

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**R. LATITUDE INC. DBA BOUNCE  
SPORTING CLUB**

*Plaintiff,*

v.

**SOCIETY INSURANCE,**

*Defendant.*

Civil Action No.

**JURY TRIAL DEMANDED**

**COMPLAINT FOR DECLARATORY JUDGMENT AND BREACH OF CONTRACT**

Plaintiff, R. Latitude Inc. DBA Bounce Sporting Club (“Bounce”), by and through its undersigned attorneys, complains against Defendant, Society Insurance, A Mutual Company (“Society”), as follows:

**SUMMARY OF THE CASE**

1. This breach of contract and declaratory judgment action arises out of Plaintiff Bounce’s pursuit of—and Society’s failure to provide—insurance coverage for Bounce’s significant losses incurred as a result of the novel SARS-CoV-2 (“COVID-19”) outbreak.

2. Bounce is a modern hybrid night club and sports bar that is heavily populated, attracting professional athletes, DJ’s and socialites located in the heart of Chicago, Illinois.<sup>1</sup> Bounce’s exclusive 1,500 square rooftop bar and its sporting club are among Chicago’s trendiest entertainment destinations. The spacious sporting club spans more than 6,000 square feet with private cabanas and bleacher style seating. There is a capacity of 600 guests who can stand or sit comfortably on various plush couches made from vintage sports gear. More than just a sports

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<sup>1</sup> Bounce has an additional location in New York, New York. However, for purposes of the instant action, “Bounce” or “Plaintiff” refers exclusively to the Bounce’s Chicago, Illinois location.

bar, Bounce has several event spaces for various functions, including but not limited to the following:

- a. Bounce's "Field House" can hold 300 occupants and offers ample seating between an expansive bar, high top cocktail tables and comfortable booths. The room features over 20 flat screen TVs, a state of the art sound system and DJ Booth.
  - b. Bounce's "Club House," can hold 150 occupants and accommodates private parties with a full bar, 10 flat screen TVs, and a floor plan that can be configured to suit any event. Bounce's Clubhouse is one of the venue's most versatile spaces. The Clubhouse has the option of a private entrance through the back alley, which attracts patrons due to its exclusivity.
  - c. Bounce's "Sky Box", can hold 45 occupants, provides a private space that overlooks the main floor of the venue, and is an ideal space for intimate gatherings and/or corporate or VIP events.
  - d. Bounce's "Rooftop" is an expansive rooftop that can hold up to 150 occupants and boasts one of the best views of downtown Chicago, with 4 flat screen TVs, café style seating and mount lighting that highlights the entire space.
3. Like virtually every other business across the country, Bounce's business has been ravaged by the current global COVID-19 pandemic.
  4. Bounce's very existence is now threatened by SARS-CoV-2, sometimes called "Coronavirus" or by one of the names of the disease that it causes and that spreads it "COVID-19." For ease of reference, SARS-CoV-2 will be referred to as COVID-19 herein.

5. Due to COVID-19, the resulting pandemic and/or the related closure orders, Plaintiffs' property has suffered "direct physical loss of or damage to" property—under the plain and ordinary meaning of that term. Any jury would find that Plaintiffs have suffered a direct physical loss or damage because COVID-19 and closure orders impaired Plaintiff's property—COVID-19 and closure orders made the property unusable in a way that it had been used before the COVID-19 pandemic.

6. Instead of being able to fill its restaurants with staff and patrons, Bounce can now, at most, serve only a limited number of customers at a time, with six-foot social distancing. To do anything else would lead to the emergence and/or reemergence of COVID-19. Until COVID-19 was brought even slightly under control, even such limited use as this was not possible.

7. This loss is direct—Plaintiff is not asking Defendant to reimburse it after someone obtained a judgment against Bounce for getting them sick. That might be an indirect loss. Plaintiff is asking Defendant to pay for its loss of business income occasioned directly by being unable to use its property and occasioned by the actual physical infestation of COVID-19 at the insured premises. Further, COVID-19 was not only a substantial factor in causing the loss, it also was the predominant or immediate factor in causing the loss or damage: COVID-19 was close in proximity to the loss or damage, such that any ordinary person would think that the loss or damage was in the zone of danger of COVID-19, and as a matter of ordinary speech and usage an ordinary person would understand and say that COVID-19 caused the loss or damage. Plaintiff will present expert testimony to the jury to establish the proximity in distance of the virus and the common understanding of the cause of the virus, which will establish to a jury that the loss or damage was direct—even under the strictest test on the meaning of "direct."

8. This loss is physical. Nearly twenty (20) of Bounce's staff members contracted COVID-19. COVID-19 structurally altered the surfaces of Bounce's covered properties and ambient air within said Covered Property. Plaintiff will present expert chemical testimony to show the structural alteration to the ambient air within the surfaces of the Covered Property. Bounce is unable to use its interior spaces in the manner in which it had previously used those spaces, as Plaintiff will show through the facts and expert testimony on safe occupancy of physical space. The probability of illness prevents the use of the space in no less a way than, on a rainy day, a crumbling and open roof from the aftermath of a tornado would make the interior space of a business unusable.<sup>2</sup>

9. The pandemic-caused shutdown orders imposed a physical limit on the properties, *e.g.*, by limiting restaurants, bars, event spaces, dental offices, and retailers from using 100% of their physical space, even when they weren't totally shutdown. "It is not as if the shut-down orders imposed a financial limit on the restaurants by, for example, capping the dollar-amount of daily sales that each restaurant could make."<sup>3</sup> Plaintiff could not/cannot fully use its physical spaces. The Policies define "Covered Property" to include buildings at the premises, not just personal property or movable items. Thus, a physical loss of property necessarily includes the lost physical space that Plaintiff can no longer fully utilize due to the novel coronavirus, the resulting pandemic, and/or the related government shutdown orders – even though its tables and chairs, equipment, etc. remain physically intact. "Another way to understand the physical nature

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<sup>2</sup> Note, however, that Bounce is not seeking recovery for its loss of use. Bounce is seeking coverage for its loss of business income. Here's an example that drives home the difference: some law firms have been unable to use their office space because of COVID-19, but nevertheless the law firms' business income has increased and they thus have faced no loss of business income. A claim by such a law firm for not being able to use its office space would be a "loss of use" claim. The law firm would have no loss of business income claim. Here, Bounce's business has decreased because of the impairment of its sports bar, club and restaurant and Bounce is seeking the loss of business income under the business interruption coverage of its property insurance policies.

<sup>3</sup> *In re: Society Ins. Co. COVID-19 Bus. Interruption Prot. Ins. Litig.*, No. 20 C 02005, 2021 WL 679109, at \*9 (N.D. Ill. Feb. 22, 2021).

of the loss inflicted by the shut-down orders is to consider how a restaurant might mitigate against the suspension of operations caused by, say, a 25%-capacity limitation on the number of guests inside the restaurant. If the restaurant could expand its physical space, then the restaurant could serve more guests and the loss would be mitigated (at least in part). The loss is physical—or at the very least, a reasonable jury can make that finding.”<sup>4</sup>

10. This loss is a loss. It is the loss of functionality of the space for business purposes. It is the diminishment of the physical space in the building. What once could hold many now can safely hold only a few, or at certain times, none at all. It is the injury and structural change to ambient air within Covered Property and the surfaces of Covered Property.

11. The impairment of business function is also damage to Plaintiff’s Covered Property.

12. Insurers around the country, like Society, are now wanting federal and state judges to interpret the words “direct physical loss or damage” and/or “direct physical loss of or damage,” but those words need no interpretation. What insurers want is for courts to change the meaning of those terms—instead of just letting a jury apply the facts of the case to these ordinary words and reach a verdict in the same way a jury would reach a verdict if it were called upon to answer whether a person was injured or property was damaged.

13. Specifically, to protect its businesses in the event that it suddenly had to suspend operations for reasons outside of its control or in order to prevent further property damage, Bounce purchased insurance coverage from Society, Policy Number BP17006981-2, for the policy period effective November 21, 2019 to November 21, 2020 (“the 2019 Policy”). Bounce subsequently purchased a renewal policy, Society Policy Number BP17006981-3, for the policy

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<sup>4</sup> *Id.*

period effective November, 21, 2020 to November 21, 2021 (“the 2020 Policy”). The policies are attached hereto, respectively, as **Exhibits A and Exhibit B** (“the Policies”).

14. Society’s Businessowners Special Property Coverage Form provides “Business Income” coverage, which promises to pay for loss due to the necessary suspension of operations following damage to property. *See* **Ex. A** at 44 of 110; **Ex. B.** at 51 of 109.<sup>5</sup>

15. Society’s Special Property Coverage Form also provides “Civil Authority” coverage, which promises to pay for loss caused by the action of a civil authority that prohibits access to the described premises. *See* **Ex. A** at 46 of 110; **Ex. B.** at 53 of 109.

16. Society’s Special Property Coverage Form provides additional “Contamination” coverage that pays for the actual loss of business income and extra expense caused by “‘Contamination’ that results in an action by a public health or other governmental authority that prohibits access to the described premises or production of your product.” The Policies broadly define a covered loss due to “Contamination” as occurring in a variety of circumstances, including an action by a public health or other governmental authority that prohibits access to the described premises and adverse “publicity” resulting from the discovery or suspicion of “Contamination.” The Special Property Coverage Form defines “Contamination” as “a defect, deficiency, inadequacy or dangerous condition in your products, merchandise or premises.” *See* **Ex. A** at 45 of 110; **Ex. B.** at 52 of 109. *See* **Ex. A** at 47 of 110; **Ex. B.** at 54 of 109.

