

1 Todd M. Schneider (SBN 158253)  
2 Joshua G. Konecky (SBN 182897)  
3 Matthew S. Weiler (SBN 236052)  
4 **SCHNEIDER WALLACE**  
5 **COTTRELL KONECKY LLP**  
6 2000 Powell Street, Suite 1400  
7 Emeryville, CA 94608  
8 Telephone: (415) 421-7100  
9 tschneider@schneiderwallace.com  
10 jkonecky@schneiderwallace.com  
11 mweiler@schneiderwallace.com

12 Peter B. Schneider (*pro hac vice* forthcoming)  
13 Edward R. Batten (*pro hac vice* forthcoming)  
14 Ryan R. Hicks (*pro hac vice* forthcoming)  
15 3700 Buffalo Speedway, Suite 300  
16 Houston, Texas 77098  
17 Telephone: (713) 338-2560  
18 Facsimile: (415) 421-7105  
19 pschneider@schneiderwallace.com  
20 ebatten@schneiderwallace.com  
21 rhicks@schneiderwallace.com

22  
23 **UNITED STATES DISTRICT COURT**  
24 **NORTHERN DISTRICT OF CALIFORNIA**  
25

26 O'BRIEN SALES AND MARKETING, INC.,  
27 on behalf of itself and other similarly situated,

28 Plaintiff

v.

TRANSPORTATION INSURANCE COMPANY,

Defendant.

COMPLAINT FOR DECLARATORY  
JUDGMENT

CLASS ACTION

1 **CLASS ACTION COMPLAINT**

2 Plaintiff O’Brien Sales and Marketing, Inc. (“Plaintiff”), individually and on behalf of the  
3 other members of the below-defined nationwide classes (collectively, the “Class”), brings this class  
4 action against Defendant Transportation Insurance Company (“Transportation”).

5 **I. INTRODUCTION**

6 1. COVID-19 has interrupted businesses nation-wide, causing itself, or through issuance  
7 of government orders, devastating losses to Plaintiff and other policyholders.

8 2. Defendant, Transportation Insurance Company, is obligated to cover Plaintiff’s  
9 losses under the terms of the insurance contract it issued to Plaintiff, which is identical in all material  
10 respects to those policies issued to other Class Members.

11 3. Although COVID-19 is caused by virulent virus strain, SARS-CoV-2, that is novel  
12 to humans, the damage it inflicts is the type of physical damage covered by “all risk” policies such  
13 as those issued by Transportation. The virus’s inherent danger is its physical presence.

14 4. Plaintiff purchased insurance coverage from Defendant to protect against the risk  
15 of losses from the suspension of its businesses. Plaintiff purchased a “Special Property Coverage”  
16 insurance policy that included “Business Income” coverage that broadly covered risks due to  
17 closure, shut down, or slowdown of Plaintiff’s business.

18 5. The policy also included “Extra Expense” coverage, that provides for additional  
19 costs and expenses that are necessary to continue operations after an interruption to business  
20 operations has occurred.

21 6. The Special Property Coverage Form also includes “Civil Authority” coverage,  
22 which applies when a civil authority such as the Governor of California or local authority takes  
23 action that prohibits physical access to covered businesses premises.

24 7. “Civil Authority” coverage is implicated by the COVID-19 epidemic because the  
25 virus was physically present at businesses and other public places near Plaintiff’s and Class  
26 Members’ businesses.

1           8.       Plaintiff’s business, and its premises, were physically damaged by the presence of  
2 the virus that causes COVID-19. Plaintiff’s business was suspended by the presence of the virus  
3 and Plaintiff was required to take measures to prevent further interruption and damage.

4           9.       Defendant has broadly refused to pay any amount of coverage for claims made under  
5 the Business Income, Extra Expense, or Civil Authority coverage. These refusals were not made on  
6 the basis of any of Plaintiff or Class Members’ individual circumstances. On information and belief,  
7 the refusal to pay is uniform and is part of Defendant’s business strategy.

8           10.      Plaintiff and Class Members have tendered claims under the Business Income, Extra  
9 Expense, Civil Authority, and any and all other applicable coverage related to the virus that causes  
10 COVID-19, but Defendant has refused to pay.

11 **II.    JURISDICTION AND VENUE**

12           11.      This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, because  
13 Defendant and at least one Class member are citizens of different states, and because the Class  
14 consists of at least 100 members and the amount in controversy exceeds \$5,000,000 exclusive of  
15 interest and costs.

