



time. Ultimately, the orders by state and local governments caused Plaintiffs to suffer physical loss and damage to their properties and have interrupted their respective businesses.

2. Plaintiffs own and operate general and specialized fitness studios nationwide. But Plaintiffs' operations—through no fault of their own—have been and continue to be curtailed, suspended, and threatened by the novel coronavirus, SARS-CoV-2, which causes the infectious disease COVID-19.

3. To protect their businesses in the event that they suddenly had to suspend operations for reasons outside of their control or to prevent further property damage, Plaintiffs each purchased insurance coverage from Defendant, which includes, but is not limited to, coverage for property loss and loss of business income and certain extra expenses. A true and accurate exemplar copy of the applicable insurance policies is attached to this Complaint as in **Exhibit A**.

4. Plaintiffs were insured under the same program by Defendant and were issued policies that were materially identical for the coverages that Plaintiffs seek in this lawsuit.

5. Specifically, Defendant's insurance policy provides coverage for "Business Income and Extra Expense," which promises to pay for actual loss due to the necessary suspension of operations caused by, among other things, accidental physical loss or accidental physical damage to the covered property.

6. Defendant's insurance policy relating to coverage for "Extra Expense" promises to pay the necessary expenses incurred to avoid or minimize the suspension of business and to continue operations curtailed by "action of civil authority that prohibits access" to the applicable premises.

7. Defendant's insurance policy provides "Business Income" coverage and "Extra Expense" coverage during a "Period of Restoration," which begins with the date of loss and ends when the property can be repaired or replaced under the circumstances.

8. Unlike some policies that provide Business Income (also referred to as "business interruption") coverage, Defendant's insurance policy neither includes, nor is otherwise subject to an exclusion for losses caused by viruses or communicable diseases.

9. Beginning in March 2020, Plaintiffs were forced to suspend or reduce business at their covered premises due to the orders issued by state and local governments ("Civil Authorities") nationwide in response to COVID-19. These orders by the civil authorities required Plaintiffs to suspend business for on-site services, as well as to take necessary steps to prevent further damage and minimize the suspension of business and continue operations.

10. In response to the various orders by the civil authorities, Plaintiffs not only suspended their business services to comply with the orders, but they also took necessary steps to prevent further damage and minimize the ill-effects of the suspension of business to allow for continued operations.

11. Plaintiffs also submitted timely claims to Defendant under the Arch Insurance Policy to receive coverage under the applicable provisions for business income, extra expense, and loss to property.

12. Nevertheless, and in violation of the Arch Insurance Policy, Defendant, on a widescale and uniform basis, refused to pay Plaintiffs and similarly situated insureds under the policies' Business Income and Extra Expense coverages for losses caused by the orders mandated by civil authorities in response to COVID-19. In particular, Arch Insurance Company has failed to honor claims submitted by Plaintiffs under their policies on the blanket basis that its policies do

not cover losses arising from the pandemic because COVID-19 does not give rise to any physical loss or damage.

## **THE PARTIES**

### ***Franchisor Plaintiffs***

13. Plaintiff, Xponential Fitness LLC, is a Delaware limited liability company with its principal place of business located at 17877 Von Karman Ave, Suite 100, Irvine, CA 92614. It is the parent holding company of Club Pilates Franchise LLC, Cyclebar Franchising LLC, Stretch Lab Franchise LLC, Row House Franchise LLC, PB Franchising LLC, Yoga Six Franchise LLC, AKT Franchise LLC and Stride Franchise LLC. It oversees and manages these companies—holding them out to consumers and franchisees as distinct brands.

14. Plaintiff, Club Pilates Franchise LLC, is a Delaware limited liability company with its principal place of business located at 17877 Von Karman Ave, Suite 100, Irvine, CA 92614. It is a subsidiary of Xponential Fitness LLC and the largest network of Reformer-based group Pilates studios in the world.

15. Plaintiff, Cyclebar Franchising LLC, is an Ohio limited liability company with its principal place of business located at 17877 Von Karman Ave, Suite 100, Irvine, CA 92614. It is a subsidiary of Xponential Fitness LLC and the world's largest premium indoor cycling brand worldwide.

16. Plaintiff, Stretch Lab Franchise LLC, is a Delaware limited liability company with its principal place of business located 17877 Von Karman Ave, Suite 100, Irvine, CA 92614. It is a subsidiary of Xponential Fitness LLC and a leading assisted stretching brand.

17. Plaintiff, Row House Franchise LLC, is a Delaware limited liability company with its principal place of business located at 17877 Von Karman Ave, Suite 100, Irvine, CA 92614. It is a subsidiary of Xponential Fitness LLC and a nationally recognized fitness brand.

18. Plaintiff, PB Franchising LLC, is a Delaware limited liability company with its principal place of business located at 17877 Von Karman Ave, Suite 100, Irvine, CA 92614. It is a subsidiary of Xponential Fitness LLC and the largest, most established barre franchise in North America, with more than 520 fitness studios.

19. Plaintiff, Yoga Six Franchise LLC, is a Delaware limited liability company with its principal place of business located at 17877 Von Karman Ave, Suite 100, Irvine, CA 92614. It is a subsidiary of Xponential Fitness LLC and a nationally recognized fitness brand that specializes in modern yoga.

20. Plaintiff, AKT Franchise LLC, is a Delaware limited liability company with its principal place of business located at 17877 Von Karman Ave, Suite 100, Irvine, CA 92614. It is a subsidiary of Xponential Fitness LLC and a nationally recognized fitness brand that specializes in cardio dance intervals.

21. Plaintiff, Stride Franchise LLC, is a Delaware limited liability company with its principal place of business located at 17877 Von Karman Ave, Suite 100, Irvine, CA 92614. It is a subsidiary of Xponential Fitness LLC and a nationally recognized fitness brand that specializes in treadmill-based cardio and strength classes.

