

CASE NO: A-22-849969-C  
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16 *Attorneys for Plaintiffs*

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18 **DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

20 PANDA RESTAURANT GROUP, INC.; PANDA  
INN INC.; PANDA EXPRESS INC.; PANDA  
21 SYSTEMS INC.; HIBACHI-SAN INC.; PANDA  
EXPRESS CT TURNPIKES LLC; PFV II RC LLC;  
22 PFV UTC LLC; PFV BARBECUE LLC; YAKIYA  
OPERATIONS LLC; PANDA EXPRESS (P.R.)  
23 INC.; GUA-PX LLC; PANDA EXPRESS  
(CANADA) ULC; ALL STATES REALTY CO.;  
24 CITADEL PANDA EXPRESS INC.; MBOS  
CONCESSIONS LLC; PLEASANT HILL PX LLC;  
25 PACOIMA PX LLC; WEST COLLEGE PX LLC;  
26 MID WEST CITY PX LLC; PXCT LLC; ROCKY  
RIVER PX LLC,

27 Plaintiffs,

28 vs.

Case No.:  
Dept. No.:

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

**BUSINESS COURT REQUESTED:**  
EDCR 1.61 – Business Tort Claim/Enhanced  
Case Management

**EXEMPT FROM ARBITRATION:**  
Business Court Matter  
Declaratory Relief Sought and  
Amount in Controversy Greater  
Than \$50,000

1 LEXINGTON INSURANCE COMPANY; AIG  
SPECIALTY INSURANCE COMPANY;  
2 WESTPORT INSURANCE CORPORATION;  
EVEREST INDEMNITY INSURANCE  
3 COMPANY; AXIS SURPLUS INSURANCE  
COMPANY; EVANSTON INSURANCE  
4 COMPANY; MAXUM INDEMNITY COMPANY;  
HALLMARK SPECIALTY INSURANCE  
5 COMPANY, and DOES 1-20,

6 Defendants.  
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1 COMPLAINT

2 Plaintiffs Panda Restaurant Group, Inc., Panda Inn Inc., Panda Express Inc., Panda Systems  
3 Inc., Hibachi-San Inc., Panda Express CT Turnpikes LLC, PFV II RC LLC, PFV UTC LLC, PFV  
4 Barbecue LLC, Yakiya Operations LLC, Panda Express (P.R.) Inc., GUA-PX LLC, Panda Express  
5 (Canada) ULC, All States Realty Co., Citadel Panda Express Inc., MBOS Concessions LLC, Pleasant  
6 Hill PX LLC, Pacoima PX LLC, West College PX LLC, Mid West City PX LLC, PXCT LLC, Rocky  
7 River PX LLC (collectively, “PANDA” or “Plaintiffs”), by and through their undersigned attorneys,  
8 in their Complaint against Defendants AIG Specialty Insurance Company, Axis Surplus Insurance  
9 Company, Evanston Insurance Company, Everest Indemnity Insurance Company, Hallmark Specialty  
10 Insurance Company, Lexington Insurance Company, Maxum Indemnity Company, and Westport  
11 Insurance Corporation (collectively, the “INSURER DEFENDANTS”), allege as follows:

12 NATURE OF THE CASE

13 1. This is an action for declaratory judgment and breach of contract arising out of the  
14 refusal of INSURER DEFENDANTS, to live up to their promises to its policyholder, PANDA.  
15 INSURER DEFENDANTS promised to pay for, in exchange for premiums paid, physical loss of or  
16 physical damage to and related business interruption losses and extra expenses at approximately  
17 hundreds of covered locations in forty-nine states, as well as certain U.S. territories and Canada, under  
18 their “all risk” insurance policies. A copy of each of the relevant INSURER DEFENDANTS policies  
19 are attached hereto as **Exhibits A through L**, and are incorporated herein by reference.

20 2. PANDA is a leader in mainly Asian dining experiences across the globe. Among  
21 others, PANDA’s dining umbrella includes: Panda Inn, the original fine dining restaurants concept;  
22 Panda Express, its gourmet Chinese food concept served in a fast, casual environment; Hibachi-San,  
23 its Japanese grill concept; Yakiya, known for its high-end, chef selected *prix-fixe* menu; Uncle Tetsu,  
24 a specialty Japanese cheesecake bakery; and Raising Cane’s, serving high quality Southern comfort  
25 foods. The family owned and operated company, which was founded in 1973 when the first Panda Inn  
26 restaurant was opened, is still run by its founders, Nevada residents. A fast-service version of the  
27 Panda Inn – Panda Express – first opened in 1983. By 1992, PANDA had opened nearly one hundred  
28 Panda Express restaurants. Panda Express is now not only the largest American Chinese restaurant

1 chain in the United States with over 2,000 stores, tens of thousands associates and over a billion dollars  
2 in sales annually, but it is also the largest family-owned restaurant chain in America.

3 3. During peak times, scores of people come in and out of PANDA restaurants to dine,  
4 shop, and host or cater events. Annually, millions of guests dine at PANDA restaurants.

5 4. This all changed beginning in 2020 with COVID-19 and SARS-CoV-2. SARS-CoV-2  
6 had an unprecedented and catastrophic effect on PANDA's property and business operations, causing  
7 in excess of one hundred million dollars in losses.

8 5. The havoc wrought by SARS-CoV-2 is well-documented. According to the Centers  
9 for Disease Control ("CDC"), COVID-19 has infected more than seventy-eight million people and  
10 killed nearly 945,000 in the United States. The communities where PANDA's properties are located  
11 have not at all been spared from this tragedy. Indeed, certain of PANDA's associates themselves  
12 learned they were infected with COVID-19 as the presence of SAR-CoV-2 everywhere unfolded.

13 6. Canada has not been spared from this tragedy. According to the Canadian  
14 government's epidemiology updates, as of March 17, 2022, COVID-19 has infected at least three  
15 million people and killed at least 37,020 people in Canada. In Alberta, the province where several of  
16 PANDA's properties are located, more than 4,000 people have died of COVID-19.

17 7. According to the WHO, COVID-19 has infected at least 39,157 people and killed at  
18 least 339 people in Guam.

19 8. According to the New York Times, COVID-19 has infected at least 510,029 people  
20 and killed at least 4,152 people in Puerto Rico.

21 9. Beyond the human toll, COVID-19 has had a devastating impact on the economies of  
22 the communities where PANDA's properties are located, causing widespread physical losses, property  
23 damage and lost revenue and extra expenses for many businesses, including PANDA's restaurant  
24 locations. As a result of SARS-CoV-2 and COVID-19, PANDA has been prevented from conducting  
25 normal business operations and deprived of the use of its business properties. Even when permitted to  
26 re-open, as a result of the spread of COVID-19, PANDA's properties required substantial physical  
27 alterations and other protective measures – at significant expense to PANDA. Further, the presence  
28 of SARS-CoV-2 within PANDA's insured locations also caused direct physical loss of or damage to

1 properties (or both) by transforming the properties from usable and safe into properties that are  
2 unsatisfactory and prohibited for use, uninhabitable, unfit for their intended function, and extremely  
3 dangerous and potentially deadly for humans. Such conditions are simply unacceptable for locations  
4 where guests eat.

5 10. SARS-CoV-2 and COVID-19 caused direct physical loss of or damage to properties  
6 (or both) throughout the locales where PANDA insured properties are based, including to PANDA  
7 locations and surrounding areas, by altering the physical conditions of the properties so that they were  
8 no longer safe or fit for occupancy or use, and/or no longer permitted to be used. Specifically, scientific  
9 evidence demonstrates that SARS-CoV-2 attaches itself to surfaces and properties, thereby producing  
10 a physical change in the condition of the surfaces and properties—from safe and touchable to unsafe  
11 and deadly. Scientific evidence also shows that SARS-CoV-2 also physically alters and damages the  
12 air within buildings such that the air is no longer safe to breathe. This can and did occur when, for  
13 example, certain PANDA associates and guests who were infected with SARS-CoV-2 expelled  
14 droplets throughout PANDA’s properties.

