

IN THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI

SCOTT CRAVEN DDS PC, and  
MET BUILDING LLC, individually and on  
behalf of a class of similarly situated Missouri  
citizens,

Plaintiffs,

v.

CAMERON MUTUAL INSURANCE  
COMPANY,

Serve at:

Director of Insurance  
301 W. High Street, Room 350  
Jefferson City, MO 65101

Defendant.

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

Division \_\_\_\_\_

**JURY TRIAL DEMANDED**

**CLASS ACTION PETITION**

Plaintiffs Scott Craven, DDS, PC, and Met Building, LLC (“Plaintiffs”), individually and on behalf of a class of similarly situated Missouri citizens, for their Class Action Petition against Defendant Cameron Mutual Insurance Company, state and allege as follows:

**NATURE OF ACTION**

1. Plaintiff Scott Craven, DDS, PC is a dental clinic doing business as Excelsior Springs Dentistry in Excelsior Springs, Missouri. It is owned by Dr. Scott Craven, DDS. Dr. Craven opened his practice in July 2005 and employs over 20 people. The practice is located at 196 S. McCleary Road in Excelsior Springs. Plaintiff Met Building LLC is the building in which Dr. Craven’s practice is located.

2. As a result of, and in connection with the COVID-19 pandemic and related governmental restrictions on non-essential business, Dr. Craven ceased normal operations and closed his dentistry practice in the middle of March. Dr. Craven saw only emergency patients, two-

and-a-half days per week, until May, when he was able to reopen the clinic in a limited capacity. However, revenues are still down significantly since reopening, as a direct result of COVID-19.

3. Plaintiffs have sustained hundreds of thousands of dollars of losses due to COVID-19.

4. Fortunately – or so they thought – Plaintiffs had purchased an all-risk commercial property insurance policy from Defendant to protect it in the event of an event such as COVID-19. The Policy provides for a wide variety of losses, including loss of use of property, business interruption, and property damage.

5. Plaintiffs promptly made a claim for coverage under the Policy. But Defendant has refused to honor its promise to provide the protection that Plaintiffs purchased. Defendant has not paid any funds to date. Rather, it has responded by seeking information that is not reasonably necessary to evaluate Plaintiffs' claim.

6. Plaintiffs are not unique. The insurance appears to be taking a uniform approach to the current pandemic: delay providing coverage decisions for as long as possible and then later formally deny coverage even when the policy they drafted and offered to insureds, and the policy paid for by the insureds, does not contain an exclusion for pandemic- or virus-related losses.

7. Defendant's conduct is particularly galling in light of the huge amount of premiums insurers like Defendant receive annually. According to information published by the Insurance Information Institute, the U.S. insurance industry collected net premiums of \$1.22 trillion in 2018. Premiums recorded by property/casualty insurers accounted for 51% of that amount. Between 2014 and 2018, these insurers wrote net premiums each year of between \$497 billion and \$612.6 billion but only incurred losses of between \$277.7 billion and \$360.9 billion.

8. This is a class action for declaratory judgment and breach of contract arising from Defendant's refusal to pay claims related to COVID-19 as required by its property insurance agreements it sold to Plaintiffs and other citizens of the State of Missouri.

### **PARTIES**

9. Plaintiff Scott Craven, DDS, PC, is a Missouri professional corporation, with its principal place of business in Excelsior Springs, Missouri.

10. Plaintiff Met Building LLC, is a Missouri limited liability company. Plaintiff Met Building LLC, has two members: Scott Craven and April Ann Craven. Both are citizens of Missouri and reside in Excelsior Springs, Missouri.

11. Defendant Cameron Mutual Insurance Company, is a Missouri corporation, with its principal place of business in Cameron, Missouri.

### **JURISDICTION AND VENUE**

12. This Court has personal jurisdiction over Defendant pursuant to Mo. Rev. Stat. § 506.500 because Defendant is a Missouri corporation that maintains its principal place of business in Missouri.

