

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA**

**MOE'S ORIGINAL BBQ HOOVER,** )  
**LLC; LAKEVIEW OYSTER HOUSE,** )  
**INC., d/b/a MOE'S ORIGINAL BBQ** )  
**LAKEVIEW; MOE'S ORIGINAL BBQ** )  
**BIRMINGHAM, LLC; and MOE'S** )  
**ORIGINAL BBQ TRUSSVILLE, LLC,** )  
 Individually and on behalf of all others )  
 similarly situated, )

\_\_\_\_\_  
**Plaintiffs**

**v.**

**THE CINCINNATI INSURANCE** )  
**COMPANY,** )

**Defendant.**

Case No. \_\_\_\_\_

**CLASS ACTION**

**DEMAND FOR JURY TRIAL**

**CLASS ACTION COMPLAINT**

COME NOW, Plaintiffs, Moe's Original BBQ Hoover, LLC; Lakeview Oyster House, Inc., d/b/a Moe's Original BBQ Lakeview; Moe's Original BBQ Birmingham, LLC; and Moe's Original BBQ Trussville, LLC (collectively referred to herein as "Moe's"), individually and on behalf of all others similarly situated, by and through their attorneys, and file this Class Action Complaint against Defendant The Cincinnati Insurance Company ("Cincinnati"). In support thereof, Plaintiffs allege the following upon personal knowledge as to themselves and their own acts, and as to all other matters upon information and belief, based upon the investigation made by and through their attorneys:

**NATURE OF THE CASE**

1. Moe's Original BBQ is a chain of restaurants with locations in twelve states and one location in Mexico City, Mexico. Plaintiffs are four separate restaurant entities and locations in Trussville, Birmingham (Lakeview), Hoover, and Vestavia Hills, Alabama.

2. To protect the restaurants and the income from operation of the restaurants, Plaintiffs purchased commercial property coverage from Defendant with policy number ECP 054 11 18 (the “Policy”).

3. The Policy was issued by The Cincinnati Insurance Company. Under the Policy, Cincinnati is responsible for receiving and managing claims and loss notices, responding to questions about insurance and coverage, and receiving process served on Cincinnati’s designated agent, among other things.

4. The Policy is a bilateral contract. Plaintiffs agreed to pay monthly premiums to Defendant, in exchange for Defendant’s promises of coverage for certain losses.

5. Among other types of coverage, the Policy protects Plaintiffs against a loss of business income due to a suspension of Moe’s operations. This type of coverage is often referred to as business interruption coverage.

6. The Policy also provides “Extra Expense” coverage under which Defendant promised to pay expenses incurred to minimize the suspension of business.

7. Additionally, the Policy provides “Civil Authority” coverage under which Defendant promised to pay for loss of business income caused by the action of a civil authority prohibiting access to the restaurant.

8. Plaintiffs duly complied with their obligations under the Policy and paid the requisite premiums.

9. Beginning in March 2020, Plaintiffs were forced to suspend business operations at their restaurants due to risk of infection of COVID-19 and/or actions of civil authorities prohibiting access to and occupancy of the restaurants. This suspension has caused Plaintiffs to suffer significant losses and incur significant expenses.

10. Plaintiffs timely filed a claim for their losses and expenses on March 25, 2020. Their claim was denied by Cincinnati on May 6, 2020.

11. Under the Policy, Defendant promised to cover these losses and expenses, and is obligated to pay for them. But in blatant breach of its contractual obligations, Defendant has failed to pay for these losses and expenses.

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

### **JURISDICTION & VENUE**

13. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332 because there is complete diversity between Defendant and at least one member of each class; there are more than one hundred members of each class; and the amount in controversy exceeds \$5,000,000 exclusive of interest and costs. This Court also has subject matter jurisdiction under 28 U.S.C. §§ 2201 and 2202 and is authorized to grant declaratory relief under these statutes. All other factual conditions precedent necessary to empower this Court with subject matter and personal jurisdiction have been satisfied.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because the Defendant is subject to personal jurisdiction in this district, has a registered agent in this district, a substantial part of the property that is the subject of this action is situated in this district, and a substantial portion of Defendant's conduct that forms the basis of this action occurred in Alabama, including within the boundaries of this district.

15. This Court has personal jurisdiction over the Defendant because Plaintiffs' claims arise out of, among other things, the Defendant conducting, engaging in, and/or carrying on business in Alabama; Defendant's maintenance of an office in Alabama; Defendant breaching a

contract in this State by failing to perform acts required by contract to be performed in this State; and Defendant contracting to insure property in Alabama, including but not limited to the premises insured under the Policy. Defendant also purposefully availed itself of the opportunity of conducting activities in the State of Alabama by marketing its insurance policies and services within the State, and intentionally developing relationships with brokers, agents, and customers within the State to insure property within the State, all of which resulted in the policies at issue in this action.

### **PARTIES**

16. Plaintiffs are four separate restaurant entities and locations of an international chain of restaurants known as Moe's Original BBQ. Plaintiffs are located in Trussville, Birmingham, Hoover, and Vestavia Hills, Alabama.

