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18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
19 **FOR THE COUNTY OF LOS ANGELES**

21 CWHH, INC. dba CABO WABO, a  
22 California corporation; and WB USC, LLC  
23 dba WAHLBURGERS, a California limited  
24 liability company;

24 Plaintiffs,

25 v.

26 FARMERS GROUP, INC., a California  
27 corporation, TRUCK INSURANCE  
28 EXCHANGE, a California reciprocal insurer  
and exchange, FARMERS INSURANCE  
EXCHANGE, a California reciprocal insurer

Case No. **20STCV42195**

**COMPLAINT FOR DAMAGES**

- (1) DECLARATORY JUDGMENT;**
- (2) BREACH OF CONTRACT; AND**
- (3) BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

**JURY TRIAL DEMANDED**

1 and exchange, MID-CENTURY  
2 INSURANCE COMPANY, a California  
3 corporation; and DOES 1 through 50  
4 inclusive,

5  
6 Defendants.

7 **COMES NOW** Plaintiffs CWHH, INC. D/B/A CABO WABO AND WB USC, LLC  
8 D/B/A WAHLBURGERS ("Plaintiffs") file suit against FARMERS GROUP, INC. ("FGI")  
9 TRUCK INSURANCE EXCHANGE ("Truck"), FARMERS INSURANCE EXCHANGE  
10 ("FIE"), MID-CENTURY INSURANCE COMPANY ("Mid-Century"), and Does 1 through 50  
11 (collectively, "Defendants," the "Farmers Defendants," or "Farmers") and allege as follows.

## 12 **INTRODUCTION**

13 1. Plaintiffs are two small restaurants in Los Angeles, California. Plaintiffs conduct  
14 business by directly interacting with customers in-person at the property of the restaurants.

15 2. In an attempt to combat the exponential spread of COVID-19 and avoid the  
16 potential collapse of our medical systems' ability to provide care to those with the disease, on  
17 March 16, 2020, Los Angeles County's Safer At Home Order For Control of Covid-19 ("Safer At  
18 Home Order") banned all gatherings of 50 or more people. On March 19, 2020, California  
19 Governor's Executive Order N-33-20 ("Stay At Home Order") instructed all 40 million  
20 California residents to remain at home, except to go to an essential job or to shop for essential  
21 needs. On March 21, 2020, Los Angeles County amended its Safer At Home Order to align with  
22 the statewide Stay At Home Order. And although a limited reopening of restaurants in Los  
23 Angeles County began on May 29, 2020 ("Safer at Work and in the Community Order"), the  
24 rules in place prevent the possibility of returning to full (or even half) of expected revenue had  
25 the Orders not been issued.

26  
27 3. Plaintiffs, who own and operate two restaurants in Los Angeles County, have  
28 dutifully followed the Orders issued by the County and the State. Though lifesaving, these

1 mandates, which remain largely in place, have forced Plaintiffs' restaurants CWHH Inc. dba  
2 Cabo Wabo and WB USC LLC dba Wahlburgers to cease seated operations entirely for almost  
3 three months and continues to require strict limitations on the use of the restaurants for seated  
4 dining.

5 4. Plaintiffs - who bear no fault for state and countywide closures - are also  
6 responsible business stewards, dutifully paying for insurance that includes coverage for loss of  
7 income due to the necessary suspension of their business operations, to protect them against just  
8 this type of situation.

9 5. Insurance is a way to manage risk, providing protection from financial loss. It is  
10 particularly appropriate – indeed, vital – for loss that, while unlikely to occur, would be  
11 financially devastating if they do occur. Or as Farmers explains on its website, insurance  
12 protects you from the unexpected.

13 6. To protect itself from the unexpected, Plaintiffs purchased a commercial multi-  
14 peril insurance policy issued by Farmers under its Businessowners Program. Pursuant to the  
15 policy issued to Plaintiffs, Farmers agreed - in exchange for the premiums paid by Plaintiffs - to  
16 pay for the “loss of Business Income sustained and necessary Extra Expense caused by action of  
17 civil authority that prohibits access to the described premises due to direct physical loss of or  
18 damage to property, other than at the described premises' caused by or resulting from any  
19 Covered Cause of Loss.” [Exhibit A ("Plaintiffs CWHH Inc. dba Cabo Wabo Policy"), at p. 93;  
20 Exhibit B (“Plaintiffs WB USC, LLC dba Wahlburgers Policy), at p. 82.]

21 7. An insurance policy is, ultimately, just a contract where the insured agrees to pay  
22 the insurance premiums, and the insurance company agrees to pay the insured, up to the policy  
23 limits, for any losses covered by the insurance policy. However, unlike most contracts, the  
24 insurer is usually not called upon to perform (since, after all, insurance protects against the  
25 unexpected) and when the insurer's performance is required, it only arises when the insured is, by  
26 definition, in a desperate financial position. Once a loss occurs, an insured can no longer buy  
27 protection for that loss from competing insurers - in essence, the insurer has exclusive and  
28

1 complete control over the evaluation, processing and denial of that claim. The implications of  
2 this disparity are fully illustrated by Plaintiffs' experience.

