

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION

MIKE'S LOUNGE & PACKAGE, INC.,

Case No.: \_\_\_\_\_

Plaintiff,

State Court Case No.: 2021-CACE-013727

v.

WILSHIRE INSURANCE COMPANY,

Defendant.

**NOTICE OF REMOVAL**

Defendant, Wilshire Insurance Company (“Defendant” or “WIC”), hereby gives notice that, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, the civil action currently pending in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida (the “State Court”), captioned *Mike’s Lounge & Package, Inc. v. Wilshire Insurance Company*, Case No. 2021-CACE-13727 (the “State Court Action”), is removed to the United States District Court for the Southern District of Florida, Fort Lauderdale Division, and in support states:

1. Pursuant to 28 U.S.C. §1446(a), copies of all process, pleadings, and orders that have been served upon Defendant are attached as **Composite Exhibit A**.

2. **This Notice of Removal is Timely:** The Complaint in the State Court Action, a copy of which is included within Exhibit A hereto (the “Complaint”), was served on Defendant on July 15, 2021. Accordingly, pursuant to 28 U.S.C. §1446(b), this notice of removal is timely filed within thirty (30) days of the date upon which Defendant received a copy of the initial pleading in the State Court Action.

3. **Jurisdiction:** Removal of the State Court Action to the United States District Court for the Southern District of Florida, Fort Lauderdale Division, is proper under 28 U.S.C. §1441(a)

inasmuch as this Court has original jurisdiction of said action under 28 U.S.C. §1332(a)(1), because “the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States.”

4. **Amount in Controversy:** The amount in controversy exceeds \$75,000.00, exclusive of interest and costs. As more particularly alleged in Plaintiff, Mike’s Lounge & Package, Inc.’s (“Plaintiff” or “Mike’s Lounge”) state court complaint (the “Complaint”), the Complaint contains one count for declaratory judgment seeking a declaratory judgment concerning Wilshire’s “rights, obligations, and coverages under” a Commercial General Liability and Commercial Property insurance policy between Mike’s Lounge and Wilshire, with policy no. CP 00180289 (the “Policy”).<sup>1</sup> Mike’s Lounge in its prayer for relief seeks not only a declaration as to the Policy, but also “for judgment against Defendant for damages including, but not limited to, an award of general compensatory damages, interest allowed by law, reasonable attorney’s fees and costs pursuant to Fla. Stat. § 627.428 or other Florida law, and any other relief this Court may deem just and proper.” Complaint, pg. 13.

The Policy contains limits of \$400,000.00 in property damage coverage, \$75,000.00 in business personal property coverage, and \$50,000.00 in business income losses with an extra expense provision. Mike’s Lounge seeks payment under the Policy for damages arising from Mike’s Lounge’s forced closure on March 18, 2020 due to COVID-19 restrictions. Mike’s Lounge alleges that COVID-19 caused physical loss and damage to its property, which also resulted in a covered business interruption under the Policy. Complaint, ¶¶ 32-42. Mike’s Lounge further

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<sup>1</sup> In a declaratory judgment action “the value of . . . declaratory relief is the value of the object of the litigation measured from the plaintiff’s perspective . . . . Stated another way, the value of declaratory relief is the monetary value of the benefit that would flow to the plaintiff if the relief he is seeking were granted.” *First Mercury Ins. Co. v. Excellent Computing Distributors, Inc.*, 648 Fed. Appx. 861, 864–65 (11th Cir. 2016)

alleges that the physical damage caused by COVID-19 triggered the Policy's "civil authority" and "extra expense" coverages. Complaint, ¶¶ 43-45. Finally, Mike's Lounge claims that Wilshire acted in bad-faith in denying Mike's Lounge's COVID-19 insurance claim.