17. Society’s Special Property Coverage Form also provides “Extra Expense” coverage, which promises to pay the expense incurred to minimize the suspension of business and to continue operations. *See* **Ex. A** at 45 of 110; **Ex. B.** at 52 of 109.

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<sup>5</sup> The Special Property Coverage Form in the 2019 and 2020 Policies, respectively, includes identical Business Income, Civil Authority, Contamination, Extra Expense, and Sue and Labor coverages.

18. Society's Special Property Coverage Form, under a section entitled "Duties in the Event of Loss or Damage" mandates that Society's insured "must see that the following are done in the event of loss or damage to Covered Property . . . [t]ake all reasonable steps to protect the Covered Property from further damage and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim." *See Ex. A* at 61 of 110; *Ex. B*. at 68 of 109.

19. Unlike many policies that provide Business Income (also referred to as "business interruption") coverage, Society's Special Property Coverage Form does not include, and is not subject to, any exclusion for losses caused by viruses or communicable diseases.

20. Plaintiff Bounce was forced to suspend and/or reduce its business due to COVID-19 (a.k.a. the "coronavirus" or "SARS-CoV-2") and the resultant Executive Orders issued by the Governor of Illinois mandating the closure of businesses like Bounce bar for on-site services, as well as in order to take necessary steps to prevent further damage and minimize the suspension of business and continue operations.

21. Upon information and belief, Society has, on a wide scale and uniform basis, refused to pay its insureds under its Business Income, Civil Authority, Contamination, Extra Expense, and Sue and Labor coverages for losses suffered due to COVID-19, any executive orders by civil authorities that have required the necessary suspension of business, and any efforts to prevent further property damage or to minimize the suspension of business and continue operations. Indeed, Society has denied Plaintiff Bounce's claim under its Policies.

### **THE PARTIES**

22. Plaintiff, R. Latitude Inc. DBA Bounce Sporting Club ("Bounce"), is an Illinois corporation with its principal place of business located at 324 W Chicago Ave, Chicago, Illinois

60654. Bounce owns, maintains and operates a hybrid sports bar, night club, and restaurant which is located in Chicago, Illinois.

23. Defendant Society is a mutual insurance company organized under the laws of the State of Wisconsin, with its principal place of business in Fond du Lac, Wisconsin. It is authorized to write, sell, and issue insurance policies providing property and business income coverage in Illinois. At all times material hereto, Society conducted and transacted business through the selling and issuing of insurance policies within Illinois, including, but not limited to, selling and issuing property coverage under the Policies to Bounce.

### **JURISDICTION AND VENUE**

24. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because Plaintiff and Defendant are citizens of different states and the amount in controversy is in excess of \$75,000, exclusive of interests and costs.

25. Venue is proper in this District under 28 U.S.C. § 1391 because Defendant Society resides in this district and a substantial portion of the acts and conduct giving rise to Plaintiff's claims occurred in this district.

### **FACTUAL BACKGROUND**

#### **I. The COVID-19 Outbreak and Bounce's Losses**

26. Society insures Bounce's modern hybrid sports bar, night club and restaurant in Chicago, Illinois.

27. On January 21, 2020, the United States reported its first case of the novel coronavirus: COVID-19. By this time, the virus had already spread across Asia and Europe. On January 31, 2020, the World Health Organization ("WHO") declared COVID-19 a "public health emergency of international concern."

28. Unlike SARS-CoV-2, some viruses do not infect humans or cannot be transmitted from human to human.

29. The coronavirus is transmitted in several ways, including via human-to-human contact, airborne viral particles in ambient air, and touching or breathing on surfaces or objects. For example, when an uninfected person touches a surface containing the coronavirus, the uninfected person transmits the coronavirus to another person, either by touching and contaminating a second surface, which is subsequently touched by that other person, or more directly by transmitting the coronavirus to another person. The coronavirus spreads easily from person to person and person to surface or object, primarily through small, physical droplets expelled from the nose or mouth when an infected person speaks, yells, sings, coughs, or sneezes. According to research published in *The Journal of the American Medical Association*, a person who sneezes can release a cloud of pathogen-bearing droplets that can span as far as 23 to 27 feet.<sup>6</sup>

30. According to the World Health Organization (“WHO”), the incubation period for COVID-19—*i.e.*, the time between exposure to the coronavirus and symptom onset—can be up to 14 days. Other studies suggest that the period may be up to 21 days. Before infected individuals exhibit symptoms, *i.e.*, the so-called “pre-symptomatic” period, they are most contagious, as their viral loads will likely be very high, and they may not know they have become carriers. In addition, studies from the CDC and others estimate that between 40% to 70% of infected individuals may never become symptomatic (referred to as “asymptomatic” carriers). Pre- and asymptomatic carriers are likely unaware that they are spreading the coronavirus by merely touching objects and surfaces, or by expelling droplets into the air. The National

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<sup>6</sup> See <https://jamanetwork.com/journals/jama/fullarticle/2763852>.

Academy of Sciences has found that the majority of transmission is attributable to people who are not showing symptoms, either because they are pre-symptomatic or asymptomatic.

31. Physical droplets containing the coronavirus land on objects and surfaces. After landing on objects and surfaces, the coronavirus can remain present and dangerous for periods ranging from hours to many days.

32. According to the WHO, people can become infected with the coronavirus by touching such objects and surfaces, then touching their eyes, nose, or mouth. This mode of transmission—indirect transmission via objects and surfaces—is known as “fomite transmission.” As the WHO has noted, fomite transmission is “a likely mode of transmission for SARS-CoV-2” because studies have consistently confirmed the existence of virus-laden droplets on objects and surfaces “in the vicinity of infected cases,” and because it is well known that other coronaviruses can be transmitted via fomite transmission.<sup>7</sup>

33. In an article posted on the National Institute of Health’s website on March 24, 2020, the NIH stated that “[v]iruses can live for a time on surfaces outside the human body. According to the CDC, it may be possible to contract the virus responsible for the current outbreak, SARS-CoV-2, by touching a surface or object with the virus on it and then touching your face.”<sup>8</sup>

34. A study of a COVID-19 outbreak published in the CDC’s Emerging Infectious Diseases journal identified indirect transmission via objects such as elevator buttons and

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<sup>7</sup> See <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

<sup>8</sup> <https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-days>.

restroom taps as an important possible cause of a “rapid spread” of the coronavirus in a shopping mall in Wenzhou, China.<sup>9</sup>

35. When frozen, viruses can survive up to two years and can travel across the globe undetected. In August 2020, Chinese authorities found samples of COVID-19 on the surface of frozen chicken wings imported from Brazil and the outer packaging of frozen shrimp imported from Ecuador. Likewise, New Zealand authorities are investigating whether the recent COVID-19 outbreak in Auckland—which ended the country’s 102-day streak without any community transmission of COVID-19—stemmed from the surface of imported frozen food containers due to multiple of the first cases being traced to workers at a frozen food warehouse.

36. Other studies have used invisible fluorescent tracers — decoy germs that glow under black light — to track how germs are spread from surfaces. In one series of experiments, 86 percent of workers were contaminated when spray or powder tracers were put on commonly touched objects in an office. When tracer powder was put on a bathroom faucet and exit doorknob, the glowing residue was found on employees’ hands, faces, phones and hair. From a shared cell phone, the tracer spread to desktop surfaces, drinking cups, keyboards, pens and doorknobs. A contaminated copy machine button added a trail of fluorescent finger prints transferred to documents and computer equipment. And just twenty minutes after arriving home from the office, the decoy germs carried by the employee were found on backpacks, keys and purses, and on home doorknobs, light switches, countertops and kitchen appliances.

37. Research has also indicated that the coronavirus can be detected on certain surfaces even weeks after infected persons are present at a given location.

38. One study, for example, found that the coronavirus remains active and dangerous on plastics for at least three days, while another reported that the coronavirus remained stable

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<sup>9</sup> See [https://wwwnc.cdc.gov/eid/article/26/6/20-0412\\_article](https://wwwnc.cdc.gov/eid/article/26/6/20-0412_article).

and viable for seven days on a range of common surfaces, including plastic, stainless steel, glass, and wood.<sup>10</sup> The latter study detected viable coronavirus samples on glass, stainless steel, and money for approximately one month if left at or around room temperature.<sup>11</sup> In a March 17, 2020 study published in the *New England Journal of Medicine*, researchers led by Dr. Vincent Munster of NIH's National Institute of Allergy and Infectious Diseases studied how long the virus survives in the air and on surfaces. The researchers reported that the COVID-19 virus remained infectious on plastic and stainless steel surfaces for two to three days, and it remained infectious for up to 24 hours on cardboard surfaces.<sup>12</sup> All of these materials are used at Plaintiff's Insured Premises.

39. Research has also indicated that the coronavirus can spread through the air. For example, airborne viral particles are known to have spread into a facility's heating and ventilation ("HVAC") system, leading to transmission of the coronavirus from person to person. One study found the presence of the coronavirus within the HVAC system servicing hospital ward rooms of COVID-19 patients. This study detected SARS-CoV-2 RNA in ceiling vent openings, vent exhaust filters, and central ducts that were located more than 50 meters from the patients' rooms.<sup>13</sup>

40. In an interview with America magazine on May 26, 2020, Dr. Anthony Fauci, who leads the National Institute of Allergy and Infectious Diseases, referenced aerosol

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<sup>10</sup> See <https://www.nejm.org/doi/full/10.1056/nejmc2004973>; <https://www.medrxiv.org/content/10.1101/2020.05.07.20094805v1.full.pdf>; <https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7>.

