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Attorneys for Plaintiffs

_____)	
LE BERNARDIN, INC., RIPERT)	SUPERIOR COURT OF NEW JERSEY
CONSULTING, INC.; LE BERNARDIN)	LAW DIVISION
CONSULTING, INC.; RIPERT)	
ENTERPRISES; LE BERNARDIN)	BERGEN COUNTY
PUBLISHING, INC.; LE BERNARDIN)	
VENTURES; LLC D/B/A)	Civ. A. No. _____
PRIVE AND LE BERNARDIN)	
VENTURES LLC D/B/A ALDO SOHM)	
WINE BAR,)	
)	Jury Trial Demanded
Plaintiffs,)	
)	
v.)	
)	
ADMIRAL INDEMNITY COMPANY,)	
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiffs Le Bernardin, Inc.; Ripert Consulting, Inc.; Le Bernardin Consulting, Inc.; Ripert Enterprises; Le Bernardin Publishing, Inc.; Le Bernardin Ventures, LLC d/b/a Prive; Le

Bernardin Ventures, LLC d/b/a Aldo Sohm Wine Bar, ("Plaintiffs"), by its undersigned counsel, hereby submit their Complaint against Defendant, Admiral Indemnity Company ("Defendant"), and in support thereof, allege as follows:

I. NATURE OF ACTION

1. This is an action for declaratory judgment and breach of contract arising out of the refusal of Defendant, a multi-billion dollar business, to live up to its promise to its policyholder, Plaintiffs. Defendant promised to pay for, in exchange for premiums paid, physical loss of or damage to and related business interruption losses and expenses under an "all risk" insurance policy.

2. Plaintiffs own and operate several restaurants in New York, New York, where during peak times, scores of people come in and out of Plaintiffs' restaurants to dine, shop, and host or attend events. Annually, Plaintiffs' restaurants hosted thousands of patrons.

3. This all changed in 2020 with the COVID-19 pandemic. The pandemic had an unprecedented and catastrophic effect on Plaintiffs' property and business operations, causing tremendous financial losses.

4. The havoc wrought by the pandemic is well-documented. According to the Centers for Disease Control ("CDC"), to date, COVID-19 has infected more than thirty-three million people and killed nearly 600,000 in the United States. The state of New York,

where Plaintiffs' business operations are located, has not been spared from this tragedy.

5. Beyond the human toll, the pandemic has had a devastating impact on the economies of the state of New York, where Plaintiffs' business operations are located, causing widespread physical losses, property damage and loss for many businesses, including Plaintiffs'. As a result of the pandemic, Plaintiffs have been prevented from conducting normal business operations and deprived of the use of its business premises. Even when permitted to open, as a result of the spread of COVID-19, Plaintiffs were unable to operate and their business locations were unusable for over one year without substantial physical alterations and other protective measures. Further, the presence of COVID-19 and SARS-CoV-2 within Plaintiffs' insured properties also caused direct physical loss of or damage to properties (or both) by transforming the properties from usable and safe into properties that are unsatisfactory and prohibited for use, uninhabitable, unfit for their intended function, and extremely dangerous and potentially deadly for humans.

6. SARS-CoV-2 and COVID-19 caused direct physical loss of or damage to the properties (or both) throughout the locales where Plaintiffs' business operations are based, including to Plaintiffs' covered business and surrounding properties, by altering the physical conditions of the properties so that they were no longer safe or fit for occupancy or use, and/or permitted to be used. Specifically, SARS-CoV-2 attaches itself to surfaces and properties, thereby producing physical change in the condition

of the surfaces and properties—from safe and touchable to unsafe and deadly. SARS-CoV-2 and COVID-19 also physically alter and damage the air within buildings such that the air is no longer safe to breathe.

7. It is often the case that the source of a covered property insurance loss can ultimately be cleaned, removed, contained, or remediated, yet that does not mean that there was no “loss of or damage to” property in the first place. This was true for mold, odors, smoke, fumes, and asbestos fibers that triggered coverage in other cases and the same is true here. That is especially significant when it comes to business interruption losses, where even modest impacts to property lead to covered losses. The coronavirus can be disinfected or cleaned, but it still causes a distinct and demonstrable alteration to property. That is what has triggered coverage for Plaintiffs’ significant losses here.

8. Because of the physical alterations of its properties, including the air, airspaces, and surfaces in its properties, which rendered the insured properties incapable of performing their essential functions, Plaintiffs sustained direct physical loss of or damage to its properties (or both). The disruption of normal business operations resulted in the severe and substantial losses more particularly described below.

9. To date, Plaintiffs have suffered hundreds of thousands of dollars in loss and damage, all of which remains unreimbursed by Defendant despite being covered under the terms of the policy purchased.

10. Plaintiffs are yet another victim of the insurance industry's universal denial and rejection of its coverage obligations for COVID-19 business interruption losses. Defendant has left Plaintiffs with no choice but to seek judicial intervention to enforce the obligations owed to it by Defendant pursuant to the terms and conditions of the "all risk" policy (the "All Risk Policy"). The All Risk Policy is attached hereto as **Exhibit A**, and is incorporated herein by reference.

11. Prior to the pandemic, Plaintiffs purchased an "all risk" insurance policy from Defendant, which included coverage for direct physical loss of or damage to properties (or both) for business interruption exactly like that caused by the COVID-19 pandemic and/or closure orders.

12. The All Risk Policy specifically insures against business interruption losses, losses occasioned by government orders, decontamination costs, extra expense payments to continue business as nearly normal as practicable, loss as a result of communicable disease, among many other covered losses. Plaintiffs have experienced losses that fall within all of these coverages. For this broad, "all risk" business interruption protection, Plaintiffs paid significant premium.

13. Plaintiffs' purchase of this broad "all risk" coverage created a reasonable expectation that the coverage will apply if Plaintiffs have a business interruption resulting from unforeseen and fortuitous events, such as the physical damage to and inability to use its properties or a forced government shutdown of its businesses as a result of a pandemic or other large-scale natural

disaster. In particular, Plaintiffs could not foresee the physical damage produced by the COVID-19 pandemic or the government orders shuttering businesses as a result of the physical damage produced by the COVID-19 pandemic. After faithfully paying a high premium for "all risk" coverage, business owner-insured Plaintiffs, who were forced to modify their business operations from these unprecedented events, had a reasonable expectation that their "all risk" business interruption insurance would apply and protect it. Plaintiffs had such expectations and sought coverage from Defendant for the losses.

14. Despite the coverage provided and the expectations of Plaintiffs, who paid a significant premium for it, Defendant preemptively denied claims submitted by businesses for "all risk" coverage during the COVID-19 pandemic. In violation of state law, Defendant denied coverage without conducting an investigation or considering supporting evidence. Through its conduct, Defendant wrongfully breached its obligations under the All Risk Policy and left Plaintiffs without the insurance benefits they paid for, relied upon, and desperately needed during the business closures and interruptions and to remediate its ongoing property damage.

15. The insurance industry has repeatedly and falsely warned courts and the media that COVID-19-related claims will bankrupt insurers and force them to raise premiums and restrict coverages - but they have reaped enormous profits by denying covered claims and have continued to raise premiums despite refusing to uphold their coverage obligations.