***Franchisee Plaintiffs—Class Representatives***

22. Other class plaintiffs are the franchisees of Club Pilates Franchise LLC, Cyclebar Franchising LLC, Stretch Lab Franchise LLC, Row House Franchise LLC, PB Franchising LLC, Yoga Six Franchise LLC, AKT Franchise LLC, and Stride Franchise LLC, which are similarly

situated policyholders insured by Defendant. The aligned interests of these numerous franchisee plaintiffs will be represented by the following class representatives:

a. Class Representative, David Wolk, who owns two Club Pilates Studios located in Woodbury, New York that were insured by Defendant at all relevant times. Mr. Wolk filed a business interruption claim with Defendant, to which Defendant has refused to provide coverage.

b. Class Representative, Jay Jasunas, who owns a Row House Studio located in Littleton, Colorado that was insured by Defendant at all relevant times. Mr. Jasunas filed a business interruption claim with Defendant, to which Defendant has refused to provide coverage.

c. Class Representative, Steve Hitzemann, who owns a StretchLab Studio located in Charlotte, North Carolina that was insured by Defendant at all relevant times. Mr. Hitzemann filed a business interruption claim with Defendant, to which Defendant has refused to provide coverage.

d. Class Representative, Seth Wardell, who owns a Stride Studio located in Jax Beach, Florida that was insured by Defendant at all relevant times. Mr. Wardell filed a business interruption claim with Defendant, to which Defendant has refused to provide coverage.

e. Class Representative, Daniel Sutherin, who owns a YogaSix Studio located in Macedonia, Ohio that was insured by Defendant at all relevant times. Mr. Sutherin filed a business interruption claim with Defendant, to which Defendant has refused to provide coverage.

f. Class Representative, Brian Davis, a franchisee of AKT Franchise LLC, who owns a studio in Mason, Ohio that was insured by Defendant at all relevant times. Mr. Davis filed a business interruption claim with Defendant, to which Defendant has refused to provide coverage.

***Defendant***

23. Defendant, Arch Insurance Company, is an insurance company domiciled in Missouri with its principal place of business located at 2345 Grand Boulevard, Suite 900, Kansas City, Missouri, 64108, United States. It is a property, casualty, and specialty insurer for corporations and professional firms.

**JURISDICTION AND VENUE**

24. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2), because this is a class action lawsuit in which at least one member of the class is a citizen of a state different from Defendant, and because: (a) the Class consists of at least 100 members; (b) the amount in controversy exceeds \$5,000,000 exclusive of interest and costs; and, (c) no relevant exceptions apply to this claim.

25. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Defendant Arch Insurance Company resides in this judicial district, and a substantial portion of the events giving rise to Plaintiffs' causes of action occurred in this judicial district. Further, the Policies at issue cover Plaintiffs' facilities located in the State of Missouri, the Policies at issue were purchased from an insurer located in the State of Missouri, and Defendant is subject to personal jurisdiction in this district.

**FACTUAL BACKGROUND**

***The Arch Insurance Policies***

26. In return for the payment of a premium, and to protect themselves against risks like closures due to viruses, epidemics, or pandemics such as COVID-19, Plaintiffs—and those similarly situated—purchased insurance policies from Defendant Arch Insurance Company (“the Policies”). See (**Exhibit A**, Exemplar Policy).

27. The Policies were in effect at all relevant times, including prior to and at the time of the COVID-19 outbreak and remain in effect today.

28. Plaintiffs performed all obligations under the Policies, including the payment of premiums, notices, and cooperation with Defendants.

29. The Policies—which explicitly include various forms and endorsements—are the same for all Plaintiffs and all members of the proposed class. Importantly, each of the Policies included a specific Endorsement Number 01, titled the “Xponential Fitness Endorsement.” (**Ex. A**). The Xponential Fitness Endorsement provided identical coverage for Plaintiffs and all other members of the proposed classes.

30. Defendant, Arch Insurance Company, is the insurer of (1) the Policies held by Plaintiffs, and (2) the Policies held by members of the proposed class.

31. Sometimes, property insurance is sold on a specific peril basis—where coverage is limited to risks of loss that are specifically listed (*e.g.*, hurricane, earthquake, etc.). By contrast, the Arch Insurance Company policies are “all-risk” property damage policies. (**Ex. A**.) These types of policies cover all risks of loss except for risks that are expressly and specifically excluded.

32. Under the Policies, Arch Insurance Company agreed to “pay for loss of or damage to Covered Property from any of the Covered Causes of Loss.” (**Ex. A**.)

33. “Covered Property” is defined as property owned by, or in the care, custody, or



control of Plaintiffs. (Ex. A.)

34. Under the heading “Covered Causes of Loss,” Arch Insurance Company agreed to pay for losses relating to “Direct Physical Loss or Damage to Covered Property, except those causes of loss listed in the Exclusions.” (Ex. A.)

35. The Policies do not define the terms “Direct Physical Loss” or “Damage to Covered Property.” (Ex. A.)

36. Importantly, the Policies did not exclude or limit coverage for losses from viruses, epidemics, pandemics, communicable disease, or similar public health emergencies. (Ex. A.)

37. Furthermore, the Policy explicitly provided that Arch Insurance Company would provide coverage and pay for losses related to “Business Income and Extra Expense” when a covered property is damaged by a “Covered Cause of Loss.” (Ex. A.)

38. There are no temporal limitations with respect to losses related to “Business Income and Extra Expense” due to a “Covered Cause of Loss.”

39. “Business Income” is defined as “Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred during the ‘period of restoration’ and continuing normal operating expenses including payroll.” (Ex. A.)

40. “Extra Expense” is defined as “necessary expenses [Plaintiffs] incur during the ‘Period of Restoration’ that [Plaintiffs] would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.” (Ex. A.)

41. “Period of Restoration” is defined as “the period of time that [b]egins with the date of physical loss or damage caused by or resulting from any Covered Cause of Loss; and [e]nds on

the date when the property should be repaired, rebuilt or replaced with reasonable speed and similar quality.” (Ex. A.)

42. Additionally, Arch Insurance Company agreed to pay for the actual loss of “Business Income” and “Extra Expense” caused by an “action of civil authority that prohibits access to the described premises due to direct physical loss of or damage to property, other than at the described premises[.]” (Ex. A.)

43. With respect to actions of civil authorities, “Business Income” is recoverable beginning 72 hours after the time of the civil authority action and will apply for a period of up to three weeks after each action of civil authority. (Ex. A.)

44. Also with respect to actions of civil authorities, “Extra Expense” is recoverable immediately after the action of civil authority and will end either (i) three consecutive weeks after the time of the civil action; or (ii) when the “Business Income” coverage ends. (Ex. A.)

45. Ultimately, per the express provisions of the Policies, Arch Insurance Company explicitly agreed to provide insurance coverage for actions of civil authority—or actions by state, local, or federal government—that prohibited access to Plaintiffs’ properties, through no fault of their own, related to shutdown orders issued to prevent the spread of deadly diseases, such as COVID-19. *See* (Ex. A).

