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10 Attorneys for Plaintiff HealthNOW Medical Center, Inc.

11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **HEALTHNOW MEDICAL CENTER, INC.,**  
14 a California Corporation,

15 Plaintiff,

16 vs.

17 **STATE FARM GENERAL INSURANCE**  
18 **COMPANY**, an Illinois Corporation doing  
19 business in California; AND DOES 1 TO 50,  
20 INCLUSIVE.

21 Defendants.

Case No.: 4:20-cv-04340-HSG

**SECOND AMENDED COMPLAINT**  
**FOR:**

- 1. BREACH OF CONTRACT;
- 2. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
- 3. BAD FAITH DENIAL;
- 4. DECLARATORY RELIEF;
- 5. UNJUST ENRICHMENT;
- 6. UNFAIR COMPETITION UNDER BUS. & PROF. CODE § 17200 ET SEQ.;
- 7. INJUNCTIVE RELIEF UNDER BUS. & PROF. CODE § 17200 ET SEQ.

**JURY TRIAL DEMANDED**

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1 Plaintiff HealthNOW Medical Center, Inc., a California Corporation doing  
2 business in California brings this Second Amended Complaint, alleging against STATE  
3 FARM GENERAL INSURANCE COMPANY, an Illinois Corporation doing business in  
4 California, and DOES 1 THROUGH 50, as follows:

5 **INTRODUCTION**

6 1. The COVID-19 pandemic was a catastrophe faced by thousands of  
7 businesses in the State of California, with civil ordinances requiring county and  
8 statewide shutdowns and stay-at-home orders which crippled businesses. It was the  
9 exact kind of loss which insurers like State Farm marketed to business owners. But when  
10 the pandemic hit and businesses began to suffer losses due to shut down orders,  
11 insurance companies like State Farm balked.

12 2. This particular case is an insurance bad faith lawsuit brought by Plaintiff  
13 HealthNOW Medical Center, Inc., a California Corporation that owns and operates a  
14 thriving health and medical clinic in Saratoga, California (hereinafter "Plaintiff" or  
15 "HealthNOW") against STATE FARM GENERAL INSURANCE COMPANY, an Illinois  
16 corporation doing business in California ("Defendant" or "State Farm"), and possible  
17 Does (collectively, "Defendants"). Plaintiff seeks damages stemming from State Farm's  
18 bad faith handling and denial of Plaintiff's claim for business income loss coverage.  
19 Plaintiff, in good faith, based on the language of its policy and for the reason many  
20 businesses bought insurance policies with business income interruption clauses,  
21 reasonably expected that State Farm would provide coverage during these  
22 unprecedented times for the loss of business income Plaintiff has suffered due to the  
23 stay-at-home ordinances effected statewide, including in Santa Clara County.  
24 Specifically, as a result of civil ordinances, Plaintiff's medical clinic or so-called  
25 scheduled premises was shut down or severely reduced in operations as an essential  
26 business, and then when Plaintiff was required to stay open on a limited basis to provide  
27 essential services, Plaintiff still had to comply with heightened safety protocols that

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1 required further manual labor and consumption of disposable Personal Protective  
2 Equipment (PPEs), thereby severely crippling Plaintiff’s revenue stream.

3 3. State Farm, meanwhile, not only has failed to provide the requested  
4 coverage, but has engaged in deceptive and unfair business practices to evade  
5 responsibility for doing so. At a moment in world history when insurance companies  
6 should be stepping up, Defendant hid behind procedures and conduct that appear to be  
7 bad faith and motivated only by profit. In this case, Defendant essentially pre-rejected  
8 the claim before it was even submitted, and then relied on quick, premature, and  
9 incomplete analysis of their own policy language, and of the nature of the losses in  
10 question.

11 **PARTIES**

12 4. At all relevant times, Plaintiff HealthNOW Medical Center, Inc., was and is  
13 a California corporation and is authorized to do business and is doing business in the  
14 State of California, County of Santa Clara. Plaintiff owns, operates, manages, and  
15 controls the health and medical clinic located in Saratoga, California. Plaintiff also owns  
16 the commercial property location at 20398 Blauer Drive, Saratoga, California, where the  
17 medical clinic is located.

18 5. At all relevant times, Defendant State Farm General Insurance Company is,  
19 and at all relevant times was, a foreign Illinois corporation with its headquarters and  
20 principal place of business in Illinois, but doing business and maintaining regular offices  
21 in the State of California. State Farm is conducting insurance business, including the  
22 marketing, sale and provision of business insurance policies and the process of handling  
23 claims, in the State of California and the basis of this suit arises out of such conduct.

24 6. Plaintiff does not know the true names and capacities, whether individual,  
25 associate, or otherwise, of Defendants DOES 1 through 50, and therefore designate those  
26 Defendants by such fictitious names. Each of the Defendants sued herein as a DOE is  
27 legally responsible in some manner for the events and happenings referred to herein and

1 proximately caused the injuries suffered by the Plaintiff. DOES may include other  
2 underwriters, agents, or individuals who participated in decisions or ratified decisions  
3 that led to or constituted the bad faith denial and misconduct of State Farm outlined in  
4 this Complaint. Plaintiff will amend this Complaint accordingly to allege the true names  
5 and capacities of these Doe Defendants when/if the same becomes known to Plaintiff.

6 **JURISDICTION AND VENUE**

7 7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332  
8 because HealthNOW and State Farm are citizens of different states and the amount of  
9 controversy exceeds \$75,000.00 exclusive of interests and costs.

10 8. This Court has personal jurisdiction over State Farm because it regularly  
11 conducts and transacts business in this state, including having issued the insurance policy  
12 currently held by Plaintiff.

13 9. Venue is proper in this Court because pursuant to 28 U.S.C. § 1391(2), the  
14 acts and/or omissions complained of took place, in whole or in part, within Santa Clara  
15 County, California. State Farm conducts business extensively throughout California,  
16 marketing their insurance policies and selling their insurance policies to thousands of  
17 insured businesses and consumer businesses in California.

18 **GENERAL ALLEGATIONS**

19 10. All allegations in this Complaint are based on information and belief  
20 and/or are likely to have evidentiary support after a reasonable opportunity for further  
21 investigation or discovery.

22 **HealthNOW and Its Decision to Purchase a State Farm Policy**

23 11. Plaintiff's business is an active internal medicine practice known as Root  
24 Cause Medical Clinic in Saratoga, California. It is owned by Dr. Richard Petersen, an  
25 experienced clinical director, Doctor of Chiropractic, certified clinical nutritionist, and  
26 certified functional medical practitioner. Dr. Petersen is joined by his spouse Dr. Vikki  
27 Petersen, also an experienced Doctor of Chiropractic, certified clinical nutritionist, and

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1 certified functional medicine practitioner, their son Dr. Sterling Petersen, Doctor of  
2 Chiropractic, and other medical practitioners at the clinic. HealthNOW employs  
3 approximately 20 individuals at the Saratoga clinic, and prior to the pandemic, was  
4 serving around 40 to 50 patients per day, five days per week. To safeguard their  
5 business and investment, and living in a state such as California where unexpected  
6 business interruptions have historically occurred, Plaintiff sought business insurance  
7 coverage with business interruption coverage from Defendants and renewed a policy  
8 with such coverage on October 12, 2019. Defendants marketed their insurance products  
9 to Plaintiff with specific representations that they would insure against business  
10 shutdown. The current State Farm website states: “For doctors, dentists, chiropractors,  
11 optometrists, acupuncturists and others, State Farm provides coverage that can help  
12 your business through challenges such as fire or vandalism, a customer lawsuit,  
13 **business shutdown [emphasis added]**, or loss/destruction of business documents.”