16. Plaintiffs seek a declaration that the presence, statistically certain presence, or suspected presence of the SARS-CoV-2 virions in or on Plaintiffs' properties and the ubiquitous presence of the virions throughout the locales and state of New York where Plaintiffs' covered business operations are located, causes direct physical loss or damage to property within the meaning of those phrases as used in the All Risk Policy sufficient to trigger coverage under the All Risk Policy, including under the coverages for Business Interruption, Extra Expense, and various Additional Coverages and Coverage Extensions, such as Dependent Property and Civil Authority.

17. Plaintiffs also seek a declaration that various orders issued by governmental officials on account of the presence of persons infected with and/or suffering from COVID-19 and the presence of SARS-CoV-2 in places of business and gathering prevented Plaintiffs from accessing and using its insured properties to conduct its ordinary business activities and deprived Plaintiffs of their properties and the functionality of its properties, thereby constituting "physical loss or damage" to property within the meaning of that phrase as used in the All Risk Policy sufficient to trigger coverage in favor of Plaintiffs under the All Risk Policy, including under the coverages for Business Interruption, Extra Expense, and various Additional Coverages and Coverage Extensions, such as Dependent Property and Civil Authority.

18. Plaintiffs seek a further declaration that the terms of the All Risk Policy obligate Defendant to pay for physical loss or

damage to the premises described in the Location Schedule attached to the All Risk Policy, and all Business Interruption loss, and Extra Expense incurred, including those expenses that would not have been incurred if there had not been "risk of physical loss or damage" or "physical loss or damage" to covered property, including expenses to temporarily continue as close to normal the conduct of the insured premises, and all incurred and to be incurred losses falling within the scope of Additional Coverages and Coverage Extensions, including Dependent Property and Civil Authority.

19. Plaintiffs also seek monetary damages for Defendant's breach of its obligations under the All Risk Policy as declared by the Court and to pay Plaintiffs' losses in full including, without limitation, loss mitigation expenses.

II. PARTIES

20. Plaintiff Le Bernardin Inc. is a corporation with its principal place of business located at 787 7th Ave New York, NY 10019.

21. Plaintiff Le Bernardin Consulting, Inc. is a corporation with its principal place of business located at 787 Seventh Ave. New York, NY 10019.

22. Plaintiff Le Bernardin Publishing, Inc. is a corporation with its principal place of business located at 787 Seventh Ave. New York, NY 10019.

23. Plaintiff Ripert Enterprises is a limited liability company with its principal place of business located at 787 7th Ave New York, NY 10019.

24. Plaintiff Le Bernardin Ventures LLC, d/b/a Aldo Sohm Wine Bar and Le Bernardin Prive is a limited liability company with its principal place of business located at 787 Seventh Ave. New York, NY 10019.

25. Plaintiff Ripert Consulting, Inc. is a corporation with its principal place of business located at 787 Seventh Ave. New York, NY 10019.

26. At all relevant times, Plaintiffs were and still are in the business of operating restaurants. Plaintiffs own several restaurants located in New York, New York, offering dining experiences. Plaintiffs employed numerous individuals pre-pandemic to keep their operations running on a daily basis.

27. Plaintiffs' premises are insured under the All-Risk Policy.

28. At all relevant times, Defendant, was and continues to be an insurance company with its principal place of business located in Rutherford, New Jersey. Defendant sells policies of insurance, including property and business interruption insurance policies.

29. At all relevant times Defendant was, and presently is, duly authorized to transact the business of insurance in New Jersey and is in fact transacting the business of insurance in New Jersey.

III. JURISDICTION AND VENUE

30. This Court has jurisdiction over this action because Defendant's principal place of business is in Rutherford, New Jersey.

31. Venue in this Court is proper because Defendant is located and conducts business in Bergen County.

IV. THE COVID-19 GLOBAL PANDEMIC

32. In December 2019, during the term of the All Risk Policy, an outbreak of illness known as COVID-19 caused by a novel coronavirus formally known as SARS-CoV-2 was first identified in Wuhan, Hubei Province, China. In an unprecedented event that has not occurred in more than a century, a pandemic of global proportions then ensued, with the illness and virus quickly spreading to Europe and then to the United States.

33. In 2020, COVID-19 decimated the economies of the states where Plaintiffs' business operations are located, including Plaintiffs' business operations.

34. COVID-19 is highly transmissible and spreads rapidly. For example, as of March 1, 2020 there were 87,137 confirmed COVID-19 cases across the globe.¹ That number increased to over 432,000,000 confirmed cases as of February 2022.² According to

¹See <https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200301-sitrep-41-covid-19.pdf>.

² See <https://graphics.reuters.com/world-coronavirus-tracker-and-maps/> (last visited February 27, 2022).

the CDC, to date, COVID-19 has infected more than seventy-eight million people and killed over 940,000 in the United States.³

35. At the pandemic's peak, over 4,000 Americans were perishing per day from COVID-19.⁴ A substantial number of Americans are still dying daily, with surges of cases and new and ever more contagious variants of the Coronavirus occurring throughout the U.S.⁵ COVID-19 was the third-leading cause of death in this country in 2020, surpassed only by heart disease and cancer.⁶

36. COVID-19 can be transmitted in several ways, including via human-to-human contact, airborne viral particles, particularly within enclosed properties like the insured locations, and touching surfaces or objects that have SARS-CoV-2 virions on them.

37. COVID-19 spreads easily from person to person and person to surface or object. Research has revealed that COVID-19 primarily is spread by small, physical droplets expelled from the nose or mouth when an infected person talks, yells, sings, coughs, or sneezes. A person who sneezes can release a cloud of SARS-CoV-2-containing droplets that can span as far as 23 to 27 feet. The CDC has stated that SARS-CoV-2 is most likely to spread when people are within six feet of each other, but has also recognized that

³ See <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited February 27, 2022).

⁴ Eugene Garcia, Lisa Marie Pane and Thalia Beaty, *U.S. tops 4,000 daily deaths from coronavirus for 1st time*, AP NEWS, Jan. 8, 2021, <https://apnews.com/article/us-coronavirus-death-4000-daily-16c1f136921c7e98ec83289942322ee4> (last visited February 27, 2022).

⁵ See https://covid.cdc.gov/covid-data-tracker/#trends_dailydeaths (last visited February 27, 2022).

⁶ See <https://www.cdc.gov/nchs/products/databriefs/db427.htm> (last visited February 27, 2022).

SARS-CoV-2 may spread from an infected person who is more than six feet away or who has left a given space. Further, according to the CDC, longer exposure time likely increases exposure risk to COVID-19.

38. Making matters worse, pre-symptomatic and asymptomatic individuals can also transmit COVID-19.⁷ Over 40% of all infections occur from people without any symptoms.⁸ Thus, even individuals who appear healthy and present no identifiable symptoms of the disease have and continue to spread the virus by breathing, speaking, or touching objects and surfaces. These activities deposit SARS-CoV-2 virions in the air and on surfaces rendering the air and surfaces changed from their previous condition. According to the World Health Organization (the "WHO"), the incubation period for COVID-19, i.e., the time between exposure to SARS-CoV-2 and symptom onset, can be up to 14 days. Other studies suggest that the period may be up to 21 days.

39. According to a report in The New York Times, "[a]n infected person talking for five minutes in a poorly ventilated space can also produce as many viral droplets as one infectious

⁷ See <https://www.nature.com/articles/s41591-020-0869-5> (last visited February 27, 2022).

