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21CV376099
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10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA CLARA**

12 PACIFIC LODGING GROUP LP D/B/A
BODEGA COAST INN & SUITES,

13 Plaintiff,

14 v.

15 SEQUOIA INSURANCE COMPANY,

16 Defendant.

Case No. **21CV376099**

COMPLAINT FOR DAMAGES

- (1) Declaratory Judgment
- (2) Breach of Contract
- (3) Breach of Implied Covenant of Good Faith and Fair Dealing

DEMAND FOR JURY TRIAL

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COMPLAINT

1 Plaintiff Pacific Lodging Group LP, doing business as Bodega Coast Inn & Suites
2 (“Bodega Coast” or “Plaintiff”) files suit against Sequoia Insurance Company (“Sequoia” or
3 “Defendant”) and alleges as follows.

4 **INTRODUCTION**

5 1. Governments around the world have enacted stringent countermeasures in order
6 to combat the COVID-19 pandemic, requiring the closure of many businesses and restricting
7 almost all public activities.

8 2. The hotel industry in particular has suffered immediate and precipitous losses.
9 According to the American Hotel & Lodging Association (“AHLA”), hotels in the United States
10 have lost more than \$46 billion in room revenue since mid-February, and by April, occupancy
11 rates at hotels in the US fell to 24.5%, an all-time low. As of July 30, more than half of the hotel
12 rooms in the United States were empty. This trend is expected to continue for months to come.

13 3. The pandemic has intensified this winter, putting an even stronger burden on
14 California’s government, residents, and businesses. With the virus’ resurgence, the outlook for
15 the hotel industry is bleak. In a survey published by the AHLA on November 18, 2020, seven in
16 ten hoteliers (71%) said they won’t make it another six months without further federal assistance
17 given current and projected travel demand, and 77% of hotels report they will be forced to lay off
18 more workers. Furthermore, without additional government assistance, either through a second
19 Paycheck Protection Program (PPP) loan, expansion of the Main Street Lending Program, or
20 some other vehicle, nearly half (47%) of respondents indicated they would be forced to close
21 hotels. More than one-third of the hotels surveyed will be facing bankruptcy or be forced to sell
22 by the end of 2020.

23 4. The future looks bleak for hoteliers, particularly smaller, independent hotels like
24 Bodega Coast: according to the AHLA survey, one-third of all respondents (34%) reported they

1 can only last between one to three more months. Sixty-three (63%) of hotels have less than half
2 of their typical, pre-crisis staff working full time. Unfortunately, a whopping 82% of hotel
3 owners say they have been unable to obtain additional debt relief, such as forbearance, from their
4 lenders beyond the end of this year, and almost six of ten (59%) of hotel owners said that they
5 are in danger of foreclosure by their commercial real estate debt lenders due to COVID-19.

6 5. Occupancy statistics provide more reason to worry. Nationwide hotel occupancy
7 was only 36.2% for the week ending November 28, 2020, compared to 64.7% the same week last
8 year. According to AHLA, 72% of Americans said they were unlikely to travel for Thanksgiving
9 and 69% were unlikely to travel for Christmas. Meanwhile, business and group travel are not
10 expected to return to peak 2019 levels until 2023, compounding the challenges for the hotel
11 industry during this public health crisis.

12 6. The impact has been felt not just by the hotels, but by those employed in the hotel
13 industry. The Bureau of Labor Statistics reported 3.9 million fewer people working in hospitality
14 and leisure in December versus February 2020, resulting in \$1.6 billion in reduced earnings from
15 these employees every week, with ripple effects throughout the economy. In California alone,
16 408,000 hospitality and leisure jobs were lost between February and November. While some of
17 those who lost their jobs initially have returned to work, employment in the leisure and
18 hospitality industry remains down by millions of jobs since February.

