

1 NAME
ADDRESS
2 TELEPHONE NUMBER
EMAIL
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4 **Notice:** Please contact an attorney to advise you of your rights upon an assessment of the facts in
your case before using this template complaint. If this matter relates to a case with significant
5 monetary risk or damage, particularly in the commercial leasing context, it is strongly advised that
you [contact a commercial landlord](#) tenant attorney, [a business attorney](#) or [bankruptcy lawyer](#)
6 to consider all of your options.

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8 Attorneys for Plaintiff

9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
10 **COUNTY OF RIVERSIDE**

11 [Plaintiff],
12 Plaintiff,
13 v.
14 [Defendant], and DOES 1 through 10, inclusive,
15 Defendants.

CASE NO.

**COMPLAINT FOR
(1) CANCELTION OF LEASE;
(2) DECLARATORY RELIEF RE:
CANCELTION OF LEASE.**

(Unlimited Civil Complaint – Amount
Demanded Exceeds \$25,000)

Re: [Insert premises address/APN]

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19 Plaintiff, [entity], alleges herein as follows:

20 **INTRODUCTION**

21 1. This is an action for termination of a commercial lease due to impracticability of
22 performance, force majeure and frustration of purpose for a commercial warehouse located at
23 [insert property address/APN]. The unforeseeable events transpiring from the Coronavirus
24 pandemic have made performance impracticable for Plaintiff by means of inability to procure the
25 goods it stores and distributes from the premises in addition to the lack of demand for those goods
26 due to the Coronavirus pandemic and resulting governmentally-ordered shutdown of the vast
27 majority of the economy, meaning performance would be at an extreme financial loss. Plaintiff

1 began reaching out to the landlord-Defendant on [insert date] due to these issues, which were only
2 exacerbated by Governor Newsom’s mandatory, statewide shelter-at-home order dated March 19,
3 2020. There is no foreseeable improvement for Plaintiff’s business such that termination of the
4 lease, dissolution of its corporate existence, liquidation of its minimal assets with limited
5 wholesale value and nominal, pro-rata payment to its numerous, unsecured creditors is the only
6 viable option.

7 **THE PREMISES**

8 2. The subject of this action is certain real property comprised of a commercial
9 warehouse within the [insert property address/APN] (the “Premises”).

10 **PARTIES**

11 3. Plaintiff is a California [entity] (“Plaintiff” or “Plaintiff”) doing business within the
12 State of California from the commercial space located at [insert property address/APN]. Plaintiff’s
13 business consists of importation of goods for resale.

14 4. Defendant [insert Defendant entity name] is a [insert entity type] (“Defendant”)
15 doing business in the [insert county and state], and is presently the owner(s) of the commercial
16 space located at [insert property address/APN].

17 5. Plaintiff does not know the true names and capacities of the defendants sued as
18 Does 1 through 10, inclusive, and therefore sues these defendants by such fictitious names.
19 Plaintiff will amend its complaint to add the true names and capacities of these defendants when
20 they are ascertained. Each of the fictitiously named Doe defendants is responsible for Plaintiff’s
21 damages and/or the subject premises.

22 **JURISDICTION**

23 6. This Court has jurisdiction over this matter for the reason that the amount in
24 question exceeds the jurisdictional minimum of the Court, exclusive of costs and interest.

25 **VENUE**

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1 15. The World Health Organization declared the Coronavirus a Global Pandemic in
2 Mid-March of 2020. As a result, many nations enacted strict quarantines to curb the growth rate
3 i.e. “flatten the curve”. As expected, the effect of these protective measures on businesses was
4 immediate. Some businesses were labeled as essential and could continue operating while others
5 were able to adapt to remote working, utilizing video-conferencing platforms such as Zoom,
6 Google Hangouts, and various other forms of communication technology.

7 16. However, the majority of businesses were not deemed essential and many
8 employees did not have the luxury of working from home. Factory workers for example, were
9 largely deemed non-essential and were required to remain at home, essentially eliminating factory
10 production in certain areas of the world altogether for extended periods of time, severely effecting
11 Plaintiff’s ability to acquire necessary goods.

12 17. At present the Coronavirus is not globally contained and continues to grow,
13 infecting more people at an exponential rate despite the global communities’ best efforts to contain
14 its spread.

15 **B. The Coronavirus Has Effectively Shut Down Plaintiff’s Business**

16 18. Plaintiff’s business relies on imported goods stored on the Premises for distribution
17 to its customers. In the weeks following the discovery of the Coronavirus, [specify how the
18 Coronavirus pandemic and subsequent preventative measures impacted your business i.e.
19 shutdown of factories, disruption of supply chain, etc.].

20 19. [Insert specific facts regarding how acquiring substitute goods/identical goods from
21 other sources has also been impacted by the worldwide spread of the Coronavirus pandemic].

22 **C. The Effect of the Coronavirus Pandemic Has Frustrated the Commercial
23 Purpose of the Lease and Made Performance Impracticable**

24 20. Further, the Coronavirus has frustrated the purpose of the Lease, which is limited
25 under [insert quoted section from Lease regarding permitted uses of the Premises].