### ***COVID-19***

46. Coronavirus (COVID-19) is a highly contagious virus that has rapidly spread and continues to spread across the United States. It is a physical substance, human pathogen, and can exist outside the human body in viral fluid particles. According to the Centers for Disease Control and Prevention (“CDC”), everyone is at risk of getting COVID-19.

47. COVID-19 can spread in numerous ways, including “community spread,” meaning that some people who have been infected cannot know how or where they were exposed to the virus. Public health authorities, including the CDC, have reported significant ongoing community spread of the virus—which includes community spread in all 50 states.

48. COVID-19 infections are spread through droplets of different sizes that can be deposited on surfaces or objects.

49. Specifically, the CDC reported COVID-19 can survive on physical surfaces and remain capable of being transmitted. Accordingly, a person can be become infected with COVID-19 if he or she touches a surface or object (like a table, floor, wall, furniture, desk, countertop, touch screen or chair) that has the virus on it, and the person then touches his or her own mouth, nose, or eyes.

50. Additionally, COVID-19 can become airborne for periods of time. Specifically, the New England Journal of Medicine published a scientific report finding that experimentally produced aerosols containing the virus remained infectious in tissue-culture assays, with only a slight reduction in infectivity during a 3-hour period of observation.

51. Furthermore, COVID-19 can be transmitted by way of human contact with surfaces and items of physical property.

52. COVID-19 has also been transmitted by human-to-human contact and interaction within premises.

53. COVID-19 has also been transmitted by way of human contact with airborne COVID-19 particles.

54. Consequently, the presence of any COVID-19 particles renders items of physical property and premises unsafe.

55. The presence of any COVID-19 particles on physical property impairs its value, usefulness, or normal function.

56. The presence of any COVID-19 particles causes direct physical harm, direct physical damage, and direct physical loss to property.

57. The presence of people infected with or carrying COVID-19 particles or pathogens renders physical property in their vicinity unsafe and unusable, resulting in direct physical loss to that property.

58. The presence of people infected with or carrying COVID-19 particles or pathogens at premises renders the premises, including property located at that premises unsafe, resulting in direct physical loss to the premises and property.

59. Plaintiffs' premises have been infected with COVID-19—or would quickly become infected through normal business operations—and, consequently, they have suffered direct physical loss to their property as a result of the COVID-19 pandemic. The incubation period for COVID-19 is approximately 14 days. Current evidence shows that the first death from COVID-19 occurred as early as February 6, 2020—weeks earlier than previously reported, suggesting that COVID-19 has been circulating in the United States for far longer than previously assumed.

60. Accordingly, it is likely that customers, employees, or other visitors to Plaintiffs' insured properties over the last several months were infected with COVID-19 and thereby infected the insured properties with COVID-19.

61. The CDC stated that it is necessary for businesses to clean and disinfect all surfaces, prioritizing the most frequently touched surfaces, to reduce the spread of disease. In most facilities, especially Plaintiffs' facilities, frequent physical cleaning and sanitation cannot adequately protect against COVID-19 contamination.

62. COVID-19 has been declared a pandemic by the World Health Organization.

63. The COVID-19 pandemic is a public health crisis that has profoundly impacted the United States, including the public's ability to patronize business establishments such as gyms, fitness studios, and health clubs.

64. To that end, the COVID-19 pandemic 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 Plaintiffs' businesses (the "Closure Orders").

65. In fact, Plaintiffs' businesses (*i.e.*, gyms, fitness studios, and health clubs), are typically among the first to be targeted by these Closure Orders.

***Pandemic Exclusion Provisions and the Foreseeability of a Global Pandemic***

66. Although the COVID-19 pandemic has had a profound global impact, such an outbreak was foreseeable, which means that such coverage was integral to Plaintiffs' bargained-for exchange.

67. Indeed, in 2003 the SARS virus that caused an epidemic was actually a "coronavirus" that is similar to COVID-19.

68. Insurers like Arch Insurance Company have been warned about, and have been aware of for years, the potential impact of pandemics. Since at least 2003, publicly available reports discuss the risks and likelihood of pandemics and what insurers should do in light of these risks.

69. For example, a March 2018 article on the 100th anniversary of the 1918 Spanish Flu pandemic noted: "Even with today's technology, a modern severe pandemic would cause

substantive direct financial losses to the insurance community. In addition, indirect losses would be severe, most notably on the asset side of the balance sheet.”<sup>1</sup>

70. In addition, for decades courts held that the presence of a hazardous substance on property—including even the airspace within buildings—constitutes property damage within the meaning of property insurance policies. Courts also held that the closure of property due to imminent risk of physical loss or damage constitutes direct physical loss of property. Insurers, like Defendant Arch Insurance Company, are aware of these decisions.

71. The Insurance Services Office (“ISO”), an organization that provides policy writing services to insurers, also recognized for years that a virus can constitute physical damage to property. Specifically, in 2006, it announced the submission of an exclusion of loss “due to disease-causing agents such as viruses and bacteria.”<sup>2</sup>

72. In connection with circulating the virus exclusion, it sent the following statement to state insurance regulators:

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.

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<sup>1</sup> <https://www.air-worldwide.com/publications/air-currents/2018/What-the-1918-Flu-Pandemic-Can-Teach-Today-s-Insurers/>

<sup>2</sup> *Id.*

73. Accordingly, since 2006 insurers have had the opportunity to incorporate—and many insurers have in fact incorporated—this standard virus exclusion in their policies when seeking to avoid providing insurance coverage for losses caused by diseases such as COVID-19.

74. Arch itself has developed a virus exclusion and included it within its policies as indicated in the lawsuit entitled *7th Inning Stretch LLC, et al. v. Arch Insurance Co., et al.*, No. 2:20-cv-08161 (D.N.J.).

75. Arch admitted and acknowledged in its most recent Form 10-K SEC filings that it provides policies “that do not contain a specific pandemic exclusion and/or explicitly afford business interruption coverage under a pandemic such as COVID-19.” Indeed, Arch admits in its recent 10-K filing that it “ha[s] exposure to a number of lines of business, such as trade credit, travel, workers compensation and *property* that do not contain a specific pandemic exclusion.”

76. Despite the availability of a specific exclusion for viruses and its inclusion of a virus exclusion in other policies for other insureds, Arch Insurance Company chose not to include any exclusions in the Policies for losses resulting from viruses, epidemics, or pandemics when drafting the Policies at issue.<sup>3</sup>

77. The decision not to provide a coverage exclusion for pandemic-related losses was an integral part of the Policies—and part of the parties’ bargained-for exchange.

### ***The Impact of COVID-19 and the Closure Orders***

78. The various Closure Orders issued by civil authorities across the United States also explicitly acknowledge that COVID-19 causes direct physical damage and loss to property.