19 7. Bodega Coast bought full-spectrum, comprehensive insurance to protect all
20 aspects of its insured business, not just for damage to insured premises and equipment but also
21 for interruptions in business operations that result in loss of business income. Bodega Coast
22 believed that it had purchased comprehensive coverage that would apply to business
23 interruptions under circumstances like this, where Plaintiff has done everything right to protect
24 its business and the public. Such coverage is important, if not vital, especially for boutique

1 properties like Bodega Coast which have narrow profit margins and, unlike in the insurance
2 industry, generally low reserve funds. Hence, business interruptions are a particular concern for
3 owners of boutique lodging.

4 8. Sequoia, from whom Plaintiff had purchased such insurance, has not even
5 provided Bodega Coast with a coverage determination or accepted coverage for the claim, which
6 Bodega Coast submitted on June 11, 2020.

7 9. Despite having pocketed significant premiums for its policies, including \$14,490
8 in provisional premiums for the policy at issue here, Sequoia has still not made a coverage
9 determination, despite the passage of more than five months since the claim was submitted and
10 over four months since the supplemental documentation was provided. No denial letter has been
11 issued, no request for information has been sent, and no further calls have been received from the
12 Defendant reflecting any sort of investigation. While Sequoia has yet to send Bodega Coast the
13 required denial letter, it has sent renewal documents that includes a new exclusion for “Loss Due
14 to Organic Pathogen,” in an attempt to limit coverage for any damages caused by COVID-19.

15 10. This arbitrary and wrongful constructive denial of insurance benefits leaves
16 Bodega Coast financially insecure and threatens its ongoing survival.

17 11. Plaintiff thus brings this action seeking declaratory relief and damages.

18 **PARTIES**

19 12. Plaintiff Pacific Lodging Group LP, d/b/a Bodega Coast Inn & Suites, is a limited
20 partnership organized under the laws of the state of California and with its principal place of
21 business in Bodega Bay, California.

22 13. Defendant Sequoia Insurance Company is a corporation organized under the laws
23 of the state of California and with its principal place of business in Monterey, California.

24 **JURISDICTION AND VENUE**

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

6 21. Beginning in late February, public health officials began advising governments
7 around the world that one of the most disruptive NPIs – population-wide social distancing – was
8 needed to stop the transmission of COVID-19. Suddenly densely occupied spaces, heavily
9 traveled spaces, and frequently visited spaces were likely to become hot-spots for local
10 transmission of COVID-19. By mid-March, the public health officials’ advice was being
11 implemented by federal, state, and local governments. These governments, including the
12 government of the State of California and Sonoma County where Plaintiff’s covered hotel is
13 located, issued a series of orders (“Public Health Orders”) placing significant limitations on
14 public activities and private gatherings in response to the pandemic.

15 22. The Public Health Orders were not implemented to prevent contamination of
16 Plaintiff’s covered premises by coronavirus. They were implemented to lessen the burden on
17 health care services and critical infrastructure in the area so that these systems would not be
18 overwhelmed. By mid-March, experts and commentators had concluded that, “our hope of
19 stopping the disease in its tracks has ended. Our main goal now is to prevent a huge spike in
20 cases, or ‘flatten the curve.’”¹ “Flattening the curve” is a strategy implemented not in response to
21 the virus itself, but rather in response to the limits of the health care system. The curve being
22 flattened is the epidemic curve, which is a visual depiction of the number of infected people who

23
24 ¹ Sean Illing, *How Bad Could the Coronavirus Get in the US? I Asked an Expert*, Vox (Mar. 12, 2020),
<https://www.vox.com/2020/3/12/21171505/coronavirus-covid-19-outbreak-containment>.

