

1 LAW OFFICE OF ROBERT G.
LOEWY, P.C.
2 ROBERT G. LOEWY
20 Enterprise, Suite 310
3 Aliso Viejo, CA 92656
Telephone: 949/468-7150
4 rloewy@rloewy.com

5 ROBBINS GELLER RUDMAN
& DOWD LLP
6 RACHEL L. JENSEN (211456)
655 West Broadway, Suite 1900
7 San Diego, CA 92101
Telephone: 619/231-1058
8 619/231-7423 (fax)
rachelj@rgrdlaw.com

9 - and -
10 PAUL J. GELLER
STUART A. DAVIDSON
120 E. Palmetto Park Road, Suite 500
11 Boca Raton, FL 33432
Telephone: 561/750-3000
12 561/750-3364 (fax)
pgeller@rgrdlaw.com
13 sdavidson@rgrdlaw.com

14 Attorneys for Plaintiffs

15 [Additional counsel listed in signature block.]

16 UNITED STATES DISTRICT COURT

17 CENTRAL DISTRICT OF CALIFORNIA

18 KINGRAY INC. d/b/a LA QUINTA)
BEER HUNTER, and NORA'S STYLE)
19 SALON INC, Individually and on)
Behalf of All Others Similarly Situated,)

20 Plaintiffs,)

21 vs.)

22 TRUCK INSURANCE EXCHANGE,)

23 Defendant.)

Case No. 5:20-cv-00963-JGB-SPx

CLASS ACTION

FIRST AMENDED COMPLAINT
FOR DECLARATORY JUDGMENT
AND BREACH OF CONTRACT

24 DEMAND FOR JURY TRIAL

1 Plaintiffs Kingray Inc. d/b/a La Quinta Beer Hunter (“Kingray”), and Nora’s
2 Style Salon (“Nora’s”) (collectively, “Plaintiffs”), by way of this First Amended
3 Class Action Complaint against Defendant Truck Insurance Exchange (“Truck” or
4 “Defendant”) allege as follows based on personal information as to themselves and
5 upon information and belief as to other matters based on their counsel’s
6 investigation. Plaintiffs believe additional evidentiary support exists for their
7 allegations, given an opportunity for discovery:

8 SUMMARY OF THE ACTION

9 1. This is a class action for declaratory relief and breach of contract arising
10 from Plaintiffs’ contracts of insurance with Defendant.

11 2. Plaintiffs and other businesses nationwide purchased commercial
12 property insurance to ensure that they would not be forced to close their doors for
13 good if they were shuttered temporarily by an unanticipated crisis. Such a crisis is
14 now upon us, but Truck and other insurers are summarily refusing to pay the claims.

15 3. On March 11, 2020, the World Health Organization’s (“WHO”)
16 Director General, Tedros Adhanom Ghebreyesus, declared the COVID-19 outbreak
17 a worldwide pandemic: “WHO has been assessing this outbreak around the clock
18 and we are deeply concerned both by the alarming levels of spread and severity, and
19 by the alarming levels of inaction. We have therefore made the assessment that
20 COVID-19 can be characterized as a pandemic.”¹

21 4. On March 13, 2020, President Trump declared the COVID-19
22 pandemic to be a national emergency.² On March 16, 2020, the Centers for Disease
23

24 ¹ See World Health Organization, *WHO Director-General’s opening remarks at*
25 *the media briefing on COVID-19 - 11 March 2020* (Mar. 11, 2020),
[https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-](https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020)
[at-the-media-briefing-on-covid-19---11-march-2020](https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020).

26 ² See The White House, *Proclamation on Declaring a National Emergency*
27 *Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (Mar. 13, 2020),
[https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-](https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/)
28 [emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/](https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/).

1 Control and Prevention (“CDC”) and members of the national Coronavirus Task
2 Force issued guidance to the American public, styled as “30 Days to Slow the
3 Spread,” for stopping the spread of COVID-19. This guidance advised individuals
4 to adopt social distancing measures, such as working from home, avoiding shopping
5 trips, avoiding gatherings of more than ten people, and staying away from bars,
6 restaurants, and food courts.³

7 5. Following this advice for individuals to adopt far-reaching social
8 distancing measures, many state and local government administrations across the
9 nation recognized the need to take steps to protect the health and safety of their
10 residents from the human-to-human and surface-to-human spread of COVID-19. As
11 a result, many governmental entities entered civil authority orders suspending or
12 severely curtailing business operations of non-essential businesses that interact with
13 the public and provide gathering places for the individuals (collectively, the
14 “COVID-19 Civil Authority Orders”). Eventually, almost all states within the
15 United States, and many counties, cities, and municipalities issued some sort of
16 “stay-at-home” or “shelter-in-place” civil authority order, and ordered private, non-
17 essential business operations to close.

18 6. These far-reaching restrictions and prohibitions have been catastrophic
19 for most non-essential businesses, especially restaurants and other foodservice
20 businesses, as well as personal care service establishments, retail shops,
21 entertainment venues, and other small, medium, and large businesses who were
22 forced to close, furlough employees, and endure a sudden shutdown of cash flow
23 that threatens their survival.

24
25
26 ³ See *The President’s Coronavirus Guidelines for America, 30 Days to Slow the*
27 *Spread*, WHITE HOUSE, [https://www.whitehouse.gov/wp-content/uploads/](https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf)
28 [2020/03/03.16.20_coronavirus- guidance_8.5x11_315PM.pdf](https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf) (last visited Apr. 27,
2020).

1 11. Plaintiff Nora's is a corporation organized under New York law with
2 its principal place of business located at 81 Old Tappan Road, Tappan, New York
3 10983. Nora's operates a beauty salon.

4 12. Defendant Truck is an insurance exchange organized under California
5 law with its principal place of business located at 6301 Owensmouth Avenue,
6 Woodland Hills, California 91367. Truck is a subsidiary of Farmer's Group Inc.
7 d/b/a Farmers Underwriters Association ("Farmers") and is duly qualified and
8 licensed to issue insurance in the State of California and other states.

9 13. Truck issued the Farmers Policy No. 60669-00-43 to Kingray for the
10 policy period of October 2, 2019, through October 2, 2020 ("Kingray's Policy"),
11 which is attached as **Exhibit A**. On or about March 11, 2020, Plaintiff Nora's
12 renewed its policy with Defendant. A copy of Nora's 2017-2018 policy, which is
13 identical in all material respects to the operative policy, is attached as **Exhibit B**
14 ("Nora's Policy). Kingray's Policy and Nora's Policy (together, "Plaintiffs'
15 Policies") as well as the policies of other Class members are comprised of standard
16 forms that Defendant uses for all insureds having applicable coverage and provide
17 identical or substantially similar coverage for all Class members.

18 **JURISDICTION AND VENUE**

19 14. This Court has jurisdiction over this action under 28 U.S.C. §1332(a)
20 because it involves citizens of different states and the amount in controversy exceeds
21 \$75,000.

22 15. This Court has jurisdiction over this action pursuant to 28 U.S.C.
23 §1332(d) in that this is a class action in which the amount in controversy exceeds
24 \$5,000,000, exclusive of interest and costs, and plaintiffs and at least one member
25 of the putative class is a citizen of a different state than the Defendant.

26 16. This Court has jurisdiction under 28 U.S.C. §§2201 and 2202 and is
27 authorized to grant declaratory relief under these statutes.

28

1 17. This Court has jurisdiction over this action pursuant to the Class Action
2 Fairness Act of 2005. *See* 28 U.S.C. §§1332, 1453, 1711-15.

3 18. This Court also has supplemental jurisdiction over the state-law claims
4 pursuant to 28 U.S.C. §1367(a) because all claims alleged herein form part of the
5 same case or controversy.

6 19. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) in that
7 Kingray is located in this District and Defendant does business in this District and
8 thus resides in this District, in accordance with 28 U.S.C. §1391(c).

9 20. This Court has personal jurisdiction over Defendant because Plaintiffs'
10 claims arise out of, among other things, Defendant conducting, engaging in, and/or
11 carrying on business in California; Defendant breaching a contract in this state by
12 failing to perform acts required by contract to be performed in this state; and
13 Defendant contracting to insure property in California. Defendant also purposefully
14 availed itself of the opportunity of conducting activities in California by marketing
15 its insurance policies and services within the state, and intentionally developing
16 relationships with brokers, agents, and customers within the state to insure property
17 within the state, all of which resulted in the policies at issue in this action.

18 21. All conditions precedent to this action have occurred, been performed,
19 or have been waived.

20 **FACTUAL BACKGROUND**

21 **A. The Global COVID-19 Pandemic**

22 22. Viruses of the family Coronaviridae, such as Middle East respiratory
23 syndrome (MERS) coronavirus (MERS-CoV) and severe acute respiratory
24 syndrome (SARS) coronavirus (SARS-CoV), have been responsible for the loss of
25 human life since at least 2002 and were identified in several animal hosts.⁴

26 _____
27 ⁴ *See* Roujian Lu, et al., *Genomic characterisation and epidemiology of 2019 novel*
28 *coronavirus: implications for virus origins and receptor binding*. CTR. FOR DISEASE
CONTROL. (Jan. 29, 2020). <https://www.cdc.gov/coronavirus/2019-ncov/downloads/genomic-characterization-of-2019-nCoV-Lancet-1-29-2020.pdf>

1 23. In December 2019, an initial cluster of nine patients with an unknown
2 cause of viral pneumonia was linked to the Huanan seafood market in Wuhan, China,
3 where many non-aquatic animals such as birds were also on sale. However, one of
4 the patients never visited the market, though he had stayed in a hotel nearby before
5 the onset of the illness.⁵

6 24. By January 2020, genetic sequencing from patient samples was
7 conducted to identify a novel virus, SARS-CoV-2, as the causative agent for the
8 pneumonia cluster.⁶ SARS-CoV-2 is an RNA virus, with a crown-like appearance
9 under an electron microscope because of glycoprotein spikes on its envelope.
10 Among the functions of the structural proteins, the envelope has a crucial role in
11 virus pathogenicity as it promotes viral assembly and release.⁷

12 25. The first confirmed case of the virus outside China was diagnosed on
13 January 13, 2020, in Bangkok, Thailand with the number of cases rapidly increasing
14 worldwide. On January 30, 2020, WHO declared that the SARS-COV-2 outbreak
15

16 (There are four genera of coronaviruses: (I) α -coronavirus (alphaCoV) and (II) β -
17 coronavirus (betaCoV), which are probably present in bats and rodents; and (III) δ -
18 coronavirus (deltaCoV) and (IV) γ -coronavirus (gammaCoV), which probably
represent avian species.).

