

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION**

ARIA DENTAL GROUP, LLC,
d/b/a MONROE FAMILY AND
COSMETIC DENTISTRY,
individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

FARMERS INSURANCE EXCHANGE,
FOREMOST INSURANCE COMPANY
GRAND RAPIDS, MICHIGAN d/b/a
FOREMOST INSURANCE COMPANY,
and JOHN DOE CORPORATIONS 1 –
100,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

COMPLAINT – CLASS ACTION

Plaintiff Aria Dental Group, LLC, d/b/a Monroe Family and Cosmetic Dentistry (“Aria”), on behalf of itself and all others similarly situated, by and through undersigned counsel, file this Class Action Complaint against Defendants Farmers Insurance Exchange and Foremost Insurance Company Grand Rapids, Michigan d/b/a Foremost Insurance Company, (collectively “Farmers” or “Defendants”), stating and alleging as follows:

PRELIMINARY STATEMENT

This action implicates Defendants' long-standing history of collecting premiums from dental professionals to insure against the prospective loss of business income when business operations are suspended through no fault of their own. Now, amid the COVID-19 pandemic, when federal, state and local government "stay at home" orders and social distancing guidelines and recommendations have affected approximately 95% of the U.S. population to prohibit all non-essential and elective medical procedures, Defendants are rotely denying dental office business income loss claims, asserting that COVID-19 is not a covered loss. But as exemplified by the common and standard Precision Portfolio Policy issued to Aria, and many others, the business income losses attributed to COVID-19 are expressly covered by the policy language and due to be paid.

PARTIES, JURISDICTION & VENUE

1. Plaintiff ARIA DENTAL GROUP, LLC, d/b/a MONROE FAMILY AND COSMETIC DENTISTRY, is a Georgia Citizen who resides in Walton County, Georgia.

2. Defendant FARMERS INSURANCE EXCHANGE is authorized by the Office of Insurance and Safety Fire Commissioner to sell Property & Casualty in Georgia. It is a California for-profit insurance company with its principal place of

business located at 6301 Owensmouth Avenue, Woodland Hill, California. It may be served via its registered agent, Corporation Service Company, whose address is 40 Technology Parkway South, Suite 300, Norcross, GA 30092, USA.

3. Defendant FOREMOST INSURANCE COMPANY GRAND RAPIDS, MICHIGAN is authorized by the Office of Insurance and Safety Fire Commissioner to sell Property & Casualty in Georgia. It is a Michigan for-profit insurance company with its principal place of business located at 5600 Beech Tree Lane, Caledonia, Michigan. It may be served via its registered agent, C T Corporation System, whose address is Corporation Service Company, whose address is 40 Technology Parkway South, Suite 300, Norcross, GA 30092, USA.

4. JOHN DOE CORPORATIONS 1–100 are as yet unidentified issuing companies, property and casualty insurance company subsidiaries or affiliates in Farmers Insurance Exchange or within Foremost Insurance Company who sold, issued or insured Precision policies that included Business Income, Civil Authority and/or Extra Expense coverages in all 50 States, the District of Columbia, and Puerto Rico. These JOHN DOE CORPORATIONS are typically organized under the laws of the state in which they conduct most or all of their business. When these JOHN DOE CORPORATIONS become identified, they will be added through amendment and served as required by law.

5. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d). The amount in controversy exceeds the sum of \$5,000,000 exclusive of interest and costs, there are more than 100 putative class members, and minimal diversity exists because many putative class members are citizens of a different state than Defendants.

6. This Court has personal jurisdiction over all Defendants because all Defendants are authorized to sell insurance in Georgia, regularly conduct business in Georgia, and have sufficient minimum contacts in Georgia. Defendants intentionally availed themselves of this jurisdiction by marketing and selling insurance products and services in Georgia, and by accepting and processing payments for those products and services within Georgia and this district.

7. Venue is proper in this Court pursuant to 28 U.S.C. §1391, because a substantial part of the events, acts and omissions giving rise to Plaintiff’s claims occurred in this District.

GENERAL ALLEGATIONS

8. Farmers sells a variety of insurance products, serving insurance needs for small businesses across the nation. As a part of insurance lines Farmers offers small business insurance marketed and sold to help protect business owners from unexpected losses. Included within its standard business insurance line of products,

Farmers provides coverage for loss of business income and extra expense, also known as business interruption coverage (“BII”). BII is a product sold to businesses to cover costs of lost business income and other expenses caused by a suspension of normal operations.

9. Plaintiff is a dentistry practice in Monroe, Georgia, which provides dental care to patients throughout Walton County and middle Georgia. Plaintiff employs two dentists and five full-time staff to serve all patient populations, focusing on general and cosmetic dentistry.

