

Cause No. 2020CI13669

**SANBUCO, INC.
DOING BUSINESS AS
HAPPY HOUND GROOMING**

IN THE DISTRICT COURT

VS.

57TH

**MASSACHUSETTS BAY
INSURANCE COMPANY,
GOVERNOR INSURANCE
AGENCY, INC., HANOVER
INSURANCE GROUP, INC.
AND JEANNE MUGAN**

____ JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

PLAINTIFF, SANBUCO, INC., DOING BUSINESS AS HAPPY HOUND GROOMING (“Plaintiff”) files this Original Petition against MASSACHUSETTS BAY INSURANCE COMPANY, (“MASSACHUSETTS BAY”), GOVERNOR INSURANCE AGENCY, INC. (“GOVERNOR”) HANOVER INSURANCE GROUP, INC. (“HANOVER”) and JEANNE MUGAN (“MUGAN”) and in support of this instrument would respectfully show as follows:

I.

DISCOVERY CONTROL PLAN LEVEL

1. Plaintiff intends for discovery to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure. This case involves complex issues and will require extensive discovery.

Therefore, Plaintiff will ask the Court to order that discovery be conducted in accordance with a discovery control plan tailored to the particular circumstances of this suit.

II.
PARTIES AND SERVICE

2. Plaintiff's principal place of business is in Bexar County, Texas.

3. Defendant MASSACHUSETTS BAY INSURANCE CO. is in business of issuing insurance policies in the State of Texas and authorized do so by the Texas Department of Insurance. Defendant MASSACHUSETTS BAY INSURANCE CO.'s business in Texas includes, but is not limited to, the following:

The taking or receiving of application for insurance, including Plaintiff's application for insurance;

The receiving or collection of premiums, commissions, membership fees, assessments, dues or other consideration for any insurance or any part thereof, including any such consideration or payments from Plaintiff;

The making, issuance or delivery of contracts of insurance to residents of this state or persons and companies authorized to do business in this state, including Plaintiff; and

The adjusting of claims on behalf of Defendants HANOVER and GOVERNOR'S presented by insureds, including Plaintiff.

Defendant **MASSACHUSETTS BAY INSURANCE CO.** can be served with citation, via certified mail, at the following address:

440 Lincoln Street, Worcester, MA 01653 - 0002 and at

Service is requested at this time.

4. Defendant GOVERNOR INSURANCE AGENCY, INC is in the business of insurance in the State of Texas and licensed to do so by the Texas Department of Insurance. Defendant GOVERNOR INSURANCE AGENCY, INC.'s business in Texas includes, but is not limited to, the following:

The taking or receiving of applications for insurance, including Plaintiff's application for insurance;

The receiving or collection of premiums, commissions, membership fees, assessments, dues or other consideration for any insurance or any part thereof, including any such consideration or payments from Plaintiff; and

The making, issuance or delivery of contracts of insurance to residents of this state or persons and businesses authorized to do business in this state, including Plaintiff.

Defendant **GOVERNOR INSURANCE AGENCY, INC.** conducts business in Texas and may be served with citation, via certified mail, at:

972 Youngstown Kingsville Road, Vienna, OH 44473

Service is requested at this time.

5. Defendant **HANOVER INSURANCE GROUP, INC.** is in the business of insurance in the State of Texas via its subsidiaries, agencies and agents licensed with the Texas Department of Insurance. Defendant HANOVER INSURANCE GROUP, INC.'s business in Texas includes, but is not limited to, the following:

The making and issuing of contracts of insurance with individuals and business entities, including Plaintiff;

The taking or receiving of application for insurance, including Plaintiff's application for insurance;

The receiving or collection of premiums, commissions, membership fees, assessments, dues or other consideration for any insurance or any part thereof, including any such consideration or payments from Plaintiff;

The issuance or delivery of contracts of insurance to residents of this state or persons authorized to do business in this state, including Plaintiff; and

The adjusting of claims on behalf of Defendants MASSACHUSETTS BAY and GOVERNOR presented by insureds, including Plaintiff.

Defendant **HANOVER INSURANCE GROUP, INC** conducts business in the State of Texas and may be served with citation, via certified mail, at his business address at:

440 Lincoln Street, Worcester, MA 01653 - 0002

Service is requested at this time.

6. Defendant **JEANNE MUGAN** is in the business of insurance in the State of Texas and licensed to adjust insurance claims through the Texas Department of Insurance. Defendant MUGAN's business in Texas includes, but is not limited to, the following:

The adjusting of claims on behalf of Defendants MASSACHUSETTS BAY, GOVERNOR and others presented by insureds, including Plaintiff.

Defendant **JEANNE MUGAN** may be served with citation, via certified mail, at her business address at:

440 Lincoln Street, Worcester, MA 01653 - 0002

Service is requested at this time.

III.

JURISDICTION AND VENUE

7. Venue is appropriate in Bexar County, Texas because all or a substantial part of the conduct giving rise to the causes of action was committed in Bexar County, Texas and because Plaintiff and its insured business and property, which are the subject of this suit are located in Bexar County, Texas. Accordingly, venue is proper pursuant to Texas Civil Practice & Remedies Code §15.002.

IV.

FACTUAL BACKGROUND

8. Plaintiff is the owner of a commercial property insurance policy underwritten by Defendant MASSACHUSETTS BAY. In exchange for substantial premiums paid over the course of years, Defendants HANOVER, MASSACHUSETTS BAY AND GOVERNOR sold

and renewed a commercial “all risk” insurance policy, number ODW-*****-6 ("the Policy"), promising to indemnify Plaintiff for losses resulting from occurrences, including the necessary suspension of business operations caused by a government order, civil authority and other risks. The Policy was renewed for the policy period of April 1, 2020 through April 2, 2021 after being continuously in full force and effect since inception, with Plaintiff faithfully paying premiums for the promised coverage for property, business personal property, business income, business expense from dependent properties, extended business income, extra expense and additional coverages, including Civil Authority. The Policy insures Plaintiff’s business in Bexar County, including the mobile pet grooming vehicles used by Plaintiff’s technicians, ("the Property"). Plaintiff secured the Policy to protect its financial interests from any loss of income has performed all of its obligations under the Policy which provides broad coverage for losses caused by any cause unless expressly excluded.

