

1 Eric H. Gibbs (SBN 178658)
 2 ehg@classlawgroup.com
 3 Michael L. Schrag (SBN 185832)
 4 mls@classlawgroup.com
 5 Andre M. Mura (SBN 298541)
 6 amm@classlawgroup.com
 7 Karen Barth Menzies (SBN 180234)
 8 kbm@classlawgroup.com
 9 Amy M. Zeman (SBN 273100)
 10 amz@classlawgroup.com
 11 Steve Lopez (SBN 300540)
 12 sal@classlawgroup.com

GIBBS LAW GROUP LLP
 505 14th Street, Suite 1110
 Oakland, CA 94612
 Telephone: (510) 350-9700
 Facsimile: (510) 350-9701

Attorneys for Plaintiff

[Additional counsel on signature page]

**IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

PAGNOL ET CIE., INC. dba CHEZ
 PANISSE RESTAURANT,

Plaintiff,

v.

AMCO INSURANCE COMPANY,

Defendant.

Case No. _____

COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Pagnol et Cie., Inc. dba Chez Panisse Restaurant files suit against
2 AMCO Insurance Company and alleges as follows:

3 INTRODUCTION

4 1. Since March 19, 2020, California’s “Stay at Home” order has instructed
5 all 40 million California residents to remain at home, with certain exceptions. Though
6 lifesaving, this mandate, which remains in place, ends in-house service at California
7 restaurants and remains in place to this day, though localities are permitted to reopen
8 if they meet certain conditions for a variance from the statewide order. This is not
9 merely causing severe financial distress for restaurants and their employees; such
10 closures threaten the viability of California’s restaurant industry.

11 2. Plaintiff’s restaurant in Berkeley, California is among the thousands of
12 restaurants that have been forced to cease operations as part of the Stay at Home
13 order. Chez Panisse and many California restaurants – none of whom bear fault for
14 statewide closures – were responsible business stewards, thus paying for business
15 interruption insurance to protect against a situation like this.

16 3. But insurance companies operating in California – despite collecting
17 premiums for such risks – are categorically denying claims from restaurants arising
18 from California’s mandated interruption of business services. Those denials are often
19 made with little or no investigation and without due regard for the interests of
20 insureds.

21 4. Indeed, form letters denying coverage for such losses appear to rest on
22 crabbed readings of coverage language and overbroad readings of exclusions. That
23 gets insurance law exactly backwards – and raises the specter of bad-faith denials.

24 5. Chez Panisse’s experience is no different. It has dutifully followed
25 California’s mandates. Facing serious financial harm, it has filed a claim with AMCO
26 for business interruption coverage.

27 6. AMCO swiftly denied the claim. Though its reasons are cursory, the
28 denial appears to be based on an unreasonable reading of its policy, which tracks
form policies issued throughout California on a take-it-or-leave-it basis.

1 7. That leaves the Chez Panisse in financial straits – precisely the situation
2 it sought to avoid when it obtained coverage for business interruptions.

3 8. Chez Panisse and other restaurants bought full-spectrum,
4 comprehensive insurance for their *businesses* – not just for damage to their physical
5 premises and equipment. And for good reason. Insurance coverage is important, if
6 not vital for small businesses.

7 9. Chez Panisse reasonably believed it had comprehensive coverage that
8 would apply to business interruptions under circumstances like these, where they
9 have done everything right to protect their businesses and the public. But insurance
10 companies like AMCO are cutting those lifelines – despite having pocketed significant
11 premiums for such relief.

12 10. Plaintiff thus brings this action seeking declaratory relief, insurance
13 coverage owed under AMCO’s policy, and damages.

14 **PARTIES**

15 11. Plaintiff Pagnol et Cie., Inc. dba Chez Panisse Restaurant is a
16 corporation formed under the laws of California. Its principal place of business is in
17 Berkeley, California.

18 12. Defendant AMCO Insurance Company is a company organized under
19 laws of Iowa with its principal place of business in Des Moines, Iowa. At all relevant
20 times, AMCO operated in California. AMCO is an affiliate of Nationwide Mutual
21 Insurance Company.

22 **JURISDICTION AND VENUE**

23 13. This Court has subject matter jurisdiction over this action under 28
24 U.S.C. § 1332. The amount in controversy exceeds \$75,000.00 exclusive of interests
25 and costs, and there is complete diversity of citizenship between Plaintiff and
26 Defendant.

27 14. This Court has personal jurisdiction over Defendant, because Defendant
28 conducts business in this District, including in Berkeley, California.

1 15. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b) as a
2 substantial part of the events or omissions giving rise to the instant action occurred in
3 Berkeley, California.

