

1 Eric H. Gibbs (SBN 178658)
 2 ehg@classlawgroup.com
 3 Andre M. Mura (SBN 298541)
 4 amm@classlawgroup.com
 5 Karen Barth Menzies (SBN 180234)
 6 kbm@classlawgroup.com
 7 Amy M. Zeman (SBN 273100)
 8 amz@classlawgroup.com
 9 Steve Lopez (SBN 300540)
 10 sal@classlawgroup.com
GIBBS LAW GROUP LLP
 505 14th Street, Suite 1110
 Oakland, CA 94612
 Telephone: (510) 350-9700
 Facsimile: (510) 350-9701

Attorneys for Plaintiff and Proposed Class

[Additional counsel on signature page]

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

16 MUDPIE, INC.,

18 Plaintiff,

20 v.

21 TRAVELERS CASUALTY
 22 INSURANCE COMPANY OF
 23 AMERICA,

24 Defendant.

Case No. _____

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Mudpie, Inc., individually and on behalf of all others similarly
2 situated, files suit against Travelers Casualty Insurance Company of America and
3 alleges as follows:

4 INTRODUCTION

5 1. Since March 19, 2020, California’s “Stay at Home” order has instructed
6 all 40 million California residents to remain at home, with certain exceptions. Though
7 lifesaving, this mandate, which remains in place, ends in-house service at California
8 retailers. This is not merely causing severe financial distress for retailers and their
9 employees; such closures threaten the viability of California’s retail industry.

10 2. Plaintiff’s store Mudpie in San Francisco, California is among the
11 thousands of retailers that have been forced by State orders to cease operations as part
12 of the Stay at Home order. Mudpie and many California retailers – none of whom
13 bear fault for statewide closures – were responsible business stewards, thus paying
14 for business interruption insurance to protect against a situation like this.

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

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

22 5. Mudpie’s experience is no different. It has dutifully followed
23 California’s mandates. Facing serious financial harm, it has filed a claim with
24 Travelers for business interruption coverage.

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

28 7. That leaves the Mudpie in financial straits – precisely the situation it
sought to avoid when it obtained coverage for business interruptions.

1 8. Mudpie and other retailers bought full-spectrum, comprehensive
2 insurance for their *businesses* – not just for damage to their physical premises and
3 equipment. And for good reason. Insurance coverage is important, if not vital for
4 small businesses.

5 9. Mudpie and other California retailers reasonably believed they had
6 comprehensive coverage that would apply to business interruptions under
7 circumstances like these, where they have done everything right to protect their
8 businesses and the public. But insurance companies like Travelers are cutting those
9 lifelines – despite having pocketed significant premiums for such relief.

10 10. Plaintiff thus brings this action, on behalf of itself and other California
11 retailers, seeking declaratory relief, insurance coverage owed under Travelers’ policy,
12 and damages.

13 **PARTIES**

14 11. Plaintiff Mudpie, Inc. is a corporation formed under the laws of
15 California. Its principal place of business is San Francisco, California.

16 12. Defendant Travelers Casualty Insurance Company of America is a
17 corporation organized under laws of Connecticut with its principal place of business
18 in Hartford, Connecticut. At all relevant times, Travelers operated in California,
19 including in San Francisco.

20 **JURISDICTION AND VENUE**

21 13. This Court has subject matter jurisdiction over this action under 28
22 U.S.C. § 1332(d)(2) because this is a class action wherein the amount in controversy
23 exceeds the sum or value of \$5,000,000, exclusive of interest and costs, there are more
24 than 100 members in the proposed class, and at least one member of the class is a
25 citizen of a state different from Defendant.

26 14. This Court has personal jurisdiction over Defendant, because Defendant
27 conducts business in San Francisco, California.

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

4 **INTRADISTRICT ASSIGNMENT**

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

8 **FACTUAL BACKGROUND**

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

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

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

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

28 21. A lack of central planning, shortages of key medical supplies and
equipment, and the unfortunate spread of misinformation and disinformation about

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

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

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

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

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

22 **PLAINTIFF'S EXPERIENCE**

23 26. Plaintiff operates a retail store called Mudpie in San Francisco,
24 California. Mudpie sells fine children's clothing, toys, housewares, books, and other
25 goods in a Victorian shop in San Francisco's historic Fillmore district.

26 27. Mudpie has complied with all applicable orders of California state and
27 local authorities. Compliance with those orders has caused direct physical loss of
28 Mudpie's insured property in that the property has been made useless and/or
uninhabitable; and its functionality has been severely reduced if not completely or

1 nearly eliminated.

