SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

MAC PARENT LLC,

Plaintiff, Index No.

v.

NORTH AMERICAN ELITE INSURANCE COMPANY

Defendant.

Mac Parent LLC ("Plaintiff"), by and through its undersigned attorneys, hereby makes this Complaint against North American Elite Insurance Company ("Defendant") amidst the unprecedented circumstances of the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) ("coronavirus") pandemic, and alleges as follows:

INTRODUCTION

1. Plaintiff asserts claims for business interruption insurance coverage under its all-risk commercial property insurance policy issued and sold to it by Defendant. Under longstanding and bedrock insurance law principles, Plaintiff is entitled to payment under that policy for millions of dollars of business income losses and extra expenses incurred as a direct result of unprecedented state and municipal Shutdown Executive Orders ("Shutdown Executive Orders") and restrictive Partial Reopening Executive Orders ("Partial Reopening Executive Orders") that caused physical loss or damage to its properties by requiring physical, detrimental alterations to them that rendered Plaintiff's properties non-functional or only partially functional as restaurants.

2. Prior to the Shutdown Executive Orders, Plaintiff's establishments were bustling with activity. Its dining rooms were places people sat to share a meal or drink; where families and friends gathered to celebrate special occasions; and where co-workers met for working or social lunches. The physical premises of Plaintiff's establishments—including the layout, arrangement of seats and furniture, and flow of human traffic—were critical to their operation.

3. The Shutdown Executive Orders ended all of that activity by rendering Plaintiff's properties functionally inoperable. Beginning in mid-March 2020, the Governor of New York, along with governors and mayors from other states across the country, issued a series of unprecedented Shutdown and (later) Partial Reopening Executive Orders designed to prevent people from being in close proximity with one another by altering physical spaces in commercial establishments.

4. The restrictions imposed by the Shutdown and Executive Orders detrimentally altered and directly and physically impaired Plaintiff's properties. Dining rooms were physically blocked off or reconfigured as staging areas for take-out, delivery, or other drastically reduced services. Vast amounts of square footage in Plaintiff's properties were rendered fully or partially nonfunctional for their intended purposes.

5. Due to the closure of dining spaces and social distancing requirements, Plaintiff's properties that remained open for the limited function of providing take-out or delivery service had to make significant, commercially detrimental alterations to their physical premises. Plaintiff had to physically manipulate tables, chairs, and other equipment into less functional arrangements; install plexiglass or other makeshift barriers to prevent congregation; place markers on the floor or walls to indicate six-feet of separation; and redesign routes for entrance and exit. Once bustling,

thoughtfully designed spaces were now physically limited to allow only for a line of customers, standing six feet apart, waiting to pick up take-out orders.

6. Even as state officials began a phased reopening of the restaurant and hospitality industry, significant physical restrictions on Plaintiff's premises persist under the Partial Reopening Executive Orders. For instance, even after some outdoor on-premises dining was permitted to resume (with restrictions that required detrimental physical alterations), indoor dining and seating areas remained closed to the public or were subject to restrictions that required detrimental physical alterations.

7. The extraordinary set of physical limitations and requirements that the Shutdown and Partial Reopening Executive Orders imposed, and continue to impose, on Plaintiff's establishments caused Plaintiff to suffer unprecedented economic losses, including millions of dollars in lost income and extra business expenses. Plaintiff's properties were carefully designed and configured to maximize food and beverage service on premises. Thus, the physical loss and impairment of Plaintiff's spaces for these core functions have caused Plaintiff to lose millions.

Plaintiff's All-Risk Insurance Policy and Defendant's Denial of Plaintiff's Claim

8. Plaintiff turned to Defendant, reasonably expecting that it would cover Plaintiff's mounting losses that directly resulted from the Shutdown and Partial Reopening Executive Orders. To insure against losses from unexpected and unprecedented circumstances like these, Plaintiff had purchased business interruption coverage as part of an all-risk commercial property insurance policy. As Defendant is well aware, "all-risk" commercial property policies cover all risks of any kind or description, unless specifically excluded. Unlike "enumerated perils" property insurance, which covers only specified causes of loss, all-risk property insurance covers even unprecedented and unanticipated risks of loss, thereby providing consumers with comfort

that all possible risks of loss are covered, unless specifically excluded. Due to the breadth of coverage, Plaintiff paid a substantial premium for this type of insurance. Here, the Shutdown and Partial Reopening Executive Orders are clearly within the scope of risks covered by the Policy.

