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IRIS Y. MARTINEZ
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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

DESAI HOTEL GROUP, LLC a/k/a)
NATCHEZ HOTEL GROUP, INC. a/k/a)
HOLIDAY INN EXPRESS & SUITES)
NATCHEZ SOUTH; RIDGELAND HOTEL) Case No.:
GROUP, LLC a/k/a HAMPTON INN &)
SUITES JACKSON-RIDGELAND; HIGH)
STREET HOTEL GROUP, LLC a/k/a)
HOLIDAY INN EXPRESS & SUITES)
JACKSON DOWNTOWN - COLISEUM;)
HERNANDO HOTEL GROUP, LLC a/k/a)
HAMPTON INN HERNANDO; JANFI, LLC)
a/k/a QUALITY INN & SUITES JACKSON) Jury Demanded
NORTH; VIDALIA HOTEL GROUP, LLC)
a/k/a TOWNEPLACE SUITES BY)
MARRIOT VIDALIA; and OPELOUSAS)
HOTEL GROUP, LLC a/k/a HAMPTON)
INN OPELOUSAS,)
Plaintiffs)
v.)
THE CONTINENTAL INSURANCE)
COMPANY, CONTINENTAL CASUALTY)
COMPANY, INC., and CNA FINANCIAL)
CORPORATION,)
Defendants)

COMPLAINT FOR DECLARATORY JUDGMENT AND BREACH OF CONTRACT

Plaintiff, Desai Hotel Group, LLC a/k/a Natchez Hotel Group, Inc. a/k/a Holiday Inn Express & Suites Natchez South; Ridgeland Hotel Group, LLC a/k/a Hampton Inn & Suites Jackson-Ridgeland; High Street Hotel Group, LLC a/k/a Holiday Inn Express & Suites Jackson Downtown - Coliseum; Hernando Hotel Group, LLC a/k/a Hampton Inn Hernando; JANFI, LLC a/k/a Quality Inn & Suites Jackson North; Vidalia Hotel Group, LLC a/k/a TownePlace Suites by Marriot Vidalia and Opelousas Hotel Group, LLC a/k/a Hampton Inn Opelousas (collectively, "Plaintiff"), through its undersigned counsel and for its Complaint against Defendants, The Continental Insurance Company, Continental Casualty Company, Inc., and CNA Financial

Corporation (collectively “CNA Defendants”), pursuant to 735 ILCS 5/2-701, *et seq.*, alleges and states as follows:

1. This case was originally filed on March 1, 2021. On August 17, 2021, the matter was voluntarily dismissed pursuant to 735 ILCS 5/2-1009, with leave to refile after one year pursuant to *Hudson v. City of Chicago*, 228 Ill.2d 462 (2008). At the time of dismissal, no counts of the then-pending complaint had been previously dismissed pursuant to §2-615, §2-619, or §2-1005 of the Illinois Code of Civil Procedure, and no adverse orders had been entered against Plaintiff.

2. The original lawsuit did not include a count for declaratory relief. The original lawsuit was assigned to the Honorable Judge James E. Snyder.

3. As will be alleged in detail below, Plaintiff seeks a declaration that Defendants are required to provide insurance coverage for Covid-related business losses under the terms of the all-risk business policy issued to Plaintiff (the “Insurance Policy,” attached hereto as **Exhibit A** and incorporated by reference).

4. As of the filing of this action, two petitions for leave to appeal are pending before the Illinois Supreme Court in two Covid-related insurance coverage disputes, *Sweet Berry Café, Inc. v. Society Insurance, Inc.* (Docket No. 128399) and *Alley 64, Inc. v. Society Insurance, Inc.* (Docket No. 128576). The denial of a petition for leave to appeal has no precedential value.

5. As of the filing of this action, the Illinois Supreme Court has not issued an opinion about whether all-risk business interruption policies, particularly policies without express virus exclusions, provide coverage for Covid-related losses.

6. In addition, after the voluntary dismissal of Plaintiff’s original suit and before the filing of this action, a chancery court in Cook County, Illinois presided over a declaratory judgment action involving the CNA Defendants and an all-risk policy similar to the policy in this matter.

That case was captioned *JDS Construction Group LLC v. Continental Casualty Co.*, 2020CH5678 (hereinafter the “JDS/CNA Action”). The chancery court in the JDS/CNA Action denied the CNA Defendants’ § 2-615 motion to dismiss along with their subsequent motion to reconsider. The JDS/CNA Action remains pending. The orders on the motion to dismiss and motion to reconsider are attached as **Exhibit B** and herein incorporated by reference.

I. PARTIES

7. Plaintiffs Desai Hotel Group, LLC. (“Plaintiff Desai”) is a Mississippi corporation with its principal place of business in Ridgeland, Mississippi. Plaintiff Desai is the parent company for Plaintiffs Natchez Hotel Group, Inc. a/k/a Holiday Inn Express & Suites Natchez South; Ridgeland Hotel Group, LLC a/k/a Hampton Inn & Suites Jackson - Ridgeland; High Street Hotel Group LLC a/k/a Holiday Inn Express & Suites Jackson Downtown - Coliseum; Hernando Hotel Group LLC a/k/a Hampton Inn Hernando; JANFI, LLC a/k/a Quality Inn & Suites Jackson North; Vidalia Hotel Group, LLC a/k/a TownePlace Suites by Marriot Vidalia; and Opelousas Hotel Group, LLC a/k/a Hampton Inn Opelousas.

8. Plaintiff Natchez Hotel Group, Inc. a/k/a Holiday Inn Express & Suites Natchez South (“Plaintiff Natchez Hotel”) is a Mississippi limited liability company with its principal place of business in Ridgeland, Mississippi. Plaintiff Natchez Hotel owns and operates the Holiday Inn Express & Suites Natchez South, a hotel located at 639 S Canal Street, Natchez, Mississippi, as well as the food and beverage services located within the Holiday Inn Express & Suites Natchez South.

9. Plaintiff Ridgeland Hotel Group, LLC a/k/a Hampton Inn & Suites Jackson-Ridgeland (“Plaintiff Ridgeland Hotel”) is a Mississippi limited liability company with its principal place of business in Ridgeland, Mississippi. Plaintiff Ridgeland Hotel owns and operates the Hampton Inn & Suites Jackson-Ridgeland, a hotel located at 600 Steed Road, Ridgeland,

Mississippi, as well as the food and beverage services located within the Hampton Inn & Suites Jackson-Ridgeland.

10. Plaintiff High Street Hotel Group LLC a/k/a Holiday Inn Express & Suites Jackson Downtown - Coliseum ("Plaintiff High Street Hotel") is a Mississippi limited liability company with its principal place of business in Ridgeland, Mississippi. Plaintiff High Street Hotel owns and operates the Holiday Inn Express & Suites Jackson Downtown - Coliseum, a hotel located at 310 Greymont Street, Jackson, Mississippi, as well as the food and beverage services located within the Holiday Inn Express & Suites Jackson Downtown - Coliseum.

11. Plaintiff Hernando Hotel Group LLC a/k/a Hampton Inn Hernando ("Plaintiff Hernando Hotel") is a Mississippi limited liability company with its principal place of business in Ridgeland, Mississippi. Plaintiff Hernando Hotel owns and operates the Hampton Inn Hernando, a hotel located at 2675 McIngvale Road, Hernando, Mississippi, as well as the food and beverage services located within the Hampton Inn Hernando.

12. Plaintiff JANFI, LLC a/k/a Quality Inn & Suites Jackson North ("Plaintiff JANFI") is a Mississippi limited liability company with its principal place of business in Ridgeland, Mississippi. Plaintiff JANFI owns and operates the Quality Inn & Suites Jackson North, a hotel located at 5723 Interstate 55 North Frontage Road, Jackson, Mississippi, as well as the food and beverage services located within the Quality Inn & Suites Jackson North.

13. Plaintiff Vidalia Hotel Group, LLC a/k/a TownePlace Suites by Marriot Vidalia ("Plaintiff Vidalia Hotel") is a Mississippi limited liability company with its principal place of business in Ridgeland, Mississippi. Plaintiff Vidalia Hotel owns and operates the TownePlace Suites by Marriot Vidalia, a hotel located at 215 Front Street, Vidalia, Louisiana, as well as the food and beverage services located within the TownePlace Suites by Marriot Vidalia.

14. Plaintiff Opelousas Hotel Group, LLC a/k/a Hampton Inn Opelousas (“Plaintiff Opelousas Hotel”) is a Mississippi limited liability company with its principal place of business in Ridgeland, Mississippi. Plaintiff Opelousas Hotel owns and operates the Hampton Inn Opelousas, a hotel located at 1700 Commerce Boulevard, Opelousas, Louisiana, as well as the food and beverage services located within the Hampton Inn Opelousas.

15. Defendant, The Continental Insurance Company (“Continental”), is a corporation organized under the laws of Pennsylvania with its principal place of business in Chicago, Illinois.

16. Defendant, Continental Casualty Company, Inc. (“Continental Casualty”), is a corporation organized under the laws of Pennsylvania with its principal place of business in Chicago, Illinois.

17. Defendant, CNA Financial Corporation. (“CNA Financial”), is an Illinois corporation with its principal place of business in Chicago, Illinois. CNA Financial is an insurance holding company. CNA and its insurance company subsidiaries, including Continental and Continental Casualty, constitute one of the largest and most sophisticated insurance conglomerates in the United States. In 2019, CNA Financial and its insurance company subsidiaries collected \$7.7 billion in premiums from policyholders, including Plaintiff.

II. NATURE OF THE CAUSE OF ACTION

18. This is a lawsuit arising out of the CNA Defendants presumptively denying Plaintiff coverage for Plaintiff’s losses under the Time Element: Business Interruption (Gross Earnings), Denial of Access by Civil Authority and Ingress-Egress, Extra Expense, and Ordinance or Law provisions of its property Insurance Policy with the CNA Defendants. These losses have resulted, and continue to result from, or have been caused by, and continue to be caused by: (a) the SARS-CoV-2 virus (“COVID-19”) causing direct physical loss of or damage to Plaintiff’s property and property of third parties such as food and beverage suppliers and patron facilities; (b) the

governments' stay-at-home orders, including, without limitation, the State of Mississippi and Louisiana's stay-at-home orders; (c) the U.S. Centers for Disease Control and Prevention's ("CDC") recommendation on travel restrictions; and/or (d) former President Trump's travel restrictions.