15 11. Because of the physical alterations of its properties, including the air, airspaces, and  
16 surfaces in its properties, which rendered the insured properties incapable of performing their essential  
17 functions, PANDA sustained direct physical loss of or damage to its property (or both). The disruption  
18 of normal business operations resulted in the severe and substantial losses more particularly described  
19 below.

20 12. As a direct cause of SARS-CoV-2 and/or the governmental orders, together with  
21 INSURER DEFENDANTS’ failure to live up to its obligations under the All Risk Policies, PANDA  
22 was forced to file this action. PANDA would not have had to file and incur the cost of this legal  
23 proceeding if INSURER DEFENDANTS had paid the loss and damage they were obligated to pay.  
24 In fact, the INSURER DEFENDANTS have taken the position in public filings across the country that  
25 it will not pay losses sustained by its policyholders, such as PANDA, as a result of SARS-CoV-2 and  
26 governmental orders.

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1           13.     To date, PANDA has suffered over a hundred million dollars in loss and damage, all  
2 of which remains unreimbursed by INSURER DEFENDANTS despite being covered under the terms  
3 of the “all risk” policies purchased.

4           14.     PANDA’s purchase of this broad “all risk” coverage created a reasonable expectation  
5 that the coverage will apply if PANDA has a business interruption resulting from unforeseen and  
6 fortuitous events, such as the physical damage to and/or inability to use its properties as well as forced  
7 government shutdown of its businesses due to the presence of a communicable disease, COVID-19,  
8 or other large-scale natural disaster. In particular, PANDA could not foresee the physical damage  
9 resulting from COVID-19 or the government orders shuttering its properties due to COVID-19. As a  
10 result, PANDA incurred substantial actual losses and extra expenses. After faithfully paying a high  
11 premium (in excess of two million dollars annually) for “all risk” coverage, business owner-insured  
12 PANDA, who was forced to close its properties from these unprecedented events, had a reasonable  
13 expectation that its “all risk” business interruption insurance would apply and protect it. PANDA had  
14 such expectations and sought coverage from INSURER DEFENDANTS for the losses.

15           15.     Despite the coverage provided and the expectations of PANDA, who paid a significant  
16 premium for it, INSURER DEFENDANTS have rejected, both in fact and in action, claims submitted  
17 by businesses for “all risk” coverage as a result of COVID-19. Through its conduct, INSURER  
18 DEFENDANTS wrongfully breached its obligations under the “all risk” policies and left PANDA  
19 without the insurance benefits it paid for, relied upon, and desperately needed.

20           16.     PANDA seeks a declaration that the actual presence and/or statistically certain presence  
21 of the SARS-CoV-2 virions in or on PANDA’s insured properties and the ubiquitous presence of the  
22 SARS-CoV-2 virions throughout the locales where PANDA’s covered properties are located, causes  
23 direct physical loss of or direct physical damage to property within the meaning of those phrases as  
24 used in the “all risk” policies sufficient to trigger coverage thereunder, including under the coverages  
25 for property damage and time element, such as ingress & egress, extra expense, communicable disease,  
26 and various additional coverages.

27           17.     PANDA also seeks a declaration that various orders issued by governmental officials  
28 on account of the presence of persons infected with and/or suffering from COVID-19 and the presence

1 of SARS-CoV-2 in places of business and gathering prevented PANDA from accessing and using its  
2 insured properties to conduct its ordinary business activities and deprived PANDA of its property and  
3 the functionality of its property, thereby constituting “physical loss of or damage” to property within  
4 the meaning of that phrase as used in the “all risk” policies sufficient to trigger coverage in favor of  
5 PANDA under the “all risk” policies, including under the coverages for property damage and time  
6 element, such as ingress & egress, extra expense, communicable disease, and various additional  
7 coverages.

8 18. PANDA also seeks a declaration that it is entitled to the extra expenses that it was  
9 forced to incur to cleanup and remove the presence of SARS-CoV-2 on its properties, to purchase  
10 equipment to adequately protect its associates and guests from the danger of SAR-CoV-2, and to  
11 restore its properties to their original condition, all of which is expressly covered by the “all risk”  
12 policies.

13 19. PANDA also seeks monetary damages for INSURER DEFENDANTS’ breach of its  
14 obligations under the “all risk” policies as declared by the Court and to pay PANDA’s losses in full  
15 including, without limitation, loss mitigation expenses.

16 **PARTIES**

17 20. Plaintiff Panda Restaurant Group, Inc. is a corporation organized and existing under  
18 the laws of California and has its principal place of business in Rosemead, California. It is the Named  
19 Insured under the INSURER DEFENDANTS policies at issue. Panda Restaurant Group, Inc. is now,  
20 and for many years has been, engaged in the food service and restaurant business, including, through  
21 managing owner and operating entities of the Panda restaurants throughout the United States and the  
22 world, including in Nevada.

23 21. Plaintiff Panda Inn, Inc. is a corporation organized and existing under the laws of  
24 California and has its principal place of business in Rosemead, California. Panda Inn, Inc. operates  
25 full-service restaurants throughout California, and is an insured under the INSURER DEFENDANTS  
26 policies at issue.

27 22. Plaintiff Panda Express Inc. is a corporation organized and existing under the laws of  
28 California and has its principal place of business in Rosemead, California. Panda Express Inc. operates

1 Panda Express concept restaurants throughout the United States, including in Nevada, and is an  
2 insured under the INSURER DEFENDANTS policies at issue.

3 23. Plaintiff Panda Systems Inc. is a corporation organized and existing under the laws of  
4 Delaware and has its principal place of business in Rosemead, California. Panda Systems Inc. holds  
5 100% interest in operating entities for Uncle Tetsu, Raising Cane's and Yakiya concept restaurants  
6 throughout the United States, and is an insured under the INSURER DEFENDANTS policies at issue.

7 24. Plaintiff Hibachi-San Inc. is a corporation organized and existing under the laws of  
8 Delaware and has its principal place of business in Rosemead, California. Hibachi-San Inc. operates  
9 Hibachi San restaurants throughout the United States, including in Nevada, as well as Wasabi sushi  
10 restaurant, in Los Angeles, and is an insured under the INSURER DEFENDANTS policies at issue.

11 25. Plaintiff Panda Express CT Turnpikes LLC is a limited liability company organized  
12 and existing under the laws of Connecticut, with its principal places of business in Rosemead,  
13 California and Milford, CT. Panda Express CT Turnpikes LLC operates Panda Express restaurants in  
14 the United States, and is an insured under the INSURER DEFENDANTS policies at issue.

15 26. Plaintiff PFV II RC LLC is a limited liability company organized and existing under  
16 the laws of Nevada, with its principal places of business in Rosemead, California and Las Vegas,  
17 Nevada. PFV II RC LLC operates Raising Cane's restaurants throughout the United States, and is an  
18 insured under the INSURER DEFENDANTS policies at issue.

19 27. Plaintiff PFV UTC LLC is a limited liability company organized and existing under  
20 the laws of Nevada, with its principal places of business in Rosemead, California and Las Vegas,  
21 Nevada. PFV UTC LLC operates Uncle Tetsu restaurants throughout the United States, and is an  
22 insured under the INSURER DEFENDANTS policies at issue.

23 28. Plaintiff PFV Barbecue LLC is a limited liability company organized and existing  
24 under the laws of Nevada, with its principal places of business in Rosemead, California and Las Vegas,  
25 Nevada. PFV Barbecue LLC operates Yakiya restaurant in California, and is an insured under the  
26 INSURER DEFENDANTS policies at issue.

27 29. Plaintiff Yakiya Operations LLC is a limited liability company organized and existing  
28 under the laws of Delaware, with its principal place of business in Rosemead, California. Yakiya



1 Operations operates Yakiya restaurant in California, and is an insured under the INSURER  
2 DEFENDANTS policies at issue.

