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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE LOS ANGELES LAKERS,

Plaintiff,

v.

FEDERAL INSURANCE COMPANY,

Defendant.

Case No. 2:21-cv-02281-AB-MRW

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)

Accompanying Documents:
Notice of Motion and Motion
Proposed Order

Date: July 23, 2021
Time: 10:00 a.m.
Judge: Andre Birotte, Jr.
Courtroom: 7B

Complaint Filed: March 15, 2021

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I. INTRODUCTION[1]

Defendant Federal Insurance Company ("Federal") issued a commercial property insurance policy to Plaintiff, The Los Angeles Lakers, Inc., that provides coverage where there is "direct physical loss or damage to" Plaintiff's properties. Plaintiff contends that the policy covers economic losses it allegedly suffered because of the COVID-19 pandemic, despite the virus causing no physical changes to its properties or property anywhere else. Plaintiff's attempt to evade the policy's plain language fails as a matter of law.

Under California law, there is no direct physical loss or damage to property unless the property itself has been physically altered. The mere temporary presence of an unwanted substance on the property is not enough. Here, Plaintiff only vaguely alleges that the coronavirus may have been present at its insured properties. And Plaintiff does not assert that the virus actually changed the properties themselves in any physical way. To the contrary, Plaintiff concedes that the virus can be removed from surfaces through ordinary cleaning methods.

Since the pandemic began, this Court and nearly every one of its sister judges in the Central District of California to have addressed the arguments espoused by Plaintiff have rejected them. Those courts, like courts in other jurisdictions around the nation, have concluded that "'direct physical loss' provisions … do not cover lost business income or expenses resulting from" the coronavirus. *Baker v. Or. Mut. Ins. Co.*, 2021 WL 24841, at *2 (N.D. Cal. Jan. 4, 2021); *see, e.g.*, *Mark's Engine Co. No. 28 Rest., LLC v. Travelers Indem. Co. of Conn.*, 492 F. Supp. 3d 1051, 1054–58 (C.D. Cal. 2020) (Birotte, Jr., J.) (dismissing every claim asserted under circumstances materially indistinguishable from those here); *Sky Flowers v. Hiscox Ins. Co.*, 2021 WL 1164473, at *3 (C.D. Cal. Mar. 26, 2021) (Wright, J.) (joining "consensus" that "temporary business impairments caused by COVID-19 safety

[1] Unless otherwise specified, all quotation marks, citations, ellipses, brackets, and other alterations are omitted, and all emphases are added.

orders do not fall within the scope of coverage"); *Ba Lax, LLC v. Hartford Fire Ins. Co.*, 2021 WL 144248, at *3 (C.D. Cal. Jan. 12, 2021) (Wilson, J.) (granting motion to dismiss complaint and recognizing "numerous courts" have held "neither the presence of COVID-19 in society nor government restrictions can by themselves constitute direct physical loss or direct physical damage under California law"); *7th Inning Stretch v. Arch Ins. Co.*, 2021 WL 1153147, at *2 n.8 (D.N.J. Mar. 26, 2021) (granting Federal's motion for judgment on the pleadings against baseball team and others because, as "numerous other federal courts" have held, "the presence of a virus that harms humans but does not physically alter structures does not constitute coverable property loss or damage"). As in those other failed cases, Plaintiff's Complaint claims that the coronavirus temporarily rendered its properties unsafe, limited access to the properties, and impaired their intended use. But even if such conclusory allegations were proven, they do not establish any direct physical loss or damage to the properties. Plaintiff cannot overcome this fundamental legal defect.

The COVID-19 pandemic is extraordinary, but the contract interpretation required here is not. Under the plain language of Plaintiff's insurance policy and California authority, Federal is entitled to dismissal of the Complaint. The Court should dismiss the entire Complaint with prejudice, and enter judgment for Federal.

II. BACKGROUND

A. THE FEDERAL POLICY

Federal issued a commercial property insurance policy (the "Policy") to Plaintiff—which operates its business at the Staples Center and the UCLA Health Training Center in Los Angeles, California—for the policy period from August 1, 2019, to August 1, 2020.[2] The Policy specifies what it covers and what it does not.

[2] This Court may consider the copy of the Policy that Plaintiff attached to its Complaint, on which Plaintiff relies extensively, and which forms the basis of Plaintiff's claims. *See* Fed. R. Civ. P. 10(c) ("A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes."); *United States v. Corinthian Colls.*, 655 F.3d 984, 999 (9th Cir. 2011) (court may consider materials

Coverage is available only if Plaintiff shows that a "covered peril" caused loss or damage to its property. Policy (ECF No. 1-1) at 61. The Policy defines "covered peril" as "a peril covered by the Form(s) shown in the Property Insurance Schedule Forms … applicable to the lost or damaged property." *Id*. at 99.

The Policy provides four types of coverage relevant here: Business Income, Extra Expense, Dependent Business Premises, and Civil Authority. Each type of coverage is triggered only where there is (i) direct physical harm to property (ii) caused by or resulting from a "covered peril." *Id.* at 61, 64–65, 75.

1. Business Income, Extra Expense, and Dependent Business Premises Coverage

The Policy's Business Income and Extra Expense provision calls for Federal to pay Plaintiff for certain losses of income if Plaintiff had to suspend operations due to "direct physical loss or damage by a covered peril to property." *Id.* at 61. The provision specifically emphasizes that the "actual or potential impairment of operations must be caused by or result **from direct physical loss or damage** by a covered peril to property," or else there can be no coverage. *Id.*

The Dependent Business Premises provision similarly requires "direct physical loss or damage to property." *Id*. at 65. That provision states that Federal will pay for certain of Plaintiff's losses only if the "actual or potential impairment of operations [is] caused by or result[s] from **direct physical loss or damage** by a covered peril to property or personal property of a dependent business premises at a dependent business premises." *Id.*

The Business Income, Extra Expense, and Dependent Business Premises provisions only provide coverage during the "period of restoration." *Id.* at 61, 65. And for all those types of coverage, the definition of "period of restoration" is tied to

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attached to complaint); *Mark's Engine*, 492 F. Supp. 3d at 1055 (considering at dismissal stage policy attached to complaint in COVID-19 case). This brief cites the CM/ECF-stamped page numbers of the Policy, which is available at ECF No. 1-1.

and requires "direct physical loss or damage" to property. *Id.* For instance, the Policy specifies that, for Business Income coverage, the term "period of restoration" means "the period of time that … begins" either (i) "[i]mmediately after the time of **direct physical loss or damage** by a covered peril **to property**" or (ii) "on the date operations would have begun if the **direct physical loss or damage** had not occurred." *Id.* at 108.

