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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

THINKFOOD GROUP LLC; TYM MERGER
COMPANY LLC; TAPAS 23 LLC T/A
JALEO; JALEO VEGAS, LLC D/B/A JALEO;
TAPAS ORLANDO LLC; MEZZE & MORE,
LLC T/A ZAYTINYA; BEEFSTEAK
OPERATOR LLC; 418 7TH ST LLC;
NOODLE TACO VEGAS, LLC D/B/A CHINA
POBLANO; HUDSON HALL LLC; 505 9TH
STREET PARTNERS, LLC; TAPAS
GEORGETOWN LLC; VIRGINIA EATS
LLC; and OYAMEL DC, LLC,
717 D Street NW, 6th Floor
Washington, DC 20004,

Plaintiffs,

v.

TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA,
1 Tower Square,
Hartford, CT 06183;
TRAVELERS LLOYDS INSURANCE
COMPANY,
1301 East Collins Boulevard,
Richardson, TX 75081; and
TRAVELERS LLOYDS MANAGEMENT
COMPANY,
1 Tower Square,
Hartford, CT 06183,

Defendants.

Civil Action No.

COMPLAINT

DEMAND FOR JURY TRIAL

ThinkFood Group LLC; TYM Merger Company LLC; Tapas 23 LLC T/A Jaleo; Jaleo Vegas, LLC D/B/A Jaleo; Tapas Orlando LLC; Mezze & More, LLC T/A Zaytinya; Beefsteak Operator LLC; 418 7th St LLC; Noodle Taco Vegas, LLC D/B/A China Poblano; Hudson Hall LLC; 505 9th Street Partners, LLC; Tapas Georgetown LLC; Virginia Eats LLC; and Oyamel DC, LLC (collectively, “TFG”) (“TFG” or Plaintiff”) hereby files suit against Travelers Property Casualty Company of America, Travelers Lloyds Insurance Company, and Travelers Lloyds Management Company (collectively, “Travelers”) and alleges the following.

INTRODUCTION

1. Governments around the world have enacted stringent counter-measures in order to combat the COVID-19 pandemic, requiring the closure of many businesses and restricting almost all public activities.

2. Restaurants, in particular, have suffered immediate and precipitous losses. This impact on restaurants will have a devastating impact on the nation’s economy and social life. As of 2016, Americans spend more than half of their food budget eating outside the home. According to The Brookings Institution, food preparation and service is the second most common occupation in the United States; waiting tables is the eighth most common. At the start of 2020, there were more than 12 million Americans working at over 600,000 food service and drinking establishments nationwide. *Food & Wine* reports that approximately 8 million restaurant workers have been laid-off or furloughed since mid-March. Before the COVID-19 pandemic materialized, the National Restaurant Association predicted 2020 sales would be \$899 billion. As of June 15, 2020, the Association’s research shows that restaurants lost \$120 billion in sales during the first three months of the COVID-19 pandemic. The outlook is dire for the tens of thousands of restaurants that may never reopen.

3. TFG bought full-spectrum, comprehensive insurance to protect all aspects of the insured businesses – not just for damage to insured premises and equipment – but also for interruptions in business operations that result in loss of business income. TFG believed that it had purchased comprehensive coverage that would apply to business interruptions under circumstances like this, where Plaintiff has done everything right to protect its businesses and the public. Such coverage is important, if not vital, because profit margins in the restaurant industry are slim and, unlike in the insurance industry, reserve funds tend to be low. Hence, business interruptions are a particular concern of this industry.

4. Travelers, from whom TFG had purchased such insurance, swiftly denied the claim. Though its reasons are cursory, the denial appears to be based on an unreasonable reading of its policy, which tracks form policies issued by Travelers on a take-it-or-leave-it basis. Travelers denied the claim despite having pocketed significant premiums for their policies. TFG has been insured by Travelers for over twenty years in total; the provisional premium for this year's policy alone is \$456,155.00.

5. This arbitrary and wrongful denial of insurance benefits leaves TFG financially insecure and threatens the survival of one or more of the nine restaurants covered under the policy.

6. Plaintiff thus brings this action seeking declaratory relief and damages.

PARTIES

7. Plaintiff ThinkFood Group LLC is a limited liability company formed under the laws of the State of Delaware with its principal place of business in Washington, DC. Under ThinkFood Group LLC's direction, associated entities operate the seventeen restaurants comprising this claim: (1) TYM Merger Company LLC, which operates Jaleo D.C. (2) TYM Merger Company LLC, which operates Jaleo Bethesda (3) Tapas 23 LLC T/A Jaleo, which

operates Jaleo Crystal City (4) Jaleo Vegas, LLC D/B/A Jaleo, which operates Jaleo Las Vegas (5) Tapas Orlando LLC, which operates Jaleo Disney Springs (6) Mezze & More, LLC T/A Zaytinya, which operates Zaytinya DC (7) Beefsteak Operator LLC, which operates Beefsteak Dupont (8) Beefsteak Operator LLC, which operates Beefsteak GWU (9) Beefsteak Operator LLC, which operates Beefsteak Montgomery Mall (10) 418 7th St LLC, which operates China Chilcano DC (11) Noodle Taco Vegas, LLC D/B/A China Poblano, which operates China Poblano Las Vegas (12) Hudson Hall LLC, which operates Mercado Little Spain (New York City) (13) 505 9th Street Partners, LLC, which operates Minibar DC (14) 505 9th Street Partners, LLC, which operates Barmini DC (15) Tapas Georgetown LLC, which operates America Eats DC (16) Virginia Eats LLC, which operates Ovation by America Eats (Vienna, VA) and (17) Oyamel DC, LLC, which operates Oyamel DC (collectively, “TFG”).

8. Defendant Travelers Property Casualty Company of America is a corporation organized under laws of Connecticut with its principal place of business in Hartford, Connecticut. At all relevant times, Travelers Property Casualty Company of America conducted business in Maryland.