3 30. Plaintiff Panda Express (P.R.) Inc. is a corporation organized and existing under the  
4 laws of California and has its principal place of business in Rosemead, California. Panda Express  
5 (P.R.) Inc. operates Panda Express restaurants throughout Puerto Rico, and is an insured under the  
6 INSURER DEFENDANTS policies at issue.

7 31. Plaintiff GUA-PX LLC is a limited liability company organized and existing under the  
8 laws of Guam and has its principal place of business in Guam. GUA-PX LLC operates Panda Express  
9 restaurants throughout Guam, and is an insured under the INSURER DEFENDANTS policies at issue.

10 32. Plaintiff Panda Express (Canada) ULC is a corporation organized and existing under  
11 the laws of British Columbia and has its principal place of business in Canada. Panda Express (Canada)  
12 ULC operates Panda Express restaurants in Canada, and is an insured under the INSURER  
13 DEFENDANTS policies at issue.

14 33. Plaintiff All States Realty Co. is a corporation organized and existing under the laws  
15 of California, with its principal place of business in Rosemead, California. All States Realty owns and  
16 operates a Panda Express restaurant in California, and is an insured under the INSURER  
17 DEFENDANTS policies at issue.

18 34. Plaintiff Citadel Panda Express Inc. is a corporation organized and existing under the  
19 laws of California, with its principal place of business in Rosemead, California. Citadel Panda Express  
20 Inc. owns an office building in California for administrative purposes, and is an insured under the  
21 INSURER DEFENDANTS policies at issue.

22 35. Plaintiff MBOS Concessions LLC is a limited liability company organized and existing  
23 under the laws of Delaware and has its principal place of business in Rosemead, California. MBOS  
24 Concessions LLC operates a Panda Express restaurant in Delaware, and is an insured under the  
25 INSURER DEFENDANTS policies at issue.

26 36. Plaintiff Pleasant Hill PX LLC is a limited liability company organized and existing  
27 under the laws of Nevada and has its principal place of business in Rosemead, California. Pleasant  
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1 Hill PX LLC owns a Panda Express restaurant in Georgia, and is an insured under the INSURER  
2 DEFENDANTS policies at issue.

3 37. Plaintiff Pacoima PX LLC is a limited liability company organized and existing under  
4 the laws of California and has its principal place of business in Rosemead, California. Pacoima PX  
5 LLC operates a Panda Express restaurant in California, and is an insured under the INSURER  
6 DEFENDANTS policies at issue.

7 38. Plaintiff West College PX LLC is a limited liability company organized and existing  
8 under the laws of Wisconsin and has its principal place of business in Rosemead, California. West  
9 College PX LLC operates Panda Express restaurants in Wisconsin, and is an insured under the  
10 INSURER DEFENDANTS policies at issue.

11 39. Plaintiff Mid West City PX LLC is a limited liability company organized and existing  
12 under the laws of Oklahoma, with its principal place of business in Rosemead, California. Mid West  
13 City PX LLC operates a Panda Express restaurant in Oklahoma, and is an insured under the INSURER  
14 DEFENDANTS policies at issue.

15 40. Plaintiff PXCT LLC is a limited liability company organized and existing under the  
16 laws of Connecticut, with its principal place of business in Rosemead, California. PXCT LLC operates  
17 Panda Express restaurants in Connecticut, and is an insured under the INSURER DEFENDANTS  
18 policies at issue.

19 41. Plaintiff Rocky River PX LLC is a limited liability company organized and existing  
20 under the laws of Ohio, with its principal place of business in Rosemead, California. Rocky River PX  
21 LLC operates a Panda Express restaurant in Ohio, and is an insured under the INSURER  
22 DEFENDANTS policies at issue.

23 42. Defendant AIG Specialty Insurance Company (“AIG”) is a corporation organized and  
24 existing under the laws of the State of New York, with its principal place of business in New York,  
25 New York. Upon information and belief, at all relevant times hereto, AIG was authorized to  
26 underwrite insurance policies covering risks in the State of Nevada. Upon information and belief, at  
27 all times relevant hereto, AIG was authorized to do business, and was doing and transacting business,  
28 in the State of Nevada. AIG issued insurance policies at issue to Plaintiffs.

1           43. Defendant Axis Surplus Insurance Company (“Axis”) is a corporation organized and  
2 existing under the laws of the State of Illinois, with its principal place of business in Chicago, Illinois.  
3 Upon information and belief, at all relevant times hereto, Axis was authorized to underwrite insurance  
4 policies covering risks in the State of Nevada. Upon information and belief, at all times relevant  
5 hereto, Axis was authorized to do business, and was doing and transacting business, in the State of  
6 Nevada. Axis issued insurance policies at issue to Plaintiffs.

7           44. Defendant Evanston Insurance Company (“Evanston”) is a corporation organized and  
8 existing under the laws of the State of Illinois, with its principal place of business in Rosemont, Illinois.  
9 Upon information and belief, at all relevant times hereto, Evanston was authorized to underwrite  
10 insurance policies covering risks in the State of Nevada. Upon information and belief, at all times  
11 relevant hereto, Evanston was authorized to do business, and was doing and transacting business, in  
12 the State of Nevada. Evanston issued insurance policies at issue to Plaintiffs.

13           45. Defendant Everest Indemnity Insurance Company (“Everest”) is a corporation  
14 organized and existing under the laws of the State of Delaware, with its principal place of business in  
15 Liberty Corner, New Jersey. Upon information and belief, at all relevant times hereto, Everest was  
16 authorized to underwrite insurance policies covering risks in the State of Nevada. Upon information  
17 and belief, at all times relevant hereto, Everest was authorized to do business, and was doing and  
18 transacting business, in the State of Nevada. Everest issued insurance policies at issue to Plaintiffs.

19           46. Defendant Hallmark Specialty Insurance Company (“Hallmark”) is a corporation  
20 organized and existing under the laws of the State of Oklahoma, with its principal place of business in  
21 Dallas, Texas. Upon information and belief, at all relevant times hereto, Hallmark was authorized to  
22 underwrite insurance policies covering risks in the State of Nevada. Upon information and belief, at  
23 all times relevant hereto, Hallmark was authorized to do business, and was doing and transacting  
24 business, in the State of Nevada. Hallmark issued insurance policies at issue to Plaintiffs.

25           47. Defendant Lexington Insurance Company (“Lexington”) is a corporation organized  
26 and existing under the laws of the State of Illinois, with its principal place of business in New York,  
27 New York. Upon information and belief, at all relevant times hereto, Lexington was authorized to  
28 underwrite insurance policies covering risks in the State of Nevada. Upon information and belief, at

1 all times relevant hereto, Lexington was authorized to do business, and was doing and transacting  
2 business, in the State of Nevada. Lexington issued insurance policies at issue to Plaintiffs.

3 48. Defendant Maxum Indemnity Company (“Maxum”) is a corporation organized and  
4 existing under the laws of the State of Connecticut, with its principal place of business in Alpharetta,  
5 Georgia. Upon information and belief, at all relevant times hereto, Maxum was authorized to  
6 underwrite insurance policies covering risks in the State of Nevada. Upon information and belief, at  
7 all times relevant hereto, Maxum was authorized to do business, and was doing and transacting  
8 business, in the State of Nevada. Maxum issued insurance policies at issue to Plaintiffs.

9 49. Defendant Westport Insurance Corporation (“Westport”) is a corporation organized  
10 and existing under the laws of the State of Missouri, with its principal place of business in Windsor,  
11 Connecticut. Upon information and belief, at all relevant times hereto, Westport was authorized to  
12 underwrite insurance policies covering risks in the State of Nevada. Upon information and belief, at  
13 all times relevant hereto, Westport was authorized to do business, and was doing and transacting  
14 business, in the State of Nevada. Westport issued insurance policies at issue to Plaintiffs.