3 8. Facing serious financial harm, CWHH Inc. dba Cabo Wabo and WB USC LLC  
4 dba Wahlburgers made a claim with Farmers seeking coverage for their business income losses  
5 and extra expenses.

6 9. But, despite collecting premiums for such risks, Farmers swiftly denied the claims  
7 with little or no investigation and without due regard for the interests of insureds. With respect to  
8 CWHH Inc. dba Cabo Wabo, Plaintiff filed a claim for losses on May 5, 2020, and was denied  
9 coverage just *three days later* via a telephone call.

10 10. With respect to WB USC LLC dba Wahlburgers, Plaintiff attempted to file a  
11 claim for business income losses on May 5, 2020, and was verbally denied coverage a few, short  
12 days later. A formal claim for business income losses suffered by WB USC LLC dba  
13 Wahlburgers was filed on July 6, 2020, and was denied just over ten days later, on July 17, 2020

14 11. Farmers (and other insurers) have acted so egregiously in preemptively denying  
15 claims for business income and extra expense claims such as the ones brought here, that on April  
16 14, 2020, the California Insurance Commissioner, Ricardo Lara, issued a notice reminding  
17 insurance companies of their duty to comply with their obligations to fairly investigate all  
18 business interruption claims caused by COVID-19.

19 12. The reasons for the denial are cursory; in fact, the denial letters are virtually  
20 identical and appear to be form letters which deny any coverage based on an unreasonable  
21 reading of the policies Farmers issued on a take-it-or-leave-it basis. That gets insurance law  
22 exactly backwards and raises the specter of bad-faith denials.

23 13. Farmers' strategy, as evidenced by Plaintiffs experience is clear: summarily deny  
24 claims for loss of business income and necessary extra expense made by small businesses like  
25 Plaintiffs with the expectation that many (perhaps most) of its insureds will not and cannot  
26 pursue. The denials also leave Plaintiffs in dire financial straits - precisely the situation they  
27 sought to avoid when they obtained coverage for loss of business income. Plaintiffs bought full-  
28

1 spectrum, comprehensive insurance for their businesses – not just for damage to their physical  
2 premises and equipment. And for good reason. Interruptions to business and the attendant loss of  
3 business income are a particular concern of the restaurant industry. Insurance coverage is  
4 important, if not vital, because profit margins in the restaurant industry are slim and, unlike the  
5 insurance industry, reserve funds tend to be low.

6 14. This is not the first time that insurers, including Farmers, have employed this  
7 tactic when faced with a large number of claims. In 2000, California enacted section 340.9 of the  
8 Code of Civil procedure which revived claims that were otherwise time-barred against insurance  
9 companies for losses resulting from the 1994 Northridge earthquake. The legislative history for  
10 the bill that enacted section 340.9 is replete with examples of why the revival statute was  
11 necessary, including, for example, that the applicable statute of limitations “has unfairly barred  
12 victims from being compensated for their losses because many were tragically misled about the  
13 extent of damage suffered as a result of the earthquake. [ ... ] Many victims, the accounts state,  
14 have received only partial settlements for their earthquake claims, and others have received no  
15 compensation at all, having been improperly told that the damage they suffered was below policy  
16 deductibles." (*Hellinger v. Farmers Grp., Inc.* (2001) 91 Cal.App.4th 1049, 1058.)

17  
18 15. Plaintiffs reasonably believed they had purchased comprehensive insurance  
19 coverage that would apply to losses of business income under circumstances like these, where  
20 they have done everything right to protect their businesses and the public. But Farmers is cutting  
21 the lifelines, despite having taken significant premiums in exchange for such coverage.

22 16. Plaintiffs thus bring this action, seeking declaratory relief, insurance coverage  
23 owed under Farmers' policies, and damages.

#### 24 **PARTIES**

25 17. At all relevant times, Plaintiff CWHH INC. dba Cabo Wabo, (“Cabo Wabo”) is a  
26 corporation, authorized to do business in the State of California, County of Los Angeles. CWHH  
27 Inc. owns, operates, manages, and/or controls the restaurant Cabo Wabo.  
28

1           18.     At all relevant times, Plaintiff WB USC LLC dba Wahlburgers, (“Wahlburgers”),  
2 is a limited liability company, authorized to do business in the State of California, County of Los  
3 Angeles. WB USC LLC owns, operates, manages, and/or controls the restaurant Wahlburgers.

4           19.     At all relevant times, Plaintiff CWHH Inc. is the managing entity for Cabo Wabo.

5           20.     At all relevant times, Plaintiff WB USC LLC is the managing entity for  
6 Wahlburgers.

