

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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PEET’S COFFEE & TEA HOLDCO, INC.,	:
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Plaintiff,	:
	:
- against -	:
	:
NORTH AMERICAN ELITE INSURANCE	:
COMPANY,	:
	:
	:
Defendant.	:
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Index No.: _____

COMPLAINT

Peet’s Coffee & Tea HoldCo, Inc. (“Peet’s”), by and through its undersigned attorneys, makes this Complaint for Declaratory Relief, Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing, and violation of the New York Deceptive Practices Act, N.Y. Gen. Bus. Law § 349, against North American Elite Insurance Company (“Elite Insurance”) as follows:

I. INTRODUCTION

1. This is an insurance coverage action for a declaratory judgment pursuant to CPLR § 3001, breach of contract, breach of the covenant of good faith and fair dealing, and violation of Section 349 of the New York Deceptive Practices Act arising from Elite Insurance’s improper refusal to provide coverage under an “all-risk” commercial property insurance policy (the “Policy”) that Elite Insurance sold to Peet’s to cover, among other things, business interruption losses.

2. Peet’s seeks insurance coverage under the Policy for its losses and expenses incurred because of COVID-19 (the “Claim”).

3. COVID-19 was present at the Peet’s locations insured by the Policy. In addition, government orders issued due to COVID-19 adversely affected Peet’s businesses. The presence of

COVID-19 and the government orders—individually or combined—resulted in physical loss or damage to Peet’s property as provided by the broad coverage grants of the Policy.

4. Peet’s suffered business interruption (i.e., time element) losses as contemplated by the Policy, resulting in tens of millions of dollars in covered losses and expenses, which continue to accrue.

5. Despite the fact that Elite Insurance always intended to deny coverage for the Claim, Elite Insurance still engaged in a dilatory, unreasonable, and illusory insurance claim examination and handling process.

6. To date, Elite Insurance still improperly refuses to provide coverage for Peet’s Claim.

7. Peet’s paid more than half a million dollars in premiums to purchase the “all-risk” Policy, which provides coverage limits of \$200,000,000.

8. Now that Peet’s has suffered substantial losses and incurred expenses resulting from covered risks under the Policy, Elite Insurance improperly and unreasonably denied Peet’s the benefit of coverage. In doing so, Elite Insurance is renegeing on its duties as bargained for between the parties and refusing to provide coverage that Peet’s reasonably expected.

9. Under established principles of insurance law, Peet’s is entitled to payment under the Policy for business losses and expenses covered under the Policy, but Elite Insurance has breached its duties under the insurance contract and has refused to provide coverage in bad faith.

10. This Court should enforce the promise that Elite Insurance made to Peet’s and require Elite Insurance to provide the “all risks” coverage that Peet’s purchased for valuable consideration of more than half a million dollars and that Peet’s reasonably expected.

11. There is an actual and justiciable controversy between Peet's and Elite Insurance that is ripe for judicial determination regarding the parties' respective rights and obligations under the Policy.

II. JURISDICTION AND VENUE

12. A declaratory judgment action may be properly sought in this Court pursuant to CPLR § 3001 and under Judiciary Law § 140-b.

13. Personal jurisdiction over Elite Insurance is proper pursuant to CPLR § 301. The Policy provides that Elite Insurance irrevocably submits to the exclusive jurisdiction of the Courts of the State of New York and that Elite Insurance expressly waives all rights to challenge or otherwise limit such jurisdiction. Alternatively, or in addition to the Policy's exclusive jurisdiction provision, this Court has jurisdiction over Elite Insurance pursuant to CPLR §§ 301 or 302 because, upon information and belief, Elite Insurance, at all relevant times, was a business authorized to transact business in New York and/or conducted continuous and substantial business in New York.

14. Venue for this action is proper in this Court pursuant to CPLR § 501 under the exclusive forum provision of the Policy. Alternatively, or in addition to the Policy's exclusive forum provision, venue is proper in this county under CPLR 503 because, *inter alia*, Peet's operates one or more insured locations in Kings County, a substantial part of the events or omissions giving rise to this action occurred in Kings County, and both Peet's and Elite Insurance regularly transact business in Kings County.

III. PARTIES

15. Peet's is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located in the State of California.

16. Upon information and belief, Elite Insurance is a property and casualty insurance company organized and existing under the laws of the State of New Hampshire and licensed to do business in the State of New York.

17. Upon information and belief, Elite Insurance is a resident of the State of New York and is authorized to do business in New York or, if not a resident of or authorized to do business in New York, has transacted business within New York or has contracted to supply goods or services in New York, including in Kings County.

IV. BACKGROUND

A. Peet's Businesses

18. Peet's operates and has an interest in a variety of businesses, including Peet's Coffee, Inc. ("Peet's Coffee"), Stumptown Coffee Corp. ("Stumptown Coffee"), and Intelligentsia Coffee Inc. ("Intelligentsia Coffee"). For ease of reference, this Complaint refers to Peet's Coffee, Stumptown Coffee, and Intelligentsia Coffee collectively as the "Coffee Businesses." The Coffee Businesses as referred to herein include all relevant entities in which Peet's has an insurable interest under the Policy.

19. The Coffee Businesses sell coffee, tea, food, and other goods nationwide.

20. Peet's and its Coffee Businesses operate more than 280 retail stores, roasting plants, distribution centers, and offices across the country, including in New York, California, Colorado, the District of Columbia, Illinois, Massachusetts, Maryland, Minnesota, Oregon, Pennsylvania, Virginia, and Washington.

21. Peet's Coffee is an award-winning, San Francisco-based specialty coffee roaster and retailer that has been dedicated to crafting the perfect cup of coffee for more than 50 years. Since 1966, when Alfred Peet opened up the first "Peet's Coffee, Tea & Spices" in Berkley, California and ushered in a new wave of coffee drinkers who cared about origins and beverage

type, Peet's Coffee has continued its vision to increase the country's access to and appreciation of artisanal, high-quality, sustainable, and freshly sourced roasted and blended coffee.

22. Stumptown Coffee is a craft coffee roaster and retailer based in Portland, Oregon that has been named to numerous "best of" lists and won various local and national industry awards, including *Roast* magazine's 2006 "Roaster of the Year." Since opening its original flagship location in 1999, Stumptown Coffee has expanded to operate more than 15 roasting facilities, cafes, and other retail locations in New York, California, Maryland, New Jersey, Oregon, Washington, Texas, and Louisiana, including a roasting facility, office space, and several coffee shop locations in Brooklyn, Kings County, New York.

23. Intelligentsia Coffee is a nationally-renowned, award-winning coffee roasting company and retailer founded in Chicago, Illinois in 1995 that operates more than a dozen locations and does business in New York, California, Georgia, Illinois, Massachusetts, and Texas.

B. The Policy

24. The Policy that Elite Insurance sold to Peet's Coffee is an "all-risk" insurance policy (Policy Number: NAP 2002125 02). Attached hereto is a true and correct copy of the Policy as Exhibit A.

25. The "First Named Insured" is "Peet's Coffee & Tea HoldCo, Inc." Ex. A, § I.D.

26. The Policy covers "Peet's Coffee & Tea HoldCo, Inc. and any subsidiary, and Peet's Coffee & Tea HoldCo, Inc. interest in any partnership or joint venture in which Peet's Coffee & Tea HoldCo, Inc. has management control, ownership, or is obligated to insure, as now constituted or hereafter is acquired, as the respective interest of each may appear; all hereafter referred to as the Insured, including legal representatives." *Id.*, § I.C.

27. The Policy states that loss "will be adjusted with and payable to the First Named Insured, or as may be directed by the First Named Insured." *Id.*, § VIII.F.

28. The Policy “insures all risks of direct physical loss or damage to INSURED PROPERTY, while on INSURED LOCATION(S) provided such physical loss or damage occurs during the term of this POLICY.” *Id.*, Declarations, § A.1.

29. The Policy does not define the term “all risks.”

30. As used in the Policy, the term “physical loss” is separate, distinct, and has an independent meaning from the term “damage.”

31. The Policy does not define the term “physical.”

32. The Policy does not define the term “physical loss.”

33. The Policy does not define the term “damage.”

34. The Policy does not define the phrase “physical loss or damage.”

35. The Policy insures all property at the locations listed on the latest schedule of locations submitted to, accepted by, and on file with Elite Insurance and is extended to insure all other property in which Peet’s has an insurable interest, even if it is not listed on the schedule of locations. *Id.*, § X.M (“INSURED LOCATION(S)” includes, among other things, all locations “listed on the latest schedule of LOCATION(S) submitted to, accepted by and on file with the Company”); § IV.B.19 (“This policy is extended to insurance INSURED PROPERTY within the Policy Territory that is . . . not listed on the latest Schedule of Locations . . .”); § IV.A (“INSURED PROPERTY” includes, among other things, all real property “owned by the Insured or in which the Insured has an insurable interest”).

