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11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 JC/SC LLC,
15 Plaintiff,
16 v.
17 TRAVELERS INDEMNITY
18 COMPANY OF CONNECTICUT,
19 Defendant.

Case No.

**COMPLAINT FOR BREACH
OF CONTRACT, TORTIOUS
BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH
AND FAIR DEALING, AND
DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

20 Plaintiff JC/SC LLC (“JC/SC”) complains of defendant Travelers
21 Indemnity Company of Connecticut and alleges as follows:

22 **NATURE OF THIS LAWSUIT**

23 1. SARS-CoV-2, COVID-19, and the subsequent actions and
24 orders of government authorities have shaken the very core of the
25 commercial real estate market. While the effects of these events have
26 been extensive across many industries, the commercial real estate
27 market suffered immediate and unprecedented losses.

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1 2. The Los Angeles commercial real estate market has especially
2 suffered. On March 19, 2020, Governor Gavin Newsom issued the
3 nation’s first “stay at home” order, Executive Order N-33-20, closing all
4 non-essential businesses and requiring residents to “stay at home.” On
5 the same day, Los Angeles Mayor Eric Garcetti issued an Executive
6 Order for the County of Los Angeles prohibiting evictions for commercial
7 and residential tenants. The moratorium on the eviction of commercial
8 tenants for failure to pay rent has been extended to June 30, 2021.

9 3. Commercial real estate is an industry that relies primarily on
10 the rent for spaces that tenants occupy. As “stay at home” orders, lock-
11 down mandates, and work from home protocols were issued, tenants’
12 businesses suffered. Many tenants simply could not pay their rents. As
13 a result, commercial real estate landlords have been forced to bear
14 outsized costs of the pandemic: they are unable to collect rents from
15 many of their tenants and, because of eviction moratoria, they have no
16 legal recourse for non-payment and are unable to replace non-paying
17 tenants with those who might pay their rents. The lack of rental income
18 has been compounded by a decline in leasing volume and higher
19 operational costs due to enhanced cleaning and safety protocols.

20 4. JC/SC owns a portfolio of commercial real estate properties in
21 and around Los Angeles, California, including office buildings and retail
22 space. Given its various commercial properties, JC/SC purchased a
23 “Master Pac Policy” from Travelers that provides commercial general
24 liability coverage and property coverage. The property coverage insures
25 against “direct physical loss or damage.” It also provides “Time Element”
26 coverages, including “Business Income” insurance, that protects JC/SC
27 from economic losses. “Business Income” coverage is specifically defined
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1 to include “rental value” if there is a suspension of “tenantability” at the
2 insured locations.

3 5. Like thousands of other businesses across the country, JC/SC
4 suffered and continues to suffer, substantial financial losses because of
5 SARS-CoV-2, COVID-19, the subsequent actions and orders of
6 government authorities, the need to comply with guidance from the
7 Centers for Disease Control and Prevention, and the need to mitigate its
8 losses and damages. To date, JC/SC has incurred approximately
9 \$1,825,000 in losses due to its tenants’ failure to pay rent.

10 6. In the face of its losses, JC/SC turned to Travelers for the
11 insurance Travelers promised to provide and that Travelers led JC/SC
12 reasonably to expect it would receive in exchange for the premiums it
13 paid. In particular, JC/SC expected the “Business Income” coverage to
14 cover the loss of “rental value” when its tenants could not pay rent—
15 exactly what the policy was designed to insure. Instead of honoring its
16 obligations, Travelers has paid nothing for JC/SC’s losses, thereby
17 depriving JC/SC of the insurance to which it is entitled.

18 7. Travelers’ conduct constitutes a breach of the insurance
19 policies and violates the implied covenant of good faith and fair dealing.
20 By this lawsuit, JC/SC seeks recovery for damages Travelers has
21 inflicted upon it by its wrongful conduct. JC/SC also seeks declaratory
22 relief confirming that Travelers must honor the terms of its policies.

23 **JURISDICTION AND VENUE**

24 8. This Court has original jurisdiction over this case under 28
25 U.S.C. § 1332(a) because the amount in controversy exceeds the sum of
26 \$75,000, exclusive of interest and costs, and this matter involves citizens
27 of different states.

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1 9. This Court has personal jurisdiction over Travelers because
2 Travelers conducts an immense volume of business within California,
3 taking advantage of substantial and significant contacts within this state
4 to derive profits. Additionally, Travelers is registered to conduct its
5 insurance business in California and intentionally avails itself of the
6 insurance marketplaces within California, and JC/SC’s claims in this
7 lawsuit arise out of and directly relate to Travelers’ contacts with
8 California. Accordingly, this Court is authorized to exercise jurisdiction
9 over Travelers.

10 10. Venue is proper in this District under 28 U.S.C. § 1391(b)(2)
11 because a substantial part of the events or omissions giving rise to
12 JC/SC’s claim occurred in this District. Travelers has also marketed,
13 advertised, sold, and maintained insurance policies, and otherwise
14 conducted extensive business, within the District.

15 **THE PARTIES**

16 11. JC/SC is a California limited liability company, with its
17 principal place of business in the County of Los Angeles, California. The
18 members of JC/SC are twenty irrevocable gift trusts. The state of
19 citizenship for each of the irrevocable gift trusts and their respective
20 Trustees and beneficiaries is California. JC/SC owns a portfolio of
21 commercial real estate properties in and around Los Angeles County,
22 California.

23 12. JC/SC is informed and believes, and on that basis alleges,
24 that Travelers is a Connecticut corporation, with its principal place of
25 business in Hartford, Connecticut. At all times material hereto,
26 Travelers was licensed to transact, and did transact, business in
27 California and the County of Los Angeles.

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1 13. Travelers is a part of the Travelers Insurance Group of
2 Companies and its ultimate parent company is Travelers Companies,
3 Inc. Travelers and other members of the Travelers Companies, Inc.
4 brand hold themselves out to the public as “Travelers” (collectively, the
5 “Travelers Group”).

6 14. The Travelers Group is one of the largest underwriters of
7 property and casualty insurance in the United States. In its 2020
8 Annual Report, the Travelers Group reported collecting \$15.4 billion in
9 net written premiums from selling business insurance to customers like
10 JC/SC.¹

11 15. The Travelers Group maintains a worldwide website at
12 www.travelers.com. The Travelers Group makes various statements and
13 representations on its website on behalf of its member companies,
14 including Travelers, regarding its experience and expertise in protecting
15 owners of commercial real estate.

