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FILED
ALAMEDA COUNTY
 JUL 23 2020
 CLERK OF THE SUPERIOR COURT
 By: *[Signature]* Deputy

7 *Attorneys for Plaintiff*

8
 9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 10 **FOR THE COUNTY OF ALAMEDA**

REED SMITH LLP
 A limited liability partnership formed in the State of Delaware

12 PALMDALE ESTATES, INC.,
 13 Plaintiff,
 14 vs.
 15 BLACKBOARD INSURANCE COMPANY
 16 Defendant.

Case No.: Rg20068690
PLAINTIFF'S COMPLAINT FOR:
 (1) BREACH OF CONTRACT
 (2) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
 (3) DECLARATORY JUDGMENT
JURY TRIAL DEMANDED

FAXED

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1 Plaintiff Palmdale Estates, Inc. (d/b/a Sunol's Casa Bella) ("Plaintiff"), for its Complaint
2 against Defendant Blackboard Insurance Company ("Defendant" or "Blackboard") alleges as follows:

3 **NATURE OF THIS ACTION**

4 1. This is a case about Plaintiff prudently purchasing Businessowners insurance and
5 Defendant, Plaintiff's insurer, denying Plaintiff the very protection it paid for, at a time when it needed
6 such protections the most.

7 2. In exchange for premiums paid by Plaintiff, Defendant promised Plaintiff that, in the
8 event of a covered loss, its insurance policy would protect Plaintiff's business, including loss of
9 business income. Yet, in the face of fallout from the worst pandemic in the last century that rendered
10 Plaintiff's premises unsafe for their continued use and operation, Defendant has failed to live up to its
11 promises.

12 3. Now, Plaintiff seeks damages for breach of contract against Defendant for its failure to
13 honor its policy obligations, and damages for Defendant's breach of the implied covenant of good
14 faith and fair dealing for its unreasonable and bad faith conduct, including its failure even to conduct
15 an investigation of Plaintiff's claim. Plaintiff also seeks a judgment declaring the scope of Defendant's
16 obligations under the Policy to pay Plaintiff's losses.

17 **THE PARTIES**

18 4. Plaintiff is, and at all times relevant hereto was, a corporation organized under the laws
19 of the State of California, with its principal place of business in Sunol, California.

20 5. Defendant is a corporation organized and existing under the laws of the State of
21 Delaware, with its principal place of business in the State of New York. Defendant is an insurance
22 company duly authorized to transact business in the State of California.

23 **JURISDICTION AND VENUE**

24 6. Jurisdiction is proper in this Court pursuant to California Code of Civil Procedure
25 Section 410.0 because Defendant does business in the State of California and the County of Alameda.

26 7. Venue is proper in this Court because the acts and/or omissions complained of took
27 place, in whole or in part, within the venue of this Court.

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FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

A. PLAINTIFF’S HIGHLY SUCCESSFUL EVENT MANAGEMENT BUSINESS

8. Plaintiff has over thirty years of experience in the event and venue management business. Plaintiff operates the Casa Bella Event Center in Sunol, California.

9. Casa Bella is a premier venue specializing in weddings, other special occasions, and corporate events. Casa Bella is a full-service year-round event location. Casa Bella has won several awards as a wedding venue in various trade publications such as WeddingWire, Here Comes the Guide, and The Knot, which rates Casa Bella with five out of five stars.

10. According to The Knot, with respect to Plaintiff’s wedding business, it states:

The exquisite Casa Bella Event Center is located near Niles Canyon between Fremont and Pleasanton. Nestled in the heart of quaint downtown Sunol, Casa Bella offers the rare experience of hosting events in a setting that encompasses old world glamour – inclusive of a vintage steam train station – amidst the gorgeous views of Pleasanton Ridge and Sunol’s rolling hills. This elegant reception hall is rich with rustic details, crystal chandeliers, a romantic outdoor ceremony patio with a grand pergola, and a fine dining experience complete with Lagunitas IPA and Blue Moon draft beer, William Hill Central Coast cabernet sauvignon and chardonnay, Weibel Brut sparkling wine, and spirit packages. The stunning bridal room doubles as a honeymoon sweet, creating not only the perfect place for the bride to get ready but also a haven for the bride and groom to enjoy after their wedding.

