

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

**CREATIVE RESTAURANTS, INC. d/b/a
BLUES HALL DINING ROOM d/b/a RUM
BOOGIE CAFE**, individually and behalf of all
others similarly situated,

Plaintiff,

v.

**COVINGTON SPECIALTY INSURANCE
COMPANY, RSUI INDEMNITY COMPANY,
and ALLEGHANY INSURANCE HOLDINGS,
LLC**,

Defendants.

**CIVIL ACTION NO:
2:20-cv-2452-JTF**

CLASS ACTION

JURY TRIAL DEMANDED

AMENDED CLASS ACTION COMPLAINT

Plaintiff Creative Restaurants, Inc. d/b/a Blues Hall Dining Room d/b/a Rum Boogie Café (“Creative” or “Plaintiff”), both individually and on behalf of all others similarly situated, files this class action Complaint against Defendants Covington Specialty Insurance Company (“Covington”), RSUI Indemnity Company (“RSUI”) and Alleghany Insurance Holdings, LLC (“Alleghany”) (collectively, “Defendants”), and in support of the Complaint alleges the following on information and belief that will likely have evidentiary support after a reasonable opportunity for further investigation and discovery, except where specifically identified as being based on personal knowledge, which factual contentions have evidentiary support:

INTRODUCTION

1. On personal knowledge, Plaintiff Creative operates a restaurant located at 182 Beale Street, Memphis, Tennessee.

2. To protect the restaurant and the income from operation of the restaurant, Creative purchased, *inter alia*, an all risk general liability policy with policy number VBA743106 (the “Policy”).

3. The Policy was issued by Defendant Covington Specialty Insurance Company (“Covington”). Under the Policy, Covington is responsible for, *inter alia*, claims handling, including receiving and managing claims and loss notices, responding to questions about insurance and coverage, investigating claims, paying claims for covered losses, and receiving process served on Covington’s designated agent.

4. The Policy is a bilateral contract. Plaintiff agreed to pay monthly premiums to Defendant Covington in exchange for promises of coverage for certain losses.

5. Among other types of coverage, the Policy protects Plaintiff against a loss of business income due to a Suspension of the restaurant’s operations due to loss or damage at the premises of the business. This type of coverage is often referred to as business interruption coverage.

6. The Policy also provides “Extra Expense” coverage, under which Defendants promised to pay expenses incurred that would not have been incurred due to loss or damage at the premises of the business.

7. Additionally, the Policy provides “Civil Authority” coverage, under which Defendants promised to pay for loss of business income sustained when the action of a civil authority prohibits public access to the business premises.

8. Plaintiff duly complied with its obligations under the Policy, and paid the requisite premiums to Defendant Covington.

9. Beginning in March 2020, Plaintiff was forced to suspend business operations at the restaurant due to risk of infection of COVID-19 and/or actions of civil authorities prohibiting full access to and occupancy of the restaurant. This Suspension, which is ongoing in terms of its impact on business operations, has caused Plaintiff to suffer significant losses and incur significant expenses.

10. On or about March 16, 2020 Plaintiff submitted a claim for coverage under the Policy. Defendants, without conducting any meaningful investigation, summarily denied this claim on or about March 20, 2020.

11. Under the Policy, Defendants promised to cover these losses and expenses, and is obligated to pay for them. But in breach of their contractual obligations, Defendants denied the claim of Plaintiff and failed to pay for these losses and expenses, and have taken the position they will not pay any such similar claims no matter the circumstances to putative class member.

12. According to published reports, Defendants are failing and refusing to pay for similar losses and expenses of other insureds holding policies that are, in all material respects, identical.

THE PARTIES

13. On personal knowledge, Plaintiff Creative Restaurants, Inc. is a Tennessee corporation organized to do business and doing business as Blues Hall Dining Room and Rum Boogie Cafe. This restaurant is located at 182 Beale Street in Memphis, Tennessee. Plaintiff Creative Restaurants, Inc. leases the premises that houses the restaurant.

14. Defendant Covington Specialty Insurance Company is a foreign corporation organized under the laws of New Hampshire, with its principal place of business in the state of New Hampshire. Covington Specialty Insurance Company is the issuer of the Policy. Defendants

RSUI and Alleghany are the underwriters that work closely with Covington and are jointly and severally responsible for the decision to deny coverage under the Policy and the policies of all others similarly situated. RSUI's principal place of business and agent for service of process is located at 945 East Paces Ferry Road, Suite 1800, Atlanta, GA 30326-1160. Alleghany's principal place of business is located at 1411 Broadway, 34th Floor, New York, New York 10018.

15. At all times material, Defendants, either individually or in concert, engaged in substantial and not isolated activity on a continuous and systematic basis in the state of Tennessee, namely by issuing, selling and/or underwriting insurance policies in Tennessee and by contracting to insure or underwrite insurance on property located in Tennessee.

16. Under the applicable law and the terms of the Policy, service of process on Defendants may be effectuated by serving the Senior Claims Officer of RSUI at 945 East Paces Ferry Road, Suite 1800, Atlanta, GA 30326-1160, or his designee.

JURISDICTION AND VENUE

17. This Court has jurisdiction over the parties to this action. Plaintiff is a resident of Tennessee, Defendants or transact business in this State, and the members of the Class are resident citizens of this State and any other state where similar policies were issued or underwritten by Defendants.

18. This Court has subject matter jurisdiction over the claims asserted in this action under 28 U.S.C. § 1332 because there is complete diversity between Defendants and at least one member of each class; there are more than one hundred members of each class; and the amount in controversy exceeds \$5,000,000 exclusive of interest and costs. This Court also has subject matter jurisdiction under 28 U.S.C. §§ 2201 and 2202 and is authorized to grant declaratory relief under these statutes.

19. This Court has personal jurisdiction over each of the Defendants because Plaintiff's claims arise out of, among other things, Defendants conducting, engaging in, and/or carrying on business in Tennessee; Defendants breaching a contract in this State by failing to perform acts required to be performed in this State; and Defendants contracting to insure or underwrite the insurance of property in this State, including but not limited to the premises insured under the Policy. Defendants also purposefully availed themselves of the opportunity to and privilege of conducting activities in the state of Tennessee by marketing and/or underwriting insurance policies and services within this State, and intentionally developing relationships with brokers, agents, and customers within this State to insure property within the State, which resulted in the issuance of the Policy in this action and similar policies to hundreds of other businesses.

