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24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

25 **LOS ANGELES COUNTY—STANLEY MOSK COURTHOUSE**

26 10E, LLC, a limited liability company;

27 Plaintiff,

28 vs.

THE TRAVELERS INDEMNITY
COMPANY OF CONNECTICUT , a
corporation; ERIC GARCETTI, an
individual, and; DOES 1 to 25, inclusive,

Defendants.

CASE NO.:

**COMPLAINT FOR DECLARATORY
RELIEF**

1 Plaintiff 10E, LLC (“10E” or “Plaintiff”), brings this Complaint, alleging against
2 Defendants The Travelers Indemnity Company of Connecticut (“Travelers”), Eric Garcetti
3 (“Garcetti”), and DOES 1 through 25 (collectively as “Defendants”) as follows:

4 **PARTIES**

5 1. At all relevant times, Plaintiff 10E, LLC is a limited liability company
6 organized and authorized to do business and doing business in the State of California. 10E
7 owns, operates, and/or manages a vibrant Mediterranean-inspired restaurant located in the
8 heart of downtown Los Angeles at 811 West 7th Street, Los Angeles, CA 90017.

9 2. At all relevant times, Defendant The Travelers Indemnity Company of
10 Connecticut (“Travelers”) is a corporation organized under the laws of Connecticut, and
11 licensed by the State of California to do business and doing business in the County of Los
12 Angeles, California (COA #6168) subscribing to Policy Number 680-4G700062 (the
13 “Policy”) issued to Plaintiff for the period of December 4, 2019 through December 4,
14 2020. Defendant Travelers is transacting the business of insurance in the state of
15 California and the basis of this suit arises out of such conduct.

16 3. At all relevant times, Defendant Eric Garcetti is an individual who is being
17 named in his official capacity as the Mayor of Los Angeles.

18 **JURISDICTION AND VENUE**

19 4. The Court has subject matter jurisdiction over the matter alleged herein.

20 5. Plaintiff is informed and believes, and thereon alleges, that this Court is the
21 proper venue for trial because the acts and/or omissions complained of took place, in whole
22 or in part, within the venue of this Court. Further, Defendants are located and conduct
23 business here, and witnesses are located here.

24 **FACTUAL BACKGROUND**

25 6. On or about December 4, 2020, Plaintiff entered into a contract of insurance
26 with Travelers, whereby Plaintiff agreed to make payments to Travelers in exchange for
27 Travelers’ promise to indemnify Plaintiff for losses including, but not limited to, business
28 income losses at its restaurant (hereinafter “Insured Property”) in downtown Los Angeles.

1 7. The Insured Property includes the full-service restaurant known as “10 E
2 Restaurant” centrally located in downtown Los Angeles at 811 West 7th Street, Los Angeles,
3 CA 90017. The 10E Restaurant is owned, managed, and/or controlled by Plaintiff.

4 8. 10E Restaurant is an award-winning, full-service restaurant which includes an
5 eatery and lounge area that provides an elevated Armenian and Lebanese cuisine to its
6 customers in an elegantly sophisticated surrounding. The restaurant is open all three hundred
7 and sixty-five days of the year and caters to large groups, individuals and happy-hour goers.

8 9. The Insured Property is covered under an insurance policy issued by the
9 Travelers bearing Policy Number 680-4G700062 (the “Policy”).

10 10. The Policy is currently in full effect, providing property, business personal
11 property, business income and extra expense, and additional coverages between the period of
12 December 4, 2019 through December 4, 2020.

13 11. Plaintiff faithfully paid policy premiums to Travelers, specifically to provide
14 additional coverages for “Business Income and Extra Expense Coverage” in the event of
15 business closures by order of Civil Authority.

16 12. Under the Policy, insurance is extended to apply to the actual loss of business
17 income sustained and the actual, necessary and reasonable extra expenses incurred when
18 access to the scheduled premises is specifically prohibited by order of Civil Authority as the
19 direct result of a covered cause of loss to property in the immediate area of Plaintiff’s
20 scheduled premises. This additional coverage is identified as coverage under “Civil
21 Authority” as part of the Policy’s “Property Optional Coverages” section.

22 13. The Policy is an all-risk policy, insofar as it provides that a covered cause of
23 loss under the policy means direct physical loss or direct physical damage unless the loss is
24 specifically excluded or limited in the Policy.

25 14. The Policy’s Civil Authority Coverage Section extends coverage to direct
26 physical loss or damage that results in a covered cause of loss to the Property in the
27 immediate area of the “scheduled premises”.

28 15. Based on information and belief, Travelers has accepted the policy premiums

1 with no intention of providing any coverage under the Policy’s Civil Authority Coverage
2 Section due to a loss and shutdown from a virus pandemic.

3 16. The global COVID-19 pandemic has physically impacted both public and
4 private property and physical spaces around the world, as well as the right of the general
5 public to gather and utilize retail business locations. The currently-raging pandemic has been
6 exacerbated by the fact that the deadly virus physically infects and stays on surfaces of
7 objects or materials, “fomites,” for up to twenty-eight days. The scientific community in the
8 United States and indeed, across the world, including the World Health Organization, has
9 recognized that the Coronavirus is a cause of real physical loss and damage.

10 17. Indeed, a number of countries such as: China, Italy, France, and Spain have
11 required the fumigation of public areas prior to allowing them to re-open. A recent scientific
12 study printed in the New England Journal of Medicine explains that the virus is detectable
13 for up to three hours in aerosols, up to four hours on copper, up to 24 hours on cardboard
14 boxes, and up to three days on plastic and stainless steel¹. Notably, the most potent form of
15 the virus is not airborne but rather present on physical surfaces.

