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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF SAN FRANCISCO**

15 **PEANUT WAGON, INC., DEMOSTHENIS**  
16 **HOUNTALAS, and MARY G. HOUNTALAS,**

17 Plaintiffs,

18 v.

19 **ALLIANZ GLOBAL CORPORATE &**  
20 **SPECIALTY.,**  
21 **ASSOCIATED INDEMNITY**  
22 **CORPORATION,**  
23 **UNIQUE INSURANCE SERVICE, INC.,**  
24 **and Does 1 through 10, inclusive,**

25 Defendants.

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

JUL 29 2020

CLERK OF THE COURT  
BY: BOWMAN LIU  
Deputy Clerk

CGC-20-585661

Case No.

**COMPLAINT FOR:**

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

**JURY TRIAL DEMANDED**

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1 Plaintiffs Peanut Wagon, Inc., Demosthenis Hountalas, and Mary G. Hountalas  
2 (collectively, “Plaintiffs,” or “The Cliff House”) file this Complaint against defendants Allianz  
3 Global Corporate & Specialty, Associated Indemnity Corporation, and UNIQUE Insurance  
4 Service, Inc. d/b/a Agency Service Bureau (collectively, “Allianz”), and Does 1 through 10 (“Doe  
5 Defendants”), and allege based on personal knowledge as to acts and events taking place in their  
6 presence or upon information and belief as to all other acts as follows:

7 **I. INTRODUCTION**

8 1. Plaintiff Peanut Wagon operates The Cliff House, a historic, destination landmark  
9 restaurant overlooking the Pacific Ocean at the northwest edge of San Francisco, under a  
10 concession contract with the National Park Service. Beginning on **March 16, 2020**, The Cliff  
11 House was forced to close its doors to the public because of a series of orders issued by the City  
12 and County of San Francisco and the State of California (“Closure Orders”). The Closure Orders  
13 **prohibited** on-premises dining at The Cliff House, and elsewhere in the city, due to the novel  
14 Coronavirus Disease 2019 (“COVID-19”) pandemic. As a result, The Cliff House suffered  
15 substantial financial losses and had to let almost all of its 185 workers go—waiters, busboys,  
16 bartenders, dishwashers, and prep cooks, as well as hosts, managers, and chef.



1           2.     To protect its business and employees from the loss caused by a situation like this,  
2 The Cliff House had obtained Portfolio Policy No. S 95 MZX 809963379 (the “Policy”) from  
3 Allianz, which includes business interruption coverage. In breach of the insurance obligations that  
4 Allianz undertook in exchange for receipt of Plaintiffs’ premium payments—which Plaintiffs  
5 dutifully and regularly paid—Allianz denied Plaintiffs’ insurance claims arising from the  
6 interruption of Plaintiffs’ business caused by the Closure Orders. Allianz denied the claims  
7 notwithstanding the plain language of the Policy, which provides coverage for such losses, and  
8 they did so fraudulently in violation of California law.



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

26           3.     In **March 2020**, the New England Journal of Medicine, one of the world’s leading  
27 peer-reviewed medical journals, published a study that describes severe acute respiratory  
28 syndrome coronavirus 2 (SARS-CoV-2), the virus that causes COVID-19, as a virus transmitted



1 by respiratory droplets that can be suspended in air for several hours. Over time, these droplets  
2 containing the coronavirus fall onto and can physically remain on surfaces, such as metal, glass,  
3 plastic, and wood, for several days. Persons who touch these surfaces, even days later, may  
4 become infected.

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

9 5. Beginning on **March 16, 2020**, civil authorities in San Francisco County and other  
10 Bay Area counties ordered their residents to “shelter in place” except for essential travel, and  
11 further ordered dine-in restaurants and other non-essential businesses to close, due to an increasing  
12 wave of information indicating the widespread physical presence of the coronavirus in the San  
13 Francisco Bay Area and throughout the State of California.

14 6. On **March 19, 2020**, California Governor Gavin Newsom issued Executive Order  
15 N-33-20, which similarly requires that non-essential businesses statewide, including dine-in  
16 restaurants such as The Cliff House, immediately close their doors to all customers.

17 7. The resulting economic harm from these Closure Orders and from the widespread  
18 physical presence of the coronavirus in the Bay Area has been significant. According to the  
19 Independent Restaurant Coalition, “up to seven million people have been laid off, and millions of  
20 our suppliers will have their bills go unpaid, creating an unprecedented trickledown effect of  
21 economic damage to local restaurants and the small businesses that rely on them.”

### 22 **III. WIDESPREAD DENIAL OF INSURANCE CLAIMS**

23 8. Many of the independent restaurants forced to close their doors had planned ahead  
24 by purchasing insurance to safeguard against the business interruption that results from precisely  
25 these kinds of civil authority closure orders. Since having to close down, independent restaurants  
26 and other businesses have filed claims for business interruption coverage with their insurance  
27 carriers as a lifeline to save their businesses and, by extension, their employees and communities.  
28 However, Allianz, and other insurance companies, have **summarily declined coverage**.

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

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

8           10.       Moreover, “[a]ccording to data from ratings firm A.M. Best Co., the insurance  
9 industry as a whole has \$18.4 billion in net reserves for future payouts. But industry trade groups  
10 like the American Property Casualty Insurance Association (APCIA) say they do not have the  
11 funds to pay out the claims from a pandemic. ‘Pandemic outbreaks are uninsured because they are  
12 uninsurable,’ says APCIA David A. Sampson. If insurance is forced to pay claims by legislation,  
13 for example, their reinsurers might not cover *them*.” The denial of business interruption insurance  
14 claims is precisely what is happening here to small, independent restaurants. For the insurance  
15 industry, the goal is to generate revenues by charging high premiums for insurance while avoiding  
16 paying anything on legitimate claims by small businesses like The Cliff House.

17           11.       The Closure Orders **prohibited** on-premises dining at The Cliff House due to the  
18 physical presence of the coronavirus in the community and on the surfaces of the property around  
19 The Cliff House. As a result, The Cliff House was forced to close its doors and let its 185 workers  
20 go, and Plaintiffs continue to suffer substantial financial losses.

21 **IV.   ALLIANZ INSURANCE AND DENIAL**

22           12.       In **June 2019**, Allianz entered into a contract of insurance with The Cliff House,  
23 Portfolio Policy No. S 95 MZX 809963379, for the period of June 1, 2019, through June 1, 2020,  
24 as a renewal of an existing relationship. Under this Policy, The Cliff House agreed to pay  
25 insurance premiums to Allianz in exchange for Allianz’s promise to cover The Cliff House for  
26 losses including, but not limited to, business income losses according to the terms set forth in the  
27 Policy. Since the inception of the Policy, The Cliff House has paid all premiums and the Policy has  
28 at all relevant times remained in full force and effect.

1           13.     The Policy specifically includes (a) coverage for business interruption caused by an  
2 “action of a civil authority” (“**Civil Authority Coverage**”), (b) coverage for business income lost  
3 due to a necessary suspension of operations (“**Lost Business Income Coverage**”), (c) coverage for  
4 extra expense incurred due a necessary suspension of operations (“**Extra Expense Coverage**”),  
5 and (d) **Crisis Event Coverage**, that expressly covers **Premises Contamination** and expressly  
6 defines such premises contamination to include **Communicable Disease**.

