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8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**

10 MAYSSAMI DIAMOND, INC.,)

Case No. 37-2020-00016241-CU-FR-CTL

11)
12 Plaintiff,)

vs.)

13 TRAVELERS CASUALTY INSURANCE)
14 COMPANY OF AMERICA, and DOES 1)
15 through 10, inclusive,)

16 Defendants.)

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**

17)
18)
19)
20)
21) **JURY TRIAL DEMANDED**

1 Plaintiff Mayssami Diamond, Inc. (“Mayssami Diamond” or “Plaintiff”), files this
2 Complaint against defendants Travelers Casualty Insurance Company of America
3 (“Travelers”), and Does 1 through 10, and alleges as follows:

4 **I. INTRODUCTION**

5 1. Plaintiff Mayssami Diamond is a jewelry retail business located in the busy
6 Gaslamp district of downtown San Diego at 562 5th Avenue, San Diego, California 92101.
7 Mayssami Diamond is a successful, fashionable, jewelry retailer specializing in the sale of
8 vintage and estate jewelry, as well as precious stones and metals. On March 19, 2020,
9 Mayssami Diamond was forced to close its doors to the public because of a series of orders
10 issued by the City and County of San Diego (“Closure Orders”). The Closure Orders prohibited
11 the continuation of business at Mayssami Diamond due to the Coronavirus Disease 2019
12 (“COVID-19”) pandemic. As a result, Mayssami Diamond suffered substantial financial losses
13 and had to let workers go.

14 2. To protect its business and employees from the loss caused by a situation like
15 this, Mayssami Diamond obtained Travelers Business Owner’s Policy No. 680-6K67049A-20-
16 42 (the “Policy”) from Travelers, which includes business interruption coverage. In breach of
17 the insurance obligations that Travelers undertook in exchange for receipt of Plaintiff’s
18 premium payments — which Plaintiff dutifully and regularly paid — Travelers denied
19 Plaintiff’s insurance claims arising from the interruption of Plaintiff’s business caused by the
20 Closure Orders. Travelers denied the claims notwithstanding the plain language of the Policy,
21 which provides coverage for such losses, and they did so fraudulently in violation of California
22 law.

23 **II. COVID-19**

24 3. On March 17, 2020, the New England Journal of Medicine, one of the world’s
25 leading peer-reviewed medical journals, published a study that describes severe acute
26 respiratory syndrome coronavirus 2 (SARS-CoV-2) (the “Coronavirus”), the official name for
27 the virus that causes COVID-19, as a virus that is transmitted by respiratory droplets that can
28 be suspended in the air for several hours. Over time, these droplets containing Coronavirus fall

1 onto and can physically remain on surfaces, such as metal, glass, plastic, and wood, for several
2 days. Persons who touch these surfaces, even days later, may become infected.

3 **III. CLOSURE ORDERS AND INSURANCE**

4 4. The COVID-19 pandemic is a public health crisis that has profoundly impacted
5 American society, including the public's ability to congregate in retail establishments.

6 5. In response to this pandemic, federal and state authorities have mandated social
7 distancing and limited the number of people that can gather in any setting.

8 6. On March 4, 2020 Governor Gavin Newsom proclaimed a State of Emergency to
9 exist in California as a result of the threat of COVID-19.

10 7. On March 19, 2020 Governor Gavin Newsom issued statewide Executive Order
11 N-33-20 which directs all residents of the state to stay home except as needed to maintain
12 infrastructure sectors defined by the federal Department of Homeland Security (DHS). "To
13 preserve the public health and safety, and to ensure the healthcare delivery system is capable
14 of serving all, and prioritizing those at the highest risk and vulnerability, all residents are
15 directed to immediately heed the current State public health directives, which I ordered the
16 Department of Public Health to develop for the current statewide status of COVID-19." *Id.* The
17 Order of the State Public Health Officer stated, "To protect public health, I as State Public
18 Health Officer and Director of the California Department of Public Health order all individuals
19 living in the State of California to stay home or at their place of residence except as needed to
20 maintain continuity of operations of the federal critical infrastructure sectors." Retailers,
21 including Jewelers, are not considered businesses that are part of the federal critical
22 infrastructure sectors, and so must close.

23 8. These orders and guidances are not laws or ordinances.

24 9. Since March 19, 2020, countless California retailers have made claims under
25 their property and casualty insurance policies for the business income they lost as a result of
26 COVID-19 and the resulting Executive Orders.

27 10. Insurers, including Travelers, have denied nearly every claim for lost business
28 income — claiming insureds have not suffered a "Direct Physical Loss" to their property, a

1 prerequisite for coverage.