In its March 9, 2020 application for insurance (just nine days before the alleged March 18<sup>th</sup> COVID-19 closure), Mike's Lounge indicated that it previously grossed \$100,000.00 in receipts for the previous 12 months and expected its total gross receipts for the next 12 months to total \$100,000.00. A true and correct copy of Mike's Lounge's insurance application is attached hereto as **Exhibit "B"** and is incorporated herein by reference. Mike's Lounge is seeking that lost gross revenue under the Policy's terms and conditions, including the Policy's business interruption, extra expense and civil authority coverages. Mike's Lounge is also seeking additional damages related to physical damage to its property. Further, Mike's Lounge has filed a civil cover sheet stating the amount in controversy in this matter is between \$75,001 and \$100,000.<sup>2</sup> A true and correct copy of the civil cover sheet is attached hereto as **Exhibit "C"** and is incorporated herein by reference.

Additionally, Mike's Lounge has alleged that it is statutorily entitled to its attorneys' fees should it prevail on its claims against Wilshire. Fla. Stat. § 627.428. As a result, Mike's Lounge's attorneys' fees should be included in the determination of the amount in controversy.<sup>3</sup> Mike's

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<sup>2</sup> Traditionally, civil cover sheets under Florida law are not sufficient in and of themselves to justify removal of a state court action. Here, however, the civil cover sheet is only one piece of evidence supporting removal and should be considered with all of the additional evidence that Plaintiff's claim exceeds the \$75,000.00 threshold. *See Bell v. Ace Ins. Co. of the Midwest*, No. 2:20-cv-309-JLB-NPM, 2020 WL 7396934, \*3, n.6 (M.D. Fla. December 17, 2020).

<sup>3</sup> Courts in the Southern District of Florida agree that attorneys' fees should be included in the amount in controversy for removal purposes when those attorneys' fees are authorized by statute or contract. *See, e.g., DO Rests., Inc. v. Aspen Specialty Ins. Co.*, 984 F. Supp. 2d 1342 (S.D. Fla. 2013). However, courts in the Southern District of Florida disagree as to whether inclusion of the projected amounts of attorneys' fees for the entirety of the case is appropriate or only the attorneys' fees accrued as of the time of removal. *Compare DO Rests., Inc. v. Aspen Specialty Ins. Co.*, 984 F. Supp. 2d 1342, 1345-47 (S.D. Fla. 2013) (including prospective future attorneys' fees in the amount in controversy); *Moshiach Cmty. Ctr. 770, Inc. v. Scottsdale Ins. Co.*, No. 17-62352-CIV, 2018 WL 6308671, at \*2 (S.D. Fla. Jan. 23, 2018) (same) with *Tumblebees Gymnastics, Inc. v. Nationwide Mut. Ins. Co.*, No. 19-21308-CIV, 2019 WL 7956169, at \*2 (S.D. Fla. May 15, 2019) (including only attorneys' fees accrued at the time of removal). In either event,

Lounge has also alleged that Wilshire acted in bad-faith in denying its insurance claim. Consequently, Mike's Lounge would potentially be entitled to consequential and punitive damages in any recovery against Wilshire. *See* Fla. Stat. § 624.155(5).

Finally, Wilshire attempted prior to filing this Notice of Removal to come to agreement with Mike's Lounge on the amount in controversy. However, Mike's Lounge has refused to stipulate that its damages for purposes of the \$75,000 jurisdictional threshold will remain below \$75,000 and has not provided any clarification as to why its damages may change despite the fact that on May 3, 2021, Governor Ron DeSantis' Executive Order No. 21-102 eliminated all state, county, and municipal COVID-19 restrictions or mandates. A true and correct copy of communications between counsel for Mike's Lounge and counsel for Wilshire regarding the damages stipulation is attached hereto as **Exhibit "D"** and a copy of Executive Order No. 21-102 is attached hereto as **Exhibit "E."**

5. **Plaintiff is a Florida Citizen:** Plaintiff is a Florida for-profit corporation with its principal place of business in Miramar, Florida.

6. **Defendant is a Citizen of North Carolina:** Defendant is an insurance company incorporated in North Carolina and maintains its principal place of business in Raleigh, North Carolina.

