

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

MOHAVE GC, LLC; CORRAL FIVE, LLC,
d/b/a GOLDEN CORRAL; CORRAL
FOUR, LLC, d/b/a GOLDEN CORRAL;
CORRAL THREE, LLC, d/b/a GOLDEN
CORRAL; CORRAL ONE, LLC, d/b/a
GOLDEN CORRAL,

Plaintiffs,

vs.

DEPOSITORS INSURANCE COMPANY,
ALLIED INSURANCE CO. OF AMERICA
and NATIONWIDE MUTUAL
INSURANCE COMPANY,

Defendants.

Case No. 4:21-cv-00119-RP-CFB

**DEFENDANT ALLIED INSURANCE
COMPANY OF AMERICA’S
MEMORANDUM IN SUPPORT OF ITS
MOTION TO DISMISS**

Defendant Allied Insurance Company of America (“Allied”) moves to dismiss Corral Three (“Corral Three”), LLC, Corral Five, LLC (“Corral Five”), and Mohave GC, LLC’s (“Mohave”) (collectively “Plaintiffs”) Petition pursuant to Federal Rule of Civil Procedure 12(b)(6) for failing to state a claim upon which relief can be granted. Allied issued the Insurance Policies (the “Policies”) to each of Corral Three, Corral Five, and Mohave:

Policy Number	Entity	Effective Dates
ACP BPFL 3028304861	Corral Three	6/6/2019-6/6/2020
ACP BPFL 3028582916	Corral Five	12/21/2019-12/21/2020
ACP BPFL 3038007165	Mohave	12/21/2019-12/21/2020

Plaintiffs allege that these Policies provided coverage for business interruption losses from alleged restrictions placed on their operations because government shutdown orders issued to stem the spread of COVID-19.

The Policies’ plain and unambiguous terms, however, expressly exclude coverage for the

Plaintiffs’ business interruption claims. These Policies exclude losses due to viruses—which COVID-19 is—and losses caused by the acts or decisions of governmental actors—which the shutdown orders Plaintiffs allege restricted their operations were.¹ As such, the Court should dismiss Plaintiffs’ Petition against Allied.

BACKGROUND²

Plaintiffs Corral Three, Corral Five, and Mohave are limited liability companies operating Golden Corral Restaurants. (See ECF 1-1 at ¶¶ 4-5, 8-9, 10-11). Corral Three operates a Golden Corral Restaurant in Illinois, while Corral Five and Mohave each operate a Golden Corral Restaurant in Arizona. (*Id.*) All three businesses allege business losses as a result of COVID-19-related, state-issued closure orders that restricted their operations. (See ECF 1-1 at ¶¶ 33-45). All three businesses submitted claims to Allied, which Allied denied. (See ECF 1-1 at ¶¶ 50-51). In part, Allied’s denial cited plain and unambiguous exclusions in their Policies. (See, e.g., ECF 1-1 at 32-33). On March 12, 2021, Golden Corral Three, Golden Corral Five, and Mohave (along with two other plaintiffs) filed the present action in Iowa state court. The action was subsequently removed to this federal District Court on April 16, 2021. (ECF 1). Plaintiffs seek a declaration of coverage and bring claims for breach of contract and bad faith. (See generally, ECF 1-1).

The Policies at-issue contain “first-party” property coverage that includes coverage for certain business losses that result from a Covered Cause of Loss. This coverage, however, is subject to two critical exclusions that each independently forecloses coverage for Plaintiffs’ claims. First, the Policies each contain a Virus Exclusion:

¹ Coverage under the Policy is unavailable for other reasons, including that the losses are not alleged to result from direct physical loss or damage as required to trigger coverage in the first instance. The Court need not reach these issues given the clear and unambiguous exclusions discussed herein.

² Plaintiffs’ allegations are taken as true solely for the purposes of this motion.

B. EXCLUSIONS

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.

i. Virus Or Bacteria

- (1) Any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.
- (2) However, the exclusion in paragraph (1) does not apply to loss or damage caused by or resulting from “fungi”, wet rot or dry rot. Such loss or damage is addressed in Exclusion h.;
- (3) With respect to any loss or damage subject to the exclusion in paragraph (1), such exclusion supersedes any exclusion relating to “pollutants”.

(See ECF 1-1 at 35-36, 55-56, 65-66).

Second, the Policies each contain a separate Acts or Decisions exclusion:

3. We will not pay for loss or damage caused by or resulting from any of the following B.3.a. through B.3.c. But if an excluded cause of loss that is listed in B.3.a. through B.3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

b. Acts Or Decisions

Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

(See *id.*).

Both the Virus Exclusion and Acts or Decisions Exclusion clearly, unambiguously, and independently forecloses coverage for Plaintiffs’ business interruption losses. The Court should, therefore, enter an order resolving Plaintiffs’ declaratory judgment count in Allied’s favor and

dismissing Plaintiffs' breach of contract and bad faith denial claims.