9. The business interruption coverage in Plaintiff's Policy, also known as "Time Element" coverage, insures against the loss of business income and extra expense incurred as a result of "direct physical loss or damage" to insured property from a covered risk.

10. Thus, when the Shutdown and Partial Reopening Executive Orders rendered Plaintiff's properties essentially non-functional for months by requiring physical changes and restrictions to its properties as described above, Plaintiff reasonably expected that the Shutdown and Partial Reopening Executive Orders were among all the risks against which it was insured. Accordingly, Plaintiff gave timely notice of a claim for business interruption coverage under its Policy.

11. Plaintiff's claim has been constructively denied. On information and belief, insurers have taken a nearly blanket approach of issuing denials to policyholders claiming losses caused by the Shutdown and Partial Reopening Executive Orders. Defendant's constructive denial and repudiation of its coverage obligation is likely based on the wholly incorrect contention that Plaintiff's claim did not result from "direct physical loss or damage" to insured property, as required by the Policy.

12. Thus, Plaintiff comes to this Court with a threshold legal question: whether Defendant must provide coverage under Plaintiff's all-risk commercial property insurance Policy for direct physical loss or damage caused by unprecedented executive orders which have seriously and physically impaired, detrimentally altered, and rendered Plaintiff's properties physically non-functional in whole or in part.

The Shutdown and Partial Reopening Executive Orders Caused "Direct Physical Loss or Damage" to Plaintiff's Properties

13. The crux of Defendant's likely position is that Plaintiff did not sustain "direct physical loss or damage" to property within the meaning of the Policy because no property was physically destroyed or disfigured. But there is no language in the Policy requiring this narrow construction. Under any reasonable interpretation, the terms "direct physical loss or damage" to property are much broader and would include detrimental physical effects, like those caused by the Shutdown and Partial Reopening Executive Orders, which altered, and impaired the functioning of, the tangible, material dimensions of Plaintiff's property. This is especially true where, as here, property has been rendered partially or wholly nonfunctional for its intended purpose due to the altered appearance, shape, and other material aspects of the properties.

14. Defendant chose not to define the terms "direct physical loss" or "damage" in the Policy. Defendant intentionally left each of these terms undefined—even though it knew, or should have known, that these terms can be reasonably construed, and indeed have been construed by courts, more broadly than the narrow self-serving definition that it contends should provide the terms' only meaning. As undefined terms in the Policy, each of the terms at issue here must be given its plain and ordinary meaning consistent with the knowledge and expectations of an ordinary, reasonably consumer.

15. In the Policy, "loss" is used in the alternative to "damage." Thus, there is coverage provided for both "loss" and "damage," either alternatively or collectively, because "loss" coverage is different from, and is in addition to, "damage" coverage. Property "loss" refers to, among other things, being deprived of a property's function, while "damage" refers to, among other things, the impairment of property or a reduction in its functionality. The adjective "physical," among other things, distinguishes between the tangible, material aspects of an object

and those that are purely intangible, such as sentiment, emotion, or imagination. In addition, under a plain grammatical reading of the phrase "direct physical loss or damage" to property, the words "direct" and "physical" can be reasonably construed as modifying only "loss" coverage—not "damage" coverage. To the extent that any language in the Policy is ambiguous, standard canons of construction provide that it should be construed against Defendant as drafter and in favor of coverage.