19 ⁵ See Francesco Di Gennaro et al., *Coronavirus Diseases (COVID-19) Current*
20 *Status and Future Perspectives a Narrative Review*, MDPI: INT'L J. ENVTL.
21 RESEARCH & PUB. HEALTH, (Apr. 1, 2020), [https://www.mdpi.com/1660-](https://www.mdpi.com/1660-4601/17/8/2690)
22 [4601/17/8/2690](https://www.mdpi.com/1660-4601/17/8/2690) (As a typical RNA virus, the average evolutionary rate for
23 coronaviruses is roughly 10-nucleotide substitutions per site per year, with mutations
24 arising during every replication cycle. This finding suggests that COVID-19
originated from one source within a short period and was detected rapidly. However,
as the virus transmits to more individuals, constant surveillance of arising mutations
is needed.); Lu, *supra* note 4 (This finding suggests either possible droplet
transmission or that the patient was infected by a currently unknown source.
Evidence of clusters of infected family members and medical workers has now
confirmed the presence of human-to-human transmission.).

25 ⁶ See Di Gennaro, *supra* note 5.

26 ⁷ See *id.* (To address the pathogenetic mechanisms of SARS-CoV-2, its viral
27 structure and genome must be considered. Coronaviruses are enveloped positive
28 strand RNA viruses with the largest known RNA genomes – 30-32 kb – with a 50-
cap structure and 30-poly-A tail.).

1 constituted a public health emergency of international concern, and by February 11,
2 2020, the virus was named “COVID-19” by the WHO Director-General.⁸ As of
3 September 28, 2020, the number of confirmed cases of COVID-19 topped 32 million
4 globally with nearly 1 million deaths, with the United States dealing with over 7
5 million confirmed cases and over 200,000 reported deaths – more than any other
6 country in the world.⁹

7 26. The clinical features of COVID-19 vary from asymptomatic forms to
8 fatal conditions of severe respiratory failure that require ventilation and support in
9 an intensive care unit (“ICU”). Pneumonia has been the most frequent severe
10 manifestation of COVID-19, with symptoms of fever, cough, dyspnea, and bilateral
11 infiltrates on chest imaging.¹⁰ There are no specific treatments recommended for
12 COVID-19, and no vaccine is currently available; so understanding the complexities
13 of COVID-19 is ongoing.¹¹

14 27. Scientists have now discovered that COVID-19 has several modes of
15 transmission. Pursuant to a “Situation Report” released by the WHO, the virus can
16 be transmitted through symptomatic transmission, pre-symptomatic transmission,
17

18 ⁸ *See id.*

19 ⁹ *See* Corona Virus Resource Center, Johns Hopkins Univ. & Medicine,
<https://coronavirus.jhu.edu/map.html> (last visited September 28, 2020).

20 ¹⁰ *See* Di Gennaro, *supra* note 5 (Asymptomatic infections have also been
21 described, but their frequency is unknown. Other, less common symptoms have
22 included headaches, sore throat, and rhinorrhea. Along with respiratory symptoms,
gastrointestinal symptoms (*e.g.*, nausea and diarrhea) have also been reported, and
in some patients, they may be the presenting complaint.).

23 ¹¹ *See id.* (The treatment is symptomatic, and oxygen therapy represents the major
24 treatment intervention for patients with severe infection. Mechanical ventilation
25 may be necessary in cases of respiratory failure refractory to oxygen therapy,
whereas hemodynamic support is essential for managing septic shock. Different
26 strategies can be used depending on the severity of the patient and local
epidemiology. Home management is appropriate for asymptomatic or
paucisymtomatic patients. They need a daily assessment of body temperature, blood
27 pressure, oxygen saturation and respiratory symptoms for about 14 days.
Management of such patients should focus on prevention of transmission to others
28 and monitoring for clinical status with prompt hospitalization if needed.).

1 and asymptomatic transmission.¹² Symptomatic transmission refers to transmission
2 by a person experiencing symptoms associated with the virus who then transfers
3 COVID-19 to another. Data from published studies provide evidence that COVID-
4 19 is primarily transmitted from symptomatic persons to others who are in close
5 contact through respiratory droplets, by direct contact with infected persons, or by
6 contact with contaminated objects and surfaces.¹³

7 28. The incubation period for COVID-19 – the time between exposure to
8 the virus (becoming infected) and symptom onset – averages 5-6 days, but it can
9 take up to 14 days.¹⁴ During this period, also known as the “pre-symptomatic”
10 period, some infected persons can be contagious. For that reason, transmission from
11 a pre-symptomatic case can occur before symptom onset. Pre-symptomatic
12 transmission still requires the virus to be spread through infectious droplets or
13 touching contaminated surfaces.¹⁵

14 29. An individual who does not develop symptoms – known as an
15 asymptomatic case of COVID-19 – can still transmit the virus to another. Though
16
17

18 ¹² See World Health Organization, *Coronavirus disease 2019 (COVID-19)*
19 *Situation Report – 73* (Apr. 3, 2020), [https://www.who.int/docs/default-](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2)
20 [source/coronaviruse/situation-reports/20200402-sitrep-73-covid-](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2)

21 ¹³ See *id.* (Data from clinical and virologic studies that have collected repeated
22 biological samples from confirmed patients provide evidence that shedding of the
23 COVID-19 virus is highest in the upper respiratory tract (nose and throat) early in
24 the course of the disease. That is, within the first three days from onset of symptoms.
25 Preliminary data suggests that people may be more contagious around the time of
26 symptom onset as compared to later on in the disease.).

27 ¹⁴ See *id.*

28 ¹⁵ See *id.* (In a small number of case reports and studies, pre-symptomatic
transmission has been documented through contact tracing efforts and enhanced
investigation of clusters of confirmed cases. This is supported by data suggesting
that some people can test positive for COVID-19 from 1-3 days before they develop
symptoms. Thus, it is possible that people infected with COVID-19 can transmit the
virus before significant symptoms develop.).

1 there are few documented cases reported, it does not exclude the possibility that it
2 has or may have occurred.¹⁶

3 30. Not only is COVID-19 transmitted via human-to-human contact, but
4 the WHO and scientific studies have confirmed that the virus can live on
5 contaminated objects or surfaces. According to a study in *The New England Journal*
6 *of Medicine*, COVID-19 was detectable in aerosols for up to three hours, up to four
7 hours on copper, up to 24 hours on cardboard, and up to 2-3 days on plastic and
8 stainless steel.¹⁷ All of these materials are used in the preparation and service of
9 food by restaurants. Salons also use some of these materials to provide personal care
10 services. The results of the study suggest that individuals could get COVID-19
11 through indirect contact with surfaces or objects used by an infected person, whether
12 or not they were symptomatic.

13 31. The *Journal of Hospital Infection* has similarly found that human
14 coronaviruses, such as SARS-CoV and MERS-CoV, can remain infectious on
15 inanimate surfaces at room temperature for up to nine days.¹⁸ At a temperature of 30
16 degrees Celsius or more, the duration of persistence is shorter. Contamination of
17

18 ¹⁶ *See id.*

19 ¹⁷ *See* News Release, *New coronavirus stable for hours on surfaces*, NAT'L INSTS.
20 OF HEALTH (Mar. 17, 2020), [https://www.nih.gov/news-events/news-releases/new-](https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces)
21 [coronavirus-stable-hours-surfaces](https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces); *see also* World Health Organization, *Modes of*
22 *transmission of virus causing COVID-19: implications for IPC* (Mar. 29, 2020),
23 [https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-](https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations)
24 [virus-causing-covid-19-implications-for-ipc-precaution-recommendations](https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations)
25 (Airborne transmission of COVID-19 “may be possible in specific circumstances
26 and settings in which procedures or support treatments that generate aerosols are
27 performed; *i.e.*, endotracheal intubation, bronchoscopy, open suctioning,
28 administration of nebulized treatment, manual ventilation before intubation, turning
the patient to the prone position, disconnecting the patient from the ventilator, non-
invasive positive-pressure ventilation, tracheostomy, and cardiopulmonary
resuscitation.”).

26 ¹⁸ *See* G. Kampf et al., *Persistence of coronaviruses on inanimate surfaces and their*
27 *inactivation with biocidal agents*, J. HOSPITAL INFECTION (Jan. 31, 2020),
28 [https://www.journalofhospitalinfection.com/action/show](https://www.journalofhospitalinfection.com/action/showPdf?pii=S0195-6701%2820%2930046-3)
[Pdf?pii=S0195-6701%2820%2930046-3](https://www.journalofhospitalinfection.com/action/showPdf?pii=S0195-6701%2820%2930046-3).

1 frequently touched surfaces is, therefore, a potential source of viral transmission.¹⁹

2 Though this study was not conclusive as to COVID-19, scientists are still grappling
3 with the implications.

4 32. On March 27, 2020, the CDC released a report entitled “Public Health
5 Responses to COVID-19 Outbreaks on Cruise Ships – Worldwide, February - March
6 2020.”²⁰ The report detailed that during this time frame, COVID-19 outbreaks
7 associated with three different cruise ship voyages caused over 800 confirmed cases
8 and ten deaths.²¹ Of the individuals tested, a high proportion were found to be
9 asymptomatic, which may explain the high rate of transmission on cruise ships.
10 Further, COVID-19 was identified on a variety of surfaces in cabins of both
11 symptomatic and asymptomatic infected passengers up to 17 days after cabins were
12 vacated on the Diamond Princess cruise line.²² The CDC study noted that more

13 _____
14 ¹⁹ See *id.* (Although the viral load of coronaviruses on inanimate surfaces is not
15 known during an outbreak situation, it seems plausible to reduce the viral load on
16 surfaces by disinfection, especially of frequently touched surfaces in the immediate
17 area surrounding a patient where the highest viral load can be expected. The WHO
18 recommends ensuring that “environmental cleaning and disinfection procedures are
19 followed consistently and correctly.”).

20 ²⁰ See Leah F. Moriarty, MPH, *Public Health Responses to COVID-19 Outbreaks*
21 *on Cruise Ships - Worldwide, February - March 2020*, CTRS. FOR DISEASE CONTROL
22 & PREVENTION (Mar. 27, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm?s_cid=mm6912e3_w.