2. Civil Authority Coverage

The Civil Authority provision affords coverage when governmental orders prohibit access to Plaintiff's premises, but only if a covered peril causes "damage to property" within one mile of Plaintiff's property. *Id.* at 64. Specifically, the provision states that Federal will pay for certain losses "directly caused by the prohibition of access" by a civil authority to Plaintiff's premises or a dependent business premises, but only if the "prohibition of access … [is] the direct result of **direct physical loss or damage to property** away from such premises [but] … within … one mile." *Id*. at 64, 77.

B. PLAINTIFF'S CLAIMED LOSSES

Plaintiff filed suit on March 15, 2021, asserting three claims for declaratory judgment, breach of contract, and bad faith—all alleging that Plaintiff is entitled to Business Income, Extra Expense, Dependent Business Premises, and Civil Authority coverage for certain losses it purportedly suffered during the coronavirus pandemic. Compl. (ECF No. 1) ¶¶ 112–134. The Complaint alleges that, in March 2020, the State of California, Los Angeles County, and the City of Los Angeles issued civil-authority orders "prohibit[ing] [Plaintiff] from hosting fans" at the Staples Center and "restricting use of the UCLA Health Training Center." *See id.* ¶¶ 18, 61, 76, 94. And while Plaintiff contends that the orders limited public access, it does not allege that any civil authority prohibited all access to the Staples Center or the UCLA Health Training Center. *See id.*

The Complaint also asserts the legal conclusion that Plaintiff "[h]a[s]

[s]uffered [d]irect [p]hysical [l]oss or [d]amage" to "[its] [p]roperty" because "[t]he presence of the coronavirus" at the Staples Center and the UCLA Health Training Center "damaged" or "physically altered the property" and Plaintiff is "unable to use the[] property for its intended purpose." *Id.* ¶¶ 59–61, 95–96. But the Complaint makes only conclusory allegations that a handful of NBA players who played games at the Staples Center or trained at the UCLA Health Training Center "during the first eleven days of March 2020" tested positive for the virus thereafter, and that the virus "physically altered" the properties by "infiltrating [them] … , dispersing through the air, and affixing to fixtures." *Id.* ¶¶ 59–60, 93–96. Plaintiff does not allege any facts supporting when or how the virus was actually present on the properties, or that the virus itself caused any physical changes to the properties. *See id.* Instead, the Complaint acknowledges that, even if the virus were present, any contamination could be "ma[d]e … safe" through "disinfection and infectious disease prevention," "air filters," "numerous hand sanitizing stations," "touchless plumbing fixtures," and "ultraviolet cleaning," among other means. *Id.* ¶¶ 61–63, 65, 101–102.

The Complaint additionally alleges the legal conclusion that the civil-authority orders were issued because "the coronavirus had already begun causing significant damage to property in Los Angeles, including within one mile of the Staples Center." *Id.* ¶ 89. The Complaint does not assert, however, whether or how any other property supposedly suffered from any tangible, physical changes due to the virus. *See id.* Plaintiff cites a civil-authority order from the City of Los Angeles that purports to recognize that COVID-19 "is physically causing property loss or damage due to its tendency to attach to surfaces for prolonged periods of time." *Id.* ¶ 72 (emphasis omitted). But this order is not evidence that the virus caused tangible, physical changes to Plaintiff's properties or to any other specific property within one mile thereof.

Finally, the Complaint contends that Federal "denied coverage wrongfully and in bad faith." *Id.* ¶ 24; *see also id.* ¶¶ 127–134. Plaintiff acknowledges, however,

that Federal's letter denying its request for coverage detailed Federal's bases for denying Plaintiff's claim. *Id*. ¶¶ 106–107.

III. LEGAL STANDARD

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of a plaintiff's claims. *See Ileto v. Glock, Inc.*, 349 F.3d 1191, 1199–1200 (9th Cir. 2003). To survive a motion to dismiss, the complaint "must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A complaint cannot avoid dismissal if it merely "tenders naked assertions devoid of further factual enhancement." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007). Courts thus need not accept "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008). Nor should courts credit allegations that contradict materials subject to judicial notice or incorporated into the complaint. *See Gonzalez v. Planned Parenthood of L.A.*, 759 F.3d 1112, 1115 (9th Cir. 2014).

Under California law, the interpretation of an insurance contract is a question of law for a court to decide.[3] *Waller v. Truck Ins. Exch., Inc.*, 11 Cal. 4th 1, 18 (1995). A policy's terms must be given their "ordinary and popular" meaning; if the policy language is "clear and explicit, it governs" and must be enforced in accordance with its terms. *Palmer v. Truck Ins. Exch.*, 21 Cal. 4th 1109, 1115 (1999); *see also* Cal.

[3] California law applies to the substantive issues in this case. *See, e.g.*, Cal. Civ. Code § 1646 ("A contract is to be interpreted according to the law and usage of the place where it is to be performed; or, if it does not indicate a place of performance, according to the law and usage of the place where it is made."); *Stanford Univ. Hosp. v. Fed. Ins. Co.*, 174 F.3d 1077, 1083 (9th Cir. 1999) (applying California law "to resolve issues of state contract law" because insured property was located in California); *Axis Reins. Co. v. Telekenex, Inc.*, 913 F. Supp. 2d 793, 805 (N.D. Cal. 2012) (similar). And in applying California law, "where there is no convincing evidence that the state supreme court would decide differently," this Court is "obligated to follow the decisions of the state's intermediate appellate courts." *Perez v. Mortg. Elec. Registration Sys., Inc.*, 959 F.3d 334, 338 (9th Cir. 2020).

Civ. Code § 1638 ("The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity."); *Ward Gen. Ins. Servs., Inc. v. Emps. Fire Ins. Co.*, 114 Cal. App. 4th 548, 552 (2003) (court must give effect to "the mutual intention of the parties" as expressed in "the written provisions of the contract"). Additionally, "[t]he language of a contract ... [is not] made ambiguous simply because the parties urge different interpretations." *Int'l Bhd. of Teamsters v. NASA Servs., Inc.*, 957 F.3d 1038, 1044 (9th Cir. 2020) (applying California law). Courts likewise "may not, under the guise of strict construction, rewrite a policy to bind the insurer to a risk that it did not contemplate and for which it has not been paid." *Safeco Ins. Co. v. Gilstrap*, 141 Cal. App. 3d 524, 533 (1983).

