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Location: District 1 Court
Cook County, IL

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DOROTHY BROWN
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2020CH05564

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

GPIF CRESCENT COURT HOTEL
LLC, GPIF WSAN RIVERWALK
HOTEL LLC, GPIF BRICE HOTEL
LLC, GPIF WPN HOTEL LLC, GPIF
WANN HOTEL LLC, GPIF A7
WESTSHORE OPERATOR LLC, and
GPIF BROWN PALACE HOTEL LLC,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

ZURICH AMERICAN INSURANCE
COMPANY,

Defendant.

Civil Action No. **2020CH05564**

JURY TRIAL DEMANDED

10237157

CLASS ACTION COMPLAINT

Plaintiffs GPIF Crescent Court Hotel LLC, GPIF WSAN Riverwalk Hotel LLC, GPIF Brice Hotel LLC, GPIF WPN Hotel LLC, GPIF WANN Hotel LLC, GPIF A7 Westshore Operator LLC, and GPIF Brown Palace Hotel LLC, individually and on behalf of the other members of the below-defined nationwide class (collectively, the “Class”), bring this class action against Defendant Zurich American Insurance Company (“Zurich”), and in support thereof state the following:

I. NATURE OF THE ACTION

1. Plaintiffs own eight high quality hotels located in Texas, Georgia, Maryland, Florida and Colorado. The hotels are part of the HEI Hotels & Resorts portfolio, which features approximately 81 “architecturally and characteristically unique” hotels and resorts. HEI Hotels & Resorts arranges property and casualty insurance (including business interruption insurance) for its portfolio hotels through HEI Hospitality LLC (“HEI”), which HEI obtained in a Zurich Edge®

Policy for August 2019 to August 2020. Zurich promotes its Zurich Edge® “‘all risk’ property form” as “[w]ritten in easy-to-understand language,” with coverage that “is especially advantageous for customers with highly protected risk exposures.”

2. Plaintiffs’ hotels, described in the following paragraphs, have been welcoming guests since as early as the 1890s. Their existence, however, is now threatened by the Coronavirus and the associated disease, COVID-19.¹

3. The Hotel Crescent Court is located in the Uptown Dallas district, mixing European elegance with Texan charm, and includes a 2,000-year-old marble sculpture of the Greek god Aesculapius. The hotel features some of the finest restaurants in Dallas, the Beau Nash cocktail lounge, extensive meeting spaces, elegant wedding venues, banquet operations, a 22,000 square foot spa, an outdoor pool, and a fitness center.

4. The Westin Riverwalk San Antonio is located in the heart of “Alamo City.” The hotel presents a subtle Spanish Colonial look blended with historic Texas culture. Dining on site includes Zocca Cuisine D’Italia, serving meals along the Riverwalk. The Westin Riverwalk San Antonio offers a total of 28,271 square feet of elegant event space perfect for weddings, banquet operations, as well as an outdoor heated pool with a pool bar, a fitness studio, and a beauty shop.

5. The Brice Kimpton Savannah offers a blend of modern and Southern style overlooking the historic district of the “Hostess City of the South.” Pacci is an on-site Italian kitchen and bar with a touch of rustic country with all meals of the day served. The hotel offers 6,000 square feet of meeting space as well as a 1,700 square foot Secret Garden perfect for special events and weddings, along with banquet operations. The Brice Kimpton Savannah also provides a seasonal outdoor pool, and a fitness center.

6. The Westin Atlanta Perimeter North has stunning views of Lake Rita and surrounding gardens. The main dining option, SAVOR bar & kitchen, utilizes fresh and local farm

¹ SARS-CoV-2 or the Coronavirus is also sometimes referred to by the name of the disease which it causes and that spreads it, COVID-19. For ease of reference, we refer to the virus as COVID-19 throughout, unless specifically stated otherwise.

goods served with spectacular views. The hotel has 24,738 square feet of event space for events and weddings, banquet operations, an outdoor heated saline swimming pool, and a fitness center.

7. The Westin Annapolis charms guests with extraordinary amenities. In normal times, the hotel serves three satisfying meals a day in the Azure restaurant. The hotel has over 15,000 square feet of event space with banquet operations, including the largest event venue in town, and is a top choice for weddings. The Westin Annapolis also offers the Azure Bar & Lounge, an indoor pool, fitness center, and beauty shop.

8. The Westshore Grand Tampa, part of Marriott's Tribute Portfolio, is a modern styled luxury hotel located in the heart of Tampa, with a variety of dining options including Shula's Steak House, No Name Lounge, and Illy Café. The hotel offers 17,000 square feet of exquisite meeting and event facilities with banquet operations, including flexible venues for weddings with 10 to 500 guests. Westshore Grand Tampa also has an enticing heated rooftop pool, fitness center, and hair salon.

9. The Brown Palace, part of Marriott's Autograph Collection, has been an icon in Denver since 1892, and even served as the Western White House for President Eisenhower. The historic hotel offers six distinct restaurants and bars, 19,855 square feet of event and wedding space with banquet operations, a boutique spa and salon, and a fitness center. The Brown Palace is dedicated to protecting honeybees in the city, and the rooftop has become home to five colonies of bees – the honey is harvested and used throughout the hotel.

10. The Holiday Inn Express Denver is a smart hotel located in the heart of the "Mile High City." The hotel offers 13 meeting rooms and an extensive fitness center with stunning views of the city. The Holiday Inn Express Denver shares the lower levels of its tower with the Brown Palace, including the elegant 5,800 square foot Grand Ballroom, which once hosted a dinner for the president of France, and which is a spectacular wedding setting.

11. For the policy period August 9, 2019, through August 9, 2020, Zurich issued the Zurich Edge® Policy, Policy Number ERP8780712-01, to HEI (the "Zurich Policy" or the "Policy").

12. HEI is an “Insured” (the “First Named Insured”) under the Zurich Policy, which also includes as Insureds:

The First Named Insured’s interest in any partnership, joint venture or other legal entity in which the First Named Insured has management control or ownership as now constituted or hereafter is acquired.

13. The territorial coverage of the Policy “applies to all covered loss or damage that takes place in the United States of America, its territories and possessions, including the District of Columbia and the Commonwealth of Puerto Rico.”

14. The “Policy insures an insured location unless otherwise provided.” Insured Locations include locations on a “Schedule of Locations on file” with Zurich. Hotel Crescent Court, Westin Riverwalk San Antonio, Brice Kimpton Savannah, Westin Atlanta Perimeter North, Westin Annapolis, Westshore Grand Tampa, the Brown Palace, and Holiday Inn Express Denver are Insured Locations under the Policy.

15. Unless otherwise excluded in the Policy, the Policy insures “buildings (or structures) including new construction, additions, alterations, and repairs that the Insured owns, occupies, leases or rents.” The Policy also covers “Personal Property, including Improvements and Betterments,” as well as Property of Others: (i) that is in an “Insured’s care, custody or control,” (ii) in which an “Insured has an insurable interest or obligation,” or (iii) for which an “Insured is legally liable.”

16. Under the Policy, all losses or damage that are attributable directly or indirectly to one cause or a series of similar or related causes” “will be treated as one Occurrence.”

17. Due to COVID-19, Plaintiffs have suffered “direct physical loss of or damage” to their hotels—under the plain and ordinary meaning of that term. COVID-19 made the hotels unusable in a way that they had been used before COVID-19.

18. Instead of being able to fill the hotels with guests, meeting attendees, and diners, the hotels were required to drastically reduce operations, and even to close entirely. To do anything

else would lead to the emergence or reemergence of COVID-19 at the hotels. Until COVID-19 was brought even slightly under control, even such limited use as this was not possible.

19. This loss is “direct”—Plaintiffs are not asking Zurich to reimburse them after someone obtained a judgment against Plaintiffs for getting guests or diners sick. That might be an indirect loss. Plaintiffs are asking Zurich to pay for their loss of business income occasioned directly by being unable to use their hotels.

20. This loss is physical. The hotels are unable to use their interior spaces in the manner in which they had previously used those spaces. The probability of illness prevents the use of the space in no less of a way than, on a rainy day, a crumbling and open roof from the aftermath of a tornado would make the interior space of a business unusable.²

21. This loss is a loss. It is the loss of functionality of the space for business purposes. It is the diminishment of the physical space in the hotels. What once could hold many now can safely hold only a few, or none at all.

22. The impairment of the business function is also damage to the hotels.

23. Plaintiffs required “all risk” property coverage to protect themselves in the event that their hotels suddenly had to suspend operations for reasons outside of a hotel’s control, or if a hotel had to act in order to prevent further property damage. Plaintiffs obtained this coverage as Insureds under the Policy, which includes Time Element coverage, “Special Coverages,” and additional coverage for “Interruption by Communicable Disease.”

24. The Time Element coverages pay for losses from the necessary Suspension of an “Insured’s business activities at an Insured Location,” including “Gross Earnings” coverage for lost net sales, rental income and other income, plus “continuation of normal charges and expenses,

² Note, however, that Plaintiffs are not seeking recovery for their loss of use. Plaintiffs are seeking coverage for their loss of business income. Here’s an example that drives home the difference, some law firms have been unable to use their office space because of COVID-19, but nevertheless the law firms’ business income has increased and they thus have faced no loss of business income. A claim by such a law firm for not being able to use its office space would be a “loss of use” claim. The law firm would have no loss of business income claim. Here, Plaintiffs’ business has decreased because of the impairment of their hotels, and Plaintiffs are seeking the loss of business income under the business interruption coverage of the Zurich insurance policy.

including Ordinary Payroll,” and “Extra Expense” coverage for costs incurred to “resume and continue as nearly as practicable” an “Insured’s normal business activities that otherwise would be necessarily suspended.”

25. The Special Coverages include “Civil or Military Authority” (“Civil Authority”) coverage for losses caused by the action of a civil authority that prohibits access to an Insured Location, and “Protection and Preservation of Property” coverage for costs incurred to “temporarily protect or preserve Covered Property” in response to “actual or imminent physical loss or damage due to a Covered Cause of Loss.”

26. Under the heading “Duties in the Event of Loss or Damage,” Zurich mandates that an Insured “must see” that certain things “are done in the event of direct physical loss or damage to Covered Property,” including taking “all reasonable steps to protect the Covered Property from further damage caused by a Covered Cause of Loss,” and keeping “a record of expenses for emergency and temporary repairs for consideration in the settlement of the claim.” This is referred to as Sue & Labor coverage.