2 11. Many, if not most, of the retailers forced to close their doors had planned ahead
3 by purchasing insurance to safeguard against the business interruption that results from
4 precisely these kinds of civil authority closure orders. In recent weeks, retailers and other
5 businesses have filed claims for business interruption coverage with their insurance carriers as
6 a lifeline to save their businesses and, by extension, their employees and communities.
7 However, Travelers, and other insurance companies, have **summarily declined coverage**.

8 12. According to persons knowledgeable about the insurance industry's blanket
9 denials of such business interruption claims:

10 "The [insurance] tactic is always the same. ... Deny everything you [insurer] owe,
11 slow the payments, don't pay the emergency funds you owe, and then, because
12 there's such carnage, the [insurance] industry goes with their lobbyists, with
13 their advocacy groups, and with the senators, and they say [to the government]
14 we need disaster relief funds."

15 13. Moreover, "[a]ccording to data from ratings firm A.M. Best Co., the insurance
16 industry as a whole has \$18.4 billion in net reserves for future payouts. But industry trade
17 groups like the American Property Casualty Insurance Association (APCIA) say they don't
18 have the funds to pay out the claims from a pandemic. 'Pandemic outbreaks are uninsured
19 because they are uninsurable,' says APCIA [president and CEO] David A. Sampson. If
20 insurance is forced to pay claims by legislation, for example, their reinsurers might not cover
21 them." The denial of business interruption insurance claims is precisely what is happening
22 here to small, independent retailers. For the insurance industry, the goal is to generate
23 revenues by charging high premiums for insurance while avoiding paying anything on
24 legitimate claims by small businesses like Mayssami Diamond.

25 14. The Closure Orders prohibited on-premises conducting of business operations at
26 Mayssami Diamond due to the physical presence of COVID-19 in the community and on the
27 surfaces of the property around Mayssami Diamond. As a result, Mayssami Diamond was
28 forced to close its doors and let workers go, and Plaintiff continues to suffer substantial
financial losses.

1 **IV. TRAVELERS INSURANCE AND DENIAL**

2 15. In February 2020, Travelers renewed its contract of insurance with Mayssami
3 Diamond, Business Owner’s Policy No. 680-6K67049A, for the period of February 16, 2020,
4 through February 16, 2021. Under this Policy, Mayssami Diamond agreed to pay insurance
5 premiums to Travelers in exchange for Travelers’ promise to cover Mayssami Diamond for
6 losses including, but not limited to, business income losses according to the terms set forth in
7 the Policy. Since the inception of the Policy, Mayssami Diamond has paid all premiums and
8 the Policy has at all relevant times remained in full force and effect.

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

14 17. The Policy’s coverage of business interruption at Mayssami Diamond can occur
15 under a number of circumstances. Here, the Policy was triggered when a complete cessation of
16 the retailer’s activities was the direct result of the Closure Orders issued by the City and
17 County of San Diego. The Civil Authority provision in the Policy’s Special Property Coverage
18 Form reads, in pertinent part:

19 **Civil Authority**

20 (1) This insurance is extended to apply to the actual loss of Business Income
21 you sustain when access to your “scheduled premises” is specifically
22 prohibited by order of a civil authority as the direct result of a Covered
Cause of Loss to property in the immediate area of your “scheduled
premises.”

23 18. The March 16, 2020 Order was issued as a direct result of a Covered Cause of
24 Loss to property under the Policy, seeing as the Coronavirus that was proliferating onto
25 virtually every surface and object in, on, and around Mayssami Diamond and its surrounding
26 environs was then causing, and is continuing to cause, direct physical damage and loss in and
27 to the immediate area of Mayssami Diamond — the “scheduled premises.”
28

1 **V. VIOLATIONS OF CALIFORNIA LAW**

2 19. This Complaint sets forth in detail direct violations of California laws that are
3 intended to protect insurance policyholders who act in good faith with their insurance carriers.
4 The details below affect not only the named Plaintiff, but also the California residents
5 employed at Maysammi Diamond.

6 **VI. PARTIES**

7 **A. Mayssami Diamond, Inc.**

8 20. Plaintiff **Mayssami Diamond, Inc.** is a company with its place of business at
9 562 5th Avenue, San Diego, California 92101, referred to herein as the “Insured Premises” or
10 “Scheduled Premises”.

11 **B. Defendant Travelers**

12 21. Defendant **Travelers Casualty Insurance Company of America** is an
13 insurance company with its principal place of business at 485 Lexington Avenue, New York,
14 New York 10017. Travelers is a holding company for several property and casualty insurance
15 companies. At all relevant times, Travelers has been and is authorized to do business and is
16 doing business in the state of California and in San Diego County. At all relevant times,
17 Travelers has been and is transacting the business of insurance in the state of California and in
18 San Diego County, and the basis of this suit arises out of said conduct.