16 16. For instance, the Travelers Group states:
17 With the commercial real estate market
18 expanding, building owners and property
19 managers should take the proper precautions to
20 help mitigate any risks associated with a growing
21 portfolio, including business continuity planning
22 and building maintenance.²

23 17. The Travelers Group also publicly touts its expediency,
24 expertise, and compassion in handling claims:

25 _____
26 ¹ Travelers 2020 Annual Report at 5, *available at*
27 https://s26.q4cdn.com/410417801/files/doc_financials/annual/2020/2020_Annual_Report.pdf

28 ² <https://www.travelers.com/business-insurance/real-estate/owners> (*last visited* June 14, 2021).

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1 Every day, our claim professionals bring great
2 expertise and dedication to their work, often going
3 above and beyond on behalf of our customers.
4 Their commitment and compassion go a long way
5 toward reassuring customers who are facing
6 challenging circumstances. Our customers and
7 distribution partners often tell us that Travelers’
8 claim service is a deciding factor in customers’
9 insurance purchasing decisions.³

10 18. Since the outbreak of the COVID-19 pandemic, the Travelers
11 Group has made wide-ranging representations. The following are some
12 of the many representations and promises that the Travelers Group has
13 made on behalf of its members, and still makes as of the filing of this
14 lawsuit:

- 15 • “We are actively monitoring developments related
16 to COVID-19 and adapting our practices to
17 support the needs of our customers, agents,
18 brokers, employees and communities. We have
19 robust business resiliency plans in place to ensure
20 exceptional, uninterrupted service, while
21 maintaining the safety of everyone involved.”⁴
- 22 • “The overall objective of our business resiliency
23 strategy is to deliver on the Travelers promise to
24
25

26 _____
27 ³ Travelers 2019 Annual Report at 5, *supra*, note 1.

28 ⁴ <https://www.travelers.com/about-travelers/covid-19-coronavirus-update>
(last visited June 14, 2021).

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take care of our customers, communities and employees, no matter the disruption.”⁵

- “We’re drawing upon our financial strength, expertise and culture of caring to help those we’re privileged to serve.”⁶
- “We’re Here to Help.”⁷
- “In light of ongoing concerns related to COVID-19, we are committed to responding to your claim needs with speed, compassion, integrity and professionalism.”⁸
- “As we continue to monitor ongoing developments related to COVID-19, please know that nothing will compromise our commitment to taking care of our customers.”⁹
- “As always, be assured that Travelers is committed to helping you protect your small business.”¹⁰

⁵ <https://www.travelers.com/about-travelers/covid-19-business-resiliency> (*last visited* June 14, 2021).

⁶ <https://www.travelers.com/iw-documents/about-travelers/covid-19/v2-field-marketing-covid-19-infographic.pdf>

⁷ <https://www.travelers.com/about-travelers/covid-19-claim-guidance> (*last visited* June 14, 2021).

⁸ *Id.*

⁹ <https://www.travelers.com/about-travelers/covid-19-premium-audits> (*last visited* June 14, 2021).

¹⁰ <https://www.travelers.com/resources/business-industries/small-business/adapting-and-preparing-your-business-for-change> (*last visited* June 14, 2021).

1 • “The events of the last few months have been
2 challenging, and our hearts go out to all those
3 affected by the COVID-19 global pandemic,’ said
4 Alan Schnitzer, Chairman and Chief Executive
5 Officer. ‘We appreciate the thoughtful actions
6 taken by our government leaders, at all levels, to
7 support individuals and businesses.’”¹¹

8 • “As a company, we are grateful that we are in a
9 position to support those impacted by COVID-19.”¹²

10 **TRAVELERS’ KNOWLEDGE OF THE RISK OF PANDEMICS**

11 19. JC/SC is informed and believes, and on that basis alleges,
12 that Travelers was repeatedly warned over the years of the potential
13 impact of pandemics. In fact, there were many publicly available reports
14 about the risks of pandemics and what Travelers should do—in the
15 months and years before the outbreak of the COVID-19 pandemic.

16 20. One insurance industry repository is indicative of how much
17 information was available to Travelers regarding the risk of pandemics.
18 The Insurance Library Association of Boston, founded in 1887, describes
19 itself as “the leading resource for and provider of literature, information
20 services, and quality professional education for the insurance industry
21 and related interests.”¹³ The Association states on its website:

22 The past 20 years [have] seen the rise of a number
23 of pandemics. Slate recently published an article

24 _____
25 ¹¹ [https://investor.travelers.com/newsroom/press-releases/news-
26 details/2020/Travelers-Reports-First-Quarter-2020-Net-Income-per-
Diluted-Share-of-233-and-Return-on-Equity-of-94/default.aspx](https://investor.travelers.com/newsroom/press-releases/news-details/2020/Travelers-Reports-First-Quarter-2020-Net-Income-per-Diluted-Share-of-233-and-Return-on-Equity-of-94/default.aspx) (*last
27 visited* June 14, 2021).

27 ¹² *Id.*

28 ¹³ <http://insurancelibrary.org/about-us/>.

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1 on what has been learned about treating them in
2 that time. We thought it might be apt for us to
3 take a look back and see what the insurance
4 industry has learned as well.¹⁴

5 21. The Association lists more than 20 articles, reports, and white
6 papers available to Travelers from early 2007 through 2018. One white
7 paper warned in 2009 of a pandemic’s consequences to the insurance
8 industry:

9 It is highly unlikely that the insurance industry
10 would have the financial reserves to meet the
11 worldwide claims arising out of a pandemic of this
12 size.¹⁵

13 22. Indeed, in March 2018, one article stated:
14 Even with today’s technology, a modern severe
15 pandemic would cause substantive direct financial
16 losses to the insurance community. In addition,
17 indirect losses would be severe, most notably on
18 the asset side of the balance sheet.¹⁶

19 23. Travelers also knew, or should have known, for decades that
20 its policies could be held to insure losses from the presence of a
21 hazardous substance, such as a virus inside a building, in its air or
22 airspace, or on surfaces, or because a building could not be used for its
23

24 ¹⁴ <http://insurancelibrary.org/pandemics-and-insurance/>.

