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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 **

11 EMPLOYERS FIRE INSURANCE)
COMPANY) Case No.:
12) Dept.:
Plaintiff,)
13)
vs.)
14)
15 BASIC FOOD FLAVORS, INC.)
Defendants.)
16)
17)

18 COMPLAINT FOR DECLARATORY RELIEF

19 Employers Fire Insurance Company (“Employers”), by and through undersigned counsel,
20 states and alleges for its Complaint for Declaratory Relief (“Complaint”) against Defendant
21 Basic Food Flavors, Inc. (“Basic Food”) as follows:

22 I. NATURE OF THE ACTION

23 1. In this Complaint, Employers seeks a declaration of its rights, duties and
24 obligations under an insurance policy issued to Basic Food.
25

26 II. PARTIES

27 2. Employers is incorporated in the State of Massachusetts, and its principal place of
28

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1 business is located in the State of Massachusetts.

2 3. Upon information and belief, Basic Food is incorporated in the State of Nevada
3 and its principal place of business is located in the State of Nevada.

4 **III. JURISDICTION AND VENUE**

5 4. This Court has jurisdiction over this controversy pursuant to 28 U.S.C. § 1332
6 because there is complete diversity of citizenship and because the amount in controversy exceeds
7 \$75,000, exclusive of interest and costs.

8 5. This Court has jurisdiction over this controversy pursuant to 28 U.S.C. § 2201, *et*
9 *seq.*, because Employers seeks a declaration as to its rights, duties and obligations under the
10 insurance policy issued to Basic Food.

11 6. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(a) because a
12 substantial portion of the events giving rise to this controversy occurred in this District.

13 **IV. THE POLICY**

14 7. Employers issued an “@vantage Policy” insurance policy to Basic Food under
15 policy number 713-00-93-03-0000, which is in effect from September 1, 2009 to September 1,
16 2010 (the “Policy”). The Policy is attached to this Complaint as Exhibit A.

17 8. The Policy contains a Commercial General Liability Coverage Form (the “CGL
18 Section”), which is written on form CG 00 01 12 07.

19 9. The CGL Section contains the following limits: \$2 million – General Aggregate;
20 \$2 million Products/Completed Operations Aggregate; and \$1 million – Each Occurrence.

21 10. The policy also contains a Commercial Umbrella Liability Coverage Form (the
22 “Umbrella Section”), which is written on form VCU 100 11 04.

23 11. The Umbrella Section contains the following limits: \$10 million – Each
24 Occurrence; \$10 million – Products/Completed Operations Aggregate; and \$10 million –
25

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1 General Aggregate, in excess of the applicable retained limit.

2 12. The CGL Section and the Umbrella Section contain certain terms, conditions,
3 limits, exclusions and endorsements, which define, limit and/or preclude any rights, duties and
4 obligations owed by Employers to Basic Food.

5 **V. GENERAL ALLEGATIONS**

6
7 13. Upon information and belief, Basic Food manufactures hydrolyzed vegetable
8 protein ("HVP"), an ingredient commonly used as a flavor enhancer in a wide variety of
9 processed foods, including soups, sauces, chilies, stews, hot dogs, gravies, seasoned snack foods,
10 dips and dressings.

11 14. In February 2010, one of Basic Food's customers notified the United States Food
12 & Drug Administration ("FDA") that it had detected salmonella in HVP purchased from Basic
13 Food.

14
15 15. Upon information and belief, the customer's report prompted the FDA to conduct
16 an investigation of Basic Food's manufacturing facility located in North Las Vegas, Nevada, on
17 February 13, 2010.

18 16. Upon information and belief, the FDA's investigation located salmonella in
19 certain areas of Basic Food's facility.

20
21 17. Upon information and belief, as a result of its inspection, the FDA requested that
22 Basic Food recall all HVP manufactured on or after September 17, 2009, and up to the date of
23 the FDA's inspection.

24 18. Upon information and belief, Basic Food determined through its own
25 investigation that the salmonella contamination was limited to a single lot of HVP produced on
26 September 17, 2009 that was sent to a single customer, and therefore, maintained that the recall
27 should be limited to the September 17, 2009 batch.
28

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26. The CGL Section and the Umbrella Section of the Policy contain certain terms, provisions, limits, conditions, exclusions and endorsements that limit or preclude coverage to Basic Food with respect to the losses, costs or expenses incurred as the result of the HVP Recall.

27. Employers respectfully requests this Court to make a declaration concerning Employers' rights, duties and obligations to Basic Food with respect to the losses, costs or expenses incurred as the result of the HVP Recall under the terms, provisions, limits, conditions, exclusions and endorsements of the CGL Section and the Umbrella Section of the Policy.

WHEREFORE, Employers respectfully requests judgment on its Complaint as follows:

- a. That the Court determine and declare Employers' rights, duties and obligations Basic Food under the terms, provisions, limits, conditions, exclusions and endorsements of the CGL Section and the Umbrella Section of the Policy;
- b. For pre- and post-judgment interest, costs of suit and attorneys' fees to the fullest extent allowed by law; and
- c. For such other relief as this Court deems just and equitable.

DATED this 7th day of July, 2010.

ALVERSON, TAYLOR, MORTENSEN & SANDERS



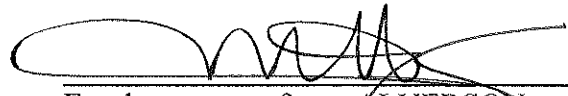
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CERTIFICATE VIA CM/ECF

Pursuant to FRCP 5, I hereby certify that I am an employee of ALVERSON, TAYLOR, MORTENSEN & SANDERS and that on the 7th day of July, 2010, I caused to be served via CM/ECF a true and correct copy of the document described herein.

Document Served: COMPLAINT FOR DECLARATORY RELIEF

Attorney for Defendant



Employee of ALVERSON, TAYLOR,
MORTENSEN & SANDERS

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