7           21.     At all relevant times, Defendant FARMERS GROUP INC. (“FGI”), is a  
8 corporation with its headquarters and principal place of business doing business in the State of  
9 California, County of Los Angeles. FGI does business as Farmers Underwriters Association, a  
10 California Corporation. FGI owns the service marks “Farmers Insurance Group of Companies”  
11 and “Farmers Insurance Group.”

12           22.     At all relevant times, Defendant Truck Insurance Exchange (“Truck”) is and was  
13 a reciprocal or inter-insurance exchange, and member of the Farmers Insurance Group of  
14 Companies, and a corporation doing business in the County of Los Angeles, State of California.

15           23.     Truck is authorized to conduct insurance business, and does in fact conduct  
16 insurance business in the State of California, in the County of Los Angeles. Truck’s operations,  
17 including but not limited to, its claims and underwriting operations and procedures, are managed,  
18 overseen, controlled, and directed in whole or in part by Defendant FGI.

19           24.     At all relevant times, Defendant Farmers Insurance Exchange (“FIE”) is and was  
20 a reciprocal or inter-insurance exchange, and member of the Farmers Insurance Group of  
21 Companies, and a corporation doing business in the County of Los Angeles, State of California.

22           25.     FIE is authorized to conduct insurance business, and does in fact conduct  
23 insurance business in the State of California, in the County of Los Angeles. FIE’s operations,  
24 including but not limited to, its claims and underwriting operations and procedures, are managed,  
25 overseen, controlled, and directed in whole or in part by Defendant FGI.

26           26.     At all relevant times, Defendant MID-CENTURY INSURANCE COMPANY  
27 (“Mid-Century”), is a corporation with its headquarters and principal place of business doing  
28

1 business in the State of California, County of Los Angeles. Mid-Century's operations, including  
2 but not limited to, its claims and underwriting operations and procedures, are managed, overseen,  
3 controlled, and directed in whole or in part by Defendant FGI.

4         27. Defendants FGI, Truck, FIE, and Mid-Century (collectively, "Defendants," the  
5 "Farmers Defendants," or "Farmers") are transacting the business of insurance in the state of  
6 California and the basis of this suit arises out of such conduct.

7         28. Plaintiffs are informed and believe, and based upon that information and believe  
8 allege, that FGI, Truck, FIE, and Mid-Century were, at all times relevant herein, related  
9 corporations with a unity of interest and ownership that the separate corporate personalities were  
10 merged, such that FGI, Truck, FIE, and Mid-Century formed a single enterprise owned and  
11 operated by the same individuals and/or entities.

12         29. Defendants FGI, Truck, FIE, and Mid-Century are alter egos. Defendant FGI and  
13 various exchanges form an insurance company holding system. Defendant FGI acts as the  
14 attorney-in-fact for Defendant Truck and Defendant FIE. As an attorney-in-fact, Defendant FGI  
15 appointed itself to provide management services to the insuring entities for a fee. This fee  
16 represents a substantial portion of the gross premiums taken in by these insuring entities. FGI,  
17 either directly or through other subsidiaries, performs all underwriting, product development,  
18 sales, actuarial and strategic planning functions for Truck and FIE. Defendants Truck, FIE, and  
19 Mid-Century are mere shells without capital or assets. FGI holds the service mark, "Farmers  
20 Insurance Group of Companies," under which Defendant Truck, FIE, and Mid-Century operate.  
21 Employees of each entity regard themselves as working form a unified entity known as  
22 "Farmers." In advertising, FGI, Truck, FIE, and Mid-Century make no distinction among  
23 themselves, and hold themselves out to the public in the collective, as "Farmers" or as "Farmers  
24 Insurance Group of Companies." Defendants share the same agent for service of process.  
25

26         30. If the alter ego relationship among Defendants FGI, Truck, FIE, and Mid-Century  
27 are not recognized, an inequity would also result because the entity which would be held liable,  
28 i.e., Defendants FIE and Truck have no employees and takes no independent action. Thus,

1 Plaintiffs would be forced to seek redress for the wrongdoing against a shell corporation, while  
2 the entities with the employees who make the decisions, and who are responsible for the  
3 wrongful acts, escape liability. This would be inequitable.

4 31. Defendants FGI, Truck, FIE, and Mid-Century share the same principal place of  
5 business, 6301 Owensmouth Ave, Woodland Hills, CA 91367.

6 32. Defendant FGI controls, as that term is defined in the California Insurance  
7 Holding Company Act, Defendants Truck and FIE.