36. The Coffee Businesses’ locations, including but not limited to cafes, retail stores, roasting / manufacturing facilities, warehouses, distribution centers, and offices, are “INSURED LOCATIONS” of Peet’s under the Policy.

37. The Policy also covers business interruption losses (referred to in the Policy as “Time Element” coverage) “directly resulting from physical loss or damage insured by this POLICY.” *Id.*, § V.A

38. The Policy provides up to \$200,000,000 of coverage. *Id.*, § II.B.

39. The Policy has a policy period of October 1, 2019 to October 1, 2020. *Id.*, § I.E.

40. Elite Insurance drafted the Policy.

41. Upon information and belief, Elite Insurance has sold many insurance policies containing substantially the same standard terms and conditions as the Policy to other policyholders in New York (and around the country). These policies insure more than hundreds of millions of dollars in potential losses in New York. The coverage afforded and claims handling practices under these policies thus affect the interests of the New York public at large.

42. Peet’s paid more than half a million dollars in premiums to Elite Insurance for the Policy. Peet’s also paid Elite Insurance more than \$2,000,000 in premiums over the five years leading up to the Policy for similar “all-risks” coverage.

43. Elite Insurance, a sophisticated insurer, was fully aware of the risks involved related to the Coffee Businesses when marketing, drafting, selling, underwriting, issuing, and binding the Policy.

44. Upon information and belief, Elite Insurance calculated the business interruption premiums based, in material part, on the revenue that Elite Insurance expected the Coffee Businesses to generate as fully functioning and operational businesses.

45. Peet’s has suffered direct physical loss and damage to the locations and properties insured under the Policy, as well as business interruption and other losses covered under the Policy.

46. Upon information and belief, most of the commercial property policies issued by Elite Insurance afford coverage for the actual presence of communicable disease at insured locations and the resulting business interruption.

47. This coverage is found under two sections of the Policy, titled “Communicable Disease Response” and “Interruption by Communicable Disease” (together, the “On-Site Sublimited Communicable Disease Coverages”). *Id.*, §§ IV B.3 and V H.8.

C. The COVID-19 Pandemic

48. COVID-19 attacks the respiratory system and causes other harm and injuries to humans.

49. COVID-19 is harmful to humans and property, highly contagious, and deadly.

50. On March 11, 2020, the World Health Organization (“WHO”) declared COVID-19 a “pandemic.”

51. A pandemic is an outbreak of a disease that affects a wide geographic area and infects an exceptionally high proportion of the population.

52. As a declared pandemic, COVID-19 is present globally, including in all Coffee Businesses locations.

53. On March 13, 2020, the President of the United States declared a nationwide emergency in response to COVID-19.

54. According to the WHO, as of February 22, 2021, COVID-19 has infected more than 111,102,016 people and caused more than 2,462,911 deaths worldwide. *See* WHO, WHO Coronavirus Disease (COVID-19) Dashboard, <https://covid19.who.int/> (last visited on Feb. 22, 2021; website updated regularly with new data).

55. According to the Centers for Disease Control and Prevention (“CDC”), as of February 22, 2021, COVID-19 has infected more than 27,938,085 people and caused more than

497,415 deaths in the United States. *See* CDC, Coronavirus Disease 2019 (COVID-19): United States COVID-19 Cases and Deaths by State, https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days (last visited on Feb. 22, 2021; website updated regularly with new data).

56. The CDC estimates that infection rates for COVID-19 are likely at least ten times higher than reported for March 2020 through May 2020.

57. In addition, the CDC has estimated that approximately 40% of COVID-19 positive individuals remain asymptomatic.

58. Further, the incubation period for COVID-19, which is the time between exposure and the onset of symptoms, can be up to fourteen days. During the incubation period, or “pre-symptomatic” period, infected persons can be contagious, and disease transmission can occur before the infected person shows any symptoms or has any reason to believe he or she has become infected. Pre-symptomatic persons carry the greatest viral-load (i.e., the amount of virus in a person’s nose, throat, and lungs) among all infected persons, meaning their ability to transmit COVID-19 is greater than symptomatic persons.

D. COVID-19 Is a Risk That Causes “Physical Loss or Damage” to Property Under the Policy

59. COVID-19 causes physical and tangible alteration to property, and the presence of COVID-19 amounts to physical loss and damage to property.

60. According to the CDC, COVID-19 can spread in several ways, including: (i) from person to person through respiratory droplets, (ii) through airborne transmission, and (iii) by contact with objects or surfaces.

61. The CDC has noted that airborne transmission involves exposure to COVID-19 in small droplets and particles that can linger in the air for minutes to hours and can infect individuals

who are further than six feet away from the person who is infected or after that person has left the space.

62. The WHO has confirmed that COVID-19 can remain viable on objects or surfaces.

63. COVID-19 also spreads by property- or surface-to-person transmission, where, for example, an uninfected person touches an object or surface that has come into contact with the saliva or nasal fluid of an infected person, and the uninfected person then touches his or her eyes, nose, or mouth.

64. According to at least one study, during and after illness, COVID-19 particles are shed in large numbers in bodily secretions, including saliva, oral and nasal fluid, respiratory droplets, blood, feces, and urine particles. As noted by that study, COVID-19 can be introduced to surfaces by direct physical contact with such surfaces; contact with soiled hands; contact with aerosolized COVID-19 (i.e., large droplet spread) exhaled while breathing, talking, sneezing, or coughing; and contact with airborne COVID-19 that settles after disturbance of a surface damaged by COVID-19 (e.g., shaking a tablecloth).

65. Medical researchers have advised that specialized air filtration systems can be used to remediate the presence of COVID-19. In other words, additional physical alteration of property may be necessary to render it safe from COVID-19 and return the property to a safe and useable state after it is physically damaged by COVID-19.

66. Multiple studies, including studies from the National Institute of Health (“NIH”) and various academic, scientific journals, have concluded that COVID-19 can remain viable on various objects, surfaces, or materials for a period of up to 28 days.

67. The Coffee Businesses contain such surfaces, objects, and materials, which they use in the ordinary course of business, and their employees, customers and guests have contact with these surfaces, objects, and materials while at the insured locations.

68. Results from studies also suggest that individuals can become infected with COVID-19 through indirect contact with surfaces or objects used by an infected person, whether they were symptomatic or not.

69. Studies have reported that COVID-19 was detectable in aerosols for up to three hours, up to four hours on copper, up to twenty-four hours on cardboard, and up to three days on plastic and stainless steel.

70. The CDC has reported that COVID-19 can remain on polystyrene plastic, aluminum, and glass for eight days at the humidity recommended for indoor living spaces.

71. Infection of touched surfaces is, therefore, a potential source of transmission.

72. As a pandemic, the presence of COVID-19 is, by definition, worldwide and COVID-19 is presumed to be present everywhere, including in all the insured sites of the Coffee Businesses.

73. The ubiquitous presence of COVID-19 is also confirmed by statistics (*see* § E, *infra*). Because COVID-19 is a pandemic and is statistically certain to be carried by a number of individuals who visit the Coffee Businesses locations daily, COVID-19 is continually reintroduced to the air and surfaces of the locations.

74. Under normal operating conditions, there is no effective way to permanently repair or remediate the loss or damage caused by COVID-19 to commercial properties like the Coffee Businesses locations because continued use of that property results in continual reintroduction of COVID-19 to the property.

75. As discussed in further detail below (*see* § F, *infra*) many orders issued by governmental authorities around the country during the COVID-19 pandemic expressly acknowledge that COVID-19 causes property loss and damage to property.

76. The prospect of COVID-19 being present on property is a risk of direct physical loss or damage, and it causes physical loss and damage to property by, *inter alia*, transforming or rendering the Coffee Businesses' property unsafe to human health, thereby depriving the Coffee Businesses of the usage, functionality and reliability of its property.

77. COVID-19 causes a physical, tangible alteration to property and seriously and detrimentally affects, impairs, damages, and alters its value, usefulness, or normal function, rendering the property nonfunctional.

