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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

_____)	
LD Gelato LLC,)	Case No.:
)	
Plaintiff,)	
)	
v.)	(Jury Trial Demanded)
)	
Hartford Underwriters Insurance)	
Company, Inc.)	
)	
Defendant.)	
_____)	

Plaintiff LD Gelato LLC (“Plaintiff”) brings this action against Hartford Underwriters Insurance Company, Inc. (“Defendant”) for acts and omissions arising out of Defendant’s failure to indemnify Plaintiff under the terms of its property insurance contract arising from business closures due to government-ordered shutdowns. In support thereof, Plaintiff states the following:

I. INTRODUCTION

1. Plaintiff owns and operates Baci Gelato, a gelato company that sells premium gelato in the Tri-state area of New York, New Jersey, and Connecticut. Plaintiff also owns and operates Miele Gelato, a kosher gelato and sorbet company that sells premium kosher gelato and sorbet in the Tri-state area.

2. Plaintiff purchased property insurance coverage from Defendant, as outlined in Plaintiff's Hartford Insurance Policy, policy number 13 SBA AE8JSH ("Plaintiff's Insurance Policy") (attached hereto as Exhibit A). Plaintiff's Insurance Policy specifically provides "Business Income" coverage for lost income due to loss or damage of property, "Extra Expense" coverage for a company's non-ordinary expenses, such as for paying employees overtime, hiring temporary workers, or relocating to a temporary work site, "Civil Authority" coverage for lost income during periods that a civil authority, such as a state or local government, closes or prohibits access to Plaintiff's business, and "Business Income From Dependent Properties" which protects against Plaintiff's inability to sell its goods due to closure or damage at properties that transport or receive Plaintiff's goods or which attract the public to Plaintiff's premises.

3. On December 8, 2019, the first patient in Wuhan City, China was diagnosed with symptoms of a coronavirus infection, later identified as COVID-19 (the "Coronavirus"). By mid-January, the Coronavirus had spread to several other countries, including the United States.

4. On January 30, 2020, the World Health Organization ("WHO") declared the spread of the Coronavirus a Public Health Emergency.¹

5. Despite the emergency declaration, governments were slow to respond. Over the following 5 weeks, the Coronavirus spread across the globe, gaining significant footholds in the Middle East, Europe, and the United States.

¹ <https://www.weforum.org/agenda/2020/04/coronavirus-spread-covid19-pandemic-timeline-milestones/>

6. On March 11, 2020, the WHO declared the Coronavirus a global pandemic, stating it was “deeply concerned by the alarming levels of spread and severity, and by the alarming levels of inaction” to prevent the Coronavirus from spreading any further.²

7. On March 16, 2020, the White House and CDC initiated a “30 Days to Slow the Spread” campaign to educate the public on the Coronavirus.³ As part of the campaign, it urged citizens to maintain adequate social distancing and follow the directions of state and local authorities.

8. Following the CDC’s guidelines, all but four states issued emergency civil authority declarations requiring non-essential businesses to close and non-essential workers to stay at or work from home.⁴ Certain local governments also enacted additional measures suspending business operations to combat the Coronavirus. These civil authority declarations were based in part on the fact that Plaintiff’s premises’ inherent characteristics posed significant health and safety concerns to the community in light of the Coronavirus’ ability to transmit from person-to-person and surface-to-person, and were therefore no longer safe or fit for business purposes or public use.

9. The widespread impact of the Governmental Shutdown measures have affected nearly all business sectors. Indeed, when New Jersey governor Philip Murphy issued Executive Order No. 107 on March 21, 2020 closing the brick-and-mortar premises of all non-essential businesses, Plaintiff was forced to suspend its business operations, which resulted in lost business income and product spoilage.

² <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

³ https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf

⁴ <https://abcnews.go.com/Health/states-shut-essential-businesses-map/story?id=69770806>

10. Plaintiff expected its all-risk insurance policy to insure against business income losses and extra expenses resulting from the civil authority actions.

11. However, when Plaintiff sought coverage for lost business income and extra under its Business Income, Extra Expense, Civil Authority, and Business Income From Dependent Properties insurance coverage provisions, Defendant denied Plaintiff's claim.

12. Plaintiff now seeks recovery under the terms of Plaintiff's Insurance Policy and alleges that Defendant is in breach of its insurance policy contract. Plaintiff also seeks declaratory relief from the Court that its lost business income resulting from the civil authority business closures is covered under the terms of its policy.

II. PARTIES

13. Plaintiff is a Limited Liability Corporation with its principle place of business at 57 Oak St., Norwood, New Jersey, 07648. Plaintiff operates Baci Gelato and Miele Gelato, which sells kosher and non-kosher gelato in the surrounding tri-state area. Plaintiff's Insurance Policy period runs from January 28, 2020 to January 28, 2021.

