

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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FARM FAMILY CASUALTY INSURANCE CO.,

Plaintiff,

VERIFIED COMPLAINT

Index No: _____

-against-

430 MONTCLAIR AVE, LLC. and 212 ORANGE AVE
ASSOC., LLC., GRASSKEEPERS LANDSCAPING,
INC., GRASSKEEPERS LANDSCAPING AND
CONSTRUCTION, INC., TURCO RENOVATIONS,
INC. and TURCO GOLF INC.

Defendants.

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The Plaintiff, FARM FAMILY CASUALTY INSURANCE CO., by SHAFER
PARTNERS, LLP, complaining of the defendants, respectfully alleges upon information and
belief as follows:

COMPLAINT FOR DECLARATORY JUDGMENT

1. This is a complaint for declaratory judgment pursuant to CPLR § 3001. Plaintiff Farm Family Casualty Insurance Co., seeks this Courts determination concerning the scope and nature of its obligations, if any, under certain liability insurance policies it issued to Defendants 430 Montclair Ave, LLC. and 212 Orange Ave Assoc. LLC., respectively.
2. That named as additional insureds on the 430 Montclair Policy are: Grasskeepers Landscaping Inc.; Grasskeepers Landscaping & Const. Inc.; Turco Renovations Inc.; Turco Golf Inc.; and 212 Orange Ave Assoc. LLC. (hereinafter “430 Montclair Insureds.”)

3. That named as additional insureds on the 212 Orange Ave policy is Grasskeepers Landscaping Inc. (hereinafter “212 Orange Ave Insureds.”)
4. That at all times hereinafter mentioned the plaintiff, Farm Family Casualty Insurance Co. was and is a corporation organized and existing under the laws of New York and having its principle place of business in New York.
5. Defendant, 430 Montclair Ave, LLC. is organized and exists under the laws of the State of New Jersey, having a place of business in the State of New York, and engaging in business within the State of New York.
6. Defendant, 430 Montclair Ave, LLC. Maintains a place of business at 212 Orange Ave, Suffern, NY 10901.
7. Defendant, 212 Orange Ave Assoc., LLC., is organized and exists under the laws of the State of New York, having its principle place of business in the State of New York, and engaging in business within the State of New York.
8. Defendant, Grasskeepers Landscaping Inc. is organized and exists under the laws of the State of New York, having its principle place of business in the State of New York, and engaging in business within the State of New York.
9. Defendant, Grasskeepers Landscaping & Const. Inc. is organized and exists under the laws of the State of New York, having its principle place of business in the State of New York, and engaging in business within the State of New York.
10. Defendant, Turco Renovations Inc. is organized and exists under the laws of the State of New York, having its principle place of business in the State of New York, and engaging in business within the State of New York.

11. Defendant, Turco Golf Inc. is organized and exists under the laws of the State of New York, having its principle place of business in the State of New York, and engaging in business within the State of New York.
12. It is widely recognized in insurance claims involving policies like the ones at issue herein that the loss needs to be “physical,” given the ordinary meaning of the term.
13. It is widely recognized in insurance claims involving policies like the ones at issue herein that “physical” is recognized to exclude alleged losses that are intangible or incorporeal and result from solely a detrimental economic impact without a distinct, demonstrable, physical alteration of the property.
14. It is widely recognized in insurance claims involving policies like the ones at issue herein that the loss needs to be fortuitous.

SUBJECT MATTER JURISDICTION

15. There now exists between Plaintiff Farm Family, Defendants 430 Montclair Insureds and Defendant 212 Orange Ave Insureds an actual, justiciable controversy with respect to: (1) the extent, if any, to which Plaintiff Farm Family provided insurance coverage under its policies for certain Business Income claims made by Defendants 430 Montclair Insureds and Defendants 212 Orange Ave Insureds; (2) the terms and conditions of any such coverage including, but not limited to, the extent of Plaintiff Farm Family’s obligation to pay sums in connection with the Business Income claims made by Defendants 430 Montclair Insureds and Defendants 212 Orange Ave Insureds; and (3) Defendants 430 Montclair Insureds and Defendants 212 Orange Ave Insureds. Therefore, Plaintiff

Farm Family is now entitled to have a determination of its rights and obligations and judicial interpretation of the rights and obligations of Defendants 430 Montclair Insureds and Defendants 212 Orange Ave Insureds.