19 **C. Doe Defendants**

20 22. Defendants Does 1 through 10 (“Doe Defendants”) were, at all relevant times,
21 transacting or otherwise engaged in the business of insurance in the State of California and in
22 San Diego County, and the basis of this suit arises out of said conduct. Though the true names
23 and capacities of the Doe Defendants are unknown to Plaintiff, each of the Doe Defendants is,
24 upon information and belief, partially or wholly liable for the unlawful acts or omissions
25 referred to herein, and for the resulting harm to Plaintiff. Many of Travelers’ agents reside and
26 operate in the City and County of San Diego.

27 23. Travelers and the Doe Defendants are collectively referred to herein as
28 “Defendants”.

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VII. AIDING AND ABETTING AND CO-CONSPIRATORS

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

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

26. Each of the Travelers' agents aided and abetted and rendered substantial assistance in the wrongs complained of herein, and also acted in a knowing conspiracy to defraud Plaintiff. In taking such actions to substantially assist the commission of the wrongdoing complained of herein, each Defendant, including the Doe Defendants, acted with knowledge of the primary wrongdoing, substantially assisted in the accomplishment of that wrongdoing, and was aware of their overall contribution to and furtherance of the wrongdoing.

VIII. JURISDICTION AND VENUE

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

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

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IX. FACTUAL ALLEGATIONS

A. Successful Jeweler

29. Mayssami Diamond is a fashionable, jewelry retailer specializing in the sale of vintage and estate jewelry, as well as precious stones and metals and has had many customers throughout the years. It employs numerous California residents as full and part-time employees.

B. Pandemic in San Diego

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

31. According to the World Health Organization (“WHO”): “People can catch COVID-19 from others who have the virus. The disease can spread from person to person through small droplets from the nose or mouth which are spread when a person with COVID-19 coughs or exhales. These droplets land on objects and surfaces around the person. Other people then catch COVID-19 by touching these objects or surfaces, then touching their eyes, nose or mouth. People can also catch COVID-19 if they breathe in droplets from a person with COVID-19 who coughs out or exhales droplets.”¹ Because the Coronavirus that causes COVID-19 is contained in and transmitted by droplets that land indiscriminately on the surfaces of property with potentially fatal consequences, it unquestionably causes physical damage and loss.

32. According to the U.S. Centers for Disease Control and Prevention (“CDC”): “COVID-19 seems to be spreading easily and sustainably in the community (‘community

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¹ WHO website, *Q&A on coronaviruses (COVID-19)*, “How does COVID-19 spread?” available at <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses> (last visited Apr. 15, 2020).

1 spread') in many affected geographic areas" in the United States.² Relative to the rest of the
2 State and Country, populous urban areas, including San Diego County, have been particularly
3 subject to community spread, and they have a correspondingly high number of confirmed
4 cases and deaths from COVID-19.

5 33. On January 26, 2020, the CDC announced California's first positive test result
6 for COVID-19.

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

8 34. On **March 4, 2020** California Governor Gavin Newsom proclaimed a State of
9 Emergency to exist in California as a result of the threat of COVID-19.

10 35. On **March 11, 2020**, the WHO declared the outbreak a global pandemic.

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

17 37. On **March 19, 2020**, the State of California issued an Order of the State Public
18 Health Officer, which set baseline statewide restrictions on non-essential business activities
19 effective until further notice. On that same date, Governor Newsom issued Executive Order N-
20 33-20, expressly requiring California residents to follow the March 19 Order of the State Public
21 Health Officer, and incorporating by reference California Government Code § 8665, which
22 provides that "[a]ny person ... who refuses or willfully neglects to obey any lawful order ...
23 issued as provided in this chapter, shall be guilty of a misdemeanor and, upon conviction
24 thereof, shall be punishable by a fine of not to exceed one thousand dollars (\$1,000) or by
25 imprisonment for not to exceed six months or by both such fine and imprisonment" (CAL. GOV.

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

1 CODE § 8665). The March 19 Order of the State Public Health Officer and Executive Order N-
2 33-20 (collectively, the “Statewide Shelter Orders”) took immediate effect on March 19, 2020,
3 and both have remained continuously in effect through the date of this Complaint.

4 38. These orders and guidances are not laws or ordinances.

5 39. Since March 16, 2020, countless California retailers have made claims under
6 their property and casualty insurance policies for the business income they have lost as a result
7 of COVID-19 and the resulting Orders.

8 **D. Plaintiff Is Forced to Close Its Operations, Resulting in Financial**
9 **Losses**

10 40. On **March 19, 2020**, Mayssami Diamond was forced to close its doors to the
11 public. Each of the following three sets of orders required Mayssami Diamond to close its store
12 to on-premises retail business: (a) the March 19 Statewide Shelter Orders on their own, and
13 (b) the March 31 Order (supported by March 12 Executive Order and Statewide Shelter
14 Orders) (collectively, the “Closure Orders”).