14. Defendant is a property and casualty insurance company of The Hartford with its principal place of business in Hartford, Connecticut. Defendant issued Plaintiff's Insurance Policy to protect against unforeseen events that may affect business income or extra expenses.

III. JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction over the parties because Plaintiff and Defendant have diverse citizenship and the amount in controversy exceeds \$75,000 dollars.

16. This Court has personal jurisdiction over the parties because Plaintiff is headquartered and has its principal place of business in this State and Defendant conducts substantial business in this state, has systematic and continuous contacts with this state, and has

agents and representatives that are found in this state. This Court also has personal jurisdiction over this case because the insurance policy at issue was purchased, and covers property, in the state of New Jersey.

17. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) in that a substantial part of the events or omissions giving rise to these claims occurred in this district, in accordance with 28 U.S.C. § 1391(c).

IV. FACTUAL ALLEGATIONS

A. The Coronavirus Pandemic

18. The Coronavirus was initially identified in Wuhan City, China, on December 8, 2019.⁵ On December 31, 2019, China informed the WHO that a cluster of pneumonia cases with unknown origin had emerged and infected a total of 44 individuals, 11 of whom were severely ill.⁶

19. On January 7, 2020, genetic sequencing identified the source of the pneumonia outbreak as a new type of coronavirus, named COVID-19.⁷ SARS, MERS, and COVID-19 are part of the Conoraviridae family of viruses that can cause illnesses ranging from the common cold to respiratory symptoms, fever, cough, shortness of breath, and breathing difficulties. In more severe cases, infection can cause pneumonia, severe acute respiratory syndrome, kidney failure, and even death.

⁵ <https://www.weforum.org/agenda/2020/04/coronavirus-spread-covid19-pandemic-timeline-milestones/>

⁶ <https://www.who.int/csr/don/05-january-2020-pneumonia-of-unkown-cause-china/en/>

⁷ <https://www.who.int/csr/don/12-january-2020-novel-coronavirus-china/en/>

20. On January 11, 2020, Thailand announced the first Coronavirus case outside of China.⁸ The following day, the WHO announced there may have been human-to-human transmission of the Coronavirus, and cautioned that a wider outbreak was possible.

21. On January 20, 2020, the US announced its first confirmed case of Coronavirus.⁹ Ten days later, the WHO announced the Coronavirus outbreak constituted a Public Health Emergency of International Concern¹⁰ and issued a Strategic Preparedness and Response Plan to address the growing spread of the virus.¹¹

22. During February 2020, Coronavirus cases mounted across the globe, particularly in Europe, Iran, South Korea, and the United States. Governments started issuing shutdown orders at the end of February.

23. On March 11, the WHO deemed the Coronavirus a global pandemic.¹² That same day, the total number of confirmed Coronavirus cases in the United States surpassed 1,100.¹³

24. By March 17, 2020, all fifty U.S. States had reported confirmed cases of Coronavirus.

25. As of April 23, 2020, more than 2.5 million globally confirmed Coronavirus cases were reported to the WHO, with over 800,000 coming from the United States.¹⁴

⁸ <https://www.who.int/news-room/detail/13-01-2020-who-statement-on-novel-coronavirus-in-thailand>

⁹ <https://www.nytimes.com/2020/01/21/health/cdc-coronavirus.html>

¹⁰ <https://www.who.int/news-room/detail/08-04-2020-who-timeline---covid-19>

¹¹ <https://www.who.int/publications-detail/strategic-preparedness-and-response-plan-for-the-new-coronavirus>

¹² <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

¹³ <https://www.nytimes.com/2020/03/10/world/coronavirus-news.html>

¹⁴ <https://covid19.who.int/>

B. Methods of Coronavirus Transmission

26. While transmission of the Coronavirus is not yet fully understood, researchers have documented both human-to-human and surface-to-human transmission of the virus.¹⁵

27. Most commonly, Coronavirus is spread through aerosolized droplets from an infected person. Studies have found that Coronavirus can travel in aerosolized droplets up to 27 feet.¹⁶

28. However, indirect contact with surfaces or objects touched by an infected person can also lead to infection.¹⁷ On March 27, 2020, the CDC issued a report on Coronavirus outbreaks on cruise ships and found that the Coronavirus was identified on a variety of surfaces up to 17 days after cabins had been vacated.¹⁸ Other studies from the New England Journal of Medicine have found that the Coronavirus lasts on surfaces at room temperature for up to 3 days.¹⁹

C. Governmental Response to the Coronavirus

29. On March 16, 2020, the White House and CDC initiated a “30 Days to Slow the Spread” campaign to educate the public on the growing threat of the Coronavirus.²⁰ The campaign urged citizens to maintain adequate social distancing of at least 6 feet, avoid discretionary travel,