PERSONAL JURISDICTION

16. This Court has jurisdiction over defendant 430 Montclair Ave, LLC., because 430 Montclair Ave, LLC., has a place of business in the State of New York and engages in business within the State of New York.
17. This Court has jurisdiction over defendant 212 Orange Ave Assoc., LLC, because 212 Orange Ave Assoc., LLC is organized and exists under the laws of the State of New York, having its principle place of business in the State of New York, and engaging in business within the State of New York.
18. This Court has jurisdiction over defendant Grasskeepers Landscaping, Inc. is organized and exists under the laws of the State of New York, having its principle place of business in the State of New York, and engaging in business within the State of New York.
19. This Court has jurisdiction over defendant Grasskeepers Landscaping & Const. Inc. is organized and exists under the laws of the State of New York, having its principle place of business in the State of New York, and engaging in business within the State of New York.
20. This Court has jurisdiction over defendant Turco Renovations Inc. is organized and exists under the laws of the State of New York, having its principle place of business in the State of New York, and engaging in business within the State of New York.

21. This Court has jurisdiction over defendant Turco Golf Inc. is organized and exists under the laws of the State of New York, having its principle place of business in the State of New York, and engaging in business within the State of New York.

FACTUAL BACKGROUND

A. Underlying Claimed Loss

22. Sometime between December of 2019 and March of 2020 a novel virus named SARS-COVID-19 (“COVID 19”) began to spread across the United States causing harm, illness, or sickness to natural persons.
23. A crisis struck in March 2020, when the novel coronavirus spread across the globe, causing governments – including the State of New Jersey – to take dramatic action.
24. There were multiple state mandated orders or directives issued after March of 2020 respecting industry specific requirements and “social distancing” that were due to the spread of COVID 19.
25. In New York these limitations started on March 12, 2020 under NY Executive Order 202.1-6 and resulted in a total closure or limited closure of all “non-essential” businesses, including but not limited to: bars, restaurants, retail establishments, movie theaters and other places of public amusement on March 19, 2020.
26. In New Jersey these limitations started on March 10, 2020 under NJ EO-104 and affected “non-essential” businesses.
27. Covid-19 is cited as the reason for closures in all executive orders issued by both New York and New Jersey that limited the operations of certain businesses.

28. Governor Murphy issued Executive Orders requiring nonessential businesses to close and ordering residents to stay home.
29. Defendants closed their businesses in compliance with Governor Murphy's orders.
30. Defendants 430 Montclair Ave Insureds and Defendants 212 Orange Ave Insureds claim losses due to social distancing, industry specific requirements, and orders or directives respecting these subjects due to the spread of COVID 19.

B. Policy Information

31. That at all times hereinafter mentioned, Plaintiff Farm Family Insurance Co. ("Farm Family") issued a Commercial Insurance Policy, Policy Number 2901X3757, covering defendant 430 Montclair Insureds for the policy period of September 8, 2019 through September 8, 2020 (hereinafter "430 Montclair Policy").
32. That at all times hereinafter mentioned, the 430 Montclair Policy contained coverage for Business Income losses under specified circumstances.
33. That at all times hereinafter mentioned, Plaintiff Farm Family issued a Select Business Package Insurance Policy, Policy No. 3101X7302, covering Defendant 212 Orange as named insured for the policy period of May 1, 2019 through May 1, 2020 (hereinafter "212 Orange Ave Policy").
34. That at all times hereinafter mentioned, the 212 Orange Ave. Policy contained coverage for Business Income losses under specified circumstances.

