

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

<b>SCHATZI CORPORATION, YKG CORPORATION, KG715 INCORPORATED and S&amp;D DINING GROUP LLC, individually and on behalf of all others similarly situated,</b>	:	
	:	
<b>Plaintiffs,</b>	:	<b>CLASS ACTION</b>
	:	
<b>v.</b>	:	<b>JURY TRIAL DEMANDED</b>
	:	
<b>INDEMNITY INSURANCE COMPANY OF NORTH AMERICA,</b>	:	
	:	
<b>Defendant.</b>	:	

**CLASS ACTION COMPLAINT**

Plaintiffs Schatzi Corporation (“Schatzi”), YKG Corporation (“YKG”), KG715 Incorporated (“KG715”) and S&D Group Dining LLC (“S&D”) (collectively “Plaintiffs”), both individually and on behalf of all others similarly situated, file this Class Action Complaint against Defendant Indemnity Insurance Company of North America (“Defendant”), and in support state the following on information and belief based on reasonable investigation and discovery, except where specifically identified as being based on personal knowledge:

**INTRODUCTION**

1. On personal knowledge, Schatzi is a New York corporation that owns and operates the restaurant *Wallsé* located at 344 West 11<sup>th</sup> Street, New York, New York 10014.
2. On personal knowledge, YKG is a New York corporation that owns and operates the restaurant *Café Sabarsky* located at 1048 Fifth Avenue, New York, New York 10028.
3. On personal knowledge, KG715 is a New York corporation that owns and operates the restaurant *Upholstery: Food and Wine* located at 713-715 Washington Street, New York, New York 10014.

4. On personal knowledge, S&D is New York limited liability company that owns and operates the restaurant *Come Prima* located at 903 Madison Avenue, New York, New York 10021.

5. On or about October 2, 2019, Schatzi, YKG and KG715 purchased a commercial policy of insurance issued by Defendant Indemnity Insurance Company of North America bearing policy number MCRD3829523A.

6. On or about February 2, 2020, S&D purchased a commercial policy of insurance issued by Defendant Indemnity Insurance Company of North America bearing policy number MCRD42195339.

7. The Policies<sup>1</sup> are each bilateral contracts: Plaintiffs agreed to pay monthly premiums to Defendant Indemnity Insurance Company of North America in exchange for Defendant's promises of coverage for all risks of loss except those specifically and unambiguously excluded.

8. Plaintiffs reasonably expected that claims for loss of business income and extra expenses arising from the physical inability to use their insured premises would be paid unless specifically and unambiguously excluded.

9. Specifically, the Policies' Business Income (And Extra Expense) Coverage Forms (CP 00 30 10 12) protected Plaintiffs against the actual loss of business income due to a suspension of Plaintiffs' respective operations. Along with this business income coverage, Plaintiffs also had in effect a "Restaurant Enhancement Endorsement" under which Defendant Indemnity Insurance Company of North America promised to pay necessary expenses incurred by Plaintiffs, in addition to the actual loss of business income sustained during a period of restoration, that Plaintiffs would not have otherwise incurred if there had been no direct physical loss of the property.

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<sup>1</sup> Attached as **Exhibit A**.

10. The Policies' Business Income (And Extra Expense) Coverage Forms (CP 00 30 10 12) also provided additional "Civil Authority" coverage, under which Defendant Indemnity Insurance Company of North America promised to pay for loss of business income Plaintiffs sustained and necessary "Extra Expense" Plaintiffs incurred caused by actions of civil authorities "that prohibit[] access to the described premises."

11. Plaintiffs complied with their obligations under their respective Policies by timely paying all premiums required.

12. Effective March 16, 2020, pursuant to an Executive Order of the Governor of New York, Plaintiffs were forced to close their restaurants located in New York City.<sup>2</sup>

13. As a result of the Orders of the various civil authorities, Plaintiffs suffered, and/or continue to suffer, significant and injurious losses and expenses directly related to the physical inability to use the premises covered by their respective Policies.

14. The Policies obligated Defendant Indemnity Insurance Company of North America to provide coverage for, and to pay, business income losses and extra expense losses resulting from the suspension of Plaintiffs' respective operations, including suspensions resulting from the actions of civil authorities.

15. Schatzi, YKG and KG715 reported notice of their losses to Defendant Indemnity Insurance Company of North America on March 17, 2020.

16. In response, on May 12, 2020, Defendant Indemnity Insurance Company of North America reneged on its promises and wrongfully failed to fulfill its contractual obligation to provide coverage for, and pay, Schatzi, YKG and KG715's business income losses and extra expense losses resulting from the suspension of their operations, including suspensions resulting from the actions of civil authorities. Defendant Indemnity Insurance Company of North America's

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<sup>2</sup> See March 16, 2020 Executive Order, attached as **Exhibit B**.

actions in improperly denying Plaintiffs' claims were a blatant disregard for Plaintiffs' contractual rights and resulted in a material breach of Indemnity Insurance Company of North America's duties and obligation owed under the Policy thus depriving Plaintiffs of the benefit of their bargain and causing serious financial damages to Plaintiffs.

17. Like many other policyholders, S&D was actively discouraged from tendering a formal claim to Defendant Indemnity Insurance Company of North America given its systematic practice of wrongfully, capriciously and arbitrarily denying coverage and payments to insureds that suffered business losses as the result of various shutdown orders. However, on information and belief, Defendant Indemnity Insurance Company of North America was on notice, actual or constructive, of S&D's losses given its knowledge of the various shutdown orders that affected restaurants, bars and other eateries in the state of New York, specifically, and the nation, more generally.

18. Indeed, on information and belief, there are hundreds, if not thousands, of restaurants, bars and other eateries insured by Indemnity Insurance Company of North America. On further information and belief, Indemnity Insurance Company of North America specifically targets restaurants such as Plaintiffs', and many other such businesses have the same or similar policies issued by Indemnity Insurance Company of North America providing the same or similar business income, extra expense coverage and extended business income coverage. Plaintiffs believe, and therefore allege, that Indemnity Insurance Company of North America has also wrongfully, capriciously and arbitrarily denied coverage and payments to these other small businesses.

### **THE PARTIES**

19. On personal knowledge, Schatzi is a corporation organized under the laws of and existing in the state of New York. Schatzi has a principal place of business located at 344 West 11<sup>th</sup> Street, New York, New York 10014.

20. On personal knowledge, YKG is a corporation organized under the laws of and existing in the state of New York. YKG has a principal place of business located at 1048 Fifth Avenue, New York, New York 10028.

21. On personal knowledge, KG715 is a corporation organized under the laws of and existing in the state of New York. KG715 has a principal place of business located at 713-715 Washington Street, New York, New York 10014.

22. On personal knowledge, S&D is a limited liability company organized under the laws of and existing in the state of New York. S&D has a registered business address of 903 Madison Ave, New York, New York 10021.