1 need health care over a period of time. A health care system can break down during an epidemic
2 or pandemic when the number of people infected exceeds the health care system’s ability to take
3 care of them. University of California, San Francisco epidemiologists Jeff Martin, MD, MPH,
4 and George Rutherford, III, MD explain that flattening the curve means “reducing how fast the
5 virus moves through the population” so that “on any given day, fewer people will need critical
6 care for severe illness.” The best way to slow the spread is through public health measures that
7 encourage social distancing.²

8 23. Improper management of the virus since March throughout the country has made
9 it increasingly difficult for contact tracers to even trace viral outbreaks. A New York Times
10 article from the fall of 2020 discusses the fact that the virus is so ubiquitous and widespread at
11 this point that tracing has become virtually impossible. “It’s just kind of everywhere,” said a
12 senior scholar at the Center for Health Security at the Johns Hopkins Bloomberg School of
13 Public Health, who estimated that tracing coronavirus cases becomes difficult once the virus
14 spreads to more than 10 cases per 100,000 people a day.³

15 **II. Public Health Orders Affecting Plaintiff’s Business**

16 24. Bodega Coast operates in Sonoma County, California. Beginning in March 2020,
17 the State of California and Sonoma County issued a series of Public Health Orders. In order to
18 comply with the Public Health Orders, many California businesses, including Bodega Coast and
19 other Sonoma County establishments, were forced to abandon or stop using their property as
20 intended and suspend ordinary business activity.

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22 _____
23 ² Nina Bai, *Why Experts Are Urging Social Distancing to Combat Coronavirus Outbreak*, UCSF (Mar. 14, 2020),
24 <https://www.ucsf.edu/news/2020/03/416906/why-experts-are-urging-social-distancing-combat-coronavirus-outbreak>.

³ Sarah Mervosh & Lucy Tompkins, *How Are Americans Catching the Virus? Increasingly, “They Have No Idea”*,
N.Y. Times (updated Nov. 4, 2020), <https://www.nytimes.com/2020/10/31/us/coronavirus-transmission-everywhere.html>.

1 25. On March 4, 2020, California Governor Gavin Newsom proclaimed a State of
2 Emergency to exist in California as a result of the threat of COVID-19. The State of Emergency
3 is ongoing.

4 26. On March 11, 2020, the United States barred entry of all foreign nationals who
5 had visited China, Iran, and most European countries, including Austria, Belgium, Denmark,
6 Estonia, Finland, France, Germany, Hungary, Italy, and Spain. On March 16, 2020, the ban was
7 extended to include foreign nationals from the United Kingdom and Ireland. These orders,
8 carried out by civil authorities, severely impacted tourism and its related industries, including
9 hotels located in and around Sonoma County.

10 27. On March 12, 2020, Governor Newsom issued Executive Order N-25-20 (the
11 “Safer at Home Order”). The Order stated, “All residents are to heed any orders and guidance of
12 state and local public health officials, including but not limited to the imposition of social
13 distancing measures, to control the spread of COVID-19.”

14 28. On March 19, 2020, Governor Newsom issued Executive Order N-33-20, a Stay
15 at Home Order. The Order, issued with the purpose to “flatten the curve,” stated, “To preserve
16 the public health and safety, and to ensure the healthcare delivery system is capable of serving
17 all, and prioritizing those at the highest risk and vulnerability, all residents are directed to
18 immediately heed the current State public health directives.” Those public health directives,
19 copied in the Stay at Home Order, required all individuals living in the State of California to stay
20 home or at their place of residence except as needed to maintain continuity of operations of
21 “federal critical infrastructure sectors.” It also stated, “Our goal is simple, we want to bend the
22 curve, and disrupt the spread of the virus.”

23 29. Consistent with the Stay at Home Order’s exception for “critical infrastructure
24 sectors,” the California State Public Health Officer designated a list of Essential Critical

1 Infrastructure Workers.⁴ The list included hotel employees only to the extent they were
2 “managing or servicing hotels or other commercial and residential buildings that are used for
3 COVID-19 mitigation and containment measures, treatment measures, provide accommodation
4 for essential workers, or providing housing solutions, including measures to protect homeless
5 populations.” This meant that Bodega Coast’s meeting, wedding, and banquet facilities could no
6 longer be used, in addition to the effect on occupancy.

7 30. On May 4, 2020, Governor Newsom issued Executive Order N-60-20 in
8 preparation for partial reopening under “Stage Two.” The Order directed the State Public Health
9 Officer “to establish criteria and procedures . . . to determine whether and how particular local
10 jurisdictions may implement public health measures that depart from the statewide directives of
11 the State Public Health Officer.” The Order made clear that it did not limit local health officers’
12 authority to establish more restrictive measures than required by the State.