27. The Policy also provides additional coverage for “Interruption by Communicable Disease” to “pay for the actual Gross Earnings loss sustained by” an Insured due to “the necessary Suspension” of an Insured’s “business activities at an Insured Location if the Suspension is caused by order” of a civil authority “enforcing any law or ordinance regulating communicable diseases and that such portions of the location are declared uninhabitable due to the threat of the spread of communicable disease.” This additional Communicable Disease coverage does “not apply to loss or damage that is payable under any other provision” in the Policy.

28. Unlike many policies that provide Time Element coverages, the Policy does not include, and is not subject to, any exclusion for losses caused by the spread of viruses or communicable diseases.

29. Zurich drafted a very limited “contamination” exclusion into the exclusions for the Property Damage section of the Policy that originally defined contamination to include “virus,” but that provision does not apply to the Time Element coverages, “Special Coverages,” or other

coverages or to contamination that results from direct physical loss or damage resulting from a covered causes of loss or to loss of business income from contamination. Moreover, “virus” was removed from the definition of “contamination” by endorsement.

30. Hotel Crescent Court, Westin Riverwalk San Antonio, Brice Kimpton Savannah, Westin Atlanta Perimeter North, Westin Annapolis, Westshore Grand Tampa, the Brown Palace, and Holiday Inn Express Denver each suffered a physical loss of property due to COVID-19 and the Closure Orders (defined below), were forced to suspend business activities due to COVID-19 and the Closure Orders, and incurred Gross Earnings, Extra Expense, Civil Authority, Protection and Preservation of Property, Sue & Labor and Interruption by Communicable Disease losses due to COVID-19 and the Closure Orders.

31. Upon information and belief, Zurich has, on a uniform basis, refused to pay claims for losses and costs due to COVID-19 and the resultant Closure Orders covered by the insurance provisions identified in this Class Action Complaint to all Class members under the Zurich Policy. Indeed, Zurich has repudiated coverage for Plaintiffs’ claim under the Policy.

II. THE PARTIES

Plaintiffs

32. Plaintiff GPIF Crescent Court Hotel LLC is organized under the laws of Delaware, with its principal place of business in Fort Worth, Texas. Plaintiff GPIF Crescent Court Hotel LLC owns Hotel Crescent Court in Dallas, Texas, and is an Insured under the Policy.

33. Plaintiff GPIF WSAN Riverwalk Hotel LLC is organized under the laws of Delaware, with its principal place of business in Fort Worth, Texas. Plaintiff GPIF WSAN Riverwalk Hotel LLC owns Westin Riverwalk San Antonio in San Antonio, Texas, and is an Insured under the Policy.

34. Plaintiff GPIF Brice Hotel LLC is organized under the laws of Delaware, with its principal place of business in Fort Worth, Texas. Plaintiff GPIF Brice Hotel LLC owns Brice Kimpton Savannah in Savannah, Georgia, and is an Insured under the Policy.

35. Plaintiff GPIF WPN Hotel LLC is organized under the laws of Delaware, with its principal place of business in Fort Worth, Texas. Plaintiff GPIF WPN Hotel LLC owns Westin Atlanta Perimeter North in Atlanta, Georgia, and is an Insured under the Policy.

36. Plaintiff GPIF WANN Hotel LLC is organized under the laws of Delaware, with its principal place of business in Fort Worth, Texas. Plaintiff GPIF WANN Hotel LLC owns Westin Annapolis in Annapolis, Maryland, and is an Insured under the Policy.

37. Plaintiff GPIF A7 Westshore Operator LLC is organized under the laws of Delaware, with its principal place of business in Fort Worth, Texas. Plaintiff GPIF A7 Westshore Operator LLC owns Westshore Grand Tampa in Tampa, Florida, and is an Insured under the Policy.

38. Plaintiff GPIF Brown Palace Hotel LLC is organized under the laws of Delaware, with its principal place of business in Fort Worth, Texas. Plaintiff GPIF Brown Palace Hotel LLC owns the Brown Palace in Denver, Colorado and the Holiday Inn Express Denver in Denver Colorado, and is an Insured under the Policy.

Defendant

39. Defendant Zurich is an insurance company organized under the laws of the State of New York, with its principal place of business at 1299 Zurich Way, Schaumburg, IL 60196. Defendant does business in the State of Illinois, Cook County, and nationwide.

III. JURISDICTION AND VENUE

40. Jurisdiction over Defendant is proper under 735 ILCS 5/2-209(a)(1) (“transaction of any business within this State”), Section 2-209(a)(7) (“making or performance of any contract or promise substantially connected with this State”), Section 2-209(b)(4) (“corporation doing business within this State”), and Section 2-209(c) (“permitted by the Illinois Constitution and the Constitution of the United States”).

41. Venue is proper in Cook County pursuant to 735 ILCS 5/2-101, because this is the “county of residence” of Defendant, and this is “the county in which the transaction or some part thereof occurred out of which the cause of action arose.”

IV. SUBSTANTIVE ALLEGATIONS

A. *The Zurich Policy*

42. In return for the payment of a premium, Zurich issued Policy No. ERP8780712-01 to HEI for a policy period of August 9, 2019 to August 9, 2020, under which Plaintiffs are Insureds. Policy No. ERP8780712-01 is attached hereto as Exhibit 1 (any redactions in Exhibit 1 were made by Zurich). The Class has performed all of their obligations under Policy No. ERP8780712-01, including HEI's payment of premiums. The Covered Property, with respect to Plaintiffs, are Hotel Crescent Court, Westin Riverwalk San Antonio, Brice Kimpton Savannah, Westin Atlanta Perimeter North, Westin Annapolis, Westshore Grand Tampa, the Brown Palace, and Holiday Inn Express Denver.

43. In many parts of the world, property insurance is sold on a specific peril basis. Such policies cover a risk of loss if that risk of loss is specifically listed (*e.g.*, hurricane, earthquake, H1N1, etc.). Most property policies sold in the United States, however, including those sold by Zurich, are all-risk property damage policies. These types of policies cover all risks of loss except for risks that are expressly and specifically excluded.

44. "Covered Cause of Loss" under the Policy includes: "All risks of direct physical loss of or damage from any cause unless excluded."

45. Zurich did not exclude or limit coverage for losses from the spread of virus in the Time Element coverages, Special Coverages, or other coverages of the Policy, which provide business interruption coverage.

46. As a matter of practice, Zurich writes a virus exclusion (even if defective) into a business interruption insurance policy *when it intends* to impose or enforce a virus exclusion. Zurich Group CFO George Quinn told reporters on May 14, 2020 that Zurich's business interruption coverage "wording typically includes a virus exclusion" in the U.S., and that "[m]ore than 99% of our contracts in North America will have that wording."³

³ L.S. Howard, Zurich Insurance Estimates Coronavirus Pandemic Claims to Hit \$750 Million for 2020, Insurance Journal (May 14, 2020),

47. Losses due to COVID-19 are a “Covered Cause of Loss” under the Policy.

48. In the Policy, Zurich agreed to pay for the Gross Earnings losses of Plaintiffs and the other Class Members from the necessary suspension of their business activities during the “Period of Liability” caused by direct physical loss or damage. Zurich defined “Suspension” in the Policy as:

- “The slowdown or cessation of the Insured’s business activities;” or,
- “As respects rental income that a part or all of the Insured Location is rendered untenable.”

The “Period of Liability” extends until “[t]he date the Insured could restore its business with due diligence, to the condition that would have existed had no direct physical loss or damage occurred to the Insured’s Covered Property,” or for one year.

49. For Gross Earnings and all other Time Element coverages, expiration of the Policy “will not limit the Period of Liability.”

50. A recoverable Gross Earnings loss, for which Zurich agreed to pay Plaintiffs and the other Class Members, is the Gross Earnings value that Plaintiffs and the other Class Members “would have earned during the Period of Liability, less charges and expenses that do not necessarily continue during the Period of Liability.” Gross Earnings value is determined based on lost net sales, rental income and other income, plus “continuation of normal charges and expenses, including Ordinary Payroll.”

51. Zurich further agreed that the “Policy will also pay the reasonable and necessary expenses incurred (except the cost to extinguish a fire) by the Insured to reduce the amount of Gross Earnings loss during the Period of Liability.”

52. Plaintiffs’ and the other Class members’ hotels have suffered direct physical loss or damage. Due to COVID-19, their hotels have become unsafe for their intended purpose and thus have suffered physical loss or damage. Their hotels’ business functions have been impaired.

If they were to conduct business as usual, the disease and virus would show up and guests, meeting attendees, and diners would get sick. This is not a non-physical or remote loss such as one occasioned by a breach of contract, loss of a market, or the imposition of a governmental penalty. It is a direct physical loss. In its current condition, Plaintiffs' and the other Class members' hotels are not functional for its business purposes.

53. Moreover, the presence of virus or disease can constitute physical damage to property, as the insurance industry has recognized since at least 2006. When preparing so-called "virus" exclusions to be placed in some policies, but not others, the insurance industry drafting arm, The Insurance Services Office ("ISO"), circulated a statement to state insurance regulators that included the following:

Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses. Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage. An allegation of property damage may be a point of disagreement in a particular case.

54. The presence of virus or disease has resulted in physical damage to property in that manner in this case.

55. Zurich Group CFO George Quinn's May 14, 2020 statements to reporters about the prevalence of virus exclusions in 99% of Zurich contracts in North America leaves no doubt that Zurich understood that policyholders expect the full benefit of their Time Element coverages, Special Coverages, and other coverages absent a virus exclusion.

56. Zurich also agreed to "pay for the reasonable and necessary Extra Expenses incurred by" Plaintiffs and other Class Members "during the Period of Liability, to resume and continue as nearly as practicable" their "normal business activities that otherwise would be necessarily suspended" due to direct physical loss or damage. Extra Expenses are costs incurred

to continue the business activities of Plaintiffs and the Other Class Members over and above the expenses they “would have normally incurred had there been no direct physical loss of or damage.”