15 41. Due to the Closure Orders, Mayssami Diamond has suffered and continues to
16 suffer lost business income and other financial losses.

17 42. Due to the Closure Orders, Mayssami Diamond had to let go some of its full-time
18 employees, resulting in lost wages for those employees.

19 43. These losses of business income and lost wages for its full-time employees are
20 precisely why Plaintiff took out the business interruption Policy with Travelers, and their
21 losses are covered under the Policy.

22 **E. Plaintiff Suffers Covered Loss**

23 44. Mayssami Diamond suffered covered loss as a result of the March 19, 2020
24 Order to shut down issued by civil authority the City and County of San Diego. Mayssami
25 Diamond is located at 562 5th Avenue, San Diego, California 92101 in the heart of the busy
26 Gaslamp district of downtown where it is surrounded by neighboring shops, boutiques, and
27 restaurants. The surrounding streets and every building and object of these neighborhoods are
28 a Coronavirus breeding ground.

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

7 46. The insidious nature of the Coronavirus is that it can remain infectious on a
8 variety of surfaces and objects from a few hours to several days. The CDC reports that the
9 Coronavirus was detected on various surfaces inside the cruise ship cabins of both
10 symptomatic and asymptomatic passengers 17 days after the cabins had been vacated.⁴ The
11 Coronavirus can remain on stainless steel and plastic up to 6 days; on glass, ceramics, silicon
12 rubber, or paper up to 5 days; on paper currency up to 3 days; and on cardboard up to 24
13 hours.⁵

14 47. Droplets containing Coronavirus can also travel and remain infectious while
15 suspended in the air. An MIT study found that the droplets from a cough can travel as far as 16
16 feet, and droplets from a sneeze can travel as far as 26 feet. According to a recent report in the
17 New York Times, “[a]n infected person talking five minutes in a poorly ventilated space can

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19 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).

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

23 ⁵ See Alex W.H. Chin, *et al.*, “Stability of SARS-CoV-2 in different environmental
24 conditions,” *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) (last visited Apr. 15, 2020); Neeltje van
25 Doremalen, *et al.*, “Aerosol and Surface Stability of SARS-CoV-2 as Compared to SARS-
26 CoV-1,” *New England Journal of Medicine* (Mar. 17, 2020), available at
<https://www.nejm.org/doi/pdf/10.1056/NEJMc2004973> (last visited Apr. 15, 2020);
27 Guenter Kampf, *et al.*, “Persistence of coronaviruses on inanimate surfaces and their
28 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).

1 produce as many viral droplets as one infectious cough. ‘If there are 10 people in there, it’s
2 going to be a buildup,’ said Pratim Biswas, an aerosols expert at Washington University in St.
3 Louis.”⁶

4 48. Here, the property loss to Mayssami Diamond has been caused by the March 19
5 Order, and by subsequent Closure Orders, that were issued due to droplets containing the
6 Coronavirus being on surfaces and objects in, on, around and in the immediate area of the
7 business location. These infected surfaces and objects outside of the Mayssami Diamond
8 location include the façade, window glass, walls, doorknobs, sidewalks, light posts, parking
9 meters, trash bags, passersby, cars, trucks, buses, and scooters that line the surrounding
10 streets.

11 49. Similarly, inside the Mayssami Diamond location, every surface and object are
12 implicated, including the doors and door jambs, carpets, the display cases and surfaces, clerk
13 and associate counters, chairs, light fixtures, the entire sales floor, inventory room, bathroom,
14 and artwork and photos.

15 50. As noted above, the Civil Authority provision of the Policy makes clear that
16 “[t]his insurance is extended to apply to the actual loss of Business Income you [*i.e.*, Mayssami
17 Diamond] sustain when access to your ‘scheduled premises’ is specifically prohibited by order
18 of a civil authority as the direct result of a Covered Cause of Loss to property in the immediate
19 area of your ‘scheduled premises.’” Policy, Businessowners Property Coverage Special Form
20 (MP T1 02 02 05).

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

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27 ⁶ See Yuliya Pashina-Kottas, *et al.*, “This 3-D Simulation Shows Why Social
28 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> (last visited Apr. 15, 2020) (3-D visualization with commentary).

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Business Income

We will pay for the actual loss of Business Income you sustain due to the necessary “suspension” of your “operations” during the “period of restoration”. The “suspension” must be caused by direct physical loss of or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss....

Business Income means:

“Actual loss for 12 consecutive months”

7. Coverage Extensions

g. Civil Authority

(1) When the Declarations show that you have coverage for Business Income and Extra Expense, you may extend that insurance to apply to the actual loss of Business Income you sustain and reasonable and necessary Extra Expense you incur caused by action of civil authority that prohibits access to the described premises. The civil authority action must be due to direct physical loss of or damage to property at locations, other than described premises, that are within 100 miles of the described premises, caused by or resulting from a Covered Cause of Loss.