STANDARD

Federal Rule of Civil Procedure 12(b)(6) permits a party “to argue, by motion, that the initial pleading does not state a claim upon which relief can be granted.” *Palmer Holdings and Investments, Inc. v. Integrity Ins. Co.*, No. 4:20-cv-154-JAJ, 2020 WL 7258857, at *6 (S.D. Iowa Dec. 7, 2020) (quotation marks omitted). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Gorog v. Best Buy Co., Inc.*, 760 F.3d 787, 792 (8th Cir. 2014) (citations and quotation marks omitted). “[A] pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action” is insufficient under the Federal Rules. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation marks omitted). Rather, the complaint must include enough factual content to permit the “court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* Although the Court is “to assume that all the facts alleged by the complaining party are true and must liberally construe those allegations,” this does not mean that the Court is “bound to accept as true a legal conclusion couched as a factual allegation.” *Gerleman Mgmt., Inc. v. Atlantic States Insurance*, No. 4:20-cv-183-JAJ, 2020 WL 8093577, at *4 (S.D. Iowa Dec. 11, 2020) (citations, quotation marks, and internal alterations omitted). “The issue” at the heart of a motion to dismiss “is not whether the plaintiff will ultimately prevail, but whether the plaintiff is entitled to present evidence in support of the claim.” *MMMMM DP, LLC, et al. v. The Cincinnati Ins. Co., et al.*, No. 4:20-cv-00867-SEP, 2021 WL 2075565, at *2 (W.D. Mo. May 24, 2021) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 556 (2007)).

ARGUMENT

I. THE COURT SHOULD RESOLVE PLAINTIFFS’ DECLARATORY JUDGMENT COUNT IN ALLIED’S FAVOR BECAUSE PLAINTIFFS’ LOSSES ARE EXCLUDED BY THE CLEAR AND UNAMBIGUOUS TERMS OF THE POLICY.

The clear and unambiguous terms of the Policies’ Virus and Acts or Decisions Exclusions defeat Plaintiffs’ claims. Although different state laws apply to the Plaintiffs’ claims—Illinois to Corral Three’s claims and Arizona to Corral Five and Mohave GC’s³—the relevant principles of insurance contract interpretation are the same. Insurance policies are contracts between insurers and policyholders. *See Border Chicken AZ LLC v. Nationwide Mut. Ins. Co.*, 501 F. Supp. 3d 699, 703-04 (D. Ariz. 2020); *Westfield Ins. Co. v. Vandenberg*, 796 F.3d 773, 777-78 (7th Cir. 2015) (holding same under Illinois law). Interpreting an insurance policy is a legal question for the Court. *City of Glendale v. National Union Fire Ins. Co. of Pittsburgh, PA*, No. 12-cv-380-PHX-BSB, 2013 WL 1296418, at *4 (D. Ariz. Mar. 29, 2013); *Mashallah, Inc. v. West Bend Mut. Ins. Co.*, No. 20-cv-5472, 2021 WL 679227, at *2 (N.D. Ill. Feb. 22, 2021). Courts in both Arizona and Illinois read insurance contracts according to their plain, ordinary, and popular sense, if the language is clear and unambiguous. *City of Glendale*, 2013 WL 1296418, at *4. Courts do not bend the language of insurance contracts to find ambiguity where it does not exist. *Border Chicken AZ LLC*, 501 F. Supp. 3d at 699; *Atlantic Cas. Ins. Co. v. ABC Construction Specialists, Inc.*, No. 18-cv-1256, 2018 WL 11190998, at *2 (N.D. Ill. July 19, 2018). Because the clear and unambiguous language of the Virus Exclusion and Acts or Decisions Exclusion precludes coverage for Plaintiffs’ alleged losses, the Court should grant Allied’s Motion with respect to Plaintiffs’ declaratory judgment count.

³ This Court has previously recognized that Illinois and Arizona law apply as noted. (ECF 15 at 4).