25 ¹⁵ Allan Manning, *White Paper on Infectious Disease Cover* (updated
26 2009).

27 ¹⁶ “What the 1918 Flu Pandemic Can Teach Today’s Insurers,” *AIR* (Mar.
28 29, 2018), <https://www.air-worldwide.com/publications/air-currents/2018/What-the-1918-Flu-Pandemic-Can-Teach-Today-s-Insurers/>.

1 intended purpose or function because of a virus. As Travelers knew, or
 2 should have known, for decades many courts have held that the presence
 3 of a hazardous substance in property, including the air, airspace,
 4 surfaces, and personal property inside buildings, constitutes property
 5 damage and that there may be “physical loss” to property even if the
 6 property is not visibly damaged to the human eye. As Travelers knew, or
 7 should have known, the many decisions include the following:

- 8 • *Arbeiter v. Cambridge Mutual Fire Insurance Co.*, 1996 WL
 9 1250616, at *2 (Mass. Super. Ct. Mar. 15, 1996): presence of
 10 oil fumes in building constituted “physical loss” to building.
- 11 • *Essex Insurance Co. v. BloomSouth Flooring Corp.*, 562 F.2d
 12 399, 406 (1st Cir. 2009): odor from carpet and adhesive “can
 13 constitute physical injury to property.”
- 14 • *Farmers Insurance Co. v. Trutanich*, 123 Or. App. 6, 9-11
 15 (1993): “[T]he odor produced by the methamphetamine lab
 16 had infiltrated the house. The cost of removing the odor is a
 17 direct physical loss.”
- 18 • *Gregory Packaging, Inc. v. Travelers Indemnity Property*
 19 *Casualty Co.*, 2014 WL 6675934 (D.N.J. Nov. 25, 2014):
 20 closure of facility because of accidentally released ammonia;
 21 while “structural alteration provides the most obvious sign of
 22 physical damage, . . . property can sustain physical loss or
 23 damage without experiencing structural alteration.”
- 24 • *Matzner v. Seacoast Insurance Co.*, 1998 WL 566658 (Mass.
 25 Super. Ct. Aug. 12, 1998): building with unsafe levels of
 26 carbon monoxide sustained direct physical loss.
- 27 • *Mellin v. North Security Insurance Co.*, 167 N.H. 544, 550-51
 28 (2015): cat urine odor inside condominium constitutes direct

1 physical loss; “physical loss may include not only tangible
 2 changes to the insured property, but also changes that are
 3 perceived by a sense of smell and that exist in the absence of
 4 structural damage.”

- 5 • *Oregon Shakespeare Festival Ass’n v. Great American*
 6 *Insurance Co.*, 2016 WL 3267247, at *9 (D. Ore. June 7,
 7 2016): “smoke infiltration in theatre caused direct property
 8 loss or damage by causing the property to be uninhabitable
 9 and unusable for its intended purpose.”
- 10 • *Pepsico, Inc. v. Winterthur International America Insurance*
 11 *Co.*, 24 A.D.3d 743, 744, 806 N.Y.S.2d 709 (N.Y. App. Div.
 12 2005): rejecting insurer’s contention that products altered
 13 because of faulty ingredients were not physically damaged
 14 under an all-risk property policy.
- 15 • *Port Authority v. Affiliated FM Insurance Co.*, 311 F.3d 226,
 16 236 (3d Cir. 2002): property sustained a direct physical loss
 17 because it was rendered uninhabitable by the presence of
 18 asbestos fibers.
- 19 • *Wakefern Food Corp. v. Liberty Mutual Fire Insurance Co.*,
 20 968 A.2d 724, 734-5 (N.J. App. Div. 2009): holding that the
 21 electrical grid was “physically damaged” when it was
 22 “incapable of performing [its] essential function of providing
 23 electricity,” further noting that “the undefined term ‘physical
 24 damage’ was ambiguous” and that “[s]ince ‘physical’ can mean
 25 more than material alteration or damage, it was incumbent
 26 on the insurer to clearly and specifically rule out coverage in
 27 the circumstances where it was not to be provided.”
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1 • *Western Fire Insurance Co. v. First Presbyterian Church*, 165
2 Colo. 34, 39-40 (1968): direct physical loss when gasoline
3 permeated church building making it dangerous to use.

4 24. Because Travelers has long been licensed to sell insurance to
5 California insureds, it has known, or should have known, that a
6 California Court of Appeal addressed in 1962—59 years ago—the
7 question of whether a property insurance policy could cover loss or
8 damage to a structure that had no physical damage or alteration. In
9 *Hughes v. Potomac Insurance Co.*, 199 Cal. App. 2d 239 (1962), the
10 insureds’ house had been left partially overhanging a cliff after landslide.
11 The house suffered no physical damage. However, the court rejected the
12 insurer’s argument that there was no “direct physical loss.” The court
13 explained why, and what an insurer should do if it did not want to cover
14 such losses:

15 Despite the fact that a “dwelling building” might
16 be rendered completely useless to its owners, [the
17 insurer] would deny that any loss or damage had
18 occurred unless some tangible injury to the
19 physical structure itself could be detected.
20 Common sense requires that a policy should not be
21 so interpreted in the absence of a provision
22 specifically limiting coverage in this manner. [The
23 insureds] correctly point out that a “dwelling” or
24 “dwelling building” connotes a place fit for
25 occupancy, a safe place in which to dwell or live. It
26 goes without question that [the insureds’]
27 “dwelling building” suffered real and severe
28 damage when the soil beneath it slid away and left

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1 it overhanging a 30-foot cliff. Until such damage
2 was repaired and the land beneath the building
3 stabilized, the structure could scarcely be
4 considered a “dwelling building” in the sense that
5 rational persons would be content to reside there.¹⁷

6 25. Thus, Travelers knew, or should have known, for decades that
7 its policies would be called upon to pay substantial amounts, including to
8 JC/SC, for losses even if there was not physical damage visible to the
9 human eye.

10 **THE TRAVELERS INSURANCE POLICIES**

11 26. Since at least 2017, Travelers has sold JC/SC “Building Pac
12 Plus” policies that provide commercial general liability coverage,
13 property coverage, and various extensions of coverage.