10. Understanding that certain events outside its control could lead to an interruption of business and lost revenue, Plaintiff purchased a Precision Portfolio Policy Precision America Office Program from Farmers (“Policy”) in 2016 and renewed it each year thereafter, with the most recent renewal Policy Period being effective from September 9, 2019 to September 9, 2020. The initial and all renewal policies included “Business Income and Extra Expense Coverage”, “Action of Civil Authority” and “Extended Business Income.” (See **Exhibit A**, Initial Policy & 2019 Renewal declarations, attached hereto.)

11. The Precision Portfolio Policy Precision America Office Program is a standard policy form issued by Farmers in all 50 states, and does not materially differ in coverage obligations.

12. The insuring provision of the Policy is designed to pay for “direct physical loss of or physical damage to Covered Property caused by or resulting from a Covered Cause of Loss.”

13. Further, as Covered Property includes loss of Business Income, the Additional Coverages provision of the policy specifically insures, among other losses, “the actual loss of Business Income you sustain due the necessary suspension of your ‘operations’ during the ‘period of restoration.’”¹

14. Additionally, the Policy provides Farmers will “pay necessary ‘extra expense’” incurred to restore a business to normal services.

15. The Policy also provides “Civil Authority” coverage, which “pay[s] for the actual loss of ‘business income’ you sustain and necessary Extra Expense caused by the action of civil authority that prohibits access to the ‘described premises’....”²

16. Finally, the Policy affords “Extended Period of Indemnity” coverage where Farmers will pay for loss of additional income after restoration and resumption of operations following a loss.

17. Unlike many commercial BII policies, Farmers’ Precision Portfolio Policy Precision America Office Program does not exclude loss caused by a virus or

¹ See Ex. A, §III.A. p. 13 of 26.

² Id., § III.A.4, p. 14 of 26.

communicable disease.

COVID-19 BECOMES A GLOBAL PANDEMIC

18. In late 2019, a new and significant outbreak of a severe respiratory disease (COVID-19), caused by a novel coronavirus (SARS-Cov-2), emerged in Wuhan, China.³

19. The respiratory disease caused by the novel coronavirus (“COVID-19”) is an infectious virus that can rapidly spread from person-to-person and resulted in serious illness and death across the globe.

20. On March 11, 2020, the World Health Organization declared COVID-19 to be a global pandemic.

21. In efforts to curb the spread of the virus and in response to the rapidly spreading pandemic, federal, state and local governments implemented temporary travel restrictions and guidelines advising against essential travel.

22. The Centers for Disease Control and Prevention (“CDC”) identified the potential public health threat posed by COVID-19 in the United States, and advised that the person-to-person spread of COVID-19 will continue to occur.

23. The CDC noted that COVID-19 was proliferating via "community

³ For simplicity, this Complaint refers to both as “COVID-19”.

spread," meaning people were contracting the virus as a result of direct or indirect contact with infected persons in the communities where they lived and worked, including some who are not sure how or where they became infected.

24. On March 13, 2020, President Donald Trump declared the outbreak of COVID-19 a national emergency beginning March 1, 2020.

25. In response to the COVID-19 pandemic, many state and local governments throughout the United States enacted measures to combat the ever-growing spread of the pandemic, including declarations of public health emergencies and stay at home orders.

26. On March 19, 2020, California became the first state to issue a shelter in place order and many others soon followed. By April 20, 2020, at least 42 states along with a number of number of cities and counties and U.S. territories, urged their citizens to stay in their homes as much as possible, including in the following states/territories: Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington,

29. The United States now leads the globe in the number of confirmed COVID-19 cases, with more than 1.8 million confirmed cases and over 106,000 deaths as a result. COVID-19 is present in every state in the nation.

GEORGIA IS AN EXEMPLARY STATE IMPACTED BY COVID-19

30. In early March 2020, the Georgia Department of Public Health determined that COVID-19 “is spreading throughout communities” and laboratory testing confirmed more than sixty (60) cases of COVID-19 had surfaced in Georgia, requiring the implementation of certain restrictions to limit the spread.

