IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO
GENERAL DIVISION

CLASSIC DINING GROUP LLC; RT REAL ESTATE OF SOUTHERN WISCONSIN LLC; RT RESTAURANTS OF SOUTHERN WISCONSIN LLC; CLASSIC DINING CASTLETON INC; CLASSIC DINING CRAWFORDSVILLE INC; CLASSIC DINING OF GREENWOOD INC; CLASSIC DINING KENTUCKY AVE INC; CLASSIC DINING KEYSTONE INC; CLASSIC DINING MICHIGAN ROAD INC; CLASSIC DINING OF BLOOMINGTON INC; CLASSIC DINING GREENWOOD MALL INC; CLASSIC DINING OF LAFAYETTE INC; CLASSIC DINING OF LEBANON INC; CLASSIC DINING OF PORTAGE INC; CLASSIC DINING OF ROCKFORD INC; CLASSIC DINING OF SHELBYVILLE INC; CLASSIC DINING POST ROAD INC; PFC OF AURORA INC; PFC OF GURNEE INC; PFC OF MICHIGAN CITY INC; PFC OF SPRINGHILL INC; CLASSIC DINING MANAGEMENT COMPANY INC; PFC MANAGEMENT COMPANY INC; CLASSIC RESTAURANT GROUP LLC BELOIT; CLASSIC RESTAURANT GROUP LLC, HEBRON; CLASSIC RESTAURANT GROUP LLC WHITELAND; CLASSIC RESTAURANT GROUP LLC LASALLE; CLASSIC RESTAURANT GROUP LLC SPICELAND; CLASSIC RESTAURANTS LLC BATAVIA; PFC RESTAURANT GROUP LLC; DENNY'S INC; CLASSIC RESTAURANT GROUP LLC; CLASSIC RESTAURANTS LLC; CLASSIC RESTAURANTS LLC ELGIN; CLASSIC RESTAURANTS LLC HOFFMAN ESTATES; CLASSIC DINING LLC AVON; RESTAURANTS LLC OAK LAWN; CLASSIC RESTAURANTS LLC AURORA; CLASSIC RESTAURANTS LLC	)	**Case No.:** **Judge:** **COMPLAINT AND REQUEST FOR DECLARATORY JUDGMENT, COMPENSATORY DAMAGES, PUNITIVE DAMAGES, AND OTHER APPROPRIATE RELIEF**

WHITESTOWN,

Plaintiffs,

v.

STATE AUTO INSURANCE COMPANIES,

Defendant.

COMPLAINT

Plaintiffs Classic Dining Group LLC; Classic Dining of Castleton Inc., Classic Dining Crawfordsville Inc.; Classic Dining of Greenwood Inc.; Classic Dining Kentucky Ave. Inc.; Classic Dining Keystone Inc.; Classic Dining Michigan Road Inc.; Classic Dining of Bloomington Inc.; Classic Dining Greenwood Mall Inc.; Classic Dining of Lafayette Inc.; Classic Dining of Lebanon Inc.; Classic Dining of Portage Inc.; Classic Dining of Rockford Inc.; Classic Dining of Shelbyville Inc.; Classic Dining Post Road Inc.; PFC of Aurora Inc.; PFC of Gurnee Inc.; PFC of Michigan City Inc.; PFC of Springhill Inc.; Classic Dining Management Company Inc.; PFC Management Dining Company Inc.; Classic Restaurant Group LLC Beloit; Classic Restaurant Group LLC, Hebron; Classic Restaurant Group LLC, Whiteland; Classic Restaurant Group LLC Lasalle; Classic Restaurant Group LLC, Spiceland; Classic Restaurants LLC, Batavia; PFC Restaurant Group LLC; Classic Restaurant Group LLC; Classic Restaurants LLC; Classic Restaurants LLC Elgin; Classic Restaurants LLC Hoffman Estates; Classic Dining LLC Avon; Classic Restaurants LLC Oak Lawn; Classic Restaurants LLC Aurora; Classic Restaurants LLC Whitestown (the "Classic Dining Plaintiffs"), and RT Restaurants of Southern Wisconsin LLC; RT Real Estate of Southern Wisconsin LLC ("RT Plaintiffs") (collectively, "Plaintiffs"), for their Complaint against Defendant State Auto Insurance Companies ("State Auto"), allege as follows:

INTRODUCTION

1. Plaintiffs are owners and operators of franchised Denny's and Ruby Tuesday restaurants in Indiana, Illinois, and Wisconsin whose ordinary business operations have been interrupted—through no fault of their own—by the spread of the novel coronavirus and orders issued by the States of Indiana, Illinois, and Wisconsin as part of the State's efforts to slow the spread of the COVID-19 global pandemic. These interruptions present an existential threat to these small, local businesses that employ thousands of people whose livelihoods are now at risk. Since the onset of the COVID-19 pandemic and the ensuing shutdown orders, Plaintiffs have collectively incurred millions of dollars in lost revenue, and are continuing to incur staggering, additional losses every day.

