

DC-21-02194
CAUSE NO. _____

JULIO & SONS COMPANY; BARTECA
RESTAURANTS, LLC; UNCLE JULIO'S
ANNAPOLIS CONCESSIONS, LLC; UNCLE
JULIO'S COLUMBIA CONCESSIONS, LLC;
UNCLE JULIO'S CORPORATION; UNCLE
JULIO'S OF FLORIDA, INC.; UNCLE JULIO'S OF
GEORGIA, INC.; UNCLE JULIO'S OF ILLINOIS,
INC.; UNCLE JULIO'S OF RESTON, INC.;
UNCLE JULIO'S OF TENNESSEE, INC.; UNCLE
JULIO'S OF TEXAS, INC.; UNCLE JULIO'S RIO
GRANDE CAFE, INC.; CONROE FOODS, INC.;
HACIENDA II PARTNERS, LLLP; SOUTHWEST
RESTAURANT PARTNERS, LLLP; THE
MEXICAN RESTAURANT, INC.; 15-16 LLC; 2004
RESTAURANT, LLC; 2016 RESTAURANT, LLC;
971 FARMINGTON, LLC; BAR TACO PORT
CHESTER, LLC; BAR TACO STAMFORD, LLC;
BARTACO 12 SOUTH, LLC; BARTACO
AVENTURA, LLC; BARTACO BALLSTON, LLC;
BARTACO CHAPEL HILL, LLC; BARTACO
CLOUD KITCHEN WMT, LLC; BARTACO
DEERFIELD, LLC; BARTACO DR. PHILLIPS,
LLC; BARTACO FORT POINT, LLC; BARTACO
HILLDALE, LLC; BARTACO HYDE PARK, LLC;
BARTACO INMAN PARK, LLC; BARTACO KOP,
LLC; BARTACO MARIETTA, LLC; BARTACO
MOAIC, LLC; BARTACO NORTH HILLS, LLC;
BARTACO PEARL WEST, LLC; BARTACO
RESTON, LLC; BARTACO ROSWELL, LLC;
BARTACO TEJON, LLC; BARTACO
WASHINGTON DC, LLC; BARTACO
WESTPORT, LLC; and
BARTACO WYNWOOD, LLC,

Plaintiffs,

v.

CONTINENTAL CASUALTY COMPANY,

Defendant.

§ IN THE DISTRICT COURT

§ 44th

§ _____ JUDICIAL DISTRICT

§ DALLAS COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

PRELIMINARY STATEMENT

1. Plaintiffs Julio & Sons Company, Barteca Restaurants, LLC, and their respective operating subsidiaries as more fully described below (collectively, “UJB”), by and through their undersigned counsel, bring this suit against Defendant Continental Casualty Company (“CNA”) seeking to enforce the terms of their commercial property insurance policy (the “Policy,” as further described below) and compel CNA to honor its contractual promises to indemnify UJB for the devastating property loss and damage that Plaintiffs have experienced as a result of the ongoing COVID-19 pandemic.

NATURE OF THE ACTION

2. Plaintiffs own and operate the popular and well-known Uncle Julio’s®, Hacienda Colorado™ (collectively, “Uncle Julio’s”), and bartaco™ (“Bartaco”) restaurant chains, comprising dozens of restaurants in Texas and 15 other states. To protect these businesses, Plaintiffs’ parent entity purchased the Policy from CNA in 2019. The Policy covers UJB’s property, including all Uncle Julio’s and Bartaco restaurant locations, for losses occurring during the period October 30, 2019 through October 30, 2020, and broadly included coverage for all “risks of direct physical loss of or damage to” any real or personal property, all “time element” losses for business interruption, losses due to orders of a “civil authority,” and extra expenses associated with such losses, among other coverages. The Policy provides these coverages “except as hereafter excluded,” but contains no exclusion for viruses. A suspension of operations or prohibition of access by a civil authority as a result of loss or damage from the coronavirus (as defined below) therefore triggers coverage under the Policy.

3. COVID-19 is a deadly disease caused by the recently discovered coronavirus known as SARS-CoV-2 (“SARS-CoV-2” or the “coronavirus”). The SARS-CoV-2 virus was

identified in China in late 2019 or January 2020, and since January 2020, the SARS-CoV-2 virus has spread across the globe. On March 11, 2020, the Director General of the World Health Organization declared the COVID-19 outbreak to constitute a worldwide pandemic, noting “alarming levels of spread and severity[.]”¹ Thus far, more than 100 million people have contracted COVID-19, and more than 2.2 million people have perished from the disease.

4. In connection with the deadly spread of COVID-19 and as a result of the shutdowns and restrictions on restaurant operations due to the ongoing coronavirus pandemic, UJB has suffered significant losses and incurred substantial expenses. Both Uncle Julio’s and Bartaco restaurants were forced to interrupt their operations, several of which closed and never re-opened. While some have since conducted a limited take-out and delivery service, at a fraction of UJB’s historical revenues, none has returned to its pre-pandemic level of operations. The coronavirus also caused severe delays in the planned re-openings of some locations and several grand openings of new locations. Uncle Julio’s and Bartaco restaurants also had to incur expenses to repair their properties, including but not limited to cleaning and remediation of the coronavirus or COVID-19 at all of their premises, and to modify their operations in an effort to restore business to the extent possible, in a limited capacity, under the circumstances of the pandemic and related civil authority orders.