7. Removal to the United States District Court for the Southern District of Florida, Fort Lauderdale Division, is proper under 28 U.S.C. §1446(a) because the State Court Action is pending within said district and division.

8. Pursuant to 28 U.S.C. §1446(d), promptly upon the filing and service of this Notice of Removal, Defendant will: (a) give written notice thereof to the attorneys of record for the

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Wilshire believes Mike's Lounge's claims exceed \$75,000 whether the court includes prospective attorneys' fees for the entirety of the litigation or only those fees accrued through the date of removal.

Plaintiff in the State Court Action, Jesse Long, Esq., Legal Grit, PLLC, 150 East Palmetto Park Road, Suite 410, Boca Raton, FL 33432, [jesse@legal-grit.com](mailto:jesse@legal-grit.com), [briana@legal-grit.com](mailto:briana@legal-grit.com), and [eservice@legal-grit.com](mailto:eservice@legal-grit.com); and, (b) will file a notice of the filing of this removal with the State Court.

9. Nothing in this Notice of Removal shall be construed as a waiver of Defendant's right to assert any defense or affirmative matter.

WHEREFORE Defendant, Wilshire Insurance Company prays that the United States District Court for the Southern District of Florida, Fort Lauderdale Division, accepts this Notice of Removal, that it assumes jurisdiction of this cause, and that it issues such further orders and processes as may be necessary to bring before it all parties necessary for the trial hereof, and that it grant such other and further relief as may be necessary.

Respectfully submitted this 3<sup>rd</sup> day of August, 2021.

ADAMS AND REESE LLP

*/s/ Kenneth M. Curtin*

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(904) 355-1797 (Facsimile)  
*Attorneys for Defendant Wilshire Insurance  
Company*

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing document has been served  
via certified mail and e-mail on August 3, 2021 on the parties listed below:

Jesse Long, Esq.  
Briana L. Prieto, Esq.  
Legal Grit, PLLC  
150 East Palmetto Park Road, Suite 410  
Boca Raton, FL 33432  
[jesse@legal-grit.com](mailto:jesse@legal-grit.com)  
[briana@legal-grit.com](mailto:briana@legal-grit.com)  
[eservice@legal-grit.com](mailto:eservice@legal-grit.com)

*/s Kenneth M. Curtin*  
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Kenneth M. Curtin  
Florida Bar No. 087319

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

MIKE'S LOUNGE & PACKAGING, INC., CASE NO.:

Plaintiff,

v.

WILSHIRE INSURANCE COMPANY,

Defendant.

SUMMONS

**THE STATE OF FLORIDA**

To the Sheriff of the State:

**YOU ARE HEREBY COMMANDED** to serve this Summons, a copy of the Complaint, Request to Produce, Notice of Taking Deposition, Request for Admissions, and Interrogatories, in this action on the Defendant:

By Serving: **WILSHIRE INSURANCE COMPANY**  
**c/o Florida Chief Financial Officer as RA**  
**200 E. GAINES STREET**  
**TALLAHASSEE FL 32399**

Each Defendant is required to serve written defenses to the Complaint on Plaintiff's attorney, to wit:

**JESSE LONG, ESQ.**  
Whose address is: **LEGAL GRIT, PLLC**  
**150 E. Palmetto Park Road, Suite 410**  
**Boca Raton, Florida 33432**

Within twenty (20) days after service of this Summons on the Defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiff's attorney or immediately thereafter. If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint or petition. You also must file your answer or motion with the court.

Date:                     JUL 08 2021                    

Clerk of said Court



*Brenda D. Forman*

As Deputy Clerk **BRENDA D. FORMAN**

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

MIKE'S LOUNGE & PACKAGE, INC.,           CASE NO.:

Plaintiff,

v.

WILSHIRE INSURANCE COMPANY

Defendant.