78. The physical alteration, damage, and impairment described herein includes, but is not limited to, damage to the Coffee Businesses' roasting, grinding, cooking, frothing, decanting, and storage equipment, coffee machines, espresso machines, blenders, ice and hot water and tea dispensers, signs, menus, ovens, microwaves, refrigerators, freezers, ice machines, lighting fixtures, cash registers, computers, tables, chairs, couches, stools, curtains, blinds, doors, door handles, carts, countertops, display cases, shelving, retail merchandise, custom coffee sleeves, straws and stirrers, napkins, coffee filters, espresso tampers, frothing pitchers, knock-boxes, coffee mugs, tea cups, trays, bags, coffee containers, utensils, sugar pourers, tea ball insurers, lemon wedge bags, creamers, condiment organizers, cups, lids, and straw organizers, measuring cups and spoons, scales, syrup pumps, frothing thermometers, timers, coffee and beverage labeling, aprons and uniforms, floors, windows, fans, mirrors, decorative items, pictures, frames, sinks, faucets, faucet handles, soap dispensers, paper towels, paper towel holders, toilets, urinals, trash cans,

recycling bins, power outlets and receptacles, light switches, as well as the loss of use of all such property.

79. The presence of COVID-19 in the air at a property also renders the property unusable, uninhabitable, and unfit for its normal occupancy or use.

80. COVID-19 has caused physical loss or damage at locations and properties insured under the Policy and is a risk of physical loss or damage to the locations and properties. It changes the property, including air and the surfaces, into dangerous transmission mechanisms for the disease, rendering the affected property unsafe, unfit, and uninhabitable for ordinary functional use.

E. COVID-19 Has Been Present at the Coffee Businesses

81. The Coffee Businesses employed more than 5,000 individuals before COVID-19 began spreading in and around each insured location and throughout the United States.

82. There have been at least 273 confirmed COVID-19 diagnoses among those individuals that work on the premises of the Coffee Businesses.

83. In addition, there have been at least 1,719 reported incidents regarding COVID-19 at the Coffee Businesses.

84. It is a statistical certainty that more of the Coffee Businesses' employees, customers and guests have had COVID-19 in addition to those who have reported suspected or confirmed cases.

85. As referenced above, the CDC estimated that infection rates for COVID-19 were likely at least ten times higher than those reported for March 2020 through May 2020.

86. The Coffee Businesses are high-traffic locations, visited by thousands of individuals monthly. The guest and customers visiting the Coffee Businesses come from multiple locations across the country and the world.

87. The CDC estimates that, for the period February 2020 through December 2020, there were approximately 83,100,000 infections, 70,400,000 symptomatic illnesses, and 4,100,000 hospitalizations in the United States. *See* CDC, Estimated Disease Burden of COVID-19, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/burden.html> (last visited on Feb. 20, 2021; website updated regularly with new data).

88. According to the United States Census Bureau, the population of the United States during that time period was about 329,000,000. *See* U.S. Census Bureau, U.S. and World Population Clock, <https://www.census.gov/popclock/> (last visited on Feb. 20, 2021; website updated regularly with new data).

89. Thus, based on the CDC estimate, 25.25% of the population was infected during that period, approximately 21.40% of which were symptomatic.

90. The Coffee Businesses recorded at least 4.5 million transactions in February 2020, which account for millions of visitors to the Coffee Businesses locations in the weeks leading up to the physical loss or damage to property, and resulting business interruption, caused by COVID-19 and related state and local government orders (*see* § F, *infra*) beginning in March 2020.

91. Applying even a conservative estimate of the CDC statistics summarized above, it is evident that thousands of individuals with COVID-19 infections visited the Coffee Businesses during the relevant Policy period.

92. Because the CDC has estimated that actual infection rates were likely ten times higher than reported rates, it is more likely than not that higher numbers of employees, customers and guests at the Coffee Businesses had COVID-19 in addition to those that have been reported as suspected or confirmed cases.

93. As noted above, thousands of individuals worked at the Coffee Businesses' locations and many thousands of customers and guests visited the Coffee Businesses in the weeks leading up to the governmental orders discussed in the following paragraphs.

94. On this basis alone, it is more probable than not that COVID-19 was actually present at the Coffee Businesses during the relevant Policy period.

95. Given the absence of commercially-available tests for surface and aerosol presence of COVID-19 and the overall shortage of testing kits for humans, however, positive human test results are not and cannot be the only means of proving the presence of COVID-19.

96. Further, numerous Coffee Businesses employees exhibited signs or actual symptoms of COVID-19 in 2020.

97. For 2020, the Coffee Businesses have recorded at least 895 leave of absences from employees. The leave of absences for 2020 reflect more than a 100% increase to those in 2019.

98. As mentioned above, even without actual detection, COVID-19 also is statistically certain to be present at Peet's locations. Statistical modeling also confirms that COVID-19 was and continues to be present at Peet's locations.

99. Positivity rates, which are material to statistical modeling, measure saturation of COVID-19 in a particular locale. Among other things, positivity rates are used to determine the statistical likelihood that at least one COVID-19 positive person will enter a facility. Positivity rates are an indicator of the ubiquitous presence of COVID-19.

100. The WHO recommends that a particular area reach a positivity rate of 5% or lower before reopening.

101. As of February 20, 2021, Johns Hopkins University calculates 25 states to have a positivity rate that is above 5%. *See* Johns Hopkins University & Medicine, Which U.S. States

Meet Who Recommended Testing Criteria?, <https://coronavirus.jhu.edu/testing/testing-positivity> (last visited on Feb. 20, 2021; website updated regularly with new data).

102. The ubiquitous nature of the pandemic also confirms that COVID-19 has been present at the Coffee Businesses.

103. COVID-19 has caused physical loss or damage to property at the Coffee Businesses' locations and constitutes a risk of physical loss or damage to the Coffee Businesses and other Peet's property under the Policy.

104. Because of the physical loss or damage caused by COVID-19, the Coffee Businesses appropriately shut down or partially limited operations. The operations remained closed or limited until it was clear that it was safe to reopen for employees, customers and guests, consistent with adherence to the Coffee Businesses' strict and rigorous protocols and health and safety guidelines in place to prevent the spread of COVID-19 on insured property and to reduce the likelihood of individuals' exposure to COVID-19 and affected property.

F. In Response to the Physical Loss or Damage to Property Caused by COVID-19, State and Local Governments Issued Orders Restricting Activities

105. COVID-19 physically affects, causes loss and damages property on which it is present and can infect individuals who are exposed to that property.

106. Beginning in March of 2020, governors, mayors, and other executives across the United States issued a series of unprecedented orders restricting activities directly because of that physical loss or damage to property and to minimize the spread of COVID-19 by reducing the likelihood of an individual's exposure to damaged property.

107. In New York, for example, Governor Cuomo declared a State disaster emergency for the entire State of New York on March 7, 2020 due to the threat posed by COVID-19 and, on March 16, 2020, ordered all restaurants and bars in the State of New York to "cease serving patrons

food or beverage on-premises,” permitting food and beverage service for off-premises consumption only.

108. On March 12, 2020, Mayor de Blasio issued an executive order declaring a state of emergency in the City of New York due to the threat posed by COVID-19 to the health and welfare of its residents. On May 4, 2020, Mayor de Blasio issued another order modifying his prior restrictions “because of the propensity of the virus to spread person-to-person and also because the actions taken to prevent such spread have led to property loss and damage.”

109. In Denver, Colorado, the Denver City Attorney’s office declared a state of emergency for the City and County of Denver on March 12, 2020, recognizing that the risks posed by COVID-19 required prompt coordination of response and recovery actions, as well as regulation of access to, “activities, persons, property, or the environment” to protect the health, safety, and welfare and “to limit damage to property” or the environment within the City and County of Denver.

110. In Napa County, California, on March 18, 2020, the Napa County government issued an order placing restrictions on both essential and non-essential businesses to slow the spread of COVID-19 based on, among other things, “evidence of increasing occurrence of COVID-19 throughout the Bay Area, increasing likelihood of occurrence of COVID-19 within the County, and the physical damage to property caused by the virus.”

111. Similarly, in Sonoma County, California, on March 31, 2020, an order by county officials extending prior COVID-19 restrictions on businesses stated that the order was necessary in part “because the virus physically is causing property loss or damage due to its proclivity to stay airborne and to attach to surfaces for prolonged periods of time.”

112. In Illinois, on March 20, 2020, Governor Pritzker declared all counties in the State of Illinois to be a disaster area as of March 9, 2020, in response to the COVID-19 pandemic. In restricting restaurants and other facilities that prepare and serve food to off-premises consumption only, among many other restrictions, the order recognized “the virus’s propensity to physically impact surfaces and personal property.”

113. In Washington, on March 23, 2020, Governor Inslee issued an executive order recognizing a “public disaster affecting . . . property,” ordering non-essential businesses to cease operations, and prohibiting essential businesses from operating unless subject to strict social distancing and sanitation measures.

114. Peet’s does business and operates locations for the Coffee Businesses in all of the states, cities, and local municipalities described above, as well as in dozens of other locations across the country, all of which were adversely impacted by COVID-19 and/or issued government-mandated restrictions requiring the Coffee Businesses to completely or partially shut down for extended periods of time.