5. Shortly after the pandemic and related orders interrupted the restaurants’ operations, UJB timely submitted an insurance claim to CNA. When presented with this claim, however, CNA denied coverage without investigation, denying, *inter alia*, the existence of any direct physical loss of or damage to property at any of the covered locations.

¹ *WHO Director-General’s opening remarks at the media briefing on COVID-19 - 11 March 2020*, World Health Organization, <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (last visited Feb. 16, 2021).

PARTIES

6. Julio & Sons Company is a corporation organized and existing under the laws of Delaware with its principal place of business in Irving, Texas. Julio & Sons Company is a named insured under the Policy and the parent company of Uncle Julio's Corporation and the other entities listed below that operate "Uncle Julio's"® and related brand restaurants.

7. Barteca Restaurants, LLC is a limited liability company organized and existing under the laws of Delaware with its principal place of business in Arlington, Virginia. Prior to relocating its headquarters in or about July 2020, Barteca Restaurants, LLC's principal place of business was in Irving, Texas. Barteca Restaurants, LLC is a named insured under the Policy and the parent company of the entities listed below that operate "bartaco"™ brand restaurants.

8. Uncle Julio's Annapolis Concessions, LLC is a limited liability company organized and existing under the laws of Maryland with its principal place of business in Annapolis, Maryland. Uncle Julio's Annapolis Concessions, LLC, a named insured under the Policy, operates a restaurant business in Annapolis, Maryland.

9. Uncle Julio's Columbia Concessions, LLC is a limited liability company organized and existing under the laws of Maryland with its principal place of business in Columbia, Maryland. Uncle Julio's Columbia Concessions, LLC, a named insured under the Policy, operates a restaurant business in Columbia, Maryland.

10. Uncle Julio's Corporation is a corporation organized and existing under the laws of Texas with its principal place of business in Irving, Texas. Uncle Julio's Corporation, a named insured under the Policy, operates Uncle Julio's catering business in Texas, Illinois, Maryland, and Virginia.

11. Uncle Julio's of Florida, Inc. is a corporation organized and existing under the laws of Florida with its principal place of business in Irving, Texas. Uncle Julio's of Florida, Inc., a

named insured under the Policy, operates restaurant businesses in several locations including Orlando, Florida; Bridgewater, New Jersey; Durham and Raleigh, North Carolina; Oklahoma City, Oklahoma; and Brookfield, Wisconsin.

12. Uncle Julio's of Georgia, Inc. is a corporation organized and existing under the laws of Georgia with its principal place of business in Irving, Texas. Uncle Julio's of Georgia, Inc., a named insured under the Policy, operates restaurant businesses in Atlanta and Sandy Springs, Georgia.

13. Uncle Julio's of Illinois, Inc. is a corporation organized and existing under the laws of Illinois with its principal place of business in Irving, Texas. Uncle Julio's of Illinois, Inc., a named insured under the Policy, operates restaurant businesses in Chicago, Kildeer, Lombard, Naperville, Orland Park, Schaumburg, Skokie, and Vernon Hills, Illinois.

14. Uncle Julio's of Reston, Inc. is a corporation organized and existing under the laws of Virginia with its principal place of business in Irving, Texas. Uncle Julio's of Reston, Inc., a named insured under the Policy, operates restaurant businesses in Ashburn, Fairfax, Gainesville, and Reston, Virginia.

15. Uncle Julio's of Texas, Inc. is a corporation organized and existing under the laws of Texas with its principal place of business in Irving, Texas. Uncle Julio's of Texas, Inc., a named insured under the Policy, operates restaurant businesses in several locations including Fort Worth, Dallas, Austin, Arlington, Katy, and Spring, Texas.

16. Uncle Julio's Rio Grande Cafe, Inc. is a corporation organized and existing under the laws of Virginia with its principal place of business in Irving, Texas. Uncle Julio's Rio Grande Cafe, Inc., a named insured under the Policy, operates restaurant businesses in Bethesda and Gaithersburg, Maryland; and in Arlington, Fairfax, and Woodbridge, Virginia.

17. Uncle Julio's of Tennessee, Inc. is a corporation organized and existing under the laws of Tennessee with its principal place of business in Irving, Texas. Uncle Julio's of Tennessee, Inc., a named insured under the Policy, operates a restaurant business in Brentwood, Tennessee.

18. Conroe Foods, Inc. is a corporation organized and existing under the laws of Texas with its principal place of business in Irving, Texas. Conroe Foods, Inc., a named insured under the Policy, operates restaurant businesses in Allen, Fort Worth, and Grapevine, Texas.

19. Hacienda II Partners, LLLP is a limited liability limited partnership organized and existing under the laws of Colorado with its principal place of business in Irving, Texas. Hacienda II Partners, LLLP, a named insured under the Policy, operates restaurant businesses in Colorado Springs, Englewood, and Westminster, Colorado.

20. Southwest Restaurant Partners, LLLP is a limited liability limited partnership organized and existing under the laws of Colorado with its principal place of business in Irving, Texas. Southwest Restaurant Partners, LLLP, a named insured under the Policy, operates a restaurant business in Lakewood, Colorado.

21. The Mexican Restaurant, Inc. is a corporation organized and existing under the laws of Maryland with its principal place of business in Irving, Texas. The Mexican Restaurant, Inc., a named insured under the Policy, operates restaurant businesses in several locations including Bethesda and Gaithersburg, Maryland.