19. This is an action for declaratory judgment and breach of contract arising out of the refusal of the CNA Defendants, a multi-billion dollar business, to live up to their promise to their policyholder, Plaintiff. Defendant promised to pay for, in exchange for premiums paid, physical loss of or damage to insured property and related business interruption losses and expenses under an "all risk" Insurance Policy.

20. Plaintiff seeks enforcement of the CNA Defendants' contractual promises to insure Plaintiff against Plaintiff's significant and ongoing losses resulting from COVID-19 outbreaks in Mississippi, Louisiana, and around the world.

21. These losses are "direct." Plaintiff is not asking CNA to reimburse it after someone obtained a judgment against Plaintiff for getting them sick. That might be indirect loss. Plaintiff is asking the CNA Defendants to pay for its loss of business income occasioned directly by being unable to use its property.

22. These losses are "physical." Plaintiff's properties are unable to operate in the manner in which they had previously operated. The probability of illness prevents the use of the hotels in no less of a way than, on a rainy day, a crumbling and open roof from the aftermath of a tornado would make the dining room of a cafeteria unusable.

23. This loss is a loss. It is the loss of functionality of the hotels for business purposes. It is the diminishment of the usable physical space of the hotels. What once could hold many now can safely hold only a few.

24. Plaintiff is suing the CNA Defendants for breach of contract and is seeking monetary damages.

**Prefatory Note: The Underlying Issue in This Case about
Whether Covid Causes Direct Physical Loss of or Damage to Property
Is Fact-Specific Not Amenable to a Motion to Dismiss**

25. The policy period for the Insurance Policy at issue in the case had a term of January 1, 2020 to January 1, 2021. Thus, when the policy period began, Covid had not yet emerged; but, by the time the policy terminated, Covid had permeated every corner of the globe.

26. Epidemiologists characterized this coronavirus as “novel”—when the SARS-CoV-2 virus initially emerged, very little was known about how easily or how far the virus would spread, nor how many deaths it would ultimately cause. In July 2020, the CDC noted: “The novel (new) coronavirus that first appeared in China had never been seen before, so it quickly gained the attention of scientists around the world.”¹

27. As will be set forth in further detail below, and as supported by scientific studies, statements, and research conducted by the World Health Organization and the Centers for Disease Control and Prevention, the novel coronavirus causes direct physical loss of or damage to Plaintiff’s insured premises and property.

28. On information and belief, the CNA Defendants believe that the novel coronavirus does not cause direct physical loss of or damage to Plaintiff’s premises and property. In so claiming, the CNA Defendants may rely upon the same or different scientific studies.

29. To the extent that the CNA Defendants disagree with Plaintiff’s well-pleaded facts, the battleground for resolving disputed facts is trial, following discovery.

¹*Identifying the source of the outbreak*, U.S. Centers for Disease Control and Prevention, (July 1, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/science/about-epidemiology/identifying-source-outbreak.html>.

30. Between the voluntary dismissal of the original action in August 2021 and the present, numerous Illinois trial courts have granted insurers' motions to dismiss policyholders' request for Covid-related coverage losses. Some Illinois appellate courts have affirmed dismissals on the pleadings.

31. Insofar as the Illinois Supreme Court has not ruled on the legal and factual issues implicated in this type of case, it does not matter that other courts have reached an opposite conclusion. Indeed, a Cook County Circuit Court rejected this precise argument in the JDS/CNA action:

There may be some suggestion that the August 12, 2021 Order [denying CNA's Section 2-615 motion to dismiss] must be wrong because so many other courts have reached a contrary conclusion. Economists refer to this as an appeal to "herding behavior"—a process by which group-think replaces individual decision making...Judges are not sheep, and do not decide a case by counting noses. Further, the "herd" can be wrong. *See, e.g.,* A. Daughety, et al., "Stampede to Judgment: Persuasive Influence and Herding Behavior by Courts," 1 *American Law and Economics Review* 158 (Fall 1999)(analyzing a cascade of decisions among various circuits of United States Court of Appeals on a single point of law later invalidated by the United States Supreme Court).

III. JURISDICTION AND VENUE

32. This Court has subject matter jurisdiction over the matters alleged herein.

33. Personal jurisdiction exists over the CNA Defendants, because they are domiciled in Illinois, do business in Illinois as it relates to the issues in this case, and generally conduct business in Illinois.

34. This Court has subject matter jurisdiction under Article VI, Section 9, of the Illinois Constitution. In addition, the Illinois Supreme Court does not have original, exclusive jurisdiction over this case.

35. Venue in this county is proper under 735 ILCS 5/2-101, because Cook County is the county of residence for the CNA Defendants, Cook County is the county in which the transaction or some part of the transaction occurred out of which this case arose, Cook County is

the county from which the Insurance Policy at issue herein was issued by the CNA Defendants, and Cook County is the county in which the CNA Defendants expect and receive payments under the policy at issue herein. Moreover, the CNA Defendants denied, either expressly or as a matter of law, Plaintiff's claim for insurance coverage from their business locations in Cook County.

IV. CORONAVIRUS AND COVID-19

36. COVID-19 is caused by the SARS-CoV-2 virus and is a disease that can result in serious illness or death.

37. COVID-19 has infected over 91 million people in the United States and caused approximately 1,000,000 deaths in the United States.²

38. COVID-19 is a deadly disease caused by the recently discovered coronavirus known as SARS-CoV-2. As of the date of this Complaint, nearly 590 million people have contracted COVID-19 and more than 6 million people have died from the disease worldwide and nearly 1,025,000 people have died from Covid in the United States.

39. COVID-19 is highly contagious. The coronavirus can be transmitted in several ways, including by inhaling airborne viral particles and by touching surfaces or objects on which viral particles are present. The coronavirus spreads easily from a person into the air, and from a person to surfaces or objects. Contamination occurs primarily through small, physical droplets expelled from the nose or mouth when an infected person speaks, coughs, sneezes, sings, cheers, or yells, as well as transfer from hands to surfaces.

40. In the scientific and medical community, it is widely held that the SARS-CoV-2 virus can persist on inanimate surfaces. For example, the website WebMD states that the

² See, U.S. Centers for Disease Control and Prevention, *United States COVID-19 Cases and Deaths by State*, <https://covid.cdc.gov/covid-data-tracker/#cases> (Data as of Aug. 8, 2022, 2:55 PM ET).

SARSCoV-2 virus can exist on wood, including furniture, for four days and on glass, including windows and drinking glasses, for five days.

41. The vast majority of medical literature and studies on the issue have confirmed that coronaviruses can exist on paper, wood, and glass for up to 4-5 days. *E.g., Persistence of Coronavirus on Inanimate Surfaces and Their Inactivation with Biological Agents*, The Journal of Hospital Infection, March 2020, Volume 104, Issue 3, Pages 246-251. This SARS-CoV-2 virus strain can, in all probability, exist on multiple surfaces beyond 4-5 days.

42. Another study found that the coronavirus remains active and dangerous on plastics for at least three days, while another reported that the coronavirus remained stable and viable for seven days on a range of common surfaces, including stainless steel, plastic, glass, and wood.³ Another study even detected viable coronavirus samples on stainless steel and glass approximately one month if left at or around room temperature. All of these materials are used at Plaintiff's property.

43. Most of the people who transmit the coronavirus are unaware they are doing so. The "pre-symptomatic" incubation period for COVID-19—*i.e.*, the time between exposure to the coronavirus and symptom onset—can be up to 21 days. Pre-symptomatic individuals frequently have high viral loads, making them highly contagious, but they often do not know they are infected. In addition, some individuals never become symptomatic ("asymptomatic" carriers) and may never know they were infected. The U.S. Centers for Disease Control and Prevention ("CDC") and others have suggested that asymptomatic carriers make up about 40 to 70 percent of those infected. Scientists have concluded that "the majority of transmission is attributable to people who

³Neeltje van Doremalen et al., *Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1*, 382 N. Engl. J. Med. 1564 (2020); Yongjian Liu et al., *Stability of SARS-CoV-2 on environmental surfaces and in human excreta*, 107 J. Hosp. Infect. 105 (2021); Riddell, S., Goldie, S., Hill, A. et al. *The effect of temperature on persistence of SARS-CoV-2 on common surfaces*, 17 Virol. J. 145 (2020).

are not exhibiting symptoms, either because they are still in the pre-symptomatic stage or the infection is asymptomatic.”⁴

44. Respiratory droplets (*i.e.*, droplets larger than 5-10 μm) expelled from infected individuals land on, attach, and adhere to surfaces and objects. In doing so, they structurally change the property and its surfaces by becoming a part of those surfaces. This structural alteration renders any physical contact with those previously safe, inert surfaces (*e.g.*, fixtures, handrails, furniture) unsafe.

45. According to the WHO, people can become infected with the coronavirus by touching such objects and surfaces, then touching their eyes, nose, or mouth. This mode of transmission—indirect transmission via objects and surfaces—is known as “fomite transmission.” As the WHO has noted, fomite transmission is “a likely mode of transmission for SARS-CoV-2” because studies have consistently confirmed the existence of virus-laden droplets on objects and surfaces “in the vicinity of infected cases,” and because it is well known that other coronaviruses can be transmitted via fomite transmission.⁵

46. A study of a COVID-19 outbreak published in the CDC’s Emerging Infectious Diseases journal identified indirect transmission via objects such as elevator buttons and restroom [sink?] taps as an important possible cause of a “rapid spread” of the coronavirus in a shopping mall in Wenzhou, China.⁶

⁴ Moghadas et al., *The Implications of Silent Transmission for the Control of COVID-19 Outbreaks*, 117 PNAS 17, 513, (July 28, 2020), <https://www.pnas.org/content/117/30/17513> (last visited Aug. 4, 2022).

⁵ See, *Transmission of SARS-CoV-2: implications for infection prevention precautions*, World Health Org. (WHO), (July 9, 2020), <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>

⁶ Cai et al., *Indirect Virus Transmission in Cluster of COVID-19 Cases, Wenzhou, China, 2020*, 26 Emerging Infectious Diseases 1343, 1345 (June 2020), https://wwwnc.cdc.gov/eid/article/26/6/20-0412_article (last visited Aug. 4, 2022).

47. The coronavirus may also spread through the air. Air is a physical substance made up of oxygen, nitrogen, and other gases. Airborne coronaviruses can transmit the virus from one person to another. When individuals carrying the coronavirus breathe, talk, cough, or sneeze, they expel aerosolized droplet nuclei (*i.e.*, those smaller than 5-10 μm) that remain in the air and, like dangerous fumes, make the premises unsafe and affirmatively dangerous. This process alters the structural properties of air in buildings from safe and breathable to unsafe and dangerous.