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**PETITION FOR DECLARATORY RELIEF**

COMES NOW the Plaintiff, MIKE'S LOUNGE & PACKAGE, INC., by and through the undersigned counsel, and hereby files this Petition for Declaratory Relief against the Defendant, WILSHIRE INSURANCE COMPANY, and as grounds therefore, states as follows:

**I. THE PARTIES**

1. At all relevant times, Plaintiff MIKE'S LOUNGE & PACKAGE, INC. ("Mike's Lounge" or "Plaintiff") is a corporation organized under the laws of the State of Florida, with its principal place of business at 6328 Pembroke Road Miramar, Florida 33023.

2. At all relevant times, Defendant, WILSHIRE INSURANCE COMPANY ("Wilshire" or "Defendant") is a corporation organized under the laws of the state of North Carolina, with its principal place of business at 702 Oberlin Road Raleigh, North Carolina 27605.

3. Defendant is authorized to do business and issue insurance policies in the state of Florida.

**II. JURISDICTION & VENUE**

4. This is an action for damages which exceed \$30,000, exclusive of court costs,



attorney's fees, and interest, and therefore within the jurisdiction of this Court

5. Venue is proper in this Court because Plaintiff's principal place of business is in Broward County and a substantial portion of the events and omissions giving rise to the claims and losses occurred within Broward County.

### III. FACTUAL BACKGROUND

6. Plaintiff is a retail liquor store and cocktail lounge providing beverages to a large number of customers throughout Broward County and beyond.

7. Defendant is an insurance company that issued a commercial insurance policy to Plaintiff. *See* Policy attached as Exhibit "A."

8. The Policy has an effective term of March 10, 2020, through March 10, 2021.

9. The Policy provides up to \$400,000.00 in coverage for property damage, up to \$75,000.00 in business personal property, and up to \$50,000.00 in coverage for business income losses with extra expense occurring as a result of direct physical loss of the type insured under the policy. *See* Exhibit "A" at MIKE'S LOUNGE-POLICY-000082.

10. The Policy provides Civil Authority coverage for business interruption loss resulting from the prohibition of access to covered property for up to 3 weeks. *See* Exhibit "A" at MIKE'S LOUNGE-POLICY-000082.

11. In exchange for Defendant's agreement to take Plaintiff's risk of loss, Plaintiff paid Defendant \$6,290.03 in premiums.

12. This lawsuit arises out of Mike's Lounge's claim of insurance coverage under a commercial property "all risks" insurance policy sold by Defendant to Mike's Lounge.

13. Despite agreeing to cover Mike's Lounge for all risks of physical loss or damage to property unless specifically excluded in the Policy, and Mike Lounge's resulting business

interruption losses, Defendant refuses to properly assess Mike's Lounge's claim, and instead, has engaged in a calculated claims handling strategy designed to deny Mike's Lounge from the recovery it is entitled to receive under the Policy it has relied upon as protection against unforeseen loss or damage and resulting loss of income. Because no exclusions listed in the Policy apply, Defendant should be required to cover Plaintiff's losses.

**A. The COVID-19 Pandemic**

14. The COVID-19 Pandemic is an ongoing pandemic caused by the coronavirus, a deadly infectious disease, that has infected millions of people worldwide. In the United States, it has already infected over 33.4 million people and caused more than 602,133 deaths.<sup>1</sup> In Broward County, Florida alone, COVID-19 has infected more than 245,828 people and caused more than 3,079 deaths.<sup>2</sup>

15. On March 11, 2020, the World Health Organization ("WHO") declared the COVID-19 outbreak a pandemic. Shortly thereafter, on March 13, 2020, President Trump declared a nationwide emergency due to a public health emergency caused by the COVID-19 Pandemic's affects in the United States.

16. The time between exposure to COVID-19 and symptom onset, known as the incubation period, can be up to 14 days.<sup>3</sup>

17. During this period, people who are infected but not symptomatic can be contagious. As such, disease transmission can occur before the infected person shows any symptoms or has

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<sup>1</sup> See [https://covid.cdc.gov/covid-data-tracker/#trends\\_dailytrendsdeaths](https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendsdeaths) (viewed June 30, 2021)

<sup>2</sup> See <https://usafacts.org/visualizations/coronavirus-covid-19-spread-map/state/florida/county/broward-county> (viewed June 30, 2021)

<sup>3</sup> See [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7\\_6](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_6) (viewed June 30, 2021)

any reason to believe they are infected.<sup>4</sup>

18. Not only is COVID-19 spread by direct contact with infected people, but the WHO has reported that COVID-19 can also exist on contaminated objects or surfaces,<sup>5</sup> including airborne particles that travel through HVAC systems.