¹⁵ See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (Coronavirus able to exist for hours on surfaces); see also <https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations> (Coronavirus spreads through aerosolized droplets expelled from humans)

¹⁶ <https://www.usatoday.com/story/news/health/2020/03/30/coronavirus-social-distancing-mit-researcher-lydia-bourouiba-27-feet/5091526002/>

¹⁷ <https://www.journalofhospitalinfection.com/action/showPdf?pii=S0195-6701%2820>

¹⁸ https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm?s_cid=mm6912e3_w

¹⁹ <https://www.nejm.org/doi/full/10.1056/NEJMc2004973>

²⁰ https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf

and follow the directions of state and local authorities. It also urged citizens to self-isolate if they or anyone they reside with feels sick or tests positive for the Coronavirus.

30. Beginning in March, State and local governments across the country issued civil authority orders in response to the rapid spread of the Coronavirus by taking the following actions:

- a. **Stay at Home orders:** 42 states required non-essential workers to remain indoors at home;
- b. **Non-Essential Business Closures:** 35 states closed non-essential businesses, including bars, restaurants, hotels, salons, gyms, schools, and wineries;
- c. **Bars/Restaurant Limitations:** 47 states closed bars and restaurants except for takeout/delivery; and
- d. **Large Gatherings Ban:** 18 states prohibited all gatherings and 26 states prohibited 10 or more people from gathering, including for sporting events, concerts, theaters, and parades.²¹

31. Moreover, the scientific community at large, including the World Health Organization, has recognized that the “Coronavirus is a cause of real physical loss and damage.”

32. On March 7, 2020, New York Governor Andrew Cuomo issued Executive Order No. 202 “Declaring a Disaster Emergency in the State of New York” in response to the damage caused by the Coronavirus.²²

33. On March 9, 2020, New Jersey Governor Philip Murphy issued Executive Order No. 103 which declared a “Public Health Emergency and State of Emergency” in response to the

²¹ <https://www.kff.org/coronavirus-policy-watch/this-week-in-coronavirus-april-10-to-april-17/>

²² https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.pdf

damage caused by the Coronavirus, stating it “constitutes an imminent public health hazard that threatens and presently endangers the health, safety, and welfare of the residents of one or more municipalities or counties of the State. . . . [and] it is necessary and appropriate to take action against this public health hazard to protect and maintain the health, safety, and welfare of New Jersey residents and visitors.”²³

34. On March 10, 2020, Connecticut Governor Ned Lamont issued Executive Order No. 7 declaring a “public health emergency and civil preparedness emergency throughout” Connecticut in response to the damage caused by the Coronavirus.²⁴

35. On March 16, 2020, New York Governor Andrew Cuomo issued Executive Order No. 202.3 and required “[a]ny restaurant or bar in the State of New York [to] cease serving patrons food or beverages on-premises.”²⁵

36. On March 16, 2020, Connecticut Governor Ned Lamont issued executive Order No. 7D which closed bars and restaurants to all service except food and non-alcoholic beverage takeout and delivery.²⁶

37. On March 16, 2020 Bergen County Executive James Tedesco shut down all “worldly employment or business” in Bergen County, New Jersey, due to the spread and damage caused by the Coronavirus.²⁷

²³ <https://nj.gov/infobank/eo/056murphy/pdf/EO-103.pdf>

²⁴ <https://portal.ct.gov/-/media/Office-of-the-Governor/News/20200310-declaration-of-civil-preparedness-and-public-health-emergency.pdf?la=en>

²⁵ https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.3.pdf

²⁶ <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7D.pdf?la=en>

²⁷ <https://thepressgroup.net/bergen-county-govt-to-shut-to-public-essential-services-to-continue/>. Tedesco’s executive order was later rescinded on March 19, 2020 at the request of Governor Philip Murphy. See <https://thepressgroup.net/bergen-county-executive-backtracks-on-order-suspending-most-commerce/>

38. On March 21, 2020, New Jersey Governor Philip Murphy issued Executive Order No. 107 which required “[t]he brick-and-mortar premises of all non-essential retail businesses [to] close to the public as long as this Order remains in effect”, reasoning that “restricting the physical presence of individuals in office environments and work sites is crucial to preventing future spread of COVID-19,” “given the rapidly rising incidence of COVID-19, temporarily closing non-essential retail businesses will strengthen New Jersey’s efforts to slow the spread of COVID-19” (collectively, the “Civil Authority Orders”).²⁸

39. On March 28, 2020, the Center for Disease Control (“CDC”) issued a domestic travel advisory for New York, New Jersey, and Connecticut, stating that “[d]ue to extensive community transmission of COVID -19 in the area, CDC urges residents of New York, New Jersey, and Connecticut to refrain from non-essential domestic travel for 14 days effective immediately.”²⁹ Transportation to and around this area was strongly discouraged.