13. Venue is proper in this Court pursuant to Mo. Rev. Stat. §§ 508.010 because Plaintiffs reside in Clay County, Missouri, and Defendant may be found in Clay County, Missouri.

14. This case is not removable to federal court. There is no federal question jurisdiction pursuant to 28 U.S.C. § 1331 in that Plaintiffs' claims assert no federal question or violation of federal statute. In addition, there is no federal diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) in that Plaintiff is a citizen of Missouri, the class has been defined to include only Missouri citizens, and Defendant is a citizen of Missouri. Moreover, there is no federal diversity jurisdiction under

28 U.S.C. § 1332(d)(2) because no member of the class is a citizen of a State different from Defendant. Plaintiff and the proposed class and Defendant all are citizens of the State of Missouri.

### **FACTUAL BACKGROUND**

15. The novel coronavirus – named “severe acute respiratory syndrome coronavirus 2” or “SARS-CoV2” – has spread widely and rapidly across the United States. The illness related to SARS-CoV-2 is “novel coronavirus disease 2019,” commonly abbreviated to “COVID-19.” Although the virus and related illness are distinct, for purposes of this Complaint, Plaintiffs refer to both interchangeably as “COVID-19.”

16. Over 1,200 Missourians and over 150,000 Americans have died of COVID-19 and there have been over 54,000 confirmed COVID-19 cases in Missouri and over 4.7 million confirmed cases in the United States as of the date of this filing, according to the Coronavirus Resource Center at Johns Hopkins University. *See also* Centers for Disease Control and Prevention (“CDC”) data.

17. Plaintiffs’ insured property has been rendered unsuitable for its intended uses and has been subject to a variety of limitations, restrictions, and prohibitions, including by government Stay at Home Orders imposed by the State of Missouri, Clay County, and City of Excelsior Springs, and the American Dental Association and the CDC.

18. Plaintiffs also imposed limitations, restrictions, and prohibitions due to the dangerous condition caused by the presence of COVID-19.

19. Orders restricting Plaintiffs’ operations are still in effect in Clay County and Excelsior Springs, Missouri, as of the date of this filing.

## ***COVID-19***

20. A growing body of evidence suggests that the virus transmits both through droplets, when someone sneezes and coughs, and aerosols, which are produced by normal breathing.

21. Aerosols are particularly concerning because unlike droplets, which stay airborne for only a few seconds, aerosols are water droplets suspended in air and can remain suspended for hours, until gravity ultimately forces them to the nearest surface below.

22. Consequently, aerosols can spread widely through air flow and settle on surfaces hundreds of feet away from any infected individual. Thus, someone not even in the vicinity of an infected person can unknowingly touch an infected surface, later touch their face, and become infected.

23. As a result, at least 42 states and countless local governments issued substantially similar “stay at home” orders, the purpose of which was to mitigate and slow the spread of COVID-19.

24. According to the CDC, everyone is at risk of getting COVID-19. The virus can spread by respiratory droplets when an infected person coughs, sneezes, or talks. A person can become infected from respiratory droplets or potentially by touching a surface or object that has the virus on it and then by touching the mouth, nose, or eyes.<sup>1</sup>

25. According to studies, the virus can live on surfaces for several days if not longer.<sup>2</sup> The New England Journal of Medicine reported finding that experimentally-produced aerosols containing the virus remained infectious in tissue-culture assays, with only a slight reduction in

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<sup>1</sup> <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>

<sup>2</sup> <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>

infectivity during a 3-hour period of observations. “Aerosols from infected persons may therefore pose an inhalation threat even at considerable distances and in enclosed spaces...”<sup>3</sup>

26. The study also found that COVID-19 was detectable for up to four hours on copper, up to 24 hours on cardboard, and up to three days on plastic and stainless steel.<sup>4</sup>

27. All of these materials are used by Plaintiffs throughout their facility and operations.

28. The study’s results indicate that individuals can become infected with COVID-19 through indirect contact with surfaces or objects used by an infected person, whether they were symptomatic or not.