2. To protect their businesses from situations like these, Plaintiffs obtained business interruption insurance from State Auto. For years, Plaintiffs have paid substantial premiums to purchase broad all-risk property coverage. Indeed, the Classic Dining Plaintiffs even purchased extended coverage under State Auto's "premier property plus endorsement." Yet, when the time came for State Auto to honor its obligations under the policies, State Auto issued cursory "cut and paste" denials without conducting a full and fair coverage investigation.

3. As a result, Plaintiffs now bring this action against State Auto for its failure to honor its obligations under commercial businessowners insurance policies issued to Plaintiffs, which provide coverage for losses incurred due to a "slow down or cessation" of their "business activities," including when their ordinary businesses operations are interrupted due to a government order.

4. On March 15, 2020, during the term of the policies issued by State Auto to Plaintiffs and as the novel coronavirus spread throughout the State of Ohio, Ohio Governor Mike

DeWine issued an order interrupting ordinary business operations at all restaurants, bars, and movie theaters in an effort to address the ongoing COVID-19 pandemic.

5. Similarly, on March 15, 2020, during the term of the policies issued by State Auto to Plaintiffs and as the novel coronavirus spread throughout the State of Illinois, Illinois Governor Pritzker issued an order interrupting ordinary business operations at all restaurants, bars, and movie theaters in an effort to address the ongoing COVID-19 pandemic.

6. Likewise, on March 16, 2020, during the term of the policies issued by State Auto to Plaintiffs and as the novel coronavirus spread throughout the State of Indiana, Indiana Governor Eric Holcomb issued an order prohibiting restaurants in Indiana from offering sit-down service in an effort to prevent the spread of COVID-19.

7. And on March 17, 2020, during the term of the policies issued by State Auto to Plaintiffs and as the novel coronavirus spread throughout the State of Wisconsin, the Wisconsin Department of Health Services, at the direction of Wisconsin Governor Tony Evers, issued an order prohibiting restaurants in Wisconsin from offering sit-down service in an effort to prevent the spread of COVID-19.

8. The orders issued by the governors of Indiana, Illinois, and Wisconsin, and subsequent amendments to these orders, are hereinafter collectively referred to as the "Business Interruption Orders."

9. As a result of the coronavirus and the ensuing Business Interruption Orders, the Plaintiffs have been forced to halt their ordinary operations, resulting in substantial lost revenues. Although the Business Interruption Orders allow restaurants to sell food on a carry-out or delivery basis, Plaintiffs were forced for several weeks to cease all dine-in operations, and even after they were permitted to partially resume such operations, they have all suffered and continue

to suffer a drastic slowdown in their operations as a result of the COVID-19 pandemic and the COVID-19 related Business Interruption Orders..

10. But despite State Auto's express promise in its policies to cover the Plaintiffs' business interruption losses when they lose the use of their property for ordinary business operations, including to provide coverage for losses incurred due to government actions "taken in response to dangerous physical conditions," like COVID-19, State Auto has issued blanket denials to Plaintiffs for losses related to COVID-19 and the Business Interruption Orders without first conducting any meaningful coverage investigation and without a reasonable basis for its denial, as is required under Ohio law.

11. Specifically, on April 7, 2020, State Auto sent a letter denying coverage for Plaintiffs' losses, citing a virus exclusion titled "Exclusion of Loss Due to Virus or Bacteria endorsement (CP0140 07/06) (the "Virus Exclusion") as a basis for denying coverage. *See* April 7, 2020 State Auto Letter attached as **Exhibit A**. Unlike many insurance policies issued by State Auto, ***the Classic Dining Plaintiffs' Policy with State Auto does not contain the Virus Exclusion***. State Auto's reliance on an exclusion that does not even appear in the Classic Dining Plaintiffs' policy as a basis for denying coverage violates the Ohio Unfair Claim Settlement Practices Act, which prohibits insurance companies from misrepresenting to their insureds relevant policy provisions contained in their policies. *See* Ohio Admin. Code 3901-1-54.