9. For decades, the Center for Disease Control (“CDC”) and the World Health Organization (“WHO”) have been warning about the possibility of an airborne virus that could cause a worldwide pandemic. The United States has seen the effects of other health issues over the past century and insurance carriers have analyzed risks for typhoid fever, MERS, polio, AIDS, influenza, SARS, Ebola, tuberculosis and other medical crises. In 1971, the Insurance Services Office, Inc. (“ISO”) was created as an advisory and rating organization for the property and casualty insurance industry. ISO maintains over nineteen billion detailed records in its database relating to the insurance industry and risk management within the insurance industry. Included in the database are records concerning the 2003 SARS outbreak that impacted over 20 countries and the 2009 H1N1 Swine Flu where the CDC estimated more than 60.8 million people were infected, including 12,469 in the United States.

10. After considering all data maintained by the Insurance Services Office, Inc. (“ISO”), actuaries calculated the risks for insuring individuals and businesses against different risks, insurance companies, including Defendants HANOVER, MASSACHUSETTS BAY and GOVERNOR, periodically negotiated policy terms and rates in Texas. Since 1971, such terms and rates considered mass infections risks and resulted in significant profits for all insurance underwriters and issuing agents for this type of insurance policy. Of approximately \$1.22 trillion in net premiums paid in 2018, property and casualty insurance accounted for approximately \$618 billion in net premiums paid. The property and casualty sector of the insurance industry maintained \$1.7 trillion in accumulated cash and invested assets in 2018 and paid out \$49.5 billion in property losses related to catastrophes. After also considering operating expenses, the insurance industry garnered approximately \$60 billion in net income in 2018.

11. Plaintiff and other consumers have purchased the all risk policies without an ability to negotiate terms or rates for decades. The possibility of a COVID-19 virus or something similar has been a calculated risk underwritten by insurance companies like Defendants HANOVER AND MASSACHUSETTS BAY. Premiums for such risks have been profitably accepted by the insurance industry for decades in exchange for the promise to insure Texas residents against potential anticipated losses.

12. On February 7, 2020, the federal government sent American evacuees who had been exposed to COVID-19 in or near Wuhan, China, to Lackland-Joint Base San Antonio for quarantine. On February 13, 2020, the first evacuee tested positive and a second wave of evacuees from the Diamond Princess cruise ship arrived at Lackland-Joint Base San Antonio. On March 1, 2020, a positive evacuee was released into the public spending approximately eleven hours in the community, including North Star Mall’s food court. On March 2, 2020, the Mayor of San Antonio

declared a Public Health Emergency designed to prevent Lackland evacuees from being released into the general public. Concerns regarding San Antonio's COVID-19 exposure combined with the governmental declarations, resulted in large events being cancelled and affected the tourist industry.

13. In a rapid series of declarations and orders at the city, county and state level, the ability of different industries to generate income was severely impaired by governmental restrictions and the public's reluctance to venture out during these unprecedented times. On March 13, 2020, Texas Governor Greg Abbott issued a Declaration of State Disaster pursuant to the Texas Disaster Act of 1987, Government Code, Title 4, Chapter 418, Sec. 418.012. As defined by the Texas Disaster Act of 1987, Sec. 418.004(1):

"Disaster" means *the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, extreme heat, cybersecurity event, other public calamity requiring emergency action*, or energy emergency." (Emphasis added).

14. On March 23, 2020, "Stay Home /Work Safe" orders were issued in Bexar County and San Antonio. On March 31, 2020, Texas Governor Greg Abbott signed an executive order requiring the public to stay home and closing all "non-essential" businesses beginning April 2nd through April 30th of 2020. The described purposes of the Orders were to protect the "health, safety and welfare" of Bexar County and San Antonio residents, and to slow the spread of COVID-19 by "minimizing social gatherings" and "minimizing in-person contact." According to the Texas Department of Health and Human Services, COVID-19 has been and continues to be present in Bexar County and San Antonio. The "Stay Home Stay/Work Safe" orders closed Plaintiff's business. City, County and

State requirements for all “essential” and “non-essential” businesses continue to change in the hope of reopening all businesses to a pre-pandemic status.

15. Government orders issued to address the pandemic and health care crises have resulted in Plaintiff suffering a physical loss of the insured Property, and alternatively, damage to the insured Property and suspension of the business. The claimed losses are covered under the General All Risk provisions, Business Income Loss provisions, Extended Business Loss provisions, the Civil Authority provisions, the Business Income from Dependent Properties provisions and the extended coverage provisions under the Policy.

16. During the term of the Policy, Plaintiff sustained and will continue to sustain covered losses during the COVID-19 pandemic and the period enforcing subsequent orders from the State of Texas, Bexar County and the City of San Antonio. Governor Abbott issued proclamations between March 13, 2020 and July 10, 2020 and issued Executive Orders GA-08 through 29. Bexar County issued similar declarations and orders. Judge Nelson Wolff issued declarations beginning March 2, 2020 and Executive Orders NW-01 through 12 beginning March 18, 2020. The City of San Antonio also issued declarations of public health emergency. The City of San Antonio’s Declaration of Public Emergency was issued on March 2, 2020 and additional declarations with different Addendums outline the municipal orders in place until the filing of this instrument that closed, modified and continue to regulate Plaintiff’s business and others. Plaintiff brings this suit for declaratory relief, breaches of Defendants’ promises and agreements, anticipated continued breaches of Defendants’ agreements and promises and for relief from the damages caused by Defendants to Plaintiff.

V.

COVERAGE ISSUES

A. Coverage for Business Income

17. As noted above, Plaintiff paid significant annual premiums for different coverage provisions under the Policy for many years. Defendants HANOVER, GOVERNOR and MASSACHUSETTS BAY sold and delivered to Plaintiff and other Texas businesses an annual policy and routinely described the Loss of Business Income Coverage in a manner consistent with Plaintiff's understanding and ultimate claim. The Declarations pages/schedules outlined coverage for "Business Income, Business Income and Extra Expense, Extended Business Income, Business Income from Dependent Properties and Civil Authority" losses. Each coverage provision has defined limits of coverage - - limiting time, limiting financial amounts and limiting claim periods. Business Income losses are for "ACTUAL BUSINESS LOSS SUSTAINED NOT EXCEEDING 12 CONSECUTIVE MONTHS." Business Income and Extra Expense Coverage has a waiting period and a \$250,000.00 limit of coverage. Additional coverage is available for Extended Business Income, Business Income from Dependent Properties and Civil Authority. As deductibles, the policy provides that the first 72 hours of losses are not covered. Under the "Coverage," provision, Plaintiff's Policy provides:

"We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss."