<sup>11</sup> <https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7>.

<sup>12</sup> See <https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-days>.

<sup>13</sup> See <https://www.researchsquare.com/article/rs-34643/v1>.

transmission in churches. “When you sing, the amount of droplets and aerosol that comes out is really, in some respects, scary,” Dr. Fauci said.<sup>14</sup>

41. Similarly, another scientist, Dr. Lidia Morawska, told Nature that, “In the minds of scientists working on this, there’s absolutely no doubt that the virus spreads in the air. This is a no-brainer.”<sup>15</sup>

42. A study of hospitals in Wuhan, China, found COVID-19 in aerosols further than 6 feet, and up to 13 feet, from patients with higher concentrations detected in more crowded areas. Those authors found evidence of the virus on floors, trash bins, air vents, and other places. Estimates using an average viral load for COVID-19 indicate that one minute of loud speaking could generate more than 1000 virion-containing aerosols.

43. The Environmental Protection Agency (“EPA”) has compiled several studies reflecting “epidemiological evidence suggestive of [coronavirus] transmission through aerosol.”<sup>16</sup> Based on these and other studies, the EPA has recommended that facilities make improvements to their ventilation and HVAC systems by, for example, increasing ventilation with outdoor air and air filtration.<sup>17</sup>

44. A study of an outbreak from a restaurant in China concluded that the transmission in that case was likely prompted by air-conditioned ventilation.<sup>18</sup> In that case, from January 26 through February 10, 2020, an outbreak of COVID-19 infected ten persons from three families (families A–C) who had eaten at the same air-conditioned restaurant in Guangzhou, China. The only known source of exposure for the affected persons in families B and C was patient A1 at the

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<sup>14</sup> <https://www.americamagazine.org/faith/2020/05/27/dr-anthony-fauci-catholic-churches-masks-communion-covid-coronavirus>.

<sup>15</sup> <https://www.nature.com/articles/d41586-020-00974-w>.

<sup>16</sup> See <https://www.epa.gov/coronavirus/indoor-air-and-covid-19-key-references-andpublications>.

<sup>17</sup> See <https://www.epa.gov/coronavirus/indoor-air-and-coronavirus-covid-19>.

<sup>18</sup> Lu J, Gu J, Li K, Xu C, Su W, Lai Z, et al. COVID-19 outbreak associated with air conditioning in restaurant, Guangzhou, China, 2020. *Emerg Infect Dis.* 2020 Jul. <https://doi.org/10.3201/eid2607.200764>.

restaurant. The families were seated more than a meter apart, and yet 10 people became ill who were at the restaurant that day. The authors concluded that the virus likely spread through the restaurant's air-conditioning system.

45. Accordingly, COVID-19 causes physical loss and damage by, among other things, destroying, distorting, corrupting, attaching to, and physically altering property, including its surfaces, and by rendering property unusable, uninhabitable, unfit for intended function, dangerous and unsafe. While mitigation efforts have been undertaken and remain ongoing, COVID-19 has caused such physical loss and damage to Plaintiff's covered properties, as described further below.

46. First, respiratory droplets (*i.e.*, droplets larger than 5-10  $\mu\text{m}$ ) expelled from infected individuals land on, attach, and adhere to surfaces and objects. In doing so, they structurally change the property and its surface by becoming a part of that surface. This structural alteration makes physical contact with those previously safe, inert surfaces (*e.g.*, walls, handrails, furniture) unsafe.

47. Second, when individuals carrying the coronavirus breathe, talk, cough, or sneeze, they expel aerosolized droplet nuclei (*i.e.*, those smaller than 5  $\mu\text{m}$ ) that remain in the air and, like dangerous fumes, make the premises unsafe and affirmatively dangerous. This process alters the structural properties of air in buildings from safe and breathable to unsafe and dangerous.

48. Fomites, droplets, droplet nuclei, and aerosols containing the coronavirus are not theoretical, intangible, or incorporeal, but rather are dangerous physical substances that have a material, tangible existence.

49. In a study by the U.S. National Institutes of Health, researchers found that the coronavirus was detectable for up to three hours in aerosols, four hours on copper, up to 24 hours on cardboard, and up to three days on stainless steel and plastic surfaces.<sup>19</sup>

50. When the coronavirus and COVID-19 attach to and adhere on surfaces and materials, they become part of those surfaces and materials, converting the surfaces and materials to fomites.<sup>20</sup> This represents a physical change in the affected surface or material, which constitutes physical loss and damage.

51. The presence of COVID-19 within a facility causes physical loss and damage by necessitating remedial measures that include without limitation extensive cleaning and disinfecting, repairing or replacing air filtration systems, remodeling and reconfiguring physical spaces, and other measures to reduce or eliminate the presence of cases of COVID-19 and the coronavirus on-site.

52. The presence of cases of COVID-19 within a facility causes physical loss and damage by transforming the facility from property that is usable and safe for humans into a property that is unsatisfactory for use, uninhabitable, unfit for its intended function, and extremely dangerous and potentially deadly for humans.

53. In addition, the presence of COVID-19 on property creates the imminent threat of further damage to that property or to nearby property. Individuals who come into contact, for example, with respiratory droplets at one location in the facility by touching a doorknob or gripping the arms of a dental chair, will carry those droplets on their hands and deposit them elsewhere in the facility, causing additional damage and loss.

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<sup>19</sup> See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hourssurfaces>.

<sup>20</sup> See <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

54. Although cleaning surfaces may reduce the presence of the coronavirus, it does not altogether eliminate it or its risk of transmission because surfaces with residual infectious virus or areas with lingering aerosolized infectious particles remain on and within covered property. And once another infected person is present in the area, the surfaces and surrounding space become further contaminated or recontaminated. In the food service environment, it is particularly challenging to keep the premises virus-free because people have to remove their masks to eat and drink or to receive dental services. By consequence, people infected with COVID-19, including asymptomatic persons, continuously emit the virus.

55. The spread and presence of COVID-19, as well as on Plaintiff's Insured Premises and on property other than that of Plaintiff's has caused civil authorities throughout the country to issue orders requiring the suspension of business at a wide range of establishments, including civil authorities with jurisdiction over Plaintiff's business (the "Closure Orders").

**a. The Closure Orders**

56. On March 11, 2020, the WHO declared COVID-19 a global pandemic. And President Trump announced he would block travelers from continental Europe. On March 12, 2020, an influential scientific study posted on the CDC's website found that surface transmission of the virus was the most likely explanation for an outbreak at a Chinese shopping mall.<sup>21</sup> In that study, the researchers studied an outbreak in January, when seven workers who shared an office in a shopping mall became ill after one of their co-workers returned from Wuhan. Public health officials tracked two dozen more sick people, including several women who had shopped at the mall, as well as their friends. None of them had come into contact with the sick office workers. The researchers concluded that "its findings appear to indicate that low intensity transmission

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<sup>21</sup> [https://www.nc.cdc.gov/eid/article/26/6/20-0412\\_article](https://www.nc.cdc.gov/eid/article/26/6/20-0412_article).

occurred without prolonged close contact in this mall; that is, the virus was spread by indirect transmission.” One leading explanation was that the virus was “spread via fomites” (i.e., infected surfaces), such as “elevator buttons or restroom taps.” Virus aerosolization was also suspected.

57. On March 15, 2020, the CDC issued guidance restricting gatherings to less than 50 people. In the guidance, the CDC recognized the danger of spreading the virus through surface transmission, and through the air, advising people to “clean frequently touched surfaces and objects daily,” to cover “coughs and sneezes,” and to “routinely clean and disinfect surfaces and objects that are frequently touched.”

58. State and local governments also have determined that, in light of the dangers of physical transmission of COVID-19 and in light of direct damage to property by the virus at locations other than Plaintiff’s property, the Closure Orders were required.

59. On March 9, 2020, Illinois Governor J.B. Pritzker issued a disaster proclamation for the entire state of Illinois.

60. On March 16, 2020, Governor Pritzker issued an executive order that closed all bars and restaurants except for carry out and delivery services and prohibited gatherings larger than 50 people until March 30, 2020.

61. On March 20, 2020, Governor Pritzker issued a statewide stay at home order that closed all nonessential businesses until April 7, 2020.

62. On April 1, 2020, Governor Pritzker extended the stay at home order, as well as the executive order closing restaurants and bars to April 30, 2020.

63. On April 30, 2020, Governor Pritzker extended the stay at home order, as well as the executive order closing restaurants and bars through May 29, 2020.

64. After the executive order closing restaurants and bars was extended to cover most of the month of June, on June 26, 2020, Governor Pritzker allowed restaurants and bars to reopen at 50 percent capacity.

65. The same day, Chicago entered Phase 4 of Mayor Lightfoot's re-opening framework under which food service and bar establishments could open under limited capacity with specific safety measures in place including but not limited to: maintaining six-foot social distancing, requiring face coverings in common areas, frequently cleaning "high touch areas" and posting visual signage regarding hygiene, social distancing and PPE.