### 15 **JURISDICTION AND VENUE**

16 50. This Court has jurisdiction over this action pursuant to NRS 14.065 and NRS 4.370(1).  
17 The INSURER DEFENDANTS regularly transact business in Nevada and have purposefully availed  
18 themselves of the privilege of conducting activities in this forum. Upon information and belief, when  
19 the “all risk” policies at issue here were sold to PANDA, the INSURER DEFENDANTS knew that  
20 PANDA operated out of Nevada, the INSURER DEFENDANTS expected to profit from their  
21 relationship with PANDA, and the INSURER DEFENDANTS purposefully acted knowing that their  
22 actions would have an effect in Nevada. Each of the INSURER DEFENDANTS have agreed under  
23 the respective “all risk” policies at issue that disputes over the INSURER DEFENDANTS’ failure to  
24 pay a claim will be submitted “to the jurisdiction of a court of competent jurisdiction within the United  
25 States” and the matter in controversy exceeds \$15,000, exclusive of attorneys’ fees, interest, and costs.  
26 *See, e.g., Ex. A.*

27 51. Venue is also proper under NRS 13.010 and NRS 13.040 because certain of the  
28 PANDA entities are incorporated in Nevada, PANDA conducts significant business operations within

1 this judicial district, and almost 100 properties insured under all of the INSURER DEFENDANTS'  
2 policies at issue in this action are located within Nevada (including over 60 within this judicial district).  
3 Further, the founders of the PANDA conglomerate, and still the principal owners, are Nevada residents  
4 based in this judicial district.

5 **FACTUAL BACKGROUND**

6 **COVID-19's GLOBAL IMPACT**

7 52. At the end of 2019, an outbreak known as COVID-19 caused by a novel coronavirus  
8 formally known as SARS-CoV-2 was first identified in Wuhan, Hubei Province, China. In an  
9 unprecedented event that has not occurred in more than a century, a catastrophe of global proportions  
10 then ensued, with the illness and virus quickly spreading to Europe and then to North America.

11 53. In 2020, COVID-19 decimated the economies of the locales where PANDA's  
12 restaurants are located, including PANDA's business operations.

13 54. COVID-19 is highly transmissible and spreads rapidly. For example, as of March 1,  
14 2020 there were 87,137 confirmed COVID-19 cases across the globe. That number increased to over  
15 800,000 confirmed cases in April 2020 and over 3,000,000 cases in May 2020. According to the  
16 Centers for Disease Control and Prevention ("CDC"), to date, COVID-19 has infected more than  
17 seventy-eight million people and killed nearly 950,000 in the United States.

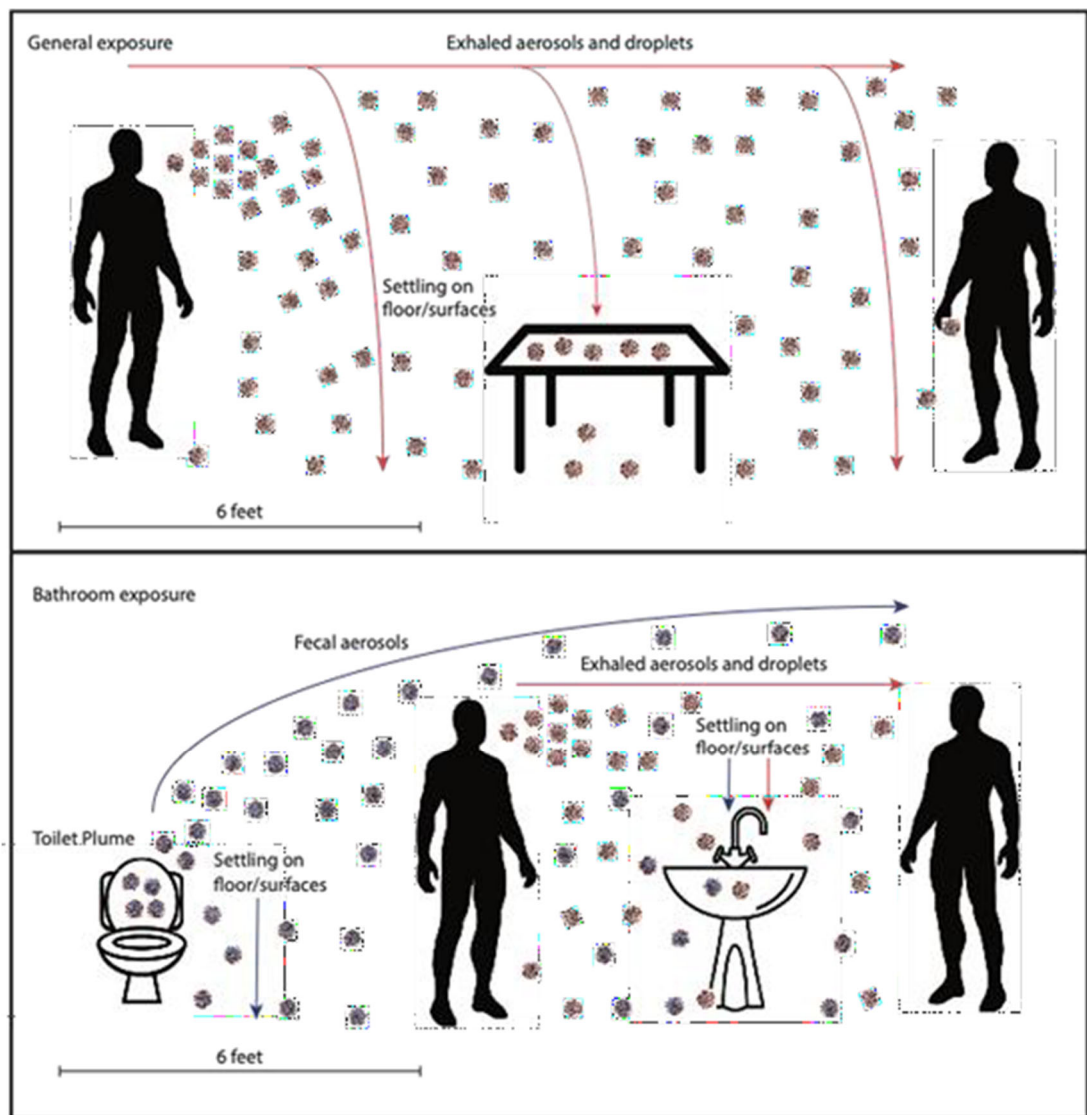
18 55. At its peak, over 4,000 Americans were perishing per day from COVID-19. A  
19 substantial number of Americans are still dying daily, with surges of cases and new and ever more  
20 contagious variants of COVID-19 occurring throughout the U.S. COVID-19 is now the third-leading  
21 cause of death in this country, surpassed only by heart disease and cancer.

22 56. Scientists have confirmed that COVID-19 can be transmitted in several ways, including  
23 via human-to-human contact, airborne viral particles, particularly within enclosed properties like the  
24 insured locations, and touching surfaces or objects that have SARS-CoV-2 virions on them.

25 57. Scientists have confirmed that COVID-19 spreads easily from person to person and  
26 person to surface or object. Research has revealed that COVID-19 primarily is spread by small,  
27 physical droplets expelled from the nose or mouth when an infected person talks, yells, sings, coughs,  
28 or sneezes. A person who sneezes can release a cloud of SARS-CoV-2-containing droplets that can

1 span as far as 23 to 27 feet. The CDC has stated that SARS-CoV-2 is most likely to spread when  
2 people are within six feet of each other, but has also recognized that SARS-CoV-2 may spread from  
3 an infected person who is more than six feet away or who has left a given space. Further, according  
4 to the CDC, longer exposure time likely increases exposure risk to COVID-19.

5 58. Scientific evidence confirms that infected people shed copious amounts of SARS-CoV-  
6 2 into the air and surfaces around them by several different mechanisms, as illustrated in the below  
7 illustration.<sup>1</sup> SARS-CoV-2 damages the air and surfaces of a property.



27 <sup>1</sup> The below illustration was obtained from virologist, Dr. Angela Rasmussen, Ph.D. Dr. Rasmussen is an affiliate of the  
28 Georgetown Center for Global Health Science and Security and a research scientist III (Associate Professor equivalent) at  
the Vaccine and Infectious Disease Organization-International Vaccine Centre (VIDO-InterVac), as well as an adjunct  
professor in the department of biochemistry, microbiology, and immunology at the University of Saskatchewan.