8 33. At all relevant times mentioned herein, the true names and capacities, whether  
9 individual, corporate, associate or otherwise, of Defendants and DOES 1 through 25, inclusive,  
10 are currently unknown to Plaintiffs, who therefore bring suit against these Defendants by their  
11 fictitious names and capacities. Plaintiffs are informed and believes and thereupon alleges that  
12 each fictitiously named Defendant, whether acting for itself or as an agent, corporation,  
13 association, or otherwise, is liable or responsible to Plaintiffs and proximately caused injuries  
14 and damages to Plaintiffs as alleged herein. While at this time Plaintiffs are unaware of the true  
15 names and capacities of the DOE Defendants, Plaintiff will amend its Complaint to show the true  
16 names and capacities of DOES 1 through 25, inclusive, when those identities have been  
17 ascertained.  
18

19 34. At all relevant times mentioned herein, Defendants were the agents, employees,  
20 supervisors, servants and joint venturers of each other, and in doing the things hereafter alleged,  
21 were acting within the course, scope and authority of such agency, employment and joint venture  
22 and with the consent and permission of each of the other Defendants. All actions of each  
23 Defendant alleged in the causes of action into which this paragraph is incorporated by reference  
24 were ratified and approved by the officers or managing agents of every other Defendant.

25 35. All allegations in this Complaint are based on information and belief and/or are  
26 likely to have evidentiary support after a reasonable opportunity for further investigation or  
27 discovery. Whenever allegations in this Complaint are contrary or inconsistent, such allegations  
28 shall be deemed alternative.



1 **JURISDICTION AND VENUE**

2 36. This Court has subject matter jurisdiction over this action pursuant to Article VI,  
3 section 10, of the California Constitution and Section 410.10 of the California Code of Civil  
4 Procedure

5 37. Venue is appropriate in this Court pursuant to Code of Civil Procedure § 395  
6 because a substantial part of the conduct, events and omissions giving rise to the violations of  
7 law giving rise to this lawsuit occurred in Los Angeles County.  
8

9 **FACTUAL BACKGROUND**

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

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

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

21 41. COVID-19 spreads readily from person-to-person. When an infected person  
22 coughs, sneezes, or even just talks, droplets with the infectious agent fly into the air from the  
23 person's nose or mouth and can infect others. To make matter worse, a person can have COVID-  
24 19, be infectious, and yet be entirely asymptomatic. As such, someone who do not even know  
25 that they are infected can nonetheless pass the disease on to others. Thus, absent testing, there is  
26 no way to know whether a person with whom one comes into contact might be spreading the  
27 disease. The coronavirus can live in the air for up to three hours, be breathed in by others, and  
28 get into their lungs, where it can infect them. The coronavirus can also infect people who touch

1 surfaces, such as countertops and doorknobs, and can live on plastic and stainless steel for up to  
2 three days.

3 42. Public health officials have recognized for decades that non-pharmaceutical  
4 interventions (NPIs) can slow and stop the transmission of certain diseases. Among these are  
5 screening and testing of potentially infected persons; contact tracing and quarantining infected  
6 persons; personal protection and prevention; and social distancing. Social distancing is the  
7 maintenance of physical space between people. Social distancing can be limited - e.g., reducing  
8 certain types of conduct or activities like hand-shaking – or large-scale – e.g., restricting the  
9 movements of the total population.

10 43. A lack of central planning, shortages of key medical supplies and equipment, and  
11 the unfortunate spread of misinformation and disinformation about the risks of COVID-19 has  
12 led to widespread confusion, unrest, and uncertainty regarding the likely trajectory of this  
13 pandemic and the appropriate counter-measures necessary to mitigate the damage it could  
14 potentially cause.

15 44. Beginning in late February, public health officials began advising various  
16 governments around the world that one of the most disruptive NPIs – population-wide social  
17 distancing – was needed to stop the transmission of COVID-19. Suddenly, schools, offices,  
18 public transit, restaurants, and shops – densely occupied spaces, heavily traveled spaces, and  
19 frequently visited spaces – were likely to become hot-spots for local transmission of COVID-19.

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

23 46. On March 16, 2020, Los Angeles County issued the Safer At Home Order, which  
24 banned gatherings of 50 or more people. On March 19, 2020, Los Angeles County amended its  
25 Safer At Home order to prohibit gatherings of 10 or more people.

26 47. On March 19, 2020, California's Governor Gavin Newsom issued the Stay at  
27 Home Order. This Order directed "All residents ... to immediately heed the current State public  
28 Home Order.

1 health directives," which, per the State Public Health Officer, ordered "all individuals living in  
2 the State of California to stay home or at their place of residence," except in certain  
3 circumstances. As such, the Statewide Stay-at-Home Order prohibited access to any business that  
4 was not designated as "essential" and thereby mandated the suspension of operations of any  
5 "non-essential" business that conducted business by directly interacting with customers or clients  
6 at the premises of the business.

7 48. On March 21, 2020, Los Angeles County's Safer At Home Order was amended a  
8 third time to comply with the statewide Stay At Home Order. The Safer at Home and Stay at  
9 Home Orders required restaurants to cease dine-in service, though take-out was permitted if  
10 certain safety measures were in place.