115. The geographic diversity of the government orders confirms the consensus among civil authorities in the United States that COVID-19 causes physical loss or damage to property. *See also* Declaration of Emergency Directive 016, Gov. of Nevada (Apr. 20, 2020) (the “ability of the novel coronavirus that causes COVID-19 to survive on surfaces for indeterminate periods of time, renders some property unusable and contributes to contamination, damage, and property loss.”); Executive Order No. 2020-21, Mayor of the City of Atlanta, at p. 3 (Mar. 23, 2020) (“based upon the advice of the CDC and of the Georgia infectious disease clinicians the extreme likelihood of destruction of life or property within the territorial jurisdictional limits of the City of Atlanta due to the unusual condition of the COVID-19 Pandemic has increased significantly”); Stay

Home, Work Safe Order; County Judge Lina Hidalgo, Director, Homeland Security Emergency Management, Harris County, Texas, at p. 2 (Mar. 24, 2020) (“COVID-19 virus causes physical loss or damage due to its ability to attach to surfaces for prolonged periods of time . . .”).

116. To mitigate losses and to comply with applicable government orders, the Coffee Businesses shut down or appropriately limited operations.

117. The Coffee Businesses’ operations remained closed or appropriately limited until it was clear that it was safe to reopen for employees and guests, consistent with adherence to the Coffee Businesses’ strict and rigorous protocols and to health and safety guidelines in place to prevent the spread of COVID-19 on insured property and to reduce the likelihood of individuals’ exposure to COVID-19 and affected property.

118. Peet’s has followed the guidelines, directives, and orders issued by relevant governmental and health authorities to limit the spread of COVID-19, which provide, *inter alia*, for enhanced cleaning protocols, social distancing, and the use of certain personal protective equipment. In doing so, Peet’s has incurred losses and extra expenses and related costs due to the presence of COVID-19 and the related government orders.

G. The Policy’s “All-Risks” Coverage Is Triggered

119. To insure against losses from unexpected and fortuitous circumstances such as COVID-19, Peet’s purchased business interruption coverage as part of the all-risk commercial property insurance Policy from Elite Insurance.

120. The Policy “insures all-risks of direct physical loss or damage to INSURED PROPERTY, while on INSURED LOCATION(S) provided such physical loss or damage occurs during the term of this POLICY.” Ex. A, Declarations, § A.1.

121. The Policy includes, among other things, Time Element coverage, which insures against, among other things, the loss of business income and extra expense resulting from “direct physical loss or damage to” insured property. *Id.*, § V.A.1.

122. In addition, the Policy contains certain “Property Damage Coverage Extensions,” which are described among various terms, conditions, provisions, limitations, and exclusions set forth in the Property Damage section of the Policy. *Id.*, § IV.B.

123. By way of example, one such coverage extension is “Communicable Disease Response.” *Id.*, § IV.B.3.

124. Under the “Communicable Disease Response” coverage, the Policy expressly covers, among other things, “the reasonable and necessary costs incurred . . . for the . . . cleanup, removal and disposal of . . . COMMUNICABLE DISEASES from INSURED PROPERTY.” *Id.*, § IV.B.3.

125. By providing for the “cleanup, removal and disposal of . . . COMMUNICABLE DISEASES from INSURED PROPERTY,” the Policy explicitly recognizes that communicable disease causes a physical, tangible alteration to the integrity of property. *Id.*, § IV.B.3.

126. Because the Policy specifically covers remediation of the damage caused by communicable disease, the physical damage to property caused by communicable disease is a type of “direct physical loss or damage” insured under the Policy.

127. COVID-19 meets the definition of a communicable disease under the Policy.

128. Peet’s paid a substantial premium of more than half a million dollars to Elite Insurance for this broad, multi-pronged, “all-risks” insurance coverage and reasonably expected coverage for the losses described in this Complaint under every one of the coverage parts implicated.

129. Peet's and its Coffee Businesses have incurred substantial covered losses and expenses as a result of the risks of physical loss or damage identified above.

130. The coverages triggered by the events described in this Complaint include those described below.

1. COVID-19 Triggered the Policy's "All-Risks" Coverage

131. The presence of COVID-19 is a "risk of direct physical loss or damage," triggering the Policy's "all-risks" coverage.

132. The presence of COVID-19 has caused direct physical loss and damage to the Coffee Business locations.

133. Peet's submitted its Claim under the Policy as a result of suffering losses and expenses in relation to COVID-19 covered by the Policy.

134. In addition, or alternatively, various government orders concerning COVID-19 are a "risk of direct physical loss or damage" that is not excluded or limited, and they trigger the Policy's Property Damage coverage.

135. Because those government orders resulted in direct loss or damage to Peet's property, including loss of use of that property, they are a "risk of direct physical loss or damage."

136. Elite Insurance denied or effectively denied coverage for Peet's Claim and did so in bad faith based on apparent systematic deceptive and misleading practices designed to avoid or minimize payments for covered COVID-19 claims. Elite Insurance's practices affected Peet's and the public at large.

2. COVID-19 Triggered the Policy's Time Element Coverage

137. The Policy affords coverage for Peet's "Time Element" loss.

138. COVID-19 has caused Peet's to suffer Time Element loss as a direct result of physical loss and damage of the type insured under the Policy to insured property at insured locations.

139. As shown above (*see, e.g., §§ D–F, supra*), the presence of COVID-19 is direct physical loss or damage of the type insured by the Policy.

140. In addition, or in the alternative, COVID-19 has caused Peet's to suffer Time Element loss due to the various state and local governmental orders that limited, restricted, or prohibited partial or total access to the Coffee Businesses' locations as a result of direct physical loss or damage of the type insured under the Policy that occurred at or within five statute miles of an insured location.

141. Such loss triggers coverage under the Policy's Time Element provisions including, without limitation, coverage for Gross Earnings loss, Extra Expense, Order of Civil or Military Authority loss, and Leasehold Interest loss up to the Policy's applicable limits and sublimits.

3. COVID-19 Triggered the Policy's Civil Authority Coverage

142. The physical loss or damage caused by the presence of COVID-19 at property located at or within five statute miles of the Coffee Businesses' locations has directly resulted in the issuance of orders from civil authorities including state and local government orders restricting or prohibiting partial or total access to the Coffee Businesses' locations.

143. Peet's has sustained and will continue to sustain Time Element loss and extra expense because of those orders, which trigger the Policy's "Order of Civil or Military Authority" coverage, subject to the Policy's applicable limits. Ex. A, § V.H.11.

4. COVID-19 Triggered the Policy's Contingent Time Element Extended Coverage

144. The presence of COVID-19 at the locations of the Coffee Businesses' suppliers or customers, which locations are within the Policy territory, has caused physical loss or damage to property insured by the Policy at such locations, which has prevented such suppliers from supplying goods or services directly or indirectly to Peet's or has prevented such customers from receiving goods or services directly or indirectly from Peet's.

145. Peet's has sustained and will continue to sustain Time Element losses as a direct result of the direct physical loss or damage insured by the Policy to property at the locations described above, triggering the Policy's "Contingent Time Element" coverage. *Id.*, § V.H.3.

5. COVID-19 Triggered the Policy's Ingress/Egress Coverage

146. Peet's has sustained losses and extra expenses due to the necessary interruption of its business directly resulting from the prevention of direct ingress to or egress from the Coffee Businesses' locations.

147. That prevention was caused by the presence of COVID-19, which is direct physical loss or damage to property insured by the Policy, triggering the Policy's "Ingress/Egress" coverage. *Id.*, § V.H.7.

6. COVID-19 Triggered the Policy's Attraction Property Coverage

148. COVID-19 has caused and is continuing to cause direct physical loss or damage of the type insured by the Policy to property not owned or operated by Peet's, including property located within five statute miles of the Coffee Businesses that attracts business to the Coffee Businesses.

149. Peet's has sustained and will continue to sustain losses and extra expenses directly resulting from direct physical loss and damage of the type insured by the Policy to property that

attracts business to the Coffee Businesses. These losses and extra expenses trigger the Policy's "Attraction Property" coverage. *Id.*, § V.H.1.

7. COVID-19 Triggered the Policy's Leasehold Interest Coverage

150. COVID-19 has caused and is continuing to cause direct physical loss or damage of the type insured by the Policy to the Coffee Businesses' locations at which Peet's leases space pursuant to one or more written leases, which require continuation of rent if the property is wholly untenable or unusable due to such physical loss or damage.

151. Peet's has sustained and will continue to sustain Leasehold Interest losses directly resulting from direct physical loss or damage to those insured locations, triggering the Policy's "Leasehold Interest" coverage. *Id.*, § V.H.9.