16           12.      Venue is proper in this District under 28 U.S.C. § 1391, because Defendant conducts  
17 business in this District, Class Members are likely located in this District, and certain of the acts  
18 and conduct giving rise to the claims occurred within the District.

19 **III.   PARTIES**

20           13.      Plaintiff O’Brien Sales & Marketing, Inc. is a marketing agency located in Newport  
21 Beach, California.

22           14.      Defendant Transportation Insurance Company (“Transportation”) is a corporation  
23 with its headquarters located at CNA 151 North Franklin Street, Chicago, Illinois 60606.  
24 Transportation is authorized to write, sell, and issue insurance policies providing property and  
25 business income coverage in California and throughout the United States.

26  
27  
28

1 **IV. FACTUAL ALLEGATIONS**

2 15. Defendant issued Plaintiff Policy No. B 5094898147. On information and belief, this  
3 policy is similar in all material respects to policies issued to other Class Members.

4 16. Plaintiff's Policy contains coverage for Business Income, Extra Expense, and Civil  
5 Authority.

6 17. The "Covered Property" under Defendant's policy is located at 2901 West Pacific  
7 Coast Highway 235, Newport Beach, California 92663.

8 18. Defendant's policy contains a Special Property Coverage Form that is an "all risk"  
9 policy that covers all "direct physical loss or damage" to the Covered Property.

10 19. "All risk" policies cover all damage from all sources unless it is specifically  
11 excluded. There is no exclusion or limit for damages from viruses in the Policy.

12 **A. Business Income Coverage**

13 20. With respect to Business Income, Transportation "will pay for the actual loss of  
14 Business Income you sustain due to the necessary 'suspension' of your 'operations' during the  
15 'period of restoration.' The 'suspension' must be caused by direct physical loss of or damage to  
16 property at the described premises. The loss or damage must be caused by or result from a Covered  
17 Cause of Loss."

18 21. "Suspension" is defined in Transportation policies as "The partial or complete  
19 cessation of your business activities" or "That a part or all of the described premises is rendered  
20 untenable"

21 22. "Period of restoration" "means the period of time that ... [b]egins with the date of  
22 direct physical loss or other damage caused by or resulting from any Covered Cause of Loss at the  
23 described premises."

24 23. As alleged herein, "Business Income" is net income that Plaintiff would have earned  
25 or incurred, and continuing normal operating expenses incurred, including payroll. "Extra Expense"  
26 are costs that Plaintiff incurred during the "period of restoration" of the Covered Property that would  
27 not have been incurred if there had been no direct physical loss or damage to the Covered Property.  
28

1           24. By the Business Income coverage, Defendant agreed to pay for Plaintiff’s and Class  
2 Members’ actual losses business income suffered during the suspension of Plaintiff’s and Class  
3 Members’ businesses. Coverage runs through the “Period of Restoration,” which is ongoing due to  
4 direct physical loss from COVID-19.

5           25. Losses due to COVID-19 is a “Covered Loss” under the Policy.

6           **B. Extra Expense Coverage**

7           26. Under Transportation policies “Extra Expense means reasonable and necessary  
8 expenses you incur during the ‘period of restoration’ that you would not have incurred if there had  
9 been no direct physical loss of or damage to property caused by or resulting from a Covered Cause  
10 of Loss.”

11           27. Extra Expense coverage includes costs incurred to “[a]void or minimize the  
12 ‘suspension’ of business and to continue ‘operations’ at the described premises or at replacement  
13 premises or temporary locations, including relocation expenses and costs to equip and operate the  
14 replacement premises or temporary locations; or ... [m]inimize the ‘suspension’ of business if you  
15 cannot continue ‘operations.’”

16           28. Extra Expense also includes costs “to repair or replace the property, but only to the  
17 extent it reduces the amount of loss that otherwise would have been payable under ... Business  
18 Income.”

19           **C. Civil Authority Coverage**

20           29. Civil Authority coverage under Transportation policies provides added Business  
21 Insurance and Extra Expense coverage when physical damage to nearby properties causes losses at  
22 Covered Property.

23           30. The policies allow Plaintiff and Class Members to “extend that insurance to apply to  
24 the actual loss of Business Income you sustain and reasonable and necessary Extra Expense you  
25 incur caused by action of civil authority that prohibits access to the described premises.”

1 31. “The civil authority action must be due to direct physical loss of or damage to  
2 property at locations, other than described premises, caused by or resulting from a Covered Cause  
3 of Loss.”

