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EXHIBITS

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

EMPLOYERS PREFERRED INSURANCE CO.	)	
	)	
Plaintiff,	)	
vs.	)	No. 2020CH05203
	)	
LEXI MANAGEMENT LLC; TAYNARVIS	)	
MASSEY; RYAN FREEMAN; and JOYCE	)	
FREEMAN,	)	
	)	
Defendants.	)	

**EMPLOYERS PREFERRED INSURANCE COMPANY’S  
COMPLAINT FOR DECLARATORY JUDGMENT**

NOW COMES, Plaintiff, EMPLOYERS PREFERRED INSURANCE COMPANY, by and through its attorneys, SKARZYNSKI MARICK & BLACK LLP, and for its Complaint for Declaratory Judgment (the “Complaint”), pursuant to section 5/2-701 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-701, states as follows:

**INTRODUCTION**

1. Employers Preferred Insurance Company (“Employers”) seeks a declaratory judgment as to the rights and duties of the parties under an insurance policy issued to Lexi Management LLC (“Lexi”) with respect to a lawsuit seeking only injunctive and declaratory relief (the “Injunction Action”). Employers seeks a declaration that it has no duty to defend or indemnify Lexi against the claims asserted in the Injunction Action because: (1) the Injunction Action seeks only injunctive and declaratory relief, and thus does not seek “damages,” as is required by the insuring agreement of Employers’ insurance policy; (2) to the extent that the relief sought in the Injunction Action may constitute “damages,” such damages are the ordinary costs of operating a business and are not “because of bodily injury to [Lexi’s] employees,” as is required by the insuring agreement of Employers’ insurance policy; (3) to the extent that the relief sought by the

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Injunction Action may constitute “damages because of bodily injury to [Lexi’s] employees,” the last day of the underlying plaintiffs’ last exposure to the conditions causing or aggravating such bodily injury did not occur during the policy period of Employers’ insurance policy, as is required by the policy’s insuring agreement; (4) any potential duty to defend or indemnify is precluded by the policy exclusion barring coverage for any obligation imposed under a workers compensation or similar law; and (5) any potential duty to defend or indemnify is precluded by the policy exclusion barring coverage for any damages arising out of coercion and/or personnel practices or policies.

### **PARTIES**

2. Employers Preferred Insurance Company is a Florida corporation and is authorized to transact business and has transacted business in Illinois.

3. On information and belief, Lexi Management LLC (“Lexi”) is a limited liability company organized under the laws of Illinois and is believed and thereon alleged to be the former owner of a McDonald’s franchise located at 207 E. 35th Street, Chicago, Illinois (the “35th Street Store”).

4. On information and belief, Taynarvis Massey works at the 35th Street Store and resides in Cook County, Illinois.

5. On information and belief, Ryan Freeman works at the 35th Street Store and resides in Cook County, Illinois.

6. On information and belief, Joyce Freeman resides in Cook County, Illinois with her son, Ryan Freeman.

7. Nominal defendants Taynarvis Massey, Ryan Freeman, and Joyce Freeman are each plaintiffs in the Injunction Action (collectively, the “35th Street Store Plaintiffs”). As

interested parties, the 35th Street Store Plaintiffs have been joined to be bound by any judgment rendered in this action.

**JURISDICTION AND VENUE**

8. This Court has jurisdiction pursuant to 735 ILCS 5/2-701. An actual, immediate and justiciable controversy exists between the parties named herein with respect to coverage provided under the terms of the liability insurance policy at issue with respect to the Injunction Action. A declaratory judgment will affect the rights and interests of the parties.

9. Venue of this action is proper in this Court pursuant to 735 ILCS 5/2-101 and 735 ILCS 5/2-102 as the transaction or some part thereof giving rise to this declaratory judgment action occurred in Cook County, Illinois.

**THE EMPLOYERS POLICY**

10. Employers issued policy no. EIG 2904273 00 (the “Policy”) to Lexi Management LLC (“Lexi”), with a policy period effective August 8, 2019 to August 8, 2020. (Ex. A.)

11. On or about June 3, 2020, Lexi requested cancellation of the Policy effective June 15, 2020. (Ex. B.)

12. On July 7, 2020, Employers issued a “Notice of Cancellation” to Lexi, advising that the Policy was cancelled effective June 15, 2020. (Ex. C.)