8. COVID-19 and the Resulting Governmental Orders Triggered the Policy's Interruption by Communicable Disease Coverage

152. The actual presence of COVID-19 at the Coffee Businesses and elsewhere has resulted in the issuance of orders by authorized governmental agencies regulating communicable disease.

153. The actual presence of COVID-19 has existed at the Coffee Businesses' locations, despite the Coffee Businesses' strict and rigorous protocols in addition to adherence to health and safety guidelines in place to prevent the spread of COVID-19 on insured property and to reduce the likelihood of individuals' exposure to COVID-19 and affected property.

154. Access to those locations has been limited, restricted, or prohibited both because of the orders by authorized governmental agencies and because of decisions by officers of the Coffee Businesses as a result of the actual presence of COVID-19.

155. The Time Element losses and extra expenses that Peet's has incurred at those locations because of these civil authority orders and decisions by officers of the Coffee Businesses trigger the Policy's "Interruption by Communicable Disease" coverage. *Id.*, § V.H.8.

156. The "Interruption by Communicable Disease" coverage is not exclusive.

157. As a result, Peet's recovery up to the limit of that communicable disease coverage does not preclude or limit recovery under any other coverages to the extent that Peet's meets the requirements to trigger such other coverages.

9. COVID-19 Triggered the Policy's Communicable Disease Response Coverage

158. The actual presence of COVID-19 has existed at the Coffee Businesses' locations, despite the Coffee Businesses' strict and rigorous protocols and adherence to health and safety guidelines in place to prevent the spread of COVID-19 on insured property and to reduce the likelihood of individuals' exposure to COVID-19 and affected property.

159. Access to those locations has been limited, restricted, or prohibited both because of the orders by authorized governmental agencies and because of decisions by officers of the Coffee Businesses as a result of the actual presence of COVID-19.

160. The reasonable and necessary costs that Peet's has incurred at those locations because of these civil authority orders and decisions by officers of the Coffee Businesses trigger the Policy's "Communicable Disease Response" coverage. *Id.*, § IV.B.3.

161. The "Communicable Disease Response" coverage is not exclusive.

162. As a result, Peet's recovery up to the limit of that communicable disease coverage does not preclude or limit recovery under any other coverages to the extent that Peet's meets the requirements to trigger such other coverages.

10. COVID-19 Triggered the Policy's Protection and Preservation of Property Coverage

163. COVID-19 has threatened and continues to threaten to cause physical loss or damage to insured property.

164. The actual and impending direct physical loss or damage to insured property has caused Peet's to incur reasonable and necessary costs for actions to temporarily protect or to preserve its property, triggering the Policy's "Protection and Preservation of Property" coverage. *Id.*, § IV.B.24.

11. COVID-19 Triggered the Policy's Professional Fees Coverage

165. The Policy covers reasonable expenses, including the cost of using Peet's employees, incurred by Peet's or by its representatives, such as accountants, appraisers, auditors, consultants, or other professionals, for preparing and certifying the details of a claim insured by the Policy.

166. Peet's has incurred actual, reasonable expenses in preparing information and documents regarding its claim in response to Elite Insurance's requests, thereby triggering the Policy's "Professional Fees" coverage.

H. In the Alternative, the Policy is Ambiguous and Coverage is Triggered

167. The Policy unambiguously covers the losses claimed by Peet's. However, Elite Insurance has refused to acknowledge that COVID-19 or the governmental orders constitute non-excluded causes of loss that have and will continue to cause physical loss of or damage to property.

168. Under New York law, policy language is considered ambiguous if it is susceptible to two, or more, reasonable interpretations; and any ambiguities are construed in favor of the policyholder, Peet's.

169. Notwithstanding Elite Insurance's refusal to provide coverage under the Policy, dozens of courts throughout the United States have already concluded that COVID-19 and/or the governmental orders meet the requirements under similar insurance policies to trigger coverage for losses akin to Peet's claimed losses and expenses.

170. Thus, for this reason as well, there can be no dispute that Peet's interpretation of the Policy is reasonable and must be read in favor of coverage. At minimum, as court decisions make evident, the Policy is reasonably susceptible to multiple interpretations, which requires a finding of coverage for Peet's claimed losses under New York law.

I. The Policy's "Contamination" Exclusion Does Not Apply

171. The "contamination" exclusion, which is a traditional pollution exclusion, in the Policy requires establishing that the presence of any deleterious substance described in the exclusion be due to a "discharge, dispersal, seepage, migration, release or escape" of such substance. Ex. A, § VI.C.3.

172. Because COVID-19 is not a pollutant and is naturally occurring and Peet's Claim does not involve any discharge, dispersal, seepage, migration, release, or escape of pollution, the contamination exclusion cannot apply.

173. In addition, Peet's reasonably understood the "contamination" exclusion to apply to localized environmental contamination, such as discharge or seepage of hazardous waste or similar environmental pollution liabilities, and not to new diseases like COVID-19, which result in pandemics.

174. At a minimum, the "contamination" exclusion is ambiguous as applied to claims, like Peet's, arising from the presence of COVID-19. Under settled principles of insurance law, such ambiguous exclusions must be construed in favor of coverage for Peet's and against Elite Insurance.

175. Elite Insurance cannot meet its heavy burden to prove that the “contamination” exclusion clearly and unmistakably applies to Peet’s Claim and is not subject to any other reasonable interpretation.

176. The “contamination” exclusion also cannot apply because it conflicts with the Policy’s affirmative coverage grant for “Communicable Disease.”

177. Conflicting provisions within the Policy cannot be read to negate certain coverages or in ways that render some coverage provisions mere surplusage. In New York, the words of the Policy must be read in a manner that gives meaning to all language, and leaves no provision without force and effect.

178. For instance, the “Communicable Disease Response” coverage expressly covers, among other things, “the reasonable and necessary costs incurred . . . for the . . . cleanup, removal and disposal of” communicable disease from insured property. *Id.*, § IV.B.3.

179. COVID-19 is a communicable disease as that term is defined in the Policy.

180. Elite Insurance contended in an October 27, 2020 letter that the “contamination” exclusion bars recovery for any loss or damage due to COVID-19.

181. The Policy defines “CONTAMINANT” as any “disease-causing or illness-causing agent . . . [or] virus.” *Id.*, § X.D.

182. Under the Policy, the term “COMMUNICABLE DISEASE” has a defined meaning that is different from the broad and general term “virus.” *Id.*, § X.C.

183. Thus, the Policy’s “contamination” exclusion does not exclude coverage for loss caused by “communicable disease.”

184. The “contamination” exclusion cannot apply to bar the affirmative “communicable disease” coverage nor can it apply to bar losses premised on the same covered cause of loss (i.e.,

communicable disease) accompanied by physical loss or damage because doing so would render the Policy's "communicable disease" coverage meaningless and illusory.

185. To the extent Elite Insurance contends that the Policy's "contamination" exclusion bars coverage for loss caused by "communicable disease" or some other aspect of Peet's Claim, the Policy is, at best, ambiguous because it is susceptible to more than one reasonable interpretation and, therefore, must be construed in favor of coverage.

186. In addition, the insurance industry has known the risks associated with pandemics for more than a century. These risks have been even more pronounced and evident to Elite Insurance in recent decades due to SARS, Ebola, MERS, H1N1, and Zika.

187. In fact, the 2017 and 2018 Annual Reports of Elite Insurance's parent company, Swiss Re, explicitly acknowledged "pandemics" and their chance of impacting "the frequency, severity and development of insured claim events" among the "known and unknown risks, uncertainties and other factors" that may adversely impact the "operations, financial condition, solvency ratios, capital or liquidity positions or prospects" of Swiss Re, Elite Insurance, and other insurers.

188. As far back as 2009 and in subsequent years, Swiss Re's Annual Reports have recognized that "pandemics" may "expose the Group to unexpectedly large losses," which Swiss Re characterized as part of "the Group's ordinary course operations."

189. Because such risks are well-known to both Elite Insurance and insurers generally, there are exclusions in common usage in the insurance industry that could have unambiguously excluded losses caused by communicable diseases, viruses, and pandemics, without also covering such risks in the policies.

190. However, Elite Insurance, a sophisticated insurer, decided not to include any such exclusions in the Policy it sold to Peet's. To the contrary, the Policy expressly states that losses from communicable disease are covered and are of the type insured under the Policy.

191. The terms of the "all-risks" Policy, coupled with the absence of any applicable exclusion (despite the existence of commonly used exclusions for losses caused by viruses, communicable diseases, or pandemics), demonstrate that the Policy provides insurance coverage for Peet's business interruption losses at the Coffee Businesses.

