

CAUSE NO. _____

YBARRA INVESTMENTS, INC.,	§	IN THE DISTRICT COURT
d/b/a GRINGO'S MEXICAN KITCHEN,	§	
	§	
Plaintiff,	§	
	§	
v.	§	____ JUDICIAL DISTRICT
	§	
SCOTTSDALE INSURANCE COMPANY,	§	
TERRY ALLEN SLATER, and	§	
HARRIS COUNTY, TEXAS,	§	
	§	
Defendants.	§	HARRIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

Plaintiff YBarra Investments, Inc. d/b/a GRINGO's MEXICAN KITCHEN ("Plaintiff") hereby files this Petition against Defendants Scottsdale Insurance Company ("Scottsdale"), Terry Allen Slater, and Harris County, Texas, (collectively "Defendants") and alleges as follows:

DISCOVERY LEVEL

Plaintiff intends that discovery be conducted under Level 3 pursuant to Rule 190.4 of the Texas Rules of Civil Procedure and seeks monetary relief over \$1,000,000.00.

I.
INTRODUCTION

1. Plaintiff is the owner and operator of a chain of restaurants in Texas that have been forced, by recent orders of civil authorities to cease their on-premises dining operations as part of the State of Texas' efforts to slow the spread of the COVID-19 global pandemic. The closures mandated by these orders present a threat to local businesses, such as Plaintiff's, that employ Texas residents. To protect its businesses from potentially catastrophic risks such as this, Plaintiff sought and paid substantial premiums for insurance coverage against losses of business income and

actions of civil authorities. Defendant Scottsdale has denied Plaintiff's claims arising from the government-ordered interruption of Plaintiff's business.

II. **PARTIES**

2. At all relevant times, Plaintiff YBarra Investments, Inc. d/b/a Gringos Mexican Kitchen is a resident and citizen of Texas. At all relevant times, YBarra was authorized to do business and doing business in the State of Texas by owning, operating, managing and controlling a commercial business consisting of certain Gringos Mexican Kitchen, Jimmy Changas, Bullrito's, The Lunchbox, and Burger Libre restaurants in Texas. Plaintiff YBarra Investments, Inc. has its corporate headquarters at 2601 Underwood Road, LaPorte, Texas 77571-9477.

3. Defendant Scottsdale Insurance Company is an Ohio corporation with its principal place of business at 8877 N. Gainey Center Drive, Scottsdale, Arizona 85258-2108. Defendant Scottsdale Insurance Company may be served by serving the its registered agent: Corporation Service Company 211 E. 7th Street, Suite 620 Austin, Texas 78701-3218.

4. Defendant Terry Allen Slater is an individual engaged in the business of procuring appropriate insurance coverage selling insurance contracts to commercial entities such as Plaintiff in Texas, and maintains his principle place of business at 1 Sugar Creek Center Blvd #870, Sugar Land, Texas, 77478. Defendant Terry Allen Slater may be served at his principal place of business.

5. Defendant Harris County, Texas is a governmental subdivision of the State of Texas. Defendant Harris Count, Texas can be served by serving the County Judge of Harris County, Lina Hidalgo, at 1001 Preston, Suite 911, Houston, Texas 77002.

III.
JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action and the parties and damages sought are within the jurisdictional limits of the court.

7. At all times relevant to this action Defendant Scottsdale was engaged in substantial business activities within the state of Texas including entering into contracts to insure Plaintiff and other Texas residents for damage and loss occurring within the state of Texas. Defendant Scottsdale regularly solicits and transacts business in Texas.

8. There is no federal jurisdiction over this matter because Plaintiff asserts claims against forum defendants Terry Allen Slater and Harris County, Texas. Defendants are therefore precluded from removing this civil action. 28 U.S.C. § 1441(b)(2) (“A civil action . . . may not be removed if any of the parties properly joined and served as defendants is a citizen of the State in which such action is brought.”).