17. Defendant The Cincinnati Insurance Company ("Cincinnati") is a corporation organized under the laws of Ohio, with its principal place of business at 6200 S. Gilmore Road, Fairfield, Ohio 45014-5141, and regularly conducts business in this district. Cincinnati may be served via its registered agent, Scott Tyra, at 2001 Park Place North, Suite 200, Birmingham, Alabama 35203.

18. At all times material, Defendant engaged in substantial and not isolated activity on a continuous and systematic basis in the State of Alabama, namely by issuing and selling insurance policies in Alabama and by contracting to insure property located in Alabama. Furthermore, Defendant engaged in substantial and not isolated activity on a continuous and systematic basis throughout the United States, namely by issuing and selling insurance policies throughout the United States and by contracting to insure property located throughout the United States.

## **FACTUAL ALLEGATIONS**

### ***The Policy Language***

19. Plaintiffs' Policy has a policy period of June 11, 2019 to June 11, 2020. The insured properties are:

- a. 163 Main Street, Trussville, Alabama 35173-1435
- b. 731 29th Street South, Birmingham, Alabama 35233-2809
- c. 181 Main Street, Suite 201, Hoover, Alabama 35244-5068
- d. 2520 Rocky Ridge Road, Vestavia, Alabama 35243-4441

A true and correct copy of the Policy is attached to this Complaint as Exhibit "A" and incorporated herein by reference.

20. The Policy is an all-risk insurance policy. In an all-risk insurance policy, all risks of loss are covered unless they are specifically excluded.

21. Consistent with the all-risk nature of the Policy, Defendant specifically agreed to pay for all losses caused by "Covered Causes of Loss," defined as "direct 'loss' unless the 'loss' is excluded or limited in this Coverage Part." In the Policy, Defendant also promised to pay for losses of business income sustained as a result of perils not excluded under the Policy. Specifically, Defendant promised to pay for losses of business income sustained as a result of a suspension of business operations during the period of restoration.

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

23. Pursuant to this section of the Policy, Defendant promised to pay for “the actual loss of ‘Business Income’ and ‘Rental Value’ you sustain due to the necessary ‘suspension’ of your ‘operations’ during the ‘period of restoration’.”

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

25. “Business Income” means the net profit that the business would have earned absent the suspension of operations, plus any continuing normal operating expenses, including payroll:

**"Business Income" means the:**

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

26. “Suspension” means, among other things, a slowdown or cessation of the insured’s business activities:

**"Suspension" means:**

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

27. “Period of Restoration” means the period of time beginning at the time of direct “loss” and ending on the date when the property is repaired or the date when business is resumed at a new location, whichever is earlier:

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

- a. Begins at the time of direct "loss".
- b. Ends on the earlier of:
  - (1) The date when the property at the "premises" should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
  - (2) The date when business is resumed at a new permanent location.

28. Additionally, Defendant also promised to cover "Extended Business Income" under the Policy. This coverage requires Defendant to pay for loss of business income beyond the "period of restoration" under certain conditions.

29. Specifically, Defendant promised to pay for the actual loss of "business income" during the period that begins on the date that the insured property is open, and ends either sixty days thereafter or on the date when operations are restored to the level which would generate business income to normal levels, whichever is earlier.

30. For all four of Plaintiffs' property locations, the limit of insurance for "Business Income with Extra Expense" is twelve months actual loss sustained.

31. In addition to promising to pay for loss of business income under the Policy, Defendant also promised to pay for certain necessary "Extra Expense." "Extra Expense" means expenses that the policyholder incurs to, for example, minimize the suspension of business.

32. The Policy also provides "Civil Authority" coverage. Under this type of coverage, Defendant promised to pay for the loss of business income and extra expense that the Plaintiffs sustained as a result of "action of civil authority that prohibits access to the 'premises'":

### **Civil Authority**

When a Covered Cause of Loss causes direct damage to property other than Covered Property at the "premises", we will pay for the actual loss of "Business Income" you sustain and necessary Extra Expense you sustain caused by action of civil authority that prohibits access to the "premises", provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority coverage for "Business Income" will begin immediately after the time of the first action of civil authority that prohibits access to the "premises" and will apply for a period of up to 30 consecutive days from the date on which such coverage began.

Civil Authority coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the "premises" and will end 30 consecutive days after the date of that action; or when your Civil Authority coverage for "Business income" coverage ends, whichever is later.

33. This civil authority provision is an independent basis for business interruption coverage. That is, it can be triggered even when the standard business interruption coverage is not.

34. Parts of the Policy, including the "Business Income (and Extra Expense) Coverage Form," are standardized forms drafted by the Insurance Services Office (ISO). The ISO is a company that drafts standard policy language for use in insurance contracts.