⁸ See *id.*;

<https://www.nbcnews.com/health/healthnews/asymptomatic-covid-19-cases-may-be-more-common-suspected-n1215481> (last visited February 27, 2022).

cough.”⁹ And one human sneeze can expel droplets that can travel up to 27 feet at nearly a hundred miles an hour.¹⁰

40. Before infected individuals exhibit symptoms, *i.e.*, the so-called “pre-symptomatic” period, they are most contagious, as their viral loads will likely be very high, and they may not know they have become carriers. In addition, studies from the CDC and others estimate that 40% to 70% of infected individuals may never become symptomatic (referred to as “asymptomatic” carriers). Pre-symptomatic and asymptomatic carriers are likely unaware that they are spreading SARS-CoV-2 by merely touching objects and surfaces, or by expelling droplets into the air. The National Academy of Sciences has found that the majority of transmission is attributable to people who are not showing symptoms, either because they are pre-symptomatic or asymptomatic.

41. Although these virus-containing droplets are very small, they are still physical, tangible objects that can travel and attach to other surfaces, “such as tables, doorknobs, and handrails,” and cause harm, loss, and damage, and physically alter the property and/or the integrity of the property. Viruses, themselves, are microscopic and made up of genetic material

⁹ See

<https://www.nytimes.com/interactive/2020/04/14/science/coronavirus-transmission-cough-6-feet-ar-ul.html> (last visited February 27, 2022).

¹⁰ See

<https://www.nationalgeographic.com/science/article/coronavirus-covid-sneeze-fluid-dynamics-in-photos> (last visited February 27, 2022).

surrounded by a protein shell¹¹, but they are capable of being observed and can attach themselves to other things they encounter. When droplets and viruses contact objects, they alter those objects, although not in way perceptible by the naked human eye. These virus-containing droplets physically exist ubiquitously in the communities and buildings in which Plaintiffs operate.

42. According to the CDC and the WHO, a person may become infected by touching these surfaces or objects that have SARS-CoV-2 on them, and then touching his or her mouth, eyes, or nose. And, when an uninfected person touches a surface containing SARS-CoV-2, the uninfected person may transmit COVID-19 to another person, by touching and infecting a second surface, which is subsequently touched by that other person. The CDC has thus recommended certain physical and structural remedial measures for businesses to put into place in order to limit transmission and continued surface alteration.

43. Numerous scientific studies have reported that SARS-CoV-2 can survive and persist within the air and on surfaces and buildings after infected persons are present at a given location. Studies have found that SARS-CoV-2 remains active and dangerous in the air in properties and on common surfaces, including plastic, stainless steel, glass, wood, cloth, ceramics, rubber, and even money.¹² All of these materials are widely present at Plaintiffs'

¹¹ See <https://rockedu.rockefeller.edu/component/what-are-viruses-made-of/> (last visited February 27, 2022).

¹² See, e.g., [https://www.thelancet.com/journals/lanmic/article/PIIS2666-5247\(20\)30003-3/fulltext](https://www.thelancet.com/journals/lanmic/article/PIIS2666-5247(20)30003-3/fulltext) (last visited February 27, 2022); <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4659470/> (last

insured location and subject to touch by the multitudes of people visiting Plaintiffs' restaurants daily. For example, Plaintiffs' pans and flatware are stainless steel; tables and chairs used in the restaurants are composed of plastic and/or wood; Plaintiffs' menus are plastic-coated; restaurant windows and doors, and glasses and stemware are glass-based; cloth table coverings and napkins are used in the restaurants; and ceramic plates are used in Plaintiffs' restaurants.

44. Generally being enclosed spaces where large numbers of people gather in close proximity for social and business purposes, especially highly trafficked ones like Plaintiffs', are reportedly particularly susceptible to circumstances favorable to the spread of SARS-CoV-2 virions. An article published in April 2020 analyzed a case study of three families (families A, B, and C) who had eaten at an air-conditioned restaurant in Guangzhou, China.¹³ One member of family A, patient A1, had recently traveled from Wuhan, China. On January 24, 2020, that family member ate at a restaurant with families A, B, and C. By February 5, 2020, 4 members of family A, 3 members of family B, and 2 members of family C had become ill with COVID-19. The only known source for those affected persons in families B and C was patient A1 at the restaurant. Moreover, a study detected SARS-CoV-2 inside the heating and ventilation

visited February 27, 2022); <https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-days> (last visited February 27, 2022); <https://www.cdc.gov/coronavirus/2019-ncov/more/scientific-brief-sars-cov-2.html> (last visited February 27, 2022).

¹³ See https://wwwnc.cdc.gov/eid/article/26/7/20-0764_ (last visited February 27, 2022).

("HVAC") system connected to hospital rooms of sick patients. The study found SARS-CoV-2 in ceiling vent openings, vent exhaust filters, and ducts located as much as 56 meters (over 183 feet) from the rooms of the sick patients.¹⁴

45. Additionally, the CDC has stated that "there is evidence that under certain conditions, people with COVID-19 seem to have infected others who were more than 6 feet away" and infected people who entered the space shortly after the person with COVID-19 had left.¹⁵ A published systematic review of airborne transmission of SARS-CoV-2 corroborated the CDC's concerns and recommended procedures to improve ventilation of indoor air environments to decrease bioaerosol concentration and physically reduce potential spread of SARS-CoV-2 in properties like the insured locations.¹⁶

46. The CDC has recommended "ventilation interventions" to help reduce exposure to the airborne Coronavirus in indoor spaces, including increasing airflow and air filtration (such as with high-efficiency particulate air ("HEPA") fan/filtration systems).¹⁷

¹⁴ Karolina Nissen, et al., *Long-distance airborne dispersal of SARS-CoV-2 in COVID-19 wards*, 10 NATURE SCI. REPORTS 19589 (Nov. 11, 2020), <https://doi.org/10.1038/s41598-020-76442-2> (last visited February 27, 2022).

¹⁵ CDC, *How COVID-19 Spreads* (last updated Oct. 28, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited February 27, 2022).

¹⁶ Zahra Noorimotlagh, et al., *A systematic review of possible airborne transmission of the COVID-19 virus (SARS-CoV-2) in the indoor air environment*, 193 ENV'T RSCH. 110612, 1-6 (Feb. 2021), https://www.sciencedirect.com/science/article/pii/S0013935120315097?dgcid=rss_sd_all (last visited February 27, 2022).

¹⁷ CDC, *Ventilation in Buildings* (last updated Feb. 9, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html#:~:text=HEPA%20filters%20are%20e>

These and other remedial measures must be implemented, at high cost and extra expense, to reduce the amount of the SARS-CoV-2 present in a given space and to make property safe for its intended use. These remedial measures demonstrate direct physical loss of or damage to interior spaces like the insured locations even where no virus is present.

47. The proposition advanced by the insurance industry that an indoor space containing the infectious SARS-CoV-2 virions can be made safe and fit for its functional and intended use even though the virions remain in the air and circulating throughout indoor environments either affixed to property or in an aerosol capacity because the virions can be removed by routine surface cleaning is false.

48. A number of studies have also demonstrated that SARS-CoV-2 is "much more resilient to cleaning than other respiratory viruses so tested."¹⁸ The measures that must be taken to remove the Coronavirus from property are significant and far beyond ordinary or routine cleaning.