66. However, on July 13, 2020, Mayor Lightfoot announced that bars and restaurants with a liquor license must close by midnight in an effort to reduce the spread of the virus. At the time, a ban of the sale of alcohol consumption after 11 p.m. remained in place.

67. On July 20, 2020, Mayor Lightfoot, the Chicago Department of Public Health (CDPH) and the Department of Business Affairs and Consumer Protection announced the reinstatement of certain reopening restrictions. As of July 24, 2020, the maximum party size and table occupancy at restaurants and bars was reduced to six people.

68. On August 25, 2020, the State of Illinois released new safety guidelines for restaurants and bars requiring Illinois patrons to wear face covering when approached by staff.

69. On September 28, 2020, Mayor Lightfoot announced that, effective October 1, 2020, restaurants and other establishments that were limited to 25% indoor capacity could increase their indoor capacity to 40%. The limit of 50 total customers within one room or space at restaurants, venues and other establishments remained in place along with the limit of no more than six people per table.

70. On October 26, 2020, Mayor Lightfoot reinstated restrictions following an increase in cases. Thereunder, all non-essential businesses were to close to the public from 10:00 p.m. to 6:00 a.m., indoor and outdoor consumption of food or alcohol at restaurants was required to cease by 10:00 p.m., and all establishments that serve alcohol for on-site consumption were to end alcohol service at 9:00 p.m. and to close completely by 10:00 p.m.

71. On November 4, 2020, additional mitigation efforts were put in place under which no indoor dining or service at bars or restaurants was permitted and meetings, social events and gatherings were limited to the lesser of 25 guests or 25% of overall room capacity.

72. On November 16, 2020, Mayor Lightfoot, the Chicago Department of Public Health (CDPH) and the Department of Business Affairs and Consumer Protection launched their “Protect Chicago” mitigation plan. Thereunder, a Stay-at-Home Advisory went into effect. Though not ordered to do so, Chicago residents were strongly advised to remain in their homes except when traveling to work or school or when seeking out essential needs such as medical care or obtaining groceries.

73. The following day, Governor Pritzker and the Illinois Department of Public Health (IDPH) announced new Tier 3 Resurgence Mitigations to be implemented statewide effective Friday November 20, 2020. These mitigation requirements mandated that all bars and restaurants close at 11 p.m. and may reopen no earlier than 6 a.m. the following day. Indoor service was banned thereby requiring all patrons to be seated at tables outside. No ordering, standing or dancing indoor or seating or congregating at a bar was permitted. The maximum party requirement of 6 persons remained in place and reservations were required for each party. These restrictions were extended on December 14, 2020 through January 9, 2021.

74. As of February 11, 2021, Mayor Lightfoot allowed for restaurants and event spaces to open with the lesser of 25% capacity or 50 people per room or floor. The city of Chicago remained under a “high-risk” stage.

75. On February 16, 2021, Chicago moved into Phase IV of its Reopening Plan thereby expanding indoor dining in the City of Chicago. Bars and restaurants were permitted to reopen indoors at the lesser of 40% capacity or 50 people. Table size remained limited to no more than six people indoor and outdoors with tables spaced six feet apart. In order to offer indoor service, food was required to be available.

76. Most recently, on March 1, 2021, Mayor Lightfoot announced that indoor bars, restaurants and other businesses could increase to 50% capacity. Table size remains limited to no more than six people indoor and outdoors with tables spaced six feet apart. In order to offer indoor service, food is required to be available.

77. The Illinois Closure Orders were issued in response to the rapid spread of COVID-19 throughout Illinois.

**b. The Impact of COVID-19 and the Closure Orders**

78. The coronavirus and coronavirus-containing respiratory droplets and nuclei are physical substances that are active on physical surfaces and are also emitted into the air. Such substances are not theoretical, intangible, or incorporeal, but rather have a material existence and are physically dangerous.

79. Plaintiff Bounce’s Premises are located approximately 0.6 miles from North Health Service Hospital.

80. Plaintiff Bounce’s Premises are located approximately 1.6 miles from Advocate Health Care Hospital.

81. Plaintiff Bounce's Premises are located approximately 3.3 miles from Saint Elizabeth Hospital.

82. Plaintiff Bounce's Premises are located approximately 3.6 miles from Norwegian American Hospital.

83. COVID-19 has been present at these hospitals, other area healthcare facilities, and other non-healthcare businesses, and has caused physical damage at those properties since at least March 2020. The Closure Orders were issued, at least in part, in response to dangerous physical conditions and damage at these hospitals, and to prevent further damage at these hospitals. For example, under New York's micro-cluster approach to business restrictions and re-openings, variations in regional "zones," and therefore the imposition of mandated business closures or limitations, were triggered expressly based on hospital capacity and COVID-19 hospitalization growth rates.<sup>22</sup>

84. Individuals with COVID-19 or otherwise carrying the coronavirus have been physically present at Plaintiff's Insured Premises and on the Covered Property. Coronavirus-containing fomites (*i.e.*, inanimate objects), respiratory droplets, and nuclei from those individuals come into contact with, adhere to, and attach to the surfaces of the property upon which they land, including without limitation, the real property, furniture, fixtures, and personal property at Plaintiff's Covered Property.

85. Coronavirus or coronavirus-containing fomites, respiratory droplets, and nuclei physically alter property to which they adhere, attach, or come in contact including without limitation by altering the surfaces of that property and/or by making physical contact with those previously safe, inert materials dangerous.

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<sup>22</sup> See, *e.g.*, <https://www.governor.ny.gov/news/governor-cuomo-directs-state-department-health-begin-implementing-surge-flex-hospital-protocol>; <https://forward.ny.gov/cluster-action-initiative>.

86. When individuals carrying the coronavirus breathe, talk, cough, or sneeze, they expel aerosolized droplet nuclei that remain in the air and, like dangerous fumes, make the premises unsafe and affirmatively dangerous. In addition, the coronavirus physically alters the air. Air inside buildings that was previously safe to breathe but can no longer safely be breathed due to coronavirus and COVID-19, has undergone a physical alteration.

87. The presence of the coronavirus and COVID-19, including but not limited to coronavirus droplets or nuclei on solid surfaces and in the air at insured property, has caused and will continue to cause direct physical damage to physical property and ambient air at the premises. Coronavirus, a physical substance, has attached and adhered to Plaintiff's property, and by doing so, altered that property. Such presence has also directly resulted in loss of functionality of that property.

88. Persons who tested positive for COVID-19 were present at the insured property on various dates during 2020. Persons who came into contact with persons diagnosed with COVID-19 were present at the insured property on various dates from March 2020 to present.

89. On information and belief, persons who were pre-symptomatic or asymptomatic and unknowingly carrying the coronavirus, including but not limited to employees, customers, and other business visitors, were present at insured property on various dates during 2020.

90. Coronavirus droplets have been conveyed from infected persons (whether symptomatic, pre-symptomatic, or asymptomatic) to solid surfaces, including but not limited to furniture, doors, floors, bathroom facilities, equipment, and supplies, and into the air and HVAC system at the Covered Property, causing damage and alteration to physical property and ambient air at the premises. Aerosolized coronavirus has entered the air in Plaintiff's business.

91. The physical losses to Plaintiff's business includes without limitation the rendering of its insured property from a satisfactory state to a state dangerous and/or unsatisfactory for use because of the fortuitous presence and effect of the coronavirus, fomites, and respiratory droplets or nuclei directly upon the property.

92. The physical loss to Plaintiff's Covered Property includes without limitation the physical loss of the ability to use Covered Property for its primary function.

93. The presence of COVID-19 caused "direct physical loss of or damage to" Covered Property at under Plaintiff's Policies by: (i) causing direct physical loss of or damage to the Covered Property; (ii) denying use of and damaging the Covered Property; (iii) requiring physical repair and/or alterations to the Covered Property; (iv) and/or by causing a necessary suspension of operations during a period of restoration.

94. Because of COVID-19 and the Closure Orders, Plaintiff was forced to suspend its operations, prohibiting customers and employees alike from accessing the Covered Property and resulting in substantial Business Income losses and Extra Expense incurred.

95. In addition to the multitude of visitors infected with COVID-19, including asymptomatic visitors, who spread the coronavirus on and around Plaintiff's Covered Property, approximately 20 individuals at Plaintiff's premises actually tested positive for COVID-19 during the period of restoration.

96. It is thus an absolute certainty that Covered Property has been infiltrated and contaminated by COVID-19 by those persons – and likely numerous others. The virus was there. The virus was harmful. Its adhesion to the air in the property and property altered the property and made it harmful. Plaintiff has thus been forced to suspend and reduce its business

due to COVID-19 and the resultant Closure Orders as well as in order to take necessary steps to prevent further damage and minimize the suspension of business and continue operations.

132. Make no mistake, Plaintiff's Covered Property has been contaminated and continued to be contaminated by COVID-19. Plaintiff hereby alleges as true and will present expert testimony of the following:

- a. Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) is a betacoronavirus that is genetically related to several other zoonotic coronaviruses, including SARS-CoV-1, the etiological agent of SARS. SARS-CoV-2 causes coronavirus disease 2019 (COVID-19) in humans. SARS-CoV-2 has glycoprotein "spikes" that are able to bind to human angiotensin converting enzyme 2 (ACE-2) receptors, which is present on human respiratory epithelial cells. After binding to ACE-2, the virus is able to enter the cells and make copies of itself, which are then released. These released infectious viral particles are then expelled in respiratory secretions as respiratory droplets into a multiphase, turbulent gas cloud during breathing, coughing, sneezing, talking, and singing. There are large and small respiratory droplets within the cloud. Large respiratory droplets can infect other people either directly, through direct contact with respiratory mucosal surfaces, or indirectly, by contaminating surfaces which are then touched by another person who subsequently touches her or his mouth, nose, or eyes. The small droplets remain in the air as an aerosol, which can remain suspended in the air for hours, travel prolonged distances indoors along air currents induced by the HVAC system, and travel from room to room, infecting people directly through

contact with, and inhalation of, the aerosol. Particles from the aerosol can also contaminate surfaces.