16. Whether considered independently or together, moreover, the terms "loss" and "damage" both point in the same direction here: the Shutdown and Partial Reopening Executive Orders caused both property loss and property damage by directly, physically, and seriously impairing the functionality of Plaintiff's properties and dispossessing Plaintiff of its tangible spaces. Dining rooms closed or limited, areas blocked off, barriers erected, appearances altered, furniture moved, fixtures altered, spaces shuttered, floors marked, plexiglass mounted—these are but a few of the physical manifestations of that direct physical loss and damage Plaintiff's properties have incurred.

17. Plaintiff understood, expected, and believed that its Policy would cover the circumstances presented here. This understanding and expectation is both subjectively and objectively reasonable. Defendant cannot now redefine or narrow the meaning of physical loss or damage—or any other undefined terms in the Policy—to support a denial of coverage in these unprecedented circumstances. Yet that is exactly what it has done.

18. Because there is a reasonable construction of these terms that provides coverage to Plaintiff for its business interruption claims—and based on bedrock insurance law principles requiring policy terms to be construed broadly in favor of coverage for Plaintiff—Defendant must pay Plaintiff's claim.

19. Accordingly, Plaintiff seeks a declaratory judgment that the Shutdown and Partial Reopening Executive Orders caused direct physical loss or damage to its insured properties. Plaintiff also brings a breach of contract claim for Defendant's failure to indemnify Plaintiff for the losses sustained as a direct result of the Shutdown and Partial Reopening Executive Orders. Plaintiff further asserts its full entitlement to coverage under all applicable Policy provisions, independently or alternatively as appropriate, including but not limited to all relevant extensions of coverage. Plaintiff does not waive any claims for Defendant's wrongful denial of coverage for the substantial losses Plaintiff has incurred, the full amount of which will be proven at trial.

JURISDICTION AND VENUE

20. This Court has jurisdiction over Defendant pursuant to CPLR §§ 301, 302, as Defendant has stated that its principal place of business is in New York and Defendant supplies insurance products and services in New York.

21. Venue in Albany County is proper pursuant to CPLR § 503, as Plaintiff's Policy covers insured property in Albany County and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred here.

22. Venue in Albany County is also proper because this action is being filed shortly after Plaintiff voluntarily dismissed an earlier-filed action in Illinois, without prejudice to re-filing in New York state court, after Defendant rejected Plaintiff's offers to reach agreement to temporarily refrain from further litigation or otherwise settle the case. *See Certain Underwriters at Lloyd's, London v. Hartford Accident & Indem. Co.*, 16 A.D.3d 167, 168 (1st Dep't 2005) (dismissing declaratory action filed by insurer "to gain a tactical advantage" pursuant to CPLR 3211(a)).

PARTIES

23. Plaintiff is a Delaware limited liability company with a principal place of business in Denver, Colorado. Plaintiff has members that are citizens of New York, among other states. Plaintiff operates two unique but classic American dining concepts with 80 locations across 27 states, including locations in or around Albany and Rochester, New York.

24. Defendant, on information and belief, is a New Hampshire corporation with a principal place of business in New York, New York. Defendant provides insurance products and services throughout the United States, including New York.

ADDITIONAL FACTUAL ALLEGATIONS

I. The Shutdown and Partial Reopening Executive Orders

25. In mid-March, 2020, governors and mayors across the country issued a series of unprecedented Shutdown Executive Orders.

26. In New York, Governor Andrew M. Cuomo began issuing a series of Shutdown Executive Orders, shortly after declaring a state disaster emergency on March 7, 2020. Initially, Governor Cuomo ordered that all places of business or public accommodation operate at no greater than 50% occupancy and no greater than 50% of seating capacity, effective March 13. (NY Executive Order No. 202.1.)

27. On March 16, 2020, Governor Cuomo ordered all restaurants and bars in the state of New York to "***cease serving patrons food or beverage on-premises***" and permitted food and beverage service for off-premises consumption only. (NY Executive Order No. 202.03.)

28. These prohibitions and restrictions on Plaintiff's properties were extended throughout the spring and summer. The Shutdown Executive Orders were designed and intended to require physical alterations to Plaintiff's properties to prevent the congregation of people in

close proximity to one another—not because the coronavirus was found in or anywhere near Plaintiff's properties.