49. Efficacy of decontaminating agents for viruses is based on a number of factors, including the initial amount of virus present, contact time with the decontaminating agent, dilution, temperature, and pH, among many others. Detergent surfactants are not recommended as single agents, but rather in conjunction with complex disinfectant solutions.¹⁹

ven%20more,with%20SARS%2DCoV%2D2 (last visited February 27, 2022).

¹⁸ *Id.*

¹⁹ *Id.*

50. Additionally, it can be challenging to accurately determine the efficacy of decontaminating agents. The toxicity of an agent may inhibit the growth of cells used to determine the presence of virus, making it difficult to determine if lower levels of infectious virus are actually still present on treated surfaces.²⁰

51. In order to be effective, cleaning and decontamination procedures require strict adherence to protocols not necessarily tested under "real life" or practical conditions, where treated surfaces or objects may not undergo even exposure or adequate contact time.²¹ Studies of coronaviruses have demonstrated viral RNA persistence on objects despite cleaning with 70% alcohol.²²

52. When considering disinfection and decontamination, the safety of products and procedures must be considered as well, due to the risks of harmful chemical accumulation, breakdown of treated materials, flammability, and potential for allergen exposure.²³

53. Moreover, the aerosolized SARS-CoV-2 particles and virions cannot be eliminated by routine cleaning. Cleaning surfaces in an indoor space will not remove the aerosolized SARS-CoV-2 particles and virions from the air that people can inhale and develop COVID-19 - no more than cleaning friable asbestos

²⁰ *Id.*

²¹ *Id.*

²² Joon Young Song, et al., *Viral Shedding and Environmental Cleaning in Middle East Respiratory Syndrome Coronavirus Infection*, 47 *INFECTION & CHEMOTHERAPY* 4, 252-5 (2015), <https://www.icjournal.org/DOIx.php?id=10.3947/ic.2015.47.4.252> (last visited February 27, 2022).

²³ *Id.*

particles that have landed on a surface will remove the friable asbestos particles suspended in the air that people can inhale.

54. Moreover, given the ubiquity and pervasiveness of SARS-CoV-2, no amount of cleaning or ventilation intervention will prevent a person infected and contagious with the virus from entering an indoor space like the insured properties and exhaling millions of additional particles and virions into the air, further: (a) filling the air with the aerosolized SARS-CoV-2 virions that can be inhaled, sometimes with deadly consequences; and (b) depositing SARS-CoV-2 particles and virions on surfaces, physically altering and transforming those surfaces into disease-transmitting fomites.

55. Even as vaccines to protect against COVID-19 have recently become more available, distribution remains uneven in the United States. Effective control of the disease's spread since the pandemic began has necessarily relied on measures designed to reduce human-to-human and surface-to-human exposure. Similarly, the governmental orders closing or severely limiting use of non-essential business premises like Plaintiff's business premises are one of the most common modes of preventing transmission of the disease because, among other things, the orders reduce the size and frequency of social gatherings and the physical use of properties.

V. COVID-19 AND SARS-CoV-2 CAUSE DIRECT PHYSICAL LOSS AND DAMAGE

56. Virologists, scientists, and researchers all have confirmed that SARS-CoV-2 remains viable and is active on physical

surfaces and in the air. The persistent presence of the deadly, viable SARS-CoV-2 on surfaces and in the air damages buildings and properties rendering them damaged, lost, unsafe, unfit, and uninhabitable for normal occupancy or use.

57. Specifically, the scientific community has confirmed that SARS-CoV-2 and COVID-19 alter the conditions of properties and buildings such that the premises are physically damaged and no longer safe and habitable for normal use. In this regard, SARS-CoV-2 and COVID-19 cause direct physical loss of or damage to buildings and properties (or both).

58. This direct physical loss of or damage to property (or both) results because SARS-CoV-2 has a corporeal existence and is contained in respiratory droplets. Once expelled from infected individuals, these droplets land on, attach, and adhere to surfaces and objects and physically changes these once safe surfaces to "fomites." Fomites are objects, previously safe to touch, that now serve as a vehicle and mechanism for transmissions of an infectious agent. Fomites are the result of SARS-CoV-2 physically changing air and property, making it unsafe. This physical alteration and change makes physical contact with those previously safe indoor spaces and inert surfaces (e.g., walls, handrails, desks) unsafe and potentially deadly. This represents a physical change in the affected enclosed space, surface or object, causing severe property loss and damage. Affected properties are unusable,

dangerous, and unsafe until the COVID-19-related conditions are fully rectified.

59. Medical and scientific research also has established that SARS-CoV-2 and COVID-19 spread through indoor airborne transmission. When individuals carrying SARS-CoV-2 breathe, talk, cough, or sneeze, they expel aerosolized droplet nuclei that remain in the air, accumulate in buildings, and, like dangerous fumes, make the premises unsafe and affirmatively dangerous. According to experts, buildings and properties accumulate the airborne SARS-CoV-2 indoors, which plays a significant role in community transmission. As a result, SARS-CoV-2 and COVID-19 cause direct physical loss of or damage to properties and buildings (or both) by changing the physical condition of air in buildings from safe and breathable to unsafe and dangerous.

60. Further, airborne viral particles are known to be able to spread into a facility's HVAC system, leading to transmission of SARS-CoV-2 from person to person. The Environmental Protection Agency ("EPA") has recommended that facilities make improvements to their ventilation and HVAC systems by, for example, increasing ventilation with air filtration and outdoor air. Accordingly, COVID-19 and SARS-CoV-2 cause direct physical loss of or damage to property (or both) 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 functions, dangerous, and unsafe.

61. Fomites, droplets, droplet nuclei, and aerosols containing SARS-CoV-2 are not theoretical, informational, or incorporeal, but rather are dangerous physical objects that have a tangible existence. Their presence within an insured property causes direct physical loss of or damage to property (or both) by necessitating remedial measures that include without limitation repairing or replacing air filtration systems, remodeling and reconfiguring physical spaces, removal of fomites by certified technicians, and other measures. The presence of COVID-19 and SARS-CoV-2 within an insured property also causes direct physical loss of or damage to properties (or both) by transforming property from usable and safe into a property that is unsatisfactory for use, uninhabitable, unfit for its intended function, and extremely dangerous and potentially deadly for humans.

62. The presence of SARS-CoV-2 on property similarly creates the 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 property by touching a doorknob, table, or handrail, will carry those droplets on their hands and deposit them elsewhere in the property, causing additional damage and loss. Property impacted by SARS-CoV-2 is just as dangerous as property impacted by fire or fumes or vapors

(if not more), and all such damaged property is equally incapable of producing revenues. Like the impact of fire, smoke, or noxious fumes, the impact of potentially fatal COVID-19 constitutes direct physical loss of or damage to property (or both).

63. The direct physical loss of or damage to property (or both) described in this section has occurred at Plaintiffs' insured locations, leading to losses covered by the All Risk Policy. Plaintiffs had to take action to secure and preserve their properties and their business operations. To the extent that the All Risk Policy requires structural alteration to establish "physical damage," which Plaintiffs dispute, such alteration has occurred and rendered the insured properties incapable of performing their essential functions. Plaintiffs' losses are ongoing and are likely to increase substantially given the length and ultimate severity of the outbreak and the government response. Moreover, to the extent that the All Risk Policy requires a permanent loss of property to establish "physical loss," which Plaintiffs dispute, such permanent loss has occurred.