35. In 2006, the ISO drafted a new endorsement, CP 01 40 07 06, acknowledging that claims for business interruption losses would be filed under existing policy language for losses resulting from the presence of disease-causing agents. Endorsement CP 01 40 07 06, which other insurers have since incorporated in policies, provides that the insurer “will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.” Significantly, Defendant chose to not include this endorsement in Plaintiffs’ Policy.

36. Plaintiffs’ Policy does not contain any exclusion which would apply to allow Defendant to deny coverage for losses caused by the interruption of Plaintiffs’ business and the actions of civil authorities.

37. Accordingly, because the Policy is an all-risk policy and does not specifically exclude the losses that Plaintiffs have suffered, those losses are covered.

***Plaintiffs’ Covered Losses***

38. The presence of COVID-19 and the public health emergency it created has prompted actions by civil authorities throughout the United States (“Civil Authority Actions”), including but not limited to civil authorities with jurisdiction over Plaintiffs: City of Birmingham, Jefferson County, and the State of Alabama.

39. On March 13, 2020, the Governor of Alabama, Kay Ivey, declared a public health emergency in response to the appearance of COVID-19 in the State of Alabama. *See* STATE OF EMERGENCY: CORONAVIRUS (COVID-19) (March 13, 2020), *available at* <https://governor.alabama.gov/newsroom/2020/03/state-of-emergency-coronavirus-covid-19/>.

40. Effective March 19, 2020, the State Health Officer of Alabama issued a Statewide Order Suspending Certain Public Gatherings Due to Risk of Infection by COVID-19. This Order,

which expressly covers Jefferson County, required all restaurants to close except for take-out, delivery, or curbside orders. *See* ORDER OF THE STATE HEALTH OFFICER SUSPENDING CERTAIN PUBLIC GATHERINGS DUE TO RISK OF INFECTION BY COVID-19 (March 27, 2020), *available at* <https://alabamapublichealth.gov/legal/assets/order-socialdistancing-signed-032720.pdf>; ORDER OF THE STATE HEALTH OFFICER SUSPENDING CERTAIN PUBLIC GATHERINGS DUE TO RISK OF INFECTION BY COVID-19 (March 19, 2020), *available at* <https://alabamapublichealth.gov/legal/assets/order-adph-cov-gatherings-031920.pdf>.

41. On March 24, 2020, the City of Birmingham issued Ordinance No. 20-48 establishing a “Shelter in Place Order.” Among other things, this Order required businesses within the City of Birmingham to comply with the Order of the Jefferson County Health Officer, requiring the closure of all businesses, including restaurants. Ordinance No. 20-48 was expressly issued in response to “an emergency of unprecedented size resulting from the natural cause of community spread of a novel human coronavirus disease, COVID-19, [having] occurred in the City of Birmingham.” *See* ORDINANCE NO. 20-48, *available at* <https://www.birminghamal.gov/wp-content/uploads/2020/03/2020.3.24.City-of-Birmingham.Shelter-In-Place-Ordinance.pdf>.

Section 1(c) of the Ordinance specifically states:

All public and private gatherings of 10 or more persons or of any size where a consistent distance of at least six feet cannot be maintained are prohibited, except as to those exempted activities further provided in this ordinance. This provision does not apply to gatherings within a single household or living unit.

*Id.* at p. 3.

42. On April 3, 2020, the State Health Officer signed an Order Suspending Certain Public Gatherings Due to Risk of Infection by COVID-19, as Amended, ordering every person in the State of Alabama “to stay at his or her place of residence except as necessary to perform . . . ‘essential activities’ . . . .” *See* ORDER OF THE STATE HEALTH OFFICER SUSPENDING CERTAIN

PUBLIC GATHERINGS DUE TO RISK OF INFECTION BY COVID-19 (April 3, 2020), *available at* [https://governor.alabama.gov/assets/2020/04/2020\\_04\\_03\\_20-Revised-SOE.pdf](https://governor.alabama.gov/assets/2020/04/2020_04_03_20-Revised-SOE.pdf).

43. In response to the State Health Officer's April 3, 2020 Order, the City of Birmingham amended its March 24, 2020 "Shelter In Place Order" (Ordinance No. 20-50) to continue through April 30, 2020. *See* ORDINANCE NO. 20-50 (April 3, 2020), *available at* <https://www.birminghamal.gov/wp-content/uploads/2020/04/Shelter-in-Place-Ordinance-Amended-20-50.pdf>.

44. On April 28, 2020, the State Health Officer signed an Order (the "Safer at Home Order") reopening certain portions of the State's economy, but still requiring restaurants to remain closed until a later date. *See* ORDER OF THE STATE HEALTH OFFICER SUSPENDING CERTAIN PUBLIC GATHERINGS DUE TO RISK OF INFECTION BY COVID-19 (April 28, 2020), *available at* <https://governor.alabama.gov/assets/2020/04/Safer-At-Home-Order-Signed-4.28.20.pdf>.