12. After the Classic Dining Plaintiffs challenged State Auto's gross misrepresentation about the Virus Exclusion, State Auto issued a new denial letter on April 21, 2020. *See* April 21, 2020 State Auto Letter attached as **Exhibit B**. State Auto's coverage denial now appeared to be based primarily on its assertion that the "actual or alleged presence of the coronavirus," which led to the Business Interruption Orders that prohibited Plaintiffs from engaging in ordinary business operations, does not constitute "direct physical loss" sufficient to

trigger the insuring agreement of the Policy. But this begs the question of why State Auto has added the Virus Exclusion to other policyholders' policies. Virus Exclusions would be unnecessary if viruses did not trigger physical loss coverage under State Auto's policies.

13. Furthermore, there is no merit to State Auto's coverage position that the actual or alleged presence of a substance like COVID-19 does not result in "physical loss or damage" sufficient to trigger business interruption coverage under their Policy. Courts across the country recognize that a condition that renders property unsafe or impairs the ability to safely use the property for its intended purpose constitutes "physical loss or damage" that triggers coverage under similar policies. Due to the widespread prevalence of coronavirus throughout the United States, it is likely that all of Plaintiffs' locations were exposed to COVID-19 and suffered similar physical damage as the pandemic unfolded. Because the coronavirus created invisible, dangerous conditions that rendered Plaintiffs' locations unsuitable for normal business operations, State Auto's conclusion that Plaintiffs' suffered no "physical damage" is incorrect.

14. Moreover, coverage under the policies is not limited to situations where the Classic Dining Plaintiffs' property has suffered "physical damage." Rather, under its broad "all risk" policies, State Auto promised to insure Plaintiffs against all risks of "direct physical *loss* unless the loss is excluded or limited in this policy." Here, in addition to suffering physical *damage* due to the presence of coronavirus on its property, Plaintiffs suffered a "physical *loss*" at each of its locations because it has lost the physical ability to fully and safely operate at the insured locations as intended. The whole point of purchasing business interruption is to make sure a business can make up for lost revenue streams if the business is closed for reasons that are outside its control, and that is precisely the coverage Plaintiffs are seeking here.

15. Further, the all-risk coverage under the State Auto policies for all "physical loss" did not—despite State Auto's false assertion in its initial letter to the Classic Dining Plaintiffs—

include an exclusion for loss caused by a virus or pandemic. Thus, the Classic Dining Plaintiffs reasonably expected that the insurance it purchased from State Auto included coverage for property damage and business interruption losses caused by viruses like the coronavirus.

16. If State Auto had wanted to add an exclusion to the policy to attempt to exclude business interruption losses relating to a pandemic it could have attempted to do so on the front-end with an express exclusion. Instead of attempting to exclude these types of exposures from its all-risk policy, State Auto waited until after it collected Plaintiffs' premiums for years, and after a pandemic and the resulting closure orders caused catastrophic business losses, to try to limit its exposure on the back-end through its false assertion that the presence of the coronavirus is not "physical loss" and therefore is not a covered cause of loss under its policies.

17. State Auto's cursory "cut and paste" coverage denials are arbitrary and unreasonable, and inconsistent with the facts and plain language of the policies it issued. These denials appear to be driven by State Auto's desire to limit its own financial exposure to the economic fallout resulting from the COVID-19 crisis, rather than to initiate, as State Auto is obligated to do, a full and fair investigation of the claims and a careful review of the policies they sold to Plaintiffs in exchange for valuable premiums.

18. As a result of State Auto's wrongful denial of coverage, Plaintiffs file this action for a declaratory judgment establishing that they are entitled to receive the benefit of the insurance coverage they purchased, for indemnification of the business losses they have sustained, for breach of contract, and for bad faith denial of insurance claims under Ohio law.

PARTIES

19. Plaintiff Classic Dining Group LLC ("Classic Dining") is an Indiana limited liability company with its principal place of business in Algonquin, Illinois. Classic Dining's sole member is Ken Kilberger. Classic Dining, and all Classic Dining Plaintiffs are named

insureds under the State Auto Policy No. SPP2501221 (the "Classic Dining Policy) issued to Classic Dining in Illinois, which is attached here as **Exhibit C**.

20. Plaintiff RT Real Estate of Southern Wisconsin LLC ("RT Real Estate") is a Wisconsin limited liability company with its principal place of business in Algonquin, Illinois. RT Real Estate's sole member is Ken Kilberger.

21. Plaintiff RT Restaurants of Southern Wisconsin LLC, is a Wisconsin limited liability company with its principal place of business in Greendale, Wisconsin. RT Restaurants of Southern Wisconsin LLC owns and operates a Ruby Tuesday franchise restaurant in Wisconsin. RT Real Estate, and RT Restaurants of Southern Wisconsin LLC are both named insureds under the State Auto Policy No. 2892817 03 (the "RT Policy), attached here as **Exhibit D**.