4 **INTRADISTRICT ASSIGNMENT**

5 16. Assignment to the San Francisco or Oakland Divisions would be proper
6 because Defendant has conducted business there and a substantial part of the events
7 or omissions which give rise to the claims alleged herein occurred in Alameda County
8 California.

9 **FACTUAL BACKGROUND**

10 17. In January 2020 early media reports documented an outbreak of a novel
11 strain of coronavirus – COVID-19 – in Wuhan, China. By late January, it was
12 generally understood in the scientific and public health communities that COVID-19
13 was spreading through human-to-human transmission and could be transmitted by
14 asymptomatic carriers.

15 18. On January 30, 2020, reports of the spread of COVID-19 outside China
16 prompted the World Health Organization to declare the COVID-19 outbreak a
17 “Public Health Emergency of International Concern.”

18 19. On March 11, the World Health Organization declared COVID-19 a
19 global health pandemic based on existing and projected infection and death rates and
20 concerns about the speed of transmission and ultimate reach of this virus.

21 20. Public health officials have recognized for decades that non-
22 pharmaceutical interventions (NPIs) can slow and stop the transmission of certain
23 diseases. Among these are screening and testing of potentially infected persons;
24 contact tracing and quarantining infected persons; personal protection and
25 prevention; and social distancing. Social distancing is the maintenance of physical
26 space between people. Social distancing can be limited – *e.g.*, reducing certain types
27 of conduct or activities like hand-shaking – or large-scale – *e.g.*, restricting the
28 movements of the total population.

21. A lack of central planning, shortages of key medical supplies and

1 equipment, and the unfortunate spread of misinformation and disinformation about
2 the risks of COVID-19 has led to widespread confusion, unrest, and uncertainty
3 regarding the likely trajectory of this pandemic and the appropriate counter-measures
4 necessary to mitigate the damage it could potentially cause.

5 22. Beginning in late February, public health officials began advising
6 various governments around the world that one of the most disruptive NPIs -
7 population-wide social distancing - was needed to stop the transmission of COVID-
8 19. Suddenly schools, offices, public transit, restaurants, bars, music venues, and
9 shops -- densely occupied spaces, heavily traveled spaces, and frequently visited
10 spaces - were likely to become hot-spots for local transmission of COVID-19.

11 23. By mid-March, that advice was being implemented by state and local
12 governments across the United States. In many respects, California led the way,
13 becoming one of the first states to order widespread closures.

14 24. California's Governor Gavin Newsom, on March 12, 2020, issued a
15 statewide directive known as the Safer at Home order: "All residents are to heed any
16 orders and guidance of state and local public health officials, including but not
17 limited to the imposition of social distancing measures, to control the spread of
18 COVID-19."

19 25. Following closely on the heels of local closure orders, including in San
20 Francisco, on March 19, 2020, the Governor issued another series of mandates (the
21 Stay at Home Order) -- which remain in effect to date, subject to approved county
22 variances -- requiring restaurants to cease in-person services, though curbside sales or
23 by delivery are now permitted.

24 **PLAINTIFF'S EXPERIENCE**

25 26. Plaintiff operates a restaurant called Chez Panisse in a converted
26 craftsman home in Berkeley, California. Founded in 1971, Chez Panisse was created to
27 reflect the feeling of having an intimate dinner party at home and focuses on
28 highlighting sustainably sourced, organic, and peak-of-their season ingredients. Chez
Panisse was one of the original innovators that helped spark the farm-to-table

1 movement in the restaurant industry.

2 27. Chez Panisse has complied with all applicable orders of California state
3 and local authorities. Compliance with those orders has caused direct physical loss of
4 Chez Panisse's insured property in that the property has been made useless and/or
5 uninhabitable; and its functionality has been severely reduced if not completely or
6 nearly eliminated.

7 28. The impact of these orders is felt not simply in their direct application to
8 Chez Panisse's operations, but also in their application to neighboring businesses and
9 properties, whose property has suffered similar direct physical loss as a result.

10 29. Even when California relaxes or revokes its mandates, Chez Panisse will
11 encounter continued loss of business income due to those orders because, in issuing
12 those orders, government officials have stated that densely occupied public spaces are
13 dangerously unsafe, and continuing to operate the shop in the same manner as before
14 could expose Chez Panisse to the risk of contaminated premises as well as exposing
15 customers and workers to transmission and infection risks.

16 30. Plaintiff purchased comprehensive commercial liability and property
17 insurance from AMCO to insure against risks the business might face. Such coverage
18 includes business income with extra expense coverage for the loss, as well as
19 additional "civil authority" coverage. Once triggered, the policy pays actual losses
20 sustained for the business income and extra expense coverage.