31. On March 14, 2020, Georgia Governor Brian Kemp declared a Public Health State of Emergency⁵ and, April 2, 2020 issued an Executive Order, requiring “all residents and visitors of the State of Georgia are required to shelter in place within their homes or places of residence ... taking every possible precaution to limit social interaction to prevent the spread or infection of COVID-19 to themselves or any other person....”⁶

32. On March 18, 2020, the Centers for Medicare and Medicaid Services (“CMS”) released recommendations on Adult Elective Surgeries and Non-Essential Medical, Surgical, and Dental Procedures During COVID-19 Response. These

⁵ <https://gov.georgia.gov/document/2020-executive-order/03142001/download>

⁶ <https://gov.georgia.gov/document/2020-executive-order/04022001/download>

recommendations provided a framework for all medical providers, including dentists, to implement immediately and delay all elective surgeries, non-essential medical, surgical, and dental procures during the 2019 COVID-19 outbreak.

33. Further mandates to cancel or postpone elective and routine medical procedures were issued by bodies and licensing boards governing dental practices, including the CMS, American Dental Association (“ADA”), the American Medical Association (“AMA”).

34. Again, on April 7, 2020, in an effort to “limit exposure of patients and staff to the virus that causes COVID-19,” CMS recommended the cancellation or postponement of all non-emergent, elective treatment, and preventive medical services for patients of all ages.⁷

35. On April 8, 2020, the CDC issued further guidelines for dental practices related to elective and routine operations, recommending all dental facilities postpone elective procedures, surgeries, and non-urgent dental visits for the foreseeable future.⁸ For other healthcare facilities, CDC guidelines call for the rescheduling of all non-urgent outpatient visits and elective surgeries.⁹

⁷ <https://www.cms.gov/files/document/cms-non-emergent-elective-medical-recommendations.pdf>

⁸ <https://www.cdc.gov/oralhealth/infectioncontrol/statement-COVID.html>

⁹ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-hcf.html>

36. The shelter-in-place Orders, association bulletins, governmental guidelines and recommendations, and other health experts consistently and unflinching mandated dental practices should cancel or postpone treatment of all non-emergent patients. The goal of such measures was to prevent transmission of a known, dangerous virus deeply persistent in communities, cities, counties, and all states across the United States.

37. According to the CDC, SARS-CoV-2 is known to remain live and viable for hours up to days on “surfaces made from a variety of chemicals,” including surfaces commonly found in dentist and physician offices¹⁰ and can be spread by asymptomatic members of the public.

38. In Georgia, there have been 48,894 confirmed COVID-19 cases and 2,123 individuals have perished from the first death reported on March 12, 2020 until June 3, 2020.¹¹

39. In Walton County, Georgia, where the Plaintiff’s “scheduled premises” is located, there have been at least 273 confirmed COVID-19 cases, 49 hospitalizations and 15 deaths.¹²

40. As a result of the proliferation and spread of COVID-19, and due to the

¹⁰ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cleaning-disinfection.html>

¹¹ <https://dph.georgia.gov/covid-19-daily-status-report>, (last visited June 3, 2020.)

¹² Id.

resultant Declarations of Emergency, Executive Orders and local mandates requiring the public to exercise strict social distancing practices, non-emergent, routine, and elective medical procedures were halted at all dental and medical practices in the states. Accordingly, Plaintiff was forced to indefinitely suspend or reduce its dentistry practice for the foreseeable future.

41. Upon information and belief, Farmers has, on a wide-scale and uniform basis, refused to pay its insureds under its Precision Portfolio Policy for losses suffered due to the spread of COVID-19. Farmers has denied Plaintiffs' claim under their policy.

The Policy

The Commercial Property Building and Personal Property Coverage Form At Issue

42. In return for the payment of a premium, Farmers issued Policy No. PAS 12557890 to Aria Dental Group, LLC and renewed the same Policy for a policy period beginning of September 9, 2019 to September 9, 2020.

43. Plaintiff has performed all of its obligations under the Farmers Policy, including payment of all premiums and submission of a claim.

44. Among other coverages, the Plaintiff's coverages include Loss of Business Income, Civil Authority, and Extra Expense due to the shutdown caused

by COVID-19.

45. The Policy is an all-risk policy. This type of policy covers all risks of loss except for those expressly and specifically excluded. Here, Farmers provides it will “pay for direct physical loss of or damage to Covered Property caused by or resulting from a Covered Cause of Loss.”

46. A “Covered Cause of Loss” is defined in the insurance contract as a “RISK OF DIRECT PHYSICAL LOSS OR DAMAGE” subject to various exclusions and limitations.

47. Farmers did not exclude or limit coverage for losses from viruses for communicable diseases.

48. Losses due to COVID-19 are a Covered Cause of Loss under Farmers’ policies.

49. Section III (**Additional Coverages**) of the Policy provides Farmers contractually agreed to:

pay for the actual loss of “business income” you sustain due to the necessary suspension of "operations" during the "period of restoration," but not to exceed 12 consecutive months. The suspension must be caused by direct physical loss of or damage to property at the "described premises", including personal property in the open, or in a vehicle, within 1000 feet, caused by or resulting from a Covered Cause of Loss.

