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

FRANKLIN EWC, INC. and
KATHY FRANKLIN,

Plaintiffs,

v.

THE HARTFORD FINANCIAL SERVICES
GROUP, INC., SENTINEL INSURANCE
COMPANY, LTD., and Does 1 through 10,
inclusive,

Defendants.

Case No.:

NOTICE OF REMOVAL

[REMOVAL FROM THE SUPERIOR
COURT OF THE STATE OF CALIFORNIA,
COUNTY OF CONTRA COSTA, CASE NO.
C20-00888]

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendants The Hartford Financial Services Group, Inc. (“HFSG”) and Sentinel Insurance Company, Ltd. (“Sentinel”) (together, “Defendants”)¹ hereby remove the above-captioned action from the Superior Court of the State of California, County of Contra Costa, to the United States District Court for the Northern District of California. Defendants remove this case based on diversity of citizenship in accordance with 28 U.S.C. § 1332. In support of this Notice of Removal, Defendants state as follows.

I. INTRODUCTION

1. On May 21, 2020, Plaintiffs Franklin EWC, Inc. (“Franklin EWC”) and Kathy Franklin (together, “Plaintiffs”) commenced this action in the Superior Court of the State of California, County of Contra Costa, with the filing of a Complaint, assigned Case No. C20-00888. *See* Ex. A, Complaint (“Compl.”). Plaintiffs served Defendants on June 3, 2020.² This Notice of Removal is timely filed within thirty (30) days of service, in accordance with 28 U.S.C. § 1446(b).

2. In their Complaint, Plaintiffs allege that Franklin EWC “owns, operates, manages, and/or controls the waxing salon known as European Wax Center – Fresno – Riverpark (‘EWC Fresno’)” located in Fresno, California. Compl. ¶ 20; *see also id.* ¶ 1. Plaintiffs allege that “[b]eginning on March 19, 2020, EWC Fresno was forced to close its doors to the public because of a series of orders issued by the State of California (‘Closure Orders’),” which “prohibited customers from accessing EWC Fresno’s premises due to the Coronavirus Disease 2019 (‘COVID-19’) pandemic.” Compl. ¶ 1. Plaintiffs say that “[a]s a result, Plaintiffs suffered substantial financial losses and had to let go approximately 30 workers.” *Id.* Plaintiffs seek to recover those

¹ HFSG consents to removal of this action but does not admit it is an appropriate party to this action. The insurance policy at issue in this action was issued to Plaintiff Franklin EWC, Inc. by Sentinel, not HFSG. HFSG fully reserves all rights.

² The Complaint also identifies “Does 1 through 10” as Defendants.” “In determining whether a civil action is removable on the basis of diversity jurisdiction under section 1332(a) of [Title 28], the citizenship of defendants sued under fictitious names shall be disregarded.” 28 U.S.C. § 1441(b)(1). Accordingly, “Does 1 through 10” are irrelevant to the jurisdictional analysis. *See Gardiner Family, LLC v. Crimson Resource Mgmt. Corp.*, 147 F. Supp. 3d 1029, 1036 (E.D. Cal. 2015).

1 purported “substantial financial losses” in this case, as well as other damages and declaratory and
2 injunctive relief.

3 3. The Complaint asserts nine causes of action against Defendants arising out of an
4 insurance policy contract between Franklin EWC and Sentinel bearing policy number
5 21SBARS4714: (1) breach of contract, (2) breach of the covenant of good faith and fair dealing,
6 (3) bad faith denial of insurance claim, (4) unfair business practices, (5) fraudulent
7 misrepresentation, (6) constructive fraud, (7) unjust enrichment, (8) declaratory relief, and (9)
8 injunctive relief. *See generally* Compl.

9 **II. BASIS FOR REMOVAL**

10 4. Defendants remove this case based on diversity of citizenship in accordance with
11 28 U.S.C. § 1332, as this action involves a dispute between citizens of different states, and the
12 amount in controversy exceeds \$75,000, exclusive of interest and costs. *See* U.S.C. §§ 1332, 1441,
13 1446. Indeed, as explained further below, Plaintiffs are citizens of California, Defendants are
14 citizens of Connecticut and Delaware,³ and the amount in controversy exceeds \$75,000.

15 **A. There is Complete Diversity of Citizenship Between the Parties**

16 5. Plaintiffs allege that Franklin EWC is a California corporation with its principal
17 place of business in California. *See* Compl. ¶¶ 1, 20. Franklin EWC is thus a citizen of California.
18 *See* 28 U.S.C. § 1332(c)(1).

19 6. Plaintiffs allege that Kathy Franklin is a resident of California and is the sole owner
20 and operator of Franklin EWC. *See* Compl. ¶ 21. Ms. Franklin is thus a citizen of California.

21 7. HFSG is a corporation incorporated in the state of Delaware with its principal place
22 of business in Connecticut. *See id.* ¶ 22. It is a publicly traded holding company that owns
23 Sentinel, and had no direct involvement or participation in any of the matters alleged in the
24 Complaint. Sentinel is a Connecticut corporation with its principal place of business in Hartford,
25 Connecticut. *See id.* ¶ 23. HFSG and Sentinel are thus citizens of Delaware and Connecticut.

26
27
28 ³ As explained in footnote 2 above, “Does 1 through 10” are irrelevant to the jurisdictional analysis.

8. Accordingly, there is complete diversity of citizenship between Plaintiffs and Defendants.

B. The Amount in Controversy Exceeds \$75,000

9. Under 28 U.S.C. § 1332, diversity subject matter jurisdiction requires that the matter in controversy “exceed[] the sum or value of \$75,000, exclusive of interest and costs[.]” Where, as here, a complaint does not seek a specific amount of damages, a defendant’s “notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014). “Evidence establishing the amount is required by § 1446(c)(2)(B) only when the plaintiff contests, or the court questions, the defendant’s allegation.” *Id.* Although Plaintiffs do not quantify their alleged damages, it is readily apparent from the Complaint that the amount in controversy exceeds \$75,000, exclusive of interest and costs.

10. Plaintiffs allege that they have “suffered substantial financial losses and had to let go approximately 30 workers” due to the coronavirus and certain state and local governmental orders directing non-essential businesses to close in response to the virus. *See* Compl. ¶¶ 1, 5-8. Plaintiffs’ allegations are focused primarily on non-party EWC Fresno’s alleged business income losses and other damages. According to Plaintiffs, EWC Fresno—“a wildly successful and award-winning waxing salon,” *id.* ¶ 32—“was forced to close its doors to the public and let 30 workers go,” *id.* ¶ 41. Plaintiffs allege that “[a]t all relevant times, Franklin EWC has owned, leased, managed, and/or controlled the Insured Premises,” *i.e.*, the EWC Fresno salon located at 7855 North Via Del Rio, Fresno, California 93720, which is the premises insured in the subject insurance policy contract between Sentinel and Franklin EWC. *See id.* ¶ 20. Plaintiffs allege that “[d]ue to the Closure Orders, as well as the presence of the Coronavirus in, on, and around the Insured Premises, Plaintiffs have suffered and continue to suffer substantial lost business income and other financial losses.” *Id.* ¶ 44. Plaintiffs characterize their business income losses as “substantial” and “extraordinary.” *See, e.g., id.* ¶¶ 44-45.