57. Zurich also agreed to pay for the actual Time Element losses sustained by Plaintiffs and the other Class Members for a 60 day period resulting from the necessary suspension of their business activities in response to a Civil Authority order that prohibits access to their hotels, issued due to direct physical loss or damage to property (other than Covered Property) within five miles of their hotels.

58. Zurich also agreed to pay for: (i) the reasonable and necessary costs incurred by Plaintiffs and the other Class Members “to temporarily protect or preserve Covered Property,” when they take actions that “are necessary due to actual or imminent physical loss or damage” to Covered Property, and (ii) the Gross Earnings losses sustained by Plaintiffs and other Class Members after “first taking reasonable action for the temporary protection and preservation of Covered Property.”

59. Zurich also provided Sue & Labor coverage when it mandated that Plaintiffs and other Class Members “must see” that certain things “are done in the event of direct physical loss or damage to Covered Property,” including taking “all reasonable steps to protect the Covered Property from further damage caused by a Covered Cause of Loss,” and keeping “a record of expenses for emergency and temporary repairs for consideration in the settlement of the claim.”

60. Zurich also agreed to “pay for the actual Gross Earnings loss sustained by” Plaintiffs and other Class Members due to the necessary Suspension of business activities at their hotels if the Suspension is caused by order of a civil authority “enforcing any law or ordinance regulating communicable diseases and that such portions of the location are declared uninhabitable due to the threat of the spread of communicable disease.” This additional Communicable Disease coverage does “not apply to loss or damage that is payable under any other provision” in the Policy.

61. Losses caused by COVID-19 and the related orders issued by local and state authorities triggered the Gross Earnings, Extra Expense, Civil Authority, Protection and

Preservation of Property, Sue & Labor and Interruption by Communicable Disease provisions of the Zurich Policy.

B. *The Covered Cause of Loss*

62. The threat and presence of COVID-19 is direct physical loss or damage to property and has caused civil authorities across the United States to issue orders requiring the suspension or restriction of business at a wide range of establishments, including civil authorities with jurisdiction over business activities at Hotel Crescent Court, Westin Riverwalk San Antonio, Brice Kimpton Savannah, Westin Atlanta Perimeter North, Westin Annapolis, Westshore Grand Tampa, the Brown Palace, Holiday Inn Express Denver, and the properties of the other Class Members (the “Closure Orders”). Indeed, many governmental bodies specifically found that COVID-19 causes property damage when issuing stay at home orders. *See* N.Y.C. Emergency Exec. Order No. 100, at 2 (Mar. 16, 2020)⁴ (emphasizing the virulence of COVID-19 and that it “physically is causing property loss and damage”); Broward Cty. Fla. Administrator’s Emergency Order No. 20-01, at 2 (Mar. 22, 2020)⁵ (noting that COVID-19 “constitutes a clear and present threat to the lives, health, welfare, and safety of the people of Broward County”); Harris Cty. Tex. Office of Homeland Security & Emergency Mgmt., Order of Cty. J. Lina Hidalgo, at 2 (Mar. 24, 2020)⁶ (emphasizing that the COVID-19 virus can cause “property loss or damage” due to its contagious nature and transmission through “person-to-person contact, especially in group settings”); Napa Cty. Cal. Health & Human Service Agency, Order of the Napa Cty. Health Officer (Mar. 18, 2020)⁷ (issuing restrictions based on evidence of the spread of COVID-19 within the Bay Area and Napa County “and the physical damage to property caused by the virus”); City of Key West Fla. State of Local Emergency Directive 2020-03, at 2 (Mar. 21, 2020)⁸ (COVID-19 is “causing property

⁴ <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eeo-100.pdf>

⁵ <https://www.broward.org/CoronaVirus/Documents/BerthaHenryExecutiveOrder20-01.pdf>

⁶ https://www.taa.org/wp-content/uploads/2020/03/03-24-20-Stay-Home-Work-Safe-Order_Harris-County.pdf

⁷ <https://www.countyofnapa.org/DocumentCenter/View/16687/3-18-2020-Shelter-at-Home-Order>

⁸ https://www.cityofkeywest-fl.gov/egov/documents/1584822002_20507.pdf

damage due to its proclivity to attach to surfaces for prolonged periods of time”); City of Oakland Park Fla. Local Public Emergency Action Directive, at 2 (Mar. 19, 2020)⁹ (COVID-19 is “physically causing property damage”); Panama City Fla. Resolution No. 20200318.1 (Mar. 18, 2020)¹⁰ (stating that the resolution is necessary because of COVID-19’s propensity to spread person to person and because the “virus physically is causing property damage”); Exec. Order of the Hillsborough Cty. Fla. Emergency Policy Group, at 2 (Mar. 27, 2020)¹¹ (in addition to COVID-19’s creation of a “dangerous physical condition,” it also creates “property or business income loss and damage in certain circumstances”); Colorado Dep’t of Pub. Health & Env’t, Updated Public Health Order No. 20-24, at 1 (Mar. 26, 2020)¹² (emphasizing the danger of “property loss, contamination, and damage” due to COVID-19’s “propensity to attach to surfaces for prolonged periods of time”); Sixth Supp. to San Francisco Mayoral Proclamation Declaring the Existence of a Local Emergency, 26 (Mar. 27, 2020)¹³ (“This order and the previous orders issued during this emergency have all been issued ... also because the virus physically is causing property loss or damage due to its proclivity to attach to surfaces for prolonged periods of time”); and City of Durham NC, Second Amendment to Declaration of State of Emergency, at 8 (effective Mar. 26, 2020)¹⁴ (prohibiting entities that provide food services from allowing food to be eaten at the site where it is provided “due to the virus’s propensity to physically impact surfaces and personal property”).

⁹ <https://oaklandparkfl.gov/DocumentCenter/View/8408/Local-Public-Emergency-Action-Directive-19-March-2020-PDF>

¹⁰ <https://www.pcgov.org/AgendaCenter/ViewFile/Item/5711?fileID=16604>

¹¹ <https://www.hillsboroughcounty.org/library/hillsborough/media-center/documents/administrator/epg/saferathomeorder.pdf>

¹² <https://www.pueblo.us/DocumentCenter/View/26395/Updated-Public-Health-Order---032620>

¹³ https://sfgov.org/sunshine/sites/default/files/sotf_061020_item3.pdf

¹⁴ https://durhamnc.gov/DocumentCenter/View/30043/City-of-Durham-Mayor-Emergency-Dec-Second-Amdmt-3-25-20_FINAL

1. The COVID-19 Pandemic

63. According to the CDC, “COVID-19 is caused by a coronavirus called SARS-CoV-2. Coronaviruses are a large family of viruses that are common in people and [many] different species of animals, including camels, cattle, cats, and bats. Rarely, animal coronaviruses can infect people and then spread between people.”¹⁵ “The virus that causes COVID-19 is thought to spread mainly from person to person, mainly through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. Spread is more likely when people are in close contact with one another (within about 6 feet).”¹⁶

64. “It may be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes.”¹⁷ A scientific study investigating the stability of COVID-19 in different environmental conditions found that, following COVID-19 contamination, the virus could be detected hours later for tissues and paper, days later for wood, cloth and glass, or even a week later for stainless steel and plastic.¹⁸

65. The CDC advised travelers:

CDC recommends you stay home as much as possible and avoid close contact, especially if you are at higher risk of severe illness. Staying in temporary accommodations (hotels, motels, and rental properties) may expose you to the virus through person-to-person contact and possibly through contact with contaminated surfaces and objects.¹⁹

¹⁵ *Coronavirus Disease 2019 Basics*, <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Coronavirus-Disease-2019-Basics>.

¹⁶ *Id.*

¹⁷ *Coronavirus Disease 2019, How COVID-19 Spreads*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

¹⁸ See Alex W.H. Chin, et al., *Stability of SARS-CoV-2 in different environmental conditions*, *The Lancet Microbe* (April 2, 2020), [https://doi.org/10.1016/S2666-5247\(20\)30003-3](https://doi.org/10.1016/S2666-5247(20)30003-3).

¹⁹ *Coronavirus Disease 2019, Considerations for Travelers – Coronavirus in the US*, <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html>.

The CDC advised businesses to “[u]se videoconferencing or teleconferencing when possible for work-related meetings and gatherings,” and to “[c]ancel, adjust, or postpone large work-related meetings or gatherings that can only occur in-person in accordance with state and local regulations and guidance.”²⁰

66. In a Risk Topics alert, Zurich warned its policyholders worldwide about the dangers of COVID-19 at their properties. “Workers can be infected by contacting contaminated surfaces or objects and then touching their eyes, nose or mouth.”²¹ Citing a study published by the New England Journal of Medicine, Zurich explained in its Risk Topics alert that COVID-19 can remain in the air up to 3 hours, and has the following surface times:

- On copper: Up to 4 hours
- On cardboard: Up to 24 hours
- On plastic: 2 to 3 days
- On stainless steel: 2 to 3 days.²²

67. Those materials are all used at the hotels in this case.

68. There is sustained transmission of COVID-19 on six continents. The United States has reported the most cases and deaths, with cases in all 50 states.

2. Closure Orders in Texas

69. Authorities in Texas have issued several Closure Orders with a variety of restrictions impacting the business activities of Plaintiffs within their jurisdiction, including the following:

70. Effective March 21, 2020, Dallas County Judge Clay Jenkins, with jurisdiction over Hotel Crescent Court, issued an Order that closed bars, restaurants for dine-in, gyms, fitness

²⁰ *Coronavirus Disease 2019, Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 (COVID-19)*, (May 2020),

<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>.

²¹ Zurich, Risk Topics, Disinfecting Offices and Facilities During the COVID-19 Crisis (May 2020), <https://www.zurichna.com/-/media/project/zwp/zna/docs/riskeng/covid/zurich-risk-topic-cleaning-and-disinfecting-during-covid-19-outbreak.pdf?la=en&hash=F0638733CD4D60108E821C13AEFEC325>.

²² *Id.*

centers, and spas. Effective March 24, 2020, Dallas County Judge Jenkins issued an Order that required all individuals living within the County to “shelter at their place of residence,” and closed all but Essential Businesses. “To the greatest extent possible, all Essential Businesses” were required to comply with Social Distancing Guidelines, “including maintaining six feet social distancing for both employees and the general public.” The Order continued through April 23, 2020, at which time modifications for the limited reopening of some business became effective through May 15, 2020.