21 31. To date, Plaintiff has paid all of the premiums required by AMCO to
22 keep its policy in full force. These premiums have totaled many thousands to date.

23 32. On or about May 7, 2020, Plaintiff reported a loss of business income as
24 of March 16, 2020, under Policy ACP BPF 3009566824.

25 33. On or about May 14, 2020, AMCO denied Plaintiff's claim for coverage.
26 In a cursory denial letter, AMCO took the position that Chez Panisse's "loss was
27 caused by governmental action, due to the recent outbreak of the coronavirus
28 (COVID-19)" and as a result, AMCO's policy does not provide coverage for this loss.
Specifically, AMCO took the position that coverage was not warranted because "there

1 was no direct physical loss of or damage to property at the described premises.”
2 AMCO further stated that the policy included “an Exclusion for damage caused by
3 Virus or Bacteria.”

4 34. AMCO’s denial letter, on information and belief, appears to be a form
5 letter sent in response to business interruption claims arising from California’s Stay at
6 Home orders.

7 35. AMCO’s denial is contrary to the terms and conditions of the policy and
8 applicable law, which gives effect to plain language, construes ambiguity in favor of
9 coverage, and narrowly construes exclusions, the applicability of which insurers have
10 the burden of proving.

11 36. AMCO’s denial of coverage breached its obligation and responsibility to
12 provide coverage available through the policy to Plaintiff due to its covered loss of
13 business income because its premises are unusable and uninhabitable and have lost
14 all function.

15 37. As a result of AMCO’s denial of coverage and breach of the insurance
16 policy it issued, Plaintiff has suffered and will continue to suffer damages.

17 38. A declaratory judgment determining that the coverage provided under
18 the policy and an order that such coverage is owed will prevent Plaintiff from being
19 wrongfully left without vital coverage acquired to ensure the survival of its businesses
20 in these circumstances. As a result of the Stay at Home orders, Plaintiff has incurred
21 and continues to incur a substantial loss of business income and additional expenses
22 covered under the policy.

23
24 **FIRST CAUSE OF ACTION**

25 **Declaratory Judgment**

26 39. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

27 40. Plaintiff purchased a comprehensive business insurance policy from
28 Defendant.

41. Plaintiff paid all premiums required to maintain its comprehensive

1 business insurance policy in full force.

2 42. The comprehensive business insurance policy includes provisions that
3 provide coverage for the direct physical loss of or damage to the premises as well as
4 actual loss of business income and extra expenses sustained during the suspension of
5 operations as a result of such loss or damage.

6 43. On or about March 19, California issued the Stay at Home order,
7 mandating that all Californians remain at home, with certain exceptions. This
8 mandate required restaurants to cease all non-essential services. This mandate also
9 applied to neighboring businesses, thus causing widespread closures surrounding
10 Plaintiff's business premises.

11 44. As a result of this mandate, the covered property of Plaintiff lost some
12 or all of its functionality and/or became useless or uninhabitable, resulting in
13 substantial loss of business income.

14 45. These losses are insured losses under Plaintiff's comprehensive business
15 insurance policy including business income and expense coverage.

16 46. There are no applicable, enforceable exclusions or definitions in the
17 insurance policies that preclude coverage for these losses.

18 47. WHEREFORE, Plaintiff seeks a declaration that its business income
19 losses are covered and not precluded by exclusions or other limitations in its
20 comprehensive business insurance policy.

21 **SECOND CAUSE OF ACTION**

22 **Breach of Contract**

23 48. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

24 49. Plaintiff purchased a comprehensive business insurance policy from
25 Defendant to insure against all risks (unless specifically excluded) a business might
26 face. This policy was a binding contract that afforded Plaintiff comprehensive
27 business insurance under the terms and conditions of the policy.

28 50. Plaintiff met all or substantially all of its contractual obligations,
including paying all the premiums required by Defendant.

1 51. On or about March 19, California issued the Stay at Home order,
2 mandating that all Californians remain at home, with certain exceptions. This
3 mandate required restaurants, including that owned by Plaintiff, to cease all in-person
4 services. This mandate also applied to neighboring businesses, thus causing
5 widespread closures surrounding Plaintiff's business premises.

6 52. Beginning on March 16, 2020, and continuing through the date of the
7 filing of this Complaint, Plaintiff suffered the direct physical loss of property and lost
8 business income following California's Stay at Home order – losses which were
9 covered under the comprehensive business insurance policy purchased from
10 Defendant.

11 53. There are no applicable, enforceable exclusions in Plaintiff's
12 comprehensive business insurance policy that precludes coverage.

13 54. Defendant breached its contract by denying comprehensive business
14 insurance coverage to Plaintiff.

15 55. As a direct and proximate result of Defendant's denial of comprehensive
16 business insurance coverage to Plaintiff, Plaintiff suffered damages.