As the insured, Plaintiff bears the burden of pleading and later proving that it is entitled to coverage. *See Olympic Club v. Those Interested Underwriters at Lloyd's London*, 991 F.2d 497, 502 (9th Cir. 1993). Yet, as explained below, even if the well-pleaded factual allegations in the Complaint are taken as true, Plaintiff is not entitled to coverage as a matter of law.

IV. ARGUMENT

A. PLAINTIFF'S BUSINESS INCOME, EXTRA EXPENSE, AND DEPENDENT BUSINESS PREMISES CLAIMS FAIL BECAUSE PLAINTIFF DOES NOT ALLEGE DIRECT PHYSICAL LOSS OR DAMAGE TO ITS PROPERTIES

Plaintiff suggests that because the Policy is denominated an "all risks" policy, it must cover all losses unless they are specifically excluded. Compl. (ECF No. 1) ¶¶ 6, 14, 47. But an "all risk" policy is not an "all loss" policy. *See, e.g.*, *MRI Healthcare Ctr. of Glendale, Inc. v. State Farm Gen. Ins. Co.*, 187 Cal. App. 4th 766, 784 (2010) ("all risk" policy must be enforced according to its terms or it "would become an 'all loss' policy"). Thus, a court must ask which losses the policy's plain language actually covers. And the Policy here provides Business Income, Extra Expense, and Dependent Business Premises coverage only when there is direct physical loss or damage to the insured properties. Policy (ECF No. 1-1) at 61, 65,

77. Yet Plaintiff does not allege any such direct physical loss or damage.

Plaintiff merely offers non-specific conclusory allegations based on an apparent assumption that the coronavirus may have been present at the Staples Center and the UCLA Health Training Center. California courts—including this Court and nearly all its sister courts to have considered the issue in this District—have held that such allegations are insufficient as a matter of California law, and dismissed analogous coronavirus-related insurance claims on the pleadings for precisely that reason, whether the insured alleged the virus was present or not. *See, e.g.*, *Mark's Engine*, 492 F. Supp. 3d at 1056–57 (granting motion to dismiss insured's COVID-19–related claims where nothing in complaint "plausibly support[ed] an inference that the virus physically altered [the insured's] property"); *Ba Lax*, 2021 WL 144248, at *4 (same, because insureds failed to allege any "distinct, demonstrable, physical alteration, or permanent dispossession of property, at [their] premises, at contiguous locations, or in the immediate area"); *Tralom, Inc. v. Beazley USA Servs., Inc.*, 2020 WL 8620224, at *5 (C.D. Cal. Dec. 29, 2020) (Walter, J.) (holding insured's "wholly conclusory allegations" about presence of virus on surfaces were insufficient to establish direct physical loss because "nothing in the [Complaint] supports a reasonable inference that the virus physically altered its property"); *Out W. Rest. Grp. Inc. v. Affiliated FM Ins. Co.*, 2021 WL 1056627, at *4 (N.D. Cal. Mar. 19, 2021) (dismissing insured's complaint even though it alleged presence of virus because "the virus fails to cause physical alteration of property" and "temporary loss of use of property (if any) during a pandemic and while government orders are in effect does not qualify as physical loss or damage"); *Jonathan Oheb MD, Inc. v. Travelers Cas. Ins. Co. of Am.*, 2020 WL 7769880, at *3–4 (C.D. Cal. Dec. 30, 2020) (Holcomb, J.) (concluding that a "temporary limitation on the use of property" was insufficient to establish direct physical loss or damage).[4]

[4] Indeed, to date, at least 50 California-law decisions have rejected Plaintiff's coverage arguments. *See also, e.g.*, *Rialto Pockets, Inc. v. Certain Underwriters At*

Lloyd's, Including Beazley Furlonge Ltd., 2021 WL 267850, at *1–2 (C.D. Cal. Jan. 7, 2021) (Fischer, J.) (no "physical loss or damage" to property because even though insureds alleged they were "prevented from using [the] property for its normal purpose," there was no allegation of "*physical* loss"); *10E, LLC v. Travelers Indem. Co. of Conn.*, 483 F. Supp. 3d 828, 836 (C.D. Cal. 2020) (Wilson, J.) ("An insured cannot recover by attempting to artfully plead temporary impairment to economically valuable use of property as physical loss or damage."); *Travelers Cas. Ins. Co. of Am. v. Geragos & Geragos*, 2020 WL 6156584, at *4–5 (C.D. Cal. Oct. 19, 2020) (Gutierrez, J.) (similar); *W. Coast Hotel Mgmt., LLC v. Berkshire Hathaway Guard Ins. Cos.*, 2020 WL 6440037, at *4 (C.D. Cal. Oct. 27, 2020) (Phillips, J.) (conclusory allegations that insured's property suffered physical damage "as a result of the physical nature of COVID-19" insufficient to establish coverage); *Long Aff. Carpet & Rug, Inc. v. Liberty Mut. Ins. Co.*, 2020 WL 6865774, at *2–3 (C.D. Cal. Nov. 12, 2020) (Carney, J.) (no direct physical loss because plaintiff could regain use of property); *Selane Prods., Inc. v. Cont'l Cas. Co.*, 2020 WL 7253378, at *5–6 (C.D. Cal. Nov. 24, 2020) (Scarsi, J.) (agreeing with other California decisions that bare allegations of "direct physical loss" do not establish coverage); *Geragos & Geragos Engine Co. No. 28, LLC v. Hartford Fire Ins. Co.*, 2020 WL 7350413, at *3 (C.D. Cal. Dec. 3, 2020) (Wu, J.) ("COVID-related restrictions on commercial activity and individuals' activities do not constitute 'direct physical loss' or 'physical damage' to property" under California law); *Posh Cafe Inc. v. AmGuard Ins. Co.*, 2020 WL 8184062, at *2 (C.D. Cal. Dec. 21, 2020) (Olguin, J.) (inability to use property does not constitute direct physical loss); *Protégé Rest. Partners LLC v. Sentinel Ins. Co.*, 2021 WL 428653, at *4 (N.D. Cal. Feb. 8, 2021) ("Every California court that has addressed COVID-19 business-interruption claims to date has concluded that government orders that prevent full use of a commercial property or that make the business less profitable do not themselves cause or constitute 'direct physical loss of or physical damage to' the insured property."); *Palmdale Ests., Inc. v. Blackboard Ins. Co.*, 2021 WL 25048, at *3 (N.D. Cal. Jan. 4, 2021) (no direct physical loss where plaintiff alleged virus caused "venue to become dangerous, unsafe, and unusable"). At the same time, Federal is aware of only three California courts denying a motion to dismiss in a COVID-19–related insurance-coverage case. The first two were decided at the outset of the pandemic, and either (i) did not address the meaning of "direct physical loss," *Best Rest Motel Inc. v. Sequoia Ins. Co.*, 2020 WL 7229856, at *1 (Cal. Super. Sept. 20, 2020) (stating only that "[t]here are questions outside the complaint whether there is insurance coverage under this policy"); or (ii) did not involve the same coverage as Plaintiff is seeking here, *see Baldwin Acad., Inc. v. Markel Ins. Co.*, 2020 WL 7488945, at *1 (S.D. Cal. Dec. 21, 2020) (denying motion to dismiss where plaintiffs "d[id] not claim coverage under a traditional Business Income provision or Civil Authority provision" but rather a