9. Defendant Travelers Lloyds Insurance Company is a corporation organized under laws of Texas with its principal place of business in Richardson, Texas. At all relevant times, Travelers Lloyds Insurance Company conducted business in Maryland.

10. Defendant Travelers Lloyds Management Company is a corporation organized under laws of Texas with its principal place of business in Hartford, Connecticut. At all relevant times, Travelers Lloyds Management Company conducted business in Maryland.

JURISDICTION

11. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(a)(1) because the parties are diverse from one another and Plaintiff seeks declaratory relief and damages valued in excess of \$75,000.

12. This Court has personal jurisdiction over Travelers because Travelers conducts business in the judicial District of Maryland, including by contracting to provide insurance coverage for Plaintiff's businesses located in Maryland, the District of Columbia, Florida, Nevada, New York, and Virginia, among other locations.

13. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b), as a substantial part of the events or omissions giving rise to the instant action occurred within the judicial District of Maryland.

FACTUAL BACKGROUND

I. The Onset of the COVID-19 Pandemic

14. In January 2020 early media reports documented an outbreak of a novel strain of coronavirus – COVID-19 – in Wuhan, China. By late January, it was generally understood in the scientific and public health communities that COVID-19 was spreading through human-to-human transmission and could be transmitted by asymptomatic carriers.

15. On January 30, 2020, reports of the spread of COVID-19 outside China prompted the World Health Organization to declare the COVID-19 outbreak a “Public Health Emergency of International Concern.”

16. On March 11, the World Health Organization declared COVID-19 a global health pandemic based on existing and projected infection and death rates, as well as concerns about the speed of transmission and ultimate reach of this virus.

17. Public health officials have recognized for decades that non-pharmaceutical

interventions (NPIs) can slow and stop the transmission of certain diseases. Among these are screening and testing of potentially infected persons; contact tracing and quarantining infected persons; personal protection and prevention; and social distancing. Social distancing is the maintenance of physical space between people. Social distancing can be limited – e.g., reducing certain types of conduct or activities like hand-shaking – or large-scale – e.g., restricting the movements of the total population.

18. A lack of central planning, shortages of key medical supplies and equipment, and the unfortunate spread of misinformation and disinformation about the risks of COVID-19 has led to widespread confusion, unrest, and uncertainty regarding the likely trajectory of this pandemic and the appropriate counter-measures necessary to mitigate the damage it could potentially cause.

19. Beginning in late February, public health officials began advising various governments around the world that one of the most disruptive NPIs – population-wide social distancing – was needed to mitigate the transmission of COVID-19. Suddenly densely occupied spaces, heavily traveled spaces, and frequently visited spaces such as schools, offices, public transit, restaurants, and shops were likely to become hot-spots for local transmission of COVID-19. By mid-March, the public health officials' advice was being implemented by state and local governments. These governments issued a series of orders ("Public Health Orders") placing significant limitations on public activities and private gatherings to limit the spread of COVID-19.

20. These Public Health Orders were not implemented to prevent the contamination of TFG's covered premises with coronavirus. They were implemented to lessen the burden on health care services and critical infrastructure in the states, counties and municipalities that

implemented them so that these systems would not be overwhelmed. By mid-March, experts and commentators had concluded that, “our hope of stopping the disease in its tracks has ended. Our main goal now is to prevent a huge spike in cases, or ‘flatten the curve.’”¹ “Flattening the curve” was a strategy implemented not in response to the virus itself, but rather in response to the limits of the health care system. As explained in an Order issued by Mayor Bowser of Washington, DC when the time Public Health Orders were first issued:

In epidemiology, the concept of slowing a virus’s spread so that fewer people need to seek treatment at any given time is known as “flattening the curve.” The faster and the more sharply the infection curve rises, the more quickly Washington, DC’s health care system will be stressed, to the point that it may become overloaded beyond its capacity to treat severely sick patients. *“Flattening the curve” is not expected to greatly reduce the total number of people that will become infected with COVID-19, but those infections will take place over a longer period of time, which will result in a less stressed health care system, and in turn, better patient outcomes.*

Mayor’s Order 2020-053 at 2² (Mar. 24, 2020) (emphasis added).

II. Public Health Orders Affecting Plaintiff’s Restaurants

21. Plaintiff operates restaurants in Maryland, the District of Columbia, Florida, Nevada, New York, and Virginia, which are covered locations under the Travelers’ policy. Each of the jurisdictions where Plaintiff’s restaurants are located has issued a series of Orders that have resulted in the partial or complete closure of all the covered restaurants.

A. Maryland

22. Beginning in March 2020, the State of Maryland and Montgomery County issued a series of Public Health Orders. In order to comply with the Public Health Orders, many Maryland businesses, including Plaintiff’s restaurants and the surrounding businesses, were

¹ Sean Illing, *How Bad Could the Coronavirus Get in the US? I Asked an Expert*, Vox (Mar. 12, 2020), <https://www.vox.com/2020/3/12/21171505/coronavirus-covid-19-outbreak-containment>.

² <https://tinyurl.com/yy7v2zky>.

forced to abandon their property and suspend ordinary business activity.

23. On March 5, 2020, Governor Lawrence J. Hogan, Jr. issued a Proclamation declaring a state of emergency and catastrophic health emergency in the State. Proclamations issued on March 12, April 10, May 6, June 3, and July 1 extended the state of emergency and catastrophic health emergency.

24. On March 16, 2020, Governor Hogan issued an Order that closed all restaurants to the general public except for carry-out, drive-through, and delivery service. Violations of the Order were punishable by imprisonment of up to one year or a fine of up to \$5,000 or both. The Order went into effect at 5:00 p.m. on March 16, 2020. Subsequent Orders (Numbers 20-03-19-01 and 20-03-23-01) reiterated these restrictions.