79. For example:

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<sup>3</sup> Significantly, Plaintiffs’ Policies included a provision extending specified business income coverage to losses based on MRSA (Methicillin-Resistant Staphylococcus Aureus) Contamination—which shows the Policies contemplated, yet did not explicitly exclude, losses based on viral contamination.

a. Kansas City, Missouri issued Order 20-01, which states, “the City wishes to employ all means available under the law to protect public life, health, safety and *property* to limit the development, contraction and spread of COVID-19” (emphasis added);

b. The State of Louisiana issued Executive Proclamation No. 33 (JBE 2020), stating, “these measures relating to closure of certain businesses and to limit the operations of non-essential businesses are necessary because of the propensity of the COVID-19 virus to spread via personal interactions and *because of physical contamination of property* due to its ability to attach to surfaces for prolonged periods of time” (emphasis added);

c. The State of Mississippi issued Executive Order No. 1466, which states, “the risk of spread of COVID-19 within Mississippi constitutes a public health emergency that may result in substantial injury or harm to life, health, and *property* within Mississippi” (emphasis added);

d. The New Mexico Department of Health issued a Public Health Order, stating “the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and *property* of the residents in the State” (emphasis added);

e. The State of West Virginia, Executive Order No. 9-20, recognizes that “measures relating to closure of certain businesses and to limit the operations of non-essential businesses are necessary because of the propensity of the COVID-19 virus to spread via personal interactions and *because of physical contamination of*



*property* due to its ability to attach to surfaces for prolonged periods of time” (emphasis added);

f. The State of Colorado issued a Public Health Order that stated, “COVID-19...*physically contributes to property loss, contamination and damage*...” (emphasis added);

g. The City of New York issued an Emergency Executive Order in response to COVID-19 and the Pandemic, in part “because *the virus physically is causing property loss and damage*” (emphasis added);

h. Broward County, Florida issued an Emergency Order acknowledging that COVID-19 “*is physically causing property damage*” (emphasis added);

i. The State of Washington issued Executive Order 20-25, stating that COVID-19 “remains a public disaster affecting life, health, *property*” and has “impact[ed ] people, *property*, and infrastructure” (emphasis added);

j. The State of Indiana issued an Executive Order recognizing that COVID-19 has the “*propensity to physically impact surfaces and personal property*” (emphasis added);

k. The City of New Orleans issued an order stating “there is reason to believe that COVID-19 may spread amongst the population by various means of exposure, including the propensity to attach to surfaces for a prolonged period of time, thereby spreading from surface to person and *causing property loss and damage* in certain circumstances” (emphasis added);

l. North Carolina issued a statewide Executive Order in response to the Pandemic not only “to assure adequate protection for lives” but also to “assure adequate protection of...*property*” (emphasis added);

m. The City of Los Angeles issued an Order in response to COVID-19 “because, among other reasons, the COVID-19 virus can spread easily from person to person *and it is physically causing property loss or damage* due to its tendency to attach to surfaces for prolonged periods of time” (emphasis added).

80. Indeed, state and local governmental authorities and public health officials throughout the United States acknowledge that COVID-19 causes direct physical loss and damage to property—and nationwide Closure Orders were issued in response to the rapid spread of COVID-19.

81. These Closure Orders constitute “civil authority actions” under the Policies and required the suspension of Plaintiffs’ businesses, thereby resulting in loss of Business Income and Extra Expense, among other things.

82. Plaintiffs’ businesses did not and do not qualify as “essential businesses” and were required to cease or significantly reduce operations at all their locations nationwide. To date, Plaintiffs’ business operations remain significantly reduced.

83. Loss of use of property, despite whether it has been tangibly or visibly altered, constitutes “physical loss or damage” for purposes of first-party property insurance.

84. As stated above, as the drafter of the Policies, if Arch Insurance Company had wished to exclude from coverage as “physical loss or damage” the loss of use of property that has not been physically altered or deformed, it could have used explicit language in the Policies for such a definition, but it did not do so.

85. The presence of COVID-19 and the actions of civil authorities caused direct physical loss of or damage to Plaintiffs' covered properties or "premises" under the Policies, and the policies of the other Class members, by denying use of and damaging the covered properties and by causing a necessary suspension of operations during a period of restoration.

86. The Closure Orders prohibited access to and use of Plaintiffs' and the other Class members' Covered Property in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage.

87. Civil authorities, both state and municipal, have issued and continue to issue authoritative orders governing Plaintiffs' businesses, and those of other similarly situated class members, in response to the COVID-19 pandemic, which have required and continue to require Plaintiffs to cease and/or significantly reduce operations at the premises described in the Policies and which prohibit and continue to prohibit access to those premises.

88. As a result of the presence of COVID-19 and the Closure Orders, Plaintiffs and the other Class members lost Business Income and incurred Extra Expense.

#### ***Plaintiffs' Notices of Loss***

89. Pursuant to the applicable terms of the Policies, Plaintiffs submitted notices of loss to Arch Insurance Company caused by the presence of COVID-19 and the Closure Orders.

90. Defendant has denied coverage for the losses sustained as a result of COVID-19 and the Closure Orders.

91. In denying coverage, Defendant conducted no investigation into Plaintiffs' claims, much less a reasonable investigation. To that end, Defendant failed to conduct an on-site investigation or testing of the premises; made no effort to determine whether Plaintiffs' facilities exposed to employees, patrons, or others infected with COVID-19; made no effort to determine

whether Plaintiffs' operations were suspended as a result of exposure to COVID-19 or the Closure Orders; made no effort to evaluate the period of restoration or amount of damages Plaintiffs' sustained; and made no effort to determine how the relevant law defined the phrase "direct physical loss." Instead, Defendant systematically denied coverage for all Plaintiffs (and, upon information and belief, for all Arch insureds) as a matter of company practice on the ground that Arch's policy does not cover losses arising out the pandemic regardless of the terms and conditions of Arch's policies. An exemplar copy of an Arch coverage denial is attached as **Exhibit B**.

92. Defendant continues to refuse to act in addressing additional notices of loss under the Policies, thus resulting in a *de facto* denial of Plaintiffs' claims under the Policies.

93. Despite numerous demands by Plaintiffs, and even offers for discounted nationwide settlement, Defendant has refused to honor the Policies.

#### **CLASS ACTION ALLEGATIONS**

94. Plaintiffs bring this action, individually and on behalf of all others similarly situated, pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1), 23(b)(2), 23(b)(3), and 23(c)(4).