A. Plaintiffs' Claims for Business Interruption Losses Are Barred by the Policies' Virus Exclusion.

Plaintiffs' claims are neither unique nor novel. Courts in both Arizona and Illinois have overwhelmingly held concluded that virus exclusions are unambiguous and bar coverage for business interruption losses arising from COVID-19-related government closure orders. *See, e.g., AFM Mattress Co., LC v. Motorists Com. Mut. Ins. Co.*, No. 20-cv-3556, 2020 WL 6940984, at *3 (N.D. Ill. Nov. 25, 2020) (finding that “the policy [at-issue] explicitly excluded coverage for virus-related loss”); *Mashallah, Inc. v. W. Bend Mut. Ins. Co.*, No. 20-cv-5742, 2021 WL 679227, at *2 (N.D. Ill. Feb. 22, 2021) (“The Ranalli’s Virus Exclusion is a bit different, but the conclusion is still the same. That Policy provides that West Bend will not pay for ‘loss or damage caused by or resulting from any virus that induces or is capable of inducing physical distress, illness or disease.’ Here, Ranalli’s business losses no doubt ‘result from’ COVID-19, which is a virus.” (internal alterations and citations omitted)); *Chattanooga Professional Baseball, LLC v. National Cas. Co.*, No. 2020-cv-01312-PHX-DLR, 2020 WL 6699480, at *3 (D. Ariz. Nov. 13, 2020) (“The amended complaint alleges that the government orders in question were issued as a direct result of the virus. It states, ‘[t]he nature of the virus has caused authorities around the country to issue stay-in-place orders to protect persons and property[.]’”); *Dental Experts, LLC v. Mass. Bay Ins. Co.*, No. 20-cv-5887, 2021 WL 1722781, at *4 (N.D. Ill. May 1, 2021) (“The Court concludes that the virus exclusion is plain and unambiguous: it excludes loss or damage ‘caused by or resulting from any virus.’ Given the ‘resulting from’ language, Dental Experts’ argument—that the shutdown orders, not the virus caused loss of business income—lacks merit.” (citations and alterations omitted)); *Border Chicken AZ LLC*, 501 F. Supp. 3d at 704 (“The Virus Exclusion . . . expressly excludes losses caused directly or indirectly by [v]irus or [b]acteria. Plaintiff does not dispute that COVID-19 is

a virus. Taken together, these provisions unambiguously preclude coverage for the Plaintiff's losses." (quotation marks and citations omitted)); *Cibus LLC v. Capital Ins. Group*, No. 4:20-cv-00277-DTF, 2021 WL 1100376, at *1-3 (D. Ariz. Mar. 23, 2021) (adopting report and recommendation of magistrate judge that concluded pathogenic organisms exclusion foreclosed coverage for plaintiff's business interruption losses and dismissing action with prejudice); *Firenze Ventures, LLC v. Twin City Fire Ins. Co.*, No. 1:20-cv-04226, 2021 WL 1208991, at *3-4 (N.D. Ill. Mar. 31, 2021) (granting insurer's motion to dismiss because policy's virus exclusion foreclosed coverage); *Lee v. State Farm Fire and Cas. Co.*, No. 2020-CH-04589, 2021 WL 261545 (Ill. Cir. Ct. Jan. 13, 2021) ("[E]ach of the Closure Orders were entered in response to the COVID-19 virus. If not for COVID-19, the Governor would not have issued the Closure Orders, and Plaintiffs would not have incurred the claimed losses. As such, the Court finds that . . . [the virus exclusion] applies under the Policy."); *Riverwalk Seafood Grill v. Travelers Cas. Ins. Co.*, No. 1:20-cv-03768, 2021 WL 81659, at *3 (N.D. Ill. Jan 7, 2021) (finding that the "plain language of the Virus Exclusion is dispositive").

Arizona and Illinois are not alone. Courts throughout the country have upheld policies' virus exclusions against insureds' claims alleging economic loss from COVID-19 governmental shutdown orders. As in Arizona and Illinois, the overwhelming weight of authority supports Allied's coverage position: the cases nationwide are nearly unanimous in concluding that virus exclusions are not only unambiguous but also wholly foreclose coverage for business income losses that arise from COVID-19-related governmental closure and shutdown orders. *N&S Restaurant LLC v. Cumberland Mutual Fire Ins. Co.*, 499 F. Supp. 3d 74, 74 (D.N.J. Nov. 5, 2020) (observing that "a survey of the case law . . . reveals that federal courts interpreting . . . 'Virus Exclusions' have nearly unanimously determined that these exclusions bar coverage for"