29. As New York executive officers began to consider how to safely reopen various industries in New York, they devised a gradual, phased approach, permitting particular industries and establishments to reopen with certain (often significant) restrictions in place, so long as public health data supported such reopening. Thus, on June 6 and 7, Governor Cuomo modified his March 16 executive order to allow "a restaurant or bar [located in a Phase Two region] to serve patrons food or beverage on-premises only in *outdoor* space, provided such restaurant or bar is in compliance with Department of Health guidance promulgated for such activity," including six-feet social distancing guidelines. (NY Executive Order No. 202.38 (emphasis added); NY Executive Order 202.39.) To compensate for the lost indoor square footage occasioned by his March 16 order, Governor Cuomo also permitted restaurants and bars "to use (a) contiguous public space (for example, sidewalks or closed streets) and/or (b) otherwise unlicensed contiguous private space under the control of such restaurant or bar" for outdoor dining purposes, subject to certain limitations. (NY Executive Order No. 202.38.)

30. These Partial Reopening Executive Orders mandated material physical alterations to insured premises, including by (i) ensuring that all outdoor tables are at least six feet from any other table, patron, or pedestrian thoroughfare, or enacting physical barriers where social distancing is not feasible; (ii) clearly signaling six feet of spacing in any lines for customers; (iii) designating different entrances and exits for customers and employees; and (iv) limiting party sizes to a maximum of ten persons. In addition, it was recommended that Plaintiff use tape or signs to reduce bi-directional foot traffic in hallways and aisles, and modify or restrict the

number of workstations to maintain six feet of distance between employees. During Phase Two, all indoor dining and seating areas remained closed to customers.[1]

31. By July 6, all regions of New York had entered Phase Three of reopening. In Phase Three regions outside of New York City, restrictions concerning outdoor dining remained in place, but indoor dining was permitted at no more than 50% of maximum occupancy, provided that every table was separated by a minimum of six feet or a physical barrier of at least five feet in height.[2]

32. By July 20, all regions in New York had entered Phase Four, the last of the phases before a full "reopening" is achieved. However, even in Phase Four, as of this Complaint, indoor dining remains strictly limited in New York.

33. Although Plaintiff owns and operates establishments outside of New York,[3] the Shutdown and Partial Reopening Executive Orders separately in effect where Plaintiff's other establishments are located also barred or limited on premises food and beverage service for restaurants, bars, and other establishments, and imposed various other detrimental physical restrictions on the premises of those establishments materially similar to those described herein.

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[1] New York Executive Order No. 202.38 requires that all bars and restaurants open for outdoor dining must do so "in compliance with Department of Health guidance promulgated for such activity." *See also* "Reopening New York: Outdoor and Takeout/Delivery Food Services Guidelines for Employers and Employees," https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/OutdoorTakeoutDeliveryFoodServicesSummaryGuidance.pdf.

[2] *See* NY Executive Order No. 202.41, "Reopening New York: Food Service Guidelines for Employers and Employees," https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Food_Services_Summary_Guidelines.pdf.