25. On March 30, 2020, Governor Hogan issued Order Number 20-03-30-01. This Stay-at-Home Order required Maryland residents to stay in their homes or places of residence except to conduct or participate in essential activities, to travel to and from those locations, to conduct minimal operations at non-essential businesses, and to deliver goods. The Order also prohibited gatherings of more than ten people. Order Number 20-03-30-01 continued the requirement that restaurants be closed to the general public, with the exception of carry-out, drive-through, and delivery services. The Stay-at-Home Order went into effect on March 30, 2020 at 8:00 p.m.

26. On May 27, 2020, Governor Hogan issued Order Number 20-05-27-01. This Order allowed restaurants to serve food and beverages in outdoor seating areas in addition to providing carry-out, drive-through, and delivery service. Outdoor service was conditioned on patrons being seated six feet away from each other and limiting groups to six people (except for households seated together), as well as other conditions.

27. On June 10, 2020, Governor Hogan issued Order Number 20-06-10-01. That Order allowed restaurants to serve food and beverages for indoor consumption and for carry-out and delivery, but limited restaurants to 50% of their maximum occupancy and placed other requirements on them.

28. Also, on June 10, 2020, the Maryland Department of Health issued a Directive and Order Regarding Food Service Establishments (No. MDH 2020-06-10-01). The Directive and Order placed limitations on restaurants, including modification of floor plans to ensure that customers are seated six feet from each other (except for households or groups seated together) and that no more than six people are seated at a table, that every other booth be closed in booth-seating arrangements, that bar patrons not of the same household or group be six feet apart, and that restaurants not exceed 50% of their maximum capacity, among other restrictions.

29. In addition to those Public Health Orders issued by the State of Maryland, Montgomery County issued several Public Health Orders to prevent the spread of COVID-19. On May 15, 2020, Montgomery County Executive Marc Elrich issued Executive Order Number 067-20, requiring restaurants to remain closed to the general public despite Governor Hogan's Order, with the exception of carry-out, drive-through, and delivery services. It also prohibited gatherings of more than ten people. The Order was effective immediately.

30. On May 28, 2020, County Executive Elrich issued Executive Order Number 070-20. The Order allowed restaurants to serve food and beverages in outdoor seating areas in addition to providing carry-out, drive-through, and delivery service. Outdoor service was conditioned on patrons being seated six feet away from each other and limiting groups to six people (except for households seated together), as well as other conditions. The Order took effect on June 1, 2020.

31. On June 16, 2020, County Executive Elrich issued Executive Order Number 082-20. The Order permitted restaurants to serve customers indoors and outdoors, under certain conditions, including compliance with Maryland Department of Health's Directive and Order Regarding Food Service Establishments (No. MDH 2020-06-10-01).

32. The TFG Maryland restaurants are located in Montgomery County, MD.

B. District of Columbia

33. Beginning in March 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued a series of Public Health Orders. In order to comply with the Public Health Orders, many D. C. businesses, including Plaintiff's restaurants and the surrounding businesses, were forced to abandon their property and suspend ordinary business activity.

34. On March 11, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Orders 2020-045 and 2020-046, which declared a public emergency and a public health emergency in the District of Columbia. These Orders went into effect immediately and were to remain in effect until at least March 26.

35. On March 16, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-048. The Order prohibited gatherings of more than fifty people. It also prohibited table seating at any restaurant in the District of Columbia beginning at 10:00 pm that night until 6:00 a.m. on April 1, 2020. Order 2020-048 stated that violators would be subject to criminal, civil, and administrative penalties, including summary suspension of licensure. The Order went into effect immediately and was to remain in effect at least through March 31, 2020.

36. On March 20, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-051, which extended the specific prohibition of gatherings of

more than fifty persons and on table seating at restaurants and, in addition, specifically prohibited service to standing customers. Order 2020-051 stated that violators would be subject to criminal, civil, and administrative penalties, including summary suspension of licensure. This Order went into effect immediately and was to remain in effect at least through April 24, 2020.

37. On March 24, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-053, which prohibited large gatherings of ten or more people, mandated closure of all on-site operations of non-essential businesses, and specifically limited restaurants to delivery, carry out, and “grab and go” service only. Order 2020-053 stated that violators would be subject to criminal, civil, and administrative penalties, including summary suspension or revocation of licensure. This Order went into effect at 10:00 p.m. on March 25, 2020, and was set to remain in effect at least through April 24, 2020.

38. On March 30, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-054, a Stay-At-Home Order, ordering all individuals living in Washington, DC, to stay at their place of residence, except to obtain food and essential household goods or to engage in Essential Business Activities. The Stay-At-Home Order stated that violators would be subject to criminal, civil, and administrative penalties, including summary suspension or revocation of licensure. This Order went into effect at 12:01 a.m. on April 1, 2020 and was set to remain in effect through at least April 24, 2020.

39. On April 8, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-058, which mandated that all restaurants mark six foot distances outside and within their location to manage lines of customers and adopt social distancing requirements similar to those imposed on grocery stores and other retail food sellers, such as maintaining a minimum distance of six feet from each person who is not part of the same

household. This Order went into effect at 12:01 a.m. on April 9, 2020 and was set to remain in effect at least through April 24, 2020.

40. On April 15, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-063, which extended Order 2020-053 and the Stay-At-Home Order (Order 2020-054) until May 15, 2020. Order 2020-063 also extended the public emergency and public health emergency in the District of Columbia until May 15, 2020. Order 2020-063 stated that violators would be subject to criminal, civil, and administrative penalties, including summary suspension or revocation of licensure, and specified that individuals “should call 311 to report any suspected violations of this or other Mayor’s Orders related to the COVID-19 public health emergency.” This Order went into effect at 12:01 a.m. on April 17, 2020 and was set to remain in effect at least through May 15, 2020.