23 ²¹ See *id.* (“During February 7-23, 2020, the largest cluster of COVID-19 cases
24 outside mainland China occurred on the Diamond Princess cruise ship, which was
25 quarantined in the port of Yokohama, Japan, on February 3. . . . On March 6, cases
26 of COVID-19 were identified in persons on the Grand Princess cruise ship off the
27 coast of California; that ship was subsequently quarantined. By March 17, confirmed
28 cases of COVID-19 had been associated with at least 25 additional cruise ship
29 voyages. On February 21, CDC recommended avoiding travel on cruise ships in
30 Southeast Asia; on March 8, this recommendation was broadened to include
31 deferring all cruise ship travel worldwide for those with underlying health conditions
32 and for persons [over] 65 years. On March 13, the Cruise Lines International
33 Association announced a 30-day voluntary suspension of cruise operations in the
34 United States. CDC issued a level 3 travel warning on March 17, recommending that
35 all cruise travel be deferred worldwide.”).

36 ²² See *id.* (“Cruise ships are often settings for outbreaks of infectious diseases
37 because of their closed environment, contact between travelers from many countries,
38 and crew transfers between ships. On the Diamond Princess, transmission largely
39 occurred among passengers before quarantine was implemented, whereas crew

1 studies are required to understand the perpetuation of transmission, but what is clear
 2 is the uncertainty around COVID-19 and its implications for the lawful and safe
 3 functioning of a variety of businesses, most significantly, food and personal service
 4 businesses.

5 33. Without a vaccine to protect against COVID-19, effective control of the
 6 outbreak relies on measures designed to reduce human-to-human and surface-to-
 7 human exposure. Recent information on the CDC's website provides that COVID-
 8 19 spreads when people are within six feet of each other or when a person comes in
 9 contact with a surface or object that has the virus on it.²³ Various other sources state
 10 that close contact with a person with the virus or surfaces where the virus is found
 11 can transmit the virus.²⁴

12 34. The secondary exposure of humans to contaminated surfaces is
 13 particularly acute in places where the public gathers to socialize, eat, drink, shop,
 14 find entertainment, and recreate. This is why the CDC recommends that in viral
 15 outbreaks individuals who are infected stay at home and those who are not sick

16 _____
 17 infections peaked after quarantine. . . . On the Grand Princess, crew members were
 18 likely infected on voyage A and then transmitted [COVID-19] to passengers on
 19 voyage B. The results of testing of passengers and crew on board the Diamond
 20 Princess demonstrated a high proportion (46.5%) of asymptomatic infections at the
 21 time of testing. Available statistical models of the Diamond Princess outbreak
 suggest that 17.9% of infected persons never developed symptoms. . . . A high
 proportion of asymptomatic infections could partially explain the high attack rate
 among cruise ship passengers and crew. . . . Although these data cannot be used to
 determine whether transmission occurred from contaminated surfaces, further study
 of fomite transmission of [COVID-19] aboard cruise ships is warranted.”).

22 ²³ See Centers for Disease Control and Prevention, *How COVID-19 Spreads*,
 23 [https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-COVID-
 spreads.html](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-COVID-spreads.html) (last visited Apr. 27, 2020).

24 ²⁴ See Kampf, *supra* note 18 (remains infectious from two hours to 28 days
 25 depending on conditions); see also Nina Bai, *Why One Test May Not Be Enough*,
 UCSF (Feb. 13, 2020), [https://www.ucsf.edu/news/2020/02/416671/how-new-
 coronavirus-spreads-and-progresses-and-why-one-test-may-not-be-enough](https://www.ucsf.edu/news/2020/02/416671/how-new-coronavirus-spreads-and-progresses-and-why-one-test-may-not-be-enough) (door
 26 knobs and table tops can contain the virus); Heather Murphy, *Surfaces? Sneezes?
 Sex? How the Coronavirus Can and Cannot Spread*, N.Y. TIMES (Mar. 19, 2020),
 27 <https://www.nytimes.com/2020/03/02/health/coronavirus-how-it-spreads.html>
 28 (virus can remain on metal, glass and plastic for several days).

1 engage in preventive measures such as constant hand washing and avoiding
2 activities that would bring them into the close proximity of people with the virus or
3 surfaces where the virus may reside. However, because these recommendations
4 have proven ineffective to minimize the spread of COVID-19, containment efforts
5 have led to civil authorities issuing orders closing non-essential business
6 establishments, including restaurants, bars, hotels, theaters, personal care salons,
7 gyms, and schools, and mandating social distancing among the population. This has
8 caused the cancelation of sporting events, parades, and concerts, the closure of
9 amusement parks, and substantial travel restrictions. In addition, to conserve
10 medical supplies, orders have been issued prohibiting the performance of non-urgent
11 or non-emergency elective procedures and surgeries, forcing the suspension of
12 operations at many medical, surgical, therapeutic, and dental practices.

13 35. On March 4, 2020, California Governor Gavin Newsom declared a state
14 of emergency statewide. On March 12, 2020, Governor Newsom issued an
15 executive order directing California residents to cancel large non-essential
16 gatherings. On March 16, 2020, the California Department of Public Health issued
17 additional guidelines, including that restaurants should be closed except for delivery
18 and take-out services. On March 19, 2020, Governor Newsom issued Executive
19 Order N-33-20, which required all residents to stay home except as needed to
20 maintain continuity of operations of the federal critical infrastructure sectors. In
21 addition, on March 16, 2020, the City of La Quinta issued Executive Resolution No.
22 2020-001, prohibiting any gathering of 10 or more people, regardless of venue, and
23 discouraging all non-essential gatherings of any size.

24 36. Governmental decrees entered throughout California recognize that
25 COVID-19 poses a threat to the loss of property. *See* San Francisco Twelfth
26 Supplemental Mayoral Proclamation (“the virus physically is causing property loss
27 or damage due to its proclivity to attach to surfaces for prolonged periods of time.”);
28 Public Order Under City of Los Angeles Emergency Authority (“This Order is given

1 because, among other reasons, the COVID-19 virus can spread easily from person
2 to person and it is physically causing property loss or damage due to its tendency to
3 attach to surfaces for prolonged periods of time.”).

4 37. In New York, between March 7, 2020 and August 2020, New York
5 Governor Andrew Cuomo issued dozens of executive orders concerning COVID-
6 19. Indeed, by June 21, 2020, Governor Cuomo had issued 44 orders continuing the
7 temporary suspension and modified laws relating to the disaster emergency. *See*
8 <https://www.governor.ny.gov/executiveorders>.

9 38. On March 7, 2020, Governor Cuomo declared a State disaster
10 emergency for the entire State of New York to address the threat that COVID-19
11 poses to the health and welfare of New York residents and advisors. *See* Exec. Order
12 202.1.

13 39. On March 12, 2020, Governor Cuomo issued an order requiring all
14 large gathering and events to be cancelled or postponed, *see* Exec. Order 202.2, and,
15 on March 16th, extended this prohibition to gatherings of more than 50 persons. *See*
16 Exec. Order 202.3. Additionally, on March 16th, all restaurants and bars in New
17 York were ordered to cease serving patrons food or beverage on premises, and all
18 gyms, fitness centers or classes, and movie theaters were also ordered to close until
19 April 15th. *Id.* In a separate order issued March 16th, Governor Cuomo also closed
20 all New York public schools until April 1 and permitted non-essential government
21 workers to work from home. *See* Exec. Order 202.4.

22 40. On March 18, 2020, Governor Cuomo issued an order closing all indoor
23 common portions of large retail shopping malls and closing all places of public
24 amusement. *See* Exec. Order 202.5. In a separate order issued March 18th,
25 Governor Cuomo ordered all businesses and not-for-profit entities in the state to
26 utilize, to the maximum extent possible, any telecommuting or work from home
27 procedures that they could safely utilize, and ordered employers to reduce all in-
28

1 person workforces at any work locations by 50% no later than March 20 at 8 p.m.
2 *See* Exec. Order 202.6.

3 41. On March 19, 2020, Governor Cuomo issued an order closing to the
4 public by March 21 at 8 p.m. all barbershops, hair salons, tattoo or piercing parlors
5 and related personal care services. *See* Exec. Order 202.7. The Governor further
6 ordered all in-person workforces to be reduced at any work location by 75% no later
7 than March 21 at 8 p.m. *Id.* As a consequence of this order, Plaintiff Nora’s business
8 was required to close.

9 42. On March 20, 2020, Governor Cuomo issued an order requiring all non-
10 essential businesses and not-for-profit entities in the state to reduce in-person
11 workforces at any work locations by 100% no later than March 22 at 8 p.m. *See*
12 Exec. Order. 202.8. Thus, by March 22nd, all non-essential businesses in New York
13 were closed except for telecommuting or work from home.

14 43. In the following weeks, Governor Cuomo entered additional Closure
15 Orders that banned all public and private gatherings of any size, closed public
16 schools for the rest of the school year, and extended previous Closure Orders for
17 non-essential businesses (including Plaintiff Nora’s)—first through April 29, 2020
18 (Exec. Order 202.14), and then through May 15, 2020 (Exec. Order 202.18).

19 44. On May 14, 2020, Governor Cuomo issued an order once again
20 extending the prior Closure Orders for non-essential businesses until 11:59 p.m. on
21 May 28, 2020, with the exception of “Phase One industries.” *See* Exec. Order
22 202.31.

23 45. Over the next month, Governor Cuomo entered additional orders
24 gradually permitting parts of the New York economy to re-open in limited ways.

25 46. In New York City, Emergency Executive Order No. 100 recognizes that
26 the order “is given because of the propensity of the virus to spread person to person
27 and also because the virus physically is causing property loss and damage[.]”
28

1 47. In addition to California and New York, all but five states enacted
2 COVID-19 Civil Authority Orders, including but not limited to “stay-at-home” or
3 “shelter-in-place” orders; 35 states closed all non-essential businesses with other
4 states enacting measures to curtail business operations; all 50 states closed schools;
5 and all but one state closed restaurants and bars for services other than take-out and
6 delivery.²⁵

7 48. The COVID-19 Civil Authority Orders issued by civil authorities
8 covering non-essential businesses in California and New York (such as Plaintiffs)
9 are similar to COVID-19 Civil Authority Orders that were issued nationwide by state
10 and local civil authorities.

11 **B. Defendant’s Standard Commercial Property Insurance Policies**

12 49. Truck’s insurance policies issued to Plaintiffs and other Class members
13 are standard “all risk” commercial property policies that cover loss or damage to the
14 covered premises resulting from all risks other than those expressly excluded.

15 50. Plaintiffs’ Policies, as well as the policies of other Class members, use
16 standard forms that contain the same and/or substantially similar provisions for all
17 insureds with applicable coverage.