11. Plaintiffs seek, among other things, “compensatory, general, and other monetary damages (including all foreseeable consequential and incidental damages for diminution in value, loss of use, and other incidental damages and out-of-pocket expenses),” restitution or disgorgement, punitive and exemplary damages, attorneys’ fees, and declaratory and injunctive relief. *See* Compl. ¶¶ 64, 70, 78, 88, 96, 102, 108, 120, 123, and pp. 26-27 (Prayer for Relief).

12. The amount in controversy for Plaintiffs’ request for declaratory and injunctive relief is “the value of the object of the litigation.” *Hunt v. Washington State Apple Adver. Comm’n*, 432 U.S. 333, 347 (1977) (citations omitted); *see also Cohn v. Petsmart*, 281 F.3d 837, 840 (9th Cir. 2002) (citation omitted); *Budget Rent-A-Car, Inc. v. Higashiguchi*, 109 F.3d 1471, 1473 (9th Cir. 1997). In this case, the object of the litigation is the value of Plaintiffs’ claim under the insurance policy, *i.e.*, the amount of money Sentinel would pay to Plaintiffs if the claim is covered under the policy. As noted above, although Plaintiffs do not specify the value of their claim, Plaintiffs do allege that they have suffered “substantial” and “extraordinary” business losses since mid-March of 2020. Such losses, coupled with Plaintiffs’ allegations of other ongoing financial damages, likely exceed the \$75,000 jurisdictional threshold.

13. Moreover, punitive damages are included in the jurisdictional threshold where state law permits a plaintiff to recover punitive damages. *See Bell v. Preferred Life Assurance Soc.*, 320 U.S. 238, 240 (1943); *Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d 1004, 1009 (N.D. Cal. 2002) (citations omitted). Past and future attorneys’ fees are also considered when determining the amount in controversy. *See Fritsch v. Swift Transp. Co. of Arizona, LLC*, 899 F.3d 785, 794-95 (9th Cir. 2018); *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 414-15 (9th Cir. 2018) (“[T]he amount in controversy is not limited to damages incurred prior to removal” and is instead “determined by the complaint operative at the time of removal and encompasses all relief a court may grant on that complaint if the plaintiff is victorious”).

14. Defendants deny that Plaintiffs are entitled to any recovery at all, but, as alleged, the amount in controversy plausibly exceeds \$75,000, exclusive of interests and costs.

III. PROCEDURAL REQUIREMENTS

15. This Notice of Removal is being filed within 30 days of service, and less than one year after commencement of this action, in accordance with 28 U.S.C. § 1446.

16. Attached hereto as Exhibit A is “a copy of all process, pleadings, and orders served upon” Defendants. *See* 28 U.S.C. § 1446(a).

17. A copy of this Notice of Removal is being filed with the Clerk of the Contra Costa Superior Court and is being served on counsel of record pursuant to 28 U.S.C. § 1446(d).

18. “When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.” 28 U.S.C. § 1446(b)(2)(A). Defendants need not obtain the consent of “Does 1 through 10” because they are unnamed and unknown parties who have not been served. *See Tatevossian v. Wells Fargo Bank*, No. CV 16-03135, 2016 WL 4367235, at *3 (C.D. Cal. Aug. 12, 2016) (explaining “Doe Defendants” need not consent to removal).

IV. VENUE AND INTRADISTRICT ASSIGNMENT

19. Under 28 U.S.C. § 1441(a), venue is proper in this Court as a district or division embracing the place where the state action was pending.

20. Pursuant to Northern District of California Civil Local Rule 3-2(c) and (d), this case should be assigned to the San Francisco Division or the Oakland Division, as at least a substantial part of the alleged events giving rise to this action occurred in Contra Costa county.

V. CONCLUSION

WHEREFORE, Defendants hereby remove this matter from the Contra Costa Superior Court to the United States District Court for the Northern District of California.

Dated: July 2, 2020

Respectfully submitted,

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FILED
MAY 21 2020

KATHERINE CLEAR OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

By _____
J. B. B. Deputy Clerk

PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT. 33 FOR ALL
PURPOSES

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

SUMMONS ISSUED

**FRANKLIN EWC, INC., and
KATHY FRANKLIN,**

Plaintiffs,

v.

**THE HARTFORD FINANCIAL SERVICES
GROUP, INC.,**

SENTINEL INSURANCE COMPANY, LTD.,

and Does 1 through 10, inclusive,

Defendants.

Case No: **C20 - 00888**

COMPLAINT FOR:

1. **BREACH OF CONTRACT,**
2. **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING,**
3. **BAD FAITH DENIAL OF INSURANCE CLAIM,**
4. **UNFAIR BUSINESS PRACTICES,**
5. **FRAUDULENT MISREPRESENTATION,**
6. **CONSTRUCTIVE FRAUD,**
7. **UNJUST ENRICHMENT,**
8. **DECLARATORY RELIEF, and**
9. **INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

COMPLAINT FOR DAMAGES, DECLARATORY RELIEF, AND INJUNCTIVE RELIEF

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1 Plaintiffs Franklin EWC, Inc. and Kathy Franklin (collectively, "Plaintiffs") file this
2 Complaint against defendants The Hartford Financial Services Group, Inc., and Sentinel Insurance
3 Company, Ltd. (collectively, "Insurance Defendants"), and Does 1 through 10 ("Doe Defendants"),
4 and allege as follows:

5 **I. INTRODUCTION**

6 1. European Wax Center – Fresno – Riverpark ("EWC Fresno") is a waxing salon
7 located just off California State Route 41 in Fresno, California that is owned by Plaintiff Franklin
8 EWC, Inc. Franklin EWC, Inc. is registered and maintains its headquarters in Moraga, California.
9 Beginning on **March 19, 2020**, EWC Fresno was forced to close its doors to the public because of
10 a series of orders issued by the State of California ("Closure Orders"). The Closure Orders have
11 **prohibited** customers from accessing EWC Fresno's premises due to the Coronavirus Disease 2019
12 ("COVID-19") pandemic. As a result, Plaintiffs suffered substantial financial losses and had to let
13 go approximately 30 workers.

14 2. EWC Fresno is a franchise of European Wax Center, a network of over 800 waxing
15 salons through the United States. Plaintiff Kathy Franklin started Franklin EWC in 2011 and has
16 owned and operated EWC Fresno since October 2013. In that time she turned it into one of the most
17 profitable European Wax Center locations in California. The employees had developed many
18 longstanding relationships with the salon's clients, many of whom visited regularly. Based on this
19 enviable record of success, Ms. Franklin chose to invest additional resources in the business in the
20 fall of 2019 and paid for the construction of three new waxing suites, an additional restroom, and a
21 storage room. Many of EWC Fresno's 30 employees had worked there for more than five years, and
22 the business provided them with medical, dental, vision, and 401-K benefits.

23 3. To protect its business and employees from the loss caused by a situation like this,
24 Franklin EWC obtained Spectrum Business Owner's Policy No. 21 SBA RS4714 (the "Policy")
25 from Insurance Defendants, which includes applicable business interruption coverage. In breach of
26 the insurance obligations that Insurance Defendants undertook in exchange for receipt of Plaintiffs'
27 premium payments—which Plaintiffs dutifully and regularly paid—Insurance Defendants denied
28 Plaintiffs' insurance claims arising from the interruption of Plaintiffs' business caused by the

1 Closure Orders. Insurance Defendants denied the claims notwithstanding the plain language of the
 2 Policy, which provides coverage for such losses, and they did so fraudulently in violation of
 3 California law.