23. Defendant Indemnity Insurance Company of North America is a corporation organized under the laws of Pennsylvania with its principal place of business located at 436 Walnut Street, Philadelphia, Pennsylvania 19106.

### **JURISDICTION AND VENUE**

24. This Court has subject matter jurisdiction over the claims asserted in this action under 28 U.S.C. § 1332 because there is complete diversity between Defendant and at least one member of each class; there are more than one hundred members of each class; and the amount in controversy exceeds \$5,000,000 exclusive of interest and costs. This Court also has subject matter jurisdiction under 28 U.S.C. §§ 2201 and 2202 and is authorized to grant declaratory relief under these statutes.

25. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because the Defendant resides in this district.

26. This Court has personal jurisdiction over the Defendant because it is incorporated in the Commonwealth of Pennsylvania.

### **FACTUAL BACKGROUND**

#### *The Policies*

27. Schatzi, YKG and KG715's Policy has an effective period of October 12, 2019, to October 12, 2020, and insures business operations at the properties located at 344 West 11<sup>th</sup> Street, New York, New York 10014, 1048 Fifth Avenue New York, New York 10028, and 713-715 Washington Street, New York, New York 10014.

28. S&D's policy has an effective period of February 2, 2020, to February 2, 2021, and insures business operations at the property located at 903 Madison Avenue, New York, New York 10021.

29. The Policies each contain the Building and Personal Property Coverage Form (CP 00 10 10 12), which states:

**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.**

30. The Policies each contain both a "Specified Cause of Loss" category and "Covered Cause of Loss" category, the latter of which is an all-risk coverage form meaning that all risks are covered unless specifically excluded or limited by other provisions in the Policies. All risks coverage is defined by limitations and exclusions in the Policies, and in the Policies, Defendant agreed: "when special is shown in the declarations, covered causes of loss means direct physical loss unless the loss is excluded or limited in this policy."

31. Because "Special" is listed on the Policies' Declarations, the Defendant promised to pay for losses of business income sustained as a result of Covered Causes of Loss not otherwise excluded or limited under the Policies.

32. The Policies also contained the “Restaurant Enhancement Endorsement” Form (FA-47549), which modified the Building and Personal Property Coverage Forms and Causes of Loss-Special Forms to include Additional Coverages for Business Income and Extra Expense.

33. Under these coverages, Indemnity Insurance Company of North America is obligated to indemnify Plaintiffs whenever they sustain a loss or damage caused by or resulting from a Covered Cause of Loss, and Indemnity Insurance Company of North America specifically promised Plaintiffs:

**We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss...**

34. The phrases “damage”, “direct physical loss” and “damage to property” are not defined by the Policies. However, "suspension" is defined as "a. The slowdown or cessation of your business activities; or; b. That a part or all of the described premises is rendered untenable, if coverage for Business Income ... applies.”

35. The Policies also provide Extended Business Income coverage, as follows:

**Extended Business Income**

**If the necessary "suspension" of your "operations" produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:**

- (a) **Begins on the date property (except "finished stock") is actually repaired, rebuilt or replaced and "operations" are resumed; and**
- (b) **Ends on the earlier of:**
  - (i) **The date you could restore your "operations", with reasonable speed, to the level which would generate the business income amount that would have existed if no direct physical loss or damage had occurred; or**

- (ii) **60 consecutive days after the date determined in (1)(a) above.**

**However, Extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located. Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.**

36. In addition to promising to pay for loss of Business Income, under the Policies, Indemnity Insurance Company of North America also promised to pay for certain necessary “Extra Expense.” Extra Expense means expenses that the policyholder incurs to, for example, minimize or offset the suspension of business operations.

37. The Policies also provide additional “Civil Authority” coverage as follows:

**(a) Civil Authority**

**In this Additional Coverage, Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations. 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, provided that both of the following apply:**

**(1) 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**

**(2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.**

**Civil Authority Coverage for Business Income 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. Civil Authority Coverage began.**



38. Indemnity Insurance Company of North America promised to pay the Plaintiffs for actions of civil authorities if a Covered Cause of Loss caused damage to property other than property at the Plaintiffs' respective premises, as described in the respective Policies' Declarations, and that Plaintiffs suffered actual loss due to civil authorities prohibiting access to Plaintiffs' premises.

39. The Business Income and Extra Expense coverage, as well as the Extended Business Income coverages, are separate, independent and not mutually exclusive of coverage for Civil Authority; thus, the Plaintiffs could theoretically recover under any one of these coverages or all of these coverages at the same time.

40. Unlike the Business Income and Extra Expense coverage, the Civil Authority coverage does not require the Plaintiffs to show a "direct physical loss" and "damage" to their respective properties. Instead, the Plaintiffs are required to show that there was "damaged property" in the area immediate to the Plaintiffs' respective premises and that "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." Neither "damaged property" nor "dangerous physical conditions" is defined by the Policies.

*History of COVID-19*

41. On December 31, 2019, the World Health Organization reported people in China were becoming sick due to a mysterious form of pneumonia.

42. On January 11, 2020, China reported its first death from the mysterious form of pneumonia.

43. On January 21, 2020, the first confirmed case of the mysterious form of pneumonia was reported in the United States.

44. On January 30, 2020, for only the sixth time in its history, the World Health Organization ("WHO"), declared the outbreak of the mysterious form of pneumonia a Public Health Emergency of International Concern.

45. On February 11, 2020, the WHO announced COVID-19, also known as coronavirus disease, as the name for the new mysterious form of pneumonia.

46. On February 29, 2020, the first death caused by COVID-19 was reported in the United States.

47. On March 13, 2020, President Trump declares the outbreak of COVID-19 to be a national emergency.

48. As of March 17, 2020, COVID-19 was reported to be present in every state in the United States.

49. As of March 26, 2020, the United States had more confirmed cases of COVID-19 than any other country in the world.

*Actions of Civil Authorities in New York City*

50. On March 12, 2020, Mayor Bill De Blasio issued an order recognizing that the spread of COVID-19 constitutes an emergency that affects the public health of the people of New York City<sup>3</sup> and to declare a state of emergency in New York City stating, among other things, that the pandemic was "causing property loss and damage."

51. On March 15, 2020, the Mayor issued an Emergency Order prohibiting the congregation of more than 50% occupancy for restaurants operating in New York City.<sup>4</sup>

52. The next day, on March 16, 2020, the Mayor issued an Emergency Order closing all New York City restaurants with external entrances indefinitely, except for the purpose of providing take-out or delivery service.

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<sup>3</sup> See **Exhibit C**.

<sup>4</sup> See **Exhibit D**.