22. Plaintiff Classic Dining of Castleton, Inc., is an Indiana corporation with its principal place of business in Indianapolis, Indiana.

23. Plaintiff Classic Dining Crawfordsville, Inc. is an Indiana corporation with its principal place of business in Indianapolis, Indiana.

24. Plaintiff Classic Dining of Greenwood, Inc. is an Indiana corporation with its principal place of business in Greenwood, Indiana.

25. Plaintiff Classic Dining Kentucky Ave. Inc. is an Indiana corporation with its principal place of business in Indianapolis, Indiana.

26. Plaintiff Classic Dining Keystone, Inc. is an Indiana corporation with its principal place of business in Indianapolis, Indiana.

27. Plaintiff Classic Dining Michigan Road, Inc. is an Indiana corporation with its principal place of business in Indianapolis, Indiana.

28. Plaintiff Classic Dining of Bloomington, Inc. is an Indiana corporation with its principal place of business in Bloomington, Indiana.

29. Plaintiff Classic Dining Greenwood Mall, Inc. is an Indiana corporation with its principal place of business in Indianapolis, Indiana.

30. Plaintiff Classic Dining of Lafayette, Inc. is an Indiana corporation with its principal place of business in Lafayette, Indiana.

31. Plaintiff Dining of Lebanon, Inc. is an Indiana corporation with its principal place of business in Lebanon, Indiana.

32. Plaintiff Classic Dining of Portage, Inc. is an Indiana corporation with its principal place of business in Portage, Indiana.

33. Plaintiff Classic Dining of Rockford, Inc. is an Illinois corporation with its principal place of business in Rockford, Illinois.

34. Plaintiff Classic Dining of Shelbyville, Inc. is an Indiana corporation with its principal place of business in Shelbyville, Indiana.

35. Plaintiff Classic Dining Post Road, Inc. is an Indiana corporation with its principal place of business in Indianapolis, Indiana.

36. Plaintiff PFC of Aurora, Inc. is a North Dakota corporation with its principal place of business in Aurora, Illinois.

37. Plaintiff PFC of Gurnee, Inc. is a North Dakota corporation with its principal place of business in Gurnee, Illinois.

38. Plaintiff PFC of Michigan City, Inc. is an Indiana corporation with its principal place of business in Michigan City, Indiana.

39. Plaintiff PFC of Springhill, Inc. is a North Dakota corporation with its principal place of business in Carpentersville, Illinois.

40. Plaintiff Classic Dining Management Company, Inc. is an Indiana corporation with its principal place of business in Algonquin, Illinois.

41. Plaintiff PFC Management Dining Company Inc. is an Illinois corporation with its principal place of business in Algonquin, Illinois.

42. Plaintiff Classic Restaurant Group, LLC Beloit is an Illinois limited liability company with its principal place of business in South Beloit, Illinois.

43. Plaintiff Classic Restaurant Group, LLC Hebron is an Illinois limited liability company with its principal place of business in Hebron, Indiana.

44. Plaintiff Classic Restaurant Group, LLC, Whiteland is an Illinois limited liability company with its principal place of business in Whiteland, Indiana.

45. Plaintiff Classic Restaurant Group, LLC Lasalle is a Illinois limited liability company with its principal place of business in Lasalle, Illinois.

46. Plaintiff Classic Restaurant Group, LLC Spiceland is an Illinois limited liability company with its principal place of business in Spiceland, Indiana.

47. Plaintiff Classic Restaurants, LLC Batavia is an Illinois limited liability company with its principal place of business in Batavia, Illinois.

48. Plaintiff PFC Restaurant Group, LLC is an Illinois limited liability company with its principal place of business in Algonquin, Illinois.

49. Plaintiff Classic Restaurant Group, LLC is an Illinois limited liability company with its principal place of business in Algonquin, Illinois.

50. Plaintiff Classic Restaurants, LLC is an Illinois limited liability company with its principal place of business in Algonquin, Illinois.

51. Plaintiff Classic Restaurants, LLC Elgin is an Illinois limited liability company with its principal place of business in Elgin, Illinois.

52. Plaintiff Classic Restaurants, LLC Hoffman Estates is an Illinois limited liability company with its principal place of business in Hoffman Estates, Illinois.

53. Plaintiff Classic Restaurants, LLC Avon is an Illinois limited liability company with its principal place of business in Avon, Indiana.

54. Plaintiff Classic Restaurants, LLC Oak Lawn is an Illinois limited liability company with its principal place of business in Oak Lawn, Illinois.