20. Venue is proper in this District under 28 U.S.C. § 1391 because Defendants maintain substantial operations in this District; many Class Members either reside or did business with Defendants in this District; Defendants engaged in business in this District; a substantial part of the events or omissions giving rise to the claims at issue occurred in this District; and Defendants entered into transactions and received substantial profits from insureds who reside in this District. Pursuant to Local Rule 3.3(a), venue is proper in the Western Division of this District, as Plaintiff resides in the Western District of Tennessee, and the Western Division of this District is where Plaintiff's claim arose.

FACTUAL BACKGROUND

The Policy

21. In February 2020, Plaintiff Creative renewed the Policy, a property insurance policy issued by Defendant Covington and underwritten by Defendants RSUI and Allegheny. The Policy

has a policy period of February 12, 2020 to February 12, 2021. The insured property under the Policy is located at 182 Beale Street, Memphis, TN 38103.¹

22. The Policy is an all risk insurance policy. An “all risk policy” covers all risks of loss that may happen (except by fraudulent acts of the insured), no matter their source and however fortuitous the event or circumstance may be, as long as it is beyond the control of the insured and unless the policy contains a specific provision expressly excluding the loss from coverage.² Plaintiff need not prove the precise cause of the loss or damage to demonstrate coverage exists under the Policy or that the loss or damage was occasioned by an external cause, but simply that the loss was due to a fortuitous circumstance or event. It is not Plaintiff’s burden to prove the non-applicability of any alleged exclusion.

23. Consistent with the all-risk nature of the Policy, Defendants specifically agreed to pay for “direct physical loss of or damage to” the premises “caused by or resulting from any “Covered Cause of Loss.” The term “Covered Causes of Loss” is defined in the Policy as “[w]hen Special is shown in the Declarations ... direct physical loss unless the loss is excluded or limited in this policy.’ The Policy does not appear to state how this term is to be defined if “Special” is not shown in the Declarations. Nor does it appear from the Policy that the term “Special” is shown in the Declarations, since the only reference to the word “Special” is to cross-reference the very schedule of endorsements where this term is located.

24. Many of the key terms in the Policy referenced herein, either in isolation or in the context in which they are used (e.g., “Covered Cause of Loss”, ‘Special”, “direct physical loss”,

¹ A redacted true and correct copy of the Policy is attached to this Amended Complaint as Exhibit “A” and incorporated herein by reference.

² “All Risk” policies differ from “enumerated risk” policies that only covered certain listed risks such as fire, lightning, wind, theft, collapse, etc. Insurers developed all risk policies to provide more comprehensive coverage than had previously been offered. STEVEN PLITT ET AL, 10A COUCH ON INSURANCE 148:50 (3RD ED.).

“repaired”, “untenantable”, “actual loss”, “damage”, “damage to property”, “direct physical loss of or damage to” and “loss”) are ambiguous and/or not defined in the Policy. For example, the term “Covered Cause of Loss”, even if found to be applicable to these claims as explained above, is defined as a direct physical loss, but other parts of the Policy refer to the term “damage” or “damage to”, which based on its usage in other contexts would not be modified by the term “direct physical”. If construed in the manner Defendants have claimed, Defendants would only have agreed to pay for direct physical loss caused by a direct physical loss, which would be circular and non-sensical. Ambiguous language in insurance contracts are to be construed liberally in favor of the insured in favor of providing coverage and strictly against the insurance company denying coverage, considering the policy in its entire context and the nature of the risks the policy insures against. Thus, the Policy must be construed in a manner that provides for coverage for purposes of this Complaint.

25. Being that Plaintiff’s Policy is an “all risk” policy, considering the entirety of its context the Policy is to be construed as covering “all risks” unless they are specifically excluded. For the reasons detailed below, the losses at issue are fortuitous and not attributable to any action of Plaintiff. Thus, coverage presumptively exists since any “loss” claimed by Plaintiff was occasioned as a result of an unexpected, unintended, fortuitous situation that was beyond the control of the insured and caused a sudden and relatively short-lived event

26. One type of coverage provided by the Policy is for loss of business income, often called business interruption insurance. This coverage is specifically provided for in a section of the Policy titled “Business Income (and Extra Expense).”

27. Specifically, pursuant to this section of the Policy, Defendants promised to pay for “the actual loss of ‘Business Income’ and ‘Rental Value’ you sustain due to the necessary

‘suspension’ of your ‘operations’ during the ‘period of restoration’, so long as the suspension is caused by direct physical loss of or damage to property at premises “caused by or result from a Covered Cause of Loss.” Since as noted above it would be circular and non-sensical to construe the Policy in a manner that it only covers direct physical losses caused or resulting from direct physical losses, this language must be construed as covering all forms of damage or loss so long as they are caused by or result from a Covered Cause of Loss.

28. Each of the operative terms of this coverage provision is defined as follows.

29. “Business Income” means the net income that the business would have earned absent Suspension of operations:

Business Income means the:

- a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and**
- b. Continuing normal operating expenses incurred, including payroll.**

30. “Suspension” means, among other things, a slowdown or cessation of the insured’s business activities or that all or a portion of the premises has been rendered untenable:

"Suspension" means:

- a. The slowdown or cessation of your business activities; or**
- b. That a part or all of the described premises is rendered untenable, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.**

31. “Operations” means, among other things, business activities at the described premises:

"Operations" means:

- a. Your business activities occurring at the described premises; and**
- b. The tenantability of the described premises, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.**

32. "Period of Restoration" means the period of time beginning at or shortly after the conditions resulting in the "loss" first began and ending on the date when the property should be repaired or replaced:

"Period of restoration" means the period of time that:

a. Begins:

- (1) 72 hours after the time of direct physical loss or damage for Business Income Coverage; or**
- (2) Immediately after the time of direct physical loss or damage for Extra Expense Coverage;**

caused by or resulting from any Covered Cause of Loss at the described premises; and

b. Ends on the earlier of:

- (1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or**
- (2) The date when business is resumed at a new permanent location.**

33. Additionally, under the Policy, Defendants also promised to cover "Extended Business Income." This coverage requires Defendants to pay for loss of business income beyond the Period of Restoration under certain conditions. "Extended Business Income" is defined as follows:

If the necessary "suspension" of your "operations" produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:

- (a) Begins on the date property (except "finished stock") is actually repaired, rebuilt or replaced and "operations" are resumed; and
- (b) Ends on the earlier of:
 - (i) The date you could restore your "operations", with reasonable speed, to the level which would generate the business income amount that would have existed if no direct physical loss or damage had occurred; or
 - (ii) 60 consecutive days after the date determined in (1)(a) above.