17 56. WHEREFORE, Plaintiff seeks: (a) a judgment for itself that Defendant
18 breached its contract with Plaintiff; and (b) corresponding damages for that breach.

19 **THIRD CAUSE OF ACTION**

20 **Breach of Implied Covenant of Good Faith and Fair Dealing**

21 57. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

22 58. Plaintiff contracted with Defendant to provide it with comprehensive
23 business insurance to ensure against all risks (unless specifically excluded) a business
24 might face.

25 59. This contract was subject to an implied covenant of good faith and fair
26 dealing that all parties would act in good faith and with reasonable efforts to perform
27 their contractual duties – both explicit and fairly implied – and not to impair the
28 rights of other parties to receive the rights, benefits, and reasonable expectations
under the contracts. These included the covenant that Defendant would act fairly and

1 in good faith in carrying out its contractual obligations to provide Plaintiff with
2 comprehensive business insurance.

3 60. Defendant breached the implied covenant of good faith and fair dealing
4 by:

5 a. Selling policies that appear to provide liberal coverage for loss of
6 property and lost business income with the intent of interpreting
7 undefined or poorly defined terms, undefined terms, and
8 ambiguously written exclusions to deny coverage under
9 circumstances foreseen by Defendant;

10 b. Denying coverage for loss of property and lost business income
11 unreasonably, and without proper cause, by applying undefined,
12 ambiguous, and contradictory terms contrary to applicable rules
13 of policy construction and the plain terms and purpose of the
14 policy;

15 c. Denying Plaintiff's claim for loss of property and loss of business
16 income without conducting a fair, unbiased and thorough
17 investigation or inquiry, arbitrarily and capriciously, and/or with
18 knowledge that the denial was unreasonable under the policy;
19 and

20 d. Compelling policyholders, including Chez Panisse, to initiate
21 litigation to recover policy benefits to which they are entitled.

22 61. Plaintiff met all or substantially all of its contractual obligations,
23 including by paying all the premiums required by Defendant.

24 62. Defendant's failure to act in good faith in providing comprehensive
25 business insurance coverage to Plaintiff denied Plaintiff the full benefit of its bargain.

26 63. Accordingly, Plaintiff has been injured as a result of Defendant's breach
27 of the covenant of good faith and fair dealing and is entitled to damages in an amount
28 to be proven at trial.

64. WHEREFORE, Plaintiff seeks: (a) a judgment for itself that Defendant

1 has breached the covenant of good faith and fair dealing implied in its contract with
2 Plaintiff; and (b) corresponding damages for that breach.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff requests that the Court enter a judgment awarding the
5 following relief:

- 6 a. A declaration that Plaintiff's losses are covered under Defendant's
7 comprehensive business insurance policy; and
8 b. Plaintiff also requests damages, attorney's fees and costs, and such
9 other and further relief as is just and proper as compensation for
10 Defendant's breach of contract and breach of the implied covenant of
11 good faith and fair dealing.

12
13 **JURY DEMAND**

14 Plaintiff demands a trial by jury for all issues so triable under the law.

15
16 Dated: July 7, 2020

Respectfully submitted,

17 **GIBBS LAW GROUP LLP**

18
19 By: /s/ Eric H. Gibbs

20 Eric H. Gibbs
21 Michael L. Schrag
22 Andre M. Mura
23 Karen Barth Menzies
24 Amy M. Zeman
25 Steve Lopez
26 505 14th Street, Suite 1110
27 Oakland, CA 94612
28 Telephone: (510) 350-9700
ehg@classlawgroup.com
mls@classlawgroup.com
amm@classlawgroup.com
kbm@classlawgroup.com

1 amz@classlawgroup.com
2 sal@classlawgroup.com

3 Andrew N. Friedman (*pro hac vice forthcoming*)

4 Victoria S. Nugent (*pro hac vice forthcoming*)

5 Julie Selesnick (*pro hac vice forthcoming*)

6 Geoffrey Graber (SBN 211547)

7 Eric Kafka (*pro hac vice forthcoming*)

8 Karina G. Puttieva (SBN 317702)

9 **COHEN MILSTEIN SELLERS & TOLL PLLC**

10 1100 New York Ave. NW, Fifth Floor

11 Washington, DC 20005

12 Telephone: (202) 408-4600

13 Facsimile: (202) 408-4699

14 afriedman@cohenmilstein.com

15 vnugent@cohenmilstein.com

16 jselesnick@cohenmilstein.com

17 ggraber@cohenmilstein.com

18 ekafka@cohenmilstein.com

19 kputtieva@cohenmilstein.com

20 *Attorneys for Plaintiff*