55. Plaintiff Classic Restaurants, LLC Aurora is an Illinois limited liability company with its principal place of business in Aurora, Illinois.

56. Plaintiff Classic Restaurants, LLC Whitestown is an Illinois limited liability company with its principal place of business in Whitestown, Indiana.

57. Defendant State Auto is an insurance company engaged in the business of selling insurance contracts to commercial entities such as Plaintiffs in Ohio, Indiana, Wisconsin, Illinois, and elsewhere. State Auto is incorporated in the State of Ohio and maintains its principal place of business in Franklin County Ohio.

JURISDICTION & VENUE

58. Jurisdiction over the subject matter of this action lies with this Court pursuant to Ohio Rev. Code § 2305.01.

59. This Court is a proper venue for this case pursuant to Ohio Civ. R. Civ. P. 3(C)(1)-(3), in that Defendant resides in Franklin County, Defendant's principal place of business is in Franklin County, and Franklin County is the county in which Defendant conducted activity that gave rise to the claims for relief.

60. This Court has general jurisdiction over State Auto because State Auto is an Ohio corporation, has its principal place of business in Ohio, and exercises substantial, systematic and

continuous contacts with Ohio by doing business in Ohio, serving insureds in Ohio, and seeking additional business in Ohio.

61. This Court has jurisdiction to grant declaratory relief under Ohio Rev. Code § 2721.02 because an actual controversy exists between the parties as to their respective rights and obligations under the Policy with respect to the loss of business arising from the civil authority event detailed below. Plaintiffs are the insureds under policies of liability insurance issued by State Auto and have commenced this action seeking a declaratory judgment or decree as to whether the policy's coverage provisions extend to losses sustained by the Plaintiffs.

FACTUAL ALLEGATIONS

62. Plaintiffs incorporate by reference, as if fully set forth herein, the allegations in paragraphs 1–62 above.

A. The State Auto Policies

63. In exchange for substantial premiums, State Auto sold Plaintiffs the Classic Dining Policy and the RT Policy (collectively, the "Policies" or the "State Auto Policies"). Through these commercial property insurance policies, State Auto promised to indemnify the Plaintiffs for losses resulting from occurrences, including any "slow down or cessation" of business operations at any insured location caused by a government order, during the relevant time period.

64. The Policies are "all risk" policies that provides broad coverage for losses caused by any cause unless expressly excluded.

65. The State Auto Policies do not purport to exclude losses from infectious diseases, viruses or pandemics. Thus, the all-risk Policies purchased by the Plaintiffs cover losses caused by COVID-19.

66. In addition to property damage losses, State Auto also agreed to "pay for the actual loss of Business Income" sustained by Plaintiffs due to a "slow down or cessation" of Plaintiffs' operations during the period of business interruption caused by "by direct physical loss of or damage to covered property" at the insured's premises.

67. With respect to business interruption losses, under the Classic Dining Policy, "suspension" means: (1) "the slowdown or cessation of your business activities"; or (2) "that a part or all of the described premises is rendered untenantable."

68. "Business Income" is defined in relevant part under the Policies as "Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no physical loss or damage had occurred" plus "continuing necessary operating expenses incurred."

69. State Auto also promised to "pay necessary Extra Expense" Plaintiffs incur during the period of interruption that they "would not have incurred if there had been no direct physical loss or damage to covered property at the described premises."

70. "Extra Expense" is defined in relevant part under the Policies as any expense incurred (1) "to avoid or minimize the suspension of business and to continue operations at the described premises"; (2) "[t]o minimize the suspension of business if [Plaintiffs] cannot continue operations"; or (3) "to [r]epair or replace any property[.]"

71. The State Auto Policies also include "Civil Authority" coverage, pursuant to which State Auto promised to pay for the loss of Business Income and necessary Extra Expense sustained by Plaintiffs "caused by action of civil authority that prohibits access" to Plaintiffs' insured premises.

72. This Civil Authority coverage is triggered when any non-excluded cause results in "damage to property other than property" at the Plaintiffs' premises.

B. The Plaintiffs' Losses Due to the Coronavirus Pandemic and the Business Interruption Orders.

73. On March 11, 2020, the World Health Organization declared that the emerging threat from the novel coronavirus—otherwise known as COVID-19—constituted a global pandemic.

74. Research on the virus and reports from the CDC indicate that the COVID-19 strains physically infect and can stay alive on surfaces for several days, a characteristic that renders property exposed to the contagion potentially unsafe and dangerous. Other research indicates that the virus may linger even longer in low temperatures.