71. On March 19, 2020, effective March 20, 2020, Bexar County Judge Nelson W. Wolff, with jurisdiction over the Westin Riverwalk San Antonio, issued Executive Order NW-02, which prohibited gatherings of 10 or more persons in enclosed indoor and outdoor spaces, and which ordered that people shall avoid bars, restaurants for dine-in, and gyms. Effective March 24, 2020, Bexar County Judge Wolff issued Executive Order NW-03, which ordered all individuals living within the County to “stay at home,” except for Exempted Activities or Exempted Businesses, and which banned all gatherings outside a single household. Social distancing and other COVID-19 mitigating measures were required for Exempted Activities and Exempted Businesses. The Order closed bars, restaurants for dine-in, gyms, fitness centers, spas, and hair salons. Effective April 29, 2020, Bexar County Judge Wolff issued Executive Order NW-07, which restricted dine-in restaurant services to 25% of listed occupancy (while restaurants with more than 51% of their gross receipts from the sale of alcohol remained closed), reopened some business, and kept bars, gyms, fitness centers, spas and hair salons closed. The Order continued through May 19, 2020.

72. On March 19, 2020, effective March 20, 2020, Texas Governor Greg Abbott issued Executive Order GA 08, which ordered that “every person in Texas shall avoid gathering in groups of more than 10 people,” and that people shall avoid eating or drinking at bars and restaurants as well as visiting gyms.

73. Effective March 28, 2020, Texas Governor Greg Abbott issued Executive Order GA 11, which imposed a 14-day quarantine on persons flying to Texas from Connecticut, New

Jersey or New York, or the City of New Orleans. Effective March 30, 2020, Florida expanded the quarantine to persons driving to Texas from Louisiana (Executive Order GA 12). Quarantine requirements for air and road travel from Louisiana to Texas were lifted on April 27, 2020. Other air travel restrictions remained in effect until May 21, 2020.

74. On March 31, 2020, Texas Governor Greg Abbott, in accordance with guidance from the Commissioner of the Texas Department of State Health Services (“DSHS”), issued Executive Order GA 14, which required that “every person in Texas shall, except where necessary to provide or obtain essential services, minimize social gatherings and minimize in-person contact with people who are not in the same household.”

75. On April 17 and 27, 2020, Texas Governor Greg Abbott issued Executive Orders GA 16 and GA 18, which allowed for reopening of certain retail services.

76. On May 5, 2020, effective immediately, Texas Governor Greg Abbott issued Executive Order GA 21, which continued stay at home measures through May 19, 2020, and restricted dine-in restaurant services to 25% of listed occupancy (restaurants with more than 51% of their gross receipts from the sale of alcohol remained closed). Bars remained closed. Commercial indoor wedding and reception venues were also restricted to 25% occupancy. Hair salons could reopen with social distancing on May 8, 2020, and swimming pools could reopen at 25% occupancy on May 8, 2020.

77. On June 3, 2020, Texas Governor Greg Abbot issued Executive Order GA 26, which restricted business establishments to “to no more than 50 percent of the total listed occupancy of the establishment,” except for essential businesses and certain other businesses, including hair salons with social distancing, and dine-in restaurant services, as of June 12, 2020, at 75% of listed occupancy (restaurants with more than 51% of their gross receipts from the sale of alcohol remained closed). Indoor bars were subject to the 50% occupancy limit, and were restricted to serving only seated customers.

78. Effective June 26, 2020, Texas Governor Greg Abbott issued Executive Order GA 28, which restricted business establishments to “to no more than 50 percent of the total listed

occupancy of the establishment,” except for essential businesses, hair salons with social distancing, and dine-in restaurant services, as of June 29, 2020, at 50% of listed occupancy (restaurants with more than 51% of their gross receipts from the sale of alcohol remained closed). Bars were re-closed for on-site consumption.

79. Violations of the Bexar County, Dallas County and State of Texas Closure Orders were punishable by fine, imprisonment, or both until May 7, 2020. On May 7, 2002, the State of Texas retroactively eliminated confinement as a punishment for violations after a Dallas salon owner began serving a jail sentence for disregarding orders to keep her salon closed.

80. Hotel Crescent Court suspended (slowed or ceased) some or all of its business activities as a result of COVID-19 and the Closure Orders.

81. Westin Riverwalk San Antonio suspended (slowed or ceased) some or all of its business activities as a result of COVID-19 and the Closure Orders.

3. Closure Orders in Georgia

82. Authorities in Georgia have issued several Closure Orders with a variety of restrictions impacting the business activities of Plaintiffs within their jurisdiction, including the following:

83. On April 2, 2020, effective April 3, 2020, Georgia Governor Brian P. Kemp issued Executive Order 04.02.20.01, which required all persons in the State of Georgia to “shelter in place within their homes or places of residence,” banned gatherings of more than 10 persons without social distancing, and closed all businesses that are not Critical Infrastructure. Critical Infrastructure business were required to implement measures to mitigate the spread of COVID-19, including, for example, not allowing “gatherings of workers during working hours.” The Order also required restaurants to suspend dine-in services, and closed many establishments including bars, gyms, fitness centers, pools, spas and hair salons.

84. On April 23, 2020, effective May 1, 2020 unless otherwise noted, Georgia Governor Brian P. Kemp issued Executive Order 04.23.20.02, which narrowed the shelter in place requirement to persons “at higher risk for severe illness.” Effective April 27, 2020, the Order

allowed restaurants to resume dine-in services with a list of 39 mandated measures to mitigate COVID-19 risks. The Order also restricted occupancy of restaurants to no more than 10 patrons per 500 square feet of public space. Gyms and fitness centers were allowed to reopen with a list of 16 mandated measures to mitigate COVID-19 risks, and spas and hair salons were allowed to reopen with a list of 13 mandated measures to mitigate COVID-19 risks. The Order continued in place the ban on gatherings of more than 10 persons without social distancing, and continued the closure of swimming pools and bars.

85. On May 12, 2020, effective May 14, 2020 unless otherwise noted, Georgia Governor Brian P. Kemp issued Executive Order 05.12.20.02, which continued the narrowed shelter in place requirement through June 12, 2020. The Order retained the list of 39 mandated measures to mitigate COVID-19 risks at restaurants, and modified the restricted occupancy of restaurants to no more than 10 patrons per 300 feet of public space. The Order continued in place the ban on gatherings of more than 10 persons without social distancing, the ban on bars, and the COVID-19 risk mitigation requirements for other establishments.

86. On May 28, 2020, effective June 1, 2020 unless otherwise noted, Georgia Governor Brian P. Kemp issued Executive Order 05.28.20.02. The Order continued in place the ban on gatherings of more than 10 persons without social distancing, and the COVID-19 risk mitigation requirements for business and other establishments. The Order also allowed bars to reopen with a list of 39 mandated measures to mitigate COVID-19 risks.

87. On June 29, 2020, effective July 1, 2020 unless otherwise noted, Georgia Governor Brian P. Kemp issued Executive Order 06.29.20.02. The Order continued in place the ban on gatherings of more than 10 persons without social distancing, and the COVID-19 risk mitigation requirements for business and other establishments.

88. Persons violating Georgia Closure Orders are subject to arrest by a Sheriff.

89. The Brice Kimpton Savannah suspended (slowed or ceased) some or all of its business activities as a result of COVID-19 and the Closure Orders.

90. The Westin Atlanta Perimeter North suspended (slowed or ceased) some or all of its business activities as a result of COVID-19 and the Closure Orders.

4. Closure Orders in Maryland

91. Authorities in Maryland have issued several Closure Orders with a variety of restrictions impacting the business activities of Plaintiffs within their jurisdiction, including the following:

92. On March 12, 2020, effective immediately, Maryland Governor Lawrence J. Hogan, Jr. issued an Executive Order, which banned large gatherings and events of more than 250 people.

93. On March 16, 2020, effective immediately, Maryland Governor Lawrence J. Hogan, Jr. issued an Executive Order, which banned large gatherings and events of more than 50 people, closed all bars and restaurants for dine-in consumption, and closed all “fitness centers, health clubs, health spas, gyms, aquatic centers, and self-defense schools.”

94. On March 19, 2020, effective immediately, Maryland Governor Lawrence J. Hogan, Jr. issued Executive Order 20-03-19-01, which banned gatherings of more than 10 people and continued in force the restrictions and closures from prior Orders.

95. On March 23, 2020, effective March 23, 2020, Maryland Governor Lawrence J. Hogan, Jr. issued Executive Order 20-03-23-01, which closed all “Non-Essential Business,” continued in force the restrictions and closures from prior Orders, and closed, for example, barber shops, beauty salons, golf courses and driving ranges.

96. On March 30, 2020, effective immediately, Maryland Governor Lawrence J. Hogan, Jr. issued Executive Order 20-30-03-01, “Stay-at-Home Order,” which required all persons living in the State of Maryland to “stay in their homes or places of residences” except for Essential Activities, and continued in force the restrictions and closures from prior Orders.

97. On May 6, 2020, effective immediately, Maryland Governor Lawrence J. Hogan, Jr. issued Executive Order 20-05-06-01, which allowed expanded outdoor recreation and continued in force other restrictions and closures from prior Orders.

98. On May 13, 2020, effective immediately, Maryland Governor Lawrence J. Hogan, Jr. issued Executive Order 20-05-13-01, which allowed limited reopening of certain businesses with reduced occupancy and social distancing, including retail, beauty salons and barber shops, and continued in force other restrictions and closures from prior Orders. On May 15, 2020, the Stay-at-Home Order was replaced with a Safer at Home Advisory.

99. On May 27, 2020, effective immediately, Maryland Governor Lawrence J. Hogan, Jr. issued Executive Order 20-05-27-01, which allowed bars and restaurants to serve food and beverages in outdoor areas with social distancing and groups no larger than six persons, and continued in force other restrictions and closures from prior Orders.

100. On June 3, 2020, effective immediately, Maryland Governor Lawrence J. Hogan, Jr. issued Executive Order 20-06-03-01, which allowed restricted reopening of nail salons and certain other businesses, and continued in force the restrictions on bars and restaurants as well as other restrictions and closures from prior Orders.