34. Specifically, Defendants promised to pay for the actual loss of Business Income during the period that begins on the date that the insured property is "repaired" (i.e., re-opened), and ends either 60 days thereafter or on the date when operations are restored to the level which would generate business income to normal levels, whichever is earlier. Based on the level of operations to date, the 60-day period may have been triggered under the terms of the Policy.

35. In addition to promising to pay for loss of Business Income, under the Policy, Defendants also promised to pay for certain necessary "Extra Expense." Extra Expense means "necessary expenses you incur during the 'period of restoration' that you 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."

Extra Expense means necessary expenses you incur during the "period of restoration" that you 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.

36. The Policy also provides "Civil Authority" coverage. Under this aspect of coverage under the Policy, Defendants promised to pay for the loss of Business Income and Extra Expense

that the Plaintiff sustained as a result of an “action of civil authority that prohibits access to the premises.”

a. Civil Authority

In this Additional Coverage, Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations.

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay 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, provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority Coverage for Business Income will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

Civil Authority Coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end:

- (1) Four consecutive weeks after the date of that action; or
 - (2) When your Civil Authority Coverage for Business Income ends;
- whichever is later.

37. This Civil Authority provision is an independent basis for business interruption coverage. That is, it can be triggered even when the standard business interruption coverage is not.

38. Parts of the Policy, including the “Business Income (and Extra Expense) Coverage Form,” are standardized forms drafted by the Insurance Services Office (ISO) (CP 00 30 10 12). The ISO is a company that drafts standard policy language for use in insurance contracts.

39. For the reasons detailed below, the losses at issue are fortuitous and not attributable to any actions of Plaintiff. Accordingly, because the Policy is an all-risk policy and the losses sustained are the result of fortuitous acts beyond the control of Plaintiff and others, these losses are covered under Plaintiff’s Policy and the policies of other similarly situated persons.

Plaintiff's covered losses

40. On March 13, 2020, the Governor of Tennessee, Bill Lee, declared a public health emergency in response to the appearance of COVID-19 in the State of Tennessee.

41. As of March 22, 2020, according to the Shelby County Department of Public Health, there were 66 confirmed cases of COVID-19 in Shelby County, with 505 positive COVID-19 tests statewide. As of August 12, 2020, Shelby County alone, where Creative is located, had 24,176 cases of COVID-19, with at least 313 deaths. There have now been over 133,708 positive COVID-19 tests in Tennessee.

42. These pervasive dangerous physical conditions prompted actions by civil authorities throughout the United States requiring the suspension of business at a wide range of establishments, including but not limited to civil authorities with jurisdiction over the Plaintiff's business: the City of Memphis, County of Shelby, and the state of Tennessee.

43. Consistent with the actions of all states nationwide, on March 22, 2020, Governor Lee issued Executive Order No. 17, An Order to Mitigate The Spread of COVID-19 By Limiting Social Gatherings, Dine-In Service, and Gym Use, and Exposure at Nursing and Retirement Homes, and Providing Flexibility for Restaurants Regarding the Sale of Alcohol. This Order, which expressly covers Shelby County, requires all restaurants to close except for curbside or take-out orders.³

44. On March 23, 2020, the City of Memphis issued Ordinance No. 03-2020 establishing a "Safer at Home Directive and Closure of Non-Essential Services and Businesses." Among other things, this Order required businesses within the city of Memphis to comply with the Order of the Governor, requiring closure of all restaurants unless the restaurants prepare food for

³ <https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee17.pdf>

delivery or carry out. Ordinance No. 03-2020 was expressly issued in response to COVID-19 “continu[ing] to present a severe danger to public health.”⁴ Page 2, Section (3) of the Ordinance specifically states: “Mass Gatherings Prohibited. All public and private gatherings of more than ten people occurring outside a single household or living unit are prohibited...” This Order was extended multiple times by Mayor Strickland, and expired on June 1, 2020.

45. On March 30, 2020, Governor Bill Lee issued Executive Order No. 21, An Order Amending Executive Order No. 17 to Further Mitigate the Spread of COVID-19 by Limiting Non-Essential Services and Gatherings, which extended Executive Order No. 17 through April 14, 2020. Governor Lee also issued Executive Order No. 22, An Order Directing Tennesseans to Stay Home Unless Engaging in Essential Activities to Limit Their Exposure to and Spread of COVID-19. This order requires non-essential businesses to close access to their premises to the public.⁵

46. On April 13, 2020, Governor Lee extended Tennessee’s Stay At Home Order (Order Nos. 17 and 22) through April 30, 2020. While Order No. 29 was issued on April 24, 2020, which reopened restaurants in the state, it gave county health departments authority to maintain orders in several counties including Shelby, where Creative operates its business.⁶

47. On June 1, 2020, the Shelby County Health Department released a Health Directive No. 5, which allowed restaurants to reopen, but those restaurants must be adhere to social distancing policies, and dining groups should be limited to no more than six people.⁷⁸

48. Plaintiff was forced to suspend or reduce business at its restaurant as a result of the Civil Authority Actions issued by local and state civil authorities set forth above mandating the

⁴ <https://covid19.memphistn.gov/wp-content/uploads/2020/03/Executive-Order-No-03-2020.pdf>

⁵ <https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee21.pdf>;

<https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee22.pdf>

⁶ <https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee29.pdf>

⁷ <http://shelbytnhealth.com/DocumentCenter/View/1748/Health-Directive-No-5?bidId=>

⁸ The Orders and Ordinances referenced in paragraphs 40-47 are collectively referred to as the “Civil Authority Actions.”

suspension of business for on-site in-dining services, as well as in order to take necessary steps to prevent further damage and minimize the suspension of business and continue operations.

49. These Civil Authority Actions prohibited full customer access to and use of Plaintiff's and the other Class members' property, and the area immediately surrounding damaged property, in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss.

50. The incubation period for COVID-19 is at least 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 the virus has been circulated in the United States far longer than previously assumed. It is likely customers, employees and/or other visitors to the insured property over the last several months were infected with COVID-19 and thereby infected the insured property with COVID-19. Plaintiff's premises likely has been infected with COVID-19 and it has suffered direct physical loss to the property.