7           14.     One circumstance in which the Policy’s coverage of business interruption at The  
8 Cliff House can be triggered is when a complete cessation of the restaurant’s activities is required  
9 as the direct result of an order of a civil authority. The Civil Authority Coverage provision in  
10 Section A.3.b of the Policy’s Business Income Coverage Form (and Extra Expense) reads, in  
11 pertinent part:

12                   **b. Civil Authority**

13                   We will pay for the actual loss of business income you sustain and  
14                   necessary Extra Expense caused by action of civil authority that  
15                   prohibits access to the described premises due to direct physical loss of  
16                   or damage to property, other than the described premises, caused by or  
17                   resulting from any Covered Cause of Loss. This coverage will begin  
18                   from the date of the action of Civil Authority and will apply for the  
19                   number of consecutive weeks shown in the Schedule of this  
20                   Endorsement.

21           15.     Here, coverage under the Policy’s Civil Authority Coverage was triggered when a  
22 complete cessation of The Cliff House’s operations was the required and direct result of the  
23 Closure Orders issued by the City and County of San Francisco and the State of California. The  
24 March 16, 2020 “Order of the Health Officer No. C19-07” issued by the City and County of San  
25 Francisco Department of Public Health, states in pertinent part:

26                   **Restaurants and cafes—regardless of their seating capacity—that serve**  
27                   **food are ordered closed except solely for takeout and delivery service.**  
28



1 This Order revokes and replaces a previously issued Order of the Health Office No. C19-05b,  
2 dated March 13, 2020. Attached hereto are true and correct copies of Orders dated March 13  
3 (No. C19-05b) (**Exhibit A**) and March 16 (No. C19-07) (**Exhibit B**).

4 16. The March 19, 2020 Executive Order N-33-20 issued by Governor Newsom  
5 similarly requires all restaurants to close for on-premises dining. Attached hereto are true and  
6 correct copies of that March 19 Executive Order (**Exhibit C**), of March 19 guidance regarding  
7 “essential workers” issued by the U.S. Cybersecurity and Infrastructure Agency and incorporated  
8 into the March 19 Executive Order by reference (**Exhibit D**), and the March 22 State Public  
9 Health Officer’s Designation of “Essential Critical Infrastructure Workers” regarding the effects of  
10 the March 19 Executive Order (**Exhibit E**).

11 17. The Closure Orders were issued as a direct result of a Covered Cause of Loss to  
12 property under the Policy, seeing as the coronavirus that was proliferating onto virtually every  
13 surface and object in, on, and around The Cliff House and its surrounding environs was then  
14 causing, and is continuing to cause, **direct physical damage** and loss in and to the immediate area  
15 of The Cliff House.

## 16 **V. VIOLATIONS OF CALIFORNIA LAW**

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

## 21 **VI. PARTIES**

### 22 **A. The Cliff House Plaintiffs**

23 19. Plaintiff **PEANUT WAGON, INC.** is a California corporation with its principal  
24 place of business in the City and County of San Francisco, California. Peanut Wagon, Inc.  
25 operates, manages, and/or controls two restaurants within the building commonly known as The  
26 Cliff House located at 1090 Point Lobos Avenue, San Francisco, California 94121, and a coffee  
27 and sandwich counter at 680 Point Lobos Avenue, San Francisco California 94121 (collectively,  
28 the “Insured Premises” or “Scheduled Premises”) and that together employ many people. At all

1 relevant times, Peanut Wagon, Inc. has leased, managed, and/or controlled the Insured Premises.

2 20. Plaintiff **DEMOSTHENIS (“DAN”) HOUNTALAS** is a resident of California  
3 and one of the current owners and operators of Peanut Wagon, Inc. and by extension, The Cliff  
4 House restaurant business.

5 21. Plaintiff **MARY G. HOUNTALAS** is a resident of California and one of the  
6 current owners and operators of Peanut Wagon, Inc. and by extension, The Cliff House restaurant  
7 business. Together, Dan and Mary Hountalas have been proprietors of The Cliff House for over 47  
8 years.

9 **B. Allianz Defendants**

10 22. Defendant **ALLIANZ GLOBAL CORPORATE & SECURITY (“ALLIANZ”)**,  
11 is a business entity and subsidiary of the Allianz Group that transacts business in 32 countries and  
12 maintains eight offices which are regular places of business in the United States, including at 525  
13 Market Street, Suite 1800, San Francisco, California, 94105. At all relevant times, ALLIANZ has  
14 been and is transacting the business of insurance in the state of California and in San Francisco  
15 County, and the basis of this suit arises out of said conduct. ALLIANZ denied Plaintiffs’ insurance  
16 claim under the Policy and issued and sent the denial letter from the ALLIANZ office at 1  
17 Progress Point Parkway, O’Fallon, Missouri, 63368.

18 23. Defendant **ASSOCIATED INDEMNITY CORPORATION (“Associated  
19 Indemnity”)**, is an insurance company that is part of the Allianz Group and has its principal place  
20 of business in Chicago, Illinois. At all relevant times, Associated Indemnity has been authorized to  
21 do business and is doing business in the state of California and in San Francisco County. At all  
22 relevant times, Associated Indemnity has been and is transacting the business of insurance in the  
23 state of California and in San Francisco County, and the basis of this suit arises out of said  
24 conduct.

25 24. Defendant **UNIQUE INSURANCE SERVICE, INC. d/b/a AGENCY SERVICE  
26 BUREAU (“UNIQUE”)**, is a California-licensed independent property insurance broker-agent and  
27 casualty insurance broker-agent doing business within the State of California under License No.  
28 0381168. UNIQUE is incorporated in the state of California and has its principal place of business

1 in Petaluma, California. UNIQUE sold The Cliff House the Policy at issue in this action and has  
2 joined in the denial of the claim that is the subject of this lawsuit, regardless of any conduct by  
3 other Defendants.

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

7 **C. Doe Defendants**

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

15 27. The Allianz and Doe Defendants are collectively referred to herein as Defendants.

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

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

22 29. In committing the wrongful acts alleged herein, each of the Defendants have  
23 pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert and/or  
24 conspired with one another in furtherance of the improper acts and transactions that are the subject  
25 of this Complaint.

26 30. Each of Allianz’s agents aided and abetted and rendered substantial assistance in  
27 the wrongs complained of herein, and also acted in a knowing conspiracy to defraud Plaintiffs. In  
28 taking such actions to substantially assist the commission of the wrongdoing complained of herein,

1 each Defendant, including each of the Doe Defendants, acted with knowledge of the primary  
2 wrongdoing, substantially assisted in the accomplishment of that wrongdoing, and was aware of  
3 their overall contribution to and furtherance of the wrongdoing.

4 **VIII. JURISDICTION AND VENUE**

5 31. This Court has subject matter jurisdiction over this action. The conduct giving rise  
6 to this action took place, in whole or in part, in the City and County of San Francisco, California.  
7 This action is based, in substantial part, on the breach of an insurance contract concerning a  
8 California property and business and is based on violations of California law. The amount in  
9 controversy exceeds the minimum jurisdictional amount of unlimited civil cases.

10 32. Venue is proper because the conduct giving rise to this action took place, in whole  
11 or in part, in the City and County of San Francisco, California, by the named Defendants and their  
12 agents and co-conspirators, and because the events and matters alleged herein concerned a policy  
13 of insurance pertaining to real property located within the City and County of San Francisco,  
14 California.