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1 21. “Frustration is a question of fact resolved in its favor by the trial court. The excuse
2 of frustration, however, like that of impossibility, is a conclusion of law drawn by the court from
3 the facts of a given case” *Mitchell v. Ceazan Tires, Ltd.* (1944) 25 Cal.2d 45, 48.

4 22. *Mitchell* is cited by the Judicial Council of California Civil Jury Instructions for a
5 [breach of contract](#), providing that, “certain defenses are decided as questions of law, not as
6 questions of fact. These defenses include frustration of purpose, impossibility, and
7 impracticability.” CACI 300 (citing *Mitchell, supra*; *Autry v. Republic Productions, Inc.* (1947) 30
8 Cal.2d 144, 157; *Oosten v. Hay Haulers Dairy Employees and Helpers Union* (1955) 45 Cal.2d
9 784, 788; and *Glen Falls Indemnity Co. v. Perscallo* (1950) 96 Cal.App.2d 799, 802).

11 23. “Impracticability does not require literal impossibility but applies when
12 performance would require excessive and unreasonable expense. Where performance remains
13 possible, but the reason the parties entered the agreement has been frustrated by a supervening
14 circumstance that was not anticipated, such that the value of performance by the party standing on
15 the contract is substantially destroyed, the doctrine of commercial frustration applies to excuse
16 performance.” *Habitat Tr. for Wildlife, Inc. v. City of Rancho Cucamonga* (2009) 175 Cal.App.
17 4th 1306, 1336.

19 24. Courts have also held “performance may be so difficult and expensive that it is
20 described as ‘impracticable,’ and enforcement may be denied on the ground of
21 impossibility.” *City of Vernon v. City of Los Angeles* (1955) 45 Cal. 2d 710, 719; *see Habitat,*
22 *supra*, 175 Cal.App. 4th 1306.

23 25. When performance under a contract is only possible at excessive and unreasonable
24 costs, Courts in have held that if “performance may be so difficult and expensive that it is
25 described as ‘impracticable,’ and enforcement may be denied on the ground of impossibility.” *City*
26 *of Vernon v. City of Los Angeles* (1955) 45 Cal. 2d 710, 719.

1 26. The inability for Plaintiff to procure goods has made it a near impossibility for
2 Plaintiff to perform its duties under the Lease.

3 27. Accordingly, Plaintiff hereby alleges that it is, and has been for some time,
4 practically unable to procure the goods required to operate its business. Further, Plaintiff alleges
5 that the commercial purpose of the Lease has been frustrated by the Coronavirus Pandemic and
6 subsequent governmental measures, resulting in Plaintiff inability to perform under the Lease.

7 **D. The Effect of the Coronavirus Pandemic Constitutes Supervening,
8 Unforeseeable Event Under the Force Majeure Clause in the Lease, Thereby
9 Entitling Plaintiff to Cancellation of the Lease**

10 28. Force majeure as an excuse for non-performance is set forth in California Civil
11 Code § 1511(2), which expresses the legislature’s intent that several causes excuse performance as
12 follows: “The want of performance of an obligation, or of an offer of performance, in whole or in
13 part, or any delay therein, is excused by the following causes, to the extent to which they
14 operate:... When it is prevented or delayed by an irresistible, superhuman cause,... unless the
15 parties have expressly agreed to the contrary.”

16 29. [Insert force majeure clause section in the Lease], in relevant part, that:

17 If either party hereto shall be delayed or hindered in or prevented from the
18 performance of any act required hereunder by reason of strikes, lock-outs, labor
19 troubles, inability to procure materials, failure of power, governmental moratorium
20 ... insurrection, war, terrorism, bioterrorism, fire, earthquake, inclement weather
21 including rain, flood or other natural disaster or other reason of a like nature not the
22 fault of the party delaying in performing work or doing acts required under the
23 terms of this Lease... performance of such act shall be excused for the period of
24 the delay and the period for the performance of any such act shall be extended for
25 a period equivalent to the period of such Force Majeure Delay.

26 (hereinafter referred to as the “Force Majeure Clause”).

27 30. Indeed: “‘Force majeure,’ . . . is not necessarily limited to the equivalent of an act
of God. The test is whether under the particular circumstances there was such an insuperable
interference occurring without the party’s intervention as could not have been prevented by the
exercise of prudence, diligence and care.” *Pacific Vegetable Oil Corporation v. C. S. T., Ltd.*

1 (1946) 29 Cal.2d 228; *see e.g. Squillante v. California Lands* (1935) 5 Cal. App. 2d 89 (grower of
2 grapes held not liable on contract to deliver quality of specific variety of grapes due to
3 extraordinary heat conditions affecting vineyards).

4 31. The Coronavirus pandemic is a supervening unforeseeable event, akin to an act of
5 god, or biological attack, which has delayed, hindered, and prevented performance under the
6 Lease.