51. The presence of employees and customers likely infected with or carrying COVID-19 renders physical property in their vicinity unsafe and unusable, resulting in direct physical loss to that property.

52. The presence of employees and customers likely infected with or carrying COVID-19 at premises renders the premises, including property located at the premises, unsafe, resulting in direct physical loss to the premises and property.

53. Loss of use of property that has not been physically altered constitutes “physical loss or damage” for purposes of insurance coverage under the Policy. As the drafter of the Policy, if Defendants had wished to exclude from coverage as “physical loss or damage” loss of use of

property that has not been physically altered or deformed, it could have used explicit language stating such a definition, but did not do so.

54. Plaintiff has sustained an actual loss of Business Income due to the necessary Suspension of its business operations based on the activities set forth above. For a period of time since March 24, 2020, Plaintiff's business was partially or totally suspended as a result of a covered Cause of Loss. Plaintiff was prohibited from allowing customers access to its premises as a result of these Civil Authority Orders between March 24, 2020 and May 3, 2020, and after that date was only permitted to be open for dine in operations at 50% capacity. It is still unable to resume normal business operations. In addition, access to premises other than Plaintiff's premises that are in the surrounding area of Plaintiff's premises were also prohibited as a result of the Civil Authority Actions, resulting in damage to those properties as well. And when Plaintiff was permitted to reopen, it could only do so if it made structural changes to the premises, which it did at a significant cost by, *inter alia*, the loss of use of space, installing plexi-glass barriers, making changes in business and employee hours to comply with the ordered sanitation requirements, and decreased business traffic, as set forth in further detail below.

55. Plaintiff has sustained a direct physical loss or damage to the covered premises, which were caused by a fortuitous event covered under the Policy that occurred during the Policy period. Since at least March 24, 2020, Plaintiff's business was partially or totally suspended as a result of a peril insured against under the Policy. Plaintiff was prohibited from allowing customers to access its premises for on-premises dining as a result of these Civil Authority Orders until at least May 4, 2020, and even now is unable to resume normal business operations and is experiencing a significant slowdown of its business operations. And when Plaintiff was permitted to reopen, it could only do so if it had made structural changes to the premises, which it did at

significant cost by, *inter alia*, removing tables to allow for appropriate social distancing and having to pay storage costs for those tables, as well as the loss of use of those tables, installing plexi-glass barriers, making changes in reduced business hours and employee hours to comply with the ordered sanitation requirements, and decreased customer traffic as a result of social distancing requirements. In addition, Plaintiff incurred expenses and losses such as the costs of reopening plans and increased costs associated therewith; remediation costs, either incurred as a result of having to engage in increased cleaning costs or shutting down entirely to avoid further spread and temporarily incapacitating the facility from operating; being considered untenable for a period of time in terms of being at least temporarily unfit for occupancy and use, resulting in a loss of its essential functionality or use of the premises; tangible property loss in terms of spoiled food that had to be discarded as a result of various Civil Authority shutdown orders or directives, and other increased costs or losses either resulting from or that are attributable to a Covered Cause of Loss. Thus, there has been a direct physical loss of and/or damage to the covered premises under the Policies by, among other things, denying access to the property, the loss of tangible physical property within the premises in terms of food or other supplies purchased by Plaintiff prior to the Civil Authority Actions that spoiled or had to be discarded; the loss of use of tangible physical property within the premises even if that property was not itself physically injured; the premises being deemed to be physically uninhabitable and untenable by customers and rendering the facility unfit for occupancy by virtue of the Civil Authority Actions and/or preventing customers from physically occupying the property; damage to the property; being forced to incur costs to make physical structural alterations to the premises; increased sanitizing costs and ongoing and increased payroll obligations; having the function of the premises to be nearly eliminated or destroyed and/or causing a decline in use and causing a Suspension of business operations on the

premises that could result in the diminution of value of the premises. These are all forms of damage or losses caused and incurred as a result of a Covered Cause of Loss to covered property. These forms of loss and damage are and/or have been found to constitute direct, tangible, physical losses or compensable increased costs attributable to such losses.

56. Additionally, Plaintiff's restaurant has suffered a Suspension of normal business operations in terms of a significant slowdown of business activities and a cessation of all restaurant in-dining operations on the premises until at least May 4, 2020, sustained losses of business income, and incurred extra expenses

57. Such slowdown or cessation was necessary due to, *inter alia*, the Civil Authority Actions that prohibited public access to the premises for reasons beyond Plaintiff's control. For at least four consecutive weeks, when the Civil Authority Actions have been in effect, Plaintiff's customers were prohibited from accessing the premises. This Suspension of operations was caused by fortuitous events and resulted in a covered Cause of Loss to the premises as set forth above.

58. Based on such facts, a reasonable person and Plaintiff's objective expectations would establish that, considering the context of the entirety of the Policy that is in the nature of an "all risk" policy that covers a litany of losses attributable to events beyond the control of the insureds, any such losses of money or income or increases in costs constitute "loss" or "damage" as those terms are used in the Policy even without any showing that the property itself experienced any form of alteration (which in Plaintiff's situations it did, as set forth above). Such damage or loss resulted from a Covered Cause of Loss. As these losses and damage are accidental, fortuitous, direct, physical, and arise out of or are related to a peril insured against, they are insurable losses covered under the Policy.

59. In compliance with the Civil Authority Actions, Plaintiff was unable to reopen for in dining service until May 4, 2020, and then was only able to reopen at 50% in dining capacity. Between May 4, 2020 and the date of this filing, Plaintiff has only been able to operate on a 50% dine in capacity and will not be able to open at a dine in capacity higher than 50% until Civil Authority Actions are relaxed. Plaintiff has not, at the time of the filing of this action, returned to normal business operations, and it is unlikely Plaintiff will be able to fully restore its operations in the near future to the condition that would have existed if no loss occurred and/or no Civil Authority Actions had been taken.

60. These losses and expenses have continued through the date of filing of this action.

61. These losses, damage and increased expenses are not excluded from coverage under the Policy. And because the Policy is an all-risk policy, and Plaintiff has complied with its contractual obligations, Plaintiff is entitled to payment for these losses and expenses.

62. Accordingly, on or about March 16, 2020, Plaintiff provided notice of a claim for its losses and expenses to Defendants, consistent with the terms and procedures of the Policy.