15 **IX. FACTUAL BACKGROUND**

16 **A. Historic Landmark Restaurant**

17 33. The Cliff House is a historic landmark restaurant located “Where San Francisco  
18 Begins,” overlooking the Sutro Bath ruins and nestled among the national park lands at the  
19 northwest edge of the city. Today the restaurant operates as two establishments, Sutro’s at the Cliff  
20 House and Bistro at The Cliff House, both located at 1090 Point Lobos Avenue. Both spaces  
21 feature spectacular ocean views and are destination restaurants both for locals and outsiders  
22 visiting San Francisco, and each has over 1,400 Yelp reviews. The Cliff House, in its modern  
23 incarnation and under the management of several previous proprietors, has featured prominently in  
24 the city’s history and literature about it. Five presidents have visited, and it has operated in some  
25 form or fashion continuously, but for a few closures due to fire and during Prohibition, since its  
26 beginnings in 1858, a run of 162 years.



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11 34. Plaintiffs have deep roots in San Francisco. Plaintiff Dan Hountalas grew up in the  
12 family that owned and operated Danny’s Cliff Chalet, another classic destination San Francisco  
13 restaurant on the western edge of the city, from 1908 until it burned down in 1966 in the same fire  
14 that claimed the Sutro Baths. Plaintiff Mary Hountalas is a registered dietician with formal training  
15 in menu planning. Dan and Mary Hountalas married in October 1972 and accepted an offer to  
16 open a restaurant at The Cliff House from then-owner George Whitney, Jr. in early 1973. Plaintiffs  
17 revived and reinvigorated the restaurant, turning what had been widely regarded as a tourist haven  
18 with 80% out-of-town clientele when they started into a culinary gem with 80% local clientele  
19 today. In 1977, during Plaintiffs’ time operating the restaurant, the National Park Service  
20 purchased the building and surrounding property and integrated them into the Golden Gate  
21 National Recreation Area. Plaintiffs became lessees of the NPS. In 1998, the NPS granted  
22 Plaintiffs a 20-year concession, which has been renewed on a year-to-year basis since expiry of the  
23 20-year term in 2018. Between 1998 and 2004, Plaintiffs oversaw a renovation project that  
24 restored the building to its 1909 appearance.

25 35. The prime oceanfront location makes the restaurant expensive to operate, and to  
26 insure. Styled as a “cruise ship stuck on the land,” its exposure to sea air corrodes electric wiring  
27 and even the locks on the doors, which must be changed out every few months. The Cliff House is  
28

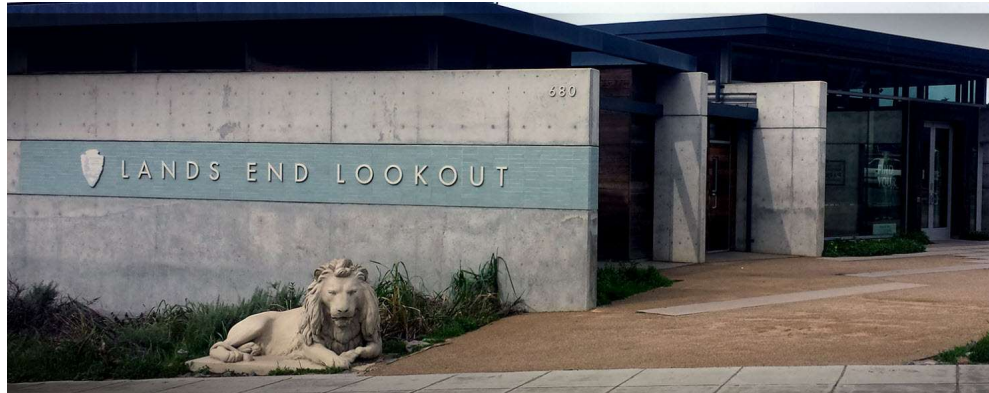
1 painted every year, in consultation with the same experts who oversee painting of the nearby  
2 Golden Gate Bridge.



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18 36. Plaintiffs have therefore devoted substantial attention and effort to securing  
19 appropriately robust insurance, and had allocated some \$21,000 per month in premiums to insure  
20 the building alone. Plaintiffs began what had been a harmonious relationship with their insurer  
21 Fireman’s Fund in 1996. The policy then in force paid out a significant claim following major  
22 property damage the following year. Plaintiffs have honored that relationship with their continued  
23 patronage and loyalty, though in the intervening years Allianz succeeded Fireman’s Fund and took  
24 over the coverage.

25 37. Plaintiffs also operate Lookout Cafe, a casual coffee and sandwich counter within  
26 the Lands End Lookout Visitor Center at 680 Point Lobos Avenue several hundred yards up from  
27 The Cliff House. Lookout Cafe was disclosed in the Declarations and covered under the Policy as  
28

1 well, and operations there have been affected by the Closure Orders in the same manner as those at  
2 The Cliff House.



10  
11 38. In the period directly before the pandemic arrived, The Cliff House employed 185  
12 Californians.

13 **B. Pandemic in San Francisco**

14 39. COVID-19 is a deadly infectious disease caused by the recently discovered  
15 coronavirus known as SARS-CoV-2. It first emerged in or about December 2019. Because this  
16 coronavirus is highly transmissible, it has rapidly spread throughout the world, including in San  
17 Francisco and other Bay Area counties.

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

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



1           41.     According to the U.S. Centers for Disease Control and Prevention (“CDC”):  
2 “COVID-19 seems to be spreading easily and sustainably in the community (‘community spread’)  
3 in many affected geographic areas” in the United States.<sup>2</sup> Relative to the rest of the State and  
4 Country, populous urban areas, including San Francisco County and surrounding Bay Area  
5 counties, have been particularly subject to community spread, and they have a correspondingly  
6 high number of confirmed cases and deaths from COVID-19.

7           42.     On **January 26, 2020**, the CDC announced California’s first positive test result for  
8 COVID-19.

9           **C.     Closure Orders Issued by State, City, and County Civil Authorities**

10          43.     On **March 4, 2020**, Governor Newsom issued a Proclamation of a State of  
11 Emergency with respect to the COVID-19 pandemic. Among other things, the Proclamation finds  
12 that there were, as of that date, and despite the widespread unavailability of COVID-19 testing,  
13 already 53 confirmed cases of COVID-19 in California, and more than 9,400 Californians across  
14 49 counties in home monitoring because of possible travel-based exposure to the coronavirus.

15          44.     On **March 6, 2020**, the San Francisco Department of Public Health (“SFPDH”)  
16 issued a Declaration of Local Health Emergency Regarding Novel Coronavirus Disease 2019  
17 (COVID-19), noting that “it appears that this disease has become an epidemic and will continue to  
18 spread through communities including the Bay Area.”

19          45.     On **March 11, 2020**, the WHO declared the outbreak a global pandemic, and the  
20 SFPDH issued Order of the Health Officer No. C19-05 (“**March 11 Order**”). The March 11 Order  
21 “prohibits all indoor public and private gatherings and outdoor gatherings within an enclosed space  
22 of 1,000 persons or more anywhere in San Francisco.” The Order was effective from March 11  
23 until it was replaced by the SFPDH’s March 13 Order.

24          46.     On **March 12, 2020**, California Governor Gavin Newsom issued Executive Order  
25 N-25-20 (“**March 12 Executive Order**”), ordering that: “All residents are to heed any orders and  
26 guidance of state and local public health officials, including but not limited to the imposition of

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

1 social distancing measures, to control the spread of COVID-19” (¶ 1). This Order took effect on  
2 March 12, 2020, and has remained continuously in effect through the date of this Complaint.