13 31. On May 7, 2020, Dr. Sonia Y. Angell, California State Public Health Officer,
14 issued an Order allowing local health jurisdictions, beginning on May 8, to move to Stage Two
15 while permitting these jurisdictions to maintain more restrictive public health measures. On
16 August 28, Acting State Public Health Officer Dr. Erica S. Pan issued an Order implementing a
17 tier system for incremental levels of reopening in different sectors.

18 32. In addition to the Public Health Orders issued by the State of California, Sonoma
19 County issued several Public Health Orders.

20 33. On March 17, 2020, Dr. Sundari R. Mase, Health Officer of Sonoma County,
21 issued Order No. C19-03 (a “Shelter in Place” Order) requiring all individuals in Sonoma
22 County to shelter at their place of residence except to engage in essential activities or essential
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24 ⁴ *Essential Workforce*, <https://covid19.ca.gov/essential-workforce/> [PDF version available at <https://files.covid19.ca.gov/pdf/EssentialCriticalInfrastructureWorkers.pdf>] (updated Jan. 7, 2021).

1 governmental functions or to operate essential businesses. Moreover, all businesses not deemed
2 essential were required to cease all activity except to conduct minimum basic operations. The
3 Order did not list hotels as an essential business, but did include as essential businesses
4 “Plumbers, electricians, exterminators, and other service providers who provide services that are
5 necessary to maintaining the safety, sanitation, and essential operation of residences,” with hotels
6 being included as “residences.”

7 34. On March 31, 2020, Sonoma County Health Officer Mase issued Order No. C19-
8 05. This Order extended the Shelter in Place Order until May 3, 2020. The Order classified
9 hotels as essential business only to the extent they provided shelter for houseless individuals,
10 individuals who cannot return to their residence because another person residing there is required
11 to isolate or quarantine, individuals who themselves are required to isolate or quarantine or
12 individuals engaging in healthcare operations, essential infrastructure, essential businesses, and
13 essential government functions. The Order explicitly stated that hotels “shall not operate for
14 tourism.”

15 35. On May 1, 2020, Sonoma County Health Officer Mase issued Order No. C19-09,
16 further extending the Shelter in Place Order indefinitely, and extending the restrictions on hotels
17 that were established in Order No. C19-05.

18 36. On June 5, 2020, Sonoma County Health Officer Mase issued Order No. C19-14,
19 titled “Stay Well Sonoma County.” This Order extended and modified the Shelter in Place Order
20 and reiterated the restrictions on hotels that had originally been set out in Order No. C19-05.

21 37. On June 18, 2020, Sonoma County Health Officer Mase issued Order No. C19-
22 15. The Order “allow[ed] the reopening of all businesses and activities in the County that are
23 currently approved to operate under the State Stay at Home Order, State and local guidance[,]
24 and sector specific guidance.” (citations omitted). Sonoma County was given permission to

1 reopen for leisure travel on June 19, 2020.

2 38. This permission comes at a cost. The Sonoma County Health Officer requires all
3 businesses to create a Social Distancing Protocol & COVID-19 Site-Specific Protection Plan to
4 mitigate the spread of COVID-19 and keep businesses open. Doing so requires businesses to: (1)
5 Review required state guidance for the appropriate industry; (2) Create a plan following
6 Appendix A of Health Order C-19-15; (3) Self-certify the business with Sonoma Safe; (4)
7 Review and distribute the plan with employees; and (5) Post the Appendix A plan and self-
8 certification certificate in the business where it is accessible to the public and employees.

9 39. Complying with these requirements has required Bodega Coast to incur extra
10 expenses, including the cost of purchasing sneeze guards and personal protective equipment.