9. This lawsuit is not subject to removal based on the existence of a federal question. Plaintiff asserts common law and/or statutory claims under state law. These claims do not arise under the Constitution, laws, or treaties of the United States. 28 U.S.C. § 1447(c).

10. Pursuant to Texas Civil Practice and Remedies Code section 15.002, venue is proper in this Court because a substantial part of the acts and/or omissions giving rise to Plaintiff's claims took place, in whole or in part, within the venue of this Court. This action involves an insurance policy sold by a citizen and resident of Harris County, Texas to a Harris County, Texas policyholder operating restaurants in Harris County, Texas and Orders issued by a Harris County, Texas judge. Further, Defendants Slater and Harris County, Texas reside and/or maintain principal places of business in Harris County, Texas.

IV.
FACTUAL ALLEGATIONS

11. At all relevant times, Plaintiff operated a group of restaurants, primarily in the Greater Houston Area, including Harris County and surrounding counties.

A. The Scottsdale Insurance Policy

12. On or about August 31, 2019, Plaintiff entered into a contract of insurance with Scottsdale, whereby Plaintiff agreed to make payments in exchange for Scottsdale's promise to insure Plaintiff for losses at the following four (4) restaurants that are owned by YBarra (the "Insured Properties"):

- Gringos Mexican Kitchen 2- 2631 Underwood Rd., La Porte, TX. 77571
- Jimmy Chargas 1- 5144 Center Street Pasadena TX 77505
- Jimmy Chargas 2 - 2504 S. Gulf Freeway, League City, TX 77573
- The Lunchbox- 9709 Spencer Hwy., Suite A, La Porte TX 77571

20. The Insured Properties are covered under an insurance policy issued underwritten by Scottsdale bearing Policy Number CPS3183471 (the "Scottsdale Policy"). The Scottsdale Policy is attached hereto as *Exhibit A* and incorporated herein by reference.

21. The Scottsdale Policy is currently in full effect, providing coverages between the period of August 31, 2019 through August 31, 2020.

22. Plaintiff faithfully paid premiums for the Scottsdale Policy.

C. Coverage Under the Scottsdale Policy.

Coverage

23. The Scottsdale Policy provides that a covered cause of loss under the Policy means direct physical loss or damage unless the loss or damage is specifically excluded or limited elsewhere in the policy.

24. In the Scottsdale Policy, Scottsdale agrees to pay for "direct physical loss of or damage to Covered Property at the described premises...caused by or resulting from any Covered Cause of Loss."

25. Under the Scottsdale Policy, a Covered Cause of Loss is defined as a "direct physical loss unless the loss is excluded or limited in [the] policy."

Coverage: Business Income.

26. The Scottsdale Policy included coverage to insure against a loss of "Business Income." The Scottsdale Policy's "Business Income" coverage applies to cover "the actual loss of 'Business Income' you sustain due to the necessary suspension of your 'operations' during the 'period of restoration.' This coverage is set forth under "Business Income" as part of the Scottsdale Policy's "Coverages" section.

Additional Coverage: Civil Authority

27. The Scottsdale Policy purchased by Plaintiff included additional coverage to insure against the losses of business income and extra expenses caused by the actions of a civil authority that prohibits access to the Insured Premises. The Scottsdale Policy's "Civil Authority" coverage states "[w]hen 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." The Civil Authority provision further states that the following must 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 for the Covered Cause of Loss..." This

additional coverage is set forth under "Civil Authority" as part of the Scottsdale Policy's "Additional Coverages" section.

Exclusion: Virus and Bacteria

28. In late 2011, the U.S. Food and Drug Administration announced the establishment of a Coordinated Outbreak Response and Evaluation ("CORE") Network focused on addressing foodborne illnesses such as those caused by viruses and bacteria. In the following years, the CORE network and Center for Disease Control increased coordinated efforts to identify, raise awareness regarding, and address foodborne illnesses. Around the same time, many insurance carriers began working exclusions into their commercial insurance policies for losses caused by viruses and bacteria.