45. On April 28, 2020, the City of Birmingham adopted Ordinance No. 20-69, which required that face coverings or masks be worn in public in the City of Birmingham, beginning May 1, 2020. Business owners, managers, and supervisors are responsible for ensuring that employees, customers, clients and/or visitors observe this requirement while at their place of business. *See* AN ORDINANCE TO AMEND ORDINANCE NO. 20-69, REQUIRING THAT FACE COVERINGS OR MASKS BE WORN IN PUBLIC IN THE CITY OF BIRMINGHAM DURING THE COVID-19 PUBLIC HEALTH EMERGENCY AND RECOVERY (May 5, 2020), *available at* <https://www.birminghamal.gov/wp-content/uploads/2020/05/Ordinance-No.-20-72.pdf>; *see also* *City's face covering ordinance extended to June 12, 2020*, *available at* <https://www.birminghamal.gov/wp-content/uploads/2020/05/Face-covering-ordinance-extended-to-June-12.pdf>; AN ORDINANCE TO AMEND ORDINANCE NO. 20-69, REQUIRING THAT FACE COVERINGS OR MASKS BE WORN IN PUBLIC

IN THE CITY OF BIRMINGHAM DURING THE COVID-19 PUBLIC HEALTH EMERGENCY AND RECOVERY (May 19, 2020), *available at* <https://www.birminghamal.gov/wp-content/uploads/2020/05/2020.5.19.Ordinance-20-83.pdf>.

46. On May 8, 2020, the State Health Officer signed an Amended Safer at Home Order, effective May 11, 2020 through May 22, 2020. While the Safer at Home Order expanded the list of businesses that were allowed to reopen, restaurants were limited to offering food for take-out or delivery, online ordering, curbside pickup, and to the extent that on-premises consumption of food or drink is offered, restaurants “must limit the party size at tables to no more than eight persons and maintain at least six feet of separation between people seated at different tables, booths chairs, or stools.” *See ORDER OF THE STATE HEALTH OFFICER SUSPENDING CERTAIN PUBLIC GATHERINGS DUE TO RISK OF INFECTION BY COVID-19 at p.7* (May 8, 2020), *available at* <https://governor.alabama.gov/assets/2020/05/Safer-at-Home-Order-FINAL-5.8.2020.pdf>. The Safer at Home Order was again amended on May 21, 2020 to extend these restrictions on restaurants through July 3, 2020. *See ORDER OF THE STATE HEALTH OFFICER SUSPENDING CERTAIN PUBLIC GATHERINGS DUE TO RISK OF INFECTION BY COVID-19 at pp. 8–9* (May 21, 2020), *available at* <https://altogetheralabama.org/wp-content/uploads/2020/05/Safer-at-Home-Order-FINAL-5.21.2020.pdf>.

47. As of the date of filing this Complaint, Jefferson County, where Plaintiffs are located, has over 2,100 cases of COVID-19, with more than 110 deaths.

48. There has been a direct physical loss of and/or damage to the covered premises under the Policy by, among other things, damaging the property, denying access to the property, preventing customers from physically occupying the property, causing the property to be

physically uninhabitable by customers, causing its function to be nearly eliminated or destroyed, and/or causing a suspension of business operations on the premises.

49. Prior to the municipal and state “stay-at-home” orders, Plaintiffs were collectively serving thousands of customers daily. On weekends, the Lakeview location alone would serve in the thousands and consistently have 100-200 people in the restaurant and patio areas.

50. Until recently, however, Plaintiffs have only been able to operate on a limited take out basis, and in fact, were forced to temporarily close the Moe’s location in Lakeview. The Lakeview location closed on approximately March 16, 2020 and did not reopen until approximately May 4, 2020 when it reopened for to-go orders. The Hoover, Vestavia Hills, and Trussville locations offered only to-go service beginning approximately March 16, 2020. Thereafter, on approximately May 11, 2020, Plaintiffs were able to serve food for on-site consumption but had to severely limit their seating areas. In addition, some of the food purchased by Plaintiffs prior to the Civil Authority Actions became spoiled and unusable, and thus had to be discarded.

51. Plaintiffs have suffered a suspension of normal business operations in terms of a significant slowdown of business activities and a cessation of all restaurant dining operations on the premises.

52. Additionally, Plaintiffs’ restaurants suffered a suspension of normal business operations in terms of a significant slowdown of business activities and a cessation of all restaurant dining operations on the premises, sustained losses of business income, and incurred extra expenses.

53. These losses and expenses have continued through the date of filing of this action. As of the date of filing, the restaurant premises just recently opened for on-site consumption at a very limited capacity.

54. These losses and expenses are not excluded from coverage under the Policy. Moreover, because the Policy is an all-risk policy and Plaintiffs have complied with their contractual obligations, Plaintiffs are entitled to payment for these losses and expenses.

55. Accordingly, on or about March 25, 2020, Plaintiffs provided notice of their claim to Defendant, consistent with the terms and procedures of the Policy. In response, Defendant sent Plaintiffs a letter reserving its rights under the Policy and asking Plaintiffs for additional information related to their claim. *See* Letter from Brian Meinberg, The Cincinnati Insurance Companies, to Moe's Original BBQ (March 26, 2020), attached hereto as "Exhibit B".