14 27. Travelers sold JC/SC the following policies, among others:
15 • Policy number 680-7650C041-17-42 for the period September
16 27, 2017, to September 27, 2018 (the “2017-18 Policy”); and
17 • Policy number 680-7650C041-19-42 for the period September
18 27, 2019, to September 27, 2020 (the “Renewal Policy”)
19 (together with the 2017-2018 Policy, the “Policies”).

20 True and correct copies of the Policies are attached hereto as Exhibits A
21 and B, respectively, and incorporated herein by reference.

22 28. JC/SC seeks damages and a declaration of coverage for losses
23 associated with COVID-19 under the Renewal Policy. The 2017-18
24 Policy is referenced herein solely because it contains operative policy
25 provisions of the Renewal Policy, including the Insuring Agreement.
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28 ¹⁷ *Id.* at 248-49.

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1 29. The “Limits of Insurance” provision of the Renewal Policy
2 states that the “most we will pay for loss or damage in any one
3 occurrence is the applicable Limit of Insurance shown in the
4 Declarations, Schedules, Coverage Forms, or endorsements.” Renewal
5 Policy § C.1., Limits of Insurance.

6 30. The “Business Income/Extra Expense” coverage in the 2019-
7 2020 Renewal Policy is for “actual loss subject to a maximum limit of
8 \$2,559,792.” 2019-2020 Renewal Policy, Schedule of Locations and
9 Buildings.

10 31. The Renewal Policy provides property coverage for the
11 following eight locations in the Los Angeles, California area:

- 12 • Building 001: 454-468 La Brea, Los Angeles, CA 90036;
- 13 • Building 002: 1901 Sunset Blvd., Los Angeles, CA 90021;
- 14 • Building 003: 8209-8225 ½ Santa Monica Blvd., Los Angeles
15 CA 90069;
- 16 • Building 004: 459 S. Sycamore Ave., Los Angeles, CA 90036;
- 17 • Building 005: 465 S. Sycamore Ave., Los Angeles, CA 90036;
- 18 • Building 006: 8111-8113 Melrose Ave., Los Angeles, CA
19 90036;
- 20 • Building 007: 715 N. Crescent Heights Blvd., Los Angeles, CA
21 90046; and
- 22 • Building 008: 8101-8109 Melrose Ave., Los Angeles, CA
23 90046.

24 *Id.*, Schedule of Locations and Buildings.

25 32. The Renewal Policy provides separate limits for “Replacement
26 Costs” at each insured location but only the one limit of \$2,559,792 is
27 provided for “Business Income/Extra Expense” coverage at all insured
28 locations.

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THE TERMS OF THE POLICIES

33. The Policies state, in part:

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from a Covered Cause of Loss.

2017-18 Policy § A.1., Coverage.

34. A “Covered Cause of Loss” is defined, in part, as “Risks of Direct Physical Loss.” *Id.* § A.4., Coverage, Covered Causes of Loss.

35. The Policies also provide “Time Element” insurance, including “Business Income” and “Extra Expense Coverage.”

36. The Insuring Agreement of the “Business Income” coverage states, in part:

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

...

Id. § A.3.a.(2), Coverage, Business Income.

37. The Policies define Business Income to mean, “net income,” which includes, in part, “rental value” and “continuing normal operating expenses incurred, including payroll.” *Id.*

38. The Policies define “operations” to include the “tenantability of the described premises.” *Id.* § G.18., Property Definitions.

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1 39. The Policies insure “reasonable and necessary expenses”
2 incurred during the
3 period of restoration that you would not have
4 occurred if there had been no direct physical loss of
5 or damage to property caused by or resulting from
6 a Covered Cause of Loss.

7 *Id.* § A.3.b.(1), Coverage, Extra Expense.

8 40. The Policies do not define “direct physical loss of or damage.”
9 Nor do they require that any “physical loss or damage” be visible to the
10 human eye or cause structural damage to a building.

11 41. The Policies also provide “Civil Authority” coverage, insuring:
12 [A]ctual loss of Business Income you sustain and
13 reasonable and necessary Extra Expense you incur
14 caused by action of civil authority that prohibits
15 access to the described premises. The civil
16 authority action must be due to direct physical loss
17 of or damage to property at locations, other than
18 described premises, that are within 100 miles of
19 the described premises, caused by or resulting
20 from a Covered Cause of Loss.

21 *Id.* § A.7.g.(1), Coverage Extensions, Civil Authority.

22 42. The coverage for Business Income loss under “Civil Authority”
23 coverage begins “24 hours after the time of that action and will continue
24 for a period of three consecutive weeks after coverage begins.” *Id.* The
25 coverage for Extra Expense loss from “Civil Authority” begins
26 “immediately after the time of that action and will end when your
27 Business Income coverage ends” *Id.*

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1 43. The Policies also provide “Business Income and Extra
2 Expense from Dependent Property” coverage. This coverage states:
3 When the Declarations show that you have
4 coverage for Business Income and Extra Expense,
5 you may extend that insurance to apply to the
6 actual loss of Business Income you sustain and
7 reasonable and necessary Extra Expense you incur
8 due to the “suspension” of your “operations” during
9 the “period of restoration”. The “suspension” must
10 be caused by direct physical loss or damage at the
11 premises of a Dependent Property, caused by or
12 resulting from a Covered Cause of Loss.

13 *Id.* § A.7.d.(1), Coverage Extensions, Business Income and Extra
14 Expense From Dependent Property.

15 44. The Renewal Policy also contains a “Building Owners
16 Endorsement” that insures, in part,
17 [t]he cost of Covered Leasehold Interest you
18 sustain due to the cancellation of lease contracts
19 by your tenants. The cancellation must result
20 from direct physical loss of or damage to your
21 Covered Property at the premises described in the
22 Schedule above caused by or resulting from a
23 Covered cause of Loss during the term of the
24 policy.

25 Renewal Policy, Building Owners Endorsement.

26 45. The “Covered Leasehold Interest” is defined to mean the
27 difference between

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(i) Rent you were collecting at the described premises prior to the loss; and

(ii) ‘Rental Value’ of the described premises after loss or damage has been repaired or rebuilt

Id.