4 **D. COVID-19 Triggers Business Income, Extra Expense, and Civil Authority**  
5 **Coverage.**

6 32. The presence of a virus is a physical interaction with property, making it dangerous  
7 and less valuable. This damage is direct, in that the presence of virus particles alone is enough to  
8 make the property dangerous and less valuable.

9 33. Persons infected with COVID-19 spread the virus through the release of virus  
10 particles in talking, breathing, coughing, and sneezing. A mere sneeze can spread millions<sup>1</sup> or  
11 even hundreds of millions<sup>2</sup> of virus particles. A little as a dozen particles can infect an adult.

12 34. SARS-CoV-2 can live for days on surfaces such as doorknobs, faucet handles,  
13 counters, desks, and carpeting.<sup>3</sup>

14 35. A study from an intensive care unit in a hospital suggests that SARS-CoV-2 can  
15 travel around four meters through the air.<sup>4</sup>

16 36. Insurance carriers know that viruses cause damage to property.

17 37. In July 2006 the Insurance Services Office (“ISO”), a leading insurance industry  
18 advisory and ratings company, issued a circular that “introduces [a] new endorsement . . . Exclusion  
19 Of Loss Due To Virus Or Bacteria, which states that there is no coverage for loss or damage caused  
20 by or resulting from any virus, bacterium or other microorganism that induces or is capable of  
21 inducing physical distress, illness or disease.”

22 38. The July 2006 ISO circular explained “Disease-causing agents may render a product  
23 impure (change its quality or substance), or enable the spread of disease by their presence on interior  
24

---

25 <sup>1</sup> <https://www.texastribune.org/2020/04/02/texas-er-doctors-demand-rapid-testing-coronavirus/>

26 <sup>2</sup> <https://acis.cals.arizona.edu/community-ipm/home-and-school-ipm-newsletters/ipm-newsletter-view/ipm-newsletters/2020/03/30/people-unite-against-the-threat-of-covid-19>

27 <sup>3</sup> <https://www.nejm.org/doi/full/10.1056/NEJMc2004973>

28 <sup>4</sup> [https://wwwnc.cdc.gov/eid/article/26/7/20-0885\\_article](https://wwwnc.cdc.gov/eid/article/26/7/20-0885_article)

1 building surfaces or the surfaces of personal property. When disease-causing viral or bacterial  
2 contamination occurs, potential claims involve the cost of replacement of property (for example, the  
3 milk), cost of decontamination (for example, interior building surfaces), and business interruption  
4 (time element) losses.”

5         39. The physical presence of COVID-19 caused “direct physical loss of or damage  
6 to” each “Covered Property” under the Policy, and the policies of the other Class members. COVID-  
7 19 damaged the “Covered Property” by requiring it to be shut down. It was necessary for Plaintiff  
8 to shut down business operations in the “Covered Property” due to the damage to its property and  
9 that of nearby property.

10         40. The “Civil Authority” provisions of the Policy have likewise been triggered here.  
11 The Governor of California has issued Executive Orders, including Executive Order N-33-20,  
12 that limit or reduce the normal business operations of businesses in Plaintiff’s community.  
13 Governor Newsom’s Proclamation of State of Emergency is authorized by Government Code  
14 Section 8625 which requires the Governor find the existence of the circumstances described in  
15 Government Code Section 8558(b). Those circumstances include “conditions of disaster or of  
16 extreme peril to the safety of persons and property” caused by conditions such as epidemics.  
17 Executive Order N-33-20, which ordered the closure of class members’ businesses, is premised  
18 on a finding by the Governor of extreme peril to property as a result of the epidemic.

19         41. State and local government across the national have issued similar orders.

20         42. The orders issued by state and local governments limit and restrict business  
21 hours; require closure of certain businesses altogether; limit the number of guests that may be  
22 allowed inside a business premises at one time; and require distancing between patrons that  
23 imposes additional limits on business operations.

24         43. The premise of all these orders is that the virus that causes COVID-19 is  
25 physically present in proximity to Plaintiff’s Covered Property. Due to the omnipresence of the  
26 virus, executive orders were issued due to the “community spread” of COVID-19. Community  
27  
28

1 spread was only possible because the virus that causes COVID-19 was physically present in  
2 public places and businesses in Newport Beach and across the nation.

3 44. Due to these executive orders, Plaintiff and Class Members could not access their  
4 businesses on Covered Property.

