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 15 named as The Travelers Indemnity Company of
 16 Connecticut)

15 UNITED STATES DISTRICT COURT
 16 CENTRAL DISTRICT OF CALIFORNIA

17 GERAGOS & GERAGOS FINE ARTS
 18 BUILDING, LLC, a limited liability
 19 company,

20 Plaintiff,

21 v.

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

26 Defendants.

CASE NO. 2:20-cv-04427-RGK-JPR

**DEFENDANT TRAVELERS
 CASUALTY INSURANCE COMPANY
 OF AMERICA’S MEMORANDUM OF
 POINTS AND AUTHORITIES IN
 SUPPORT OF MOTION TO DISMISS**

Hearing:

Date: June 29, 2020
 Time: 9:00 a.m.
 Place: Courtroom 850
 Roybal Federal Building and
 U.S. Courthouse
 255 E. Temple Street
 Los Angeles, CA 90012
 Judge: R. Gary Klausner

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2 *Clarke v. State Farm Fla. Ins.*,

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16 *Knievel v. ESPN*,

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2 *Moradi-Shalal v. Fireman’s Fund Ins. Cos.*,

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4 *Moss v. Infinity Ins. Co.*,

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6 *Moss v. U.S. Secret Serv.*,

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13 *Navarro v. Block*,

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15 *O’Keefe v. Allstate Indem. Co.*,

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22 *R. L. H., III by & through Hunter v. United Servs. Auto. Ass’n*,

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3 *Sigma Fin. Corp. v. Gotham Ins. Co.*,

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1 Travelers Casualty Insurance Company of America (“Travelers”), erroneously
2 sued as The Travelers Indemnity Company of Connecticut, hereby submits this
3 memorandum of points and authorities in support of its Motion to Dismiss.¹

4 **I. INTRODUCTION**

5 The COVID-19 pandemic has affected the public and most businesses
6 throughout the country in unprecedented ways. But these challenging and unfortunate
7 circumstances do not create insurance coverage for losses that fall outside the terms of
8 a policyholder’s insurance contract.

9 Plaintiff Geragos & Geragos Fine Arts Building, LLC (“G&G Fine Arts” or
10 “Plaintiff”) asks this Court to declare that G&G Fine Arts is entitled to insurance
11 coverage for claimed business income losses allegedly caused by orders that Mayor
12 Garcetti issued to protect residential tenants during the Coronavirus pandemic (the
13 “Orders”) and a related amendment to the Los Angeles Municipal Code (“Code
14 Amendment”). But G&G Fine Arts ignores the material terms of its Travelers
15 insurance policy—foremost among them an explicit exclusion of *any* type of coverage,
16 including Civil Authority coverage, for *any* “loss or damage resulting from any virus,
17 bacterium or other microorganism that induces or is capable of inducing physical
18 distress, illness or disease.”

19 In addition to the case-dispositive virus exclusion, for additional reasons G&G
20 Fine Arts has not and cannot plead the facts necessary to establish that it is entitled to
21 Civil Authority coverage, Business Income and Extra Expense coverage, or any of the
22 derivative declarations that it seeks. The Complaint fails, as a matter of law, for at
23 least two other reasons.

24
25
26 ¹ See also contemporaneously filed motions to dismiss in *Geragos & Geragos, APC*
27 *v. Travelers Indem. Co.*, No. 20-cv-4414, D.E. 1 (C.D. Cal. May 15, 2020); *10E,*
28 *LLC v. Travelers Indem. Co.*, No. 20-cv-4418, D.E. 1 (C.D. Cal. May 15, 2020);
Mark’s Engine Co. No 28 Rest., LLC v. Travelers Indem. Co., No. 20-cv-04423,
D.E. 1 (C.D. Cal. May 15, 2020).

1 First, G&G Fine Arts fails to allege that the Orders “prohibited access” to its
2 premises, a basic prerequisite for Civil Authority coverage. Courts nationwide have
3 repeatedly held that to “prohibit access” requires that government authorities
4 completely prevent access to the premises. Here, G&G Fine Arts alleges that tenants
5 *currently accessing and occupying its premises* are not paying rent.

6 Second, G&G Fine Arts fails to allege facts demonstrating that it suffered a
7 “direct physical loss of or damage to [the insured] property,” which Business Income
8 coverage requires.

9 And, again, even if G&G Fine Arts could have pleaded these factual
10 requirements for coverage, its insurance claim—which results from the Coronavirus—
11 would still be *expressly excluded* by the virus exclusion.² The Complaint should be
12 dismissed with prejudice because, as a matter of law, G&G Fine Arts cannot plead an
13 entitlement to coverage under its contract with Travelers.

14 **II. PROCEDURAL HISTORY AND ALLEGED FACTS**

15 **A. This Lawsuit**

16 G&G Fine Arts commenced this action on April 21, 2020, in Los Angeles
17 Superior Court, against The Travelers Indemnity Company of Connecticut and Los
18 Angeles Mayor Eric Garcetti.³ Plaintiff alleges that a Travelers insurance policy
19 bearing policy number 680-4H55186A (the “Policy”)⁴ insures losses of “rental
20

21
22 ² Because G&G Fine Arts cannot plead facts to establish coverage, its claim for bad
23 faith premised on the wrongful denial of coverage likewise fails as a matter of law.
24 Separately, the claim for violation of Insurance Code § 790.03 fails because the
25 statute does not convey a private right of action.