48. According to research published in The Journal of the American Medical Association, a person who sneezes can release a cloud of pathogen-bearing droplets that can span as far as 23 to 27 feet.⁷ If a person is infected with SARS-CoV-2, whether symptomatic or asymptomatic, infectious viral particles will be aerosolized and physically permeate the air around the person. Once airborne, many virus particles quickly fall and settle on surfaces and objects, where they transfer to other people who touch those surfaces.

49. But many coronavirus particles also remain airborne for a time sufficient to travel a considerable distance, filling indoor and outdoor spaces, and lingering in, attaching to, and spreading through heating, ventilation, and air conditioning (“HVAC”) systems. One study found the presence of the coronavirus within the HVAC system servicing hospital ward rooms of COVID-19 patients. This study detected SARS-CoV-2 RNA in ceiling vent openings, vent exhaust filters, and central ducts that were located more than 50 meters from the patients’ rooms.⁸

⁷ See, Lydia Bourouiba, *Turbulent Gas Clouds and Respiratory Pathogen Emissions: Potential Implications for Reducing Transmission of COVID-19*, 323 JAMA 1837-1838 (2020)

⁸ See, Nissen et al., Long-Distance Airborne Dispersal of SARS-CoV-2 in COVID-19 Wards, at 7 (Oct. 20, 2020 version) (preprint), <https://www.researchsquare.com/article/rs-34643/v2> (last visited Aug. 4, 2022).

50. The Environmental Protection Agency (“EPA”) has compiled several studies reflecting epidemiological evidence suggestive of coronavirus transmission through aerosol.⁹ Based on these and other studies, the EPA has recommended that facilities make improvements to their ventilation and HVAC systems by, for example, increasing ventilation with outdoor air and air filtration.¹⁰ The purpose of these measures is to physically remediate the quality of the air by, among other things, diluting the concentration of virus particles or by trapping and removing them.

51. Merely cleaning surfaces may reduce—but does not altogether eliminate—the risk of transmission amongst people. There may be surfaces with residual infectious virus, and aerosolized infectious particles. In other words, disinfection is temporary at best; however, a space may remain contaminated if an aerosol is present, and immediately become contaminated thereafter if another infected person is present in the area. This contamination will provide a constant modality for infection to people.

V. THE CNA DEFENDANTS’ HISTORY WITH VIRUSES IN INSURANCE POLICIES

52. Plaintiff purchased the all-risk Insurance Policy from the CNA Defendants to protect itself against various risks, including the risks of loss of income and extra expenses because of direct physical loss of or damage to its property.

53. Plaintiff required coverage to protect its business in the event that Plaintiff had to suddenly suspend operations for reasons outside of its control, or if it had to act in order to prevent further property damage. Therefore, Plaintiff obtained insurance coverage from the CNA

⁹ See, U.S. Environmental Protection Agency, *Indoor Air and COVID-19 Key References and Publications*, (last updated July 18, 2022), <https://www.epa.gov/coronavirus/indoor-air-and-covid-19-key-references-and-publications> (last visited Aug. 4, 2022).

¹⁰ See, U.S. Environmental Protection Agency, *Indoor Air and Coronavirus (COVID-19)* (Dec. 15, 2021), <https://www.epa.gov/coronavirus/indoor-air-and-coronavirus-covid-19> (last visited Aug. 4, 2022).

Defendants, including the Time Element: Business Interruption (Gross Earnings), Denial of Access by Civil Authority and Ingress-Egress, Extra Expense, and Ordinance of Law provisions.

54. Historically, the risk of loss due to pandemic is a covered cause of loss under all-risk policies.

55. “All risk” property policies insure against losses from unexpected and unprecedented circumstances and provide coverage for risks of any kind or description, unless specifically excluded.

56. “Business interruption” insurance provides coverage—often up to a year or more—to replace business income lost as a result of a covered cause of loss. Under industry-standard “all risk” policies procured by many hotels, business interruption coverage is triggered when a policyholder suffers direct “loss or damage” to its premises.

57. These policies provide businesses with comfort knowing they have coverage for even unforeseeable or unlikely risks that may physically impair or alter their property.

58. Due to the breadth of coverage, hotels paid substantial premiums for “all risk” policies with business interruption coverage. In doing so, Plaintiff reasonably understood, expected, and believed its policy would cover business income losses from any and all non-excluded risks. Those risks, in the eyes of a reasonable policyholder, include shutdown orders caused by direct physical “loss of or damage to property,” and that the shutdown orders themselves are “a direct physical loss” of the premises for their intended use, as policyholders understood those words to mean.

59. Business interruption coverage thus insures against the risk that a business-owner’s property will not be able to function as intended.

60. That kind of interruption is precisely what happened when shutdown orders required hotels to make physical, detrimental alterations that materially impaired the functionality of their premises. In barring or limiting on-premises dining, those orders caused the loss of millions of square feet of vital physical space.

61. The orders dispossessed hotels of their tangible spaces and forced very real, material detrimental physical changes and alterations to their premises.

62. Payment of business interruption losses due to pandemic were most recently issued in 2003 during the Severe Acute Respiratory Syndrome (SARS) pandemic caused by a coronavirus, SARS-CoV-2.

63. For example, the Mandarin Oriental International Ltd. secured a \$16 million payment for its business interruption losses for its hotels due to cancellations and reduced local food and beverage sales stemming from the SARS outbreak. Similarly, the Peninsula Hotel Group received a payment of \$12 million from their business interruption insurance to mitigate the loss of income due to SARS.

64. After SARS, the insurance industry and, based upon information and belief, the CNA Defendants knew that the language under their all-risk policies provided coverage for losses associated with pandemics, a covered cause of loss.

65. Upon information and belief, certain insurance policies provided by the CNA Defendants provide limited coverage for certain losses caused by “virus.” The Insurance Policy at issue here is not one of those policies.

66. Unlike many policies that provide Business Interruption coverage (also referred to as “business income” coverage), the CNA Defendants’ policy issued to Plaintiff does not include, and is not subject to, any exclusion for losses caused by the spread of viruses or communicable diseases.

67. The Insurance Policy **PRAYER FOR RELIEF** to pay for direct physical loss of or damage ~~WHEREFORE, Plaintiff seeks to have the Court find that the proposed Class, respectfully requests that this Court enter an Order~~ does not define direct physical loss of or physical damage.

69. ~~That the proposed Class is defined above, appointing Plaintiff as class representative,~~ and appointing Plaintiff's counsel as class counsel;
 means that coverage is triggered if either a physical loss of property or damage to property occurs.
 b. Declaring that Defendant's actions as set forth herein violate BIPA;
 70. As drafter of the Insurance Policy, the CNA Defendants could have defined the
 c. Awarding injunctive and equitable relief as necessary to protect the Class;
 terms "physical loss of property" or "damage to property."
 d. Finding Defendant's conduct intentional or reckless and awarding \$5,000 in
 damages per violation of BIPA, per Class member under 740 ILCS 14/20(2), or if
 71. When the CNA Defendants sold the policy to Plaintiff, they knew the policy
 Defendant's conduct does not rise to that standard, \$1,000 per violation of BIPA,
 per Class member under 740 ILCS 14/20(1);
 provided coverage for losses caused by viruses.

72. Awarding Plaintiff payment of her \$641.75 in unpaid wages, plus damages of 5%
 In February 2019, only a few months before the CNA Defendants sold the
 per month for every month from March 2022 until the date of payment, under 820
 ILCS 115/14;
 Insurance Policy to Plaintiff, the CNA Defendants, explicitly warned its investors about the
 f. Awarding Plaintiff and the Class their reasonable attorneys' fees, costs, and other
 potential for "material losses" to CNA and its affiliates from "pandemics" in its 2018 Form 10-K
 litigation expenses;

g. Awarding Plaintiff and the Class pre- and post-judgment interest; and
 annual report filed with the U.S. Securities and Exchange Commission. In fact, CNA repeatedly
 told its investors that such losses are "a fundamental part of [CNA's] business."¹¹ Importantly,

CNA also relayed these warnings in the 2018 and 2019 annual reports, which covered the effective
 period of the Insurance Policy.
JURY DEMAND
 Plaintiff demands a trial by jury on all claims and issues so triable.

Dated: July 27, 2022, CNA's 2020 Form-10K and annual report, filed individually and on behalf
 of all others similarly situated,
 specific warning, and braced its investors for the likely onslaught of business interruption coverage
 s/ J. Dominick Larry

claims, including those arising out of shelter in place restrictions and business closures. CNA
 J. Dominick Larry
 NICK LARRY LAW LLC
 1720 W. Division St.
 Chicago, IL 60622

T: 773.694.4669
 F: 773.694.4891
 E: nick@nicklarrylaw.com
¹¹ See CNA Financial Corporation, 2018 Annual Report (Form 10-K) (Feb. 13, 2019)
https://s25.g4cdn.com/951400234/files/doc_financials/2018/ar/Annual-Report-2018.pdf (last visited Aug. 3, 2022);
 CNA Financial Corporation, 2019 Annual Report (Form 10-K) (Feb. 11, 2020) (last visited Aug. 3, 2022);
https://www.annualreports.com/HostedData/AnnualReportArchive/c/NYSE_CNA_2019.pdf; and
 CNA Financial Corporation, 2020 Annual Report (Form 10-K) (Feb. 9, 2021),
https://s25.g4cdn.com/951400234/files/doc_financials/2020/ar/1512-2020-Annual-Report-10K-Wrap-Final-03.08.21-IR.pdf (last visited Aug. 3, 2022).

The COVID-19 pandemic and measures to mitigate the spread of the virus have resulted in significant risk across our enterprise, which have had, and may continue to have, material adverse impacts on our business, results of operations and financial condition, the extent of which cannot be determined with any certainty at this time.

Continued spread of the virus, as well as new or extended shelter in place restrictions and full or partial business closures, could cause us to experience additional COVID-19 related catastrophe losses in future quarters, which could be material.

We have incurred and may continue to incur substantial expenses related to litigation in connection with COVID-related legal matters. These actions primarily relate to denial of claims submitted as a result of the pandemic and the mitigating actions under commercial property policies for business interruption coverage, including lockdown and closing of certain businesses. The significance of such litigation, both in substance and volume, and the resultant activities initiated, including external counsel engagement, and the costs related thereto, may have a material impact on our business, results of operations and financial condition, the extent of which cannot be determined with any certainty at this time.¹²

74. CNA has been keenly aware of how a pandemic, generally, and the COVID-19 virus, specifically, could trigger voluminous business interruption claims from policy holders, and have a material impact on its enterprise as a whole.

