contamination; or

1 2) for fines or penalties or civil liabilities imposed by public health
2 authorities or other governmental authority, including those arising out of
covered loss or damage under this endorsement.

3 b. To the extent Business Interruption (Gross Earnings) coverage is
4 applicable at that location, the Company will pay for the Business
5 Interruption (Gross Earnings) loss the Insured incurs during the
6 Business Interruption Period of Indemnity from the necessary
7 interruption of the Insured's business due to the evacuation or
decontamination order at a location by the National Center for Disease
Control, authorized public health official or governmental authority
because of the discovery or suspicion of a communicable disease or
the threat of the spread of a communicable disease.

8 34. The policy's Denial of Access by Civil Authority and Ingress-Egress
9 Coverage states:

10 This policy is extended to cover for up to the time limit specified in Section
11 1.5, but not exceeding the sublimit shown in Section 1.4 of this policy, the
actual loss sustained:

12 during the period of time while access to the Insured's Location is prohibited
13 by order of civil authority, but only when such order is given as a direct result
of physical loss or damage to property of the type insured from a peril insured
against occurring at or in the immediate vicinity of said Location; or

14 during the period of time when as a direct result of physical loss or damage to
15 property of the type insured from a peril insured against, ingress to or egress
from the Insured's Location is thereby physically prevented.

16 35. The policy includes a Contingent Business Interruptions Revision Endorsement as well
17 stating:

18 "[T]he policy is extended to cover against loss to the Insured resulting from
19 necessary interruption of business conducted by the Insured and covered in
20 the policy, caused by perils insured against that result in direct physical loss or
damage to any real or personal property, of the type insured hereunder, owned
or operated by: . . . "

21 36. On or about April 29, 2020, CBTL timely submitted to Defendants [CNA] a notice of
22 claim under the CNA/CCC Policy for the above-described losses and thereafter advised Defendants in
23 writing and orally that CBTL locations had experienced a reduction in business due to the pandemic
24 resulting in closure of 20% of CBTL locations, and severe reduction in the remaining locations which
25 were limited to take-out and delivery service, leading to at least a \$10 million loss in business income
26 as of the date of the notice, as well as increased costs of cleaning and operation.

27 37. Defendants were obligated to conduct a thorough investigation of CBTL's claims and
28 to fully inquire into all possible bases that might support such claims. Defendants, without engaging

1 in any legitimate and meaningful or thorough investigation and analysis of the CNA/CCC Policy and
2 circumstances, denied CBTL's claim in a letter of July 7, 2020, and again in a letter of July 19, 2020.

3 38. Defendants have refused and are refusing to pay any of CBTL's covered losses
4 sustained as a result of the loss and damage to CBTL's property, interests, and business operations
5 resulting from the coronavirus and COVID-19 pandemic, and persist in their erroneous coverage
6 positions.

7 **FIRST CAUSE OF ACTION – BREACH OF CONTRACT**

8 (Against All Defendants)

9 39. Plaintiff incorporates herein paragraphs 1 through 38 above as though set forth fully
10 herein.

11 40. The CNA/CCC Policy constitutes a written contract under which Defendants agreed, in
12 consideration of the premiums paid, to provide certain insurance benefits as above described to CBTL.

13 41. Plaintiff has performed all acts required of it under the terms of said Policy required by
14 it to be performed precedent to receiving the benefits of said Policy, excepting those terms and
15 conditions that were waived or that Defendants are estopped to rely upon as herein alleged.

16 42. Plaintiff has incurred substantial financial losses as a result of the coronavirus and
17 COVID-19 pandemic, including losses that constitute either direct physical loss of or damage to its
18 covered properties, and damage to its interests therein, including but not limited to lost revenue from
19 having to suspend or limits its operations, extra expenses incurred to mitigate the suspension of its
20 operations, and other increased costs of cleaning and operation. (Note that the policy of insurance lists
21 *both* "direct physical loss of" or "damage to" covered property. As such, the phrases separated by the
22 word "or" refer to two separate concepts.)

23 43. Defendants have breached and continue to breach their contractual obligations by
24 refusing to pay amounts due under the CNA/CCC Policy, including without limitation business
25 income losses and extra expenses that CBTL has sustained as a result of the coronavirus and COVID-
26 19, and the direct physical loss or damage to insured premises and interests therein, and interruption of
27 CBTL's customary business operations.

28 44. In doing or failing to do any act required by the policy, Plaintiff acted in reasonable

1 reliance upon Defendants' acts and omissions, and their failure to inform Plaintiff as above alleged.
2 Defendants are therefore estopped to allege or assert that Plaintiff failed to comply with any term or
3 condition of the Policy, and/or that the Policy is terminated.