26 ³ Mayor Garcetti is neither a party to the insurance contract at issue nor does he have
27 any rights or obligations under that contract. As explained in the Notice of
28 Removal, Mayor Garcetti was fraudulently joined in this lawsuit and the Court
should disregard his citizenship and assert its subject matter jurisdiction over this
action.

⁴ The Policy identifies “Mark & Brian’s Fine Arts Building” as the insured, but
Plaintiff alleges that it has changed its name to “Geragos & Geragos Fine Arts
Building, LLC” since the issuance of the Policy. Compl. ¶ 1, n.1.

1 income/business income” at G&G’s Fine Arts’ property “caused by” the Orders
2 resulting from the Coronavirus. Compl. ¶¶ 9-11, 16-18. The Policy, which is
3 incorporated by reference into the Complaint, was issued by Travelers Casualty
4 Insurance Company of America, not the erroneously sued The Travelers Indemnity
5 Company of Connecticut. *See* Kupec Decl., Ex. 1 & RJN.⁵

6 According to the Complaint, on March 15, March 23, and March 31, 2020,
7 Mayor Garcetti issued Orders that led to a Los Angeles Municipal Code amendment
8 affording “tenant protections during the Coronavirus pandemic.” Compl. ¶ 15. These
9 protections “provided residential tenants with numerous relief measures,” including:

- 10 (1) the ability to withhold rent on account of Coronavirus-related issues (i.e.,
11 un/underemployment, illness, quarantine, etc.);
12 (2) a moratorium on tenant evictions;
13 (3) a deferral for residential tenants to pay rent over a 12-month period . . . ; and
14 (4) the inability for any landlord to charge interest or late fees on the deferred
15 rent.

16 *Id.*

17 G&G Fine Arts owns and manages four single-family residential cottages in
18 Pasadena (the “Cottages”). Compl. ¶¶ 1, 6-7. G&G Fine Arts alleges that, as a result
19 of the Orders, tenants at the Cottages have made “rent deferral requests” and have not
20 paid rent. *Id.* ¶ 16. Thus, G&G Fine Arts alleges that it has incurred “loss of rental
21 income” as a result of the Orders. *Id.* ¶ 18.

22 G&G Fine Arts appears to seek coverage for these purported rental income
23 losses under the Policy’s Civil Authority or Business Income coverages. Compl. ¶¶ 9-
24

25 ⁵ The Court may properly consider the insurance policy referenced in the Complaint,
26 even though it was not physically attached to the Complaint. *Tellabs, Inc. v. Makor*
27 *Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007) (in ruling on a motion to dismiss, a
28 court “must consider the complaint in its entirety, as well as . . . documents
incorporated into the complaint by reference”); *Knievel v. ESPN*, 393 F.3d 1068,
1076 (9th Cir. 2005); *see also, e.g., Camp Richardson Resort, Inc. v. Philadelphia*
Indem. Ins. Co., 150 F. Supp. 3d 1186, 1189 (E.D. Cal. 2015) (insurance policy).

1 11.⁶ The Complaint frames three purported insurance coverage issues for which
2 Plaintiff seeks declaratory judgment: (1) that the Orders “constitute[] an interference
3 with, loss and damage to the Insured Premises”; (2) that the Orders “trigger coverage
4 because the Policy expressly provides coverage for loss of rent and losses incurred by
5 Civil Authority Order”; and (3) that “the Policy provides coverage to Plaintiff for any
6 current and future Civil Authority Order and any accompanying loss of rental income
7 on account of such Order.” *See id.*, Prayer for Relief. The Complaint also asserts
8 causes of action for bad faith breach of the implied covenant of good faith and fair
9 dealing and violation of Insurance Code § 790.03. Compl. ¶¶ 24-42.

10 **B. Contract Language At Issue**

11 **1. The Relevant Coverage Provisions**

12 Plaintiff purchased an Apartment PAC Policy from Travelers, a policy that
13 insures Plaintiff’s property from covered causes of loss, such as a fire or windstorm.
14 Consider a fire that requires a suspension of business operations. The Policy would
15 cover lost business income or increased expenses resulting from the suspension of
16 operations caused by the fire *and* occurring while the repairs are being made—during
17 the “period of restoration.” Plaintiff’s Business Income coverage provides, in relevant
18 part:

19 We will pay for the actual loss of Business Income you sustain due
20 to the necessary “suspension” of your “operations” during the
21 “period of restoration”. The “suspension” must be caused by direct
22 physical loss of or damage to property at the described premises.
23 The loss or damage must be caused by or result from a Covered
24 Cause of Loss. . . .

27 ⁶ Plaintiff’s allegations are sometimes unclear because the Complaint purports to
28 quote phrases that do not appear in the Policy. *See, e.g.*, Compl. ¶¶ 10-11 (“Rental
Income Coverage” and “Property Optional Coverages” do not appear in the Policy).

1 Kupec Decl., Ex. 1 at 20-21. “Covered Causes of Loss” are “RISKS OF DIRECT
2 PHYSICAL LOSS unless the loss is . . . [e]xcluded[.]” *Id.* at 21-22.