53. On June 3, 2020, the New York State Department of Health issued "Interim Guidance for Outdoor and Take-Out/Delivery Food Services during the COVID-19 Public Health Emergency" authorizing restaurants in regions that have reached Phase 2 of the State's reopening to open outdoor spaces with seating for customers, provided that social distancing is maintained, and to open outdoor bar seating areas, provided that customers can be distanced appropriately, and providing minimum requirements for the operation of any such outdoor space or outdoor bar seating area.

54. On June 18, 2020, the Mayor issued an Emergency Order allowing restaurants to utilize sidewalk seating, curbside seating and seating directly in front of establishments on streets that have been opened across the City pursuant to the Open Restaurants Program.

55. The actions of the City of New York forced the Plaintiffs to cease, suspend, limit or otherwise lose their use of the insured premises to conduct business operations.

*Actions of Civil Authorities for the State of New York*

56. On March 7, 2020, New York State Governor Andrew Cuomo declared a State disaster emergency for the entire State of New York to address the threat that COVID-19 poses to the health and welfare of New York residents and visitors.

57. On March 7, 2020, in response to the 2019 novel coronavirus disease, the Governor of New York ordered that any restaurant or bar in the state of New York shall cease serving patrons food or beverage on-premises effective on March 16, 2020, and until further notice shall only serve food or beverage for off-premises consumption.

58. On April 26, 2020, Governor Cuomo announced a phased approach to reopen industries and businesses in New York in phases based upon a data-driven, regional analysis. On May 4, 2020, the Governor provided that the regional analysis would consider several public health factors, including new COVID-19 infections, as well as health care system, diagnostic testing, and

contact tracing capacity. On May 11, 2020, Governor Cuomo announced that the first phase of reopening would begin on May 15, 2020 in several regions of New York, based upon available regional metrics and indicators.

59. On June 6<sup>th</sup>, pursuant to an Executive Order, restaurants or bars in regions that were in phase 2 could serve patrons food or beverage on-premises only in outdoor space, provided such restaurant or bar is in compliance with Department of Health guidance promulgated for such activity including, among other things, having a private entrance.

60. On September 9, 2020, Governor Andrew Cuomo announced New York City Restaurants could restart indoor dining on September 30, but they will be limited to operating at 25% capacity.

61. The actions of the State of New York forced the Plaintiffs to cease, suspend, limit or otherwise lose their use of the insured premises to conduct business operations.

*Impact of COVID-19 in New York*

62. By April 20, The New York Times reported that hundreds of thousands of New Yorkers were unemployed, with at least \$7.4 billion lost tax revenue projected over the year.

63. As of June 202, New York City has had 1.25 million total job losses since February, marking the sharpest job decline seen in New York City since the 1930s. To a greater extent than in previous downturns, the COVID-19-related job losses are heavily concentrated among low-wage workers, hitting persons of color, immigrants, young workers, and less educated workers the hardest.

64. According to the Mayor's office, the drop in income, sales tax and tourism revenues including hotel tax revenue will cost New York City up to \$10 billion in tax revenue. According

to the New York City Independent Budget Office, a full economic recovery might not be achieved until 2024.

65. In August 2020, the New York Times estimated that up to 80,000 small businesses in New York might never reopen, eliminating jobs for up to 520,000 people and representing one-third of the total number of small businesses in operation before the pandemic.

66. Within the restaurant industry, spending at New York City restaurants was down over 90 percent compared to the same time period last year, amounting to over \$1 billion in lost tax revenue for the current fiscal year, according to the New York City's executive Financial Budget Summary.

67. The strict limits imposed on New York City's approximately 27,000 eating and drinking establishments during the public health crisis affect more than 300,000 people, or 7 percent of the overall workforce. More than half of those jobs have been lost.

68. According to the New York City Hospitality Alliance, the 10,000 New York City restaurants that are operating with outdoor seating and curbside pick-up and delivery have lost 70 percent of their revenues compared to 2019.

69. In a survey by the New York State Restaurant Association conducted March 23-26, an estimated \$1.9 billion in sales and more than 250,000 jobs were lost, 78 percent of operators laid off employees, and 48 percent of operators temporarily closed their restaurants in the first 22 days of march.

70. Even still, additional losses are forecasted as the New York City Independent Budget Office expects that another 475,000 people will lose their jobs over the next year

*Plaintiffs' Covered Losses*

71. Based on the state and local orders described above, Plaintiffs' were prevented from physically using their insured premises to conduct business as of March 16, 2020.

72. Indeed, even after Plaintiffs were permitted to partially resume physical use of their insured premises under the state and local orders described above, they continued to suffer losses and incur extra operating expenses.

73. Plaintiffs have suffered a suspension of normal business operations and a cessation of all operations on their premises, sustained losses of business income, and incurred extra expenses.

74. These losses and expenses have continued through the date of filing of this action.

75. These losses and expenses are not excluded from coverage under the respective Policies, and because the respective Policies are all-risk policies, and Plaintiffs have complied with their contractual obligations, Plaintiffs are entitled to payment for these losses and expenses.

76. Plaintiffs have suffered a suspension and/or cessation of all normal business operations given the response to the global pandemic associated with the spread of COVID-19, including the actions of civil authority described herein.

77. Contrary to the plain language of the Policies, and to Indemnity Insurance Company of North America's corresponding promises and contractual obligations, Indemnity Insurance Company of North America has refused to pay for Plaintiffs' respective losses and expenses under the terms of the Policies.<sup>5</sup>

### **CLASS ACTION ALLEGATIONS**

78. The class claims all derive directly from a single course of conduct by Indemnity Insurance Company of North America and its systematic, uniform, capricious and arbitrary refusal to pay insureds for covered losses and the actions taken by civil authorities to suspend business operations.

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<sup>5</sup> See **Exhibit E**.

79. Plaintiffs bring this action pursuant to Rules 23(a), 23(b)(1), 23(b)(2), and/or 23(b)(3), as well as 23(c)(4), of the Federal Rules of Civil Procedure, individually and on behalf of all others similarly situated. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

80. Plaintiffs seek to represent a nationwide class as the Court may deem appropriate defined as:

- a) All bars, restaurants and other eateries that purchased Business Income and Extra Expense coverage under a policy of insurance issued by the Defendant covering the period of March 2020 through the present that suffered a suspension of business operations due to government prohibitions on the use of their insured premises and for which the Defendant has either actually denied or stated it will deny a claim for the losses or has otherwise failed to acknowledge, accept as a covered cause of loss, or pay for the covered losses (“the Business Income Coverage Class”).
- b) All bars, restaurants and other eateries that purchased Extended Business Income coverage under a policy of insurance issued by the Defendant covering the period of March 2020 through the present that incurred extra expenses to avoid or minimize the suspension of business operations due to government prohibitions on the use of their insured premises and for which the Defendant has either actually denied or stated it will deny a claim for the extra expenses or

has otherwise failed to acknowledge, accept as a covered expense, or pay for the covered expenses (“the Extra Expense Coverage Class”).