This coverage begins 24 hours after the time of that action and applies for a period of three consecutive weeks after coverage begins.

52. As a result of the March 19, 2020 Order, Mayssami Diamond ceased all business, and filed a claim for business interruption with Travelers. Mayssami Diamond’s claim was denied.

F. Defendants’ Denial of Plaintiff’s Insurance Claim

53. Mayssami Diamond’s insurance Policy covers the extraordinary losses experienced by Mayssami Diamond and its employees during this crisis. The Policy specifically includes “**Civil Authority**” coverage for business interruptions caused by “**order of a civil authority,**” “**Lost Business Income & Extra Expense Coverage,**” and “**Limited Fungi, Bacteria, Or Virus Coverage.**”

54. In **April 2020**, Mayssami Diamond filed a claim with Travelers requesting coverage under the Policy in connection with lost Business Income due to the Closure Orders

1 and the damage caused by the presence of the Coronavirus in and around the Insured
2 Premises.

3 55. On **April 21, 2020**, Travelers issued written correspondence to Mayssami
4 Diamond stating that it was denying the claim without any inspection or review of the Insured
5 Premises.

6 56. On **April 24, 2020**, Plaintiff sent a Pre-Suit Notification Letter to Defendants
7 via Federal Express and email. The letter provided detailed reasons why Defendants' denial of
8 the claim was wrongful, requesting an actual physical inspection of the premises, and
9 indicating that Plaintiff was attempting to work in good faith with Defendants to resolve the
10 dispute without the need for litigation.

11 57. On **May 4, 2020**, Defendants provided a written response to Plaintiff's April 24,
12 2020 letter, in which Defendants again denied the claim and refused to perform an inspection
13 of the premises.

14 58. On information and belief, Travelers accepted the Policy premiums paid by
15 Mayssami Diamond with no intention of providing any coverage under the Civil Authority and
16 other provisions providing coverage for losses from closure orders issued by civil authorities
17 and from a virus. In addition, as demonstrated above, after Plaintiff filed its claim and
18 attempted to negotiate in good faith with Defendants to resolve the coverage dispute without
19 the need for litigation, Defendants acted in bad faith by rejecting the claims for a second time
20 without performing any actual inspection or investigation.

21 59. On information and belief, Travelers rejected Mayssami Diamond's claims in bad
22 faith as part of a policy to limit its losses during this pandemic, notwithstanding that the Policy
23 provides coverage for losses from closure orders issued by civil authorities and from a virus.

24 **FIRST CAUSE OF ACTION**
25 **Breach of Contract**
26 **(Against All Defendants)**

27 60. Plaintiff re-alleges and incorporates by reference into this cause of action all
28 allegations set forth in this Complaint as though fully set forth herein.

1 61. At all times relevant, Plaintiff has paid all premiums and performed all of its
2 obligations under the Policy.

3 62. Defendants have a contractual duty to provide Plaintiff with insurance coverage
4 under specified provisions of the Policy, as alleged by Plaintiff herein.

5 63. In denying Plaintiff's insurance claim, Defendants breached that duty.

6 64. As a result of that breach, Plaintiff has been damaged in the amount of coverage
7 to which it is entitled under the Policy, and in an amount to be proved at trial, and for which
8 Plaintiff seeks compensatory damages with interest thereon.

9 **SECOND CAUSE OF ACTION**
10 **Breach of Covenant of Good Faith and Fair Dealing**
11 **(Against All Defendants)**

12 65. Plaintiff re-alleges and incorporates by reference into this cause of action all
13 allegations set forth in this Complaint as though fully set forth herein.

14 66. When Defendants issued the Policy, they undertook and were bound to the
15 covenants implied by law that they would deal fairly and in good faith with Plaintiff, and not to
16 engage in any acts, conduct, or omissions that would impair or diminish the rights and
17 benefits due to Plaintiff, according to the terms of the Policy.

18 67. Upon information and belief, Defendants breached the implied covenant of good
19 faith and fair dealing arising out of the Policy by, unreasonably and in bad faith, denying
20 Plaintiff insurance coverage to which it is entitled under the Policy.

21 68. In committing the above-referenced breach, Defendants intended to and did vex,
22 damage, annoy, and injure Plaintiff. Said conduct was intentional, willful, and with conscious
23 disregard of Plaintiff's rights, and was malicious, oppressive and/or fraudulent under
24 California Civil Code § 3294, thereby entitling Plaintiff to punitive and exemplary damages
25 against the Travelers Defendants.

26 69. As a direct and proximate result of the above-referenced breach, Plaintiff has had
27 to retain attorneys to enforce its right to the insurance coverage to which it is entitled under
28 the Policy, and has thereby been injured and damaged.