11 49. And although a limited reopening of restaurants in Los Angeles County began on  
12 May 29, 2020 ("Safer at Work and in the Community Order"), the rules in place severely restrict  
13 the number of persons that the restaurant can seat and will not result in the return of even half of  
14 expected revenue had the orders not been issued.  
15

### 16 **PLAINTIFFS' EXPERIENCE**

17 50. Plaintiff CWHH, Inc. operates Cabo Wabo, located at 6801 Hollywood  
18 Boulevard, Suite 411, Los Angeles, CA 90028. Cabo Wabo serves modern Mexican cuisine and  
19 drinks, blending the unique, authentic flavors of Cabo San Lucas with the new-age energy of the  
20 Hollywood food scene.  
21

22 51. Plaintiff WB USC LLC operates the Wahlburgers, which is located at 835 West  
23 Jefferson Boulevard, Unit 1710, Los Angeles, CA 90007. Wahlburgers serves classic,  
24 American-style burgers and fries and is conveniently located on the University of Southern  
25 California's campus, providing a popular locale for college students .

26 52. Plaintiffs have complied with all applicable orders of California state and local  
27 authorities, including the Stay At Home Order and Safer At Home Order, and are currently  
28 complying with the Safer at Work and in the Community Order (collectively, the "Orders").

1 Compliance with those orders has caused direct physical loss of both Plaintiffs' insured property  
2 in that all or part of the property has been made useless and/or uninhabitable and removed the  
3 ability to earn business income from such parts; the functionality of both restaurants has been  
4 severely reduced and at times completely or nearly eliminated.

5 53. As a further direct and proximate result of the Orders, Plaintiffs have been forced  
6 to close their business and furlough and/or layoff multiple employees due to a prohibition of  
7 access to the property.

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

11 55. Even as California relaxes and eventually revokes the various orders, Plaintiffs  
12 will encounter continued loss of business income and face considerable extra expense because  
13 ongoing measures that reduce expected business income will be required to help slow the  
14 transmission of the virus.

15 56. On or about May 6, 2019, Plaintiff CWHH, Inc. purchased a comprehensive  
16 commercial liability and property insurance policy from Farmers, policy number 60674-29-87  
17 (hereinafter, "Policy A"), that insured against all of the risks their restaurants might face.

18 57. Plaintiff is informed and believes that Defendants delivered Policy A to Plaintiff  
19 in the state of California and Plaintiff listed is a named insured.

20 58. Policy A had effective dates of coverage from May 6, 2019 to May 6, 2020. A  
21 true and correct copy of the applicable Policy A is attached hereto as Exhibit "A" and is  
22 incorporated herein by reference as though fully set forth at length.

23 59. On or about October 19, 2019, Plaintiff WB USC LLC purchased a  
24 comprehensive commercial liability and property insurance policy from Farmers, policy number  
25 60663-22-81 (hereinafter, "Policy B"), that insured against all of the risks their restaurants might  
26 face.  
27  
28

1           60. Plaintiff is informed and believes that Defendants delivered Policy B to Plaintiff  
2 in the state of California and Plaintiff listed is a named insured.

3           61. Policy B had effective dates of coverage from October 19, 2019 to October 19,  
4 2020. A true and correct copy of the applicable Policy B is attached hereto as Exhibit "B" and is  
5 incorporated herein by reference as though fully set forth at length.

6           62. Policies A and B are all-risk policies, insofar as they provide that covered causes  
7 of loss under the Policy A and Policy B means direct physical loss or damage is covered unless  
8 the loss is specifically excluded or limited in the policy.

9           63. At the time of loss, Policy A and Policy B were in full effect, providing property,  
10 business personal property, business income with extra expense coverage for losses, as well as,  
11 additional "civil authority" coverage.

12           64. Under Policy A and Policy B, insurance is extended to apply to the actual loss of  
13 business income sustained and the actual, necessary and reasonable extra expenses incurred  
14 when access to the scheduled premises is specifically prohibited by order of civil authority as the  
15 direct result of a covered cause of loss to property within one mile of Plaintiff's scheduled  
16 premises. Once triggered, Policy A and Policy B pay actual losses sustained for the business  
17 income and extra expense coverage for up to eighteen (18) months, as well as twenty-one (21)  
18 days of civil authority coverage for lost business income and extra expense.

19           65. To date, Plaintiffs have paid all of the premiums required by Farmers to keep their  
20 policies in full force.

21           66. On or around March 16, 2020, there were local and state government orders  
22 related to the subject properties, which are insured under Policy A and Policy B, which caused  
23 physical loss or damage to the subject property.

24           67. On May 5, 2020, Plaintiffs' representative, Mr. Steve Yazeji (hereinafter "Mr.  
25 Yazeji"), the Director of Operations, reported a loss of business income as of March 16, 2020,  
26 for Cabo Wabo under Restaurant Premier Policy No. 60674-29-87 for the policy period of May  
27 5, 2019, 2019 to May 5, 2020 ("Policy A").  
28

1           68.     Just three days later, on May 8, 2020, Farmers Special Field Claims  
2 Representative, Ernest Raya, called Mr. Yazeji to inform him that coverage had been denied. On  
3 May 11, 2020, a letter was sent to Mr. Yazeji explaining Farmers’ decision to deny coverage for  
4 a loss of business income under Policy A.