Unless specifically excluded Defendants' agreements, representations and promises to pay Plaintiff for losses to "Covered Property." The Covered Property included, *inter alia*, Plaintiff's Buildings and Business Personal Property. "Business Personal Property" under the policy includes all personal property in or on the buildings and includes **"Property you own that is used in your business."** All risks of loss are "Covered Causes of Loss" unless the loss is excluded or limited.

18. Additionally, Defendants represented, agreed and promised that Plaintiff had coverage for the Loss of "Business Income. Business Income means the:

“i. Net Income (Net Profit of Loss before income taxes) that would have been earned or incurred if no physical loss or damage had occurred . . .; and

b. Continuing normal operating expenses incurred, including payroll.”

As noted above, the coverage is limited to “ACTUAL BUSINESS LOS SUSTAINED NOT EXCEEDING 12 CONSECUTIVE MONTHS.” The Business Income provision of the policy further provided for additional Extended Business Income - Other than Rental Value for thirty days. The policy also provided for “Extra Expense Coverage.” On page 12 of the policy, the following is provided:

“We will pay the 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 damage to property at the described premises.”

Plaintiff suffered lost income when the governmental Orders closed its business, and on information and belief, Plaintiff will continue to suffer lost income as a consequence of the government shutdown and pandemic fear even after the Orders are completely lifted. The pandemic which was declared by the Governor to be a natural disaster caused lost income to Plaintiff and such disaster was an insured event that was not excluded under the policy. Consumer fear of the virus and the stay at home orders have caused Plaintiff’s physical loss to the property and loss of business income – again risks that are not specifically excluded by the all risk Policy. Plaintiff’s business has been transformed by external events, not specifically excluded, from sustainable, revenue generating operations to the unsatisfactory state of semi-operational or full-blown closure of its establishment.

B. Coverage for Civil Authority

19. The Business Income provisions of the policy also provides additional coverage for Civil Authority losses:

“(1) When a *Covered Cause Of Loss* causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises due to direct physical loss or damage to property within one mile of the described 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 described 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 property.”

(emphasis added).

“Civil Authority” indemnification will “begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began.”

The referenced Orders are clearly acts of Civil Authority which have caused Plaintiff’s loss of income as described above. The Orders, along with their stated purposes, qualify as a Covered Cause of Loss under the Policy, especially given that Texas precedent holds “physical loss” can occur without actual physical damage to a property.

C. Wrongful Denial of Coverage

20. Complying with prerequisites for notice and coverage, Plaintiff reported its business interruption losses to Defendants MASSACHUSETTS BAY AND GOVERNOR on or about May 19, 2020. Defendants HANOVER and MASSACHUSETTS BAY assigned Defendant MUGAN to adjust the claim and investigate the loss related to business interruption. On information and belief, Plaintiff would represent that Defendants HANOVER and MASSACHUSETTS BAY had instructed Defendant MUGAN and others to deny claims associated with “virus losses” prior to

Plaintiff submitting its claim.

21. On June 3, 2020, Defendants HANOVER, MUGAN and MASSACHUSETTS BAY wrongfully denied Plaintiff's claim without meaningful investigation. The reasons for denying coverage outlined in the denial letter are inconsistent with the Policy language and ignore obvious facts. A copy of the denial letter is attached hereto as Exhibit "A" and incorporated for all purposes. As a result of Defendants HANOVER, MASSACHUSETTS BAY and MUGAN mishandling Plaintiff's claim, Defendants HANOVER, MASSACHUSETTS BAY and MUGAN caused and continue to cause Plaintiff further and additional damages.

22. Defendants HANOVER, MASSACHUSETTS BAY and MUGAN's denial was based, in part, because "there were no direct physical damages sustained." Policy ODW-*****-06 does not require a loss caused by physical "damage," but only physical "loss." Defendants are attempting to rewrite the policy claiming only a physical damage or actual change to the property is covered and would permit coverage for business income loss. At the very least, Plaintiff suffered a physical loss of the covered property as a result of the governmental actions taken to limit the impact of the pandemic on the health, safety and welfare of San Antonio and Bexar County citizens. Further, Plaintiff clearly suffered physical loss to Covered Property because Plaintiff was unable to operate and use the business premises and vehicles for their intended purposes of securing business, arranging appointments and servicing the pet grooming needs of their customers. Plaintiff suffered a loss to its "use interest as tenant in improvements and betterments" as contemplated in the Policy.

Such loss continues to be suffered as San Antonio and Bexar County are trying to return to pre-pandemic conditions. Moreover, the "physical damage" interpretation by Defendants is contrary to well established precedent. By way of example, the accidental release of ammonia into a building will render a building unsafe until the ammonia can be removed. As the insured property has

suffered covered property damage, the mere presence of a dangerous substance has been consistently held to constitute “physical loss or damage.” A party’s inability to use, inhabit, access or otherwise avail itself of insured property, satisfies the coverage requirement of direct physical loss or damage.

23. Defendants HANOVER, MASSACHUSETTS BAY and MUGAN also based their denial of coverage on their misconstruing the Business Income provision of the policy, Section IA5f, (1)(a) and (b) of Form 391-1003 8/16. The Business Income provision does not require the business “suspension” be caused by physical “damage” to a building, only a physical “loss.” Plaintiff has suffered a “direct physical loss” and “damage to a described premises” as outlined in the Policy. Defendants are attempting to rewrite the Policy claiming only a physical damage or actual change to the property is covered and would permit coverage for business income loss. Plaintiff suffered a “physical loss of the covered property” and “damage to property” as a result of the governmental actions taken to limit the impact of the pandemic on the health, safety and welfare of San Antonio and Bexar County citizens. The governmental actions and actions of civil authority are “Covered Causes of Loss” as defined by the policy. As an “All Risk” policy, *ALL RISKS* are covered unless excluded or limited. See, Section IA3 of the Policy. As reflected in the description of Additional Liability Coverages, the General Liability Broadening Endorsement as a special class “85286” is for “PET GROOMING SERVICES - MOBILE.” The Covered Property at issue and the Business Income coverage under the Policy is for Plaintiff’s business operation, not the physical structure where the business operates or the individual vehicles used . Plaintiff clearly suffered physical loss to Covered Property because Plaintiff was unable to operate and use its premises and vehicles for their intended business purposes. Such loss continues to be suffered as San Antonio and Bexar County are trying to return to pre-pandemic conditions. Defendants’ denial based on misapplied policy language has no factual, contextual or legal application to the Plaintiff’s claim based on upon