3 In the provision entitled “Civil Authority,” which is the focal point of the
4 Complaint, coverage for Business Income and Extra Expense resulting from a
5 “Covered Cause of Loss” is extended to:

6 the actual loss of Business Income you sustain and reasonable and
7 necessary Extra Expense you incur caused by action of civil authority
8 that prohibits access to the described premises. The civil authority
9 action must be due to direct physical loss of or damage to property at
10 locations, other than described premises, that are within 100 miles of
11 the described premises, caused by or resulting from a Covered Cause
12 of Loss.

13 *Id.* at 33 (underscores added). As highlighted, two key requirements for this coverage
14 to apply are: (i) a civil authority action must “prohibit” access to the insured’s
15 premises, and (ii) the action must be due to physical property loss or damage “caused
16 by or resulting from a Covered Cause of Loss” (i.e., a cause that is not excluded from
17 coverage).

18 The Policy does not provide separate Rental Income Coverage, but “Business
19 Income” available pursuant to the Business Income or Civil Authority coverages is
20 defined to include “Rental Value.” Kupec Decl., Ex. 1 at 20. “‘Rental Value’ means
21 Business Income that consists of . . . Net Income . . . that would have been earned or
22 incurred as rental income from tenant occupancy of the premises . . . ; and [c]ontinuing
23 normal operation expenses incurred in connection with that premises[.]” *Id.* at 56.

24 2. The Virus Exclusion

25 The Policy contains an endorsement entitled “EXCLUSION OF LOSS DUE TO
26 VIRUS OR BACTERIA,” which “applies to all coverage under all forms and
27 endorsements that comprise” the Commercial Property Coverage Part of the Policy
28 “including but not limited to forms or endorsements that cover . . . business income,

1 extra expense, rental value or action of civil authority.” Kupec Decl., Ex. 1 at 117.

2 The exclusion concisely states in plain terms that:

3 We will not pay for loss or damage caused by or resulting from any
4 virus, bacterium or other microorganism that induces or is capable of
5 inducing physical distress, illness or disease.

6 *Id.* (underscores added).

7 **III. LEGAL STANDARD**

8 A complaint should be dismissed under Federal Rule of Civil Procedure
9 12(b)(6) when “there is no cognizable legal theory or an absence of sufficient facts
10 alleged to support a cognizable legal theory.” *Navarro v. Block*, 250 F.3d 729, 732
11 (9th Cir. 2001) (citations omitted); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
12 570 (2007) (complaint must “state a claim to relief that is plausible on its face”).

13 Although “a court must take all allegations of material fact as true and construe them
14 in the light most favorable to the nonmoving party,” *Turner v. City & Cty. of San*
15 *Francisco*, 788 F.3d 1206, 1210 (9th Cir. 2015), dismissal is warranted when “the
16 complaint [can]not be saved by any amendment,” *Moss v. U.S. Secret Serv.*, 572 F.3d
17 962, 972 (9th Cir. 2009) (citations omitted). If a complaint fails to state a plausible
18 claim, a district court should grant leave to amend “unless it determines that the
19 pleading could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*,
20 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc) (citation omitted).

21 Under California law,⁷ the terms of an insurance policy must be given their
22 “ordinary and popular sense,” and “[i]f the policy language ‘is clear and explicit, it

23 _____
24 ⁷ California law applies here because the parties are before the Court in diversity and
25 thus the forum state’s choice-of-law principles apply. *Welles v. Turner Entm’t Co.*,
26 503 F.3d 728, 738 (9th Cir. 2007); *Yahoo! Inc. v. Nat’l Union Fire Ins. Co. of*
27 *Pittsburgh, PA*, 255 F. Supp. 3d 970, 973 n.1 (N.D. Cal. 2017). Under California
28 law, a “contract is to be interpreted according to the law and usage of the place
where it is to be performed; or . . . where it is made.” Cal. Civ. Code § 1646.
Because the Policy here concerns rights and responsibilities with respect to property
in California, California law governs. *See Cont’l Cas. Co. v. City of Richmond*, 763
F.2d 1076, 1079 (9th Cir. 1985).

1 governs.” *Palmer v. Truck Ins. Exch.*, 21 Cal. 4th 1109, 1115-17 (Cal. 1999); Cal.
2 Civ. Code § 1638 (“The language of a contract is to govern its interpretation, if the
3 language is clear and explicit, and does not involve an absurdity.”). Indeed, “[a]n
4 insurance policy is but a contract, and, like all other contracts it must be construed
5 from the language used; when the terms are plain and unambiguous, it is the duty of
6 courts to enforce the agreement.” *Roug v. Ohio Sec. Ins. Co.*, 182 Cal. App. 3d 1030,
7 1035 (Ct. App. 1986) (citation omitted). Moreover, courts may not “rewrite a policy to
8 bind the insurer to a risk that it did not contemplate and for which it has not been
9 paid.” *Safeco Ins. Co. v. Gilstrap*, 141 Cal. App. 3d 524, 533 (Ct. App. 1983); *see also*
10 *Certain Underwriters at Lloyd’s of London v. Superior Court*, 24 Cal. 4th 945, 968
11 (2001) (“[W]e do not rewrite any provision of any contract, including the [insurance
12 policy at issue], for any purpose.”). If a complaint “place[s] a clearly erroneous
13 construction upon the provisions of the contract,” that construction should be rejected
14 and the complaint dismissed. *Marzec v. California Pub. Employees Ret. Sys.*, 236 Cal.
15 App. 4th 889, 909 (Ct. App. 2015).