Casa Bella events are run exclusively by the acclaimed Palmdale Estates management team who have over 30 years’ experience in event management. Casa Bella is dedicated to giving each couple and their guests a memorable wedding experience with attentive, caring and professional staff.

With weekday and weekend availability, Casa Bella can comfortably host both intimate and large events, providing table seating for up to 200 guests or 300 guests cocktail style. Our fully decorated facility with high-quality lighting, sound and visual amenities in both our indoor and outdoor spaces make us event ready at Casa Bella.

11. Prior to the COVID-19 outbreak, the Plaintiff operated a thriving event venue that was highly sought after for weddings and other special occasions, as well as corporate events.

12. Prior to the COVID-19 outbreak, Plaintiff’s facility employed more than 15 local residents and hosted more than 130 events per year.

B. THE COVID-19 PANDEMIC

13. During the relevant policy period, a communicable disease (“COVID-19”) was first discovered in China. The disease made its way from China, to Europe, then the United States and

1 South America.

2 14. COVID-19 is a highly contagious, deadly and infectious disease that is easily
3 transmitted from person to person, particularly indoors and in group settings.

4 15. By no later than January 2020, the COVID-19 disease reached the United States and
5 then spread across the country. On February 26, 2020, the Centers for Disease Control and Prevention
6 (“CDC”) advised that a person in California had tested positive for COVID-19, and that person had
7 no relevant travel history or exposure to another person with known COVID-19. The CDC raised the
8 concern of community spread or transmission. In other words, the CDC was concerned that COVID-
9 19 was spreading freely, without the ability to trace the origin of new infections.

10 16. On March 11, 2020, the World Health Organization (“WHO”) declared COVID-19 a
11 global pandemic.

12 17. The WHO states: “[t]he disease spreads primarily from person to person through small
13 droplets from the nose or mouth, which are expelled when a person with COVID-19 coughs, sneezes,
14 or speaks.”

15 18. According to the CDC, “everyone is at risk for getting COVID-19.” A person may
16 become infected by: (1) coming into close contact (about 6 feet) with a person who has COVID-19;
17 (2) coming into contact with respiratory droplets when an infected person talks, sneezes, or coughs;
18 and/or (3) touching surfaces or objects contaminated with COVID-19.

19 19. The CDC has identified as the “highest risk” category for disease spread “[l]arge in-
20 person gatherings where it is difficult for individuals to remain spaced at least 6 feet apart and
21 attendees travel from the local area.” Plaintiff’s venue fits squarely within this “high risk” category.
22 According to the CDC: “The more people an individual interacts with at a gathering and the longer
23 that interaction lasts, the higher the potential risk of becoming infected with COVID-19 and COVID-
24 19 spreading.”

25 20. What distinguishes COVID-19 from other diseases is its propensity to spread via
26 persons who show no symptoms of the disease. Asymptomatic carriers of the disease are seemingly
27 healthy people, yet can unknowingly transmit the disease by spreading infectious droplets through
28 speaking, breathing, and touching objects.

1 21. After news that COVID-19 had disseminated from China and the WHO declared a
2 global pandemic, the United States' public health systems and infrastructures were not prepared to
3 prevent the spread of the disease throughout the general public in a manner that would have protected
4 the Plaintiff's business from becoming unsafe for their intended use.

5 22. In fact, even before COVID-19 was detected in China and made known throughout the
6 world, the public health system in the United States was not prepared to handle a massive national
7 healthcare emergency that would ultimately require: stockpiles of medical supplies, adequate hospital
8 and first responder staffing, and sufficient hospital facilities to handle the influx of new patients, in
9 addition to the already existing level of patients being treated under normal circumstances.