63. But contrary to the plain language of the Policy, and to Defendants' corresponding promises and contractual obligations, by letter dated March 20, 2020, which included a form denial and without having conducted any substantive investigation, Defendants refused to pay for Plaintiff's covered losses and expenses under the terms of the Policy.

64. This denial appears to be consistent with the position Defendants have taken with other similarly situated businesses nationwide.

CLASS ACTION ALLEGATIONS

65. The class claims all derive directly from a single course of conduct by Defendants: their systematic and uniform refusal to pay insureds for covered losses based on *inter alia* the

actions taken by civil authorities to suspend or curtail business operations, no matter the circumstance.

66. Plaintiff brings this action pursuant to Rules 23(a), 23(b)(1), 23(b)(2), and/or 23(b)(3), as well as 23(c)(4), of the Federal Rules of Civil Procedure, individually and on behalf of all others similarly situated. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

67. Plaintiff seeks to represent a class of persons and entities located in Tennessee and such other states as the Court may deem appropriate, defined as follows (collectively, the “Class” or “Classes”):

a) All persons and entities with Business Income coverage and/or Extended Business Income coverage under a property insurance policy issued or underwritten by Defendants that suffered a Suspension of business operations and for which Defendants have either actually denied or stated they will deny a claim for the losses or have otherwise failed to acknowledge, accept as a covered loss, or pay for the covered losses (“the Business Income Coverage Class”).

b) All persons and entities with Extra Expense coverage under a property insurance policy issued or underwritten by Defendants that suffered a Suspension of business operations and for which Defendants have either actually denied or stated they will deny a claim for the expenses or have otherwise failed to acknowledge, accept as a covered expense, or pay for the covered expenses (“the Extra Expense Coverage Class”).

c) All persons and entities with Civil Authority coverage under a property insurance policy issued or underwritten by Defendants that suffered an actual loss of Business Income and/or Extra Expense caused by an action of a civil authority that

prohibited full access to the premises, and for which Defendants have either actually denied or stated they will deny a claim for the losses or have otherwise failed to acknowledge, accept as a covered loss, or pay for the covered losses (“the Civil Authority Coverage Class”).

68. Excluded from each defined proposed Classes are Defendants and any of their members, affiliates, parents, subsidiaries, officers, directors, employees, successors, or assigns; governmental entities; Class Counsel and their employees; and the judicial officers and Court staff assigned to this case and their immediate family members.

69. Plaintiff reserves the right to modify, expand, or amend the definitions of the proposed Classes, as appropriate, during the course of this litigation.

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

Numerosity and Ascertainability

71. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(1). The members of each proposed Class are so numerous that individual joinder of all Class members is impracticable. There are, at a minimum, thousands of members of each proposed Class, and these individuals and entities are spread out across the State and the United States.

72. The identity of Class members is ascertainable, as the names and addresses of all Class members can be identified in Defendants’ or their agents’ 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.

Predominance of Common Issues

73. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(2) and 23(b)(3) because this action involves common questions of law and fact that predominate over any questions affecting only individual Class members. Defendants issued all-risk policies to all the members of each proposed Class in exchange for payment of premiums by the Class members. The questions of law and fact affecting all Class members include, without limitation, the following:

- a) Whether Plaintiff and the Class members suffered a covered loss under the policies issued to Plaintiff and members of the Class;
- b) Whether Defendants wrongfully denied all claims based on the facts set forth herein;
- c) Whether Defendants' Business Income coverage applies based on the facts set forth herein;
- d) Whether Defendants' Extra Expense coverage applies to a loss caused by the Suspension of business operations based on the facts set forth herein;
- e) Whether Defendants' Civil Authority coverage applies to a loss of Business Income based on the facts set forth herein;
- f) Whether Defendants have breached contracts of insurance through a uniform and blanket denial of all claims for business losses under the circumstances alleged herein;
- g) Whether Plaintiff and the Class members suffered loss or damage as a result of Defendants' actions; and

h) Whether Plaintiff and the Class members are entitled to an award of reasonable attorneys' fees, interest, and costs.

Typicality

74. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(3) because Plaintiff's claims are typical of the claims of the Class members and arise from the same course of conduct by Defendants. Plaintiff and the other Class members are all similarly affected by Defendants' refusal to pay under their property insurance policies. Plaintiff's claims are based upon the same legal theories as those of the other Class members. Plaintiff and the other Class members sustained losses and damages as a direct and proximate result of the same wrongful practices in which Defendants engaged. The relief Plaintiff seeks is typical of the relief sought for the absent Class members.

Adequacy of Representation

75. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(4) because Plaintiff will fairly and adequately represent and protect the interests of Class members. Plaintiff has retained counsel with substantial experience in prosecuting complex class action litigation.

76. Plaintiff and its counsel are committed to vigorously prosecuting this action on behalf of the Class members and have the financial resources to do so. Neither Plaintiff nor its counsel has interests adverse to or irreconcilably conflict with those of the Class members.

Inconsistent or Varying Adjudications and the Risk of Impediments to Other Class Members' Interests

77. This action satisfies the requirements of Fed. R. Civ. P. 23(b)(1). Plaintiff seeks class-wide adjudication as to the interpretation and scope of Defendants' property insurance policies that use the same language and terms as the Policy. The prosecution of separate actions

by individual members of the proposed Classes would create an imminent risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants.

Final Injunctive and/or Corresponding Declaratory Relief with respect to the Class is Appropriate

78. This action satisfies the requirements of Fed. R. Civ. P. 23(b)(2) because Defendants acted or refused to act on grounds generally applicable to Plaintiff and the members of the Classes, thereby making appropriate final injunctive and/or corresponding declaratory relief with respect to the Class members. The Class members' claims all derive directly from Defendants' systematic and uniform refusal to pay insureds for any losses suffered that they attribute are due to risk of infection of COVID-19 and/or actions taken by civil authorities to suspend or prohibit access to and occupancy of the business. Defendants' actions or refusal to act are grounded upon the same generally applicable legal theories. Plaintiff and Class Members are entitled to a declaration regarding their rights and obligations under such agreements, including whether Defendants are obligated to pay claims under the Policy and similar policies based on the facts and circumstances alleged above and the "all risk" nature of such insurance policies and whether the claims at issue constituted Covered Cause of Loss.

Superiority

79. To the extent applicable to certification of a Class under these circumstances, this action satisfies the requirements of Fed. R. Civ. P. 23(b)(3) because a class action is superior to other available methods for the fair and efficient group-wide adjudication of this controversy. The common questions of law and of fact regarding Defendants' conduct and the interpretation of the common language in their property insurance policies predominate over any questions affecting only individual Class members.