1 70. Plaintiff therefore, is entitled to recover and seek in connection with this Cause
2 of Action: (a) an award of general damages and other monetary damages, including all
3 foreseeable consequential and incidental damages for diminution in value, loss of use, and
4 other incidental damages and out-of-pocket expenses, plus interest, in an amount to be
5 determined at trial; (b) punitive and exemplary damages in an amount to be determined at
6 trial; (c) Plaintiff's costs of suit; and (d) Plaintiff's reasonable attorneys' fees in connection
7 with this action.

8 **THIRD CAUSE OF ACTION**
9 **Bad Faith Denial of Insurance Claim**
10 **(Against All Defendants)**

11 71. Plaintiff re-alleges and incorporates by reference into this cause of action all
12 allegations set forth in this Complaint as though fully set forth herein.

13 72. Defendants have put their own interests above those of Plaintiff and have, in bad
14 faith, failed or refused to perform their obligations under the Policy and under the laws of
15 California.

16 73. Defendants denied Plaintiff's claim in bad faith by, among other conduct,
17 (a) failing or refusing to perform a fair, objective, and thorough investigation of the claim as
18 required by the California Insurance Code; (b) asserting coverage defenses that were legally
19 and/or factually invalid and thereby delaying resolution of Plaintiff's claim; (c) placing unduly
20 restrictive interpretations on the Policy terms for the purpose of denying coverage due under
21 the Policy; (d) failing to give Plaintiff's interests equal consideration with their own; and
22 (e) forcing Plaintiff to institute litigation to recover amounts due under the Policy.

23 74. Plaintiff alleges on information and belief that there are numerous other
24 individuals and groups insured by Defendants who were or are similarly situated to Plaintiff
25 and who are also being denied benefits under the same unlawful and non-applicable policy
26 provisions and/or exclusions being applied to Plaintiff. At such time as Plaintiff learns the
27 names of such persons, Plaintiff may seek leave of court to join such persons as a plaintiff in
28 this action.

1 Competition Law is interpreted broadly and provides a cause of action for any unlawful,
2 unfair, or fraudulent business act or practice. Any unlawful, unfair, or fraudulent business
3 practice that causes injury to consumers falls within the scope of California's Unfair
4 Competition Law.

5 81. Defendants' acts and practices, as described herein, constitute unlawful or unfair
6 business practices against Plaintiff in violation of California Business and Professions Code
7 section 17200, *et seq.*

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

12 83. Any claimed justification for Defendants' conduct is outweighed by the gravity of
13 the consequences to Plaintiff. Defendants' acts and practices are immoral, unethical,
14 oppressive, unconscionable, or substantially injurious to Plaintiff, and/or have a tendency to
15 deceive Plaintiff.

16 84. By reason of Defendants' fraudulent, deceptive, unfair, and other wrongful
17 conduct as alleged herein, said Defendants violated California Business and Professions Code
18 section 17200, *et seq.*, by consummating an unlawful, unfair, and fraudulent business practice
19 designed to deprive Plaintiff of the benefits of Defendants' financial products and services.

20 85. Defendants perpetrated these acts and practices against Plaintiff, and as a direct
21 and proximate result of the foregoing, Plaintiff has suffered and continues to suffer damages in
22 a sum which is, as of yet, unascertained. Pursuant to California Business and Professions Code
23 § 17203, Plaintiff is entitled to restitution of all the monies paid to Defendants for retaining
24 benefits that were due and owing to Plaintiff (with interest thereon), to disgorgement of all
25 Defendants' profits arising out of their unlawful conduct (with interest thereon), and to be
26 paid benefits due to Plaintiff under the Policy that Defendants wrongfully retained by means of
27 its unlawful business practices.

28

1 86. Pursuant to California Code of Civil Procedure section 1021.5, Plaintiff is entitled
2 to recover its reasonable attorneys' fees in connection with Defendants' unfair competition
3 claims, the substantial benefit doctrine, and/or the common fund doctrine.

4 **FIFTH CAUSE OF ACTION**
5 **Fraudulent Misrepresentation**
6 **(Against All Defendants)**

7 87. Plaintiff re-alleges and incorporates by reference into this cause of action all
8 allegations set forth in this Complaint as though fully set forth herein.

9 88. Defendants committed actionable fraud against Plaintiff by way of affirmative
10 misrepresentations and the concealment of material facts. For example, Defendants
11 affirmatively misrepresented that there was full coverage for business interruption whenever
12 there was a business interruption caused by physical damage. At all relevant times, Defendants
13 knew and concealed from the Plaintiff that there was a policy that Defendants would not pay
14 for any claims during a pandemic, notwithstanding the express provision for such coverage in
15 the Policy.

16 89. Defendants made or approved materially false and misleading statements to
17 Plaintiff when it sold Plaintiff the Policy.

18 90. Defendants made the foregoing false statements and misrepresentations that
19 omitted and concealed material facts despite being aware of their falsity.