1           59.     SARS-CoV-2 is exhaled in respiratory particles through normal breathing, as well as  
2 coughing, speaking, singing, shouting, or exerted breathing, into the air by persons with COVID-19,  
3 including symptomatic and asymptomatic persons, where it persists in respiratory aerosols and  
4 droplets. Aerosols can remain suspended in the air for prolonged periods of time, where they can travel  
5 distances greater than 6 feet and eventually settle on surfaces to become fomites (infectious objects).  
6 Infectious aerosols can accumulate in enclosed spaces and present a significant infection risk in a  
7 manner that is dependent on concentration, not distance. Notably, without adequate ventilation and air  
8 filtration, the transformation of indoor air by people in an enclosed space for a long period of time  
9 presents a substantial infection hazard that cannot be mitigated solely with masks and distancing,  
10 resulting in damage to the property.

11           60.     In addition to damage to the property via transformation of the indoor air, SARS- CoV-  
12 2 can be deposited on surfaces either through direct contact with respiratory secretions or saliva of an  
13 infected person (transfer by hand or tissue) or by settling of particles from the air.

14           61.     Inhalation of infectious aerosols is a major mode of SARS-CoV-2 transmission,  
15 providing a clear mechanism for SARS-CoV-2 in the air to damage property. Although the exact rate  
16 of fomite transmission is unknown, it is still a viable mode of transmission along with the more  
17 dominant modes of transmission by direct contact and inhalation of infectious SARS-CoV- 2, and risk  
18 of fomite transmission is dependent on prevalence in the community, shedding, environmental features  
19 such as heat or humidity, mitigation efforts such as masks, distancing, or ventilation, rate of deposition  
20 of virion particles onto surfaces, frequency of exposure to those surfaces, and achieving minimum  
21 infectious dose.

22           62.     All three modes of transmission have been demonstrated in multiple scientific  
23 experimental models. Exhaled respiratory particles and fecal bio-aerosols present a significant  
24 transmission risk even after they have settled and are no longer suspended in the air, and disturbances  
25 can re-suspend them in the air.

26           63.     Thus, SARS-CoV-2 causes property damage by rendering property unsafe and unfit for  
27 habitation and use, by transforming both the shared air breathed by the property's occupants and the  
28 physical surfaces of the property itself.

1           64.     The presence of infected people on the property ensure that infectious SARS-CoV-2  
2 will inevitably be shed into the air and onto surfaces, damaging the property by rendering it unsafe for  
3 occupation and use without extreme mitigation measures.

4           65.     Making matters worse, pre-symptomatic and asymptomatic individuals can also  
5 transmit COVID-19. Over 40% of all infections occur from people without any symptoms. Thus, even  
6 individuals who appear healthy and present no identifiable symptoms of the disease have and continue  
7 to spread COVID-19 by breathing, speaking, or touching objects and surfaces. These activities deposit  
8 SARS-CoV-2 virions in the air and on surfaces rendering the air and surfaces changed from their  
9 previous condition. According to the World Health Organization (the “WHO”), the incubation period  
10 for COVID-19, *i.e.*, the time between exposure to SARS-CoV-2 and symptom onset, can be up to 14  
11 days. Other studies suggest that the period may be up to 21 days.

12           66.     Before infected individuals exhibit symptoms, *i.e.*, the so-called “pre-symptomatic”  
13 period, they are most contagious, as their viral loads will likely be very high, and they may not know  
14 they have become carriers. In addition, studies from the CDC and others estimate that between 40%  
15 to 70% of infected individuals may never become symptomatic (referred to as “asymptomatic”  
16 carriers). Pre-symptomatic and asymptomatic carriers are likely unaware that they are spreading  
17 SARS-CoV-2 by merely touching objects and surfaces, or by expelling droplets into the air. The  
18 National Academy of Sciences has found that the majority of transmission is attributable to people  
19 who are not showing symptoms, either because they are pre-symptomatic or asymptomatic.

20           67.     Although these droplets are very small, they are still physical, tangible objects that can  
21 travel and attach to other surfaces, “such as tables, doorknobs, and handrails,” and cause harm, loss,  
22 and damage, and physically alter the property and/or the integrity of the property. SARS-CoV-2 is  
23 microscopic and made up of genetic material surrounded by a protein shell, but is capable of being  
24 observed and can attach itself to other things encountered. When these contaminated droplets contact  
25 objects, they alter those objects, although not in way perceptible by the naked human eye. These  
26 SARS-CoV-2 containing droplets physically exist ubiquitously in the communities and buildings in  
27 which PANDA Covered Properties operate.

28



1           68.     According to the CDC and the WHO, a person may become infected by touching these  
2 surfaces or objects that have SARS-CoV-2 on them, and then touching his or her mouth, eyes, or nose.  
3 When an uninfected person touches a surface containing SARS-CoV-2, the uninfected person may  
4 transmit COVID-19 to another person, by touching and infecting a second surface, which is  
5 subsequently touched by that other person. The CDC has thus recommended certain physical and  
6 structural remedial measures for businesses to put into place in order to limit transmission and  
7 continued surface alteration.

8           69.     Numerous scientific studies have reported that SARS-CoV-2 can survive and persist  
9 within the air and on surfaces and buildings after infected persons are present at a given location.  
10 Studies have found that SARS-CoV-2 remains active and dangerous in the air in properties and on  
11 common surfaces, including plastic, stainless steel, glass, wood, cloth, ceramics, rubber, and even  
12 money. All of these materials are widely present at PANDA's insured locations and subject to touch  
13 by the multitudes of people visiting PANDA's premises daily, including its associates. As a restaurant  
14 group reliant on guests to frequent the premises to eat and takeaway meals, PANDA is particularly  
15 vulnerable to this danger.

16           70.     Generally enclosed spaces where large numbers of people gather in close proximity for  
17 social and business purposes, including highly trafficked indoor premises like PANDA insured  
18 locations, are reportedly particularly susceptible to circumstances favorable to the spread of SARS-  
19 CoV-2 virions. An article published in April 2020 analyzed a case study of three families (families  
20 A, B, and C) who had eaten at an air-conditioned restaurant in Guangzhou, China. One member of  
21 family A, patient A1, had recently traveled from Wuhan, China. On January 24, 2020, that family  
22 member ate at a restaurant with families A, B, and C. By February 5, 2020, 4 members of family A,  
23 3 members of family B, and 2 members of family C had become ill with COVID-19. The only known  
24 source for those affected persons in families B and C was patient A1 at the restaurant. Moreover, a  
25 study detected SARS-CoV-2 inside the heating and ventilation ("HVAC") system connected to  
26 hospital rooms of sick patients. The study found SARS-CoV-2 in ceiling vent openings, vent exhaust  
27 filters, and ducts located as much as 56 meters (over 183 feet) from the rooms of the sick patients.

28

1           71.     Additionally, the CDC has stated that “there is evidence that under certain conditions,  
2 people with COVID-19 seem to have infected others who were more than 6 feet away” and infected  
3 people who entered the space shortly after the person with COVID-19 had left. A published systematic  
4 review of airborne transmission of SARS-CoV-2 corroborated the CDC’s concerns and recommended  
5 procedures to improve ventilation of indoor air environments to decrease bio-aerosol concentration  
6 and physically reduce potential spread of SARS-CoV-2 in properties like the insured locations.

7           72.     The CDC has recommended “ventilation interventions” to help reduce exposure to the  
8 airborne SARS-CoV-2 in indoor spaces, including increasing airflow and air filtration (such as with  
9 high-efficiency particulate air (“HEPA”) fan/filtration systems). These and other remedial measures  
10 must be implemented, at high cost and extra expense, to reduce the amount of the SARS-CoV-2  
11 present in a given space and to make property safe for its intended use. These remedial measures  
12 demonstrate direct physical loss of or damage to interior spaces like PANDA’S insured locations.

