

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SPRING HOUSE TAVERN, INC.  
INDIVIDUALLY AND ON BEHALF OF A  
CLASS OF SIMILARLY SITUATED  
PERSONS,

Plaintiffs,

v.

AMERICAN FIRE AND CASUALTY  
COMPANY,

Defendant.

Civil Action No.: \_\_\_\_\_

Removed from:

Court of Common Pleas of Montgomery  
County Pennsylvania

Docket No.: 2020-06069

**NOTICE OF REMOVAL**

**TO: Clerk of the Court**

United States District Court  
Eastern District of Pennsylvania  
James A. Byrne U.S. Courthouse  
601 Market Street  
Philadelphia, Pennsylvania 19106

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**PLEASE TAKE NOTICE THAT** pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1453,  
Defendant American Fire and Casualty Company (“American Fire”), by its undersigned attorneys,  
Faegre Drinker Biddle & Reath LLP and Finazzo Cossolini O’Leary Meola & Hager, LLC, hereby

removes the above-captioned putative class action, and all claims and causes of action therein, from the Court of Common Pleas of Montgomery County, Pennsylvania, 2 East Airy Street, Norristown, Pennsylvania 19404-0311, to the United States District Court for the Eastern District of Pennsylvania. The grounds for removal are as follows:

**I. Nature of Case**

1. The lawsuit arises out of Defendant's denial of Plaintiff's insurance claim for business losses allegedly associated with the COVID-19 virus. Specifically, Plaintiff alleges that it was forced to shut down its restaurant business and furlough its employees as a result of the COVID-19 pandemic and the State of Pennsylvania's orders and restrictions allegedly requiring all non-life sustaining businesses to cease operations and to close all physical locations. *See* Complaint ("Compl."), included at Exhibit A, ¶¶ 19-22, 24.

2. Plaintiff subsequently made a claim under the commercial business owner policy issued by Defendant for the associated losses, including for business income losses. Defendant denied coverage because, among other things, Plaintiff's policy specifically excludes coverage for losses caused by or resulting from a "virus," and because COVID-19 – even if actually present at a property – does not cause a direct physical loss. Compl., Ex. A, ¶ 33. As a result, Plaintiff filed this lawsuit.

3. As set forth in detail below, this case is removable on two independent grounds: (1) there is complete diversity between the parties and the amount in controversy exceeds \$75,000, as required for removal pursuant to 28 U.S.C. § 1332(a); and (2) there is minimal diversity between the defendant and the putative class and the amount in controversy exceeds \$5 million as required for removal pursuant to 28 U.S.C. § 1332 (d), as amended by the Class Action Fairness Act of 2005 ("CAFA").

4. By removing this action, Defendant does not waive and expressly reserves any arguments or defenses available to it including, but not limited to, any arguments or defenses relating to class certification, and any defenses based on personal jurisdiction, improper venue and improper or lack of service of process. Likewise, by removing this action, Defendant does not admit any of the allegations in Plaintiff's Complaint.

## **II. Procedural Background**

5. Plaintiff initiated this putative class action on May 11, 2020 by filing a Complaint in the Court of Common Pleas, Montgomery County, Pennsylvania captioned *Spring House Tavern, Inc. Individually and On Behalf Of a Class of Similarly Situated Persons v. American Fire and Casualty Company*, Docket No. 2020-06069. American Fire was served with a copy of Plaintiff's Summons and Complaint on May 18, 2020. *See* Summons and Proof of Service, included at Ex. A.

6. Defendant has not filed a responsive pleading in the state-court action.

7. In the Complaint, Plaintiff asserts two causes of action: (1) declaratory judgment on the issue of coverage as it relates to Plaintiff and the Class Claims; and (2) injunctive relief enjoining Defendant from continuing to deny and/or refusing to acknowledge coverage to insureds for losses caused by the COVID-19 pandemic and the referenced Orders as it relates to Plaintiff and the Class Claims. The Complaint seeks to represent a class defined as Pennsylvania citizens who have sustained losses caused by the COVID-19 pandemic and the referenced Orders where: (a) Defendant has issued a policy of insurance providing coverages to each class member; (b) the putative class members have suffered covered losses under those policies by reason of the COVID-19 pandemic and the referenced Orders; and (c) Defendant has disclaimed coverage and/or refused to acknowledge coverage under the policies of insurance. *See* Compl, Ex. A, ¶ 38.