**B. Civil Authority Orders As a Result of the COVID-19 Pandemic and Related Physical Loss or Damage to Property**

19. In an effort to slow the spread of COVID-19 and as a consequence of physical damage caused by the COVID-19 Pandemic, federal, state, and local governments imposed orders prohibiting travel, requiring certain businesses to close and requiring people to remain in their homes unless performing essential activities.

20. On March 9, 2020, Governor DeSantis issued Executive Order No. 20-52 declaring a State of Emergency in the State of Florida based on the on-going risk posed by COVID-19. Notably, the Order stated that the Center for Disease Control and Prevention (“CDC”) recommends not only home isolation by those with symptoms and the covering of coughs and sneezes, but also *routinely cleaning frequently touched surfaces and objects*.

21. On March 10, 2020, as a result of the COVID-19 Pandemic’s threat to the life and property of Broward County citizens, the County Administrator for Broward County issued a declaration of a State of Emergency for Broward County. Specifically, the declaration stated that Broward county is a significant destination for travelers all around the world. “Broward County is threatened by COVID-19 because of the apparent ability of the virus to spread rapidly among humans through respiratory droplets produced when an infected person coughs or sneezes.” Further, the declaration cited at least four (4) confirmed cases of COVID-19 in Broward County

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

<sup>5</sup> *Id.*

at that time. However, with a lack of accessible testing to the public at the time, experts opine that there may have been many more cases in the area.

22. On March 22, 2020, Broward County Administrator issued Emergency Order No. 10-1, ordering the closure of all non-essential retail and commercial businesses. Specifically, the order stated that “the tri-county area of South Florida, comprised of Miami-Dade County, Broward County, and Palm Beach County, is a contiguous community with both commercial and cultural continuities, and both Broward County and Miami-Dade County have emerged as clusters of positive COVID-19 cases.” Further, the order detailed that “this Emergency Order is necessary because of the propensity of the virus to spread person to person and also because *the virus is physically causing property damage due to its proclivity to attach to surfaces for prolonged periods of time.*” (emphasis added).

23. On March 30, 2020, Florida Governor Ron DeSantis issued Executive Order No. 20-89, citing the presence of COVID-19 and its impact on both lives and property of citizens and ordering four (4) Florida counties, including Broward County, to restrict access to businesses and facilities deemed non-essential. Notably, the Order provided directives for businesses deemed essential, including the adoption and maintenance of reasonable measures to ensure sanitation and cleanliness of premises and items that may come into contact with employees and the public.

24. As a direct result of COVID-19 and Governor DeSantis’ March 20, 2020, Order No. 20-72, issued directly because of physical damage to property, Plaintiff sanitized its property and closed its doors on March 18, 2020.

25. The aforementioned orders, the damage caused by the COVID-19 Pandemic, and the transmission of COVID-19 have had a devastating effect on Plaintiff’s business.

**C. Plaintiff’s “All Risks” Policy**

26. The Policy covers the insured property against all risks of direct physical loss unless the loss is excluded in Section B., Exclusions, or limited in Section C., Limitations. See Exhibit “A” at MIKE’S LOUNGE-POLICY-000082, MIKE’S LOUNGE-POLICY-000093 and MIKE’S LOUNGE-POLICY-000116.

27. Plaintiff’s insured location, identified in the declarations page of the Policy, includes a liquor sales and lounge building located at 6328 Pembroke Road Hollywood, Florida 33023. See Exhibit “A” at MIKE’S LOUNGE-POLICY-000082.

