

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

LITTLE STARS, LLC d/b/a THE	)	
LITTLE GYM OF GILBERT,	)	
	)	No. 3:20-cv-00609-AVC
Plaintiff,	)	
	)	
v.	)	<b>ANSWER AND AFFIRMATIVE</b>
	)	<b>DEFENSES OF DEFENDANT</b>
SENTINEL INSURANCE COMPANY,	)	<b>TO PLAINTIFF’S FIRST AMENDED</b>
LTD.,	)	<b>COMPLAINT</b>
	)	
Defendant.	)	
	)	

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Defendant Sentinel Insurance Company, Ltd. (“Sentinel” or “Defendant”), by and through its counsel, hereby answers and responds to Little Stars, LLC d/b/a The Little Gym of Gilbert’s (“Plaintiff’s”) First Amended Complaint.

**NATURE OF THE CASE**<sup>1</sup>

1. Defendant admits that it and Plaintiff entered into a contract of insurance, Business Owner’s Policy No. 59 SBA PG1004 SC effective January 30, 2020 through January 30, 2021 (the “Policy”), and that Plaintiff seeks declaratory relief in this action. Defendant denies that Plaintiff is entitled to any relief whatsoever from Defendant.

2. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations in Paragraph 2 as stated, and therefore denies same.

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<sup>1</sup> For ease of reference, this Answer uses the headings and subheadings that Plaintiff included in the Complaint. The use of such headings is not an admission by Defendant of the truth of any allegations contained in the headings or subheadings. Defendant denies any suggestions implied by the headings and subheadings.

3. Defendant denies the allegations in Paragraph 3. The terms of the Policy speak for themselves.

4. Paragraph 4 states a legal conclusion to which no response is required. To the extent a response is required, Defendant denies that Plaintiff is entitled to declaratory relief or to any relief whatsoever from Defendant.

### **JURISDICTION**

5. Paragraph 5 states legal conclusions to which no response is required. To the extent a response is required, Defendant denies that Plaintiff is entitled to any relief from Defendant. To the extent further response is required, Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the remaining allegations in Paragraph 5, and therefore denies same.

6. Paragraph 6 states legal conclusions to which no response is required. To the extent a response is required, Defendant admits its principal place of business is Connecticut and admits that it is subject to the general personal jurisdiction of this Court.

7. Paragraph 7 states legal conclusions to which no response is required. To the extent a response is required, Defendant admits that it is a citizen of Connecticut and that venue is proper in the United States District Court for the District of Connecticut. Defendant denies the remaining allegations in Paragraph 7 given their vagueness and ambiguity.

### **PARTIES**

8. Upon information and belief, Defendant admits that Plaintiff's gym is located at 538 S. Gilbert Road #109, Gilbert, Arizona 85296. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the remaining allegations in Paragraph 8.

9. Defendant admits that Sentinel is an insurance carrier with its principal place of business in Connecticut and that Sentinel entered into the Policy with Plaintiff, the terms and conditions of which speak for themselves. To the extent the allegations in Paragraph 9 are inconsistent with the terms of the Policy, Defendant denies them. To the extent the allegations in Paragraph 9 refer to “Defendants” other than Sentinel, Sentinel denies them as Sentinel is the sole proper Defendant in this action.

10. Defendant admits that Sentinel entered into a contract of insurance with Plaintiff and issued the Policy to Plaintiff, the terms and conditions of which speak for themselves. To the extent the allegations in Paragraph 10 refer to “Defendants” other than Sentinel, Sentinel denies them as Sentinel is the sole proper Defendant in this action.

11. Defendant admits the Policy is in effect. The terms of the Policy speak for themselves. To the extent the allegations in Paragraph 11 are inconsistent with the terms of the Policy, Defendant denies them.

12. Defendant admits that Plaintiff submitted a claim for coverage to Defendant on March 16, 2020. Defendant admits that it sent a letter to Plaintiff denying Plaintiff’s claim on March 20, 2020, and refers to the letter for its contents. To the extent the allegations in Paragraph 12 are inconsistent with the content of the letter, Defendant denies them. Defendant denies the remaining allegations of Paragraph 12 due to their vagueness and ambiguity.

### **FACTUAL BACKGROUND**

#### **I. Insurance Coverage**

13. Defendant admits that Plaintiff paid premiums for the Policy. The terms of the Policy speak for themselves. To the extent the allegations in Paragraph 13 are inconsistent with the terms of the Policy, Defendant denies them.

14. The terms of the Policy speak for themselves. To the extent the allegations in Paragraph 14 are inconsistent with the terms of the Policy, Defendant denies them.