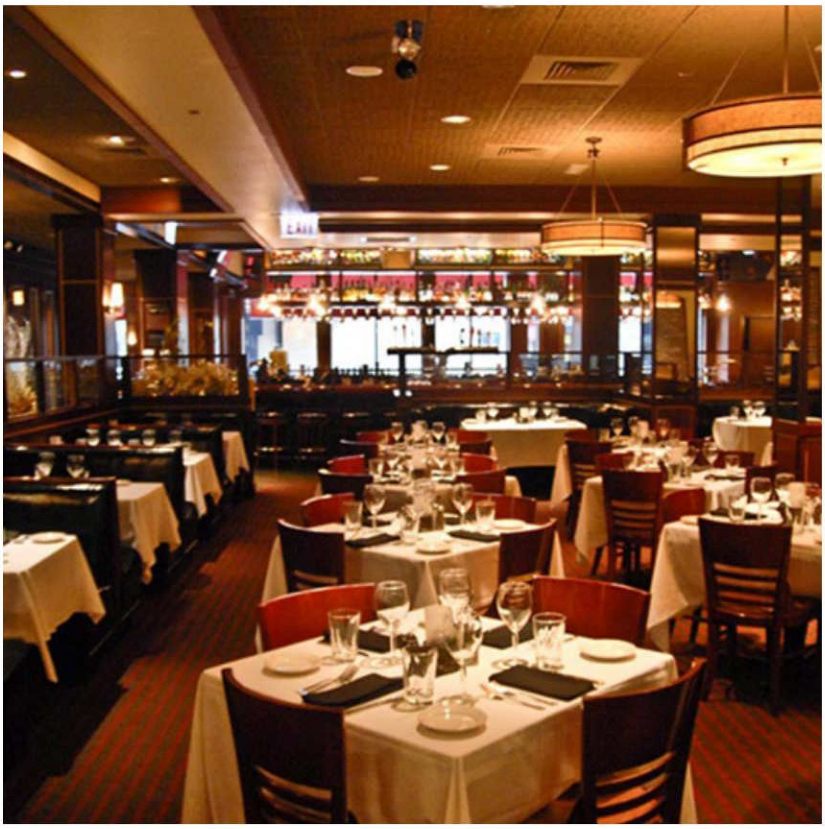
[3] As of mid-March 2020, Plaintiff owned and operated locations in Alaska, Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Maine, Michigan, Nebraska, New Mexico, Nevada, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Utah, and Virginia.

II. Direct Physical Loss or Damage

34. Plaintiff Mac Parent operates two unique but classic American dining concepts with, as of mid-March 2020, 94 locations across 28 states, including New York.

35. ***Sullivan's Steakhouse***, the first concept, offers an unforgettable fine-dining steakhouse experience complete with the sounds of jazz music and a friendly, familiar atmosphere. Sullivan's is rooted in rich traditions, but with a lively twist. The vibrant neighborhood locations feature the finest steaks, seafood, and cocktails, set against an elegant and carefully tailored backdrop.

36. Until March 2020, each Sullivan's Steakhouse location served hundreds of guests each day—couples out for a night on the town, families celebrating special events, and individuals seeking to unwind in rarefied chophouse air. The image below depicts a typical Sullivan's restaurant primed for service:



37. ***Romano's Macaroni Grill***, the second concept, specializes in polished yet casual Italian-American cuisine. The first Macaroni Grill was founded by restauranteur Phillip Romano in 1988. Driven by a belief that flavors and details make the meal, Romano's Macaroni Grill crafts its menu from key ingredients from small, family-owned Italian farms and still carries out that menu with the same attention to detail that Phil Romano gave when he wrote the original recipe book.

38. Until March 2020, each Macaroni Grill location served hundreds of guests—individuals, families, coworkers, and friends—offering a chef-driven, evolving menu rooted in Italian tradition and infused with inventive, modern flavors. The image included below depicts a typical Macaroni Grill dining room before the Shutdown Executive Orders went into effect:

39. As a direct result of the Shutdown Executive Orders, Sullivan's Steakhouse and Macaroni Grill incurred direct physical loss and damage and were rendered non-functional as restaurants. Beginning in mid-March, every Sullivan's Steakhouse and Macaroni Grill location completely closed all in-person dining services. Although most locations remained open only for

limited carry-out and delivery service, to facilitate this limited operation under the Shutdown Executive Orders, Macaroni Grill and Sullivan's locations reintroduced a curbside option for carry-out orders. In addition, in adherence with the Shutdown Executive Orders' requirements, these locations installed plexiglass to create physical barriers for any customers or delivery personnel coming inside the restaurants. Some of the restaurants also cordoned off bar areas to prevent access to those physical spaces. The dining room at each and every Sullivan's Steakhouse and Macaroni Grill lay dormant, ceasing to function as intended as a curated dine-in restaurant.