5           69.     On May 5, 2020, Mr. Yazeji attempted to open a claim for loss of business  
6 income as of March 16, 2020 for WB USC LLC dba Wahlburgers under Restaurant Premier  
7 Policy No.: 60663-22-81 for the policy period of October 19, 2019 to October 19, 2020 (“Policy  
8 B”).

9           70.     On or around May 8, 2020, Mr. Yazeji was verbally denied coverage by Farmers  
10 for his loss of business income.

11           71.     On July 6, 2020, the undersigned, on behalf of WB USC LLC, reported a loss of  
12 business income as of March 16, 2020, for Wahlburgers under Restaurant Premier Policy No.:  
13 60663-22-81 for the policy period of October 19, 2020 to October 20, 2020 (“Policy B”).

14           72.     Just a few days later, on or around July 8, 2020, Farmers called the undersigned to  
15 explain Farmers’ decision to deny coverage for a loss of business income under Policy B.

16           73.     A little over a week later, on July 17, 2020, Farmers Senior Commercial Property  
17 Claims Representative, Robert Evans, sent a letter to the undersigned, denying coverage for a  
18 loss of business income under Policy B.

19           74.     Farmers' basis for denying coverage for loss of income and extra expenses under  
20 Policy A for Cabo Wabo and the Policy B for Wahlburgers appears to be based on the same  
21 grounds that Farmers is asserting to deny all such claims made by California restaurants, and the  
22 letters to each Plaintiff denying coverage are identical in all relevant regards. Both letters deny  
23 coverage because, according to the claim examiner:  
24

- 25           a.     There was no direct physical loss of or damage to property at the insured  
26 premises;

- 1           b. While the government's civil authority orders have closed businesses, “access to  
2           the described premises was not prohibited due to direct physical loss of or damage  
3           to property;”
- 4           c. Spoilage from extended closure is not a covered cause of spoilage under  
5           Plaintiffs' Spoilage Coverage (while ignoring the fact that both policies list  
6           "perishable goods" as covered property via endorsement); and
- 7           d. The policies were unilaterally amended with an Endorsement that purports to  
8           exclude loss or damage caused by or resulting from any virus that is capable of  
9           inducing physical distress, illness or disease.

10           75. Farmers' reasons for denying coverage to Plaintiffs are contrary to the terms and  
11 conditions of the policies and applicable law, which gives effect to plain language, construes  
12 ambiguity in favor of coverage, and narrowly construes exclusions, the applicability of which  
13 insurers have the burden of proving. Additionally, California law requires that insurance policy  
14 terms be construed broadly in favor of coverage, and that any ambiguity in scope be resolved in  
15 favor of coverage. On the other hand, exclusions must be read narrowly.

16           76. Under California law, insurance companies are required to conduct a reasonable  
17 investigation before reaching a coverage determination, yet Farmers performed little to no  
18 investigation. In the case of Cabo Wabo, coverage was denied telephonically within just three  
19 days. In the case of Wahlburgers, coverage was denied telephonically, prior to a claim number  
20 being assigned within just two days. Once undersigned then filed a formal claim for business  
21 income losses, this too was denied, just one week after reporting.

22           77. Farmers' denial of coverage to the Plaintiffs breached its obligation and  
23 responsibility to provide coverage available under the policies to Plaintiffs for their covered  
24 losses of business income and property, and the extra expenses being incurred, as a result of the  
25 insured premises becoming unusable as full-service casual dining establishments, which is what  
26 both policies purport to cover. Farmers is aware that the Plaintiffs' business incomes are  
27  
28

1 generated through providing food and beverage service at a full-service dining establishment,  
2 which is what the Plaintiffs purchased insurance to protect.

3 78. Based on information and belief, Defendants accepted the policy premiums with  
4 no intention of providing coverage under the Business Income with Extra Expense part of the  
5 Insurance of the Policy or the Civil Authority extension due to a loss and shutdown from a global  
6 pandemic.

7 79. The global pandemic is exacerbated by the fact that the deadly virus physically  
8 infects and stays on surfaces of objects or materials, “fomites,” for days and maybe even weeks  
9 according to scientific research.

10 80. The coronavirus creates a physical impact and loss on property as it alters  
11 surfaces, limiting or prohibiting the intended use of property and causing a dangerous property  
12 condition.

13 81. The coronavirus is physically impacting public and private property, and physical  
14 spaces in cities around the world and the United States. Any effort by Defendants to deny the  
15 reality that the virus causes physical loss and damage would constitute a false and potentially  
16 fraudulently misrepresentation that could endanger policyholders and the public.

17 82. The Orders were given in part, because COVID-19 is physically causing property  
18 loss or damage due to its tendency to attach to surfaces for prolonged periods of time. Cities  
19 across the country, including Los Angeles, San Francisco and Napa in California, have also  
20 provided that the closures are in part due to the virus’ propensity to attach to surfaces, which is a  
21 dangerous property condition that causes property loss or damage.