business interruption claims premised on loss due to COVID-19-related governmental shutdown orders); *Gerleman Mgmt.*, 2020 WL 8093577, at *6 (“Plaintiffs’ contention that it was the proclamation that caused their losses rather than the virus because they would have remained open does not save their claims from the Virus Exclusion. . . . Plaintiffs’ losses were caused by or resulted from COVID-19.”); *Ballas Nails & Spa v. Travelers Cas. Ins. Co. of Am.*, No. 4:20-cv-1155-CDP, 2021 WL 37984, at *6 (E.D. Mo. Jan. 5, 2021) (“While it was the orders that technically forced Ballas to suspend its business to protect public health, the orders came about only because of the Covid-19 virus spreading rapidly throughout the community.”); *Mark’s Engine Co. No. 28 Restaurant, LLC*, 492 F. Supp. 3d 1051, 1057 (C.D. Cal. 2020) (“The virus provision clearly and unequivocally exempts ‘loss or damage caused by or resulting from any virus.’”); *Travelers Cas. Ins. Co. of Am. v. Geragos & Geragos*, 495 F. Supp. 3d 848 (C.D. Cal. 2020) (“[T]he Court finds that the Virus Exclusion provision explicitly excludes civil authority coverage”); *Palmer Holdings and Investments, Inc.*, 2020 WL 7258857, at *12-13 (“Plaintiffs’ contention that it was the proclamation [ordering businesses to close] that caused their losses rather than the virus because they would have remained open does not save their claims from the Virus Exclusion. Plaintiffs’ losses were directly or indirectly caused by or resulted from COVID-19. The proclamation was issued in response to the COVID-19 pandemic The Virus Exclusion is therefore triggered, and coverage is excluded”); *Mena Catering, Inc. v. Scottsdale Ins. Co.*, 2021 WL 86777, at *8-9 (S.D. Fla. 2021) (collecting cases); *Palmdale Estates, Inc. v. Blackboard Ins. Co.*, 2021 WL 25048, at *3 (N.D. Cal. 2021) (concluding that the weight of authority supports the application of the virus exclusion to business interruption claims); *Wilson v. Hartford Cas. Co.*, 492 F. Supp. 3d 417, 420, 426-27 (E.D. Pa. 2020) (clear and unambiguous virus exclusion barred coverage for law office’s COVID-19-related losses).⁴

⁴ Additional authority supporting this interpretation of the Virus Exclusion can also be found in the following cases.