3 47. On **March 13, 2020**, the SFDPH issued Order of the Health Officer No. C19-05b  
4 (“**March 13 Order**”) (see **Exhibit A**), which “revokes and replaces” the March 11 Order (¶ 1) and  
5 “prohibits all indoor public and private gatherings and outdoor gatherings within an enclosed space  
6 that has a maximum occupant load of 100 people or more anywhere in San Francisco” (p. 1). The  
7 order expressly applies to on-premises dining at restaurants (¶ 13.e–f). The March 13 Order was  
8 effective from March 13 at 5:00 p.m. (¶¶ 2, 14) until March 17 at 12:01 a.m., when it was replaced  
9 by the SFDPH’s March 16 Order.

10 48. On **March 16, 2020**, the SFDPH issued Order of the Health Officer No. C19-07  
11 (“**March 16 Order**” or “**First SF Shelter Order**”) (see **Exhibit B**), which “revoke[d] and  
12 replace[d]” the March 13 Order. The March 16 Order prohibits “[a]ll travel” and “[a]ll public and  
13 private gatherings of any number of people occurring outside a single household” (¶¶ 4, 5). As an  
14 exception to this prohibition, the March 16 Order permits travel and gathering that is necessary to  
15 operate “Essential Business” (¶¶ 5, 10.d), which the Order defines to include “[r]estaurants and  
16 other facilities that prepare and serve food, but only for delivery or carry out” (¶ 10.f.xiii). The  
17 March 16 Order further states: “**Restaurants and cafes—regardless of their seating capacity—  
18 that serve food are ordered closed except solely for takeout and delivery service**” (p. 2). The  
19 order also provides that “[v]iolation of or failure to comply with this Order is a misdemeanor  
20 punishable by fine, imprisonment, or both” (p. 1), and “requests that the Sheriff and the Chief of  
21 Police in the County ensure compliance with and enforce this Order,” since “violation of any  
22 provision of this Order constitutes an imminent threat and creates an immediate menace to public  
23 health (¶ 11). The March 16 Order was effective from March 17 at 12:01 a.m. (¶ 12) until March  
24 31 at 11:59 p.m., when it was superseded by the SFDPH’s March 31 Order (described below).

25 49. On **March 19, 2020**, the State of California issued an Order of the State Public  
26 Health Officer, which set baseline statewide restrictions on non-essential business activities,  
27 effective until further notice. On that same date, Governor Newsom issued Executive Order N-33-  
28 20, expressly requiring California residents to follow the March 19 Order of the State Public

1 Health Officer, and incorporating by reference California Government Code 8665, which provides  
2 that “[a]ny person . . . who refuses or willfully neglects to obey any lawful order . . . issued as  
3 provided in this chapter, shall be guilty of a misdemeanor and, upon conviction thereof, shall be  
4 punishable by a fine of not to exceed one thousand dollars (\$1,000) or by imprisonment for not to  
5 exceed six months or by both such fine and imprisonment” (Cal. Gov. Code § 8665). The March  
6 19 Order of the State Public Health Officer and Executive Order N-33-20 (collectively, the  
7 “**Statewide Shelter Orders**”) (*see* **Exhibit C**) took immediate effect on March 19, 2020, and both  
8 have remained continuously in effect through the date of this Complaint.

9         50. On **March 31, 2020**, the SFDPH issued Order of the Health Office No. C19-07b  
10 (“**March 31 Order**” or “**Second SF Shelter Order**”) (*see* **Exhibit F**), which “supersedes” and  
11 “clarifies, strengthens, and extends certain terms of the [First SF] Shelter Order to increase social  
12 distancing and reduce person-to-person contact to further slow transmission of [the coronavirus]”  
13 (§ 1). As concerns restaurants, the terms of the First and Second SF Shelter Orders are  
14 substantially similar, with the Second Order noting that “[r]estaurants, cafes, coffee shops, and  
15 other facilities that serve food—regardless of their seating capacity—must remain closed except  
16 solely for takeout and delivery service” (p. 2), and continuing to define restaurants as Essential  
17 Businesses “only for delivery or carry out” (§ 13.f.xvii). Like its predecessor, the Second SF  
18 Shelter Order provides that “[v]iolation of or failure to comply with this Order is a misdemeanor  
19 punishable by fine, imprisonment, or both” (p. 1), and further provides that “violation of any  
20 provision of this Order constitutes an imminent threat and menace to public health” and  
21 “constitutes a public nuisance” (§ 15). The Second SF Shelter Order was effective from March 31  
22 at 11:59 p.m. through May 3, 2020, at 11:59 p.m. (§ 16), when it was replaced by the Third SF  
23 Shelter Order.

24         51. On **April 29, 2020**, the SFDPH issued Order of the Health Office No. C19-07c  
25 (“**April 29 Order**” or “**Third SF Shelter Order**”) (*see* **Exhibit G**), which “supersedes” and  
26 “amends, clarifies, and extends certain terms of the [Second SF] Shelter Order to ensure continued  
27 social distancing and limit person-to-person contact to reduce the rate of transmission of [COVID-  
28 19]” (§ 1). The terms of the Second and Third SF Shelter Orders are substantially similar, with the

1 Third SF Shelter Order continuing to require that “[r]estaurants, cafes, coffee shops, and other  
2 facilities that serve food—regardless of their seating capacity—must remain closed except solely  
3 for takeout and delivery service” (p. 3), and continuing to define restaurants as Essential Business  
4 “only for delivery or carry out” (§ 16.f.xvi). Like its two predecessors, the Third SF Shelter Order  
5 provides that “[v]iolation of or failure to comply with this Order is a misdemeanor punishable by  
6 fine, imprisonment, or both” (p. 1), and further provides that “violation of any provision of this  
7 Order constitutes an imminent threat and menace to public health” and “constitutes a public  
8 nuisance” (§ 18). The Third SF Shelter Order was by its terms effective from May 3 at 11:59 p.m.,  
9 through May 31, 2020, at 11:59 p.m. (§ 19).

10           52.     On **May 17, 2020**, the SFDPH issued Order of the Health Office No. C19-07d  
11 (“**May 17 Order**” or “**Fourth SF Shelter Order**”) (see **Exhibit H**), amending the Third SF  
12 Shelter Order, prolonging the rule barring on-premises dining at restaurants within the city, and  
13 extending the effect of the shelter-in-place rules indefinitely. The Fourth SF Shelter Order became  
14 effective starting May 17 at 11:59 p.m. and states it “will continue to be in effect until it is  
15 rescinded, superseded, or amended in writing by the Health Officer” (§ 18); no termination date  
16 was identified.

17           53.     On **May 22, 2020**, the SFDPH issued Order of the Health Office No. C19-07e  
18 (“**May 22 Order**” or “**Fifth SF Shelter Order**”) (see **Exhibit I**), which permitted several  
19 additional categories of business to reopen and eased restrictions on restaurants to allow outdoor  
20 dining, subject to stringent social distancing and other restrictions (Appx. C-1 § (8)b). This change  
21 appeared as an exception to the rules permitting restaurants to remain open “only for delivery or  
22 carry out,” which remained operative with respect to indoor dining and all outdoor dining that did  
23 not meet the narrowly defined conditions of the exception (§ 15.f.xvi). The Fifth SF Shelter Order  
24 became effective starting May 22 at 12:00 p.m. and by its terms continued indefinitely, with no  
25 termination date identified (§ 18).