56. Plaintiffs responded to Defendant's questions on or around April 23, 2020 and April 28, 2020. In their response, Plaintiffs noted that they were prevented by HIPAA from being given the names of any customers or employees who may have been infected by COVID-19. However, Plaintiffs included copies of the government orders that restricted their businesses and also included letters from local mayors that confirmed cases of COVID-19 within their city limits.

57. Thereafter, in a letter dated May 6, 2020, Defendant denied coverage for Plaintiffs' claims. *See* Letter from Brian Meinberg, The Cincinnati Insurance Companies, to Moe's Original BBQ (May 6, 2020), attached hereto as "Exhibit C". Thus, contrary to the plain language of the Policy and Defendant's corresponding promises and contractual obligations, Defendant has refused to pay for Plaintiffs' losses and expenses under the terms of the Policy.

58. This appears to be consistent with the position Defendant has taken nationwide, even though on its website, Defendant publicly represents:

Cincinnati puts the health and safety of our associates, agents and customers at the top of our priorities. That's why we've put our business continuity plans in action, ensuring we do our part to help prevent the spread of COVID-19 while continuing to deliver the outstanding service you deserve. *We know it's important to keep our business running, ready to serve you and fulfill the promises we've made to you.*

Ready to Serve, THE CINCINNATI INS. COS., *available at* <https://www.cinfin.com/covid-19> (emphasis added).

### **CLASS ACTION ALLEGATIONS**

59. The class claims all derive directly from a single course of conduct by Defendant: its systematic and uniform refusal to pay insureds for covered losses and the actions taken by civil authorities to suspend business operations.

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

61. Plaintiffs seek to represent a nationwide class defined as:

- a. All persons and entities with Business Income coverage and/or Extended Business Income coverage under a property insurance policy issued by Defendant that suffered a suspension of business operations and for which Defendant has either actually denied or stated it will deny a claim for the losses or has otherwise failed to acknowledge, accept as a covered loss, or pay for the covered losses ("the Business Income Coverage Class").
- b. All persons and entities with Extra Expense coverage under a property insurance policy issued by Defendant that suffered a suspension of business operations and for which Defendant has either actually denied or stated it will deny a claim for the

expenses or has otherwise failed to acknowledge, accept as a covered expense, or pay for the covered expenses (“the Extra Expense Coverage Class”).

- c. All persons and entities with Civil Authority coverage under a property insurance policy issued by Defendant that suffered an actual loss of Business Income and/or Extra Expense caused by an action of a civil authority that prohibited access to the premises, and for which Defendant has either actually denied or stated it will deny a claim for the losses or has otherwise failed to acknowledge, accept as a covered loss, or pay for the covered losses (“the Civil Authority Coverage Class”).

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

63. Plaintiffs reserve the right to modify, expand, or amend the definitions of the proposed Classes, as appropriate, during the course of this litigation.

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

#### **Numerosity and Ascertainability**

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

66. The identity of Class members is ascertainable, as the names and addresses of all Class members can be identified in Defendant’s or its agents’ books and records. Class members



may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, internet postings, and/or published notice.

**Predominance of Common Issues**

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

- a. Whether Plaintiffs and the Class members suffered a covered loss under the policies issued to members of the Class;
- b. Whether Defendant wrongfully denied all claims based on the facts set forth herein;
- c. Whether Defendant's business income coverage applies based on the facts set forth herein;
- d. Whether Defendant's civil authority coverage applies based on the facts set forth herein;
- e. Whether Defendant's extra expense coverage applies to efforts to avoid or minimize a loss caused by the suspension of business based on the facts set forth herein;
- f. Whether Defendant breached its contracts of insurance through a uniform and blanket denial of all claims for business losses based on the facts set forth herein;
- g. Whether Plaintiffs and the Class members suffered damages as a result of Defendant's actions; and

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

**Typicality**

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

**Adequacy of Representation**

69. This action satisfies the requirements of FED. R. CIV. P. 23(a)(4) because Plaintiffs will fairly and adequately represent and protect the interests of Class members. Plaintiffs have retained counsel with substantial experience in prosecuting complex class action litigation.

70. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Class members and have the financial resources to do so. Neither Plaintiffs nor their counsel have interests adverse to those of the Class members.

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

71. This action satisfies the requirements of FED. R. CIV. P. 23(b)(1). Plaintiffs seek class-wide adjudication as to the interpretation and scope of Defendant's property insurance policies that use the same language and terms as the Policy. The prosecution of separate actions

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

**Final Injunctive and/or Corresponding Declaratory Relief with Respect to the Classes Is Appropriate**

72. This action satisfies the requirements of FED. R. CIV. P. 23(b)(2) because Defendant acted or refused to act on grounds generally applicable to Plaintiffs and the members of the proposed Classes, thereby making appropriate final injunctive and/or corresponding declaratory relief with respect to the Class members. The class claims all derive directly from Defendant's systematic and uniform refusal to pay insureds for losses suffered due to actions taken by civil authorities to suspend or interrupt business operations in response to the COVID-19 pandemic. Defendant's actions, or refusal to act, are grounded upon the same generally applicable legal theories.