14 12. At all relevant times, and since around 2004, Plaintiff has been a State Farm  
15 policyholder, and currently insured under State Farm’ business policy number 97-KQ-  
16 1125-5 (the “Policy”).

17 13. The Policy is currently in full effect, providing commercial business policy  
18 coverage including coverage for lost business income which occurs during the policy  
19 period, which is currently from October 12, 2019, through October 12, 2020.

20 14. Plaintiff faithfully paid policy premiums to State Farm, specifically to  
21 provide additional coverages including but not limited to loss of business income due to  
22 Civil Authority or civil ordinances. The policy expressly states that in return for the  
23 payment of premium, State Farm would provide Business Income & Extra Expense  
24 Coverage-Civil Authority with both short term and long term coverage provisions: “We  
25 agree to provide the insurance described in this policy. You agree to pay premiums  
26 when due and comply with the provisions of this policy.”

1           15. Under the Policy, Civil Authority coverage appears to be provided for loss  
2 of income and appears to be available both for a shorter period and for an extended  
3 period under certain conditions.

4           16. The Policy specifically extends coverage to business income and extra  
5 expense caused by a civil authority limiting access to Plaintiff’s property.

6           17. Property and Business Insurance can be sold for coverage on specific  
7 perils, which would limit coverage to those perils specifically written into an insurance  
8 policy (such as fire, earthquakes, etc.). Other insurance policies, such as the one sold by  
9 State Farm, are “all-risk” insurance policies, providing coverage for all losses except  
10 those that are excluded by the explicit, unambiguous words of the policy. Additionally,  
11 State Farm marketed and expressly represented their policy products as protecting  
12 businesses from whatever perils and losses they might face.

13           18. Under the Policy, Civil Authority coverage appears to be provided for loss  
14 of income, and appears to be available both for a shorter period and for an extended  
15 period under certain conditions.

16           19. The All-Risk Policy provides for coverage as follows:

17  
18           When a Limit Of Insurance is shown in the Declarations for  
19 that type of property as described under **Coverage A –**  
20 **Buildings, Coverage B – Business Personal Property**, or  
21 both, we will pay for accidental direct physical loss to that  
22 Covered Property at the premises described in the  
23 Declarations caused by any loss as described under  
24 **SECTION I – COVERED CAUSES OF LOSS.**

25  
26           Covered Property includes property as described under  
27 **Coverage A – Buildings**, property as described under  
28 **Coverage B – Business Personal Property**, or both.

          Regardless of whether coverage is shown in the Declarations  
for **Coverage A – Buildings, Coverage B –**  
**Business Personal Property**, or both, there is no coverage  
for property described under **Property Not Covered.**

(Exhibit A at p. A-14)

The All-Risk Policy defines Covered Cause of Loss as follows:

**SECTION I – COVERED CAUSES OF LOSS**

We insure for accidental direct physical loss to Covered Property unless the loss is:

- 1. Excluded in **SECTION I – EXCLUSIONS**; or
- 2. Limited in the **Property Subject To Limitations** provision.

(Exhibit A at page A-16)

Additional coverages in the All-Risk Policy include:

**1. Loss of Income**

a. We will pay for the actual “Loss of 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 physical damage to property at the described premises. The loss must be caused by a Covered Cause of Loss. With respect to loss of personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of the site at which the described premises are located.

With respect to the requirements set forth in the preceding paragraph, if you occupy only part of the site at which the described premises are located, then the described premises means:

- (1) The portion of the building which you rent, lease or occupy; and
- (2) Any area within the building or on the site at which the described premises are located, if that area is the only such area that:
  - (a) Services, or
  - (b) is used to gain access to the described premises.

b. We will only pay for “Loss of Income” that you sustain during the “period of restoration” that occurs after the date of accidental direct physical loss and within the number of consecutive months for Loss of Income and Extra Expenses shown in the Declarations. We will only pay for “ordinary payroll

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1 expenses” for 90 days following the date of accidental direct  
2 physical loss.

3 **2. Extra Expense**

4 a. We will pay necessary “Extra Expense” you incur during  
5 the “period of restoration” that you would not have incurred if  
6 there had been no accidental direct physical loss to property at the  
7 described premises. The loss must be caused by a Covered Cause  
8 Of Loss. With respect to loss to personal property in the open or  
9 personal property in a vehicle, the described premises include the  
10 area within 100 feet of the site at which the described premises are  
11 located.

12 With respect to the requirements set forth in the preceding  
13 paragraph, if you occupy only part of the site at which the  
14 described premises are located, then the described premises means:

15 (1) The portion of the building which you rent, lease or  
16 occupy; and

17 (2) Any area within the building or on the site at which the  
18 described premises are located, if that area is the only such area  
19 that:

20 (a) Services; or

21 (b) Is used to gain access to;  
22 the described premises.

23 b. We will only pay for “Extra Expense” that occurs after the  
24 date of accidental direct physical loss and within the number of  
25 consecutive months for Loss Of Income And Extra Expense shown  
26 in the Declarations.

27 **3. Extended Loss Of Income**

28 a. If the necessary “suspension” of your “operations”  
produces a “Loss Of Income” payable under this policy, we will  
pay for the actual “Loss Of Income” you incur during the period  
that:

(1) Begins on the date property, except finished  
stock, is actually repaired, rebuilt or replaced and  
“operations” are resumed; and

(2) Ends on the earlier of:

(a) The date you could restore your “operations”,  
with reasonable speed, to the level which would



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generate the Net Income amount that would have existed if no accidental direct physical loss had occurred; or  
**(b)** 60 consecutive days after the date determined in Paragraph a.(1) above.

However, Extended Loss Of Income does not apply to “Loss Of Income” incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause Of Loss in the area where the described premises are located.

**b.** “Loss Of Income” must be caused by accidental direct physical loss at the described premises caused by any Covered Cause Of Loss.

**4. Civil Authority**

**a.** When a Covered Cause Of Loss causes damage to property other than property at the described premises, we will pay for the actual “Loss Of Income” you sustain and necessary “Extra Expense” caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

- (1)** Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
- (2)** The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause Of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

**b.** Civil Authority coverage for “Loss Of Income” will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

**c.** Civil Authority coverage for necessary “Extra Expense” will begin immediately after the time of the first action of civil

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1 authority that prohibits access to the described premises and will  
2 end:

- 3 (1) Four consecutive weeks after the date
- 4 of that action; or
- 5 (2) When your Civil Authority coverage for
- 6 "Loss Of Income" ends;
- 7 whichever is later.