80. Because the damages suffered by certain individual Class members may be relatively small, the expense and burden of individual litigation would make it very difficult for all individual Class members to redress the wrongs done to each of them individually, such that many Class members would have little to no economic interest in individually controlling the prosecution of specific actions, and the burden imposed on the judicial system by individual litigation by even a small fraction of the Classes would be enormous, making class adjudication the superior alternative under Fed. R. Civ. P. 23(b)(3)(A).

81. The conduct of this action as a class action presents far fewer management difficulties, far better conserves judicial resources and the parties' resources, and far more effectively protects the rights of each Class member than would piecemeal litigation. Compared to the expense, burdens, inconsistencies, economic infeasibility, and inefficiencies of individualized litigation, the challenges of managing this action as a class action are substantially outweighed by the benefits to the legitimate interests of the parties, the Court, and the public of class treatment in this Court, making class adjudication superior to other alternatives, under Fed. R. Civ. P. 23(b)(3)(D).

82. Particularly as to the interpretation of the scope of the uniform provisions of the Policy set forth above, certification of the Classes may also be appropriate under Fed. R. Civ. P. 23(c)(4), which provides that "when appropriate, an action may be brought or maintained as a class action with respect to particular issues."

83. Plaintiff is not aware of any obstacles likely to be encountered in the management of this action that would preclude its maintenance as a class action. Rule 23 provides the Court with authority and flexibility to maximize the efficiencies and benefits of the class mechanism and reduce management challenges. The Court may, on motion of Plaintiff or on its own determination,

certify nationwide, statewide and/or multistate classes for claims sharing common legal questions; utilize the provisions of Rule 23(c)(4) to certify any particular claims, issues, or common questions of fact or law for class-wide adjudication; certify and adjudicate bellwether class claims; and utilize Rule 23(c)(5) to divide any portion of the Classes into subclasses that are each treated as a class.

CAUSES OF ACTION

COUNT I: DECLARATORY JUDGMENT

(On behalf of the Business Income Coverage Class)

84. Plaintiff incorporates by reference and realleges each and every allegation contained in paragraphs 1-83 above, as though fully set forth herein, but only as applicable to the Business Income Coverage Class.

85. Plaintiff brings this Count both individually and on behalf of the other members of the Business Income Coverage Class.

86. Under 28 U.S.C. §§ 2201 and 2202, this Court has jurisdiction to declare the rights and other legal relations of the parties in dispute.

87. Plaintiff's Policy, as well as the policies of other Business Income Coverage Class members, are insurance contracts under which Defendants were paid premiums in exchange for promises to pay Class members' losses for claims covered by the Policy and the policies of other Business Income Coverage Class members.

88. In the Policy, Defendants promised to pay for losses of business income sustained as a result of perils not excluded under the Policy. Specifically, Defendants promised to pay for losses of business income sustained as a result of a Suspension of business operations during the Period of Restoration.

89. Plaintiff and Business Income Coverage Class members suffered direct physical loss or damage to Plaintiff's insured premises and other Class members' insured premises,

resulting in interruptions or Suspensions of business operations at the premises. These Suspensions and interruptions have caused Plaintiff and Business Income Class members to suffer losses of business income.

90. These suspensions and interruptions, and the resulting losses, triggered business income coverage under the Policy and other Business Income Coverage Class members' policies.

91. Plaintiff and the other Class members have complied with all applicable provisions of their respective policies, including payment of premiums and/or those provisions has been waived by Defendants, or Defendants are estopped from asserting them.

92. Defendants, without justification, dispute that the Policy and other Business Income Coverage Class members' policies provide coverage for these losses. Defendants have abrogated their coverage obligations pursuant to the Policies' clear and unambiguous terms and have wrongfully and illegally refused to provide coverage to which Plaintiff and the other Business Income Coverage Class members are entitled.

93. Plaintiff seeks a Declaratory Judgment that its Policy and other Business Income Coverage Class members' policies provide coverage for the losses of business income attributable to the facts set forth above.

94. An actual case or controversy exists regarding Plaintiff's and other Business Income Coverage Class members' rights and Defendants' obligations to reimburse Plaintiff and other Business Income Coverage Class members for the full amount of these losses. Accordingly, the Declaratory Judgment sought is justiciable.

WHEREFORE, Plaintiff requests that this Court enter a Declaratory Judgment declaring that the Policy and other Class members' policies provide coverage for Class members' losses of business income as set forth above.

COUNT II: BREACH OF CONTRACT

(On behalf of the Business Income Coverage Class)

95. Plaintiff incorporates by reference and realleges each and every allegation contained in paragraphs 1-83 above, as though fully set forth herein, but only as applicable to the Business Income Coverage Class.

96. Plaintiff brings this Count both individually and on behalf of the other members of the Business Income Coverage Class.

97. Plaintiff's Policy, as well as the policies of other Business Income Coverage Class members, are insurance contracts under which Defendants were paid or received the benefits of premiums in exchange for promises to pay Class members' losses for claims covered by the Policy.

98. In the Policy, Defendants promised to pay for losses of business income incurred as a result of perils not excluded under the Policy. Specifically, Defendants promised to pay for losses of business income sustained as a result of a Suspension of business operations during the Period of Restoration.

99. Plaintiff and Business Income Coverage Class members have suffered a direct physical loss or damage to Plaintiff's insured premises and other Business Income Coverage Class members' insured premises as a result of interruptions or Suspensions of business operations at these premises. These interruptions and Suspensions have caused Business Income Coverage Class members to suffer losses of business income.

100. These losses triggered business income coverage under both the Policy and other Business Income Coverage Class members' policies.

101. Plaintiff and the other Business Income Coverage Class members have complied with all applicable provisions of their respective policies, including payment of premiums.

102. Defendants denied coverage and refused performance under the Policy and other Class members' policies by denying coverage for these losses and expenses. Accordingly, Defendants are in breach of the Policy and other Business Income Coverage Class members' policies and/or jointly and severally responsible therefor.

103. As a result of Defendants' breaches of the Policy and other Business Income Coverage Class members' policies, Plaintiff and other Class members have suffered actual and substantial damages for which Defendants are jointly and severally liable.