29. The Scottsdale Policy excludes "any loss of damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease."

30. Persons and entities in the restaurant business are used to thinking of bacteria and viruses as potential causes of food poisoning and other illnesses. Stringent food safety and sanitation practices are imposed and followed by Plaintiff to manage the risks posed by viruses and bacteria and to avoid foodborne viral or bacterial outbreaks inside the Insured Properties.

31. Indeed, when preparing so called "virus" exclusions to be placed in some policies, the insurance industry's drafting arm, ISO, circulated a statement to insurance regulators reflecting that the exclusion related to damage causing viruses on *interior* building surfaces:

Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence *on interior building surfaces* or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example,

interior building surfaces), and business interruption (time element) losses. Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage. An allegation of property damage may be a point of disagreement in a particular case. (emphasis added).

Insurance Services Office, Inc. ("ISO") Circular LI-CF-2006-175 *New Endorsements Filed to Address exclusion of Loss Due to Virus or Bacteria* (July 6, 2006)(emphasis added), available at <https://www.propertyinsurancecoveragelaw.com/files/2020/03/ISO-Circular-LI-CF-2006-175-Virus.pdf>

32. The ambiguous "Virus and Bacteria" exclusion in the Scottsdale Policy, does not refer to pandemics. Although a future pandemic event could be catastrophic for Plaintiff's restaurant business, Plaintiff was not advised by Scottsdale or Terry Slater that (a) that the exclusion was meant to cover loss and damage caused by a virus pandemic outside the Insured Properties, (b) that the virus exclusions in the Scottsdale Policy would leave Plaintiff without coverage for future pandemics, or (c) that Plaintiff should obtain additional insurance endorsements against microscopic threats and pandemic events (either from Scottsdale or another insurer) to meet Plaintiff's desire for coverage against potentially catastrophic risks outside Plaintiff's control.

B. Acts and Omissions of Terry Slater

33. Terry Slater worked with and for Plaintiff in securing a policy that would meet Plaintiff's insurance needs.

34. A special relationship existed between Slater and Plaintiff. Plaintiff had extensive, ongoing communications with Slater over a ten (10) year period of time. Plaintiff had regular conversations with Slater and Slater volunteered input on a variety of issues related to Plaintiff's

insurance needs. On multiple occasions, Plaintiff inquired and consulted with Slater regarding the adequacy of Plaintiff's insurance coverage.

35. Slater was aware, both from express conversations and from past course of dealings, that Plaintiff was relying upon Slater to assess Plaintiff's insurance needs and to counsel Plaintiff as to how best to protect itself from risks that could harm its business. In particular, after suffering losses related to Hurricane Harvey, Plaintiff discussed with Slater its desire to insure itself against risks that were beyond Plaintiff's control.

36. Plaintiff asked Slater to procure for Plaintiff the best available policy with complete coverage for any catastrophic events.

37. Plaintiff expected, based on Plaintiff's past course of dealings with Slater, that Slater would advise Plaintiff of substantial uncovered risks (such as a pandemic) which had the potential to ruin Plaintiff's business but that were not insured.

38. Slater did not inform Plaintiff about coverage issues or deficiencies related to virus pandemics, or that Plaintiff would not be covered under the Scottsdale Policy in the event of a virus pandemic. Slater did not inform Plaintiff of available options for coverage that would protect Plaintiff in the event of a virus pandemic.

B. The Global Covid-19 Pandemic

39. The global Covid-19 pandemic has physically impacted both public and private property and physical spaces around the world.

