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 18 Company of Connecticut

19 UNITED STATES DISTRICT COURT

20 CENTRAL DISTRICT OF CALIFORNIA

21 10E, LLC a limited liability company,

22 Plaintiff,

23 v.

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

28 Defendants.

CASE NO. 2:20-cv-04418

**NOTICE OF REMOVAL BY
 DEFENDANT TRAVELERS
 INDEMNITY COMPANY OF
 CONNECTICUT**

[Removal from the Superior Court of the
 State of California, Los Angeles County,
 Case No. 20STCV14043]

1 **TO THE CLERK OF THE ABOVE-TITLED COURT, AND TO ALL PARTIES**
2 **AND THEIR COUNSEL OF RECORD:**

3 PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1332, 1441, and
4 1446, Defendant Travelers Indemnity Company of Connecticut (“Travelers”) hereby
5 removes this action from the Superior Court of the State of California for Los Angeles
6 County, where it is pending as Case No. 20STCV14043, to the United States District
7 Court for the Central District of California.

8 This Court has original jurisdiction over this action under 28 U.S.C. § 1332
9 because there is complete diversity of citizenship between Travelers and Plaintiff 10E,
10 LLC (“Plaintiff” or “10E”), and the amount in controversy exceeds \$75,000, exclusive
11 of interest and costs. The citizenship of Defendant Does 1 to 25 should be disregarded
12 for purposes of evaluating diversity. 28 U.S.C. 1441(b); *see McCabe v. Gen. Foods*
13 *Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987) (district court properly disregarded Doe
14 defendants who were not “indispensable parties and served no other purpose than
15 protecting the plaintiff under California pleading practice”). The citizenship of the
16 remaining Defendant, Los Angeles Mayor Eric Garcetti (“Mayor Garcetti”), should
17 also be disregarded because he is not properly joined in this lawsuit. Rather, Mayor
18 Garcetti was apparently joined in an attempt to destroy diversity among the parties;
19 this fraudulent joinder, however, is ineffective and should not be considered in the
20 evaluation of this Court’s jurisdiction. Grounds for removal are set forth in more detail
21 below.

22 **I. BACKGROUND**

23 **A. This Action**

24 1. Plaintiff commenced this action on April 10, 2020, in the Superior Court
25 of the State of California for Los Angeles County, which is within the district and
26 division to which this case is removed. As required under 28 U.S.C. § 1446(a), a copy
27 of all process, pleadings, and orders served upon Travelers in the underlying state court
28 action is attached concurrently herewith.

1 2. In this declaratory judgment action, Plaintiff alleges that an insurance
2 policy bearing policy number 680-4G700062 (the “Policy”) insures losses of “business
3 income” “caused by” Mayor Garcetti’s Executive Order (“Order”) relating to the
4 “Coronavirus” and the “global COVID-19 pandemic.” Compl. ¶¶ 3, 6-22. According
5 to the Complaint, the Order “direct[ed] all ‘non-essential’ businesses to be closed in
6 Los Angeles.” *Id.* ¶ 18.¹ The Policy was issued to Plaintiff by Travelers.

7 3. Pursuant to California Code of Civil Procedure §§ 1060 *et seq.*, the
8 Complaint seeks a declaratory judgment as to what Plaintiff presents as four insurance
9 coverage issues: (1) that the Order “constitutes a prohibition of access to Plaintiff’s
10 Insured Premises”; (2) that the “prohibition of access by the Order is specifically
11 prohibited access as defined in the Policy”; (3) that the Order “triggers coverage
12 because the Policy does not include an exclusion for a viral pandemic and actually
13 extends coverage for loss or damage due to physical loss and damage”; and (4) that
14 “the Policy provides coverage for any current and future civil authority closures of
15 restaurants in California due to physical loss or damage from the Coronavirus under
16 the Civil Authority coverage parameters and the Policy provides business income
17 coverage in the event that Coronavirus has caused a loss or damage at the insured
18 premises or immediate area of the insured premises.” Compl., Prayer for Relief.