See Real Hosp., LLC v. Travelers Cas. Ins. Co. of Am., No. 2:20-cv-000087-KS-MTP, 499 F. Supp. 3d 288, 297 (S.D. Miss. 2020) (“The virus exclusion clearly and unequivocally exempts ‘loss or damage caused by or resulting from any virus.’ Plaintiff’s Complaint clearly demonstrates that all alleged loss or damage was caused by or resulted from COVID-19.” (citations omitted)); *Goodwill Industries of Central Okla. v. Philadelphia Indemnity Ins. Co.*, 499 F. Supp. 3d 1098, 1104-05 (W.D. Okla. 2020) (“The mandated closures, which caused Goodwill to seek declaratory judgment, resulted from the ability, or capability, of COVID-19 to ‘induc[e] physical distress, illness or disease.’ Thus, even if Goodwill alleged a Covered Loss, the Virus Endorsement would exclude coverage.”); *10E, LLC v. Travelers Indem. Co. Connecticut*, 500 F. Supp. 3d 1070 (C.D. Cal. 2020) (“The virus exclusion forecloses coverage where loss or damage is caused by or resulting from any virus. The term ‘resulting from’ broadly links a factual situation with the event creating liability, and connotes only a minimal casual connection or incidental relationship.” (internal quotation marks and citations omitted)); *Natty Greene’s Brewing Co., LLC et al. v. Travelers Cas. Ins. Co. of America, et al.*, 1:20-cv-437, 2020 WL 7024882, at *4 (M.D.N.C. Nov. 30, 2020) (“The policies unambiguously exclude coverage for loss or damage caused directly or indirectly by, or resulting from, any virus.”); *Toppers Salon & Health Spa, Inc. v. Travelers Prop. Cas. Co. of America*, No. 2:20-cv-03442, 2020 WL 7024287, at *3 (E.D. Pa. Nov. 30, 2020) (“The language of [the virus exclusion] is not ambiguous, and it applies to Covid-19, which is caused by a coronavirus that causes physical illness and distress. Other courts considering Travelers’ policies under other states’ laws have reached the same conclusion. That means the Virus Exclusion applies to Toppers’ insurance claim.”); *Newchops Res. Comcast LLC v. Admiral Indem. Co.*, No. 20-cv-1949, 2020 WL 7935153, at *8 (E.D. Pa. Dec. 17, 2020) (“Even if the insureds had suffered covered losses under either or both the civil authority and business income provisions, the virus exclusion precludes coverage. The policy contains an exclusion for viruses and other pathogens. The virus exclusion provides ‘[w]e will not pay for loss or damage caused by or resulting from any virus, bacterium or other micro-organism that induces or is capable of inducing physical distress, illness or disease.’”); *1210 McGavock Street. Hospitality Partners, LLC v. Admiral Indemnity Co.*, 3:20-cv-694, 2020 WL 7641184, at *5 (M.D. Tenn. Dec. 23, 2020) (“Even if the plaintiff could show that it suffered covered losses under either the Business Income Clause or the Civil Authority Clause, the Virus Exclusion precludes coverage.”); *Edison Kennedy, LLC v. Scottsdale Ins. Co.*, No. 8:20-cv-1416-T-02SPF, 2021 WL 22314, at *8 (M.D. Fla. Jan. 4, 2021) (“The coronavirus is the peril that caused the government to enact orders restricting business. . . . The orders are wholly dependent on the virus. The orders, as they so state, were enacted to curtail the spread of the coronavirus and would not have been issued but for the pandemic. Because the orders were the direct result of, caused by, and arose from the prime excluded peril, the exclusion applies to deny coverage. Other courts have reached the same conclusion.”); *Pez Seafood DTLA, LLC v. Travelers Indem. Co. et al.*, 20-cv-4699-DMG, 2021 WL 234355, at *8 (C.D. Cal. Jan. 20, 2021) (“[T]he Virus Exclusion precludes Plaintiff’s claim for losses under the Civil Authority and Business Income provisions.”); *Salon XL Color & Design Grp., LC v. W. Bend Mut. Ins. Co.*, No. 20-cv-11719, at 2021 WL 391418, at *3 (E.D. Mich. Feb. 4, 2021) (“The Virus or Bacteria Exclusion is clearly written to exclude ‘any virus’ from the Business Income, Extra Expense, and Civil Authority coverages. Neither party disputes that COVID-19 is a virus. Therefore, the Virus or Bacterial Exclusion precludes coverage for the Business Income, Extra Expense, and Civil Authority Coverages”); *Causeway Automotive, LLC v. Zurich American Ins. Co.*, No. 20-cv-8393, 2021 WL 486917, at *8 (D.N.J. Feb. 10, 2021) (“[B]ecause the Court finds the Virus Exclusion is unambiguous and that COVID-19 was the proximate cause of Plaintiff’s losses, I find that the Virus Exclusion bars coverage.”); *Whiskey Flats, Inc. v. Axis Ins. Co.*, No. 20-cv-3451, 2021 WL 534471, at *4 (E.D. Pa. Feb. 12, 2021) (“Even if Plaintiff’s claimed losses fell within the grant of coverage under the Business Income or Civil Authority provisions, the Virus Exclusion would still prevent recovery.”); *Eye Specialist of Del. v. Harleysville Worcester Ins. Co.*, No. 20-cv-6386, 2021 WL 506270, at *5 (Ohio Ct. Comm. Pl. Feb. 1, 2021) (“This analysis allows the Court to conclude that the virus exclusion bars coverage for the business interruption that Plaintiff alleges in its complaint was caused by COVID-19.”); *Equity Planning Corp. v. Westfield Ins. Co.*, No. 1:20-cv-01204, 2021 WL 766802, at *18 (N.D. Ohio Feb. 26, 2021) (“By the Virus Exclusion’s own terms, claims for loss or damage resulting from viruses are excluded. Accordingly, the Court concludes that Westfield demonstrated that the Virus Exclusion applies to bar coverage in the instant matter. The court further concludes that the language is plain and unambiguous.”); *Kingray, Inc. v. Farmers Group Inc., et al.*, 20-cv-963, 2021 WL 837622, at *6 (C.D. Cal. Mar. 4, 2021) (“And while it is debatable whether state-mandated closures and business modifications constitute damage ‘caused by’ a virus, it is indisputable that such closures and modifications ‘result[] from’ a virus. If there were no coronavirus, there would be no Covid-19 pandemic, no Covid-19-related shutdowns, and no need for Kingray to close, operate at a limited capacity, or modify the floor plan of its sports bar. This causal chain is straightforward and unbroken.”); *Body Physics v. Nationwide Ins.*, No. 20-cv-92331, 2021 WL 912815, at *5 (D.N.J. Mar. 10, 2021) (“The Virus Exclusion is unambiguous and applies here. Numerous courts have considered similar exclusions and