Using the same reasoning, this Court should dismiss Plaintiff's claims on the pleadings. Plaintiff does not allege that the coronavirus was present on its properties, let alone that the virus tangibly altered those properties in any way. Even if Plaintiff had alleged the virus was present, moreover, the mere presence of the virus would be insufficient to constitute direct physical loss or damage to property under California law. And, contrary to Plaintiff's suggestion, the absence of an explicit virus exclusion in its Policy cannot create coverage as a matter of law.

1. Plaintiff Alleges No Physical Change to its Properties

The overwhelming authority supporting dismissal of Plaintiff's allegations follows inescapably from well-established California law holding that physical loss or damage requires an "actual change" in the insured property "occasioned by accident or other fortuitous event directly upon the property causing it to become unsatisfactory for future use or requiring that repairs be made to make it so." *MRI Healthcare*, 187 Cal. App. 4th at 779 (lost use of machine after power outage did not qualify as "direct physical loss" because there was no "actual change" to property). Because the words "direct physical" modify "loss" and "damage," both "direct physical loss" and "direct physical damage" require an external force to cause a "distinct, demonstrable, physical alteration" of the property. *Id.* at 779–80. In other words, the property itself must have been damaged. Alleged losses that are intangible or incorporeal do not suffice. *Ward*, 114 Cal. App. 4th at 555–56. Thus, California law makes clear that there is no coverage where the insured merely alleges a "detrimental economic impact unaccompanied by a distinct, demonstrable, physical

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"Communicable Disease Endorsement"). And in the third case, the court denied the insurer's motion to dismiss in part on the theory that "it is plausible that 'direct physical loss of' property includes physical dispossession." *Kingray Inc. v. Farmers Grp. Inc.*, 2021 WL 837622, at *8 (C.D. Cal. Mar. 4, 2021). Here, by contrast, Plaintiff's Policy provides coverage only for "direct physical loss or damage … *to* property." Policy (ECF No. 1-1) at 61. And every other court in this District that has addressed the issue has held that temporary dispossession of property does not trigger coverage. *See infra* at 14–16.

alteration" of the insured property itself. *Simon Mktg., Inc. v. Gulf Ins. Co.*, 149 Cal. App. 4th 616, 623 (2007).

In addition to its use of the term "direct physical loss or damage," other aspects of Plaintiff's Policy confirm that the insured properties must tangibly change from the fortuitous event for there to be coverage. For instance, the Policy provides Business Income, Extra Expense, and Dependent Business Premises coverage for Plaintiff's operations only during the "period of restoration," which begins "immediately after the time of direct physical loss or damage" or "on the date operations would have begun if the direct physical loss or damage had not occurred," and continues during the time required to "repair or replace the property," including where the repairs or replacement "require[] the tearing down of parts of any property not damaged." Policy (ECF No. 1-1) at 108. The Policy's reference to "direct physical loss or damage" and "repair or replace" is no accident; that language connotes physical harm because coverage is triggered only if a fortuitous event causes an actual, physical change in the insured property itself. *See, e.g.*, *Mudpie, Inc. v. Travelers Cas. Ins. Co. of Am.*, 487 F. Supp. 3d 834, 840 (N.D. Cal. 2020) (construing "direct physical loss or damage" to require actual changes in property, because the words "'[r]ebuild,' 'repair[,]' and 'replace,' all strongly suggest that the damage contemplated by the Policy is physical in nature"); *W. Coast Hotel Mgmt.*, 2020 WL 6440037, at *3 (similar); *Tralom*, 2020 WL 8620224, at *3 (same); *Baker*, 2021 WL 24841, at *3 (same); *Kevin Barry Fine Art Assocs. v. Sentinel Ins. Co.*, 2021 WL 141180, at *5 (N.D. Cal. Jan. 13, 2021) (same); *Wellness Eatery La Jolla LLC v. Hanover Ins. Grp.*, 2021 WL 389215, at *6 (S.D. Cal. Feb. 3, 2021) (same); *Daneli Shoe Co. v. Valley Forge Ins. Co.*, 2021 WL 1112710, at *4 (S.D. Cal. Mar. 17, 2021) (same).

Plaintiff's claims fail because it nowhere pleads any actual change from the COVID-19 pandemic to the insured properties themselves. The Complaint includes the conclusory assertion that the pandemic "caused physical loss or damage to [the

insured] properties by physically altering their condition." Compl. (ECF No. 1) ¶¶ 3, 61. But pleading "the bare elements [of a] claim without sufficient supporting facts" will not sustain a claim for relief. *GCIU-Emp. Ret. Fund v. Quad/Graphics, Inc.*, 2016 WL 1118208, at *5 (C.D. Cal. Mar. 22, 2016). And, just as in other cases dismissed on the pleadings, Plaintiff's Complaint contains only "fatally conclusory allegations" and "does not allege actual cases of direct physical loss of or damage to property." *10E*, 483 F. Supp. 3d at 837; *see also, e.g.*, *Tralom*, 2020 WL 8620224, at *5 ("wholly conclusory allegations" that COVID-19 caused physical damage did not establish direct physical loss or damage to insured's property); *W. Coast Hotel Mgmt.*, 2020 WL 6440037, at *4 ("generic statements regarding the physical nature of COVID-19" not enough to trigger coverage).

2. The Alleged "Presence" of Coronavirus Is Insufficient

As the legion of cases dismissing coronavirus-related insurance-coverage claims have correctly held, Plaintiff cannot sustain a claim by suggesting that the virus may have been present at its properties. *See* Compl. (ECF No. 1) ¶¶ 3, 8, 17, 60–63, 77–78, 89, 93, 95–96.