192. The "contamination" exclusion is also ambiguous because, among other reasons, it directly conflicts with other coverages in the Policy under which contamination is covered.

193. Because the "contamination" exclusion is ambiguous, it must be read in favor of Peet's and construed in favor of coverage for the Claim.

J. The Policy's "Microorganism" Exclusion Does Not Apply

194. The Policy's "microorganism" exclusion applies only to "mold, mildew, fungus, spores, or other microorganism of any type, nature, or description." *Id.*, § VI.B.6.

195. Examples of "other microorganisms" in this exclusion include "wet rot or dry rot."

196. The term "microorganism" is not defined in the Policy.

197. COVID-19 is not a "microorganism," as that term is commonly understood, and cannot reasonably be interpreted to include COVID-19 within the list of mold, mildew, fungus, spores, wet rot, and dry rot that the exclusion is intended to address.

198. The use of the term "other" in "other microorganism" more broadly to include any substance whose presence poses an "actual or potential threat to human health" without regard to the type of microorganisms that precede that term renders the word "other" meaningless or illusory and contrary to settled principles of contractual interpretation.

199. In addition, for the reasons stated above, the “microorganism” exclusion cannot apply to bar the affirmative “communicable disease” coverage nor can it apply to bar losses premised on the same covered cause of loss (i.e., communicable disease) accompanied by physical loss or damage because doing so would render the Policy’s “communicable disease” coverage meaningless and illusory.

200. To the extent Elite Insurance contends that the Policy’s “microorganism” exclusion bars coverage for loss caused by COVID-19, communicable disease, or some other aspect of Peet’s claim, the Policy is, at best, ambiguous because it is susceptible to more than one reasonable interpretation and, therefore, must be construed in favor of coverage.

K. No Other Exclusions Bar Coverage

201. Peet’s losses and expenses, and coverage for such losses and expenses, are not excluded by the Policy under the contamination and microorganism exclusions discussed above or under any other exclusion.

202. If Elite Insurance wanted to exclude coverage for physical loss or damage caused directly or indirectly by a novel disease that was transmissible from human to human, through airborne contact, or from surfaces to humans, it could have used an exclusion that clearly and unambiguously did so, as required by New York law and as other insurers have done in other policies for other novel diseases. It did not. Elite Insurance cannot now retroactively rewrite the Policy it sold to Peet’s in an attempt to foreclose coverage for the Claim.

L. Elite Insurance’s Bad Faith Delay, Adjustment, and Denial of the Claim

203. Peet’s turned to Elite Insurance, reasonably expecting that Elite Insurance would cover its losses and expenses for its Claim under the Policy as described in this Complaint.

204. Elite Insurance breached the duty of good faith and fair dealing that is implied in every insurance policy by, *inter alia*, failing to conduct a fair and comprehensive investigation

before unreasonably refusing to pay Peet's Claim and by improperly refusing to pay the Claim. As outlined below, Elite Insurance never intended to reasonably and fully adjust Peet's Claim as required by law.

205. On April 23, 2020, Elite Insurance received a timely notice of loss from Peet's that detailed the losses described herein and requested coverage for the Claim.

206. On April 30, 2020, Peet's was informed that Sedgwick CMS ("Sedgwick"), a third-party claims administrator, was "assisting" Elite Insurance with the Claim.

207. During an initial conversation with Sedgwick on or around April 30, 2020, Peet's asked Elite Insurance to provide its coverage position for the Claim based on the threshold question of whether Elite Insurance believed that losses arising from the presence of COVID-19 could trigger coverage under the Policy. The adjuster acknowledged that Peet's should not be required to expend significant time and resources responding to insurer information requests or compiling detailed loss information unless Elite Insurance agreed to provide coverage.

208. Nevertheless, on May 22, 2020, Elite Insurance responded through Sedgwick by seeking additional information. Elite Insurance made 14 requests for "preliminary information," including: (i) "Are there any federal, state or local government orders impacting your business?"; (ii) "Do you expect to recover any funding from any governmental agency in response to the closure (full, partial) of your properties?"; and (iii) "Please identify all other insurance policies you have that may provide coverage for this Claim and if you have provided a notice of loss under those policies." Elite Insurance made these requests despite its intention to deny coverage for the Claim regardless of the answers to its questions.

209. The May 22, 2020 letter also confusingly stated that, while Sedgwick was "retained" by Elite Insurance "to investigate the Claim"—and Sedgwick signed and sent the letter—

–Sedgwick had “no authority” to “interpret” any terms of the Policy applicable to the Claim it was asked to investigate.

210. The May 22, 2020 letter stated that Elite Insurance was “investigating th[e] Claim under a complete reservation of its rights pursuant to the terms and conditions of the . . . policy . . . and applicable law.”

211. To the extent that the May 22, 2020 letter purportedly reserved Elite Insurance’s rights to exclude coverage under the Policy, the letter did not properly inform Peet’s of the full reasoning or grounds behind any such coverage reservation to apprise Peet’s of its coverage availability and options under the Policy.

212. By failing to include such rights in its purported reservation of rights letter, Elite Insurance waived such rights.

213. At the time, Elite Insurance had sufficient knowledge of the relevant facts to assess coverage for the Claim under the Policy.

214. Elite Insurance, however, chose not to fully and properly inform Peet’s of its position that coverage might be barred because the actual or suspected presence of COVID-19 does not constitute “physical loss or damage to property,” or under other exclusions or endorsements.

215. Elite Insurance’s choice not to give proper notice of its grounds for reserving or disclaiming coverage to Peet’s precludes effective disclaimer or denial under these provisions, exclusions, and endorsements.

216. On June 5, 2020, Peet’s responded to Elite Insurance’s reservation of rights letter and information requests, explaining that those requests were premature and would not assist Elite

Insurance in reaching its preliminary coverage determination, but rather address ancillary issues, such as loss adjustment and settlement or the quantum of Peet's losses under the Policy.

217. Peet's letter also explained the concern that, by raising a wide-ranging set of questions on ancillary issues before formally accepting coverage, Elite Insurance was requiring Peet's to incur the substantial expense and effort of supporting a claim unnecessarily if Elite Insurance ultimately planned to deny coverage based on its view regarding the nature of COVID-19 and whether its presence constitutes "direct physical loss or damage" to property or whether there are any exclusions in the Policy that Elite Insurance believes apply to preclude losses stemming from COVID-19. Elite Insurance demanding answers to information requests despite intending to deny coverage regardless of the Peet's answers to those questions directly contradicted what the Sedgwick adjuster had told Peet's at the outset of Sedgwick's engagement to assist Elite Insurance in handling the Claim.

218. Elite Insurance, through Sedgwick, then engaged in unreasonable delay and obfuscation, further revealing that its prior repeated inquiries were misleading and meant only to paint an inaccurate picture of the Claim, including that Elite Insurance and/or Sedgwick was investigating the Claim and evaluating coverage in good faith. They were not.

219. Peet's followed up with the Sedgwick adjuster on June 18, 2020, asking when Elite Insurance would be issuing its preliminary coverage position. Peet's followed up again on July 6, 2020 to which the Sedgwick adjuster stated he is "following up with the insurer so as to provide a formal response to our requests as outlined within your correspondence." After another week passed, Peet's followed up again on July 14, 2020, as Elite Insurance's improper and unreasonable delay continued.

220. On July 28, 2020, Elite Insurance through Sedgwick, finally responded to Elite Insurance's repeated requests for a preliminary coverage position. In that letter, Elite Insurance: (i) mischaracterized Peet's positions and the parties' prior communications; (ii) attempted to retract statements made by its retained adjuster from Sedgwick; (iii) stated that Elite Insurance cannot provide a coverage determination until Peet's responded to Elite Insurance's unduly burdensome and unnecessary information requests; and (iv) threatened to raise a non-cooperation defense if Peet's did not provide answers to all 14 of the onerous information requests.

221. Despite stating that Elite Insurance "cannot provide a coverage determination" without answers to each and every burdensome and unnecessary information request, that is exactly what Elite Insurance did in its July 28 letter, presenting a blanket denial for all losses directly and indirectly related to COVID-19, irrespective of what information Peet's provided.

222. Peet's notice of loss, which Elite Insurance had possessed for more than three months prior to issuing its July 28, 2020 letter, stated that Peet's "direct physical loss or damage to property" was "based on COVID-19" and that it also sought coverage for losses due to "orders from civil and/or governmental authorities limiting, restricting, or prohibiting partial or total access to property, and/or orders from civil and/or governmental authorities resulting in the suspension of business operations or services."