8 (Exhibit A at p. A-61 and A-62)

9 The Limited Fungi, Bacteria or Virus Coverage (the "Virus Exclusion") provides:

10 **i. Fungi, Virus Or Bacteria**

11 (1) Growth, proliferation, spread or presence of "fungi" or  
12 wet or dry rot; or

13 (2) Virus, bacteria or other microorganism that induces or is  
14 capable of inducing physical distress, illness or disease; and

15 (3) We will also not pay for:

16 (a) Any loss of use or delay in rebuilding, repairing or  
17 replacing covered property, including any associated cost or  
18 expense, due to interference

19 at the described premises or location of the rebuilding,  
20 repair or replacement of that property, by "fungi", wet or dry rot,  
21 virus, bacteria or other microorganism;

22 (b) Any remediation of "fungi", wet or dry rot, virus,  
23 bacteria or other microorganism, including the cost or expense to:

24 i. Remove the "fungi", wet or dry rot, virus, bacteria or other  
25 microorganism from Covered Property or to repair, restore or  
26 replace that property;

27 ii. Tear out and replace any part of the building or other  
28 property as needed to gain access to the "fungi", wet or dry rot,  
virus, bacteria or other microorganism; or

iii. Contain, treat, detoxify, neutralize or dispose of or in any  
way respond to or assess the effects of the "fungi", wet or dry rot,  
virus, bacteria or other microorganism; or

(c) The cost of any testing or monitoring of air or property to  
confirm the type, absence, presence or level of "fungi", wet or dry  
rot, virus, bacteria or other microorganism, whether performed  
prior to, during or after removal, repair, restoration or replacement  
of Covered Property.

This exclusion does not apply:

1 (1) If “fungi”, wet or dry rot, virus, bacteria or other  
2 microorganism results from an accidental direct physical loss  
3 caused by fire or lightning; or

4 (2) To the extent coverage is provided in Paragraph 23.  
5 Fungi, Wet Or Dry Rot, under SECTION I – EXTENSIONS OF  
6 COVERAGE.

7 (Exhibit A at p. A-17 and A-18)

8 20. It is notable that the policy does not define, address, or exclude losses or  
9 physical damage or alteration related to saliva, or respiratory droplets (large or small).

10 **The COVID-19 Pandemic**

11 21. On or about December of 2019, the so-called pathogen SARS CoV-2  
12 (“COVID-19”) was first identified in humans in Wuhan, China.

13 22. As is now commonly known, in an unprecedented event that has not  
14 occurred in more than a century, a world pandemic of global proportions then ensued.  
15 By March 11, 2020, the World Health Organization officially recognized the pandemic.  
16 According to the Centers for Disease Control and Prevention, the virus has already  
17 claimed 169,870 lives in the United States, with a reported 5,422,242 confirmed cases in  
18 the United States as of August 18, 2020 at 2:36 PM. The ordinances described below  
19 were issued with multiple objectives to address a complex national crisis. The virus was  
20 clearly being transmitted at an alarming rate.

21 23. It is understood that the COVID-19 virus can be spread and transmitted  
22 through bodily fluids such as saliva, respiratory droplets, or mucus.

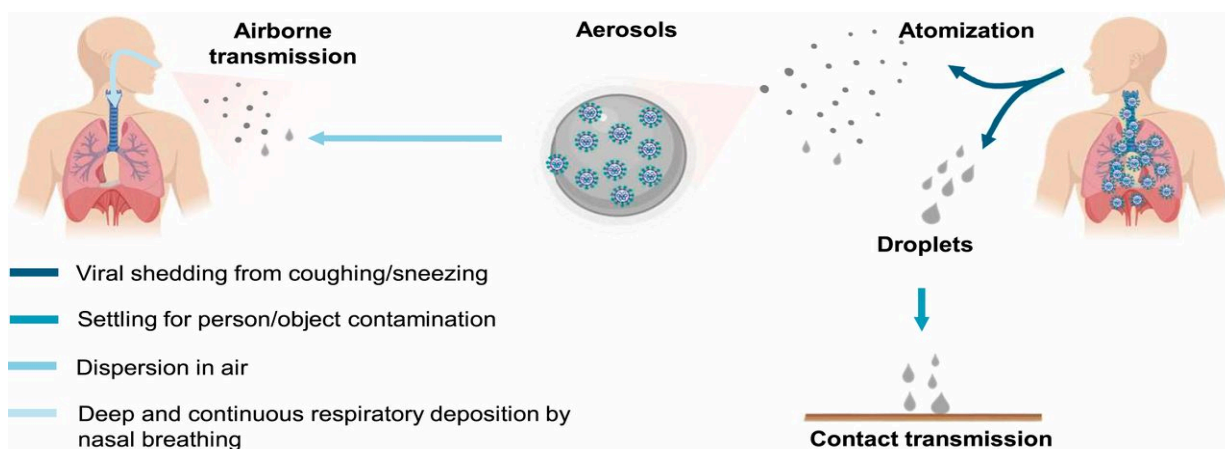
23 24. Health experts, such as the CDC, have identified two principal routes of  
24 transmission, one where the virus travels in respiratory droplets or droplet nuclei  
25 through the air from person to person, and the other where the virus may travel in saliva  
26 droplets or other human droplets and those droplets then land on nearby surfaces.  
27 Droplets, not viruses, that is the actual physical substance targeted by the ordinances. By  
28 reducing the spread of the droplets in the environment, the goal is to reduce the  
transmission of the virus that may travel in some of the droplets dispersed by infected

1 individuals as they talk, breath, sneeze, cough, etc. Emerging evidence shows that  
 2 COVID-19 may be present in saliva droplets or respiratory droplets which are formed  
 3 from mucus coating of the lung or vocal cords or droplet nuclei.<sup>1</sup> These droplets are not  
 4 viruses, but a virus or other pathogen can sometimes travel in said droplets.

5 25. The droplets, whether saliva or respiratory, can leave a human body (by  
 6 sneezing, coughing, or on a hand that has just touched a mouth or nose) and then land  
 7 on surfaces such as doorknobs, rail handles, utensils, tables, chairs, car seats, bus seats,  
 8 benches, and so forth. This kind of passage of droplets occur every day and is typically  
 9 addressed through daily cleaning protocols used by businesses, schools, institutions,  
 10 cities, and other entities. When the pandemic hit, the human droplets became a focus of  
 11 concern because they can possibly carry the virus. Some studies suggest that the  
 12 physical dimension and properties of droplets affect how the viruses which may be  
 13 carried in the droplets are carried. Droplets which are greater than 5  $\mu\text{m}$  in diameter  
 14 may land on fomites, and then be passed to individuals. Then, if the droplet contains the  
 15 COVID-19 virus, the fomite may pass the virus to an individual. Droplets smaller than 5  
 16  $\mu\text{m}$  are referred to as droplet nuclei and get aerosolized. If they contain the virus, they  
 17 can facilitate airborne transmission. Indeed, the particle size of the microscopic virus is  
 18 approximately 0.125  $\mu\text{m}$ , but the average droplet size is 5  $\mu\text{m}$ . Proportionately, the  
 19 average droplet is therefore 40 times larger than the virus, and the coalescence of  
 20 multiple droplets may form a liquid layer that is visible to the naked eye. Some saliva  
 21 droplets are also large enough to be seen by the naked eye. In other words, the droplets  
 22 have an actual physical presence and alter and damage surfaces where they are present.  
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25  
 26 <sup>1</sup> Dbouk T, Drikakis D. On coughing and airborne droplet transmission to humans. *Phys*  
 27 *Fluids* **32**, 053310 (2020); <https://doi.org/10.1063/5.0011960>

26. As such, the droplets (not the virus itself) are the real focus of ordinances seeking to limit human to fomite to human transmission and should have been the real focus of damage or loss investigation by Defendants. The droplets are of sufficient size to alter any surface they land on regardless of whether they have the virus in them. Consider the following diagram from a study conducted by the Proceedings of the National Academy of Sciences of the United States of America<sup>2</sup> showing the role of droplets in carrying virus particles:



Transmission of COVID-19. Human atomization of viruses arises from coughing or sneezing of an infected person, producing virus-containing droplets (>5  $\mu\text{m}$ ) and aerosols (<5  $\mu\text{m}$ ). Virus transmission from person to person occurs through direct/indirect contact and airborne aerosol/droplet routes. Large droplets mainly settle out of air to cause person/object contamination, while aerosols are efficiently dispersed in air. Direct and airborne transmissions occur in short range and extended distance/time, respectively. Inhaled airborne viruses deposit directly into the human respiration tract.