**III. This Case is Removable Pursuant to 28 U.S.C. § 1332(a)**

8. As set forth below, because there is complete diversity among the parties, and the amount in controversy exceeds \$75,000, exclusive of interest and costs, the United States District Court for the Eastern District of Pennsylvania has diversity jurisdiction pursuant to 28 U.S.C. § 1332 (a).

**A. There is complete diversity of citizenship between the parties.**

9. Plaintiff Spring House Tavern, Inc. is a Pennsylvania corporation with its principal place of business in Spring House, Pennsylvania. Compl., Ex. A, ¶ 1.

10. Defendant American Fire and Casualty Company is a New Hampshire corporation with its principal place of business in Massachusetts. Compl., Ex. A, ¶ 2.

11. Because Plaintiff is a citizen of Pennsylvania and Defendant is a citizen of Massachusetts and New Hampshire, there is complete diversity of citizenship between the parties. 28 U.S.C. § 1332(a).

**B. The amount in controversy exceeds the \$75,000 jurisdictional minimum.**

12. To satisfy the amount-in-controversy for purposes of removal, defendants “need to include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554, 190 L. Ed. 2d 495 (2014).

13. Plaintiff seeks the following relief in this case on an individual basis and on behalf of the Class Claims (excluding interest and costs): Business Income, Extra Expense, Civil Authority and other related, unspecified losses. Compl., Ex. A, ¶ 29. As set forth below, the combined value of this relief easily exceeds the jurisdictional minimum of \$75,000. 28 U.S.C. § 1332(a).

14. First, Plaintiff's Civil Cover Sheet filed with its initial pleading states that it is entitled to in excess of \$50,000 in compensatory damages. In addition, the most recent application that Plaintiff submitted in connection with its procurement of the American Fire policy represented that, in the event Plaintiff's operations were interrupted, Plaintiff would sustain an annual loss of revenue of approximately \$533,333. In its Complaint filed on May 21, 2020, Plaintiff alleges that as of that date, its business operations had already been completely shut-down for approximately 7 weeks. On the basis of Plaintiff's reported annual loss of revenue, it is reasonable to estimate that its claim against American Fire, as of May 11, 2020, was already approximately \$71,795, exclusive of interest and costs ( $\$533,333/52 \text{ weeks} \times 7 \text{ weeks} = 71,795$ ), and as of the filing of this Notice of Removal, is approximately \$112,820, exclusive of interest and costs ( $\$533,333/52 \text{ weeks} \times 11 \text{ weeks} = \$112,820$ ).

15. Second, Plaintiff is seeking declaratory relief, which is to be included in determining whether an action satisfies the \$75,000 amount-in-controversy threshold. In the context of a declaratory judgment, "it is well established that the amount in controversy is measured by the value of the object of the litigation." *Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 347 (1977) (citations omitted); *Columbia Gas Transmission Corp. v. Tarbuck*, 62 F.3d 538, 541 (3d Cir. 1995). The declaratory relief is particularly notable here because Plaintiff essentially seeks a determination that all business losses relating to COVID-19 are covered by Plaintiff's insurance policy—losses that, in this case, are alleged to include the entirety of Plaintiff's restaurant operations, which Plaintiff alleges came to a complete halt as of at least March 23, 2020, when Governor Tom Wolf issued the initial Stay at Home Order. Compl., Ex. A, ¶¶ 20, 24)

16. For these reasons, it is reasonable to conclude that Plaintiff's damage claim in this action exceeds the sum of \$75,000, exclusive of interest and costs, thereby satisfying the amount in controversy requirement of 28 U.S.C. § 1332.

**IV. This Case is Also Removable Pursuant to CAFA and 28 U.S.C. § 1453**

**A. This Court has original jurisdiction Under CAFA.**

17. In addition to diversity jurisdiction under 28 U.S.C. § 1332(a), this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(d) because it is reasonable to conclude that: (1) the matter in controversy is a class action where a member of the putative class is a citizen of a state different from the defendant; (2) the amount in controversy exceeds \$5,000,000, exclusive of interest and costs; and (3) the number of members of the proposed plaintiff class exceeds 100. *See* 28 U.S.C. § 1332(d), as amended by The Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4; 28 U.S.C. § 1453 (allowing removal of class actions covered by Section 1332(d)).