22 83. For the purpose of determining physical loss or damage of property, California  
23 courts have found that coverage is triggered when there is an alteration to the property, even if  
24 invisible to the naked eye or not structural, that prevents the ordinary intended use of the  
25 property. *See Oregon Shakespeare Festival Ass’n v. Great Am. Ins. Co.*, No. 1:15-cv-01932-CL,  
26 2016 WL 3267247, at \*5-6 (D. Or. June 7, 2016). *See also MRI Healthcare Ctr. of Glendale,*  
27 *Inc. v. State Farm Gen. Ins. Co.*, 187 Cal. App. 4th 76 (2010).  
28



1           84.     For example, bacterial contamination via E-Coli to a water well located on a  
2 restaurant’s property has been held to constitute physical loss or damage to property. *See e.g.*  
3 *Cooper v. Travelers Indem. Co. of Illinois*, 2002 WL 32775680 (N.D. Cal. 2002).

4           85.     The word “physical” has been defined by California courts as “having material  
5 existence” or “perceptible through the sense and subject to the laws of nature.” *Ward General*  
6 *Ins. Services, Inc. v. Employers Fire Ins. Co.*, 114 Cal.App.4<sup>th</sup> 548 (2003).

7           86.     The coronavirus clearly has a material existence and is something that exists in  
8 nature that physically damages tangible property by rendering it unusable as it adheres to  
9 surfaces creating a dangerous property condition.

10           87.     Furthermore, California courts have found that loss of use of a property  
11 constitutes a physical loss of property, and an insurer cannot deny any loss or damage occurred  
12 even if there is no tangible injury to the physical structure. *Hughes v. Potomac Ins.*, (1962) 18  
13 Cal.Rptr 650).

14           88.     Plaintiffs suffered physical damage to property and also suffered physical loss of  
15 property due to the Orders’ prohibited use of the property.

16           89.     Insurance policies, in general, differ from policy to policy. Some policies have  
17 clear exclusions for viral “pandemics,” while others do not exclude pandemics and only include  
18 exclusionary language for “virus.” On the other end, some policies do not contain any exclusion  
19 for virus or pandemic and even extend coverage for losses caused by a virus and/or pandemic.  
20

21           90.     This Policy does not contain any pandemic exclusion.

22           91.     In order for an exclusionary clause to effectively exclude coverage, it must be  
23 conspicuous, plain, and clear. *See e.g. MacKinnon v. Truck Ins. Exchange*, 73 P.3d 1205, 1213  
24 (2003). This rule applies with particular force when the coverage portion of an insurance policy  
25 would lead an insured to reasonably expect coverage for the claim purportedly excluded. *Id.*

26           92.     The insurer bears the burden of establishing the claim comes within the exclusion.  
27 *Id.* To prevail, the insurer must establish its interpretation of the policy is the only reasonable  
28 one. *Id.* at 1218. Even if the insurer’s interpretation is reasonable, the court must interpret the

1 policy in the insured’s favor if any other reasonable interpretation would permit coverage for the  
2 claim. *Id.*

3 93. Defendants did not specifically exclude losses from a global viral pandemic and  
4 no reasonable insured business would reasonably expect that any exclusions in Defendants’  
5 Policy would preclude coverage for these circumstances.

6 94. Any ambiguous terms within the Policy are nonetheless resolved in favor of the  
7 insureds’ reasonable expectations. *Safeco Ins. Co. v. Robert S.*, 28 P.3d 889 (2001).

8 95. The insurance industry is well aware of and utilizes both “virus” and “pandemic”  
9 exclusions. For example, the Liberty Mutual Fire Insurance Company policy in question in  
10 *Meyer Natural Foods, LLC v. Liberty Mutual Fire Insurance Company*, provided an exclusion  
11 for “the actual or suspected presence or threat of any virus, organism or like substance that is  
12 capable of inducing disease, illness, physical distress or death, whether infectious or otherwise,  
13 ***including but not limited to any epidemic, pandemic, influenza, plague, SARS, or Avian Flu.***”  
14 (emphasis added) (*See* 218 F. Supp. 3d 1034 (D Neb. 2016)).

15 96. At the time Defendants produced the Policy, Defendants knew that it could have  
16 clearly and unambiguously included exclusions for pandemics.

17 97. On information and belief, Defendants chose not to include a specific exclusion  
18 for pandemic. This choice was not an accident or the result of negligent drafting. By not  
19 including an exclusion for pandemic, Defendants allow themselves the opportunity to expand the  
20 exclusionary provision beyond the reasonable business insureds’ expectations in the event of  
21 extreme losses such as a global pandemic, all while collecting premiums.

22 98. Plaintiffs did not reasonably expect that any exclusion in their Policy would  
23 prevent coverage from physical loss or damage caused by global pandemic that results in  
24 suspension of operations of their entire businesses and threatens their very existence.