(Source: Fig. 4, Zhang, et al. *Identifying Airborne Transmission as the Dominant Route for the Spread of COVID-19*. PNAS June 30, 2020 117 (26) 14857-14863; first published June 11, 2020 – see footnote 2.)

27. Recent data suggests conflicting views on how much virus is present on surfaces contaminated by human saliva droplets or human respiratory droplets. The

<sup>2</sup> Zhang, et al. *Identifying Airborne Transmission as the Dominant Route for the Spread of COVID-19*. PNAS June 30, 2020 117 (26) 14857-14863; first published June 11, 2020 (<https://doi.org/10.1073/pnas.2009637117>)

1 CDC website as of August 21, 2020, states that transmission of novel coronavirus to  
2 persons from surfaces has not been documented.<sup>3</sup> On the other hand, the same CDC  
3 webpage goes on to say that the virus may remain viable in the droplets on surfaces for  
4 hours to days. *Id.*

5 28. On March 12, 2020, the Governor of the State of California Gavin Newsom  
6 banned gatherings over 250 people.

7 29. On March 16, 2020, the health departments of numerous counties,  
8 including San Francisco, San Mateo, Santa Cruz, and Santa Clara, announced, with the  
9 City of Berkeley, a legal order directing residents to shelter in place for three weeks  
10 beginning midnight March 17, 2020, to April 7, 2020. It was well recognized by all  
11 counties that part of the reason for the issuance of the orders was the need to reduce the  
12 person to person transmission of the virus and reduce the contamination of frequently  
13 contacted surfaces with the droplets that might contain the virus. Orders were then  
14 extended through May 3, 2020.

15 30. By March 19, 2020, the Governor of California issued a statewide stay at  
16 home order (“State of California Order”) that would be in effect until further notice and  
17 is still in effect as this pandemic continues.

18 31. On May 22, 2020, the Health Office of Santa Clara continued the shelter-in-  
19 place order to be in effect until at it is extended, rescinded, superseded, or amended in  
20 writing by the Health Officer.

21 32. As of March 16, 2020, under the Santa Clara Emergency Health Ordinance,  
22 entities like HealthNOW were designated as Essential Businesses with an implicit  
23 recognition of the necessity to continue to provide essential healthcare for issues. As of  
24 March 19, 2020, the State of California Order also recognized healthcare businesses like

25 \_\_\_\_\_

27 <sup>3</sup> [https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cleaning-](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cleaning-disinfection.html)  
28 [disinfection.html](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cleaning-disinfection.html)

1 HealthNOW as critical infrastructure sectors. HealthNOW, despite the challenges of  
2 substantial revenue reductions and with a reasonable expectation of business insurance  
3 to facilitate their efforts, kept its doors open to provide the exact kind of essential  
4 services recognized as essential and critical by the Santa Clara Ordinance and State of  
5 California Order.

6 33. The Santa Clara Emergency Health Ordinance and State of California  
7 Order, in an unprecedented manner, required necessary measures to keep people at  
8 home and off the streets and out of areas of public gatherings, and thereby crippled the  
9 major source of revenue (in-person visits) for these same Essential Businesses. As a  
10 direct and proximate result of this Order, access to businesses like HealthNOW,  
11 including Essential Businesses like HealthNOW, have been specifically prohibited  
12 except for urgent care, emergency visits, and special medical needs.

13 34. It is extremely important to note that the various stay-at-home and other  
14 civil ordinances were put in place not to eliminate the virus, but aimed at eliminating the  
15 possible spread of virus through various transmission methods and community spread.

16 35. COVID-19 is particularly unique given the widespread evidence that  
17 community spread of the disease is possible by COVID-19 infected individuals who do  
18 not have any physical symptoms. Thus, it is even more difficult for any business to  
19 gauge the danger and threat of having any individuals operating in or visiting physical  
20 locations. The WHO<sup>4</sup> has concluded that the “extent of truly asymptomatic infection in  
21 the community remains unknown.” It is also believed that both asymptomatic  
22 transmission (“people who are infected who never develop symptoms”) and pre-  
23 symptomatic transmission (by “people who are infected but have not developed  
24 symptoms yet”) are possible and widespread in the current COVID-19 pandemic. In the

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27 <sup>4</sup> <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>

1 context of asymptomatic transmission, the travel and path of respiratory droplets  
2 became a concern for cities and counties who were looking for any way to reduce the  
3 spread of the virus, and who believed that reducing droplet spread would reduce viral  
4 transmission.

5 36. Various studies, summarized by the WHO<sup>5</sup>, have identified multiple  
6 methods of transmission, including:

7 a. **Contact:** transmission of COVID-19 can occur through “direct, indirect, or  
8 close contact with infected people.”

9 b. **Respiratory Secretions, Droplets, and Saliva:** transmission of COVID-19 is  
10 possible when respiratory secretions, droplets, or saliva are expelled when people  
11 cough, sneeze, talk, or open their mouths for any reason, but only in cases where the  
12 droplets contain the pathogenic COVID-19 particles.

13 c. **Airborne:** there is now evidence from various studies that COVID-19  
14 infectious agents can be disseminated in the air by “droplet nuclei (aerosols) which are  
15 separate and distinct from the virus that remain infectious if they contain the virus when  
16 suspended in air over long distances and time.” Various outbreak reports of COVID-19  
17 point to airborne spread of the virus through respiratory droplet or droplet nuclei,  
18 especially in smaller, indoor setting, exacerbated by poor ventilation and airflow.

19 d. **Fomites:** Respiratory Secretions, droplets, saliva, and other biological  
20 samples can land on everyday surfaces and objects, creating so-called fomites.

21 e. **Other Biological Samples:** Urine, feces, blood have been found to contain  
22 viable COVID-19 particles, thus opening the possibility of further transmission of the  
23 disease.

24  
25 \_\_\_\_\_

27 <sup>5</sup> <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>



1 37. Thus, as set forth above, when present in human respiratory or saliva  
2 droplets, COVID-19 has been transmitted by human-to-human interaction, contact with  
3 fomites, and by various other modes of transmission in the State of California, County of  
4 Santa Clara.

5 38. The threat of the presence of COVID-19 particles, or in the alternative,  
6 human droplets which themselves damage surfaces and alter surfaces and which are at  
7 risk for having virus particles, renders items at physical properties, like those at  
8 Plaintiff's property, unsafe and physically damaged and/or altered.