41. On May 13, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-066, which extended the public emergency and public health emergency (declared by Orders 2020-045 and 2020-046, respectively) and all previous COVID-19-related orders through June 8, 2020. This Order also required masks to be worn by employees, independent contractors, customers, and visitors of essential businesses and others, and it continued to prohibit large gatherings of more than ten individuals. Order 2020-066 stated that violators would be subject to criminal, civil, and administrative penalties, including summary suspension or revocation of licensure, and instructed individuals to call 311 to report violations. This Order went into effect at 12:01 a.m. on May 16, 2020 and was set to remain in effect at least through June 8, 2020.

42. On May 27, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-067, which declared the District to be in Phase One of

reopening and lifted the Stay-At-Home Order (Order 2020-054). The Order continued to require mask wearing and social distancing and to prohibit large gatherings of more than ten individuals. It allowed restaurants and other licensed food establishments to open for outdoor dining, subject to conditions including that tables seat no more than six individuals and that tables be at least six feet apart. Order 2020-067 extended the public emergency and public health emergency (declared by Orders 2020-045 and 2020-046, respectively) through July 24, 2020, and extended all previous COVID-19-related orders unless otherwise modified or superseded. The Order stated that violators would be subject to criminal, civil, and administrative penalties, including summary suspension or revocation of licensure, and instructed individuals to call 311 to report violations. This Order went into effect at 12:01 a.m. on May 29, 2020.

43. On June 19, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-075, which declared the District to be in Phase Two of reopening. The Order continued to require mask wearing and social distancing. It replaced the prohibition on large gatherings of more than ten individuals with a prohibition on large gatherings of more than fifty individuals. The Order permitted licensed food establishments to open for indoor dining, subject to conditions including that the establishment remain at or below 50% of occupancy, that tables seat no more than six individuals or allow for six feet between groups, that tables be at least six feet apart, that bar seating be prohibited if a bartender is working there, that indoor queuing not be allowed, and that patrons queuing outdoors be separated by at least six feet. Order 2020-075 stated that violators would be subject to criminal, civil, and administrative penalties, including summary suspension or revocation of licensure, and instructed individuals to call 311 to report violations. This Order went into effect at 12:01 a.m. on June 22, 2020 and remains effective for the duration of public health emergency.

C. Florida

44. Beginning in March 2020, the State of Florida and Orange County issued a series of Public Health Orders. In order to comply with the Public Health Orders, many Florida businesses, including TFG's restaurant and the surrounding businesses, were forced to abandon their property and suspend ordinary business activity.

45. On March 1, 2020, Governor Ron DeSantis issued Executive Order 20-51, directing the State Health Officer and Surgeon General to declare a public health emergency in the State and to follow CDC guidelines to control the spread of COVID-19. The State Surgeon General and State Health Officer issued such a public health emergency the same day.

46. On March 9, 2020, Governor DeSantis issued Executive Order 20-52, which declared a state of emergency.

47. On March 17, 2020, Governor DeSantis issued Executive Order 20-68. This Executive Order required all restaurants to limit their occupancy to 50% of their building capacity; ensure a six-foot distance between patrons; limit parties to ten individuals, screen employees for COVID-19 symptoms; and prohibit employees from entering the restaurant if they have been infected by COVID-19, exhibited certain symptoms, have been in contact with a COVID-19-infected person, or have travelled by airport or cruise ship in the past fourteen days. Executive Order 20-68 took effect immediately and was set to expire on April 16, 2020.

48. On March 20, 2020, Governor DeSantis issued Executive Order 20-71. The Order rescinded Order 20-68 in part and required restaurants within the State to suspend on-premises food consumption, and allowed employees and others access only for the purposes of delivery or take-out services.

49. On April 1, 2020, Governor DeSantis issued Executive Order 20-91. The Executive Order required senior citizens and those with a significant underlying medical

condition to stay at home and limited all others to limit their outside-the-home activities to obtaining essential services or conducting essential activities. Incorporating Executive Order 20-89 by reference (which attached Miami-Dade County Emergency Order 07-20, which itself incorporated a portion of Miami-Dade County Emergency Order 03-20), it deemed restaurants essential but forbade on-premises service of customers in any establishment with seating for more than eight people.

50. On April 29, 2020, Governor DeSantis issued Executive Order 20-111, which extended Executive Orders 20-87 and 20-91 until 12:01 a.m. on May 4, 2020.

51. On April 29, 2020, Governor DeSantis issued Executive Order 20-112, which announced Phase 1 of reopening. The Executive Order permitted on-premises consumption of food and beverage in restaurants on the conditions that they adopt appropriate social distancing measures and limit their indoor capacity to 25% of building capacity. Outdoor seating was also permitted, provided that parties do not contain more than ten people and that six feet between parties is maintained. The Executive Order went into effect at 12:01 a.m. on May 4, 2020.

52. On May 8, 2020, Governor DeSantis issued Executive Order 20-114, extending the state of emergency declared in Executive Order 20-52 for 60 days and stating that any executive order amended or extended as a result of Executive Order 20-112 remains in effect as modified.

53. On May 15, 2020, Governor DeSantis issued Executive Order 20-123, which further expanded the reopening begun by Executive Order 20-112. Executive Order 20-123 allowed indoor seating in restaurants on the conditions that they adopt appropriate social distancing measures and limit their indoor capacity to 50% of building capacity. The Executive Order went into effect at 12:01 a.m. on May 18, 2020.

54. On June 3, 2020, Governor DeSantis issued Executive Order 20-139, which announced Phase 2 of reopening. This Executive Order followed Executive Order 20-123's allowance for restaurants to operate at 50% capacity. It additionally allowed bar areas to be open with seated service. The Executive Order went into effect at 12:01 a.m. on June 5, 2020.

55. On June 26, 2020, Halsey Beshears, Secretary of the Florida Department of Business and Professional Regulation, issued Emergency Order 2020-09, allowing restaurants to serve alcoholic beverages only to patrons seated at tables, not in bar areas.