- b. Because SARS-Co-V-2 spread is logarithmic, a key purpose of government closure orders for non-essential medical procedures that require personal protective equipment (PPE) is to prevent the spread of SARS-Co-V-2. In the absence of closure, more likely than not there will be people infected with SARS-Co-V-2 present on a premise, causing contamination of air and physical surfaces with infectious SARS-Co-V-2 particles, leading to virus transmission and additional cases of COVID-19. For every case of COVID-19 prevented by closure orders, up to six additional cases will be prevented, resulting in greater preservation of PPE than saved directly by the closures order alone.
- c. The virus is indirectly transmitted when a host touches a contaminated object or surface that is contaminated with the SAR-CoV-2 virus (i.e., fomite transmission). The virus can survive on hard and soft surfaces for a period of time ranging from a few hours to a few days.
- d. Aerosol transmission, particularly during aerosol generating procedures, is believed to be a common mode of transmission in healthcare and restaurant settings. Although aerosols can be generated through simple breathing, many common procedures performed and devices used in dentist offices are aerosol generating procedures, including, but not limited to, ultrasonic scaler, high-speed dental hand piece, air/water syringe, air polishing, and air abrasion. These devices expel oral secretions into the air as an aerosol. If a person is infected with SARS-CoV-2, whether symptomatic or asymptomatic, and undergoes a dental

procedure, infectious viral particles will be aerosolized into the air. Infection clusters suggest that aerosol, droplet and fomite transmission explain SARS-CoV-2 transmission amongst humans.

- e. Nonetheless, the virus, while imperceptible to the human eye without enhancement, is undeniably present in the air, and on objects and surfaces where infected humans congregate. The object and surface and space are, essentially, rendered useless, in that they should not be utilized while virus is present.
- f. The virus cannot be observed by the human eye without enhancement. No one can see the virus in the air, on one's hands, or on a surface. This, of course, makes it difficult to eliminate the virus, or eradicate its transmission, from air or surfaces. The presence of the virus is only observed through the infection rate.
- g. In the hospitality setting, such as a restaurant and bar, for example, merely cleaning surfaces may reduce but does not altogether eliminate the risk of transmission amongst office staff or employees, and patients or customers. There may be surfaces with residual infectious virus, and aerosolized infectious particles. In other words, disinfection may temporarily eliminate a virus that was present prior to disinfection; however, a space may remain contaminated if an aerosol is present, and immediately become contaminated thereafter if another infected person is present in the area. Further, the challenges of keeping a dentist office or hospitality venue free from virus contamination extend beyond disinfection because people will necessarily need to remove their masks for dental care or to eat or drink, and thus, infected people will continuously emit infectious

viral particles to others and be susceptible to receive viral particles from others as well.

- h. The presence of the virus, whether circulating or stagnant, has changed the object, surface or premises, in that it has become dangerous to handle and/or enter, and cannot be used. Its use can only be restored with remedial action and sufficient time for the contaminated air to be evacuated, as suggested by the CDC and other infectious disease experts.
- i. The virus, observable only through microscopy and reflected by the public transmission rates, does physically exist and will survive in the air and on hard and soft surfaces. The virus can remain viable and infectious in aerosols for hours and on surfaces up to days. The virus may be inhaled from aerosols or spread to hands from a contaminated surface and then to the nose or mouth, causing infection. Notably, clearance of aerosols or disinfection of a contaminated surface is temporary and will easily become contaminated again when the virus is reintroduced by another infected person, and this contamination will provide a constant modality for infection to people.
- j. The virus' presence in a community, evidenced by infection rates, makes it more probably true than not, that live virus has been transferred in the air and to objects and surfaces. When aerosolized or an object or surface contains live virus, the virus is physically present in the air and on surfaces and objects, but imperceptible to the human eye. Nevertheless, the air, objects and surfaces should not be used. The transmission of the virus can occur through breathing, aerosol generating

procedures, or touching surfaces or objects contaminated with virus from an infected person.

- k. Aerosol, droplet, and fomite transmission are the basis for masking, eye protection, use of gowns and gloves in the healthcare setting, social distancing, hand-washing, stay-at-home orders, home-shelter orders, distance learning, reduced capacity and/or occupancy limits, and other measures implemented in various executive orders, including the closure orders. The virus is physically present in the community, including in the air and on objects and surfaces. Aerosol and fomite transmission are real, and due to constant recontamination of air and surface areas, it is simply impossible to entirely eradicate the virus from indoor spaces and such surfaces if there continue to be unmasked people in the area.
- l. Reducing capacity in public settings is one way to reduce the presence of virus on objects and surfaces and, therefore, reduce the risk of transmission, especially during times of rising infection rates. Wearing masks reduces, but does not eliminate, the likelihood of virus being aerosolized and transferred to objects and hard surfaces. However, in a dentist office setting, where masks cannot be worn during the exam and dental procedures, or in a hospitality setting, where masks cannot be worn when an individual is eating or drinking, the likelihood of virus being aerosolized and transferred to objects and surfaces is increased. This is true even if patients and staff or customers and employees are asymptomatic.
- m. Even with cleaning and disinfecting, the presence of virus on objects and surfaces, though reduced, cannot be reliably eliminated because these surfaces will

continue to become contaminated as people spread the virus throughout their dental exams or by eating and drinking (i.e., breathing and undergoing aerosol generating procedures). The only way to ensure the absence of virus on objects and surfaces is to prevent access to an environment, especially an indoor environment with full capacity.

97. Because of the spread or presence of COVID-19, the air in Plaintiffs' property has become unsafe, necessitating repairs and alterations, often on a continuing basis.

98. The presence of COVID-19 undoubtedly caused "physical loss or damage" to Bounce's Covered Property.

99. The "physical loss or damage" to property brought about by the presence of COVID-19 is evidenced by confirmed positive cases made known to Bounce among its employees,<sup>23</sup> and thus the known presence of the virus on site, as well as the subsequent professional-grade deep cleaning, include fogging, and other forms of sanitization efforts that have routinely ensued in conformance with local health department requirements.

100. The confirmed positive cases of COVID-19 at Bounce's insured premises have required specific and costly actions to prevent the spread of the virus, threat to customers and employees, and additional damages to the locations.

101. The professional-grade deep cleaning which has been performed within Bounce's insured premises following these confirmed cases constitutes a necessary repair or change to the properties without which Bounce's would not have been able to continue to operate its businesses upon re-opening.

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<sup>23</sup> The identity of these Bounce's employees and patrons and the specific dates of their diagnoses are not identified herein in order to protect their privacy interests. However, to date approximately 20 or more Bounce employees have been diagnosed with COVID-19.

102. The physical loss or damage brought about by the actual presence of COVID-19 is also visibly apparent to anyone upon immediate entry at the insured premises.

103. Bounce has incurred significant expenses in outfitting its insured premises with Plexiglass and numerous hands-free measures.

104. New air purification and filtration measures have been installed.

105. Bounce has likewise incurred significant expenses in obtaining and installing hands-free sanitizing stations which are available for usage upon entry into the insured premises, as well as on various additional sanitizers, disinfectants, and disposable surgical masks, all of which were designed to eliminate, mitigate, and/or prevent the reemergence of COVID-19 at the insured premises.

106. The physical loss or damage brought about by the actual presence of COVID-19 is also apparent from the markedly reduced capacity limitations and the significant reduction in furniture and functional space in Bounce's insured premises.

107. Bounce has been forced to incur significant costs associated with outdoor safety measures in order to salvage its business during the pandemic in accordance with local Closure Orders and health guidelines.

108. Thus, there have been many obvious structural alterations, changes, and/or repairs made to the insured premises and Bounce's internal operating procedures. Bounce has been left with no choice but to incur significant costs in implementing these safety measures, alterations, changes, and/or repairs caused by the actual presence and continued threat of COVID-19.

## **II. The Society Policies**

109. In return for the payment of a premium, Society issued Policy No. BP17006981-2 to Bounce for the policy period of November 21, 2019 to November 21, 2020, including a

Businessowners Special Property Coverage Form. Bounce has performed all of its obligations under Policy No. BP17006981-2, including the payment of premiums. The Covered Property, with respect to the Special Property Coverage Form, is sporting club, restaurant and rooftop bar and terrace located at 324 W Chicago Avenue, Chicago Illinois, 60654.

110. Society subsequently issued renewal Policy No. BP17006981-3 to Bounce for the policy period of November 21, 2020 to November 21, 2021. This policy also includes the Businessowners Special Property Coverage Form.