22. 15-16 LLC is a limited liability company organized and existing under the laws of Colorado with its principal place of business in Irving, Texas. 15-16 LLC, a named insured under the Policy, operates a restaurant business in Wheat Ridge, Colorado.

23. 2004 Restaurant, LLC is a limited liability company organized and existing under the laws of Colorado with its principal place of business in Irving, Texas. 2004 Restaurant, LLC,

a named insured under the Policy, operates a restaurant business in Denver, Colorado.

24. 2016 Restaurant, LLC is a limited liability company organized and existing under the laws of Colorado with its principal place of business in Irving, Texas. 2016 Restaurant, LLC, a named insured under the Policy, operates a restaurant business in Denver, Colorado.

25. 971 Farmington, LLC is a limited liability company organized and existing under the laws of Connecticut with its principal place of business in West Hartford, Connecticut. 971 Farmington, LLC, a named insured under the Policy, operates a restaurant business in West Hartford, Connecticut.

26. Bar Taco Port Chester, LLC is a limited liability company organized and existing under the laws of New York with its principal place of business in Port Chester, New York. Bar Taco Port Chester, LLC, a named insured under the Policy, operates a restaurant business in Port Chester, New York.

27. Bar Taco Stamford, LLC is a limited liability company organized and existing under the laws of Connecticut with its principal place of business in Stamford, Connecticut. Bar Taco Stamford, LLC, a named insured under the Policy, operates a restaurant business in Stamford, Connecticut.

28. Bartaco 12 South, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Tennessee, with its principal place of business in Nashville, Tennessee. Bar Taco 12 South, LLC, a named insured under the Policy, operates a restaurant business in Nashville, Tennessee.

29. Bartaco Aventura, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Florida, with its principal place of business in Aventura, Florida. Bar Taco Aventura, LLC, a named insured under the Policy, operates a restaurant business

in Aventura, Florida.

30. Bartaco Ballston, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Virginia, with its principal place of business in Arlington, Virginia. Bar Taco Ballston, LLC, a named insured under the Policy, operates a restaurant business in Arlington, Virginia.

31. Bartaco Chapel Hill, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in North Carolina, with its principal place of business in Chapel Hill, North Carolina. Bar Taco Chapel Hill, LLC, a named insured under the Policy, operates a restaurant business in Chapel Hill, North Carolina.

32. Bartaco Cloud Kitchen, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Georgia, with its principal place of business in Irving, Texas. Bartaco Cloud Kitchen, LLC, a named insured under the Policy, operates a restaurant business in Atlanta, Georgia.

33. Bartaco Deerfield, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Illinois, with its principal place of business in Deerfield, Illinois. Bar Taco Deerfield, LLC, a named insured under the Policy, during the policy period operated a restaurant business in Deerfield, Illinois.

34. Bartaco Dr. Phillips, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Florida, with its principal place of business in Orlando, Florida. Bar Taco Dr. Phillips, LLC, a named insured under the Policy, operates a restaurant business in Orlando, Florida.

35. Bartaco Fort Point, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Massachusetts, with its principal place of business in

Boston, Massachusetts. Bar Taco Fort Point, LLC, a named insured under the Policy, operates a restaurant business in Boston, Massachusetts.

36. Bartaco Hilldale, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Wisconsin, with its principal place of business in Madison, Wisconsin. Bar Taco Hilldale, LLC, a named insured under the Policy, operates a restaurant business in Madison, Wisconsin.

37. Bartaco Hyde Park, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Florida, with its principal place of business in Tampa, Florida. Bar Taco Hyde Park, LLC, a named insured under the Policy, operates a restaurant business in Tampa, Florida.

38. Bartaco Inman Park, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Georgia, with its principal place of business in Atlanta, Georgia. Bar Taco Inman Park, LLC, a named insured under the Policy, operates a restaurant business in Atlanta, Georgia.

39. Bartaco KOP, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Pennsylvania, with its principal place of business in King of Prussia, Pennsylvania. Bar Taco KOP, LLC, a named insured under the Policy, operates a restaurant business in King of Prussia, Pennsylvania.

40. Bartaco Marietta, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Georgia, with its principal place of business in Atlanta, Georgia. Bar Taco Marietta, LLC, a named insured under the Policy, operates a restaurant business in Atlanta, Georgia.

41. Bartaco Mosaic, LLC is a limited liability company organized and existing under

the laws of Delaware, and also qualified in Virginia, with its principal place of business in Fairfax, Virginia. Bar Taco Mosaic, LLC, a named insured under the Policy, operates a restaurant business in Fairfax, Virginia.

42. Bartaco North Hills, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in North Carolina, with its principal place of business in Raleigh, North Carolina. Bar Taco North Hills, LLC, a named insured under the Policy, operates a restaurant business in Raleigh, North Carolina.

43. Bartaco Pearl West, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Colorado, with its principal place of business in Boulder, Colorado. Bar Taco Pearl West, LLC, a named insured under the Policy, operates a restaurant business in Boulder, Colorado.

44. Bartaco Reston, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Virginia, with its principal place of business in Reston, Virginia. Bar Taco Reston, LLC, a named insured under the Policy, operates a restaurant business in Reston, Virginia.

45. Bartaco Roswell, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Georgia, with its principal place of business in Atlanta, Georgia. Bar Taco Roswell, LLC, a named insured under the Policy, operates a restaurant business in Atlanta, Georgia.