**B. Plaintiff filed this case as a class action.**

18. This lawsuit is a putative class action as defined by 28 U.S.C. § 1332(d)(1)(B). CAFA defines a "class action" as "any civil action filed under Rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action." *Id.*

19. Here, Plaintiff titles the Complaint "Civil Action – Class Action Complaint" and expressly seeks to represent a putative class. Compl., Ex. A, Caption & ¶ 47. Accordingly, this action is brought on behalf of a putative class as defined under CAFA.

**C. There is minimal diversity between the parties.**

20. As set forth above, Defendant is a New Hampshire corporation with its principal place of business in Massachusetts. (Compl., Ex. A, ¶ 2.). Plaintiff is a corporation with its principal place of business in Pennsylvania. Additionally, Plaintiff alleges that the putative class that it seeks to certify consists of Pennsylvania citizens who have sustained covered losses caused by the COVID-19 pandemic and the referenced Orders and that “the members of the class are so numerous that joinder of them is impracticable”. Compl., Ex. A, ¶¶ 38, 41. Accordingly, all of the plaintiffs are citizens of a different state than the Defendant, satisfying CAFA’s minimal-diversity requirement. 28 U.S.C. § 1332(d)(2)(A).

**D. The amount in controversy exceeds the \$5 million jurisdictional minimum.**

21. It is appropriate for Courts to use estimates when calculating the amount in controversy under CAFA. *Judon v. Travelers Prop. Cas. Co. of Amer.*, 773 F.3d 495, 507 (3d Cir. 2014) (holding that jurisdiction can be premised upon realistic estimates of the amount of damages per class member); *see also Federico v. Home Depot*, 507 F.3d 188, 197-9 (3d Cir. 2007) (finding that removing defendant had sufficiently established the amount in controversy where it based its calculations on class representative plaintiff’s allegation of her actual damages and the complaint’s allegation of “thousands if not...tens of hundreds of thousands” of class members). Defendants may establish the amount in controversy by performing calculations based on the allegations in the complaint. *Judon*, 773 F.3d at 502-3 (holding that jurisdiction can be established by reliance on the allegations in plaintiff’s complaint) (*citing Federico*, 507 F.3d at 197).

22. Here, Plaintiff specifically seeks a monetary award “in excess of \$50,000” on behalf of each class member, plus declaratory relief. Compl., Ex. A, Civil Cover Sheet. Plaintiff further alleges that the class members are “so numerous that joinder of them is impracticable”,

consisting of all Pennsylvania citizens who have suffered losses as a result of the COVID-19 pandemic and referenced Orders that are insured under a policy of insurance issued by American Fire and where American Fire denied or refused to acknowledge coverage for the alleged losses. Compl., Ex. A, ¶ 38, 41. A review of Defendant's own data indicates that, as of January 1, 2020, it issued business insurance policies that included property/loss of business income coverage to approximately 687 Pennsylvania citizens/businesses. *See* Declaration of Victoria Sheridan, Ex. B, ¶ 3.)

23. Even assuming a potential class of just 150 members, and using Plaintiff's minimum compensatory damage claim of \$50,000, the amount in controversy would be at least \$7,500,000 – significantly more than the amount required to establish jurisdiction under CAFA, without consideration of the value of Plaintiff's declaratory relief. Accordingly, Plaintiff's Complaint clearly satisfies CAFA's \$5 million amount-in-controversy threshold.

#### **V. All Procedural Elements for Removal Are Satisfied**

24. This Notice of Removal is timely under 28 U.S.C. § 1446(b) because it is filed within thirty (30) days of May 18, 2020, the date on which Defendant was served with the Complaint.

25. This action is properly removed to this Court because the state court action is pending within this district. 28 U.S.C. § 1441.

26. As set forth above, the United States District Court for the Eastern District of Pennsylvania has jurisdiction over this action under both 28 U.S.C. § 1332(a) and § 1332(d).

27. Pursuant to 28 U.S.C. § 1446(a), attached hereto as Exhibit A is a true and correct copy of the entire file of record with the court in the state court action, including true and accurate



copies of the docket, complaint, summons, and proof of service filed with the Montgomery County Court of Common Pleas.