75. The vast majority of insurance policies issued in the United States that cover business income losses contain an exclusion for losses caused by “virus.” According to a June 2020 report by the National Association of Insurance Commissioners, 83 percent of insurance policies covering business income losses contain a virus exclusion.¹³

76. Sophisticated insurance companies like the CNA Defendants knew that viruses cause direct physical loss of or damage to property and that such losses are covered by their policies unless specifically limited or excluded. That is why, upon information and belief, the

¹² CNA Financial Corporation, 2020 Annual Report (Form 10-K) (Feb. 9, 2021), https://s25.q4cdn.com/951400234/files/doc_financials/2020/ar/1512-2020-Annual-Report-10K-Wrap-Final-03.08.21-IR.pdf (last visited Aug. 3, 2022).

¹³ National Association of Insurance Commissioners, *COVID-19 Property & Casualty Insurance Business Interruption Data Call: Part 1, Premiums and Policy Information*, at 3 (June 2020), https://content.naic.org/sites/default/files/inline-files/COVID-19%20BI%20Nat%271%20Aggregates_2.pdf (last visited Aug. 12, 2022).

CNA Defendants specifically limited certain losses caused by “virus” in other insurance policies sold by the company.

77. During a May 4, 2020 earnings call with investors, the chairman and CEO of CNA Defendants, Dino Robusto, claimed that property policies issued by the CNA Defendants “have exclusions barring coverage for viruses[,] ... [s]o with respect to business interruption, our property policy exclusionary language does not provide coverage for COVID-19....” He acknowledged, however, that “[t]here are a very few policies where [business interruption] coverage may exist.”¹⁴

78. The CNA Defendants and the insurance industry recognized before the Insurance Policy in this case was issued that viruses can cause direct physical loss of or physical damage to property. In the Insurance Service Office, Inc.’s (“ISO”) July 6, 2006 Circular regarding an ISO endorsement (CP 01 40 07 06) for exclusion of viruses (“ISO Virus Exclusion”) ISO stated:

Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses.

79. On information and belief, between 2006 and 2019, some CNA all risk policies contained the ISO Virus Exclusion and some did not.

80. On information and belief, the CNA Defendants consciously chose not to incorporate the express ISO Virus Exclusion from 2006 into Plaintiff’s Insurance Policy. If incorporated into Plaintiff’s Insurance Policy, the ISO Virus exclusion would have arguably made

¹⁴ CNA Financial Corp (CNA) Q1 2020 Earnings Call Transcript, The Motley Fool, (May 5, 2020), <https://www.fool.com/earnings/call-transcripts/2020/05/05/cna-financial-corp-cna-q1-2020-earnings-call-trans.aspx> (last visited Aug. 4, 2022).

it clear that losses caused by Covid—a virus—were not covered. Discovery should yield answers on this issue.

81. By intentionally refusing to include the ISO Virus Exclusion, CNA created a self-inflicted ambiguity in its policy about whether damage caused by Covid is a covered loss, an ambiguity which should be construed against it.

82. On information and belief, the CNA Defendants discussed how, when or whether to incorporate the ISO Virus Exclusion in some or all of its all-risk policies. On information and belief, between at least 2006 and the end of 2019, CNA employees and agents discussed and debated whether, when, and under what circumstances the ISO Virus Exclusion was to be included in insurance policies to its customers. Discovery should yield answers on this issue.

VI. REACTIONS TO COVID-19 AT THE NATIONAL, STATE, AND LOCAL LEVEL

83. On January 20, 2020, the CDC confirmed the first SARS-CoV-2 virus case in the United States.¹⁵

84. On or about January 31, 2020, former President Trump signed the Proclamation on Suspension of Entry as Immigrants and Nonimmigrants of Persons who Pose a Risk of Transmitting 2019 Novel Coronavirus. This Proclamation states: “The entry into the United States, as immigrants or nonimmigrants, of all aliens who were physically present within the People’s Republic of China, excluding the Special Administrative Regions of Hong Kong and Macau, during the 14-day period preceding their entry or attempted entry into the United States is hereby suspended and limited subject to section 2 of this proclamation.”

¹⁵ Holshue, et al., *First Case of 2019 Novel Coronavirus in the United States*, 382 New Eng. J. Med. 929, (March 5, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMoa2001191> (last visited Aug. 4, 2022).

85. On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic. On or about March 11, 2020, President Trump imposed a travel ban barring travel from the Schengen zone of Europe to the U.S. in order to slow the spread of the SARS-CoV-2 virus and COVID-19. On March 13, 2020, a national emergency was declared in the United States due to the spread of COVID-19.

State of Mississippi

86. On March 14, 2020, Mississippi State Governor Tate Reeves declared a State of Emergency for the entire state of Mississippi as a result of COVID-19.¹⁶

87. On March 24, 2020, Mississippi Governor Tate Reeves issued Executive Order No. 1463, “in response to the COVID-19 emergency and in accordance with the Guidelines from the President, the CDC, and the Mississippi State Department of Health.” This Order, together with subsequent Executive Orders by Governor Tate Reeves, are attached hereto as **Exhibit C** and incorporated herein by reference.

88. Executive Order No. 1463 stated:

WHEREAS the risk of spread of COVID-19 within Mississippi constitutes a public emergency that may *result in substantial injury or harm to* life, health, and *property within Mississippi...*

Mississippi residents shall avoid social and other non-essential gatherings in groups of more than 10 people where the gatherings in a single space at the same time where individuals are in close proximity to each other...

...restaurants, bars, or other dining establishments shall suspend dine-in services unless able to reduce capacity to allow no more than 10 people to be gathered in a single space at the same time where individuals are in seated or otherwise in close proximity to each other...

¹⁶ Governor Tate Reeves declares a State of Emergency, CORONAVIRUS.MS.GOV, (Mar. 14, 2020) <https://www.coronavirus.ms.gov/2019-11/governor-tate-reeves-declares-state-emergency> (last visited Aug. 16, 2022).

...it is also recommended and encouraged that all Mississippi businesses and non-profit entities likewise utilize, to the maximum extent possible, work from home or other telework procedures.

See Exhibit C (emphasis added).

89. On April 1, 2020, Mississippi Governor Tate Reeves issued Executive Order No. 1466, which stated:

WHEREAS additional measures are needed to further disrupt and slow the spread of the COVID-19 virus within the State and to manage needed healthcare and emergency management resources; accordingly, all individuals residing in the State of Mississippi will need to temporarily remain in their home or place of residence, and certain businesses and public amenities need to be temporarily closed to the public...

All businesses and non-profit entities operating within the State of Mississippi, except for Essential Business or Operations identified in Executive Order No. 1463 as Supplemented (which is incorporated herein by reference), shall cease operation and all activities except Minimum Operations as defined herein...

All places of amusement and recreation, whether indoors or outdoors, including but not limited to amusement parks and rides, museums, playgrounds, children's party and play facilities, all parks including all beaches, lakes and reservoirs (but not including walking trails), movie theatres, bowling alleys, and social clubs shall be closed to the public.

See Exhibit C.

90. In the following months, the State of Mississippi (like cities, counties, and states across the nation) issued a series of orders (collectively the "Mississippi Shutdown Orders"). The Mississippi Shutdown Orders included (but are not limited to) the following:

- Mississippi State Proclamation (March 14, 2020)
 - State of Emergency Declaration.
- Mississippi State Executive Order No. 1463 (March 24, 2020)
 - Shut down all dine-in restaurants and bars.
 - Allowed restaurants and bars to provide only take-out service.
 - Prohibited gatherings of 10 or more people where gatherings in a single space.
- Mississippi State Executive Order No. 1466 (April 1, 2020)
 - Directed all residents to shelter in place.
 - Directed certain business and public amenities closed to public.

- Directed places of amusement and recreation to be closed to the public.
- Mississippi State Executive Order No. 1473 (April 17, 2020)
 - Extended shelter in place order.
 - Established a non-essential businesses and operations program to allow retail sales limited to drive-thru, curbside, and/or delivery services with safety protocols.
- Mississippi State Executive Order No. 1477 (April 24, 2020)
 - Established the “Safer at Home” order.
 - Non-essential public and private social gatherings of more than 10 remain prohibited.
 - Limited the number of customers in stores to no greater than 50% of store capacity.
 - Restaurants and bars to remain open but are limited to drive-thru, curbside, and/or delivery service.
 - Fitness and exercise gyms, dance studios, clubs, tattoo parlors, spas, salons, barber shops, and all other personal care and personal grooming facilities shall remain closed to the public.
- Mississippi State Executive Order No. 1484 (May 14, 2020)
 - Allowed certain government operations to return back to work.
- Mississippi State Executive Order No. 1486 (May 15, 2020)
 - Reopened tattoo parlors, dance studios, and similar businesses
 - Allowed restaurants who do not serve alcohol to offer in-house dining.
- Mississippi State Executive Order No. 1491 (May 27, 2020)
 - Reopened ballparks, movie theatres, libraries and museums.
- Mississippi State Executive Order No. 1492 (May 28, 2020)
 - Established “Safe Return” order and outlined a plan to open all businesses.
- Mississippi State Executive Order No. 1493 (May 29, 2020)
 - Extended social distancing restrictions to certain counties with higher risk for transmission of COVID-19: Holmes, Jasper, Neshoba, Lauderdale, and Wayne Counties due to high COVID infection rates.
- Mississippi State Executive Order No. 1496 (June 10, 2020)
 - Extended Safe Return order until June 29, 2020.
 - Allowed Reception Halls and Conference centers to remain open with 25% capacity.
 - Allowed for seated dinners, reception halls and conference centers to be open with 50% capacity.
- Mississippi State Executive Order No. 1505 (July 2, 2020)
 - Extended Safe Return order until July 20, 2020.

- Mississippi State Executive Order No. 1507 (July 10, 2020)
 - Established additional social distancing measures in 13 counties: Claiborne, Desoto, Grenada, Harrison, Hinds, Jackson, Jefferson, Madison, Quitman, Rankin, Sunflower, Washington, and Wayne Counties due to high COVID infection rates.
- Mississippi State Executive Order No. 1509 (July 19, 2020)
 - Established additional social distancing measures in an additional 10 counties: Bolivar, Covington, Forrest, Humphreys, Panola, Sharkey, Simpson, Tallahatchie, Tate, and Walthall due to high COVID infection rates.
- Mississippi State Executive Order No. 1512 (July 24, 2020)
 - Established additional social distancing measures in an additional 6 counties until August 3, 2020: Calhoun, Holmes, Lamar, Montgomery, Winston, and Yalobusha due to high COVID infection rates.
- Mississippi State Executive Order No. 1516 (August 4, 2020)
 - Established a statewide mask mandate.
- Mississippi State Executive Order No. 1519 (August 20, 2020)
 - Established social distancing guidelines for college and university outdoor stadiums and game days.
- Mississippi State Executive Order No. 1522 (September 13, 2020)
 - Extended Safe Return order until September 30, 2020.
 - Allowed retail businesses to allow 75% of the store's maximum capacity.
 - Established that social distancing is not possible at public and private social gatherings of less than 10 people in a single indoor space and less than 50 people in an outdoor space.
- Mississippi State Executive Order No. 1525 (September 30, 2020)
 - Established "Safe Recovery" Order to allow for reopening of economy.