20 91. Plaintiff reasonably and actually relied on Defendants' misrepresentations and
21 concealments.

22 92. As a direct and proximate result of such unlawful conduct, Plaintiff has suffered,
23 and will continue to suffer, damages in an amount to be proven at trial.

24 93. Defendants' acts were undertaken intentionally and in conscious disregard of
25 Plaintiff's rights, and were malicious, fraudulent, and oppressive.

26 94. Plaintiff is entitled to damages, and it should be awarded exemplary and punitive
27 damages in an appropriate amount to punish Defendants and to deter similar fraudulent
28 conduct in the future.

1 **SIXTH CAUSE OF ACTION**
2 **Constructive Fraud**
3 **(Against All Defendants)**

4 95. Plaintiff re-alleges and incorporates by reference into this cause of action all
5 allegations set forth in this Complaint as though fully set forth herein.

6 96. Defendants owe fiduciary and quasi-fiduciary duties to Plaintiff, including duties
7 of loyalty, due care, good faith, and fair dealing in connection with their actions under the
8 Policy.

9 97. By the conduct alleged herein, Defendants took unfair advantage of and did not
10 act in or consider the best interests of Plaintiff, but rather acted solely in their own interests.

11 98. As a direct and proximate result of Defendants' constructive fraud, Plaintiff has
12 suffered and will continue to suffer damages in an amount to be proven at trial.

13 99. Defendants' acts were also malicious, fraudulent, and oppressive, and
14 undertaken intentionally and in conscious disregard of Plaintiff's rights.

15 100. Plaintiff is entitled to damages, and should be awarded exemplary and punitive
16 damages in an appropriate amount to punish Defendants and to deter similar fraudulent
17 conduct in the future.

18 **SEVENTH CAUSE OF ACTION**
19 **Unjust Enrichment**
20 **(Against All Defendants)**

21 101. Plaintiff re-alleges and incorporates by reference into this cause of action all
22 allegations set forth in this Complaint as though fully set forth herein.

23 102. As a result of Defendants' conduct, as set forth above, Plaintiff may lose the
24 financial benefit of the amounts that Plaintiff paid for those portions of the Policy that were
25 illegal, unfair, or deceptive.

26 103. By their wrongful acts and omissions, Defendants, and each of them, were
27 unjustly enriched at the expense of and to the detriment of Plaintiff.

28 104. Defendants were unjustly enriched through the offering of insurance coverages
within the Policy that purport and appear at first glance to provide certain coverages, such as

1 the Limited Virus Coverage, but when read according to their plain meaning, lead to absurd
2 requirements that are impossible to satisfy, such as only covering losses caused by viruses that
3 were created by windstorms, hail, aircraft, falling objects, and other phenomena and events
4 that are categorically incapable of creating a virus.

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

10 106. As a direct and proximate result of Defendants' conduct, Plaintiff has been
11 damaged and is entitled to restitution in an amount to be determined at trial. Plaintiff seeks
12 restitution from Defendants and seeks an order from this Court disgorging all monies paid to
13 Defendants as a result of the illegal, deceptive, unfair, and/or fraudulent business practices.

14 107. Plaintiff has no adequate remedy at law.

15 **EIGHTH CAUSE OF ACTION**
16 **Declaratory Relief**
17 **(Against All Defendants)**

18 108. Plaintiff re-alleges and incorporates by reference into this cause of action all
19 allegations set forth in this Complaint as though fully set forth herein.

20 109. Under California Code of Civil Procedure § 1060, *et seq.*, the court may declare
21 rights, duties, statuses, and other legal relations, regardless of whether further relief is or
22 could be claimed.

23 110. An actual controversy has arisen between Plaintiff and Defendants as to their
24 respective rights and duties under the Policy.

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

27 112. Plaintiff alleges and contends, with respect to the Policy's Civil Authority
28 coverage, that each of the Closure Orders triggers that coverage because (a) each of the Closure

1 Orders is an order of a civil authority, (b) each of the Closure Orders specifically prohibits
2 access to the Scheduled Premises by prohibiting all customers and workers from accessing the
3 Scheduled Premises, (c) said prohibition of access by each of the Closure Orders has been
4 continuous and ongoing since the Orders were issued, such that access has not subsequently
5 been permitted, (d) each of the Closure Orders prohibits said access as the direct result of a
6 Covered Cause of Loss (*i.e.*, a risk of direct physical loss of property) in the immediate area of
7 the Scheduled Premises, (e) no Policy coverage exclusions or limitations apply to exclude or
8 limit coverage, (f) Plaintiff has suffered actual and covered loss of Business Income in an
9 amount to be determined at trial, and (g) coverage should begin as of March 19, 2020.