16 **IV. ARGUMENT**

17 The facts pleaded in the Complaint demonstrate as a matter of law that G&G
18 Fine Arts cannot prove an entitlement to coverage under the Policy. Indeed, the
19 Complaint seeks coverage for losses that G&G Fine Arts alleges were caused by orders
20 issued to combat the spread and effects of a virus—yet, as previously described, the
21 Policy contains an explicit exclusion of *any* type of property coverage, including Civil
22 Authority coverage, for *any* “loss or damage resulting from any virus, bacterium or
23 other microorganism that induces or is capable of inducing physical distress, illness or
24 disease.” For this reason alone, the Complaint’s causes of action for declaratory relief
25 regarding coverage and breach of the implied covenant of good faith and fair dealing
26 should be dismissed with prejudice. The cause of action for violation of Insurance
27 Code § 790.03 should be dismissed with prejudice because the statute does not contain
28 a private right of action.

1 **A. G&G Fine Arts Is Not Entitled to Civil Authority Coverage As a**
 2 **Matter of Law**

3 Civil Authority coverage insures certain business losses and expenses “caused
 4 by action of civil authority” that are “due to direct physical loss of or damage to
 5 property . . . *caused by or resulting from a Covered Cause of Loss.*” Kupec Decl., Ex.
 6 1 at 33 (emphasis added). Here, the Policy explicitly excludes losses “caused by or
 7 resulting from any virus” from its Covered Causes of Loss. Moreover, the “action of
 8 civil authority” must “*prohibit[] access to the described premises*” for there to be any
 9 potential of coverage. *Id.* (emphasis added). G&G Fine Arts does not allege that
 10 access to the Cottages was prohibited; instead, G&G Fine Arts alleges that existing
 11 tenants are not paying rent. Compl. ¶ 16. Because G&G’s Fine Arts’ allegations fail
 12 to satisfy either requirement, dismissal is warranted as to G&G Fine Arts’ requests
 13 regarding this coverage.

14 **1. Civil Authority Coverage Does Not Apply to Losses Caused By**
 15 **or Resulting From a Virus**

16 Pursuant to the Policy’s express terms, an “action of civil authority” can *only*
 17 give rise to coverage if, among other things, the action is taken “due to direct physical
 18 loss of or damage to property . . . *caused by or resulting from a Covered Cause of*
 19 *Loss.*” Kupec Decl., Ex. 1 at 33 (emphasis added). And as a matter of logic as well as
 20 explicit policy language, an *excluded* risk of loss is *not* a Covered Cause of Loss.

21 The Complaint alleges that the civil authority actions—the Orders and Code
 22 Amendment—were issued because of *the Coronavirus*. Specifically, G&G Fine Arts
 23 alleges that Mayor Garcetti issued the Orders to “afford[] unprecedented and unique
 24 tenant protections during the Coronavirus pandemic[.]” Compl. ¶ 15. The Orders and
 25 Code Amendment “provided residential tenants with numerous relief measures” for
 26 “Coronavirus-related issues (i.e., un/underemployment, illness, quarantine, etc.)[.]” *Id.*

27 G&G Fine Arts’ alleged losses, therefore, likewise are caused by or result from
 28 the Coronavirus, a risk of loss that falls squarely within the Policy’s broad exclusion of

1 “loss or damage *caused by or resulting from any virus, bacterium or other*
 2 *microorganism that induces or is capable of inducing physical distress, illness or*
 3 *disease.”* Kupec Decl., Ex. 1 at 117 (emphasis added). And this exclusion expressly
 4 applies to civil authority coverage and any “rental value” sought. *Id.* (“The exclusion
 5 applies to . . . forms or endorsements that cover business income, extra expense, *rental*
 6 *value or action of civil authority.”* *Id.* (emphasis added)).

7 California law instructs that when the language of a policy “is clear and
 8 explicit,” as it is here, the language governs. *Palmer*, 21 Cal. 4th at 1115; Cal. Civ.
 9 Code § 1638. California courts evaluating policy exclusions foreclosing coverage for
 10 losses “caused by or resulting from” specified non-covered risks have found the
 11 provisions unambiguous and applied their plain meaning. *See, e.g., Atlas Assurance*
 12 *Co. v. McCombs Corp.*, 146 Cal. App. 3d 135, 149 (Ct. App. 1983); *see also*
 13 *Fireman’s Fund Ins. Co. v. Superior Court*, 65 Cal. App. 4th 1205, 1212-13 (Ct. App.
 14 1997) (a court “will not strain to create an ambiguity where none exists or indulge in
 15 tortured constructions to divine some theoretical ambiguity in order to find coverage
 16 where none was contemplated.”).⁸