46. Bartaco Tejon, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Colorado, with its principal place of business in Denver, Colorado. Bar Taco Tejon, LLC, a named insured under the Policy, operates a restaurant business in Denver, Colorado.

47. Bartaco Washington DC, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in the District of Columbia, with its principal place of business in Washington, DC. Bar Taco Washington DC, LLC, a named insured under the Policy, operates a restaurant business in Washington, DC.

48. Bartaco Westport, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Connecticut, with its principal place of business in Westport, Connecticut. Bar Taco Westport, LLC, a named insured under the Policy, operates a restaurant business in Westport, Connecticut.

49. Bartaco Wynwood, LLC is a limited liability company organized and existing under the laws of Delaware, and also qualified in Florida, with its principal place of business in Miami, Florida. Bartaco Wynwood, LLC, a named insured under the Policy, operates a restaurant business in Miami, Florida.

50. Together, Plaintiffs currently own and operate more than 37 Uncle Julio's restaurants and 20 Bartaco restaurants in 16 states, including 10 restaurants in Texas. A tenth Texas restaurant has permanently closed since the beginning of the pandemic, and some of Plaintiffs' other restaurants have closed or their planned openings have been delayed or canceled due to the coronavirus pandemic. Plaintiffs each have suffered covered losses as a result of the events described herein.

51. Upon information and belief, Defendant CNA is incorporated in Illinois with its principal place of business in Chicago, Illinois. CNA is a carrier eligible to engage in business in Texas. Pursuant to Texas Insurance Code § 804.103, service may be made on its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

DISCOVERY CONTROL PLAN

52. The discovery in this case is intended to be conducted under Level 3 pursuant to

Tex. R. Civ. P. 190.4.

JURISDICTION AND VENUE

53. At all times relevant to the allegations contained herein, CNA was an insurance company licensed to do business in the State of Texas that sold property insurance to numerous policyholders, including UJB, in Texas. This Court has personal jurisdiction over CNA because, within the time period relevant herein, CNA has been licensed to transact insurance business in Texas, has in fact transacted business in Texas, has maintained a substantial presence in Texas, and/or has insured substantial properties and risks located in Texas.

54. Jurisdiction is proper in the District Court of Dallas County, Texas because the amount in controversy is within the jurisdictional limits of this court and because this is a civil case with an amount in controversy greater than \$500, exclusive of interest. Tex. Gov't Code § 24.007(b).

55. Venue is proper in Dallas County pursuant to Texas Civil Practice and Remedies § 15.002 because a substantial part of the events or omissions giving rise to the claims asserted in this action occurred in Dallas County and pursuant to § 15.032 because insured property is located in Dallas County.

56. UJB seeks monetary relief in excess of \$1,000,000.

FACTUAL ALLEGATIONS

I. Uncle Julio's and Bartaco Were Successful Restaurant Chains Before the Pandemic.

57. Uncle Julio's is a national restaurant chain that has operated in Texas for more than 30 years, featuring "Mexican from scratch" offerings with an emphasis on fresh ingredients and handcrafted recipes. In March 2020, there were 44 operating Uncle Julio's restaurants in 12 states, including 10 locations in Texas (in the cities of Allen, Alliance, Arlington, Austin, Dallas, Fort Worth, Grapevine, Katy, Keller Springs, and Spring); eight in Illinois; seven in Colorado; six in

Virginia; four in Maryland; two in Georgia; two in North Carolina; and single locations in Florida, Oklahoma, Tennessee, Wisconsin, and New Jersey. At that time, Uncle Julio's was planning to open six new restaurants in 2020 or 2021, including two additional locations in Texas (in Lubbock and Frisco); and single locations in Missouri, Michigan, Florida, and Oklahoma.

58. Bartaco was founded in 2010 as an upscale, fast casual bar and restaurant featuring a high-end, casual yet sophisticated menu, freshly-squeezed juices, and craft cocktails. By March 2020, Bartaco had grown to 21 restaurants operating in 13 states, including one location in Texas (in Fort Worth); three in Connecticut; three in Georgia; three in Florida; two in Virginia; two in North Carolina; and single locations in Colorado, New York, Massachusetts, Pennsylvania, Tennessee, Wisconsin, and Illinois. When the pandemic struck, Bartaco was planning to open four new Bartaco restaurants in 2020 in Virginia, Colorado, Florida, and the District of Columbia.

59. The restaurant operations of the Uncle Julio's and Bartaco businesses depend upon in-house dining, with customers entering and remaining on restaurant premises to eat, drink, and socialize. In 2019 and until the pandemic in early 2020, both restaurant chains were expanding, with gross earnings for 2019 exceeding \$335 million and new openings planned in multiple cities around the country.

60. Beginning in March 2020, however, Uncle Julio's and Bartaco were financially devastated by the COVID-19 pandemic. UJB was forced to shut down Uncle Julio's and Bartaco properties, necessarily interrupting business operations as a result of the actual or unavoidable suspected presence of the coronavirus at Uncle Julio's and Bartaco restaurants, as well as due to numerous governmental orders issued by civil authorities in the various locations in which Uncle Julio's and Bartaco operate.

61. As set forth below, the coronavirus has caused massive direct physical loss of and

damage to UJB's covered property, requiring UJB to incur significant extra expenses to remediate such damage and resulting in tens of millions of dollars in business interruption losses. These losses are also due to civil authority orders resulting from similar loss or damage to property in the immediate vicinity of UJB's premises and prohibiting access to Uncle Julio's and Bartaco restaurants' services.