40. The pandemic has been exacerbated by the fact that the deadly virus physically infests and stays on surfaces of objects or materials. Notably, the most potent form of the virus is not airborne but rather present on physical surfaces. A recent scientific study printed in the New England Journal of Medicine explains that the virus is detectable for up to three hours in aerosols,

up to four hours on copper, up to 24 hours on cardboard boxes, and up to three days on plastic and stainless steel.¹

41. As of April 17, 2020, the Centers for Disease Control and Prevention ("CDC") reports 661,712 Covid-19 cases in the United States and its territories. The CDC reports 33,049 deaths are attributed to Covid-19 through the same date.

42. The scientific community in the United States and across the world, including the World Health Organization, has recognized that the coronavirus is a cause of real physical loss and damage. Numerous government entities have also recognized the coronavirus as a cause of physical loss and damage to property.

C. Actions and Orders of Civil Authorities

43. The presence of Covid-19 has caused civil authorities throughout the country to issue orders requiring the suspension of business at a wide range of establishments, including civil authorities with jurisdiction over Plaintiff's business.

44. On March 11, 2020, Harris County Judge Lina Hidalgo issued an order declaring a local disaster and public health emergency. On March 13, 2020, a Declaration of State of Disaster was issued by Governor Greg Abbott.

45. On March 16, 2020, Harris County Judge Lina Hidalgo issued an Order outlining measures intended to protect the public and mitigate the spread of Covid-19 which was effective at 8:00 am on March 17, 2020. This Order, together with subsequent similar Orders, amendments, and extensions issued by Judge Hidalgo, and Orders issued by Texas Governor Greg Abbott are referred to herein as the " Covid-19 Restriction Orders" and are attached hereto as *Exhibit B* and incorporated herein by reference.

¹ See Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1, New England Journal of Medicine (March 17, 2020), available at <https://www.nejm.org/doi/pdf/10.1056/NEJMc2004973?articleTools=true>

46. On March 19, 2020, Harris County Judge Lina Hidalgo issued an Amendment to the [March 16] Order By the County Judge of Harris County which ordered the following actions through April 3, 2020:

Subject to this Order, dining on the premises of Food Establishments permitted by Harris County. . . shall cease until April 3, 2020. Nothing herein precludes the provision of any other food service, such as to-go, take out or delivery services by such businesses.

* * *

Food establishments, with or without drive-in or drive-through services and food court dining areas, microbreweries, micro-distilleries, or wineries, may only provide take out, delivery or drive-through services as allowed by law.

47. On March 19, Texas Governor Greg Abbott issued Executive Order No. GA-08 Relating to COVID-19 Preparedness and Mitigation, which stated:

Order No. 2 - In accordance with the Guidelines from the President and the CDC, people shall avoid eating or drinking at bars, restaurants, and food courts, or visiting gyms or massage parlors; provided, however, that the use of drive-thru, pickup or delivery options is allowed and highly encouraged throughout the limited duration of this executive order.

48. On March 24, Harris County Judge Lina Hidalgo issued an Order requiring all individual to stay at their place of residence except to engage in certain defined essential activities.

Restaurants, bars, micro-breweries, micro-distilleries, wineries and other establishments that serve food, with or without drive-in or drive-through services, are prohibited from serving food for consumption on the premises and may only serve food and/or alcohol by take out, delivery or drive through services as allowed by law, and detailed in the Harris County Judge's Order of March 19, 2020, pertaining to restaurants and bars.

49. In her March 24, 2020 order, Judge Hidalgo declared that coronavirus "causes property loss or damage due to its ability to attach to surfaces for prolonged periods of time."

50. On April 3, 2020, Judge Hidalgo issued an Order extending the restrictions set forth in her prior order to April 30, 2020.

51. Judge Hidalgo's March 24, 2020 Order states that property damage occurs when the coronavirus attaches to surfaces. Properties in the area immediately surrounding the Insured Properties, and not more than one mile from the Insured Properties, have suffered damage due to the coronavirus.

52. The Covid-19 Restriction Orders are acts of civil authorities taken in response to the dangerous physical conditions resulting from the presence and attachment of the coronavirus to surfaces in the immediate area of this Insured Properties.