clear Policy language. Alternatively, the terms referenced by Defendants are ambiguous and must be construed in favor of coverage for Plaintiff as required by law. *RSUI Indemnity Company v. The Lynd Company*, 466 S.W.3d 113 (Tex. 2015), *Balandran v. Safeco Insurance Co.*, 972 S.W.2d 738 (Tex.1998), *National Union Fire v. Hudson Energy Company, Inc.*, 811 S.W. 552, (Tex. 1991),

24. Defendants HANOVER, MASSACHUSETTS BAY and MUGAN also based their denial of Plaintiff's claim on the "virus" endorsement, which excludes losses caused "from any virus, bacterium . . . that induces or is capable of inducing physical illness or disease." However, Defendants ignore the fact that Plaintiff, Plaintiff's employees and Plaintiff's suppliers had no known or suspected exposure to COVID-19 at its Property. At the time of this filing, Plaintiff has no evidence of a virus contamination that caused Plaintiff's business operations to cease. No facts exist to support Defendant's pretextual argument that the COVID-19 virus caused Plaintiff's business operations to be "suspended." The Exclusion of Loss Due to Virus or Bacteria has no application to Plaintiff's claim based on upon clear Policy language and known facts relevant to the adjusting process. Alternatively, the exclusion is ambiguous and must be construed in favor of coverage for Plaintiff as required by law. *RSUI Indemnity Company v. The Lynd Company*, 466 S.W.3d 113 (Tex. 2015), *Balandran v. Safeco Insurance Co.*, 972 S.W.2d 738 (Tex.1998), *National Union Fire v. Hudson Energy Company, Inc.*, 811 S.W. 552, (Tex. 1991),

25. With respect to the additional coverage for Civil Authority, Defendants HANOVER, MASSACHUSETTS BAY and MUGAN denied the policy provision's applicability to Plaintiff's claim stating "The Civil Authority Coverage is given when a governmental agency limits access to your business due to damage by a Covered Cause of Loss. . . . [T]here is no physical damage in your area that prompted governmental action to close your operations. Further, as already

discussed, this virus response is not a Covered Cause of Loss per the Exclusionary Form CP0140 0706.” Although HANOVER, MASSACHUSETTS BAY and MUGAN acknowledged the Orders issued on March 18, 2020 “shut down” Plaintiff’s business, coverage was wrongfully denied. The Orders issued by Civil Authority prohibited Plaintiff from continuing its business operations. The clear loss of property was directly caused by Civil Authority closing Plaintiff’s business and in issuing Orders that compromised the ability of customers to use Plaintiff’s services.

26. Defendants HANOVER, MASSACHUSETTS BAY and GOVERNOR failed to give proper, advance notice and disclosure of the Exclusions and is thus barred from reliance upon them. On information and belief, Defendants HANOVER, MASSACHUSETTS BAY, GOVERNOR and MUGAN are barred from relying on the Exclusions as a result of regulatory and/or administrative estoppel. Alternatively, any Exclusions as interpreted by Defendants HANOVER, MASSACHUSETTS BAY, GOVERNOR and MUGAN are unconscionable and/or contrary to public policy and cannot be enforced as written.

27. Defendants HANOVER, MASSACHUSETTS BAY, GOVERNOR and MUGAN made material misrepresentations about Policy provisions, coverage and Texas law applicable to Plaintiff’s Loss of Income, Civil Authority, additional coverages and Virus Exclusion. Defendants HANOVER, MASSACHUSETTS BAY, GOVERNOR and MUGAN wrongfully denied Plaintiff’s claim for business interruption losses and extended coverage even though the Policy provides coverage for losses such as those suffered by Plaintiff. Furthermore, based upon information and belief, Defendants HANOVER, MASSACHUSETTS BAY and GOVERNOR engaged its agents and adjustors to misrepresent Policy provisions and coverage. To date, each Defendant continues to deny the payment for Plaintiff’s loss of business and deny any right to compensation under the Policy.

VI.
CAUSES OF ACTION

A. BREACH OF CONTRACT

28. Plaintiff re-alleges the foregoing paragraphs alleging the facts in this matter and incorporates the same by reference for all purposes. Defendants and their agents' conduct constitute a breach of the insurance contract between Defendants and Plaintiff. Defendants' failure and/or refusal, as described above, to pay Plaintiff the adequate compensation as they are obligated to do under the terms of the Policy in question, and under the laws of the State of Texas, constitute a breach of the insurance contract with Plaintiff.

29. Defendants failed to perform their contractual duty to adequately compensate Plaintiff under the terms of the Policy. Specifically, Defendants HANOVER, MASSACHUSETTS BAY and MUGAN wrongfully denied coverage for loss of Business Income, Civil Authority and other extended coverages and refused to offer the full proceeds of the Policy, although due demand was made for proceeds to be paid in an amount sufficient to cover Plaintiff's business losses, and all conditions precedent to recovery under the Policy have been carried out and accomplished by Plaintiff. Defendants' conduct constitutes a breach of the insurance contract between Defendants and Plaintiff.

B. NONCOMPLIANCE WITH TEXAS INSURANCE CODE

UNFAIR SETTLEMENT PRACTICES

30. Plaintiff re-alleges the foregoing paragraphs alleging the facts in this matter and incorporates the same by reference for all purposes. Texas law is clear that insurance companies and anyone engaged in the business of insurance by investigating and adjusting a claim must conduct a reasonable, full and fair claim investigation. Defendants HANOVER, GOVERNOR, MASSACHUSETTS BAY and MUGAN violated Chapter 541 of the Texas Insurance Code, in

one or more of the following particulars:

§ 541.061. Misrepresentation of Insurance Policy.