2 28. The impact of these orders is felt not simply in their direct application to
3 Mudpie’s operations, but also in their application to neighboring businesses and
4 properties, whose property has suffered similar direct physical loss as a result.

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

11 30. Plaintiff purchased comprehensive commercial liability and property
12 insurance from Travelers to insure against risks the business might face. Such
13 coverage includes business income with extra expense coverage for the loss, as well as
14 additional “civil authority” coverage. The coverage excludes loss “caused by or
15 resulting from” virus or bacteria. Once triggered, the policy pays actual losses
16 sustained for the business income and extra expense coverage.

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

19 32. On or about April 27, 2020, Plaintiff reported a loss of business income
20 as of March 16, 2020, under Policy 680-1G147295.

21 33. On or about May 6, 2020, Travelers denied Plaintiff’s claim for coverage.
22 In a cursory denial letter, Travelers took the position that “[b]ecause the limitations on
23 your business operations were the result of the Governmental Order, as opposed to
24 ‘direct physical loss or damage to property at the described premises’ . . . this
25 Business Income and Extra Expense coverage does not apply to your loss.” Although
26 Mudpie’s policy also included civil authority coverage and while Travelers
27 acknowledged that a civil authority had prohibited access to Mudpie’s premises, it
28 stated that “the Governmental Order that affected your business was not issued due
to ‘direct physical loss of or damage to property.” Travelers further stated that the

1 policy included “an exclusion for ‘loss or damage caused by or resulting from any
2 virus’ – such as the COVID-19 virus.”

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

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

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

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

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

22 CLASS ALLEGATIONS

23 39. Plaintiff re-alleges and incorporates by reference herein all of the
24 allegations contained above.

25 40. Business insurance policies purchased by small businesses like Mudpie
26 are not individually negotiated. At most, the prospective policyholder may elect to
27 add specialized coverage options to a basic business insurance policy. But the
28 substantive terms are set unilaterally by the insurer.

41. Plaintiff’s policy includes common terms and phrases widely used by

1 the insurance industry. The insurance industry typically hews closely to
2 standardized insurance policy forms in addressing property and liability risks, and
3 Defendant did so here.

4 42. As the impact of the COVID-19 pandemic is emerging, leading
5 insurance industry associations have publicly stated that such standard business
6 insurance policies do not provide any coverage for the business losses related to
7 public health orders like the Stay at Home orders imposed by California. The denial
8 letter received by Plaintiff – issued without any investigation at Mudpie’s premises
9 and shortly after a claim was filed – appears to be a form letter that, on information
10 and belief, is sent automatically to any such business with comprehensive business
11 insurance that files a claim at this time.

12 43. Pursuant to Fed. R. Civ. P. 23(b)(2), 23(b)(3), and 23(c)(4), Plaintiff brings
13 this action on behalf of itself and the following Class (the “Class”): All retailers in
14 California that purchased comprehensive business insurance coverage from
15 Defendant which includes coverage for business interruption, filed a claim for lost
16 business income following California’s Stay at Home order, and were denied
17 coverage by Defendant.

18 44. Excluded from the Class are Defendant, any entity in which Defendant
19 has a controlling interest, and Defendant’s officers, directors, legal representatives,
20 successors, subsidiaries, and assigns. Also excluded from the Class are any judge,
21 justice, or judicial officer presiding over this matter and the members of their
22 immediate families and judicial staff.

23 45. This action has been brought and may properly be maintained as a class
24 action as it satisfies the numerosity, commonality, typicality, adequacy,
25 predominance, and superiority requirements.

26 46. Plaintiff reserves the right to amend the Class definition if discovery and
27 further investigation reveal that the Class should be expanded, divided into
28 subclasses, or modified in any other way.

47. Although the precise number of members of the Class is unknown and

1 can only be determined through appropriate discovery, Plaintiff believes, and on that
2 basis alleges, that the members of the proposed Class are so numerous that joinder of
3 all members would be impracticable. There are tens of thousands of retailers in
4 California which are governed by the Stay at Home order and attendant statewide
5 restrictions, and public reporting reveals that many have filed for coverage but have
6 been denied.

7 48. Questions of law and fact common to the Class exist that predominate
8 over questions affecting only individual members, including *inter alia*:

- 9 a. Whether Defendant's comprehensive business insurance policies
10 cover claims for lost business income under the circumstances
11 present here;
- 12 b. Whether the terms, definitions, and exclusions that Defendant
13 has relied on to deny coverage reasonably can be construed in the
14 manner Defendant claims, or are otherwise unenforceable as a
15 basis for Defendant's denials or, instead, must be construed to
16 provide coverage under California law;
- 17 c. Whether the virus exclusion endorsement excludes coverage for
18 the Stay at Home order;
- 19 d. Whether Defendant breached the implied covenant of good faith
20 and fair dealing in its handling of the claim; an
- 21 e. Whether the declaratory judgment sought is appropriate.