18 51. Plaintiffs, and all similarly situated Class members, had a reasonable
19 expectation that Defendant’s policies would cover their business interruption losses
20 because they paid premiums in exchange for Defendant’s promise to indemnify for
21 losses, including business income and extra expense losses at the insured properties.

22 52. Defendant accepted premium payments, and as such, is obligated to
23 honor its contractual duty to provide coverage for the business losses and extra
24 expenses suffered.

25
26
27 ²⁵ See Kaiser Family Foundation, *State Data and Policy Actions to Address*
28 *Coronavirus* (Apr. 27, 2020), <https://www.kff.org/health-costs/issue-brief/state-data-and-policy-actions-to-address-coronavirus/>.

1 We will pay for the actual loss of "business income" you sustain due to
2 the necessary suspension of "operations" during the "period of
3 restoration," but not to exceed 12 consecutive months. The suspension
4 must be caused by direct physical loss of or damage to property at the
5 "described premises," including personal property in the open, or in a
6 vehicle, within 1000 feet, caused by or resulting from a Covered Cause
7 of Loss.

8 57. Kingray's Policy defines Business Income as:

9 (i) Net Income (Net Profit or Loss before income taxes) that
10 would have been earned or incurred if no physical loss or
11 damage has occurred, but not including any Net Income
12 that would likely have been earned as a result of an
13 increase in the volume of business due to favorable
14 business conditions caused by the impact of the Covered
15 Cause of Loss on customers or on other businesses; and

16 (ii) Continuing normal operating expenses incurred, including
17 payroll.

18 58. Nora's Policy defines Business Income as "1. Net Income (Net Profit
19 or Loss before income taxes) that would have been earned or incurred; and (b)
20 Continuing normal operating expenses incurred, including payroll if there had been
21 no direct physical loss or damage."

22 59. Kingray's Policy defines "Period of Restoration" as:

23 a. Begins:

24 (1) 72 hours after the time of direct physical loss or damage for
25 Business Income Coverage; or

26 (2) Immediately after the time of direct physical loss or damage
27 for Extra Expense Coverage;

28 caused by or resulting from any Covered Cause of Loss at the described
premises; and

b. Ends on the earlier of:

(1) The date when the property at the described premises should
be repaired, rebuilt or replaced with reasonable speed and similar
quality; or

(2) The date when business is resumed at a new permanent
location.

60. Nora's Policy defines "Period of Restoration" as

... the period of time that:

- 1 a. Begins with the date of direct physical loss or physical damage
- 2 caused by or resulting from a Covered Cause of Loss at the
- 3 “described premises”, and
- 4 b. End on the earlier of:
- 5 (1) The date when the property at the ‘described premises’
- 6 should be repaired, rebuilt or replaced with reasonable
- 7 speed and similar quality; or
- 8 (2) The date when business is resumed at a new permanent
- 9 location.

8 61. In addition, the Businessowners Special Property Coverage Form,
9 Form BP 00 02 01 97, in Kingray’s Policy provides “Extra Expense” coverage as
10 follows:

11 **g. Extra Expense**

- 12 (1) We will pay necessary Extra Expense you incur during the
- 13 “period of restoration” that you would not have incurred if
- 14 there had been no direct physical loss or damage to
- 15 property at the described premises. The loss or damage
- 16 must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of the site at which the described premises are located.

17 With respect to the requirements set forth in the preceding
18 paragraph, if you occupy only part of the site at which the
described premises are located, your premises means:

- 19 (a) The portion of the building which you rent, lease or
20 occupy; and
- 21 (b) Any area within the building or on the site at which
the described premises are located, if that area services, or
22 is used to gain access to, the described premises.
- 23 (2) Extra Expense means expense incurred:
- 24 (a) To avoid or minimize the suspension of business
and to continue “operations”:
- 25 (i) At the described premises; or
- 26 (ii) At replacement premises or at temporary
27 locations, including relocation expenses, and costs to
equip and operate the replacement or temporary locations.
- 28

1 (b) To minimize the suspension of business if you
2 cannot continue “operations”

3 62. Nora’s Policy also provides coverage for “Extra Expense” as follows:

4 We will also pay necessary "extra expense" you incur during the
5 "period of restoration" that you would not have incurred if there had
6 been no direct physical loss of or damage to such property caused by or
7 resulting from a Covered Cause of Loss.

8 63. In Kingray’s Policy, the Businessowners Special Property Coverage
9 Form, Form BP 00 02 01 97, also provides “Civil Authority” coverage as follows:

10 **i. Civil Authority.**

11 We will pay for the actual loss of Business Income you sustain
12 and necessary Extra Expense caused by action of civil authority
13 that prohibits access to the described premises due to direct
14 physical loss of or damage to property, other than at the described
15 premises, caused by or resulting from any Covered Cause of
16 Loss.

17 The coverage for Business Income will begin 72 hours after the
18 time of that action and will apply for a period of up to three
19 consecutive weeks after coverage begins.

20 The coverage for necessary Extra Expense will begin
21 immediately after the time of that action and ends:

22 (1) 3 consecutive weeks after the time of that action; or

23 (2) When your Business Income coverage ends;

24 whichever is later.

25 The definitions of Business Income and Extra Expense contained
26 in the Business Income and Extra Expense Additional Coverages
27 also apply to this Civil Authority Additional Coverage. The Civil
28 Authority Additional Coverage is not subject to the Limits of
Insurance.

64. Nora’s Policy also provides “Civil Authority” coverage for:

[T]he actual loss of ‘business income’ you sustain and necessary Extra
Expense caused by action of civil authority that prohibits access to the
‘described premises’ due to direct physical loss of or damage to
property, other than at the ‘described premises,’ caused by or resulting
from any Covered Cause of Loss.”

This coverage begins “after the action by the civil authority for a period
of up to three consecutive weeks after coverage begins.”

1 65. The Civil Authority coverage is an independent basis for business
2 interruption coverage that can be triggered even when the standard business
3 interruption coverage is not. In light of Plaintiffs’ businesses relying, in part, on the
4 foot traffic from nearby businesses, Plaintiffs also lost business income from the
5 COVID-19 Civil Authority Orders directly causing physical loss to nearby
6 businesses.

7 66. Additionally, under Nora’s Policy, Defendant also promised to cover
8 “Business Income from Dependent Properties.” This coverage requires Defendant
9 to pay for loss of business income that occurs within the less of the “period of
10 restoration” at the “dependent property” where the direct loss or damage occurs or
11 30 days, where the loss is caused by the necessary suspension of operations caused
12 by direct physical loss of or damage by a Covered Cause of Loss to “dependent
13 property” at a premises the Policy owner does not own, lease, or operate.

14 67. “Dependent Property” means “premises operated by others on whom
15 you depend to: 1. Deliver materials or services to you, or to others for your account
16 (not including water, communication or power supply services); 2. Accept your
17 products of services; 3. Manufacture products for delivery to your customers under
18 contract of sale; or 4. Attract customers to your business.”

19 68. Plaintiffs’ Policies further define “property damage” as:

20 a. Physical injury to tangible property, including all resulting loss of
21 use of that property. All such loss of use shall be deemed to occur at
the time of the physical injury that caused it; or

22 b. Loss of use of tangible property that is not physically injured. All
23 such loss of use shall be deemed to occur at the time of the “occurrence”
that caused it.

24 69. As a result of the COVID-19 Civil Authority Orders, Plaintiffs and all
25 similarly situated Class members suffered a “direct physical loss of and damage to”
26 their properties. They lost the physical use of their properties, have been unable to
27 use their properties for their intended purpose, and were forced to suspend and curtail
28 business operations, which rendered the properties useless and/or uninhabitable.

1 Plaintiffs also suffered a “direct physical loss of and damage to” their properties in
2 the form of diminished value, lost income, and forced physical alterations during the
3 period of restoration.

4 70. Kingray was forced to physically alter its floor plans to comply with
5 the COVID-19 Civil Authority Orders, which included, without limitation, installing
6 Plexiglas shields at the hostess stand and between booths; placing “social
7 distancing” markers on the property floor; installing health related signs throughout
8 the property; eliminating chairs and tables to comply with social distancing
9 mandates; adding hand-sanitizing stations throughout the property; and shutting-
10 down leisure activities such as pool and foosball tables. Kingray also added and
11 installed TVs, fans, misters, and a bar to its outdoor-patio area.

12 71. Nora’s was also forced to physically alter its floor plans to comply with
13 the COVID-19 Civil Authority Orders, which included, without limitation,
14 eliminating its waiting area, removing two salon chairs, and installing Plexiglas over
15 the reception desk.

16 72. Plaintiffs forced alterations were efforts to repair, rebuild, replace, or
17 otherwise minimize the suspension of their business operations that would not have
18 occurred but for compliance with the COVID-19 Civil Authority Orders.

19 73. The losses Plaintiffs suffered, including the physical dispossession of
20 their tangible property, caused by the COVID-19 Civil Authority Orders is sufficient
21 to trigger coverage under Plaintiffs’ Policies.

22 74. Like an ammonia or gas leak on property, COVID-19 presented an
23 unsafe condition at Plaintiffs’ properties (precisely the purpose of the COVID-19
24 Civil Authority Orders).

25 75. Coverage is also triggered because the COVID-19 Civil Authority
26 Orders prohibited access to Plaintiffs and other similarly situated class members’
27 insured properties, and the areas immediately surrounding the insured properties,
28 due to similar direct physical loss of or damage to properties other than Plaintiffs’.

1 76. Nora’s has also sustained business income losses due to direct physical
2 loss of or physical damage to the premises of dependent properties caused by the
3 COVID-19 Civil Authority Orders.

4 77. Alternatively, and without conceding that coverage is triggered solely
5 by the COVID-19 Civil Authority Orders, the presence of COVID-19 also caused
6 Nora’s to suffer a direct physical loss of or damage to insured property under Nora’s
7 Policy by, among other things, damaging the property, denying access to the
8 property, preventing customers and patients from physically occupying the property,
9 causing the property to be physically uninhabitable by customers and patients,
10 causing its function to be nearly eliminated or destroyed, and/or causing a
11 suspension of business operations on the premises.

12 78. Alternatively, and without conceding that coverage is triggered solely
13 by the COVID-19 Civil Authority Orders, the presence of COVID-19 also prohibited
14 access to Nora’s properties, and the areas immediately surrounding its properties, in
15 response to the presence of COVID-19.