VI. REACTIONS AT THE NATIONAL, STATE, AND LOCAL LEVELS

64. Federal and state governments tried to slow the spread of COVID-19 and protect people, property, and businesses. Unprecedented directives were issued, requiring certain businesses to close and requiring residents to remain in their homes unless performing "essential" activities.

65. On January 31, 2020, the United States Department of Health and Human Services declared that a public health emergency existed nationwide because of confirmed cases of COVID-19 in the United States.

66. The earliest two confirmed deaths in the United States due to COVID-19 occurred in early and mid-February 2020.

67. On March 11, 2020, the WHO officially declared the COVID-19 outbreak a worldwide pandemic.

68. Beginning in early March 2020, U.S. state and local governments issued orders suspending or severely curtailing the operations of all "non-essential" or "high risk" businesses in response to the virus and/or risks created by virus. This included businesses such as those owned and operated by Plaintiffs.

69. On or about March 2020, states, counties, and cities where Plaintiffs' insured businesses are located declared states of emergency to help prepare for broader spread of COVID-19.

70. On or about March 2020, states where Plaintiffs' insured businesses are located issued orders requiring business to operate their premises and conduct their operations on those premises so as to reduce their customer occupancy by a significant percentage to create space between customers.

71. On or about March 2020, states, counties, and cities where Plaintiffs' insured businesses are located issued orders

closing or restricting access to numerous business locations insured under the Policy.

72. These orders, together with similarly construed orders issued by government officials, effectively curtailed Plaintiffs' on-premises operations, resulting in an interruption of business operations and an immediate Business Interruption and Extra Expense loss.

73. Because of the danger posed by COVID-19 and its spread as described above, Plaintiffs also determined that closure was necessary to slow the spread of COVID-19 as a result of infected persons on the property or from those who would enter the property.

74. Other states, and county and city officials have issued similar orders throughout the United States referencing physical property loss or damage or imminent threatened physical property loss or damage from the virus.

75. Prior to the issuance of any of the orders curtailing or suspending non-essential business operations, literally hundreds of individuals would be present in Plaintiffs' business location on a daily basis.

76. The vast majority of those individuals were dine-in customers, who would spend a substantial period of time in the restaurants, often enjoying the company of others in celebratory settings involving conversation, laughing, and close interaction among individuals.

77. Given the number of infected individuals, it is a virtual certainty that infected individuals, both symptomatic and asymptomatic, were present in Plaintiffs' businesses on a daily basis even prior to the issuance of the governmental orders and would have been present daily in Plaintiffs' businesses in an ever-increasing number in the absence of the issuance of those orders.

78. Exhalation by these infected individuals when coughing, sneezing, talking, laughing, and even simply breathing created respiratory droplets and aerosolized particles containing the SARS-CoV-2 virus that were inhaled into the noses, mouths, and lungs of other individuals and deposited on surfaces within Plaintiffs' businesses where later contact by uninfected individuals undoubtedly resulted in transmission of SARS-CoV-2 to those individuals.

79. Each visit by an individual, whether symptomatic or asymptomatic, infected with SARS-CoV-2 resulted in either the actual or an imminent threat of deposition and transmission of the SARS-CoV-2 into the air and onto the surfaces within Plaintiffs' businesses.

80. For the reasons described above, COVID-19 and the governmental orders caused a total or partial prohibition of access to Plaintiffs' businesses as well as partial or total interruption of Plaintiffs' business operations. The direct physical loss of or damage to property (or both) caused by COVID-19 and/or the

orders and the further direct physical loss of or damage to property (or both) threatened by COVID-19 have combined to devastate Plaintiffs' business operations.

VII. PLAINTIFFS SUFFERED AND CONTINUES TO SUFFER COVERED LOSSES

81. The SARS-CoV-2 virus is a covered cause of loss, because it is a risk of physical loss or damage, and not otherwise excluded under the All Risk Policy.

82. The issuance of the above-referenced closure orders by state, county, and city officials is a covered cause of loss because it is a risk of physical loss or damage, and not otherwise excluded under the All Risk Policy.

83. Whether the SARS-CoV-2 virus and/or the above-referenced orders caused Plaintiffs' losses and expenses presents a factual question that is inappropriate for resolution at the motion to dismiss stage.

84. The SARS-CoV-2 virus and/or the above-referenced orders issued by state, county, and city officials have directly impacted Plaintiffs' businesses, which do not qualify as essential businesses. The damage and far-reaching restrictions and prohibitions on the activities that can be conducted at Plaintiffs' business premises, and restoration efforts necessary to rid the premises of COVID-19, have been catastrophic for Plaintiffs' businesses - interrupting operations so pervasively as to effectively force Plaintiffs to close, thereby enduring a

prolonged curtailment of earnings that threatens Plaintiffs' survival.

85. Plaintiffs' operations were suspended in order for Plaintiffs to repair the insured properties, including restoration efforts to rid the premises of and attempt to protect against further physical loss and/or damage SARS-CoV-2. Plaintiffs suffered a complete and permanent loss of use of its business premises and the premises were unfit for use for their intended purposes.

86. Plaintiffs' business was frequented by hundreds of individuals a day, including patrons, employees, vendors, and other individuals carrying SARS-CoV-2 and COVID-19. In addition to breathing SARS-CoV-2 and COVID-19 into the air, these individuals touched countless surfaces in Plaintiffs' insured premises, including walls, furniture, doors, tables, and other surfaces on the floors, restrooms, and other areas on the premises.

87. The hundreds of individuals that frequent Plaintiffs' business daily, ranging from patrons to vendors, are carrying or otherwise exposed to SARS-CoV-2 and COVID-19 and would have been in contact with each other, furniture, doors, and other surfaces on the floors, restrooms, and other areas on the premises.

88. Plaintiffs have thus been forced to pay decontamination costs, covered under the All Risk Policy, to repair the physical damage caused by COVID-19. It became clear that Plaintiff's

insured premises were (and continue to be) inoperable and unusable without the alterations necessary to protect the safety of its visitors, guests, and employees. These decontamination costs also were necessary to comply with the emergency directives, laws, and/or ordinances promulgated by governmental authorities and the CDC, among others. None of these costs would have been incurred but for the impacts of the COVID-19 pandemic and the resulting closure orders.

89. In addition to decontamination costs, Plaintiffs have incurred significant losses and extra expense in nearly all aspects of its business. Again, none of these expenses would have been incurred but for the impacts of the COVID-19 pandemic and the resulting closure orders.

90. The SARS-CoV-2 virus and/or the above-referenced closure orders issued by state, county, and city officials have caused physical loss or damage to business Plaintiffs depend on to attract customers to their insured business premises.

91. Plaintiffs' businesses are within five miles of many other restaurants, cafes, bars, parks, and hotels that have also suffered and continue to suffer physical damage due to the SARS-CoV-2 virus and/or closure orders. Many of these restaurants, cafes, bars, parks, and hotels almost certainly suffered alteration of their premises and contents as a result of the virtually certain and ubiquitous presence of SARS-CoV-2 due to

gathering of people affected by COVID-19, whether symptomatic or asymptomatic.

92. The SARS-CoV-2 virus and/or the above-referenced closure orders have further caused Plaintiff to suffer loss of earnings directly resulting from physical loss or damage to property at the premises of Plaintiffs' suppliers, customers, and/or contract service providers.