13          73.     The proposition advanced by the insurance industry that an indoor space containing the  
14 infectious SARS-CoV-2 virions can be made safe and fit for its functional and intended use even  
15 though the virions remain in the air and circulating throughout indoor environments either affixed to  
16 property or in an aerosol capacity because the virions can be removed by routine surface cleaning is  
17 false.

18          74.     A number of studies have also demonstrated that SARS-CoV-2 is “much more resilient  
19 to cleaning than other respiratory [virions] so tested.” The measures that must be taken to remove  
20 SARS-CoV-2 from property are significant and far beyond ordinary or routine cleaning.

21          75.     Efficacy of disinfecting agents for SARS-CoV-2 is based on a number of factors,  
22 including the initial amount of SARS-CoV-2 present, contact time with the disinfecting agent, dilution,  
23 temperature, and pH, among many others. Detergent surfactants are not recommended as single agents,  
24 but rather in conjunction with complex disinfectant solutions.

25          76.     Additionally, it can be challenging to determine accurately the efficacy of disinfecting  
26 agents. The toxicity of an agent may inhibit the growth of cells used to determine the presence of  
27 virions, making it difficult to determine if lower levels of infectious virions are actually still present  
28 on treated surfaces.

1           77.     In order to be effective, cleaning and disinfecting procedures require strict adherence  
2 to protocols not necessarily tested under “real life” or practical conditions, where treated surfaces or  
3 objects may not undergo even exposure or adequate contact time. Studies of coronaviruses have  
4 demonstrated viral RNA persistence on objects despite cleaning with 70% alcohol.

5           78.     When considering disinfection, the safety of products and procedures must be  
6 considered as well, due to the risks of harmful chemical accumulation, breakdown of treated materials,  
7 flammability, and potential for allergen exposure.

8           79.     Moreover, the aerosolized SARS-CoV-2 particles and virions cannot be eliminated by  
9 routine cleaning. Cleaning surfaces in an indoor space will not remove the aerosolized SARS-CoV-2  
10 particles and virions from the air that people can inhale and develop COVID-19 – no more than  
11 cleaning friable asbestos particles that have landed on a surface will remove the friable asbestos  
12 particles suspended in the air that people can inhale.

13          80.     Given the ubiquity and pervasiveness of SARS-CoV-2, no amount of cleaning or  
14 ventilation intervention will prevent a person infected and contagious with COVID-19 from entering  
15 an indoor space like the covered properties and exhaling millions of additional particles and virions  
16 into the air, further: (a) filling the air with the aerosolized SARS-CoV-2 virions that can be inhaled,  
17 sometimes with deadly consequences; and (b) depositing SARS-CoV-2 particles and virions on  
18 surfaces, physically altering and transforming those surfaces into disease-transmitting fomites.

19          81.     Even as vaccines to protect against COVID-19 have become more available,  
20 distribution remains uneven throughout the world, including in the United States, its territories and in  
21 Canada. Effective control of the disease’s spread necessarily relied on measures designed to reduce  
22 human-to-human and surface-to-human exposure. Similarly, the governmental orders closing or  
23 severely limiting use of non-essential business premises like PANDA’s insured locations are one of  
24 the most common modes of preventing transmission of the disease because, among other things, the  
25 orders reduce the size and frequency of social gatherings and the physical use of properties.

26           **COVID-19 AND SARS-CoV-2 CAUSE DIRECT PHYSICAL LOSS AND DAMAGE**

27          82.     Virologists, scientists, and researchers all have confirmed that SARS-CoV-2 remains  
28 viable and is active on physical surfaces after deposited on property as in the air. The persistent

1 presence of the deadly, viable SARS-CoV-2 on surfaces and in the air damages buildings and  
2 properties rendering them damaged, lost, unsafe, unfit, and uninhabitable for normal occupancy or  
3 use.

4 83. Specifically, the scientific community has confirmed that SARS-CoV-2 and COVID-  
5 19 alter the conditions of properties and buildings such that the premises are physically damaged and  
6 no longer safe and habitable for normal use. In this regard, SARS-CoV-2 and COVID-19 cause direct  
7 physical loss of or damage to buildings and properties (or both).

8 84. This direct physical loss of or damage to property (or both) results because SARS-  
9 CoV-2 has a corporeal existence and is contained in respiratory droplets. Once expelled from infected  
10 individuals, these droplets land on, attach, and adhere to surfaces and objects and physically change  
11 these once safe surfaces to “fomites.” Fomites are objects, previously safe to touch, that now serve as  
12 a vehicle and mechanism for transmissions of an infectious agent. Fomites are the result of SARS-  
13 CoV-2 physically changing air and property, making them unsafe. This physical alteration and change  
14 makes physical contact with those previously safe indoor spaces and inert surfaces (*e.g.*, walls,  
15 handrails, desks) unsafe and potentially deadly. This represents a physical change in the affected  
16 enclosed space, surface or object, causing severe property loss and damage. Affected properties are  
17 unusable, dangerous, and unsafe until the COVID-19-related conditions are fully rectified.

18 85. Accordingly, COVID-19 and SARS-CoV-2 cause direct physical loss of or damage to  
19 property (or both) by, among other things, destroying, distorting, attaching to, and physically altering  
20 property, including its surfaces, and by rendering property unusable, uninhabitable, unfit for intended  
21 functions, dangerous, and unsafe.

22 86. Fomites, droplets, droplet nuclei, and aerosols containing SARS-CoV-2 are not  
23 theoretical, informational, or incorporeal, but rather are dangerous physical objects that have a tangible  
24 existence. Their presence within an insured property causes direct physical loss of or damage to  
25 property (or both) by necessitating remedial measures that include, without limitation, repairing or  
26 replacing air filtration systems, remodeling and reconfiguring physical spaces, removal of fomites by  
27 certified technicians, and other measures. The presence of COVID-19 and SARS-CoV-2 within an  
28 insured property also causes direct physical loss of or damage to properties (or both) by transforming

1 property from usable and safe into a property that is unsatisfactory for use, uninhabitable, unfit for its  
2 intended function, and extremely dangerous and potentially deadly for humans.

3 87. The presence of SARS-CoV-2 on property similarly creates the imminent threat of  
4 further damage to that property or to nearby property. Individuals who come into contact, for example,  
5 with respiratory droplets at one location in the property by touching a doorknob, table, or handrail,  
6 will carry those droplets on their hands and deposit them elsewhere in the property, causing additional  
7 damage and loss. Property impacted by SARS-CoV-2 is just as dangerous as property impacted by  
8 fire or fumes or vapors (if not more), and all such damaged property is equally incapable of producing  
9 revenues. Like the impact of fire, smoke, or noxious fumes, the impact of potentially fatal COVID-  
10 19 constitutes direct physical loss of or damage to property (or both).

11 88. The direct physical loss of or direct physical damage to property (or both) described in  
12 this section has occurred at PANDA's insured locations, leading to losses covered by the "all risk"  
13 policies. PANDA had to take action to secure and preserve its properties and its business operations.  
14 To the extent that the "all risk" policies require structural alteration to establish "physical damage,"  
15 which PANDA disputes, such alteration has occurred and rendered the insured properties incapable of  
16 performing their essential functions. PANDA's losses are ongoing and are likely to increase  
17 substantially given the length and ultimate severity of the outbreak, repeated closures and/or  
18 restrictions of PANDA insured locations, and the government response. Moreover, to the extent that  
19 the "all risk" Policy requires a permanent loss of property to establish "physical loss," which PANDA  
20 disputes, such permanent loss has occurred.

21 **REACTIONS IN NORTH AMERICA AT THE NATIONAL, STATE, AND LOCAL LEVELS**

22 89. On January 30, 2020, with the outbreak spreading outside of China, impacting many  
23 countries including the United States, the World Health Organization ("WHO") declared the COVID-  
24 19 outbreak a Public Health Emergency of International Concern.