19 ⁸ While few courts have had occasion to construe a virus or microorganism
 20 exclusion, courts have enforced them in accordance with their clear and
 21 unambiguous language. *See, e.g., Certain Underwriters at Lloyd’s London v.*
 22 *Creagh*, Civ. A. No. 12-571, 2013 WL 3213345 (E.D. Pa. June 26, 2013) (holding
 23 that exclusion for “any loss . . . arising out of or relating to . . . [a] microorganism
 24 of any type” precluded coverage for damage to bathroom caused by bacteria from
 25 dead body), *aff’d*, 563 Fed. App’x 209 (3d Cir. 2014); *Doe v. State Farm Fire &*
 26 *Cas. Co.*, No. 2015-0136, 2015 WL 11083311, at *2 (N.H. Sept. 21, 2015) (“We
 27 conclude that a reasonable person in the position of the insured, based upon more
 28 than a casual reading of the policy as a whole, would understand the policy to
 exclude all diseases and viruses that can be transmitted from one person to
 another.”); *Lambi v. Am. Family Mut. Ins. Co.*, 498 F. App’x 655, 656 (8th Cir.
 2013) (“the policy excluded bodily injury arising out of the actual or alleged
 transmission of a communicable disease, and infecting another with the HIV virus
 clearly falls within the plain and ordinary meaning of the transmission of a
 communicable disease.”); *Clarke v. State Farm Fla. Ins.*, 123 So. 3d 583, 584 (Fla.
 Dist. Ct. App. 2012) (similar result, finding exclusion unambiguous).

1 There is no question that the plain language of the virus exclusion controls here.
 2 The Complaint refers to the “Coronavirus pandemic” and acknowledges that
 3 “Coronavirus-related issues” include “illness.” Compl. ¶ 15. Thus, as alleged by
 4 Plaintiff, the Coronavirus is a virus “capable of inducing physical distress, *illness* or
 5 disease,” which falls squarely within the scope of the virus exclusion. Kupec Decl.,
 6 Ex. 1 at 117 (emphasis added). The Coronavirus is not a Covered Cause of Loss and
 7 therefore cannot give rise to Civil Authority coverage.

8 Nonetheless, G&G Fine Arts requests declarations establishing civil authority
 9 coverage for losses caused by or resulting from current and future Coronavirus-related
 10 orders. Compl., Prayer for Relief. To grant G&G Fine Arts’ request would “strain[]
 11 reason” and require “precisely the opposite” of the plain meaning of the virus
 12 exclusion, which unambiguously precludes coverage for any loss “caused by or
 13 resulting from” a virus. *See Atlas Assurance*, 146 Cal. App. 3d at 149. Such a result
 14 would effectively “rewrite” the Policy and improperly bind Travelers “to a risk that it
 15 did not contemplate and for which it has not been paid.” *Id.*; *Marzec*, 236 Cal. App.
 16 4th at 909-10 (“The fundamental goal of contract interpretation is to give effect to the
 17 mutual intention of the parties as it existed at the time they entered into the contract.”).

18 Because G&G Fine Arts’ construction of the Policy requires that the virus
 19 exclusion be ignored, it is “clearly erroneous” and unreasonable, and thus dismissal is
 20 warranted on this basis. *Marzec*, 236 Cal. App. 4th at 909 (when the insured “place[s]
 21 a clearly erroneous construction upon the provisions of the contract,” that construction
 22 cannot be accepted and the complaint should be dismissed).

23 **2. Civil Authority Coverage Does Not Apply Because the**
 24 **Complaint Admits the Orders Did Not “Prohibit Access” to**
 25 **G&G Fine Arts’ Premises**

26 G&G Fine Arts’ allegations also fail to establish Civil Authority coverage for
 27 the independent reason that the Complaint does not allege that the Orders or Code
 28 Amendment “prohibit access” to the Cottages. Plaintiff’s allegations nowhere state

1 that Plaintiff, its tenants, or anyone else is prohibited from accessing the Cottages, and
 2 the Complaint actually suggests that tenants continue to access and occupy the
 3 Cottages without paying rent. Compl. ¶ 16.⁹ In other words, Plaintiff acknowledges
 4 on the face of the Complaint that the Orders did not close or prohibit access to the
 5 G&G Fine Arts' premises. Instead, G&G Fine Arts claims entitlement to Civil
 6 Authority coverage because it "has been forced to deal with rent deferral requests and
 7 unpaid rent," i.e., its rental business has suffered, as a result of the Orders. *Id.* These
 8 allegations do not satisfy the requirements for coverage under the plain language of the
 9 Policy.

10 Courts interpreting civil authority provisions uniformly require the phrase
 11 "prohibit access" to mean to "formally forbid" or "prevent" any access to the premises.
 12 *See, e.g., Southern Hospitality, Inc. v. Zurich American Ins.*, 393 F.3d 1137, 1140
 13 (10th Cir. 2004). Restrictions that negatively impact an insured's business, but do not
 14 prevent access to the business premises, are not sufficient. For example, in *Syufy*
 15 *Enterprises v. The Home Insurance Co. of Indiana*, the district court addressed civil
 16 authority coverage for businesses affected by "dawn-to-dusk" curfews imposed by
 17 cities during the Rodney King riots. 1995 WL 129229 (N.D. Cal. Mar. 21, 1995). A
 18 movie theater operator cancelled showings during the curfew period, presumably
 19 because customers could not attend. *Id.* at *1. Although the orders caused the
 20 insured's business to suffer, coverage was not implicated because the orders did not
 21 "deny access to a Syufy theater" or "prohibit[] any individual from entering a theater."
 22 *Id.* at *2. That the insured "opted to close its theaters" and suffered lost ticket sales as
 23 a result of the curfews did not satisfy the policy language. *Id.*

24 Civil authority coverage cases in California and elsewhere after the September
 25 11, 2001 terrorist attacks reinforced this distinction between orders that "prohibit
 26

27 ⁹ Plaintiff alleges that one unit "has gone unoccupied" during the pandemic,
 28 suggesting either difficulty leasing the unit or that a tenant left, but Plaintiff does
 not allege that access to the presently unoccupied unit is "prohibited." Compl. ¶ 16.