50. Business Income under the policy is defined as “1. Net Income (Net

Profit or Loss before income taxes) that would have been earned or incurred; and 2. Continuing normal operating expenses incurred, including payroll if there had been no direct physical loss or damage.”

51. Relative to the physical loss or damage requirement under the Policy, the presence of a dangerous virus or disease is known to be a physical loss or damage, as the insurance industry has recognized since at least 2006. When preparing so-called “virus” exclusions to be placed in some policies, but not others, the insurance industry drafting arm, Insurance Services Office, Inc. (“ISO”), circulated a statement to state insurance regulators which included the following:

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.¹³

¹³See ISO Circular LI-CF_2006-175, July 6, 2006, available at <https://www.propertyinsurancecoveragelaw.com/files/2020/03/ISO-Circular-LI-CF-2006-175-Virus.pdf> (emphasis added).

52. Contrary to the denial made in this case, the insurance industry has recognized broad pollution or contamination exclusions do not limit or exclude coverage related to viruses or bacteria, thus creating the need for specific endorsements necessary to exclude loss due to virus or bacteria.

53. Farmers also agreed to pay necessary “Extra Expense” incurred by its insureds during the period of time the business would not have incurred “if there had been no direct physical loss or damage to property.”

54. “Extra Expense” includes, among other items, expense incurred “to avoid or minimize the suspension of business and continue ‘operations.’”

55. Farmers further agreed to pay the “actual loss of Business Income...caused by action of civil authority that prohibits access to the ‘described premises’ due to direct physical loss of or damage to property.”

56. Losses caused by COVID-19 and related orders issued by local, state, and federal authorities, triggered the Business Income and Extra Expense and Civil Authority provisions of Farmers’ policy.

COVID-19 Is A Covered Cause of Loss Under Standard and Uniform Policy Language

57. The spread of COVID-19, and the corresponding orders and mandates from civil authorities throughout the country requiring the suspension of businesses like Plaintiffs' and the putative class members, constitutes damage to the premises and a loss that is covered under Farmers' policy.

58. The presence of COVID-19 is the cause of "direct physical loss" and "damage" to those premises covered under Plaintiff's policy, and the policies of other Class members, by denying use of and damage to the "described premises" and by the involuntary suspension of all non-emergent business operations.

59. In response to COVID-19, the federal government, the WHO, the CDC, State governing authorities, the AMA, and the ADA all decided to prohibit access to Plaintiff's and other class members' premises, thus suspending their normal business activities.

60. As a result of the presence of COVID-19 and the orders of civilian authorities, Plaintiff and the other Class members lost Business Income and incurred Extra Expense. Indeed, the Georgia Dental Association reports that an ADA survey of dentists shows the typical dental office is seeing less than 5% of its normal patient

volume.¹⁴

61. On April 7, 2020, Dr. Alex Podebryi, on behalf of Plaintiff, submitted a proof of loss to Farmers, claiming loss of Business Income for closures due to COVID-19 and corresponding shelter-in-place orders put in place by order of civil authorities. Dr. Podebryi, on behalf of Plaintiff, spoke with Farmers' representative Gregory Watts the same day, where Farmers verbally denied Plaintiff's claim. Farmers' representative Mr. Watts informed Plaintiff that Farmers was denying all claims related to business interruption under the Precision Portfolio Policy. Two days later, Farmers officially denied Plaintiff's claim by letter. (See **Exhibit B**, attached hereto.) As a basis for denying coverage under the policy, Farmers maintained "there is no coverage found in your policy package for business interruption as there is no direct physical loss or damage to property at the described premises from a covered cause of loss."

62. Farmers further claimed that while a government shutdown of Plaintiff's business was in effect pursuant to civil authority for containment of COVID-19, "access to the described premises was not prohibited due to direct physical loss of or damage to property from a covered cause of loss."

¹⁴

https://www.ada.org/~media/ADA/Science%20and%20Research/HPI/Files/HPIbrief_0420_1.pdf?la=en

63. Upon information and belief, Farmers has, on a wide-scale basis with many if not all of its insureds, refused to provide coverage under the Policy for Business Income losses due to COVID-19.

64. Given the rapid denial of such claims, Farmers has failed to adequately investigate the factual occurrence of the Plaintiff's and other Class members' claims, instead issuing an automated blanket denial of all claims, which is contrary to the Policy language.