46. The “Building Owners Endorsement” provides limits of \$500,000 in “any one occurrence at each described premises” and \$500,000 in “any one occurrence regardless of the number of described premises involved.” *Id.*

47. The Policies contain an “Exclusion of Loss Due to Virus or Bacteria” Endorsement. This exclusion states in part:

[W]e will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness, or disease.

2017-18 Policy, Exclusion of Loss Due to Virus or Bacteria.

48. Unlike other exclusions in the Policies, the “Exclusion of Loss Due to Virus or Bacteria” is written to apply narrowly and, at most, only if a virus is the efficient proximate cause of loss or damage. It does not contain broad lead-in language found in other exclusions. Indeed, other exclusions in the Renewal Policy contain the following lead-in language:

We will not pay for loss or damage caused directly or indirectly by any of the following, regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

Id. § B.1., Exclusions. Travelers elected not to use this more-encompassing language in the “Exclusion of Loss Due to Virus or

1 Bacteria” Endorsement. Therefore, the exclusion cannot be interpreted
2 as if it contained such language.

3 49. Even if the “Exclusion of Loss Due to Virus or Bacteria”
4 Endorsement otherwise could apply to JC/SC’s losses, it does not limit or
5 exclude coverage if other causes of loss are the efficient proximate cause
6 of the loss.

7 **THE COVID-19 PANDEMIC AND**
8 **SUBSEQUENT CIVIL AUTHORITY ORDERS**

9 50. In December 2019, SARS-CoV-2 and COVID-19 broke out in
10 Wuhan, China. Since then, SARS-CoV-2 and COVID-19 have spread
11 throughout the world, prompting the World Health Organization to
12 declare a global pandemic.

13 51. As explained by the World Health Organization,
14 People can catch COVID-19 from others who have
15 the [SARS-CoV-2] virus. The disease can spread
16 from person to person through small droplets from
17 the nose or mouth which are spread when a person
18 with COVID-19 coughs or exhales. These droplets
19 land on objects and surfaces around the person.
20 Other people then catch COVID-19 by touching
21 these objects or surfaces, then touching their eyes,
22 nose or mouth. People can also catch COVID-19 if
23 they breathe in droplets from a person with
24 COVID-19 who coughs out or exhales droplets.¹⁸

25 52. Aerosolized droplets exhaled by normal breathing can travel
26 significant distances and stay suspended in air for hours until gravity
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28 ¹⁸ See <https://www.who.int/news-room/q-a-detail/q-acoronaviruses> . .

1 ultimately forces them to the nearest surface. Studies suggest that the
2 SARS-CoV-2 virus can remain on surfaces for at least 28 days.¹⁹

3 53. Though microscopic, SARS-CoV-2—like all viruses—is a
4 physical substance. SARS-CoV-2 is highly contagious and mobile. Even
5 with reasonable efforts to slow the spread, it spreads from person to
6 person primarily through fine aerosolized droplets containing the virus.
7 These aerosolized droplets are expelled into the air when infected
8 individuals breathe, talk, sing, cough, or sneeze. Their presence in the
9 air and airspace constitutes a physical alteration to the air and airspace,
10 constituting physical damage.

11 54. Scientists have likened the ubiquitous aerosolized droplets of
12 the virus to smoke, present in the air long after the source of its
13 dissemination has gone.²⁰ Thus, entering a building or other location
14 where SARS-CoV-2 may be physically present in the air or airspace or on
15 surfaces has posed an imminent and severe risk to human health.

16 55. Since January 1, 2020, and as of the filing of this Complaint,
17 there have been more than 175,686,814 confirmed cases of COVID-19
18 throughout the world, more than 3,803,592 of which have resulted in
19 deaths as of the date of the filing of this Complaint.²¹ There have been
20 more than 3,802,217 confirmed cases in the State of California, more
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22 ¹⁹ See, e.g., CNBC, *Virus that causes Covid-19 can survive for 28 days on*
23 *common surfaces, research says* (Oct. 12, 2020),
[https://www.cnbc.com/2020/10/12/virus-that-causes-covid-19-can-survive-](https://www.cnbc.com/2020/10/12/virus-that-causes-covid-19-can-survive-for-28-days-on-surfaces-research-says.html)
24 [for-28-days-on-surfaces-research-says.html](https://www.cnbc.com/2020/10/12/virus-that-causes-covid-19-can-survive-for-28-days-on-surfaces-research-says.html); Shane Riddell, Sarah Goldie,
25 Andrew Hill, Debbie Eagles, & Trevor W. Drew, *The effect of temperature*
on persistence of SARS-CoV-2 on common surfaces, 17 *Virology J.*, Art.
26 No. 145 (2020),
<https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7>.

27 ²⁰ See “Airborne Transmission of SARS-CoV-2,” *Science* (Oct. 16, 2020),
available at <https://science.sciencemag.org/content/370/6514/303.2>.

28 ²¹ See <https://covid19.who.int/>.

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1 than 63,584 of which have resulted in deaths.²² There have been more
2 than 1,246,974 cases in Los Angeles, more than 24,434 of which have
3 resulted in deaths.²³ Moreover, due in part to the initial absence of
4 available tests, it is believed that the true number of COVID-19 cases is
5 significantly higher than the reported numbers might suggest.²⁴

6 56. Since the outbreak of SARS-Cov-2 and COVID-19, and in
7 response thereto, civil authorities throughout the world issued “stay-at-
8 home,” and “shelter in place,” travel restrictions, quarantine, and other
9 orders, including orders requiring the suspension of non-essential
10 business operations (collectively, the “Civil Authority Orders”). The Civil
11 Authority Orders include those described hereafter.

12 57. To help create a framework for the implementation of such
13 policies in California, Governor Gavin Newsom issued Executive Order
14 N-25-20, stating: “All residents are to heed any orders and guidance of
15 state and local public health officials, including but not limited to the
16 imposition of social distancing measures, to control the spread of COVID-
17 19.” Executive Order N-25-20 took effect on March 12, 2020.

18 58. On March 15, 2020, Los Angeles Mayor Eric Garcetti issued a
19 public order prohibiting all dining in restaurants, prohibiting other large
20 gatherings, and strongly discouraging religious gatherings.

21 59. On March 16, 2020, the County of Los Angeles Department of
22 Public Health issued an order prohibiting gatherings of more than 50
23 people.