9 39. The threat of the presence of any COVID-19 particles, or in the alternative,  
10 human droplets which themselves damage surfaces and alter surfaces and which are at  
11 risk for having virus particles, constitutes direct physical harm, physical damage, and  
12 physical loss to Plaintiff's property or surrounding property.

13 40. It is important to note that the presence of possibly infected respiratory  
14 droplets, saliva, or airborne particles, constitutes physical damage to Plaintiff's property  
15 or surrounding property. Said droplets, with or without virus particles, have physically  
16 changed and physically damaged Plaintiff's property or surrounding property. Indeed,  
17 human droplets have actual physical attributes that alter surfaces and make surfaces  
18 essentially dirty. A respiratory droplet may be smaller and have a more mucus like  
19 quality, whereas a saliva droplet may be larger. A droplet nuclei is even smaller and can  
20 be aerosolized. Naturally produced droplets, without a virus, contain various cell types  
21 including epithelial cells, immune system cells, and electrolytes such as Na<sup>+</sup>, K<sup>+</sup>, and Cl<sup>-</sup>.<sup>6</sup>

22 41. The presence of humans at any physical property is a physical threat given  
23 the various modes of transmission possible for COVID-19, exacerbated by the fact that  
24

25  
26 <sup>6</sup> Atkinson J, Chartier Y, Pessoa-Silva CL, et al., editors. Natural Ventilation for Infection  
27 Control in Health-Care Settings. Geneva: World Health Organization; 2009. Annex C,  
28 Respiratory droplets. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK143281/>

1 COVID-19 can be held and transmitted by individuals with no known physical  
2 symptoms. Thus, the mere presence of any humans on physical properties makes  
3 physical locations hazardous, unsafe, and unstable, especially given the wide-ranging  
4 modes of transmission for COVID-19 and the nature of human droplets.

5 42. Against this backdrop and given concern over the role of human droplets  
6 in COVID-19 transmission, State and Local civil authority ordinances were issued  
7 suspending normal, in-person, physical visitation of business properties to curb the  
8 threat of further spread and transmission of COVID-19 by any of the currently-known  
9 modes of transmission.

10 **Rapid Denial of HealthNOW’s Claims In Apparent Bad Faith**

11 43. In good faith, HealthNOW promptly notified Defendants on April 14,  
12 2020, at 12:50 PM, of their concerns and the risk for loss and whether there was coverage  
13 for the losses under the Policy. Within a few hours that same day, HealthNOW was  
14 informed by a State Farm agent as follows:

15 “That said, as your risk manager, I want to share with you what  
16 I have been discussing with other business clients. In general, a  
17 claim, including business interruption, requires a ‘direct, physical  
18 loss” by at least one of the covered “perils’ (fancy word for cause of  
19 loss). Some of the obvious causes of loss include fire, windstorm,  
20 theft, falling object, etc. but **not virus**. [emphasis added]

21 [. . .]

22 I cannot prevent you, or any client, from filing a claim. That is  
23 your right as a policyholder. However, because of our longstanding  
24 relationship, I would not be fulfilling my role as advisor and risk  
25 manager to simply provide you with a phone number for claims  
26 without more context.”

27 Despite being told that State Farm was going to deny the claim on their Policy, Plaintiff  
28 submitted the claim on Wednesday, April 15, 2020 at 4:51 PM. Thereafter, through the  
following events, their claim was rejected:

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- a. On Tuesday, April 21, 2020 at 10:20 AM, HealthNOW’s representative received a phone call from (844) 458-4300 ext. 972-657-2464, purportedly from a State Farm Claims Specialist Corrin Torrez.
- b. Ms. Torrez advised HealthNOW that the HealthNOW claim would not be covered under the current policy despite the government mandated shelter-in-place order which appeared to trigger coverage. HealthNOW’s representative asked Mr. Torrez what is covered on the policy, and she read off a list of covered scenarios and emphasized the supposed policy virus exclusion. At the time of the call, HealthNOW’s representative felt that Ms. Torrez was denying her claims outright during the phone conversation because the majority of the conversation focused on the supposed policy virus exclusion rather than discussing how HealthNOW’s coverage would apply in the situation.
- c. Shortly later the next day, on April 22, 2020 at 8:22 AM, HealthNOW received an email from State Farm, again denying coverage. The analysis and explanation appeared boilerplate, and despite signed by Ms. Corrin Torrez, appears to have been generated as a matter of form.

44. By April 7, 2020, the world was still getting its collective resources, researchers, specialists, scientists, and experts around the science of the virus transmission and the role of human droplets.

45. On information and belief and based on actual communications, State Farm’s conduct above was ratified, ordered, and encouraged by officers of State Farm in order to effect a strategy to rapidly deny, deflect, and minimize COVID-19 related claims and losses for State Farm. In fact, on information and belief, Plaintiff’s counsel has learned that there are allegations that on or about March 17, 2020, members of the insurance industry are believed to have sent companywide emails to their claims offices which were then distributed to agents and representatives in different parts of California

1 directing agents and representatives to spread the word that there was no coverage and  
2 dissuade businesses from submitting claims. There is also emerging evidence of  
3 attempts to prematurely lobby the California Department of Insurance on these issues.

4 46. As of August 24, 2020, Santa Clara County is still under the statewide  
5 closure ordered by Governor Newsom on July 13, 2020.

6 **State Farm Has a Duty To Diligently Search For Evidence That Supports Plaintiff’s**  
7 **Claim, And Failed To Do So.**

8 47. According to California law, an insurance company, like State Farm, has a  
9 duty to, in good faith, fully investigate the claims and considerations of its clients who  
10 faithfully pay premiums and uphold all obligations for coverage under the policy. The  
11 insurance company must investigate all possible grounds of coverage, and in order to  
12 perform a reasonable and proper investigation, an insurance company must also  
13 investigate all bases for the insured’s claim. As this Amended Complaint thoroughly  
14 demonstrated, State Farm should have conducted a fair evaluation and thorough  
15 investigation of the exact nature of how COVID-19 is transmitted before rapidly  
16 concluding there is no coverage and denying Plaintiff’s claim. A fair evaluation, and  
17 thorough investigation was necessary, but State Farm chose not to do one. Indeed, a  
18 proper evaluation would have revealed that the terms of the All-Risk Policy should have  
19 provided multiple bases for coverage warranting further expert evaluation, including  
20 loss or damage caused by droplets, loss or damage caused by the virus, and also  
21 considerations of whether there was business income loss and suspension of operations  
22 due to loss or damage at the subject premises or surrounding areas controlling access to  
23 the premises.

24 48. It is well recognized that, “[w]hen investigating a claim, an insurance  
25 company has a duty to diligently search for evidence which support its insured’s claim.  
26 If it seeks to discover only the evidence that defeats the claim it holds its own interest  
27 above that of the insured.” In this case, State Farm issued blanket denials of all claims,

1 including Plaintiff's, without fulfilling its obligation to conduct a full, fair, and thorough  
2 investigation of the claims with evidence.

3 **FIRST CAUSE OF ACTION**

4 **(Breach of Contract By Plaintiff Against Defendant State Farm)**

5 49. Plaintiff re-alleges and incorporates by reference the allegations contained  
6 in the preceding paragraphs of this Complaint, as though fully set forth herein.