4 **II. COVID-19 AND CLOSURE ORDERS**

5 4. In March 2020, the New England Journal of Medicine, one of the world's leading
 6 peer-reviewed medical journals, published a study that describes severe acute respiratory syndrome
 7 coronavirus 2 (SARS-CoV-2) (the "Coronavirus"), the official name for the virus that causes
 8 COVID-19, as a virus that is transmitted by respiratory droplets that can be suspended in air for
 9 several hours. Over time, these droplets containing Coronavirus fall onto and can physically remain
 10 on surfaces, such as metal, glass, plastic, and wood, for several days. Persons who touch these
 11 surfaces, even days later, may become infected.

12 5. On **March 12, 2020**, California Governor Gavin Newsom issued Executive Order N-
 13 25-20, which requires all California "to heed any orders and guidance of state and local public health
 14 officials, including but not limited to the imposition of social distancing measures, to control the
 15 spread of COVID-19."

16 6. On **March 19, 2020**, California Governor Gavin Newsom issued Executive Order N-
 17 33-20, which similarly requires that Non-Essential Businesses statewide, including waxing salons
 18 such as EWC Fresno, immediately close their doors to all customers.

19 7. As expressly stated in multiple countywide closure orders issued in California
 20 (including orders issued by Napa, Solano, Sonoma, Sutter, and Yuba Counties), the recent business
 21 closure orders have been issued because the Coronavirus was proliferating onto virtually every
 22 surface and object in, on, and around commercial premises such as that belonging to EWC Fresno,
 23 and thereby causing **direct physical damage** and loss in and to the immediate area of such
 24 commercial premises, and thereby triggering coverage under commercial insurance policies. *See,*
 25 *e.g.*, Order of the Napa County Health Officer ¶ 6 (Mar. 18, 2020) ("This Order is issued based on
 26 evidence of increasing occurrence of COVID-19 throughout the Bay Area, increasing likelihood of
 27 occurrence of COVID-19 within the County, and the **physical damage to property caused by the**
 28 **virus.**"); Order of the Solano County Health Officer No. 2020-04 ¶ 10 (Mar. 30, 2020) ("[T]his

Order is given because of the propensity of the virus to spread person to person and also because **the virus physically is causing property loss or damage** due to its proclivity to attach to surfaces.”); Order of the Sonoma County Health Officer No. C19-05 ¶ 17 (Mar. 31, 2020) (“This order is given because of the propensity of the virus to spread person-to-person, and also because **the virus physically is causing property loss or damage** due to its proclivity to stay airborne and to attach to surfaces for prolonged periods of time.”); Order of the Sutter County and Yuba County Bi-County Public Health Officer Restricting Activities in Response to COVID-19 Outbreak ¶ 7 (Apr. 6, 2020) (same as March 31 Sonoma County Order).

8. The resulting economic harm from these Closure Orders and from the widespread physical presence of the Coronavirus has been significant. Millions of California residents have lost their jobs, and hundreds of thousands of California businesses have had to close and are suffering substantial losses, creating unprecedented ripple effects through local, state, and national economies.

III. WIDESPREAD DENIAL OF INSURANCE CLAIMS

9. Many, if not most, of the California businesses forced to close their doors to the public had planned ahead by purchasing insurance to safeguard against the business interruption that results from precisely these kinds of civil authority closure orders. Since having to close down, businesses have filed claims for business interruption coverage with their insurance carriers as a lifeline to save their businesses and, by extension, their employees and communities. However, Insurance Defendants, and other insurance companies, have **summarily declined coverage**.

10. According to persons knowledgeable about the insurance industry’s blanket denials of such business interruption claims:

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

11. Moreover, “[a]ccording to data from ratings firm A.M. Best Co., the insurance industry as a whole has \$18.4 billion in net reserves for future payouts. But industry trade groups

1 like the American Property Casualty Insurance Association (APCIA) say they don't have the funds
 2 to pay out the claims from a pandemic. 'Pandemic outbreaks are uninsured because they are
 3 uninsurable,' says APCIA's David A. Sampson. If insurance is forced to pay claims by legislation,
 4 for example, their reinsurers might not cover *them*." This blanket denial of business interruption
 5 insurance claims is precisely what is happening here to Plaintiffs. For the insurance industry, the
 6 goal is to generate revenues by charging high premiums for insurance while avoiding paying
 7 anything on legitimate claims by businesses like EWC Fresno.

8 12. The Closure Orders **prohibited all customers from accessing EWC Fresno's**
 9 premises due to the physical presence of COVID-19 in the community and on the surfaces of the
 10 property around EWC Fresno. As a result, EWC Fresno was forced to close its doors to the public,
 11 and Plaintiffs continue to suffer substantial financial losses.

12 **IV. INSURANCE DEFENDANTS AND DENIAL OF COVERAGE**

13 13. In **June 2019**, Insurance Defendants entered into a contract of insurance with
 14 Plaintiffs, Spectrum Business Owner's Policy No. 21 SBA RS4714, for the period of June 8, 2019
 15 through June 8, 2020. Under this Policy, Franklin EWC agreed to pay insurance premiums to
 16 Insurance Defendants in exchange for Insurance Defendants' promise to cover Plaintiffs for losses
 17 including, but not limited to, business income losses according to the terms set forth in the Policy.
 18 Since the inception of the Policy, Plaintiffs have paid all premiums and the Policy has at all relevant
 19 times remained in full force and effect.

20 14. The Policy specifically includes (a) coverage for business interruption caused by an
 21 order of a civil authority ("**Civil Authority Coverage**"), (b) **Lost Business Income Coverage**,
 22 (c) **Extra Expense Coverage**, and (d) Limited Fungi, Bacteria, Or Virus Coverage ("**Limited Virus**
 23 **Coverage**").

24 15. One circumstance in which the Policy's business interruption coverage can be
 25 triggered is when a complete cessation of Plaintiffs' business operations is required as the direct
 26 result of a civil authority's issuance of a Closure Order. The Civil Authority Coverage provision in
 27 the Policy provides, in pertinent part:
 28

1 **Civil Authority**

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

7 16. Here, coverage under the Policy’s Civil Authority Coverage was triggered when a
 8 complete cessation of EWC Fresno’s operations was the required and direct result of the Closure
 9 Orders issued by the State of California.

10 17. These Closure Orders were issued as a direct result of a Covered Cause of Loss to
 11 property under the Policy, given that they created a direct physical loss by shutting off physical
 12 access to the insured premises by Plaintiffs and EWC Fresno’s customers.

13 18. These Closure Orders were also issued as a direct result of a Covered Cause of Loss
 14 to property under the Policy, seeing as the Coronavirus that was proliferating onto virtually every
 15 surface and object in, on, and around EWC Fresno and its surrounding environs was then causing,
 16 and is continuing to cause, **direct physical damage** and loss in and to the immediate area of EWC
 17 Fresno.