VIII. THE INSURANCE COVERAGE PURCHASED BY DEFENDANT

93. Plaintiffs and its business location are protected by the All Risk Policy sold to Plaintiffs by Defendant for the time period September 16, 2019 to September 16, 2020.

94. Plaintiffs are a Named Insureds under the All Risk Policy.

95. Plaintiffs paid all premiums due to Defendant to purchase the All Risk Policy and otherwise complied with all applicable terms and conditions of coverage.

96. Shortly after Plaintiffs ceased business operations, Plaintiffs' losses far exceeded the deductible under the All Risk Policy.

97. The policy Defendant sold to Plaintiffs is an "all-risk" insurance policy. An "all-risk" policy provides the broadest insurance coverage available to policyholders for protection of their property interests, including protection against disruption to their business operations. Under an all-risk policy, the

insured's burden to obtain coverage for a loss is very limited—the insured needs only to show that its loss occurred and that the loss was fortuitous. The burden then shifts to the insurer to show that a clear, express, and unambiguous exception or exclusion in the policy bars or limits coverage.

98. The damages, Business Interruption loss, Extra Expense, and other losses incurred and continuing to be incurred by Plaintiffs are covered under the All Risk Policy sold to Plaintiffs by Defendant.

99. Plaintiffs gave timely notice of their claims and has satisfied, is excused from performing, or Defendant has waived or is estopped from insistence upon performance of, all conditions of the All Risk Policy, including but not limited to payment of required premiums and provision of timely notice of claim.

IX. MULTIPLE COVERAGES ARE TRIGGERED UNDER THE ALL RISK POLICY

100. In addition to triggering the policy's "all risk" Property Damage and Business Interruption coverages, Plaintiffs' claims also trigger multiple "Additional Coverages" and "Coverage Extensions" provided under the All Risk Policy.

A. Plaintiffs sustained losses and expenses caused by the suspension of its operations resulting from covered direct physical loss of or damage to Plaintiffs' insured premises.

101. The All Risk Policy contains an obligation to pay for direct physical loss of or direct physical damage to the following

types of Covered Property caused by or resulting from a Covered Cause of Loss.

102. The All Risk Policy does not define direct physical loss of or direct physical damage.

103. The presence of the disjunctive "or" in "physical loss or damage to property" means that coverage is triggered if *either* a physical loss of property or damage to property occurs.

104. SARS-CoV-2 or SARS-CoV-2-containing fomites, respiratory droplets, and droplet nuclei physically alter the air and airspaces they enter and the property to which they adhere, attach or come in contact, including without limitation, by physically altering the surfaces of those properties and by making air inhalation or physical contact with those previously safe, inert air and air spaces inside the properties and the properties dangerous.

105. When individuals carrying SARS-CoV-2 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 as SARS-CoV-2 physically alters the air. Air inside buildings that was previously safe to breathe, but can no longer safely be breathed due to SARS-CoV-2 and COVID-19, has undergone a physical alteration.

106. In addition, the presence of SARS-CoV-2 and COVID-19, including but not limited to SARS-CoV-2 droplets or droplet nuclei

on solid surfaces and in the air at insured property, also has caused and will continue to cause direct physical damage to physical property and ambient air at the premises. SARS-CoV-2, a physical entity, has attached and adhered to Plaintiffs' insured properties and by doing so, altered the properties. This has directly resulted in loss of use of the properties and the properties are unusable without substantial physical alteration.

107. Given published reports about SARS-CoV-2 and the outbreak of the pandemic, it is likely that persons who were pre-symptomatic or asymptomatic and unknowingly carrying SARS-CoV-2, including but not limited to patrons, visitors, and employees were present at Plaintiff's business premises immediately before the closure orders were issued.

108. SARS-CoV-2 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, and restaurant supplies, and into the air and HVAC systems at Plaintiffs' business premises, causing damage and alteration to physical property and ambient air at the premises. Aerosolized SARS-CoV-2 has entered the air in Plaintiffs' business premises.

109. Plaintiffs sustained actual loss, including but not limited to substantial sums spent to remediate physical damage to their properties, such as for cleaning and disinfecting premises,

repairing or replacing air filtration systems, remodeling and reconfiguring physical spaces, and other measures to reduce or eliminate the presence of the SARS-CoV-2 on its properties. Such remediation measures have been ongoing because of the continuous and repeated recurrence of SARS-CoV-2 while the pandemic persists.

110. In addition to physical damage, Plaintiffs' insured premises also have suffered direct physical loss. The on-site SARS-CoV-2, fomites, and respiratory droplets or droplet nuclei containing SARS-CoV-2 have attached to and deprived, partially and totally, Plaintiffs of the physical use of their insured premises by making them unsafe and unusable and thereby lost.

111. These direct physical losses to Plaintiffs' insured premises include without limitation the rendering of their insured properties from a satisfactory state to a state dangerous and/or unsatisfactory for use because of the fortuitous presence and effect of SARS-CoV-2, fomites, and respiratory droplets or droplet nuclei directly upon the property.

112. These direct physical losses to Plaintiffs' insured premises include without limitation the direct physical loss of the ability to use Plaintiffs' premises for their primary functions.

113. Plaintiffs also have incurred substantial costs in an attempt to mitigate the suspension of their business operations, including without limitation expenses incurred for

reconfiguration, to the extent possible. Plaintiffs would not have incurred those costs but for either direct physical loss of or damage to property (or both) caused by SARS-CoV-2 and COVID-19.

B. Plaintiffs have sustained actual losses and incurred extra expenses insured by the All Risk Policy's Business Income coverage.

114. As part of the protection from "all risk," the All Risk Policy contains "Business Income" and "Extra Expense" coverage where operations are suspended because of direct physical loss of or direct physical damage caused by a covered loss. The amount payable as indemnity thereunder includes payroll.

115. The Business Income coverages include Extra Expense to minimize the suspension of business and to continue operations, or to repair or replace property in order to reduce the amount of loss that would have been payable under this Policy.

116. The onset of COVID-19, the ensuing closure orders, direct physical loss of or damage to property (or both) caused by SARS-CoV-2 and COVID-19, and the effects of all of these (including restoration efforts to rid the premises of COVID-19) on Plaintiffs' businesses triggered the All Risk Policy's Business Income coverage. Plaintiffs paid substantial premium in anticipation of those coverages being provided.

C. Plaintiffs have sustained actual losses and incurred extra expenses insured by the All Risk Policy's Civil Authority coverage.

117. The All Risk Policy affords a Business Income Coverage where the premises is specifically prohibited by order of a civil authority as the direct result of a covered loss.

118. Plaintiffs have sustained actual loss and incurred Extra Expense because state and local authorities governing the locales in which Plaintiffs' insured business premises are situated, have issued orders that impair, limit, restrict, or prohibit partial or total access to insured properties.

119. These civil orders limiting, restricting, prohibiting, or impairing access to Plaintiffs' insured business premises have all been issued as a direct result of, among other things, direct physical loss of or damage to property (or both) caused by the SARS-CoV-2 and COVID-19, including but not limited to physical damage either at insured locations or within five statute miles thereof. This direct physical damage is caused by the physical presence of, and structural damage caused by, SARS-CoV-2 and COVID-19 on furniture, doors, floors, bathroom facilities, and office supplies; and in the air within the premises, including offices, restrooms, and HVAC systems at the insured premises. Such direct physical loss of or damage to property (or both) is of the type insured by the All Risk Policy generally as well as by the Civil Authority coverage provisions specifically.

