

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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GOLDEN TASTE, INC.,

Plaintiff,

-against-

WESTCHESTER SURPLUS LINES
INSURANCE COMPANY,

Defendant.

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Index No.
Date Purchased:

Plaintiff designates ROCKLAND
County as the place of trial

SUMMONS

Plaintiff resides at
318 Roosevelt Ave
Spring Valley, NY 10977-5824

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
November 23, 2021

LERNER, ARNOLD & WINSTON, LLP
Attorneys for Plaintiff

By /s/ Noah J. Fried
Noah J. Fried, Esq.
286 Fifth Avenue, 12th Floor
New York, New York 10001
(212) 686-4655

Defendant's Address:

Mr. Paul Bech, Esq.,
Associate General Counsel
Chubb
436 Walnut Street
Philadelphia, PA 19106-3703

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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GOLDEN TASTE, INC.,

Plaintiff,

Index No:

-against-

COMPLAINT

WESTCHESTER SURPLUS LINES
INSURANCE COMPANY,

Defendant.

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Plaintiff GOLDEN TASTE, INC., by its attorneys, LERNER, ARNOLD & WINSTON, LLP, as and for its Complaint, alleges, upon information and belief as follows:

1. Plaintiff GOLDEN TASTE, INC., (“Plaintiff”) was and still is a Domestic Corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business located in the State of New York, County of Rockland.

2. Upon information and belief, the Defendant WESTCHESTER SURPLUS LINES INSURANCE COMPANY (hereinafter referred to as “Defendant”) is an insurance company organized under the laws of Georgia with its principal place of business in Alpharetta Georgia.

3. Upon information and belief, Defendant is a member of the Chubb Insurance Group, a global group of insurance companies.

4. At all relevant times, Defendant was authorized by the New York State Department of Financial Services and the Superintendent of Insurance to issue policies of insurance in the State of New York, including the policy issued to Plaintiff.

5. Venue is proper in this County since this is where the cause of action arises and where the policy of insurance was issued.

BACKGROUND FACTS

6. Plaintiff is engaged in the manufacturing, distributing and sale of food items.
7. Plaintiff produces a variety of kosher food products for sale to the public, including Healthy Tuna Deluxe, a tuna fish salad product (“the product”).
8. On or around March 3, 2021, the Healthy Tuna Deluxe was manufactured, packaged, and shipped to Costco for retail sale.
9. After receiving the product, Costco performed a visual inspection of it.
10. On or around March 20, 2021, Costco advised the Plaintiff that it discovered visible organic growth in the Healthy Tuna Deluxe.
11. Costco subsequently withdrew all product with sell by dates of March 23, 2021 through April 18, 2021 from store shelves.
12. Some of the product was destroyed at Costco, and new shipments were refused and returned to the Plaintiff.
13. The Plaintiff then had the product tested by Certified Laboratories, located in Melville NY.
14. The lab testing confirmed that *Aspergillus* spp., *Candida Lipolytica*, and *Penicillium* Spp were all present on the product.
15. The lab report was sent to both Comprehensive Food Safety located in Westwood New Jersey, and Focuss Group located in Monsey New York, for their expert opinions.
16. Both experts concluded that the product was not fit for human consumption.
17. As a direct and proximate result of the defective product and the subsequent destruction and recall of the product, Plaintiff sustained a significant loss of over \$300,000, exceeding all limits of insurance.

THE POLICY

18. Prior to February March 3, 2021, for good and valuable consideration, Defendant issued to Plaintiff a Recall Plus Insurance for Consumable Products policy bearing the policy number G28234363 004, with effective dates of coverage from July 28,2020 to July 28, 2021 (“the Policy”). A copy of the policy is included herein as Exhibit “A”.

19. The Plaintiff is a named insured within the Policy.

20. The product is covered within the Policy.

21. The Policy insured Plaintiff for any “Loss” that occurs from an “insured event,” except for those specifically excluded, up to the amount of \$ \$250,000.