65. If left unchecked, Farmers will continue to deny coverage under the Precision Portfolio Policy, even as governing State and Federal authorities recognize the impropriety of such denials.¹⁵

66. Farmers' basis for denial – that COVID-19 does not constitute “direct physical loss or damage” and thus is not covered under the policy – is in direct contravention of the vast majority of cases in the United States and insurance industry standards, where it is commonly accepted that “physical damage to the property is not necessary, at least where the building in question has been rendered unusable by physical forces.” *TRAVCO Ins. Co. v. Ward*, 715 F.Supp.2d 699, 708

¹⁵ CNBC, “Insurers are Denying Coronavirus Claims. Restaurants are Fighting back,” (last visited May 5, 2020), <https://www.cnbc.com/2020/04/20/insurers-are-denying-coronavirus-claims-restaurants-are-fighting-back.html> (“I would like to see the insurance companies pay if they need to pay, if it's fair. And they know what's fair. And I know what's fair,” Trump told reporters on Tuesday during his daily coronavirus task force briefing.”).

(E.D.Va. 2010), *aff'd*, 504 F. App'x 251 (4th Cir. 2013). Moreover, the insurance industry commonly recognizes imminent threat of release of a dangerous substance, thus rendering a premises useless, constitutes physical loss or damage. *Port Authority of New York & New Jersey v. Affiliated FM Insurance Co.*, 311 F.3d 226, 236 (3d Cir.2002); *Motorists Mut. Ins. Co. v. Hardinger*, 131 F. App'x 823 (3d Cir. 2005) (well contaminated by e-coli rendered property useless or uninhabitable, thus constituting physical loss or damage); *Sentinel Mgmt Co. v. New Hampshire Ins. Co.*, 563 N.W.2d 296 (Minn. 1997); *Western Fire Ins. Co. v. First Presbyterian Church*, 437 P.2d 52 (Colo.1968) (gas fumes constituted a physical loss); *Farmers Ins. Co. v. Trutanich*, 123 Or. App. 6, 858 P.2d 1332 (1993) (infiltration of premises by methamphetamine fumes constituted a physical loss); *Oregon Shakespeare Festival Ass'n v. Great Am. Ins. Co.*, 2016 WL 3267247, at *9 (D. Ore. June 7, 2016) (air quality due to wildfires rendered property uninhabitable and unusable for its intended purpose”).

67. In issuing blanket denials resulting from the spread of COVID-19, Farmers is breaching its contractual obligation with its insureds, who are entitled to the coverages afforded by the uniform language of the Precision Portfolio Policy they have.

68. Dentists and physicians, called upon as a first-line defense against the

COVID-19 outbreak to keep the public safe and protected, could not perform non-essential elective medical procedures or see their patients on a regularly scheduled basis, which is the lifeblood for any dental or medical practice.

69. As a result of government mandated restrictions, many dental and medical practices have been forced to shut down and lay off staff. Now more than ever, insured practices who have paid insurance premiums for specifically designed policies to cover interruptions are entitled to the coverage for which they paid.

CLASS ACTION ALLEGATIONS

70. The Class Member policies at issue in this case were issued as uniform, standard policies containing the same or substantially similar language which provides an all risk policy of insurance against the losses alleged in this case.

71. The Class Member policies at issue in this case do not vary substantially from policy holder to policy holder.

72. The Class Member policies at issue in this case do not exclude viruses or communicable diseases.

73. Pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3), as applicable, and (c)(4), Plaintiffs seek class certification of the following nationwide class (the “Nationwide Class” or the “Class”):

NATIONWIDE CLASS

All natural persons and/or dental practice groups in the United States who purchased from Defendants a Precision Portfolio Policy of insurance with Business Income, Civil Authority or Extra Expense coverage who were subject to federal recommended guidelines or state directives to limit, suspend or cancel non-emergent and elective procedures during the COVID-19 pandemic.

The Nationwide Class asserts claims against Farmers for Breach of Contract for Business Income coverage (Count I), Breach of Contract for Civil Authority Coverage (Count II), Breach of Contract for Extra Expense Coverage (Count III), and Declaratory Relief (Count IV).

74. Pursuant to Fed. R. Civ. P. 23 (b)(2) and (b)(3), as applicable, and (c)(4), Plaintiffs seek certification of state-by-state claims in the alternative to the nationwide claims breach of contract claims brought under Georgia common law (the “Statewide Subclasses”), defined as follows:

STATEWIDE [NAME OF STATE OR TERRITORY] SUBCLASS

All natural persons and/or dental practice groups residing in [same of state or territory] who purchased from Defendants a Precision Portfolio Policy of insurance with Business Income, Civil Authority or Extra Expense coverage who were subject to federal recommended guidelines or state directives to limit, suspend or cancel non-emergent and elective procedures during the COVID-19 pandemic.