101. Violations of Closure Orders in Maryland are punishable by fine, imprisonment, or both. Maryland State Police have enforced the Orders.

102. The Westin Annapolis suspended (slowed or ceased) some or all of its business activities as a result of COVID-19 and the Closure Orders.

5. Closure Orders in Florida

103. Authorities in Florida have issued several Closure Orders with a variety of restrictions impacting the business activities of Plaintiffs within their jurisdiction, including the following:

104. On March 17, 2020, effective immediately, Florida Governor Ron DeSantis issued Executive Order 20-68, which closed bars for sales of alcohol, and restricted restaurants to 50% capacity, with social distancing and other COVID-19 risk measures.

105. On March 19, 2020, Miami-Dade County Mayor Carlos A. Gimenez, with jurisdiction over the hotels of three Class Members, issued Emergency Order 07-20, which closed, for the duration of the State of Local Emergency, all non-essential businesses, including hotels not

operating at an airport, bars, restaurants for on-site dining, fitness centers, gyms, spas and hair salons.

106. On March 20, 2020, effective immediately, Florida Governor Ron DeSantis issued Executive Order 20-71, which closed bars for on-site consumption, and which closed restaurants for dine-in services.

107. On March 23, 2020, effective immediately, Florida Governor Ron DeSantis issued Executive Order 20-80, which imposed a 14-day quarantine on persons flying to Florida from Connecticut, New Jersey or New York. On March 27, 2020, Florida expanded the quarantine requirement to anyone entering Florida from areas with "substantial community spread," including Louisiana, and extended the quarantine requirement to anyone driving to Florida (Executive Order 20-86). Effective June 5, 2020, Florida lifted restrictions for commercial travelers and students traveling for instruction or school sports (Executive Order 20-139).

108. On March 24, 2020, effective immediately, Florida Governor Ron DeSantis issued Executive Order 20-83, which directed the State Surgeon General and State Health Officer to "issue a public health advisory against all social or recreational gatherings of 10 or more people" and encouraging anyone who can work remotely to do so.

109. On March 30, 2020, effective immediately, Florida Governor Ron DeSantis issued Executive Order 20-89, which ordered, among others, Miami-Dade, Broward, and Palm Beach Counties, with jurisdiction over the hotels of five Class Members, to close non-essential businesses in accordance with guidelines established by Miami-Dade County's Emergency Order 07-20 (described above).

110. On April 1, 2020, effective April 3, 2020, Florida Governor Ron DeSantis issued Executive Order 20-91, which required persons residing in Florida to stay at home, except for Essential Services and Activities. On April 29, 2020, Florida Governor DeSantis issued Executive Order 20-111, which extended these Safer at Home requirements until 12:01 a.m. on May 4, 2020.

111. On May 14, 2020, effective May 18, 2020, Florida Governor Ron DeSantis issued Executive Order 20-123, which restricted on-site consumption at bars to outdoor seating, and

which restricted gyms, fitness centers and restaurant dine-in services to 50% capacity, all with social distancing and other COVID-19 risk measures in place.

112. On June 3, 2020, effective June 5, 2020, Florida Governor Ron DeSantis issued Executive Order 20-139, which reopened restaurant bar areas to seated service.

113. Violations of Closure Orders in Florida are punishable by fine, imprisonment, or both.

114. The Westshore Grand Tampa suspended (slowed or ceased) some or all of its business activities as a result of COVID-19 and the Closure Orders.

6. Closure Orders in Colorado

115. Authorities in Colorado have issued several Closure Orders with a variety of restrictions impacting the business activities of Plaintiffs within their jurisdiction, including the following:

116. On March 16, 2020, effective March 17, 2020, the Colorado Department of Public Health & Environment (“CDPHE”) published Notice of Public Health Order 20-22, which closed all “bars, restaurants, gyms, theaters, and casinos to slow the spread of the COVID-19 virus.”

117. On March 19, 2020, CDPHE published Updated Notice of Public Health Order 20-22 which, effective March 19, 2020, added spas and hair salons to the list of closed businesses.

118. On March 25, 2020, effective March 26, 2020, Colorado Governor Jared Polis issued Executive Order D 2020 017, which directed “all Coloradans to stay at home,” and which closed “all businesses other than ‘Critical Businesses.’” Governor Polis directed CDPHE “to issue a public health order consistent with the directives” of his Executive Order.

119. On March 27, 2020, effective March 26, 2020, CDPHE published Second Updated Public Health Order 20-24, which implemented Governor Polis’ Stay at Home Order. The Public Health Order required all persons living in the State of Colorado “to Stay at Home whenever possible,” and banned all “gatherings of any number of people outside a residence,” except for Essential Activities. Critical Businesses were required to “comply with Social Distancing Requirements at all times,” and to adopt other COVID-19 risk mitigation measures. The Public

Health order included the Findings that “COVID-19 also physically contributes to property loss, contamination, and damage due to its propensity to attach to surfaces for prolonged periods of time,” and that the Public Health Order “helps to reduce the property damage caused by COVID-19.”

120. On April 6, 2020, Colorado Governor Jared Polis issued Executive Order D 2020 024, extending his Stay at Home Order through April 26, 2020. Governor Polis reiterated that “COVID-19 also physically contributes to property loss, contamination, and damage due to its propensity to attach to surfaces for prolonged periods of time.”

121. On April 8, 2020, Colorado Governor Jared Polis issued Executive Order D 2020 032, extending his March 11, 2020 Declaration of a Disaster Emergency due to COVID-19 for another 30 days. Governor Polis again reiterated that “COVID-19 also physically contributes to property loss, contamination, and damage due to its propensity to attach to surfaces for prolonged periods of time.”

122. On April 26, 2020, Colorado Governor Jared Polis issued Executive Order D 2020 044, “Safer at Home.” The Order permitted the limited reopening of certain business operations.

123. On April 26, 2020, effective April 27, 2020, CDPHE published Public Health Order 20-28, “Safer at Home.” Under the Order, bars and restaurants remained closed for on-premises consumption. Gyms remained closed except for personal training and small classes with social distancing. Hotel fitness centers, spas and salons were limited to hotel guests only, with social distancing and “frequent environmental cleaning.”

124. On June 1, 2020, Colorado Governor Jared Polis issued Executive Order D 2020 091, “Safer at Home and in the Vast, Great Outdoors.” The Order directed CDPHE to issue a Public Health Order to ease certain business restrictions, with social distancing, cleaning, and other measures to address COVID-19 risks. Wedding ceremonies were limited to “50% capacity not to exceed 50 people indoors,” with social distancing. Bars remained closed for on-premises consumption.

125. On June 5, 2020, CDPHE published Sixth Amended Public Health Order 20-28, “Safer at Home and in the Vast, Great Outdoors.” The Order restricted all gatherings to no more than 10 people, except for Necessary Activities. Outdoor swimming pools were permitted to open at 50% capacity, with hourly cleaning of frequently touched areas, objects, and bathrooms. Indoor gyms and pools were permitted to open at 25% capacity, with social distancing and other measures. Effective May 27, 2020, restaurants were permitted to “open to in-person dining at 50% of the indoor posted occupancy code limit, not to exceed 50 people, whichever is less,” with social distancing and party sizes limited to no more than eight persons. Bars remained closed for on-premises consumption.

126. Violations of Closure Orders in Colorado are punishable by fine, imprisonment, or both.

127. The Brown Palace suspended (slowed or ceased) some or all of its business activities as a result of COVID-19 and the Closure Orders.

128. The Holiday Inn Express Denver suspended (slowed or ceased) some or all of its business activities as a result of COVID-19 and the Closure Orders.

7. Closure Orders Throughout the United States

129. Closure Orders were also issued by local and state jurisdictions of Class Members throughout the United States. The list, in addition to Texas, Georgia, Maryland, Florida, and Colorado, includes the following additional states where Class Members have Covered Properties: Arizona, California, Illinois, Massachusetts, Minnesota, Missouri, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Virginia, and Washington; the list also includes the District of Columbia.

130. In New York City, where the Westin New York Grand Central and three other HEI portfolio hotels are located, on March 25, 2020, effective immediately, the City of New York Office of the Mayor issued Emergency Executive Order No. 103,²³ after earlier issuing Emergency

²³ <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eeo-103.pdf>

Executive Order No. 100 (discussed above). Emergency Executive Order No. 103 was given “because of the propensity of the virus to spread person-to-person and also because the actions taken to prevent such spread have led to property loss and damage,” and “to ensure that the Governor’s orders are enforced.” The Mayor ordered the closure of all non-essential businesses (“each such business and not-for-profit entity shall reduce its in-person workforce at any locations by 100%”). The Mayor also directed “the Fire Department of the City of New York, the New York City Police Department, the Department of Buildings, the Sheriff, and other agencies as needed to immediately enforce” the Order.

131. All of the Closure Orders cited in this Class Action Complaint were issued in response to the rapid spread of COVID-19.

8. The Impact of COVID-19 and the Closure Orders

132. The presence of COVID-19 caused direct physical loss or damage to Plaintiffs’ and the other Class Members’ Covered Property, by impairing and damaging the property, and by causing a necessary suspension of their business activities during a “Period of Liability.”

133. Plaintiffs and the other Class Members also incurred reasonable and necessary costs “to temporarily protect or preserve Covered Property” as a result of actual and imminent physical loss or damage to Covered Property caused by COVID-19.

134. The Closure Orders, including the issuance of Dallas County, Bexar County, Texas, Georgia, Maryland, Miami-Dade County, Florida, and Colorado Closure Orders, resulted from Covered Causes of Loss by impairing access to and business functions of Plaintiffs’ and the other Class Members’ Covered Property.

135. As of the filing of this Class Action Complaint, Plaintiffs estimate that Class Members have suffered hundreds of millions of dollars of Gross Earnings losses alone. These losses are ongoing and could increase substantially depending on the length and ultimate severity of the pandemic and the government response throughout the United States.

136. Westin Riverwalk San Antonio, Westin Atlanta Perimeter North, Westin Annapolis, Westshore Grand Tampa and the Brown Palace book through Marriott Bonvoy™.

These five hotels insure through HEI under the Zurich Policy rather than through Marriott, but, on information and belief, are included in Marriott's worldwide financial metrics.