18 **V. VIOLATIONS OF CALIFORNIA LAW**

19 19. This Complaint sets forth in detail direct violations of California laws that are
 20 intended to protect insurance policyholders who act in good faith with their insurance carriers. The
 21 details below affect not only the named Plaintiffs, but also the **30 California residents** employed at
 22 EWC Fresno.

23 **VI. PARTIES**

24 **A. Plaintiffs**

25 20. Plaintiff FRANKLIN EWC, INC. (“Franklin EWC”), is a California corporation
 26 registered in Moraga, California, within Contra Costa County. Franklin EWC owns, operates,
 27 manages, and/or controls the waxing salon known as European Wax Center – Fresno – Riverpark
 28 (“EWC Fresno”) located at 7885 North Via Del Rio, Fresno, California 93720 (the “Insured

Premises”) and that employs many people. At all relevant times, Franklin EWC has owned, leased, managed, and/or controlled the Insured Premises.

21. Plaintiff **KATHY FRANKLIN** (“Ms. Franklin”) is a California resident and the sole owner and operator of Franklin EWC.

B. Insurance Company Defendants

22. Defendant **THE HARTFORD FINANCIAL SERVICES GROUP, INC.** (“Hartford”), is a Delaware corporation with its principal place of business in Connecticut. At all relevant times, Hartford has been and is authorized to do business and is doing business in the state of California and in Fresno County. At all relevant times, Hartford has been and is transacting the business of insurance in the state of California and in Fresno County, and the basis of this suit arises out of said conduct.

23. Defendant **SENTINEL INSURANCE COMPANY, LTD.** (“Sentinel”), is a State corporation with its principal place of business in Connecticut. Sentinel is an insurance company that is part of Hartford. At all relevant times, Sentinel has been authorized to do business and is doing business in the state of California and in Fresno County. At all relevant times, Sentinel has been and is transacting the business of insurance in the state of California and in Fresno County, and the basis of this suit arises out of said conduct.

24. Upon information and belief, each of the Insurance Defendants was, at all relevant times, in any agency or joint-venture relationship with the other Insurance Defendants, and was at all relevant times acting within the purpose and scope of said relationship.

C. Doe Defendants

25. Defendants **DOES 1 through 10** (“Doe Defendants”) were, at all relevant times, transacting or otherwise engaged in the business of insurance in the State of California and in Fresno County, and the basis of this suit arises out of said conduct. Though the true names and capacities of the Doe Defendants are unknown to Plaintiffs, each of the Doe Defendants is, upon information and belief, partially or wholly liable for the unlawful acts or omissions referred to herein, and for the resulting harm to Plaintiffs. Many of Insurance Defendants’ agents reside and operate in Fresno County.

1 26. The Insurance Defendants and Doe Defendants are collectively referred to herein as
2 Defendants.

3 **VII. AIDING AND ABETTING and CO-CONSPIRATORS**

4 27. At all times relevant to this Complaint, each Defendant was acting as the agent, alter
5 ego, servant, employee, and/or representative of the other Defendants, and was acting within the
6 course and scope of their agency, employment, and/or representation, with the full knowledge,
7 consent, permission, authorization, and ratification, either express or implied, of the other
8 Defendants in performing the acts alleged in this Complaint.

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

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

19 **VIII. JURISDICTION AND VENUE**

20 30. This Court has subject matter jurisdiction over this action. The conduct giving rise
21 to this action concerns coverage under an insurance policy taken out by a business with its
22 headquarters in Contra Costa County, California. This action is based, in substantial part, on the
23 breach of an insurance contract concerning a California property and business and is based on
24 violations of California law. The amount in controversy exceeds the minimum jurisdictional amount
25 of unlimited civil cases.

26 31. Venue is proper because the conduct giving rise to this action concerns a denial of
27 coverage under an insurance policy taken out by a business with its headquarters in Contra Costa
28 County, California, by the Defendants and their agents and co-conspirators.

1 **IX. FACTUAL BACKGROUND**

2 **A. EWC Fresno**

3 32. European Wax Center – Fresno – Riverpark is a wildly successful and award-winning
4 waxing salon located off California State Route 41 in Fresno. The salon offers a range of face and
5 body hair removal and skincare services to its male and female clientele and strives to provide them
6 “unbelievably smooth skin with a side of confidence.” Owner Katherine Franklin opened her first
7 salon in 2011 and the Fresno location in 2013 and has built it into a highly successful, locally owned
8 and operated business.

9 **B. Pandemic in California**

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

14 34. According to the World Health Organization (“WHO”): “People can catch COVID-
15 19 from others who have the virus. The disease can spread from person to person through small
16 droplets from the nose or mouth which are spread when a person with COVID-19 coughs or exhales.
17 These droplets land on objects and surfaces around the person. Other people then catch COVID-19
18 by touching these objects or surfaces, then touching their eyes, nose or mouth. People can also catch
19 COVID-19 if they breathe in droplets from a person with COVID-19 who coughs out or exhales
20 droplets.”¹ Because the Coronavirus that causes COVID-19 is contained in and transmitted by
21 droplets that land indiscriminately on the surfaces of property with potentially fatal consequences,
22 it unquestionably causes physical damage and loss.

23 35. According to the U.S. Centers for Disease Control and Prevention (“CDC”):
24 “COVID-19 seems to be spreading easily and sustainably in the community (‘community spread’)
25 in many affected geographic areas” in the United States.²

26
27 ¹ WHO website, *Q&A on coronaviruses (COVID-19)*, “How does COVID-19 spread?,” <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses> (last visited Apr. 15, 2020).

28 ² CDC website, *Coronavirus Disease 2019 (COVID-19): Frequently Asked Questions*, “How COVID-19 Spreads: How does the virus spread?,” <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#covid19-basics> (last visited Apr. 28, 2020).

1 36. On **January 26, 2020**, the CDC announced California's first positive test result for
2 COVID-19.

3 C. **Closure Orders Issued by State and County Civil Authorities**

4 37. On **March 4, 2020**, California Governor Gavin Newsom issued a Proclamation of a
5 State of Emergency with respect to the COVID-19 pandemic. Among other things, the Proclamation
6 finds that there were, as of that date, and despite the widespread unavailability of COVID-19 testing,
7 already 53 confirmed cases of COVID-19 in California, and more than 9,400 Californians across 49
8 counties in home monitoring because of possible travel-based exposure to the Coronavirus.

9 38. On **March 11, 2020**, the WHO declared the outbreak a global pandemic.

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

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

27 ///

D. EWC Fresno Forced to Close and Resulting Financial Losses

41. On March 19, 2020, EWC Fresno was forced to close its doors to the public and let 30 workers go. The March 19 Statewide Shelter Orders required EWC Fresno to close (the “Closure Order”).

42. Similarly, the Closure Order created direct physical loss by prohibiting customers accessing and otherwise patronizing EWC Fresno for purposes of obtaining waxing salon services.

43. Further, even if the Closure Orders had not issued, EWC Fresno would have had to close the salon and suspend its operations due to the worsening pandemic-level presence or risk of presence of the Coronavirus in, on, and around the Insured Premises, and which has caused physical damage or loss to the Insured Premises and to the fixtures and personal property therein. Moreover, the pandemic-level presence or risk of presence of the Coronavirus in those places where its employees, suppliers, and regular and potential clientele live, work, recreate, and travel means that EWC Fresno could not have reopened during this ongoing closure period due to the high statistical likelihood, if not certainty, that the Insured Premises would have been regularly re-damaged by the recurrent reintroduction of infectious Coronavirus into the Insured Premises from COVID-19-infected individuals and personal property.