53. As a direct and proximate result of the Covid-19 Restriction Orders, access to Plaintiff's Insured Properties has been prohibited. Use of the Insured Properties for their primary intended purpose as full-service restaurants has been prohibited.

54. Plaintiff's losses or damages occurred as a result of the Covid-19 Restriction Orders. As a result of the actions of Civil Authorities in issuing the Covid-19 Restriction Orders described above, Plaintiff has incurred, and continues to incur, a substantial loss of business income and additional expenses covered under the Scottsdale Policy.

D. Denial of Plaintiff's Claims

55. Plaintiff provided notice of a claim for coverage under the Scottsdale Policy. Plaintiff satisfied all conditions precedent to recovering for its loss under the terms and conditions of the Scottsdale Policy.

56. On April 10, 2020, Scottsdale denied Plaintiff's claim. Scottsdale denied coverage on grounds including the following: (a) a false and erroneous belief that Plaintiff had confirmed there was no damage to property at the Insured Properties or at a nearby premises causing the

suspension of operations, and (b) any loss due to a virus is excluded from coverage. See April 10, 2020 Denial Letter attached hereto as *Exhibit C* and incorporated herein by reference.

57. Scottsdale's denial is based on a false claim that Plaintiff confirmed that there was no damage to or near the Insured Properties (which is contrary to the true facts) and is additionally contradicted by the terms and conditions of the Scottsdale Policy and applicable law.

58. The facts, as alleged in this Petition, establish a covered loss under the Scottsdale Policy.

59. Any exclusion to coverage under the Scottsdale Policy based on the virus exclusion of the Policy is inapplicable.

60. As a result of Scottsdale's denial of coverage, Plaintiff has suffered and will continue to suffer damages.

V. **CLAIMS**

COUNT ONE: DECLARATORY RELIEF *(Against Defendants Scottsdale and Harris County, Texas)*

61. Plaintiff repeats and re-alleges each and every allegation in this Petition and incorporate each allegation into this Count, as if set forth at length herein, in its entirety.

62. Under Texas Civil Practice and Remedies Code § 37.003 et seq., the Court may declare rights, status and other legal relations whether or not further relief is or could be claimed. The declaration may be either affirmative or negative in form and effect, and the declaration has the force and effect of a final judgment or decree.

63. An actual controversy has arisen between Plaintiff and Scottsdale as to the rights, duties, responsibilities and obligations of the parties in that Scottsdale disputes and denies one or more of the following facts: (a) that there was direct physical loss or damage to property at the

properties, (b) that there has been an action(s) of a civil authority prohibiting access to the properties, (c) that there has been damage to property from a Covered Cause of Loss, (d) that Plaintiff's damage and loss fall outside the Policy's virus exclusion, and (e) that Plaintiff is entitled to coverage under the Scottsdale Policy.

64. Resolution of the duties, responsibilities and obligations of the parties is necessary as no adequate remedy at law exists and a declaration from the Court is needed to resolve the dispute and controversy.

65. Plaintiff seeks a Declaratory Judgment to determine the following:

- (a) whether the Covid-19 Restriction Orders constitute a prohibition of access to the Covered Properties by a Civil Authority as defined in the Scottsdale Policy.
- (b) whether the Covid-19 Restriction Orders caused a direct physical loss or damage to the Covered Properties.
- (c) whether the Covid-19 Restriction Orders caused damage to on-premises dining establishments and other businesses in the immediate area of the Insured Properties;
- (d) whether Plaintiff's losses incurred in connection with the Covid-19 Restriction Orders and the interruption of Plaintiff's businesses are insured losses under the Scottsdale Policy.
- (e) whether the Covid-19 Restriction Orders triggered coverage under the Scottsdale Policy;
- (f) whether the Policy's virus exclusion is inapplicable.

COUNT TWO: NEGLIGENCE
(against Defendant Slater)

66. Plaintiff repeats and re-alleges each and every allegation in this Petition and incorporate each allegation into this Count, as if set forth at length herein, in its entirety.