1 access” to an insured premises and those that, as Plaintiff describes, “interfere[]” with
2 an insured’s business. Compl. ¶ 21. In *Backroads Corp. v. Great Northern Ins.*, 2005
3 WL 1866397 (N.D. Cal. Aug. 1, 2005), after the FAA grounded domestic air traffic in
4 the days following September 11, the court rejected a vacation tour operator’s claim
5 for civil authority coverage for trip reimbursements to customers. Although the orders
6 prevented customers from utilizing their vacation packages and caused the insured’s
7 business to suffer, there was no coverage because “the FAA’s order did not prohibit
8 access to [the insured]’s premises[.]” *Id.* at *6. Courts across the country similarly
9 rejected attempts by hotels, airport parking garages, and even airport gift shops to
10 claim coverage for losses incurred as a result of the FAA orders because they did not
11 “prohibit access” to the various businesses. *See Southern Hospitality*, 393 F.3d at
12 1140 (“The FAA order prohibited access to airplane flights; it did not prohibit access
13 to hotel operations.”); *730 Bienville Partners, Ltd. v. Assurance Co. of Am.*, 67 F.
14 App’x 248 (5th Cir. 2003) (unpublished) (“The generally prevailing meaning of
15 ‘prohibit’ is . . . ‘to forbid by authority or command,’” and “[i]t is undisputed that the
16 FAA did not forbid any person to access the [insured’s] hotels” after the September
17 11th attacks.); *Philadelphia Parking Auth. v. Fed. Ins. Co.*, 385 F. Supp. 2d 280, 289
18 (S.D.N.Y. 2005) (While the order “may have temporarily obviated the need for
19 Plaintiff’s parking services, it did not prohibit access to Plaintiff’s garages and
20 therefore cannot be used to invoke coverage[.]”); *Paradies Shops, Inc. v. Hartford Fire*
21 *Ins. Co.*, No. 1:03-CV-3154-JEC, 2004 WL 5704715, at *7 (N.D. Ga. Dec. 15, 2004)
22 (“The Court sees no reasonable means of construing [the] order to ground all aircraft
23 as an order specifically forbidding access to plaintiff’s premises” in airport terminal
24 stores.). Likewise, while post-September 11th orders closing lower Manhattan
25 businesses in the days following the attacks “prohibited access” to businesses,
26 subsequent “vehicular traffic prohibitions” were insufficient to trigger coverage even
27 though they “restrain[ed] . . . normal operating procedures” for businesses. *Abner,*
28 *Herrman & Brock, Inc. v. Great N. Ins. Co.*, 308 F. Supp. 2d 331, 335-36 (S.D.N.Y.

1 Mar. 12, 2004); *see also 54th St. Ltd. Partners, L.P. v. Fid. & Guar. Ins. Co.*, 763
2 N.Y.S.2d 243, 244 (N.Y. App. Div. 2003).

3 Thus, as a matter of law, Plaintiff is not entitled to a declaration establishing
4 Civil Authority coverage under the Policy because the Complaint does not allege
5 (1) physical loss or damage to property “caused by or resulting from a Covered Cause
6 of Loss” in light of the virus exclusion; or (2) that the Orders “prohibited access” to
7 G&G Fine Arts’ premises. Amendment cannot cure these defects because the lawsuit
8 is premised on the terms of the Orders and Code Amendment, neither of which can be
9 altered by amendment.

10 **B. Business Income Coverage Similarly Does Not Apply as a Matter of**
11 **Law**

12 The focal point of the Complaint is Civil Authority coverage. Yet to the extent
13 that G&G Fine Arts’ claims for “Rental Income Coverage” are intended to sweep in
14 business interruption coverage beyond Civil Authority coverage, this claim also fails
15 as a matter of law.

16 The Policy provides coverage for “actual loss of Business Income . . . due to the
17 necessary ‘suspension’ of [G&G Fine Arts’] ‘operations’” only if (1) the suspension is
18 “caused by direct physical loss of or damage to property at the described premises,”
19 and (2) the loss or damage is “caused by or result[s] from a Covered Cause of Loss.”
20 Kupec Decl., Ex. 1 at 20-21. The Complaint contains no allegation of “physical loss of
21 or damage to property” *anywhere*, let alone at the Cottages. Because G&G Fine Arts
22 does not allege direct physical loss of or damage to the described premises, dismissal is
23 warranted on this basis alone.