137. On May 11, 2020, Marriott reported its financial results for the first quarter of 2020, which ended on March 31, 2020 ("1Q20"). President and Chief Executive Officer Arne M. Sorenson said, "In the last few months we have seen the impact of COVID-19 spread throughout our business in an unprecedented way." Sorenson reported that Revenue per Available Room ("RevPAR") fell sharply as the pandemic spread "and, in April, worldwide RevPAR declined approximately 90 percent." Sorenson stated that "roughly a quarter" of Marriott hotels were closed as of May 11, 2020. Sorenson also disclosed "extremely low levels of demand." Based on occupancy and booking trends, Sorenson noted that demand outside of China "has stabilized, albeit at very low levels." Accentuating the meager positive, Sorenson highlighted occupancy of around 20% in North American limited-service hotels in the two weeks leading up to the earning release, "benefitting from leisure and drive-to demand." Nonetheless, as Marriott said at the top of its earnings release, 1Q20 results "were dramatically impacted by the COVID-19 global pandemic and efforts to contain it." For 1Q20 compared to 1Q19, RevPAR and occupancy fell across all Marriott brands, including Westin.

138. On August 10, 2020, Marriott reported its financial results for the second quarter of 2020, which ended on June 30, 2020 ("2Q20"). President and Chief Executive Officer Anne M. Sorenson said that Marriott's "business continues to be profoundly impacted by COVID-19," but pointed to some tepid improvement in that "Worldwide RevPAR has climbed steadily since its low point of down 90 percent for the month of April, to a decline of 70 percent for the month of July." For 2Q20, Marriott reported: "Second quarter 2020 comparable systemwide constant dollar RevPAR declined 84.4 percent worldwide, 83.6 percent in North America and 86.7 percent outside North America." For 2Q20 compared to 2Q19, RevPAR and occupancy fell across all Marriott brands, including Westin.

139. Plaintiffs and the other Class Members purchased an all-risk insurance policy from Zurich to protect their businesses against the losses addressed by the Time Element coverages,

Special Coverages, and other coverages of the Policy. As a result of the presence of COVID-19 and the Closure Orders, Plaintiffs and the other Class Members suffered multiple occurrences of direct physical loss of or damage to Covered Property at dozens of locations throughout the United States. Plaintiffs and the other Class Members suffered Gross Earnings, Extra Expense, Civil Authority and Sue & Labor losses from the necessary suspension of their businesses, and incurred reasonable and necessary costs to reduce their Gross Earnings losses. Plaintiffs and the other Class Members also suffered Protection and Preservation of Property losses, which include Gross Earnings losses sustained after “first taking reasonable action for the temporary protection and preservation of Covered Property.” Plaintiffs and the other Class Members also suffered losses payable under their additional Interruption by Communicable Disease coverage.

140. On May 14, 2020, Zurich Group CFO George Quinn announced to reporters, in response to questions about claims by Zurich policyholders due to COVID-19, that whether a virus constitutes property damage “will be litigated again.” The May 14, 2020 announcement by Mr. Quinn is a repudiation of the Policy by Zurich.

141. Two weeks after Mr. Quinn’s public repudiation, even before ultimately issuing a denial letter, Zurich denied the claim of a popular California-based chain of hamburger and cheeseburger restaurants. That denial confirms that Zurich’s policy and practice is to deny property and casualty claims arising from COVID-19, resulting in litigation, as Zurich Group CFO George Quinn publicly announced.

142. Zurich’s repudiation of coverage is wrongful. Any alleged requirement of direct physical loss for the Time Element coverages, Special Coverages, and other coverages in the Policy is satisfied by the impairment of the business function of Plaintiffs’ and other Class Members’ Covered Properties at locations throughout the United States. Neither can Zurich meet its burden to show that any exclusions apply, including exclusions for contamination.

V. CLASS ACTION ALLEGATIONS

143. **Class Definition.** Plaintiffs bring this action pursuant to 735 ILCS 5/2-801, individually and on behalf of all others similarly situated. Plaintiffs seek to represent a nationwide Class defined as all persons and entities with claims due to COVID-19 and the Closure Orders under the Policy, including persons and entities that:

- (a) suffered a suspension of business and sustained loss of Gross Earnings related to COVID-19 and the Closure Orders, at locations covered by the Policy; or
- (b) incurred reasonable and necessary expenses to reduce their Gross Earnings losses due to COVID-19 and the Closure Orders; or
- (c) incurred Extra Expenses that they would not have incurred if there had been no direct physical loss or damage to the Covered Property, or to “resume and continue as nearly as practicable” their “normal business activities that otherwise would be necessarily suspended;” or
- (d) sustained Time Element losses caused by action of a civil or military authority due to COVID-19; or
- (e) sustained losses for their actions “to temporarily protect or preserve Covered Property” that were necessary due to actual or imminent physical loss or damage;” or
- (f) sustained Gross Earnings losses after “first taking reasonable action for the temporary protection and preservation of Covered Property;” or
- (g) incurred expenses when taking “all reasonable steps to protect the Covered Property from further damage caused by a Covered Cause of Loss;” or
- (h) sustained loss of Gross Earnings from their suspended business activities caused by order of a civil authority enforcing laws or ordinances regulating communicable diseases in locations “declared uninhabitable due to the threat of the spread of communicable disease.”

144. Excluded from the Class are Defendant and any of its members, affiliates, parents, subsidiaries, officers, directors, employees, successors, or assigns; governmental entities; and the Court staff assigned to this case and their immediate family members. Plaintiffs reserve the right to modify or amend the Class definition, as appropriate, during the course of this litigation.

145. This action has been brought and may properly be maintained on behalf of the Class proposed herein under the criteria of Rule 23 of the Federal Rules of Civil Procedure.

146. **Numerosity.** The members of the defined Class are so numerous that individual joinder of all Class Members is impracticable. While Plaintiffs are informed and believe that there are 81 or more members of the Class, the precise number of Class Members is unknown to Plaintiffs but may be ascertained from Defendant's books and records. Class Members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, internet postings, and/or published notice.

147. **Commonality and Predominance.** This action involves common questions of law and fact, which predominate over any questions affecting only individual Class Members, including, without limitation:

- (a) Zurich issued the all-risk Policy in exchange for payment of premiums by HEI for the Class;
- (b) whether the Class suffered a covered loss based on the Policy;
- (c) whether Zurich wrongfully repudiated all claims based on COVID-19 and the Closure Orders;
- (d) whether Zurich's Gross Earnings coverage applies to a suspension of business caused by COVID-19 and the Closure Orders;
- (e) whether Zurich's Extra Expense coverage applies to business losses caused by COVID-19 and the Closure Orders;
- (f) whether Zurich's Civil and Military Authority coverage applies to a suspension of business due to COVID-19 and the Closure Orders;

- (g) whether Zurich's Protection and Preservation of Property coverage applies to business losses due to COVID-19 and the Closure Orders;
- (h) whether Zurich's Sue & Labor coverage applies to business losses caused by COVID-19 and the Closure Orders;
- (i) whether Zurich's Interruption by Communicable Disease coverage applies to business losses caused by COVID-19 or the Closure Orders;
- (j) whether Zurich has breached its contract of insurance through a blanket repudiation of all claims based on suspension of business activities, business losses, costs or closures related to COVID-19 and the Closure Orders; and
- (k) whether Plaintiffs and the other Class Members are entitled to an award of reasonable attorney fees, interest and costs.

148. **Adequacy of Representation.** Plaintiffs are adequate Class representatives because their interests do not conflict with the interests of the other Class Members whom they seek to represent, Plaintiffs have retained counsel competent and experienced in complex class action litigation, including successfully litigating class action cases similar to this one, where insurers breached contracts with insureds by failing to pay the amounts owed under their policies, and Plaintiffs intend to prosecute this action vigorously. The interests of the above-defined Classes will be fairly and adequately protected by Plaintiffs and their counsel.

149. Plaintiffs' claims are typical of the other Class Members' claims because Plaintiffs and the other Class Members are all similarly affected by Defendant's refusal to pay under its Gross Earnings, Extra Expense, Civil and Military Authority, Protection and Preservation of Property, Sue & Labor and Interruption by Communicable Disease coverages. Plaintiffs' claims are based upon the same legal theories as those of the other Class Members. Plaintiffs and the other Class Members sustained damages as a direct and proximate result of the same wrongful practices in which Defendant engaged.

150. **Appropriateness.** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be

encountered in the management of this class action. Individualized litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

151. Plaintiffs seek class-wide adjudication as to the interpretation, and resultant scope, of Defendant's Gross Earnings, Extra Expense, Civil and Military Authority, Protection and Preservation of Property, Sue & Labor and Interruption by Communicable Disease coverages. The prosecution of separate actions by individual Class Members would create an immediate risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for the Defendant. Moreover, the adjudications sought by Plaintiffs could, as a practical matter, substantially impair or impede the ability of other Class Members, who are not parties to this action, to protect their interests.

152. Defendant acted or refused to act on grounds generally applicable to Plaintiffs and the other Class Members, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Class Members.

VI. CLAIMS FOR RELIEF

COUNT I

BREACH OF CONTRACT – GROSS EARNINGS COVERAGE

153. Plaintiffs repeat and reallege Paragraphs 1-152 as if fully set forth herein.

154. Plaintiffs bring this Count individually and on behalf of the Class.

155. The Policy is a contract under which HEI paid Zurich premiums on behalf of the Class, in exchange for Zurich's promise to pay their losses for claims covered by the Policy.

156. In the Policy, Zurich agreed to pay for its Insureds actual Gross Earnings losses due to the necessary suspension of their business activities during the "Period of Liability."

157. The “Period of Liability” extends until the date when Plaintiffs and the other Class Members can restore their business “with due diligence, to the condition that would have existed had no direct physical loss or damage occurred” to their Covered Property, or for one year.

158. Gross Earnings coverage applies when direct physical loss or damage to Covered Property causes a “slowdown or cessation” of the business activities of Plaintiffs and the other Class Members. Gross Earnings coverage also pays for lost “rental income” of Plaintiffs and the other Class Members when direct physical loss or damage renders part or all of their Insured Locations “untenantable.”