22 49. Plaintiff is a member of the putative Class. The claims asserted by the
23 Plaintiff in this action are typical of the claims of the members of the putative Class as
24 the claims arise from the same course of conduct by Defendant and the relief sought is
25 common.

26 50. Plaintiff will fairly and adequately represent and protect the interests of
27 the members of the putative Class, as its interests coincide with, and are not
28 antagonistic to, the other members of the Class. Plaintiff has retained counsel
competent and experienced in both consumer protection, insurance coverage, and

1 class-action litigation.

2 51. Certification of the Class is appropriate pursuant to Fed. R. Civ. P. 23
3 (b)(3) because:

- 4 a. Questions of law or fact common to the respective members of
5 the Class predominate over questions of law or fact affecting only
6 individual members. This predominance makes class litigation
7 superior to any other method available for the fair and efficient
8 adjudication of these claims including consistency of
9 adjudications. Absent a class action it would be highly unlikely
10 that the members of the Class would be able to protect their own
11 interests because the cost of litigation through individual
12 lawsuits might exceed the expected recovery;
- 13 b. A class action is a superior method for the adjudication of the
14 controversy in that it will permit a large number of claims to be
15 resolved in a single forum simultaneously, efficiently, and
16 without the unnecessary hardship that would result from the
17 prosecution of numerous individual actions and the duplication
18 of discovery, effort, expense, and the burden of the courts that
19 individual actions would create; and
- 20 c. The benefits of proceeding as a class action, including providing
21 a method for obtaining redress for claims that would not be
22 practical to pursue individually, outweigh any difficulties that
23 might be argued with regard to the management of the class
24 action.

25 52. The Class should also be certified pursuant to Fed. R. Civ. P. 23(b)(2)
26 because:

- 27 a. The prosecution of separate actions by the individual members of
28 the proposed class would create a risk of inconsistent
adjudications, which could establish incompatible standards of

1 conduct for Defendant;

2 b. The prosecution of individual actions could result in
3 adjudications, which as a practical matter, would be dispositive
4 of the interests of non-party class members or which would
5 substantially impair their ability to protect their interests; and

6 c. Defendant has acted or refused to act on grounds generally
7 applicable to the proposed Class, thereby making appropriate
8 final and injunctive relief with respect to the members of the
9 proposed Class as a whole.

10 53. Likewise, particular issues are appropriate for certification under Fed. R.
11 Civ. P. 23(c)(4) because such claims present only particular, common issues, the
12 resolution of which would advance the disposition of this matter and the parties'
13 interests therein. Such particular issues include, but are not limited to:

14 a. Whether the comprehensive business insurance policies issued by
15 Defendant cover class members' direct physical loss of property
16 and lost business income following California's Stay at Home
17 order;

18 b. Whether the coverages for direct physical loss of property and
19 lost business income provided by the comprehensive business
20 insurance policies are precluded by exclusions or other
21 limitations in those policies;

22 c. Whether Defendant breached contracts by denying
23 comprehensive business insurance coverage to Plaintiff and Class
24 members;

25 d. Whether summary denial of claims for direct physical loss of
26 property and lost business income, including by invoking an
27 exclusion for viruses, without any investigation or inquiry
28 constitutes bad faith and therefore a breach of the implied
 covenant of good faith and fair dealing to act in good faith and

1 with reasonable efforts to perform their contractual duties and
2 not to impair the rights of other parties to receive the rights,
3 benefits, and reasonable expectations under the contracts;

4 e. Whether the handling of the claim with the knowledge that
5 Defendant would not provide coverage for business interruptions
6 associated with public health measures such as California's Stay
7 at Home order constitutes a breach of the implied covenant of
8 good faith and fair dealing; and

9 f. Whether Plaintiff and Class members are entitled to actual
10 damages and/or injunctive relief as a result of Defendant's
11 wrongful conduct.

12 **FIRST CAUSE OF ACTION**

13 **Declaratory Judgment**

14 54. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

15 55. Plaintiff purchased a comprehensive business insurance policy from
16 Defendant.

17 56. Plaintiff paid all premiums required to maintain its comprehensive
18 business insurance policy in full force.

19 57. The comprehensive business insurance policy includes provisions that
20 provide coverage for the direct physical loss of or damage to the premises as well as
21 actual loss of business income and extra expenses sustained during the suspension of
22 operations as a result of such loss or damage.