The Alternative Subclasses assert claims against Farmers for Breach of Contract for Business Income Coverage (Count 1), Breach of Contract for Civil

Authority Coverage (Count II), Breach of Contract for Extra Expense Coverage (Count III), and Declaratory Relief (Count IIV).

75. Excluded from the Class are Defendant, any entity in which Defendant has a controlling interest, and Defendants' officers, directors, legal representatives, successors, subsidiaries, and assigns. Also excluded from the Class are any judicial officers presiding over this matter, members of their immediate family, and members of their judicial staff, and any Judge sitting in the presiding court system who may hear an appeal of any judgment entered.

76. Plaintiff reserves the right to amend or modify the Class definition with greater specificity or division after having had an opportunity to conduct discovery.

77. The Class meets the criteria for certification under Rule 23(a), 23(b)(2), 23(b)(3) and 23(c)(4).

78. **Numerosity. Fed. R. Civ. P. 23(a)(1).** The members of each Class and Subclass are so numerous and geographically dispersed that the joinder of all members is impractical. The exact number of class members is unknown to Plaintiffs at this time but may be ascertained through Defendants' records. Based on the large number of Precision Portfolio policies issued by Defendants, and the blanket denials of all claims related to business loss occasioned by COVID-19, the Class likely comprises tens of thousands of members geographically dispersed throughout the

United States. Affected entities' and individual insured's names and addresses are available from Defendants' records, and class members may be notified of the pendency of this action by recognized, court-approved notice dissemination methods, which may include electronic mail, U.S. Mail, internet notice, and/or published notice.

79. **Commonality and Predominance: Fed. R. Civ. P. 23(a)(2) and (b)(3).** As to each Class and Subclass, this action involves common questions of law and fact which predominate over any questions affecting individual class members. The terms of Farmers' coverage, exclusions and limitations related to the Precision Portfolio Policy are uniform for those contained within the proposed class, and Farmers breached the terms of those contracts pursuant to a uniform policy of denying all loss of business income claims related to COVID-19. Common questions of law and fact include, but are not limited to:

- a. Whether Defendants' conduct breaches its Contract of Insurance;
- b. Whether the spread of COVID-19 constitutes physical loss or damage to covered premises so as to trigger coverage for loss of Business Income and Extra Expense under Defendants' Precision Portfolio insurance policy;

c. Whether Plaintiff and members of the Class are entitled to damages, costs, or attorneys' fees from Defendants; and

d. Whether Plaintiff and members of the Class are entitled to compensatory damages.

80. **Typicality. Fed. R. Civ. P. 23(a)(3).** As to each Class and Subclass, Plaintiff's claims are typical of other Class members' claims because Plaintiff and members of the Class were subjected to the same unlawful conduct and damaged in the same way. Defendants' conduct that gave rise to the claims of Plaintiff and other Class members (*i.e.*, denying coverage for a covered loss) is the same for all members of the Class.

81. **Adequacy. Fed. R. Civ. P. 23(a)(4).** As to each Class and Subclass, Plaintiff is an adequate representative of the Class because Plaintiff is a member of the Class and is committed to pursuing this matter against Defendants to obtain relief for the Class. Plaintiff has no conflict of interest with the Class. Plaintiff's counsel are competent and experienced in litigating class actions, including extensive experience in litigating consumer claims. Plaintiff intends to vigorously prosecute this case and will fairly and adequately protect the interests of the Class.

82. **Declaratory and Injunctive Relief: Fed. R. Civ. P. 23(b)(2).** As to each Class and Subclass, the prosecution by separate actions by individual Class

members would create a risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for Farmers. Such individual actions would create a risk of adjudications that would be dispositive of the interests of other Class members and impair their interests. Farmers has acted and/or refused to act on grounds generally applicable to the Class, making final injunctive relief or corresponding declaratory relief appropriate. Class certification is also appropriate under Rule 23(b)(2) and (c). Defendants, through its uniform conduct, acted or refused to act on grounds generally applicable to the Class as a whole, making injunctive and declaratory relief appropriate to the Class as a whole. Moreover, Defendants continue to deny claims for covered losses for loss of Business Income resulting from continuing interruptions to their insured's businesses, thus making declaratory relief a live issue and appropriate to the Class as a whole.