28. Pursuant to 28 U.S.C. § 1446(d), Defendant will file a copy of this Notice of Removal in the Court of Common Pleas, Montgomery County, Case No. CV-2020-06069, contemporaneously with this filing.

## **VI. Conclusion**

29. American Fire will promptly serve a copy of this Notice of Removal on counsel for Plaintiff, and will file a copy of this Notice of Removal with the Clerk of the Court of Common Pleas, Montgomery County, Pennsylvania, pursuant to 28 U.S.C. § 1446(d).

**WHEREFORE**, Defendant American Fire and Casualty Company, under 28 U.S.C. §§ 1332, 1441, 1446, and 1453, removes this action in its entirety from the Court of Common Pleas of Montgomery County, Pennsylvania, to the United States District Court for the Eastern District of Pennsylvania.

Dated: June 16, 2020

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**p** IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY  
PENNSYLVANIA

SPRING HOUSE TAVERN, INC.  
INDIVIDUALLY AND  
ON BEHALF OF A CLASS OF  
SIMILARLY SITUATED PERSONS  
1032 Bethlehem Pike  
Spring House, PA 19477

**VS.**

AMERICAN FIRE AND CASUALTY  
COMPANY  
175 Berkeley Street  
Boston, MA 02116

No.

**CIVIL ACTION – CLASS ACTION COMPLAINT**

## Parties

1. Plaintiff, Spring House Tavern, Inc. (“Spring House”) is a corporation organized and existing under the Commonwealth of Pennsylvania, with its principal place of business located at 1032 Bethlehem Pike, Spring House, PA 19477; as such, Plaintiff is a citizen of the Commonwealth of Pennsylvania.

2. Plaintiff owns and operates Spring House Tavern, Inc. in Spring House, Pennsylvania.

3. Defendant, American Fire and Casualty Company (“American Fire”) is a corporation organized and existing in the Commonwealth of Massachusetts with its principal place of business in Boston, Massachusetts, being duly authorized to and regularly and routinely conducting business in the Commonwealth of Pennsylvania; as such, Defendant is a citizen of the Commonwealth of Massachusetts.

4. The present action seeks declaratory and injunctive relief on behalf of the individual plaintiff, Spring House, and on behalf of a class of similarly situated persons, under identical insurance policies issued by Defendant, American Fire, in the Commonwealth of Pennsylvania.

5. Defendant, American Fire, regularly and routinely conducts business in Montgomery County, Pennsylvania.

### **Insurance Coverage**

6. At all times material hereto, there existed, in full force and effect, a Commercial General Liability Policy (No. BKA (20) 56 10 25 39) (“American Fire Policy”) issued by Defendant, American Fire, to Plaintiff, Spring House, providing, *inter alia*, Business Income, Extra Expense, Contamination, Civil Authority and additional coverages applicable to the losses claimed in this action. A true and correct copy of the American Fire Policy is attached hereto and marked as Exhibit “A”.

7. The American Fire Policy was in effect and provided coverage for the period June 1, 2019 to June 1, 2020.

8. The American Fire Policy is an “All Risks” policy which provides coverage for losses to the insured premises unless specifically excluded.

9. The American Fire Policy does not exclude the losses caused by the Coronavirus Pandemic.

10. The American Fire Policy provides coverage for the losses incurred by Plaintiff, Spring House, as a result of the Coronavirus Pandemic and the actions of the government in response thereto.

9

**Coronavirus Pandemic**

11. The Center for Disease Control and the World Health Organization has for years warned of the possibility of an airborne virus which could cause a worldwide pandemic.

12. Coronavirus COVID-19 is a highly contagious airborne virus which has rapidly spread and continues to spread across the United States.

13. COVID-19 has been declared a pandemic by the World Health Organization.

14. The COVID-19 virus remains stable and transmittable in aerosols and various surfaces for prolonged periods of time, up to two to three days on some surfaces.

15. The COVID-19 virus is a public health crisis that has profoundly affected all aspects of society, including the ability of the public to congregate and gather.

16. The COVID-19 pandemic has been exacerbated by the fact that the virus infects and stays on the surfaces of objects and materials for prolonged periods.

17. The Center for Disease Control has issued guidance that gatherings of more than ten (10) people should not occur; such gatherings increase the danger of contracting the COVID-19 virus.