23 58. On or about March 19, California issued the Stay at Home order,
24 mandating that all Californians remain at home, with certain exceptions. This
25 mandate required retailers to cease all non-essential services. This mandate also
26 applied to neighboring businesses, thus causing widespread closures surrounding
27 Plaintiff's business premises.

28 59. As a result of this mandate, the covered property of Plaintiff lost some
or all of its functionality and/or became useless or uninhabitable, resulting in

1 substantial loss of business income.

2 60. These losses are insured losses under several provisions of Plaintiff's
3 comprehensive business insurance policy including business income and expense
4 coverage, and coverage for civil authority orders.

5 61. There are no applicable, enforceable exclusions or definitions in the
6 insurance policies that preclude coverage for these losses.

7 62. WHEREFORE, Plaintiff seeks a declaration for itself and similarly
8 situated retailers that its business income losses are covered and not precluded by
9 exclusions or other limitations in its comprehensive business insurance policy.

10 **SECOND CAUSE OF ACTION**

11 **Breach of Contract**

12 63. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

13 64. Plaintiff purchased a comprehensive business insurance policy from
14 Defendant to insure against all risks (unless specifically excluded) a business might
15 face. This policy was a binding contract that afforded Plaintiff comprehensive
16 business insurance under the terms and conditions of the policy.

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

19 66. On or about March 19, California issued the Stay at Home order,
20 mandating that all Californians remain at home, with certain exceptions. This
21 mandate required retailers, including that owned by Plaintiff, to cease all in-person
22 services. This mandate also applied to neighboring businesses, thus causing
23 widespread closures surrounding Plaintiff's business premises.

24 67. Beginning on March 16, 2020, and continuing through the date of the
25 filing of this Complaint, Plaintiff suffered the direct physical loss of property and lost
26 business income following California's Stay at Home order – losses which were
27 covered under the comprehensive business insurance policy purchased from
28 Defendant.

68. There are no applicable, enforceable exclusions in Plaintiff's

1 comprehensive business insurance policy that precludes coverage.

2 69. Defendant breached its contract by denying comprehensive business
3 insurance coverage to Plaintiff.

4 70. As a direct and proximate result of Defendant's denial of comprehensive
5 business insurance coverage to Plaintiff, Plaintiff suffered damages.

6 71. WHEREFORE, Plaintiff seeks: (a) a judgment for itself and similarly
7 situated retailers that Defendant breached its contracts with Plaintiff; and (b)
8 corresponding damages for that breach.

9 **THIRD CAUSE OF ACTION**

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

11 72. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

12 73. Plaintiff contracted with Defendant to provide it with comprehensive
13 business insurance to ensure against all risks (unless specifically excluded) a business
14 might face.

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

22 75. Defendant breached the implied covenant of good faith and fair dealing
23 by:

- 24 a. Selling policies that appear to provide liberal coverage for loss of
25 property and lost business income with the intent of interpreting
26 undefined or poorly defined terms, undefined terms, and
27 ambiguously written exclusions to deny coverage under
28 circumstances foreseen by Defendant;
- b. Denying coverage for loss of property and lost business income

1 unreasonably, and without proper cause, by applying undefined,
2 ambiguous, and contradictory terms contrary to applicable rules
3 of policy construction and the plain terms and purpose of the
4 policy;

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

9 d. Misrepresenting policy terms; and

10 e. Compelling policyholders, including Mudpie, to initiate litigation
11 to recover policy benefits to which they are entitled.

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

14 77. Defendant's failure to act in good faith in providing comprehensive
15 business insurance coverage to Plaintiff denied Plaintiff the full benefit of its bargain.

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

19 79. WHEREFORE, Plaintiff seeks: (a) a judgment for itself and similarly
20 situated retailers that Defendant has breached the covenant of good faith and fair
21 dealing implied in its contract with Plaintiff; and (b) corresponding damages for that
22 breach.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff requests, on behalf of itself and the Class, that the
25 Court enter a judgment awarding the following relief:

26 a. An order certifying this action as a class action under Fed. R. Civ. P. 23,
27 defining the Class as requested herein, appointing Gibbs Law Group
28 LLP and Cohen Milstein Sellers & Toll PLLC, as Class Counsel, and
finding that Plaintiff is a proper representative of the Class requested

COHEN MILSTEIN SELLERS & TOLL PLLC

1100 New York Ave. NW, Fifth Floor

Washington, DC 20005

Telephone: (202) 408-4600

Facsimile: (202) 408-4699

afriedman@cohenmilstein.com

vnugent@cohenmilstein.com

jselesnick@cohenmilstein.com

ggraber@cohenmilstein.com

ekafka@cohenmilstein.com

kputtieva@cohenmilstein.com

Attorneys for Plaintiff and Proposed Class

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