D. Plaintiff’s Insurance Policy

40. Plaintiff’s Insurance Policy is an “all risk” property insurance policy, meaning that coverage applies to all Covered Causes of Loss except those explicitly excluded.

41. “Covered Causes of Loss” means “direct physical loss or direct physical damage unless the loss or damage is excluded or limited in this Coverage Part.”

42. In return for Plaintiff’s premium payments, Defendant provides Business Income, Extra Expense, Civil Authority, and Business Income From Dependent Properties coverage that indemnifies Plaintiff for lost business income if the business: (1) is shut down due to loss or

²⁸ <https://nj.gov/infobank/eo/056murphy/pdf/EO-107.pdf>

²⁹ cdc.gov/media/releases/2020/s038-travel-advisory.html

damage to property; (2) incurs extra expenses; (3) is shut down due to orders of Civil Authority; or (4) cannot transport or sell its products to customers or cannot attract customers to its products.

43. Plaintiff's Business Income coverage provision states:

We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your 'operations' during the 'period of restoration', subject to the Limit of Insurance stated in Paragraph (9) below. The suspension must be caused by direct physical loss of or direct physical damage to property at the 'scheduled premises', including personal property in the open (or in a vehicle) within 1,000 feet of the 'scheduled premises', caused by or resulting from a Covered Cause of Loss.

44. Pursuant to Plaintiff's Business Income coverage provision, "Business Income" means the:

(i) Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no direct physical loss or direct physical damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses; and (ii) Continuing normal operating expenses incurred, including payroll expenses.

45. Plaintiff's Extra Expense coverage provision states:

(a) We will pay reasonable and necessary Extra Expense you incur during the "period of restoration" . . . that you would not have incurred if there had been no direct physical loss or direct physical damage to property at the "scheduled premises", including personal property in the open (or in a vehicle) within 1,000 feet, caused by or resulting from a Covered Cause of Loss. . . . (c) Extra Expense means expense incurred: (i) To avoid or minimize the suspension of business and to continue "operations": (aa) At the "scheduled premises"; or (bb) At replacement premises or at temporary locations, including relocation expenses; and the cost to equip and operate the replacement or temporary location, other than those costs necessary to repair or to replace damaged stock and equipment. (ii) To minimize the suspension of business if you cannot continue "operations". (iii) To: (aa) Repair or replace any property; or (bb) Research, replace or restore the lost information on damaged "valuable papers and records"; to the extent it reduces the amount of loss that otherwise would have been payable under this Coverage Extension or the Business Income Coverage Extensions.

46. Plaintiff's Civil Authority coverage provision states:

(1) When a Covered Cause of Loss causes direct physical loss or direct physical damage to property other than at the "scheduled premises", we will pay for the actual loss of Business Income you sustain and necessary Extra Expense you incur during the "civil authority period of restoration" caused by action of civil authority that prohibits access to the "scheduled premises" provided that both of the following apply: (a) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the "scheduled premises" are within that area but are not more than one mile from the damaged property; and (b) 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.

47. Pursuant to Plaintiff's Civil Authority coverage, "Business Income" means the:

(a) Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if access to the "scheduled premises" had not been prohibited by action of civil authority, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses; and (b) Continuing normal operating expenses incurred, including payroll expenses.

48. Pursuant to Plaintiff's Civil Authority coverage, "Extra Expense" means expenses incurred:

(a) To avoid or minimize the suspension of business and to continue "operations";
(b) To minimize the suspension of business if you cannot continue "operations"; or
(c) To: (i) Repair or replace any property; or (ii) Research, replace or restore the lost information on damaged "valuable papers and records"; to the extent it reduces the amount of loss that otherwise would have been payable under this Coverage Extension.

49. Plaintiff's Business Income From Dependent Properties states:

(1) We will pay the actual loss of Business Income you sustain and necessary Extra Expense you incur during the "dependent property period of restoration" due to

direct physical loss or direct physical damage at the premises of a “dependent property” or “secondary dependent property” caused by or resulting from a Covered Cause of Loss. However, this Coverage Extension does not apply when the only loss at the premises of a “dependent property” or “secondary dependent property” is loss or damage to “electronic data”, including destruction or corruption of “electronic data”. If the “dependent property” or “secondary dependent property” sustains loss or damage to both “electronic data” and other property, coverage under this Coverage Extension will not continue once the other property is repaired, rebuilt or replaced.