120. Numerous outbreaks of COVID-19 in the vicinities of Plaintiffs' restaurants have led to numerous discrete direct physical loss of or damage to property (or both) at or within five statute miles of the insured locations, and those losses or damages have in turn led to numerous discrete civil orders limiting, restricting, impairing or prohibiting access to insured locations. Certain civil orders that purport to prevent against future proliferation of SARS-CoV-2 and future transmission of COVID-19 are the direct result of direct physical loss of or damage to property (or both) of the type insured. Such direct physical loss of or damage to property (or both) is of the type insured by the All Risk Policy generally as well as by the Civil Authority coverage provisions specifically.

D. Plaintiffs have sustained actual losses and incurred extra expenses insured by the All Risk Policy's Dependent Property coverage.

121. The All Risk Policy affords a Business Income Coverage for Dependent Property where actual loss is sustained due to direct physical loss of or direct damage to dependent property caused by or resulting from a covered loss. Dependent Property includes Leader Locations that attract customers to the insured businesses.

122. For the reasons described above, Plaintiffs have sustained actual loss and has incurred extra expense directly resulting from direct physical loss of or damage to property (or both) caused by SARS-CoV-2 and COVID-19 to properties within one

mile of Plaintiffs' business premises that attract business to its business.

E. No exclusions apply to Plaintiffs' losses and damages.

123. No exclusions under the All Risk Policy unambiguously preclude coverage for Plaintiffs' claims. And, more specifically, no exclusions unambiguously preclude coverage for direct physical loss of or damage to property (or both) from the effects of the COVID-19 pandemic and the ensuing closure orders and emergency directives.

124. No virus or similar exclusion applies to the damage and loss at issue here. Any virus or contamination exclusion is applicable to environmental pollution and intentional acts, not pandemics beyond a policyholder's control.

125. The All-Risk Policy contains no specific applicable exclusion involving a pandemic, which was available to the insurance company but not used in the policy.

126. Government negligence on a massive scale prior to any pandemic or loss or damage caused by virus or contamination was the legal, efficient or proximate cause of loss.

127. Any potentially applicable exclusion is ambiguous due to other coverages expressly provided by the All-Risk Policy, and ambiguous in relation to losses involving governmental orders that close or restrict businesses on a widespread scale due to a natural disaster, for which the policy provides coverage.

128. The Defendant is estopped from relying on any virus exclusion based on regulatory representations made on its behalf to state insurance regulators in 2006, indicating that the exclusion when newly introduced was not a reduction in existing coverage.

129. Defendant knew how to draft an exclusion specifically excluding losses or damage arising from a pandemic. The risks associated with viruses and pandemics have been known to the insurance industry for a century and have been well known to Defendant in recent decades during which we all have witnessed outbreaks and pandemics involving viruses such as SARS, MERS, H1N1, and Zika.

130. Because these risks are well known, there are exclusions in common usage in the insurance industry that specifically reference losses caused by pandemics. However, Defendant did not include such a specific pandemic exclusion as part of the All Risk Policy it sold to Plaintiffs.

131. A pandemic is a natural disaster comprising unique features such as the emergence of a new communicable disease-causing strain to which the general populations lack sufficient immunity, the ability of this new strain to infect humans and to cause severe reactions, and the new strain's highly contagious transmission capability among humans as a vehicle for worldwide spread. Indeed, the Chief Executive Officer of Zurich Insurance

Group AG, a major insurance company, in an interview with media outlets, referenced the COVID-19 pandemic as “put[ting] it in the framework of a natural catastrophe.”²⁴

132. Plaintiffs also have a reasonable expectation that the onset of the COVID-19 pandemic, the ensuing closure orders and later emergency directives, direct physical loss of or damage to property (or both) caused by SARS-CoV-2 and COVID-19, and the effects of all of these on Plaintiff’s businesses would trigger multiple Business Interruption and Property Damage coverages under the All Risk Policy described above as no exclusion unambiguously applied to preclude coverage and Plaintiffs had paid for extremely broad “all risk” coverage.

X. DEFENDANT’S IMPROPER DENIAL OF PLAINTIFFS’ CLAIMS

133. Plaintiffs have sustained actual loss and has incurred extra expense directly resulting from direct physical loss of or damage to property (or both) of the type insured under the All Risk Policy. No exclusions under the All Risk Policy apply to preclude coverage for Plaintiffs’ claims. As a result, Plaintiffs promptly notified Defendant of its claims for losses under the All Risk Policy.

²⁴ <https://www.bloomberg.com/news/videos/2020-05-14/zurich-may-pay-out-750-million-in-2020-due-to-virus-video> (advance video to 1:36).

134. At no time subsequent to Plaintiffs providing notice to Defendant of the claims has Defendant, or its representatives, requested to access, inspect, and/or test the properties at issue.

135. Rather, Defendant preemptively sought to limit Plaintiffs' coverage.

136. Plaintiffs have substantially performed or otherwise satisfied all conditions precedent to bringing this action and obtaining coverage pursuant to the All Risk Policy and applicable law, or alternatively, Plaintiffs have been excused from performance by Defendant's acts, representations, conduct, or omissions.

XI. DEFENDANT'S DUTIES PURSUANT TO GOVERNING LAW

137. On information and belief, Defendant adopted a company-wide stance at the beginning of the pandemic to deny insureds like Plaintiffs business interruption claims, regardless of the facts giving rise to each policyholder's loss.

138. State insurance law requires that insurance companies act in good faith, abstain from deception and practice honesty and equity in all insurance matters. The business of insurance is affected by the public interest and engaging in the business of insurance requires insurers like Defendant to promptly conduct fair, balanced, and thorough investigations of all bases of claims for benefits made by their insureds, with a view toward honoring the claims. As part of these obligations, an insurance company is

obligated to diligently search for and consider evidence that supports coverage of the claimed loss, and in doing so must give at least as much consideration to the interests of its insured as it gives to its own interests.

139. Defendant has a duty to adopt and maintain a consistent and rational interpretation of the All Risk Policy sold to Plaintiffs.

140. Defendant is bound to interpret and administer its insurance policies in accordance with the requirements of governing state law.

141. Defendant is bound to investigate Plaintiffs' claims in good faith and with an individualized investigation into the cause of loss.

142. Defendant has failed to honor its obligations under the All Risk Policy and governing law to Plaintiffs. As described in greater detail below, Defendant denied coverage and breached (a) the All Risk Policy sold to Plaintiffs and (b) the duties of good faith and fair dealing owed to Plaintiffs. These breaches have caused great and incalculable damages to Plaintiffs. Defendant has threatened to violate and has violated its fiduciary duties to Plaintiffs.

143. By engaging in evasive, dilatory, inconsistent and litigious tactics, Defendant breached its obligation to act in

good faith towards its policyholders, including Plaintiffs, and the public.