29. A consensus appears to be emerging that COVID-19 can travel through the air via aerosols. For example, aerosol scientist Lidia Morawska of the Queensland University of Technology in Brisbane, Australia told *Nature* that, “In the minds of scientists working on this, there’s absolutely no doubt that the virus spreads in the air. This is a no-brainer.”<sup>5</sup>

30. An April 2020 study published in the journal *Emerging Infectious Diseases* found a wide distribution of COVID-19 on surfaces and in the air about *13 feet* from patients in two hospital wards in Wuhan, China, leading the authors to conclude that the virus spreads in aerosols in addition to large respiratory droplets. The investigators found evidence of the virus in swabs of floors, computer mice, trash bins, bed handrails, patients’ face masks, health workers’ personal protective equipment, and air vents.<sup>6</sup>

31. The authors also surmised that the high rate of positivity for floor samples in the hospital strongly suggest that droplets fall to the ground and then are spread via patients’ shoes.

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<sup>3</sup> <https://www.nejm.org/doi/full/10.1056/NEJMc2009324>

<sup>4</sup> <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces>

<sup>5</sup> <https://www.nature.com/articles/d41586-020-00974-w>

<sup>6</sup> <https://www.cidrap.umn.edu/news-perspective/2020/04/study-finds-evidence-covid-19-air-hospital-surfaces>

For example, every sample tested from the pharmacy floor tested positive for COVID-19 even though no patients were housed there.<sup>7</sup>

32. Another study conducted in Wuhan indicates that staff movement, floor cleaning, and the removal of personal protective equipment could transmit the virus through the re-suspension of virus-contaminated aerosols.<sup>8</sup>

33. Kimberly Prather, an aerosol chemist at the University of California, San Diego told *Science* magazine: “I’m relieved to see aerosolization is accepted. This added airborne pathway helps explain why it is spreading so fast.”<sup>9</sup>

34. Aerosol particles are held in the air by physical and chemical forces. The suspended particles remain for *hours or more*, depending on factors such as heat and humidity. If virus particles can be suspended in air for more than a few seconds, like, for instance, the measles virus can, then anyone passing through could become infected by a pathogenic aerosol cloud. And the virus can travel long distances and land on surfaces, only to be stirred back up into the air later by cleaning or other disturbances.

35. The SARS virus that caused a 2003 epidemic is a coronavirus and is similar to COVID-19. As a result, the behavior of SARS during the 2003 epidemic provided evidence about any aerosol risk from COVID-19.

36. A 2014 analysis published in the journal *Clinical Infectious Diseases* investigated a seemingly puzzling outbreak in a Hong Kong apartment complex whose residents had not been in close contact with each other.<sup>10</sup> The study found that “airborne spread was the most likely

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<sup>7</sup> <https://www.cidrap.umn.edu/news-perspective/2020/04/study-finds-evidence-covid-19-air-hospital-surfaces>

<sup>8</sup> <https://www.biorxiv.org/content/10.1101/2020.03.08.982637v1>

<sup>9</sup> <https://www.sciencemag.org/news/2020/04/you-may-be-able-spread-coronavirus-just-breathing-new-report-finds#>

<sup>10</sup> <https://academic.oup.com/cid/article/58/5/683/365793>

explanation, and the SARS coronavirus could have spread over a distance of 200 meters,” or about 600 feet.<sup>11</sup>

37. The implications of airborne spread of the virus are extremely serious. Airborne spread means that the virus can travel long distances from any infected person. It can then infect someone who unknowingly walks through a pathogenic cloud. It can also infect someone by settling on a physical surface, which someone touches and later becomes infected. And regardless of the transmission method, the evidence suggests that COVID-19 can be transmitted by shoes even once it reaches the ground.

38. State and local governments have determined that without the Stay at Home Orders, COVID-19 could spread rampant throughout the community.