50. Pursuant to Plaintiff’s Business Income From Dependent Properties, “Dependent Property” means:

property owned, leased or operated by others whom you depend on to: a. Deliver materials or services to you or to others for your account. But services do not include: (1) Water, wastewater removal, communication, power services or any other utility services; or (2) Any type of web site, or Internet service. b. Accept your products or services; c. Manufacture your products for delivery to your customers under contract for sale; or d. Attract customers to your business premises.

51. Plaintiff’s Insurance Policy also excludes several causes of loss, including losses sustained by:

- a. “Any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease;” and
- b. An Ordinance or Law “[r]egulating the construction, use or repair of any property.”

52. Plaintiff’s Insurance Policy does not, however, exclude coverage for losses resulting from civil authorities regulating business operations or limiting the public’s access to Plaintiff’s premises.

53. Here, civil authorities did not suspend Plaintiff’s business operations due to the presence of Coronavirus at Plaintiffs’ premises. Indeed, the Coronavirus was never found on

Plaintiff's premises and no tests were ever conducted on Plaintiff's premises before governmental officials shuttered its business operations and prohibited employees, customers, and suppliers from accessing Plaintiff's premises. Instead, the Civil Authority Orders suspended Plaintiff's business operations due to the civil authorities' determination that Plaintiff's property possessed inherently dangerous characteristics to the health and safety of the community in light of the Coronavirus' ability to transmit from person-to-person and surface-to-person and in response physical loss or damage at other properties near Plaintiff's property.

54. Similarly, the Civil Authority Orders did not regulate the "use" of Plaintiff's *property*. Notwithstanding the fact that this exclusion relates to building and zoning codes, the Civil Authority Orders regulated Plaintiff's ability *to conduct business operations* in its entirety. Such Civil Authority Orders are distinct from regulating the use of a property given that it regulated Plaintiff's ability to conduct business operations at all, as opposed to regulating how the premises could be used generally.

55. Thus, no exclusions apply to Plaintiff's claim. Plaintiff's losses were not borne out of the presence of a virus or the regulation of use of the property; instead, Plaintiff's losses arose from Civil Authority Orders prohibiting it from conducting business at all in light of dangerous inherent characteristics at its premises and those around it.

E. Plaintiff Suffered Loss or Damage Resulting From the Coronavirus Pandemic

56. As a result of the Civil Authority Orders, Plaintiff was prevented from preparing or selling its products and was forced to shut down its business operations.

57. Plaintiff predominantly sells her products to hotels and restaurants in the Tri-state area. As Civil Authority Orders closed restaurants and hotels in her geographic region, all orders

for Plaintiff's products were cancelled, resulting in significant product spoilage and loss of business income.

58. On March 16, 2020, Teaneck Township, New Jersey ordered businesses to close and residents to self-quarantine if able to do so. Plaintiff's employees, who are residents of Teaneck, self-quarantined and did not show up to work.

59. That same day, news of Bergen County Executive James Tedesco ordering the shutdown of all "worldly businesses" was announced.

60. As a result of these orders, Plaintiff ceased all business operations.

61. On March 21, 2020, Governor Philip Murphy extended the business closures statewide. The closures remained in effect until mid-May for most businesses.

62. Plaintiff operates the type of business the Civil Authority Orders were designed to impact.

63. The Civil Authority Orders disrupted and suspended Plaintiff's business operations due to the assertion that business premises posed a threat to human health and safety and due to Plaintiff's inability to deliver or sell to customers as a result of their businesses being shut down as well.

64. In effect, the Civil Authority Orders declared Plaintiff's business and those around it a danger to human health and safety given the premises' inherent characteristics to facilitate person-to-person and surface-to-person Coronavirus transmission. Such characteristics made it unsuitable to conduct business operations.

65. The Civil Authority Orders prohibited Plaintiff and its employees, customers, and suppliers from conducting any business or from accessing the premises and utilizing it for its intended purpose.

66. The Civil Authority Orders triggered Plaintiff's Business Interruption coverage when it caused physical loss or damage to Plaintiff's property. Plaintiff was deprived of its ability to conduct business on its premises and distribute products to customers. Such Orders resulted in a loss of use and impairment of function that constitutes a physical loss or damage to property, for which Plaintiff is entitled to recover. Due to Civil Authority Orders closing Plaintiff's business, and the business of its customers, Plaintiff was forced to suspend its business operations, cancel orders previously received, and cease transporting and selling its products in the Tri-state area. Such actions resulted in a complete loss of Plaintiff's business income during the time the Civil Authority Orders were in effect, and for which Defendant is obligated to indemnify Plaintiff.