11 40. On August 6, 2020, the Sonoma County Board of Supervisors adopted an
12 ordinance providing Sonoma County and its municipalities with “administrative enforcement
13 tools . . . to assist in achieving compliance with Public Health Orders.” Among other things, the
14 ordinance imposed civil penalties of \$100 for non-commercial violations. For commercial
15 violations, the ordinance created escalating civil penalties: \$1,000 for the first violation, \$5,000
16 for the second, and \$10,000 for each additional violation. For violations that continue after the
17 imposition of civil penalties, the ordinance allows referral to law enforcement for criminal
18 enforcement.

19 41. Due to a resurgence in the virus, on November 21, 2020 the California
20 Department of Public Health implemented a 10:00 p.m. to 5:00 a.m. curfew for Sonoma County:
21 “Due to the recent unprecedented rate of increase in COVID-19 cases across California, a curfew
22 has been ordered to prevent the spread of the virus.” All nonessential activities outside of the
23 home are not permitted during these hours.

24 42. On December 3, 2020, Dr. Erica S. Pan, California Acting State Public Health

1 Officer, issued a “Regional Stay At Home Order.” That Order required all individuals to stay
2 home or at their place of residence except to conduct activities associated with critical
3 infrastructure or as otherwise permitted. Among other things, the Order stated, “Except as
4 otherwise required by law, no hotel or lodging entity in California shall accept or honor out of
5 state reservations for non-essential travel, unless the reservation is for at least the minimum time
6 period required for quarantine and the persons identified in the reservation will quarantine in the
7 hotel or lodging entity until after that time period has expired.” The Order remained in effect for
8 at least three weeks, and for as long as the ICU bed capacity in the region was less than 15%.

9 **III. Plaintiff’s Experiences**

10 43. Bodega Coast is located at 521 Coast Highway 1 in Bodega Bay, California.
11 Nestled along the shores of the Pacific Coast, Bodega Coast boasts views of the water, beach
12 access, and amenities like in-room wood-burning fireplaces and spa tubs. The hotel also has
13 meeting facilities with panoramic bay views and two modern event rooms for weddings,
14 banquets, conferences, and other events. The hotel has been run by the same family since it was
15 built in 1986. Over the past three decades, Bodega Coast has been a staple of the small town of
16 Bodega Bay.

17 44. According to CDC data, coronavirus has been present in Sonoma County since
18 early March. A community level of prevalence presenting risks of transmission and
19 contamination continues to exist. For example, according to the Covid-19 Event Risk
20 Assessment Planning Tool, provided by the George Institute of Technology, at current
21 prevalence levels, there is substantial risk of community spread. Currently in Sonoma County,
22 for any event with 50 persons, there is a 42% chance that at least one COVID-19-positive
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1 individual will be present. For any event with 100 persons, there is a 66% chance.⁵

2 45. Thus, in these localities, there is significant contamination in the community, and
3 the more guests passing through a hotel increases the likelihood of short-term transmission
4 between individuals. Bodega Coast has accordingly altered its operations to comply with all
5 applicable government orders to reduce the likelihood of contamination and transmission of
6 coronavirus from happening at its hotel.

7 46. Bodega Coast was subject to the Public Health Orders set forth above and has
8 complied with all of the Public Health Orders. As a result of these Public Health Orders,
9 Plaintiff's hotel was forced to close, as Bodega Coast is not located in a place useful for housing
10 essential workers, healthcare workers, those under quarantine, or houseless people. The hotel
11 was closed from March 19, when the statewide Stay-At-Home Order went into effect, until June
12 19, when reopening with modification was allowed. Business remains slow, however, and the
13 California Department of Public Health website still recommends that Californians only travel
14 for urgent matters or matters essential to employment and discourages Californians from
15 travelling for vacations or pleasure as much as possible.

16 47. The ongoing interruptions to Bodega Coast's business operations have caused
17 direct loss of Plaintiff's insured property in that the hotel and its equipment, furnishings,
18 amenities, and other business personal property such as continental breakfast supplies have been
19 made unavailable, inoperable, useless, and uninhabitable, and their functionality has been
20 severely reduced if not eliminated. The impact of the Public Health Orders is felt not simply in
21 their direct application to Plaintiff's operations, but also in their application to the businesses and
22 properties surrounding Plaintiff's hotel and the cancellation of so many conferences, weddings,
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24 ⁵ See *COVID-19 Event Risk Assessment Planning Tool*, Ga. Inst. Tech., <https://covid19risk.biosci.gatech.edu/> (last visited Feb. 2, 2020).