19 4. The Complaint identifies Travelers as the party with which 10E has a
20 contract of insurance and from which 10E seeks insurance coverage. It also names
21 Mayor Garcetti as a defendant, though he is not a party to the insurance contract at
22 issue nor does he have any rights or obligations under that contract. And 10E does not
23 seek any relief from or related to Mayor Garcetti in this insurance coverage dispute.
24 The few allegations that mention him simply set forth purported background
25 information relevant to 10E’s dispute with Travelers. At most, Mayor Garcetti is a
26 third-party witness to an incident (the issuance of the Order) ancillary to the dispute at
27 _____

28 ¹ Plaintiff admits, however, that restaurants’ “delivery [and] takeout” services are
“specifically exempt” from Mayor Garcetti’s Order. Compl. ¶ 19.

1 issue. No claim is or can be stated against Mayor Garcetti in this dispute between 10E
2 and Travelers. Therefore, this Court should disregard the citizenship of Mayor
3 Garcetti, who was fraudulently joined in this lawsuit in an apparent attempt to defeat
4 diversity, and assert its subject matter jurisdiction over this action.

5 5. Travelers was served with the Summons and Complaint no earlier than
6 April 16, 2020. This Notice is timely filed under 28 U.S.C. § 1446(b).

7 6. Because Mayor Garcetti was fraudulently joined, his consent is not
8 required for this removal. 28 U.S.C. § 1446(b)(2)(A) (“[A]ll defendants who have
9 been *properly joined* and served must join in or consent to the removal of the action.”
10 (emphasis added)); *see also United Computer Sys., Inc. v. AT & T Corp.*, 298 F.3d 756,
11 762 (9th Cir. 2002) (“[T]he ‘rule of unanimity’ does not apply to . . . ‘fraudulently
12 joined parties.’” (citation omitted)).

13 7. Upon filing the Notice of Removal, Travelers will furnish written notice
14 to 10E’s counsel, and will file and serve a copy of this Notice with the Clerk of the Los
15 Angeles County Superior Court, pursuant to 28 U.S.C. § 1446(d).

16 **II. THIS COURT HAS SUBJECT MATTER JURISDICTION PURSUANT**
17 **TO 28 U.S.C. § 1332**

18 8. This Court has subject matter jurisdiction over this case pursuant to 28
19 U.S.C. § 1332. There is complete diversity of citizenship between 10E and Travelers.
20 The amount in controversy exceeds \$75,000, exclusive of interest and costs.

21 **A. There Is Complete Diversity of Citizenship Between Plaintiff and**
22 **Travelers**

23 9. Plaintiff 10E is a citizen of California for purposes of diversity
24 jurisdiction. As a limited liability company (Compl. ¶ 1), 10E is considered a citizen
25 of every state in which its owners or members are citizens. *Johnson v. Columbia*
26 *Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). According to 10E’s
27 publicly available filings with the State of California and on information and belief,
28 10E’s owners or members are Jacques Darakjian and/or Tina Glandian. On

1 information and belief, Jacques Darakjian is a citizen of and domiciled in California.
2 On information and belief, Tina Glandian is a citizen of and domiciled in California.

3 10. Travelers is a citizen of Connecticut because it is incorporated in
4 Connecticut and its principal place of business is in Hartford, Connecticut. *See* Compl.
5 ¶ 2.

6 11. The Complaint names Mayor Garcetti as a defendant in his official
7 capacity and alleges that he is a citizen of California. Compl. ¶ 3. Mayor Garcetti is
8 fraudulently joined and should be disregarded for purposes of determining diversity of
9 citizenship.

10 12. The citizenship of “DOES 1 to 25, inclusive,” also named as Defendants
11 in this matter, should be disregarded for purposes of assessing jurisdiction. 28 U.S.C.
12 § 1441(b)(1) (“In determining whether a civil action is removable on the basis of the
13 jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under
14 fictitious names shall be disregarded.”). Plaintiff has pleaded no facts regarding Does
15 1 to 25: whether they exist, who they are, where they live, or how they are related to
16 this case. *See McCabe*, 811 F.2d at 1339 (district court properly disregarded “100 Doe
17 defendants” who were not “indispensable parties and served no other purpose than
18 protecting the plaintiff under California pleading practice”).