10 113. Plaintiff alleges and contends that the Policy's Lost Business Income and Extra
11 Expense Coverage is triggered because (a) Plaintiff has sustained actual loss of Business
12 Income due to the closure of the Mayssami Diamond location, (b) said closure constitutes a
13 necessary suspension of Mayssami Diamond's operations under the Policy, (c) this suspension
14 has been and is caused by direct physical loss of or physical damage to property at the
15 Scheduled Premises, including personal property in the open (or in a vehicle) within 1,000 feet
16 of the Scheduled Premises, due to the presence of Coronavirus, (d) the presence of
17 Coronavirus is a Covered Cause of Loss, and (e) some or all of the period of Mayssami
18 Diamond's closures is within the period of restoration under the Policy.

19 114. Plaintiff alleges and contends that the Policy's Business Income for Essential
20 Personnel Coverage is triggered with respect to each of its full-time employees that it had no
21 choice but to let go in or about March 2020, as a direct, proximate, and inevitable result of the
22 issuance and maintenance of the Closure Orders and of the presence of Coronavirus in, on,
23 and around the Scheduled Premises.

24 115. Plaintiff alleges and contends that the presence of the Coronavirus in and on the
25 Insured Premises triggers the Policy's Limited Virus Coverage for substantially the same
26 reasons as those set forth above.

27 116. Plaintiff alleges and contends that the Policy's Extended Business Income
28 coverage applies or will apply for substantially the same reasons as those set forth above.

1 117. Plaintiff alleges and contends that Defendants wrongly denied coverage with
2 respect to all the foregoing provisions.

3 118. Upon information and belief, Plaintiff alleges that Defendants dispute and deny
4 each of Plaintiff's contentions set forth in this Cause of Action.

5 119. Plaintiff, therefore, seeks a declaratory judgment regarding each of Plaintiff's
6 contentions set forth in this Cause of Action. A declaratory judgment determining that Plaintiff
7 is due coverage under the Policy, as set forth above, will help to ensure the survival of its
8 business during this prolonged closure made necessary by the Closure Orders and by the
9 presence of Coronavirus at and around the Insured Premises during this global pandemic.

10 **NINTH CAUSE OF ACTION**
11 **Injunctive Relief Under BUS. and PROF. CODE § 17200, *et seq.***
12 **(Against All Defendants)**

13 120. Plaintiff re-alleges and incorporates by reference into this cause of action all
14 allegations set forth in this Complaint as though fully set forth herein.

15 121. Upon information and belief, Plaintiff alleges that, unless enjoined by order of
16 the Court, Defendants will continue to operate their companies for their sole benefit and to the
17 detriment of Plaintiff. No adequate remedy exists at law for the injuries alleged herein, and
18 Plaintiff will suffer great and irreparable injury if Defendants' conduct is not immediately
19 enjoined and restrained.

20 122. Defendants wrongfully denied Plaintiff's insurance claim based on erroneous
21 interpretations of the Policy, in order to avoid their financial obligations to Plaintiff
22 thereunder.

23 123. Given the likely extended time period of the regional presence of the Coronavirus
24 and COVID-19 cases, and the likely continued effect of the Closure Orders, Plaintiff will almost
25 certainly have similar insurance claims in the future, and Defendants will almost certainly
26 apply the same or similar erroneous interpretations of the Policy to wrongfully deny coverage.
27 If Defendants' conduct in this manner is not restrained and enjoined, Plaintiff will suffer great
28 and irreparable harm, as it has already paid for the Policy in full, and Defendants seem

1 committed to continuing their unfair and unlawful business practices of erroneously denying
2 Plaintiff's claims. Defendants will continue to act in their own self-interest and to commit the
3 acts that have damaged Plaintiff, and that continue to do so.

4 124. Plaintiff has no adequate remedy at law for the threatened injury.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays for judgment in its favor and against Defendants, as
7 follows:

8 A. For a declaration adopting each of Plaintiff's contentions set forth in the
9 above Cause of Action for Declaratory Relief;

10 B. For injunctive relief enjoining and restraining Defendants' unlawful conduct
11 as alleged herein, including but not limited to their unfair and unlawful business practices
12 and their wrongful denials of coverage under the Policy;

13 C. For general and compensatory damages in an amount to be determined at
14 trial;

15 D. For exemplary and punitive damages in an amount to be determined at trial;

16 E. For Plaintiff's costs of suit;

17 F. For Plaintiff's reasonable attorneys' fees incurred in this action pursuant to
18 statute;

19 G. For pre-judgment interest on all other interest to which Plaintiff is entitled;

20 and

21 H. For such other relief as the Court may deem proper.

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JURY DEMAND

Plaintiff demands a trial by jury on all counts for which a jury trial is permitted.

DATED: May 20, 2020

BOTTINI & BOTTINI, INC.
Francis A. Bottini, Jr.
Albert Y. Chang
Yury A. Kolesnikov

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