See Exhibit C.

State of Louisiana

91. On March 11, 2020, Louisiana State Governor John Bel Edwards declared a Public Health Emergency for the entire state of Louisiana as a result of COVID-19.¹⁷

92. On March 13, 2020: Louisiana State Governor John Bel Edwards issued Proclamation Number JBE 2020 – 27, which stated:

¹⁷ **Exhibit D**, Louisiana Executive Orders (attached hereto and incorporated by reference)

WHEREAS, in addition, COVID-19 may cause businesses to shut down due to a slow down or lack of demand, institute temporary or partial layoffs...

WHEREAS, Louisiana Revised Statute 29:724 confers upon the Governor emergency powers to deal with emergencies and disasters and to ensure that preparations of this state will be adequate to deal with *such emergencies or disasters, and to preserve the lives and property of the citizens* of the State of Louisiana...

In an effort to reduce the spread of COVID-19 in Louisiana, and to preserve the health and safety of all members of the public, all gatherings of 250 people or more between...shall be postponed or cancelled.

See Exhibit D, (emphasis added).

93. On March 16, 2020, Louisiana State Governor John Bel Edwards issued Proclamation Number JBE 2020 – 30 which stated “WHEREAS, these measures relating to gaming establishments, restaurants, bars, cafes, and coffee shops are necessary because of the ability of the COVID-19 virus to spread via personal interactions and because of *physical contamination of property due to its propensity to attach to surfaces for prolonged periods of time.*”¹⁸ Additionally, the Order stated “all gatherings of 50 people or more” were “postponed or cancelled.”

94. In the following months, the State of Louisiana (like cities, counties, and states across the nation) issued a series of orders (collectively the "Louisiana Shutdown Orders"). The Louisiana Shutdown Orders included (but are not limited to) the following:

- Louisiana Proclamation Number 25 JBE 2020 (March 11, 2020)
 - Public Health Emergency declared.
- Louisiana Proclamation Number 27 JBE 2020 (March 13, 2020)
 - Directed gatherings of 250 or more people to be postponed or cancelled.
 - Directed all public schools in Louisiana to close.

¹⁸ *Id.* (emphasis added).

- Louisiana Proclamation Number 30 JBE 2020 (March 16, 2020)
 - Directed gatherings of 50 or more people to be postponed or cancelled.
 - Directed all casinos, video poker establishments, movie theaters, bars, bowling alleys, and fitness centers and gyms, to cease operations completely.
 - Directed all restaurants, cafes, and coffee shops to cease allowing on premises consumption of food or beverages; only take out, drive-thru and delivery services.
- Louisiana Proclamation Number 33 JBE 2020 (March 22, 2020)
 - Established a statewide “Stay at Home” Order.
 - Directed all state office buildings to be closed to public.
 - Directed all gatherings of 10 or more people to be postponed or cancelled.
 - Directed all places of public amusement, whether indoors or outdoors, including but not limited to, locations with amusement rides, carnivals, amusement parks, water parks, trampoline parks, aquariums, zoos, museums, arcades, fairs, pool halls, children’s play centers, playgrounds, theme parks, any theatres, concert and music halls, adult entertainment venues, racetracks, and other similar businesses, to close.
 - Directed all personal care and grooming businesses such as barber shops, beauty salons, nail salons, spas, massage parlors, tattoo parlors, and other similar business to close.
 - Directed all malls, except for stores in a mall that have a direct outdoor entrance and exit that provide essential services and products to close.
- Louisiana Proclamation Number 41 JBE 2020 (April 2, 2020)
 - Extended Stay at Home order until April 30, 2020, due to high COVID infection rates.
- Louisiana Proclamation Number 47 JBE 2020 (April 15, 2020)
 - Directed all public school to remain closed for the duration of the school year.
- Louisiana Proclamation Number 52 JBE 2020 (April 30, 2020)
 - Extended Stay at Home order until May 15, 2020 due to high COVID infection rates.
 - Directed malls to remain closed to public, but allowed curbside delivery.
 - Directed restaurants can be open in their outside areas for patrons to eat meals only, without tableside service.
 - Directed all employees of business who have contact with public to wear a mask or face covering.
- Louisiana Proclamation Number 58 JBE 2020 (May 14, 2020)
 - Phase 1 of reopening, “Resilient Louisiana” order.
 - Required businesses and organization to have any owner or employee having interaction with the public to wear a mask or face covering.
 - Extended closure for all places of public amusement and certain personal care and grooming businesses such as, massage establishments, tattoo parlors, and other similar businesses.
 - Allowed restaurants, barber shops/beauty salons, shopping malls, churches, casinos, and gyms to be open inside as long as they do not exceed 25% capacity.

- Louisiana Proclamation Number 74 JBE 2020 (June 4, 2020)
 - Phase 2 of reopening, Resilient Louisiana.
 - Directed the following businesses may be open at 50% capacity including but not limited to: restaurants, cafes, coffee shops, shopping malls, gyms, barber and beauty shops, theatres, racetracks, museums, massage establishments, spas, tattoo establishments, pool halls, event centers, wedding venues, and casinos (casinos allowed 75% at gaming positions with proper social distancing).
- Louisiana Proclamation Number 83 JBE 2020 (June 25, 2020)
 - Extended Phase 2 of reopening, Resilient Louisiana due to high COVID infection rates.
 - Directed a limit of 250 people for the size of indoor gatherings.
- Louisiana Proclamation Number 89 JBE 2020 (July 11, 2020)
 - Extended Phase 2 of reopening, Resilient Louisiana due to high COVID infection rates.
 - Created a statewide mask mandate.
 - Directed a limit of 50 people for the size of indoor or outdoor gatherings.
- Louisiana Proclamation Number 96 JBE 2020 (July 23, 2020)
 - Extended Phase 2 of reopening, Resilient Louisiana, and statewide mask mandate due to high COVID infection rates.
 - Extended closure of bars to on-site consumption and gathering size limits.
- Louisiana Proclamation Number 101 JBE 2020 (August 6, 2020)
 - Extended Phase 2 of reopening, Resilient Louisiana, and statewide mask mandate due to high COVID infection rates.
 - Extended closure of bars to on-site consumption and gathering size limits.
- Louisiana Proclamation Number 110 JBE 2020 (August 26, 2020)
 - Extended Phase 2 of reopening, Resilient Louisiana, and statewide mask mandate due to high COVID infection rates.
 - Extended closure of bars to on-site consumption and gathering size limits.
- Louisiana Proclamation Number 143 JBE 2020 (October 22, 2020)
 - Phase 3 of reopening, Resilient Louisiana.
 - Allowed outdoor high school sports by allowing outdoor stadiums in lower rates of positive COVID tests to move to 50% capacity.
 - Allowed bars to reopen with safety precautions.
- Louisiana Proclamation Number 158 JBE 2020 (November 5, 2020)
 - Extended Phase 3 of reopening, Resilient Louisiana until December 4, 2020, due to high COVID infection rates.
 - Allowed all restaurants, cafes, coffee shops, barber and beauty shops, churches, casinos, gyms, and fitness centers to provide dine-in services if does not exceed 75% capacity.
 - Directed event centers and reception halls to open but cannot exceed 50% of total occupancy or 250 people, which is less.

See Exhibit D.

95. The CDC recommended that people stay at home as much as possible which includes limiting travel for only essential purposes.¹⁹

VII. THE IMPACT OF COVID AND THE CLOSURE ORDERS ON PLAINTIFF'S PREMISES AND OPERATIONS: PLAINTIFF'S PROPERTY EXPERIENCED DIRECT PHYSICAL LOSS OR DAMAGE

96. As of the filing of this lawsuit, the State of Mississippi has had approximately 482,915 confirmed cases of COVID-19 and in excess of 8,371 deaths as a result of COVID-19.²⁰

97. As of the filing of this lawsuit, the State of Louisiana has had approximately 1.4 million reported cases of COVID-19 and in excess of 17,000 deaths as a result of COVID-19.²¹

98. All of Plaintiff's hotels are located in suburban or urban areas, five throughout Mississippi and two in Louisiana. Plaintiff's hotels operate in close proximity to many bars, restaurants, entertainment venues, and commercial retail centers to facilitate their business operations.

99. Plaintiff Natchez Hotel is located at 639 S Canal Street, Natchez, Mississippi 39120, in Adams County. Of Adams County's nearly 30,000 residents, over 8,000 have become infected with COVID-19.²² Natchez is an idyllic southern town with 300 years of history to explore. Plaintiff Natchez Hotel encompasses 47,505 square feet, has 81 rooms, a pool and a fitness center. The hotel also has a snack bar and deli for the service of its guests. The hotel caters to

¹⁹ See U.S. Centers for Disease Control and Prevention, *Travel During COVID-19*, (last updated May 3, 2022) <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html> (last visited Aug. 16, 2022)

²⁰ See Mississippi State Department of Health, *Coronavirus Disease 2019 (COVID-19)*, https://msdh.ms.gov/msdhsite/_static/14,0420.html (last visited Aug. 12, 2022).

²¹ See Louisiana Department of Health, *Louisiana Coronavirus (COVID-19): Information*, <https://ldh.la.gov/Coronavirus/> (last visited Aug. 12, 2022).

²² See Mississippi State Department of Health, *Mississippi COVID-19 Cases and Deaths by County as of August 7, 2022 (COVID-19)*, https://msdh.ms.gov/msdhsite/_static/resources/19249.pdf (last visited Aug. 16, 2022)

patrons coming to town to explore historical art and architecture, picturesque hiking trails along the Mississippi River, and a thriving food and entertainment scene.