10 23. The United States' public health system was also unequipped to handle the spread of
11 COVID-19 due to a lack of critical infrastructure for testing, contact tracing, and quarantining for
12 those found exposed to the disease, or those who came into contact with someone confirmed to carry
13 COVID-19. As a result, COVID-19 disseminated largely undetected into an unsuspecting United
14 States population.

15 24. As of July 23, 2020, there have been almost 4 million confirmed COVID-19 cases in
16 the United States, resulting in more than 144,000 deaths. In just California, there have been more than
17 410,000 confirmed cases resulting in over 7,883 deaths. In Alameda County, where Plaintiff's venue
18 is located, there have been more than 9,404 confirmed cases resulting in over 166 deaths.

19 25. Because COVID-19 spreads from person-to-person through various means, and also
20 can survive on surfaces and remain in the air for periods of time, including migration through indoor
21 ventilation systems, if not successfully contained by the public health system, indoor event spaces,
22 such as Plaintiff's venue, are particularly susceptible to facilitating the spread of COVID-19. This is
23 problematic as patrons and guests rely on the venue to present a safe and sanitary group experience.
24 When venues cannot be kept safe and sanitary for groups of individuals to congregate without the risk
25 of becoming ill or injured, the venues cannot be used for their intended purposes and suffer physical
26 loss.

27 26. Given the propensity of COVID-19 to easily spread from person-to-person, and the
28 healthcare system's inability to stop the spread of the disease throughout the community, and safely

1 treat sick individuals due to a lack of supplies and staffing, it became untenable and unsafe for business
2 locations to allow individuals to gather in groups.

3 27. Further, if COVID-19 infected large numbers of Californians simultaneously,
4 California's healthcare system would have been inundated with COVID-19 patients. Thus, the spread
5 of COVID-19 throughout the community created a dangerous situation, not just with respect to the
6 spread of the disease, but also with respect to an injured individuals' ability to receive necessary
7 healthcare treatment. For example, due to the strain COVID-19 has placed on California's healthcare
8 system, a guest at an event, such as a wedding, who lost consciousness from choking on food, or
9 individuals injured in a fire at a crowded business, might not have been able to obtain the medical
10 treatment they needed, including from first responders. Scarce resources used to treat a massive
11 number of COVID-19 cases would not be available for the treatment of other sick and injured people.
12 For this additional reason, it became impossible for businesses, like the Plaintiff's event venue, to
13 operate safely in the manner intended.

14 **C. STATE AND LOCAL GOVERNMENTS' CLOSURE ORDERS AND PLAINTIFF'S RELATED**
15 **LOSSES.**

16 28. Once it became clear that COVID-19 had reached the United States, federal, state, and
17 local authorities were not able to contain the spread of COVID-19 as effectively as was done in other
18 locations with less draconian measures.

19 29. The public health system in the United States began to respond to the pandemic only
20 after the pandemic had taken root in the country and had begun to wreak serious devastation in certain
21 geographic regions. By then it was too late for federal, state, and local authorities to take focused and
22 effective measures to avoid the spread of COVID-19 to the population at large. The state of the public
23 health system, both before and after the start of the crisis, led to the unrestrained spread of COVID-
24 19, and resulted in Plaintiff's venue becoming untenable to operate for its intended purposes.

25 30. On March 16, 2020, the federal government issued public guidance titled "30 Days to
26 Slow the Spread" of COVID-19. The guidance called for extreme social distancing measures, such as
27 working from home, avoiding gatherings of more than 10 people, and staying away from bars and
28 restaurants.

1 31. State and local governments across the United States, including California, responded
2 to the catastrophic healthcare emergency by issuing “State of Emergency” orders. These orders
3 suspended or severely limited operations of nonessential businesses where people could potentially
4 contract COVID-19 from others or from contaminated property. These orders, almost uniformly,
5 included closing restaurants for in-person dining.

6 32. Simultaneously to the issuances of government emergency orders, states across the
7 country also issued orders encouraging or requiring citizens to “shelter in place” or “stay at home.”
8 In many instances, city and county governments issued their own restrictive orders, which also
9 restricted large gatherings of people.