19 **B. The Amount in Controversy Exceeds \$75,000**

20 13. Under 28 U.S.C. § 1332(a), diversity subject matter jurisdiction requires
21 that the matter in controversy “exceed[] the sum or value of \$75,000, exclusive of
22 interest and costs.” This requirement is met. A notice of removal “need include only a
23 plausible allegation that the amount in controversy exceeds the jurisdictional
24 threshold,” *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014), and
25 if contested, a court will determine whether the threshold is met by a preponderance of
26 the evidence, *id.* at 88; *see also Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 416
27 (9th Cir. 2018). In declaratory relief actions, “the amount in controversy is measured
28 by the value of the object of the litigation.” *Corral v. Select Portfolio Servicing, Inc.*,

1 878 F.3d 770, 775 (9th Cir. 2017) (quoting *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840
2 (9th Cir. 2002)). Such value is determined by “the pecuniary result to either party
3 which the judgment would directly produce.” *Id.* (quotation marks and citation
4 omitted).

5 14. Here, the Complaint does not include a specific demand for damages. On
6 a full and fair reading of the Complaint, however, the amount in controversy exceeds
7 \$75,000, exclusive of interest and costs. The Complaint seeks a declaration that
8 Travelers’ insurance coverage extends to business income lost by 10E, which is
9 described as “an award-winning, full-service restaurant which includes an eatery and
10 lounge area that provides an elevated Armenian and Lebanese cuisine to its customers
11 in an elegantly sophisticated surrounding” “located in the heart of downtown Los
12 Angeles at 811 West 7th Street, Los Angeles, CA 90017.” Compl. ¶¶ 1, 8. Plaintiff
13 alleges that the Order “has caused a complete and total shutdown of Plaintiff’s
14 business operations” and that it has incurred and continues to incur “a substantial loss
15 of business income and additional expenses.” *Id.* ¶¶ 19, 22. 10E requests a declaration
16 of coverage under both the Policy’s Business Income coverage and its Civil Authority
17 coverage, and not only for the restaurant’s losses to date, but also for losses stemming
18 from any *future* civil authority closures of California’s commercial buildings “due to
19 . . . the Coronavirus.” *Id.* ¶ 24.

20 15. Based on information provided by 10E to Travelers in connection with the
21 Policy’s issuance and/or renewal, the amount in controversy plainly exceeds \$75,000.
22 Travelers will make this information available if requested by the Court or otherwise
23 necessary.

24 16. The Complaint alleges that its business losses arise from Los Angeles’s
25 stay-at-home order issued March 15, 2020. That order has been extended until at least
26 May 15, 2020, meaning that it will be in effect for at least *two months*. See
27 https://covid19.lacounty.gov/wp-content/uploads/HOO_Safer-at-Home-Order-for-
28

1 Control-of-COVID_04102020.pdf. Los Angeles County officials have announced that
2 the stay-at-home order will likely be extended for at least three additional months.

3 17. The Complaint does not seek a declaration of coverage for only the two-
4 month duration of the current stay-at-home order, but also for coverage arising from
5 any and all “future” closures due to COVID-19. Compl. ¶ 24. Because it is reasonable
6 to assume that stay-at-home orders will extend beyond May 15, and the policy at issue
7 includes 12 consecutive months of business-losses coverage, the Complaint puts “at
8 stake” significant future business-interruption losses beyond May 15. *See Chavez*, 888
9 F.3d at 417 (where plaintiff alleges “future [losses],” it is appropriate to include all
10 potential future losses in the amount in controversy); *Arias v. Residence Inn by*
11 *Marriott*, 936 F.3d 920, 927 (9th Cir. 2019) (defendant may make “reasonable
12 assumptions” in demonstrating amount in controversy (quotation marks and citation
13 omitted)).