56. On July 7, 2020, Governor DeSantis issued Executive Order 20-166, extending the state of emergency – first declared in Executive Order 20-52 and subsequently extended in Executive Order 20-114 – for 60 days and stating that any executive order amended or extended as a result of Executive Order 20-139 remains in effect as modified.

57. In addition to those Public Health Orders issued by the State of Florida, Orange County issued several Public Health Orders to prevent the spread of COVID-19. On March 13, 2020, Orange County Mayor Jerry L. Demings issued Emergency Executive Order No. 2020-01, which declared a State of Local Emergency. Subsequent Emergency Executive Orders (2020-02, -06, -07, -08, -09, -10, -11, -13, -15, -17, -18, -20, -22, -24, -26, -27, -28, -29, and -30) extended the State of Local Emergency, which is ongoing.

58. On May 1, 2020, Mayor Demings issued Emergency Executive Order No. 2020-12, which required restaurants to adopt social distancing measures; limit their indoor occupancy to 25% of building occupancy; and conduct outdoor dining only with social distancing, six feet between parties, parties of ten or fewer people, and without bar seating.

59. On May 18, 2020, Mayor Demings issued Emergency Executive Order No. 2020-16, limiting restaurants to 50% capacity.

60. TFG's Florida Restaurant is in Orlando, Florida, located in Orange County.

D. Nevada

61. Beginning in March 2020, the State of Nevada issued a series of Public Health Orders. In order to comply with the Public Health Orders, many Nevada businesses, including Plaintiff's restaurants and the surrounding businesses, were forced to abandon their property and suspend ordinary business activity.

62. On March 12, 2020, Governor Steve Sisolak declared an emergency in response to the COVID-19 pandemic.

63. On March 20, 2020, Governor Sisolak issued *Declaration of Emergency for COVID-19 Directive 003*. This Directive required restaurants to cease onsite dining effective March 20 at 11:59 p.m, while allowing carry-out, drive-through, and delivery service, provided certain conditions are met.

64. On the same day the Nevada Department of Public Safety, Division of Emergency Management adopted an emergency regulation, N.A.C. § 414.XXX. The regulation listed restaurants as essential licensed businesses if they offer meals on a carry-out, drive-through, or delivery basis, but as non-essential businesses if they provide only in-house dining.

65. On March 24, 2020, Governor Sisolak issued *Declaration of Emergency Directive 007*, prohibiting gatherings of ten or more people in any indoor or outdoor area, with the exception of persons living in the same household or working at or patronizing essential licensed businesses.

66. On March 31, 2020, Governor Sisolak issued *Declaration of Emergency Directive 010 Stay at Home Order*. The Directive required all Nevadans to stay in their residences, except to perform essential healthcare operations, to work on essential infrastructure operations, or to work in or obtain goods or services from essential licensed businesses, as had been defined in the

March 20 emergency regulations. The Directive was set to remain in effect until April 30, 2020.

67. On April 29, 2020, Governor Sisolak issued *Declaration of Emergency Directive 016*. Among other things, this Directive extended Directives 003, 007, and 010 until May 15, 2020.

68. On May 7, 2020, Governor Sisolak issued *Declaration of Emergency Directive 018*, which introduced Phase One of reopening. The Directive allowed restaurants to reopen for dine-in service provided various conditions are met, including limiting occupancy to 50% of available seating capacity, spacing tables or booths at least six feet apart, and closing bar areas. The State also released a document titled *Roadmap to Recovery for Nevada: Guidelines and Protocols for Individuals and Businesses*, and a document explaining requirements for particular industries, reiterating the restrictions on restaurants.

69. On May 28, 2020, Governor Sisolak issued *Declaration of Emergency Directive 021 – Phase Two Reopening Plan*. The Directive limited public gatherings in indoor and outdoor spaces to fifty people. The Directive required restaurants to continue to operate under the Phase One conditions set forth in Directive 018, but additionally allowed service at the bar areas under certain conditions.

70. On June 29, 2020, Governor Sisolak issued *Declaration of Emergency Directive 026*, extending Phase Two of recovery until July 31, 2020 at 11:59 p.m.

71. On July 10, 2020, Governor Sisolak issued *Declaration of Emergency Directive 027*. The Directive limited restaurant seating to parties of no more than six people. It also required restaurants located in a county with an Elevated Disease Transmission to follow Phase 1 guidelines as set forth in Directive 018 (as amended). The Nevada Department of Health and Human Services identified Clark County, where Plaintiff's restaurant is located, as having an

Elevated Disease Transmission.

E. New York

72. Beginning in March 2020, the City and State of New York issued a series of Public Health Orders. In order to comply with the Public Health Orders, many New York businesses, including TFG's New York restaurant and the surrounding businesses, were forced to abandon their property and suspend ordinary business activity.

73. On March 7, 2020, Governor Andrew M. Cuomo issued Executive Order No. 202, which declared a State disaster emergency for the State of New York. The Executive Order is in effect until September 7, 2020.

74. On March 12, 2020, Governor Cuomo issued Executive Order No. 202.1. This Order extended the State disaster emergency declared in Executive Order No. 202. It also required any business or public accommodation to operate at no more than 50% occupancy and 50% of seating capacity, effective March 13, 2020.

75. On March 16, 2020, Governor Cuomo issued Executive Order No. 202.3. This Executive Order required all restaurants in the State to cease on-premises service, while allowing service for off-premises consumption. The Executive Order went into effect, in relevant part, at 8:00 p.m. on March 16, 2020.

76. On March 18, 2020, Governor Cuomo issued Executive Order No. 202.6. The Order required all business to reduce their in-person workforce at any location to 50%, effective at 8:00 p.m. on March 20, 2020. Essential businesses were exempt from this requirement, but restaurants were not named essential businesses.

77. On March 20, 2020, Governor Cuomo issued Executive Order No. 202.8, modifying Executive Order No. 202.6 by requiring businesses to reduce their in-person workforce at any location by 100%, effective at 8:00 p.m. on March 22, 2020.