159. A recoverable Gross Earnings loss, for which Zurich agreed to pay Plaintiffs and the other Class Members, is the Gross Earnings value that Plaintiffs and the other Class Members “would have earned during the Period of Liability, less charges and expenses that do not necessarily continue during the Period of Liability.” Gross Earnings value is determined based on lost net sales, rental income and other income, plus “continuation of normal charges and expenses, including Ordinary Payroll.”

160. Zurich also agreed to pay the reasonable and necessary expenses that Plaintiffs and the other Class Members incurred to reduce the amount of their Gross Earnings loss during the Period of Liability, except expenses to extinguish a fire.

161. COVID-19 caused direct physical loss and damage to the Covered Property of Class Members, requiring suspension of business activities at their Covered Property. Losses caused by COVID-19 thus triggered the Gross Earnings provision of the Policy.

162. Class Members have complied with all applicable provisions of the Policy and/or those provisions have been waived by Zurich or Zurich is estopped from asserting them, and yet Zurich has abrogated its insurance coverage obligations pursuant to the Policy’s clear and unambiguous terms.

163. By repudiating coverage for any Gross Earnings losses incurred by the Class in connection with the COVID-19 pandemic, Zurich has breached its coverage obligations under the Policy.

164. As a result of Zurich's breach of the Policy, the Class has sustained substantial damages for which Zurich is liable, in an amount to be established at trial.

COUNT II
BREACH OF CONTRACT – EXTRA EXPENSE COVERAGE

165. Plaintiffs repeat and reallege Paragraphs 1-152 as if fully set forth herein.

166. Plaintiffs bring this Count individually and on behalf of the Class.

167. The Policy is a contract under which HEI paid Zurich premiums on behalf of the Class, in exchange for Zurich's promise to pay their losses for claims covered by the Policy.

168. In the Policy, Zurich agreed to pay reasonable and necessary Extra Expense that Plaintiffs and the other Class Members incur during the "Period of Liability" that they would not have incurred if there had been no direct physical loss or damage to their Covered Property.

169. "Extra Expense" includes cost for Plaintiffs and the other Class Members to "resume and continue as nearly as practicable" their "normal business activities that otherwise would be necessarily suspended."

170. Due to COVID-19 and the Closure Orders, Class Members incurred Extra Expense at Covered Property.

171. Class Members have complied with all applicable provisions of the Policy and/or those provisions have been waived by Zurich or Zurich is estopped from asserting them, and yet Zurich has abrogated its insurance coverage obligations pursuant to the Policy's clear and unambiguous terms.

172. By repudiating coverage for any business losses incurred by the Class in connection with the Closure Orders and the COVID-19 pandemic, Zurich has breached its coverage obligations under the Policy.

173. As a result of Zurich's breach of the Policy, the Class has sustained substantial damages for which Zurich is liable, in an amount to be established at trial.

COUNT III
BREACH OF CONTRACT – CIVIL AUTHORITY COVERAGE

174. Plaintiffs repeat and reallege Paragraphs 1-152 as if fully set forth herein.

175. Plaintiffs bring this Count individually and on behalf of the Class.

176. The Policy is a contract under which HEI paid Zurich premiums on behalf of the Class, in exchange for Zurich's promise to pay their losses for claims covered by the Policy.

177. In the Policy, Zurich agreed to pay for the actual Time Element losses sustained by Plaintiffs and the other Class Members for a 60 day period resulting from the necessary suspension of their business activities in response to a Civil Authority order that prohibits access to their hotels, issued due to direct physical loss or damage to property (other than Covered Property) within five miles of their hotels.

178. The Closure Orders triggered the Civil Authority provision of the Policy. COVID-19 caused direct physical loss or damage to property within five miles of the Covered Property in the same manner described above that it caused direct physical loss or damage to the Covered Property. The Closure Orders were actions taken in response to the dangerous physical conditions resulting from the direct physical loss or damage to such properties. And, the Closure Orders prohibited access to an immediately surrounding area that included the Covered Property.

179. Class Members have complied with all applicable provisions of the Policy, and/or those provisions have been waived by Zurich, or Zurich is estopped from asserting them, and yet Zurich has abrogated its insurance coverage obligations pursuant to the Policy's clear and unambiguous terms.

180. By repudiating coverage for any business losses incurred by the Class in connection with the Closure Orders and the COVID-19 pandemic, Zurich has breached its coverage obligations under the Policy.

181. As a result of Zurich's breach of the Policy, the Class has sustained substantial damages for which Zurich is liable, in an amount to be established at trial.

COUNT IV
BREACH OF CONTRACT – PROTECTION AND PRESERVATION COVERAGE

182. Plaintiffs repeat and reallege Paragraphs 1-152 as if fully set forth herein.

183. Plaintiffs bring this Count individually and on behalf of the Class.

184. The Policy is a contract under which HEI paid Zurich premiums on behalf of the Class, in exchange for Zurich's promise to pay their losses for claims covered by the Policy.

185. In the Policy, Zurich agreed to pay the "Protection and Preservation of Property" losses incurred by Plaintiffs and other Class Members for their reasonable and necessary costs "to temporarily protect or preserve Covered Property," when they take actions that "are necessary due to actual or imminent physical loss or damage" to Covered Property.

186. Zurich also agreed pay the Gross Earnings losses sustained by Plaintiffs and other Class Members after "first taking reasonable action for the temporary protection and preservation of Covered Property."

187. Class Members suspended operations and took other actions that triggered the Protection and Preservation provision of the Policy.

188. Class Members have complied with all applicable provisions of the Policy, and/or those provisions have been waived by Zurich, or Zurich is estopped from asserting them, and yet Zurich has abrogated its insurance coverage obligations pursuant to the Policy's clear and unambiguous terms.

189. By repudiating coverage for any business losses incurred by the Class in connection with the Closure Orders and the COVID-19 pandemic, Zurich has breached its coverage obligations under the Policy.

190. As a result of Zurich's breach of the Policy, the Class has sustained substantial damages for which Zurich is liable, in an amount to be established at trial.

COUNT V
BREACH OF CONTRACT – SUE & LABOR COVERAGE

191. Plaintiffs repeat and reallege Paragraphs 1-152 as if fully set forth herein.

192. Plaintiffs bring this Count individually and on behalf of the Class.

193. The Policy is a contract under which HEI paid Zurich premiums on behalf of the Class, in exchange for Zurich's promise to pay their losses for claims covered by the Policy.

194. In the Policy, Zurich agreed to pay Plaintiffs and the other Class Members for the costs incurred by them in taking "all reasonable steps to protect the Covered Property from further damage caused by a Covered Cause of Loss."

195. Class Members suspended operations and took other actions that triggered the Sue & Labor provision of the Policy.

196. Class Members have complied with all applicable provisions of the Policy, and/or those provisions have been waived by Zurich, or Zurich is estopped from asserting them, and yet Zurich has abrogated its insurance coverage obligations pursuant to the Policy's clear and unambiguous terms.

197. By repudiating coverage for any business losses incurred by the Class in connection with the Closure Orders and the COVID-19 pandemic, Zurich has breached its coverage obligations under the Policy.

198. As a result of Zurich's breach of the Policy, the Class has sustained substantial damages for which Zurich is liable, in an amount to be established at trial.

COUNT VI
BREACH OF CONTRACT – INTERRUPTION BY
COMMUNICABLE DISEASE COVERAGE

199. Plaintiffs repeat and reallege Paragraphs 1-152 as if fully set forth herein.

200. Plaintiffs bring this Count individually and on behalf of the Class.

201. The Policy is a contract under which HEI paid Zurich premiums on behalf of the Class, in exchange for Zurich's promise to pay their losses for claims covered by the Policy.

202. In the Policy, Zurich additionally agreed to "pay for the actual Gross Earnings loss sustained by" Plaintiffs and other Class Members due to the necessary Suspension of business activities at their hotels if the Suspension is caused by order of a civil authority "enforcing any law

or ordinance regulating communicable diseases and that such portions of the location are declared uninhabitable due to the threat of the spread of communicable disease.”

203. This additional Communicable Disease coverage does “not apply to loss or damage that is payable under any other provision” in the Policy.

204. The Closure Orders triggered the Interruption by Communicable Disease provision of the Policy.

205. Class Members have complied with all applicable provisions of the Policy, and/or those provisions have been waived by Zurich, or Zurich is estopped from asserting them, and yet Zurich has abrogated its insurance coverage obligations pursuant to the Policy’s clear and unambiguous terms.

206. By repudiating coverage for any business losses incurred by the Class in connection with the Closure Orders and the COVID-19 pandemic, Zurich has breached its coverage obligations under the Policy.

207. As a result of Zurich’s breach of the Policy, the Class has sustained substantial damages for which Zurich is liable, in an amount to be established at trial.

COUNT VII **DECLARATORY JUDGMENT – GROSS EARNINGS COVERAGE**

208. Plaintiffs repeat and reallege Paragraphs 1-152 as if fully set forth herein.

209. Plaintiffs bring this Count individually and on behalf of the Class.

210. The Policy is a contract under which HEI paid Zurich premiums on behalf of the Class, in exchange for Zurich’s promise to pay their losses for claims covered by the Policy.

211. Class Members have complied with all applicable provisions of the Policy and/or those provisions have been waived by Zurich, or Zurich is estopped from asserting them, and yet Zurich has abrogated its insurance coverage obligations pursuant to the Policy’s clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Class Members are entitled.

212. Zurich has repudiated coverage related to COVID-19 on a uniform and class wide basis, without individual bases or investigations, such that the Court can render declaratory judgment irrespective of whether members of the Class have filed a claim.

213. An actual case or controversy exists regarding Class Members' rights and Zurich's obligations under the Policy to reimburse the full amount of Gross Earnings losses incurred by the Class in connection with suspension of their businesses stemming from the COVID-19 pandemic.

214. Pursuant to 735 ILCS 5/2-701, Plaintiffs seek a declaratory judgment from this Court declaring the following:

- i. Class Members' Gross Earnings losses incurred in connection with the Closure Orders and the necessary suspension of their businesses stemming from the COVID-19 pandemic are insured losses under the Policy; and
- ii. Class Members' Gross Earnings losses include reasonable and necessary costs incurred to reduce their Gross Earnings losses; and
- iii. Zurich is obligated to pay the Class for the full amount of the Gross Earnings losses incurred and to be incurred in connection with the Closure Orders during the Period of Liability and the necessary suspension of their businesses stemming from the COVID-19 pandemic, and for the reasonable and necessary costs incurred to reduce their Gross Earnings losses.