39. The Stay at Home Orders in and around Plaintiffs’ property also explicitly acknowledge that COVID-19 causes direct physical damage and loss to property:

- a. the Clay County “Public Health Emergency Order” stated that “the County wishes to protect public life, health, safety and **property** to limit the development, contraction and spread of COVID-19 creating this emergency”<sup>12</sup> (emphasis added); and
- b. nearby Kansas City, Missouri, issued Order 20-01 in response to the pandemic, which states that “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”<sup>13</sup> (emphasis added);

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<sup>11</sup> *Id.*

<sup>12</sup> <https://www.clayhealth.com/DocumentCenter/View/1009/Clay-County-Public-Health-Emergency-Order---Updated-32220>

<sup>13</sup> [http://mediaassets.kshb.com/NWT/Sam/Mayor%20Lucas%20Stay%20at%20Home%20Order.pdf?\\_ga=2.87564241.83785035.1587504680-1549958454.1581544124](http://mediaassets.kshb.com/NWT/Sam/Mayor%20Lucas%20Stay%20at%20Home%20Order.pdf?_ga=2.87564241.83785035.1587504680-1549958454.1581544124)



***The Cameron Mutual Policy***

40. To protect themselves against risks like COVID-19, Plaintiffs purchased an insurance policy (the “Policy”) from Defendant bearing Policy Number BP 7110055496. The Policy was in effect at the time of the outbreak and remains in effect today. Plaintiffs paid all premiums required by the Policy.

41. Plaintiffs are Named Insureds under the Policy.

42. Defendant is the effective and liable insurer of the Policy and policies meeting the class definition.

43. Generally, under property insurance policies like those issued by Defendant to Plaintiffs and class members, the insuring agreements provide coverage for all risks of physical loss or damage to property, unless specifically excluded.

44. The Policy is an “all-risk” policy. In it Defendant agrees to pay for “direct physical loss of or damage to” the insured property. *See* Policy, attached hereto as Ex. A, at 7. The Policy has limits in excess of \$1 million. *Id.* at 6.

45. The risk of a virus like COVID-19 was foreseeable to, if not foreseen by, insurance companies like the Defendant. The Insurance Services Office (“ISO”), an organization that provides policy writing services to insurers, has 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.”

46. In connection with circulating the virus exclusion, the ISO 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.

47. Despite the availability of a specific exclusion for viruses, Plaintiffs' Policy contains no such exclusion. Nor does Plaintiffs' Policy contain an exclusion for "pandemics," "communicable disease," or anything similar.

48. Because damage due to viruses constitute physical damage and loss under the Policy, and the Stay at Home Orders have caused Plaintiffs to have lost the use of their premises for their intended purpose, Plaintiffs' losses are covered under the Policy. Moreover, Plaintiffs suspended normal operations due to COVID-19.

49. The Policy provides coverage for several different types of losses arising from COVID-19 that are relevant here, including, but not limited to, the following.

50. The Policy provides coverage for "**Business Income**" loss sustained due to the necessary suspension of operations caused by direct physical loss of or damage to the insured property. Exhibit A at 11. Payable loss under this coverage means "Net Income...that would have been earned or incurred if no physical loss or damage had occurred" and "continuing normal operating expenses incurred, including payroll." *Id.* Plaintiffs have suffered Business Income losses due to COVID-19.

51. The Time Element section also covers "**Extra Expense.**" Ex. A at 12. Extra Expenses include expenses incurred "to avoid or minimize the suspension of business and to continue 'operations'" and "to minimize the suspension of business if you cannot continue 'operations'" due to direct physical loss of or damage to property. *Id.* at 12-13. Plaintiffs have incurred Extra Expenses due to COVID-19.

52. The Policy also provides coverage for an interruption to business caused by an order from a “**Civil Authority.**” Exhibit A at 13. Specifically, the Policy covers “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” direct physical loss. *Id.* Access to Plaintiffs’ property has been prohibited in part or in total due to the presence and threat of COVID-19 and related Stay-at-Home Orders.