10 33. For example, on March 16, 2020, Alameda County issued its shelter in place “Order of
11 the Health Officer of the County of Alameda.” The Order prohibited all “non-essential gatherings of
12 any number of individuals.” The Order also required all businesses in Alameda County, with
13 exceptions for essential businesses, to “cease all activities at facilities located within the County.” The
14 order recognized that there was a lack of widespread COVID-19 testing available to the public.

15 34. On March 31, 2020, Alameda County issued a revised shelter-in-place order to
16 strengthen and extend the prior order, including to “mitigate the impact on delivery of critical
17 healthcare services to those in need.” Again, the revised order prohibited “[a]ll public and private
18 gatherings of any number of people occurring outside a single household or living unit.” The order
19 noted that the public health emergency had “substantially worsened since the County issued the Prior
20 Shelter in Place Order on March 16, 2020, with a significant escalation in the number of positive cases,
21 hospitalizations, and deaths, and increasing strain on health care resources.”

22 35. On March 19, 2020, California Governor Gavin Newsom announced a statewide order
23 to shelter at home, affecting 40 million Californians. The order restricted all non-essential travel and
24 activities outside the home.

25 36. Since March 2020, the COVID-19 pandemic has only gotten worse throughout
26 California and the United States. An order issued by the County of Alameda on June 18, 2020,
27 continued to prohibit gatherings of individuals. On July 13, 2020, California’s Governor issued a
28 statewide order mandating the indefinite closure of all *indoor* activities such as restaurants, movie

1 theaters, wineries, zoos, museums, cardrooms and entertainment venues.

2 37. The foregoing governmental actions and orders underscore the fact that event venue
3 locations have become unsafe for their intended use as locations for individuals to gather. These
4 orders, and the dangerous conditions they intended to address, forced the suspension of Plaintiff's
5 operations.

6 38. The above orders and social distancing guidelines make clear that public gathering
7 venues such as the event venue operated by Plaintiff, became dangerously unsafe for its intended use
8 and could not be operated as usual in a safe manner. This was due, at least in part, to the inability of
9 the public health system to prevent the spread of COVID-19 once it reached the United States, such
10 that less onerous measures, including aggressive testing, contact tracing, and/or isolating those who
11 became infected with COVID-19 could have been implemented (as was done in other countries) so
12 that the public at large could continue to go about their daily activities, including safely gathering in
13 large numbers.

14 39. As a result of this situation, since at least March 2020, and continuing to the present,
15 Plaintiff has suffered a complete loss of functionality of its covered premises as it became and was
16 considered unsafe for its intended use as a location for individuals to gather for an event.

17 40. Plaintiff was forced to suspend its operations and suffered significant losses. Further,
18 due to the current state of the COVID-19 pandemic and the fact that there is not yet a vaccine for
19 COVID-19, the suspension of Plaintiff's operations and associated losses and expenses will likely
20 continue for quite some time. The health and safety concerns presented by the spread of COVID-19,
21 and its presence in the community, make it untenable for Plaintiff's location to be used as it was
22 intended, and has resulted in physical loss or damage.

23 41. The risk of contracting COVID-19 through the gathering of individuals at indoor
24 locations such as Plaintiff's venue due to the increased risks of disease transmission in such locations,
25 coupled with the increased risks associated with gatherings of individuals generally due to strains on
26 the healthcare system outlined above, rendered Plaintiff's event location unsafe for its intended use
27 and caused Plaintiff to suffer physical loss or damage, as evidenced by the government closure orders,
28 social distancing guidelines, and other factors discussed herein.

1 42. Although Plaintiff purchased insurance to protect it from these losses, the Defendant
2 has abandoned Plaintiff in its time of need.