14 18. Allegations of a “substantial” loss of 10E’s business income over the past
15 two months and future losses “due to . . . the Coronavirus” thus compel the conclusion
16 that the object of the declaratory relief sought plausibly exceeds \$75,000. While
17 Travelers does not concede that 10E is entitled to any relief, a fair reading of the
18 Complaint describes an amount in controversy exceeding the jurisdictional minimum.

19 **III. MAYOR GARCETTI IS FRAUDULENTLY JOINED**

20 19. The Complaint expressly alleges that the controversy at issue in this
21 action is solely between 10E and Travelers—Mayor Garcetti is not involved in this
22 contractual dispute over the respective rights and obligations of two parties to an
23 insurance policy. *See* Compl. ¶ 24 (“An actual controversy has arisen between
24 *Plaintiff* and *Travelers* as to the rights, duties, responsibilities and obligations of the
25 parties[.]” (emphasis added)). Because 10E has not and cannot establish a cause of
26 action against Mayor Garcetti relevant to this controversy, his joinder is fraudulent,
27 diversity jurisdiction exists over this action, and this action is properly removed.

28

1 20. “If the plaintiff fails to state a cause of action against a resident defendant,
2 and the failure is obvious according to the settled rules of the state, the joinder of the
3 resident defendant is fraudulent.” *McCabe*, 811 F.2d at 1339. Fraudulent joinder is
4 established when “a defendant shows that an ‘individual[] joined in the action cannot
5 be liable on any theory.’” *Grancare, LLC v. Thrower by & through Mills*, 889 F.3d
6 543, 548 (9th Cir. 2018) (quoting *Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313, 1318
7 (9th Cir. 1998)).

8 21. Fraudulent joinder can be established when, as here, claims against a
9 resident defendant are predicated on a contract to which the resident defendant is not a
10 party. *See United Computer Sys.*, 298 F.3d at 761.

11 **A. Plaintiff Does Not and Cannot State a Claim for Declaratory Relief**
12 **Against Mayor Garcetti**

13 22. 10E brings its claim for declaratory relief pursuant to California Code of
14 Civil Procedure § 1060. Compl. ¶ 24.² To state a claim for declaratory relief, a
15 plaintiff must “set[] forth facts showing the existence of an actual controversy relating
16 to the legal rights and duties of the respective parties under a written instrument . . .
17 and request[] that the rights and duties of the parties be adjudged by the court.”
18 *Benjamin v. Wells Fargo Bank, N.A.*, No. 11-cv-6583-VBF, 2011 WL 13220918, at *2
19 (C.D. Cal. Oct. 17, 2011) (quoting *Wellenkamp v. Bank of Am.*, 21 Cal. 3d 943, 947
20 (1978)). “The main requirement for declaratory relief is a present and actual
21 controversy between the parties.” *Id.* (citing *City of Cotati v. Cashman*, 29 Cal. 4th 69,
22 80 (2002)).

23
24
25 ² Sitting in diversity and assessing fraudulent joinder, this Court should consider the
26 underlying claim “under California law.” *McCabe*, 811 F.2d at 1339. Looking to
27 the declaratory judgment claim at issue, “[f]ederal courts ‘have consistently applied
28 California Code of Civil Procedure § 1060 rather than the federal Declaratory
Judgment Act when sitting in diversity.’” *D. Cummins Corp. v. U.S. Fid. & Guar.
Co.*, No. 14-CV-935-SC, 2014 WL 2211979, at *2 n.2 (N.D. Cal. May 28, 2014)
(quoting *Schwartz v. U.S. Bank, Nat’l Ass’n*, No. 11-cv-8754 MMM, 2012 WL
10423214, at *15 (C.D. Cal. Aug. 3, 2012)).