95. Plaintiffs seek to represent a class for all similarly situated persons and entities insured under a policy issued by Arch Insurance Company, which policy contains the Xponential Fitness Endorsement, for "Business Income" coverage defined as:

- a. All persons and entities with Business Income coverage under a property insurance policy issued by Arch Insurance Company that suffered a suspension of business due to COVID-19 at the premises covered by the business income coverage ("***Business Income Declaratory Judgment Class***").

b. All persons and entities that: had Business Income coverage under a property insurance policy issued by Arch Insurance Company; suffered a suspension of business related to COVID-19, at the premises covered by their property insurance policy; made a claim under their property insurance policy issued by Arch Insurance Company; and were denied Business Income coverage for the suspension of business resulting from the presence or threat of COVID-19 (***“Business Income Breach Class”***).

96. Plaintiffs also seek to represent a class for all similarly situated persons and entities insured under a policy issued by Arch Insurance Company, which policy contains the Xponential Fitness Endorsement, for “Extra Expense” coverage to be defined as:

a. All persons and entities with Extra Expense coverage under a property insurance policy issued by Arch Insurance Company that sought to minimize the suspension of business in connection with COVID-19 at the premises covered by their property insurance policy (***“Extra Expense Declaratory Judgment Class”***).

b. All persons and entities that: had Extra Expense coverage under a property insurance policy issued by Arch Insurance Company; sought to minimize the suspension of business in connection with COVID-19 at the premises covered by their property insurance policy; made a claim under their property insurance policy; and were denied Extra Expense coverage by Arch Insurance Company despite their efforts to minimize the suspension of business caused by COVID-19 (***“Extra Expense Breach Class”***).

97. Plaintiffs seek to represent a class for all similarly situated persons and entities insured under a policy issued by Arch Insurance Company, which policy contains the Xponential Fitness Endorsement, for civil authority coverage to be defined as:

a. All persons and entities with civil authority coverage under a property insurance policy issued by Arch Insurance Company that suffered loss of Business Income and/or Extra Expense caused by a Closure Order (“***Civil Authority Declaratory Judgment Class***”).

b. All persons and entities that: had Civil Authority coverage under a property insurance policy issued by Arch Insurance Company; suffered loss of Business Income and/or Extra Expense caused by action of a civil authority; made a claim under their property insurance policy issued by Arch Insurance Company; and were denied Civil Authority coverage by Arch Insurance Company for the loss of Business Income and/or Extra Expense caused by a Closure Order (“***Civil Authority Breach Class***”).

98. Plaintiffs seek to represent a class for all similarly situated persons and entities insured under a policy issued by Arch Insurance Company, which policy contains the Xponential Fitness Endorsement, for bad faith and/or breach of good faith and fair dealing, defined as:

a. All persons and entities that: (i) had Business Income coverage under a property insurance policy issued by Arch Insurance Company; suffered a suspension of business related to COVID-19, at the premises covered by their property insurance policy; made a claim under their property insurance policy issued by Arch Insurance Company; and were denied Business Income coverage for the suspension of business resulting from the presence or threat of COVID-19

(i.e. Business Income Breach Class), and/or; (ii) had Extra Expense coverage under a property insurance policy issued by Arch Insurance Company; sought to minimize the suspension of business in connection with COVID-19 at the premises covered by their property insurance policy; made a claim under their property insurance policy; and were denied Extra Expense coverage by Arch Insurance Company despite their efforts to minimize the suspension of business caused by COVID-19 (i.e. Extra Expense Breach Class), and/or; (iii) had civil authority coverage under a property insurance policy issued by Arch Insurance Company; suffered loss of Business Income and/or Extra Expense caused by action of a civil authority; made a claim under their property insurance policy issued by Arch Insurance Company; and were denied Civil Authority coverage by Arch Insurance Company for the loss of Business Income and/or Extra Expense caused by a Closure Order (i.e. Civil Authority Breach Class); and, (iv) such a denial was made in bad faith and/or in breach of an implied covenant of good faith and fair dealing. (“**Bad Faith Class**”).

99. Excluded from each defined Class is Arch Insurance Company, and any of its members, affiliates, parents, subsidiaries, officers, directors, employees, successors, or assigns; governmental entities; and the Court staff assigned to this case and their immediate family members. Plaintiffs reserve the right to modify or amend each of the Class definitions, as appropriate, during this litigation.

100. This action has been brought and may properly be maintained on behalf of each Class proposed under the criteria of Rule 23 of the Federal Rules of Civil Procedure.

***Numerosity—Federal Rule of Civil Procedure 23(a)(1).***

101. The members of each defined Class are so numerous that individual joinder of all Class members is impracticable. While Plaintiffs are informed and believe that there are thousands of members of each Class, the precise number of Class members is unknown to Plaintiffs but may be ascertained from Arch Insurance Company's books and records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, internet postings, and/or published notice.

***Commonality and Predominance—Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3).***

102. This action involves common questions of law and fact, which predominate over any questions affecting only individual Class members, including, without limitation:

- a. Arch Insurance Company issued all-risk policies to the members of the Class in exchange for payment of premiums by the Class members;
- b. whether the Class suffered a covered loss based on the common policies issued to members of the Class;
- c. whether Arch Insurance Company wrongfully denied claims based on COVID-19;
- d. whether Arch Insurance Company Business Income coverage applies to a suspension of business caused by COVID-19 and/or the Closure Orders;
- e. whether Arch Insurance Company Extra Expense coverage applies to efforts to minimize a loss caused by COVID-19 and/or the Closure Orders;
- f. whether Arch Insurance Company Civil Authority coverage applies to a loss of Business Income and Extra Expense sustained caused by the orders of state governors and/or mayors requiring the suspension of businesses as a result of COVID-19 and/or the Closure Orders;



- g. whether Arch Insurance Company acted in good faith in denying and/or handling the claims made by members of the Class by issuing a form denial without any reasonable investigation of each claim submitted by members of the Class;
- h. whether Arch Insurance Company has breached its contracts of insurance through a blanket denial of all claims based on business interruption, income loss related to COVID-19 and the related closures; and
- i. whether Plaintiffs and the Class are entitled to an award of reasonable attorney fees, interest and costs.

***Typicality—Federal Rule of Civil Procedure 23(a)(3)***

103. Plaintiffs' claims are typical of the other Class members' claims because Plaintiffs and the other Class members are all similarly affected by Arch Insurance Company's refusal to pay under its Business Income, Extra Expense, and Civil Authority coverages. Plaintiffs' claims are based upon the same legal theories as those of the other Class members.