found them to be unambiguous and clearly applicable to COVID-19, which is caused by a coronavirus that causes physical illness and distress.”); *Colby Rest. Group, Inc. v. Utica Nat’l Ins. Grp.*, No. 20-cv-5927, 2021 WL 1137994, at *5 (D.N.J. Mar. 12, 2021) (“In sum, the Virus Exclusions are unambiguous and they exclude Plaintiffs’ alleged losses, which were caused by COVID-19, a virus that has unfortunately affected too many businesses and individuals. Therefore, Plaintiffs’ claims in this action are legally insufficient.”); *Pane Rustica, Inc. v. Greenwich Ins. Co.*, No. 8:20-cv-1783-KKM-AAS, 2021 WL 1087219, at * (M.D. Fla. Mar. 22, 2021) (“Here, the virus is clearly the peril that precipitated the government orders. Neither order would have existed but for the existence of the virus, and the virus is the proximate cause of the orders. Accordingly, the virus is the cause of the loss, and Pane Rustica’s claims are excluded under the policy. As confirmation of this interpretation, district courts around the country have almost universally dismissed with prejudice claims for loss due to COVID-19 shutdowns based on identical or substantially similar virus exclusions.” (citations omitted)); *Downs Ford, Inc. v. Zurich American Ins. Co. et al.*, No. 3:20-cv-08595-BRM-ZNQ, 2021 WL 1138141, at * (D.N.J. Mar. 25, 2021) (“COVID-19 is not a Covered Cause of Loss because of the Virus Exclusion [and] . . . the Executive Orders . . . [are] not Covered Cause[s] of Loss either. Therefore, the Virus Exclusion bars the Subject Claim.”); *Carpe Diem Spa, Inc. v. Travelers Cas. Ins. Co. of America*, No. 20-cv-14860, 2021 WL 1153171, at *3 (D.N.J. Mar. 26, 2021) (“The Virus Exclusion precludes coverage of Plaintiff’s losses.”); *Chester C. Chianese DDS LLC v. Travelers Cas. Ins. Co. of America*, No. 20-cv-5702, 2021 WL 1175344, at *3 (D.N.J. Mar. 27, 2021) (“The Virus Exclusion clearly and unambiguously bars coverage for Plaintiff’s claims.”); *J.B.’s Variety Inc. v. Axis Ins. Co.*, No. 20-cv-4571, 2021 WL 1174917, at *5 (E.D. Pa. Mar. 29, 2021) (“Even if Plaintiff’s claimed losses fell within the grant of coverage under the Business Income or Civil Authority Provisions, the Virus Exclusion would still prevent recovery. . . The [Exclusion’s] language is not ambiguous and it applies to COVID-19, which is cause by a coronavirus that causes physical illness and distress.”); *Mayssami Diamond, Inc. v. Travelers Cas. Ins. Co. of America*, No. 3:20-cv-01230-AJB-RBB, 2021 WL 1226447 *4 (S.D. Cal. Mar. 30, 2021) (“[The] [virus exclusion] applies, and takes any damage resulting from any virus out of the Policy’s scope of coverage.”); *Shantzer v. Travelers Cas. Ins. Co. of America*, No. 20-cv-2021, 2021 WL 1209845, at *5 (E.D. Pa. Mar. 31, 2021) (“Shantzer cannot plead facts to establish coverage because he also did not experience a ‘covered cause of loss.’ . . . [T]he relevant exception is the virus exclusion, which excludes coverage resulting from a virus capable of illness or disease. Courts have routinely concluded identical virus exclusion provisions are not reasonably susceptible to more than one construction and meaning and are therefore unambiguous.”); *Quakerbridge Early Learning LLC v. Selective Ins. Co.*, No. 20-cv-7798, 2021 WL 1214758, at *4 (D.N.J. Mar. 31, 2021) (“The Court finds no reason to deviate from [the] growing line of recent opinions and finds that the Virus Exclusion clearly and unambiguously bars coverage for Plaintiff’s claims.”); *SSN Hotel Mgmt., LC v. Harford Mut. Ins. Co.*, No. 20-cv-6228, 2021 WL 1339993, at *5 (E.D. Pa. April 8, 2021) (“Even if Plaintiffs’ claimed losses fell within the grant of coverage under the Business Income, Extra Expense, or Civil Authority provisions, the Virus Exclusion still bars recovery.”); *L&L Logistics and Warehousing Inc. v. Evanston Ins. Co.*, No. 3:20-cv-324, 2021 WL 1396280, at * (E.D. Va. April 13, 2021) (“The Court finds that the plain language of the insurance policy is unambiguous, and by the unambiguous plain language of the policy, Plaintiff’s claim based on the harm caused by COVID-19, a virus, is barred by the Virus and Organic Pathogen Exclusions – regardless of how the phrase ‘direct physical loss or damage’ is interpreted.”); *Los Angeles County Museum of Natural History Foundation v. Travelers Indem. Co. et al.*, No. 2:21-cv-01497, 2021 WL 1851028, at *6 (C.D. Cal. April 15, 2021) (“[T]he Court concludes that the virus exclusion bars coverage.”); *Tanq’s Inc. v. Scottsdale Ins. Co.*, No. 6:20-cv-2356-ACC-GJK, 2021 WL 1940291, at *2 (M.D. Fla. April 16, 2021) (“[T]he Court need not determine whether business income coverage is available under Florida law because the insurance policy’s virus exclusion precludes coverage in this case.”); *RDS Vending LLC v. Union Ins. Co.*, No. 20-cv-3928, 2021 WL 1923024, at * (E.D. Pa. May 13, 2021) (“Even if Plaintiff could allege facts showing that it was entitled to coverage under the insurance policy, coverage would still be barred under the Virus Exclusion.”); *Star Buick GMC v. Sentry Ins. Grp.*, No. 5:20-cv-03023, 2021 WL 2134289, at * [] (E.D. Pa. May 26, 2021) (“Star Buick alleges that its ‘operations have been and continue to be, suspended and threatened by the novel Coronavirus SARS-CoV-2, which causes the infectious disease, COVID-19.’ The virus exclusion therefore unambiguously applies to COVID-19.” (citations omitted)); *Phan v. Nationwide Gen. Ins. Co. et al.*, No. 20-cv-7616-MWF (JPRx), Civil Minutes, ECF 31 at 6 (C.D. Cal. Feb. 1, 2021) (“Any putative loss resulting from a virus—even indirectly—is not covered by the Policy.”); *Garmany of Red Bank, Inc. v. Harleysville Ins. Co. et al.*, No. 3:20-cv-08676, Opinion, ECF 21 at 13 (D.N.J. Mar. 18, 2021) (“Accordingly, I find that the Virus Exclusion unambiguously bars coverage of Plaintiff’s claims.”); *Beach Glo Tanning Studio, Inc. v. Scottsdale et al.*, No. 3:20-cv-13901, Opinion, ECF 21 at 15 (D.N.J. May 28, 2021) (“The Closure Orders were issued as the direct result of COVID-19—a cause of loss that falls squarely within the Virus Exclusion.” (internal quotations omitted)); *Cadeceus LLC v. Scottsdale Ins. Co.*, No. 2:21-