WHEREFORE, Plaintiff, both individually and on behalf of other Class members, seeks compensatory damages resulting from Defendants' breaches of the Policy and other Class Members' policies and seeks all other relief deemed appropriate by this Court.

COUNT III: DECLARATORY JUDGMENT

(On behalf of the Extra Expense Coverage Class)

104. Plaintiff incorporates by reference and realleges each and every allegation contained in paragraphs 1-83 above, as though fully set forth herein, but only as applicable to the Extra Expense Coverage Class.

105. Plaintiff brings this Count both individually and on behalf of the other members of the Extra Expense Coverage Class.

106. Under 28 U.S.C. §§ 2201 and 2202, this Court has jurisdiction to declare the rights and other legal relations of the parties in dispute.

107. Plaintiff's Policy, as well as the policies of other Extra Expense Coverage Class members, are insurance contracts under which Defendants were paid premiums in exchange for promises to pay Extra Expense Coverage Class members' losses for claims covered by the Policy and the policies of other Extra Expense Coverage Class members.

108. Specifically, Defendants promised to pay for Extra Expenses incurred by Plaintiff and other Extra Expense Coverage Class members during the Period of Restoration that the insureds would not have incurred if there had been no loss or damage to the insured premises. These Extra Expenses include expenses to avoid or minimize the Suspension of business, continue operations, and to repair or replace property.

109. Plaintiff and Extra Expense Coverage Class members suffered direct physical loss or damage to Plaintiff's restaurant and other Class members' insured premises, resulting in Suspensions or interruptions of business operations at these premises. As a result, Plaintiff and other Extra Expense Coverage Class members have incurred Extra Expenses, as defined in the Policy and other Extra Expense Coverage Class members' policies.

110. These Expenses triggered Extra Expense coverage under the Policy and other Extra Expense Coverage Class members' policies.

111. Plaintiff and the other Extra Expense Coverage Class members have complied with all applicable provisions of their respective policies, including payment of premiums.

112. Defendants, without justification, dispute that the Policy and other Extra Expense Coverage Class members' policies provide coverage for these Extra Expenses.

113. Plaintiff, both individually and on behalf of the other members of the Extra Expense Coverage Class, seeks a Declaratory Judgment that its Policy, and those of other members of the Extra Expense Coverage Class, provides coverage for these Extra Expenses.

114. An actual case or controversy exists regarding Extra Expense Coverage Class members' rights and Defendants' obligations under Extra Expense Coverage Class members' policies to reimburse Class members for these Extra Expenses. Accordingly, the Declaratory Judgment sought is justiciable.

WHEREFORE, Plaintiff requests that this Court enter a Declaratory Judgment declaring that the Policy and other Extra Expense Coverage Class members' policies provide coverage for Class members' Extra Expenses.

COUNT IV: BREACH OF CONTRACT

(On behalf of the Extra Expense Coverage Class)

115. Plaintiff incorporates by reference and realleges each and every allegation contained in paragraphs 1-83 above, as though fully set forth herein, but only as applicable to the Extra Expense Coverage Class.

116. Plaintiff brings this Count individually and on behalf of the other members of the Extra Expense Coverage Class.

117. Plaintiff's Policy, as well as the policies of other Extra Expense Coverage Class members, are insurance contracts under which Defendants directly or indirectly were paid premiums in exchange for promises to pay Extra Expense Coverage Class members' losses for claims covered by the Policy.

118. Specifically, Defendants promised to pay for Extra Expenses incurred by Plaintiff and other Extra Expense Coverage Class members during the Period of Restoration that the insureds would not have incurred if there had been no loss or damage to the insured premises. These Extra Expenses include expenses to avoid or minimize the Suspension of business, continue operations, and/or to repair replace property.

119. Plaintiff and Extra Expense Coverage Class members suffered direct physical loss or damage to the Plaintiff's restaurant and other Extra Expense Coverage Class members' insured premises, resulting in Suspensions and interruptions of business operations at these premises.

These Suspensions and interruptions have caused Extra Expense Coverage Class members to incur Extra Expenses.

120. These Expenses triggered Extra Expense coverage under the Policy and other Extra Expense Coverage Class members' policies.

121. Plaintiff and the other Extra Expense Coverage Class members have complied with all applicable provisions of the Policy, including payment of premiums.

122. Defendants denied coverage and refused performance under the Policy and other Extra Expense Coverage Class members' policies by denying coverage for these Extra Expenses. Accordingly, Defendants are in breach of the Policy and other Extra Expense Coverage Class members' policies.

123. As a result of Defendants' breaches of the Policy and other Extra Expense Coverage Class members' policies, Plaintiff and other Extra Expense Coverage Class members have suffered actual and substantial damages for which Defendants are jointly and severally liable.

WHEREFORE, Plaintiff, individually and on behalf of other Extra Expense Coverage Class members, seeks compensatory damages resulting from Defendants' breaches of the Policy and other Extra Expense Coverage Class Members' policies and seeks all other relief deemed appropriate by this Court.

COUNT V: DECLARATORY JUDGMENT

(On behalf of the Civil Authority Coverage Class)

124. Plaintiff incorporates by reference and realleges each and every allegation contained in paragraphs 1-83 above, as though fully set forth herein, but only as applicable to the Civil Authority Coverage Class.

125. Plaintiff brings this Count both individually and on behalf of the other members of the Civil Authority Coverage Class.

126. Under 28 U.S.C. §§ 2201 and 2202, this Court has jurisdiction to declare the rights and other legal relations of the parties in dispute.

127. Plaintiff's Policy, as well as the policies of other Civil Authority Coverage Class members, are insurance contracts under which Defendants directly or indirectly were paid premiums in exchange for promises to pay Civil Authority Coverage Class members' losses for claims covered by the policies.

128. In the Policy and other Class members' policies, Defendants promised to pay for losses of business income sustained and extra expenses incurred when, *inter alia*, full access to an insured's premises is specifically prohibited by Civil Authority Actions as the result of a Covered Cause of Loss and the Civil Authority Actions are taken in response to dangerous physical conditions.

129. Plaintiff and other Civil Authority Coverage Class members have suffered losses or damage and incurred expenses as a result of actions of civil authorities that prohibited full access to insured premises under the Policy and Civil Authority Coverage Class members' policies.

130. These losses satisfied all requirements to trigger Civil Authority coverage under the Policy and other Civil Authority Coverage Class members' policies.

131. Plaintiff and the other Civil Authority Coverage Class members have complied with all applicable provisions of the Policy, including payment of premiums.