104. Plaintiffs and the other Class members sustained damages as a direct and proximate result of the same wrongful practices in which Arch Insurance Company engaged.

***Adequacy of Representation—Federal Rule of Civil Procedure 23(a)(4)***

105. Plaintiffs are adequate Class representatives because they are a member of the Class, their interests do not conflict with the interests of the other Class members who they seek to represent, Plaintiffs have retained counsel competent and experienced in complex class action litigation, including successfully litigating cases similar to this one, where insurers breached contracts with insureds by failing to pay the amounts owed under their policies, and Plaintiffs intend to vigorously prosecute this action. The interests of the above-defined Classes will be fairly and adequately protected by Plaintiffs and their counsel.

***Inconsistent Adjudications and Impediments to Others—  
Federal Rule of Civil Procedure 23(b)(1).***

106. Plaintiffs seek class-wide adjudication as to the interpretation, and resultant scope, of Arch Insurance Company's coverages for Business Income, Extra Expense, and Civil Authority. The prosecution of separate actions by individual members of the Classes would create an immediate risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Arch Insurance Company. Moreover, the adjudications sought by Plaintiffs could, as a practical matter, substantially impair or impede the ability of other Class members, who are not parties to this action, to protect their interests.

***Declaratory and Injunctive Relief—Federal Rule of Civil Procedure 23(b)(2).***

107. Arch Insurance Company acted or refused to act (or intends to refuse) on grounds generally applicable to Plaintiffs and the other Class members, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Class members.

***Superiority—Federal Rule of Civil Procedure 23(b)(3).***

108. A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action.

109. Defendant has acted or refused to act on grounds generally applicable to the Class. Individualized litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

***Issue Class and Modification of Class Definitions and Creation of Subclasses***

110. In the alternative, Plaintiffs reserve the right to seek certification of one or more common issues pursuant to Federal Rule of Civil Procedure 23(c)(4). In addition, Plaintiffs reserve the right to modify the definitions of the Classes and/or create subclasses either by amendment to the complaint or by motion for class certification, including but not limited to subclasses for policyholders with each of the following policy provisions: Business Income, Extra Expense, and/or Civil Authority; and/or other subclasses that may be appropriate or necessary.

**COUNT 1: DECLARATORY JUDGMENT**  
**(Brought by Business Income Declaratory Judgment Class)**

111. Plaintiffs repeat and reallege Paragraphs 1-110 as is fully set forth in this Paragraph.

112. Plaintiffs bring this Count individually and on behalf of the other members of the Business Income Declaratory Judgment Class and any applicable subclasses.

113. The Declaratory Judgment Act (28 U.S.C. §§ 2201–2202) allows this Court to declare the rights and legal relations of the parties to this dispute.

114. The Policies applicable to Plaintiffs, as well as those of the other members of the Business Income Declaratory Judgment Class, are contracts under which Arch Insurance Company received paid premiums in exchange for its promises to pay Plaintiffs' and the other Business Income Declaratory Judgment Class members' losses for claims covered by the Policies.

115. Plaintiffs and the other members of the Business Income Declaratory Judgment Class have complied with all applicable provisions of the Policies and/or those provisions have been (i) waived by Arch Insurance Company, or (ii) Arch Insurance Company is estopped from asserting them. Nevertheless, Arch Insurance Company 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 and the other members of the Business Income Declaratory Judgment Class are entitled.

116. Arch Insurance Company has either denied or refuses to act on any claims related to COVID-19 on a uniform and class wide basis, without individual bases or investigations, such that the Court can render declaratory judgment irrespective of whether members of the Class have filed a claim.

117. An actual case or controversy exists regarding Plaintiffs' and the other Business Income Declaratory Judgment Class members' rights under the Policies and Arch Insurance Company's obligations under the Policies to reimburse Plaintiffs for the full amount of Business Income losses incurred by Plaintiffs and the other members of the Business Income Declaratory Judgment Class in connection with the cessation or suspension of their businesses stemming from the COVID-19 pandemic.

118. Pursuant to 28 U.S.C. § 2201, Plaintiffs and the other members of the Business Income Declaratory Judgment Class seek a declaratory judgment from this Court declaring the following:

- a. Plaintiffs' and the other Business Income Declaratory Judgment Class members' incurred Business Income losses in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under the Policies;
- b. Arch Insurance Company is obligated to pay Plaintiffs and the other members of the Business Income Declaratory Judgment Class 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 their businesses stemming from the COVID-19 pandemic; and

c. Plaintiffs further seek an injunction enjoining Arch Insurance Company from continuing to engage in conduct in breach of the Policies with respect to coverage decisions under the Business Income coverage form and ordering Defendant to comply with the terms of the policies for such coverage decisions.

**COUNT 2: BREACH OF CONTRACT**  
**(Brought by Business Income Breach Class)**

119. Plaintiffs repeat and reallege Paragraphs 1-110 as is fully set forth in this Paragraph.

120. Plaintiffs bring this Count individually and on behalf of the other members of the Business Income Breach Class and applicable Subclasses.

121. The Policies applicable to Plaintiffs, as well as those of the other members of the Business Income Breach Class, are contracts under which Arch Insurance Company received paid premiums in exchange for its promise to pay Plaintiffs' and the other members' of the Business Income Breach Class losses for claims covered by the Policies.

122. In the provisions concerning Personal Property Coverage and Business Income (and Extra Expense) Coverage, Arch Insurance Company 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."

123. A "slowdown or cessation" of business activities at the Covered Property is a "suspension" under the policy, for which Arch Insurance Company agreed to pay for loss of Business Income during the "Period of Restoration" that begins near the time of direct loss.

124. "Business Income" means net income (net profit or loss before income taxes) that would have been earned or incurred and continuing normal operating expenses sustained, including payroll.

125. COVID-19 caused direct physical loss of or damage to Plaintiffs' and the other Business Income Breach Class members' Covered Properties, requiring the cessation or suspension of operations at the Covered Properties. Losses caused by COVID-19 thus triggered the Business Income provision of the Policies applicable to Plaintiffs and the other members of the Business Income Breach Class.

126. Plaintiffs and the other members of the Business Income Breach Class have complied with all applicable provisions of the Policies and/or those provisions have been (i) waived by Arch Insurance Company, or (ii) Arch Insurance Company is estopped from asserting them. Nevertheless, Arch Insurance Company breached the Policies and abrogated its insurance coverage obligations pursuant to the Policies' clear and unambiguous terms

127. By denying coverage for any Business Income losses incurred by Plaintiffs and the other members of the Business Income Breach Class in connection with the Closure Orders and the COVID-19 pandemic, Arch Insurance Company has breached its coverage obligations under the Policies.