13. The Policy provides both workers compensation insurance coverage and employers liability insurance coverage.

14. The insuring agreement of the Policy’s employers liability insurance coverage states:

**A. How This Insurance Applies**

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

\* \* \*

**B. We Will Pay**

We will pay all sums that you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. For which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;
2. For care and loss of services; and
3. For consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee; provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and
4. Because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

\* \* \*

15. The Policy's employers liability insurance coverage includes the following defense provision:

**D. We Will Defend**

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

\* \* \*

16. The Policy’s employers liability insurance coverage contains the following exclusions, which state, “this insurance does not cover:”

4. Any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;

\* \* \*

7. Damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions;

**THE INJUNCTION ACTION**

17. On May 19, 2020, a Complaint for Injunctive Relief (the “Injunction Complaint”) was filed in Case No. 2020 CH 04247 (the “Injunction Action”), in the Circuit Court of Cook County, Illinois, Chancery Division, by Taynarvis Massey, Ryan Freeman, and Joyce Freeman, among others, on behalf of themselves and a putative class (collectively, the “Underlying Plaintiffs”), against McDonald’s Corporation, McDonald’s USA, LLC, McDonald’s Restaurants of Illinois, Inc., Lexi Management LLC (“Lexi”), and DAK4, LLC (collectively, the “Underlying Defendants”). (Ex. D.)

18. The Injunction Complaint alleges that Lexi owns and operates a McDonald's restaurant franchise located at 207 E. 35th Street in Chicago, Illinois, that Taynarvis Massey and Ryan Freeman currently "work[]" at the McDonald's restaurant at that location, that Plaintiff Joyce Freeman is Ryan Freeman's mother, and that Ms. Freeman and Mr. Freeman live together.

19. The Injunction Complaint alleges that the Underlying Plaintiffs are "workers at McDonald's restaurants in Cook County" who "are likely to suffer the consequences of infections originating in the workplace" due to COVID-19, and that "the steps [the Underlying] Defendants are taking to contain COVID-19 are plainly inadequate."

20. The Injunction Complaint alleges that the Underlying Defendants' "deficient maintenance of the McDonald's restaurants constitutes a public nuisance, and their actions are negligent under Illinois law."

21. The Injunction Complaint alleges that the Underlying Plaintiffs "were forced, as a condition of their employment, to work in restaurants with inadequate protections to prevent the spread of COVID-19."

22. The Injunction Complaint alleges that the Underlying Defendants violated various practices and policies recommended by various governmental entities, including the CDC.

23. According to the Injunction Complaint, the Underlying Plaintiffs "seek only declaratory and injunctive relief to order [the Underlying] Defendants to adhere to their legal responsibilities, and provide a safe working environment."

24. In the section of the Injunction Complaint captioned "Requested Relief," the Underlying Plaintiffs "seek declaratory relief finding that [the Underlying] Defendants are maintaining a public nuisance and have violated Illinois law prohibiting negligence."

25. The Underlying Plaintiffs “further seek an injunction that requires [the Underlying] Defendants to:”

1. Supply workers with adequate protective equipment, including face coverings and gloves;
2. Cease and desist from forcing workers to reuse face coverings and gloves in a manner that makes them unsafe;
3. Supply hand sanitizer for workers and customers entering the restaurant;
4. Establish and enforce policies that require employees to wear face coverings during their shifts, and require customers entering the restaurant to wear face coverings;
5. Monitor infections among workers and, if an employee experiences COVID-19 symptoms or is confirmed to be infected with COVID-19, inform fellow employees immediately of their possible exposure;
6. Provide employees with accurate information about COVID-19, how it spreads, and risk of exposure, and train employees on proper hand washing practice and other preventative measures established by the CDC.

#### **EMPLOYERS’ DENIAL OF COVERAGE**

26. Lexi tendered the Injunction Complaint to Employers, requesting that Employers defend and indemnify Lexi under the Policy with respect to the Injunction Action.

27. By letter dated May 28, 2020, Employers denied any duty to defend or indemnify Lexi under the Policy with respect to the claims asserted in the Injunction Action.

#### **THE JUNE 24, 2020 RULING IN THE INJUNCTION ACTION**

28. By order dated June 24, 2020, an order was entered in the Injunction Action granting, in part, the Underlying Plaintiffs’ motion for a preliminary injunction.

29. With respect to Lexi, the order stated:

At the hearing on June 15, 2020, Plaintiffs called Paul Harris (“Harris”), the former manager at the 35th Street store. Harris testified that Lexi no longer owned the store.... On June 16, 2020 Plaintiffs’ counsel informed the Court that it is no longer seeking a



preliminary injunction against Defendant Lexi. Therefore, no injunction will be granted against Defendant Lexi.

(Ex. D at 7.)