C. Determination of Coverage

35. By electronic mail dated April 29, 2020, Defendants 430 Montclair Insureds informed Farm Family of potential losses sustained by their respective businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects. Said social distancing, industry specific requirements, and orders respecting these subjects were due to COVID 19.
36. By electronic mail dated April 29, 2020, Defendants 212 Orange Insureds informed Farm Family of potential losses sustained by their business, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects. Said social distancing, industry specific requirements, and orders respecting these subjects were due to COVID 19.
37. By letter dated May 18, 2020 Plaintiff Farm Family responded to the letter from 430 Montclair Insureds by letter determining that no coverage existed for their claim. Plaintiff Farm Family based this determination on the fact that the claims by the 430 Montclair Insureds for Business Income, Civil Authority Coverage, and Extended Business Income coverage:
- a. did not fall within the term “direct physical loss of or damage to property” contained in the 413 Montclair Policy;
 - b. fell within the term “unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located” in the 413 Montclair Policy;
 - c. fell within the “Exclusion of Loss Due to Virus” additional endorsement in the 413 Montclair Policy;

- d. fell within the “Ordinance or Law” exclusion contained within the
“Causes of Loss- Special Form” additional endorsement in the 413
Montclair Policy;
- 38. By letter dated May 18, 2020, Plaintiff Farm Family responded to the April 29,
2020 letter from 212 Orange Ave Insureds by letter determining that no coverage
existed for their claim.
- 39. Plaintiff Farm Family based this determination on the fact the claims made by the
212 Orange Ave Insureds for Business Income coverage:
 - a. did not fall within the term “direct physical loss of or damage to property”
contained in the 413 Montclair Policy;
 - b. fell within the term “unfavorable business conditions caused by the impact
of the Covered Cause of Loss in the area where the described premises are
located” for Extended Business income in the 212 Orange Ave Policy;
 - c. fell within the “Ordinance or Law” exclusion contained within the
“Causes of Loss- Special Form” additional endorsement in the 212 Orange
Ave Policy;
 - d. fell within the “Exclusion of Loss Due to Virus” additional endorsement
in the 212 Orange Ave;
 - e. did not fall within the definition of “direct physical loss of or damage”
within the 212 Orange Ave Policy;
 - f. fell within the term “unfavorable business conditions caused by the impact
of the Covered Cause of Loss in the area where the described premises are

located” for Extended Business Income within the 212 Orange Ave Policy.

- g. fell within the “Ordinance or Law”, “Virus or Bacteria”, “Consequential Losses”, and/or “Acts or Decisions” exclusions within the 212 Orange Ave Policy;
- h. fell within the amendment to the “Business Income and Extra Expense Exclusions” within the “New York- Additional Provisions and Exclusions” additional endorsement in the 212 Orange Ave Policy;
- i. and fell within the “New York- Exclusion of Loss Due to Virus or Bacteria” additional endorsement in the 212 Orange Ave Policy.

- 40. By letter dated September 18, 2020, Defendant 430 Montclair Insureds and Defendant 212 Orange Insureds via counsel disputed their respective determinations and requested Plaintiff Farm Family withdraw its prior denial of coverage and accept coverage for these Claims under the 430 Montclair Policy and the 212 Orange Policy.
- 41. On or about October 26, 2020, Plaintiff Farm Family sent Defendant 430 Montclair Insureds and Defendant 212 Orange Ave. Insureds Supplemental Determination letters determining coverage under the 430 Montclair Policy and the 212 Orange Ave. Policy. These letters reiterated the grounds for the determination as set forth in paragraphs 16 and 17 of this complaint.
- 42. Upon information and belief, Defendants 430 Montclair Insureds and Defendant 212 Orange Ave Insureds have continued to assert Plaintiff Farm Family is obligated to cover their financial losses due to the closing of their businesses.

**AS AND FOR THE FIRST CAUSE OF ACTION AGAINST THE 430
MONTCLAIR AVE DEFENDANTS**

43. The allegations contained in paragraphs 1 through 42 of this complaint are incorporated and realleged as if fully set forth herein.

44. That the 430 Montclair Policy contains an insuring agreement as follows:

“ A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Causes of Loss.”

45. That the 430 Montclair Policy defines “Covered Cause of Loss” in the “Cause of Loss- Special Coverage Form” pursuant to the following operative terms:

CAUSES OF LOSS - SPECIAL FORM

A. Covered Causes Of Loss

When Special is shown in the Declarations, Covered Causes of Loss means Risks Of Direct Physical Loss unless the loss is:

1. Excluded in Section B. , Exclusions

46. That the 430 Montclair Policy provides Business Income Coverage within the Business Income (Extra Expense) Coverage Form” pursuant to the following operative terms:

“BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM....