78. On March 23, 2020, Governor Cuomo issued Executive Order No. 202.10. Among other things, this Executive Order stated, “Non-essential gatherings of individuals of any size for any reason (e.g. parties, celebrations or other social events) are canceled or postponed at this time.”

79. On April 7, 2020, Governor Cuomo issued Executive Order No. 202.14, extending the application of previous Executive Orders that restricted businesses and places of public accommodation.

80. On April 12, 2020, Governor Cuomo issued Executive Order No. 202.16. This Executive Order, among other provisions, required businesses to provide employees with face coverings at the business’s expense, effective at 8:00 p.m. on April 15, 2020.

81. On May 14, 2020, Governor Cuomo issued Executive Order No. 202.31. This Order implemented New York State on PAUSE, relaxing prior restrictions for certain industries (“Phase One Industries”) and in certain areas of New York State. However, Executive Order No. 202.31 did not apply to restaurants or to New York City. Executive Order 202.34, issued on May 28, 2020, extended New York State on PAUSE but continued not to apply to New York City.

82. On May 22, 2020, Governor Cuomo issued Executive Order No. 202.33, which modified Executive Order No. 202.10 and allowed gatherings of ten or fewer individuals provided that social distancing and other protocols are observed.

83. On July 6, 2020, Governor Cuomo issued Executive Order No. 202.48. That Executive Order reaffirmed that “indoor food services and dining continue to be prohibited in New York City.”

84. In addition to those Public Health Orders issued by the State of New York, the City of New York issued several Public Health Orders to prevent the spread of COVID-19. On

March 12, 2020, Mayor Bill de Blasio issued Emergency Executive Order No. 98, declaring a state of emergency. That Order was subsequently extended by Emergency Executive Order Nos. 106, 112, 123, and 130.

85. On March 15, 2020, Mayor de Blasio issued Emergency Executive Order No. 99, which among other provisions required restaurants to operate at no more than 50% occupancy and seating capacity.

86. On March 15, 2020, Mayor de Blasio issued Emergency Executive Order No. 100. This Order required all restaurants to close effective 8:00 p.m. on Monday, March 16, 2020 and until further notice.

87. On March 20, 2020, Mayor de Blasio issued Emergency Executive Order No. 102. The Order required non-essential businesses to reduce the in-person workforce by 50% by 8:00 p.m. on March 2, 2020.

88. On March 25, 2020, Mayor de Blasio issued Emergency Executive Order No. 103, which stated that “any non-essential gathering of individuals of any size for any reason shall be cancelled or postponed.”

89. On May 24, 2020, Mayor de Blasio issued Emergency Executive Order No. 115. This Order modified Emergency Executive Order No. 103 by allowing gatherings of ten or fewer individuals provided that they adhere to social distancing and other protocols.

90. On June 18, 2020, Mayor de Blasio issued Emergency Executive Order No. 126. This Order established the Open Restaurants Program and “direct[ed] the Department of Transportation to establish and administer a program to expand seating options for restaurants, bars and other establishments in certain outdoor area.”

91. On June 22, 2020, Mayor de Blasio issued Emergency Executive Order No. 127.

The Emergency Executive Order allowing some restaurants to provide on-site service in accordance with certain guidelines, and all others (as well as those allowed to open) to continue to provide carry-out and delivery services.

92. TFG's New York restaurant is located in New York City.

F. Virginia

93. Beginning in March 2020, the Commonwealth of Virginia issued a series of Public Health Orders. In order to comply with the Public Health Orders, many Virginia businesses, including Plaintiff's restaurants and the surrounding businesses, were forced to abandon their property and suspend ordinary business activity.

94. On March 12, 2020, Governor Ralph S. Northam issued Executive Order Number 51, declaring a state of emergency until June 10, 2020. On May 26, 2020, Governor Northam issued Executive Order Amended Number 51, extending the state of emergency indefinitely.

95. On March 17, 2020, Governor Northam and State Health Commissioner M. Norman Oliver issued an Order declaring a public health emergency. The Order also restricted restaurants to ten or fewer patrons. Violations are punishable as a misdemeanor and can result in suspension of operation permits. The Order was subsequently amended on March 20, 2020.

96. On March 23, 2020, Governor Northam issued Executive Order Number 53. The Order prohibited all gatherings of ten or more people, effective at 11:59 p.m. on March 24, 2020. It further required closure of all restaurants effective at the same time. Violations of the relevant portions of the Order constitutes a Class 1 misdemeanor. The applicability of Executive Order Number 53 was extended twice. The most recent amendment (Executive Order Second Amended Number 53) extended the ten-person-gathering restriction until June 10, 2020 and extended the restaurant-closure provision until May 14, 2020.

97. On March 30, 2020, Governor Northam issued Executive Order Number 55, a

“Temporary Stay at Home Order Due to Novel Coronavirus (COVID-19).” The Order prohibited individuals from leaving their place of residence except for a set of enumerated activities, which did not include patronizing restaurants. The Order was set to remain in effect until June 10, 2020.

98. On May 8, 2020, Governor Northam issued Executive Order Number 61, which promulgated rules for Phase One reopening. The Order allowed restaurants to operate carry-out, delivery, and outdoor services only, provided that the restaurant not exceed 50% occupancy, that no more than 10 patrons are seated as a party, that tables are at least six feet apart, and that other conditions are met. The Order was effective at 12:00 a.m. on May 15, 2020.

99. On May 12, 2020, Governor Northam issued Executive Order Number 62. The Order exempted Arlington and Fairfax Counties and the Town of Vienna from Executive Order No. 61 and kept them at Phase Zero. Staying in Phase Zero meant all restaurants stayed closed (except for carry-out and delivery services) and individuals were still required to remain at their place of residence except to engage in enumerated activities in the Northern Virginia Region.