II. UJB Purchased Insurance To Protect Its Restaurant Businesses Against Catastrophes.

62. In or about October 2019, Plaintiffs, through their mutual parent at the time, UJ Barteca Parent, LLC, purchased commercial property insurance from CNA to protect their restaurant businesses against various risks, including the risk of lost income and extra expenses.

63. CNA issued the Policy, No. 6073187285, with a policy period of October 30, 2019 to October 30, 2020. Excerpts from the Policy are quoted below. The complete terms of the Policy are found in the copy attached to and made part of this Petition at **Exhibit A**.

64. UJ Barteca Parent, LLC fully paid the premium for the Policy.

65. Thereafter, UJ Barteca Parent, LLC was dissolved, and CNA issued endorsements to the Policy identifying Julio & Sons Company, Uncle Julio's Corporation, Barteca Restaurants, LLC, and their parents and subsidiaries or affiliated organizations, including each of the Plaintiffs in this action, as named insureds under the Policy.

A. The Policy Covers Risks of Physical Loss of or Damage to Property and Related Business Interruption Losses and Expenses.

66. The Policy provides both property and "time element" coverages, including business interruption, civil authority, ingress/egress, loss reduction expense, and extra expense coverage, among other coverage provisions.

67. The Policy provides a blanket limit of liability of \$50,000,000 per occurrence, without any sublimit for "time element" or business interruption losses or expenses, and further

extends coverage up to \$5,000,000 per occurrence for losses when access to UJB's properties is prohibited by order of civil authority.

68. The Policy insures against all "risks of direct physical loss of or damage to property and/or interests described herein," except as expressly excluded by the Policy. The Policy contains no exclusions or limitations for losses caused by viruses.

1) Time Element Business Interruption Coverage

69. The Policy provides "Time Element" coverage for "Business Interruption (Gross Earnings)," which means "loss resulting from necessary interruption of business caused by direct physical loss of or damage to covered property . . . by the peril(s) insured against and occurring during the term of this policy"

70. The "Business Interruption" component of Time Element coverage insures up to \$50,000,000 per occurrence against loss of Gross Earnings during the Period of Indemnity (up to 12 months) plus an Extended Period of Indemnity (up to 180 days), as set forth more fully in Section II.B and the Declarations of the Policy. The Policy expressly provides that these periods are not limited by the expiration date of the Policy.

2) Civil Authority and Ingress-Egress Coverage

71. The Policy provides an additional "Civil Authority" coverage extension insuring against actual loss sustained when "access to the Insured's Location is prohibited by order of civil authority," if the order is "given as a direct result of physical loss or damage to property of the type insured from a peril insured against occurring in the immediate vicinity of said Location."

72. The Policy further extends coverage for "Ingress-Egress" losses "during the period of time when as a direct result of physical loss or damage to property of the type insured from a peril insured against, ingress to or egress from the Insured's Location is thereby physically prevented."

3) Coverage for Expenses

73. The Policy provides an additional coverage extension insuring “Expenses Related to Reducing Loss,” which includes “such expenses as are necessarily incurred for the purpose of reducing a Time Element loss”

74. The Policy provides an additional coverage extension insuring “Extra Expense,” which includes the Insured’s “reasonable and necessary” extra expenses incurred “in order to continue as nearly as practicable the normal operation of the Insured’s business following direct physical loss of or damage to covered property” Such extra expenses are covered for “such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property as has been damaged, commencing with the date of damage and not limited by the date of expiration of this policy,” up to the Policy’s stated sublimit of \$5 million per occurrence.

75. The Policy provides an additional coverage extension insuring “Loss Adjustment Expense,” which includes the Insured’s “reasonable expenses incurred . . . in preparing claim data” and “other documentation to show the extent of the loss.”

B. The Policy Does Not Exclude Coronavirus-Related Losses.

76. Losses caused by virus are not excluded by the Policy. No exclusion in the Policy contains the word “virus,” nor does that term appear anywhere else in the Policy.

77. When CNA sold the Policy to UJB, CNA had issued comparable policies covering property damage and business interruption losses to other insureds containing either a specific virus exclusion for losses caused by “virus” or expressly including the term “virus” within other exclusions. No such exclusion appears within the Policy.

78. CNA knew that the Policy provided coverage for and did not exclude losses caused by viruses. Indeed, a large majority of insurance policies issued in the United States that cover

business income losses contain an exclusion for losses caused by “virus.” According to a June 2020 report by the National Association of Insurance Commissioners, 83 percent of insurance policies covering business income losses contain a “virus” exclusion. The Policy does not.

79. In February 2019, several months before CNA sold the Policy to UJB, CNA’s parent company warned its investors about the potential for “material losses” to CNA and its affiliates from “pandemics” in its 2018 Form 10-K annual report filed with the U.S. Securities and Exchange Commission. CNA told its investors that such losses are “an inevitable part of [CNA’s] business.”²

80. The Policy contains a “contaminants or pollutants” exclusion, but that exclusion is limited to “contaminants or pollutants” expressly defined to mean “[a]ny solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to: smoke and soot (other than smoke and soot emanating from a fire involving property insured under this policy), vapor, fumes, acids, alkalis, chemicals, vaccines and waste and any other substances which pose a hazard to human health or the environment. Waste includes materials to be recycled, reconditioned or reclaimed.” This definition of “contaminants or pollutants” refers to chemical and other industrial materials or wastes and does not include the word “virus.”