30. With respect to other Underlying Defendants, McDonald's Restaurant of Illinois and DAK4, the order stated:

- k. Therefore it is ordered that Defendants McDonald's Restaurants of Illinois and DAK4 are enjoined from training employees on social distancing in a way that is inconsistent with the Governor's Executive Order.
- l. Further, Defendants McDonald's Restaurants of Illinois and DAK4 must enforce their mask wearing policies when employees are not 6 feet apart to come into compliance with the Governor's Order.
- m. This order is effective as of June 24, 2020 at 5 p.m. and will last until a decision is made on the merits or the Governor's Order changes its guidance on the facial coverings and/or social distancing.

(*Id.* at 36.)

#### **COUNT I**

#### **Declaratory Judgment That Injunction Action Does Not Seek "Damages"**

31. Employers incorporates by reference paragraphs 1-30 of its Complaint as if fully set forth herein.

32. The Policy's insuring agreement states that Employers "will pay sums that [Lexi] must pay as damages...."

33. The Injunction Action seeks only declaratory and injunctive relief and does not seek any damages.

34. Therefore, the Policy does not give rise to any duty to defend or indemnify with respect to any legal fees, costs, or other expenses incurred by Lexi relating to the Injunction Action.

35. An actual controversy exists in this matter, and pursuant to Section 5/2-701 of the Illinois Code of Civil Procedure, this Court has the power to declare the rights and obligations of the parties hereto and to grant such other further relief as may be necessary.

WHEREFORE, the Plaintiff, Employers Preferred Insurance Company, respectfully requests that this Court find and declare as follows:

- (A) The Injunction Action does not seek “damages,” as is required by the Policy’s insuring agreement;
- (B) Employers Preferred Insurance Company has no duty to defend or indemnify Lexi Management LLC under the Policy for any attorney’s fees, costs or other expenses arising from the Injunction Action; and
- (C) Employers Preferred Insurance Company is entitled to any and all other relief from Lexi Management LLC that this Court deems equitable and just.

**COUNT II**  
**Declaratory Judgment That The Injunction Action Does**  
**Not Seek “Damages Because of Bodily Injury”**

36. Employers incorporates by reference paragraphs 1-30 of its Complaint as if fully set forth herein.

37. The Policy’s insuring agreements states that Employers “will pay sums that [Lexi] must pay as damages because of bodily injury to [Lexi’s] employees....”

38. To the extent that the injunctive and declaratory relief sought by the 35th Street Store Plaintiffs in the Injunction Action may constitute “damages,” those damages are the ordinary costs of operating a business and are not “because of bodily injury to [Lexi’s] employees.”

39. Therefore, the Policy does not give rise to any duty to defend or indemnify with respect to any legal fees, costs, or other expenses incurred by Lexi relating to the Injunction Action.

40. An actual controversy exists in this matter, and pursuant to Section 5/2-701 of the Illinois Code of Civil Procedure, this Court has the power to declare the rights and obligations of the parties hereto and to grant such other further relief as may be necessary.

WHEREFORE, the Plaintiff, Employers Preferred Insurance Company, respectfully requests that this Court find and declare as follows:

- (A) The Injunction Action does not seek “damages because of bodily injury to [Lexi’s] employees,” as is required by the Policy’s insuring agreement;
- (B) Employers Preferred Insurance Company has no duty to defend or indemnify Lexi under the Policy for any attorney’s fees, costs or other expenses arising from the Injunction Action; and
- (C) Employers Preferred Insurance Company is entitled to any and all other relief from Lexi Management LLC that this Court deems equitable and just.

### COUNT III

#### **Declaratory Judgment That The Last Day of 35th Street Store Plaintiffs’ Last Exposure To Conditions Causing Any Bodily Injury Did Not Occur During Policy Period**

41. Employers incorporates by reference paragraphs 1-30 of its Complaint as if fully set forth herein.

42. The Policy’s insuring agreement states that any “bodily injury by disease must be caused or aggravated by the conditions of your employment,” and that “[t]he employee’s last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.”

43. The Policy was cancelled effective June 15, 2020.

44. The Injunction Complaint alleges that Taynarvis Massey and Ryan Freeman currently work at the 35th Street Store.

45. Accordingly, to the extent that the injunctive and declaratory relief sought by the 35th Street Store Plaintiffs in the Injunction Action may constitute “damages because of bodily

injury to [Lexi's] employees," the last day of the 35th Street Store Plaintiffs' last exposure to the conditions causing or aggravating such bodily injury did not occur during the policy period.

46. Therefore, the Policy does not give rise to any duty to defend or indemnify with respect to any legal fees, costs, or other expenses incurred by Lexi relating to the Injunction Action.