1 and other functions over an extended period of time. As a result of these losses, business income
2 for Bodega Coast has plummeted.

3 48. Prior to the issuance of the Public Health Orders, Bodega Coast employed
4 roughly fourteen individuals at the peak of the season. All but two employees were laid off or
5 furloughed, and Plaintiff is currently able to conduct only enough business to support seven
6 employees. The income protection coverage Plaintiff purchased from Sequoia covers normal
7 payroll expenses and tips.

8 49. As winter approached, the COVID-19 pandemic in California, as well as in the
9 rest of the country, has grown more dire. The state of California and Sonoma County, facing a
10 spike in COVID cases and deaths, have begun to reverse and/or revise their Public Health Orders
11 to account for the resurgence of the virus. As a result, Plaintiff is likely to experience a new drop
12 in business, which had not ever returned to pre-pandemic levels to begin with. The effects of
13 these closures are devastating to Bodega Coast, and it appears that the pandemic spread will
14 remain uncontrolled for the foreseeable future, meaning densely occupied public spaces (e.g.
15 meetings, functions, and weddings that occur at hotels) are unlikely to return to full volume for
16 years.

17 50. Bodega Coast purchased a commercial multi-peril insurance policy (the “Policy”)
18 from Sequoia, with a policy period from September 1, 2019 to September 1, 2020 .

19 51. The Policy is an “All-Risk” Commercial Property Policy, meaning that all perils
20 which are not specifically excluded by the Policy are covered. Bodega Coast purchased the
21 Policy to protect itself against all risks that the boutique property might face, including those
22 risks that might cause interruptions to normal business operations and resulting lost business
23 income.

24 52. Bodega Coast’s owners and operators are savvy businesspeople with established

1 skills in running a boutique inn. However, they are not risk assessment professionals aware of
2 every possible catastrophe that might occur which could cause the hotel to close or severely
3 restrict occupancy. In its dealings with Sequoia, Bodega Coast was a consumer, and what it cared
4 about was being covered by insurance under any circumstances that might cause it to close.
5 Sequoia, on the other hand, is in the business of predicting catastrophes and has been aware of
6 the potential for a COVID-19-type pandemic for at least a decade, if not longer.

7 53. Many insurance carriers who have denied claims for business interruption under
8 similar policies claim that the virus exclusion in their policies was added with the specific goal of
9 excluding pandemic-related losses; the Policy issued to Bodega Coast has no virus exclusion.

10 54. There are many extensions of coverage in the Policy, including business income
11 and extra expense coverage, as well as coverage for dependent income losses.

12 55. Once triggered, the Policy pays business income losses up to a blanket limit of
13 \$1.4 million per occurrence. There is an additional limit of \$250,000 for dependent property
14 income losses and \$25,000 for extra expenses due to losses at dependent property.

15 56. The Policy was not individually negotiated. The Policy’s substantive terms were
16 set unilaterally by Defendant, were not subject to individual negotiation by Plaintiff, and were
17 presented to Plaintiff on a “take it or leave it” basis, despite the hefty premiums charged.
18 Subsequent amendments to the original terms – called endorsements – were also unilaterally
19 imposed on Plaintiff.

20 57. Bodega Coast was never informed by Sequoia that for the business income and
21 extra expense coverage to apply, there would need to be direct physical damage to the insured
22 property. The Policy also does not say this anywhere. To date, Sequoia also has not said this to
23 Bodega Coast (but it has not taken any coverage position, in the many months since the notice of
24 loss was submitted).

1 58. To date, Bodega Coast has paid all of the premiums required by Defendant to
2 keep the Policy in full force, and has met all applicable conditions precedent in order to receive
3 payment under the Policy and to recover the lost business income and extra expenses that have
4 resulted from the Public Health Orders closing and/or severely restricting Plaintiff's business.