To start, Plaintiff does not plead whether or how the virus was supposedly present at its properties. Plaintiff alleges only that a handful of players who played games or trained at the insured properties at various times in the beginning of March 2020 later tested positive for COVID-19, and so the virus must have been present on the insured properties at some point. *Id.* ¶¶ 59, 80–84, 93. Plaintiff's allegations, however, consist only of speculation about how the players were infected, and do not establish that the virus itself was ever present on the properties. *See, e.g.*, Order 11, *United Talent Agency v. Vigilant Ins. Co.*, No. 20STCV43745 (Cal. Super. Mar. 18, 2021) ("[c]overage should not arise based upon speculation" that virus was present on property after insured's employees tested positive because "perhaps the employees became infected elsewhere, or their spouses or dependents were the ones who infected the employees"); *Out W.*, 2021 WL 1056627, at *2–4 (dismissing

complaint alleging that COVID-19 caused employees to test positive after being on property for similar reasons). Moreover, the positive tests could not possibly have been the cause of Plaintiff's supposed losses here, because as Plaintiff concedes, civil-authority orders and NBA league decisions limiting its use of the properties were already in place by the time of the alleged positive tests. *See, e.g.*, *Another Planet Ent., LLC v. Vigilant Ins. Co.*, 2021 WL 774141, at *2 (N.D. Cal. Feb. 25, 2021) (dismissing insured's COVID-19–related complaint because insured's "facilities would have remained shut regardless of whether the virus was present"); *Pappy's Barber Shops, Inc. v. Farmers Grp., Inc.*, 490 F. Supp. 3d 738, 740 (S.D. Cal. 2020) (even assuming presence of virus or infected individuals constituted direct physical loss or damage, "they were not the cause of the business income losses for which [the insureds] seek coverage"); *Tralom*, 2020 WL 8620224, at *6 (similar).

In any event, the mere "presence" of a substance such as a virus does not constitute direct physical loss or damage to a property, as a bevy of courts applying California law have held. *See, e.g.*, *Pappy's Barber Shops*, 491 F. Supp. 3d at 740 ("[T]he presence of the virus itself, or of individuals infected the virus, at Plaintiffs' business premises or elsewhere do not constitute direct physical losses of or damage to property."); *Tralom*, 2020 WL 8620224, at *5 ("no physical loss of or damage to property" even if virus present because "virus can be eliminated by cleaning the surface of property"); Order 10–11, *United Talent Agency v. Vigilant Ins. Co.*, No. 20STCV43745 (Cal. Super. Mar. 18, 2021) (conclusory allegations "that SARS-CoV-2 was present on … insured premises" and employees tested positive for virus insufficient because "[c]overage should not arise based upon speculation"); *Wellness Eatery*, 2021 WL 389215, at *7 (insured's "bare assertions and mere conclusory statements" about presence of virus on surfaces and objects in insured property insufficient to show physical damage because "the virus harms human beings, not property"); *Out W.*, 2021 WL 1056627, at *5 (mere presence of virus insufficient to establish direct physical loss because cleaning resolves issue if there is "a positive

test or positive exposure to COVID-19"); *O'Brien Sales & Mktg., Inc. v. Transp. Ins. Co.*, 2021 WL 105772, at *4 (N.D. Cal. Jan. 12, 2021) (even where virus present, it does not physically change property because "contaminated surfaces can be disinfected and cleaned"); *Mortar & Pestle Corp. v. Atain Specialty Ins. Co.*, 2020 WL 7495180, at *4 (N.D. Cal. Dec. 21, 2020) (similar); *Barbizon Sch. of S.F., Inc. v. Sentinel Ins. Co.*, 2021 WL 1222161, at *9 (N.D. Cal. Mar. 31, 2021) (same). And Plaintiff nowhere explains how the virus, even if present, physically altered the insured properties themselves. *See, e.g.*, *Protégé*, 2021 WL 428653, at *4 ("Even if Plaintiff had known of a specific instance of COVID-19 particles inside of its business, evidence of such would still not qualify as a 'physical change' to the property."); *Karen Trinh, DDS, Inc. v. State Farm Gen. Ins. Co.*, 2020 WL 7696080, at *5 (N.D. Cal. Dec. 28, 2020) (similar); *Kevin Barry*, 2021 WL 141180, at *6 (same); *Daneli Shoe*, 2021 WL 1112710, at *3 (insured's theory that COVID-19 causes damage to property by infecting surfaces "does not comport with California's legal definition of 'physical loss or damage'").

Plaintiff's allegations that the coronavirus's possible presence rendered "the air" in its businesses "unsafe," required "the reconfiguration of physical space," necessitated the installation of air filtration and other systems, and diminished the functional use of its properties do not suffice either. *See* Compl. (ECF No. 1) ¶¶ 3, 56, 58, 60, 62–63, 95. As a threshold matter, "air" and "space" are not even a part of the insured premises. *See, e.g.*, Policy (ECF No. 1-1) at 112–13 (defining "Property" as "building; personal property; personal property of employees; electronic data processing property; valuable papers; fine arts; or research and development property," none of which are defined to include "air"); *id*. at 97 (explicitly excluding "air, either inside or outside of a structure," from definition of "Building").

Regardless, it is well established that the mere inability to use an insured property, as opposed to an actual permanent dispossession of it, does not constitute direct physical loss or damage. *See, e.g.*, *Palmdale*, 2021 WL 25048, at *3