128. As a result of Arch Insurance Company's numerous breaches of the Policies, Plaintiffs and the other members of the Business Income Breach Class have sustained substantial damages for which Defendant is liable, in an amount to be established at trial.

**COUNT 3: DECLARATORY JUDGMENT**  
**(Brought by Extra Expense Declaratory Judgment Class)**

129. Plaintiffs repeat and reallege Paragraphs 1-110 as is fully set forth in this Paragraph.

130. Plaintiffs bring this Count individually and on behalf of the other members of the Extra Expense Declaratory Judgment Class and applicable Subclasses.

131. The Declaratory Judgment Act (28 U.S.C. §§ 2201–2202) allows this Court to declare the rights and legal relations of the parties to this dispute.

132. The Policies applicable to Plaintiffs, as well as those of the other Extra Expense Declaratory Judgment Class members, are contracts under which Arch Insurance Company received paid premiums in exchange for its promises to pay Plaintiffs' and the other Extra Expense Declaratory Judgment Class members' losses for claims covered by the Policies.

133. Plaintiffs and the other members of the Extra Expense Declaratory Judgment Class have complied with all applicable provisions of the Policies and/or those provisions have been (i) waived by Arch Insurance Company, or (ii) Arch Insurance Company is estopped from asserting them. Nevertheless, Arch Insurance Company 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 and the other Extra Expense Declaratory Judgment Class members are entitled.

134. Arch Insurance Company has either denied or refuses to act on any claims related to COVID-19 on a uniform and class wide basis, without individual bases or investigations, such that the Court can render declaratory judgment irrespective of whether members of the Class have filed a claim.

135. An actual case or controversy exists regarding Plaintiffs' and the other Extra Expense Declaratory Judgment Class members' rights under the Policies and Arch Insurance Company's obligations under the Policies to reimburse Plaintiffs for the full amount of Extra Expense losses incurred in connection with the cessation or suspension of their businesses stemming from the COVID-19 pandemic.

136. Pursuant to 28 U.S.C. § 2201, Plaintiffs and the other Extra Expense Declaratory Judgment Class members seek a declaratory judgment from this Court declaring the following:

a. Plaintiffs and the other Extra Expense Declaratory Judgment Class members' Extra Expense losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under the Policies;

b. Arch Insurance Company is obligated to pay Plaintiffs and the other members of the Extra Expense Declaratory Judgment Class for the full amount of the Extra Expense losses incurred and to be incurred in connection with the Closure Orders during the Period of Restoration and the necessary interruption of their businesses stemming from the COVID-19 pandemic; and

c. Plaintiffs further seek an injunction enjoining Arch Insurance Company from continuing to engage in conduct in breach of the Policies with respect to coverage decisions under the Extra Expense coverage form and ordering Defendant to comply with the terms of the policies for such coverage decisions.

**COUNT 4: BREACH OF CONTRACT  
(Brought by Extra Expense Breach Class)**

137. Plaintiffs repeat and reallege Paragraphs 1-110 as is fully set forth in this Paragraph.

138. Plaintiffs bring this Count individually and on behalf of the other members of the Extra Expense Breach Class and applicable Subclasses.

139. The Policies applicable to Plaintiffs, as well as those of the other Extra Expense Breach Class members, are contracts under which Arch Insurance Company received paid



premiums in exchange for its promise to pay Plaintiffs and the other Extra Expense Breach Class members' losses for claims covered by the Policies.

140. In the provisions concerning Personal Property Coverage and Business Income (and Extra Expense) Coverage, Arch Insurance Company agreed to pay necessary Extra Expense that the insureds occurred during the "Period of Restoration" that the insureds would not have sustained if there had been no direct loss to property caused by or resulting from a Covered Cause of Loss.

141. "Extra Expense" includes expenses to avoid or minimize the cessation or suspension of business, continue operations, and to repair or replace property.

142. COVID-19 caused Plaintiffs and the other Extra Expense Breach Class members to incur Extra Expense at the Covered Properties, thus triggering the Extra Expense provision of the Policies applicable to Plaintiffs and the other Extra Expense Breach Class members.

143. Plaintiffs and the other members of the Extra Expense Breach Class have complied with all applicable provisions of the Policies and/or those provisions have been (i) waived by Arch Insurance Company, or (ii) Arch Insurance Company is estopped from asserting them. Nevertheless, Arch Insurance Company breached the Policies and abrogated its insurance coverage obligations pursuant to the Policies' clear and unambiguous terms.

144. By denying coverage for any losses incurred by Plaintiffs and the other members of the Extra Expense Breach Class members in connection with the Closure Orders and the COVID-19 pandemic, Arch Insurance Company has breached its coverage obligations under the Policies.

145. As a result of Arch Insurance Company's numerous breaches of the Policies, Plaintiffs and the other members of the Extra Expense Breach Class have sustained substantial damages for which Defendant is liable, in an amount to be established at trial.

**COUNT 5: DECLARATORY JUDGMENT**  
**(Brought by Civil Authority Declaratory Judgment Class)**

146. Plaintiffs repeat and reallege Paragraphs 1-110 as is fully set forth in this Paragraph.

147. Plaintiffs bring this Count individually and on behalf of the other members of the Civil Authority Declaratory Judgment Class and applicable Subclasses.

148. The Declaratory Judgment Act (28 U.S.C. §§ 2201–2202) allows this Court to declare the rights and legal relations of the parties to this dispute.

149. The Policies applicable to Plaintiffs, as well as those of the other members of the Civil Authority Declaratory Judgment Class, are contracts under which Arch Insurance Company received paid premiums in exchange for its promises to pay Plaintiffs' and the other members of the Civil Authority Declaratory Judgment Class members' losses for claims covered by the Policies.

150. Plaintiffs and the other members of the Civil Authority Declaratory Judgment Class have complied with all applicable provisions of the Policies and/or those provisions have been (i) waived by Arch Insurance Company, or (ii) Arch Insurance Company is estopped from asserting them. Nevertheless, Arch Insurance Company 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 and the other members of the Civil Authority Declaratory Judgment Class are entitled.

151. Arch Insurance Company has either denied or refuses to act on any claims related to COVID-19 on a uniform and class-wide basis, without individual bases or investigations, such that the Court can render declaratory judgment irrespective of whether members of the Class have filed a claim.