4 45. As a direct and proximate result of the aforesaid breaches of contract, CBTL has been
5 injured and denied benefits provided under the CNA/CCC Policy, and damaged in an amount
6 exceeding the jurisdictional minimum of this Court, and to be proven at trial.

7 46. As a direct and proximate cause of Defendants' conduct, Plaintiff has been required to
8 employ legal counsel and has incurred other special damages and costs in an amount to be shown at
9 time of trial.

10 47. In doing the acts herein alleged, Defendants have damaged Plaintiff in an amount
11 capable of being made certain by calculation. Plaintiff's right to recover vested on a particular day
12 and it is therefore entitled to recover prejudgment interest pursuant to Civil Code §3287, as well as
13 interest after judgment at the maximum legal rate.

14 **SECOND CAUSE OF ACTION – BREACH OF DUTY**
15 **OF GOOD FAITH AND FAIR DEALING**

16 (Against All Defendants)

17 48. Plaintiff incorporates herein paragraphs 1 through 47 above as though set forth fully
18 herein.

19 49. Engaging in the business of insurance in California imposes upon insurers the legal
20 obligation to promptly conduct fair, balanced, and thorough investigations of all bases of claims for
21 benefits made by their insureds, with a view toward honoring the claims. As part of these obligations,
22 an insurance company is obligated to diligently search for and consider evidence that supports
23 coverage of the claimed loss, and in doing so must give at least as much consideration to the interests
24 of its insured as it gives to its own interests.

25 50. At all times herein mentioned, Plaintiff was owed a duty of good faith and fair dealing
26 by Defendants. The contract between Defendants and Plaintiff contains an implied covenant of good
27 faith and fair dealing whereby Defendants promised to act fairly, honestly, and reasonably in
28 performing the terms and conditions of the contracts, and to refrain from doing any acts which would

1 prevent or impede Plaintiff from performing all conditions of the contract to be performed by it, or
2 impede or prevent Plaintiff's reception and enjoyment of the benefits of the contract.

3 50. In doing the acts herein alleged, Defendants and each of them violated the implied
4 covenant of good faith and fair dealing and their duty of good faith owed under the policy of insurance
5 by doing, without good or sufficient cause, the following, among other things:

- 6 a) unreasonably refusing and declining to provide coverage and pay business
7 income losses and extra expenses in connection with CBTL's COVID-19-related
8 claims without a reasonable basis, and in contradiction to governing law;
- 9 b) deciding without any reasonable basis in fact or law, and for its own purposes
10 and to serve its own desires, to take objectively unreasonable positions regarding the
11 interpretation of the provisions of the Policy concerning CBTL's COVID-19-related
12 claims;
- 13 c) unreasonably refusing to conduct a thorough investigation of CBTL's claims,
14 ignoring evidence which supports coverage instead of inquiring into possible bases that
15 might support CBTL's claim, and unreasonably failing to diligently search for and
16 consider evidence that supports coverage of Plaintiffs' claim;
- 17 d) unreasonably engaging in a pattern and practice of failing to diligently search
18 for and consider evidence that supports coverage of claims;
- 19 e) unreasonably failing to conduct an investigation to determine the efficient
20 proximate cause (predominant cause) of Plaintiff's loss;
- 21 f) misrepresenting coverage available under the Policy;
- 22 g) unreasonably failing to apply the CNA/CNN Policy's definitions and terms to
23 determine whether Plaintiffs' claim was covered; and
- 24 h) unreasonably compelling CBTL to litigate to obtain benefits under the
25 CNA/CCC Policy; all in violation of accepted insurance industry customs, practices,
26 standards, and its duties to CBTL.

27 51. Defendants did the things and committed the acts alleged above for the purpose of
28 consciously withholding from CBTL the rights and benefits to which CBTL is entitled under the

1 CNA/CCC Policy, and without considering the interests of CBTL at least to the same extent as it did
2 its own interests. Defendants' acts are inconsistent with the reasonable expectations of CBTL, are
3 contrary to established norms, practices, standards of care, and legal requirements related to insurance
4 claims, are contrary to the express terms of the CNA/CCC Policy, and constitute bad faith and a
5 breach of the implied covenant of good faith and fair dealing.

6 52. Defendants' conduct is and has been undertaken with a conscious disregard of CBTL's
7 rights as beneficiary of the CNA/CCC Policy.

8 53. As a direct and proximate cause of said Defendants' conduct and breach of duty,
9 Plaintiff has been and will be denied benefits provided under the Policy, and have or will be damaged
10 in an amount exceeding the jurisdictional minimum of this Court, to be proven at trial.