- c) All bars, restaurants and other eaters that purchased Civil Authority coverage under a policy of insurance issued by the Defendant covering the period of March 2020 through the present that suffered an actual loss of Business Income and/or Extra Expense due to government prohibitions on the use of their insured premises and for which the Defendant has either actually denied or stated it will deny a claim for the losses or has otherwise failed to acknowledge, accept as a covered cause of loss, or pay for the covered losses (“the Civil Authority Coverage Class”).

81. Excluded from each defined proposed Classes are Defendant and any of its members, affiliates, parents, subsidiaries, officers, directors, employees, successors, or assigns; governmental entities; Class Counsel and their employees; and the judicial officers and Court staff assigned to this case and their immediate family members.

82. Plaintiffs reserve the right to modify, expand, or amend the definitions of the proposed Classes, as appropriate, during the course of this litigation.

83. This action has been brought and may properly be maintained on behalf of each Class proposed herein under the criteria of Rule 23 of the Federal Rules of Civil Procedure

*Numerosity and Ascertainability*

84. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(1). The members of each proposed Class are so numerous that individual joinder of all Class members is impracticable.



There are, at a minimum, hundreds, if not thousands, of members of each proposed Class, and these individuals and entities are spread out across the Commonwealth and the United States.

85. The identity of Class members is ascertainable, as the names and addresses of all Class members can be identified in Defendant's or its agents' books and records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, internet postings, and/or published notice.

*Predominance of Common Issues*

86. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(2) and 23(b)(3) because this action involves common questions of law and fact that predominate over any questions affecting only individual Class members. Defendant issued the same or substantially similar all-risk policies using the same or similar coverage forms to all the members of each proposed Class in exchange for payment of premiums by the Class members. The questions of law and fact affecting all Class members include, without limitation, the following:

- a) Whether Plaintiffs and the Class members suffered a covered cause of loss under the policies issued to members of the Class;
- b) Whether Defendant wrongfully, capriciously and arbitrarily denied all claims based on the facts set forth herein;
- c) Whether Defendant's Business Income coverage applies based on the facts set forth herein;
- d) Whether Defendant's Civil Authority coverage applies to a loss of Business Income based on the facts set forth herein;

- e) Whether Defendant's Extra Expense coverage applies to efforts to avoid or minimize a loss caused by the suspension of business based on the facts set forth herein;
- f) Whether Defendant has breached their contracts of insurance through a uniform and blanket denial of all claims for business losses based on the facts set forth herein;
- g) Whether the Defendant acted in bad faith breach of contract and the duty of good faith and fair dealing through a uniform and blanket denial of all claims for business losses based on the facts set forth herein; and
- h) Whether Plaintiffs and the Class members suffered damages as a result of Defendant's actions; and
- i) Whether Plaintiffs and the Class members are entitled to an award of reasonable attorneys' fees, interest, and costs.

*Typicality*

87. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(3) because Plaintiffs' claims are typical of the claims of the Class members and arise from the same course of conduct by Defendant. Plaintiffs and the other Class members are all similarly affected by Defendant's refusal to pay under their Policies, which are representative of the same or similar all-risk policies issued by the Defendant. Plaintiffs' claims are based upon the same legal theories as those of the other Class members. Plaintiffs and the other Class members sustained damages as a direct and proximate result of the same wrongful practices in which Defendant engaged. The relief Plaintiffs seek is typical of the relief sought for the absent Class members.

*Adequacy of Representation*

88. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(4) because Plaintiffs will fairly and adequately represent and protect the interests of Class members. Plaintiffs have retained counsel with substantial experience in prosecuting complex class action and insurance coverage litigation.

89. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Class members and have the financial resources to do so. Neither Plaintiffs nor their counsel has interests adverse to those of the Class members.

*Inconsistent or Varying Adjudications and the Risk of Impediments to Other Class Members' Interests*

90. This action satisfies the requirements of Fed. R. Civ. P. 23(b)(1). Plaintiffs seek class-wide adjudication as to the interpretation and scope of Defendant's insurance policies. The prosecution of separate actions by individual members of the proposed Classes would create an imminent risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendant.

*Final Injunctive and/or Corresponding Declaratory Relief with respect to the Class is Appropriate*

91. This action satisfies the requirements of Fed. R. Civ. P. 23(b)(2) because Defendant acted or refused to act on grounds generally applicable to Plaintiffs and the members of the Classes, thereby making appropriate final injunctive and/or corresponding declaratory relief with respect to the Class members. The Class' claims all derive directly from Defendant's systematic, uniform, capricious and arbitrary refusal to pay insureds for losses suffered due to government prohibitions on the use of insured premises in response to the pandemic associated with the spread of COVID-19. Defendant's actions or refusal to act are grounded upon the same generally applicable legal theories.

*Superiority*

92. This action satisfies the requirements of Fed. R. Civ. P. 23(b)(3) because a class action is superior to other available methods for the fair and efficient group-wide adjudication of this controversy. The common questions of law and of fact regarding Defendant's conduct and the interpretation of the common language in their insurance policies predominate over any questions affecting only individual Class members.

93. Because the damages suffered by certain individual Class members may be relatively small, the expense and burden of individual litigation would make it very difficult for all individual Class members to redress the wrongs done to each of them individually, such that many Class members would have no rational economic interest in individually controlling the prosecution of specific actions, and the burden imposed on the judicial system by individual litigation by even a small fraction of the Class would be enormous, making class adjudication the superior alternative under Fed. R. Civ. P. 23(b)(3)(A).

94. The conduct of this action as a class action presents far fewer management difficulties, far better conserves judicial resources and the parties' resources, and far more effectively protects the rights of each Class member than would piecemeal litigation. Compared to the expense, burdens, inconsistencies, economic infeasibility, and inefficiencies of individualized litigation, the challenges of managing this action as a class action are substantially outweighed by the benefits to the legitimate interests of the parties, the Court, and the public of class treatment in this Court, making class adjudication superior to other alternatives, under Fed. R. Civ. P. 23(b)(3)(D).

95. Plaintiffs are not aware of any obstacles likely to be encountered in the management of this action that would preclude its maintenance as a class action. Rule 23 provides the Court with authority and flexibility to maximize the efficiencies and benefits of the class mechanism and

reduce management challenges. The Court may, on motion of Plaintiffs or on its own determination, certify nationwide, statewide and/or multistate classes for claims sharing common legal questions; utilize the provisions of Rule 23(c)(4) to certify any particular claims, issues, or common questions of fact or law for class-wide adjudication; certify and adjudicate bellwether class claims; and utilize Rule 23(c)(5) to divide any Class into subclasses.

**CAUSES OF ACTION**  
**COUNT I: DECLARATORY JUDGMENT**  
**(On behalf of the Business Income Coverage Class)**

96. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 95 above, as though fully set forth herein.