75. And as Ohio Governor DeWine explained in his March 15, 2020 Director's Order, restaurants were forced to close in order to prevent exposure to the coronavirus, which "is spread between individuals who are in close contact with each other" and also when individuals "touch[] a surface or object that has the virus on it and then touch[] their own mouth, nose or eyes." Similar executive orders have been entered by Illinois, Indiana, and Wisconsin for this same reason.

76. Similarly, Illinois Governor Pritzker ordered restaurants to close dine-in service in order to prevent coronavirus exposure "from frequently used surfaces in public settings, including bars and restaurants." Similar executive orders have been entered by Indiana and Wisconsin for this same reason.

77. Likewise, Wisconsin Governor Evers prevented restaurants from offering seating and ordered that "food may not be consumed at the restaurant."

78. The continuous presence of the coronavirus on or around Plaintiffs' premises has created a dangerous condition and rendered their premises unsafe and unfit for their intended use and therefore caused physical property damage or loss under the Policies.

79. The Business Interruption Orders were made in direct response to the continued and increasing presence of the coronavirus on property or around Plaintiffs' premises and required bars and restaurants like Plaintiffs' to suspend service on their premises.

80. As a result of the Business Interruption Orders, the Plaintiffs have each suffered substantial Business Income losses and incurred Extra Expense. The covered losses incurred by Plaintiffs and owed under the Policies is increasing every day. As a result of these catastrophic losses, many of the Plaintiffs have been forced to furlough their workers and may have to close some or all of their locations permanently.

C. State Auto's Wrongful and Tortious Denial of Coverage.

81. Following the Business Interruption Orders, the Plaintiffs submitted a claim to State Auto requesting coverage for their business interruption losses promised under the Policies (collectively, the "Business Interruption Claims").

82. State Auto has denied each of the Business Interruption Claims.

83. On April 7, 2020, State Auto sent a letter denying coverage for the Classic Dining Plaintiffs' losses. In its letter, State Auto asserted that coverage had not been triggered because (1) the Classic Dining Plaintiffs had not suffered any direct physical loss or damage to their premises, (2) the Classic Dining Plaintiffs' losses did not result from any property damage to the area immediately surrounding the restaurant, and (3) the Classic Dining Plaintiffs' losses did not stem from a civil authority having to have unimpeded access to any damaged property. *See* **Exhibit A** at 4-10. State Auto's letter also cited several policy exclusions—including a purported exclusion titled "Exclusion of Loss Due to Virus or Bacteria endorsement (CP0140 07/06) (the "Virus Exclusion")—which it contended "may apply in whole or in part, to preclude coverage for the claim." As noted above, however, the ***Classic Dining Plaintiffs' Policy with State Auto does not contain a virus exclusion***.

84. Only after the Classic Dining Plaintiffs responded to State Auto's April 7 letter and noted that it falsely represented that the Classic Dining Policy contained a virus exclusion, State Auto issued a second letter to the Classic Dining Plaintiffs on April 21 which again denied coverage. *See* **Exhibit B**. State Auto's April 21 letter was identical in all material respects to the April 7 letter—with the exception that the April 21 letter lacked any citation to a virus exclusion.

85. State Auto issued essentially the same letter to the RT Plaintiffs denying their claim for coverage on April 17, 2020, contending that (1) the RT Plaintiffs had not suffered any direct physical loss or damage to their premises, (2) the RT Plaintiffs' losses did not result from any property damage to the area immediately surrounding the restaurant, and (3) the RT Plaintiffs' losses did not stem from a civil authority having to have unimpeded access to any damaged property. In this letter, State Auto also attempts to reserve rights under a few exclusions that contend "may apply" to preclude coverage. *See* **Exhibit E**. State Auto's letter to the RT Plaintiffs set forth no other coverage defenses to the RT Plaintiffs' claims.

86. On May 8, counsel for the Classic Dining Plaintiffs sent a letter to State Auto challenging State Auto's denial of coverage, which is attached hereto as **Exhibit F**. The Classic Dining Plaintiffs pointed out that the broad all-risk coverage promised by State Auto insurer the Classic Dining Plaintiffs against all risks not specifically excluded, and that the Policies do not contain any exclusion for virus or pandemic risks. Moreover, the Classic Dining Plaintiffs explained in the letter that the State Auto Policies cover both "physical loss" and "physical damage," and that the Classic Dining Plaintiffs suffered a "physical loss" at each of their locations because they had lost the physical ability to fully and safely operate at the insured locations as intended. The Classic Dining Plaintiffs therefore demanded that State Auto immediately withdraw its improper coverage denial and confirm that it would cover Classic Dining Plaintiffs' COVID-19 business interruption losses. Noting the urgency in the request,

given the significant losses the Classic Dining Plaintiffs had incurred and were continuing to incur on a daily basis, Classic Dining requested a response from State Auto by May 22.