18. On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency as a result of the COVID-19 pandemic.

19. On March 19, 2020, Governor Tom Wolf issued an Order requiring all non-life sustaining businesses in the Commonwealth to cease operation and to close all physical locations.

20. On March 23, 2020, Governor Tom Wolf issued a Stay at Home Order for citizens of various counties including Montgomery County.

21. On March 23, 2020 the Pennsylvania Department of Health issued a similar Order noting that the “operation of non-life sustaining businesses present the opportunity for unnecessary gatherings, personal contact and interaction that will increase the risk of transmission and the risk of community spread of COVID-19.”

22. On April 1, 2020, Governor Tom Wolf extended the March 23, 2020 Stay at Home Order to the entire Commonwealth of Pennsylvania.

23. The COVID-19 virus, as evidenced by these Orders, causes damage to property, particularly in places of business, such as that of Plaintiff, Spring House, and other similarly situated persons and organizations, where the operation of the business requires inter-action, gatherings and contact in areas where there exists a heightened risk of contamination by the COVID-19 virus.

#### **Impact of COVID-19 Pandemic**

24. As a result of the impact of the COVID-19 pandemic and the referenced Orders of the Governor, Plaintiff, Spring House, has been ordered to close its business and forced to furlough employees, thereby incurring loss.

25. As a result of the impact of the COVID-19 pandemic and the referenced Orders of the Governor, many similarly situated businesses have been ordered to close, thereby incurring losses similar to Plaintiff.

26. The business which Plaintiff, Spring House, like many businesses, operates in “closed environment” where many persons, including employees and customers, cycle in and out thereby creating a risk of contamination to the insured premises.

27. As a result of the COVID-19 pandemic, the business of Plaintiff, Spring House, like other similarly situated businesses, is susceptible to person to person, person to property, and property to person transmittal and contamination.

28. The COVID-19 pandemic has directly and adversely affected the business operations of Plaintiff, Spring House, and other similarly situated businesses, by causing damage and the risk of further harm to the property and its occupants.

29. Plaintiff, Spring House, and other similarly situated persons, have suffered Business Income, Extra Expense, Civil Authority and other related losses which are covered by policies of insurance issued by Defendant, American Fire.

#### **Claim for Recovery**

30. Plaintiff, Spring House, has made claim upon Defendant, American Fire, for recovery of losses caused by the COVID-19 pandemic and the referenced Orders.

31. Plaintiff, Spring House, is entitled to a declaration that it is covered under the American Fire Policy for, *inter alia*, Business Income, Extra Expense, Contamination, Civil Authority and other coverages under the American Fire Policy.

32. All similarly situated persons and organizations to whom Defendant, American Fire, has issued policies of insurance are entitled to a declaration that he or she is covered for

Business Income, Extra Expense, Contamination, Civil Authority and other coverages under the policies issued by Defendant, American Fire.

33. Defendant, American Fire, has wrongfully denied the claims of Plaintiff, Spring House, and similarly situated persons, for recovery of damages caused by the COVID-19 pandemic and referenced Orders.

34. Plaintiff, Spring House, and all similarly situated persons and entities, are entitled to a declaration that the policies of insurance issued by Defendant, American Fire, provide coverage for the losses caused by the COVID-19 pandemic and referenced Orders.

35. Plaintiff, Spring House, and all similarly situated persons and entities are entitled to an Order enjoining Defendant, American Fire, from denying coverage to insureds for Business Income, Extra Expense, Contamination, Civil Authority and other coverages for losses caused by the COVID-19 pandemic and referenced Orders.



9

**Class Action Allegations**

36. Plaintiff, Spring House, brings this action individually and on behalf of a class of similarly situated persons as a class action pursuant to the Pennsylvania Rules of Civil Procedure.

37. Defendant, American Fire, has wrongfully denied and/or failed to acknowledge the coverage to persons or organizations who have sustained covered losses caused by the COVID-19 pandemic and the referenced Orders.

38. Plaintiff, Spring House, seeks to represent a class of Pennsylvania citizens who have sustained covered losses caused by the COVID-19 pandemic and the referenced Orders where: (a) Defendant, American Fire, issued a policy of insurance providing, *inter alia*, Business Income, Extra Expense, Contamination, Civil Authority and other applicable coverages to each class member; (b) the putative class members have suffered covered losses under those policies by reason of the COVID-19 pandemic and referenced Orders; and (c) Defendant, American Fire, has disclaimed coverage and/or refused to acknowledge coverage under the policy in question for the loss.