40. Thereafter, as a result of the restrictive Partial Reopening Executive Orders, Sullivan's Steakhouse and Macaroni Grill remain physically impaired and have been required to make detrimental material alterations to their premises. The majority of locations remained closed for on-premises dining until June 2020, and then could reopen in-restaurant dining services only subject to the Partial Reopening Executive Orders' severe restrictions on restaurant capacity and the physical space intended for serving guests on premises. To maintain capacity reductions and/or social-distancing requirements, each Mac Parent restaurant has had to (among other things): cordon off bar areas, revise floor plans and layouts to account for the square footage lost within the locations, or designate tables as nonfunctioning. These impairments have been dramatic. At Macaroni Grill locations, for example, dozens upon dozens of tables with hundreds of seats have been rendered nonfunctional. Due to the impairments caused by the Shutdown and Partial Reopening Executive Orders, the Sullivan's Steakhouse and Macaroni Grill locations now open are operating at a fraction of their pre-Shutdown Executive Order selves.

41. As of the date of this Complaint, all locations in New York remain closed entirely as the Shutdown Executive Orders and restrictive Partial Reopening Executive Orders have rendered it economically infeasible to operate functional restaurants as intended in New York State.

42. As a direct result of the Shutdown and Partial Reopening Executive Orders, Plaintiff (via Sullivan's Steakhouse and Macaroni Grill) has suffered substantial losses, in an amount that will be proven at trial.

43. Through Plaintiff, each Sullivan's Steakhouse and Macaroni Grill location has at all relevant times had in place an all-risk insurance policy, Leading Edge All-Risk General Property (Policy No. NAP 2002449-01), effective April 17, 2019 with Defendant.[4] (*See* Ex. 1 to Complaint.) The Policy insures "all risks of direct physical loss or damage" to any insured property. In addition, Defendant agreed to cover Plaintiff for "Actual Loss Sustained" at Sullivan's Steakhouse and Macaroni Grill locations during the "Period of Liability" from "direct physical loss or damage" to any of the Policy's covered locations. Defendant also agreed to pay for "Extra Expense."

44. On June 9, 2020, Plaintiff submitted to Defendant a notice of claim covering all insured entities including Sullivan's Steakhouse and Macaroni Grill for covered losses.

45. On June 10, 2020, Defendant acknowledged receipt of Plaintiff's notice of claim and stated Defendant would "be in touch shortly to confirm next steps."

46. On July 30, 2020, having not heard from Defendant regarding its claim, and having received communications indicating that Defendant has denied or will deny coverage of

[4] The Policy was extended through June 1, 2020, and then renewed on the same date.

Plaintiff's claim without any valid justification, Plaintiff filed an action against Defendant in Illinois.

47. On October 9, 2020, after Defendant raised a New York forum selection clause in the parties' agreement, Plaintiff voluntarily dismissed the Illinois Action without prejudice to refiling its claim in the Courts of the State of New York.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION—DECLARATORY JUDGMENT Pursuant to CPLR § 3001

48. Plaintiff incorporates and realleges each of the allegations set forth above as if fully set forth herein.

49. The Policy described in Paragraph 43 is a valid and fully enforceable insurance contract. The Policy provides for coverage for business income losses and extra expenses Plaintiff incurred as a result of the interruption of business caused by a covered cause of loss.

50. Plaintiff submitted a claim for covered losses sustained as a direct result of the Shutdown and Partial Reopening Executive Orders, a covered cause of loss.

51. Plaintiff was denied business interruption coverage based on Defendant's constructive denial and Defendant's repudiation of its obligation to provide coverage, consistent with insurers' nearly blanket approach of issuing denials to policyholders claiming losses caused by the Shutdown and Partial Reopening Executive Orders based on the wholly incorrect contention that Plaintiff's claim did not result from "direct physical loss or damage" to insured property, as required by the Policy.

52. An actual, justiciable controversy exists between the parties concerning the construction of the terms of "direct physical loss or damage" to covered property.

53. As a result of this controversy, Plaintiff seeks a declaration from the Court that the Shutdown and Partial Reopening Executive Orders caused direct physical loss or damage to Plaintiff's insured properties.