132. Defendants, without justification, dispute that the Policy provides coverage for these losses.

133. Plaintiff seeks a Declaratory Judgment that its Policy and other Class members' policies provide coverage for the losses that Civil Authority Coverage Class members have sustained and extra expenses they have incurred caused by actions of civil authorities.

134. An actual case or controversy exists regarding Civil Authority Coverage Class members' rights and Defendants' obligations under Civil Authority Coverage Class members' policies to reimburse Class members for these losses and extra expenses. Accordingly, the Declaratory Judgment sought is justiciable.

WHEREFORE, Plaintiff, both individually and on behalf of other Civil Authority Coverage Class members, requests that this Court enter a Declaratory Judgment declaring that the Policy provides Civil Authority coverage for the losses and extra expenses incurred by Plaintiff and the other Class members.

COUNT VI: BREACH OF CONTRACT

(On behalf of the Civil Authority Coverage Class)

135. Plaintiff incorporates by reference and realleges each and every allegation contained in paragraphs 1-83 above, as though fully set forth herein, but only as applicable to the Civil Authority Coverage Class.

136. Plaintiff brings this Count individually and on behalf of the other members of the Civil Authority Coverage Class.

137. Plaintiff's Policy, as well as the policies of other Civil Authority Coverage Class members, are insurance contracts under which Defendants directly or indirectly were paid premiums in exchange for promises to pay Civil Authority Coverage Class members' losses and expenses covered by the Policy.

138. In the Policy and other Civil Authority Coverage Class members' policies, Defendants promised to pay for losses of business income sustained and extra expenses incurred when, *inter alia*, access to an insured's premises is specifically prohibited by a Civil Authority Actions as the result of a Covered Cause of Loss, the civil authority prohibits full access to the premises and property next to or close to the insured premises, and the civil authority action is taken in response to dangerous physical conditions. The Civil Authority Actions satisfy all the requirements of this coverage.

139. Plaintiff and other Class members have suffered losses or damage and incurred expenses as a result of actions of civil authorities that prohibited full public access to insured premises under the Policy and Civil Authority Coverage Class members' policies.

140. These losses satisfied all requirements to trigger Civil Authority coverage under the Policy and other Civil Authority Coverage Class members' policies.

141. Plaintiff and the other Civil Authority Coverage Class members have complied with all applicable provisions of the Policy, including payment of premiums.

142. Defendants refused performance under the Policy and other Civil Authority Coverage Class members' policies by denying coverage for these losses and expenses. Accordingly, Defendants are in breach of the Policy and other Civil Authority Coverage Class members' policies.

143. As a result of Defendants' breaches of the Policy and other Civil Authority Coverage Class members' policies, Plaintiff and other Civil Authority Coverage Class members have suffered actual and substantial damages for which Defendants are jointly and severally liable.

WHEREFORE, Plaintiff, individually and on behalf of other Civil Authority Coverage Class members, seeks compensatory damages resulting from Defendants' breaches of the Policy

and other Civil Authority Coverage Class members' policies and seeks all other relief deemed appropriate by this Court.

COUNT VII: BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

(On behalf of All Classes)

144. Plaintiff incorporates by reference and realleges each and every allegation contained in paragraphs 1-83 above, as though fully set forth herein and as applicable to all Classes.

145. The agreements described in this Complaint constitute enforceable contracts under applicable state law.

146. There is implied in every contract a duty of good faith and fair dealing in its performance and enforcement.

147. The specific requirements of this duty depend upon the contract, with courts imposing a construction that is fair and reasonable under the circumstances.

148. At a minimum, this duty requires Defendants to perform under the insurance contracts with Plaintiff and Class Members in a manner consistent with state and federal law and to protect the interests of Plaintiff and Class Members in having the promises required by the agreements and applicable law performed and by ensuring companies do not engage in unfair dealing.

149. Defendants, either separately or by acting in concert with third parties, breached this duty of good faith and fair dealing owed to Plaintiff and Class Members, and in undertaking such actions frustrated or denied them the benefits of their original bargain.

150. Defendants also breached this duty of good faith and fair dealing owed to Plaintiff and Class Members by failing to properly investigate their claims and by other acts or omissions of which Plaintiff is presently unaware and that will be shown according to proof at trial.

151. As a proximate result of the conscious and objectively unreasonable conduct of Defendants as set forth above, which conduct was either intended, designed to or did frustrate the rights of Plaintiff and Class Members arising out of such agreements and their reasonably justified expectations based upon the requirements of the law, Plaintiff and Class Members have suffered and/or will continue to suffer in the future damages plus interest, and other economic and consequential damages, in an amount to be proven at trial. As a further proximate result of the conduct of Defendants, Plaintiff was compelled to retain legal counsel and to institute litigation to obtain the benefits of these agreements and covenants for the benefit of themselves and all other Class Members.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its favor and against Defendants, jointly and severally, as follows:

- A. Entering an order certifying the proposed Classes, designating Plaintiff as Class representative, and appointing Plaintiff's undersigned attorneys as Counsel for the Classes;
- B. Entering declaratory judgments on Counts I, III, and V in favor of Plaintiff and the members of the Business Income Coverage Class, the Extra Expense Coverage Class and the Civil Authority Coverage Class as follows:
 - i. That all Business Income, Extra Expense and Civil Authority losses and expenses incurred and sustained based on the facts and circumstances set forth above are insured and covered losses and expenses under Plaintiff's and Class members' policies; and

- ii. Defendants, jointly and severally, are obligated to pay for the full amount of the Business Income, Extra Expense and Civil Authority losses and expenses sustained and incurred, and to be sustained and incurred, based on the facts and circumstances set forth above as insured and covered losses and expenses under Plaintiff and Class members' policies;
- C. Entering judgments on counts II, IV, VI and VII in favor of Plaintiff and the members of the Business Income Coverage Class, the Extra Expense Coverage Class and the Civil Authority Coverage Class, and awarding damages in amounts to be determined at trial, as applicable;
- D. An order requiring Defendants to pay both pre- and post-judgment interest on any amounts awarded;
- E. An award of costs and attorneys' fees; and
- F. Such other or further relief as may be appropriate.

DEMAND FOR JURY TRIAL

The undersigned hereby demands a trial by jury as to all issues so triable.

Dated: August 17, 2020

/s/ J. Luke Sanderson
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* Motion for Admission *Pro Hac Vice* to be promptly filed.