87. State Auto noted on May 12 that it was "reviewing the file and [would] respond to [the Classic Dining Plaintiffs'] letter as soon as possible." But the Classic Dining Plaintiffs received no such response.

88. On May 29, having received no response from State Auto, counsel for the Classic Dining Plaintiffs then sent a second letter to State Auto, attached hereto as **Exhibit G**, stressing again that the matter was "serious and urgent" and noting that "without the assistance State Auto promised to provide, and which it has unreasonably refused to provide, there will be a long-lasting (and potentially permanent) impact to [the Classic Dining Plaintiffs'] operations." The letter continued by warning State Auto that if it continued to ignore its policyholder, the Classic Dining Plaintiffs would have no other choice than to file a lawsuit that would seek to hold State Auto to its coverage obligations and would also seek extra-contractual remedies for State Auto's bad faith conduct beyond the Policy limits, including punitive damages, consequential damages, statutory penalties and attorneys' fees.

89. State Auto eventually responded to the Classic Dining Plaintiffs' May 8 letter on June 10, attached hereto as **Exhibit H**, reiterating its position that coverage was not triggered because "there is no alleged destruction of or physical damage to any insured structures at any of the more than 25 insured premises" and that "the business income coverage indeed does require actual alteration to the physical property at the premises."

90. Notably, in the June 10 letter, State Auto did not dispute that the Classic Dining Plaintiffs suffered a "physical loss." Instead, State Auto attempted to read out the "physical loss" insuring clause from its Policy by suggesting that it is interchangeable with the phrase "physical damage" and that the Classic Dining Plaintiffs must show "actual alteration to the

physical property at the premises." Ironically, in a misguided effort to show the Policy was never intended to cover business interruption losses caused by "physical loss," State Auto cited to limited exceptions and exclusions in other parts of the Policy (not applicable here) which they contend "specifically preclude" coverage for certain losses stemming from the inability to safely operate insured property. But, if coverage under the Policy is only triggered in the first instance by the "actual alteration to the physical property" and is not triggered by "physical loss," as State Auto falsely contends, then there would be no need to add such exclusions to try to "specifically preclude" limit coverage in some circumstances.

91. Further, consistent with its pattern of bad faith claims handing, State Auto denied coverage under the Civil Authority coverage in the June 10 letter by mischaracterizing the Civil Authority coverage and the relevant government orders, which it contends "encouraged limited and continued access to restaurants." This is plainly false, as the Business Interruption Orders strictly prohibited access to the Plaintiffs' premises for dine-in services. The fact that the government orders allowed limited delivery and carry-out services does not mean the Civil Authority coverage was not triggered.

92. Finally, State Auto confirmed in the June 10 letter that it was not denying coverage based on any exclusions in the Policy, and its reference to such exclusions in its prior letters were meant only to serve as "compliments to bolster and support" its arguments that the insuring agreements of the Policy were not triggered.

COUNT I: DECLARATORY JUDGMENT

93. Plaintiffs incorporate by reference, as if fully set forth herein, the facts set forth in paragraphs 1–92 above.

94. Each Policy is an insurance contract under which State Auto was paid premiums in exchange for its promise to pay Plaintiffs' losses for claims covered by the Policy, such as

business losses incurred as a result of the government orders forcing the interruption of their ordinary business operations.

95. Plaintiffs have complied with all applicable provisions of the Policies, including payment of the premiums in exchange for coverage under the Policies.

96. State Auto has arbitrarily and without justification refused to reimburse Plaintiffs for any losses incurred by Plaintiffs in connection with the covered business losses related to novel coronavirus, the Business Interruption Orders, and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

97. An actual case or controversy exists regarding Plaintiffs' rights and State Auto's obligations under the Policies to reimburse Plaintiffs for the full amount of losses incurred by Plaintiffs in connection with Business Interruption Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

98. Pursuant to Ohio Rev. Code § 2721.02, Plaintiffs seek a declaratory judgment from this Court declaring the following:

(a) Plaintiffs' losses incurred in connection with the novel coronavirus, the Business Interruption Orders and the necessary interruption of their businesses stemming from the Business Interruption Orders and COVID-19 pandemic are insured losses under the Policies;

(b) State Auto has waived any right it may have had to assert defenses to coverage or otherwise seek to bar or limit coverage for Plaintiffs' losses by issuing coverage denials without conducting a full and fair claim investigation as required under Ohio law; and

(c) State Auto is obligated to pay Plaintiffs for the full amount of the losses incurred and to be incurred due to the Business Interruption Orders and the COVID-19 pandemic.