A. Coverage

1.Bussiness Income

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.

For manufacturing risks, Net Income Includes the net sales value of production.....

We will pay for the actual loss of Business Income you sustain due to a necessary ‘suspension’ of your ‘operations’ during the ‘period of restoration’.

The ‘suspension’ must be caused by direct physical loss of or damage to property at the premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations.

The loss or damage must be caused by or result from a Covered Cause of Loss...”

47. That 430 Montclair Policy provides Civil Authority coverage as an additional coverage within the “Business Income (Extra Expense) Coverage Form” pursuant to the following operative terms:

5. Additional Coverages

a. Civil Authority

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 due to direct physical loss of or damage to property, other than at the described premises, caused by or resulting from any Covered Cause of Loss.

The coverage for Business Income will begin 72 hours after the time of that action and will apply for a period of up to three consecutive weeks after coverage begins. The coverage for Extra Expense will begin immediately after the time of that action and will end:

- (1) 3 consecutive weeks after the time of that action; or
 - (2) When your Business Income coverage ends;
- whichever is later.

48. That potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, such as claimed by the 430 Montclair Defendants do not fall within the scope of the term “direct physical loss of or damage to property”, are not caused by a “Covered Cause of Loss”, and are not afforded coverage for Business Income, or additional coverage for Civil Authority or Extended Business Income contained in the foregoing operative terms.

WHEREFORE, Plaintiff Farm Family requests a declaration by this Court that the claims made by the 430 Montclair Defendants for potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, do not fall within the scope of the term “direct physical loss of or damage to property”, are not caused by a “Covered Cause of Loss”, and are not afforded coverage for Business Income, or additional coverage for Civil Authority or Extended Business Income, and therefore, Plaintiff Farm Family does not have an obligation to pay for claims of potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, under the 430 Montclair Policy.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST THE 430
MONTCLAIR AVE DEFENDANTS**

49. The plaintiff, Farm Family, repeats, reiterates and realleges each and every allegation set forth in the paragraphs numbered "1" through "42", inclusive, with the same force and effect as if set forth herein at length.
50. That the 430 Montclair Policy provides Extended Business Income coverage as an additional coverage within the “Business Income (And Extra Expense) Coverage Form” pursuant to the following operative terms:

c. Extended Business Income

(1) Business Income Other Than "Rental Value"

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) 30 consecutive days after the date determined in (i)(a) above.

However, Extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

(2) "Rental Value"

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

(a) Begins on the date property is actually repaired, rebuilt or replaced and tenantability is restored; and

(b) Ends on the earlier of:

(i) The date you could restore tenant occupancy, with reasonable speed, to the level which would generate the "Rental Value" that would have existed if no direct physical loss or damage had occurred; or

(ii) 30 consecutive days after the date determined in (2)(a) above.

However, Extended Business Income does not apply to loss of "Rental Value" incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located. Loss of "Rental Value" must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

51. That potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, such as claimed by the 430 Montclair Defendants fall within the scope of the term "loss....incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss" contained in the foregoing operative terms referenced above.

WHEREFORE, Plaintiff Farm Family requests a declaration by this Court that the claims made by the 430 Montclair Defendants for potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, fall within the term "loss....incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss" contained in the 430 Montclair Policy, and therefore, Plaintiff Farm Family does not have an obligation to pay for potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19.

AS AND FOR A THIRD CAUSE OF ACTION AGAINST THE 430 MONTCLAIR AVE
DEFENDANTS

52. The Plaintiff, Farm Family, repeats, reiterates and realleges each and every allegation contained in the paragraphs numbered "1" through "42", inclusive, with the same force and effect as if set forth herein at length.
53. That the 430 Montclair Policy limits the coverage provided via the inclusion of an "Ordinance or Law" exclusion within the "Causes of Loss- Special Form". The operative terms of the foregoing exclusion are provided below:

B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following.

Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

a. Ordinance Or Law

The enforcement of any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance Or Law, applies whether the loss results from:

- (1) An ordinance or law that is enforced even if the property has not been damaged; or
- (2) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.