97. Plaintiffs bring this Count both individually and on behalf of the other members of the Business Income Coverage Class.

98. Under 28 U.S.C. §§ 2201 and 2202, this Court has jurisdiction to declare the rights and other legal relations of the parties in dispute.

99. Plaintiffs' respective Policies, as well as the policies of other Business Income Coverage Class members, are insurance contracts under which Defendant was paid premiums in exchange for promises to pay Class members' losses for claims covered by the policies.

100. In the policies, Defendant promised to pay for losses of business income and extra expense sustained as a result of perils not excluded under the policies. Specifically, Defendant promised to pay for losses of business income and extra expense sustained as a result of a suspension of business operations during the period of restoration.

101. Plaintiffs and Class members suffered direct physical loss of or damage to Plaintiffs' insured premises and other Class members' insured premises, resulting in interruptions or suspensions of business operations at the locations. These suspensions and interruptions have caused Plaintiffs and Class members to suffer losses of business income and extra expense.

102. These suspensions and interruptions, and the resulting losses, triggered business income and extra expense coverage under the respective Policies and other Class members' policies.

103. Plaintiffs and the other Class members have complied with all applicable provisions of their respective policies, including payment of premiums.

104. Defendant, without justification, denied that the Policies and other Class members' policies provide coverage for these losses.

105. Plaintiffs seek a Declaratory Judgment that their Policies and other Class members' policies provide coverage for the losses of business income and extra expense attributable to the facts set forth above.

106. An actual case or controversy exists regarding Plaintiffs and other Class members' rights and Defendant's obligations to reimburse Plaintiffs and other Class members for the full amount of these losses. Accordingly, the Declaratory Judgment sought is justiciable.

**WHEREFORE**, Plaintiffs requests that this Court enter a Declaratory Judgment declaring that the Policies and other Class members' policies provide coverage for Class members' losses of business income.

**COUNT II: BREACH OF CONTRACT**  
**(On behalf of the Business Income Coverage Class)**

107. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 95 above, as though fully set forth herein.

108. Plaintiffs bring this Count both individually and on behalf of the other members of the Business Income Coverage Class.

109. Plaintiffs' respective Policies, as well as the policies of other Business Income Coverage Class members, are insurance contracts under which Defendant was paid premiums in exchange for promises to pay Class members' losses for claims covered by the respective policies.

110. In the policies, Defendant promised to pay for losses of business income and extra expense incurred as a result of perils not excluded under the policies. Specifically, Defendant promised to pay for losses of business income and extra expense sustained as a result of a suspension of business operations during the period of restoration.

111. Plaintiffs and Class members have suffered a direct physical loss of or damage to Plaintiffs' insured premises and other Class members' insured premises as a result of interruptions or suspensions of business operations at these premises. These interruptions and suspensions have caused Class members to suffer losses of business income and extra expense.

112. These losses triggered business income and extra expense coverage under both the respective Policies and other Class members' policies.

113. Plaintiffs and the other Class members have complied with all applicable provisions of their respective policies, including payment of premiums.

114. Defendant has denied coverage and refused performance under the respective Policies and other Class members' policies by denying coverage for these losses and expenses. Accordingly, Defendant is in breach of the Policies and other Class members' policies.

115. As a result of Defendant's breaches of the respective Policies and other Class members' policies, Plaintiffs and other Class members have suffered actual and substantial damages for which Defendant is liable.

**WHEREFORE**, Plaintiffs, both individually and on behalf of other Class members, seek compensatory damages resulting from Defendant's breaches of their Policies and other Class Members' policies and seek all other relief deemed appropriate by this Court.

**COUNT III: BAD FAITH BREACH OF CONTRACT AND  
THE DUTY OF GOOD FAITH AND FAIR DEALING**  
**(On behalf of the Business Income Coverage Class)**

116. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 95 above, as though fully set forth herein.

117. Plaintiffs bring this Count both individually and on behalf of the other members of the Business Income Coverage Class.

118. Plaintiffs' respective Policies, as well as the policies of other Business Income Coverage Class members, are insurance contracts under which Defendant was paid premiums in exchange for promises to pay Class members' losses for claims covered by the policies.

119. In the policies, Defendant promised to pay for losses of business income and extra expense incurred as a result of perils not excluded under the policies. Specifically, Defendant promised to pay for losses of business income and extra expense sustained as a result of a suspension of business operations during the period of restoration.

120. Plaintiffs and Class members suffered an actual loss of business income and extra expense to the necessary suspension of Plaintiffs' bars and/or restaurants and other Class members' business operations at insured premises and said suspension(s) were caused by direct physical loss of and damage to Plaintiffs' bars and/or restaurants and other Class members' insured premises caused by or resulting from Covered Causes of Loss under the respective Policies and other Class members' policies. These actual losses, therefore, triggered Business Income and Extra Expense coverage under both the respective Policies and other Class members' policies.

121. These Covered Causes of Loss were direct, physical and foreseeable causes of loss under the Policies and other Class members' policies and they each caused, and/or resulted in, dangerous physical conditions at, and physical injuries to, the Plaintiffs' restaurants, bars or eateries, other Class members' insured premises and property immediately adjacent to each. The



subject Covered Causes of Loss pose a serious risk to and endanger(ed) the public's health, safety and property and rendered the Plaintiffs' bars, restaurants or eateries and other Class members' insured premises unusable and/or uninhabitable; thus, mandating a suspension of business operations.

122. These losses and expenses are not excluded from coverage under the policies. The policies are all-risk policies meaning Covered Causes of Loss are determined by exclusions and the subject Covered Causes of Loss were not excluded under the policies.

123. Furthermore, these Covered Causes of Loss caused direct physical loss and damage to the Plaintiffs' various business premises and the other Class Members' insured premises resulting in dangerous physical conditions, the nature of such loss and damage to property having been recognized by civil authorities in Orders addressing COVID-19.

124. Plaintiffs and the other Class members have complied with all applicable provisions of their respective policies, including payment of premiums.

125. The actions of the Defendant give rise to a cause of action for bad faith breach of contract and the duty of good faith and fair dealing as Plaintiffs and other Class members were covered under Plaintiffs' respective Policies, as well as the policies of other Business Income Coverage Class members, and the Defendant has breached the terms of said policies by denying business income and extra expense coverage to the Plaintiffs and other Class members. Defendant's actions in breaching the terms of the Plaintiffs' respective policies and the other Class Members' policies, in bad faith, have proximately caused damages to Plaintiffs and other Class members and the damages were reasonably foreseeable to the Defendant.

126. It appears that the Defendant's conduct was performed because it placed its own financial interests before the Plaintiffs' and other Class Members' financial interests.

127. Further, the actions of the Defendant in denying business income and extra expense coverage to the Plaintiffs and other Class Members was done so without any legitimate basis or arguable reason and constitute intentional and/or malicious conduct or gross negligence and reckless disregard.