Making an untrue statement of material fact;
Failing to state a material fact necessary to make other statements made not misleading;
Making a misleading statement; and
Failing to disclose a material matter of law.

PROMPT PAYMENT OF CLAIMS

31. Plaintiff re-alleges the foregoing paragraphs alleging the facts in this matter and incorporates the same by reference for all purposes. Defendants HANOVER's, MASSACHUSETTS BAY's and MUGAN's conduct constitutes and will continue to constitute multiple violations of the Texas Insurance Code, Prompt Payment of Claims. All violations made under this article are made actionable by §542.060 of the TEXAS INSURANCE. CODE.

32. Defendants HANOVER, MASSACHUSETTS BAY and MUGAN failed to meet their obligations under the Texas Insurance Code to timely begin an investigation of Plaintiff's claims and timely request all information reasonably necessary to investigate Plaintiff's claims within the statutorily mandated time of receiving notice of Plaintiff's claims. The conduct of Defendants HANOVER, MASSACHUSETTS BAY and MUGAN constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEXAS INSURANCE CODE, §542.055.

33. Further, Defendants HANOVER, MASSACHUSETTS BAY and MUGAN failed to accept or deny Plaintiff's full and entire claims within the statutorily-mandated time of receiving all necessary information. The conduct of Defendants HANOVER, MASSACHUSETTS BAY and MUGAN constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEXAS INSURANCE CODE, §542.056.

34. Defendants HANOVER, MASSACHUSETTS BAY and MUGAN failed and will fail

to timely pay Plaintiff's claim, and for all of the covered losses due to its wrongful denial of the policy benefits. TEXAS INSURANCE CODE, §542.057.

35. Defendants HANOVER, MASSACHUSETTS BAY and MUGAN failed and will fail to meet their obligations under the Texas Insurance Code regarding payment of claims without delay due to their wrongful denial. Their conduct constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEXAS INSURANCE CODE, §542.058.

36. Because of Defendants' wrongful acts and omissions, Plaintiff was forced to retain the professional services of the attorney and law firm who is representing Plaintiff with respect to these causes of action.

C. BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING

37. Plaintiff re-alleges the foregoing paragraphs alleging the facts in this matter and incorporates the same by reference for all purposes. Each Defendant's conduct constitutes a breach of the common law duty of good faith and fair dealing owed to the insureds pursuant to insurance contracts. "Good faith and fair dealing" is defined as the degree and diligence which a man of ordinary care and prudence would exercise in the management of one's own business." This tort arises from Texas law, which recognizes that a special relationship exists as a result of the unequal bargaining power between Plaintiff (the policyholder) and Defendants (the insurers). A special relationship exists and continues to exist between Defendants and Plaintiff as a result of the first-party insurance policy issued by Defendants HANOVER, MASSACHUSETTS BAY, GOVERNOR and MUGAN. Inherently unequal bargaining power exists between Plaintiff and Defendants HANOVER, MASSACHUSETTS BAY, GOVERNOR and MUGAN.

38. From and after the time Plaintiff's losses were presented to Defendants, their liability to pay the full claim in accordance with the terms of the Policy was reasonably clear. However, Defendants

HANOVER, MASSACHUSETTS BAY, GOVERNOR and MUGAN have refused to pay Plaintiff in full and wrongfully denied the claim, despite there being no basis upon which a reasonable insurance company would have relied to deny the full payment. Defendants HANOVER, MASSACHUSETTS BAY, GOVERNOR and MUGAN considered only their own interests and purposefully engaged in a one-sided self-serving interpretation of the claim while concealing from Plaintiff that they were making no effort to consider Plaintiff's contractual claims. Defendants HANOVER's, MASSACHUSETTS BAY's, GOVERNOR's and MUGAN's conduct constitutes a breach of the common law duty of good faith and fair dealing.

39. On information and belief, Plaintiff would represent that Defendants HANOVER's, MASSACHUSETTS BAY's, GOVERNOR's and MUGAN's denial of coverage is based on internal high level directives issued before Plaintiff's claim was filed to automatically deny all pandemic-related business-interruption claims. Defendants HANOVER's, MASSACHUSETTS BAY's AND MUGAN's denial of coverage is unreasonable and reflects a failure to adequately and reasonably investigate and evaluate Plaintiff's claim, even though Defendants HANOVER, MASSACHUSETTS BAY, GOVERNOR and MUGAN knew, or should have known by the exercise of reasonable diligence that their liability was reasonably clear under the circumstances.

40. For these reasons, Defendants HANOVER's, MASSACHUSETTS BAY's, GOVERNOR's and MUGAN's failures, as described above, to adequately and reasonably investigate and evaluate Plaintiff's claim when they knew or should have known by the exercise of reasonable diligence that their liability was reasonably clear, constitutes a breach of the duty of good faith and fair dealing. Plaintiff is entitled, at a minimum, to all compensatory damages, including all forms of loss resulting from Defendants HANOVER's, MASSACHUSETTS BAY's, GOVERNOR's and MUGAN's breach of duty, including additional costs, economic hardship, losses due to nonpayment of the

amount Defendants owe, and other direct and consequential damages, as well as exemplary damages.

D. CAUSES OF ACTION AGAINST DEFENDANT MUGAN

NONCOMPLIANCE WITH TEXAS INSURANCE CODE

41. Plaintiff re-alleges the foregoing paragraphs alleging the facts in this matter and incorporates the same by reference for all purposes. At all pertinent times, Defendant MUGAN was engaged in the business of insurance as defined by the Texas Insurance Code. The acts and omissions of Defendant MUGAN constitute one or more violations of the Texas Insurance Code. More specifically, Defendant MUGAN has, among other violations, violated the following provisions of the Code:

a. Insurance Code § 542.003(b)(5) by compelling Plaintiff to institute a suit to recover those amounts due under the policy.

b. Insurance Code chapter 541, section 541.060 by, among other things:

misrepresenting one or more material facts and/or policy provisions relating to coverage;

failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claims with respect to which their liability has become reasonably clear;

failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claims under one portion of a policy with respect to which liability has become reasonably clear in order to influence Plaintiffs to settle its claims with respect to another portion of the policy;

failing to promptly provide a reasonable explanation of the basis in law or fact for the denial of Plaintiff's claims;

refusing to affirm or deny coverage within a reasonable time;

refusing to conduct a reasonable investigation;

ignoring damage known to be covered by the Policy;

creating evidence to provide the carrier with a basis to deny coverage; and/or

conducting an outcome-oriented investigation in order to provide the carrier with a basis to deny the claim.