53. The Policies also provide additional coverages that apply to Plaintiffs’ claim, including, but not limited to “**Sue and Labor**” coverage. *See* Ex. A.

***Plaintiffs’ Claim to Cameron Mutual***

54. Plaintiffs submitted a timely claim to Defendant for coverage under the Policy.

55. Defendant has failed to render a coverage decision and instead has requested additional information not required to evaluate Plaintiffs’ claim. Defendant’s conduct is intended to effectuate delay and denial of Plaintiffs’ claim and amounts to a breach of its obligations to provide coverage under the Policy.

**CLASS ACTION ALLEGATIONS**

56. Pursuant to Mo. R. Civ. P. 52.08 and Mo. Rev. Stat. § 407.025, Plaintiffs bring this action on behalf of themselves and all other similarly situated insureds in the State of Missouri, and seek to represent the following class:

All Missouri citizens insured by one of Defendant’s property insurance policies in effect during the COVID-19 pandemic.

Excluded from the Class is the Defendant, any entity in which the Defendant has a controlling interest, any of the officers, directors, or employees of the Defendant, the legal representatives,

heirs, successors, and assigns of the Defendant, anyone employed with Plaintiffs' counsel's firms, and any Judge to whom this case is assigned, and his or his immediate family.

57. Plaintiffs' Classes satisfy the numerosity, commonality, typicality, adequacy, and superiority requirements of a class action under Rule 52.08, as set forth more fully herein.

58. **Numerosity.** COVID-19 has impacted thousands of businesses across the State of Missouri and, upon information and belief, Defendant issued hundreds or more policies with the relevant provisions. Consequently, the Classes each number in at least the hundreds and most likely thousands, and thus the numerosity standard is satisfied. Class members may be informed of the pendency of this class action through direct mail or other means based on Defendant's records of its policyholders.

59. **Commonality.** There are questions of fact and law common to the Classes that predominate over any questions affecting only individual members. The questions of law and fact common to the Class arising from Defendant's actions include, without limitation, the following:

- a. Do the Policies cover losses resulting from the COVID-19 pandemic?
- b. Do the Policies cover losses resulting from state and local Stay At Home Orders requiring the suspension or reduction in business?
- c. Has Defendant wrongfully denied claims for business losses resulting from COVID-19 and/or the Stay at Home Orders?
- d. Do any of the following provisions in the Policies cover losses due to COVID-19: (i) business income; (ii) extra expense; and (iii) civil authority?
- e. Has Defendant breached its Policies by refusing to cover COVID-19 related losses?
- f. Are Class members entitled to reasonable attorneys' fees and expenses?

60. **Predominance.** The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity to other available methods for the fair and

efficient adjudication of the claims asserted herein. Specifically, hundreds or more of policyholders are impacted by Defendant's denial of coverage for COVID-19 losses and their claims arise from a common factual predicate, which is the government shutdown orders and suspension of activities due to the virus.

61. **Typicality.** Plaintiffs' claims are typical of those of the Classes as Plaintiffs were subject to the same or similar policy provisions and the losses for all members relate to COVID-19 and the related closure orders and the claims arise from the same legal theories.

62. **Superiority.** A class action is the appropriate method for the fair and efficient adjudication of this controversy. Defendant has acted or refused to act on grounds generally applicable to the Classes. The presentation of separate actions by individual Class members would create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for Defendant, and/or substantially impair or impede the ability of Class members to protect their interests.

63. **Adequacy.** Plaintiffs are adequate representatives of the Classes because they are members of the Class and their interests do not conflict with the interests of those they seek to represent. The interests of the Class members will be fairly and adequately protected by Plaintiffs and their counsel, who have extensive experience prosecuting complex class litigation.