7 32. Due to the Coronavirus pandemic, Plaintiff hereby alleges that it is, and has been
8 for some time, practically unable to procure the goods required to operate its business.

9 33. Plaintiff alleges that it has been materially delayed, hindered, and prevented from
10 the economically feasible performance of its business because of the Coronavirus pandemic,
11 which was not the fault of Plaintiff, and thereby Plaintiff alleges it should be released from the
12 Lease Agreement due to the unforeseeable events which transpired because under the Force
13 Majeure clause in the Lease.

14 **FIRST CAUSE OF ACTION**

15 (Cancellation of Contract (Lease) Due to Frustration of Purpose, Commercial Impracticability,
16 and/or Force Majeure – Against All Defendants)

17 34. Plaintiff repeats and realleges the allegations set forth above as though fully set
18 forth herein.

19 35. The global effects of the Coronavirus have made Plaintiff's obligations under the
20 contract impracticable, thereby entitling Plaintiff to suspend any and all performance under the
21 contract.

22 36. In case at hand, Plaintiff requires [insert specific facts that have prevented
23 performance i.e. inability of suppliers to procure goods]. The production, shipment, and
24 distribution of goods have all been materially affected by the Coronavirus, limiting not only the
25 amount of goods but also the manner in which they can be procured. [Insert additional specific
26 facts that have prevented performance i.e. inability of suppliers to procure goods]. By being
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1 unable to secure the goods, Plaintiff was materially harmed by the unforeseeable events of the
2 Coronavirus, from which recovery will not be financially practical.

3 37. The Coronavirus and subsequent global effects were an unforeseeable event in
4 which was beyond the control of Plaintiff, and no amount of skill, good diligence or good faith
5 could have prevented or even mitigated. Additionally, neither Plaintiff nor Defendant could have
6 reasonably foreseen or anticipated at the time they signed the Lease that a global pandemic would
7 effectively shut down the global production of goods for the foreseeable future. As a matter of
8 law, the Coronavirus pandemic was a supervening circumstance which was not anticipated and
9 made performance impracticable.

10 38. Given the facts which have transpired since the origination of the Coronavirus, it is
11 evident that Plaintiff performance under the Lease agreement have become legally and factually
12 impracticable thereby frustrating the purpose of the Lease and, therefore, Plaintiff's performance
13 of making lease payments under the original Lease are excused.

14 39. Even further, the Coronavirus pandemic constitutes a force majeure event entitling
15 Plaintiff to termination of the Lease.

16 40. Plaintiff requests a judgment cancelling the Lease effective [insert last date that
17 Lease payments were made].

18 **SECOND CAUSE OF ACTION**

19 (Declaratory Relief re: Cancellation of Contract (Lease) Due to Frustration of Purpose,
20 Commercial Impracticability, and/or Force Majeure – Against All Defendants)

21 41. Plaintiff repeats and realleges the allegations set forth above as though fully set
22 forth herein.

23 42. Under *Code of Civil Procedure* § 1060: "Any person interested under a written
24 instrument . . . or under a contract, or who desires a declaration of his or her rights or duties with
25 respect to another, or in respect to, in, over or upon property, . . . may, in cases of actual
26 controversy relating to the legal rights and duties of the respective parties, bring an original action
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1 or cross-complaint in the superior court for a declaration of his or her rights and duties in the
2 premises, including a determination of any question of construction or validity arising under the
3 instrument or contract. He or she may ask for a declaration of rights or duties, either alone or with
4 other relief; and the court may make a binding declaration of these rights or duties, whether or not
5 further relief is or could be claimed at the time. The declaration may be either affirmative or
6 negative in form and effect, and the declaration shall have the force of a final judgment. The
7 declaration may be had before there has been any breach of the obligation in respect to which said
8 declaration is sought.”

9 43. In the above-captioned matter, an actual controversy has arisen and now exists
10 between Plaintiff, on one hand, and Defendants, on the other hand, concerning their respective
11 rights and duties with regard to whether further sums are owed under the Lease.

12 44. Specifically, Plaintiff contends that no further sums are owed under the Lease due
13 to the affirmative defenses to contract as a result of the Coronavirus pandemic.

14 45. However, Defendants contend that Plaintiff continues to owe rent under the Lease
15 despite the Coronavirus pandemic.

16 46. A judicial declaration is necessary and appropriate at this time under the
17 circumstances in order that Plaintiff may ascertain its rights and duties with relation to the Lease.

18 47. Plaintiff request a judgment declaring that the Lease terminated effective [insert
19 last date that Lease payments were made].

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1 **WHEREFORE**, Plaintiff prays for judgment against all Defendants as follows:

- 2 1. For termination of the Lease effective [insert last date that Lease payments were
3 made];
- 4 2. For a declaration that the Lease is terminated effective [insert last date that Lease
5 payments were made];
- 6 3. For costs of suit incurred herein;
- 7 4. For such other and further relief that the court may deem just and proper.

8 DATED:

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11 Attorney for Plaintiff
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