1 23. Where, as here, a “[p]laintiff has failed to state any claims, [and] there is
2 no actual and present controversy,” the declaratory relief claim must be dismissed.
3 *Ngoc Nguyen v. Wells Fargo Bank, N.A.*, 749 F. Supp. 2d 1022, 1038 (N.D. Cal.
4 2010). When a defendant is uninvolved in a “present and actual controversy,” then
5 that defendant is fraudulently joined. *See Daniels v. Am.’s Wholesale Lender*, No. 11-
6 cv-1287 PA, 2011 WL 13225097, at *1 n.1 (C.D. Cal. Oct. 24, 2011) (complaint
7 challenging default failed to state a claim against financial institutions other than the
8 institution which executed the notice of default).

9 24. The only “actual controversy” alleged in the Complaint “has arisen
10 between *Plaintiff* and *Travelers* as to the rights, duties, responsibilities and obligations
11 of the parties.” Compl. ¶ 24 (emphasis added). Plaintiff describes the controversy as
12 involving four issues of contract interpretation specific to the insurance policy issued
13 to Plaintiff: whether (1) the Order prohibits access to the “Insured Premises” as
14 described in the insurance policy; (2) the Order is a “prohibition of access” as
15 described in the insurance policy; (3) the Order “triggers” insurance coverage because
16 the policy’s virus exclusion does not apply and a virus causes physical loss or damage
17 to the “Insured Premises”; and (4) the Policy provides coverage for any current or
18 future civil authority closures “due to physical loss or damage from the Coronavirus”
19 and provides business income coverage “in the event that Coronavirus has caused a
20 loss or damage” at Plaintiff’s premises or in the immediate area. *Id.* The Complaint
21 neither generally nor specifically alleges any controversy or dispute between Plaintiff
22 and Mayor Garcetti. Thus, “[o]n the basis of the complaint alone,” there is no claim
23 for declaratory judgment against Mayor Garcetti under California law because 10E did
24 not even attempt to allege a controversy against him. *McCabe*, 811 F.2d at 1339.

25 25. The factual allegations in the Complaint outline a dispute over 10E’s
26 entitlement to insurance coverage under various provisions of its insurance contract
27 with Travelers. Plaintiff’s Complaint identifies the Policy, alleges 10E’s performance
28 under the Policy, and purports to summarize the Policy’s terms. Compl. ¶¶ 6-14.

1 Plaintiff then provides the factual premise for its insurance coverage claim, describing
2 the “global COVID-19 pandemic” and the City and State orders that purportedly
3 limited access to the Insured Premises and caused Plaintiff’s business to suffer. *Id.* ¶¶
4 15-20. The Complaint does not describe any dispute with Mayor Garcetti or challenge
5 his Order (which Plaintiff embraces as a basis for its claims against Travelers) and, in
6 fact, acknowledges that “delivery [and] takeout” are exempt from Mayor Garcetti’s
7 Order. *Id.* ¶ 19.

8 26. Additionally, 10E does not seek any relief vis-à-vis Mayor Garcetti. As
9 previously described, none of the declarations sought relates in any way to Mayor
10 Garcetti. *See supra* ¶ 4.

11 27. 10E also has failed to demonstrate that it has standing to sue Mayor
12 Garcetti. *See Kruso v. Int’l Tel. & Tel. Corp.*, 872 F.2d 1416, 1427 (9th Cir. 1989)
13 (holding that nondiverse defendants were fraudulently joined where plaintiffs were not
14 parties to agreements with those defendants, failed to allege injury by those
15 defendants, and had no standing to sue them).

16 28. In short, the references to Mayor Garcetti and the Order simply provide
17 context for the insurance coverage dispute between Plaintiff and Travelers. Because
18 10E “failed to state any cause of action against [Mayor Garcetti]; [his] joinder to
19 [Travelers] as defendant[] was [a] sham; [his] presence did not destroy diversity.”
20 *McCabe*, 811 F.2d at 1339.