7 50. Plaintiff was insured under a valid insurance policy, the aforementioned  
8 and described Policy, issued by State Farm which was in effect on the date the loss  
9 occurred.

10 51. Plaintiff paid consideration in the form of premiums for Policy, and have  
11 faithfully performed all obligations required to be performed by them under the terms  
12 of the Policy, except to the extent performance may have been excused by, among other  
13 things, State Farm's bad faith conduct and breach of the insurance policy.

14 52. State Farm breached the terms of the contract by not providing requisite  
15 documentations required for submitting claims, by prematurely and without basis or  
16 reasonable good faith analysis denying and/or "closing" the claim without proper  
17 analysis or explanation, and by ultimately failing to pay and/or underpaying monies  
18 due under the contract and by forcing Plaintiff to file this action.

19 53. Plaintiff has demanded that State Farm pay, and State Farm has declined to  
20 pay, Plaintiff's claims for damages and losses of business income and additional  
21 expenses due to Civil Authority, specifically the issuance of the Santa Clara Ordinance  
22 and State of California Order which limited public access to Plaintiff's property.

23 54. As a direct, proximate, and legal result of State Farm's breach of contract,  
24 Plaintiff has been, and continues to be, damaged in an amount in excess of the  
25 jurisdictional limits of this Court, including but not limited to: damage suffered to their  
26 business caused by the loss of business income and additional expenses created by the  
27 Santa Clara Ordinance and State of California Order, the loss of benefits due under the

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1 contract, and consequential damages including interest on the monies Plaintiff could  
2 and should have received promptly, but which they did not receive in a timely manner  
3 as a result of State Farm’s breach of the contract, as well as other fees, expenses, and  
4 costs to be proven at trial.

5 55. Plaintiff has also sustained other economic losses as a direct, proximate,  
6 and legal result of State Farm’s conduct, in an amount to be proven at trial.

7 **SECOND CAUSE OF ACTION**

8 **(Breach Of The Implied Covenant Of Good Faith And Fair Dealing By Plaintiff**  
9 **Against Defendant State Farm)**

10 56. Plaintiff re-alleges and incorporates herein by reference the allegations  
11 contained in the preceding paragraphs of this Complaint, as though fully set forth  
12 herein.

13 57. Plaintiff’s insurance policy at issue in this action, the aforementioned  
14 Policy, contains an implied covenant of good faith and fair dealing, whereby State Farm  
15 agreed to perform its obligations under the Policy in good faith, to deal fairly with  
16 Plaintiff, and not to unreasonably deprive Plaintiff of the benefits due under the  
17 insurance policy.

18 58. State Farm tortiously breached the implied covenant of good faith and fair  
19 dealing arising from the insurance contract by unreasonably denying or withholding  
20 benefits due under the Policy, by failing to conduct fair and objective claims  
21 investigation and issuing preordained denials and pre-claim communications aimed to  
22 discourage claims, by failing to treat Plaintiff fairly and by other conduct, including but  
23 not limited to that expressly set forth in this Complaint, after accepting insurance  
24 premiums from Plaintiff. On information and belief, it appears from the pattern of pre-  
25 denial and cut and pasted communications by agents that State Farm was, and is,  
26 executing a directive to deny COVID-19 claims systematically.

1 59. Despite Plaintiff's request for coverage and demand for payment of the  
2 compensation for the business disruption caused by the Santa Clara Ordinance and State  
3 of California Order, State Farm denied coverage and blocked access to information and  
4 engaged in a continuous pattern of tortious conduct which has and will cause Plaintiff  
5 continued damages.

6 60. State Farm engaged and continue to engage in the course of conduct to  
7 further their own economic interest, including and in violation of their obligations to  
8 Plaintiff. This conduct includes, but is not limited to that conduct alleged in this  
9 Amended Complaint and the following:

10 a. Failing to perform competent and/or complete investigation of the request  
11 for coverage;

12 b. Misrepresenting the content of the Policy to Plaintiff;

13 c. Deliberately, unjustifiably, and unreasonably denying coverage and hiding  
14 essential information in an effort to discourage Plaintiff from pursuing their full policy  
15 and benefits;

16 d. Refusing to pay any or adequate insurance benefits which a reasonable  
17 person would have believed Plaintiff was entitled to receive;

18 e. Failing to provide promptly a reasonable explanation of the basis relied on  
19 in the insurance policy, in relation to the facts or applicable law, for the denial of  
20 Plaintiff's claims, and instead providing a boilerplate, inapplicable explanation; and

21 f. Plaintiff is informed, believe and thereon alleges, that State Farm has  
22 breached its duty of good faith and fair dealing owed to Plaintiff by other acts or  
23 omissions of which Plaintiff is presently unaware and which will be shown according to  
24 proof at the time of trial.

25 61. Without any reasonable basis for doing so, and with full knowledge and/or  
26 conscious disregard of the consequences, State Farm has failed and refused to act in  
27 good faith or act fairly toward Plaintiff. Furthermore, State Farm has in bad faith failed

1 and refused to perform their obligations under the insurance policy and under the laws  
2 of the State of California.

3 62. State Farm engaged in conduct that was malicious, fraudulent, and  
4 oppressive. Indeed, State Farm engaged in a scheme designed to quickly deny Plaintiff’s  
5 claim. State Farm unreasonably denied and/or “closed” Plaintiff’s claim without  
6 investigating the actual cause of the loss and business interruption—i.e., the Civil  
7 Authority orders themselves and their multiple expressly stated policy objectives  
8 including preventing overrun of the health system and the City, County and State  
9 concern for surface contamination and damage and person to person transmission.

10 63. As a direct, proximate, and legal result of said breaches of the covenants of  
11 good faith and fair dealing by State Farm, Plaintiff has been damaged and continues to  
12 incur each and every day substantial and foreseeable consequential and incidental  
13 damages, including loss of income and net profits and other expenses related to  
14 complying with the Santa Clara Ordinance and State of California Order, and other costs  
15 in an amount according to proof. Plaintiff was and will be forced to expend attorneys’  
16 fees and costs in pursuing relief to which they are entitled as a matter of law. Pursuant  
17 to *Brandt v. Superior Court* (1985) 37 Cal.3d 813, Plaintiff is entitled to attorneys’ fees and  
18 costs reasonably incurred to compel the payment of benefits due under the insurance  
19 policies.

20 64. As a further direct, proximate and legal result of the wrongful conduct of  
21 State Farm, Plaintiff has also sustained other economic damages, as set forth above, and  
22 other damages in an amount to be proven at trial.

23 65. On the basis of all of the facts alleged herein, State Farm’s conduct and  
24 actions were despicable, done maliciously, oppressively, and fraudulently, with the  
25 intent to deprive Plaintiff of insurance benefits and to cause injury to Plaintiff. State  
26 Farm’s conduct and actions were further done with a willful and conscious disregard of  
27 Plaintiff’s rights, thereby subjecting Plaintiff to unjust hardship and distress in the midst



1 of a global pandemic where Plaintiff will play a critical role in economic recovery of  
2 other businesses. State Farm, its officers, directors, and managing agents were  
3 personally involved in the decision-making process with respect to the misconduct  
4 alleged herein and to be proven at trial, as suggested already, even prior to discovery, by  
5 verbal and written communications showing the appearance of a pre-planned, rapid  
6 denial of COVID-19 claims.