("allegedly 'unsafe' condition does not plausibly plead a 'direct physical loss of or damage to property'" because "[i]t is conclusory and does not approximate (for example) a loss of functionality resulting from infection"); *Baker*, 2021 WL 1145882, at *1 (allegations that "'hazardous human respiratory droplets' damaged the property and 'posed an immediate danger to any person(s) physically present on the premises'" did not "plausibly plead direct physical loss"); *10E*, 483 F. Supp. 3d at 836 ("temporary impairment to economically valuable use of property" not enough to show physical loss or damage); *Long Aff. Carpet & Rug*, 2020 WL 6865774, at *3 (no direct physical loss where plaintiff could regain use of its insured property); *Posh Cafe*, 2020 WL 8184062, at *2 (inability to use property does not constitute direct physical loss). And Plaintiff (i) agrees that property contaminated by the virus can be "ma[d]e [] safe" through "protocols for air circulation, disinfection, and disease prevention," and (ii) acknowledges that the virus, whether in the air or on surfaces, eventually deactivates even if left untreated. Compl. (ECF No. 1) ¶¶ 2–3, 55, 61–63. Plaintiff's failure to plead facts demonstrating that the virus cannot be easily removed or deactivated precludes the argument that Plaintiff's property itself suffered any tangible, physical change requiring repair or replacement of the property. *See, e.g.*, *Tralom*, 2020 WL 8620224, at *5 ("[T]here is no physical loss of or damage to property where the virus can be eliminated by cleaning the surface of property."); *Daneli Shoe*, 2021 WL 1112710, at *3 (dismissing insured's complaint alleging virus could remain on surfaces for number of days, because "at most, [the insured] would 'lose' its property" temporarily, which does not qualify as permanent dispossession); *Rococo Steak, LLC v. Aspen Specialty Ins. Co.*, 2021 WL 268478, at *4 (M.D. Fla. Jan. 27, 2021) ("surfaces allegedly contaminated by COVID-19 seem to only require cleaning to fix" and so there is no physical loss or damage to property); *Uncork & Create LLC v. Cincinnati Ins. Co.*, 2020 WL 6436948, at *5 (S.D. W. Va. Nov. 2, 2020) ("even when present, COVID-19 does not threaten the inanimate structures covered by property insurance policies, and its presence on surfaces can be

eliminated with disinfectant"). Plaintiff thus does not and cannot plead any physical loss or damage to its insured properties.

3. The Absence of A Virus Exclusion Does Not Change the Analysis

Faced with the overwhelming authority rejecting coverage in materially identical circumstances, Plaintiff retreats to an illogical argument that the absence of a virus exclusion in its Policy somehow proves that it is entitled to coverage. Compl. (ECF No. 1) ¶¶ 6, 14, 43–47. That theory is contrary to basic principles of insurance, and numerous courts have rejected it.

Plaintiff's argument is flawed from the start because it relies on evidence outside the Policy's four corners. The Policy is unambiguous and, under California law, an unambiguous insurance policy must be interpreted solely based on its plain, written terms. *E.g.*, *Palmer*, 21 Cal. 4th at 1115 ("If the policy language is clear and explicit, it governs."); *Bank of the W. v. Super. Ct.*, 2 Cal. 4th 1254, 1264 (1992) (similar).

Plaintiff's argument is also illogical. According to Plaintiff, some commercial property insurance policies contain virus exclusions, but its Policy does not, so there must be coverage under the Policy for any and all virus-related losses. Compl. (ECF No. 1) ¶¶ 6, 14, 43–47. But that argument conflates two separate questions—first, whether there is coverage, and second, *if so*, whether coverage is excluded by some other provision. *See, e.g.*, *Sony Comp. Ent. Am. Inc. v. Am. Home Assurance Co.*, 532 F.3d 1007, 1017 (9th Cir. 2008) (exclusion "cannot establish coverage that does not exist under the affirmative coverage provisions"). Plaintiff's argument thus reflects a basic misunderstanding about how insurance policies work.

For this very reason, a long line of federal courts have rebuffed similar arguments in the COVID-19 context. For example, in *Café La Trova LLC v. Aspen Specialty Insurance Co.*, 2021 WL 602585 (S.D. Fla. Feb. 16, 2021), the insured argued that its COVID-19–related losses must be covered because its "[p]olicy does not contain a virus exclusion," whereas other insurance policies do. *Id.* at *6 n.7.

But the court rejected that argument, emphasizing that under basic insurance principles "exclusionary provisions plainly cannot be used to establish coverage in the first instance." *Id.*; *see also, e.g.*, *Water Sports Kauai, Inc. v. Fireman's Fund Ins. Co.*, 2020 WL 6562332, at *6 n.4 (N.D. Cal. Nov. 9, 2020) (in case with no virus exclusion, following decisions involving exclusion because the "courts' initial coverage determinations are persuasive" and apply equally to the direct physical loss or damage language in the exclusion-less case); *El Novillo Rest. v. Certain Underwriters at Lloyd's, London*, 2020 WL 7251362, at *4 (S.D. Fla. Dec. 7, 2020) ("[p]laintiffs' reliance on the Policies' exclusionary provisions must be rejected as a means to establish coverage"); *Prime Time Sports Grill, Inc. v. DTW 1991 Underwriting Ltd.*, 2020 WL 7398646, at *2 (M.D. Fla. Dec. 17, 2020) (similar); *Skillets, LLC v. Colony Ins. Co.*, 2021 WL 926211, at *6 (E.D. Va. Mar. 10, 2021) (same); *Kamakura, LLC v. Greater N.Y. Mut. Ins. Co.*, 2021 WL 1171630, at *8 (D. Mass. Mar. 9, 2021) (rejecting argument because the "absence of an express exclusion does not … create coverage"); *4431, Inc. v. Cincinnati Ins. Cos.*, 2020 WL 7075318, at *9 n.18 (E.D. Pa. Dec. 3, 2020) (similar); *Sandy Point Dental, PC v. Cincinnati Ins. Co.*, 488 F. Supp. 3d 690, 694 n.3 (N.D. Ill. 2020) (same); *Promotional Headwear Int'l v. Cincinnati Ins. Co.*, 2020 WL 7078735, at *7 n.61 (D. Kan. Dec. 3, 2020) (same); *Bel Air Auto Auction, Inc. v. Great N. Ins. Co.*, 2021 WL 1400891, at *10 (D. Md. Apr. 14, 2021) (insured's argument based on absence of exclusion in policy issued by Federal affiliate "without merit" because "an exclusion cannot grant coverage" and "[o]mission of an exclusion does not alter the plain language of the provisions," which "do not provide coverage for a loss of use unrelated to physical, structural, tangible, damage to property").

The analysis would remain the same, moreover, even if the coverage provisions and virus exclusion could be considered together to determine what "direct physical loss or damage to property" means. Plaintiff points to no language in any virus exclusion that would alter the meaning of that phrase. At best for

Plaintiff, the existence of virus exclusions suggests that some viruses might cause direct physical loss or damage to certain types of property.[5] It does not and cannot mean, however, that all virus-related losses are automatically covered under all business-interruption policies. That would read the phrase "direct physical loss or damage to property" out of the Policy—a result that well-settled insurance principles preclude.

B. PLAINTIFF'S CIVIL AUTHORITY CLAIM FAILS BECAUSE PLAINTIFF DOES NOT ALLEGE THAT ANY CIVIL AUTHORITY PROHIBITED ACCESS DUE TO PHYSICAL DAMAGE TO PROPERTY

Like Business Income, Extra Expense, and Dependent Business Premises coverage, Civil Authority coverage applies only if there is physical harm to some property away from the insured premises, which Plaintiff does not plead. Nor has Plaintiff alleged that any civil-authority order actually prohibited access to its properties. Accordingly, Plaintiff's assertion of Civil Authority coverage fails, too.