16 79. Alternatively, and without conceding that coverage is triggered solely
17 by the COVID-19 Civil Authority Orders, as a result of the presence of COVID-19,
18 Nora’s and other similarly situated class members sustained a suspension of business
19 operations, sustained losses of business income, and incurred extra expenses.
20 Plaintiff Nora’s has also sustained business income losses due to direct physical loss
21 or physical damage at the premises of dependent properties.

22 80. Kingray’s Policy also contains certain exclusions that do not appear in
23 Nora’s Policy, such as an Exclusion of Loss Due to Virus or Bacteria,²⁶ a Mold and
24
25

26 _____
27 ²⁶ The Exclusion of Loss Due to Virus excludes “loss or damage caused by or
28 resulting from any virus, bacterium or other microorganism that induces or is
capable of inducing physical distress, illness or disease.”

1 Microorganism Exclusion,²⁷ and a Limited Coverage for Fungi, Wet Rot, Dry Rot,
2 and Bacteria provision.²⁸

3 81. None of the exclusions in Kingray’s Policy apply because the efficient
4 proximate cause of Kingray’s losses were the COVID-19 Civil Authority Orders,
5 not because coronavirus was found on or around insured property.

6 82. The virus exclusion is particularly inapplicable because principles of
7 regulatory estoppel and general public policy should prevent Defendant from
8 enforcing it.

9 83. In 2006, two insurance industry trade groups, Insurance Services
10 Office, Inc. (“ISO”) and the American Association of Insurance Services (“AAIS”),
11 represented hundreds of insurers in a national effort to seek approval from state
12 insurance regulators for the adoption of the virus exclusion.

13 84. In their filings with the various state regulators (including, upon
14 information and belief, California) on behalf of the insurers, ISO and AAIS
15 represented that the adoption of the virus exclusion was only meant to “clarify” that
16 coverage for “disease-causing agents” has never been in effect, and was never
17 intended to be included, in the property policies.

18
19
20
21 ²⁷ The Mold and Microorganism Exclusion, which purports to exclude “[a]ny loss,
22 cost or expense arising out the abating, testing for, monitoring, cleaning up,
23 removing, containing, treating, detoxifying, neutralizing, remediating or disposing
of, or in any way responding to or assessing the effect of ‘mold’ or ‘microorganism’,
by any insured or by any other person or entity.”

24 ²⁸ The Limited Coverage for Fungi, Wet Rot, Dry Rot, and Bacteria provision,
25 which excludes from coverage: (a) The enforcement of any ordinance or law which
26 requires demolition, repair, replacement, reconstruction, remodeling or remediation
27 of property due to contamination by “pollutants” or due to the presence, growth,
28 proliferation, spread or any activity of “fungi”, wet or dry rot or bacteria; or (b) The
costs associated with the enforcement of any ordinance or law which requires any
insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or
neutralize, or in any way respond to, or assess the effects of “pollutants,” “fungi,”
wet or dry rot or bacteria.

1 85. Specifically, in its “ISO Circular” dated July 6, 2006 and entitled, “New
2 Endorsements Filed to Address Exclusion of Loss Due to Virus or Bacteria,” ISO
3 represented to the state regulatory bodies that:

4 While property policies have not been a source of recovery for losses
5 involving contamination by disease-causing agents, the specter of
6 pandemic or hitherto unorthodox transmission of infectious material
7 raises the concern that insurers employing such policies may face
8 claims in which there are efforts to expand coverage to create sources
9 of recovery for such losses, contrary to policy intent.

10 86. Similarly, AAIS, in its “Filing Memorandum” in support of the virus
11 exclusion, represented that:

12 Property policies have not been, nor were they intended to be, a source
13 of recovery for loss, cost or expense caused by disease-causing agents.
14 With the possibility of a pandemic, there is concern that claims may
15 result in efforts to expand coverage to create recovery for loss where no
16 coverage was originally intended

17 This endorsement clarifies that loss, cost, or expense caused by,
18 resulting from, or relating to any virus, bacterium, or other
19 microorganism that causes disease, illness, or physical distress or that
20 is capable of causing disease, illness, or physical distress is excluded .
21

22 87. The foregoing representations made by the insurance industry were
23 false. By 2006, the time of the state applications to approve the Virus Exclusion,
24 courts had repeatedly found that property insurance policies covered claims
25 involving disease-causing agents, and had held on numerous occasions that any
26 condition making it impossible to use property for its intended use constituted
27 “physical loss or damage to such property.” For example, in *Motorists Mutual*
28 *Insurance Co. v. Hardinger*, 131 F. App’x 823 (3d Cir. 2005), the United States
Court of Appeals for the Third Circuit held that a genuine issue of fact existed as to
whether the presence of E-Coli at the covered property impacted its functionality, or
made the property otherwise useless or uninhabitable, sufficient to establish a
physical loss or damage to the property. The holding in *Motorists Mutual*
completely belies the statement made by the insurance industry to the state regulators

1 that “property policies have not been a source of recovery for losses involving
2 contamination by disease-causing agents”

3 88. The foregoing assertions by the insurance industry (including
4 Defendant), made to obtain regulatory approval of the virus exclusion, were in fact
5 misrepresentations and for this reason, among other public policy concerns, insurers
6 should now be estopped from enforcing the virus exclusion to avoid coverage of
7 claims related to the COVID-19 pandemic.

8 89. In securing approval for the adoption of the virus exclusion by
9 misrepresenting to the state regulators that the virus exclusion would not change the
10 scope of coverage, the insurance industry effectively narrowed the scope of the
11 insuring agreement without a commensurate reduction in premiums charged. Under
12 the doctrine of regulatory estoppel, the Court should not permit the insurance
13 industry to benefit from this type of duplicitous conduct before the state regulators.

14 90. Plaintiffs’ Policies therefore do not contain any exclusions that would
15 apply to deny coverage.

16 91. Because Plaintiffs’ Policies are all-risk policies and do not exclude
17 Plaintiffs’ losses, which continue through the date of filing this action, Plaintiffs’
18 losses are covered up to the applicable limits of insurance.

19 92. Plaintiffs have complied with their contractual obligations, including
20 providing notice to Defendant of their business income losses and extra expenses
21 incurred.

22 93. Notwithstanding the foregoing, Truck denied their claims and
23 wrongfully withheld benefits to which Plaintiffs are entitled.

24 **C. The COVID-19 Pandemic Has Affected Policyholders Nationwide**

25 94. COVID-19 is physically impacting private commercial property
26 throughout the United States and the State of California, threatening the survival of
27 thousands of restaurants, personal care services businesses, retail establishments,
28

1 and other businesses that have had their business operations suspended or curtailed
2 indefinitely by order of civil authorities.

3 95. Truck does not intend to cover losses caused by the COVID-19
4 pandemic as part of business interruption coverage. As aforementioned, Truck
5 denied Plaintiffs' claims. Upon information and belief, Truck has denied similar
6 claims by other Class members across-the-board, a practice which is belied by not
7 only the express terms of the insurance policies, but also: (a) the Small Business
8 Administration's requirement that "reimbursement" from "business interruption
9 insurance" be submitted along with an application for an Economic Injury Disaster
10 Loan ("EIDL") loan;²⁹ and (b) American's SBDC, whose COVID-19 newsletter
11 expressly states, "Business interruption insurance also applies if government actions
12 cause operations to cease temporarily, which results in a loss for a firm."³⁰

13 96. As a result, many small businesses that maintain commercial multi-
14 peril insurance policies with business interruption coverage will have significant
15 uninsured losses absent declaratory relief from this Court. Indeed, even if state and
16 local governments re-open, as some have, small businesses will almost certainly still
17 be under social-distancing mandates and will continue to experience diminishing
18 revenues due to the loss of covered property. These businesses, like Plaintiffs, also
19 remain susceptible to additional governmental decrees suspending or curtailing
20 operations.³¹

21
22 ²⁹ *Applying for SBA Disaster Loans (EIDL)* at 12, U.S. SMALL BUS. ADMIN. (Mar.
23 26, 2020), https://www.sba.gov/sites/default/files/articles/EIDL_Information_and_Documentation_-_3-30-2020_FINAL_2_pm.pdf (last visited Apr. 30, 2020).

24 ³⁰ *COVID-19: The Latest News and Resources for Your Business*, at 15, AMERICA'S
25 SBDC (Mar. 20, 2020), <https://www.dropbox.com/s/jcw2iw9vk2hcq9y/COVID%2019%20-%20Rev6.pdf?dl=0> (last visited Apr. 30, 2020).

26 ³¹ See Rong-Gong Lin II, et al., *How California Went From A Rapid Reopening To*
27 *A Second Closing In One Month*, LOS ANGELES TIMES, July 14, 2020,
28 <https://www.latimes.com/california/story/2020-07-14/california-reopening-shutdown-coronavirus-spike>.

1 97. A declaratory judgment determining that the Business Income loss and
2 Extra Expense coverage provided in Truck’s standard commercial property
3 insurance policies applies to the suspension, curtailment, and interruption of
4 business operations resulting from measures put into place by civil authorities is
5 necessary to prevent Plaintiffs and similarly situated Class members from being
6 denied critical coverage for which they have paid premiums.

7 **CLASS ALLEGATIONS**

8 98. Plaintiffs bring this lawsuit pursuant to Federal Rules of Civil
9 Procedure 23(a), (b)(1), (b)(2), (b)(3), and (c)(4), individually and on behalf of all
10 other persons similarly situated. This action satisfies the numerosity, commonality,
11 typicality, adequacy, predominance, and superiority requirements of those
12 provisions.

13 99. The Nationwide Class, which both Plaintiffs seek to represent, is
14 defined as:

15 All persons and entities who have entered into a standard commercial
16 property insurance policy with Truck to insure property in the United
17 States, where such policy provides for business income loss and extra
18 expense coverage and does not exclude coverage for pandemics, and
19 who have suffered losses due to measures put in place by a COVID-19
20 Civil Authority Order.

21 The Sub-Class, which only Nora’s seeks to represent, is defined as:

22 All persons and entities who have entered into a standard commercial
23 property insurance policy with Truck to insure property in the United
24 States, where such policy provides for business income loss and extra
25 expense coverage and contains no exclusion for mold, microorganisms,
26 viruses, bacteria, and/or fungi, and who have suffered losses due to the
27 presence of COVID-19 at the premises and/or measures put in place by
28 a COVID-19 Civil Authority Order.³²

Excluded from each of the Classes is Defendant, its employees, officers, directors,
legal representatives, heirs, successors, and wholly or partly owned subsidiaries or

³² The Nationwide Class and Sub-Class may collectively be referred to herein as the “Class” or “Classes.”