SECOND CAUSE OF ACTION—BREACH OF CONTRACT

54. Plaintiff incorporates and realleges each of the allegations set forth above as if fully set forth herein.

55. Plaintiff Mac Parent and Defendant North American Elite have an enforceable insurance coverage agreement pursuant to which Defendant agreed to provide "all-risk" insurance coverage to Plaintiff, to wit Leading Edge All-Risk General Property (Policy No. NAP 2002449-01). Plaintiff agreed to, and in fact did, pay insurance premiums under the agreement, and in return Defendant agreed to insure "all risks of direct physical loss or damage" to any insured property, and further agreed to cover Plaintiff for "Actual Loss Sustained" due to the necessary interruption of Plaintiff's business resulting from "direct physical loss or damage" at any of the Policy's covered locations. In addition, Defendant also agreed to pay for Plaintiff's "Extra Expense."

56. Plaintiff has sustained direct physical loss and/or damage from a covered cause of loss under the parties' agreement.

57. Plaintiff performed all of its obligations under the parties' agreement, including by notifying Defendant of a covered cause of loss under the agreement, and any conditions precedent have been satisfied, waived, excused, or are otherwise inapplicable.

58. Defendant breached the parties' agreement by constructively denying its coverage obligations under the agreement or otherwise repudiating its obligation to cover Plaintiff's losses, as expressly required under the parties' agreement.

59. Plaintiff has sustained damage as a result of Defendant's breach of contract in an amount to be proven at trial.

60. Plaintiff respectfully prays that the Court enter judgment in its favor and against Defendant on the breach of contract claim set forth above, in an amount to be proven at trial, plus pre-judgment interest.

THIRD CAUSE OF ACTION—UNJUST ENRICHMENT

61. Plaintiff incorporates and realleges each of the allegations set forth above as if fully set forth herein.

62. In the alternative, if Defendant's denial of coverage for Plaintiff's claim for business interruption coverage is upheld, then Defendant has been unjustly enriched in the amount of excess premium for business interruption coverage it has charged and retained while Plaintiff's properties have been shut down or functionally impaired as the result of the Shutdown and Partial Reopening Executive Orders.

63. Defendant has priced and charged premiums for Plaintiff's Policy on the basis of Plaintiff's insured properties operating as fully functional restaurants, according to the available square footage at the outset of the policy period. Accordingly, the insured risks included the prospect of having to pay claims for lost business at levels commensurate with fully operational businesses.

64. During the time period while Plaintiff's properties have been lost, damaged, shut down, or otherwise functionally impaired by the Shutdown and Partial Reopening Executive Orders, Defendant's risk of having to pay other business interruption claims has been reduced in many instances to zero and in all instances by substantial monetary amounts. The Policy contains

provisions making Defendant liable to pay business interruption loss only to the extent it would not have been incurred anyway.

65. Defendant knows all this, yet it has intentionally continued to charge and collect as "earned"—and Plaintiff has continued to pay—premiums for which Defendant, according to its own self-serving justifications for denying coverage, assumed no commensurate risk.

66. Defendant has been unjustly enriched, at Plaintiff's expense, and should be required to disgorge to Plaintiff the full amount of excess premium for business interruption coverage Defendant has unlawfully charged, collected, and retained, as equity and good conscience require.

67. Defendant's misconduct in this respect has been willful, wanton, and in bad faith.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court

a. Declare, as set forth in the First Cause of Action, that the Shutdown and Partial Reopening Executive Orders caused direct physical loss or damage to Plaintiff's insured properties;

b. Enter judgment in Plaintiff's favor and against Defendant on the breach of contract claim set forth in the Second Cause of Action, in an amount to be proven at trial, plus pre-judgment interest;

c. In the alternative, enter judgment in Plaintiff's favor and against Defendant on the unjust enrichment claim set forth in the Third Cause of Action, in an amount to be proven at trial, plus pre-judgment interest;

d. And grant any such other relief as this Court may deem just and proper.

Dated: October 13, 2020
New York, NY

Respectfully Submitted,

/s/ Jeremy M. Creelan

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