24
25 ²² See [https://www.nytimes.com/interactive/2021/us/california-covid-](https://www.nytimes.com/interactive/2021/us/california-covid-cases.html)
26 [cases.html](https://www.nytimes.com/interactive/2021/us/california-covid-cases.html)

27 ²³ *Id.*

28 ²⁴ See [https://www.nbcnews.com/health/health-news/how-many-people-](https://www.nbcnews.com/health/health-news/how-many-people-have-had-coronavirus-no-symptoms-n1187681)
[have-had-coronavirus-no-symptoms-n1187681.](https://www.nbcnews.com/health/health-news/how-many-people-have-had-coronavirus-no-symptoms-n1187681)

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1 60. On March 16, 2020, the City of West Hollywood passed
2 Resolution No. 20-5263 proclaiming the existence of a local emergency.

3 61. On March 19, 2020, the County of Los Angeles amended its
4 prior order and mandated the closure of all businesses operating in the
5 County, subject to certain exceptions for “essential” businesses and
6 business activities. The County of Los Angeles stated that this order was
7 issued in direct response to the “continued rapid spread of COVID-19
8 and the need to protect the most vulnerable members of our community,”
9 adding that the order was “based upon scientific evidence and best
10 practices, as currently known and available, to protect members of the
11 public from avoidable risk of serious illness and death resulting from the
12 spread of COVID-19” The March 19, 2020, Order further recognized
13 that, as of that date, there were “at least 231 cases of COVID-19 and 2
14 deaths reported in Los Angeles County,” noting that “[t]here remains a
15 strong likelihood of significant and increasing number of suspected cases
16 of community transmission.”

17 62. On March 19, 2020, the State of California issued an Order of
18 the State Public Health Officer, which required all individuals living in
19 the state to stay at home or at their place of residence “except as needed
20 to maintain operations of the federal critical infrastructure sectors.” On
21 that same date, California Governor Newsom issued Executive Order N-
22 33- 20, expressly requiring California residents to follow the March 19,
23 2020, Order of the State Public Health Officer, and incorporating by
24 reference California Government Code 8665, which provides that “[a]ny
25 person . . . who refuses or willfully neglects to obey any lawful order . . .
26 issued as provided in this chapter, shall be guilty of a misdemeanor and,
27 upon conviction thereof, shall be punishable by a fine of not to exceed one
28 thousand dollars (\$1,000) or by imprisonment for not to exceed six

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1 months or by both such fine and imprisonment.” The March 19, 2020,
2 Order of the State Public Health Officer and Executive Order N-33-20
3 took immediate effect on March 19, 2020.

4 63. Also on March 19, 2020, Mayor Garcetti issued a Public Order
5 Under City of Los Angeles Emergency Authority with the subject “Safer
6 at Home.” Mayor Garcetti’s Order stated that “all persons living within
7 the City of Los Angeles are hereby ordered to remain in their homes” and
8 “all businesses within the City of Los Angeles are ordered to cease
9 operations that require in-person attendance by workers at a workplace .
10 . . .” Mayor Garcetti’s Order included certain exceptions for “essential”
11 businesses and business activities.

12 64. On March 21, 2020, the County of Los Angeles Department of
13 Public Health amended and superseded its March 19, 2020 to “comply
14 with Executive Order N-33-20 issued by Governor Newsom.” This March
15 21 Order “specifically requires all business to cease in-person operations
16 and close to the public, unless the business is defined as an Essential
17 Business by this Order.”

18 65. On April 1, 2020, Mayor Garcetti further revised his March
19 19, 2020, Order. Mr. Garcetti’s April 1, 2020, Order reiterated that all
20 Los Angeles residents were required to stay home and mandated the
21 continued closure of non-essential in-person businesses. The April 1,
22 2020, Order explicitly recognizes that the SARS-CoV-2 virus can spread
23 easily from person to person and “it is physically causing property loss or
24 damage due to its tendency to attach to surfaces for prolonged periods of
25 time.”

26 66. On April 10, 2020, Mayor Garcetti issued a further revised
27 “Safer at Home” Order. The Order extended all mandated closures
28 through May 15, 2020.

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1 67. Also on April 10, 2020, the County of Los Angeles issued an
2 Order regarding the Temporary Prohibition of All Events and
3 Gatherings and Closure of Non-Essential Businesses and Areas. The
4 April 10, 2020, Order extended all mandated closures through May 15,
5 2020.

6 68. On April 27, 2020, May 4, 2020, and May 8, 2020, Mayor
7 Garcetti issued additional updates to his “Safer at Home” Order. In
8 relevant part, these Orders all required Los Angeles Citizens to stay at
9 home and mandated the continued closure of all non-essential in-person
10 businesses.

11 69. In the months since Mayor Garcetti’s May orders, additional
12 Civil Authority Orders were issued. These orders imposed varying
13 restrictions and conditions of the ability of individuals to leave their
14 homes and on the ability of businesses to conduct their operations as
15 they otherwise normally would have done.

16 70. The Civil Authority Orders forced many of JC/SC’s tenants’ to
17 “stay at home” and caused the shut-down of many of these tenants’
18 businesses. As a result, these tenants could not pay rent to JC/SC.
19 Further, the Civil Authority Orders continue to limit, restrict, and
20 prohibit partial or total access to JC/SC’s commercial properties as a
21 direct result of physical damage to other properties—that is, the physical
22 alteration to air, airspace, and the surfaces of property caused by SARS-
23 CoV-2.

24 71. Additionally, Civil Authority Orders prevent or impair the
25 use of the properties, meaning that they have not been, and cannot be,
26 used for their intended purpose and function, thus constituting “physical
27 loss” to property as that phrase is used in the Renewal Policies, even if it
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1 did not also constitute “damage” to property as that term is used in the
2 Policies.

3 72. Commencing in March 2020, JC/SC suffered, and continues to
4 suffer, losses and damages covered by the Renewal Policy in an amount
5 to be established at trial.

6 **TRAVELERS’ BREACHES AND WRONGFUL CONDUCT**

7 73. JC/SC timely notified Travelers of its losses on or about July
8 28, 2020. On March 12, 2021, Travelers finally provided JC/SC with its
9 coverage position. Travelers stated that it had “concluded that your
10 policy does not provide coverage for your claims loss of income.”