100. On June 2, 2020, Governor Northam issued Executive Order Number 65. The Order eased restrictions consistent with Phase Two. For regions moving to Phase Two, restaurants may operate carry-out, delivery, indoor, and outdoor services, provided that the restaurant’s occupancy not exceed 50% what is allowed in the certificate of occupancy, that no more than 50 patrons are seated as a party, that tables are at least six feet apart, and that other conditions are met. This Order explicitly exempted the Northern Virginia Region.

101. On June 5, 2020, Governor Northam issued Executive Order Third Amended Number 61, which moved Northern Virginia to Phase One. Executive Order Amended Number 65, issued on June 9, 2020, stated that the Northern Virginia Region would remain in Phase One while much of the rest of the Commonwealth moved to Phase Two.

102. On June 30, 2020, Governor Northam issued Executive Order Number 67, implementing Phase Three of reopening. The Order allowed restaurants to operate carry-out, delivery, indoor, and outdoor services, provided that parties are separated by six feet, including in the bar area.

103. TFG's Virginia restaurants are located in Crystal City, VA and Vienna, VA, in the Northern Virginia Region.

III. Plaintiff's Experience

104. The seventeen of the restaurants TFG operates restaurants through separately organized entities are located in Maryland, the District of Columbia, Florida, Nevada, New York, and Virginia, and each are covered under the Travelers policy: the Jaleo restaurants located in Maryland, DC, Virginia, Florida and Nevada; the Beefsteak restaurants located in Maryland and (two) in DC; America Eats located in DC and Ovations by America Eats located in Virginia; Mercado Little Spain located in New York; China Chilcano located in DC and China Poblano located in Nevada; and Barmini, Minibar, Oyamel, and Zaytinya located in DC.

105. TFG and its chef-owner José Andrés have had a tremendous influence on American cuisine. Minibar has received two Michelin stars, while Jaleo D.C. is credited with introducing the concept of tapas to the United States.

106. TFG was subject to the Public Health Orders reproduced above, and has complied with all of the Public Health Orders. As a result of these Public Health Orders, all of TFG's covered restaurants were forced to either close or seriously curtail their operations.

107. These business interruptions have caused direct loss of Plaintiff's insured property in that the restaurants and their equipment, furnishings, and other business personal property have been made unavailable, inoperable, useless, and uninhabitable, and their functionality has been severely reduced if not eliminated. The impact of these orders is felt not simply in their

direct application to TFG's operations, but also in their application to the businesses and properties adjacent to TFG in each of the jurisdictions subject to the Public Health Orders. As a result of these losses, TGF's profits have also plummeted and for some restaurants ceased entirely.

108. Just before the Public Health Orders caused the restaurants to close, TFG employed around 1,600 employees living in Maryland, the District of Columbia, Florida, Nevada, New York, and Virginia. They have had to lay off substantial numbers of staff members because of the closures, and currently are only able to conduct enough business to support 275 employees. The business income coverage TFG purchased from Travelers covers regular payroll expenses. It also covers ordinary operating expenses that TFG has still had to pay for each restaurant, including rent and utility payments.

109. Even as some jurisdictions have begun to rescind or revise their Public Health Orders to allow for more business to be conducted, Plaintiff is likely to experience residual effects, given that the pandemic spread still remains uncontrolled and densely occupied public spaces remain unsafe as places where the risk of transmission remains high.

110. TFG purchased a comprehensive commercial liability and property insurance policy from Travelers effective from April 1, 2019 to April 1, 2020 (the "Policy"). TFG purchased the Policy to protect itself against all risks that it might face, including those risks that might cause interruptions to the covered restaurant businesses and result in lost business income.

111. TFG is comprised of food and beverage professionals who excel at operating restaurants; they are not risk assessment professionals aware of every possible catastrophe that might occur which could cause its restaurants to close; what they cared about was being covered by insurance no matter what caused their restaurants to close. In its dealings with Travelers, TFG

was a consumer, and what it cared about was being covered by insurance under any circumstances that might cause its restaurants to close. Travelers, on the other hand, is in the business of predicting catastrophes and has been aware of the potential for a COVID-19-type pandemic for at least a decade.

112. There are many extensions of coverage in the Policy, including coverage for losses of business income with extra expense, as well as coverage for business income from dependent property. Once triggered, the Policy pays actual losses sustained for the business income and extra expense coverage. The Policy also provides “civil authority” coverage and “ingress or egress” coverage if all qualifying conditions are met.

113. The Policy was not individually negotiated. The Policy’s substantive terms were set unilaterally by Travelers, were not subject to individual negotiation by Plaintiff, and were presented to TFG on a “take it or leave it” basis, despite the hefty premiums charged. Subsequent amendments to the original terms – called endorsements – were also unilaterally imposed.

114. TFG was never informed by Travelers that for the business income and extra expense coverage to apply, there would need to be visible physical damage to property. The Policy also does not say this anywhere, nor does it define the terms “loss” or “damage.”

115. To date, TFG has paid all of the premiums required by Travelers to keep the Policy in full force, and has met all applicable conditions precedent in order to receive payment under the Policy and to recover the lost business income and extra expenses that have resulted from the Public Health Orders closing and/or severely restricting TFG’s restaurants.

116. Shortly after its restaurants were forced to close, TFG reported a loss of business income as of March 20, 2020, for all seventeen of the restaurants insured under the Policy and named in Paragraph 7. It reported the loss to Travelers under the Policy.

117. On April 21, 2020, Travelers denied TFG's claim for coverage. In a cursory denial letter, Travelers took the position that "[b]ecause there was no direct physical loss or damage at the properties listed . . . as described in your policy, this Business Income and Extra Expense coverage does not apply to your loss." Travelers also denied coverage under the Civil Authority provision and the Ingress or Egress coverage extension and invoked several policy exclusions.

118. Travelers' denial letter appears to be a form letter sent in response to business interruption claims arising from Public Health Orders.