5 59. The Public Health Orders required Bodega Coast to stop doing business unless it
6 could provide rooms to individuals who fell in very specific categories due to the various Public
7 Health Orders, which are covered causes of loss as defined in the Policy. As a result of the Public
8 Health Orders, Bodega Coast suffered the direct physical loss of the insured real and personal
9 property. As such, the Policy's coverage for losses to business income and extra expenses are
10 triggered. The Policy's coverage for dependent business income is also likely triggered.

11 60. The new Public Health Order of November 21, 2020 is another occurrence as
12 defined under the Policy, and one which will also result in the direct physical loss of insured
13 property and interruption to business to Plaintiff.

14 61. On June 11, 2020, Plaintiff reported a loss of business income under the Policy.
15 Bodega Coast's notice informed Sequoia that Bodega Coast was forced to suspend business
16 operations at the scheduled premises, 521 Coast Highway 1, Bodega Bay, California 94923, as a
17 result of the Public Health Orders issued by state, county and local governments in California in
18 their efforts to slow the rate of transmission of COVID-19.

19 62. A conversation took place between the examiner whom Defendant assigned to
20 Bodega Coast's claim and Bodega Coast's counsel on June 23, 2020, in which the examiner
21 asserted a position that the policy required direct physical damage to the insured premises for the
22 business interruption coverage to be triggered, despite the insuring agreement, which promises to
23 pay business income that results from direct "physical loss of" or "damage to" insured premises.

24 63. After conveying Bodega Coast's position, that a requirement of physical damage

1 conflates the policy requirements of “direct physical loss of” *or* “damage to” insured property,
2 the examiner asked Bodega Coast to submit a supplement to its loss notice explaining its position
3 regarding the business income coverage being triggered by the state and county Public Health
4 Orders. That written explanation was submitted to Sequoia on July 16, 2020.

5 64. No communications have issued from Defendant since the June 23 phone
6 conversation. Eight months have elapsed since Bodega Coast submitted a notice of loss to
7 Defendant, and seven months have elapsed since additional information was submitted directly
8 to the examiner. Still, Sequoia had not agreed to provide coverage for Plaintiff’s loss, nor has it
9 issued a denial.

10 65. Sequoia’s failure to make a coverage determination in this period of time is a
11 constructive denial of coverage, as Sequoia was not provided the benefit it bargained for –
12 insurance coverage for its losses. It also violates Section 2695.5 of the California Fair Claims
13 Practices Regulations, which requires, among other things, a carrier to provide a complete
14 response to a written request within fifteen (15) days of receipt.

15 66. Sequoia’s refusal to provide coverage for Bodega Coast’s losses is contrary to the
16 terms and conditions of the Policy and applicable law, which give effect to plain language,
17 construe ambiguity in favor of coverage, and narrowly construe exclusions, the applicability of
18 which insurers have the burden of proving.

19 67. Bodega Coast has suffered and will continue to suffer damages due to Sequoia’s
20 wrongful refusal to provide insurance coverage, which Plaintiff acquired to sustain Bodega Coast
21 and protect its continued viability in circumstances such as these.

22 68. Meanwhile, Sequoia sent Bodega Coast renewal documents for the September
23 2020 – September 2021 policy period. Without conversation or explanation, the premiums are
24 increasing by 6.9% despite the same coverage limits and a known lower occupancy rate. More

1 egregious, however, is that Sequoia included a new exclusion to the renewal policy property
2 coverage, titled “Loss Due to Organic Pathogen.” This exclusion is normally found in
3 commercial general liability policies, not property policies, and was developed to exclude
4 coverage for food borne illnesses. The definition of biological agents excluded under this
5 endorsement include virus, so the addition of this endorsement to Bodega Coast’s renewal policy
6 reflects Sequoia’s attempt to limit coverage for any damages caused by COVID-19 in the
7 renewal policy.