44. Due to the Closure Orders, as well as the presence of the Coronavirus in, on, and around the Insured Premises, Plaintiffs have suffered and continue to suffer substantial lost business income and other financial losses.

E. EWC Fresno Suffers Covered Loss

45. These extraordinary losses of business income are precisely why Plaintiffs took out the business interruption Policy with Insurance Defendants, and their losses are covered under the Policy. Specifically, Plaintiffs losses are covered under the Policy’s Civil Authority Coverage, Lost Business Income Coverage, Extra Expense Coverage, and Limited Virus Coverage.

46. EWC Fresno is located in built urban environment in Fresno, California. Its neighbors are a mix of offices, restaurants, retail shops, and other businesses.

47. According to the CDC, the National Institutes of Health (“NIH”), other infectious disease organizations around the world, and leading peer-reviewed medical journals such as the New

England Journal of Medicine, the Coronavirus spreads by droplets through person-to-person contact and through contact with surfaces and objects.³ Although droplets containing Coronavirus may not be visible to the human eye, the droplets are undeniably physical and have spread on property surfaces.

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

49. Droplets containing Coronavirus can also travel and remain infectious while suspended in the air. A widely reported study from the Massachusetts Institute of Technology found that the droplets from a cough can travel as far as 16 feet, and droplets from a sneeze can travel as far as 26 feet.⁶ According to a recent report in the New York Times: “An infected person talking five minutes in a poorly ventilated space can produce as many viral droplets as one infectious cough. ‘If there are 10 people in there, it’s going to be a build up,’ said Pratim Biswas, an aerosols experts at Washington University in St. Louis.”⁷

³ See, e.g., CDC website, “How COVID-19 Spreads,” <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited Apr. 28, 2020).

⁴ See Leah E. Moriarty, et al., “Public Health Responses to COVID-19 Outbreaks on Cruise Ships — Worldwide, February–March 2020,” 69 *Morbidity and Mortality Weekly Report* 347 (released online Mar. 23, 2020), available at <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6912e3-H.pdf> (last visited Apr. 28, 2020) (CDC journal article).

⁵ See Alex W.H. Chin, et al., “Stability of SARS-CoV-2 in different environmental conditions,” *The Lancet Microbe* (Apr. 2, 2020), available at [https://doi.org/10.1016/S2666-5247\(20\)30003-3](https://doi.org/10.1016/S2666-5247(20)30003-3) (last visited Apr. 28, 2020); Neeltje van Doremalen, et al., “Aerosol and Surface Stability of SARS-CoV-2 as Compared to SARS-CoV-1,” *New England Journal of Medicine* (Mar. 17, 2020), available at <https://www.nejm.org/doi/pdf/10.1056/NEJMc2004973> (last visited Apr. 28, 2020); Guenter Kampf, et al., “Persistence of coronaviruses on inanimate surfaces and their inactivation with biocidal agents,” 104 *Journal of Hospital Infection* 246 (Feb. 6, 2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7132493/pdf/main.pdf> (last visited Apr. 28, 2020).

⁶ See Lydia Bouroulba, “Turbulent Gas Cloud and Respiratory Pathogen Emissions: Potential Implications for Reducing Transmission of COVID-19,” *JAMA* (published online Mar. 26, 2020), available at <https://jamanetwork.com/journals/jama/fullarticle/2763852> (last visited Apr. 28, 2020).

⁷ See Yuliya Pashina-Kottas, et al., “This 3-D Simulation Shows Why Social Distancing Is So Important,” *The New York Times* (Apr. 14, 2020), <https://www.nytimes.com/interactive/2020/04/14>

1 50. As noted above, the Civil Authority provision of the Policy makes clear that “[t]his
2 insurance is extended to apply to the actual loss of Business Income you [i.e., EWC Fresno] sustain
3 when access to your ‘scheduled premises’ is specifically prohibited by order of a civil authority as
4 the direct result of a Covered Cause of Loss to property in the immediate area of your ‘scheduled
5 premises.’” Policy, Special Property Coverage Form § A.5.q. This coverage applies here.”

6 51. Here, Plaintiffs’ losses are covered by the Civil Authority Coverage due to the
7 Closure Order, which not only restricted the movement of people; rather, it also directly required
8 that EWC Fresno close its doors, and therefore had the impact of taking away the use of the insured
9 premises for their intended purpose.

10 52. Moreover, the Closure Order was issued due to droplets containing the Coronavirus
11 being on surfaces and objects in, on, around and in the immediate area of EWC Fresno. These
12 infected surfaces and objects outside of EWC Fresno include all the common fixtures, installations,
13 and other kinds of property that exist in California’s contemporary built environment (e.g., building
14 façades, windows, walls, doorknobs, door handles and push plates, sidewalks, light posts, benches,
15 parking meters, trash receptacles and bags, litter, bicycles and bicycle racks, automobiles, other
16 fixtures and property, and passersby that occupy and line the street outside, and the immediate area
17 surrounding, EWC Fresno.

18 53. The Policy’s Lost Business Income Coverage expressly provides coverage to pay for
19 lost business income, regardless of whether the loss was the result of a civil authority order. The
20 Policy states, in relevant part:

21 **o. Business Income**

22 (1) We will pay for the actual loss of Business Income you sustain due
23 to the necessary suspension of your “operations” during the “period
24 of restoration”. The suspension must be caused by direct physical
25 loss of or physical damage to property at the “scheduled premises”,
26 including personal property in the open (or in a vehicle) within 1,000
27

28 / [science/coronavirus-transmission-cough-6-feet-apart.html](https://www.cdc.gov/science/coronavirus-transmission-cough-6-feet-apart.html) (last visited Apr. 15, 2020) (3-D
visualization with commentary).

feet of the “scheduled premises”, caused by or resulting from a Covered Cause of Loss.

* * *

(4) Business Income means the:

(a) Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no direct physical loss or physical damage had occurred; and

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

(5) With respect to the coverage provided in this Additional Coverage, suspension means:

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

Policy, Special Coverage Property Form § A.5.o. This coverage also applies here.

54. Here, Plaintiffs’ losses are covered by the Lost Business Income Coverage due to the physical loss of the cutting off of physical access to the Insured Premises. In addition these losses are covered because of the presence and physical damage that the Coronavirus caused to the Insured Premises itself, where every surface and object is implicated, including the doors and their parts, door jambs, handrails, floors and carpeting, walls, countertops, tables, chairs and other seating, light fixtures, bathrooms, and other fixtures and moveable personal property.

55. The presence or imminent threat of the presence of the Coronavirus and the consequent closures also constituted physical damage in the sense that they eliminated or destroyed the function of EWC Fresno’s premises, making the location useless or uninhabitable.

F. Insurance Defendants’ Denial of Plaintiffs’ Claim

56. On or shortly after March 19, 2020, Plaintiffs filed a claim with Insurance Defendants requesting coverage under the Policy for Plaintiffs’ lost Business Income due to the Closure Orders and the damage caused by the presence of the Coronavirus in and around the Insured Premises.

1 57. On **April 8, 2020**, Hartford issued written correspondence to Plaintiffs stating that it
 2 was denying the claim, and they did so without having conducted any inspection or review of the
 3 Insured Premises.