54. That potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, such as claimed by the 430 Montclair Defendants, fall within the scope of the above "Ordinance Or Law" exclusion provided above and are thus excluded from the coverage provided under the 430 Montclair policy.

WHEREFORE, Plaintiff Farm Family requests a declaration by this Court that the claims made by the 430 Montclair Defendants for potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, are excluded from coverage by operation of the “Ordinance Or Law” exclusion contained in the 430 Montclair Policy, and therefore, Plaintiff Farm Family does not have an obligation to pay for potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19.

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST THE 430
MONTCLAIR AVE DEFENDANTS**

55. The plaintiff, Farm Family repeats, reiterates and realleges each and every allegation contained in the paragraphs "1" through "42", inclusive, with the same force and effect as if set forth herein at length.
56. That the 430 Montclair Policy limits the coverage provided via the inclusion of an of the following exclusion within the “Causes of Loss- Special Form”:
2. We will not pay for loss or damage caused by or resulting from any of the following:
- b. Delay, loss of use or loss of market.
57. That the potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, such as claimed by the 430 Montclair Defendants, fall

within the scope of the above exclusion provided above and are thus excluded from the coverage provided under the 430 Montclair policy.

WHEREFORE, Plaintiff Farm Family requests a declaration by this Court that the claims made by the 430 Montclair Defendants for potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, are excluded from coverage by operation of the “delay, loss of use or loss of market” exclusion contained in the 430 Montclair Policy, and therefore, Plaintiff Farm Family does not have an obligation to pay for potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19.

**AS AND FOR A FIFTH CAUSE OF ACTION AGAINST THE 430 MONTCLAIR
AVE DEFENDANTS**

58. The plaintiff, Farm Family repeats, reiterates and realleges each and every allegation contained in paragraphs “1” through “42” as set forth fully at length herein.
59. That the 430 Montclair Policy limits the coverage provided via the inclusion of an of the following exclusion within the “Causes of Loss- Special Form”:
- 3.** We will not pay for loss or damage caused by or resulting from any of the following, **3.a.** through **3.c.** But if an excluded cause of loss that is listed in **3.a.** through **3.c.** results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.
 - b.** Acts or decisions, including the failure to act or decide, of any person, group, organization

or governmental body.

60. That the potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, such as claimed by the 430 Montclair Defendants, fall within the scope of the above “acts or decisions” exclusion and are thus excluded from the coverage provided under the 430 Montclair policy.

WHEREFORE, Plaintiff Farm Family requests a declaration by this Court that the claims made by the 430 Montclair Defendants for potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, are excluded from coverage by operation of the “acts or decisions” exclusion contained in the 430 Montclair Policy, and therefore, Plaintiff Farm Family does not have an obligation to pay for potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19.

**AS AND FOR THE SIXTH CAUSE OF ACTION AGAINST THE 430
MONTCLAIR AVE DEFENDANTS**

61. The plaintiff, Farm Family repeats, reiterates and realleges each and every allegation contained in paragraphs “1” through “42” as set forth fully at length herein
62. That the 430 Montclair Policy limits the coverage provided via the inclusion of the “Exclusion of Loss Due to Virus or Bacteria” additional endorsement. The

operative language of the foregoing additional endorsement is provided as follows:

EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA

A. The exclusion set forth in Paragraph **B.** applies to all coverage under all forms and endorsements that comprise this Coverage Part, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority.

B. We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.

However, this exclusion does not apply to loss or damage caused by or resulting from "fungus", wet rot or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy

63. That potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, such as claimed by the 430 Montclair Defendants, fall within the scope of the above "Exclusion of Loss Due to Virus or Bacteria" additional endorsement as provided above and are thus excluded from the coverage provided under the 430 Montclair policy.

WHEREFORE, Plaintiff Farm Family requests a declaration by this Court that the claims made by the 430 Montclair Defendants for potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, are excluded from coverage by

operation of the “Exclusion of Loss Due to Virus or Bacteria” additional endorsement contained in the 430 Montclair Policy, and therefore, Plaintiff Farm Family does not have an obligation to pay for potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19.