25 90. On March 16, 2020, the CDC and members of the national COVID-19 Task Force  
26 issued guidelines to the American public (titled "30 Days to Slow the Spread") to slow the spread of  
27 COVID-19. The guidelines advised individuals to adopt far-reaching social distancing measures, such  
28

1 as working from home, avoiding gatherings of more than ten people, and avoiding eating or drinking  
2 in restaurants.

3 91. In or around mid- to late-March 2020, state and local governments across the country  
4 recognized the unprecedented and catastrophic situation, and made “state of emergency” declarations.  
5 Simultaneously, or shortly thereafter, states across the country issued orders encouraging or requiring  
6 citizens to “shelter in place” or “stay at home.” These “stay at home” orders implicated innumerable  
7 locations where PANDA’S insured properties were located. Additionally, numerous governmental  
8 authorities issued orders partially or totally suspending business operations due to the presence of  
9 COVID-19 and SARS-CoV-2.

10 92. Numerous states, counties, cities, and governmental health authorities, in their  
11 emergency orders, also made clear that these were issued, in part, to limit property loss and damage.  
12 For example, in an Emergency Order signed by Governor Andrew Cuomo of the State of New York,  
13 the Order stated that it was given “because of the propensity of [COVID-19] to spread person to person  
14 and also because [COVID-19] *physically is causing property loss and damage.*” (emphasis added.)  
15 Likewise, the Mayor of New York City, Bill de Blasio, issued Emergency Executive Order 100, in  
16 part “because [COVID-19] physically is causing property loss and damage” and required that all  
17 restaurants, bars and cafes close until further notice. There are over a dozen PANDA operated  
18 restaurants in New York.

19 93. Similarly, in Nevada, Governor Steve Sisolak issued several Emergency Orders in  
20 order to “to save lives, *protect property*, and protect the health and safety of persons in th[e] state[.]”  
21 (emphasis added.) Other Emergency Orders by Governor Sisolak explained that these drastic shut-  
22 down measures were necessary in light of “the ability of [SARS-CoV-2 virions] that cause[] COVID-  
23 19 to survive on surfaces for indeterminate periods of time, [which] *renders some property unusable*”  
24 and contributes to “*damage . . . and property loss.*” (emphasis added.) Even Mayor Carolyn Goodman,  
25 for the City of Las Vegas, issued a local order, noting that COVID-19 “represents a threat to the safety  
26 and welfare of the citizens of Las Vegas *as well as a threat to their property within the City.*” (emphasis  
27 added.)

28

1           94.     The rise of sudden shutdown orders impacted PANDA’s properties in other countries  
2 and territories, as well. In Canada, the Province of Alberta, announcing a state of public health  
3 emergency, issued an Order placing unprecedented restrictions on business owners. Since then,  
4 Alberta has gone through multiple waves of governmental orders, which were not limited to the year  
5 2020. In April 2021, after restrictions were loosened slightly, restaurants were ordered to close again  
6 in response to a surge of cases caused by new variants.

7           95.     Similarly, Governor Lou Leon Guerrero issued an Order for the island of Guam, which  
8 ordered restaurants to close. In August 2020, after restrictions on restaurants had begun to loosen, the  
9 Governor issued another Order, which caused restaurants to close again. Governor Wanda Vázquez  
10 also issued an Order for Puerto Rico, which ordered restaurants to close. Those few restaurants that  
11 were able to offer takeout were subject to a strictly-enforced 6 p.m. closure curfew. Puerto Rico did  
12 not lift its curfew until over a year later in 2021. In August 2020 and December 2020, after some of  
13 the restrictions on restaurants had begun to loosen, the Governor issued Orders that forced restaurants  
14 to close again, and mandated a lockdown every Sunday.

15           96.     Other states, and county and city officials, as well as local health departments, have  
16 issued similar orders throughout the United States referencing physical property loss or damage or  
17 imminent threatened physical property loss or damage from SARS-CoV-2 and/or COVID-19.

18           97.     On April 5, 2020, the United States Secretary of the Department of Health issued an  
19 Order requiring building safety measures, which mandated these buildings, “clean, and disinfect high-  
20 touch areas routinely in accordance to CDC guidelines, in spaces that are accessible to guests, tenants,  
21 and other individuals.”

22           98.     Because of the danger posed by COVID-19 and its spread as described above, PANDA  
23 also determined that closure was necessary to slow the spread of COVID-19 as a result of infected  
24 persons on the property or from those who would enter the property. More specifically, PANDA  
25 identified some insured property locations where COVID-19 was confirmed to be present on the  
26 premises, and numerous people who had been present on insured properties with confirmed cases or  
27 who had self-quarantined.

28

1 99. A motivating factor behind these governmental orders and restriction was to protect  
2 persons and property from direct physical loss of or direct physical damage to property (or both)  
3 caused by SARS-CoV-2 and COVID-19.

4 100. Given the number of infected individuals, it is a virtual certainty that infected  
5 individuals, both symptomatic and asymptomatic, were present in PANDA insured properties on a  
6 daily basis even prior to the issuance of the governmental orders and would have been present daily  
7 in PANDA insured properties in an ever-increasing number in the absence of the issuance of those  
8 orders.

9 101. Exhalation by these infected individuals when coughing, sneezing, talking, laughing,  
10 and even simply breathing created respiratory droplets and aerosolized particles containing the SARS-  
11 CoV-2 that were inhaled into the noses, mouths, and lungs of other individuals and deposited on  
12 surfaces within PANDA insured properties where later contact by uninfected individuals undoubtedly  
13 resulted in transmission of SARS-CoV-2 to those individuals.

14 102. Each visit by a guest, associate, or otherwise, whether symptomatic or asymptomatic,  
15 infected with SARS-CoV-2 resulted in either the actual or an imminent threat of deposition and  
16 transmission of the SARS-CoV-2 into the air and onto the surfaces within PANDA insured properties.

17 103. For the reasons described above, COVID-19 and the governmental orders caused a total  
18 or partial prohibition of access to PANDA insured properties as well as partial or total interruption of  
19 PANDA's business operations. The direct physical loss of or direct physical damage to property (or  
20 both) caused by COVID-19 and/or the orders and the further direct physical loss of or direct physical  
21 damage to property (or both) threatened by COVID-19 have combined to devastate PANDA's  
22 business operations.

23 **PANDA SUFFERED AND CONTINUES TO SUFFER COVERED LOSSES**

24 104. SARS-CoV-2 is a covered cause of loss, because it is a risk of physical loss or damage,  
25 and not otherwise excluded under the "all risk" policies.

26 105. The issuance of the above-referenced closure and restriction orders by state, county,  
27 and city officials and local health departments is a covered cause of loss because it is a risk of direct  
28 physical loss or direct physical damage, and not otherwise excluded under the "all risk" policies.



1           106. Whether SARS-CoV-2 and the above-referenced orders caused PANDA's losses and  
2 expenses, and in what sequence in each covered location, presents a factual question that is  
3 inappropriate for resolution at the motion to dismiss stage.

4           107. The SARS-CoV-2 virions and/or the above-referenced orders issued by state, county,  
5 and city officials have directly impacted PANDA insured properties, which do not qualify as essential  
6 businesses. The damage and far-reaching restrictions and prohibitions on the activities that can be  
7 conducted at PANDA insured properties, and restoration efforts necessary to rid the premises of  
8 COVID-19, have been catastrophic for PANDA insured properties – interrupting their operations so  
9 pervasively as to effectively force them to close, thereby enduring a prolonged curtailment of earnings.

10           108. PANDA's operations were suspended to allow PANDA to repair the insured properties,  
11 including restoration efforts to rid the premises of and attempt to protect against further physical loss  
12 of and/or damage from SARS-CoV-2. Until the premises could be repaired and restored and resulting  
13 government orders lifted, PANDA suffered a complete and permanent loss of use of its business  
14 premises and they were unfit for use for their intended purposes.

15           109. Ultimately, a significant portion of PANDA insured properties were closed on various  
16 dates from March 2020 and forward. Even upon reopening, PANDA insured properties were forced  
17 to operate at reduced hours and capacity. Since the reopening, some PANDA insured properties were  
18 again forced to close due to COVID-19.