119. Travelers' denial letter does not define "direct," "physical," "loss," or "damage," and the Policy does not either.

120. Travelers' denial is contrary to the terms and conditions of the Policy and applicable law, which give effect to plain language, construe ambiguity in favor of coverage, and narrowly construe exclusions, the applicability of which insurers have the burden of proving.

121. On May 11, 2020, USI Insurance Services – the insurance broker for the Policy – wrote a letter to Travelers stated that it "disagree[d] with [Travelers'] assessment of coverage."

122. TFG's properties were ordered to suspend or severely curtail business due to the various Public Health Orders, which are covered causes of loss. As a result of the suspensions, TFG has suffered the physical loss of its insured real and personal property. As such, the Policy's coverage for losses to business income and extra expenses are triggered. The Policy's coverages for business income from dependent property, civil authority, contract penalties, and ingress or egress are also likely triggered.

123. TFG has suffered and will continue to suffer damages due to Travelers' wrongful denial of insurance coverage, which Plaintiff acquired to sustain its business protect the

continued viability of the restaurants in circumstances such as these.

CAUSES OF ACTION

Count I: Declaratory Judgment

124. Plaintiff re-alleges and incorporates by reference herein all the allegations contained in paragraphs 1 through 123.

125. Plaintiff purchased the Policy which provides comprehensive business insurance from Travelers.

126. Plaintiff met all or substantially all of its contractual obligations, including by paying all the premiums required by Travelers.

127. The Policy includes provisions that provide coverage for the direct physical loss of use of its premises and equipment as well as actual loss of business income and extra expenses sustained during the suspension of operations as a result of the loss of use and risk of physical loss.

128. Beginning in March 2020, state and local governments issued a series of Public Health Orders that severely restricted access to Plaintiff's business premises.

129. As a result of these Public Health Orders, Plaintiff lost the use of its business property and lost substantial business income as a result of the loss of the use of its business property.

130. These losses are insured losses under several provisions of Plaintiff's Policy, including provisions covering direct loss of property, loss of business income, extended loss of business income, and business income from dependent properties.

131. There are no applicable, enforceable exclusions or definitions in the Policy that preclude coverage for these losses.

132. Wherefore, Plaintiff seeks a declaration that its business income losses are

covered and not precluded by exclusions or other limitations in the Travelers Policy.

Count II: Breach of Contract

133. Plaintiff re-alleges and incorporates by reference herein all the allegations contained in paragraphs 1 through 123.

134. Plaintiff purchased the Policy from Travelers to ensure against all risks (unless specifically excluded) its business might face. The Policy is a binding contract that is supposed to provide Plaintiff comprehensive business insurance under its terms and conditions.

135. Plaintiff met all or substantially all of its contractual obligations, including by paying all the premiums required by Travelers.

136. Beginning in March 2020, state and local governments issued a series of Public Health Orders that severely restricted access to Plaintiff's business premises.

137. As a result of these Public Health Orders, Plaintiff lost the use of its business property and lost substantial business income as a result of the loss of the use of its business property.

138. These losses are insured losses under several provisions of Plaintiff's Policy, including provisions covering direct loss of property, loss of business income, extended loss of business income, and business income from dependent properties.

139. There are no applicable, enforceable exclusions in Plaintiff's Policy that preclude coverage.

140. Travelers breached the contract by denying comprehensive business insurance coverage to Plaintiff.

141. As a direct and proximate result of Travelers' denial of comprehensive business insurance coverage under the Policy, Plaintiff suffered damages.

142. Wherefore, Plaintiff seeks a judgment that Travelers have breached its Contract

with Plaintiff and corresponding damages for that breach.

**Count III: Breach of the Implied Covenant
of Good Faith and Fair Dealing**

143. Plaintiff re-alleges and incorporates by reference herein all the allegations contained in paragraphs 1 through 123.

144. Plaintiff contracted with Travelers to provide it with a Policy containing comprehensive business insurance to ensure against all risks (unless specifically excluded) a business might face.

145. This contract is subject to implied covenants of good faith and fair dealing that all parties would act in good faith and with reasonable efforts to perform their contractual duties – both explicit and fairly implied – and not to impair the rights of other parties to receive the rights, benefits, and reasonable expectations under the contract. These included the covenants that Travelers would act fairly and in good faith in carrying out its contractual obligations to provide Plaintiff with comprehensive business insurance.

146. Travelers breached the implied covenant of good faith and fair dealing by:
- a. selling policies that appear to provide liberal coverage for loss of property and lost business income, knowing that they would interpret poorly defined terms, undefined terms, and ambiguously written exclusions to deny coverage under circumstances foreseen by Travelers but not TFG;
 - b. denying coverage for loss of property and lost business income by invoking undefined, ambiguous, and contradictory terms that are inconsistent with the plain terms and purpose of the Policy;
 - c. denying Plaintiff's claims for loss of property and loss of business income without adequate investigation or inquiry, arbitrarily and capriciously,

and/or with knowledge that the denial was unreasonable under the Policy.

147. TFG met all or substantially all of its contractual obligations, including by paying all the premiums required by Travelers.

148. Travelers' failure to act in good faith in providing comprehensive business insurance coverage to Plaintiff denied TFG the full benefit of its bargain.

149. Accordingly, TFG has been injured as a result of Travelers' breach of the covenant of good faith and fair dealing and is entitled to damages in an amount to be proven at trial.

150. Wherefore, TFG seeks a judgment that Defendant has breached its covenant of good faith and fair dealing implied in its contract with Plaintiff and corresponding damages for that breach.

Prayer for Relief

Wherefore, Plaintiff ThinkFood Group LLC seeks the following relief:

- a. A declaration that Plaintiff's losses are covered under the Policies;
- b. Damages;
- c. Attorneys' fees and costs; and
- d. Such other relief as this Court deems just and proper.

Jury Trial Demand

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands trial by jury in this action of all issues so triable.

July 29, 2020

Respectfully submitted,

/s/ Andrew N. Friedman

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