1 affiliated companies; Class Counsel and their employees; and the judicial officers
2 and their immediate family members and associated court staff assigned to this case.

3 100. This action has been brought and may properly be maintained on behalf
4 of each Class proposed herein under the criteria of Rule 23 of the Federal Rules of
5 Civil Procedure.

6 101. Plaintiffs reserve the right to modify, expand, or amend the definitions
7 of the proposed Classes following the discovery period and before the Court
8 determines whether class certification is appropriate.

9 102. Certification of Plaintiffs' claims for class-wide treatment is
10 appropriate because Plaintiffs can prove the elements of their claims on a class-wide
11 basis using the same evidence as would prove those elements in individual actions
12 alleging the same claims.

13 **Numerosity**

14 103. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(1). The
15 Classes number at least in the hundreds and consists of geographically dispersed
16 business entities who are insured for business interruption losses. Truck sells many
17 insurance policies nationwide and in the State of California and, therefore, joinder
18 of the Class members is impracticable.

19 104. The identity of Class members is ascertainable, as the names and
20 addresses of all Class members can be identified in Truck's or its agent's books and
21 records. Plaintiffs anticipate providing appropriate notice to the certified Classes in
22 compliance with Fed. R. Civ. P. 23(c)(2)(A) and/or (B), to be approved by the Court
23 after class certification, or pursuant to court order under Fed. R. Civ. P. 23(d).

24 **Typicality**

25 105. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(3)
26 because Plaintiffs' claims are typical of the claims of each of the Class members, as
27 all Class members were and are similarly affected and their claims arise from the
28 same or substantially similar standard policy provisions entered into with Truck.

1 Each Class member's insurance policy contains the same or substantially similar
2 form providing coverage for business income loss. None of the forms exclude
3 coverage due to a governmental action intended to reduce the effect of the ongoing
4 global pandemic. As a result, a declaratory judgment as to the rights and obligations
5 under Plaintiffs' Policies will address the rights and obligations of all Class
6 members.

7 **Adequacy of Representation**

8 106. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(4)
9 because Plaintiffs are committed to prosecuting the action, will fairly and adequately
10 protect the interests of Class members, and have retained counsel competent and
11 experienced in class action litigation, including litigation relating to insurance
12 policies. Plaintiffs have no interests antagonistic to or in conflict with other Class
13 members. Both Plaintiffs are adequate to represent the Nationwide Class, and
14 Nora's is adequate to represent the Sub-Class. Plaintiffs anticipate no difficulty in
15 the management of this litigation as a class action.

16 **Commonality**

17 107. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(2)
18 because there are questions of law and fact that are common to each of the Classes.
19 These common questions predominate over any questions affecting only individual
20 Class members. The questions of law and fact common to the Classes include, but
21 are not limited to:

22 (a) Whether there is an actual controversy between Plaintiffs and
23 Truck as to the rights, duties, responsibilities and obligations of the parties under the
24 business interruption coverage provisions in standard commercial property
25 insurance policies;

26 (b) Whether measures to reduce the spread of the COVID-19
27 pandemic are excluded from Plaintiffs' and Class members' standard commercial
28 property insurance policies;

1 (c) Whether the measures put in place by civil authorities to stop the
2 spread of COVID-19 caused physical loss or damage to the covered commercial
3 property;

4 (d) Whether COVID-19 caused physical loss of or damage to
5 covered commercial property;

6 (e) Whether Truck has breached the insurance policies with business
7 interruption coverage by denying claims for coverage; and

8 (f) Whether Plaintiffs and Class members suffered damages as a
9 result of the breach by Truck.

10 **Superiority/Predominance**

11 108. This action satisfies the requirements of Fed. R. Civ. P. 23(b)(3). A
12 class action is superior to other available methods for the fair and efficient
13 adjudication of the rights of the Class members. The joinder of individual Class
14 members is impracticable because of the vast number of Class members who have
15 purchased commercial property insurance policies from Defendant.

16 109. Because a declaratory judgment as to the rights and obligations under
17 the uniform insurance policies will apply to all Class members, most or all Class
18 members would have no rational economic interest in individually controlling the
19 prosecution of specific actions. The burden imposed on the judicial system by
20 individual litigation, and to Truck, by even a small fraction of the Class members,
21 would be enormous.

22 110. In comparison to piecemeal litigation, class action litigation presents
23 far fewer management difficulties, conserves the resources of both the judiciary and
24 the parties far better, and protects the rights of each Class member far more
25 effectively. The benefits to the legitimate interests of the parties, the Court, and the
26 public resulting from class action litigation substantially outweigh the expenses,
27 burdens, inconsistencies, economic infeasibility, and inefficiencies of individualized
28 litigation. Class adjudication is superior to other alternatives under Fed. R. Civ. P.

1 23(b)(3)(D). Class treatment will also avoid the substantial risk of inconsistent
2 factual and legal determinations on the many issues in this lawsuit.

3 111. Plaintiffs know of no obstacles likely to be encountered in the
4 management of this action that would preclude its maintenance as a class action.
5 Rule 23 provides the Court with the authority and flexibility to maximize the
6 efficiencies and benefits of the class mechanism and reduce management challenges.
7 The Court may, on motion of Plaintiffs or on its own determination, certify
8 nationwide and statewide classes for claims sharing common legal questions; use
9 the provisions of Rule 23(c)(4) to certify particular claims, issues, or common
10 questions of law or of fact for class-wide adjudication; certify and adjudicate
11 bellwether class claims; and use Rule 23(c)(5) to divide any class into subclasses.

12 **Rule 23(b)(2) Certification**

13 112. This action satisfies the requirements of Fed. R. Civ. P. 23(b)(2). The
14 prosecution of separate actions by individual Class members would create a risk of
15 inconsistent or varying adjudication with respect to individual Class members that
16 would establish incompatible standards of conduct for the Defendant.

17 113. In addition, the prosecution of separate actions by individual Class
18 members would create a risk of adjudications with respect to them that would, as a
19 practical matter, be dispositive of the interests of other Class members not parties to
20 the adjudications, or substantially impair or impede their ability to protect their
21 interests.

22 114. Defendant has also acted or refused to act on grounds generally
23 applicable to the Class as a whole, thereby making appropriate final declaratory
24 and/or injunctive relief with respect to the members of the Class as a whole.
25
26
27
28

COUNT I

**DECLARATORY JUDGMENT – BUSINESS INCOME COVERAGE
(Claim Brought on Behalf of Plaintiffs and the Nationwide)**

115. Plaintiffs repeat the allegations in paragraphs 1-114 set forth above as if fully set forth herein.

116. Plaintiffs bring this Count individually and on behalf of the other members of the Nationwide Class.

117. Plaintiffs' Policies, as well as those of the other Class members, are contracts under which Truck was paid premiums in exchange for its contractual agreement to pay Plaintiffs', and the other Class members', losses for claims covered by the policies.

118. The COVID-19 Civil Authority Orders caused direct physical loss of and damage to Plaintiffs' and the other Class members' covered properties, requiring suspension of operations at the covered properties. Accordingly, losses caused by the COVID-19 Civil Authority Orders triggered the Business Income provision of Plaintiffs' and the other Class members' policies.

119. Plaintiffs and other Class members have complied with all applicable provisions of the policies and/or those provisions have been waived by Truck or Truck is estopped from asserting them. Yet, Truck has abrogated its insurance coverage obligations pursuant to the policies' clear and unambiguous terms and has wrongfully and illegally refused to provide the coverage to which Plaintiffs and Class members are entitled.

120. Truck has denied Plaintiffs' and other Class members' claims for business interruption losses caused by COVID-19 Civil Authority Orders on a uniform and class-wide basis without individual bases or investigations, so the Court can render declaratory judgment irrespective of whether a particular Class member has filed a claim.

1 133. Plaintiffs' Policies, as well as those of other Class members, are
2 contracts under which Truck was paid premiums in exchange for its promise to pay
3 Plaintiffs', and the other Class members', losses for claims covered by the policies.

4 134. The COVID-19 Civil Authority Orders caused direct physical loss and
5 damage to Plaintiffs' and the other Class members' covered properties, requiring
6 suspension of operations at the covered properties. Accordingly, losses caused by
7 the COVID-19 Civil Authority Orders triggered the Business Income provision of
8 Plaintiffs' and the other Class members' Truck policies.

9 135. Plaintiffs and the other Class members have complied with all
10 applicable provisions of their policies and/or those provisions have been waived by
11 Truck and/or Truck is estopped from asserting them. Yet, Truck has abrogated its
12 insurance coverage obligations under the policies' clear and unambiguous terms.

13 136. By denying coverage for any Business Income loss incurred by
14 Plaintiffs or other Class members as a result of the COVID-19 Civil Authority
15 Orders, Truck has breached its coverage obligations under the policies.

16 137. As a result of Truck's breaches of contract, Plaintiffs and other Class
17 members have sustained substantial damages for which Truck is liable in an amount
18 to be established at trial.

19 **COUNT IV**

20 **BREACH OF CONTRACT – BUSINESS INCOME COVERAGE**
21 **(Claim Brought on Behalf of Plaintiff Nora's and the Sub-Class)**

22 138. Plaintiff Nora's repeats the allegations in paragraphs 1-114 set forth
23 above as if fully set forth herein.

24 139. Plaintiff Nora's brings this Count individually and on behalf of the
25 other members of the Sub-Class.

26 140. Plaintiff Nora's Policy, as well as those of other Sub-Class members, is
27 a contract under which Truck was paid premiums in exchange for its promise to pay
28

1 Plaintiff Nora's, and the other Sub-Class members', losses for claims covered by the
2 policies.

3 141. The COVID-19 pandemic caused direct physical loss and damage to
4 Plaintiff Nora's and the other Sub-Class members' covered properties, requiring
5 suspension of operations at the covered properties. Accordingly, losses caused by
6 the COVID-19 pandemic triggered the Business Income provision of Plaintiff
7 Nora's and the other Sub-Class members' Truck policies.

8 142. Plaintiff Nora's and the other Sub-Class members have complied with
9 all applicable provisions of their policies and/or those provisions have been waived
10 by Truck and/or Truck is estopped from asserting them. Yet, Truck has abrogated
11 its insurance coverage obligations under the policies' clear and unambiguous terms.