3 **D. IN RESPONSE TO THE PANDEMIC, THE CALIFORNIA INSURANCE DEPARTMENT**
4 **ORDERS INSURERS TO INVESTIGATE CLAIMS IN GOOD FAITH**

5 43. On April 14, 2020, California Insurance Commissioner Ricardo Lara issued a Notice
6 to “All Admitted and Non-Admitted Insurance Companies, All Licensed Insurance Adjusters and
7 Producers, and Other Licensees and Interested Parties” (the “Commissioner’s Notice”). The
8 Commissioner’s Notice recognized that “[t]he COVID-19 Pandemic has severely curtailed activities
9 of policyholders in both personal and commercial lines, causing significant and widespread economic
10 loss in California.”

11 44. The Commissioner’s Notice further recognized that “[m]any small and large California
12 businesses purchase Business Interruption insurance to protect against the loss of income and other
13 losses caused by an interruption to the normal operations of the business.”

14 45. The Commissioner’s Notice stated that the California Department of Insurance had
15 “received numerous complaints from businesses, public officials, and other stakeholders asserting that
16 certain insurers, agents, brokers, and insurance company representatives are attempting to dissuade
17 policyholders from filing a notice of claim under its Business Interruption insurance coverage, or
18 refusing to open and investigate these claims upon receipt of a notice of claim.”

19 46. Accordingly, the Commissioner’s Notice provided the following:
20
21 Commissioner Lara hereby notifies all agents, brokers, insurance companies
22 and other Department Licensees that they are required to comply with their
23 contractual, statutory, regulatory, and other legal obligations, including but
24 not limited to, the obligations set forth in California Fair Claims Settlement
25 Practices Regulations (Cal. Code Regs. Tit. 10; sections 2695.1 et seq.) (the
26 “Regulations”) in connection with all California insurance claims including,
27 but not limited to, Business Interruption insurance claims, event cancellation
28 claims, and other related claims filed by California businesses.

 Upon receipt of a notice of claim, the insurer is required to provide the
policyholder with the necessary forms, instructions, and reasonable assistance,
including but not limited to, specifying the information the policyholder must
provide in connection with the proof of claim and begin any necessary
investigation of the claim. (Regulations, section 2695.5(e)(2). Thereafter,
every insurer is required to conduct and diligently pursue a thorough, fair, and

1 objective investigation of the reported claim, and is prohibited from seeking
2 information not reasonably required for or material to the resolution of a claim
3 dispute before determining whether the claim will be accepted or denied, in
4 whole or in part. (Regulations, section 2695.7(d).)

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6 Based on the foregoing, every insurance agent, broker, insurance company
7 representative, and other Department licensee is required to comply with their
8 contractual, statutory, regulatory, and other legal obligations in connection
9 with all California insurance claims, and other related claims filed by
10 California businesses. Additionally, no insurer, insurance agent, insurance
11 company representative, or other Department licensee shall dissuade
12 policyholders from filing a notice of claim under its Business Interruption
13 insurance coverage, or refuse to open and investigate such claims upon receipt
14 of a notice of claim.

15 47. Despite the foregoing clear guidance and orders from California's Insurance
16 Commissioner, Defendant failed to follow these mandates and investigate Plaintiff's insurance claim.

17 **E. THE DEFENDANT'S POLICY**

18 48. Plaintiff purchased insurance from Defendant to protect against business interruption
19 and related losses such as those at issue in this case.

20 49. Defendant issued Policy No. CASURA0001HIBP-20931-01. The policy period runs
21 from July 17, 2019 through July 17, 2020 (the "Policy").

22 50. Pursuant to the Policy, Defendant promised Plaintiff that it will:

23 [P]ay for direct physical loss of or damage to Covered Property at
24 the premises described in the Declarations caused by or resulting
25 from any Covered Cause of Loss.

26 51. "Loss of" and "damage to" are not defined in the Policy.

27 52. The term Covered Causes of Loss means:

28 Direct physical loss unless the loss is excluded or limited under
Section I – Property.

53. Defendant also promises the Plaintiff that it will:

[P]ay 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.