42. Defendants HANOVER and MASSACHUSETTS BAY assigned the loss and the claim to Defendant MUGAN who was at all pertinent times the agent of Defendants HANOVER, GOVERNOR and MASSACHUSETTS BAY, through both actual and apparent authority. The acts, representations and omissions of Defendant MUGAN are attributed to Defendants HANOVER, GOVERNOR and MASSACHUSETTS BAY. Defendant MUGAN was tasked with the statutory responsibility of conducting an impartial, thorough and reasonable investigation of Plaintiff's losses and claim. Despite the fact that the Texas Insurance Code dictates adjusters must conduct a reasonable investigation and adjustment of a claim, Defendant MUGAN failed to do so and actually set out to conduct a one-sided outcome-oriented investigation and adjustment, which has and will result in an inequitable settlement of Plaintiff's claim.

43. Defendant MUGAN pre-textually looked only for ways to avoid coverage rather than first trying to find coverage. Notably, Defendant MUGAN made no request for relevant information or documentation. To date, there has been no indication that Plaintiff's customers, employees or supplier representatives were exposed to the virus, tested positive for the virus or exhibited symptoms of contracting the virus. Again, the Government Orders physically prevented patrons from accessing Plaintiff's business. With no meaningful, thorough or reasonable investigation of the facts surrounding Plaintiff's specific claim, Defendant MUGAN delivered Defendant MASSACHUSETTS BAY's preordained Denial of Claim on grounds dictated by Defendant MASSACHUSETTS BAY. On information and belief, Plaintiff would represent that Defendants conspired with each other prior to any claim being filed by Plaintiff and other consumers to deny all claims resulting during the pandemic, regardless of the factual grounds for

each consumer's claims.

44. Similarly, Defendant MUGAN *NEVER CITES ANY* government orders in the denial letter or considered the applicability of the government orders for Civil Authority coverage and business interruption coverage. Defendant MUGAN failed to consider the later "Stay Home Stay Safe" Orders issued on the state and local levels which prohibited people from leaving their homes and prohibited "nonessential businesses" from conducting normal business operations.

45. Defendant MUGAN could have fairly and reasonably adjusted and evaluated the loss, but failed to do so. Defendant MUGAN also misrepresented the policy coverages to Plaintiff. Defendant MUGAN misrepresented to Plaintiff that in order to have coverage for Business Income and Civil Authority, Plaintiff's business needed to sustain direct physical damage to the premises. However, Plaintiff's Policy covers physical *loss of* the property, not just physical damage. Rather than advising Defendants HANOVER, MASSACHUSETTS BAY and GOVERNOR to pay Plaintiff's claim, rather than investigating more with respect to the local and state orders, Defendant MUGAN sent Plaintiff a pre-formatted denial letter shortly after the claim was made, despite the fact the Policy provides coverage for Plaintiff's business losses. Because of Defendant MUGAN's misrepresentations, inadequate and outcome-oriented investigation, Plaintiff has not received any payment for the claim.

46. The foregoing conduct was and is the producing cause(s) of injury and damage to Plaintiff. Plaintiff has suffered damages including, without limitation, actual damages, economic damages, and consequential damages. Defendant MUGAN's conduct on behalf of Defendants MASSACHUSETTS BAY, GOVERNOR and HANOVER caused a failure to effectuate a prompt, reasonable settlement of the claim. Moreover, one or more of the foregoing acts or omissions were committed "knowingly" and entitling Plaintiffs to seek treble damages

pursuant to the Insurance Code.

VII.

CAUSES OF ACTION AGAINST ALL DEFENDANTS FOR CIVIL CONSPIRACY

47. Plaintiff re-alleges the foregoing paragraphs alleging the facts in this matter and incorporates the same by reference for all purposes. Defendants conspired to delay and deny or underpay Plaintiff's claim. Defendants HANOVER, GOVERNOR and MASSACHUSETTS BAY assigned Defendant MUGAN to investigate Plaintiff's claim and Defendants set out to intentionally conduct an outcome-oriented investigation in order to avoid paying for all of the damages covered by the Policy. Defendant MUGAN is employed by and is an agent of Defendants MASSACHUSETTS BAY, GOVERNOR and HANOVER. The pretextual adjustment of the claim and denial letter misrepresenting coverage were the acts by Defendant MUGAN in violation of the Insurance Code and a component of the meeting of the minds between Defendants MUGAN, MASSACHUSETTS BAY, GOVERNOR and HANOVER to perpetrate the violations of the Insurance Code. Defendants' conspiracy was a proximate cause of Plaintiff's damages.

VIII.

KNOWLEDGE

48. Each of the acts described above, together and singularly, was done "knowingly" by Defendants as that term is used in the Texas Insurance Code and was a producing cause of Plaintiff's damages described herein.

IX.

DAMAGES

49. Plaintiff would show that all of the aforementioned acts, taken together or singularly, constitute the proximate and producing causes of the damages sustained by Plaintiff.

50. For breach of contract, Plaintiff is entitled to regain the benefit of the bargain, which is the amount of the claim, together with attorney's fees.

51. For noncompliance with the Texas Insurance Code, Unfair Settlement Practices, Plaintiff is entitled to actual damages, which include the loss of the benefits that should have been paid pursuant to the Policy but for the wrongful denial, court costs, consequential damages not covered by Plaintiff's Policy and attorney's fees. For knowing conduct of the acts described above, Plaintiff asks for three times the actual damages. TEX. INS. CODE §541.152.

52. For noncompliance with the Texas Insurance Code, Prompt Payment of Claims, Plaintiff is entitled to the amount of the claim, as well as eighteen (18) percent interest per annum on the amount of such claim as damages, together with attorney's fees. TEX. INS. CODE §542.060.

53. For breach of the common law duty of good faith and fair dealing, Plaintiff is entitled to compensatory damages, including all forms of loss resulting from the insurer's breach of duty, such as additional costs, economic hardship, losses due to nonpayment of the amount the insurer owed, and exemplary damages.