**AS AND FOR THE SEVENTH CAUSE OF ACTION AGAINST THE 212
ORANGE AVE DEFENDANTS**

64. The Plaintiff, Farm Family, repeats, reiterates and realleges each and every allegation contained in the paragraphs numbered "1" through "42", inclusive, with the same force and effect as if set forth herein at length.
65. That the 212 Orange Policy contains an insuring agreement as follows:

SECTION I - PROPERTY

A. Coverage

We will pay for direct physical loss of or damage to
Covered Property at the premises described in the
Declarations caused by or resulting from any
Covered Cause of Loss.

66. That “Covered Cause of Loss” is defined pursuant to the following definition:

SECTION I- PROPERTY

3.Covered Causes of Loss

Direct physical loss unless the loss excluded of limited Under Section I-
Property.

67. That additional coverage for Business Income is provided pursuant to following definition:

SECTION I-PROPERTY

5. Additional Coverages

f. Business Income

(1) Business Income

(a) We will pay for the actual loss of
Business Income you sustain due to

the necessary suspension of your "operations" during the "period of restoration". The suspension must be caused by direct physical loss of or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of such premises.

68. That additional coverages are provided for actions of Civil Authority within the

212 Orange Policy pursuant to the following operative terms:

SECTION I-PROPERTY

5. Additional Coverages

i. Civil Authority

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 necessary 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.

The definitions of Business Income and Extra Expense contained in the Business Income and Extra Expense Additional Coverages also apply to this Civil Authority Additional Coverage. The Civil Authority Additional Coverage is not subject to the Limits of Insurance of Section I -Property.

69. That potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, such as claimed by the 212 Orange Ave Defendants, do not fall within the scope of the term “direct physical loss of or damage to property”, are not a “Covered Cause of Loss”, and are not entitled to additional coverage for Business Income and Civil Authority contained in the foregoing operative terms and definitions referenced above.

WHEREFORE, Plaintiff Farm Family requests a declaration by this Court that the claims made by the 212 Orange Ave Defendants for potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief

were a result of or caused by the spread of COVID 19, do not fall within the scope of the term “direct physical loss of or damage to property”, are not a “Covered Cause of Loss”, and are not entitled to additional coverage for “Business Income” and “Civil Authority” contained in the 212 Orange Policy, and therefore, Plaintiff Farm Family does not have an obligation to pay for claims of potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19.

**AS AND FOR THE EIGHTH CAUSE OF ACTION AGAINST THE 212 ORANGE
AVE DEFENDANTS**

70. The Plaintiff, Farm Family, repeats, reiterates and realleges each and every allegation contained in the paragraphs numbered "1" through "42", inclusive, with the same force and effect as if set forth herein at length.
71. That additional coverage is provided for Extended Business Income under the 212 Orange Policy pursuant to the following operative terms:

(2) Extended Business Income

(a) 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:

(i) Begins on the date property except finished stock is actually repaired, rebuilt or replaced and "operations" are resumed; and

(ii) 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 Paragraph (a)(i) above, unless a greater number of consecutive days is shown in the Declarations.

However, Extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

(b) Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

(3) With respect to the coverage provided in this Additional Coverage, suspension means:

(a) The partial slowdown or complete cessation of your business activities; or

(b) That a part or all of the described premises is rendered untenable, if coverage for Business Income applies.

72. That the potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, such as claimed by the 212 Orange Ave Defendants, fall within the scope of the term “loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located” contained in the foregoing operative terms referenced above.

73. That the potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, such as claimed by the 212 Orange Ave Defendants, do not fall within the scope of the term “direct physical loss of or damage to property”, and were not caused by a “Covered Cause of Loss” contained in the foregoing operative terms referenced above.

WHEREFORE, Plaintiff Farm Family requests a declaration by this Court that the claims made by the 212 Orange Ave Defendants for potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, falls within the term “loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises is located” contained in the 212 Orange Policy, and does not fall within “direct physical loss of or damage to property”, and therefore, Plaintiff Farm Family does not have an obligation to pay additional coverage for potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19.