15. The terms of the Policy speak for themselves. To the extent the allegations in Paragraph 15 are inconsistent with the terms of the Policy, Defendant denies them.

16. Paragraph 16 states legal conclusions to which no response is required. To the extent a response is required, Defendant admits that Plaintiff paid premiums for the Policy but denies the remaining allegations in Paragraph 16.

## **II. The Coronavirus Pandemic**

17. Paragraph 17 states legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 17.

18. Paragraph 18 purports to summarize information purportedly contained on a website, the content of which speaks for itself. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations in Paragraph 18, and therefore denies them.

19. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations in Paragraph 19, and therefore denies them. To the extent Paragraph 19 purports to explain guidance of the CDC, that guidance speaks for itself.

20. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations in Paragraph 20, and therefore denies them.

21. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations in Paragraph 21, and therefore denies them.

### **III. Civil Authority**

22. Defendant admits that Arizona Governor Doug Ducey issued a Declaration of Emergency on March 11, 2020, which speaks for itself. To the extent the allegations in Paragraph 22 are inconsistent with the terms of the declaration, Defendant denies them.

23. Defendant admits that Arizona Governor Doug Ducey and Arizona State Superintendent of Public Instruction Kathy Hoffman announced the closure of public schools in the state on March 15, 2020. To the extent the allegations in Paragraph 23 are inconsistent with the announcement, Defendant denies them.

24. Defendant admits that Arizona Governor Doug Ducey made remarks to the press in a briefing on March 17, 2020, and refers to his remarks for their contents. To the extent the allegations in Paragraph 24 are inconsistent with the remarks, Defendant denies them.

25. Defendant denies the allegations in Paragraph 25.

26. Defendant admits that Arizona Governor Doug Ducey issued Executive Order 2020-33 on April 29, 2020, which speaks for itself. To the extent the allegations in Paragraph 26 are inconsistent with the terms of the order, Defendant denies them.

27. Defendant admits that Plaintiff submitted a claim for coverage to Sentinel on March 16, 2020. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the remaining allegations in Paragraph 27, and therefore denies them.

28. Defendant admits that President Trump made remarks to the press in a briefing on April 10, 2020, and refer to his remarks for their contents. Defendant denies the remaining allegations in Paragraph 28.

29. Defendant admits that President Trump made remarks to the press in a briefing on April 10, 2020, and refers to his remarks for their contents. Defendant denies the remaining allegations in Paragraph 29.

30. Defendant denies the allegations in Paragraph 30.

#### **IV. Impact on Plaintiff**

31. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations in Paragraph 31, and therefore denies them.

32. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations in Paragraph 32, and therefore denies them.

33. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations in Paragraph 33, and therefore denies them.

34. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations in Paragraph 34, and therefore denies them.

35. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations in Paragraph 35, and therefore denies them.

36. Paragraph 36 states legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 36.

37. Paragraph 37 states legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations of Paragraph 37 and denies that Plaintiff is entitled to any relief from Defendant.

**CAUSE OF ACTION**

**DECLARATORY RELIEF**

38. Defendant restates and incorporates by reference Defendant's responses to Paragraphs 1-37, as if fully set forth herein.

39. Defendant admits that the statement in Paragraph 39 is an incomplete quote from the Declaratory Judgment Act, 28 U.S.C. § 2201(a), and refers to the statute for the full text of the provision.

40. Paragraph 40 states legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 40 and denies that Plaintiff is entitled to any relief whatsoever from Defendant.

41. Paragraph 41 contains a declarative description of the relief sought by Plaintiff to which no response is required. To the extent a response is required, Defendant denies the allegations of Paragraph 41 and denies that Plaintiff is entitled to any relief whatsoever from Defendant.

42. Paragraph 42 contains a declarative description of the relief sought by Plaintiff to which no response is required. To the extent a response is required, Defendant denies the allegations of Paragraph 42 and denies that Plaintiff is entitled to any relief whatsoever from Defendant.

43. Paragraph 43 contains a declarative description of the relief sought by Plaintiff to which no response is required. To the extent a response is required, Defendant denies the allegations of Paragraph 43 and denies that Plaintiff is entitled to any relief whatsoever from Defendant.

The “Wherefore” clauses and subparagraphs that follow do not allege any facts and therefore no response is required. To the extent a response is required, Defendant denies that Plaintiff is entitled to the requested relief or any other relief from Defendant. To the extent any further response is required, Defendant denies the allegations contained in the “Wherefore” clause and the subparagraphs that follow.

### **DEFENDANT’S AFFIRMATIVE DEFENSES**

Defendant asserts the following affirmative defenses and reserves all rights to amend or supplement these defenses when and if amended or additional defenses become appropriate and/or available in this action. The statement of any defense herein does not assume the burden of proof for any issue to which the applicable law places the burden of proof on Plaintiff.