12 143. By denying coverage for any Business Income loss incurred by Plaintiff
13 Nora's or other Sub-Class members as a result of the COVID-19 Pandemic, Truck
14 has breached its coverage obligations under the policies.

15 144. As a result of Truck's breaches of contract, Plaintiff Nora's and other
16 Sub-Class members have sustained substantial damages for which Truck is liable in
17 an amount to be established at trial.

18 **COUNT V**

19 **DECLARATORY JUDGMENT – CIVIL AUTHORITY COVERAGE**
20 **(Claim Brought on Behalf of Plaintiffs and the Nationwide Class)**

21 145. Plaintiffs repeat the allegations in paragraphs 1-114 set forth above as
22 if fully set forth herein.

23 146. Plaintiffs bring this Count individually and on behalf of the other
24 members of the Nationwide Class.

25 147. Plaintiffs' Policies, as well as those of other Class members, are
26 contracts under which Truck was paid premiums in exchange for its promise to pay
27 Plaintiffs', and other Class members', losses for claims covered by the policy.
28

1 148. Plaintiffs and Class members have complied with all applicable
2 provisions of the policies and/or those provisions have been waived by Truck and/or
3 Truck is estopped from asserting them. Yet, Truck has abrogated its insurance
4 coverage obligations under the policies' clear and unambiguous terms and has
5 wrongfully and illegally refused to provide coverage to which plaintiffs and Class
6 members are entitled.

7 149. Truck has denied Plaintiffs' and other Class members' claims for
8 business interruption losses caused by COVID-19 Civil Authority Orders on a
9 uniform and class-wide basis, without individual bases or investigations, so the
10 Court can render declaratory judgment irrespective of whether a particular Class
11 member has filed a claim.

12 150. An actual case or controversy exists regarding Plaintiffs' and other
13 Class members' rights and Truck's obligations under the policies to reimburse
14 Plaintiffs and other Class members for the full amount of covered Civil Authority
15 losses incurred by Plaintiffs and other Class members in connection with COVID-
16 19 Civil Authority Orders and the necessary interruption of their businesses
17 stemming therefrom.

18 151. Pursuant to 28 U.S.C. §2201, Plaintiffs and other Class members seek
19 a declaratory judgment from this Court declaring the following:

- 20 i. Plaintiffs' and other Class members' Civil Authority losses incurred in
21 connection with COVID-19 Civil Authority Orders and the necessary
22 interruption of their businesses stemming therefrom are insured losses
23 under their policies; and
24 ii. Truck is obligated to pay Plaintiffs and other Class members for the full
25 amount of their Civil Authority losses (up to the maximum allowable
26 amount under the policies) incurred in connection with the COVID-19
27 Civil Authority Orders and the necessary interruption of their
28 businesses stemming therefrom.

COUNT VI

**DECLARATORY JUDGMENT – CIVIL AUTHORITY COVERAGE
(Claim Brought on Plaintiff Nora’s and the Sub-Class)**

152. Plaintiff Nora’s repeats the allegations in paragraphs 1-114 set forth above as if fully set forth herein.

153. Plaintiff Nora’s brings this Count individually and on behalf of the other members of the Sub-Class.

154. Plaintiff Nora’s Policy, as well as those of other Sub-Class members, is a contract under which Truck was paid premiums in exchange for its promise to pay Plaintiff Nora’s, and other Sub-Class members’, losses for claims covered by the policy.

155. Plaintiff Nora’s and Sub-Class members have complied with all applicable provisions of the policies and/or those provisions have been waived by Truck and/or Truck is estopped from asserting them. Yet, Truck has abrogated its insurance coverage obligations under the policies’ clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Plaintiff Nora’s and Sub-Class members are entitled.

156. Truck has denied Plaintiff Nora’s and other Sub-Class members’ claims for business interruption losses caused by the COVID-19 pandemic on a uniform and class-wide basis, without individual bases or investigations, so the Court can render declaratory judgment irrespective of whether a particular Sub-Class member has filed a claim.

157. An actual case or controversy exists regarding Plaintiff Nora’s and other Sub-Class members’ rights and Truck’s obligations under the policies to reimburse Plaintiff Nora’s and other Sub-Class members for the full amount of covered Civil Authority losses incurred by Plaintiff Nora’s and other Sub-Class members in connection with COVID-19 pandemic and the necessary interruption of their businesses stemming therefrom.

1 158. Pursuant to 28 U.S.C. §2201, Plaintiff Nora’s and other Sub-Class
2 members seek a declaratory judgment from this Court declaring the following:

- 3 i. Plaintiff Nora’s and other Sub-Class members’ Civil Authority losses
4 incurred in connection with COVID-19 pandemic and the necessary
5 interruption of their businesses stemming therefrom are insured losses
6 under their policies; and
7 ii. Truck is obligated to pay Plaintiff Nora’s and other Sub-Class members
8 for the full amount of their Civil Authority losses (up to the maximum
9 allowable amount under the policies) incurred in connection with the
10 COVID-19 pandemic and the necessary interruption of their businesses
11 stemming therefrom.

12 **COUNT VII**

13 **BREACH OF CONTRACT – CIVIL AUTHORITY COVERAGE** 14 **(Claim Brought on Behalf of Plaintiffs and the Nationwide Class)**

15 159. Plaintiffs repeat the allegations in paragraphs 1-114 set forth above as
16 if fully set forth herein.

17 160. Plaintiffs bring this Count individually and on behalf of the other
18 members of the Nationwide Class.

19 161. Plaintiffs’ Policies, as well as those of other Class members, are
20 contracts under which Truck was paid premiums in exchange for its promise to pay
21 Plaintiffs’, and the other Class Members’, losses for claims covered by the policy.

22 162. Plaintiffs and the other Class members have complied with all
23 applicable provisions of the policies and/or those provisions have been waived by
24 Truck and/or Truck is estopped from asserting them. Yet, Truck has abrogated its
25 insurance coverage obligations under the policies’ clear and unambiguous terms.

26 163. By denying coverage for any business losses incurred by Plaintiffs and
27 other Class members in connection with the COVID-19 Civil Authority Orders,
28 Truck has breached its coverage obligations under the policies.

164. As a result of Truck’s breaches of contract, Plaintiffs and other Class
members have sustained substantial damages for which Truck is liable in an amount
to be established at trial.

1 **COUNT VIII**

2 **BREACH OF CONTRACT – CIVIL AUTHORITY COVERAGE**
3 **(Claim Brought on Behalf of Plaintiff Nora’s and the Sub-Class)**

4 165. Plaintiff Nora’s repeats the allegations in paragraphs 1-114 set forth
5 above as if fully set forth herein.

6 166. Plaintiff Nora’s brings this Count individually and on behalf of the
7 other members of the Sub-Class.

8 167. Plaintiff Nora’s Policy, as well as those of other Sub-Class members, is
9 a contract under which Truck was paid premiums in exchange for its promise to pay
10 Plaintiff Nora’s, and the other Sub-Class Members’, losses for claims covered by the
11 policy.

12 168. Plaintiff Nora’s and the other Sub-Class members have complied with
13 all applicable provisions of the policies and/or those provisions have been waived
14 by Truck and/or Truck is estopped from asserting them. Yet, Truck has abrogated
15 its insurance coverage obligations under the policies’ clear and unambiguous terms.

16 169. By denying coverage for any business losses incurred by Plaintiff
17 Nora’s and other Sub-Class members in connection with the COVID-19 pandemic,
18 Truck has breached its coverage obligations under the policies.

19 170. As a result of Truck’s breaches of contract, Plaintiff Nora’s and other
20 Sub-Class members have sustained substantial damages for which Truck is liable in
21 an amount to be established at trial.

22 **COUNT IX**

23 **DECLARATORY JUDGMENT – EXTRA EXPENSE COVERAGE**
24 **(Claim Brought on Behalf of Plaintiffs and the Nationwide Class)**

25 171. Plaintiffs repeat the allegations in paragraphs 1-114 set forth above as
26 if fully set forth herein.

27 172. Plaintiffs bring this Count individually and on behalf of the other
28 members of the Nationwide Class.

1 173. Plaintiffs' Policies, as well as those of other Class Members, are
2 contracts under which Truck was paid premiums in exchange for its promise to pay
3 Plaintiffs', and other Class members', losses for claims covered by the policies.

4 174. Plaintiffs and other Class members have complied with all applicable
5 provisions of the policies and/or those provisions have been waived by Truck and/or
6 Truck is estopped from asserting them. Yet, Truck has abrogated its insurance
7 coverage obligations under the policies' clear and unambiguous terms and has
8 wrongfully and illegally refused to provide coverage to which Plaintiffs and Class
9 members are entitled.

10 175. Truck has denied Plaintiffs' and other Class members' claims for
11 business interruption losses caused by COVID-19 Civil Authority Orders on a
12 uniform and class-wide basis, without individual bases or investigations, so the
13 Court can render declaratory judgment irrespective of whether a particular Class
14 member has filed a claim.

15 176. An actual case or controversy exists regarding Plaintiffs' and other
16 Class members' rights and Truck's obligations under the policies to reimburse
17 Plaintiffs and the other Class members for the full amount of Extra Expense losses
18 incurred by Plaintiffs and Class members in connection with COVID-19 Civil
19 Authority Orders and the necessary interruption of their businesses stemming
20 therefrom.

21 177. Pursuant to 28 U.S.C. §2201, Plaintiffs and other Class members seek
22 a declaratory judgment from this Court declaring the following:

- 23 i. Plaintiffs' and other Class members' Extra Expense losses incurred in
24 connection with the COVID-19 Civil Authority Orders and the
25 necessary interruption of their businesses stemming therefrom are
26 insured losses under their policies; and
27 ii. Truck is obligated to pay Plaintiffs and other Class members for the full
28 amount of their Extra Expenses losses (up to the maximum allowable
amount under the policies) in connection with the COVID-19 Civil
Authority Orders and the necessary interruption of their businesses
stemming therefrom.

COUNT X

**DECLARATORY JUDGMENT – EXTRA EXPENSE COVERAGE
(Claim Brought on Behalf of Plaintiff Nora’s and the Sub-Class)**

178. Plaintiff Nora’s repeats the allegations in paragraphs 1-114 set forth above as if fully set forth herein.

179. Plaintiff Nora’s brings this Count individually and on behalf of the other members of the Sub-Class.

180. Plaintiff Nora’s Policy, as well as those of other Class Members, is a contract under which Truck was paid premiums in exchange for its promise to pay Plaintiff Nora’s, and other Sub-Class members’, losses for claims covered by the policies.