128. Implied in the Plaintiffs' respective Policies and the other Class Members' policies is a duty of good faith and fair dealing with respect to conduct encompassed by contractual relations. Defendant's conduct as aforesaid breached the duty of good faith and fair dealing which further gives rise to the tort of bad faith for the breach of contract.

129. Defendant, at all times relevant hereto, owed Plaintiffs and other Class Members a duty to exercise good faith and an obligation to deal fairly with them; however, the denial of business income and extra expense coverage by Defendant constituted a bad faith breach of contract and was totally made with only the Defendant's best interests in mind and in total disregard of the contractual rights of Plaintiffs and other Class Members.

130. Defendant's bad faith material breach(es) of the Plaintiffs' respective Policies, as well as other Class members' policies, has resulted in actual and substantial damages to the Plaintiffs and Business Income Coverage Class members, depriving all of the benefit of their bargain, and represents, in addition to warranting contractual damages, incidental damages and consequential damages, an independent tort entitling Plaintiffs and other Class Members to punitive damages in an amount which will punish the Defendant for its intentional, grossly negligent, and/or reckless conduct as well as to deter Defendant and others from similar misconduct in the future.

**WHEREFORE**, Plaintiffs, both individually and on behalf of other Class members, seek compensatory damages, contractual damages, incidental damages, consequential damages, and

punitive damages, resulting from Defendant's bad faith breach(es) of the Policies and other Class Members' policies and seek all other relief deemed appropriate by this Court.

**COUNT IV: DECLARATORY JUDGMENT**  
**(On behalf of the Extended Business Income Coverage Class)**

131. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 95 above, as though fully set forth herein.

132. Plaintiffs bring this Count both individually and on behalf of the other members of the Extra Expense Coverage Class.

133. Under 28 U.S.C. §§ 2201 and 2202, this Court has jurisdiction to declare the rights and other legal relations of the parties in dispute.

134. Plaintiffs' respective Policies, as well as the policies of other Extended Business Income Coverage Class members, are insurance contracts under which Defendant were paid premiums in exchange for promises to pay Class members' losses for claims covered by the policies.

135. Specifically, Defendant promised to pay for extended business income for losses incurred by Plaintiffs and other Class members during the period of restoration that the insureds would not have incurred if there had been no loss or damage to the insured premises. Extended business income included income to avoid or minimize the suspension of business, continue operations, and to repair or replace property.

136. Plaintiffs and Class members suffered direct physical loss of or damage to their locations and other Class members' insured premises, resulting in suspensions or interruptions of business operations at these premises. As a result, Plaintiffs and other Class members have incurred losses, as defined in the respective Policies and other Class members' policies.

137. These losses triggered Extended Business Income coverage under the policies and other Class members' policies.

138. Plaintiffs and the other Class members have complied with all applicable provisions of their respective policies, including payment of premiums.

139. Defendant, without justification, denied that the Policies and other Class members' policies provide coverage for these Extended Business Income.

140. Plaintiffs, both individually and on behalf of the other members of the Extended Business Income Coverage Class, seek a Declaratory Judgment that their Policies, and those of other members of the Extended Business Income Coverage Class, provides coverage for these extended business income.

141. An actual case or controversy exists regarding Class members' rights and Defendant's obligations under Class members' policies to reimburse Class members for extended business income. Accordingly, the Declaratory Judgment sought is justiciable.

**WHEREFORE**, Plaintiffs requests that this Court enter a Declaratory Judgment declaring that the Policies and other Class members' policies provide coverage for Class members' extended business income.

**COUNT V: BREACH OF CONTRACT**  
**(On behalf of the Extended Business Income Coverage Class)**

142. Plaintiffs incorporates by reference and re-allege paragraphs 1 through 95 above, as though fully set forth herein.

143. Plaintiffs bring this Count individually and on behalf of the other members of the Extended Business Income Coverage Class.

144. Plaintiffs' respective Policies, as well as the policies of other Extended Business Income Coverage Class members, are insurance contracts under which Defendant was paid premiums in exchange for promises to pay Class members' losses for claims covered by their policies.

145. Specifically, Defendant promised to pay for extended business income for losses incurred by Plaintiffs and other Class members during the period of restoration that the insureds would not have incurred if there had been no loss or damage to the insured premises. Extended business income losses included income to avoid or minimize the suspension of business, continue operations, and to repair or replace property.

146. Plaintiffs and Class members suffered direct physical loss of or damage to their locations and other Class members' insured premises, resulting in suspensions and interruptions of business operations at these premises. These suspensions and interruptions have caused Class members to incur Extra Expenses.

147. These expenses triggered extended business income coverage under the policies and other Class members' policies.

148. Plaintiffs and the other Class members have complied with all applicable provisions of their policies, including payment of premiums.

149. Defendant has denied coverage and refused performance extended business income. Accordingly, Defendant is in breach of the Policies and other Class members' policies.

150. As a result of Defendant's breaches of the Policies and other Class members' policies, Plaintiffs and other Class members have suffered actual and substantial damages for which Defendant is liable.

**WHEREFORE**, Plaintiffs, individually and on behalf of other Class members, seek compensatory damages resulting from Defendant's breaches of the Policies and other Class Members' policies and seek all other relief deemed appropriate by this Court.

**COUNT VI: BAD FAITH BREACH OF CONTRACT AND**  
**THE DUTY OF GOOD FAITH AND FAIR DEALING**  
**(On behalf of the Extended Business Income Coverage Class)**

151. Plaintiffs incorporates by reference and re-allege paragraphs 1 through 95 above, as though fully set forth herein.

152. Plaintiffs bring this Count both individually and on behalf of the other members of the Extra Expense Coverage Class.

153. Plaintiffs' respective Policies, as well as the policies of other Extended Business Income Coverage Class members, are insurance contracts under which Defendant was paid premiums in exchange for promises to pay Class members' losses for claims covered by the policies.

154. In the policies, Defendant promised to pay extended business income for losses, incurred as a result of perils not excluded under the policies. Specifically, Defendant promised to pay for losses of Extended Business Income sustained as a result of a suspension of business operations during the period of restoration.

155. Plaintiffs and Class members suffered an actual loss of business income due to the necessary Suspension of Plaintiffs' restaurants, bars or eateries and other Class members' business operations at insured premises and said suspension(s) were caused by direct physical loss of and damage to their restaurants, bars or eateries and other Class members' insured premises caused by or resulting from Covered Causes of Loss under the Policies and other Class members' policies. These actual losses, therefore, triggered Extended Business Income coverage under Plaintiffs' respective Policies and other Class members' policies.