81. Although it did not do so here, CNA has issued to other policyholders commercial property insurance policies that contain a “contaminants or pollutants” exclusion and expressly *include* the word “virus” in the definition of “contaminants or pollutants.”

82. The Policy’s “contaminants or pollutants” exclusion does not apply to viruses generally or to UJB’s losses specifically.

² CNA Financial Corporation, 2018 Annual Report (Form 10-K) (Feb. 13, 2019), https://www.annualreports.com/HostedData/AnnualReportArchive/c/NYSE_CNA_2018.pdf.

83. To the extent the language of the exclusion is susceptible to any disagreement, the term “contaminants or pollutants” as used in the policy is ambiguous and must be construed in favor of coverage, to not encompass viruses.

84. The Policy contains a “fungi, wet rot, dry rot and microbes” exclusion, and defines “microbe” as “any non-fungal microorganism or non-fungal, colony-form organism that causes infection or disease.” The Policy’s definition of “microbe” does not contain the word “virus.”

85. Although it did not do so here, CNA has issued to other policyholders commercial property insurance policies that contain microbe exclusions or other provisions and expressly include “virus” within the scope of the exclusion.

86. There is general consensus in the scientific community that a virus is not a microorganism or an organism because, unlike microorganisms and other organisms, which are living, viruses are not alive.³ Unlike microorganisms and other organisms, viruses “cannot capture and store free energy,” nor are they “functionally active outside their host cells.”⁴ Unlike microorganisms and other organisms, viruses do not respond to changes in the environment, cannot reproduce on their own, and have no capacity to reproduce without first taking over the cells of a

³ See Marc van Regenmortel & Brian Mahy, *Emerging Issues in Virus Taxonomy*, *Emerging Infectious Diseases J.* (Jan. 2004) Vol. 10, No. 1, <https://wwwnc.cdc.gov/eid/article/10/1/03-0279> (“Although they are pathogens, viruses should not be considered pathogenic microorganisms since they are not alive.”); Centre for Geobiology, University of Bergen, “What are microorganisms?” (Nov. 2010) <https://www.uib.no/en/geobio/56846/what-are-microorganisms> (“Technically a microorganism or microbe is an organism that is microscopic The term microorganisms does not include viruses and prions, which are generally classified as non-living”); McNeil, Taylor, *What Are Viruses and How Do They Work?* (Apr. 3, 2020), <https://now.tufts.edu/articles/what-are-viruses-and-how-do-they-work> (“The novel coronavirus . . . like other viruses, is inert, not even alive They’re not really living organisms—they can’t carry out on their own any of the functions that we consider to be connected with life.”).

⁴ Marc van Regenmortel & Brian Mahy, *Emerging Issues in Virus Taxonomy*, *Emerging Infectious Diseases J.* (Jan. 2004) Vol. 10, No. 1, <https://wwwnc.cdc.gov/eid/article/10/1/03-0279>.

host organism.⁵

87. The Policy’s “microbe” definition does not apply to viruses generally or to the coronavirus, which is not a microorganism or an organism. The “fungi, wet rot, dry rot and microbe” exclusion therefore does not apply to UJB’s losses.

88. To the extent the language of the exclusion is susceptible to any disagreement, the term “microbe” as used in the policy is ambiguous and must be construed in favor of coverage and not to encompass viruses.

89. No other Policy exclusions apply to UJB’s losses.

III. The Coronavirus and the COVID-19 Pandemic Cause Direct Physical Loss of and Damage to Property.

90. From March 2020 through the present, as a direct result of the COVID-19 pandemic and related government orders, UJB has suffered, and continues to suffer, physical loss of and damage to its covered property and severe “time element” losses and other covered losses and expenses due to necessary business interruptions of, and the prohibition of access to, its numerous Uncle Julio’s and Bartaco restaurants and other property.

A. The Virus Physically Alters Property.

91. COVID-19 is a dangerous and highly contagious disease caused by human exposure to the SARS-CoV-2 coronavirus. The coronavirus can be transmitted in several ways, including via direct human-to-human contact and by inhaling airborne viral particles in ambient air or touching surfaces or objects on which viral particles are present.

92. The coronavirus spreads easily and lingers both in the air and on surfaces and objects. Transmission from person to ambient air and from person to surface or object occurs

⁵ Centre for Geobiology, University of Bergen, “What are microorganisms?” (Nov. 2010) <https://www.uib.no/en/geobio/56846/what-are-microorganisms>.

primarily through small, physical droplets expelled from the nose or mouth when an infected person breathes, speaks, laughs, coughs, or sneezes. According to published research, a person who sneezes can release a cloud of small, pathogen-bearing droplets that can travel as far as 23 to 27 feet. Such respiratory droplets or droplet nuclei containing the coronavirus physically persist in the ambient air and adhere to objects and surfaces. Though invisible to the naked human eye, such pathogen-bearing droplets have physical mass and dimensions measurable in micrometers (μm), ranging from smaller droplets (less than 5 μm) that typically remain airborne longer to larger droplets (5–10 μm) that land on and attach to surfaces and other objects.

93. COVID-19 contagion can occur in several ways, including when an uninfected person breathes air containing coronavirus-bearing droplets or through so-called “fomite transmission,” when a person touches surfaces or objects on which such droplets are present and then touches their eyes, nose, or mouth. After touching such a surface or object, a person may further transmit the coronavirus by touching a second surface and depositing coronavirus-bearing droplets there.

