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UNITED STATES COURT OF APPEALS

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U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

GOERGIO COSANI MENSWEAR, INC.; et al., Plaintiffs-Appellants, v. AMGUARD INSURANCE COMPANY, a Pennsylvania Corporation; DOES, 1 through 50, inclusive, Defendants-Appellees.	No. 22-55541 D.C. No. 2:22-cv-00881-RGK-JC MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Submitted December 5, 2022**
Pasadena, California

Before: M. SMITH, COLLINS, and LEE, Circuit Judges.

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Appellants are Los Angeles-area businesses that were forced to suspend operations during COVID-19. They filed insurance claims with their insurer, AmGuard, for lost business income, which AmGuard denied. Appellants then sued for breach of contract and related claims. The district court granted AmGuard's motion to dismiss, finding that Appellants' claims were barred by their policies' virus exclusions.[1] We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Because the parties are familiar with the facts, we do not recount them here, except as necessary to provide context to our ruling.

The district court properly granted AmGuard's motion to dismiss because coverage for Appellants' losses is plainly barred by their policies' virus exclusions. The policies exclude from coverage any "loss or damage caused directly or indirectly by . . . [a]ny virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease," and this exclusion expressly applies "whether or not the loss event results in widespread damage or affects a substantial area." Appellants have repeatedly asserted that the COVID-19 virus caused their losses.

Appellants first argue that the virus exclusion does not unambiguously

[1] The district court alternatively concluded that there was no coverage because Appellants had failed to plead facts establishing the requisite "direct physical loss of or damage to property." Because we conclude that the virus exclusions bar coverage, we need not address this alternative ground.

exclude COVID-19-related losses because it does not include a specific "pandemic exclusion." *See MacKinnon v. Truck Ins. Exch.*, 73 P.3d 1205, 1213 (Cal. 2003) (noting that "exclusionary clauses are interpreted narrowly against the insurer") (internal quotation omitted)). To determine whether a coverage exclusion is ambiguous, courts consider whether the "insurer[] fail[ed] to use available language [more] expressly excluding" coverage, which may "impl[y] a manifested intent not to do so." *Pardee Constr. Co. v. Ins. Co. of the W.*, 92 Cal. Rptr. 2d 443, 456 (Cal. Ct. App. 2000). But in this case, there is no question that the virus exclusion—which applies "whether or not the loss event results in *widespread damage* or affects a *substantial area*"—bars coverage for pandemic-related losses.

Appellants also argue that the virus exclusion does not apply because their losses were caused by the shut-down orders issued in response to COVID-19, not by COVID-19 itself. We rejected a similar argument in *Mudpie, Inc. v. Travelers Casualty Insurance Co. of America*, 15 F.4th 885 (9th Cir. 2021). Considering a nearly identical exclusion provision, we determined that, notwithstanding the shut-down orders, "the efficient cause, i.e., the one that set others in motion, was . . . the spread of the virus throughout California," so the virus exclusion barred coverage for COVID-19-related business losses. *Id.* at 894. We hold the same here.

AFFIRMED.