#### **FIRST AFFIRMATIVE DEFENSE** (Failure to state a claim)

The Complaint fails to state a cause of action upon which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE** (Virus Exclusion)

The Policy contains an exclusion titled “‘Fungi’, Wet Rot, Dry Rot, Bacteria and Virus.” Form SS 40 93 07 05 at 1. Plaintiff’s claims may be barred or limited, in whole or in part, to the extent that the alleged loss or damage, if any, is excluded by the ‘Fungi’, Wet Rot, Dry Rot, Bacteria and Virus exclusion.



THIRD AFFIRMATIVE DEFENSE  
(Virus Limited Additional Coverage)

The Policy contains a provision titled “Limited Coverage For ‘Fungi’, Wet Rot, Dry Rot, Bacteria and Virus.” Form SS 40 93 07 05 at 2-3. Plaintiff’s claims may be barred or limited by the time period and/or sub-limits applicable to the Limited Coverage for “Fungi”, Wet Rot, Dry Rot, Bacteria and Virus provision.

FOURTH AFFIRMATIVE DEFENSE  
(Waiver, estoppel, and unclean hands)

Plaintiff’s claims may be barred or limited, in whole or in part, by the doctrines of waiver, estoppel, and/or unclean hands.

FIFTH AFFIRMATIVE DEFENSE  
(Merger clause)

The Policy is the sole agreement between the parties, and Sentinel did not breach any Policy terms.

SIXTH AFFIRMATIVE DEFENSE  
(Terms of the Policy are controlling)

Sentinel’s obligations in the Policy are defined, limited, and controlled by the terms and conditions of the Policy, including, but not limited to, the coverages, limits, sub-limits, exclusions, endorsements, conditions, and all other terms set forth therein.

SEVENTH AFFIRMATIVE DEFENSE  
(Failure to comply with Policy)

Plaintiff’s claims may be barred or limited, in whole or in part, to the extent that Plaintiff failed to perform its obligations under the Policy.

EIGHTH AFFIRMATIVE DEFENSE

(Losses not covered by Policy)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent Plaintiff seeks relief for damages or losses not covered by the Policy.

NINTH AFFIRMATIVE DEFENSE

(Two or More Coverages)

The Policy contains a General Condition titled "Insurance Under Two Or More Coverages." Form SS 00 05 10 08 at 2. Plaintiff's claims may be limited, in whole or in part, to the extent the Insurance Under Two Or More Coverages provision is applicable to the loss or damage.

TENTH AFFIRMATIVE DEFENSE

(Other insurance)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent other insurance or contributing insurance is applicable to the alleged loss or damage.

ELEVENTH AFFIRMATIVE DEFENSE

(Failure to exhaust other insurance coverage)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent Plaintiff has not demonstrated exhaustion of coverage for losses under other more specific insurance policies.

TWELFTH AFFIRMATIVE DEFENSE

(Deductibles, Sub-limits)

Plaintiff's claims may be barred or limited, in whole or in part, by applicable deductibles, retentions, and/or limits and sub-limits (including per occurrence limits) contained in the Policy.

THIRTEENTH AFFIRMATIVE DEFENSE

(Outside Period of Restoration)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent Plaintiff seeks to recover for loss incurred outside the Period of Restoration.

FOURTEENTH AFFIRMATIVE DEFENSE  
(Law or public policy)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent coverage is prohibited by express provisions of law or public policy.

FIFTEENTH AFFIRMATIVE DEFENSE  
(Conditions precedent and subsequent)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent that conditions precedent and subsequent to the availability of insurance coverage under the Policy have not been satisfied.

SIXTEENTH AFFIRMATIVE DEFENSE  
(Offset)

Defendant's obligations to Plaintiff, if any, are subject to offset for recoveries by Plaintiff from other persons or entities.

SEVENTEENTH AFFIRMATIVE DEFENSE  
(Valuation Clause)

Plaintiff's claims may be limited, in whole or in part, by the valuation provisions in the Policy.

EIGHTEENTH AFFIRMATIVE DEFENSE  
(No "direct physical loss")

Plaintiff's claims may be barred or limited, in whole or in part, to the extent there is no direct physical loss of or direct physical damage to covered property.

NINETEENTH AFFIRMATIVE DEFENSE  
(No “direct physical loss” – Business Interruption)

Plaintiff’s claims may be barred or limited, in whole or in part, because the interruption to Plaintiff’s business, if any, was not due to the “direct physical loss of or direct physical damage to property... caused by or resulting from a Covered Cause of Loss.” Form SS 00 07 07 05 at 10.