94. Many coronavirus particles remain airborne for a period of time sufficient to travel a considerable distance, filling indoor and outdoor spaces and lingering in, attaching to, and spreading through heating, ventilation, and air conditioning (HVAC) systems. One study examined a COVID-19 cluster of people who had eaten at the same restaurant and concluded that the most likely cause of the outbreak was droplet transmission by the restaurant’s HVAC system.⁶ Another study examined a hospital’s HVAC system and found coronavirus particles throughout the system, including in ceiling vent openings, vent exhaust filters, and central ducts that were located more

⁶ See Lu J, Gu J, Li K, et al., *COVID-19 Outbreak Associated with Air Conditioning in Restaurant, Guangzhou, China, 2020*. 26 *Emerging Infectious Diseases J.* 7 at 1628-1631 (July 2020), https://wwwnc.cdc.gov/eid/article/26/7/20-0764_article, (last visited Feb. 16, 2021).

than 50 meters from infected patients' rooms.⁷ The Environmental Protection Agency (“EPA”) has compiled several studies reflecting epidemiological evidence indicative of coronavirus transmission through aerosols.⁸

95. On surfaces, the coronavirus can remain present and dangerous for hours, days, or even weeks under some circumstances. When the coronavirus attaches or binds to surfaces and objects, it converts the surfaces and objects to active fomites. One study found that the coronavirus remains active and dangerous on room-temperature stainless steel, glass, and money after 28 days.⁹ Indirect transmission via objects such as elevator buttons and restroom faucets in a shopping mall has been identified as an important possible cause of a “rapid spread” of the coronavirus.¹⁰

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

⁷ See Nissen et al., *Long-Distance Airborne Dispersal of SARS-CoV-2 in COVID-19 Wards*, at 7 (Oct. 20, 2020 version) (preprint), <https://www.researchsquare.com/article/rs-34643/v2> (last visited Feb. 16, 2021).

⁸ See U.S. Environmental Protection Agency, *Indoor Air and COVID-19 Key References and Publications*, <https://www.epa.gov/coronavirus/indoor-air-and-covid-19-key-references-and-publications> (last visited Feb. 16, 2021).

⁹ See Riddell et al., *The Effect of Temperature on Persistence of SARS-CoV-2 on Common Surfaces*, 17 *Virology J.* 145, at 3 (Oct. 7, 2020), <https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7>.

¹⁰ Cai et al., *Indirect Virus Transmission in Cluster of COVID-19 Cases, Wenzhou, China, 2020*, 26 *Emerging Infectious Diseases* 1343, 1345 (June 2020), https://wwwnc.cdc.gov/eid/article/26/6/20-0412_article.

infected, and that most transmission is attributable to people who are not exhibiting symptoms, either because their infections are asymptomatic or they are still in the pre-symptomatic stage.

B. Plaintiffs Have Suffered Direct Physical Loss of and Damage to Property Because of the Coronavirus and COVID-19.

97. The coronavirus and the fomites, droplets, and droplet nuclei carrying it are dangerous physical substances that have a material, tangible existence. In landing and settling on a surface or object, respiratory droplets containing the coronavirus physically change the property by adsorbing to or otherwise becoming a part of its surface. The viral particles themselves can adsorb to fomite surfaces, *i.e.*, they interact at a molecular level to form a chemical bond with the surface. The bond persists until broken through intervening forces, requiring either remediation or disposal and replacement of the property. This physical alteration makes those previously safe, inert surfaces (*e.g.*, handrails, doorknobs, bathroom fixtures, tables, plates, and silverware) unsafe.

98. When an infected person breathes, speaks, coughs, or sneezes, thousands of droplets carrying the coronavirus physically permeate the surrounding air. Air is a physical substance made up oxygen, nitrogen, and other gases. The introduction of expelled droplets and aerosolized droplet nuclei containing the virus alters the physical composition of the air in and around buildings.

99. The exposure of humans to fomites, respiratory droplets, or aerosolized droplet nuclei containing the coronavirus is particularly acute in locations—such as restaurants—where members of the public normally gather to socialize, eat, drink, shop, be entertained, and go for recreation. While measures to keep infected persons home and out of restaurants and public spaces have been recommended to prevent further spread, complete containment is not possible. Since a high percentage of infected people are pre-symptomatic or asymptomatic, even frequent cleanings cannot be assumed to have eliminated the coronavirus from a premises, given the coronavirus's

ability to spread whenever anyone carrying the virus enters the premises.

100. The coronavirus causes direct physical loss and damage by, among other things, physically permeating the air and attaching to, binding to, corrupting, distorting, and altering air, surfaces, objects, and other property within the insured premises.

101. Where the virus is physically present in air and on surfaces, it causes physical loss of and damage to that property and creates a significant risk to the health of anyone entering the premises. The presence of cases of COVID-19 and the coronavirus at a property thus transforms the property from one that is satisfactory, safe, and fit for its intended function and use into one that is unsatisfactory, uninhabitable, dangerous, and unfit for its intended function and use.

102. In addition, the presence of the coronavirus on or near a property creates a substantial risk and/or an imminent threat of further loss of and damage to that property or to nearby property. Individuals who come into contact with coronavirus-containing droplets or particles on fomite surfaces such as a doorknob or handrail at one location will carry those physical substances on their hands and deposit them elsewhere, rendering additional areas, surfaces, and objects at or near a property unsatisfactory, uninhabitable, unfit for their intended function and use, and dangerous and potentially deadly.