47. An actual controversy exists in this matter, and pursuant to Section 5/2-701 of the Illinois Code of Civil Procedure, this Court has the power to declare the rights and obligations of the parties hereto and to grant such other further relief as may be necessary.

WHEREFORE, the Plaintiff, Employers Preferred Insurance Company, respectfully requests that this Court find and declare as follows:

- (A) The last day of the 35th Street Store Plaintiffs' last exposure to conditions causing or aggravating any bodily injury did not occur during the policy period, as is required by the Policy's insuring agreement;
- (B) Employers Preferred Insurance Company has no duty to defend or indemnify Lexi under the Policy for any attorney's fees, costs or other expenses arising from the Injunction Action; and
- (C) Employers Preferred Insurance Company is entitled to any and all other relief from Lexi Management LLC that this Court deems equitable and just.

#### COUNT IV

#### **Declaratory Judgment That Exclusion 4 (Workers Compensation Exclusion) Precludes Any Duty To Defend Or Indemnify**

48. Employers incorporates by reference paragraphs 1-30 of its Complaint as if fully set forth herein.

49. The Policy is subject to an exclusion ("Exclusion 4") stating that "[t]his insurance does not cover... [a]ny obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law."

50. To the extent that any of the 35th Street Store Plaintiffs seek “damages for bodily injury to [Lexi’s] employees” that are imposed by any workers compensation law or any other law identified by Exclusion 4, any potential duty to defend or indemnify on the part of Employers with respect to the Injunction Action is excluded by operation of Exclusion 4.

51. Therefore, the Policy does not give rise to any duty to defend or indemnify with respect to any legal fees, costs, or other expenses incurred by Lexi relating to the Injunction Action.

52. An actual controversy exists in this matter, and pursuant to Section 5/2-701 of the Illinois Code of Civil Procedure, this Court has the power to declare the rights and obligations of the parties hereto and to grant such other further relief as may be necessary.

WHEREFORE, the Plaintiff, Employers Preferred Insurance Company, respectfully requests that this Court find and declare as follows:

- (A) Any “damages for bodily injury to [Lexi’s] employees” sought by the Injunction Action are excluded by operation of the Policy’s Exclusion 4;
- (B) Employers Preferred Insurance Company has no duty to defend or indemnify Lexi under the Policy for any attorney’s fees, costs or other expenses arising from the Injunction Action; and
- (C) Employers Preferred Insurance Company is entitled to any and all other relief from Lexi Management LLC that this Court deems equitable and just.

**COUNT V– Declaratory Judgment  
Declaratory Judgment That Exclusion 7  
(Exclusion for Coercion / Personnel Practices  
and Policies) Precludes Any Duty To Defend Or Indemnify**

53. Employers incorporates by reference paragraphs 1-30 of its Complaint as if fully set forth herein.

54. The Policy is subject to an exclusion (“Exclusion 7”) stating that “[t]his insurance does not cover... [d]amages arising out of coercion, criticism, demotion, evaluation, reassignment,

discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions.”

55. The Injunction Action alleges that the 35th Street Store Plaintiffs “were forced, as a condition of their employment, to work in restaurants with inadequate protections to prevent the spread of COVID-19.”

56. The Injunction Action further alleges that Lexi violated various personnel practices and policies recommended by various government entities, including the CDC.

57. Accordingly, to the extent that any of the 35th Street Store Plaintiffs seek “damages for bodily injury to [Lexi’s] employees” arising out of coercion and/or personnel practices or policies, any potential duty to defend or indemnify on the part of Employers with respect to the Injunction Action is excluded by operation of Exclusion 7.

58. Therefore, the Policy does not give rise to any duty to defend or indemnify with respect to any legal fees, costs, or other expenses incurred by Lexi relating to the Injunction Action.

59. An actual controversy exists in this matter, and pursuant to Section 5/2-701 of the Illinois Code of Civil Procedure, this Court has the power to declare the rights and obligations of the parties hereto and to grant such other further relief as may be necessary.

WHEREFORE, the Plaintiff, Employers Preferred Insurance Company, respectfully requests that this Court find and declare as follows:

- (A) Any “damages for bodily injury to [Lexi’s] employees” sought by the Injunction Action are excluded by operation of Exclusion 7;
- (B) Employers Preferred Insurance Company has no duty to defend or indemnify Lexi under the Policy for any attorney’s fees, costs or other expenses arising from the Injunction Action; and
- (C) Employers Preferred Insurance Company is entitled to any and all other relief from Lexi Management LLC that this Court deems equitable and just.

Respectfully submitted,

SKARZYNSKI MARICK & BLACK LLP

By: /s/Timothy H. Wright

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