11 Specifically, Travelers stated:

12 The presence or possible presence of the COVID-19
13 virus does not constitute “direct physical loss or
14 damage to property” within the meaning of your
15 client’s policy. Because the limitations on their
16 business operations were the result of the
17 Governmental Order (as opposed to “direct
18 physical loss or damage to property at the
19 described premises, See IL T0 20 02 05, this
20 Business Income and Extra Expense coverage does
21 not apply to your loss.

22 74. Travelers also stated in the March 12, 2021, letter that
23 neither Civil Authority nor Business Income and Extra Expense From
24 Dependent Property coverage was available.

25 75. Travelers also relied on several exclusions to deny coverage
26 including, the “Exclusion of Loss Due to Virus or Bacteria” exclusion.

27 76. Given the manner in which SARS-CoV-2 lingers in the air, in
28 airspace, and on surfaces, and its manner of transmission, and the

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1 government’s desire to “flatten the curve,” JC/SC’s properties could not
2 be used by many of JC/SC’s tenants, who did not pay rent.

3 77. Further, as a result of these events, many of JC/SC’s
4 commercial tenants did not renew leases and vacancies at JC/SC’s
5 properties increased, causing JC/SC further economic loss.

6 78. JC/SC is also entitled to recover damages representing the
7 reasonable and necessary expenses incurred during the “period of
8 restoration” that would not have occurred if there had been no direct
9 physical loss of or damage to property.

10 79. Additionally, the closures of JC/SC’s properties were
11 necessary to “flatten the curve” associated with the spread of SARS-CoV-
12 2. The costs and losses associated with the closures therefore constitute
13 reasonable costs incurred to mitigate potential damages. Travelers is
14 obligated to pay these amounts because JC/SC’s actions were required
15 under the common law doctrine of mitigation.

16 80. Although JC/SC sustained losses and damages falling
17 squarely within several of the Policies’ coverage grants, Travelers failed
18 and refused to acknowledge coverage for those losses and refused to pay
19 any portion of them, including the amounts JC/SC has incurred, and is
20 incurring, to mitigate its otherwise insured losses.

21 81. Furthermore, Travelers denied JC/SC’s claim, incorrectly
22 asserting that the losses were not caused by or the result of physical loss
23 or damage or due to the prohibition of access by a civil authority.

24 82. Travelers contends that even though SARS-CoV-2 caused
25 physical alterations to the air and airspace in which it is present and to
26 the surfaces to which its attaches, these physical alterations do not
27 constitute “physical loss of or damage” as that phrase is used in the
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1 Policies because the physical alterations are not visible to the naked
2 human eye.

3 83. As pointed out above, JC/SC is informed and believes, and on
4 that basis alleges, that Travelers has known for decades that the
5 presence of hazardous substances, including microscopic substances, on
6 or in real and personal property have been deemed to constitute property
7 damage.

8 84. At a minimum, in light of the decades of court decisions
9 holding that the presence of hazard substances constitutes damage to
10 property and recognizing that if property is unsafe, there is “loss of
11 property,” Travelers knew that its policy language reasonably could be
12 interpreted not to restrict coverage only to losses causing structural
13 damage visible to the human eye.

14 85. Furthermore, Travelers knew, or should have known, that the
15 “Exclusion of Loss Due to Virus or Bacteria” would apply only if it could
16 show that the efficient proximate cause of JC/SC’s losses was SARS-CoV-
17 2 and that the exclusion applied to damage to other properties.
18 However, JC/SC is informed and believes, and on that basis alleges, that
19 Travelers made no meaningful investigation of the causes of JC/SC’s
20 losses, let alone the thorough investigation that it is legally required to
21 make into bases supporting JC/SC’s claim for coverage, including
22 whether the efficient proximate cause of the loss was something other
23 than the presence of SARS-CoV-2 on JC/SC’s properties

24 86. Additionally, in denying coverage based on the “Exclusion of
25 Loss Due to Virus or Bacteria,” Travelers ignored the facts that (a)
26 viruses have always been present in the world, (b) viruses associated
27 with prior pandemics still are prevalent, (c) various flu viruses kill tens
28 of thousands of people each year in the United States, and (d) even

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1 though SARS-CoV-2 likely will be present for years to come, business
2 are reopening. Therefore, Travelers cannot reasonably have concluded
3 that the presence of a virus is the efficient proximate cause of JS/SC’s
4 losses.

5 87. JC/SC is informed and believes, and on that basis alleges,
6 that Travelers knew by mid-March 2020 that it would deny coverage
7 under its property policies for losses associated with the pandemic on the
8 ground that the presence of SARS-CoV-2 does not constitute “direct loss
9 or damage of property” as that phrased is used in its policies. However,
10 Travelers delayed until March 12, 2021, to tell JC/SC that it was denying
11 coverage on this basis, thereby violating California’s Fair Claims
12 Settlement Practices regulations and insurance industry custom,
13 practice, and standards.

14 88. To the extent not waived or otherwise excused, JC/SC has
15 complied with the provisions contained in the Renewal Policy.
16 Therefore, JC/SC is entitled to all benefits of the insurance provided by
17 the Renewal Policy.

18 **FIRST CAUSE OF ACTION**

19 **(Breach of Contract)**

20 89. JC/SC realleges and incorporates by reference paragraphs 1
21 through 88, above.

22 90. Travelers breached its duties under the Renewal Policy by,
23 among other things, unreasonably taking the position that JC/SC
24 sustained no “direct physical loss of or damage to Covered Property,”
25 asserting that the “Exclusion for Loss Due to Virus or Bacteria” applied,
26 by denying coverage for JC/SC’s losses, by failing to pay for any portion
27 of JC/SC’s losses, and by otherwise acting as alleged above.

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1 91. As a direct and proximate result of Travelers' breaches, JC/SC
2 has sustained, and will continue to sustain, substantial damages for
3 which Travelers is liable, in an amount to be established at trial. JC/SC
4 will seek leave to amend this Complaint once it ascertains the full extent
5 of its damages.

6 **SECOND CAUSE OF ACTION**

7 **(Tortious Breach of the Implied Covenant of**
8 **Good Faith and Fair Dealing)**

9 92. JC/SC realleges and incorporates by reference paragraphs 1
10 through 88 and 90 above.