54. The acts of each Defendant were committed knowingly, willfully, intentionally, with actual awareness, or with actual malice. In order to punish defendants for such unconscionable overreaching and to deter such actions and/or omissions in the future, Plaintiff seeks recovery from all Defendants of exemplary damages as provided by Chapter 41 of the Texas Civil Practice and Remedies Code and Texas Insurance Code, §542.060.

X.

ALTERNATIVE RELIEF

55. In addition, as to any exclusion, condition, or defense pled by Defendants, Plaintiff would show:

- a. The clear and unambiguous language of the policy provides coverage for business interruption and other losses to the Properties caused by losses made the basis of Plaintiff's claim;
- b. In the alternative, any other construction of the language of the policy is void as against public policy;
- c. Any other construction and its use by Defendants violate the Texas Insurance Code, §541 et. seq. and is void as against public policy;
- d. Any other construction is otherwise void as against public policy, illegal, and violates state law and administrative rules and regulations.
- e. In the alternative, should the Court find any ambiguity in the policy, the rules of construction of such policies mandate the construction and interpretation urged by Plaintiff as an insured party under the Policy;
- f. In the alternative, Defendants are judicially, administratively, and equitably estopped from denying Plaintiff's construction of the policy coverage at issue;
- g. In the alternative, to the extent that the wording of such policy does not reflect the true intent of all parties thereto, Plaintiff pleads the doctrine of mutual mistake requiring reformation.

XI.
ATTORNEYS FEES

56. For the prosecution and collection of this claim, Plaintiff has been compelled to engage the services of the attorneys whose names are subscribed to this pleading. Plaintiff is entitled to recover a sum for the reasonable and necessary services of Plaintiff's attorneys in the preparation

and trial of this action, including any appeals to the Court of Appeals and/or the Supreme Court of Texas in accordance with Texas Civil Practice and Remedies Code, §§37.004, 37.005, 37.009, 38.001 and Texas Insurance Code, §542.060.

XI.

REQUEST FOR DISCLOSURES

57. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Plaintiff request that Defendants each provide the information required in a Request for Disclosure.

XII.

FIRST REQUEST FOR PRODUCTION TO DEFENDANT HANOVER

1. Produce the non-privileged portion of HANOVER's complete claim file for, relating to or arising from Plaintiff's losses for which HANOVER opened a claim under the Policy.
2. Produce all emails and other forms of communication between HANOVER, its agents, adjusters, employees, or representatives and the agent and adjuster, and/or their agents, adjusters, representatives or employees relating to, mentioning, concerning or evidencing Plaintiff's Policy, business, claims and/or Property which are the subject of this suit.
3. Produce all underwriting documents and communications, including but not limited to, any and all materials, documents, notations, files, reports, correspondence and/or other communications related to Plaintiff's application/s for coverage, binders, proposals, and the issuance of the policy, including renewals thereof. This request also includes materials, determination and/or method for determining the forms and endorsements to be used in creating the policy. This request also includes information regarding the basis for rating and premium classifications used for Plaintiff. Finally, this request includes any internal communications or guidelines regarding the handling and/or coverage positions of Defendants HANOVER, MASSACHUSETTS BAY, GOVERNOR and MUGAN regarding business interruption and other claims related to the 2019 Novel Coronavirus and/or COVID-19.
4. Produce any and all documents and/or communications from HANOVER or any parent, subsidiary or affiliated entities to any third-party, including but not limited to insurance agents and brokers, marketing and/or public relations firms, at any time after December 15, 2018, and relating in any way to coverage or exclusions or denials of coverage for civil authority or for business interruption or business income loss and/ or commercial property coverage mentioning or referencing the 2019 Novel Coronavirus, the pandemic, and/or COVID-19.

5. Produce as to each policy provision that HANOVER contends in the denial letter of June 3, 2020, limits or bars coverage for Plaintiff for the subject claim, any and all Documents reflecting drafting history of each provision, including changes in policy language and any and all materials, Documents, notations, files, reports, correspondence and/or other Communications Related to actual or proposed changes in policy language

6. Produce any and all Documents reflecting the drafting history, intent and/or regulatory submission and approval or disapproval of regarding the EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA (Businessowners Coverage Form, form 391-1003 08/16), including changes in policy language and any and all materials, documents, notations, files, reports, correspondence and/ or other Communications Related to actual or proposed changes in policy language.

7. Produce any and all Documents and Communications from or relating to or concerning the Insurance Services Office, Inc. ("ISO") and the EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA (Businessowners Coverage Form, form 391-1003 08/16). This request includes Documents and/or Communications relating to the drafting, creation, revision, or analysis of any ISO Insurance Policy forms, terms, or provisions involving the EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA (Businessowners Coverage Form, form 391-1003 08/16) and/or any other similar provision, definition, exclusion or endorsement.

XIII.

FIRST REQUEST FOR PRODUCTION TO DEFENDANT MUGAN

1. Produce MUGAN's complete claim or adjusting file for Plaintiff's claim.
2. Produce all emails and other forms of communication between MASSACHUSETTS BAY, HANOVER, GOVERNOR and their agents, adjusters, employees, or representatives with Defendant MUGAN and/or MUGAN's agents, adjusters, representatives or employees relating to, mentioning, concerning or evidencing the claim which is the subject of this suit. This request includes Documents and/or Communications relating to the handling of business interruption and other claims related to the 2019 Novel Coronavirus and/or COVID-19.
3. Produce any and all documents and/or communications from MASSACHUSETTS BAY or any parent, subsidiary or affiliated entities to any third-party, including but not limited to insurance agents and brokers, marketing and/or public relations firms, at any time after December 15, 2018, and relating in any way to coverage or exclusions or denials of coverage for civil authority or for business interruption or business income loss and/ or commercial property coverage mentioning or referencing the 2019 Novel Coronavirus, the pandemic, and/or COVID.
4. Produce any and all form letters for denials of business interruption coverage in Defendant MUGAN's possession that existed within twenty-four (24) months prior to Plaintiff's claim being assigned to Defendant MUGAN for adjusting.

XIV.