100. Plaintiff Ridgeland Hotel is located at 600 Steed Road, Ridgeland, Mississippi 39157, in Madison County. Madison County has a population of over 90,000, with 27,912 confirmed cases of COVID-19 to date.²³ Plaintiff Ridgeland Hotel encompasses 66,274 square feet, boasts 93 guest rooms, an indoor pool and fitness center, and an on-site business center. The hotel sits in close proximity to multiple schools, along with restaurants and bars, and the front sign advertises the hotel guests' ability to walk to the local shops. The metropolitan area of Ridgeland flows seamlessly into the larger urban sprawl of the Mississippi capital, Jackson, to the south along Interstate-55.

101. Plaintiff High Street Hotel is located at 310 Greymont Avenue, Jackson, Mississippi 39202, in Hinds County. Hinds County has a population of over 245,000 and has 60,419 confirmed COVID-19 cases to date.²⁴ The hotel is located just outside downtown Jackson, on Interstate-55. Hinds is the most populous county in Mississippi, and Jackson is the most populous city. Plaintiff High Street Hotel boasts 77 guest rooms and 31 deluxe suites over 66,274 square feet, , a pool, a fitness center, and a meeting room meant to accommodate 35 people, used for corporate events, training classes, family gatherings, and receptions.

102. Plaintiff Hernando Hotel is located at 2675 McIngvale Road, Hernando, Mississippi 38632, in DeSoto County. DeSoto County has a population of approximately 161,000 people, and has just over 55,000 confirmed cases of COVID-19.²⁵ DeSoto County, and Hernando by extension, are considered part of the Memphis, Tennessee statistical area because of the latter's geographic proximity and metropolitan reach. Plaintiff Hernando Hotel boasts 82 guest rooms, a

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

pool, a fitness center, a 24-hour business center and a meeting space meant to accommodate over 130 people. The hotel is located on I-55 on the eastern part of Hernando, surrounded by restaurants and shopping.

103. Plaintiff JANFI is located at 5723 I-55 N, Jackson, Mississippi 39206, in Hinds County. Hinds County's COVID-19 data is stated above. Plaintiff JANFI has 76 guest rooms over 33, 674 square feet, a breakfast area, on-site fitness center, laundry room, and a sundry shop. The hotel caters to travelers heading along Interstate-55, the largest north-south highway in the state, as well as visitors to Mississippi's largest city and capital.

104. Plaintiff Vidalia Hotel is located at 215 Front Street, Vidalia, Louisiana 71373, in Concordia Parish. Concordia Parish has a population of over 20,000 and to date has seen over 5,600 cases of COVID-19.²⁶ Vidalia shares a metropolitan area with Natchez, MS, separated by the Mississippi River.

105. Plaintiff Opelousas Hotel is located at 1700 Commerce Boulevard, Opelousas, Louisiana 70570, the county seat of St. Landry Parish. St. Landry Parish has a population of over 80,000 and to date has seen over 25,000 cases of COVID-19.²⁷ Plaintiff Opelousas Hotel sits just off Interstate-49, in close proximity to restaurants, bars, shopping, and the Evangeline Downs Racetrack and Casino.

106. The coronavirus is ubiquitous—it has spread through all fifty states, including Mississippi and Louisiana. Some individuals carry it with no symptoms, and it cannot be visibly detected on surfaces, despite its physical presence, and can remain on surfaces for weeks.

107. The prolonged prevalence of COVID-19 in the areas surrounding and encompassing Plaintiff's hotels made it unavoidable that individuals with COVID-19 or otherwise

²⁶ See n. 21 *supra*.

²⁷ *Id.*

carrying the coronavirus, including employees, visitors, trade workers, patrons, guests, and business visitors, would be physically present at Plaintiff's property since the earliest days of the pandemic.

108. The coronavirus and the fomites, droplets, and droplet nuclei carrying it are dangerous physical substances that have a material, tangible existence on Plaintiff's hotels and property.

109. There have been numerous and obvious structural alterations, changes, and/or repairs made by Plaintiff in an effort to resume operations after experiencing direct property damage caused by COVID-19 and to avoid imminent threat of further property damage.

110. COVID-19 caused physical loss of and/or damage to Plaintiff's hotels and property by, among other things, destroying, distorting, corrupting, attaching to, and physically altering property, including its surfaces, and by rendering property unusable, uninhabitable, unfit for intended function, dangerous, and unsafe. COVID-19 has caused such physical loss of and/or damage to Plaintiff's property, as described further below.

111. When the coronavirus and COVID-19 attached to and adhered on surfaces and materials of Plaintiff's hotels and property, they became a part of those surfaces and materials, converting the surfaces and materials to fomites.²⁸ This represents a physical change in the affected surface or material, which constitutes physical loss of or damage to property.

112. The presence of COVID-19 at Plaintiff's property caused physical loss of and damage to that property by necessitating remedial measures to reduce or eliminate the presence of cases of COVID-19 and the coronavirus on-site.

²⁸ See n. 5, *supra*.

113. The presence of the virus at Plaintiff's property, whether circulating or stagnant, changed the object, surface, or premises, in that it has become dangerous to handle and/or enter, and cannot be used without remedial measures. Its use can only be restored with remedial action and sufficient time for the contaminated air to be evacuated, as suggested by infectious disease experts.

114. The presence of cases of COVID-19 at a Plaintiff's hotels and property caused physical loss of or damage to the premises rendering a property that is usable and safe for humans into a property that, absent remedial measures, is unsatisfactory for use, uninhabitable, unfit for its intended function, and extremely dangerous and potentially deadly for humans.

115. In addition, the presence of COVID-19 on Plaintiff's property created an imminent threat of further damage to that property or to nearby property. Individuals who come into contact, for example, with respiratory droplets at one location in the building by touching a fixture, pressing an elevator button, or gripping a handrail, will carry those droplets on their hands and deposit them elsewhere in the building, causing additional damage and loss.

116. Even frequent cleanings cannot be assumed to have eliminated the coronavirus from a premises, given the coronavirus's ability to spread easily and quickly as long as people are entering the premises during an outbreak at or near the premises. It is clear from the epidemiological trajectory of the outbreaks in the U.S. and other countries that even expensive new cleaning measures cannot completely eliminate viral presence once the virus binds to and adheres to surfaces.

117. Many hotels, bars, restaurants, and retail locations, including Plaintiff, experienced extensive physical loss or damage due to COVID-19.

VIII. THE INSURANCE COVERAGE PURCHASED BY PLAINTIFF

118. To protect its business against property damage or business interruptions, on or about January 1, 2020, Plaintiff entered into a contract of insurance with the CNA Defendants bearing Policy Number 6023321926, naming Plaintiff as the named insured under the Insurance Policy.

119. The policy period for the Insurance Policy for Policy No. 6023321926 is January 1, 2020 through January 1, 2021.

120. Plaintiff is listed as the “Named Insured” under the CNA Policy, reflected on page 1 of 3 of the Insurance Policy’s Policy Declarations as well as page 4 of 37 of the Insurance Policy.

121. The relevant policy limits under the Insurance Policy are: (a) \$69, 641,600 “subject to a maximum limit any one occurrence”; (b) \$7,470,000 for “Blanket Business Interruption (Gross Earnings); (c) \$250,000 for “Denial of access by Civil Authority / Ingress – Egress”; (d) \$1,500,000 for “Extra Expense”; and (e) \$1,000,000 for “Ordinance or Law: Business Interruption, Extra Expense, or Rental Value” as outlined in Section I. DECLARATIONS, 4. LIMITS OF LIABILITY of the Insurance Policy.

122. The relevant time limit for “Business Interruption Period of Indemnity” is: “Twelve (12) Months.” The relevant time limit for “Denial of Access by Civil Authority / Ingress – Egress is “Thirty (30) Days.”

123. As outlined in Section II. COVERGE, this Insurance Policy “insures against risks of direct physical loss of or damage to property and/or interests described herein at covered Locations,” “[e]xcept “as hereafter excluded and subject to the LIMITS OF LIABILITY.”

124. The Insurance Policy defines “Location” as the “area within legal boundaries of the premises, or of the portion of the premises, in which the Insured has an interest.”

125. The Insurance Policy defines “Covered Property and Related Interests” to include:

a. The interest of the Insured in all real and personal property owned or used by the Insured, or hereafter erected, installed, or acquired, including while in course of building, erection, installation, and assembly, and including interest in **Improvements and Betterments**.

In the event of loss or damage, the Company agrees to accept and consider the Insured as sole and unconditional owner of **Improvements and Betterments**, notwithstanding any contracts or leases to the contrary.

b. The interest of the Insured in the real and personal property of others in the Insured’s care, custody and control, and the Insured’s liability imposed by law or assumed by contract for physical loss or damage to such property.

c. Personal property to the Insured’s officers and employees while at **Locations** of the Insured, or within one thousand (1,000) feet thereof.

126. Plaintiff Desai’s hotel properties, as well as the food and beverage services located within those hotel properties, are Covered Locations as defined above.

127. The Insurance Policy contains no exclusions that would apply to, preclude, or limit coverage for Plaintiff’s losses. None of the exclusions applicable to the Insurance Policy’s Coverage Part refer to viruses, communicable diseases, or pandemics.

1. Business Interruption (Gross Earnings)

128. The Insurance Policy includes coverage to insure against “Time Element” loss.

129. Paragraph B. of Time Element, **BUSINESS INTERRUPTION (GROSS EARNINGS)** coverage states:

a. This policy covers against loss resulting from necessary interruption of business caused by direct physical loss of or damage to covered property, except **Finished Stock**, by the peril(s) insured against and occurring during the term of this policy at covered **Locations** occupied by the Insured, subject to the sublimit specified in Section I.4. of this policy.