11 93. Implied in the Renewal Policy is a covenant that Travelers
12 would act in good faith and deal fairly with JC/SC, that Travelers would
13 do nothing to interfere with the right of JC/SC to receive benefits due
14 under the Renewal Policy, and that Travelers would give at least the
15 same level of consideration to the interests of JC/SC as it gives to its own
16 interests.

17 94. Travelers had a duty under the Renewal Policy, California
18 law, and insurance industry custom, practice, and standards to conduct a
19 prompt and thorough investigation, including as to all bases that might
20 support JC/SC's claims for insurance coverage, before denying, coverage.

21 95. Instead of complying with its duties, Travelers acted in bad
22 faith by, among other things:

23 a. failing to conduct a full and thorough investigation of
24 JC/SC's claim for insurance coverage and asserting grounds
25 for denying coverage without conducting such an
26 investigation;

27 b. wrongfully and unreasonably asserting grounds for
28 denying coverage that Travelers knew, or should have

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- 1 known, are not supported by, and in fact are contrary to,
- 2 the terms of the Renewal Policy, California law, insurance
- 3 industry custom, practice, and standards, and the facts;
- 4 c. creating and implementing a course of action to
- 5 automatically deny coverage for business interruption
- 6 claims associated with SARS-CoV-2, COVID-19, and
- 7 subsequent events;
- 8 d. unreasonably failing and refusing to honor its promises
- 9 and representations in the Renewal Policy;
- 10 e. giving greater consideration to its own interests than it
- 11 gave to the interests of JC/SC;
- 12 f. compelling JC/SC to file this suit in order to receive the
- 13 contractual benefits which it bought and paid for; and
- 14 g. otherwise acting as alleged above.

15 96. In breach of the implied covenant of good faith and fair
16 dealing, Travelers did the things and committed the acts alleged above
17 for the purpose of consciously withholding from JC/SC the rights and
18 benefits to which it is entitled under the Renewal Policy.

19 97. Travelers' actions are inconsistent with the reasonable
20 expectations of JC/SC, are contrary to established industry custom and
21 practice, are contrary to the legal requirements of California, are
22 contrary to the express terms of the Renewal Policy and constitute bad
23 faith.

24 98. As a direct and proximate result of Travelers' actions, JC/SC
25 has been damaged in an amount exceeding the Court's jurisdictional
26 limits. Pursuant to *Brandt v. Superior Court*, 37 Cal. 3d 813 (1985),
27 JC/SC is also entitled to recover all attorneys' fees it reasonably
28 incurred, and continue to incur, in the efforts to obtain the benefits due

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1 under the Renewal Policy that Travelers has withheld, and is
2 withholding, in bad faith, relative to the insured properties. JC/SC is
3 also entitled to interest at the maximum legal rate.

4 99. JC/SC is informed and believes, and on that basis alleges,
5 that Travelers, acting through one or more of its officers, directors, or
6 other corporate employees with substantial independent and
7 discretionary authority over significant aspects of its business,
8 performed, authorized, or ratified the bad faith conduct alleged above.

9 100. Travelers' conduct exhibits a conscious disregard of the rights
10 of JC/SC, constituting oppression, fraud, or malice. JC/SC engaged in a
11 series of acts designed to deny JC/SC the benefits due under the Renewal
12 Policy. Specifically, by acting as alleged above, in light of information,
13 facts, and relevant law to the contrary, Travelers consciously disregarded
14 JC/SC's respective rights and forced JC/SC to incur substantial financial
15 losses, thereby inflicting substantial financial damage on JC/SC.
16 Travelers ignored JC/SC's interests and concerns with the requisite
17 intent to injure within, for example, the meaning of California Civil Code
18 section 3294. Therefore, JC/SC is entitled to recover punitive damages
19 from Travelers in an amount sufficient to punish and make an example
20 of Travelers and to deter similar conduct in the future.

21 **THIRD CAUSE OF ACTION**

22 **(Declaratory Relief)**

23 101. JC/SC realleges and incorporates by reference paragraphs 1
24 through 88 above.

25 102. Pursuant to the terms of the Renewal Policy, Travelers is
26 obligated to pay, up to the limit of liability for each insured premises, for
27 property damage, time element and contingent time element losses, and
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1 the other aforementioned coverages under the Renewal Policy, none of
2 which are specifically, clearly, and unambiguously excluded.

3 103. JC/SC’s losses are covered under multiple coverage grants
4 and are not excluded.

5 104. Travelers disputes and denies that it has any contractual
6 obligations to cover JC/SC’s losses under the Renewal Policy.

7 105. An actual and justiciable controversy has arisen between
8 JC/SC and Travelers as to Travelers’ obligation to acknowledge JC/SC’s
9 insured losses and pay JC/SC under the Renewal Policy.

10 106. JC/SC and Travelers dispute the meaning, scope, and
11 application of key terms and provisions in the Renewal Policy, none of
12 which are defined therein.

13 107. Resolution of these controversies will establish JC/SC’s right
14 to recover payments under the Renewal Policy as a result of SARS-CoV-
15 2, COVID-19, the Civil Authority Orders, and JC/SC’s efforts to mitigate
16 its loss.

17 108. JC/SC seeks a judicial declaration by this Court in accord
18 with its contentions, rejecting Travelers’ contentions, stating that
19 JC/SC’s losses are insured under the Renewal Policy.

20 109. A declaration is necessary at this time in order that the
21 parties’ dispute may be resolved and that they may be aware of their
22 prospective rights and duties.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, JC/SC prays for relief as follows:

25 **ON THE FIRST CAUSE OF ACTION**

26 1. For damages, plus interest, according to proof at the time of
27 trial;

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ON THE SECOND CAUSE OF ACTION

2. For damages, including reasonable attorneys’ fees incurred in obtaining the benefits due under the Policy, plus interest, according to proof at the time of trial; and

3. For punitive damages in an amount to be determined at the time of trial;

ON THE THIRD CAUSE OF ACTION

4. For a declaratory judgment in favor of JC/SC and against Travelers, in accord with JC/SC’s contentions above and declaring that Travelers is required to pay JC/SC for its insured loss; and

ON ALL CAUSES OF ACTION

5. For costs of suit herein; and

6. For such other, further, or different relief as the Court may deem just and proper.

Dated: June 14, 2021

PASICH LLP

By: /s/ Kirk Pasich
Kirk Pasich

Attorneys for Plaintiff

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