67. The Civil Authority Orders also triggered Plaintiff's Extra Expense coverage due to the reasonable and necessary Extra Expenses Plaintiff incurred due to the Civil Authority Orders closing Plaintiff's business. Plaintiff incurred expenses that it otherwise would not have incurred absent the Civil Authority Orders legally depriving Plaintiff of its ability to conduct business operations, thereby rendering Defendant liable to Plaintiff for the extra expenses incurred as a result of Plaintiff's business closure. Specifically, Plaintiff incurred expenses relating to delivering its products in personal vehicles, cleaning up spoiled product that was unable to be sold during the period its businesses were shut down, cleaning refrigerators, and fixing an air conditioning unit that was shut off while its businesses were closed.

68. The Civil Authority Orders also triggered Plaintiff's Civil Authority coverage. The Civil Authority Orders were issued, in part, as a response to dangerous physical conditions and property damage at nearby premises. Specifically, the Civil Authority Orders closed other nearby businesses, within one mile of Plaintiff's business, due to other premises' inherent characteristics

to facilitate person-to-person and surface-to-person Coronavirus transmission and/or the presence of the Coronavirus at nearby premises.

69. The Civil Authority Orders also triggered Plaintiff's Business Income From Dependent Properties coverage. As a result of the Civil Authority Orders, dependent properties that Plaintiff relied on to purchase its products, deliver materials to others on Plaintiff's behalf, and attract customers to its business premises were shut down in the Tri-state area. As a result, Plaintiff sustained business income losses resulting from other dependent properties' inability to transport, accept, and attract customers to Plaintiff's premises, given that they too were shut down by the Civil Authority Orders.

70. As a result of the Civil Authority Orders, Plaintiff lost Business Income and incurred Extra Expenses that are covered under several provisions in its Insurance Policy. Plaintiff's businesses were closed for nearly two months and a substantial amount of product orders were cancelled.

71. Similarly, the presence of the coronavirus was not what led to the Civil Authority Orders closing Plaintiff's businesses- it was the authorities' determination that Plaintiff's business premises harbored unsafe physical characteristics due to its ability to transmit the Coronavirus.

72. Plaintiff submitted claims for loss to Defendant pursuant to its policies.

73. Defendant denied Plaintiff's claims in their entirety.

74. In being denied coverage, Plaintiff has been injured by Defendant for its refusal to indemnify Plaintiff for business income losses and extra expenses incurred due to the Civil Authority Orders.

75. Plaintiff returned to her premises to clean out product that had spoiled on May 10, 2020.

F. The Insurance Industry’s Response to the Civil Authority Orders

76. On information and belief, no insurer intends to cover losses caused by any civil authority orders.

77. Several insurance companies and industry groups have made it their position that “Business interruption policies do not, and were designed to, provide coverage against communicable diseases such as COVID-19.”³⁰

78. For example, The Hartford’s website states: “Most property insurance includes business interruption coverage, which often includes civil authority and dependent property coverage. This is generally designed to cover losses that result from direct physical loss or damage to property caused by hurricanes, fires, wind damage or theft and is not designed to apply in the case of a virus.”³¹

79. Similarly, Travelers Insurance claims:

Insurance for business interruption can provide coverage when a policyholder suffers a loss of income due to direct physical loss or damage to covered property at its location or another location. It does not cover loss of income due to market conditions, a slowdown of economic activity or a general fear of contamination. Nor does the policy provide coverage for cancellations, suspensions and shutdowns that are implemented to limit the spread of the coronavirus. These are not a result of direct physical loss or damage. Accordingly, business interruption losses resulting from these types of events do not present covered losses under our property coverage forms. Even if there has been direct physical loss or damage to property, your policy contains a number of exclusions that are likely to apply to business interruption losses. The most important exclusion to note is the exclusion for losses resulting from a virus or bacteria, which would include coronavirus.³²

³⁰ <https://www.insurancejournal.com/news/national/2020/03/20/561810.htm>

³¹ <https://www.natlawreview.com/article/contractual-distancing-pandemic-insurance-litigation-spreads-business-interruption>

³² *Id.*

80. Additionally, several state departments of insurance have issued advisories claiming that losses from the Coronavirus are excluded losses.³³

81. These misleading statements ignore the fact that Plaintiff's losses arose from Civil Authorities closing and Plaintiff's business based on the belief that the inherent nature of the premises was fundamentally dangerous for humans during the Coronavirus pandemic.

82. Insurance companies taking this uniform position against coverage, without properly evaluating claims, has caught the attention of several Federal and State officials.