**Superiority**

73. This action satisfies the requirements of FED. R. CIV. P. 23(b)(3) because a class action is superior to other available methods for the fair and efficient group-wide adjudication of this controversy. The common questions of law and fact regarding Defendant's conduct and the interpretation of the common language in its property insurance policies predominate over any questions affecting only individual Class members.

74. Because the damages suffered by certain individual Class members may be relatively small, the expense and burden of individual litigation would make it very difficult for all individual Class members to redress the wrongs done to each of them individually, such that many Class members would have no rational economic interest in individually controlling the prosecution of specific actions, and the burden imposed on the judicial system by individual

litigation by even a small fraction of the Class would be enormous, making class adjudication the superior alternative under FED. R. CIV. P. 23(b)(3)(A).

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

76. Plaintiffs are not aware of any obstacles likely to be encountered in the management of this action that would preclude its maintenance as a class action. Rule 23 provides the Court with authority and flexibility to maximize the efficiencies and benefits of the class mechanism and reduce management challenges. The Court may, on motion of Plaintiffs or on its own determination, certify nationwide, statewide and/or multistate classes for claims sharing common legal questions; utilize the provisions of Rule 23(c)(4) to certify any particular claims, issues, or common questions of fact or law for class-wide adjudication; certify and adjudicate bellwether class claims; and utilize Rule 23(c)(5) to divide any Class into subclasses.

**COUNT I – BREACH OF CONTRACT**  
**(On behalf of the Business Income Coverage Class)**

77. Plaintiffs incorporate by reference and reallege each and every allegation above as if fully set forth herein.

78. Plaintiffs bring this Count both individually and on behalf of the other members of the Business Income Coverage Class.

79. Plaintiffs' Policy, as well as the policies of the other Business Income Coverage Class members, are insurance contracts under which Defendant was paid premiums in exchange for promises to pay Plaintiffs and Class members' losses for claims covered by their policies.

80. In the Policy and other Class members' policies, Defendant promised to pay for losses of business income incurred as a result of perils not excluded under their policies. Specifically, Defendant promised to pay for losses of "business income" sustained as a result of a "suspension" of "business operations" during the "period of restoration."

81. Plaintiffs and Class members suffered a direct physical loss of and damage to Plaintiffs' restaurants and other Class members' insured premises as a result of interruptions or suspensions of business operations at these premises. These interruptions and suspensions caused Plaintiffs and Class members to suffer losses of business income.

82. These losses triggered business income coverage under Plaintiffs' Policy and other Class members' policies.

83. Plaintiffs and the other Class members have complied with all applicable provisions of their respective policies, including payment of premiums.

84. Defendant, without justification and in bad faith, denied coverage and refused performance under the Policy and other Class members' policies by denying coverage for these losses and expenses. Accordingly, Defendant is in breach of the Policy and other Class members' policies.

85. As a result of Defendant's breaches of the Policy and other Class members' policies, Plaintiffs and the Class members have suffered actual and substantial damages for which Defendant is liable.

WHEREFORE, Plaintiffs, both individually and on behalf of the Class members, seek compensatory damages resulting from Defendant's breaches of the Policy and other Class members' policies and seek all other relief deemed appropriate by this Court.

**COUNT II – DECLARATORY JUDGMENT**  
**(On behalf of the Business Income Coverage Class)**

86. Plaintiffs incorporate by reference and reallege each and every allegation above as if fully set forth herein.

87. Plaintiffs bring this Count both individually and on behalf of the other members of the Business Income Coverage Class.

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

89. Plaintiffs' Policy, as well as the policies of other Business Income Coverage Class members, are insurance contracts under which Defendant was paid premiums in exchange for promises to pay Plaintiffs' and Class members' losses for claims covered by their policies.

90. In the Policy and other Class members' policies, Defendant promised to pay for losses of business income sustained as a result of perils not excluded under their policies. Specifically, Defendant promised to pay for losses of "business income" sustained as a result of a "suspension" of "business operations" during the "period of restoration."

91. Plaintiffs and Class members suffered direct physical loss of and damage to Plaintiffs' restaurants and other Class members' insured premises, resulting in interruptions or suspensions of business operations at their premises. These interruptions and suspensions caused Plaintiffs and Class members to suffer losses of business income.

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

93. Plaintiffs and the other Class members complied with all applicable provisions of their respective policies, including payment of premiums.

94. Defendant, without justification, disputes that the Policy and other Class members' policies provides coverage for the losses.

95. Plaintiffs seek a Declaratory Judgment that their Policy and the other Class members' policies provide coverage for the losses of business income attributable to the facts set forth above.