26           54.     On **July 13, 2020**, the SFDPH issued Order of the Health Office No. C19-07f  
27 (“**July 13 Order**” or “**Sixth SF Shelter Order**”) (see **Exhibit J**). The Sixth SF Shelter Order  
28 consolidated many existing rules and prohibitions, but retained the limitation on the functioning of

1 restaurants as Essential Businesses to “delivery or carry out” only (¶ 8.a.xvi) and the rules  
2 permitting outdoor dining subject to strict conditions (Appx. C-1 § (8)b). The Sixth SF Shelter  
3 Order became effective starting July 13 at 12:00 p.m. and once again by its terms continued  
4 indefinitely, with no termination date identified (¶ 13). The July 13 Order remains in effect as of  
5 the date of this Complaint.

6 **D. The Cliff House Forced to Close and Resulting Financial Losses**

7 55. Beginning on **March 16, 2020**, The Cliff House was forced to close its doors to the  
8 public and let its workers go. Each of the following four sets of orders required The Cliff House to  
9 close its restaurant to on-premises dining: (a) the First SF Shelter Order, issued on March 16  
10 (supported by the March 12 Executive Order); (b) the March 19 Statewide Shelter Orders on their  
11 own; (c) the Second SF Shelter Order (supported by the March 12 Executive Order and the  
12 Statewide Shelter Orders); and (d) the Third SF Shelter Order (also supported by the March 12  
13 Executive Order and Statewide Shelter Orders); (e) the Fourth SF Shelter Order (with the same  
14 support); (f) the Fifth SF Shelter Order (same support); and (f) the Sixth SF Shelter Order (same  
15 support) (collectively, the “**Closure Orders**”).

16 56. Similarly, the Closure Orders prohibited customers accessing and otherwise  
17 patronizing The Cliff House for purposes of on-premises dining.

18 57. Further, even if the Closure Orders had not issued, The Cliff House would have had  
19 to close the restaurant and suspend its operations due to the worsening pandemic-level presence of  
20 the coronavirus in, on, and around the Insured Premises, and which has caused physical damage to  
21 the Insured Premises and to the fixtures and personal property therein. Moreover, the pandemic-  
22 level presence of the coronavirus in those places where its employees, suppliers, and regular and  
23 potential clientele live, work, recreate, and travel (including but not limited to San Francisco and  
24 the rest of the Bay Area) means that The Cliff House could not have reopened during this ongoing  
25 closure period due to the high statistical likelihood, if not certainty, that the Insured Premises  
26 would have been regularly re-damaged by the recurrent reintroduction of infectious coronavirus  
27 into the Insured Premises from COVID-19-infected individuals and personal property.

28

1           58.     Once the pandemic reached the United States and the Closure Orders issued,  
2 Plaintiffs were forced to furlough all but a skeleton staff made up primarily of managers who  
3 presently work rotating part-time shifts to monitor and maintain security at the premises. Plaintiffs  
4 paid out vacations and health coverage through May for all employees. Following several  
5 extensions to the Closure Orders, Plaintiffs were left with no choice but to announce in mid-April  
6 that the furloughs would be permanent.



23           59.     As the pandemic crisis has unfolded in spring and summer 2020, updates and  
24 modifications to the Closure Orders enabled some restaurants to offer food for takeout or delivery,  
25 but not to open their doors to the public for on-premises dining, except in limited circumstances  
26 where such restaurants were able to accommodate a limited number of diners in socially distanced  
27 outdoor areas. The Cliff House was not able to open for any form of in-person dining, but for  
28 several months offered a restricted list of menu options for takeout only. The takeout operation

1 provided a means to offer some limited service but was a stopgap measure never meant to persist  
2 long term and did not permit The Cliff House to return to overall profitability.

3 60. By July, with COVID-19 cases surging nationwide and in the most heavily  
4 populated parts of California, including the San Francisco Bay Area, Governor Newsom and other  
5 officials in California began rolling back the easing of restrictions. On July 1, Governor Newsom  
6 mandated closure of indoor establishments including indoor restaurants and bars in 19 California  
7 counties.<sup>3</sup> Enhanced restrictions are tied to the decision of the Department of Public Health (DPH),  
8 utilizing a set of six objective criteria including such factors as case numbers, hospitalizations,  
9 testing, and available medical resources, to place counties on the official state watch list.<sup>4</sup> As of  
10 July 13, the watch list had expanded to include 31 counties.<sup>5</sup>

11 61. On July 19, 2020, the City and County of San Francisco landed on the DPH watch  
12 list “due to a ‘significant increase’ in infections and hospitalizations,” and already postponed plans  
13 to reopen restaurants within the city for indoor dining were suspended indefinitely. As of this  
14 writing there is no anticipated date for when restaurants like The Cliff House will be able to  
15 welcome the public once again.

16 62. The following day, on July 20, 2020, Plaintiffs announced that The Cliff House  
17 would shut down the takeout operation and close completely until they could reopen the  
18 restaurant’s indoor dining spaces.<sup>6</sup> As they explained in a public Facebook post that day that was  
19 picked up by local media:

22 <sup>3</sup> Taryn Luna & Phil Willon, “Restaurant dining rooms, wineries, card rooms to close for at least  
23 three weeks in 19 California counties.” *Los Angeles Times* (July 1, 2020),  
[https://www.latimes.com/california/story/2020-07-01/newsom-imposes-new-rollbacks-of-](https://www.latimes.com/california/story/2020-07-01/newsom-imposes-new-rollbacks-of-californias-coronavirus-reopening)  
24 [californias-coronavirus-reopening](https://www.latimes.com/california/story/2020-07-01/newsom-imposes-new-rollbacks-of-californias-coronavirus-reopening) (last visited July 23, 2020).

25 <sup>4</sup> Alix Martichoux, “Coronavirus watch list: 35 California counties where COVID-19 is getting  
26 worse,” (July 22, 2020), [https://abc7news.com/ca-state-watch-list-california-monitoring-covid-19-](https://abc7news.com/ca-state-watch-list-california-monitoring-covid-19-update-gavin-newsom/6265270/)  
27 [update-gavin-newsom/6265270/](https://abc7news.com/ca-state-watch-list-california-monitoring-covid-19-update-gavin-newsom/6265270/) (last accessed July 23, 2020).

28 <sup>5</sup> Rong-Gong Lin II & Alex Wigglesworth, “California officials rolling back reopening as  
coronavirus surge creates new crisis.” *Los Angeles Times* (July 13, 2020),  
[https://www.latimes.com/california/story/2020-07-13/california-officials-rolling-back-reopenings-](https://www.latimes.com/california/story/2020-07-13/california-officials-rolling-back-reopenings-as-coronavirus-surge-creates-new-crisis)  
as-coronavirus-surge-creates-new-crisis (last visited July 23, 2020).

<sup>6</sup> Jessica Yadegaran, “After 157 years, San Francisco’s Cliff House restaurant closes temporarily,”  
*East Bay Times*, (July 20, 2020), [https://www.eastbaytimes.com/2020/07/20/after-157-years-san-](https://www.eastbaytimes.com/2020/07/20/after-157-years-san-franciscos-cliff-house-restaurant-closes-temporarily/)  
franciscos-cliff-house-restaurant-closes-temporarily/ (last accessed July 23, 2020).



1                    *Our commitment to our guests, our staff, and to San Francisco has never*  
2                    *been stronger. It is due to this very commitment that we have decided to*  
3                    *suspend our takeout service at both the Cliff House and the Lookout Cafe*  
4                    *effective this Monday, July 20, 2020. Due to economic pressure during*  
5                    *this unprecedented situation we have concluded that it would be best to*  
6                    *preserve our remaining resources to ensure a continuance of future*  
7                    *operations. This was not an easy decision to make especially considering*  
8                    *the support we have received from all of you.*

9                    63.        Due to the Closure Orders, as well as the presence of the coronavirus in, on, and  
10                  around the Insured Premises, The Cliff House has suffered and continues to suffer substantial lost  
11                  business income and other financial losses totaling into the millions of dollars.