16 18. On March 15, 2020, the Mayor of Los Angeles, Defendant Garcetti, issued an
17 Executive Order (No. 202.6) directing all “non-essential” businesses to be closed in Los
18 Angeles. Defendant Garcetti’s Order came on the heels of Governor Gavin Newsom’s
19 similar state-wide order issued earlier that day. Defendant Garcetti’s Order specifically
20 referenced that it was being issued based on the dire risks of exposure with the contraction
21 of COVID-19 and evidence of physical damage to property. Shortly thereafter, Governor
22 Newsom issued a state-wide “Stay-at-Home Order” for all residents of California. In this
23 case, the property that is damaged is in the immediate area of the Insured Property.

24 19. Except for delivery or takeout, the Order does not specifically exempt
25 restaurants and has caused a complete and total shutdown of Plaintiff’s business operations.

26 _____
27 ¹ See Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1, New
28 England Journal of Medicine (March 17, 2020), available at
<https://www.nejm.org/doi/pdf/10.1056/NEJMc2004973?articleTools=true>

1 As a direct and proximate result of this Order, access to Plaintiff's Insured Property has been
2 specifically prohibited and Plaintiff's employees have refused to work out of fear of
3 contracting the novel Coronavirus. As such, Plaintiff's business has been shut down.

4 20. As a further direct and proximate result of the Order, Plaintiff has been forced
5 to consider, and in some cases, begin the termination process for dozens of its employees.

6 21. Any effort by Travelers to deny the reality that the Coronavirus causes
7 physical loss and damage would constitute a false and potentially fraudulent
8 misrepresentation that could endanger policyholders, such as Plaintiff, and the public.

9 22. A declaratory judgment determining that the coverage provided under the
10 Policy will prevent Plaintiff from being left without vital coverage acquired to ensure the
11 survival of its business due to the unprecedented scale of the shutdown caused by the Order.
12 As a result of this Order, Plaintiff has incurred, and continues to incur, a substantial loss of
13 business income and additional expenses covered under the Policy.

14 **FIRST CAUSE OF ACTION**

15 **DECLARATORY RELIEF**

16 **(Against All Defendants and DOES 1 to 25)**

17 23. Plaintiff re-alleges and incorporates by reference into this cause of action each
18 and every allegation set forth in each and every paragraph of this Complaint.

19 24. Under California Code of Civil Procedure section 1060 et seq., the court may
20 declare rights, status, and other legal relations whether or not further relief is or could be
21 claimed. An actual controversy has arisen between Plaintiff and Travelers as to the rights,
22 duties, responsibilities and obligations of the parties in that Plaintiff contends and, on
23 information and belief, Travelers dispute and deny, that: (1) the Order by Garcetti, in his
24 official capacity as Mayor of Los Angeles, constitutes a prohibition of access to Plaintiff's
25 Insured Premises; (2) the prohibition of access by the Order is specifically prohibited access
26 as defined in the Policy; (3) the Order triggers coverage because the Policy does not include
27 an exclusion for a viral pandemic and actually extends coverage for loss or damage due to
28 physical loss and damage, including by virus; and (4) the Policy provides coverage to

1 Plaintiff for any current and future civil authority closures of restaurants in California due to
2 physical loss or damage from the Coronavirus under the Civil Authority coverage parameters
3 and the Policy provides business income coverage in the event that Coronavirus has caused a
4 loss or damage at the insured premises or immediate area of the insured premises.

5 25. Resolution of the duties, responsibilities and obligation of the parties is
6 necessary as no adequate remedy at law exists and a declaration of the Court is needed to
7 resolve the dispute and controversy.

8 26. Plaintiff seeks a Declaratory Judgement to determine whether the Order
9 constitutes a prohibition of access to its Insured Premises by a Civil Authority as defined in
10 the Policy.

11 27. Plaintiff further seeks a Declaratory Judgement to affirm that the Order triggers
12 coverage because the Policy does not include exclusion for a viral pandemic and actually
13 extends coverage for physical loss or damage to the Insured Premises.

14 28. Plaintiff further seeks a Declaratory Judgment to affirm that the Policy provides
15 coverage to Plaintiff for any current and future civil authority closures of restaurants in
16 California due to physical loss or damage from the Coronavirus and the Policy provides
17 business income coverage in the event that Coronavirus has caused a loss or damage at the
18 Insured Premises.

19 29. Plaintiff does not seek any determination of whether the Coronavirus is
20 physically in the Insured Premises, amount of damages, or any other remedy other than
21 declaratory relief.

22 **PRAYER FOR RELIEF**

23 Wherefore, Plaintiff herein, 10E, LLC dba “10E Restaurant”, prays as follows:

- 24 1) For a declaration that the Order by Eric Garcetti, in his official capacity as Mayor
25 of Los Angeles, constitutes a prohibition of access to Plaintiff’s Insured Premises
26 located at 811 West 7th Street, Los Angeles, CA 90017.
- 27 2) For a declaration that the prohibition of access by the Order is specifically
28 prohibited access as defined in the Policy.

- 1 3) For a declaration that the Order triggers coverage because the Policy does not
2 include an exclusion for a viral pandemic and actually extends coverage for loss
3 or damage due to physical loss and damage, including by virus.
4 4) For a declaration that the Policy provides coverage to Plaintiff for any current and
5 future civil authority closures of restaurants in California due to physical loss or
6 damage from the Coronavirus under the Civil Authority coverage parameters and
7 the Policy provides business income coverage in the event that Coronavirus has
8 caused a loss or damage at the insured premises or immediate area of the insured
9 premises.
10 1) For such other relief as the Court may deem just and proper:

11
12 DATED: April 9, 2020

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14
15
16 By: 

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