TWENTIETH AFFIRMATIVE DEFENSE  
(Covered Cause of Loss)

Plaintiff’s claims may be barred or limited, in whole or in part, to the extent Plaintiff cannot demonstrate a Covered Cause of Loss, as defined in the Policy. Form SS 00 07 07 05 at 2.

TWENTY-FIRST AFFIRMATIVE DEFENSE  
(Ordinance or Law-Limits)

The Policy contains an Additional Coverage provision for “Ordinance or Law.” Form SS 00 07 07 05 at 7-8. Plaintiff’s claims may be barred or limited, in whole or in part, by the time period and/or sub-limits applicable to the Ordinance or Law provision.

TWENTY-SECOND AFFIRMATIVE DEFENSE  
(Pollution Exclusion)

The Policy contains an exclusion titled “Pollution.” Form SS 00 07 07 05 at 17-18. Plaintiff’s claims may be barred or limited, in whole or in part, to the extent that the alleged loss or damage, if any, is excluded by the Pollution exclusion.

TWENTY-THIRD AFFIRMATIVE DEFENSE  
(Consequential Losses Exclusion)

The Policy contains an exclusion titled “Consequential Losses.” Form SS 00 07 07 05 at 17. Plaintiff’s claims may be barred or limited, in whole or in part, to the extent that the alleged loss or damage, if any, are excluded by the Consequential Losses exclusion.

TWENTY-FOURTH AFFIRMATIVE DEFENSE  
(Civil Authority)

The Policy contains an Additional Coverage provision for “Civil Authority.” Form SS 00 07 07 05 at 11. Plaintiff’s claims may be barred, in whole or in part, to the extent that Plaintiff cannot satisfy the requirements of the Civil Authority provision (a) that the order of civil authority be issued as the direct result of a Covered Cause of Loss, and (b) that access to Plaintiff’s premises be prohibited by the order.

TWENTY-FIFTH AFFIRMATIVE DEFENSE  
(Business Income from Dependent Properties-Limits)

The Policy contains an Additional Coverage provision for “Business Income from Dependent Properties.” Form SS 00 07 07 05 at 11-12. Plaintiff’s claims may be barred or limited, in whole or in part, by the time period and/or sub-limits, if any, applicable to the Business Income from Dependent Properties provision.

TWENTY-SIXTH AFFIRMATIVE DEFENSE  
(Extended Business Income-Limits)

The Policy contains an Additional Coverage provision for “Extended Business Income.” Form SS 00 07 07 05 at 11. Plaintiff’s claims may be barred or limited, in whole or in part, by the time period and/or sub-limits, if any, applicable to the Extended Business Income provision.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE  
(Acts or Decisions-Exclusion)

The Policy contains an exclusion titled “Acts or Decisions.” Policy at Form SS 00 07 07 05 at 18. Plaintiff’s claims may be barred or limited, in whole or in part, to the extent that the alleged loss or damage, if any, is excluded by the Acts or Decisions exclusion.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**  
(Failure to mitigate)

Plaintiff’s claims may be barred or limited, in whole or in part, to the extent that Plaintiff failed to mitigate damages, if any. To the extent Plaintiff failed to take reasonable steps to mitigate Plaintiff’s alleged damages, if any, Plaintiff should be denied any recovery in this action.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**  
(Reservation of future defenses)

Plaintiff’s claims may be barred or limited, in whole or in part, by additional defenses that cannot now be articulated because of the generality of the pleadings, and other presently undeveloped information. Accordingly, Defendant reserves the right to supplement the foregoing defenses as may appear as this case progresses to the full extent permissible by law.

**PRAYER FOR RELIEF**

WHEREFORE, based on the above answers and defenses, Defendant respectfully requests that the Court enter an order:

- i. denying Plaintiff the relief sought in the Complaint;
- ii. dismissing the Complaint in its entirety with prejudice;
- iii. awarding Defendant its costs and expenses, including its attorneys’ fees; and
- iv. awarding Defendant such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Defendant hereby demands a trial by jury.

Dated this 23<sup>rd</sup> day of June, 2020.

Respectfully submitted,

By: /s/ Gerald P. Dwyer, Jr.  
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*Pro Hac Vice Application Forthcoming*

*Attorneys for Defendant Sentinel Insurance Company, Ltd.*

**CERTIFICATE OF SERVICE**

I certify that a copy of the ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT TO PLAINTIFF'S FIRST AMENDED COMPLAINT has been furnished to all counsel of record by ECF on June 23, 2020.

*/s/ Gerald P. Dwyer, Jr.* \_\_\_\_\_