21 **B. 10E Cannot Defeat Removal by Amending Its Complaint to Add New**
22 **Claims Against Mayor Garcetti**

23 29. “[J]urisdiction must be analyzed on the basis of the pleadings filed at the
24 time of removal[.]” *Sparta Surgical Corp. v. Nat’l Ass’n of Sec. Dealers, Inc.*, 159
25 F.3d 1209, 1213 (9th Cir. 1998). Thus, when evaluating fraudulent joinder, courts do
26 not consider possible claims or causes of action that were not alleged against the sham
27 defendant in the removed complaint. *See Kruso*, 872 F.2d at 1426 n.12 (the court
28 “confine[d] [its] review to the facts alleged in the original complaint” and refused to

1 consider allegations in a “Proposed First Amended Complaint” which attempted to
2 state claims against the sham defendants); *see also Health Pro Dental Corp. v.*
3 *Travelers Prop. Cas. Co. of Am.*, No. 17-cv-0637 BRO, 2017 WL 1033970, at *5 n.6
4 (C.D. Cal. Mar. 17, 2017) (“The Court declines to consider causes of action that were
5 not pleaded in the operative complaint to determine whether Baker is a sham
6 defendant.”); *Goens v. Adams & Assocs.*, No. 2:16-cv-0960 TLN, 2017 WL 3167809,
7 at *4 (E.D. Cal. July 26, 2017) (“The court, however, should only consider facts
8 alleged in the operative complaint, rather than causes of action or facts which could be
9 included in an amended complaint.”); *Altman v. HO Sports Co.*, No. 1:09-cv-1000
10 AWI, 2009 WL 2590425, at *3 (E.D. Cal. Aug. 20, 2009) (“[T]he propriety of removal
11 is determined by the complaint as it existed at the time of removal.”).

12 30. At the time of removal, 10E makes no claim against Mayor Garcetti and
13 thereby establishes no controversy against him. An attempt by 10E to create new
14 claims against Mayor Garcetti, which is impossible given the limited scope of the
15 contract controversy at issue, would be irrelevant to this removal analysis. *See Kruso*,
16 872 F.2d at 1426 n.12.

17 31. Because 10E’s complaint does not articulate a cause of action against
18 Mayor Garcetti, and because the requested declaratory judgment is predicated on an
19 insurance contract to which Mayor Garcetti is not party, Mayor Garcetti’s joinder is
20 fraudulent and does not defeat diversity.

21 **IV. VENUE**

22 32. The United States District Court for Central District of California,
23 Western Division is the federal judicial district in which the Los Angeles County
24 Superior Court sits. This action was originally filed in the Los Angeles County
25 Superior Court, rendering venue in this federal judicial district and division proper. 28
26 U.S.C. § 84(c); *see also* 28 U.S.C. § 1441(a).

1 **V. CONCLUSION**

2 33. For the foregoing reasons, Travelers respectfully states that this action,
3 previously pending in the Superior Court of the State of California for the County of
4 Los Angeles, is properly removed to this Court, and Travelers respectfully requests
5 that this Court proceed as if this case had been originally filed in this Court.
6

7 Dated: May 15, 2020

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20STCV14043

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Barbara Scheper

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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

20 10E, LLC, a limited liability company;

21 Plaintiff,

22 vs.

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

27 Defendants.
28

CASE NO.: 20STCV14043

COMPLAINT FOR DECLARATORY
RELIEF

GERAGOS & GERAGOS, APC
HISTORIC ENGINE CO. NO. 28
644 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90017-3411

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.

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HISTORIC ENGINE CO. NO. 28
6444 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90017-3411

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

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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>

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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

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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.

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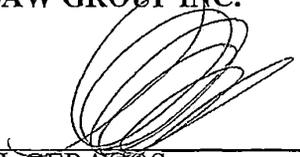
- 3) For a declaration that the Order triggers coverage because the Policy does not include an exclusion for a viral pandemic and actually extends coverage for loss or damage due to physical loss and damage, including by virus.
- 4) For a declaration that the Policy provides coverage to Plaintiff for any current and future civil authority closures of restaurants 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.

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DATED: April 9, 2020

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