COUNT II: BREACH OF CONTRACT

99. Plaintiffs incorporate by reference, as if fully set forth herein, the facts set forth in paragraphs 1–98 above.

100. Each Policy is an insurance contract under which State Auto was paid premiums in exchange for its promise to pay Plaintiffs' losses for claims covered by the Policy, such as business losses incurred as a result of the government orders interrupting their ordinary business operations and the COVID-19 pandemic.

101. Plaintiffs have complied with all applicable provisions of the Policies, including payment of the premiums in exchange for coverage under the Policies, and yet State Auto has abrogated its insurance coverage obligations pursuant to the Policies' clear and unambiguous terms.

102. By denying coverage for any business losses incurred by Plaintiffs in connection with the novel coronavirus, the Business Interruption Orders, and the COVID-19 pandemic, State Auto has breached its coverage obligations under the Policies.

103. As a result of State Auto's breaches of the Policies, Plaintiffs have sustained substantial damages for which State Auto is liable, in an amount to be established at trial.

COUNT III: BAD FAITH DENIAL OF INSURANCE

104. Plaintiffs incorporate by reference, as if fully set forth herein, the facts set forth in paragraphs 1–103 above.

105. Upon receipt of the Business Interruption Order Claims, State Auto denied the claims without any lawful basis for the refusal despite having actual knowledge of that facts establishing coverage for Plaintiffs' losses, amounting to an intentional failure to determine whether there was any lawful basis for such refusal.

106. State Auto's denials were arbitrary and capricious.

107. Indeed, State Auto's April 7 letter to the Classic Dining Plaintiffs misrepresented material provisions in the Classic Dining Policy when it denied coverage based on a Virus Exclusion that does not appear in the Policies. Such conduct violates both the Ohio Unfair

Claim Settlement Practices Act, which prohibits insurance companies from misrepresenting to their insureds relevant policy provisions contained in their policies. See Ohio Admin. Code 3901-1-54.

108. State Auto's denials constitute "improper claims practices" under Ohio law—namely State Auto's (1) refusals to pay Plaintiffs' claims without conducting reasonable investigations based on all available information and (2) failure to provide reasonable and accurate explanations of the bases in its denials.

109. State Auto has failed to raise any bona fide dispute as to the whether the claims are covered by the Policies.

110. Therefore, Plaintiffs request that, in addition to entering a judgment in favor of Plaintiffs and against State Auto for the amount owed under the Policies at the time of judgment, the Court award Plaintiffs consequential and punitive damages.

111. Plaintiffs further request that the Court enter a judgment in favor of Plaintiffs and against State Auto in an amount equal to the attorneys' fees and costs incurred by Plaintiffs for the prosecution of this coverage action against State Auto, which amount will be proved at or after trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that the Court:

A. Enter a declaratory judgment on Count I of the Complaint in favor of Plaintiffs and against State Auto, declaring as follows:

   i. Plaintiffs' losses incurred in connection with the novel coronavirus, the Business Interruption Orders and the necessary interruption of their businesses stemming from the Business Interruption Orders and COVID-19 pandemic are insured losses under the Policies;

   ii. State Auto has waived any right it may have had to assert defenses to coverage or otherwise seek to bar or limit coverage for Plaintiffs' losses by issuing coverage denials without conducting full and fair a claim investigation as required under Ohio law; and

iii. State Auto is obligated to pay Plaintiffs for the full amount of the losses incurred and to be incurred due to the Business Interruption Orders and the COVID-19 pandemic.

B. Enter a judgment on Count II of the Complaint in favor of Plaintiffs and against State Auto and award damages for breach of contract in an amount to be proven at trial;

C. Enter a judgment on Count III of the Complaint in favor of Plaintiffs and against State Auto, entitling Plaintiffs to an award of consequential and punitive damages in an amount to be proven at trial;

D. Enter a judgment in favor of Plaintiffs and against State Auto in an amount equal to all attorneys' fees and related costs incurred for the prosecution of this coverage action against State Auto, which amount to be established at the conclusion of this action;

E. Award to Plaintiffs and against State Auto prejudgment interest, to be calculated according to law, to compensate Plaintiffs for the loss of use of funds caused by State Auto's wrongful refusal to pay Plaintiffs for the full amount in costs incurred in connection with the Business Interruption Claims;

F. Award Plaintiffs such other, further, and additional relief as this Court deems just and appropriate.

JURY DEMAND

Plaintiffs hereby demand trial by jury on all issues so triable.

Respectfully submitted this 24th day of June 2020.

/s/ Gregory A. Ruehlmann
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