54. The Policy defines the term "Business Income" as:

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(i) Net income (Profit or Loss before income taxes) that would have been earned or incurred if no physical loss, damage or incident had occurred...; and

(ii) Continuing normal operating expenses incurred, including payroll.

55. The term “suspension” means with respect to Business Income and Extra Expense:

(a) The partial slowdown or complete cessation of your business activities; or

(b) That a part or all of the described premises is rendered untenable, if coverage for Business Income applies.

56. The “Period of restoration” means the period of time that:

(a) Begins:

(1) 48 hours after the time of direct physical loss or damage for the Business Income Coverage; or

(2) Immediately after the time of direct physical loss or damage for Extra Expense Coverage;

caused by or resulting from any Covered Cause of Loss at the described premises; and

(b) Ends on the earlier of:

(1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality;

or

(2) The date when business is resumed at a new permanent location.

57. Defendant also promises Plaintiff that it will:

[P]ay the necessary Extra Expense you incur during the “period of restoration” that you would not have incurred if there had been no direct physical loss or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss. In each of the Mid-Century Policies, “Operations” is defined broadly to mean Plaintiffs’ “business activities occurring at the described premises.”

58. “Extra Expense” means, among other things, expense incurred:

a. To avoid or minimize the suspension of business and to continue operations; or

b. To minimize the suspension of business if you cannot immediately

1 continue operations

2 59. Under applicable law, even if an excluded cause might have contributed to the loss,
3 coverage exists so long as the “efficient proximate cause” of the loss is not excluded. Since all causes
4 of physical loss are covered unless excluded, Defendant has the burden of establishing that the efficient
5 proximate cause of the loss was not a covered cause.

6 60. It also is a violation of law for an insurance company to deny claims “before
7 undertaking a diligent investigation regarding the cause of loss and after carefully considering the
8 facts.” See California Insurance Department Notice dated January 29, 2018 regarding coverage for
9 certain wildfire-related claims.

10 61. To the extent that the loss is caused by the act or neglect of a third party, not under the
11 insured’s control, coverage is not impacted, and such event is considered a covered cause, as the Policy
12 contains a “Control of Property” provision that states, in part:

13 Any act or neglect of any person other than
14 you beyond your direction or control will not
15 affect this insurance.

16 62. All conditions imposed under the Policy, including the payment of premiums and
17 notice of claims, have been satisfied, waived, or otherwise excused by the behavior of Defendant or
18 by operation of law, including by Defendant’s breaching the Policy through its wrongful denial of
19 coverage to Plaintiff.

20 **F. DEFENDANT IMMEDIATELY DENIES PLAINTIFF’S CLAIM WITHOUT INVESTIGATING**

21 63. On or about March 18, 2020, Plaintiff provided notice to Defendant of its COVID-19
22 losses. Rather than conducting a thorough and good faith investigation, as required under California
23 law and as set forth in the Commissioner’s Notice, Defendant hired an individual in Ohio to convey
24 Defendant’s denial of coverage under the Policy.

25 64. The Defendant’s denial of coverage and failure to investigate constitute a breach of
26 contract and a breach of the duty of good faith and fair dealing.

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1 **FIRST CAUSE OF ACTION**

2 **(Breach of Contract)**

3 65. Plaintiff incorporates by reference the allegations in Paragraphs 1 through 64.

4 66. The Policy is a valid and enforceable written contract between Plaintiff and Defendant.

5 67. Plaintiff has performed all obligations under the Policy, and any and all conditions
6 precedent to coverage under the Policy have been satisfied or waived.

7 68. As set forth above and in the Policy Defendant contracted to insure Plaintiff for its
8 "Business Income" and "Extra Expense" losses arising from physical loss or damage caused by
9 COVID-19.

10 69. Plaintiff incurred losses covered under the Policy.

11 70. Defendant breached the Policy by wrongfully denying coverage to Plaintiff and in
12 refusing to conduct a good faith investigation as required.