**XII. FIRST CAUSE OF ACTION
(For Declaratory Relief)**

144. Plaintiffs incorporate by reference the allegations contained in the above-stated paragraphs.

145. The controversy between Plaintiffs and Defendant is ripe for judicial review.

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

147. Plaintiffs accordingly seek a declaration from the Court that:

- a. Each coverage provision identified in the Complaint is triggered by Plaintiffs' claims;
- b. No exclusion in the All Risk Policy applies to preclude or limit coverage for Plaintiffs' claims;
- c. Plaintiffs have satisfied or been excused from satisfying, or Defendant has waived or is estopped from enforcing, all conditions precedent under the All Risk Policy;
- d. Defendant is contractually obligated under the All Risk Policy to indemnify Plaintiffs for their claims of Property Damage losses, Business Interruption losses, Extra Expense, and other losses sustained as a result of direct physical loss of or damage to property (or both) due to COVID-19, the ensuing closure orders, and

emergency directives, up to the applicable limit(s) of liability;

- e. Defendant is contractually obligated under the All Risk Policy to indemnify Plaintiffs for their claims of Business Interruption losses for gross Earnings or gross Profits loss, at Plaintiff's election, during the Period of Liability;
- f. Defendant is contractually obligated under its All Risk Policy to indemnify Plaintiffs for their claims of Extra Expense incurred to continue business during the Period of Liability, up to the applicable limit(s) of liability;
- g. Defendant is contractually obligated under the All Risk Policy to indemnify Plaintiffs for their claims of Business Interruption losses and Extra Expense as a result of orders of Civil Authority that have limited, restricted, or prohibited access to insured properties, including Plaintiffs' premises, as a result of COVID-19 at insured properties or other locations within five statute (5) miles, up to the applicable limit(s) of liability;
- h. Defendant is contractually obligated under the All Risk Policy to indemnify Plaintiffs for their claims of Business Interruption losses and Extra Expense directly resulting from direct physical loss of or damage of the type insured (or both) to property of the type insured (or both) that attracts business to an insured location

and is within one (1) statute mile of the insured location, up to the applicable limit(s) of liability;

- i. Defendant is contractually obligated under the All Risk Policy to indemnify Plaintiff for its claims of lost Gross Earnings during the Extended Period of Liability after the end of the Period of Liability;
- j. Defendant is contractually obligated under the All Risk Policy to indemnify Plaintiffs for actual loss sustained to prevent and costs incurred to temporarily protect actual or impending direct physical loss of or damage to insured property (or both), up to the applicable limit(s) of liability; and
- k. The award of such additional relief as the Court deems just and appropriate.

**XIII. SECOND CAUSE OF ACTION
(Breach of Contract)**

148. Plaintiffs incorporate by reference the allegations contained in the above-stated paragraphs.

149. As set forth above, in return for premiums paid, Defendant sold Plaintiffs the Global All-Risk Policy, in which Defendant promised to pay for covered losses and expenses up to the applicable Limit of Liability for an Occurrence.

150. Plaintiffs promptly advised Defendant it sustained and is sustaining losses and expenses covered by the Global All Risk Policy.

151. Defendant has failed to accept, acknowledge or provide coverage for or make any payment with respect to Plaintiffs' losses and expenses.

152. Defendant's failure to provide coverage for Plaintiffs' losses and expenses constitutes a breach of the Global All Risk Policy.

153. As a direct and proximate result of Defendant's breach, Plaintiffs have been deprived of the benefits of insurance coverage for which it paid substantial premiums, and has suffered substantial damage.

**XIV. THIRD CAUSE OF ACTION
(Breach of the Duty of Good Faith and Fair Dealing and Bad Faith)**

154. Plaintiffs incorporate by reference the allegations contained in the above-stated paragraphs.

155. The Policies all contain an implied covenant of good faith and fair dealing that imposes on Defendant an obligation to not do anything to injure the rights of Plaintiffs' to receive the benefits of the All-Risk Policy and to not place its own interests above those of its policyholder.

156. Defendant has an obligation to act in good faith towards Plaintiffs in every decision it makes regarding the claim and to respond and investigate claims in good faith. Unfortunately, as set forth above, Defendant has repeatedly placed its own interests ahead of those of Plaintiffs and other policyholders nationwide and across the Commonwealth, to the detriment of Plaintiffs, and

Defendant continues to refuse to undo its bad faith decisions in relation to Plaintiffs' claim.

157. Defendant has acted in bad faith towards Plaintiffs with respect to their claim by, among other things: a) denying coverage without any investigation or effort to adjust the claim; b) denying coverage without reference to individual policy terms or individual causes of loss; costs after accepting the duty to defend the Underlying Claims; c) acting in a one-sided manner and exposing Plaintiffs to severe losses for which Plaintiffs purchased appropriate insurance coverage by way of the All-Risk Policy; and d) refusing to pay for claims without legal compulsion and forcing Plaintiffs to protect themselves by way of this lawsuit against Defendant.

158. Defendant is ignoring the interests of its policyholders and coverage owed to them in favor of its own interests. Defendant is acting only out of its self-interest.

159. As set forth above, Defendant has not offered a reasonable basis or explanation for its immediate denial of coverage and has not even considered the specific terms of the All-Risk Policy as endorsed nor sought any further detail from Plaintiffs concerning Plaintiffs' claim.

160. Defendant's failure to investigate or adjust the claim of Plaintiffs' and claims of other policyholders in good faith has caused severe detriment to Plaintiffs and other policyholders across Pennsylvania and the nation and unnecessarily exposes businesses to severe financial hardship and potentially

bankruptcy, threatening the employment of thousands, and damaging the economic well-being of society as a whole.

161. As a result of Defendant's refusal to honor its obligation to act in good faith with respect to Plaintiffs' claim, Plaintiffs have incurred costs and expenses including attorneys' fees in connection with its pursuit for insurance coverage in this lawsuit.

XV. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek judgment against Defendant as follows:

i. On the First Count, a judicial declaration by this Court that there has been and continues to be direct physical loss of or damage to Plaintiffs' Insured Locations;

ii. Plaintiffs seek a further declaration by this Court that Defendant is obligated under the Global All-Risk Policy to pay Plaintiff up to the Limit of Liability for all loss and expenses arising out of SARS-CoV-2 and/or COVID-19 under coverages for Extra Expense, Civil Authority, Business Interruption, Property Damage and any and all other applicable coverages under the Global All-Risk Policy.

iii. Plaintiffs seek a further declaration by this Court that there are no applicable exclusions in the Policy that bar coverage for Plaintiffs' claim.

iv. On the Second Count, Plaintiffs request all actual and compensatory monetary damages in an amount to be proven at trial and all relief available at law for Defendant's breach of contract in denying coverage to Plaintiffs under the Global All-Risk Policy,

and failing to pay any losses or expenses under the Global All-Risk Policy, in relation to any insured Location, including costs, expenses, pre-judgment and post-judgment interest, and reasonable attorneys' fees in this action.

v. The award of such additional relief as the Court deems just and appropriate, including pre-judgment and post-judgment interest and attorneys' fees and costs to the fullest extent permitted by law.

vi. The award of such additional relief as the Court deems just and appropriate.

XVI. JURY DEMAND

Plaintiffs demand a trial by jury as to all issues properly so tried.

XVI. DESIGNATION OF TRIAL COUNSEL

John W. Houghtaling, II is hereby designated as trial counsel for Plaintiffs.

Dated: March 21, 2022

Respectfully submitted,

/s/ Luke E. Debevec

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CERTIFICATION PURSUANT TO R. 4:5-1

In accordance with R. 4:5-1, I certify that based upon the information currently in my possession, the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding and that I know of no other person or persons at this time who should be joined in this action at this time.

Dated: March 21, 2022

/s/ Luke E. Debevec