Plaintiffs' Petition cannot survive the Virus Exclusion in their Policies. The Petition alleges that Illinois and Arizona state-issued governmental closure orders in March of 2020 restricted the operation of their businesses and were the sole causes of their business interruption losses. (ECF 1-1 at ¶¶ 36-45). It is undisputed that the governmental closure orders at-issue arose from the COVID-19 pandemic. The Virus Exclusions in the Policies expressly preclude coverage for "loss or damage caused directly or indirectly by . . . Any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease." (ECF 1-1 at 35-36, 55-56, 66-67). As recognized by courts in Illinois, Arizona, and across the country, the plain language of the Virus Exclusion bars Plaintiffs' claims for coverage.

Plaintiffs also allege that COVID-19 was not physically present on their property. To the extent this allegation is an attempt at side-stepping the effect of the Policies' Virus Exclusion, it fails. Numerous courts have considered this precise issue and nearly universally held that because COVID-19's outbreak was the reason for the state-imposed closure orders, economic losses resulting from the suspension of business operations were caused by or resulted from COVID-19—which is a virus. *See, e.g., Chattanooga Professional Baseball, LLC*, 2020 WL 6699480, at *3; *Mashallah, Inc.*, 2021 WL 679227, at *4 ("Here, there is no genuine dispute that the activity of a virus, namely COVID-19, set government restrictions in motion, and is therefore the efficient proximate cause of Plaintiffs' claimed losses. This is because the causal links represented by the virus and the Order are interlocking—even intertwined. Indeed, the closure orders would not exist absent the presence of COVID-19. After all, the closure orders only came about sequentially as a result of the COVID-19 virus spreading rapidly throughout the community. Thus, COVID-19 was the primary root cause of Plaintiffs' businesses temporarily

cv-00050, 2021 WL 2206468, at * (W.D. Wash. June 1, 2021) ("In its previous Order, the Court found that [the] Virus exclusions applied and rejected arguments identical to the ones advanced by Plaintiff and does so here.").

closing.” (internal quotation marks and citations omitted)); *N&S Restaurant LLC*, 499 F. Supp. 3d at 74. (collecting cases addressing this issue).

Plaintiffs’ alleged losses resulting from governmental shutdown orders issued to stem the spread of COVID-19 are unambiguously excluded by the Policies’ Virus Exclusions. The Court should dismiss Plaintiffs’ declaratory judgment count for this reason alone.

B. Plaintiffs’ Claims for Business Interruption Losses Are Barred by the Policies’ Acts or Decisions Exclusions.

Although the force and effect of the Policies’ Virus Exclusions is sufficient to foreclose coverage, the Policies’ Acts or Decisions Exclusions also provides a separate and independently sufficient bar to coverage for Plaintiffs’ claims. The Acts or Decisions Exclusion precludes coverage for “loss or damage caused by or resulting from . . . [the] [a]cts or decisions, including the failure to act or decide, of any person, group, organization or governmental body,” unless that act or decision itself “results in a Covered Cause of loss.” (ECF 1-1 at 35-36, 55-56, 66-67). Plaintiffs do not allege that the Illinois and Arizona governmental shutdown orders resulted in separate Covered Causes of Loss. Instead, they assert only that these orders required them to suspend or alter their operations which in turn resulted in those losses. But by its plain terms, the Acts or Decisions Exclusion “unambiguously states [that Allied] will not pay for any loss or damage resulting from the acts or decisions of a governmental body.” *Whiskey River on Vintage, Inc.*, 2020 WL 7258575, at *19. Nowhere do Plaintiffs allege facts that “would prevent the application of this exclusion.” *Id.* Indeed, Plaintiffs’ Petition places its claim within the Exclusion’s four corners because their losses arose from state government decisions responding to COVID-19, i.e., with the issuing orders that limited Plaintiffs’ business operations. (ECF 1-1 at ¶¶ 36-45); *cf. Whiskey River on Vintage, Inc.*, 2020 WL 7258575, at *18-19 (“Because [Iowa’s governor] is a governmental body as an officer of the state of Iowa, Defendant argues the facts