28. Defendant drafted the Policy.

**I. The COVID-19 Pandemic Triggered Coverage Under the “All Risks” Policy**

29. As courts have previously determined, the COVID-19 Pandemic is a *natural disaster* – that is the COVID-19 Pandemic involves “substantial damage to property, hardship, suffering or possible loss of life.” See *Friends of DeVito v. Wolf* (Pa. 2020).

30. The actual presence of COVID-19 at and around the area immediately surrounding Plaintiff’s location has triggered coverage under the policy.

31. In addition, the presence of COVID-19 on property away from Plaintiff’s location has triggered coverage under the Policy.

32. The COVID-19 Pandemic has caused physical loss and physical damage to property, including Plaintiff’s property.

33. The COVID-19 Pandemic has caused Plaintiff to experience covered business interruption.

34. Plaintiff submitted a claim pursuant to the Policy as a result of sustaining losses covered by the Policy.

35. Defendant denied coverage in bad faith based upon its seemingly systematic

practice designed to minimize or deny payments for coverage related to COVID-19 claims.

**II. Multiple Coverages are Triggered under the “All Risks” Policy**

36. In addition to triggering the Policy’s “all risks” coverage, Plaintiff’s claim also triggers multiple coverage extensions provided under the Policy, including but not limited to:

**i. The COVID-19 Pandemic Triggered the Policy’s Business Interruption Coverage**

37. The Policy affords coverage for Plaintiff’s business interruption losses, subject to the Policy’s terms and conditions. “We will pay for the actual loss of Business Income you sustain due to the necessary ‘suspension’ of your ‘operations’ during the ‘period of restoration.’ The ‘suspension’ must be caused by direct physical loss of or damage to property at premises which are described in the Declarations [ . . .].” *See* Exhibit “A” at MIKE’S LOUNGE-POLICY-000105.

38. As a direct result of damage to Plaintiff’s property caused by the COVID-19 Pandemic, Plaintiff suffered a business interruption loss.

39. This loss triggers coverage under the Policy’s Business Interruption provisions including for coverage of Plaintiff’s net income and continuing normal operating expenses for up to 3 weeks. *See* Exhibit “A” at MIKE’S LOUNGE-POLICY-000106.

**ii. The COVID-19 Pandemic Triggered the Policy’s Extra Expense Coverage**

40. The COVID-19 Pandemic has caused Plaintiff to incur reasonable and necessary expenses to continue as close to normal as possible the conduct of Plaintiff’s business. Such expenses are beyond those that would have normally been incurred in conducting the business absent the affects of the COVID-19 Pandemic.

41. This loss triggers coverage under the Policy’s Extra Expense provisions including extra expense incurred to minimize the suspension of business because Plaintiff could not continue

operations. *See* Exhibit “A” at MIKE’S LOUNGE-POLICY-000105.

42. The expenses incurred by Plaintiff are beyond those necessary in the normal operation of its business solely as a result of the physical loss and damage caused by the COVID-19 Pandemic trigger coverage under the Policy’s Extra Expense coverage.

**iii. The COVID-19 Pandemic Triggered the Policy’s Civil Authority Coverage**

43. The physical damage caused by the presence of COVID-19 at and in the immediate area around Plaintiff’s property has directly resulted in the issuance of orders and Directives by Governor DeSantis and other civil authorities prohibiting access to Plaintiff’s location.

44. This loss triggers coverage under the Policy’s Civil Authority Provision, which provides coverage for “[. . .] the actual loss of Business Income you sustain and necessary Extra Expense caused by 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, caused by or resulting from any Covered Cause of Loss.” *See* Exhibit “A” at MIKE’S LOUNGE-POLICY-000106.

45. Plaintiff has sustained business interruption and extra expense losses as a result of civil authority orders issued as a direct result of physical damage, of the type insured, at and around Plaintiff’s location. These orders have prohibited access to Plaintiff’s location.

**III. No Exclusion Impacts Coverage**

46. No exclusion in the Policy applies to preclude or limit coverage for the actual presence at or away from Plaintiff’s location, the physical loss and damage to property at Plaintiff’s location and/or the business interruption losses that has and will continue to result from the physical loss and damage to property. To the extent Defendant contends any exclusion(s) apply, such exclusion(s) are unenforceable.