12                  64.        Due to the Closure Orders and the presence of the coronavirus in, on, and around  
13                  the Insured Premises, The Cliff House had to let go nearly all of its 185 full-time employees,  
14                  resulting in lost wages for those employees.

15                  **E.        The Cliff House Suffers Covered Loss**

16                  65.        These extraordinary losses of business income and lost wages for its full-time  
17                  employees are precisely why The Cliff House took out the business interruption Policy with  
18                  Allianz, and its losses are covered under the Policy.

19                  66.        The Cliff House is located in a historic building in a scenic location at the edge of  
20                  the San Francisco's Pacific coastline that is a magnet for locals and tourists alike. The building is  
21                  large, especially for a restaurant in San Francisco, and on a typical pre-pandemic night the two  
22                  restaurants would serve hundreds of covers with virtually no empty seats anywhere in the house.  
23                  Substantial numbers of patrons would gather at the bar or in waiting areas for their reservations or  
24                  for a table to open up. The prime location attracted patrons from throughout the city and also from  
25                  far and wide who had traveled a significant distance for the experience. For that reason, it would  
26                  be even harder for The Cliff House than for many establishments in the Bay Area to assess  
27                  potential for virus exposure by tracking reported infections in the immediate vicinity.

1           67.     According to the CDC, the National Institutes of Health (“NIH”), other infectious  
2 disease organizations around the world, and leading peer-reviewed medical journals such as the  
3 New England Journal of Medicine, the coronavirus spreads via droplets through person-to-person  
4 contact and through contact with surfaces and objects.<sup>7</sup> Although droplets containing coronavirus  
5 may not be visible to the human eye, the droplets are undeniably physical and have spread on  
6 property surfaces.

7           68.     The insidious nature of the coronavirus is that it can remain infectious on a variety  
8 of surfaces and objects from a few hours to several days. The CDC reports that the coronavirus  
9 was detected on various surfaces inside the cruise ship cabins of both symptomatic and  
10 asymptomatic passengers **17 days** after the cabins had been vacated.<sup>8</sup> The coronavirus can remain  
11 on stainless steel and plastic up to six days; on glass, ceramics, silicon rubber, or paper up to five  
12 days; on paper currency up to three days; and on cardboard up to 24 hours.<sup>9</sup>

13           69.     Droplets containing coronavirus can also travel and remain infectious while  
14 suspended in the air. A widely reported study from the Massachusetts Institute of Technology  
15 found that the droplets from a cough can travel as far as 16 feet, and droplets from a sneeze can  
16 travel as far as 26 feet.<sup>10</sup> And according to a report in the New York Times: “An infected person  
17 talking five minutes in a poorly ventilated space can produce as many viral droplets as one  
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20 <sup>7</sup> See, e.g., CDC website, “How COVID-19 Spreads,” <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited Apr. 28, 2020).

21 <sup>8</sup> See Leah E. Moriarty, et al., “Public Health Responses to COVID-19 Outbreaks on Cruise Ships  
22 — Worldwide, February–March 2020,” 69 *Morbidity and Mortality Weekly Report* 347 (released  
23 online Mar. 23, 2020), available at <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6912e3-H.pdf> (last visited Apr. 28, 2020) (CDC journal article).

24 <sup>9</sup> See Alex W.H. Chin, et al., “Stability of SARS-CoV-2 in different environmental conditions,”  
25 *The Lancet Microbe* (Apr. 2, 2020), available at [https://doi.org/10.1016/S2666-5247\(20\)30003-3](https://doi.org/10.1016/S2666-5247(20)30003-3)  
26 (last visited Apr. 28, 2020); Neeltje van Doremalen, et al., “Aerosol and Surface Stability of  
27 SARS-CoV-2 as Compared to SARS-CoV-1,” *New England Journal of Medicine* (Mar. 17, 2020),  
28 available at <https://www.nejm.org/doi/pdf/10.1056/NEJMc2004973> (last visited Apr. 28, 2020);  
Guenter Kampf, et al., “Persistence of coronaviruses on inanimate surfaces and their inactivation  
with biocidal agents,” 104 *Journal of Hospital Infection* 246 (Feb. 6, 2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7132493/pdf/main.pdf> (last visited Apr. 28, 2020).

<sup>10</sup> See Lydia Bouroulba, “Turbulent Gas Clous and Respiratory Pathogen Emissions: Potential  
Implications for Reducing Transmission of COVID-19,” *JAMA* (published online Mar. 26, 2020),  
available at <https://jamanetwork.com/journals/jama/fullarticle/2763852> (last visited Apr. 28,  
2020).

1 infectious cough. ‘If there are 10 people in there, it’s going to be a build up,’ said Pratim Biswas,  
2 an aerosols experts at Washington University in St. Louis.”<sup>11</sup>

3 70. Here, The Cliff House’s lost income has been caused by the Closure Orders, which  
4 were issued due to droplets containing the coronavirus being on surfaces and objects in, on,  
5 around, and in the immediate area of The Cliff House. These infected surfaces and objects outside  
6 of The Cliff House include the façade, window glass, walls, doorknobs, sidewalks, light posts,  
7 passersby, cars, trucks, buses, scooters, and other fixtures and property in the immediate area  
8 surrounding The Cliff House.

9 71. As noted above, the Civil Authority provision of the Policy makes clear that the  
10 policy covers “the actual loss of Business Income you [i.e., The Cliff House] sustain and necessary  
11 Extra Expense caused by action of civil authority that prohibits access to the described premises  
12 due to direct physical loss of or damage to property, other than at the described premises, caused  
13 by or resulting from any Covered Cause of Loss.” Policy, Business Income Coverage Form (and  
14 Extra Expense) § A.3.b. This coverage applies here.

15 72. Similarly, lost income at The Cliff House has been caused by physical damage to  
16 the Insured Premises, where every surface and object is implicated, including the doors and their  
17 parts, door jambs, floors and carpeting, window panes, walls, countertops, light fixtures, host  
18 station, tables, chairs, dishes, drinking utensils, flatware, the entire kitchen and cookware,  
19 bathrooms, elevator, artwork and photos, and other fixtures and moveable personal property inside  
20 the Insured Premises.

21 73. The Policy’s Lost Business Income Coverage expressly provides coverage to pay  
22 for lost business income, regardless of whether the loss was the result of a civil authority order.

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27 <sup>11</sup> See Yuliya Pashina-Kottas, et al., “This 3-D Simulation Shows Why Social Distancing Is So  
28 Important,” *The New York Times* (Apr. 14, 2020), <https://www.nytimes.com/interactive/2020/04/14/science/coronavirus-transmission-cough-6-feet-ar-ul.html> (last visited Apr. 28, 2020) (3-D visualization with commentary).

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A. Coverage

...

We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your **operations** during the **period of restoration**. The suspension must be caused by direct physical loss of or physical damage to property at the premises described in the Declarations, including personal property in the open (or in a vehicle) within 100 feet, caused by or resulting from any Covered Cause of Loss.

\* \* \*

- 1. Business Income means the:
  - a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
  - b. Continuing normal operating expenses incurred, including payroll.

Policy, Business Income Coverage Form (and Extra Expense) § A.1 (emphasis in original). This coverage also applies here.

74. The same form within the Policy provides for Extra Expense Coverage, which “means necessary expenses you incur during the period of restoration that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.” *Id.* § A.3.a.