67. Terry Slater was paid by Plaintiff to assess, select, counsel, inform, and procure appropriate insurance products that would meet Plaintiff's insurance needs.

68. A special relationship existed between Slater and Plaintiff. Plaintiff had extensive, ongoing communications with Slater over approximately a ten (10) year period of time. On multiple occasions, Plaintiff inquired and consulted with Slater regarding the adequacy of Plaintiff's insurance coverage.

69. Slater was aware, both from express conversations and from past course of dealings, that Plaintiff was relying upon Slater to assess Plaintiff's insurance needs and to counsel Plaintiff as to how best to protect Plaintiff from risks that could harm its business.

70. Plaintiff asked Slater to procure for Plaintiff the best available policy with complete coverage for catastrophic events.

71. Due to the special relationship that existed between Slater and Plaintiff, and because of Slater's agreement to undertake responsibility for assessing and procuring insurance that would fit Plaintiff's needs, Slater owed a duty to Plaintiff to use reasonable care in the assessment, investigation, selection, counseling, informing, and procurement of such insurance.

72. In the event that the Scottsdale Policy does not provide coverage for Plaintiff's losses, Slater failed to meet his duties to Plaintiff. Slater did not inform Plaintiff about coverage issues or deficiencies related to virus pandemics, or that Plaintiff would not be covered under the Scottsdale Policy in the event of a virus pandemic, or of available options for coverage that would protect Plaintiff in the event of a virus pandemic.

73. Plaintiff relied on the information provided by Slater in purchasing the Scottsdale Policy.

74. It was foreseeable to Slater, or should have been foreseeable to Slater, that if he failed to properly fulfill his duty to procure the proper and desired insurance coverage for Plaintiff, that Plaintiff would be damaged in the event of a loss of income caused by the actions of a civil authority in relation to a viral pandemic.

75. As a direct and proximate cause of Slater's negligent acts and omissions in failing to properly assess, advise and procure insurance, Plaintiff suffered damages as described below.

COUNT THREE: BREACH OF CONTRACT
(against Defendants Scottsdale and Slater)

76. Plaintiff repeats and re-alleges each and every allegation in this Petition and incorporates each allegation into this Count, as if set forth at length herein, in its entirety.

77. On or about August 31, 2020, Scottsdale issued Plaintiff the Scottsdale Policy for which Plaintiff paid premiums.

78. The Scottsdale Policy was a binding contract between Plaintiff and Scottsdale that afforded Plaintiff insurance under the terms and conditions of the Scottsdale Policy.

79. On March 16, 2020, Harris County Judge Lena Hidalgo issued an Order prohibiting in-premises dining at restaurants in Harris County beginning at 8:00 a.m. on March 17. That prohibition has continued in effect through the date of filing of this Petition.

80. As a result of the Covid-19 Restriction Orders, Plaintiff has suffered a direct physical loss of or damage to its insured properties caused by or resulting from a covered cause of loss. This loss or damage falls within the coverage terms of the Scottsdale Policy.

81. Plaintiff has suffered a loss of business income and extra expenses due to the suspension of operations as ordered in the Covid-19 Restriction Orders. The suspension was caused by direct physical loss or damage at the insured properties resulting from a covered cause of loss. Plaintiff's loss of business income falls within the "Business Income" coverage terms of Scottsdale Policy and is not otherwise excluded under the Scottsdale Policy.

82. Coverage was further available under the Scottsdale Policy's respective coverage for Civil Authority. The Scottsdale Policy included additional coverage to insure against the losses of business income and extra expenses caused by the actions of a civil authority that prohibits access to the Insured Premises. Plaintiff's loss of business income and extra expenses fall within the "Civil Authority" coverage terms of the Scottsdale Policy and is not otherwise excluded under either policy.