22. The Policy defines an “Insured Event” as:

A voluntary, involuntary or mandatory recovery of “stock”, market withdrawal or recall of an “adulterated” “insured product(s)” by or on behalf of its manufacturer, producer, processor, distributor, purchaser, retailer, wholesaler, importer, exporter, a regularly constituted federal, state, or local regulatory or administrative body or user of the “insured product(s)” provided that the consumption, exposure to, or use of such “insured product(s)” has resulted in or would result in “bodily injury” or “property damage”; or

23. The policy is subject to a deductible of \$5,000.00.

THE CLAIM

24. As a result of the Loss, Plaintiff submitted a claim to Defendant under the Policy, seeking reimbursement for damages sustained as a result of the Insured Event thereof.

25. While Defendant has acknowledged that the product contains Aspergillus spp., Candida Lipolytica, and Penicillium Spp, Defendant has disputed the fact that the amounts found were significant enough to be dangerous to humans and to trigger coverage under the

policy.

AS AND FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

26. Plaintiff repeats, reiterates and realleges each and every allegation set forth in preceding paragraphs numbered “1” through “25,” inclusive, with the same force and effect as though more fully set forth herein at length.

27. Prior to March 2021, Defendants had issued a Policy of Insurance to Plaintiff, effective at the time of the product recall, which policy provided Coverage in the event of a recall of one of Plaintiff’s products.

28. On or about March 20, 2021, as a result of the presence of Aspergillus spp., Candida Lipolytica, and Penicillium Spp, Plaintiff had to issue a recall and destroy the product.

29. Plaintiff submitted a claim to Defendant and cooperated with Defendant’s investigation of the claim.

30. Plaintiff submitted supporting documentation in support of its claim, including lab results and two expert opinions.

31. The Defendant has failed and wrongfully refused to indemnify the Plaintiff for the losses sustained despite the fact that the policy covers this type of loss.

32. All premiums for the insurance had been paid to the Defendants.

33. Defendants’ failure to indemnify Plaintiff for its loss incurred constitutes a breach of contract.

34. The Defendant has breached the policy obligations both as to payment of the claim and as to the adjustment of the claim.

35. The Defendant is estopped and/or has waived the right to deny coverage for any reason other than that set forth in the wrongful denial.

36. The Plaintiff has incurred a loss, which is covered under the Policy, mthe Defendants have failed to make payment as required by the Policy.

37. The Plaintiff has satisfied all conditions precedent, prior to the filing of a claim and this lawsuit.

38. The Defendant has an obligation to indemnify the Plaintiff.

39. The Plaintiff has sustained \$250,000 in damages as a result of Defendant's breach, based on the policy limits of liability for this type of loss.

WHEREFORE, Plaintiff demands judgment against Defendant for Breach of Contract for the limits of the policy, with interest thereon from March 3, 2021, together with the costs and disbursements of this action, including reasonable attorney's fees.

Dated: New York, New York
November 23, 2021

LERNER, ARNOLD & WINSTON, LLP
Attorneys for Plaintiff

By /s/Noah J. Fried
Noah J. Fried, Esq.
286 Fifth Avenue 12th Floor
New York, New York 10001
(212) 686-4655

VERIFICATION

Noah J. Fried, an attorney duly admitted to practice law in the State of New York, hereby affirms the truth of the following, upon information and belief, under penalty of perjury:

That I am one of the attorneys for the Plaintiffs in the within action.

That I have read the foregoing **SUMMONS and COMPLAINT** and know the contents thereof; that the same is true to my own knowledge, except as to the matters therein stated to be upon information and belief; and as to those matters, I believe it to be true.

That the reason this verification is made by your affirmant and not by the Plaintiffs is that Plaintiff does not reside in the County where your affirmant maintains his office.

That the grounds for your affirmant’s belief as to all matters not stated upon my knowledge are as follows: records, correspondence, reports and documents contained in Plaintiff’s file maintained by your affirmant’s office.

Dated: New York, New York
November 23, 2021

/s/Noah J. Fried
Noah J. Fried, Esq.