5 45. Plaintiff and Class Members lost Business Income and paid Extra Expense as a result  
6 of COVID-19.

7 46. Plaintiff submitted a claim to Defendant, but Defendant has denied Plaintiff's claim.

8 47. Defendant's denial of Plaintiff's claim is part of a common plan or business policy  
9 that applies to all Class Members. Defendant will not pay any claims related to COVID-19,  
10 regardless of the merits of these claims.

11 **V. CLASS ACTION ALLEGATIONS**

12 48. Plaintiff brings this action pursuant to Rules 23(a), and 23(b)(1), 23(b)(2), 23(b)(3)  
13 and/or 23(c)(4), of the Federal Rules of Civil Procedure, individually and on behalf of all others  
14 similarly situated. Plaintiff seeks to represent the following classes of Transportation  
15 policyholders for purposes of obtaining declaratory judgement:

16 49. The "Business Income Class": All persons and entities with Business Income  
17 coverage under an insurance policy issued by Transportation that suffered an interruption of  
18 business due to COVID-19 at the premises covered by the business income coverage.

19 50. The "Extra Expense Class": All persons and entities with Extra Expense coverage  
20 under a policy issued by Transportation that paid or incurred costs in seeking to minimize the  
21 suspension of business in connection with COVID-19 at the premises covered by their  
22 Transportation property insurance policy.

23 51. The "Civil Authority Class": All persons and entities with Civil Authority  
24 coverage under a policy issued by Transportation that suffered loss of Business Income and/or  
25 Extra Expense caused by an order closing businesses and public spaces due to COVID-19.



1           52. Defendant and any of its members, affiliates, parents, subsidiaries, officers,  
2 directors, employees, successors, or assigns; governmental entities; and the Court staff assigned to  
3 this case and their immediate family members are excluded from each class.

4           53. Each of the Rule 23 requirements are satisfied here.

5           54. There is “numerosity” under Rule 23(a)(1) because Class Members are so  
6 numerous that joinder is impracticable. On information and belief Class Members consist of  
7 hundreds or more of persons and entities across the United States.

8           55. Class Members are ascertainable because they can be readily identified based on  
9 Defendant’s records, including insurance policies issued by Defendant and electronic databases  
10 maintained by Defendant that identify Class Members by their names, policies, or other  
11 personally identifiable information, including their addresses and the Covered Property under  
12 their policies.

13           56. “Commonality” and “predominance” may be established under Rule 23(a)(2) and  
14 Rule 23(b)(3) because this action involves common issues of law and fact that determine  
15 coverage under the policies at issue here. Such questions include, but are not limited to:

- 16           • Whether Plaintiff and Class Members paid premiums in exchange for all-risk  
17 property policies containing Business Income, Extra Expense, and Civil Authority  
18 coverage;
- 19           • Whether Class Members suffered a covered loss based on the Business Income,  
20 Extra Expense, or Civil Authority coverage;
- 21           • Whether COVID-19 triggered a covered loss under the Business Income, Extra  
22 Expense, or Civil Authority coverage;
- 23           • Whether Defendant improperly denied claims for coverage under the Business  
24 Income, Extra Expense, or Civil Authority coverage based on the position these  
25 provisions do not cover COVID-19;
- 26           • Whether Defendant breached its obligations under insurance policies with Business  
27 Income, Extra Expense, or Civil Authority coverage by denying claims en masse;
- 28

- 1 • Whether Plaintiff and Class Members are entitled to a declaratory judgment that
- 2 COVID triggers coverage under Business Income, Extra Expense, or Civil
- 3 Authority coverage; and
- 4 • Whether Plaintiff and Class Members are entitled to attorneys' fees, court costs,
- 5 and other costs incurred in prosecuting this class action litigation.

6 57. Plaintiff's claims are typical of other Class Members' claims for purposes of Rule  
7 23(a)(3) because, on information and belief, Defendant has issued blanked denials of coverage  
8 based on a uniform policy to not pay out claims for COVID-19 related claims for Business  
9 Income, Extra Expense, or Civil Authority coverage. Plaintiff's injuries, like those of other Class  
10 Members, are caused directly by these denials of coverage.

11 58. Plaintiff is an adequate class member under Rule 23(a)(4) because Plaintiff's  
12 interests are aligned with those of other Class Members. Plaintiff has retained counsel experienced  
13 in class action litigation, and insurance recovery. Plaintiff is willing, ready, and able to prosecute  
14 this action against Defendant on behalf of other policyholders.