96. An actual case or controversy exists regarding Plaintiffs' and other Class members' rights and Defendant's obligations to reimburse Plaintiffs and other Class members for the full amount of these losses. Accordingly, the Declaratory Judgment sought is justiciable.

WHEREFORE, Plaintiffs, both individually and on behalf of the Class members, request that this Court enter a Declaratory Judgment declaring that the Policy and other Class members' policies provide coverage for Plaintiffs' and Class members' losses of business income.

**COUNT III – BREACH OF CONTRACT**  
**(On behalf of the Extra Expense Coverage Class)**

97. Plaintiffs incorporate by reference and reallege each and every allegation above as if fully set forth herein.

98. Plaintiffs bring this Count both individually and on behalf of the other members of the Extra Expense Coverage Class.

99. Plaintiffs' Policy, as well as the policies of the other Extra Expense Coverage Class members, are insurance contracts under which Defendant was paid premiums in exchange for promises to pay Plaintiffs and Class members' losses for claims covered by their policies.

100. In the Policy and other Class members' policies, Defendant promised to pay for "Extra Expense[s]" incurred by Plaintiffs and other Class members during the "period of

restoration” that the insureds would not have incurred if there had been no loss or damage to the insured premises. These “Extra Expense[s]” include expenses to avoid or minimize the “suspension” of business, continue “operations,” and to repair or replace property.

101. Plaintiffs and Class members suffered a direct physical loss of and damage to Plaintiffs’ restaurants and other Class members’ insured premises, resulting in suspensions and interruptions of business operations at these premises. These suspensions and interruptions have caused Plaintiffs and Class members to incur “Extra Expense[s].”

102. These expenses triggered the “Extra Expense” coverage under the Policy and other Class members’ policies.

103. Plaintiffs and the other Class members have complied with all applicable provisions of their respective policies, including payment of premiums.

104. Defendant, without justification and in bad faith, denied coverage and refused performance under the Policy and other Class members’ policies by denying coverage for these “Extra Expense[s]”. Accordingly, Defendant is in breach of the Policy and other Class members’ policies.

105. As a result of Defendant’s breaches of the Policy and other Class members’ policies, Plaintiffs and the Class members have suffered actual and substantial damages for which Defendant is liable.

WHEREFORE, Plaintiffs, both individually and on behalf of the Class members, seek compensatory damages resulting from Defendant’s breaches of the Policy and other Class members’ policies and seek all other relief deemed appropriate by this Court.



**COUNT IV – DECLARATORY JUDGMENT**  
**(On behalf of the Extra Expense Coverage Class)**

106. Plaintiffs incorporate by reference and reallege each and every allegation above as if fully set forth herein.

107. Plaintiffs bring this Count both individually and on behalf of the other members of the Extra Expense Coverage Class.

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

109. Plaintiffs' Policy, as well as the policies of other Extra Expense Coverage Class members, are insurance contracts under which Defendant was paid premiums in exchange for promises to pay Plaintiffs' and Class members' losses for claims covered by their policies.

110. In the Policy and other Class members' policies, Defendant promised to pay for "Extra Expense[s]" incurred by Plaintiffs and other Class members during the "period of restoration" that the insureds would not have incurred if there had been no loss or damage to the insured premises. These "Extra Expense[s]" include expenses to avoid or minimize the "suspension" of business, continue "operations," and to repair or replace property.

111. Plaintiffs and Class members suffered direct physical loss of and damage to Plaintiffs' restaurants and other Class members' insured premises, resulting in interruptions or suspensions of business operations at their premises. As a result, Plaintiffs and other Class members have incurred "Extra Expense[s]", as defined in the Policy and other Class members' policies.

112. These expenses triggered "Extra Expense" coverage under the Policy and other Class members' policies.

113. Plaintiffs and the other Class members complied with all applicable provisions of their respective policies, including payment of premiums.

114. Defendant, without justification, disputes that the Policy and other Class members' policies provides coverage for the "Extra Expense[s]".

115. Plaintiffs, both individually and on behalf of the other members of the Extra Expense Coverage Class, seek a Declaratory Judgment that their Policy and the other Extra Expense Coverage Class members' policies provide coverage for these "Extra Expense[s]."

116. An actual case or controversy exists regarding Plaintiffs' and other Class members' rights and Defendant's obligations under the Policy and Class members' policies to reimburse Plaintiffs and other Class members for these "Extra Expense[s]." Accordingly, the Declaratory Judgment sought is justiciable.

WHEREFORE, Plaintiffs, both individually and on behalf of the Class members, request that this Court enter a Declaratory Judgment declaring that the Policy and other Class members' policies provide coverage for Plaintiffs' and Class members' "Extra Expense[s]."

**COUNT V – BREACH OF CONTRACT**  
**(On behalf of the Civil Authority Coverage Class)**

117. Plaintiffs incorporate by reference and reallege each and every allegation above as if fully set forth herein.

118. Plaintiffs bring this Count both individually and on behalf of the other members of the Civil Authority Coverage Class.