**IV. The Policy's Bioaerosols, Biological Organisms, Microorganisms or Organic Contaminants Exclusion Does Not Apply**

47. The Policy contains exclusions that preclude coverage for certain bioaerosols, biological organisms, microorganisms, and organic contaminant losses. *See* Exhibit "A" at MIKE'S LOUNGE-POLICY-000088. However, neither the unprecedented COVID-19 Pandemic, nor the virus responsible for the pandemic fall under any of the exclusions listed.

48. The Policy's exclusions do not exclude coverage for loss caused by the COVID-19 Pandemic or the virus itself.

49. The Policy's exclusions do not exclude coverage for Plaintiff's claim.

50. To the extent Defendant contends that the Policy's Bioaerosols, Biological Organisms, Microorganisms or Organic Contaminants Exclusion bars coverage for loss caused by the COVID-19 Pandemic or some other aspect of Plaintiff's claim, the Policy is, at best, ambiguous, and therefore, must be construed in favor of coverage.

**D. Defendant's Bad Faith Conduct**

*i. Defendant Conducted an Inadequate and Improper Investigation of Plaintiff's Claim*

51. Aware that its Policy affords coverage for losses related to the COVID-19 Pandemic, Defendant devised a plan designed to steer its policyholders, including Plaintiff, into a denial under the inapplicable Bioaerosols, Biological Organisms, Microorganisms or Organic Contaminants Exclusions.

52. Defendant executed that plan in response to Plaintiff's claim.

53. Plaintiff submitted its claim for coverage under the Policy on April 1, 2020.

54. Finally, on August 25, 2020, after months of Plaintiff being left in the dark regarding its pending claim, Plaintiff received a correspondence from the Law Firm of Foran, Glennon, Palandech, Ponzi & Rudloff, P.C. The correspondence advised that the New York based



firm had been retained by Defendant to provide legal advice as to Plaintiff's Florida based claim. Ultimately, the letter informed Plaintiff that the Policy does not provide coverage for its loss. However, it invited Plaintiff to submit additional information prior to Defendant making its final coverage decision. *See* Denial Letter as Exhibit "B."

55. On October 30, 2020, and November 5, 2020, Plaintiff provided Defendant with additional information and documentation supporting its claim.

56. Nevertheless, on November 13, 2020, Plaintiff received a correspondence from the law firm of Foran, Glennon, Palandech, Ponzi & Rudloff, P.C., advising that Defendant had denied Plaintiff's claim.

57. Defendant failed to conduct any investigation with respect to Plaintiff's claim to determine whether Plaintiff had in fact sustained physical loss or damage as a result of the loss.

58. Defendant did not inspect Plaintiff's Property.

59. Defendant's failure to investigate Plaintiff's claim is contrary to the accepted practices of good faith insurance claim handling.

60. Further, Defendant retained counsel who is not licensed to practice law in Florida, and as such, further contributed to Defendant's insufficient investigation into Plaintiff's claim.

61. Defendant's outright denial without a good faith investigation into Plaintiff's claim constitutes an unfair or deceptive act or practice in the business of insurance.

62. Defendant's outright denial without a good faith investigation shows a conscious disregard of the policyholder's rights under the Policy.

63. Defendant continues to refuse to pay Plaintiff's claim.

64. Defendant knowingly or recklessly failed to conduct a reasonable investigation of Plaintiff's claim and, therefore, the basis for Defendant's denial is unreasonable.

65. In denying Plaintiff's claim, Defendant knew its denial lacked any reasonable basis.

66. In denying Plaintiff's claim, Defendant failed to faithfully apply its own Policy language, failed to conduct a reasonable investigation, and failed to consider the facts relevant to Plaintiff's claim against the Policy language as interpreted pursuant to Florida law.

67. As a consequence of Defendant's bad faith conduct, including its wrongful denial and inadequate claim investigation, Plaintiff has suffered and continues to suffer significant damages.