156. These Covered Causes of Loss were direct, physical and foreseeable causes of loss under the Policies and other Class members' policies and they each caused, and/or resulted in, dangerous physical conditions at, and physical injuries to, their bars, restaurants or eateries, other

Class members' insured premises and property immediately adjacent to each. The subject Covered Causes of Loss pose a serious risk to and endanger(ed) the public's health, safety and property and rendered the Plaintiffs' bars, restaurants or eateries and other Class members' insured premises unusable and/or uninhabitable; thus, mandating a suspension of business operations.

157. These losses and expenses are not excluded from coverage under the policies. The policies are all-risk policies meaning Covered Causes of Loss are determined by exclusions and the subject Covered Causes of Loss were not excluded under the policies.

158. Furthermore, these Covered Causes of Loss caused direct physical loss and damage to the Plaintiffs' various business premises and the other Class Members' insured premises resulting in dangerous physical conditions, the nature of such loss and damage to property having been recognized by civil authorities in Orders addressing COVID-19.

159. Plaintiffs and the other Class members have complied with all applicable provisions of their respective policies, including payment of premiums.

160. The actions of the Defendant give rise to a cause of action for bad faith breach of contract and the duty of good faith and fair dealing as Plaintiffs and other Class members were covered under their respective policies, as well as the policies of other Class members, and the Defendant has breached the terms of said policies by denying extended business income coverage to the Plaintiffs and other Class members. Defendant's actions in breaching the terms of the Plaintiffs' respective policies and the other Class Members' policies, in bad faith, have proximately caused damages to Plaintiffs and other Class members and the damages were reasonably foreseeable to the Defendant.

161. It appears that the Defendant's conduct was performed because it placed its own financial interests before the Plaintiffs' and other Class Members' financial interests.

162. Further, the actions of the Defendant in denying extended business income coverage to the Plaintiffs and other Class Members was done so without any legitimate basis or arguable reason and constitute intentional and/or malicious conduct or gross negligence and reckless disregard.

163. Implied in the Plaintiffs' respective Policies and the other Class Members' policies is a duty of good faith and fair dealing with respect to conduct encompassed by contractual relations. Defendant's conduct as aforesaid breached the duty of good faith and fair dealing which further gives rise to the tort of bad faith for the breach of contract.

164. Defendant, at all times relevant hereto, owed Plaintiffs and other Class Members a duty to exercise good faith and an obligation to deal fairly with them; however, the denial of extended business income coverage by Defendant constituted a bad faith breach of contract and was totally made with only the Defendant's best interests in mind and in total disregard of the contractual rights of Plaintiffs and other Class Members.

165. Defendant's bad faith material breach(es) of the Plaintiffs' respective Policies, as well as other Class members' policies, has resulted in actual and substantial damages to the Plaintiffs and Extended Business Income Coverage Class members, depriving all of the benefit of their bargain, and represents, in addition to warranting contractual damages, incidental damages, and consequential damages, an independent tort entitling Plaintiffs and other Class Members to punitive damages in an amount which will punish the Defendant for its intentional, grossly negligent, and/or reckless conduct as well as to deter Defendant and others from similar misconduct in the future.

**WHEREFORE**, Plaintiffs, both individually and on behalf of other Class members, seek compensatory damages, contractual damages, incidental damages, consequential damages, and



punitive damages, resulting from Defendant's bad faith breach(es) of the Policies and other Class Members' policies, and seek all other relief deemed appropriate by this Court.

**COUNT VII: DECLARATORY JUDGMENT**  
**(On behalf of the Civil Authority Coverage Class)**

166. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 95 above, as though fully set forth herein.

167. Plaintiffs bring this Count both individually and on behalf of the other members of the Civil Authority Coverage Class. Under 28 U.S.C. §§ 2201 and 2202, this Court has jurisdiction to declare the rights and other legal relations of the parties in dispute.

168. Plaintiffs' respective Policies, as well as the policies of other Civil Authority Coverage Class members, are insurance contracts under which Defendant was paid premiums in exchange for promises to pay Class members' losses for claims covered by the policies.

169. In the Plaintiffs' respective Policies and other Class members' policies, Defendant promised to pay for losses of business income sustained and extra expenses incurred when, among other things, a covered cause of loss causes damage to property other than Plaintiffs' properties prohibits access to Plaintiffs' properties.

170. Plaintiffs and other Class members have suffered losses and incurred expenses as a result of actions of civil authorities that prohibited access to insured premises under the Policies and Class members' policies.

171. These losses satisfied all requirements to trigger Civil Authority coverage under the Policies and other Class members' policies.

172. Plaintiffs and the other Class members have complied with all applicable provisions of the policies, including payment of premiums.

173. Defendant, without justification, denies that the policies provides coverage for these losses.

174. Plaintiffs seek a Declaratory Judgment that their respective Policies and other Class members' policies provide coverage for the losses that Class members have sustained and extra expenses they have incurred caused by actions of civil authorities.

175. An actual case or controversy exists regarding Class members' rights and Defendant's obligations under Class members' policies to reimburse Class members for these losses and extra expenses. Accordingly, the Declaratory Judgment sought is justiciable.

**WHEREFORE**, Plaintiffs, both individually and on behalf of other Class members, requests that this Court enter a Declaratory Judgment declaring that their policies provides Civil Authority coverage for the losses and extra expenses incurred by Plaintiffs and the other Class members.

**COUNT VIII: BREACH OF CONTRACT**  
**(On behalf of the Civil Authority Coverage Class)**

176. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 95 above, as though fully set forth herein.

177. Plaintiffs bring this Count individually and on behalf of the other members of the Civil Authority Coverage Class.

178. Plaintiffs' respective Policies, as well as the policies of other Civil Authority Coverage Class members, are insurance contracts under which Defendant was paid premiums in exchange for promises to pay Class members' losses and expenses covered by the policies.

179. In the Policies and other Class members' policies, Defendant promised to pay for losses of business income sustained and extra expenses incurred when a covered cause of loss causes damage to property near the insured premises, the civil authority prohibits access to property near the insured premises, and the civil authority action is taken in response to dangerous physical conditions.

180. Plaintiffs and other Class members have suffered losses and incurred expenses as a result of actions of civil authorities that prohibited access to insured premises under the Policies and Class members' policies.

181. These losses satisfied all requirements to trigger Civil Authority coverage under the Policies and other Class members' policies.

182. Plaintiffs and the other Class members have complied with all applicable provisions of the policies, including payment of premiums.

183. Defendant has refused performance under the Policies and other Class members' policies by denying coverage for these losses and expenses. Accordingly, Defendant are in breach of the Policies and other Class members' policies.

184. As a result of Defendant's breaches of the Policies and other Class members' policies, Plaintiffs and other Class members have suffered actual and substantial damages for which Defendant is liable.

**WHEREFORE**, Plaintiffs seek compensatory damages resulting from Defendant's breaches of the Policies and other Class members' policies, and seek all other relief deemed appropriate by this Court.