83. **Superiority: Fed. R. Civ. P. 23(b)(3).** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The purpose of the class action mechanism is to permit litigation against wrongdoers even when damages to individual plaintiffs and class members may not be sufficient to justify individual litigation. Here, the damages suffered by Plaintiff

and the Class members are relatively small compared to the burden and expense required to individually litigate their claims against Defendants, and thus, individual litigation to redress Defendants' wrongful conduct would be impracticable. Individual litigation by each Class member would also strain the court system. Moreover, individual litigation creates the potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of a single adjudication, economies of scale, and comprehensive supervision by a single court.

84. Plaintiff alleges that, based on Defendants' denial of thousands of claims for loss of Business Income, Civil Authority coverage, and Extra Expense coverage due to the spread of COVID-19 and corresponding shelter-in-place orders, the total claims of individual Class Members in this action exceed \$5,000,000.00 in the aggregate, exclusive of interest and costs.

COUNT I

BREACH OF CONTRACT – BUSINESS INCOME COVERAGE

85. Plaintiff realleges and incorporate Paragraphs 1 - 84, as if fully set forth herein.

86. Plaintiff brings this Count individually and on behalf of the other members of the proposed Class and Alternative Subclasses.

87. Plaintiff's insurance policy, as well as those of the other Business Income Class members, are contracts under which Farmers was paid premiums in exchange for its promise to pay Plaintiff's and the other Business Income Class members' losses for claims covered by the policy, which does not expressly exclude virus' and/or communicable diseases from coverage.

88. Farmers agreed to pay for insureds' actual loss of Business Income sustained due to the necessary suspension of practice caused by direct physical loss of or physical damage to property at the scheduled premises.

89. Farmers agreed to pay for loss of Business Income that occurs within 12 consecutive months after the date of direct physical loss or damage.

90. "Business Income" means "1. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and 2. Continuing normal operating expenses incurred, including payroll if there had been no direct physical loss or damage."

91. COVID-19 caused direct physical loss and damage to Plaintiffs' and the other Business Income Class members' Scheduled Premises, requiring suspension of practice at their Scheduled Premises. Losses caused by COVID-19

thus triggered the Business Income provision of Plaintiffs' and the other Business Income Class members' insurance policies with Farmers.

92. Plaintiff and the other Business Income Class members have complied with all applicable provisions of their policies and/or those provisions have been waived by Farmers, or Farmers is estopped from asserting them, and yet Farmers has abrogated its insurance coverage obligations pursuant to the Policies' clear and unambiguous terms.

93. By denying coverage for any Business Income losses incurred by Plaintiff and the other class members in connection with the COVID-19 pandemic, Farmers has breached its coverage obligations under the Policy.

94. As a result of Farmers breaches of the Policy, Plaintiff and the other Business Income Class members have sustained substantial damages for which Farmers is liable, in an amount to be established at trial.

COUNT II

BREACH OF CONTRACT – CIVIL AUTHORITY COVERAGE

95. Plaintiff realleges and incorporate Paragraphs 1 – 84, as if fully set forth herein.

96. Plaintiff bring this Count individually and on behalf of the Class or Alternative Subclasses.

97. Plaintiff's insurance policy, as well as those of the other Civil Authority Class members, are contracts under which Farmers was paid premiums in exchange for its promise to pay Plaintiff's and the other Civil Authority Class members' losses for claims covered by the policy, which does not expressly exclude virus and/or communicable diseases from coverage.

98. Farmers promised to pay "the actual loss of Business Income" that a policyholder sustains which are "caused by action of civil authority that prohibits access to the 'described premises'."

99. The shelter-in-place orders and mandates by relevant civil authorities triggered the Civil Authority provision under Plaintiff's and the other members of the Civil Authority Class's insurance policies with Farmers.

100. Plaintiff and the other members of the Civil Authority Class have complied with all applicable provisions of the Policies and/or those provisions have been waived by Farmers and Farmers is estopped from asserting them, and yet Farmers has abrogated its insurance coverage obligations pursuant to the Policies' clear and unambiguous terms.

101. By denying coverage for any practice losses incurred by Plaintiff and other members of the Civil Authority Class in connection with the COVID-19 pandemic, Farmers has breached its coverage obligations under the Policy.

102. As a result of Farmers' breaches of the Policy, Plaintiff and the other members of the Civil Authority Class have sustained substantial damages for which Farmers is liable, in an amount to be established at trial.

COUNT III

BREACH OF CONTRACT – EXTRA EXPENSE COVERAGE

103. Plaintiff realleges and incorporates Paragraphs 1 – 102, as if fully set forth herein.

104. Plaintiff brings this Count individually and on behalf of the Class or Alternative Subclasses.

105. Plaintiff's insurance policy, as well as those of the other Extra Expense Class members, are contracts under which Farmers was paid premiums in exchange for its promise to pay Plaintiff's and the other Extra Expense Class members' losses for claims covered by the policy, which does not expressly exclude virus and/or communicable diseases from coverage.