119. Plaintiffs' Policy, as well as the policies of the other Civil Authority Coverage Class members, are insurance contracts under which Defendant was paid premiums in exchange for promises to pay Plaintiffs and Class members' losses and expenses covered by the policies.

120. In the Policy and other Class members' policies, Defendant promised to pay for losses of business income sustained and extra expenses incurred when a "Covered Cause of Loss" causes damage to property near the insured premises, the civil authority prohibits access to property near the insured premises, and the civil authority action is taken in response to dangerous physical conditions.

121. Plaintiffs and Class members suffered losses and incurred expenses as a result of action of civil authorities that prohibited access to insured premises under the Policy and Class members' policies.

122. These losses satisfied all requirements to trigger civil authority coverage under the Policy and other Class members' policies.

123. Plaintiffs and the other Class members have complied with all applicable provisions of their respective policies, including payment of premiums.

124. Defendant, without justification and in bad faith, has denied coverage and refused performance under the Policy and other Class members' policies by denying coverage for these losses and expenses. Accordingly, Defendant is in breach of the Policy and other Class members' policies.

125. As a result of Defendant's breaches of the Policy and other Class members' policies, Plaintiffs and the Class members have suffered actual and substantial damages for which Defendant is liable.

WHEREFORE, Plaintiffs, both individually and on behalf of the Class members, seek compensatory damages resulting from Defendant's breaches of the Policy and other Class members' policies and seek all other relief deemed appropriate by this Court.

**COUNT VI – DECLARATORY JUDGMENT**  
**(On behalf of the Civil Authority Coverage Class)**

126. Plaintiffs incorporate by reference and reallege each and every allegation above as if fully set forth herein.

127. Plaintiffs bring this Count both individually and on behalf of the other members of the Civil Authority Coverage Class.

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

129. Plaintiffs' Policy, as well as the policies of other Civil Authority Coverage Class members, are insurance contracts under which Defendant was paid premiums in exchange for promises to pay Plaintiffs' and Class members' losses for claims covered by their policies.

130. In the Policy and other Class members' policies, Defendant promised to pay for losses of business income sustained and extra expenses incurred when, among other things, a "Covered Cause of Loss" causes damage to property near the insured premises, the civil authority prohibits access to property near the insured premises, and the civil authority action is taken in response to dangerous physical conditions.

131. Plaintiffs and Class members suffered losses and incurred expenses as a result of actions of civil authorities that prohibited access to insured premises under the Policy and Class members' policies.

132. These losses satisfied all requirements to trigger civil authority coverage under the Policy and other Class members' policies.

133. Plaintiffs and the other Class members complied with all applicable provisions of their respective policies, including payment of premiums.

134. Defendant, without justification, disputes that the Policy and other Class members' policies provides coverage for these losses.

135. Plaintiffs, both individually and on behalf of the other members of the Civil Authority Coverage Class, seek a Declaratory Judgment that their Policy and the other Civil Authority Coverage Class members' policies provide coverage for the losses that Class members have sustained and extra expenses they have incurred caused by actions of civil authorities.

136. An actual case or controversy exists regarding Plaintiffs' and other Class members' rights and Defendant's obligations under the Policy and Class members' policies to reimburse Plaintiffs and other Class members for these losses and extra expenses. Accordingly, the Declaratory Judgment sought is justiciable.

WHEREFORE, Plaintiffs, both individually and on behalf of other Class members, request that this Court enter a Declaratory Judgment declaring that the Policy and other Class members' policies provide civil authority coverage for the losses and extra expenses incurred by Plaintiffs' and Class members.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against Defendant, as follows:

- a. Entering an order certifying the proposed Classes, designating Plaintiffs as Class representatives, and appointing Plaintiffs' undersigned attorneys as Counsel for the Classes;
- b. Entering judgments on Counts I, III, and V (Breach of Contract) in favor of Plaintiffs and the members of the Business Income Coverage Class, Extra Expense Coverage Class, and

Civil Authority Coverage Class, and awarding damages for breach of contract in an amount to be determined at trial;

- c. Entering declaratory judgments on Counts II, IV, and VI (Declaratory Judgment) in favor of Plaintiffs and the members of the Business Income Coverage Class, Extra Expense Coverage Class, and Civil Authority Coverage Class as follows:
  - i. That all business income, civil authority, and extra expense losses and expenses incurred and sustained based on the facts and circumstances set forth above are insured and covered losses and expenses under Plaintiffs' Policy and Class members' policies; and
  - ii. Defendant The Cincinnati Insurance Company is obligated to pay for the full amount of the business income, civil authority, and extra expense losses and expenses sustained and incurred, and to be sustained and incurred, based on the facts and circumstances set forth above.
- d. An order requiring Defendant to pay both pre- and post-judgment interest on any amounts awarded;
- e. An award of costs and attorneys' fees; and
- f. Such other or further relief as may be appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby request a trial by jury of all issues so triable.

Dated: June 11, 2020

/s/ Courtney C. Gipson  
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