**COUNT I**  
**Declaratory Judgment**

68. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 67 above, as if fully restated herein.

69. Plaintiff seeks a declaratory judgment pursuant to Florida Statute § 86.011 for the purposes of determining a question of actual controversy between the parties concerning its rights, obligations, and coverages under the subject policy.

70. Due to Defendant's actions, Plaintiff is in doubt as to its rights, obligations, and duties under the Policy, and requires a declaration of such rights and duties owed by the Defendant.

71. There is a bona fide, actual, present, and practical need for this declaration of rights, as there is a dispute between the parties as to each party's individual rights and obligations under and pursuant to the policy.

72. The resolution of this dispute will not solely be legal advice, as the Court's declaration of Plaintiff's rights under the policy directly affects the outcome of issues currently before this Court.

73. The Defendant disputes that (1) the governmental orders constitute prohibition of access to Plaintiff's Insured Premises; (2) the prohibition of access by the orders is specifically

prohibited access as defined in the Policy; (3) the Order triggers coverage because the Policy does not include an exclusion for a viral pandemic and actually extends coverage for loss or damage due to the COVID-19 Pandemic; and (4) the Policy provides coverage to Plaintiff for any current and future civil authority closures of its Insured Premises due to physical loss or damage from the COVID-19 Pandemic under the Civil Authority coverage parameters and the policy provides business income coverage in the event that the COVID-19 Pandemic has caused a loss or damage at the Insured Premises or immediate area of the Insured Premises. Resolution of the duties, responsibilities and obligation of the parties is necessary as no adequate remedy at law exists and a declaration of the Court is needed to resolve the dispute and controversy.

74. The Defendant has not tendered coverage based upon its interpretation of the Policy conditions and exclusions.

75. Although the Policy provides for settlement of covered losses there must be an acknowledgement by Defendant or a Court determination there has been as covered loss before Plaintiff is entitled to recover damages. See: *Corzo v. American Superior Ins. Co.*, 847 So.2d 584 (Fla. 3d DCA 2003).

76. There is no clear and unambiguous exclusion in the policy excluding damage to the insured building caused by a viral pandemic.

77. Plaintiff is in doubt of its entitlement to coverage under the Policy because it contends that the Policy is vague and ambiguous as to whether some or all of the damages caused by the COVID-19 Pandemic is subject to the alleged Bioaerosols, Biological Organisms, Microorganisms or Organic Contaminants Exclusion (the "Biological Exclusion"). See Exhibit "B," in which Defendant advises Plaintiff of its coverage decision.

78. Plaintiff contends that although the damages caused by the COVID-19 Pandemic

are covered, Defendant unilaterally determined that the loss was not covered and subject to the Biological Exclusion. *See* Exhibit “B.”

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1) For a declaration from the Court that the subject civil authority orders prohibit access to Plaintiff’s Insured Premises.

2) For a declaration that the prohibition of access by the orders is specifically prohibited access as defined in the Policy.

3) For a declaration that the orders trigger coverage because the Policy does not include an exclusion for a viral pandemic and actually extends coverage for loss or damage due to a viral pandemic.

4) For a declaration that the Policy provides coverage to Plaintiff for any current and future civil authority closures due to physical loss or damage from the COVID-19 Pandemic under the Civil Authority coverage parameters and the Policy provides business income coverage in the event that the COVID-19 Pandemic has caused loss or damage at the insured premises or immediate area of the insured premises.

5) For judgment against Defendant for damages including, but not limited to, an award of general compensatory damages, interest allowed by law, reasonable attorney’s fees and costs pursuant to Fla. Stat. § 627.428 or other Florida law, and any other relief this Court may deem just and proper.

6) For such other relief as the Court may deem proper.

**JURY TRIAL DEMANDED**

Plaintiff demands trial by jury on all issues so triable.

**LEGAL GRIT, PLLC**

A handwritten signature in black ink, appearing to read 'Jesse Long', is written over a horizontal line.

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