111. In many parts of the world, property insurance is sold on a specific peril basis. Such policies cover a risk of loss if that risk of loss is specifically listed (e.g., hurricane, earthquake, H1N1, etc.). Most property policies sold in the United States, however, including those sold by Society, are all-risk property damage policies. These types of policies cover all risks of loss except for risks that are expressly and specifically excluded. In the Special Property Coverage Form provided to Bounce , under the heading “Covered Causes of Loss,” Society agreed to “pay for direct physical loss or damage to Covered Property” “unless the loss is excluded or limited by” the Special Property Coverage Form.

112. In the Special Property Coverage Form, Society did not exclude or limit coverage for losses from viruses.

113. Losses due to COVID-19 are a Covered Cause of Loss under the Policies with the Special Property Coverage Form.

114. In the Special Property Coverage Form, Society agreed to pay for its insured’s actual loss of Business Income sustained due to the necessary suspension of its operations during the “period of restoration” caused by direct physical loss or damage. A “partial slowdown or complete cessation” of business activities at the Covered Property is a “suspension” under the

policy, for which Society agreed to pay for loss of Business Income during the “period of restoration” “that occurs within 12 consecutive months after the date of direct physical loss or damage.”

115. “Business Income” means net income (or loss) before tax that Plaintiffs would have earned “if no physical loss or damage had occurred.”

116. The presence of virus or disease can constitute physical damage to property, as the insurance industry has recognized since at least 2006. When preparing so-called “virus” exclusions to be placed in some policies, but not others, the insurance industry drafting arm, ISO, circulated a statement to state insurance regulators that included the following:

117. Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses. Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage. An allegation of property damage may be a point of disagreement in a particular case.

118. In the Special Property Coverage Form, Society also agreed to pay necessary Extra Expense that its insureds incur during the “period of restoration” that the insureds would not have incurred if there had been no direct physical loss or damage to the Covered Property.

119. “Extra Expense” means expenses “to avoid or minimize the suspension of business and to continue ‘operations,’” and to repair or replace property.

120. Society also agreed to “pay for the actual loss of Business Income” that Plaintiffs sustain “and any Extra Expense caused by action of civil authority that prohibits access to” the Covered Property when a Covered Cause of Loss causes damage to property other than the Covered Property and the civil authority prohibits access to the property and its surrounding area and takes such action “in response to dangerous physical conditions.”

121. Society’s Special Property Coverage Form provides “Contamination” coverage that pays for the actual loss of Business Income and Extra Expense caused by “‘Contamination’ that results in an action by a public health or other governmental authority that prohibits access to the described premises or production of your product.” The Special Property Coverage Form broadly defines a covered loss due to “Contamination” as occurring in a variety of circumstances, including the following: (a) “Contamination” that results in an action by a public health or other governmental authority that prohibits access to the described premises or production of your product; (b) a “Contamination threat”, or (c) “publicity” resulting from the discovery or suspicion of “Contamination.” The Special Property Coverage Form defines “Contamination” as “a defect, deficiency, inadequacy or dangerous condition in your products, merchandise or premises.”

122. Society’s Special Property Coverage Form, under a section entitled “Duties in the Event of Loss or Damage” mandates that Society’s insured “must see that the following are done in the event of loss or damage to Covered Property . . . [t]ake all reasonable steps to protect the Covered Property from further damage and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim.” This type of coverage has historically been known as “sue and labor” coverage or a “sue and labor” provision, and property policies have long provided coverage for these types of expenses.

123. Losses caused by COVID-19 and the related orders issued by local, state, and federal authorities triggered the Business Income, Extra Expense, Civil Authority, Contamination, and Sue and Labor provisions of the Policies.

124. Indeed, many governmental bodies specifically found that COVID-19 causes property damage when issuing stay at home orders. *See* N.Y.C. Emergency Exec. Order No. 100, at 2 (Mar. 16, 2020)<sup>24</sup> (emphasizing the virulence of COVID-19 and that it “physically is causing property loss and damage”); N.Y.C. Emergency Exec. Order No. 103 at 1 (March 25, 2020)<sup>25</sup> (recognizing the “actions taken to prevent such spread [of COVID-19] have led to property loss and damage”); Broward Cty. Fla. Administrator’s Emergency Order No. 20-01, at 2 (Mar. 22, 2020)<sup>26</sup> (noting that COVID-19 “constitutes a clear and present threat to the lives, health, welfare, and safety of the people of Broward County”); Harris Cty. Tex. Office of Homeland Security & Emergency Mgmt., Order of Cty. J. Lina Hidalgo, at 2 (Mar. 24, 2020)<sup>27</sup> (emphasizing that the COVID-19 virus can cause “property loss or damage” due to its contagious nature and transmission through “person-to-person contact, especially in group settings”); Napa Cty. Cal. Health & Human Service Agency, Order of the Napa Cty. Health Officer (Mar. 18, 2020)<sup>28</sup> (issuing restrictions based on evidence of the spread of COVID-19 within the Bay Area and Napa County “and the physical damage to property caused by the virus”); City of Key West Fla. State of Local Emergency Directive 2020-03, at 2 (Mar. 21, 2020)<sup>29</sup> (COVID-19 is “causing property damage due to its proclivity to attach to surfaces for prolonged periods of time”); City

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<sup>24</sup> <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-100.pdf>.

<sup>25</sup> <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-103.pdf>.

<sup>26</sup> <https://www.broward.org/CoronaVirus/Documents/BerthaHenryExecutiveOrder20-01.pdf>.

<sup>27</sup> [https://www.taa.org/wp-content/uploads/2020/03/03-24-20-Stay-Home-Work-Safe-Order\\_Harris-County.pdf](https://www.taa.org/wp-content/uploads/2020/03/03-24-20-Stay-Home-Work-Safe-Order_Harris-County.pdf).

<sup>28</sup> <https://www.countyofnapa.org/DocumentCenter/View/16687/3-18-2020-Shelter-at-Home-Order>.

<sup>29</sup> [https://www.cityofkeywest-fl.gov/egov/documents/1584822002\\_20507.pdf](https://www.cityofkeywest-fl.gov/egov/documents/1584822002_20507.pdf).

of Oakland Park Fla. Local Public Emergency Action Directive, at 2 (Mar. 19, 2020)<sup>30</sup> (COVID-19 is “physically causing property damage”); Panama City Fla. Resolution No. 20200318.1 (Mar. 18, 2020)<sup>31</sup> (stating that the resolution is necessary because of COVID-19’s propensity to spread person to person and because the “virus physically is causing property damage”); Exec. Order of the Hillsborough Cty. Fla. Emergency Policy Group, at 2 (Mar. 27, 2020)<sup>32</sup> (in addition to COVID-19’s creation of a “dangerous physical condition,” it also creates “property or business income loss and damage in certain circumstances”); Colorado Dep’t of Pub. Health & Env’t, Updated Public Health Order No. 20-24, at 1 (Mar. 26, 2020)<sup>33</sup> (emphasizing the danger of “property loss, contamination, and damage” due to COVID-19’s “propensity to attach to surfaces for prolonged periods of time”); Sixth Supp. to San Francisco Mayoral Proclamation Declaring the Existence of a Local Emergency, 26 (Mar. 27, 2020)<sup>34</sup> (“This order and the previous orders issued during this emergency have all been issued ... also because the virus physically is causing property loss or damage due to its proclivity to attach to surfaces for prolonged periods of time”); City of Durham NC, Second Amendment to Declaration of State of Emergency, at 8 (effective Mar. 26, 2020)<sup>35</sup> (prohibiting entities that provide food services from allowing food to be eaten at the site where it is provided “due to the virus’s propensity to physically impact surfaces and personal property”); and State of Nevada Declaration of Emergency Directive 016 at 1 (Apr. 29, 2020)<sup>36</sup> (noting “ability of the novel coronavirus that

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<sup>30</sup> <https://oaklandparkfl.gov/DocumentCenter/View/8408/Local-Public-Emergency-Action-Directive-19-March-2020-PDF>.

<sup>31</sup> <https://www.pcgov.org/AgendaCenter/ViewFile/Item/5711?fileID=16604>.

<sup>32</sup> <https://www.hillsboroughcounty.org/library/hillsborough/mediacenter/documents/administrator/epg/saferathomeorder.pdf>.

<sup>33</sup> <https://www.pueblo.us/DocumentCenter/View/26395/Updated-Public-Health-Order---032620>.

<sup>34</sup> [https://sfgov.org/sunshine/sites/default/files/sof\\_061020\\_item3.pdf](https://sfgov.org/sunshine/sites/default/files/sof_061020_item3.pdf).

<sup>35</sup> [https://durhamnc.gov/DocumentCenter/View/30043/City-of-Durham-Mayor-Emergency-Dec-Second-Amdmt-3-25-20\\_FINAL](https://durhamnc.gov/DocumentCenter/View/30043/City-of-Durham-Mayor-Emergency-Dec-Second-Amdmt-3-25-20_FINAL).

<sup>36</sup> [https://gov.nv.gov/News/Emergency\\_Orders/2020/2020-04-29\\_-\\_COVID-19\\_Declaration\\_of\\_Emergency\\_Directive\\_016\\_\(Attachments\)/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-04-29_-_COVID-19_Declaration_of_Emergency_Directive_016_(Attachments)/).

causes COVID-19 to survive on surfaces for indeterminate periods of time renders some property unusable and contributes to contamination, damage, and property loss”).

**III. Society Improperly Denied Bounce’s Claim Under The 2019 Policy And It Is Anticipated That Society Will Also Deny Bounce’s Claim Under The 2020 Policy.**

125. In accordance with the terms of the Policies, Bounce submitted timely claims to Society for losses caused by the COVID-19 pandemic. In submitting its business interruption claim on or about March 16, 2020 under the 2019 Policy, Bounce made clear that its losses were ongoing.