83. In California, insurance commissioner Ricardo Lara issued a notice requiring insurance companies to fairly investigate all business interruption claims caused by COVID-19.³⁴

84. Congresswoman Pramila Jaypal also sent a letter to Chubb Group, QBE Holdings, Tokio Marine Insurance Group, Liberty Mutual Insurance Co., Mutual of Enumclaw Insurance Co., Oregon Mutual Insurance Co., Traveler Indemnity Co., BankDirect Capital Finance, and Nationwide Mutual Insurance Co. expressing concern over the devastation small and medium-sized businesses face when carriers deny coverage for business losses, claiming insurers "should honor all clearly covered coronavirus-related losses" and work with states to resolve disputes quickly.³⁵

85. President Trump also weighed in on insurance companies blanket denial of business interruption claims, stating "you have people that have never asked for business-interruption insurance and they have been paying a lot of money for a lot of years for the privilege of having it an then when they finally need it, the insurance company says 'we're not going to give it. We

³³ See <https://www.oci.ga.gov/ExternalResources/Announcements/Bulletin-3172020-1619.pdf>; see also <https://insurance.ks.gov/documents/department/COVID19-FAQ.pdf>

³⁴ <http://www.insurance.ca.gov/0400-news/0100-press-releases/2020/release039-2020.cfm>

³⁵ <https://www.natlawreview.com/article/contractual-distancing-pandemic-insurance-litigation-spreads-business-interruption>

can't let that happen. . . I would like to see the insurance companies pay if they need to pay, if it's fair. And they know what's fair."³⁶

86. Other state governments, including New Jersey, Ohio, and Massachusetts, have introduced legislation that would mandate insurers cover Business Interruption, Extra Expense, and Civil Authority claims resulting from the Civil Authority Orders.³⁷

87. Despite the attention this issue has garnered, the insurance industry, and Defendant in particular, continues to deny claims for Business Interruption, Extra Expense, and Civil Authority coverage due to Governmental Shutdowns. A declaratory judgment determining that business income, extra expense, and civil authority provisions applies to business income losses and expenses resulting from Civil Authority Orders, and other relief, is necessary to prevent Plaintiff from being denied critical coverage for which it has paid and is entitled to.

V. CAUSES OF ACTION

COUNT I

DECLARATORY JUDGMENT – BUSINESS INTERRUPTION, CIVIL AUTHORITY, EXTRA EXPENSE, AND BUSINESS INCOME FROM DEPENDENT PROPERTIES

88. Plaintiff repeats all allegations set forth in the preceding paragraphs as if fully set forth herein.

89. Plaintiff's Insurance Policy is a contract under which Plaintiff paid premiums in exchange for Defendant's promise to pay Plaintiff's losses arising under its Business Interruption, Extra Expense, Civil Authority, and Business Income From Dependent Properties policy provisions.

³⁶ <https://www.insurancejournal.com/news/national/2020/04/14/564744.htm>

³⁷ <https://www.insurancejournal.com/news/east/2020/03/31/562855.htm>

90. Plaintiff has complied with all applicable provisions of the insurance policy, yet Defendant refuses to fulfill its obligation to indemnify Plaintiff for losses sustained as a result of the Civil Authority Orders and to which Plaintiff is entitled.

91. Defendant has uniformly denied insureds' claims related to Business Interruption, Extra Expense, Civil Authority, and Business Income From Dependent Properties coverage resulting from the Civil Authority Orders, oftentimes without conducting a proper investigation into the basis of insureds' claims. More broadly, the insurance industry as a whole does not believe business losses resulting from the Civil Authority Orders is covered under any policy, thereby enabling this Court to render declaratory judgment on Plaintiff's claims.

92. A case or controversy exists between Plaintiff and Defendant with respect to Plaintiff's right to recover lost business income under its Business Interruption, Extra Expense, Civil Authority, and Business Income From Dependent Properties policy provisions and Defendant's obligations to indemnify pursuant thereto. Plaintiff paid for Business Interruption, Extra Expense, Civil Authority, and Business Income From Dependent Properties provisions to be included in its insurance policies, its businesses were ordered to close by Civil Authority Orders, and Defendant denied Plaintiff's claims for business income losses under any policy provision resulting from these closures.

93. Plaintiff has an interest in this lawsuit, as its outcome will dictate whether business losses resulting from the Civil Authority Orders are recoverable under its insurance policies.

94. Pursuant to New Jersey's Declaratory Judgments Act, N.J.S.A. 2A:16-51 *et seq.*, Plaintiff respectfully requests the Court declare the following:

- a. Plaintiff's Insurance Policy covers business income and other losses resulting from the Civil Authority Orders pursuant to its Business

Interruption, Extra Expense, Civil Authority, and Business Income From Dependent Properties insurance provisions;

- b. No coverage exclusions are applicable; and
- c. Defendant is obligated to indemnify Plaintiff for all covered business income losses sustained.

COUNT II

BREACH OF CONTRACT – BUSINESS INTERRUPTION, CIVIL AUTHORITY, EXTRA EXPENSE, AND BUSINESS INCOME FROM DEPENDENT PROPERTIES

95. Plaintiff repeats all allegations set forth in the preceding paragraphs as if fully set forth herein.

96. Plaintiff's Insurance Policy is a contract under which Plaintiff paid premiums in exchange for Defendant's promise to pay Plaintiff's losses arising under its Business Interruption, Extra Expense, Civil Authority, and Business Income From Dependent Properties policy provisions.