24 But even if G&G Fine Arts had alleged direct physical loss of or damage to
25 property at the insured premises, there is no Business Income coverage for the same
26 reason that there is no Civil Authority coverage: a virus is not a Covered Cause of
27 Loss. The virus exclusion expressly applies to Business Income coverage. Kupec
28 Decl., Ex. 1 at 117 (“The exclusion . . . applies to . . . forms or endorsements that cover

1 *business income*, extra expense, rental value or action of civil authority.”) (emphasis
 2 added). If G&G Fine Arts were to amend its Complaint to allege *physical* loss or
 3 damage to property at the Cottages, such purported “damage” could only be caused by
 4 or result from the Coronavirus.¹⁰ The Policy, however, precludes Business Income
 5 coverage claimed on this basis. Thus, as a matter of law, Plaintiff’s Complaint
 6 premised on the Coronavirus cannot trigger Business Income coverage.¹¹

7 Plaintiff’s claim for Business Income coverage fails as a matter of law for the
 8 additional reason that *deferred* rent is not lost business income. See Compl. ¶¶ 15-16
 9 (alleging that the Orders have caused rent “deferral[s]” but not alleging that any rent
 10 cannot be collected in the future). The Policy’s Civil Authority and Business Income
 11 coverages provide compensation only for the “actual loss of Business Income you
 12 sustain.” Kupec Decl., Ex. 1 at 20. This is an independent basis to dismiss Plaintiff’s
 13 claims premised on Business Income coverage as a matter of law.¹²

14
 15 ¹⁰ Although Travelers does not seek adjudication of this issue on this motion, a virus
 16 cannot cause direct physical loss or damage as a matter of law because California
 17 appellate decisions require “a distinct, demonstrable, physical alteration of the
 18 property.” *MRI Healthcare Ctr. of Glendale, Inc. v. State Farm Gen. Ins. Co.*, 187
 19 Cal. App. 4th 766, 779 (Ct. App. 2d Dist. 2010); see also *Social Life Magazine, Inc.*
 20 *v. Sentinel Ins. Co. Ltd.*, No. 20 Civ. 3311 (VEC) (S.D.N.Y. May 14, 2020
 transcript) (available at ECF 24-1) (court explaining in case making allegations
 similar to Plaintiff’s allegations that COVID-19 “damages lungs,” “[i]t doesn’t
 damage printing presses” or other property, and “this is just not what’s covered
 under these insurance policies”).

21 ¹¹ The Complaint also contains passing references to Extra Expense coverage and in
 22 one sentence vaguely refers to potential “late fees.” Compl. ¶¶ 9, 18. Although
 23 these fleeting references are hardly sufficient to plead a claim under the Extra
 24 Expense provision, that coverage similarly requires “direct physical loss of or
 25 damage to property caused by or resulting from a Covered Cause of Loss” (Kupec
 Decl., Ex. 1 at 21), and thus there is no coverage for the same reasons that there is
 no Business Income coverage, as set forth above. The virus exclusion also
 expressly applies to Extra Expense coverage. Kupec Decl., Ex. 1 at 117.

26 ¹² See, e.g., *Fireman’s Fund Ins. Co. v. Holland Am. Line-Westours, Inc.*, 25 F. App’x
 27 602, 603 (9th Cir. 2002) (lost revenue was reduced by “make-up” reservations that
 28 the cruise line was able to process when the system came back online); *Admiral*
Indem. Co. v. Bouley Int’l Holding, LLC, No. 02 CIV. 9696, 2003 WL 22682273, at
 *4 (S.D.N.Y. Nov. 13, 2003).

1 **C. As a Matter of Law, G&G Fine Arts Is Not Entitled to Any of Its**
 2 **Requested Declarations**

3 Because G&G Fine Arts cannot demonstrate as a matter of law that it is entitled
 4 to coverage under the Policy’s Civil Authority or Business Income provisions, G&G
 5 Fine Arts is not entitled to any of the declarations it seeks. G&G Fine Arts has
 6 specifically requested three declarations pertaining to aspects of Civil Authority (or
 7 possibly Business Income) coverage under the Policy. Compl., Prayer for Relief. As
 8 discussed above, G&G Fine Arts has failed to state a claim that Civil Authority or
 9 Business Income coverage exists (the second and third declarations) or that the Orders
 10 caused loss or damage to premises (the first declaration). Thus, no cognizable legal
 11 theory or set of facts has been alleged to sustain any of the declarations.

12 Indeed, because G&G Fine Arts has failed to allege that it is entitled to a
 13 declaration of coverage, the Court can dismiss all other derivative declarations as
 14 moot. *See Native Vill. of Noatak v. Blatchford*, 38 F.3d 1505, 1514 (9th Cir. 1994)
 15 (“The district court, . . . may grant declaratory relief only when there is an actual case
 16 or controversy; a declaratory judgment may not be used to secure judicial
 17 determination of moot questions.”), *overruled on other grounds by Bd. of Trustees of*
 18 *Glazing Health & Welfare Tr. v. Chambers*, 941 F.3d 1195 (9th Cir. 2019); *see also*
 19 *Amaral v. Wachovia Mortg. Corp.*, 692 F. Supp. 2d 1226, 1236 & n.3 (E.D. Cal. 2010)
 20 (dismissing two of three requested declarations in part because “a determination as to
 21 whether Plaintiffs [were] entitled to the third requested declaration [would] involve an
 22 analysis of the issues surrounding the first two with no need for separate declarations
 23 on all three matters”).