126. Within days after Bounce’s claim under the 2019 Policy was submitted, Society represented to Bounces that it was denying coverage, in part, based on the argument that COVID-19 does not cause direct physical loss or damage. *See Exhibit C.*

127. Bounce is in the process of submitting an additional business interruption claim under the 2020 Policy, effective from November 21, 2020 to November 21, 2021.

128. As the 2019 and 2020 Policies have the same terms and conditions and Bounce’s losses are ongoing, Bounce has experienced an anticipatory repudiation by Society or its agents with respect to its covered losses under the 2020 Policy as well.

129. Society’s interpretation of the Policies is entirely incorrect.

130. Due to the COVID-19 pandemic, Bounce’s properties have suffered direct physical loss or damage resulting from COVID-19.

131. Like all other places where people congregate, people have spread COVID-19 to the surfaces of Bounce’s property through breathing, sneezing, coughing, and talking.

132. Bounce’s property has become unsafe for its intended business purpose and has thus suffered physical loss and/or damage.

133. COVID-19 has been actually present in Bounce's properties and has physically infected the surfaces of Bounce's property.

134. The business functions of Bounce's property have undoubtedly been drastically impaired.

135. If Bounce were to conduct business as usual, the disease and virus spread would be inevitable, and Bounce's workers and customers would become infected.

136. In its current condition, Bounce's property is not functional for its intended business purpose because of the changed physical environment.

137. The actual presence of the disease or virus constitutes direct physical loss or damage as well.

138. Indeed, Society's own Policies, through the grant of Contamination Coverage, acknowledges that communicable diseases, such as COVID-19, can cause direct physical loss and/or damage.

139. The presence of the disease or virus also poses an imminent threat to every one of Bounce's property.

140. Society's coverage position is demonstrably wrong.

141. Many insurance policies issued in the United States that cover business interruption (though not the Policies at issue) contain an exclusion identical or very similar to the Insurance Services Office ("ISO") Form CP 01 40 07 06, adopted in 2006 and titled "Amendatory Endorsement – Exclusion of Loss Due to Virus or Bacteria."

142. The ISO Form CP 01 40 07 06 exclusion and those similar to it typically state: "We 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."

143. By virtue of ISO Form CP 01 40 07 06, SOCIETY unquestionably knew exactly how to exclude coverage for loss caused by or resulting from any virus, *yet Society chose not to do so within the Business Income Coverage Form*. Indeed, *the Policies contain no such virus exclusion applicable to Bounce's business income losses*.

144. The Policies in no way exclude or limit coverage for business income losses caused by viruses, such as COVID-19.

145. Society's ongoing refusal to provide coverage under the Policies is in direct breach of the parties' contracts and Bounce's reasonable expectation of coverage and, consequently, has caused Bounces to incur significant damages.

146. In contrast, Bounces has paid all required premiums and has otherwise fully complied with all terms and conditions of the Policies.

### **CLAIMS FOR RELIEF**

#### **COUNT I**

#### **BREACH OF CONTRACT – BUSINESS INCOME COVERAGE**

147. Plaintiff Bounce repeats and realleges Paragraphs 1-146 as if fully set forth herein.

148. Plaintiff's Policies are contracts under which Society was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policies.

149. In the Special Property Coverage Form, Society agreed to pay for its insureds' actual loss of Business Income sustained due to the necessary suspension of its operations during the "period of restoration."

150. A "partial slowdown or complete cessation" of business activities at the Covered

Property is a “suspension” under the Policies, for which Society agreed to pay for loss of Business Income during the “period of restoration” “that occurs within 12 consecutive months after the date of direct physical loss or damage.”

151. “Business Income” means net income (or loss) before tax that Plaintiff would have earned “if no physical loss or damage had occurred.”

152. COVID-19 and the Closure Orders caused direct physical loss and damage to Plaintiff, requiring suspension of operations at the Covered Property. Losses caused by COVID-19 and the Closure Orders thus triggered the Business Income provision of Plaintiff’s Policies.

153. Plaintiff has complied with all applicable provisions of its policies and/or those provisions have been waived by Society or Society is estopped from asserting them, and yet Society has abrogated its insurance coverage obligations pursuant to the Policies’ clear and unambiguous terms.

154. By denying coverage for any Business Income losses incurred by Plaintiff in connection with the COVID-19 pandemic, Society has breached its coverage obligations under the Policies.

155. As a result of Society’s breach of the Policies, Plaintiff has sustained substantial damages for which Society is liable, in an amount to be established at trial.

**COUNT II**  
**BREACH OF CONTRACT – CIVIL AUTHORITY COVERAGE**

156. Plaintiff, Bounce repeats and realleges Paragraphs 1-155 as if fully set forth herein.

157. Plaintiff’s Society Policies are contracts under which Society was paid premiums in exchange for its promise to pay Plaintiff’s losses for claims covered by the Policies.

158. Society promised to “pay for the actual loss of Business Income” sustained “and any Extra Expense caused by action of civil authority that prohibit access to” the Covered Property when a Covered Cause of Loss causes damage to property other than the Covered Property and the civil authority takes its action “in response to dangerous physical conditions.”

159. The Closure Orders triggered the Civil Authority provision under Plaintiff’s Policies. COVID-19 caused direct physical loss or damage to property other than Insured Premises in the same manner described above that it caused direct physical loss or damage to the Insured Premises. The civil authority orders were actions taken in response to the dangerous physical conditions resulting from the direct physical damage to such property. The civil authority orders prohibited access to an immediately surrounding area that included the Insured Premises.

160. Plaintiff complied with all applicable provisions of the Policies, and/or those provisions have been waived by Society or Society is estopped from asserting them, and yet Society has abrogated its insurance coverage obligations pursuant to the Policies’ clear and unambiguous terms.

161. By denying coverage for any business losses incurred by Plaintiff in connection with the Closure Orders and the COVID-19 pandemic, Society has breached its coverage obligations under the Policies.

162. As a result of Society’s breach of the Policies, Plaintiff has sustained substantial damages for which Society is liable, in an amount to be established at trial.

**COUNT III**  
**BREACH OF CONTRACT – CONTAMINATION COVERAGE**

163. Plaintiff Bounce repeats and realleges Paragraphs 1-162 as if fully set forth herein.

164. Plaintiff's Policies are contracts under which Society was paid premiums in exchange for its promise to pay Plaintiff for claims covered by the Policies.

165. Society promised to "pay for the actual loss of Business Income and Extra Expense caused by 'Contamination' that results in an action by a public health or other governmental authority that prohibits access to the described premises or production of your product."

166. Society specifically defines "Contamination" as "a defect, deficiency, inadequacy or dangerous condition in your products, merchandise or premises."

167. The Special Property Coverage Form also provides a broad definition for determining when a covered loss due to "Contamination" occurs, including the following: (a) "Contamination" that results in an action by a public health or other governmental authority that prohibits access to the described premises or production of your product; (b) a "Contamination threat", or (c) "publicity" resulting from the discovery or suspicion of "Contamination."

168. COVID-19 constitutes Contamination that resulted in the Closure Orders that prohibits access to the described premises or production of product.

169. Plaintiff has complied with all applicable provisions of the Policies and/or those provisions have been waived by Society or Society is estopped from asserting them, and yet Society has abrogated its insurance coverage obligations pursuant to the Policies' clear and unambiguous terms.

170. By denying coverage for any business losses incurred by Plaintiff in connection with the Closure Orders and the COVID-19 pandemic, Society has breached its coverage obligations under the Policies.

171. As a result of Society's breach of the Policies, Plaintiff has sustained substantial damages for which Society is liable, in an amount to be established at trial.

**COUNT IV**  
**BREACH OF CONTRACT – EXTRA EXPENSE COVERAGE**

172. Plaintiff Bounce repeats and realleges Paragraphs 1-171 as if fully set forth herein.

173. Plaintiff's Society's Policies are contracts under which Society was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policies.

174. In the Special Property Coverage Form, Society agreed to pay necessary Extra Expense that its insureds incur during the "period of restoration" that the insureds would not have incurred if there had been no direct physical loss or damage to the Covered Property.

175. "Extra Expense" means expenses "to avoid or minimize the suspension of business and to continue 'operations,'" and also includes expenses "to repair or replace property."

176. Due to COVID-19 and the Closure Orders, Plaintiff incurred Extra Expense at the Covered Property.

177. Plaintiff has complied with all applicable provisions of the Policies and/or those provisions have been waived by Society or Society is estopped from asserting them, and yet Society has abrogated its insurance coverage obligations pursuant to the Policies' clear and unambiguous terms.

178. By denying coverage for any business losses incurred by Plaintiff in connection with the Closure Orders and the COVID-19 pandemic, Society has breached its coverage obligations under the Policies.

179. As a result of Society's breach of the Policies, Plaintiff has sustained substantial damages for which Society is liable, in an amount to be established at trial.

**COUNT V**  
**BREACH OF CONTRACT – SUE AND LABOR COVERAGE**

180. Plaintiff Bounce repeats and realleges Paragraphs 1-179 as if fully set forth herein.

181. Plaintiff's Policies are contracts under which Society was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policies.

182. In the Special Property Coverage Form, Society agreed to give due consideration in settlement of a claim to expenses incurred in taking all reasonable steps to protect Covered Property from further damage.