7 66. Plaintiff alleges on information and belief that State Farm, through their  
8 representatives, officers, directors, and managing agents, authorized and ratified each  
9 and every act on which Plaintiff's allegations of punitive damages herein are based  
10 upon. On that basis, pursuant to California Civil Code § 3294, Plaintiff is entitled to an  
11 award of exemplary and punitive damages in an amount adequate to make an example  
12 of, and to punish and deter State Farm.

13 **THIRD CAUSE OF ACTION**

14 **(Bad Faith Denial By Plaintiff Against Defendant State Farm)**

15 67. Plaintiff re-alleges and incorporates herein by reference the allegations  
16 contained in the preceding paragraphs of this Complaint, as though fully set forth  
17 herein.

18 68. State Farm in bad faith failed or refused to perform their obligations under  
19 the Policy and under the laws of California because State Farm has put its own interests  
20 above those of Plaintiff.

21 69. State Farm denied Plaintiff's claim in bad faith, among other things, when  
22 State Farm: (a) failed or refused to perform a fair, objective, and thorough investigation  
23 of the claim as required by California Insurance Code; (b) raised coverage defenses that  
24 were factually and/or legally invalid, (c) improperly denied coverage by creating unduly  
25 restrictive claim interpretations on the terms of the Policy, and ultimately forced Plaintiff  
26 to engage in litigation to recover the amounts due under the Policy.

1           70.     On information and belief, Plaintiff alleges that there are numerous other  
2 individuals, business entities, and other groups insured by State Farm who were or are  
3 similarly situated by Plaintiff in that they were denied coverage using similar unlawful  
4 tactics used to deny Plaintiff’s claim coverage. At such time as Plaintiff learn the names  
5 of such parties, Plaintiff may seek leave of court to join such persons as additional  
6 Plaintiffs in this action.

7           71.     Based on the foregoing allegations, Plaintiff alleges State Farm has  
8 committed institutional bad faith and that what Plaintiff experienced is not an isolated  
9 incident but rather a systematic and organized unfair practices perpetrated against its  
10 clients. The pattern of unfair practices constitutes intentional wrongful conduct that is  
11 institutionalized in State Farm’s established company policy.

12           72.     As a proximate result of State Farm’s bad faith conduct above, Plaintiff has  
13 suffered and will continue to suffer damages. These damages include interest on the  
14 withheld and unreasonably delayed payments due under the policy and other special  
15 economic and consequential damages, in an amount to be proven at trial.

16           73.     Plaintiff was forced to retain legal counsel to obtain benefits due under its  
17 policy as a result of State Farm’s bad faith conduct. As such, Plaintiff is entitled to  
18 recover from State Farm attorney fees and other reasonable costs of litigation incurred  
19 by Plaintiff in order to obtain the benefits of the policy.

20           74.     On the basis of all of the facts alleged herein, State Farm’s conduct and  
21 actions were despicable, done maliciously, oppressively, and fraudulently, with the  
22 intent to deprive Plaintiff of insurance benefits and to cause injury to Plaintiff. State  
23 Farm’s conduct and actions were further done with a willful and conscious disregard of  
24 Plaintiff’s rights, thereby subjecting Plaintiff to unjust hardship and distress in the midst  
25 of a global pandemic where Plaintiff is serving an essential and critical function. State  
26 Farm, its officers, directors, and managing agents were personally involved in the  
27 decision-making process with respect to the misconduct alleged herein and to be proven

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1 at trial, as suggested already, even prior to discovery, by verbal and written  
2 communications showing the appearance of a pre-planned, rapid denial of COVID-19  
3 claims.

4 75. Plaintiff alleges on information and belief that State Farm, through its  
5 representatives, officers, directors, and managing agents, authorized and ratified each  
6 and every act on which Plaintiff's allegations of punitive damages herein are based  
7 upon. On that basis, pursuant to California Civil Code § 3294, Plaintiff is entitled to an  
8 award of exemplary and punitive damages in an amount adequate to make an example  
9 of, and to punish and deter State Farm.

10 **FOURTH CAUSE OF ACTION**

11 **(Declaratory Relief By Plaintiff Against Defendant State Farm)**

12 76. Plaintiff re-alleges and incorporates herein by reference the allegations  
13 contained in the preceding paragraphs of this Complaint, as though fully set forth  
14 herein.

15 Under California Code of Civil Procedure § 1060 et seq., the Court may declare  
16 rights, status, and other legal relations whether or not further relief is or could be  
17 claimed. It is also likely that the COVID-19 pandemic may trigger subsequent claims by  
18 Plaintiff under this Policy if the pandemic occurs in cycles, as has been predicted by  
19 some health experts.

20 77. An actual controversy has arisen between Plaintiff and State Farm as to the  
21 rights, duties, responsibilities, and obligations of the parties in that Plaintiff contends  
22 that and State Farm denies that : (1) the civic orders issued by the Government of State of  
23 California and the County of Santa Clara constitute a prohibition of access to Plaintiff's  
24 business or so-called described premises under the Policy; (2) the prohibition of access to  
25 the described premises by the various orders triggers the Civil Authority business  
26 income loss and additional expenses portion of the Policy; (3) said civic orders trigger  
27 coverage without applicable exclusion because the civil authorities in question were

1 concerned for ongoing damage including the presence of human droplets and/or viral  
2 particles that might be in said droplets or otherwise present outside of the business; and  
3 (4) the Policy provides coverage to Plaintiff for such orders. Resolution of the duties,  
4 responsibilities, and obligations of the parties is necessary as no full adequate remedy at  
5 law exists given the potential ongoing and cyclical nature of the pandemic and the  
6 damage that can occur with these orders, and a declaration of the Court is needed to  
7 resolve the dispute and controversy.

8 **FIFTH CAUSE OF ACTION**

9 **(Unjust Enrichment By Plaintiff Against Defendant State Farm)**

10 78. Plaintiff re-alleges and incorporates herein by reference the allegations  
11 contained in the preceding paragraphs of this Complaint, as though fully set forth  
12 herein.

13 79. As set forth above, Plaintiff may lose the financial benefit of the amounts  
14 that Plaintiff has paid for those portions of the policy that were illegal, unfair, or  
15 deceptive because of State Farm’s unlawful conduct.

16 80. State Farm was unjustly enriched at the expense of and to the detriment of  
17 Plaintiff because of their wrongful acts and omissions.

18 81. Specifically, State Farm was unjustly enriched when State Farm offered  
19 insurance coverages through its policy which purports and appears to provide  
20 coverages for loss of business income due to Civil Authority or civil ordinance, but  
21 instead, State Farm refused to fulfill its financial obligation to Plaintiff and denied  
22 coverage in a rapid fashion without any evidence of properly conducting review or  
23 investigation to the claims, suggesting that State Farm has no intention to pay the  
24 insurance coverage owed to Plaintiff.

25 82. As a direct and proximate result of State Farm’s conduct, Plaintiff has  
26 suffered damages and is entitled to restitution in an amount to be proven at trial.  
27 Plaintiff seeks restitution from State Farm and seek an order from the Court to disgorge

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1 all monies paid to State Farm as a result of the unlawful, illegal, and/or fraudulent  
2 business practices.

3 83. Plaintiff has no adequate remedy at law.