pleaded by the Plaintiffs demonstrate this exclusion applies . . . The Court finds Defendant has alleged facts that are sufficient to demonstrate the applicability of the Acts or Decisions exclusion.”); *Glat, P.C. v. Nationwide Mutual Ins. Co.*, No. 20-cv-5271, 2021 WL 1210000, at *6-7 (E.D. Pa. March 31, 2021) (“The shutdown orders were decisions by state and local governments regulating business operations at the insured property. As a result of the shutdown orders, [the insured] was unable to use its surgical facility . . . Thus, its business losses caused by the decisions of governmental entities preventing the use of the insured property are not covered under [the policy.]”); *Florexpo LLC et al. v. Travelers Prop. Cas. Co. of America*, No. 20-cv-1024-JLS, Order Granting Defendant’s Motion to Dismiss, ECF 5 at 13 (S.D. Cal. Mar. 8, 2021) (acts or decisions exclusion barred coverage for business’s alleged losses resulting from inability to access premises due to COVID-19-related government shutdown orders).

Plaintiffs’ claims for business interruption losses arising from COVID-19-related government shutdown orders are separately and independently foreclosed by the clear and unambiguous language of the Policies’ Acts or Decisions Exclusions. The Court should dismiss Plaintiffs’ declaratory judgment count for this reason as well.

II. THE COURT SHOULD DISMISS PLAINTIFFS’ BREACH OF CONTRACT AND BAD FAITH CLAIMS.

Because no coverage exists under the Policies for Plaintiffs’ business interruption losses, Allied correctly denied their claims as a matter of law. These claims cannot survive without the existence of coverage for Plaintiffs’ underlying business interruption claims. *See Lee*, 2021 WL 261545 at *6 (“[H]aving determined that Plaintiffs’ claims are not covered under the Policy, the Court finds that Plaintiffs have not and cannot adequately plead a breach of the insurance contract for failing to provide coverage . . . Defendant argues that in the absence of a breach of the Policy, Plaintiffs’ bad faith claim should also be dismissed. The Court agrees.”); *Gregorio v.*

GEICO General Ins. Co., 815 F. Supp. 2d 1097, 1107-08 (D. Ariz. 2011) (absence of coverage for underlying claim meant insurer had objectively reasonable basis for denying coverage and was therefore entitled to summary judgment on insured's bad faith claim); *Maricopa County Special Health Care Dist. v. Lexington Ins. Co.*, No. 17-cv-04554-PHX-SPL, 2018 WL 9812062, at *1 (D. Ariz. Sept. 10, 2018) (granting summary judgment in favor of insurer on insured's breach of contract claim because insured's claim was not covered under the policy's terms). Because coverage for those claims is separately and independently foreclosed by application of the Policies' Virus Exclusions and Acts or Decisions Exclusions, Plaintiffs' claims for breach of contract and bad faith necessarily fail and should also be dismissed.

CONCLUSION

For the reasons stated above, this Court should resolve Plaintiffs' declaratory judgment count in Allied's favor and dismiss Plaintiffs' claims for breach of contract and bad-faith denial.

Respectfully submitted,

HOPKINS & HUEBNER, P.C.

By /s/ Alex E. Grasso

Alex E. Grasso, AT0011862
2700 Grand Avenue, Suite 111
Des Moines, IA 50312
Telephone: 515-244-0111
Facsimile: 515-244-8935
agrasso@hhlawpc.com
ATTORNEYS FOR DEFENDANTS

Original filed.

Copy to:

James W. Carney, AT0001327
Nicholas J. Mauro, AT0005007
Jasper P. Verhofste, AT0014017
Carney & Appleby, P.L.C.
303 Locust Street, Suite 400
Des Moines, IA 50309-1770
Telephone: 515-282-6803
Facsimile: 515-282-4700
Email: carney@carneyappleby.com
mauro@carneyappleby.com
verhofste@carneyappleby.com

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause herein at their respective addresses disclosed on the pleadings of record on the 10th day of June, 2021.

By U.S. Mail Fax
 Hand Delivery Electronically through CM/ECF
 Private Carrier Other: _____

Signature /s/Alex Grasso