183. In complying with the Closure Orders and otherwise suspending or limiting operations, Plaintiff incurred expenses in connection with reasonable steps to protect Covered Property.

184. Plaintiff has complied with all applicable provisions of the Policies and/or those provisions have been waived by Society or Society is estopped from asserting them, and yet Society has abrogated its insurance coverage obligations pursuant to the Policies' clear and unambiguous terms.

185. By denying coverage for any Sue and Labor expenses incurred by Plaintiff in connection with the Closure Orders and the COVID-19 pandemic, Society has breached its coverage obligations under the Policies.

186. As a result of Society's breach of the Policies, Plaintiff has sustained substantial damages for which Society is liable, in an amount to be established at trial.

**COUNT VI**  
**DECLARATORY JUDGMENT – BUSINESS INCOME COVERAGE**

187. Plaintiff Bounce repeats and realleges Paragraphs 1-186 as if fully set forth herein.

188. Plaintiff's Policies are contracts under which Society was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policies.

189. Plaintiff has complied with all applicable provisions of the Policies and/or those provisions have been waived by Society or Society is estopped from asserting them, and yet Society has abrogated its insurance coverage obligations pursuant to the Policies' clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Plaintiff is entitled.

190. Society has denied claims related to COVID-19, without individual bases or investigations, such that the Court can render declaratory judgment.

191. An actual case or controversy exists regarding Plaintiff's rights and Society's obligations under the Policies to reimburse Plaintiff for the full amount of Business Income losses incurred by Plaintiff in connection with suspension of its business stemming from the COVID-19 pandemic.

192. Pursuant to 28 U.S.C. § 2201, Plaintiff seeks a declaratory judgment from this Court declaring the following:

- Plaintiff's losses incurred in connection with the Closure Orders and the necessary interruption of its business stemming from the COVID-19 pandemic are insured losses under the Policies; and

- Society is obligated to pay Plaintiff for the full amount of the Business Income losses incurred and to be incurred in connection with the Closure Orders during the period of restoration and the necessary interruption of its business stemming from the COVID-19 pandemic.

## **COUNT VII**

### **DECLARATORY JUDGMENT – CIVIL AUTHORITY COVERAGE**

193. Plaintiff repeats and realleges Paragraphs 1-192 as if fully set forth herein.

194. Plaintiff's Policies are contracts under which Society was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policies.

195. The Closure Orders triggered the Civil Authority provision under Plaintiff's Policies. COVID-19 caused direct physical loss or damage to property other than Insured Premises in the same manner described above that it caused direct physical loss or damage to Insured Premises. The civil authority orders were actions taken in response to the dangerous physical conditions resulting from the direct physical damage to such properties. The civil authority orders also prohibited access to an immediately surrounding area that included the Insured Premises.

196. Plaintiff has complied with all applicable provisions of the Policies and/or those provisions have been waived by Society or Society is estopped from asserting them, and yet Society has abrogated its insurance coverage obligations pursuant to the Policies' clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Plaintiffs are entitled.

197. Society has denied claims related to COVID-19, without individual bases or investigations, such that the Court can render declaratory judgment have filed a claim.

198. An actual case or controversy exists regarding Plaintiff's rights and Society's obligations under the Policies to reimburse Plaintiff for the full amount of covered Civil

Authority losses incurred by Plaintiff in connection with Closure Orders and the necessary interruption of its business stemming from the COVID-19 pandemic.

199. Pursuant to 28 U.S.C. § 2201, Plaintiff seek a declaratory judgment from this Court declaring the following:

- Plaintiff's losses incurred in connection with the Closure Orders and the necessary interruption of its business stemming from the COVID-19 pandemic are insured losses under the Policies; and
- Society is obligated the full amount of the Civil Authority losses incurred and to be incurred in connection with the covered losses related to the Closure Orders and the necessary interruption of its business stemming from the COVID-19 pandemic.

**COUNT VIII**  
**DECLARATORY JUDGMENT – CONTAMINATION COVERAGE**

200. Plaintiff Bounce repeats and realleges Paragraphs 1-199 as if fully set forth herein.

201. Plaintiff's Policies are contracts under which Society was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policies.

202. Plaintiff's Policies are contracts under which Society was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policies.

203. Plaintiff has complied with all applicable provisions of the Policies and/or those provisions have been waived by Society or Society is estopped from asserting them, and yet Society has abrogated its insurance coverage obligations pursuant to the Policies' clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Plaintiff is entitled.

204. Society has denied claims related to COVID-19, without individual bases or investigations, such that the Court can render declaratory judgment.

205. An actual case or controversy exists regarding Plaintiff's rights and Society's obligations under the Policies to reimburse Plaintiff for the full amount of covered Contamination losses incurred by Plaintiff in connection with Closure Orders and the necessary interruption of its business stemming from the COVID-19 pandemic.

206. Pursuant to 28 U.S.C. § 2201, Plaintiff seeks a declaratory judgment from this Court declaring the following:

- Plaintiff's covered Contamination losses incurred in connection with the Closure Orders and the necessary interruption of its business stemming from the COVID-19 pandemic are insured losses under their Policies; and
- Society is obligated to pay Plaintiff the full amount of the covered Contamination losses incurred and to be incurred in connection with the Closure Orders and the necessary interruption of its business stemming from the COVID-19 pandemic.

**COUNT IX**  
**DECLARATORY JUDGMENT – EXTRA EXPENSE COVERAGE**

207. Plaintiff Bounce repeats and realleges Paragraphs 1-206 as if fully set forth herein.

208. Plaintiff's Policies are contracts under which Society was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policies.

209. Plaintiff has complied with all applicable provisions of the Policies and/or those provisions have been waived by Society or Society is estopped from asserting them, and yet Society has abrogated its insurance coverage obligations pursuant to the Policies' clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Plaintiffs are entitled.

210. Society has denied Plaintiff's claims related to COVID-19, without individual bases or investigations, such that the Court can render declaratory judgment.

211. An actual case or controversy exists regarding Plaintiff's rights and Society's obligations under the Policies to reimburse Plaintiff for the full amount of Extra Expense losses incurred by Plaintiff in connection with Closure Orders and the necessary interruption of its business stemming from the COVID-19 pandemic.

212. Pursuant to 28 U.S.C. § 2201, Plaintiff seeks a declaratory judgment from this Court declaring the following:

- Plaintiff's losses incurred in connection with the Closure Orders and the necessary interruption of its business stemming from the COVID-19 pandemic are insured losses under the Policies; and
- Society is obligated to pay Plaintiff for the full amount of the Extra Expense losses incurred and to be incurred in connection with the covered losses related to the Closure Orders during the period of restoration and the necessary interruption of its business stemming from the COVID-19 pandemic.

**COUNT X**  
**DECLARATORY JUDGMENT – SUE AND LABOR COVERAGE**

213. Plaintiff Bounce repeats and realleges Paragraphs 1-212 as if fully set forth herein.

214. Plaintiff's Policies are contracts under which Society was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policies.

215. Plaintiff's Policies are contracts under which Society was paid premiums in exchange for its promise to pay Plaintiff's reasonably incurred expenses to protect Covered Property.

216. Plaintiff has complied with all applicable provisions of the Policies and/or those provisions have been waived by Society or Society is estopped from asserting them, and yet Society has abrogated its insurance coverage obligations pursuant to the Policies' clear and

unambiguous terms and has wrongfully and illegally refused to provide coverage to which Plaintiff is entitled.

217. Society has denied claims related to COVID-19, without individual bases or investigations, such that the Court can render declaratory judgment.

218. An actual case or controversy exists regarding Plaintiff's rights and Society's obligations under the Policies to reimburse Plaintiff for the full amount Plaintiff reasonably incurred to protect Covered Property from further damage by COVID-19.

219. Pursuant to 28 U.S.C. § 2201, Plaintiff seeks a declaratory judgment from this Court declaring the following:

- Plaintiff's reasonably incurred expenses to protect Covered Property from further damage by COVID-19 are insured losses under their Policies; and
- Society is obligated to pay Plaintiff for the full amount of the expenses they reasonably incurred to protect Covered Property from further damage by COVID-19.

### **REQUESTS FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that the Court enter judgment in Plaintiff's favor and against Defendant as follows:

- a. Entering judgment on Counts I-V in favor of Plaintiff and awarding damages for breach of contract in an amount to be determined at trial;
- b. Entering declaratory judgment on Counts VI-X in favor of Plaintiff as follows:
  - i. The Business Income, Civil Authority, Contamination, Extra Expense and Sue and Labor losses incurred by Plaintiff in connection with the Closure Orders and the necessary interruption of Plaintiff's business stemming from the COVID-19 pandemic are insured losses under the Policies; and

- ii. Society is obligated to pay under the Policies for the full amount of the Business Income, Civil Authority, Contamination, Extra Expense, and Sue and Labor losses incurred and to be incurred related to COVID-19, the Closure Orders and the necessary interruption of Plaintiff's business stemming from the COVID-19 pandemic;
- c. Ordering Society to pay both pre and post-judgement interest on any amounts awarded;
- d. Ordering Society to pay attorneys' fees and costs of suit plus interest; and
- e. Ordering such other and further relief as may be just and proper.

**JURY DEMAND**

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

Dated: March 8, 2021

/s/ Adam J. Levitt

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\*Applications for admission *pro hac vice* to be filed.