4 **SIXTH CAUSE OF ACTION**

5 **(Violation Of California Bus. & Prof. Code § 17200 Et Seq. By Plaintiff Against**  
6 **Defendant State Farm)**

7 84. Plaintiff re-alleges and incorporates herein by reference the allegations  
8 contained in the preceding paragraphs of this Complaint, as though fully set forth  
9 herein.

10 85. Section 17200 of the California Business & Professions Code (“Unfair  
11 Competition Law” or “UCL”) prohibits any “unlawful,” “unfair,” and “fraudulent”  
12 business practice.

13 86. Section 17200 specifically prohibits any “*unlawful* . . . business act or  
14 practice.” State Farm has violated the UCL’s prohibition against engaging in unlawful  
15 act or practice by, *inter alia*, denying Plaintiff’s claim for coverage and such action  
16 violates California state laws.

17 87. By improperly denying Plaintiff’s claim, State Farm violated California’s  
18 Unfair Insurance Practice Acts (UIPA), codified as California Insurance Code Section  
19 790.03(h), including but not limited to the following unfair claim practices:

20 a. Misrepresenting to Plaintiff pertinent facts or insurance policy provisions  
21 relating to any coverages at issue;

22 b. Issuing a boilerplate letter in record time and appearing to have pre-  
23 ordained a denial of claims as part of a systemwide campaign by State Farm to dissuade  
24 policyholders from even submitting claims; and

25 c. Failing to adopt and implement reasonable standards for the prompt  
26 investigation and processing of claims arising under insurance policies, not spending  
27

1 time to carefully read the language of their own Policy and failing to identify and  
2 analyze what actually triggered the Civil Authority ordinances or orders in question.

3 88. It is also believed that State Farm is attempting to contract around  
4 California Insurance Code by attempting to enforce an unenforceable virus exclusion  
5 even before a claim was submitted and ultimately in contravention of a covered peril  
6 (i.e. the effects of a civil ordinance) which was the primary and proximate cause of  
7 Plaintiff’s business losses to date. State Farm’s conduct is therefore unlawful, and the  
8 exclusion clause unenforceable.

9 89. Section 17200 also prohibits any “*unfair . . . business act or practice.*” As  
10 described in the preceding paragraphs, State Farm engaged in the unfair business  
11 practice of denying business disruption insurance claims even though State Farm’s  
12 policy language covers such losses and attempting to dissuade even the submission of  
13 the claims by disseminating false information about what the Policy covers.

14 90. State Farm’s business practices, as detailed above, are unethical,  
15 oppressive, and unscrupulous. They violate fundamental policies of this State including  
16 the very policies underlying the Santa Clara Ordinance and State of California Order  
17 which aim to protect the general population and the County for a finite period of time  
18 but not cause unreasonable closure or business loss for businesses. Further, any  
19 justifications for State Farm’s wrongful conduct are outweighed by the adverse effects of  
20 such conduct, which in this case is jeopardizing operations of a business that will play a  
21 critical role in recovery of the local economy by catalyzing the recovery and growth of  
22 startups. Thus, State Farm is engaged in unfair business practices prohibited by  
23 California Business & Professions Code §17200 et seq.

24 91. Section 17200 also prohibits any “*fraudulent business act or practice.*”  
25 State Farm violated this prong of the UCL by disseminating and/or agreeing to  
26 disseminate, through State Farm’s website and other promotional channels, misleading  
27 and partial statements about available business disruption or closure coverages that

1 have a tendency to mislead the public, and also at the time they marketed their policies,  
2 misleading consumers to believe they would be insured for this kind of business  
3 interruption. Further, State Farm violated this prong of the UCL by omitting material  
4 information about business disruption coverages with the intent to induce reliance by  
5 consumers to not pursue such claims even though State Farm has an obligation to  
6 compensate them under their Policy. State Farm’s claims, nondisclosures, and  
7 misleading statements concerning business closure coverage and/or lack thereof, as  
8 more fully set forth above, were false, misleading, and/or likely to deceive the  
9 consuming public within the meaning of California Business and Professions Code  
10 §17200. They were and are intended to dissuade businesses from seeking coverage.

11 92. Section 17200 also prohibits any “unfair, deceptive, untrue, or misleading  
12 advertising.” For the reasons set forth above, State Farm engaged in unfair, deceptive,  
13 untrue, and misleading advertising in violation of California Business & Professions  
14 Code § 17200.

15 93. State Farm’s conduct caused and continues to cause substantial injury to  
16 Plaintiff. Plaintiff has suffered an injury in fact and lost money as a result of State Farm’s  
17 unfair conduct.

18 94. Additionally, pursuant to California Business and Professions Code §  
19 17203, Plaintiff seeks an order requiring State Farm to immediately cease such acts of  
20 unlawful, unfair, and fraudulent business practices and requiring State Farm to pay the  
21 monies owed to Plaintiff.

22 **SEVENTH CAUSE OF ACTION**

23 **(Injunctive Relief Under Bus. & Prof. Code § 17200 Et Seq. By Plaintiff Against**  
24 **Defendant State Farm)**

25 95. Plaintiff re-alleges and incorporates herein by reference the allegations  
26 contained in the preceding paragraphs of this Complaint, as though fully set forth  
27 herein.

1 96. Upon information and belief, Plaintiff alleges that unless enjoined by the  
2 order of the Court, State Farm will continue their unlawful practices of denying  
3 coverages to policyholders with legitimate claims just like Plaintiff who are literally  
4 trying to survive by the day due to the COVID-19 global pandemic emergency. No  
5 adequate remedy exists at law for the injuries alleged herein, and Plaintiff will suffer  
6 great and irreparable injury if State Farm’s conduct is not immediately enjoined and  
7 restrained.

8 97. State Farm wrongfully denied Plaintiff’s insurance claim without any  
9 conducting a proper claim review and investigation, and likely doing so to avoid their  
10 financial obligations to Plaintiff and their policyholders. Given the uncertainty of when  
11 the pandemic emergency can truly end and the likely continued effect of the closure  
12 orders, it is foreseeable for Plaintiff to have similar and additional insurance claims in  
13 the future, and State Farm could use similar tactics to deny coverage to Plaintiff similar  
14 to the situation led to this instant action. If State Farm’s conduct is not restrained or  
15 enjoined, Plaintiff will suffer great and irreparable harm, as it has already paid the  
16 premium due for the insurance policy, and State Farm seem committed to continuing  
17 their unlawful practices of erroneously denying claims and will likely continue to do so  
18 without an injunction from the Court.

19 98. Plaintiff has no adequate remedy at law for the threatened injury.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiff prays for judgment against Defendant as follows:

- 22 1. For general, compensatory damages, plus pre-judgment interest and other  
23 damages according to proof;  
24 2. For special and consequential damages;  
25 3. For punitive and exemplary damages according to proof and as applicable under  
26 the law;



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- 4. For restitutionary disgorgement of all profits Defendant obtained as a result of unlawful, unfair, and/or fraudulent business practices;
- 5. For an appropriate injunction;
- 6. For attorneys’ fees and costs of suit herein;
- 7. For pre-judgment interest as provided for by applicable law; and
- 8. For such further relief as the Court may deem just and proper.

Respectfully submitted,

DATED: August 24, 2020

SANJIV N. SINGH, A PROFESSIONAL LAW CORPORATION

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