223. Despite Elite Insurance's blanket denial of coverage, on October 15, 2020, to assist Elite Insurance's purported "investigation" and to avoid resolving outstanding disputes through litigation, Peet's provided further responses to Elite Insurance's information requests, subject to a complete reservation of rights. Those responses included additional information and documents concerning the date of loss; the locations that comprise the Claim; Peet's efforts to clean the affected locations; data concerning numerous of employees at more than 30 stores who had tested

positive for COVID-19 shortly after being on premises; the nature of Peet's interest at each affected location; and various state or local governmental orders impacting the Coffee Businesses (copies of which Peet's provided under separate cover).

224. In this regard, the governmental orders were equally available to Elite Insurance. The orders are all public and readily accessible in their respective government website, and multiple third-party sources have likewise compiled the orders and made them available online. Upon information and belief, Elite Insurance was already aware of the relevant orders' import and contents given Elite Insurance's line of business or, at minimum, had equal access to the orders. Despite this, Elite Insurance chose to burden Peet's by asking it to spend time and money to collect information that Elite Insurance already had in its possession or had easy access to.

225. On October 29, 2020, Peet's provided additional documents and information in response to Elite Insurance's ongoing, onerous information requests, subject to a complete reservation of rights. Delaying over a month, it was not until December 3, 2020, that Elite Insurance responded indicating it had reviewed the additional documents Peet's had provided. When it did respond, Elite Insurance stated that Peet's supplemental submission did not contain any new materials, which was false and serves as another example of Elite Insurance's delay and lack of diligence in adjusting the Claim.

226. Elite Insurance rejected the sufficiency of the Claim information and documentation Peet's provided and refused to reconsider any of its coverage positions. Elite Insurance acknowledged potential coverage only for the Policy's On-Site Sublimited Communicable Disease Coverages, but nevertheless took the unreasonable position that Peet's had not provided sufficient "evidence" to trigger those coverages, thereby refusing to provide coverage under that coverage part as well.

227. Elite Insurance possessed all information necessary to render its preliminary coverage opinion on April 23, 2020, when it received Peet's notice under the Policy detailing various losses and triggered coverages arising from the presence of COVID-19 and the issuance of civil authority orders. Yet Elite Insurance, through an appointed adjuster that stated it had no authority to interpret the Policy governing the Claim it was investigating, engaged in unreasonable delay and deceptive acts and practices by making repeated inquiries and threatening non-cooperation for the failure to provide information that was neither reasonable nor necessary to make those coverage determinations.

228. Elite Insurance employed this strategy with Peet's and, upon information and belief, with other policyholders seeking coverage for COVID-19-related losses in New York and elsewhere, for the purpose of delaying resolution of even the most basic coverage issues under the "all-risk" policies Elite Insurance drafted.

229. In doing so, Elite Insurance imposed unnecessary burdens and high transaction costs on policyholders like Peet's to provide voluminous and cumbersome supporting documentation for claims that Elite Insurance knew it was going to deny anyways, and complicating the claims handling process to discourage policyholders and to avoid paying covered losses.

230. As part of this strategy, upon information and belief, in responding to policyholders' claims, Elite Insurance systemically steered its policyholders, including Peet's, into the On-Site Sublimated Communicable Disease Coverages for their COVID-19 losses, which improperly deprived its policyholders of the full extent of coverage available under the all-risk policies issued by Elite Insurance.

231. Notably, Elite Insurance took all the above coverage positions under the Policy without ever physically inspecting, testing, or even observing any Peet's or Coffee Businesses' location for the presence of COVID-19 or resulting direct physical loss or damage.

232. Elite Insurance never even requested an opportunity to physically inspect, test, or observe any locations following its receipt of Peet's notice of loss. Upon information and belief, Elite Insurance has issued similar coverage determinations to other policyholders in New York and around the country without taking any of these steps in analyzing coverage for COVID-19 claims.

233. Compounding Elite Insurance's and Sedgwick's delay in adjusting Peet's Coffee's Claim in a timely and efficient manner, Elite Insurance also refused repeated requests from Peet's to enter into a tolling agreement to allow the parties to attempt to resolve the outstanding coverage disputes through mediation and avoid proceeding to litigation.

234. Elite Insurance's onerous requests for information demonstrate that its request for information from Peet's were part of its illusory investigation and served no other purpose than to delay providing a coverage decision for the Claim.

235. Peet's performed all of its obligations under the Policy, including by notifying Elite Insurance of a covered cause of loss under the Policy, and any conditions precedent have occurred or been satisfied, met, waived, excused, or are otherwise inapplicable.

236. Elite Insurance's denial of coverage for Peet's Claim is improper, and its failure to provide coverage is a breach of the Policy.

237. The conduct of Elite Insurance and its authorized adjuster, Sedgwick, during the handling of Peet's Claim constituted bad faith.

238. New York Deceptive Practices Act, N.Y. Gen. Bus. § 349 makes unlawful “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service” in New York.

239. Elite Insurance’s deceptive practices in selling the Policy for “all-risks” it did not intend to cover, illusory and dilatory investigation, and unreasonable and improper denial of coverage for Peet’s Claim, constitute deceptive acts or practices pursuant to N.Y. Gen. Bus. Law § 349.

240. Elite Insurance’s materially deceptive conduct during the selling of the Policy and Elite Insurance and Sedgwick’s improper handling of Peet’s Claim has a broad impact on the public at large given, *inter alia*, Elite Insurance’s use of materially identical standard-form policy language with other consumers in New York (and elsewhere) and Elite Insurance’s practice of using similar claims handling tactics to improperly deny coverage. Elite Insurance’s conduct thus constitutes a violation of N.Y. Gen. Bus. Law § 349.

COUNT I
(Declaratory Relief)

241. Peet’s repeats and realleges the allegations in the preceding paragraphs.

242. The Policy described above is a valid and enforceable insurance contract.

243. Peet’s performed all of its obligations under the Policy, and any Policy conditions or requirements have been satisfied, waived, excused, or are otherwise inapplicable.

244. The Policy provides coverage for, among other things, business income losses and extra expenses that Peet’s incurred as a result of the interruption of its business caused by a covered cause of loss.

245. Peet’s submitted a claim for loss as a direct result of a covered cause of loss.

246. Peet's was denied coverage, or Elite Insurance repudiated its obligations to provide coverage, under the Policy based on Elite Insurance's improper position that, among other things, Peet's had not suffered any direct physical loss or damage to its covered properties as a result of the actual or suspected presence of COVID-19 and that any claim comprised of loss or damage due to COVID-19 is excluded under the Policy's "contamination" and "microorganism" exclusions.

247. An actual, justiciable controversy exists between Peet's and Elite Insurance concerning the availability and amount of coverage under the Policy for Peet's claims.

248. The controversy between Elite Insurance and Peet's is ripe for judicial review.

249. As a result, Peet's seeks a declaration from the Court that: (a) Peet's claims trigger the various coverage provisions identified above; (b) the Policy covers Peet's Claim; (c) Peet's sustained direct physical loss or damage from a covered cause of loss under the Policy; (d) Elite Insurance waived or is estopped from asserting its positions, as described above, to bar or limit coverage; (e) no exclusion applies to bar or limit coverage for Peet's claims; and (f) granting any other declaratory relief useful to resolving the dispute between the parties.

**COUNT II
(Breach of Contract)**

250. Peet's repeats and realleges the allegations in the preceding paragraphs.

251. The Policy is a valid and enforceable contract between Peet's and Elite Insurance.

252. Peet's performed all of its obligations under the Policy, and any Policy conditions or requirements have been satisfied, waived, excused, or are otherwise inapplicable.

253. Elite Insurance breached the Policy by improperly denying coverage to Peet's or by otherwise repudiating Elite Insurance's obligations to cover Peet's losses and expenses as expressly required under the Policy.

254. Peet's has sustained and continues to sustain damages as a result of Elite Insurance's breach of the Policy.

255. Peet's is entitled to damages as a result of Elite Insurance's breach in an amount to be determined at trial, including compensatory and consequential damages, pre-judgment and post-judgment interest, attorneys' fees and costs, and any other costs and relief that this Court deems appropriate.

**COUNT III
(Breach of the Covenant of Good Faith and Fair Dealing)**

256. Peet's repeats and realleges the allegations in the preceding paragraphs.

257. Elite Insurance is required to act in good faith, abstain from deception, and practice honesty and equity in all dealings with its policyholders, including Peet's, under the insurance policies it sells.

258. The business of insurance affects the public interest.

259. Elite Insurance owes a covenant of good faith and fair dealing to Peet's in light of the insurance relationship created by the Policy.

260. The covenant of good faith and fair dealing obligates each party to the contract to refrain from taking any action that would deprive the other of the benefits of the contract or to cause undue hardship or harm to the other party.