**AS AND FOR THE NINTH CAUSE OF ACTION AGAINST THE 212 ORANGE
AVE DEFENDANTS**

74. The Plaintiff, Farm Family, repeats, reiterates and realleges each and every allegation contained in the paragraphs numbered "1" through "42", inclusive, with the same force and effect as if set forth herein at length.
75. That 212 Orange Policy limits the coverage provided via the inclusion of an "Ordinance or Law" exclusion. The operative terms of the foregoing exclusion are provided below:

B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes

a. Ordinance Or Law

(1) The enforcement of or compliance with any ordinance or law:

(a) Regulating the construction, use or repair of any property; or

(b) Requiring the tearing down of any property, including the cost of removing its debris.

(2) This exclusion, Ordinance Or Law, applies whether the loss results from:

(a) An ordinance or law that is enforced even if the property has not been damaged; or

(b) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property or removal of its debris, following a physical loss to that property.

76. That potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, such as claimed by the 212 Orange Ave Defendants, fall

within the scope of the above “Ordinance Or Law” exclusion provided above and are thus excluded from the coverage provided under the 212 Orange Policy.

WHEREFORE, Plaintiff Farm Family requests a declaration by this Court that the claims made by the 212 Orange Ave Defendants for potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, are excluded from coverage by operation of the “Ordinance Or Law” exclusion contained in the 212 Orange Policy, and therefore, Plaintiff Farm Family does not have an obligation to pay for potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19.

AS AND FOR THE TENTH CAUSE OF ACTION AGAINST THE 212 ORANGE AVE DEFENDANTS

77. The Plaintiff, Farm Family, repeats, reiterates and realleges each and every allegation contained in the paragraphs numbered “1” through “42”, inclusive, with the same force and effect as if set forth herein at length.
78. That the 212 Orange Policy limits the coverage provided via the inclusion of an “Virus and Bacteria” exclusion. The operative terms of the foregoing exclusion are provided below:

B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes....

j. Virus Or Bacteria

- (1) Any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.
- (2) However, the exclusion in Paragraph (1) does not apply to loss or damage caused by or resulting from "fungi", wet rot or dry rot. Such loss or damage is addressed in Exclusion i.
- (3) With respect to any loss or damage subject to the exclusion in Paragraph (1), such exclusion supersedes any exclusion relating to "pollutants".

79. That potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, such as claimed by the 212 Orange Ave Defendants, fall within the scope of the above "Virus and Bacteria" exclusion provided above and are thus excluded from the coverage provided under the 212 Orange Policy.

WHEREFORE, Plaintiff Farm Family requests a declaration by this Court that the claims made by the 212 Orange Ave Defendants for potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, are excluded from coverage by operation of the "Virus and Bacteria" exclusion contained in the 212 Orange Policy, and therefore, Plaintiff Farm Family does not have an obligation to pay for potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19.

**AS AND FOR THE ELEVENTH CAUSE OF ACTION AGAINST THE 212
ORANGE AVE DEFENDANTS**

80. The Plaintiff, Farm Family, repeats, reiterates and realleges each and every allegation contained in the paragraphs numbered "1" through "42", inclusive, with the same force and effect as if set forth herein at length.
81. 212 Orange Policy limits the coverage provided via the inclusion of an "Consequential Loss" exclusion. The operative terms of the foregoing exclusion are provided below:

B. Exclusions

2. We will not pay for loss or damage caused by or resulting from any of the following:

b. Consequential Losses

Delay, loss of use or loss of market.

82. That potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, such as claimed by Defendant 212 Orange, falls within the scope of the above "Consequential Loss" exclusion provided above and are thus excluded from the coverage provided under the 212 Orange Policy.

WHEREFORE, Plaintiff Farm Family requests a declaration by this Court that the claims made by the 212 Orange Ave Defendants for potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, are excluded from coverage by operation of the "Consequential Loss" exclusion contained in the 212 Orange Policy, and therefore, Plaintiff Farm Family does not have an obligation to pay for potential losses

sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19.