4 58. On information and belief, Insurance Defendants accepted the Policy premiums paid
 5 by Plaintiffs with no intention of providing any coverage under the applicable coverages for losses
 6 from closure orders issued by civil authorities and from an epidemic or pandemic.

7 59. On information and belief, Insurance Defendants rejected Plaintiffs' claims in bad
 8 faith as part of a policy to limit its losses during this pandemic, notwithstanding that the Policy
 9 provides coverage for Plaintiffs' losses.

10 **X. CAUSES OF ACTION**

11 **FIRST CAUSE OF ACTION**

12 **BREACH OF CONTRACT**

13 60. Plaintiffs re-allege and incorporate by reference into this cause of action all
 14 allegations set forth in this Complaint.

15 61. At all times relevant, Plaintiffs have paid all premiums and fulfilled or performed all
 16 their obligations under the Policy.

17 62. Insurance Defendants had contractual duties to provide Plaintiffs with insurance
 18 coverage under the applicable Policy coverages, including those coverages specifically alleged
 19 herein.

20 63. In denying Plaintiffs' insurance claim, and otherwise refusing to perform under the
 21 Policy, Insurance Defendants breached those duties.

22 64. As a result of those breaches, Plaintiffs have been damaged in the amount of coverage
 23 to which they are entitled under the Policy, and in an amount to be proved at trial, and for which
 24 Plaintiffs seek compensatory, general, and other monetary damages (including all foreseeable
 25 consequential and incidental damages for diminution in value, loss of use, and other incidental
 26 damages and out-of-pocket expenses) in an amount to be determined at trial, plus interest.

SECOND CAUSE OF ACTION

BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

65. Plaintiffs re-allege and incorporate by reference into this cause of action all allegations set forth in this Complaint.

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

67. Upon information and belief, Insurance Defendants breached the implied covenant of good faith and fair dealing arising out of the Policy by, unreasonably and in bad faith, denying Plaintiffs insurance coverage to which they are entitled under the Policy. Specifically, among other conduct, Defendants (a) failed or refused to perform a fair, objective, and thorough investigation of the claim as required by the California Insurance Code; (b) asserted coverage defenses that were legally and/or factually invalid and thereby delaying resolution of Plaintiffs' claim; (c) placed unduly restrictive interpretations on the Policy terms for the purpose of denying coverage due under the Policy; (d) failed to give Plaintiffs' interests equal consideration with its own; and (e) forced Plaintiffs to institute litigation to recover amounts due under the Policy.

68. In committing the above-referenced breaches, Insurance Defendants intended to and did vex, damage, annoy, and injure Plaintiffs. Said conduct was intentional, willful, and with conscious disregard of Plaintiffs' rights, and was malicious, oppressive and/or fraudulent under California Civil Code section 3294, thereby entitling Plaintiffs to punitive and exemplary damages against each of the Insurance Defendants.

69. As a direct and proximate result of the above-referenced breach, Plaintiffs have had to retain attorneys to enforce their right to the insurance coverage to which they are entitled under the Policy, and have thereby been injured and damaged.

70. Plaintiffs, therefore, are entitled to recover and seek in connection with this Cause of Action (a) compensatory, general, and other monetary damages (including all foreseeable consequential and incidental damages for diminution in value, loss of use, and other incidental

1 damages and out-of-pocket expenses) in an amount to be determined at trial, plus interest;
 2 (b) punitive and exemplary damages in an amount to be determined at trial; (c) Plaintiffs' costs of
 3 suit; and (d) Plaintiffs' reasonable attorney's fees in connection with this action.

4 **THIRD CAUSE OF ACTION**

5 **BAD FAITH DENIAL OF INSURANCE CLAIM**

6 71. Plaintiffs re-allege and incorporate by reference into this cause of action all
 7 allegations set forth in this Complaint.

8 72. Defendants have put their own interests above those of Plaintiffs and have, in bad
 9 faith, failed or refused to perform their obligations under the Policy and under the laws of California.

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

17 74. Upon information and belief, there are numerous other individuals and groups
 18 insured by Defendants who were or are similarly situated to Plaintiffs and who are also being denied
 19 benefits under the same unlawful and non-applicable policy provisions and/or exclusions being
 20 applied to Plaintiffs. At such time as Plaintiffs learn the names of such persons, Plaintiffs may seek
 21 leave of court to join such persons as plaintiffs in this action.

22 75. Based on the above, Plaintiffs allege that Defendants have committed institutional
 23 bad faith that is part of a repeated pattern of unfair practices and not an isolated occurrence. The
 24 pattern of unfair practices constitutes a conscious course of wrongful conduct that is firmly grounded
 25 in Defendants' established company policy.

26 76. As a proximate result of the aforementioned bad faith conduct by Defendants,
 27 Plaintiffs have suffered and will continue to suffer damages. These damages include interest on the
 28

1 withheld and unreasonably delayed payments due under the Policy and other special economic and
2 consequential damages, of a total amount to be shown at trial.

3 77. As a further proximate result Defendants' bad faith conduct, Plaintiffs were
4 compelled to retain legal counsel to obtain the coverage benefits due under the Policy. Therefore,
5 Defendants are liable to Plaintiffs for those attorney fees, witness fees, and costs of litigation
6 reasonably necessary and incurred by Plaintiffs in order to obtain the benefits of the Policy.

7 78. Defendants carried out their bad-faith conduct with a willful and conscious disregard
8 of Plaintiffs' rights or subjected Plaintiffs to cruel and unjust hardship in conscious disregard of its
9 rights. Alternatively, Defendants' conduct constituted an intentional misrepresentation, deceit, or
10 concealment of a material fact known to Defendants with the intention of depriving Plaintiffs of
11 property or legal rights, or of causing Plaintiffs other injury. Defendants' conduct constitutes malice,
12 oppression, or fraud under California Civil Code section 3294, entitling Plaintiffs to punitive
13 damages in an amount appropriate to punish or set an example of Defendants and to deter future
14 similar conduct.

15 **FOURTH CAUSE OF ACTION**

16 **UNFAIR BUSINESS PRACTICES UNDER BUS. & PROF. CODE § 17200, ET SEQ.**

17 79. Plaintiffs re-allege and incorporate by reference into this cause of action all
18 allegations set forth in this Complaint as though fully set forth herein.

19 80. California's Unfair Competition Law, as codified by California Business &
20 Professions Code sections 17200, *et seq.*, protects both consumers and competitors by promoting
21 fair competition in commercial markets for goods and services. California's Unfair Competition
22 Law is interpreted broadly and provides a cause of action for any unlawful, unfair, or fraudulent
23 business act or practice. Any unlawful, unfair, or fraudulent business practice that causes injury to
24 consumers falls within the scope of California's Unfair Competition Law.