1. Plaintiff Does Not Allege That Access Was Prohibited Because of Offsite Property Damage Within One Mile of Its Premises

Under the Policy's Civil Authority provision, coverage arises only where the action of a civil authority "prohibit[s] … access" to the insured properties due to damage to property within one mile thereof. Policy (ECF No. 1-1) at 64–65. That is, the "prohibition of access by a civil authority must be the direct result of direct physical loss or damage to property" within one mile of the insured properties. *Id.* at 64. But, as Plaintiff itself alleges, the orders cited by Plaintiff were issued "to control the spread of COVID-19"—not because of any property damage. Compl. (ECF No.

[5] *See, e.g.*, *Curtis O. Griess & Sons, Inc. v. Farm Bureau Ins. Co. of Neb.*, 528 N.W.2d 329, 331–33 (Neb. 1995) (coverage where tornado carried virus to policyholder's insured swine); *see also Franklin EWC, Inc. v. Hartford Fin. Servs. Grp., Inc.*, 2020 WL 7342687, at *8 (N.D. Cal. Dec. 14, 2020) (*Curtis* supports rejecting insureds' "assertion that a virus could never be caused directly or indirectly by any of the specified causes of loss").

1) ¶ 69. And, just as Plaintiff fails to allege direct physical loss or damage to its own properties, nowhere does Plaintiff allege that the authorities' orders resulted from any tangible damage to property elsewhere. Accordingly, no coverage exists under the Policy's Civil Authority provision as a matter of law. *See Roundin3rd Sports Bar LLC v. Hartford*, 2021 WL 647379, at *7 (C.D. Cal. Jan. 14, 2021) (prophylactic orders "implemented to prevent the spread of COVID-19" did not trigger civil-authority coverage); *Tralom*, 2020 WL 8620224, at *6 ("Government Orders were issued to enforce social distancing and for the prevention of the spread of disease and not because of the physical alteration of property"); *Another Planet*, 2021 WL 774141, at *1 (no civil-authority coverage because "[t]he closure orders were clearly passed in response to the virus in the community at large, not in specific response to the presence of the virus at properties within a mile of [the insured's] facilities"); *O'Brien*, 2021 WL 105772, at *5 (California orders issued to "stop the spread of COVID-19 and not as a result of any physical loss of or damage to property"); *Kevin Barry*, 2021 WL 141180, at *6 ("Stay-at-Home Orders were issued to prevent the spread of COVID-19 to *people*"); *Mayssami Diamond, Inc. v. Travelers Cas. Ins. Co. of Am.*, 2021 WL 1226447, at *5 (S.D. Cal. Mar. 30, 2021) (dismissing claim for civil-authority coverage consistent with "many courts routinely rejecting Civil Authority claims that fail to plausibly connect the Closure Order in question to loss or damage in the vicinity of the covered property"); *Westside Head & Neck v. Hartford Fin. Servs. Grp., Inc.*, 2021 WL 1060230, at *7 (C.D. Cal. Mar. 19, 2021) ("Los Angeles order does not identify any specific property in Plaintiff's immediate area that experienced a risk of direct physical loss or damage"); *Barbizon*, 2021 WL 1222161, at *10 (allegations that nearby property suffered damage based on "pervasive presence of the virus SARS-Cov-2 in the cities where the Insured Locations are located" too general and speculative to trigger civil-authority coverage).

To be sure, a Los Angeles order cited by Plaintiff offers the bare statement that the virus "is physically causing property loss or damage." Compl. (ECF No. 1) ¶¶ 23, 72 (emphasis omitted). But, as several courts adjudicating COVID-19–related insurance-coverage claims have already recognized, this statement does not change the analysis. Like Plaintiff's own naked allegations, the order merely provides an unsubstantiated legal conclusion to which this Court need not and should not defer. *See, e.g.*, *W. Coast Hotel Mgmt.*, 2020 WL 6440037, at *4 ("generic descriptions of the Executive Orders" fail to provide "sufficient non-conclusory allegations to state a plausible claim"). Rather, it is the well-settled principles of California law, interpreting the policy provisions at issue, that control here. *See, e.g.*, *id.* (rejecting reliance on California order's assertion of property damage for this reason); *Baker*, 2021 WL 24841, at *2 (same); Order 11, *United Talent Agency v. Vigilant Ins. Co.*, No. 20STCV43745 (Cal. Super. Mar. 18, 2021) (Mayor Garcetti order's assertion of property damage "does not establish such physical damage to or loss to property for purposes of insurance coverage"); *Wellness Eatery*, 2021 WL 389215, at *8 (similar); *Island Hotel Props., Inc. v. Fireman's Fund Ins. Co.*, 2021 WL 117898, at *3 (S.D. Fla. Jan. 11, 2021) (same, Florida orders); *Digital Age Mktg. Grp., Inc. v. Sentinel Ins. Co.*, 2021 WL 80535, at *5 (S.D. Fla. Jan. 8, 2021) (same); *Promotional Headwear*, 2020 WL 7078735, at *7 n.66 (same, Kansas order).

In any event, the civil-authority order does not assert that the coronavirus caused any actual, tangible change in any property. To the contrary, the order claims that there is "property damage" solely because of the virus's supposed "tendency to attach to surfaces," Compl. (ECF No. 1) ¶¶ 23, 72 (emphasis omitted), which, as explained, does not suffice to establish direct physical loss or damage to property as a matter of law, *see supra* at 12–16, 19.