103. The aforementioned characteristics and impacts of the coronavirus and COVID-19 have caused direct physical loss of and damage to property at Plaintiffs Uncle Julio's and Bartaco restaurants and other covered property, resulting in necessary interruption of UJB's business, lost income, extra expenses, and other covered losses under the Policy.

IV. COVID-19 Outbreaks Caused Physical Loss and Damage and Resulted in Government Orders to Close Non-Essential Businesses, Including Restaurants, and to Require Patrons to "Stay at Home."

104. Beginning in March 2020, Uncle Julio's and Bartaco suffered severe business interruption due to necessary suspension of operations, extra expenses incurred to remediate their

properties, and other financial losses covered by the Policy.

105. By March 15, 2020, every state in which Uncle Julio's or Bartaco operated one or more restaurants had suffered a known outbreak of COVID-19. For example, by March 17, 2020, Uncle Julio's' home state of Texas had at least 106 confirmed COVID-19 cases; by March 23, 2020, that number had increased to 728.

106. As a result of the rapid spread of COVID-19 and its presence in the United States, states and localities across the country began issuing States of Emergency, Public Health Emergencies, and Disaster Emergencies. By March 15, 2020, emergencies had been declared in all 16 states with Uncle Julio's or Bartaco restaurants. As set forth more fully below, orders followed shortly thereafter directing businesses to suspend operations and instructing residents to stay home.

107. Executive orders in all 16 states in which Uncle Julio's or Bartaco restaurants are located and the District of Columbia, as well as loss and damage caused by the coronavirus and COVID-19 at UJB properties, have caused UJB to implement necessary interruptions of its restaurants' operations and, in some cases, to suspend opening plans or permanently close, resulting in lost income and extra expenses associated with the coronavirus's physical impact.

108. For the period of time from the first known outbreaks of COVID-19 affecting UJB's restaurants and continuing through the date of this Petition, the physical loss of and damage to UJB's covered property caused by the coronavirus and the governmental orders prohibiting access to indoor dining have impaired and interrupted the operations of every Uncle Julio's and Bartaco restaurant. Each restaurant has lost substantial amounts, and UJB has lost tens of millions of dollars as a result. Additional losses are continuing to be incurred by those restaurants and UJB.

A. The Coronavirus and COVID-19 Caused Direct Physical Loss of or Damage to UJB Properties.

109. Beginning in March 2020, employees who had been present on the premises of multiple Uncle Julio's and Bartaco locations tested positive for COVID-19.

110. Approximately 110 Uncle Julio's employees in Texas were quarantined after reporting that they were infected with COVID-19 or had been exposed to COVID-19 after close contact with another infected person. Outside of Texas, there were approximately 200 instances of Uncle Julio's employees being quarantined after making similar reports.

111. Uncle Julio's locations and Bartaco locations were repeatedly closed for cleaning and sanitation. Some locations closed for prolonged periods when the number of employees infected by or exposed to COVID-19 rose to levels that affected staffing and increased the risk of exposure.

112. In addition to the confirmed positive COVID-19 cases among employees on insured premises, because the coronavirus and COVID-19 are statistically certain to be carried by a number of individuals who visited Uncle Julio's and Bartaco restaurants daily whenever the restaurants were open, the coronavirus was continually reintroduced to the air and surfaces of those locations.

113. Persons with COVID-19 who were present on UJB's covered property spread the coronavirus through respiratory droplets expelled into the air, which remained airborne or settled on surfaces and objects, which then could be transferred to other people who touched those surfaces.

114. The physical spread of the coronavirus in the air and on surfaces, including through HVAC systems, caused a physical alteration to UJB's covered property, by, among other things, physically permeating, attaching to, binding to, corrupting, distorting, and altering property within the insured premises, rendering the insured premises unsatisfactory and unfit for their intended

function, dangerous, and unsafe.

115. The presence of cases of COVID-19 and the coronavirus at UJB's covered property is an external force that caused physical loss of and damage to property by transforming the property from satisfactory and safe for use into property that is unsatisfactory for use, uninhabitable, unfit for its intended function, and dangerous and potentially deadly.

116. In addition, the presence of the coronavirus on or near insured property created an imminent threat of additional damage to insured property, by further physical transmission of the coronavirus from one surface to other surfaces, causing more damage and loss.

117. These direct physical losses of and damage to UJB's property required UJB to close restaurants, incur extra expenses, adopt remedial measures to restore and remediate the air and surfaces at its restaurants, and suspend operations at its restaurants, all resulting in tens of millions of dollars in losses.

B. Outbreaks Resulting in Government Orders Prohibited Access and Forced UJB To Suspend Restaurant Operations.

118. The impact of the coronavirus outbreaks on each of the cities with Uncle Julio's and Bartaco restaurants was severe, and the physical loss and damage resulting from the coronavirus and COVID-19 led directly to civil orders prohibiting access to, among other places, restaurants, resulting in massive losses to UJB.

119. As a result of the rapid spread of COVID-19 and its presence in the United States, states and localities across the country began issuing States of Emergency, Public Health Emergencies, and Disaster Emergencies. By March 15, 2020, emergencies had been declared in all 16 states with Uncle Julio's or Bartaco restaurants due to COVID-19 and the presence of the coronavirus in those states, including in the immediate vicinity of Plaintiffs' restaurants. Orders followed shortly thereafter suspending business operations and instructing residents to stay home.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