83. Plaintiff's losses or damages occurred as a result of the Covid-19 Restriction Orders.

84. Scottsdale breached the Scottsdale Policy by denying coverage to Plaintiff.

85. As a result of Scottsdale's breach of the Scottsdale Policy, Plaintiff suffered damage as described below.

VI. DAMAGES

86. The business losses caused by the Covid-19 Restriction Orders are ongoing and causing undue burden and hardship on Plaintiff. The failure of Slater to assess, advise and procure appropriate insurance coverage, and the failure of Scottsdale to promptly accept Plaintiff's claims under the Scottsdale Policy have caused (and will continue to cause) Plaintiff to incur direct and consequential damages.

87. The aforementioned acts of Defendants, taken together or singularly, constitute the producing causes of damages sustained by Plaintiff.

88. As a result of Defendants' acts and omissions, Plaintiff has suffered damages including but not limited to: (a) loss of business income; (b) loss of property; (c) loss of use of property; (d) damage to property; (e) extra expenses incurred, (f) economic hardship, (g) reasonable and necessary attorney's fees; and (h) reasonable and necessary costs.

VII.
ATTORNEY'S FEES

89. Because of the acts and omissions of Defendants, Plaintiff has been required to obtain the services of attorneys to pursue its claims.

90. Pursuant to Texas Civil Practice and Remedies Code § 38.001, Plaintiff may recover attorney's fees and costs from an individual or corporation for breach of oral or written contracts.

91. Pursuant to Texas Civil Practice and Remedies Code § 37.004, 37.005, 37.009 Plaintiff may be awarded attorney's fees and costs if the parties seek to determine their rights with respect to deeds, wills, written contracts or other writings.

VIII.
DISCOVERY REQUESTS

92. Pursuant to Texas Rule of Civil Procedure 194, Plaintiff requests that Defendants disclose, within fifty (50) days of the service of this request, the information or material described in Rule 194.2.

IX.
REQUESTED RELIEF

WHEREFORE, Plaintiff prays for relief on the entire Petition, as follows: Judgment to be entered against Defendants on all causes of action of this Petition, including but not limited to:

- a. For a declaration that the Covid-19 Restriction Orders constitute a prohibition of access to the Insured Properties by a Civil Authority as defined in the Scottsdale Policy;
- b. For a declaration that the Covid-19 Restriction Orders caused a direct physical loss or damage to the Insured Properties;
- c. For a declaration that the Covid-19 Restriction Orders caused damage to on-premises dining establishments and other businesses in the immediate area of the Insured Properties;
- d. For a declaration that Plaintiff's losses incurred in connection with the Covid-19 Restriction Orders and the interruption of its businesses are insured losses under the Scottsdale Policy;
- e. For a declaration that the Covid-19 Restriction Orders triggered coverage under the Scottsdale Policy;
- f. For a declaration that the Scottsdale Policy's virus exclusion is inapplicable;
- g. For compensatory damages;
- h. For statutory damages as permitted by law;
- i. For attorneys' fees;
- j. For costs; and
- k. For any other and further relief, either in at law or in equity, to which Plaintiff may show itself to be justly entitled.

X.
JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims so triable.

Respectfully Submitted,

MATTHEWS & ASSOCIATES

/s/ David P. Matthews

David P. Matthews

MATTHEWS & ASSOCIATES

2905 Sackett

Houston, TX 77098

Telephone: (713) 522-5250

Facsimile: (713) 535-7132

Email: dmatthews@thematthewslawfirm.com

Tim K. Goss

FREESE & GOSS, PLLC

3500 Maple Ave., Suite 1100

Dallas, TX 75219

Telephone: (214) 761-6610

Email: tim@freeseandgoss.com

Alfred Flores, Jr.

THE FLORES LAW GROUP, PC

2601 Underwood Rd.

La Porte, Texas 77571

Telephone: (281) 470-7900

Facsimile: (281) 470-7799

Email: al@gringostexmex.com

Attorneys for Plaintiff