8 69. The Loss Due to Organic Pathogen Endorsement was added to the renewal policy
9 without comment, despite California law requiring renewals on less favorable terms to be
10 disclosed prior to renewal or the carrier is estopped from enforcing the changed terms.

11 **CAUSES OF ACTION**

12 **Count I: Declaratory Judgment**

13 70. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth
14 herein.

15 71. Plaintiff purchased the Policy from Defendant to ensure against all risks (unless
16 specifically excluded) its business might face. The Policy is a binding contract that is supposed
17 to provide Plaintiff with comprehensive business insurance under its terms and conditions.

18 72. Plaintiff met all or substantially all of its contractual obligations, including paying
19 all the premiums required by Defendant.

20 73. The Policy includes provisions that provide coverage for the direct physical loss
21 of use of the insured premises and equipment as well as business income coverage for the actual
22 loss of business income and extra expenses sustained during the suspension of operations.

23 74. Beginning in March 2020, California state and county government officials issued
24 a series of Public Health Orders severely restricting Bodega Coast’s ability to conduct business.

1 84. These losses are insured losses under several provisions of the Policy, including
2 provisions covering direct loss of property, coverage for lost business income and extra expense,
3 and the coverage extension for dependent business income.

4 85. There are no applicable, enforceable exclusions or definitions in the Policy that
5 preclude coverage for Plaintiff's losses.

6 86. Defendant breached the contracts by failing to provide insurance coverage to
7 Plaintiff.

8 87. As a direct and proximate result of Sequoia's failure to provide insurance
9 coverage under the Policy, Bodega Coast has suffered damages.

10 88. Wherefore, Plaintiff seeks a judgment that Defendant has breached its contract
11 with Plaintiff and corresponding damages for that breach.

12 **Count III: Breach of Implied Covenant of Good Faith and Fair Dealing**

13 89. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth
14 herein.

15 90. Plaintiff contracted with Defendant to provide it with the Policy, which contains
16 comprehensive business insurance to ensure against all risks (unless specifically excluded)
17 Bodega Coast might face.

18 91. The contract was subject to the implied covenant of good faith and fair dealing
19 that all parties would act in good faith and with reasonable efforts to perform their contractual
20 duties – both explicit and fairly implied – and not to impair the rights of other parties to receive
21 the rights, benefits, and reasonable expectations under the contract. These included the covenants
22 that Defendant would act fairly and in good faith in carrying out its contractual obligations to
23 provide Plaintiff with comprehensive business insurance.

24 92. Defendant breached the implied covenant of good faith and fair dealing by:

- a) selling Plaintiff a policy that appears to provide liberal coverage for loss of property and lost business income, yet constructively denying coverage under circumstances foreseen by Defendant but not Plaintiff;
- b) failing to respond to Plaintiff's reported loss within a reasonable period of time, and without explanation as to why the reported loss received no response within a reasonable period of time;
- c) failing to adequately investigate or inquire into the circumstances surrounding Plaintiff's loss;
- d) violating the California Fair Claims Settlement Practices Regulations, specifically Cal. Code Regs. tit. 10, § 2695.5(e); and
- e) violating California Insurance Code §790.03(h)(1)–(4)

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

94. Defendant's failure to act in good faith in providing comprehensive business insurance coverage to Plaintiff denied Bodega Coast the full benefit of the bargain it made with Sequoia.

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

96. Wherefore, Plaintiff seeks a judgment that Defendant has breached its covenant of good faith and fair dealing implied in its contracts with Plaintiff and corresponding damages for that breach.

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1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff requests that the Court enter a judgment awarding the following
3 relief:

- 4 a) a declaration that Plaintiff’s losses are covered under Defendant’s comprehensive
- 5 business insurance policy;
- 6 b) damages;
- 7 c) attorney’s fees and costs; and
- 8 d) such other relief as this Court deems just and proper.

9 **JURY TRIAL DEMAND**

10 Pursuant to Article I, Section 16 of the California Constitution, Plaintiffs hereby demand
11 trial by jury in this action of all issues so triable.

12 Dated: February 11, 2021

Respectfully submitted,

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