39. Plaintiff, Spring House, reserves the right to amend the definition and/or identify subclasses upon completion of class certification.

40. The putative class is limited to citizen citizens of the Commonwealth of Pennsylvania in numbers sufficient to allow class certification.

41. The members of the class are so numerous that joinder of them is impracticable.

42. Identification of the members of the class can be ascertained in and through discovery of the files and/or computer data base of Defendant, American Fire.

43. A class action is the only practicable means available for the members of the class to pursue the appropriate remedies and receive the necessary underinsured motorist benefits under the policies of insurance in question.

44. A class action is the only practicable means available to prevent the Defendant, American Fire, from engaging in the continuous and systematic denial and disclaimer of coverage for losses caused by the COVID-19 pandemic and referenced Orders.

45. The questions of law and fact are common to the members of the class which Plaintiff, Spring House, seeks to represent.

46. The questions of law and fact common to the members of the class predominate over questions that may affect only individual members.

47. The common questions of law and fact which control this litigation predominate over any individual issues include, but are not limited to:

- (a) Each member of the class suffered losses as a result of the COVID-19 pandemic and referenced Orders;
- (b) Each member of the class is an insured under a policy of insurance issued by Defendant, American Fire, which provided Business Income, Extra Expense, Contamination, Civil Authority and other coverages applicable to the loss;
- (c) Each class member is eligible to recover under the policy issued by Defendant, American Fire, for the losses caused by the COVID-19 pandemic and the referenced Orders;
- (d) Defendant, American Fire, has denied or refused to acknowledge coverage for the loss;
- (e) The denial or refusal to acknowledge coverage is illegal and a breach of the terms and provisions of the policy at issue; and

- (f) Each member of the class is entitled to a declaration that he or she is entitled to recover under the policy of insurance issued by Defendant, American Fire, for the losses caused by the COVID-19 pandemic and referenced Orders.

48. Plaintiff, Spring House, is a member of the class that it seeks to represent.

49. The claims of Plaintiff, Spring House, are typical of the claims of other members of the class which it purports to represent.

50. Plaintiff, Spring House, is well qualified to act as class representative.

51. Plaintiff, Spring House, will fairly and adequately protect the interests of the members of the class.

52. Plaintiff, Spring House, has no interest that is adverse or antagonistic to the interests of the members of the class.

53. Plaintiff, Spring House, is committed to prosecuting the class action.

54. Plaintiff, Spring House, has retained competent counsel who are experienced in litigation of this nature.

55. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

56. Joinder of all class matters is impracticable and the likelihood of individual class members prosecuting separate claims is remote due to the fact that the members of the class do not know that they are entitled to as a result of the COVID-19 pandemic and referenced Orders.

57. The expense and burden of individual litigation makes it unlikely that a substantial number of the class members will individually seek redress for the wrongs done to them.

58. It is desirable for all concerned to concentrate the litigation in this particular forum for adjudication.

59. Plaintiff, Spring House, anticipates no difficulty in the management of this action as a class action.

60. The class action brought by Plaintiff, Spring House, is a convenient and proper forum in which to litigate the claim.

61. The prosecution of separate actions by individual class members would create the risk of bearing inconsistent determinations that could confront Defendant, American Fire, with incompatible standards of conduct and which could prejudice non-parties to any adjudication or substantially impede their ability to protect their own interests because of the overriding common questions of law and fact involved in the matter.

62. Prosecution of these claims as a class action will result in an orderly and expeditious administration of the claims and will foster economies of time, effort and expense.

63. Prosecution of these claims as a class action will contribute to uniformity of decisions concerning the practices of Defendant, American Fire.

**COUNT I**  
**(Declaratory Relief – Individual and Class Claims)**

64. Plaintiff, Spring House, hereby incorporates by reference the foregoing Paragraphs 1 through 63 of this Complaint as though same were fully set forth herein.

65. Plaintiff, Spring House, is entitled to coverage under the American Fire Policy for the losses caused by the COVID-19 pandemic and referenced Orders.