In the event such physical loss or damaged the Company shall be liable for the actual loss sustained by the Insured resulting directly from such interruption of business, but not exceeding the reduction in **Gross Earnings** as set forth below less charges and expenses which do not necessarily continue during the interruption of business, for only such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property herein

described as has been damaged or destroyed, commencing with the date of such damage or destruction and not limited by the date of expiration of this policy, but in no event to exceed the number of months specified in Section I.5. **TIME LIMITS** if a Business Interruption Period of Indemnity limit is specified.

b. Determination of Gross Earnings:

- (1) Manufacturing **Locations**: **Gross Earnings** are the sum of:
 - (a) Total net sales value of production;
 - (b) Total net sales of **Merchandise**; and
 - (c) Other earnings derived from operations of the business; Less the cost of:
 - (d) **Raw Stock** from which production is derived;
 - (e) Supplies consisting of materials consumed directly in the conversion of such **Raw Stock** into **Finished Stock** or in supplying the service(s) sold by the Insured;
 - (f) **Merchandise** sold, including packaging materials therefore;
 - (g) Services(s) purchased from outsiders (not employees of the Insured) for resale which do not continue under contract;
 - (h) Ordinary Payroll expense (the entire payroll expense for all employees of the insured, except officers, executives, department managers and employees under contract) beyond the number of days included in Section I.5. of this policy;
 - (i) Depreciation Expense for any asset destroyed by perils insured hereunder; and
 - (j) Other Discontinued Expenses meaning any other operating expenses discontinued as a result of the direct physical loss or damage caused by peril(s) insured against.
- (2) Mercantile & Non-Manufacturing **Locations**: **Gross Earnings** are the sum of:
 - (a) Total net sales; and
 - (b) Other earnings derived from operations of the business; Less the cost of:
 - (c) **Merchandise** sold, including packaging materials therefore;
 - (d) Materials and supplies consumed directly in supplying the service(s) sold by the Insured;
 - (e) Services(s) purchased from outsiders (not employees of the Insured) for resale which do not continue under contract; and
 - (f) Depreciation Expense for any asset destroyed by perils insured hereunder;
 - (g) Ordinary Payroll expense (the entire payroll expense for all employees of the insured, except officers, executives, department managers and employees under contract) beyond the number of days included in Section I.5. of this policy; and
 - (h) Other Discontinued Expenses meaning any other operating expenses discontinued as a result of the direct physical loss or damage caused by a peril insured against.

130. As a result of COVID-19, Plaintiff has sustained direct physical loss of or damage to property of the type insured under the Insurance Policy: (a) to property (i.e., Real and Personal Property) described in the Insurance Policy and not otherwise excluded by the Insurance Policy; (b) that Plaintiff used; (c) is located at covered Locations (i.e., Plaintiff's hotel properties); and (d) occurred during the Periods of Liability. In fact, as a result of COVID-19 and physical loss of or damage to the properties beginning in mid-March 2020, Plaintiffs ceased hotel operations and/or hotel operations were suspended or reduced, restaurant/food services were terminated and/or suspended, scheduled bookings/reservations for guests and group events were terminated, and Plaintiffs lost substantial income from the loss of revenue from paying extended stay hotel guests. To date, Plaintiffs continue to suffer losses as a result of business interruptions related to COVID-19 and the resulting physical loss of or damage to their properties (i.e., reduced occupancy, and significant drops in revenue from the termination, suspension and/or interruption of hotel, food, and beverage operations). Therefore, Plaintiff has suffered Time Element losses, which are covered under the **BUSINESS INTERRUPTION (GROSS EARNINGS)** coverage of the Insurance Policy.

131. As a result of COVID-19 and the direct physical loss of or damage to property caused thereby, Plaintiff has been: (a) wholly or partially prevented from continuing business operations or services (i.e., operating its hotels and other related dining, beverage and retail services); (b) unable to make up lost production within a reasonable period of time; (c) unable to continue such operations or services (i.e., operating its hotels and other related dining, beverage and retail services) during the Period of Liability; and (d) able to demonstrate a loss of sales for the operations or services prevented. Therefore, Plaintiff is entitled to coverage for its losses under the **BUSINESS INTERRUPTION (GROSS EARNINGS)** provision of the Insurance Policy.

2. Denial Of Access By Civil Authority And Ingress-Egress

132. Paragraph C.10. of ADDITIONAL COVERAGES, COVERAGE EXTENSIONS AND LIMITATIONS states:

10. DENIAL OF ACCESS BY CIVIL AUTHORITY AND INGRESS EGRESS

This policy is extended to cover for up to the time limit specified in Section I.5. but not exceeding the sublimit shown in Section I.4. of this policy, the actual loss sustained:

- a. during the period of time while access to the Insured's Location is prohibited by order of civil authority, but only when such order is given as a direct result of physical loss or damage to property of the type insured from a peril insured against occurring at or in the immediate vicinity of said Location; or
- b. during the period of time when as a direct result of physical loss or damage to property of the type insured from a peril insured against, ingress to or egress from the Insured's Location is thereby physical prevented.

133. Plaintiff has sustained losses as a result of direct physical loss of or damage to its insured property that are not excluded in the Insurance Policy. In addition, the Civil Authority Orders have impaired access to the Plaintiff's properties as well as access to restaurants, bars and retail locations at the hotel premises. Accordingly, Plaintiff is entitled to coverage for its losses under the DENIAL OF ACCESS BY CIVIL AUTHORITY AND INGRESS-EGRESS provision.

134. Further, Plaintiff incurred costs, expenses, and losses to mitigate the spread of COVID-19 in response to the Civil Authority Orders.

3. Extra Expense

135. Paragraph C.15. of ADDITIONAL COVERAGES, COVERAGE EXTENSIONS AND LIMITATIONS states:

15. EXTRA EXPENSE

The Company will pay for the reasonable and necessary extra expense, as hereinafter defined, incurred by the Insured in order to continue as nearly as practicable the normal operation of the Insured's business following direct physical loss of or damage to covered property by perils(s) insured against.

In the event of such physical loss or damage, the Company shall be liable for such reasonable and necessary extra expense incurred for only such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property as has been damaged, commencing with the date of damage and not limited by the date of expiration of this policy, subject to the sublimit specified in Section I.4. of this policy.

136. Plaintiff has incurred reasonable and necessary extra expenses to temporarily continue as nearly normal as practicable the providing of hotel and restaurant/bar/retail services at the covered Locations. Plaintiff's losses and **EXTRA EXPENSE** incurred were a direct result of the direct physical loss of or damage to the covered Locations. None of the **EXTRA EXPENSE** Exclusions apply. As a result, Plaintiff is entitled to coverage for the extra costs and expenses under the **EXTRA EXPENSE** provision of the Insurance Policy.

4. Ordinance Or Law, Demolition Cost, And Increased Cost Of Construction

137. Paragraph C.23. of **ADDITIONAL COVERAGES, COVERAGE EXTENSIONS AND LIMITATIONS** states:

23. ORDINANCE OR LAW, DEMOLITION COST, AND INCREASED COST OF CONSTRUCTION

In the event of physical loss or damage covered hereunder that causes the enforcement of any law or ordinance in effect at the time of loss regulating the construction, repair or use of the damaged building(s), this Company shall be liable for:

- a. The value of the undamaged portion of the damaged building(s) that must be demolished;
- b. The cost of demolishing the undamaged portion of the damaged building(s) that must be demolished because of such law or ordinance, including the cost of clearing the site;

c. The increased cost of repair or reconstruction of the damaged and undamaged portion of the damaged building(s) on the same site or another site, but limited to the costs that would have been incurred in order to comply with the minimum requirements of such law or ordinance regulating the repair or reconstruction of the damaged building(s) on the same site; and

d. The increased loss or costs for business interruption, extra expense or rental value arising out of the additional time required to comply with said law or ordinance.

138. Moreover, the Loss Conditions section of the Insurance Policy at issue required that Plaintiff protect its property from further loss or damage and maintain the property in the best possible order. In other words, the remedial efforts alleged above which were undertaken by Plaintiff in response to the physical loss of or damage to its property were also part of Plaintiff's mitigation obligations under the policy.

139. If Plaintiff had not closed, altered, or remediated its hotels, properties, and operations, COVID-19 would have remained in and on Plaintiff's properties. By suspending and reducing its operations, Plaintiff avoided actual and imminent covered property damage, as well as potential third party claims.

140. Plaintiff has sustained losses and increased costs of repair as a result of direct physical loss of or damage to the covered Locations caused by COVID-19. Plaintiff has sustained increased loss or costs for business interruption and extra expense arising out of the additional time required to comply with laws and ordinances that required Plaintiff to increase its costs in the form of personal protective equipment, increased cleaning/sanitary procedures, and the installation and maintenance of air filters and humidifiers at the covered Locations.

141. Accordingly, Plaintiff is entitled to coverage for its losses under the **ORDINANCE OR LAW, DEMOLITION COST, AND INCREASED COST OF CONSTRUCTION** provision.

IX. PLAINTIFF'S CLAIM FOR COVERAGE

142. COVID-19 was present at Plaintiff's properties in various ways including: (1) respiratory droplets in the air at or surrounding the insured property, (2) on the surface of objects or tangible things at the insured property, and (3) in persons infected with the disease such as customers, employees, and service providers who are at or in proximity to the insured property and objects or tangible things located at or near the insured property. In effect, COVID-19 is pervasively present and ubiquitous at any time and in any place where real or personal property is located or where people are or can be.

143. When individuals carrying the coronavirus breathe, talk, cough, or sneeze, they expel aerosolized droplet nuclei that remain in the air and, like dangerous fumes, make the premises unsafe and affirmatively dangerous. In addition, the coronavirus physically alters the air. Air inside buildings that was previously safe to breathe but can no longer safely be breathed due to coronavirus and COVID-19 has undergone a physical alteration.

144. Coronavirus droplets have been conveyed from infected persons (whether symptomatic, pre-symptomatic, or asymptomatic) to solid surfaces, including but not limited to furniture, doors, floors, bathroom facilities, equipment, and supplies, and into the air and HVAC system at Plaintiff's hotels, causing damage and alteration to physical property and ambient air at the premises. Aerosolized coronavirus has entered the air in Plaintiff's hotels.

145. The presence of coronavirus and COVID-19, including but not limited to coronavirus droplets or nuclei on solid surfaces and in the air at insured Locations, has caused and will continue to cause direct physical damage to physical property and ambient air at the premises. Coronavirus, a physical substance, has attached and adhered to Plaintiff's hotels and the surfaces therein, and by doing so, altered those properties. Such presence has also directly resulted in loss of functionality of those properties.

146. In mid to late March 2020, Plaintiff's property was forced to cease normal business operations as a result of the direct physical loss of or damage caused by COVID-19, the Mississippi Shutdown Orders, the CDC's travel recommendations, former President Trump's travel orders, the Civil Authority Orders, and/or other states' stay-at-home orders. All bookings were cancelled and Plaintiff's hotels, including the restaurants, bars, and other retail services were temporarily unable to conduct business or accept future bookings or reservations.

147. As a result of the direct physical loss of and damage to property caused by COVID-19, the coronavirus pandemic and directly resulting business interruption, the Mississippi Shutdown Orders, the CDC's travel recommendations, former President Trump's travel orders, the Civil Authority Orders, and/or other states' stay-at-home orders, Plaintiff has sustained significant losses and expenses and will continue to do so.

148. The physical losses to Plaintiff's hotels include without limitation the rendering of the properties from a satisfactory state to a state dangerous and/or unsatisfactory for use because of the fortuitous presence and effect of the coronavirus, fomites, and respiratory droplets or nuclei directly upon the property.