25 81. Defendants' acts and practices, as described herein, constitute unlawful or unfair
26 business practices against Plaintiffs in violation of California Business and Professions Code section
27 17200, *et seq.*

1 82. These unlawful or unfair acts and practices include, but are not limited to, (a) failing
 2 or refusing to perform a fair, objective, and thorough investigation of the claim as required by the
 3 California Insurance Code; (b) asserting coverage defenses that were legally and/or factually invalid
 4 and thereby delaying resolution of Plaintiffs' claim; (c) placing unduly restrictive interpretations on
 5 the Policy terms for the purpose of denying coverage due under the Policy; (d) failing to give
 6 Plaintiffs' interests equal consideration with its own; (e) forcing Plaintiffs to institute litigation to
 7 recover amounts due under the Policy; (f) charging and accepting Plaintiffs' premiums in exchange
 8 for coverage or purported coverage for losses caused by an order of a civil authority, by direct
 9 physical damage to the Insured Premises, by a virus, and by other business interruptions, without
 10 any intention of satisfying those claims in an emergency such as the COVID-19 pandemic and the
 11 related Closure Orders; and (g) denying Plaintiffs' claims as part of a company-wide and/or industry-
 12 wide policy of denying all business interruption claims related to the COVID-19 pandemic.

13 83. These unlawful or unfair acts and practices also include, but are not limited to,
 14 inserting deep into the fine print of the Policy's Limited Virus Coverage an absurd coverage
 15 requirement that is factually impossible to satisfy, then offering that Limited Virus Coverage to
 16 Plaintiffs and otherwise inducing Plaintiffs to purchase it, charging and accepting premiums for the
 17 Limited Virus Coverage, representing in the Policy Declarations that Plaintiff has Limited Virus
 18 Coverage, and then when Plaintiff makes a claim, denying that claim (in part) because of Plaintiffs'
 19 failure to satisfy the impossible coverage requirement. The impossible coverage requirement is that
 20 the virus that causes damage to the insured must "[be] the result of one of more of the following
 21 causes . . . (1) A "specified cause of loss" [which the Policy elsewhere defines as "Fire; lightning;
 22 explosion, windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism;
 23 leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects;
 24 weight of snow, ice or sleet; water damage"] other than fire or lightning . . . [or] (2) Equipment
 25 Breakdown Accident occurs to Equipment Breakdown Property" (Policy, Limited Fungi,
 26 Bacteria or Virus Coverage Form § B.1.a.). But as a matter of scientific fact, viruses cannot be "the
 27 result of" explosion, windstorm or hail, smoke, aircraft or vehicles, falling objects, or any of the
 28 other "specified cause of loss," or of an "Equipment Breakdown Accident," as those terms are

1 defined by the Policy.

2 84. Any claimed justification for Defendants' conduct is outweighed by the gravity of
3 the consequences to Plaintiffs. Defendants' acts and practices are immoral, unethical, oppressive,
4 unconscionable, or substantially injurious to Plaintiffs, and/or have a tendency to deceive Plaintiffs.

5 85. By reason of Defendants' fraudulent, deceptive, unfair, and other wrongful conduct
6 as alleged herein, said Defendants violated California Business and Professions Code sections
7 17200, *et seq.*, by consummating an unlawful, unfair, and fraudulent business practice, designed to
8 deprive Plaintiffs of the benefits of Defendants' financial products and services.

9 86. Defendants perpetrated these acts and practices against Plaintiffs, and as a direct and
10 proximate result of the foregoing, Plaintiffs have suffered and continue to suffer damages in a sum
11 which is, as of yet, unascertained. Pursuant to California Business and Professions Code section
12 17203, Plaintiffs are entitled to and seek restitution of all the monies paid to Defendants for retaining
13 benefits that were due and owing to Plaintiffs (with interest thereon), disgorgement of all
14 Defendants' profits arising out of their unlawful conduct (with interest thereon), payment of all
15 benefits due to Plaintiffs under the Policy that Defendants wrongfully retained by means of its
16 unlawful business practices, and/or to injunctive relief to enjoin Defendants unfair business practices
17 in the future.

18 87. With respect to injunctive relief, Defendants wrongfully denied Plaintiffs' insurance
19 claim based on erroneous interpretations of the Policy, in order to avoid their financial obligations
20 to Plaintiffs thereunder. Given the likely extended time period of the regional presence of the
21 Coronavirus and COVID-19 cases, and the likely continued effect of the Closure Orders, Plaintiffs
22 will almost certainly have similar insurance claims in the future, and Defendants will almost
23 certainly apply the same or similar erroneous interpretations of the Policy to wrongfully deny
24 coverage. If Defendants' conduct in this manner is not restrained and enjoined, Plaintiffs will suffer
25 great and irreparable harm, and Defendants seem committed to continuing their unfair and unlawful
26 business practices of erroneously denying Plaintiffs' claims. Defendants will continue to act in their
27 own self-interest and to commit the acts that have damaged Plaintiffs, and that continue to do so.

28

1 88. Pursuant to California Code of Civil Procedure section 1021.5, Plaintiffs are entitled
2 to recover and seek their reasonable attorney's fees in connection with Defendants' unfair
3 competition claims, the substantial benefit doctrine, and/or the common fund doctrine.

4 **FIFTH CAUSE OF ACTION**

5 **FRAUDULENT MISREPRESENTATION**

6 89. Plaintiffs re-allege and incorporate by reference into this cause of action all
7 allegations set forth in this Complaint.

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

14 91. Defendants made or approved materially false and misleading statements to Plaintiffs
15 when it sold Plaintiffs the Policy.

16 92. Defendants made the foregoing false statements and misrepresentations that omitted
17 and concealed material facts despite being aware of their falsity.

18 93. Plaintiffs reasonably and actually relied on Defendants' misrepresentations and
19 concealments.

20 94. As a direct and proximate result of such unlawful conduct, Plaintiffs have suffered,
21 and will continue to suffer, damages in an amount to be proven at trial.

22 95. Defendants' acts were undertaken intentionally and in conscious disregard of
23 Plaintiffs' rights, and were malicious, fraudulent, and oppressive.

24 96. Plaintiffs are entitled to damages, and they should be awarded exemplary and
25 punitive damages in an appropriate amount to punish Defendants and to deter similar fraudulent
26 conduct in the future.

SIXTH CAUSE OF ACTION

CONSTRUCTIVE FRAUD

97. Plaintiffs re-allege and incorporate by reference into this cause of action all allegations set forth in this Complaint.

98. Defendants owe fiduciary and quasi-fiduciary duties to Plaintiffs, including duties of loyalty, due care, good faith, and fair dealing in connection with their actions under the Policy.

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

100. As a direct and proximate result of Defendants' constructive fraud, Plaintiffs have suffered and will continue to suffer damages in an amount to be proven at trial.

101. Defendants' acts were also malicious, fraudulent, and oppressive, and undertaken intentionally and in conscious disregard of Plaintiffs' rights.

102. Plaintiffs are entitled to damages, and should be awarded exemplary and punitive damages in an appropriate amount to punish Defendants and to deter similar fraudulent conduct in the future.

SEVENTH CAUSE OF ACTION

UNJUST ENRICHMENT

103. Plaintiffs re-allege and incorporate by reference into this cause of action all allegations set forth in this Complaint.

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

105. By their wrongful acts and omissions, Defendants, and each of them, were unjustly enriched at the expense of and to the detriment of Plaintiffs.

106. Defendants were unjustly enriched, among other reasons, by offering, and accepting premiums paid for, insurance coverages within the Policy that purport and appear at first glance to provide certain coverages, such as the Limited Virus Coverage, but when read according their plain meaning, lead to absurd requirements that are impossible to satisfy, such as only covering losses

1 caused by viruses that were the result of windstorms, hail, aircraft, falling objects, and other
2 phenomena and events that are incapable of creating or otherwise resulting in a virus.