15 59. For purposes of Rule 23(b)(1) and Rule 23(b)(3), maintaining a class action is  
16 superior to individual litigation of Business Income, Extra Expense, or Civil Authority coverage  
17 because of the inherent risk of inconsistent results on common factual and legal issues that arise  
18 from common facts. These coverage issues and Defendant's position with respect to COVID-19  
19 should be determined on a representative basis to achieve efficiency and finality. Individual  
20 litigation will only result in delay and differing legal standards applying to the same challenged  
21 conduct.

22 60. For purposes of Rule 23(b)(2), Defendant's actions are equally applicable to  
23 Plaintiff and Class Members such that the wrongdoing may be addressed by declaratory relief,  
24 including a declaratory judgment concerning coverage under Business Income, Extra Expense, or  
25 Civil Authority coverage relating to COVID-19.

1 **VI. LEGAL CLAIMS**

2 **COUNT I**

3 **DECLARATORY JUDGMENT**

4 **(On Behalf of the Business Income Class)**

5 61. Plaintiff incorporates and re-alleges the allegations set forth above.

6 62. Plaintiff and Class Members paid premiums in exchange for a Transportation  
7 property insurance contract that included Business Income coverage.

8 63. Coverage under the Business Income provisions of their Transportation insurance  
9 contracts would compensate Plaintiff and Class Members for their injuries related to COVID-19.

10 64. Plaintiff and other Class Members have complied with all aspects of the policies  
11 issued by Transportation.

12 65. For purposes of Business Income coverage, Defendant is required to pay claims  
13 related to COVID-19 because the virus caused physical damage to Plaintiff's and Class Members'  
14 Covered Property. Plaintiff and Class Members suffered lost profits or other covered amounts due  
15 to the suspension or interruption of their businesses at the damaged properties.

16 66. Defendant has denied COVID-19 related claims en masse, such that the Court can  
17 effectively issue a declaratory judgment that would give all Class Members relief in determining  
18 their rights with respect to Business Income coverage in their Transportation policies.

19 67. An actual controversy exists between Defendant and Plaintiff and other Class  
20 Members because Plaintiff and Class Members contend, and Defendant denies, that there are  
21 claims for Business Income coverage under Transportation policies.

22 68. Plaintiff and other Class Members are entitled to a declaratory judgment under 28  
23 U.S.C. § 2201 that (a) for purposes of Business Income coverage Plaintiff's and Class Members'  
24 losses incurred in connection with necessary interruption of their businesses due to the presence of  
25 COVID-19 and are insured losses; (b) Defendant is required to pay Plaintiff and other Class  
26 Members for the full amount of losses incurred for Business Income coverage.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**COUNT II**

**DECLARATORY JUDGMENT**

**(On Behalf of the Extra Expense Class)**

69. Plaintiff incorporates and re-alleges the allegations set forth above.

70. Plaintiff and Class Members paid premiums in exchange for a Transportation property insurance contract that included Extra Expense coverage.

71. Coverage under the Extra Expense provisions of their Transportation insurance contracts would compensate Plaintiff and Class Members for their injuries related to COVID-19.

72. Plaintiff and other Class Members have complied with all aspects of the policies issued by Transportation.

73. For purposes of the Extra Expense coverage, Defendant is required to pay claims related to COVID-19 because Plaintiff and Class Members paid or incurred costs in a period of restoration of their Covered Property because they took precautions; performed repairs; purchased equipment or other services due to COVID-19; or otherwise incurred expenses that were directly due to the interruption or suspension of their businesses.

74. Defendant has denied COVID-19 related claims en masse, such that the Court can effectively issue a declaratory judgment that would give all Class Members relief in determining their rights with respect to Extra Expense coverage in their Transportation policies.

75. An actual controversy exists between Defendant and Plaintiff and other Class Members because Plaintiff and Class Members contend, and Defendant denies, that there are claims for Extra Expense coverage under Transportation policies.

76. Plaintiff and other Class Members are entitled to a declaratory judgment under 28 U.S.C. § 2201 that (a) for purposes of Extra Expense coverage, the amounts paid or incurred by Plaintiff and Class Members during the period of restoration of access to their Covered Property are insured losses; (b) Defendant is required to pay Plaintiff and other Class Members for the full amount of losses incurred for Extra Expense coverage.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**COUNT III**  
**DECLARATORY JUDGMENT**  
**(On Behalf of the Civil Authority Class)**

77. Plaintiff incorporates and re-alleges the allegations set forth above.

78. Plaintiff and Class Members paid premiums in exchange for a Transportation property insurance contract that included Civil Authority coverage.