64. **Declaratory Relief and certification under 52.08(b)(2) of the Missouri Rules of Civil Procedure.** On information and belief, Defendant has refused, or intends to refuse, coverage due to COVID-19 business interruption and other covered losses for all, or most, policyholders with covered Policies and final injunctive and/or declaratory relief mandating that Defendant cover the losses of Class members is appropriate respecting the class as a whole.

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

In the alternative, Plaintiffs reserve the right to seek certification of one or more common issues pursuant to 52.08(c)(4). In addition, Plaintiffs reserve the right to modify the definitions of the class and/or create subclasses either by amendment to the complaint or by motion for class certification, including but not limited to subclasses for policyholders under specific Policy provisions.

**COUNT I: DECLARATORY RELIEF**

66. The preceding paragraphs are incorporated by reference as if fully alleged herein.

67. Mo. Rev. Stat. §§ 527.010 and Mo. Sup. Ct. Rule 87, authorize this Court to declare the rights and other legal relations of the parties to this dispute.

68. An actual controversy has arisen and now exists between Plaintiffs and Defendant concerning the respective rights and duties of the parties under the Policy. Plaintiffs submitted a timely and valid claim for coverage arising from COVID-19, but Defendant has not paid the claim despite having sufficient information to do so. Moreover, upon information and belief, Defendant has refused or will refuse to pay other similar claims for coverage for COVID-19 related losses under the Policies.

69. Plaintiffs contend that Defendant has breached the Policies in the following respects:

- a. Plaintiffs and the class have suffered losses due to COVID-19 covered by the Policies.
- b. Defendant is obligated to pay Plaintiffs and the class for those losses.
- c. Defendant has failed to pay Plaintiffs and the class for those losses.

70. Plaintiffs and the class therefore seek a declaration of the parties' respective rights and duties under the Policies and requests the Court declare the aforementioned conduct of Defendant unlawful and in material breach of the policies so that future controversies may be avoided.

**COUNT II: BREACH OF CONTRACT AND/OR ANTICIPATORY BREACH**

71. The preceding paragraphs are incorporated by reference as if fully alleged herein.

72. Plaintiffs and the class purchased property coverage policies from Defendant.

73. The Policies are valid and enforceable contracts between the Defendant and Plaintiffs and class members.

74. Plaintiffs and the class substantially performed their obligations under the terms of the Policies including giving Defendant notice of the claim. Alternatively, Defendant has waived any terms or conditions of coverage and may not assert any term or condition in the Policy as a defense to liability.

75. Plaintiffs and the class have sustained a loss covered by the Policies arising from the COVID-19 virus and associated state and local Stay at Home orders.

76. Defendant has not agreed to pay Plaintiffs' claim. Instead, Defendant has requested information not necessary to determine coverage.

77. Upon information and belief, Defendant has refused or will refuse other similar claims related to COVID-19 on a uniform and class-wide basis, in breach of the policies.

78. Any conditions precedent to a claim for breach of contract under the Policies have occurred, been satisfied, or, in any event, should be excused or otherwise discarded on the basis of futility or other applicable law.

79. As a direct and proximate result of Defendant's breaches, Plaintiffs and the class have sustained damages in an amount to be determined at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, request relief and judgment against Defendant as follows:

- a. That the Court enter an order certifying the classes, appointing Plaintiffs as representatives of the class, appointing Plaintiffs' counsel as class counsel, and directing that reasonable notice of this action, as provided by Mo. Sup. Ct. Rule 52.08, be given to the class;
- b. For a judgment against Defendant for the causes of action alleged against it;
- c. For compensatory damages in an amount to be proven at trial;
- d. For a declaration that Defendant's conduct as alleged herein is unlawful and in material breach of the Policy;
- e. For pre-judgment and post-judgment interest at the maximum rate permitted by law;
- f. For Plaintiffs' attorney's fees;
- g. For Plaintiffs' costs incurred; and
- h. For such other relief in law or equity as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury on all issues so triable.



Date: August 5, 2020

Respectfully submitted,

**STUEVE SIEGEL HANSON LLP**

*s/ Patrick J. Stueve*

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