106. Farmers also agreed to pay necessary Extra Expense that its insureds incurred during the “period of restoration” “resulting from a Covered Cause of Loss.”

107. “Extra Expense” means, in pertinent part, “expenses necessarily incurred by a policyholder to “[a]void or minimize the suspension of business and continue ‘operations’ ... [;] Minimize the suspension of business if you cannot continue operations; [and] Repair or replace any property....”

108. Due to COVID-19, Plaintiffs and the other members of the Extra Expense Class incurred Extra Expense at scheduled premises.

109. Plaintiff and the other members of the Extra Expense Class have complied with all applicable provisions of their policies and/or those provisions have been waived by Farmers or Farmers is estopped from asserting them, and yet Farmers has abrogated its insurance coverage obligations pursuant to the policies’ clear and unambiguous terms.

110. By denying coverage for any business losses incurred by Plaintiff and the other members of the Extra Expense Class in connection with the COVID-19 pandemic, Farmers has breached its coverage obligations under the policies.

111. As a result of Farmers’ breaches of the policies, Plaintiff and other

members of the Extra Expense Class have sustained substantial damages for which Farmers is liable, in an amount to be established at trial.

COUNT IV

DECLARATORY JUDGMENT

(BUSINESS INCOME AND EXTRA EXPENSE, AND/OR CIVIL AUTHORITY COVERAGE)

112. Plaintiff realleges and incorporates Paragraphs 1 – 111, as if fully set forth herein.

113. Plaintiff brings this Count individually and on behalf of the other members who purchased Business Income and Extra Expense, and Civil Authority Coverage.

114. Plaintiff's insurance policy, as well as those of the Class members, are contracts under which Farmers was paid premiums in exchange for its promise to pay Plaintiff's and the other Class members' losses for claims covered by the Policy.

115. Plaintiff and the Class members have complied with all applicable provisions of the Policies and/or those provisions have been waived by Farmers or Farmers is estopped from asserting them, and yet Farmers has abrogated its insurance coverage obligations pursuant to the Policies' clear and unambiguous

terms and has wrongfully and illegally refused to provide coverage to which Plaintiff and other members of the Class are entitled.

116. Farmers has denied claims related to COVID-19 on a uniform and class wide basis, without individual bases or investigations, such that the Court can render declaratory judgment irrespective of whether members of the Class have filed a claim.

117. An actual case or controversy exists regarding Plaintiff's and the other Class members' rights and Farmers' obligations under the Policies to reimburse them for the full amount of Business Income losses, Civil Authority losses, and Extra Expense losses in connection with suspension of their practices stemming from the COVID-19 pandemic.

118. Pursuant to 28 U.S.C. § 2201, Plaintiff and the other Class members seek a declaratory judgment from this Court declaring the following:

- i. Business Income losses incurred in connection with the necessary interruption of their practices stemming from the COVID-19 pandemic, are insured losses under their policies;
- ii. Extra Expense losses incurred in connection with the necessary interruption of their practices stemming from the COVID-19 pandemic, are insured losses under their policies;
- iii. Civil Authority losses incurred in connection with the necessary interruption of their practices stemming from the COVID-19 pandemic, are insured losses under their policies; and

- iv. Farmers is obligated to pay Plaintiff and the other Class members for the full amount of the Business Income and Extra Expense, and Civil Authority losses incurred and to be incurred in connection with the period of restoration and the necessary interruption of their practices stemming from the COVID-19 pandemic.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the other Class members, respectfully requests that the Court enter judgment in its favor and against Defendants as follows:

- a. Entering an order certifying the proposed Nationwide Class, or as Alternative Subclasses as requested herein, designating Plaintiff as Class representative, and appointing Plaintiff's undersigned attorneys as Counsel for the Classes;
- b. Entering judgment on Counts I-III in favor of Plaintiff and the members of the Business Income Class, the Civil Authority Class, and the Extra Expense Class; and awarding damages for breach of contract in an amount to be determined at trial;
- c. Entering declaratory judgments on Count IV in favor of Plaintiff and the members of the Class as requested;
- d. Ordering Defendants to pay both pre- and post-judgment interest on

any amounts awarded;

- e. Ordering Defendant to pay attorneys' fees and costs of suit; and
- f. Ordering such other and further relief as may be just and proper.

JURY DEMAND

Plaintiff, individually, and on behalf of the Class of all others similarly situated, hereby demands a trial by jury on all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: June 12, 2020

Respectfully submitted,

/s/Roy E. Barnes

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