

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 11 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

KIDS INDOOR PLAYGROUND, INC.,  
DBA We Play,

Plaintiff-Appellant,

v.

NORTHFIELD INSURANCE COMPANY,

Defendant-Appellee,

and

DOES, 1 through 50, inclusive,

Defendant.

No. 23-55076

D.C. No.

2:22-cv-02918-FMO-RAO

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Fernando M. Olguin, District Judge, Presiding

Submitted December 7, 2023\*\*  
Pasadena, California

Before: CALLAHAN, R. NELSON, and BADE, 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).

Plaintiff-Appellant Kids Indoor Playground appeals from the district court's dismissal of its claims that its insurance policy covers business losses sustained due to the COVID-19 virus and related government shutdown orders. We have jurisdiction under 28 U.S.C. § 1291 and review de novo. *Mudpie, Inc. v. Travelers Cas. Ins. Co. of Am.*, 15 F.4th 885, 889 (9th Cir. 2021) (citation omitted). We affirm.

Kids Indoor Playground bought a commercial property insurance policy ("Policy") from Northfield Insurance Company ("Northfield") that covers "direct physical loss of or damage to Covered Property." The Policy excludes coverage for "loss due to virus or bacteria." Under the virus exclusion, "[Northfield] will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease."

The Policy's virus exclusion unambiguously bars coverage for Kids Indoor Playground's claims of loss and damage. *See Pardee Constr. Co. v. Ins. Co. of the W.*, 92 Cal. Rptr. 2d 443, 451 (Ct. App. 2000). As is plain, SARS-CoV-2 is a virus. There are no limitations in the exclusion that would suggest the COVID-19 virus is not a "virus" under the Policy. And Kids Indoor Playground's alternative argument—that the COVID-19 government shutdown orders, not the COVID-19

virus, caused its business losses—is foreclosed by our decision in *Mudpie*.<sup>1</sup> *See* 15 F.4th at 893–94.

Because the virus exclusion bars Kids Indoor Playground’s claims, we need not address its other arguments.

**AFFIRMED.**

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<sup>1</sup> Kids Indoor Playground argues that *Mudpie*’s conclusion is based on reasoning that “is inherently flawed.” This argument is unavailing because we are bound by our prior precedent. *See Miller v. Gammie*, 335 F.3d 889, 899–900 (9th Cir. 2003) (en banc).