181. Plaintiff Nora’s and other Sub-Class members have complied with all applicable provisions of the policies and/or those provisions have been waived by Truck and/or Truck is estopped from asserting them. Yet, Truck has abrogated its insurance coverage obligations under the policies’ clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Plaintiff Nora’s and Sub-Class members are entitled.

182. Truck has denied Plaintiff Nora’s and other Sub-Class members’ claims for business interruption losses caused by the COVID-19 pandemic on a uniform and class-wide basis, without individual bases or investigations, so the Court can render declaratory judgment irrespective of whether a particular Sub-Class member has filed a claim.

183. An actual case or controversy exists regarding Plaintiff Nora’s and other Sub-Class members’ rights and Truck’s obligations under the policies to reimburse Plaintiff Nora’s and the other Sub-Class members for the full amount of Extra Expense losses incurred by Plaintiff Nora’s and Sub-Class members in connection with the COVID-19 pandemic and the necessary interruption of their businesses stemming therefrom.

1 184. Pursuant to 28 U.S.C. §2201, Plaintiff Nora's and other Sub-Class
2 members seek a declaratory judgment from this Court declaring the following:

- 3 i. Plaintiff Nora's and other Sub-Class members' Extra Expense losses
4 incurred in connection with the COVID-19 pandemic and the necessary
5 interruption of their businesses stemming therefrom are insured losses
6 under their policies; and
7 ii. Truck is obligated to pay Plaintiff Nora's and other Sub-Class members
8 for the full amount of their Extra Expenses losses (up to the maximum
9 allowable amount under the policies) in connection with the COVID-
10 19 pandemic and the necessary interruption of their businesses
11 stemming therefrom.

12 **COUNT XI**

13 **BREACH OF CONTRACT – EXTRA EXPENSE COVERAGE** 14 **(Claim Brought on Behalf of Plaintiffs and the Nationwide Class)**

15 185. Plaintiffs repeat the allegations in paragraphs 1-114 set forth above as
16 if fully set forth herein.

17 186. Plaintiffs bring this Count individually and on behalf of the other
18 members of the Nationwide Class.

19 187. Plaintiffs' Policies, as well as those of the other Class members, are
20 contracts under which Truck was paid premiums in exchange for its promise to pay
21 Plaintiffs', and the other Class members', losses for claims covered by the policy.

22 188. Plaintiffs and other Class members have complied with all applicable
23 provisions of the policies and/or those provisions have been waived by Truck and/or
24 Truck is estopped from asserting them. Yet, Truck has abrogated its insurance
25 coverage obligations under the policies' clear and unambiguous terms.

26 189. By denying coverage for any business losses incurred by Plaintiffs and
27 other Class members in connection with the COVID-19 Civil Authority Orders,
28 Truck has breached its coverage obligations under the policies.

190. As a result of Truck's breaches of the policies, Plaintiffs and the other
Class members have sustained substantial damages for which Truck is liable in an
amount to be established at trial.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNT XII

**BREACH OF CONTRACT – EXTRA EXPENSE COVERAGE
(Claim Brought on Behalf of Plaintiff Nora’s and the Sub-Class)**

191. Plaintiff Nora’s repeats the allegations in paragraphs 1-114 set forth above as if fully set forth herein.

192. Plaintiff Nora’s brings this Count individually and on behalf of the other members of the Sub-Class.

193. Plaintiff Nora’s Policy, as well as those of the other Class members, is a contract under which Truck was paid premiums in exchange for its promise to pay Plaintiff Nora’s, and the other Sub-Class members’, losses for claims covered by the policy.

194. Plaintiff Nora’s and other Sub-Class members have complied with all applicable provisions of the policies and/or those provisions have been waived by Truck and/or Truck is estopped from asserting them. Yet, Truck has abrogated its insurance coverage obligations under the policies’ clear and unambiguous terms.

195. By denying coverage for any business losses incurred by Plaintiff Nora’s and other Sub-Class members in connection with the COVID-pandemic, Truck has breached its coverage obligations under the policies.

196. As a result of Truck’s breaches of the policies, Plaintiff Nora’s and the other Sub-Class members have sustained substantial damages for which Truck is liable in an amount to be established at trial.

COUNT XIII

**DECLARATORY JUDGMENT – BUSINESS INCOME FROM
DEPENDENT PROPERTIES COVERAGE
(Claim Brought on Behalf of Plaintiff Nora’s and the Sub-Class)**

197. Plaintiff Nora’s repeats the allegations in paragraphs 1-114 set forth above as if fully set forth herein.

198. Plaintiff Nora’s brings this Count individually and on behalf of the other members of the Sub-Class.

1 200. Under 28 U.S.C. §§2201 and 2202, this Court has jurisdiction to
2 declare the rights and other legal relations of the parties in dispute.

3 201. Plaintiff Nora's Policy, as well as those of other Class Members, is a
4 contract under which Truck was paid premiums in exchange for its promise to pay
5 Plaintiff Nora's, and other Sub-Class members', losses for claims covered by the
6 policies.

7 202. In Plaintiff Nora's Policy, Truck promised to pay for losses of business
8 income sustained as a result of perils not excluded under the Policy. Specifically,
9 Truck promised to pay for losses of business income sustained due to direct physical
10 loss or physical damage at the premises of a dependent property.

11 203. Plaintiff Nora's, and other Sub-Class members, suffered losses of
12 business income due to direct physical loss and/or physical damage at the premises
13 of dependent properties.

14 204. These losses triggered business income from dependent properties
15 coverage under Plaintiff Nora's Policy and other Sub-Class members' policies.

16 205. Plaintiff Nora's and the other Sub-Class members have complied with
17 all applicable provisions of their respective policies, including payment of
18 premiums.

19 206. Truck, without justification, dispute that Plaintiff Nora's Policy and
20 other Sub-Class members' policies provide coverage for these losses.

21 207. Plaintiff Nora's seeks a Declaratory Judgment that its policy and other
22 Sub-Class members' policies provide coverage for the losses of business income
23 attributable to the facts set forth above.

24 208. An actual case or controversy exists regarding Plaintiff Nora's and
25 other Sub-Class members' rights and Truck's obligations under the policies to
26 reimburse Plaintiff Nora's and the other Sub-Class members for the full amount of
27 Business Income from Dependent Properties losses incurred by Plaintiff Nora's and
28

1 Sub-Class members in connection with the COVID-19 pandemic and the necessary
2 interruption of their businesses stemming therefrom.

3 208. Pursuant to 28 U.S.C. §2201, Plaintiff Nora's and other Sub-Class
4 members seek a declaratory judgment from this Court declaring the following:

- 5 i. Plaintiff Nora's and other Sub-Class members' Business Income from
6 Dependent Properties losses incurred in connection with the COVID-
7 19 pandemic and the necessary interruption of their businesses
8 stemming therefrom are insured losses under their policies; and
9 ii. Truck is obligated to pay Plaintiff Nora's and other Sub-Class members
10 for the full amount of their Business Income from Dependent Properties
11 losses (up to the maximum allowable amount under the policies) in
12 connection with the COVID-19 pandemic and the necessary
13 interruption of their businesses stemming therefrom.

14 **COUNT XIV**

15 **BREACH OF CONTRACT – BUSINESS INCOME FROM DEPENDENT** 16 **PROPERTIES COVERAGE** 17 **(Claim Brought on Behalf of Plaintiff Nora's and the Sub-Class)**

18 209. Plaintiff Nora's repeats the allegations in paragraphs 1-114 set forth
19 above as if fully set forth herein.

20 210. Plaintiff Nora's brings this Count individually and on behalf of the
21 other members of the Sub-Class.

22 211. Plaintiff Nora's Policy, as well as those of the other Class members, is
23 a contract under which Truck was paid premiums in exchange for its promise to pay
24 Plaintiff Nora's, and the other Sub-Class members', losses for claims covered by the
25 policy.

26 212. Plaintiff Nora's and other Sub-Class members have complied with all
27 applicable provisions of the policies and/or those provisions have been waived by
28 Truck and/or Truck is estopped from asserting them. Yet, Truck has abrogated its
insurance coverage obligations under the policies' clear and unambiguous terms.

213. By denying coverage for any business losses incurred by Plaintiff
Nora's and other Sub-Class members in connection with the COVID-19 pandemic,
Truck has breached its coverage obligations under the policies.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

120 East Palmetto Park Road, Suite 500
Boca Raton, FL 33432
Telephone: 561/750-3000
561/750-3364 (fax)
pgeller@rgrdlaw.com
sdavidson@rgrdlaw.

ROBBINS GELLER RUDMAN
& DOWD LLP
RACHEL L. JENSEN
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
rachelj@rgrdlaw.com

ROBBINS GELLER RUDMAN
& DOWD LLP
SAMUEL H. RUDMAN
58 South Service Road, Suite 200
Melville, NY 11747
Telephone: 631/367-7100
631/367-1173 (fax)
srudman@rgrdlaw.com

CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.
JAMES E. CECCHI
LINDSEY H. TAYLOR
5 Becker Farm Road
Roseland, NJ 07068
Telephone: 973/994-1700
973/994-1744 (fax)
jcecchi@carellabyrne.com
ltaylor@carellabvrne.com

SEEGER WEISS LLP
CHRISTOPHER A. SEEGER
STEPHEN A. WEISS
77 Water Street, 8th Floor
New York, NY 10005
Telephone: 212/584-0700
212/584-0799 (fax)
cseeger@seegerweiss.com
sweiss@seegerweiss.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ZWERLING, SCHACHTER &
ZWERLING, LLP
ROBERT SCHACHTER
41 Madison Avenue
New York, NY 10010
Telephone: 212/223-3900
212/371-5969 (fax)
rschachter@zsz.com

THE MOSKOWITZ LAW FIRM, PLLC
Adam M. Moskowitz
Adam A. Schwartzbaum
2 Alhambra Plaza, Suite 601
Coral Gables, FL 33134
Telephone: 305/740-1423
adam@moskowitz-law.com
adams@moskowitz-law.com

MERLIN LAW GROUP
WILLIAM F. "CHIP" MERLIN, JR.
777 S. Harbour Island Blvd., Suite 950
Tampa, FL 33602
Telephone: 813/229-1000
cmerlin@MerlinLawGroup.com

LAW OFFICE OF ROBERT
G. LOEWY, P.C.
ROBERT G. LOEWY
20 Enterprise, Suite 310
Aliso Viejo, CA 92656
Telephone: 949/468-7150
rloewy@rloewy.com

Attorneys for Plaintiffs