**COUNT IX: BAD FAITH BREACH OF CONTRACT AND**  
**THE DUTY OF GOOD FAITH AND FAIR DEALING**  
**(On behalf of the Civil Authority Coverage Class)**

185. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 95 above, as though fully set forth herein.

186. Plaintiffs bring this Count individually and on behalf of the other members of the Civil Authority Coverage Class.

187. Plaintiffs' respective Policies, as well as the policies of other Civil Authority Coverage Class members, are insurance contracts under which Defendant was paid premiums in exchange for promises to pay Class members' losses and expenses covered by the policies.

188. In the Policies and other Class members' policies, Defendant promised to pay for actual loss of business income sustained and necessary extra expenses incurred when a covered cause of loss causes damage to property near the insured premises, the civil authority prohibits access to property near the insured premises, and the civil authority action is taken in response to dangerous physical conditions.

189. These Covered Causes of Loss were direct, physical and foreseeable causes of loss under the policies and other Class members' policies and they each caused, and/or resulted in, dangerous physical conditions at, and physical injuries to, the Plaintiffs' restaurants, bars or eateries, other Class members' insured premises and property immediately adjacent to each. The subject Covered Causes of Loss pose a serious risk to and endanger(ed) the public's health, safety and property and rendered the Plaintiffs' restaurants, bars or eateries, other Class members' insured premises and areas within one mile of the Plaintiffs' business premises and other Class Members' insured premises, damaged, unusable and/or uninhabitable; thus, prompting the Orders of civil authorities prohibiting access to the same.

190. These losses and expenses are not excluded from coverage under the policies. The policies are all-risk policies meaning Covered Causes of Loss are determined by exclusions and the subject Covered Causes of Loss were not excluded under the policies.

191. Furthermore, these Covered Causes of Loss caused damage to property in the area Plaintiffs' various business premises, and the other Class Members' insured premises, resulting in dangerous physical conditions prompting civil authorities, such as, for example, the city of Philadelphia and the Commonwealth of Pennsylvania, to issue Orders prohibiting the public's

access to the area immediately surrounding the damaged property, including access to the Plaintiffs' business premises and other Class Members' insured premises.

192. Accordingly, these losses satisfied all requirements to trigger Civil Authority coverage under the Policies and other Class members' policies.

193. Plaintiffs and the other Class members have complied with all applicable provisions of the policies, including payment of premiums.

194. The actions of the Defendant give rise to a cause of action for bad faith breach of contract and the duty of good faith and fair dealing as Plaintiffs and other Class members were covered under Plaintiffs' respective Policies, as well as the policies of other Civil Authority Coverage Class members, and the Defendant has breached the terms of said policies by denying Civil Authority coverage to the Plaintiffs and other Class members. Defendant's actions in breaching the terms of the Plaintiffs' respective Policies and the other Class Members' policies, in bad faith, have proximately caused damages to Plaintiffs and other Class members and the damages were reasonably foreseeable to the Defendant.

195. It appears that the Defendant's conduct was performed because it placed its own financial interests before the Plaintiffs' and other Class Members' financial interests.

196. Further, the actions of the Defendant in denying Civil Authority coverage to the Plaintiffs and other Class Members was done so without any legitimate basis or arguable reason and constitute intentional and/or malicious conduct or gross negligence and reckless disregard.

197. Implied in the Plaintiffs' respective Policies and the other Class Members' policies is a duty of good faith and fair dealing with respect to conduct encompassed by contractual relations. Defendant's conduct as aforesaid breached the duty of good faith and fair dealing which further gives rise to the tort of bad faith for the breach of contract.

198. Defendant, at all times relevant hereto, owed Plaintiffs and other Class Members a duty to exercise good faith and an obligation to deal fairly with them; however, the denials of Civil Authority coverage by Defendant constituted a bad faith breach of contract and was totally made with only the Defendant's best interests in mind and in total disregard of the contractual rights of Plaintiffs and other Class Members.

199. Defendant's bad faith material breach(es) of the Plaintiffs' respective Policies, as well as other Class members' policies, has resulted in actual and substantial damages to the Plaintiffs and Civil Authority Coverage Class members, depriving all of the benefit of their bargain, and represents, in addition to warranting contractual damages, incidental damages, and consequential damages, an independent tort entitling Plaintiffs and other Class Members to punitive damages in an amount which will punish the Defendant for its intentional, grossly negligent, and/or reckless conduct as well as to deter Defendant and others from similar misconduct in the future.

**WHEREFORE**, Plaintiffs, both individually and on behalf of other Class members, seek compensatory damages, contractual damages, incidental damages, consequential damages, and punitive damages, resulting from Defendant's bad faith breach(es) of the Policies and other Class Members' policies and seek all other relief deemed appropriate by this Court.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully requests that the Court enter judgment in its favor and against Defendant, as follows:

- A. Entering an order certifying the proposed Classes, designating Plaintiffs as Class representatives for each of the Classes, and appointing Plaintiffs' attorneys as Counsel for the Classes;

- B. Entering declaratory judgments on Counts I, IV, and VII in favor of Plaintiffs and the members of the Business Income Coverage Class, Extended Business Income Coverage Class and Civil Authority Coverage Class as follows:
- i. That all Business Income and Extra Expense, Civil Authority and Extended Business Income losses and expenses incurred and sustained based on the facts and circumstances set forth above are insured and covered losses and expenses under Plaintiffs' and Class members' policies; and
  - ii. Defendant is obligated to pay for the full amount of the Business Income and Extra Expense, Civil Authority and Extended Business Income losses and expenses sustained and incurred, and to be sustained and incurred, based on the facts and circumstances set forth above are insured and covered losses and expenses under Plaintiffs' and Class members' policies;
- C. Entering judgments on counts II, V, and VIII in favor of Plaintiffs and the members of the Business Income Coverage Class, Extended Business Income Coverage Class and Civil Authority Coverage Class, and awarding damages for breach of contract in an amount to be determined at trial;
- D. Entering judgments on counts III, VI, IX in favor of the Plaintiffs and the members of the Business Income Coverage Class, Extended Business Income Coverage Class and Civil Authority Coverage Class, and awarding compensatory damages, incidental damages, consequential damages, and punitive damages for the Defendant's bad faith material breach(es) in an amount to be determined at trial;
- E. An order requiring Defendant to pay both pre- and post-judgment interest on any amounts awarded; and
- F. Such other or further relief as may be appropriate.

**DEMAND FOR JURY TRIAL**

The undersigned hereby demands a trial by jury as to all issues so triable.

Respectfully submitted,

**GRANT & EISENHOFER P.A.**

/s/ Adam J. Gomez

Adam J. Gomez (PA Bar # 317145)

Tudor I. Farcas (PA Bar # 316541)

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*Attorney for Plaintiffs*

Date: September 21, 2020