97. Plaintiff has complied with all applicable provisions of the insurance policy, yet Defendant refuses to fulfill its obligation to indemnify Plaintiff for covered losses sustained.

98. Pursuant to Plaintiff's Insurance Policy, Defendant agreed to indemnify Plaintiff for:

- a. "[L]oss of Business Income you sustain due to the necessary suspension of your 'operations'" under its Business Interruption policy provision;
- b. "[R]easonable and necessary Extra Expense you incur during the 'period of restoration' . . . that you would not have incurred if there had been no direct physical loss or direct physical damage to property at the 'scheduled

premises’ . . . caused by or resulting from a Covered Cause of Loss” under its Extra Expense policy provision; and

- c. “[L]oss of Business Income you sustain and necessary Extra Expense you incur during the ‘civil authority period of restoration’ caused by action of civil authority that prohibits access to the ‘scheduled premises’” under its Civil Authority policy provision;
- d. “[A]ctual loss of Business Income you sustain and necessary Extra Expense you incur during the “dependent property period of restoration” due to direct physical loss or direct physical damage at the premises of a “dependent property” or “secondary dependent property” caused by or resulting from a Covered Cause of Loss” under its Business Income From Dependent Properties provision.

99. The Civil Authority Orders resulted in physical loss or damage to Plaintiff’s property by shutting down its business operations and declaring its premises unsafe and unfit for business operations. Plaintiff’s inability to lawfully use its premises for business purposes constitutes an impairment of function that resulted in a covered cause of loss or damage.

100. The Civil Authority Orders were also issued in response to physical loss or damage at properties other than Plaintiff’s and which were caused by a covered cause of loss. Other premises in Plaintiff’s vicinity posed such a danger to public safety that governmental authorities deemed it necessary to shut down Plaintiff’s business operations and prohibit access to Plaintiff’s property, and others premises had the Coronavirus on its premises. The Civil Authority Orders prohibited Plaintiff from accessing its premises or conducting business. Such action constitutes

an impairment of function that triggered Plaintiff's Civil Authority clause and entitles Plaintiff to indemnification.

101. The Civil Authority Orders also caused Plaintiff to incur extra expenses at its property. Specifically, Plaintiff incurred extra expenses to mitigate the closure of its business.

102. The Civil Authority Orders also caused Plaintiff to incur business income losses resulting from the closure of dependent properties which Plaintiff relies on to transport, receive, and attract customers to its business premises. Due to the Civil Authority Orders closing businesses in the Tri-state area, Plaintiff was unable to conduct business, ship its products to customers who usually receive Plaintiff's products, or allow customers to receive shipments of Plaintiff's products.

103. No policy exclusion applies to Plaintiff's claims.

104. Defendant breached its obligations to cover Plaintiff's business income losses resulting from the Civil Authority Orders when it denied coverage under its Business Interruption, Extra Expense, Civil Authority, and Business Income From Dependent Properties policy provisions.

105. As a result of Defendant's breach, Plaintiff has sustained and continues to sustain damages for which Defendant is liable in an amount to be established at trial.

VI. PRAYER FOR RELIEF

106. **WHEREFORE**, Plaintiff demands judgment against Defendant as follows:

a. A Declaratory Judgment declaring:

i. Plaintiff's insurance policies cover business income and other losses resulting from the Civil Authority Orders pursuant to its Business

Interruption, Extra Expense, Civil Authority, and Business Income From Dependent Properties insurance provisions;

- ii. No coverage exclusions are applicable to the facts of this case; and
 - iii. Defendant is obligated to indemnify Plaintiff for all business income losses sustained in connection with the closure of Plaintiff's business due to Civil Authority Orders.
- b. Awarding Plaintiff compensatory damages resulting from Defendant's breach of contract pursuant to Plaintiff's Business Interruption, Extra Expense, Civil Authority, and Business Income From Dependent Properties policy provisions in an amount to be determined at trial, together with appropriate prejudgment interest at the maximum rate allowable by law;
 - c. Attorneys' fees and expenses as allowable by law; and
 - d. Awarding all other relief the Court deems just, proper, and equitable.

VII. JURY TRIAL DEMAND

Plaintiff demands a jury trial on all issues so triable.

Dated: May 21, 2020

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CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

I hereby certify under penalty of perjury under the laws of the United States of America that to the best of my knowledge, this matter is not the subject to any other action pending in any court, or of any pending arbitration or administrative proceeding. I understand that if the foregoing statement is willfully false, I am subject to punishment.

Dated: May 21, 2020

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