2. Plaintiff Does Not—and Cannot—Allege That the Civil-Authority Orders Prohibited Access to Its Properties

Plaintiff's Civil Authority claim also fails for the separate reason that Plaintiff does not plead that any civil-authority orders prohibited access to the Staples Center or the UCLA Health Training Center. Civil Authority coverage is triggered only if an action of a civil authority imposes a "prohibition of access" to the insured premises. Policy (ECF No. 1-1) at 64. But no civil-authority order ever prohibited access to the Staples Center or the UCLA Health Training Center. Plaintiff alleges only that the orders limited public and some employee access, effectively acknowledging that other employees, staff, contractors, and personnel could still access the properties. *See, e.g.*, Compl. (ECF No. 1) ¶¶ 3, 18, 61 (asserting only that Staples Center was "closed to the public" and that Plaintiff was barred from "hosting fans"). Plaintiff thus does not plead the "prohibition of access" required for coverage here. And for this additional reason, Plaintiff's Civil Authority claim fails as a matter of law. *See, e.g.*, *Wellness Eatery*, 2021 WL 389215, at *7 (orders hindering access without completely barring access do not trigger civil-authority coverage); *Oheb*, 2020 WL 7769880, at *4 (no civil-authority coverage because civil-authority orders "did not prevent *all* access"); *Pappy's Barber Shops*, 487 F. Supp. 3d at 945 (allegations that insureds were "prohibited from operating their businesses at their premises" insufficient because they did not show all access was prohibited); *Protégé*, 2021 WL 428653, at *6 ("access was not 'prohibited' where [insured] was still able to enter the premises, even though the order prevented customers from entering"); *Barbizon*, 2021 WL 1222161, at *9 (no civil-authority coverage where plaintiff prohibited from using its property but could still access the property).

C. PLAINTIFF CANNOT SATISFY THE REQUIREMENTS FOR ITS BAD-FAITH CLAIM BECAUSE THERE IS NO COVERAGE AND FEDERAL'S DENIAL OF COVERAGE WAS REASONABLE

Because Plaintiff cannot establish it is entitled to coverage, Plaintiff cannot

maintain its claim for bad faith. To establish a breach of the implied covenant of good faith and fair dealing, an insured must show both that (1) "benefits due under the policy must have been withheld," and (2) "the reason for withholding benefits must have been unreasonable or without proper cause." *Love v. Fire Ins. Exch.*, 221 Cal. App. 3d 1136, 1151 (1990). Plaintiff cannot meet either requirement.

To begin, Plaintiff cannot establish that Federal withheld benefits due under the Policy because Plaintiff cannot establish that it was due any insurance coverage. California law holds that without any predicate coverage, there can be no liability for bad faith. *See Everett v. State Farm Gen. Ins. Co.*, 162 Cal. App. 4th 649, 663 (2008) ("Because there was no breach of contract, there was no breach of the implied covenant."); *Minich v. Allstate Ins. Co.*, 193 Cal. App. 4th 477, 493 (2011) (similar); *Waller*, 11 Cal. 4th at 36 ("[A] bad faith claim cannot be maintained unless policy benefits are due … ."). For that very reason, courts routinely dismiss bad-faith claims where, as here, the policyholder cannot establish coverage for COVID-19–related losses. *See, e.g.*, *Mudpie*, 487 F. Supp. 3d at 844 (dismissing implied-covenant claim where plaintiff failed to allege withholding of benefits due under policy because there was no coverage); *Phan v. Nationwide Gen. Ins. Co.*, 2021 WL 609845, at *4 (C.D. Cal. Feb. 1, 2021) (Fitzgerald, J.) (similar); *Wellness Eatery*, 2021 WL 389215, at *8 (dismissing bad-faith claim because it depends "upon the existence of coverage"); *Plan Check Downtown III, LLC v. AmGuard Ins. Co.*, 485 F. Supp. 3d 1225, 1233 (C.D. Cal. 2020) (Wu, J.) (same). That alone disposes of Plaintiff's bad-faith claim.

Further, even if Plaintiff could establish coverage, its bad-faith claim would still fail as a matter of law for the independent reason that it does not and cannot plead that Federal withheld benefits unreasonably or without proper cause. The purpose of bad-faith liability is to protect the insured from an *unreasonable* withholding of covered policy benefits. *See Silberg v. Cal. Life Ins. Co.*, 11 Cal. 3d 452, 460–61 (1974). And, as explained, a legion of courts have held that there is no insurance coverage in precisely the circumstances Plaintiff alleges here. *See supra* at 7–21.

This Court and numerous of its brethren have thus recognized that an insurer's denial of coverage for COVID-19–related business losses is as least reasonably justified and cannot give rise to bad-faith liability. *See, e.g.*, *Mark's Engine*, 492 F. Supp. 3d at 1051 (insured's implied-covenant claim failed because "[w]here benefits are withheld for proper cause, there is not breach of the implied covenant"); *Henderson Rd. Rest. Sys., Inc. v. Zurich Am. Ins. Co.*, 2021 WL 168422, at *16 (N.D. Ohio Jan. 19, 2021) (dismissing bad-faith claim even where court found coverage because insurer "had a reasonable justification for denying coverage" given "growing consensus of courts that have rejected COVID-19 business interruption claims").

D. LEAVE TO AMEND SHOULD BE DENIED

Because Plaintiff cannot amend the Complaint to allege all of the above requirements to state a claim for Business Income, Extra Expense, Dependent Business Premises, or Civil Authority coverage, the Complaint should be dismissed with prejudice and leave to amend should be denied. *See Loughney v. Allstate Ins. Co.*, 465 F. Supp. 2d 1039, 1042 (S.D. Cal. 2006) (granting motion to dismiss without leave to amend because allegations did not establish that insured was entitled to coverage under insurance policy); *Granite Outlet, Inc. v. Hartford Cas. Ins. Co.*, 190 F. Supp. 3d 976, 986 (E.D. Cal. 2016) (granting motion to dismiss declaratory relief claim without leave to amend because allegations did not demonstrate insured's claims were covered under insurance policy); *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) ("[T]o survive a motion to dismiss, a complaint must contain sufficient factual matter to state a facially plausible claim for relief."). Indeed, this Court and numerous other California courts have dismissed COVID-19–related insurance-coverage complaints with prejudice for precisely this reason. *See, e.g.*, *Mark's Engine*, 492 F. Supp. 3d at 1058; *Musso & Frank Grill Co. v. Mitsui Sumitomo Ins. USA Inc.*, 2020 WL 7346569, at *4 (Cal. Super. Nov. 9, 2020); *Travelers*, 2020 WL 6156584, at *5; *W. Coast Hotel Mgmt.*, 2020 WL 6440037, at *6–7; *Long Aff. Carpet & Rug*, 2020 WL 6865774, at *3.

V. CONCLUSION

Well-established California precedent makes clear that there is no coverage in circumstances like those alleged here. Consistent with the nearly unanimous view of its sister courts in the Central District of California, this Court should once again hold that Plaintiff's conclusory allegations and speculation about the virus are insufficient to state a claim for coverage as a matter of law. And because it will be impossible for Plaintiff to cure the Complaint's deficiencies, Federal's motion to dismiss should be granted with prejudice and without leave to amend.

Dated: April 29, 2021

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