79. Coverage under the Civil Authority provisions of their Transportation insurance contracts would compensate Plaintiff and Class Members for their injuries related to COVID-19.

80. Plaintiff and other Class Members have complied with all aspects of the policies issued by Transportation.

81. For purposes of Civil Authority coverage, Defendant is required to pay for the lost profits other covered amounts that were caused by the issuance of orders, such as executive orders, closing and suspending business operations due to the physical presence of the virus that causes COVID-19 in close proximity to the Covered Property under Plaintiff's and Class Members' property policies issued by Transportation.

82. Defendant has denied COVID-19 related claims en masse, such that the Court can effectively issue a declaratory judgment that would give all Class Members relief in determining their rights with respect to Civil Authority coverage in their Transportation policies.

83. An actual controversy exists between Defendant and Plaintiff and other Class Members because Plaintiff and Class Members contend, and Defendant denies, that there are claims for Civil Authority coverage under Transportation policies.

84. Plaintiff and other Class Members are entitled to a declaratory judgment under 28 U.S.C. § 2201 that (a) for purposes of Civil Authority coverage, the interruption or suspension of Plaintiff's and Class Members' businesses have led to insured losses under their Transportation policies; (b) Defendant is required to pay Plaintiff and other Class Members for the full amount of losses incurred for Civil Authority coverage.

1 **VII. REQUEST FOR RELIEF**

2 Plaintiff, individually and on behalf of the other Class members, respectfully requests that  
3 the Court:

- 4 a. Enter judgment in their favor on all Counts;
- 5 b. Certify the proposed nationwide Classes, appoint Plaintiff as a representative of the  
6 Class, and designate Plaintiff's counsel as counsel for the Class;
- 7 c. Direct Defendant to pay attorneys' fees and costs of suit; and
- 8 d. Order such other and further relief as may be just and proper.

9 **VIII. JURY DEMAND**

10 Plaintiff hereby demands a trial by jury on all claims so triable.

11

12

13 Dated: April 29, 2020

14 **SCHNEIDER WALLACE COTTRELL**  
15 **KONECKY LLP**

16 /s/ Todd M. Schneider

17 Todd M. Schneider (SBN 158253)  
18 Joshua G. Konecky (SBN 182897)  
19 Matthew S. Weiler (SBN 236052)  
20 2000 Powell Street, Suite 1400  
21 Emeryville, CA 94608  
22 Telephone: (415) 421-7100  
23 tschneider@schneiderwallace.com  
24 jkonecky@schneiderwallace.com  
25 mweiler@schneiderwallace.com

26 Peter B. Schneider (*pro hac vice* forthcoming)  
27 Edward R. Batten (*pro hac vice* forthcoming)  
28 Ryan R. Hicks (*pro hac vice* forthcoming)  
3700 Buffalo Speedway, Suite 300  
Houston, Texas 77098  
Telephone: (713) 338-2560  
Facsimile: (415) 421-7105  
pschneider@schneiderwallace.com  
ebatten@schneiderwallace.com  
rhicks@schneiderwallace.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

O'Brien Sales & Marketing, Inc.

(b) County of Residence of First Listed Plaintiff Orange County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Todd M. Schneider, Schneider Wallace Cottrell Konecky, 2000 Powell Street, Suite 1400, Emeryville, CA 94608; 415-421-7100

DEFENDANTS

Transportation Insurance Company

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State PTF DEF X 1 1 Incorporated or Principal Place of Business In This State X 4 4 Citizen of Another State 2 X 2 Incorporated and Principal Place of Business In Another State 5 X 5 Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 2201

Brief description of cause: Insurance coverage dispute

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 04/29/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Todd M. Schneider

Print

Save As...

Reset



## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

O'Brien Sales and Marketing, Inc., on behalf of itself
and others similarly situated,

Plaintiff(s)

v.

Transportation Insurance Company

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Transportation Insurance Company
CNA 151 North Franklin Street
Chicago, Illinois 60606

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are: Todd M. Schneider (SBN 158253)
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, CA 94608

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Print**

**Save As...**

**Reset**

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges Transportation Insurance Co. Wrongfully Denied COVID-19-Related Claims](#)

---