3 107. To enforce such coverage requirements would be unconscionable, void as against
4 public policy, and inequitable. In the event such coverage requirements are interpreted and applied
5 according to their plain meaning (they should not be), it would be against equity to permit
6 Defendants to retain the payments that they received from Plaintiffs for any such aspect of the Policy.
7 This is because it is an illegal, deceptive, unfair, and/or fraudulent business practice to induce
8 Plaintiffs or any other person to purchase insurance coverage that will never cover a loss.

9 108. As a direct and proximate result of Defendants' conduct, Plaintiffs have been
10 damaged and are entitled to restitution in an amount to be determined at trial. Plaintiffs seek
11 restitution from Defendants and seek an order from this Court disgorging all monies paid to
12 Defendants as a result of the illegal, deceptive, unfair, and/or fraudulent business practices.

13 109. Plaintiffs have no adequate remedy at law.

14 **EIGHTH CAUSE OF ACTION**

15 **DECLARATORY RELIEF**

16 110. Plaintiffs re-allege and incorporate by reference into this cause of action all
17 allegations set forth in this Complaint.

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

21 112. An actual controversy has arisen between Plaintiffs and Defendants as to their
22 respective rights and duties under the Policy.

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

25 114. Plaintiffs allege and contend, with respect to the Policy's Civil Authority Coverage,
26 that each of the Closure Orders triggers that coverage because (a) each of the Closure Orders is an
27 order of a civil authority, (b) each of the Closure Orders specifically prohibits access to the Insured
28 Premises by prohibiting all potential on-premises dining customers and workers from accessing the

1 Insured Premises, (c) said prohibition of access by each of the Closure Orders has been continuous
 2 and ongoing since the Orders were issued, such that access has not subsequently been permitted, (d)
 3 each of the Closure Orders prohibits said access as the direct result of a Covered Cause of Loss in
 4 the immediate area of the Insured Premises, (e) no Policy coverage exclusions or limitations apply
 5 to exclude or limit coverage, (f) Plaintiffs have suffered actual and covered loss of Business Income
 6 in an amount to be determined at trial, and (g) coverage under the Policy should begin as of March
 7 19, 2020.

8 115. Plaintiffs allege and contend that the Policy's Lost Business Income Coverage is
 9 triggered because (a) Plaintiffs have sustained actual loss of Business Income due to the closure of
 10 EWC Fresno, (b) said closure constitutes a necessary suspension of EWC Fresno's operations under
 11 the Policy, (c) this suspension has been and is caused by direct physical loss of or physical damage
 12 to property at the Insured Premises, including personal property in the open (or in a vehicle) within
 13 1,000 feet of the Scheduled Premises, due to the presence of Coronavirus, (d) the presence of
 14 Coronavirus is a Covered Cause of Loss, and (e) some or all of the period of EWC Fresno's closure
 15 is within the period of restoration under the Policy.

16 116. Plaintiffs allege and contend that the Policy's Extra Expense Coverage is triggered
 17 because (a) Plaintiffs have incurred Extra Expense due to the closure of EWC Fresno, (b) said
 18 closure constitutes a necessary suspension of EWC Fresno's operations under the Policy, (c) this
 19 suspension has been and is caused by direct physical loss of or physical damage to property at the
 20 Scheduled Premises, including personal property in the open (or in a vehicle) within 1,000 feet of
 21 the Scheduled Premises, due to the presence of Coronavirus, (d) the presence of Coronavirus is a
 22 Covered Cause of Loss, and (e) some or all of the Extra Expense was incurred during the period of
 23 restoration under the Policy.

24 117. Plaintiffs allege and contend that the presence of the Coronavirus in and on the
 25 Insured Premises triggers the Policy's Limited Virus Coverage because (a) the "specified cause of
 26 loss" and "Equipment Breakdown Accident" coverage requirement is unconscionable, void as
 27 against public policy, inequitable, or otherwise unenforceable for the reasons alleged herein, (b) the
 28 loss and the cause of loss arose during the policy period, and (c) all reasonable means were used to

1 save and preserve the property from further damage. Further, (d) the Limited Virus Coverage
 2 provides up to \$50,000 in coverage for 30 days lost business income (per the declarations), as well
 3 as direct physical loss or damage and the costing of testing for virus in the Scheduled Premises.

4 118. Plaintiffs allege and contend that Defendants wrongly denied coverage with respect
 5 to all the foregoing provisions.

6 119. Upon information and belief, Plaintiffs allege that Defendants dispute and deny each
 7 of Plaintiffs' contentions set forth in this Cause of Action.

8 120. Plaintiffs, therefore, seek a declaratory judgment regarding each of Plaintiffs'
 9 contentions set forth in this Cause of Action. A declaratory judgment determining that Plaintiffs are
 10 due coverage under the Policy, as set forth above, will help to ensure the survival of its business
 11 during this prolonged closure made necessary by the Closure Orders and by the presence of
 12 Coronavirus at and around the Insured Premises during this global pandemic.

13 NINTH CAUSE OF ACTION

14 EQUITABLE INJUNCTIVE RELIEF

15 121. Plaintiffs re-allege and incorporate by reference into this cause of action all
 16 allegations set forth in this Complaint.

17 122. Upon information and belief, Plaintiffs allege that, unless enjoined by order of the
 18 Court, Defendants will continue to operate their companies for their sole benefit and to the detriment
 19 of Plaintiffs.

20 123. No adequate remedy exists at law for the injuries alleged herein, and Plaintiffs will
 21 suffer great and irreparable injury if Defendants' conduct is not immediately enjoined and restrained.

22 XI. PRAYER FOR RELIEF


23 WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants, as
 24 follows:

- 25 A. For a declaration adopting each of Plaintiffs' contentions set forth in the above Cause
 26 of Action for Declaratory Relief;

- 1 B. For injunctive relief enjoining and restraining Defendants' unlawful conduct as
2 alleged herein, including but not limited to their unfair and unlawful business
3 practices and their wrongful denials of coverage under the Policy;
4 C. For compensatory, general, and other monetary damages (including all foreseeable
5 consequential and incidental damages for diminution in value, loss of use, and other
6 incidental damages and out-of-pocket expenses) in an amount to be determined at
7 trial;
8 D. For exemplary and punitive damages in an amount to be determined at trial;
9 E. For Plaintiffs' costs of suit;
10 F. For Plaintiffs' reasonable attorney's fees incurred in this action pursuant to statute;
11 G. For pre-judgment interest and all other interest to which Plaintiffs are entitled; and
12 H. For such other relief as the Court may deem proper.

13 Dated: May 20, 2020

COTCHETT, PITRE, & McCARTHY, LLP

15 By: 
16 NANCIE NISHIMURA
17 Counsel for Plaintiffs

18
19 **DEMAND FOR JURY TRIAL**

20 Plaintiffs FRANKLIN EWC, INC., and KATHY FRANKLIN hereby demand a jury trial
21 on all issues so triable.

22
23 Dated: May 20, 2020

COTCHETT, PITRE, & McCARTHY, LLP

24 By: 
25 NANCIE NISHIMURA
26 Counsel for Plaintiffs
27
28