FIRST REQUEST FOR PRODUCTION TO DEFENDANT MASSACHUSETTS BAY

1. Produce the non-privileged portion of MASSACHUSETTS BAY's complete claim file for, relating to or arising from Plaintiff's losses for which MASSACHUSETTS BAY opened a claim under the Policy.
2. Produce all emails and other forms of communication between MASSACHUSETTS BAY, its agents, adjusters, employees, or representatives and the agent and adjuster, and/or their agents, adjusters, representatives or employees relating to, mentioning, concerning or evidencing Plaintiff's Policy, business, claims and/or Properties which are the subject of this suit.
3. Produce all underwriting documents and communications, including but not limited to, any and all materials, documents, notations, files, reports, correspondence and/or other communications related to Plaintiff's application/s for coverage, binders, proposals, and the issuance of the policy, including renewals thereof. This request also includes materials, determination and/or method for determining the forms and endorsements to be used in creating the policy. This request also includes information regarding the basis for rating and premium classifications used for Plaintiff. Finally, this request includes any internal communications or guidelines regarding the handling and/or coverage positions of Defendants HANOVER, MASSACHUSETTS BAY, GOVERNOR and MUGAN regarding business interruption and other claims related to the 2019 Novel Coronavirus and/or COVID-19.
4. Produce any and all documents and/or communications from MASSACHUSETTS BAY or any parent, subsidiary or affiliated entities to any third-party, including but not limited to insurance agents and brokers, marketing and/or public relations firms, at any time after December 15, 2018, and relating in any way to coverage or exclusions or denials of coverage for civil authority or for business interruption or business income loss and/ or commercial property coverage mentioning or referencing the 2019 Novel Coronavirus, the pandemic, and/or COVID-19.
5. As to each policy provision that MASSACHUSETTS BAY contends in the denial letter of June 3, 2020, limits or bars coverage for Plaintiff for the subject claim, produce any and all documents reflecting drafting history of each provision, including changes in policy language and any and all materials, documents, notations, files, reports, correspondence and/or other communications related to actual or proposed changes in policy language. This request for production specifically includes correspondence with the Texas Department of Insurance.
6. Any and all Documents reflecting the drafting history, intent and/or regulatory submission and approval or disapproval of regarding the EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA (Businessowners Coverage Form, form 391-1003 08/16), including changes in policy language and any and all materials, documents, notations, files, reports, correspondence and/ or other Communications Related to actual or proposed changes in policy language.

7. Any and all Documents and Communications from or relating to or concerning the Insurance Services Office, Inc. (“ISO”) and the EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA (Businessowners Coverage Form, form 391-1003 08/16). This request includes Documents and/or Communications relating to the drafting, creation, revision, or analysis of any ISO Insurance Policy forms, terms, or provisions involving the EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA and/or any other similar provision, definition, exclusion or endorsement.

XV.

FIRST REQUEST FOR PRODUCTION TO DEFENDANT GOVERNOR

1. Produce the non-privileged portion of GOVERNOR’s complete file for, relating to or arising from the sale and issuance of Plaintiff’s original Policy and all subsequent renewals of the Policy.
2. Produce all emails and other forms of communication between GOVERNOR and MASSACHUSETTS BAY, HANOVER and/or MUGAN and their respective agents, employees, or representatives concerning Plaintiff’s Policy, business, claims and/or Property which are the subject of this suit.
3. Produce any underwriting documents and communications, including but not limited to, any and all materials, documents, notations, files, reports, correspondence and/or other communications related to Plaintiff’s application/s for coverage, binders, proposals, and the issuance of the policy, including renewals thereof. This request also includes materials, determination and/or method for determining the forms and endorsements to be used in creating the policy. This request also includes information regarding the basis for rating and premium classifications used for Plaintiff. Finally, this request includes any internal communications or guidelines regarding the handling and/or coverage positions of Defendants HANOVER, MASSACHUSETTS BAY, GOVERNOR and MUGAN regarding business interruption and other claims related to the 2019 Novel Coronavirus and/or COVID-19.
4. Produce any and all documents and/or communications from MASSACHUSETTS BAY or any parent, subsidiary or affiliated entities to GOVERNOR and any third-party, including but not limited to insurance agents and brokers, marketing and/or public relations firms, at any time after December 15, 2018, and relating in any way to coverage or exclusions or denials of coverage for civil authority or for business interruption or business income loss and/ or commercial property coverage mentioning or referencing the 2019 Novel Coronavirus, the pandemic, and/or COVID-19.
5. As to each policy provision that GOVERNOR contends limits or bars coverage for Plaintiff for the subject claim, produce any and all Documents containing information provided to Plaintiff and similarly insurable businesses describing the coverage, endorsements and definitions concerning coverage that was offered to Plaintiff.
6. Produce any and all Documents in GOVERNOR’s possession reflecting the drafting history, intent and/or regulatory submission and approval or disapproval of regarding the

EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA (Businessowners Coverage Form, form 391-1003 08/16), including changes in policy language and any and all materials, documents, notations, files, reports, correspondence and/ or other Communications Related to actual or proposed changes in policy language.

7. Produce any and all Documents and Communications in GOVERNOR's possession relating to or concerning concerning the Insurance Services Office, Inc. ("ISO") and the EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA (Businessowners Coverage Form, form 391-1003 08/16). This request includes Documents and/or Communications relating to the drafting, creation, revision, or analysis of any ISO Insurance Policy forms, terms, or provisions involving the EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA and/or any other similar provision, definition, exclusion or endorsement.

8. Produce a copy of each policy issued to Plaintiff by GOVERNOR, MASSACHUSETTS BAY and HANOVER or their respective agents, with all endorsements and all annual renewals of Plaintiff's insurance policies.

9. Produce a copy of all marketing materials and informational materials provided to Plaintiff concerning the policies offered by Governor to Plaintiff. This request is for all periods beginning six (6) months prior to Plaintiff buying Plaintiff's first commercial insurance policy from GOVERNOR, MASSACHUSETTS BAY and HANOVER.

XIV.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendants be cited to appear and answer herein; that, on final hearing, Plaintiff have judgment against Defendants for an amount, deemed to be just and fair by the jury, which will be a sum within the jurisdictional limits of this Court, but more than \$1,000,000. Plaintiff further pleads for costs of suit; for interest on the judgment; for pre-judgment interest; and, for such other and further relief, in law or in equity, either general or special, including the non-monetary relief of declaratory judgment against each defendant to which Plaintiff may be justly entitled.

Respectfully submitted,

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