**AS AND FOR THE TWELFTH CAUSE OF ACTION AGAINST THE 212
ORANGE AVE DEFENDANTS**

83. The Plaintiff, Farm Family, repeats, reiterates and realleges each and every allegation contained in the paragraphs numbered "1" through "42", inclusive, with the same force and effect as if set forth herein at length.
84. 212 Orange Policy limits the coverage provided via the inclusion of an "Act or Decisions" exclusion. The operative terms of the foregoing exclusion are provided below:

B. Exclusions

3. We will not pay for loss or damage caused by or resulting from any of the following Paragraphs a. through c. But if an excluded cause of loss that is listed in Paragraphs a. through c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

b. Acts Or Decisions

Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

85. That potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, such as claimed by the 212 Orange Ave Defendants, fall

within the scope of the above “Acts or Decisions” exclusion provided above and are thus excluded from the coverage provided under the 212 Orange Policy.

WHEREFORE, Plaintiff Farm Family requests a declaration by this Court that the claims made by the 212 Orange Ave Defendants for potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, are excluded from coverage by operation of the “Acts or Decisions” exclusion contained in the 212 Orange Policy, and therefore, Plaintiff Farm Family does not have an obligation to pay for potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19.

**AS AND FOR THE THIRTEENTH CAUSE OF ACTION AGAINST THE 212
ORANGE AVE DEFENDANTS**

86. The Plaintiff, Farm Family, repeats, reiterates and realleges each and every allegation contained in the paragraphs numbered “1” through “42”, inclusive, with the same force and effect as if set forth herein at length.
87. That the 212 Orange Policy limits the coverage provided via the inclusion of the “Additional Provisions and Exclusions” additional endorsement. The operative language of the foregoing additional endorsement is provided as follows:

ADDITIONAL PROVISIONS AND EXCLUSIONS

This endorsement modifies insurance provided under the following:

**C. The following replaces Paragraph B. Exclusions of SECTION I
PROPERTY 5.
Business Income And Extra Expense Exclusions a. (2):**

(2) Any other consequential loss, including but not limited to delay of market, latent defect and quarantine.

88. that potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, such as claimed by the 212 Orange Ave Defendants, fall within the scope of the and “Ordinance or Law” exclusion contained above as modified by of the above “Additional Provisions and Exclusions” additional endorsement as provided above, and are thus excluded from the coverage provided under the 212 Orange Policy.

WHEREFORE, Plaintiff Farm Family requests a declaration by this Court that the claims made by the 212 Orange Ave Defendants for potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, are excluded from coverage by operation of the “Ordinance Or Law” exclusion as modified by the “Additional Provisions and Exclusions” additional endorsement contained in the 212 Orange Policy, and therefore, Plaintiff Farm Family does not have an obligation to pay for potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19.

**AS AND FOR THE FOURTEENTH CAUSE OF ACTION AGAINST THE 212
ORANGE AVE DEFENDANTS**

89. The Plaintiff, Farm Family, repeats, reiterates and realleges each and every allegation contained in the paragraphs numbered "1" through "42", inclusive, with the same force and effect as if set forth herein at length.
90. That the 212 Orange Policy limits the coverage provided via the inclusion of the "New York-Exclusion of Loss Due to Virus or Bacteria" additional endorsement. The operative language of the foregoing additional endorsement is provided as follows:

NEW YORK- EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

- A.** The exclusion set forth in Paragraph B. applies to all coverage under Section I - Property in all forms and endorsements that comprise this Businessowners Policy, except as provided in Paragraph
- B.** We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.
- C.** This includes but is not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority.
91. That potential losses sustained by businesses, operations, and properties due to social distancing, industry specific requirements, and orders respecting these subjects, which upon information or belief were a result of or caused by the spread of COVID 19, such as claimed by the 212 Orange Ave Defendants, fall within the scope of the above "New York- Exclusion of Loss Due to Virus or

Bacteria” additional endorsement as provided above and are thus excluded from the coverage provided under the 212 Orange Policy,

WHEREFORE, Plaintiff Farm Family requests a declaration by this Court that it is not obligated to cover the financial losses of the 430 Montclair Defendants and the 212 Orange Ave Defendants due to the closing of their businesses and that the claims made by the 430 Montclair Defendants and the 212 Orange Ave Defendants for financial losses are excluded from coverage by operation exclusions.

Dated: New York, New York
October 22, 2020

Yours, etc.,

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