75. The Policy also provides Crisis Event Coverage which adds coverage for up to 30 days of “Crisis Event Business Income.” Policy, Crisis Management Coverage Extension Endorsement § B.1. This coverage form expressly defines “Covered crisis event” to include “premises contamination” including by “communicable disease,” as follows:

- b. **Premises contamination.** Necessary closure of your **covered premises** due to any sudden, accidental and unintentional contamination or impairment of the **covered premises** or other

1 property on the **covered premises** which results in clear,  
2 identifiable, internal or external visible symptoms of bodily injury,  
3 illness, or death of any person(s). This includes **covered premises**  
4 contaminated by **communicable disease**, Legionnaire's disease,  
5 but does not include premises contaminated by other **pollutants** or  
6 **fungi**.

7 *Id.* § G.1.b (emphasis in original).

8 **F. Allianz's Denial of Plaintiffs' Insurance Claim**

9 76. In **March 2020**, The Cliff House filed a claim with Allianz requesting coverage  
10 under the Policy in connection with lost Business Income due to the Closure Orders and the  
11 damage caused by the presence of the coronavirus in and around the Insured Premises.

12 77. On **April 30, 2020**, Plaintiffs received a questionnaire from an assigned claims  
13 adjustor. Shortly thereafter in early May, Plaintiffs duly submitted answers and documentation  
14 substantiating the circumstances of their claim and the amounts of their losses.

15 78. On **June 15, 2020**, Allianz issued written correspondence to The Cliff House  
16 stating that it was denying the claim, without having conducted any inspection or review of the  
17 Insured Premises.

18 79. On information and belief, Allianz accepted the Policy premiums paid by The Cliff  
19 House with no intention of providing any coverage under the Civil Authority and other provisions  
20 providing coverage for losses from closure orders issued by civil authorities or from an epidemic  
21 or pandemic.

22 80. On information and belief, Allianz rejected The Cliff House's claims in bad faith as  
23 part of a policy to limit its losses during this pandemic, notwithstanding that the Policy provides  
24 coverage for losses from Plaintiffs' losses.

1 **X. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **BREACH OF CONTRACT**

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

6 82. At all times relevant, Plaintiffs have paid all premiums and fulfilled or performed  
7 all their obligations under the Policy.

8 83. Allianz had contractual duties to provide Plaintiffs with insurance coverage under  
9 the applicable Policy coverages, including those coverages specifically alleged herein.

10 84. In denying Plaintiffs' insurance claim, and otherwise refusing to perform under the  
11 Policy, Allianz breached those duties.

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

18 **SECOND CAUSE OF ACTION**

19 **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

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

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

26 88. Upon information and belief, Allianz breached the implied covenant of good faith  
27 and fair dealing arising out of the Policy by, unreasonably and in bad faith, denying Plaintiffs  
28 insurance coverage to which they are entitled under the Policy. Specifically, among other conduct,

1 Defendants (a) failed or refused to perform a fair, objective, and thorough investigation of the  
2 claim as required by the California Insurance Code; (b) asserted coverage defenses that were  
3 legally and/or factually invalid and thereby delaying resolution of Plaintiffs' claim; (c) placed  
4 unduly restrictive interpretations on the Policy terms for the purpose of denying coverage due  
5 under the Policy; (d) failed to give Plaintiffs' interests equal consideration with its own; and  
6 (e) forced Plaintiffs to institute litigation to recover amounts due under the Policy.

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

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

15 91. Plaintiffs, therefore, are entitled to recover and seek in connection with this Cause  
16 of Action: (a) an award of general damages and other monetary damages, including all foreseeable  
17 consequential and incidental damages for diminution in value, loss of use, and other incidental  
18 damages and out-of-pocket expenses, plus interest, in an amount to be determined at trial;  
19 (b) punitive and exemplary damages in an amount to be determined at trial; (c) Plaintiffs' costs of  
20 suit; and (d) Plaintiffs' reasonable attorney's fees in connection with this action.

### 21 **THIRD CAUSE OF ACTION**

#### 22 **BAD FAITH DENIAL OF INSURANCE CLAIM**

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

25 93. Defendants have put their own interests above those of Plaintiffs and have, in bad  
26 faith, failed or refused to perform their obligations under the Policy and under the laws of  
27 California.



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

8           95. Plaintiffs allege on information and belief that there are numerous other individuals  
9 and groups insured by Defendants who were or are similarly situated to Plaintiffs and who are also  
10 being denied benefits under the same unlawful and non-applicable policy provisions and/or  
11 exclusions being applied to Plaintiffs. At such time as Plaintiffs learn the names of such persons,  
12 Plaintiffs may seek leave of court to join such persons as plaintiffs in this action.

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

17           97. As a proximate result of the aforementioned bad faith conduct by Defendants,  
18 Plaintiffs have suffered and will continue to suffer damages. These damages include interest on the  
19 withheld and unreasonably delayed payments due under the Policy and other special economic and  
20 consequential damages, of a total amount to be shown at trial.

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

25           99. Defendants carried out their bad-faith conduct with a willful and conscious  
26 disregard of Plaintiffs' rights or subjected Plaintiffs to cruel and unjust hardship in conscious  
27 disregard of its rights. Alternatively, Defendants' conduct constituted an intentional  
28 misrepresentation, deceit, or concealment of a material fact known to Defendants with the

1 intention of depriving Plaintiffs of property or legal rights, or of causing Plaintiffs other injury.  
2 Defendants' conduct constitutes malice, oppression, or fraud under California Civil Code section  
3 3294, entitling Plaintiffs to punitive damages in an amount appropriate to punish or set an example  
4 of Defendants and to deter future similar conduct.

5 **FOURTH CAUSE OF ACTION**

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

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

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

15 102. Defendants' acts and practices, as described herein, constitute unlawful or unfair  
16 business practices against Plaintiffs in violation of California Business and Professions Code  
17 section 17200, *et seq.*

18 103. These unlawful or unfair acts and practices include, but are not limited to,  
19 (a) failing or refusing to perform a fair, objective, and thorough investigation of the claim as  
20 required by the California Insurance Code; (b) asserting coverage defenses that were legally and/or  
21 factually invalid and thereby delaying resolution of Plaintiffs' claim; (c) placing unduly restrictive  
22 interpretations on the Policy terms for the purpose of denying coverage due under the Policy;  
23 (d) failing to give Plaintiffs' interests equal consideration with its own; (e) forcing Plaintiffs to  
24 institute litigation to recover amounts due under the Policy; (f) charging and accepting Plaintiffs'  
25 premiums in exchange for purported coverage for losses caused by an order of a civil authority, by  
26 direct physical damage to the insured premises, by a virus, and by other business interruptions,  
27 without any intention of satisfying those claims in an emergency such as the COVID-19 pandemic  
28 and the related Closure Orders; and (g) denying Plaintiffs' claims as part of a company-wide

1 and/or industry-wide policy of denying all business interruption claims related to the COVID-19  
2 pandemic.

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

7 105. By reason of Defendants' fraudulent, deceptive, unfair, and other wrongful conduct  
8 as alleged herein, said Defendants violated California Business and Professions Code sections  
9 17200, *et seq.*, by consummating an unlawful, unfair, and fraudulent business practice, designed to  
10 deprive Plaintiffs of the benefits of Defendants' financial products and services.