152. An actual case or controversy exists regarding Plaintiffs' and the other Civil Authority Declaratory Judgment Class members' rights under the Policies and Arch Insurance Company's obligations under the Policies to reimburse Plaintiffs for the full amount of losses incurred in connection with the cessation or suspension of their businesses stemming from the Closure Orders and the COVID-19 pandemic.

153. Pursuant to 28 U.S.C. § 2201, Plaintiffs and the other members of the Civil Authority Declaratory Judgment Class seek a declaratory judgment from this Court declaring the following:

- a. Plaintiffs' and the other Civil Authority Declaratory Judgment Class members' losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under the Policies;
- b. Arch Insurance Company is obligated to pay Plaintiffs and the other members of the Civil Authority Declaratory Judgment Class for the full amount of the losses incurred and to be incurred in connection with the Closure Orders during the Period of Restoration and the necessary interruption of their businesses stemming from the COVID-19 pandemic; and
- c. Plaintiffs further seek an injunction enjoining Arch Insurance Company from continuing to engage in conduct in breach of the Policies with respect to coverage decisions under the Extra Expense coverage form and ordering Defendant to comply with the terms of the policies for such coverage decisions.

**COUNT 6: BREACH OF CONTRACT**  
**(Brought by Civil Authority Breach Class)**

154. Plaintiffs repeat and reallege Paragraphs 1-110 as if fully set forth in this Paragraph.

155. Plaintiffs bring this Count individually and on behalf of the other members of the Civil Authority Breach Class and applicable Subclasses.

156. The Policies applicable to Plaintiffs, as well as those of the other members of the Civil Authority Breach Class, are contracts under which Arch Insurance Company received paid premiums in exchange for its promise to pay Plaintiffs and the other Civil Authority Breach Class members' losses for claims covered by the Policies.

157. In the Policies, Arch Insurance Company agreed to pay for the actual loss of "Business Income" and "Extra Expense" caused by an "action of civil authority that prohibits access to the described premises due to direct physical loss of or damage to property, other than at the described premises[.]"

158. In response to the COVID-19 pandemic, state and local governments issued the Closure Orders that caused Plaintiffs and the other members of the Civil Authority Breach Class to incur Business Income and Extra Expense losses at the Covered Properties, thus triggering the Business Income and Extra Expense provision of the Policies applicable to Plaintiffs and the other members of the Civil Authority Breach Class.

159. Plaintiffs and the other members of the Civil Authority Breach Class have complied with all applicable provisions of the Policies and/or those provisions have been (i) waived by Arch Insurance Company, or (ii) Arch Insurance Company is estopped from asserting them. Nevertheless, Arch Insurance Company breached the Policies and abrogated its insurance coverage obligations pursuant to the Policies' clear and unambiguous terms.

160. By denying coverage for any losses incurred by Plaintiffs and the other members of the Civil Authority Breach Class in connection with the Closure Orders and the COVID-19 pandemic, Arch Insurance Company has breached its coverage obligations under the Policies.

161. As a result of Arch Insurance Company's numerous breaches of the Policies, Plaintiffs and the other members of the Civil Authority Breach Class have sustained substantial damages for which Defendant is liable, in an amount to be established at trial.

**COUNT 7: VEXATIOUS REFUSAL TO PAY CLAIMS**  
**(Brought by Bad Faith Class)**

162. Plaintiffs repeat and reallege Paragraphs 1-110 as if fully set forth in this Paragraph.

163. Plaintiffs bring this Count individually and on behalf of the other members of the Business Income Breach Class, Extra Expense Breach Class, Civil Authority Breach Class and related Subclasses.

164. This is an action to recover the amount of loss under the Arch policies referenced herein.

165. As described in this Complaint more fully, Arch has refused to pay the business interruption, extra expense and civil authority losses Plaintiffs have sustained as a result of COVID-19 and the Closure Orders.

166. As described in this Complaint more fully, Arch's refusal has been without reasonable cause or excuse. More specifically, Defendants conducted no investigation into Plaintiffs' claims prior to blanketly denying coverage as evidenced by:

- a. Defendants conducted no on-site investigation or testing of the premises.
- b. Defendants made no effort to determine whether Plaintiffs facilities were exposed to employees, patrons or others infected with COVID-19.

- c. Defendants made no effort to determine whether Plaintiffs' operations were suspended as a result of exposure to COVID-19 or the Closure Orders.
- d. Defendants made no effort to evaluate the period of restoration or amount of damages Plaintiffs sustained.
- e. Defendants made no effort to determine how the relevant law defined the phrase "direct physical loss."

167. Upon information and belief, Arch's refusal has been based on a company-wide policy to deny business interruption, extra expense and civil authority coverage for the pandemic as a matter of company policy regardless of the terms of the specific policies at issue here, the uniqueness of the single, overarching program Arch provided for the class members, the differences between the policies issued under that program and other policies Arch issued to other Arch insureds, and the law of the jurisdiction governing those policies. To that end, Arch vexatiously and without reasonable cause or excuse refused to provide the coverage it promised to Plaintiffs and the claim members simply because it did not want to pay a large claim and sustain the financial consequences of fulfilling its promises to Plaintiffs and the class as evidenced by the policy terms notwithstanding that Plaintiffs and the class, as Arch insureds, fulfilled their promises to Arch in the form of millions of dollars in premiums they paid to Arch.

168. Indeed, Arch was aware that its policies covered losses related to the COVID-19 pandemic, as Arch has been notified by foreign jurisdictions that its policies provided coverage for COVID-19 losses.

169. Specifically, Arch's company-wide refusal to pay for losses related to COVID-19 was recently adjudicated by the UK Supreme Court in *FCA v. Arch Insurance (UK) Ltd., et al.*, [2021] UKSC 1. The UK Supreme Court held that Arch's policies covered COVID-19 losses.

170. Hence, Arch's company-wide refusal to provide coverage is undertaken in bad faith based on its prior notice that the failure to include express language exempting pandemic-related losses defeats any argument to the contrary.

171. Arch's refusal to pay the benefits due under its policies constitutes a violation of V.A.M.S. § 375.420.

172. Plaintiffs request the damages remedy afforded by V.A.M.S. § 375.420 as a result of Arch's violation of the statute.

### **DEMAND FOR JURY TRIAL**

173. Plaintiffs demand a jury trial of all counts of this Complaint.

Dated: April 23, 2021

Respectfully Submitted,

**WELDER BLUNT WELDER  
& ASSOCIATES, LLC.**

/s/ Kristie L. Welder

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