11 54. As a direct and proximate cause of Defendants' conduct, Plaintiff has been required to
12 employ legal counsel to bring this action to recover sums due to Plaintiff under the Policy and under
13 California law and withheld by Defendants in bad faith, and has incurred other special damages and
14 costs in an amount to be shown at time of trial.

15 55. In doing the aforementioned acts, Defendants acted willfully, in conscious disregard of
16 the rights of Plaintiff, their duties to Plaintiff, and the probable injury to Plaintiff, and with fraud,
17 malice, and oppression as those terms are defined in Civil Code §3294. Defendants' conduct was
18 intended to cause injury to Plaintiff and was done in a willful, reckless, or wanton disregard for the
19 rights, duties and obligations owed to Plaintiff, and was carried on with a despicable, conscious,
20 reckless disregard of Plaintiff's rights. Plaintiff is therefore entitled to punitive or exemplary damages
21 in an amount appropriate to punish defendants and set an example for others.

22 56. The aforesaid acts of malice, fraud, and oppression were approved, ratified, and
23 authorized by the managing agents, officers and directors of each of the corporate Defendants
24 [named?] herein after acquiring knowledge of those acts, and were done with the advance approval
25 and authorization of the corporate Defendants' managing agents, officers, directors and employees.

26 57. In doing the acts herein alleged, Defendants have damaged Plaintiff in an amount
27 capable of being made certain by calculation. Plaintiff's right to recover vested on a particular day
28 and it is therefore entitled to recover prejudgment interest pursuant to Civil Code §3287, as well as

1 interest after judgment at the maximum legal rate.

2 **THIRD CAUSE OF ACTION – DECLARATORY RELIEF**

3 (Against All Defendants)

4 58. Plaintiff incorporates herein paragraphs 1 through 57 above as though set forth fully
5 herein.

6 59. There is now an actual controversy between Plaintiff and Defendants concerning their
7 respective rights, duties, and interests under the policy. Plaintiff contends that the CNA/CCC Policy
8 requires Defendants to provide coverage for amounts incurred in connection with the losses arising out
9 of the COVID-19-related claims, and Defendants deny that Plaintiff has any benefits due under the
10 Policy.

11 60. A determination by this Court of the respective rights, duties, and obligations under the
12 CNA/CCC Policy is necessary and proper to avoid further prejudice to CBTL’s rights and operations.
13 CBTL has incurred and will continue to incur substantial financial losses and expenses in connection
14 with its insurance claims covered under the CNA/CCC Policy, and further covered losses and damages
15 which may hereafter occur or be discovered. The controversy is of sufficient immediacy to justify the
16 issuance of a declaratory judgment, which may terminate some or all of the existing and future
17 controversy between the parties.

18 61. CBTL is entitled to a declaration of the rights and obligations under the CNA/CCC
19 Policy, including but not limited to a judicial determination and declaration that Defendants are
20 obligated to provide coverage for all amounts and losses incurred in connection with CBTL’s COVID-
21 19-related claims. Plaintiff desires a judicial declaration of its and interests, and a declaration in its
22 favor, on the issues discussed above.

23 62. A judicial declaration is necessary as to the rights and interests of the parties with
24 respect to the claims herein and Plaintiff’s rights and duties under the CNA/CCC Policy so that
25 Plaintiff may ascertain and enforce its rights, and enforce the duties and obligations of Defendants as
26 to the policy, and to avoid a multiplicity of actions.

27 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 28 1. For general, special and other damages according to proof at time of trial and within the

1 jurisdiction of this Court;

2 2. For attorney's' fees, and costs and expenses incurred in securing the benefits owed
3 Plaintiff under the insurance policy issued by CNA and CCC;

4 3. For prejudgment interest pursuant to Civil Code §§ 3287, 3288 and 3291 and Code of
5 Civil Procedure §998;

6 4. For punitive or exemplary damages in an amount to be shown at time of trial;

7 5. For a declaration as to the respective rights, duties, and interest of Plaintiff and
8 Defendants in CNA Property Policy No. 6023397758;

9 6. For costs of suit; and

10 7. For such other and further relief as the Court deems just and proper.

11
12 Respectfully Submitted,

13 DATED: March 12, 2021

HERZOG, YUHAS, EHRLICH & ARDELL
A Professional Corporation

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15
16 By: 

JUSTIN EHRLICH

Attorneys for Plaintiff, International Coffee
& Tea, LLC

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20 **DEMAND FOR JURY TRIAL**

21 Plaintiff herewith demands trial by jury as to all cause of action so triable.

22
23 Respectfully Submitted,

24 DATED: March 12, 2021

HERZOG, YUHAS, EHRLICH & ARDELL
A Professional Corporation

25
26
27 By: 

JUSTIN EHRLICH

Attorneys for Plaintiff, International Coffee
& Tea , LLC