66. Each member of the class is entitled to coverage under the applicable policy issued by American Fire.

67. Defendant, American Fire, has denied and/or refused to acknowledge coverage for the losses of Plaintiff, Spring House, caused by the COVID-19 pandemic and the referenced Orders.

68. Defendant, American Fire, has wrongfully denied and refused to acknowledge coverage to each member of the class for the losses caused by the COVID-19 pandemic and referenced Orders.

69. Plaintiff, Spring House, is entitled to recover for losses covered by the COVID-19 pandemic and the referenced Orders under the American Fire Policy.

70. Each member of the class is entitled to recover for losses caused by the COVID-19 pandemic and the referenced Orders under the applicable policy.

71. Defendant, American Fire, has wrongfully refused to provide coverage to Plaintiff Spring House, under the American Fire Policy.

72. The denial and refusal to acknowledge coverage to Plaintiff, Spring House, under the American Fire Policy is a material breach of that policy.

73. The denial and refusal to acknowledge coverage to Plaintiff, Spring House, under the American Fire Policy is in direct violation of the specific terms and provisions of the American Fire Policy.

74. The denial and refusal to acknowledge coverage to each member of the class under the applicable policy is a material breach of that policy.

75. Plaintiff, Spring House, is entitled to a declaration that it is entitled to coverage for losses caused by the COVID-19 pandemic and the referenced Orders.

76. Each member of the class is entitled to a declaration that he and/or she is entitled to coverage for losses caused by the COVID-19 pandemic and the referenced Orders under the pertinent policy of insurance issued by Defendant, American Fire.

77. The controversy poses an issue for judicial determination under the Declaratory Judgment Act.

78. The controversy involves substantial rights of the parties to the action.

79. The controversy poses an issue for judicial determination which is not within the scope of authority of any arbitrator or arbitration panel pursuant to the policy of insurance in question.

80. A judgment of this court in this action will also be useful for the purpose of clarifying and settling the legal relations at issue between the parties.

81. A judgment of this court will determine, terminate and afford relief from the uncertainty and controversy giving rise to this action.

WHEREFORE, Plaintiff, Spring House Tavern, Inc., respectfully requests that the Court enter an Order:

- (a) declaring that Plaintiff, Spring House Tavern, Inc., is entitled to coverage for losses caused by the COVID-19 pandemic and the referenced Orders from Defendant, American Fire and Casualty Company;
- (b) declaring that each member of the class is entitled to coverage for losses caused by the COVID-19 pandemic and the referenced Orders from Defendant, American Fire and Casualty Company; and

- (c) such other relief as the court deems appropriate.

**COUNT II**  
**(Injunctive Relief – Individual and Class Claims)**

82. Plaintiff, Spring House, hereby incorporates by reference the foregoing Paragraphs 1 through 81 of this Complaint as though same were fully set forth herein.

83. Plaintiff, Spring House, has made claim upon Defendant, American Fire, for coverage for losses caused by the COVID-19 pandemic and the referenced Orders including but not limited to Business Income, Extra Expense, Contamination, Civil Authority and other coverages.

84. Defendant, American Fire, has denied or refused to acknowledge coverage for the loss.

85. Defendant, American Fire, continues to deny and/or refused to acknowledge coverage for the losses caused by the COVID-19 pandemic and the referenced Orders.

86. Plaintiff, Spring House, and members of the class have suffered damages and/or are at immediate risk of suffering damages as a result of the continued denial and/or refusal to acknowledge coverage by Defendant, American Fire, for the loss caused by the COVID-19 pandemic and the referenced Orders.

87. Defendant, American Fire, must be enjoined from continuing to deny and/or refuse to acknowledge coverage to insureds for losses caused by the COVID-19 pandemic and the referenced Orders.

WHEREFORE, Plaintiff, Spring House Tavern, Inc., respectfully requests that the Court enter an Order:

- (a) enjoining Defendant, American Fire and Casualty Company, from further denying coverage to Plaintiff, Spring House Tavern, Inc., for losses caused by the COVID-19 pandemic and the governmental Orders; and



- (b) enjoining Defendant, American Fire and Casualty Company, from denying or refusing to acknowledge coverage for losses caused by the COVID-19 pandemic and the governmental Orders.

HAGGERTY, GOLDBERG, SCHLEIFER &  
KUPERSMITH, P.C.

SCHMIT KRAMER, P.C.

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