13 71. No exclusions, conditions, or other limitation provisions in the policy excuse
14 Defendant's obligation to provide coverage to Plaintiff. Any such exclusions or limitations relied on
15 by Defendant do not apply or Defendant should be estopped from relying on them. Since exclusions,
16 conditions, and limitations of coverage must be plead by Defendant as an affirmative defense, and
17 Defendant has the burden of proving their applicability, Plaintiff reserves all rights to respond to any
18 such defenses once they are asserted.

19 72. As a direct and proximate cause of Defendant's breach, Plaintiff has been denied the
20 benefits of insurance coverage to which it is entitled as an insured under the policy.

21 73. As a direct and proximate cause of Defendant's breach, Plaintiff has already incurred
22 monetary damages, and Defendant's continuing breach will result in substantial further monetary
23 damages.

24 **SECOND CAUSE OF ACTION**

25 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

26 74. Plaintiff incorporates by reference the allegations in Paragraphs 1 through 73.

27 75. Implied in every contract of insurance, including the Policy, is an implied covenant that
28 the insurance company, including Defendant, will act in good faith, reasonably, will conduct a prompt,

1 thorough and good faith investigation and will, in all respects, give as much consideration to the
2 policyholder's interests as it does to its own (the "implied covenant of good faith and fair dealing").

3 76. In unreasonably denying coverage without conducting a prompt, thorough and good
4 faith investigation, Defendant breached the implied covenant of good faith and fair dealing.

5 77. As a direct and proximate cause of Defendant's breach of the implied covenant of good
6 faith and fair dealing, Plaintiff has suffered and will continue to suffer damages.

7 78. Pursuant to the holding in *Brandt v. Superior Court*, 37 Cal. 3d 813 (1985), Plaintiff is
8 entitled to recover its reasonable attorneys' fees incurred in its effort to obtain the benefits of the
9 coverage that Defendant has wrongfully withheld, and continues to withhold, in bad faith, plus
10 interest. The total amount of Plaintiff's attorneys' fees is currently unknown. When the precise
11 amount of Plaintiff's damage is known, Plaintiff will assert those damages accordingly.

12 **THIRD CAUSE OF ACTION**

13 **(Declaratory Judgment)**

14 79. Plaintiff incorporates by reference the allegations in Paragraphs 1 through 78.

15 80. Plaintiff seeks a declaratory judgment, pursuant to California Code of Civil Procedure
16 Section 1060, of the respective rights and obligations of Plaintiff and Defendant under the Policy.

17 81. An actual justiciable controversy exists between Plaintiff and Defendant concerning
18 Policy, in that Plaintiff contends that the Policy provides coverage for its claim and Defendant
19 contends there is no coverage based on its interpretation of various provisions in the Policy.

20 82. Plaintiff is entitled to declaratory relief establishing that its interpretation of the Policy
21 with respect to its losses is the correct interpretation.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, in consideration of the foregoing, Plaintiff requests the entry of a judgment in
24 its favor and against Defendant on all claims in this Complaint, and prays for relief as follows:

25 1. On the First Cause of Action for Breach of Contract and Second Cause of Action for
26 Breach of the Implied Covenant of Good Faith and Fair Dealing:

27 a. For damages in an amount to be established at trial, including attorney's
28 fees on the breach of implied covenant cause of action;

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- b. For costs of suit; and
 - c. Interest at the maximum legal rate on all amounts owed under the respective policies, accruing from the date upon which amounts should have been paid.
2. On the Third Cause of Action for Declaratory Relief:
- a. That this Court declare the rights, obligations, and liabilities of the parties herein and specifically declare, as Plaintiff contends, that Plaintiff's interpretation of the Policy with respect to the events and losses incurred as described in this complaint are correct, such that Plaintiff's claim is covered by the Policy.
3. On all Causes of Action:
- a. For costs of suit incurred herein; and
 - b. For such other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all issues so triable.

DATED: July 23, 2020

REED SMITH LLP

By: 

David E. Weiss
Cristina M. Shea
T. Connor O'Carroll
Attorneys for Plaintiff