COUNT VIII **DECLARATORY JUDGMENT – EXTRA EXPENSE COVERAGE**

215. Plaintiffs repeat and reallege Paragraphs 1-152 as if fully set forth herein.

216. Plaintiffs bring this Count individually and on behalf of the Class.

217. The Policy is a contract under which HEI paid Zurich premiums on behalf of the Class, in exchange for Zurich's promise to pay their losses for claims covered by the Policy.

218. Class Members have complied with all applicable provisions of the Policy and/or those provisions have been waived by Zurich, or Zurich is estopped from asserting them, and yet Zurich has abrogated its insurance coverage obligations pursuant to the Policy's clear and

unambiguous terms and has wrongfully and illegally refused to provide coverage to which Class Members are entitled.

219. Zurich has repudiated coverage related to COVID-19 on a uniform and class wide basis, without individual bases or investigations, such that the Court can render declaratory judgment irrespective of whether members of the Class have filed a claim.

220. An actual case or controversy exists regarding Class Members' rights and Zurich's obligations under the Policy to reimburse the full amount of Extra Expense losses incurred by the Class in connection with suspension of their businesses stemming from the COVID-19 pandemic.

221. Pursuant to 735 ILCS 5/2-701, Plaintiffs seek a declaratory judgment from this Court declaring the following:

- i. Class Members' Extra Expense losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under the Policy; and
- ii. Zurich is obligated to pay the Class for the full amount of the Extra Expense losses incurred and to be incurred in connection with the Closure Orders during the Period of Liability and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

COUNT IX
DECLARATORY JUDGMENT – CIVIL AUTHORITY COVERAGE

222. Plaintiffs repeat and reallege Paragraphs 1-152 as if fully set forth herein.

223. Plaintiffs bring this Count individually and on behalf of the Class.

224. The Policy is a contract under which HEI paid Zurich premiums on behalf of the Class, in exchange for Zurich's promise to pay their losses for claims covered by the Policy.

225. Class Members have complied with all applicable provisions of the Policy and/or those provisions have been waived by Zurich, or Zurich is estopped from asserting them, and yet Zurich has abrogated its insurance coverage obligations pursuant to the Policy's clear and

unambiguous terms and has wrongfully and illegally refused to provide coverage to which Class Members are entitled.

226. Zurich has repudiated coverage related to COVID-19 on a uniform and class wide basis, without individual bases or investigations, such that the Court can render declaratory judgment irrespective of whether members of the Class have filed a claim.

227. An actual case or controversy exists regarding Class Members' rights and Zurich's obligations under the Policy to reimburse the full amount of Civil and Military Authority losses incurred by the Class in connection with suspension of their businesses stemming from COVID-19 and the Closure Orders. Pursuant to 735 ILCS 5/2-701, Plaintiffs seek a declaratory judgment from this Court declaring the following:

- i. Class Members' Civil and Military Authority losses incurred in connection with the Closure Orders and the necessary suspension of their businesses stemming from the COVID-19 pandemic are insured losses under the Policy; and
- ii. Zurich is obligated to pay the Class for the full amount of the Civil and Military Authority losses incurred and to be incurred in connection with the Closure Orders during the Period of Liability and the necessary suspension of their businesses stemming from the COVID-19 pandemic.

COUNT X
DECLARATORY JUDGMENT – PROTECTION AND PRESERVATION COVERAGE

228. Plaintiffs repeat and reallege Paragraphs 1-152 as if fully set forth herein.

229. Plaintiffs bring this Count individually and on behalf of the Class.

230. The Policy is a contract under which HEI paid Zurich premiums on behalf of the Class, in exchange for Zurich's promise to pay their losses for claims covered by the Policy.

231. Class Members have complied with all applicable provisions of the Policy and/or those provisions have been waived by Zurich, or Zurich is estopped from asserting them, and yet Zurich has abrogated its insurance coverage obligations pursuant to the Policy's clear and

unambiguous terms and has wrongfully and illegally refused to provide coverage to which Class Members are entitled.

232. Zurich has repudiated coverage related to COVID-19 on a uniform and class wide basis, without individual bases or investigations, such that the Court can render declaratory judgment irrespective of whether members of the Class have filed a claim.

233. An actual case or controversy exists regarding Members' rights and Zurich's obligations under the Policy to reimburse the full amount of Protection and Preservation of Property losses incurred by the Class in connection with suspension of their businesses stemming from the COVID-19 pandemic.

234. Pursuant to 735 ILCS 5/2-701, Plaintiffs seek a declaratory judgment from this Court declaring the following:

- i. Class Members' Protection and Preservation of Property losses incurred in connection with the Closure Orders and the necessary suspension of their businesses stemming from the COVID-19 pandemic are insured losses under the Policy; and
- ii. Class Members' Protection and Preservation of Property losses include the Gross Earnings losses sustained after "first taking reasonable action for the temporary protection and preservation of Covered Property;" and
- iii. Zurich is obligated to pay the Class for the full amount of Protection and Preservation of Property losses incurred and to be incurred in connection with the Closure Orders during the Period of Liability and the necessary suspension of their businesses stemming from the COVID-19 pandemic, and Zurich is also obligated to pay the Class for the full amount of Gross Earnings losses they reasonably and necessarily sustained after "first taking reasonable action for the temporary protection and preservation of Covered Property."

COUNT XI
DECLARATORY JUDGMENT – SUE & LABOR COVERAGE

235. Plaintiffs repeat and reallege Paragraphs 1-152 as if fully set forth herein.

236. Plaintiffs bring this Count individually and on behalf of the Class.

237. The Policy is a contract under which HEI paid Zurich premiums on behalf of the Class, in exchange for Zurich's promise to pay their losses for claims covered by the Policy.

238. Class Members have complied with all applicable provisions of the Policy and/or those provisions have been waived by Zurich, or Zurich is estopped from asserting them, and yet Zurich has abrogated its insurance coverage obligations pursuant to the Policy's clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Class Members are entitled.

239. Zurich has repudiated coverage related to COVID-19 on a uniform and class wide basis, without individual bases or investigations, such that the Court can render declaratory judgment irrespective of whether members of the Class have filed a claim.

240. An actual case or controversy exists regarding Class Members' rights and Zurich's obligations under the Policy to reimburse the full amount of Sue & Labor losses incurred by the Class in connection with suspension of their businesses stemming from the Closure Orders and the COVID-19 pandemic.

241. Pursuant to 735 ILCS 5/2-701, Plaintiffs seek a declaratory judgment from this Court declaring the following:

- i. Class Members' Sue & Labor losses incurred in connection with the Closure Orders and the necessary suspension of their businesses stemming from the COVID-19 pandemic are insured losses under the Policy; and
- ii. Zurich is obligated to pay the Class for the full amount of the Sue & Labor losses incurred and to be incurred in connection with the Closure Orders and the necessary suspension of their businesses stemming from the COVID-19 pandemic.

COUNT XII
DECLARATORY JUDGMENT – INTERRUPTION BY
COMMUNICABLE DISEASE COVERAGE

242. Plaintiffs repeat and reallege Paragraphs 1-152 as if fully set forth herein.

243. Plaintiffs bring this Count individually and on behalf of the Class.

244. The Policy is a contract under which HEI paid Zurich premiums on behalf of the Class, in exchange for Zurich's promise to pay their losses for claims covered by the Policy.

245. Class Members have complied with all applicable provisions of the Policy and/or those provisions have been waived by Zurich, or Zurich is estopped from asserting them, and yet Zurich has abrogated its insurance coverage obligations pursuant to the Policy's clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Class Members are entitled.

246. Zurich has repudiated coverage related to COVID-19 on a uniform and class wide basis, without individual bases or investigations, such that the Court can render declaratory judgment irrespective of whether members of the Class have filed a claim.

247. An actual case or controversy exists regarding Class Members' rights and Zurich's obligations under the Policy to reimburse the full amount of Interruption by Communicable Disease losses incurred by the Class in connection with suspension of their businesses stemming from the Closure Orders and the COVID-19 pandemic.

248. Pursuant to 735 ILCS 5/2-701, Plaintiffs seek a declaratory judgment from this Court declaring the following:

- i. Class Members' Interruption by Communicable Disease losses incurred in connection with the Closure Orders and the necessary suspension of their businesses stemming from the COVID-19 pandemic are insured losses under the Policy; and
- ii. Zurich is obligated to pay the Class for the full amount of the Interruption by Communicable Disease losses incurred and to be incurred in connection with the

Closure Orders during the Period of Liability and the necessary suspension of their businesses stemming from the COVID-19 pandemic.

VII. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all Class Members, respectfully requests that the Court enter judgment in their favor and against Defendant as follows:

- a. Entering an order certifying the proposed nationwide Class, as requested herein, designating Plaintiffs as Class representatives, and appointing Plaintiffs' undersigned attorneys as Counsel for the Class;
- b. Entering judgment on Counts I-VI in favor of the Class and awarding damages for breach of contract in an amount to be determined at trial;
- c. Entering declaratory judgments on Counts VII-XII in favor of the Class, as follows;
 - i. Class Members' Gross Earnings, Extra Expense, Civil and Military Authority, Protection and Preservation of Property, Sue & Labor and Interruption by Communicable Disease losses incurred in connection with the Closure Orders and the necessary suspension of their businesses stemming from the COVID-19 pandemic are insured losses under the Policy; and
 - ii. Zurich is obligated to pay for the foregoing losses incurred and to be incurred by the Class related to COVID-19, the Closure Orders and the necessary suspension of their businesses stemming from the COVID-19 pandemic, and to pay the Class the expenses reasonably incurred by them to reduce their Time Element losses;
- d. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded;
- e. Ordering Defendant to pay attorneys' fees and costs of suit;
- f. Ordering Defendant to pay multiple damages where required under state law; and
- g. Ordering such other and further relief as may be just and proper.

VIII. JURY DEMAND

Plaintiffs hereby demand a trial by jury on all claims so triable.

Dated: August 26, 2020

Respectfully submitted,

/s/ Adam J. Levitt

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