25 99. While Farmers’ policies set forth an Exclusion of Loss Due to Virus or Bacteria  
26 Endorsement Form (the “Virus Exclusion”), this exclusion does not apply to Plaintiffs. The  
27 Virus Exclusion provides that Farmers “will not pay for loss or damage caused by or resulting  
28

1 from any virus, bacterium or other microorganism that induces or is capable of inducing physical  
2 distress, illness or disease." [Ex. A at p. 10]

3 100. The Virus Exclusion does not, however, exclude the losses claimed by Plaintiffs  
4 because those losses were not "caused by or resulting from any virus;" instead, the efficient  
5 proximate cause of the business income losses sustained by Plaintiffs are the precautionary  
6 measures taken by California's state and local officials to prevent the spread of COVID-19 - *not*  
7 the presence of coronavirus on the property of Plaintiff.

8 101. Farmers could have employed broader causation language in the Virus Exclusion  
9 - as it does elsewhere in the Farmers BOP Policies. [See, e.g., Ex. A, at p. 130 ("We will not pay  
10 for loss or damage caused directly or indirectly by an 'other act of terrorism.' Such loss or  
11 damage is excluded regardless of any other cause or event that contributes concurrently or in any  
12 sequence to the loss.")].] Farmers, however, elected to use the more restrictive causation language  
13 ("caused by or resulting from") in the Virus Exclusion. As such, by its own terms, the Virus  
14 Exclusion only applies when a virus is the efficient proximate cause of the insured's loss. That is  
15 not the case here.

16 102. As a result of Farmers' improper denial of coverage and breach of the Plaintiffs'  
17 Policy, Plaintiffs have suffered and will continue to suffer damages.

18 103. A declaratory judgment determining that the policies provide coverage for the  
19 losses of business income and extra expenses that Plaintiffs are experiencing will prevent the  
20 Plaintiffs from being left without the vital coverage they need and which was acquired to ensure  
21 the survival of their businesses in circumstances like the present. As a result of the Stay At  
22 Home Order, the Safer At Home Order, and the Safer at Work and in the Community Order, the  
23 Plaintiffs have incurred, and will continue to incur, a substantial loss of business income and are  
24 forced to pay extra expenses, all of which are covered under the policies issued to them by  
25 Farmers.

26 104. Plaintiffs gave Defendants timely notice of the loss and Defendants had the right  
27 to conduct a physical inspection of the subject property.  
28







- 1 a. Selling policies that appear to provide liberal coverage for loss of property and  
2 lost business income with the intent of interpreting undefined or poorly defined  
3 terms and ambiguously written exclusions to deny coverage under circumstances  
4 foreseen by Defendants;
- 5 b. Unreasonably failing to conduct a prompt, fair, balanced and thorough  
6 investigation of all of the bases of Plaintiffs' claims;
- 7 c. Unreasonably failing to adopt and implement reasonable standards for the prompt  
8 investigation and processing of the claims asserted by Plaintiffs;
- 9 d. Misrepresenting pertinent facts or the provisions in the policies relating to any  
10 coverages at issue;
- 11 e. Unreasonably failing to provide promptly a reasonable explanation of the basis  
12 relied on in the policies, in relation to the facts or applicable law, for the denial of  
13 the claims by Plaintiffs;
- 14 f. Denying coverage for loss of property and lost business income unreasonably, and  
15 without proper cause, by applying undefined, ambiguous, and contradictory terms  
16 contrary to applicable rules of policy construction and the plain terms and purpose  
17 of the policies;
- 18 g. Denying Plaintiffs' claims for loss of property and loss of business income  
19 without conducting a fair, unbiased and thorough investigation or inquiry,  
20 arbitrarily and capriciously, and/ or with knowledge that the denial was  
21 unreasonable under the policy;
- 22 h. Refusing to pay any insurance benefits which a reasonable person would have  
23 believed Plaintiffs was entitled to receive;
- 24 i. Not attempting in good faith effectuate a prompt, fair and equitable settlement of  
25 the claims for benefits by Plaintiffs where the obligation to pay had become  
26 reasonably clear;  
27  
28





- 1 136. Damages according to proof for breach of contract;  
2 137. General and compensatory damages according to proof;  
3 138. Attorneys' fees incurred in bringing this action pursuant to Insurance Code  
4 §1619;  
5 139. Attorneys' fees incurred in in obtaining policy benefits as provided by *Brandt v.*  
6 *Superior Court (1985) 37 Cal. 3d 813* and as provided by law;  
7 140. Prejudgment interest in an amount to be proven at trial;  
8 141. Punitive damages on the Third Cause of Action in an amount sufficient to deter  
9 future, similar behavior and to make example of the Defendants to other similar defendants;  
10 142. Costs of suit incurred; and  
11 143. Such other and further relief as the Court may deem just and proper.  
12


13  
14 **JURY TRIAL DEMAND**

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

17  
18 DATED: November 3, 2020

Respectfully Submitted,

19 **GOMEZ TRIAL ATTORNEYS**

20  
21 By:   
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