149. Physical losses to Plaintiff's hotels include without limitation the physical loss of the ability to use covered property for its primary function.

150. The presence of COVID-19 caused direct physical loss of or damage to a Covered Location under the Policy by: (i) causing direct physical loss of or damage to a Covered Location; (ii) denying use of and damaging the Covered Location; (iii) requiring physical repair and/or alterations to the Covered Location; (iv) and/or by causing a necessary interruption of business during a period of liability.

151. On or about March 17, 2020, Plaintiff submitted a claim to the CNA Defendants for coverage under the Insurance Policy.

152. Following Plaintiffs' providing extensive information related to the Plaintiffs' closures, interruptions to businesses, property loss and damage, and resulting financial losses and damages suffered by the Plaintiffs, the CNA Defendants issued a denial letter dated May 20, 2020 in which they refused to provide coverage to any of the Plaintiffs under the Insurance Policy. Moreover, upon information and belief, the CNA Defendants have granted no coverage to other hotels and/or businesses related to COVID-19 and the resulting the Mississippi Shutdown Orders, the CDC's travel recommendations, former President Trump's travel orders, the Civil Authority Orders, and/or other states' stay-at-home orders.

IX. PLAINTIFF'S CAUSES OF ACTION

COUNT ONE (DECLARATORY RELIEF)

153. Plaintiff hereby adopts and incorporates as if fully re-written herein all the allegations set forth in paragraph 1 through 152 of this Complaint.

154. Plaintiff seeks a declaration of the parties' rights and duties under the Insurance Policy pursuant to 735 ILCS § 5/2-701.

155. Under "§ 2-701 Declaratory Judgments" in Illinois Statutes Chapter 735 on Civil Procedure et seq., the court:

may, in cases of actual controversy make binding declarations of rights, having the force of final judgements, whether or not any consequential relief is or could be claimed, including the determination, at the instance of anyone interested in the controversy, of the construction of any statute, municipal ordinance, or other governmental regulation, or of any deed, will, contract or other written instrument, and a declaration of the rights of the parties interested.²⁹

156. An actual, present, and justiciable controversy has arisen between Plaintiff and the CNA Defendants concerning Defendants' contractual duties to indemnify Plaintiff's claims for

²⁹ 735 ILCS 5/2-701 (2021)

time element losses, property losses, and other losses, costs, and expenses under the Insurance Policy.

157. The controversy between Plaintiff and the CNA Defendants is ripe for judicial review.

158. The controversy is of sufficient immediacy to justify the issuance of declaratory relief.

159. Plaintiff has suffered, and continues to suffer, a covered loss under the terms of the Insurance Policy and is entitled to coverage for its losses pursuant to the coverage provisions of the Insurance Policy. No valid and/or applicable exclusion exists in the Insurance Policy to deny coverage. Upon information and belief, the CNA Defendants will deny Plaintiff's claims without legal or factual basis for doing so.

160. Plaintiff is the named insured under the Insurance Policy. As such, Plaintiff is an entity interested under a written contract or other writing or whose rights, status, or other legal relations are affected by a statute or ordinance may have determined any question of construction or validity arising under the contract or ordinance and obtain a declaration of the rights, status and other legal relations thereunder.

161. Plaintiff alleges that:

- a. The Insurance Policy's coverage provisions are triggered by the facts set forth herein;
- b. COVID-19 causes direct physical loss of or damage to properties, including the covered Locations, within the meaning of the Insurance Policy;
- c. Plaintiff has satisfied or been excused from satisfying, or the CNA Defendants have waived or are estopped from enforcing, all conditions precedent under the Insurance Policy;
- d. Plaintiff is entitled to coverage under the Insurance Policy for its business income losses and extra expenses arising out of the interruption and closure of business as a result of COVID-19 at or near the covered Locations;

- e. Plaintiff is entitled to coverage under the Insurance Policy for its losses caused by the Civil Authority Orders which limited, restricted, or prohibited access to the covered Locations as a result of COVID-19 at the covered Locations;
- f. Plaintiff has sustained increased loss or costs for business interruption and extra expense arising out of the additional time required to comply with the Civil Authority Orders that required Plaintiff to increase its costs and expenses;
- g. Plaintiff is entitled to coverage under the Insurance Policy for actual loss sustained to prevent and costs incurred to temporarily protect against actual or impending direct physical loss of or damage to the covered Locations;
- h. Plaintiff has incurred reasonable and necessary extra expenses to temporarily continue normal business, to the extent possible, at the covered Locations following the direct physical loss of or damage of the type insured by the Insurance Policy;
- i. No exclusions in the Insurance Policy apply to preclude or limit coverage for Plaintiff's claims;
- j. The CNA Defendants are liable to pay and indemnify Plaintiff up to the coverage limits of the Insurance Policy for all costs, losses and liabilities associated with the covered losses under the Insurance Policy;
- k. Plaintiff is entitled to costs and expenses in connection with this action, including but not limited to, reasonable attorneys' fees and pre-and post-judgment interest; and
- l. Plaintiff is entitled to any such other and further relief as this Court finds just and proper.

WHEREFORE, Plaintiffs, Desai Hotel Group, LLC a/k/a Natchez Hotel Group, Inc. a/k/a Holiday Inn Express & Suites Natchez South; Ridgeland Hotel Group, LLC a/k/a Hampton Inn & Suites Jackson-Ridgeland; High Street Hotel Group, LLC a/k/a Holiday Inn Express & Suites Jackson Downtown - Coliseum; Hernando Hotel Group, LLC a/k/a Hampton Inn Hernando; JANFI, LLC a/k/a Quality Inn & Suites Jackson North; Vidalia Hotel Group, LLC a/k/a TownePlace Suites by Marriot Vidalia and Opelousas Hotel Group, LLC a/k/a Hampton Inn Opelousas, respectfully requests that this Court, pursuant to 735 ILCS 5/2-701, declare in Plaintiff's favor and against the CNA Defendants, as follows:

- a. The Insurance Policy's coverage provisions are triggered by the facts set forth herein;
- b. COVID-19 causes direct physical loss of or damage to properties, including the covered Locations, within the meaning of the Insurance Policy;
- c. Plaintiff has satisfied or been excused from satisfying, or the CNA Defendants have waived or are estopped from enforcing, all conditions precedent under the Insurance Policy;
- d. Plaintiff is entitled to coverage under the Insurance Policy for its business income losses and extra expenses arising out of the interruption and closure of business as a result of COVID-19 at or near the covered Locations;
- e. Plaintiff is entitled to coverage under the Insurance Policy for its losses caused by the Civil Authority Orders which limited, restricted, or prohibited access to the covered Locations as a result of COVID-19 at the covered Locations;
- f. Plaintiff has sustained increased loss or costs for business interruption and extra expense arising out of the additional time required to comply with the Civil Authority Orders that required Plaintiff to increase its costs and expenses;
- g. Plaintiff is entitled to coverage under the Insurance Policy for actual loss sustained to prevent and costs incurred to temporarily protect against actual or impending direct physical loss of or damage to the covered Locations;
- h. Plaintiff has incurred reasonable and necessary extra expenses to temporarily continue normal business, to the extent possible, at the covered Locations following the direct physical loss of or damage of the type insured by the Insurance Policy;
- i. No exclusions in the Insurance Policy apply to preclude or limit coverage for Plaintiff's claims;
- j. The CNA Defendants are liable to pay and indemnify Plaintiff up to the coverage limits of the Insurance Policy for all costs, losses and liabilities associated with the covered losses under the Insurance Policy;
- k. Plaintiff is entitled to costs and expenses in connection with this action, including but not limited to, reasonable attorneys' fees and pre-and post-judgment interest; and
- l. Plaintiff is entitled to any such other and further relief as this Court finds just and proper

COUNT TWO (BREACH OF CONTRACT)

162. Plaintiff hereby adopts and incorporates as if fully re-written herein all the allegations set forth in paragraphs 1 through 161 of this Complaint.

163. Plaintiff submitted a claim for coverage under the Time Element: Business Interruption (Gross Earnings), Denial of Access by Civil Authority and Ingress-Egress, Extra Expense, Ordinance or Law, and related provisions of the property Insurance Policy ("Coverage Provisions") for the direct physical loss of or damage to its property, and resulting expenses, caused by COVID- 19 and the losses, damages and expenses caused by the NY Executive Orders, the CDC's travel recommendations, former President Trump's travel orders, the Civil Authority Orders, and/or other states' stay-at-home orders.

164. Plaintiff is entitled to coverage for its losses, damages and expenses under the applicable Coverage Provisions.

165. The CNA Defendants have expressly denied, or denied by operation on applicable law, Plaintiff's claims for coverage under the Coverage Provisions.

166. Plaintiff is entitled to recover its incurred costs, expenses, and losses to mitigate the spread of COVID-19 in complying with Civil Authority Orders, which are covered under the Insurance Policy.

167. The CNA Defendants have expressly denied, or denied by operation of applicable law, Plaintiff's claim for costs, expenses, and losses to mitigate the spread of COVID-19 in complying with Civil Authority Orders.

168. Plaintiff has substantially performed all required conditions precedent under the Insurance Policy, such provisions have been waived by the CNA Defendants, or the CNA Defendants are estopped from asserting them.

169. By denying such coverage as outlined herein, the CNA Defendants have materially breached the Insurance Policy.

170. As a direct and proximate result of the CNA Defendants' breaches of the Insurance Policy, Plaintiff has been damaged in an aggregate amount in excess of \$50,000.00, the exact amount to be proven at trial.

WHEREFORE, Plaintiff respectfully prays that the Court enter a judgment in its favor and against the CNA Defendants on the breach of contract claim set forth above in Count One and award Plaintiff:

- a. compensatory and general damages in an amount to be proven at trial, including consequential damages;
- b. attorney fees and costs incurred in obtaining the benefits under the Insurance Policy;
- c. pre-judgment and post-judgment interest at the maximum legal rate; and
- d. such other and further relief as this Court finds just and proper.

XI. DEMAND FOR TRIAL BY JURY

Plaintiff demands a jury trial on all issues and claims so triable.

Respectfully Submitted,

GAUTHIER MURPHY & HOUGHTALING LLC

/s/ Perrey S. Lee
Counsel for Plaintiff Desai Hotel Group, LLC.

TANNEN LAW GROUP, P.C.

/s/ Michael M. Tannen
Local Counsel for Plaintiff Desai Hotel Group, LLC.

Perrey S. Lee (*to be admitted Pro Hac Vice*³⁰)
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³⁰ Ms. Lee's application for *pro hac* admission will be filed soon after the clerk of the circuit court assigns a case number.