24 **D. G&G Fine Arts’ Claim for Breach of the Implied Covenant of Good**
 25 **Faith and Fair Dealing Fails Because G&G Fine Arts Is Not Entitled**
 26 **to Coverage as a Matter of Law**

27 To establish a claim for breach of the implied covenant of good faith and fair
 28 dealing, “(1) *benefits due under the policy* must have been withheld; and (2) the reason

1 for withholding benefits must have been unreasonable or without probable cause.”
2 *Love v. Fire Ins. Exch.*, 221 Cal. App. 3d 1136, 1151 (1990) (emphasis added). The
3 “threshold requirement” in such a claim is that insurance coverage exists under the
4 plaintiff’s policy. *Id.* at 1152. Thus, a bad faith claim “cannot be maintained unless
5 policy benefits are due under a contract.” *Waller v. Truck Ins. Exch., Inc.* 11 Cal. 4th
6 1, 35 (1995); *see, e.g., Minich v. Allstate Ins. Co.* 193 Cal. App. 4th 477, 493 (2011)
7 (the “claim for tortious breach of contract (bad faith) fails as a matter of law because
8 [the insurer] did not breach the Policy”); *Brown v. Mid-Century Ins. Co.* 215 Cal. App.
9 4th 841, 858 (2013) (“Because the policy did not cover the [insureds’] claims,
10 however, the [insureds] do not have a claim for breach of the implied covenant of good
11 faith and fair dealing.”).

12 Applying this well-established California law, district courts routinely dismiss
13 claims for breach of the covenant of good faith and fair dealing when plaintiffs’
14 allegations of coverage under their policies fail to state a claim. *See Sigma Fin. Corp.*
15 *v. Gotham Ins. Co.*, No. CV1501531AGD, 2017 WL 9511732, at *2 (C.D. Cal. Mar.
16 31, 2017) (granting motion to dismiss with prejudice when the insurer “didn’t breach
17 the excess-liability insurance contract, so it follows that [the insured] can’t possibly
18 recover for breach of the implied covenant of good faith and fair dealing.”); *O’Keefe v.*
19 *Allstate Indem. Co.*, 953 F. Supp. 2d 1111, 1116 (S.D. Cal. 2013) (“Because
20 [plaintiffs] cannot sue for bad faith without proving that benefits were withheld under
21 the policy ‘as written,’ and because [plaintiffs] cannot establish that coverage existed
22 under the express terms of the contract, there is no cause of action for breach of the
23 implied covenant of good faith and fair dealing.”); *Moss v. Infinity Ins. Co.*, No. 15-
24 CV-03456-JSC, 2015 WL 7351395, at *5 (N.D. Cal. Nov. 20, 2015) (dismissing
25 implied covenant claim when the policy “excluded from coverage the particular
26 situation for which Plaintiff sought benefits.”). Here, because G&G Fine Arts is not
27 entitled to coverage under the Policy as a matter of law, its claim for bad faith breach
28 of the covenant of good faith and fair dealing must be dismissed.

1 **E. Dismissal of the Third Cause of Action for Violation of Insurance**
 2 **Code Section 790.03 Is Proper Because There Is No Private Right of**
 3 **Action Under That Section**

4 California’s Unfair Insurance Practices Act prohibits “unfair claims settlement
 5 practices” by insurers. Cal. Ins. Code, § 790.03(h). More than three decades ago, the
 6 California Supreme Court declared that “no private action may be brought under
 7 section 790.03” to establish an insurer’s liability. *Moradi-Shalal v. Fireman’s Fund*
 8 *Ins. Cos.*, 46 Cal. 3d 287, 313 (1988). Violations are enforceable by the Insurance
 9 Commissioner, not individual insureds. *Id.* at 304. Thus, the Court should dismiss the
 10 third cause of action because there is no private right of action for unfair claims
 11 practices in violation of Section 790.03. *See, e.g., Good v. State Farm Mut. Auto. Ins.*
 12 *Co.*, No. C 05-05299 SBA, 2006 WL 8443383, at *5 (N.D. Cal. Mar. 10, 2006)
 13 (“because California Insurance Code § 790.03 does not provide a private right of
 14 action, the Court hereby GRANTS Defendant’s Motion to Dismiss”); *R. L. H., III by &*
 15 *through Hunter v. United Servs. Auto. Ass’n*, No. cv-7942-VAP, 2008 WL 11336180,
 16 at *6 (C.D. Cal. Apr. 10, 2008), *aff’d sub nom. R.L.H. ex rel. Hunter v. United Servs.*
 17 *Auto. Ass’n*, 327 F. App’x 714 (9th Cir. 2009).

18 **V. CONCLUSION**

19 For all of the reasons stated above, G&G Fine Arts has failed to state any claim
 20 upon which relief must be granted. Thus, Travelers respectfully requests that the Court
 21 dismiss the Complaint with prejudice under Federal Rule of Civil Procedure 12(b)(6).¹³
 22
 23
 24
 25

26
 27 ¹³ Travelers notes that some policyholders have petitioned for the creation of an
 28 industry-wide COVID-19 business interruption insurance MDL. To the best of
 Travelers’ knowledge, Plaintiff here has not sought to be part of that MDL.
 Moreover, the hearing on the MDL petition is not scheduled until July 30.

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