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

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

22 **FIFTH CAUSE OF ACTION**

23 **FRAUDULENT MISREPRESENTATION**

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

26 109. Defendants committed actionable fraud against Plaintiffs by way of affirmative  
27 misrepresentations and the concealment of material facts. For example, Defendants affirmatively  
28 misrepresented that there was full coverage for business interruption whenever there was a

1 business interruption caused by physical damage. At all relevant times, Defendants knew and  
2 concealed from the Plaintiffs that there was a policy that Allianz would not pay any claims during  
3 a pandemic, notwithstanding the express provision for such coverage in the Policy.

4 110. Defendants made or approved materially false and misleading statements to  
5 Plaintiffs when they sold Plaintiffs the Policy.

6 111. Defendants made the foregoing false statements and misrepresentations that omitted  
7 and concealed material facts despite being aware of their falsity.

8 112. Plaintiffs reasonably and actually relied on Defendants' misrepresentations and  
9 concealments.

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

12 114. Defendants' acts were undertaken intentionally and in conscious disregard of  
13 Plaintiffs' rights, and were malicious, fraudulent, and oppressive.

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

17 **SIXTH CAUSE OF ACTION**

18 **CONSTRUCTIVE FRAUD**

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

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

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

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

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



1 128. Plaintiffs have no adequate remedy at law.

2 **EIGHTH CAUSE OF ACTION**

3 **DECLARATORY RELIEF**

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

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

9 131. An actual controversy has arisen between Plaintiffs and Defendants as to their  
10 respective rights and duties under the Policy.

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

13 133. Plaintiffs allege and contend, with respect to the Policy's Civil Authority coverage,  
14 that each of the Closure Orders triggers that coverage because (a) each of the Closure Orders is an  
15 order of a civil authority, (b) each of the Closure Orders specifically prohibits access to the  
16 Scheduled Premises by prohibiting all potential on-premises dining customers and workers from  
17 accessing the Scheduled Premises, (c) said prohibition of access by each of the Closure Orders has  
18 been continuous and ongoing since the Orders were issued, such that access has not subsequently  
19 been permitted, (d) each of the Closure Orders prohibits said access as the direct result of a  
20 Covered Cause of Loss in the immediate area of the Scheduled Premises, (e) no Policy coverage  
21 exclusions or limitations apply to exclude or limit coverage, (f) Plaintiffs have suffered actual and  
22 covered loss of Business Income in an amount to be determined at trial, and (g) coverage should  
23 begin as of March 16, 2020.

24 134. Plaintiffs allege and contend that the Policy's Lost Business Income Coverage is  
25 triggered because (a) Plaintiffs have sustained actual loss of Business Income due to the closure of  
26 The Cliff House, (b) said closure constitutes a necessary suspension of The Cliff House's  
27 operations under the Policy, (c) this suspension has been and is caused by direct physical loss of or  
28 physical damage to property at the Scheduled Premises, including personal property in the open

1 (or in a vehicle) within 100 feet of the Scheduled Premises, due to the presence of coronavirus, (d)  
2 the presence of coronavirus is a Covered Cause of Loss, and (e) some or all of the period of The  
3 Cliff House's closure is within the period of restoration under the Policy.

4 135. Plaintiffs allege and contend that the Policy's Extra Expense Coverage is triggered  
5 because (a) Plaintiffs have incurred Extra Expense due to the closure of The Cliff House, (b) said  
6 closure constitutes a necessary suspension of The Cliff House's operations under the Policy, (c)  
7 this suspension has been and is caused by direct physical loss of or physical damage to property at  
8 the Scheduled Premises, including personal property in the open (or in a vehicle) within 100 feet  
9 of the Scheduled Premises, due to the presence of coronavirus, (d) the presence of coronavirus is a  
10 Covered Cause of Loss, and (e) some or all of the Extra Expense was incurred during the period of  
11 restoration under the Policy.

12 136. Plaintiffs allege and contend that the Policy's Crisis Event Coverage is triggered  
13 because (a) Plaintiffs have sustained an actual loss of crisis event business income due to the  
14 closure of The Cliff House; (b) said closure constitutes a necessary suspension of The Cliff  
15 House's operations under the Policy, (c) this suspension has been and is caused by direct physical  
16 loss of or physical damage to property at the Scheduled Premises, including personal property in  
17 the open (or in a vehicle) within 100 feet of the Scheduled Premises, due to the presence of  
18 coronavirus, (d) communicable disease in the form of the presence of coronavirus is a Covered  
19 crisis event, and (e) some or all of the crisis event business income loss was incurred during the  
20 period of restoration under the Policy.

21 137. Plaintiffs allege and contend that Allianz wrongly denied coverage with respect to  
22 all the foregoing provisions.

23 138. Upon information and belief, Plaintiffs allege that Defendants dispute and deny  
24 each of Plaintiffs' contentions set forth in this Cause of Action.

25 139. Plaintiffs, therefore, seek a declaratory judgment regarding each of Plaintiffs'  
26 contentions set forth in this Cause of Action. A declaratory judgment determining that Plaintiffs  
27 are due coverage under the Policy, as set forth above, will help to ensure the survival of its  
28



1 business during this prolonged closure made necessary by the Closure Orders and by the presence  
2 of coronavirus at and around the Insured Premises during this global pandemic.

3 **NINTH CAUSE OF ACTION**

4 **INJUNCTIVE RELIEF UNDER BUS. AND PROF. CODE § 17200, ET SEQ.**

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

7 141. Upon information and belief, Plaintiffs allege that, unless enjoined by order of the  
8 Court, Defendants will continue to operate their companies for their sole benefit and to the  
9 detriment of Plaintiffs. No adequate remedy exists at law for the injuries alleged herein, and  
10 Plaintiffs will suffer great and irreparable injury if Defendants' conduct is not immediately  
11 enjoined and restrained.

12 142. Defendants wrongfully denied Plaintiffs' insurance claim based on erroneous  
13 interpretations of the Policy, in order avoid their financial obligations to Plaintiffs thereunder.  
14 Given the likely extended time period of the regional presence of the coronavirus and COVID-19  
15 cases, and the likely continued effect of the Closure Orders, Plaintiffs will almost certainly have  
16 similar insurance claims in the future, and Defendants will almost certainly apply the same or  
17 similar erroneous interpretations of the Policy to wrongfully deny coverage. If Defendants'  
18 conduct in this manner is not restrained and enjoined, Plaintiffs will suffer great and irreparable  
19 harm, as it has already paid for the Policy in full, and Defendants seem committed to continuing  
20 their unfair and unlawful business practices of erroneously denying Plaintiffs' claims. Defendants  
21 will continue to act in their own self-interest and to commit the acts that have damaged Plaintiffs,  
22 and that continue to do so.

23 143. Plaintiffs have no adequate remedy at law for the threatened injury.

24 **X. PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants, as  
26 follows:

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

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- B. For injunctive relief enjoining and restraining Defendants' unlawful conduct as alleged herein, including but not limited to their unfair and unlawful business practices and their wrongful denials of coverage under the Policy;
- C. For general and compensatory damages in an amount to be determined at trial;
- D. For exemplary and punitive damages in an amount to be determined at trial;
- E. For Plaintiffs' costs of suit;
- F. For Plaintiffs' reasonable attorney's fees incurred in this action pursuant to statute;
- G. For pre-judgment interest and all other interest to which Plaintiffs are entitled; and
- H. For such other relief as the Court may deem proper.

**XI. JURY DEMAND**

Plaintiffs demand a trial by jury on all issues so triable.

Dated: July 29, 2020

**COTCHETT, PITRE, & McCARTHY, LLP**

By:   
\_\_\_\_\_  
BRIAN DANITZ  
*Counsel for Plaintiffs*