261. Elite Insurance's conduct described in this Complaint and otherwise in investigating, handling, and denying Peet's Claim under the Policy constitutes bad faith.

262. Specifically, Elite Insurance acted in bad faith with respect to Peet's by and through Elite Insurance's unreasonable, malicious, reckless, grossly negligent or intentional failure to adequately adjust Peet's Claim and refusal to pay Peet's the benefits to which it is entitled under the Policy.

263. Elite Insurance's reaction to Peet's claims was to press Peet's to respond to overly burdensome, premature or unnecessary information requests in an attempt to create time-consuming and costly work, to dissuade Peet's from pursuing its Claim, and to paint an inaccurate picture that Peet's was somehow delaying Elite Insurance's investigation or not cooperating and that Elite Insurance was investigating the Claim and evaluating coverage in good faith. The unreasonable nature of those tactics is further demonstrated by the fact that, because Elite Insurance denies that the presence of COVID-19 amounts to physical loss or damage, Elite Insurance always intended to deny coverage regardless of Peet's responses to those inquiries.

264. In violation of its duties to Peet's and as a result of Elite Insurance's gross negligence, Elite Insurance acted in bad faith by, among other acts and omissions: (a) unreasonably, maliciously, recklessly, or intentionally denying its obligations to pay benefits or by repudiating its obligations to pay benefits to Peet's when it knew or should have known it had an obligation to provide insurance coverage; (b) failing and refusing to pay covered loss under the Policy without a reasonable or arguable basis to do so and with the knowledge or reckless disregard of its lack of reasonable or arguable basis to refuse coverage; (c) unreasonably, maliciously, reckless, or intentionally delaying payment of insurance proceeds due and owed Peet's under the Policy; (d) failing to conduct a fair, complete and proper investigation of Peet's Claim before denying coverage or repudiating its obligation to provide coverage; and (e) breaching its promise of security to Peet's by unreasonably and without justification renegeing on the all-risk commercial property insurance policy benefits it promised to provide Peet's, leaving Peet's without the benefits of its insurance assets to operate its business during a pandemic.

265. The bad faith acts and omissions by Elite Insurance described above is the type of egregious disregard for the obligations specified by the broad, standard-form, all-risk Policy and

the rights entitled to Peet's under Elite Insurance's standard-form, all-risk commercial property insurance policies that would result in foreseeable losses and damages to the policyholder as to require the imposition of consequential damages.

266. Upon information and belief, Elite Insurance's bad faith conduct described above was perpetrated for the purposes of placing Elite Insurance's own pecuniary interests ahead of those of Peet's and for withholding from Peet's the rights and benefits to which it is entitled under the Policy.

267. As a result of Elite Insurance's bad faith breach of its obligations under the Policy, Peet's has suffered and will continue to suffer substantial damages in an amount to be proven at trial, including additional loss of business income, extra expense, and attorneys' fees that it would not otherwise have needed to pay had Elite Insurance made full payment of Peet's losses covered under the Policy.

268. Those damages were a natural and probable consequence of Elite Insurance's breach, were or should have been foreseeable to Elite Insurance, and were reasonably contemplated by the parties because, for example, the widespread financial, operational, and liquidity risks associated with pandemics have been known to the insurance industry for decades and were explicitly recognized by Elite Insurance as risks that could impact the frequency, severity, and development of insured claim events, yet Elite Insurance, unlike other insurers, decided not to clearly exclude losses by communicable diseases, viruses, and pandemics from its broad, all-risk commercial property insurance policies.

269. Because Elite Insurance had recognized for years that pandemics may increase its own operations, financial conditions, solvency, and capital and liquidity positions or prospects, it was or should have been reasonably foreseeable at the time it issued the Policy that the refusal to

afford protection under the broad, all-risk policy it sold to Peet's for those same risks would have immediate and dire financial consequences to Peet's, including, but not limited to, attorneys' fees, expenses, and other consequential damages, all directly resulting from Elite Insurance's placing its own pecuniary interests ahead of its policyholder and forcing Peet's into litigation to recover the benefits under the Policy.

270. Peet's is entitled to damages as a result of Elite Insurance's breach of the covenant of good faith and fair dealing, including compensatory and consequential damages, punitive damages, pre- and post-judgment interest, attorneys' fees and costs, and any other costs and relief that this Court deems appropriate.

COUNT IV
(Violation of N.Y. Gen. Bus. Law § 349)

271. Peet's repeats and realleges the allegations in the preceding paragraphs.

272. Peet's, like the thousands of other businesses who enter into insurance contracts with Elite Insurance, is an individual consumer of insurance products.

273. The Policy is comprised of standard-form language that is designed and intended to be purchased by the public at large in the State of New York and elsewhere.

274. Elite Insurance routinely and commonly utilizes the same standard-form policy language in issuing other policies, such that Elite Insurance's acts and practices potentially affects similarly-situated consumers suffering losses arising from COVID-19 and have purchased policies from Elite Insurance with materially identical wording.

275. Elite Insurance's acts and practices in investigating, handling, and denying Peet's and other policyholders' claims based on the same or similar policy language has a broad impact on insurance consumers at large.

276. In fact, other policyholders have filed lawsuits against Elite Insurance in New York (and elsewhere) raising coverage disputes involving COVID-19-related losses under Elite Insurance's all-risk commercial property insurance policy forms like the Policy at issue in this action. Those other insurance coverage lawsuits allege, among other things, that Elite Insurance knew that its all-risk policies provided coverage for COVID-19-related losses but nevertheless denied claims without any genuine investigation, taking the same improper, blanket approach to denying claims as what occurred with Peet's. Another lawsuit filed against Elite Insurance during the pandemic under the same "leading edge all-risk form" policy alleges that Elite Insurance employed a pattern of unreasonable delay throughout the claims adjustment process, denying payment without reasonable basis to do so, impairing the benefit of the bargain purchased under the all-risk policy, and resulting in additional consequential damages to the policyholder's business.

277. Thus, the dispute in this action is not limited to a challenge regarding coverage made on the facts unique to Peet's but rather relates to consumer-oriented conduct affecting the public at large.

278. Elite Insurance's consumer-oriented practices were materially misleading and deceptive, including when Elite Insurance failed to pay benefits due to Peet's under the terms of the standard-form Policy.

279. In addition to failing to pay benefits due under Elite Insurance's standard all-risk commercial property insurance policy forms, through the misleading and deceptive acts discussed herein, Elite Insurance engaged in a scheme to discourage or obstruct Peet's from recovering under the Policy by: (i) demanding answers to information requests despite intending to deny coverage regardless of the policyholder's answers to those questions, which directly contradicted the

statements made by Elite Insurance's adjuster at the outset of the claim; (ii) threatening to raise non-cooperation defenses if policyholders did not expend significant time and resources in response to Elite Insurance's information requests to support a claim that Elite Insurance always intended to deny; (iii) steering policyholders to On-Site Sublimited Communicable Disease Coverages for COVID-19 losses, improperly depriving policyholders of the full extent of coverage available under Elite Insurance's all-risk policies; and (iv) after receiving information in support of claims, belatedly issuing blanket denials of coverage for any and all losses arising from COVID-19, including for On-Site Sublimited Communicable Disease Coverages, without actually investigating the underlying facts or law governing each claim.

280. As a result of Elite Insurance's consumer-oriented, materially misleading and deceptive acts or practices, Peet's has suffered and will continue to suffer substantial damages in an amount to be proven at trial.

281. Peet's is entitled to damages as a result of Elite Insurance's deceptive acts and practices, including compensatory and consequential damages, treble damages, punitive damages, pre- and post-judgment interest, attorneys' fees and costs, and any other costs and relief that this Court deems appropriate.

WHEREFORE, Peet's respectfully requests that the Court:

1. Declare that: (a) Peet's claims trigger the various coverage provisions identified in this Complaint; (b) the Policy covers Peet's claims; (c) Peet's sustained direct physical loss or damage from a covered cause of loss under the Policy; (d) NAIEC waived or is estopped from asserting its positions, as described in this Complaint, to bar or limit coverage; (e) no exclusion applies to bar or limit coverage for Peet's

- claims; and (f) granting any other declaratory relief useful to resolving the dispute between the parties;
2. Order Elite Insurance to provide coverage for Peet's claims under the Policy;
 3. Award damages, including actual, compensatory, consequential, special, exemplary, and punitive damages, against Elite Insurance in an amount to be determined at trial;
 4. Award pre-judgment, post-judgment, and statutory interest;
 5. Award attorneys' fees and costs of suit incurred; and
 6. Grant such other and further relief, including any equitable relief, as the Court deems just and proper.

Date: February 26, 2021

Respectfully submitted,

PEET'S COFFEE & TEA HOLDCO, INC.

By its attorneys,

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