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15  
16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17  
18 **LOS ANGELES COUNTY—STANLEY MOSK COURTHOUSE**

19  
20 2420 HONOLULU AVENUE, LLC, a  
21 limited liability company;

22 Plaintiff,

23 vs.

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

27  
28 Defendants.

**CASE NO.:**

**COMPLAINT FOR DECLARATORY  
RELIEF**

1 Plaintiff 2420 Honolulu Avenue, LLC (“2420 Honolulu” or “Plaintiff”), brings this  
2 Complaint, alleging against Defendants The Travelers Indemnity Company of Connecticut  
3 (“Travelers”), Eric Garcetti (“Garcetti”), and DOES 1 through 25 (collectively as  
4 “Defendants”) as follows:

5 **PARTIES**

6 1. At all relevant times, Plaintiff 2420 Honolulu Avenue, LLC is a limited  
7 liability company organized and authorized to do business and doing business in the State  
8 of California. Plaintiff owns, operates, and/or manages a small commercial business space  
9 consisting of a restaurant located at 2420 Honolulu Avenue, Montrose, CA 91020.

10 2. At all relevant times, Defendant The Travelers Indemnity Company of  
11 Connecticut (“Travelers”) is a corporation organized under the laws of Connecticut, and  
12 licensed by the State of California to do business and doing business in the County of Los  
13 Angeles, California (COA #6168) subscribing to Policy Number 680-1H138718 (the  
14 “Policy”) issued to Plaintiff for the period of April 25, 2019 through April 25, 2020.  
15 Travelers is transacting the business of insurance in the state of California and the basis of  
16 this suit arises out of such conduct.

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

19 **JURISDICTION AND VENUE**

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

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

25 **FACTUAL BACKGROUND**

26 6. On or about April 25, 2019, Plaintiff entered into a contract of insurance with  
27 Travelers, whereby Plaintiff agreed to make payments to Travelers in exchange for  
28 Travelers’ promise to indemnify Plaintiff for losses including, but not limited to, business

1 income losses at its commercial business retail space (hereinafter “Insured Property”) located  
2 at 2420 Honolulu Avenue, Montrose, CA 91020.

3 7. The Insured Property consists of a single commercial space which hosts a  
4 restaurant / deli. The entire commercial business retail space is owned, managed, and/or  
5 controlled by Plaintiff.

6 8. The Insured Property is covered under an insurance policy issued by the  
7 Travelers bearing Policy Number 680-1H138718 (the “Policy”).

8 9. The Policy is currently in full effect, providing property, business personal  
9 property, business income and extra expense, and additional coverages between the period of  
10 April 25, 2019 through April 25, 2020.

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

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

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

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

26 14. Based on information and belief, Travelers has accepted the policy premiums  
27 with no intention of providing any coverage under the Policy’s Civil Authority Coverage  
28 Section due to a loss and shutdown from a virus pandemic.

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

8           16.     Indeed, a number of countries such as: China, Italy, France, and Spain have  
9 required the fumigation of public areas prior to allowing them to re-open. A recent scientific  
10 study printed in the New England Journal of Medicine explains that the virus is detectable  
11 for up to three hours in aerosols, up to four hours on copper, up to 24 hours on cardboard  
12 boxes, and up to three days on plastic and stainless steel<sup>1</sup>. Notably, the most potent form of  
13 the virus is not airborne but rather present on physical surfaces.

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

22           18.     As a direct and proximate result of this Order, access to Plaintiff’s Insured  
23 Property (including its underlying retail business) has been specifically prohibited.

24           19.     As a further direct and proximate result of the Order, Plaintiff has been forced  
25 to deal with unpaid rent and other related issues stemming from its tenants’ cessation of use

26 \_\_\_\_\_  
27 <sup>1</sup> 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 with respect to the Insured Premises.

2 20. Any effort by Travelers to deny the reality that the Coronavirus causes  
3 physical loss and damage would constitute a false and potentially fraudulent  
4 misrepresentation that could endanger policyholders, such as Plaintiff, and the public.

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

10 **FIRST CAUSE OF ACTION**

11 **DECLARATORY RELIEF**

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

13 22. Plaintiff re-alleges and incorporates by reference into this cause of action  
14 each and every allegation set forth in each and every paragraph of this Complaint.

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

1 Insured Premises. Resolution of the duties, responsibilities and obligation of the parties is  
2 necessary as no adequate remedy at law exists and a declaration of the Court is needed to  
3 resolve the dispute and controversy.

4 24. Plaintiff seeks a Declaratory Judgement to determine whether the Order  
5 constitutes a prohibition of access to its Insured Premises by a Civil Authority as defined in  
6 the Policy.

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

10 26. Plaintiff further seeks a Declaratory Judgment to affirm that the Policy  
11 provides coverage to Plaintiff for any current and future civil authority closures of  
12 commercial buildings in California due to physical loss or damage from the Coronavirus and  
13 the Policy provides business income coverage in the event that Coronavirus has caused a loss  
14 or damage at the Insured Premises.

15 27. Plaintiff does not seek any determination of whether the Coronavirus is  
16 physically in the Insured Premises, amount of damages, or any other remedy other than  
17 declaratory relief.

18 **PRAYER FOR RELIEF**

19 Wherefore, Plaintiff herein, 2420 Honolulu Avenue, LLC, prays as follows:

- 20 1) For a declaration that the Order by Eric Garcetti, in his official capacity as Mayor  
21 of Los Angeles, constitutes a prohibition of access to Plaintiff's Insured Premises  
22 located at 2420 Honolulu Avenue, Montrose, CA 91020.
- 23 2) For a declaration that the prohibition of access by the Order is specifically  
24 prohibited access as defined in the Policy.
- 25 3) For a declaration that the Order triggers coverage because the Policy does not  
26 include an exclusion for a viral pandemic and actually extends coverage for loss  
27 or damage due to physical loss and damage.
- 28 4) For a declaration that the Policy provides coverage to Plaintiff for any current and

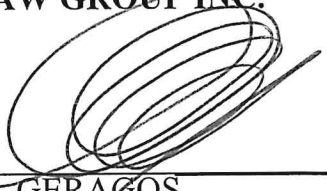
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future civil authority closures of commercial buildings in California due to physical loss or damage from the Coronavirus under the Civil Authority coverage parameters and the Policy provides business income coverage in the event that Coronavirus has caused a loss or damage at the insured premises or immediate area of the insured premises.

- 1) For such other relief as the Court may deem just and proper.

DATED: April 9, 2020

**GERAGOS & GERAGOS, APC**  
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