19           110. As a result of the physical loss or damage, PANDA acted to mitigate the effects on its  
20 business in numerous ways.

21           111. Prior to business closures and restrictions beginning in March 2020, PANDA insured  
22 properties were frequented by thousands of individuals a day, including guests, associates, vendors,  
23 and other individuals carrying SARS-CoV-2 and COVID-19. In addition to breathing SARS-CoV-2  
24 and COVID-19 into the air, these individuals touched countless surfaces in PANDA insured  
25 properties, including service counters, stock rooms, bathrooms, tables, chairs, doors, surfaces on the  
26 floors, and other common areas on the premises.

27           112. These individuals that frequent PANDA insured properties daily, ranging from guests,  
28 to associates, to vendors, are carrying or otherwise exposed to SARS-CoV-2 and COVID-19 and

1 would have been in contact with each other, as well as service counters, stock rooms, bathrooms,  
2 tables, chairs, doors, surfaces on the floors, and other common areas on the premises.

3 113. Thus, PANDA has been forced to pay costs, covered under the “all risk” policies, to  
4 repair the physical damage caused by COVID-19. It became clear that PANDA’s insured properties  
5 were (and continue to be) inoperable and unusable without the alterations necessary to protect the  
6 safety of its guests, vendors, and associates. These costs and extra expenses also were necessary to  
7 comply with the emergency directives, laws, and/or ordinances promulgated by governmental  
8 authorities and the CDC, among others. None of these costs would have been incurred but for the  
9 impacts of SARS-CoV-2 and the resulting governmental orders.

10 114. In addition to these costs, PANDA has incurred significant losses and extra expense in  
11 nearly all aspects of its business. Again, none of these expenses would have been incurred but for the  
12 impacts of SARS-CoV-2 and the resulting governmental orders.

13 115. Among other things, PANDA implemented mitigation measures once certain states  
14 began to allow reopening of businesses and in-person shopping, which led to an increase in extra  
15 expense.

16 116. The above-referenced orders, issued as a direct result of the physical loss or damage  
17 described above, have operated to prohibit access to PANDA insured properties and the immediate  
18 surrounding businesses, properties, and areas.

19 117. SARS-CoV-2 and/or the above-referenced governmental orders have also caused  
20 PANDA to suffer interruption of business operations resulting from PANDA taking reasonable and  
21 necessary action for the temporary protection and preservation of its insured locations, to prevent  
22 immediately impending insured physical loss or damage to its insured locations.

23 118. SARS-CoV-2 and/or the above-referenced governmental orders have further caused  
24 PANDA to suffer loss directly resulting from physical loss or damage to property at the premises of  
25 PANDA’s suppliers, guests, and/or contract service providers.

26 **THE INSURANCE COVERAGE PURCHASED BY PANDA**

27 119. To protect itself in the event of property loss and business interruption, PANDA  
28 annually purchased an “all risk” program of insurance at significant expense. COVID-19 and

1 governmental orders triggered coverage under PANDA’s “all risk program,” as relevant here, for its  
2 “all risk” policies covering 2019-2020 and 2020-2021.

3 120. Defendants Lexington, Westport, Everest, Axis, Evanston and Maxum each issued an  
4 “all risk” insurance policy to PANDA insuring its commercial property risks during the policy period  
5 April 1, 2019 through April 1, 2020 (the “2019-20 All Risk Policies”). *See Exs. A through F.* The  
6 2019-20 All Risk Policies respond to covered claims seriatim such that the Lexington Policy,  
7 20413373, is first to provide insurance coverage for PANDA’s loss. If PANDA’s loss exceeds the  
8 Lexington Policy, then the Westport Policy, NAP 2003325 00, and the Everest Policy, RP8CF00053-  
9 191, respond simultaneously, sharing equally the insurance covering Plaintiff’s loss. Finally, if the  
10 loss exceeds the Everest and Westport Policies, the Axis Policy, ECF636741-19, the Evanston Policy,  
11 MKLV12XP002896, and the Maxum Policy, MSP-6034389-01, all respond simultaneously such that  
12 the Axis Policy provides one-half and the Evanston and Maxum Policies each provide one-quarter of  
13 the insurance coverage for PANDA’s loss.

14 121. Defendants AIG, Westport, Everest, Axis, Evanston and Maxum each issued an  
15 insurance policy to PANDA insuring its commercial property risks during the policy period April 1,  
16 2020 through April 1, 2021 (the “2020-21 All Risk Policies”). *See Exs. G through L.* The 2020-21  
17 All Risk Policies respond to covered claims seriatim such that the AIG Policy, 34250337, is first to  
18 provide coverage for PANDA’s loss. If PANDA’s loss exceeds the AIG Policy, then the Westport  
19 Policy, NAP 2003325 01, and the Everest Policy, RP8CF00053-201, respond simultaneously, sharing  
20 equally the insurance covering PANDA’s loss. Finally, if the loss exceeds the Everest and Westport  
21 Policies, the Axis Policy, ECF636741-20, the Evanston Policy, MKLV12XP003411, and the Hallmark  
22 Policy, 73PRX20A569, all respond simultaneously such that the Axis Policy provides one-half and  
23 the Evanston and Hallmark Policies each provide one-quarter of the insurance coverage for PANDA’s  
24 loss.

25 122. Panda Restaurant Group, Inc. is the Named Insured under the All Risk Policies. The  
26 All Risk Policies define “Named Insured” to mean the “First Named Insured and/or its affiliated and  
27 subsidiary companies and/or corporations as now exist or may hereafter be constituted or acquired  
28 including their interests as may appear in partnerships or joint ventures which the Insured is legally

1 obligated to insure.”<sup>2</sup> All other Plaintiffs are subsidiaries and/or affiliates of Panda Restaurant Group  
2 and, thus, qualify as insureds under each of the All Risk Policies.

3 123. PANDA has paid all required premiums and otherwise complied with all terms and  
4 conditions of these All Risk Policies. These premiums collectively total more than \$2 million  
5 annually.

6 124. The All Risk Policies contain, *inter alia*, first party commercial property coverage for  
7 all risks of loss of or damage to property and ensuing business interruption and extra expense  
8 (collectively, the “Insured Properties”), including without limitation, coverage for Business  
9 Interruption, Communicable Disease, Interruption by Civil or Military Authority, Contingent Time  
10 Element, Extended Period of Indemnity, Extra Expense, Ingress & Egress, Ordinary Payroll,  
11 Professional Fees, Limit Pollution Coverage, Leasehold Interest, and Spoilage.

12 125. Collectively, the All Risk Policies provide a total limit of liability of at least \$110  
13 million for any one occurrence for Property Damage, Business Income and Extra Expense, with  
14 various deductibles, sublimits, and time limits.

15 126. Shortly after PANDA began closing hundreds of its Insured Properties across the  
16 United States and its territories, and Canada, its suffered losses in excess of \$100 Million – far  
17 exceeding the deductibles and policy limits under the All Risk Policies. Accordingly, the full limits  
18 of liability are available for PANDA’s damages.

19 127. The All Risk Polices begin with a clear obligation to “insure[] against **all risks** of direct  
20 physical loss or damage to Insured Property” subject to the All Risk Policies’ terms and conditions.  
21 (emphasis added.)

### 22 **PROPERTY COVERAGE UNDER THE ALL RISK POLICIES**

23 128. Unless otherwise excluded, the All Risk Policies “cover[] the following real property  
24 while on the described **Locations** and within 1,000 feet thereof: Real property, including new  
25

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26 <sup>2</sup> The policy language throughout this Complaint is taken from the primary policy issued by Lexington, with an effective  
27 period of April 1, 2019 through April 1, 2020, and bearing the Policy No. 020413373. While the policy language is not  
28 identical across the All Risk Policies, except where noted, the policy provisions are substantively the same and have no  
material differences impacting Panda’s claim for coverage. For ease of reference, attached to this Complaint as Exhibits  
A through L are the All Risk Policies.

1 buildings and additions under construction at an Insured **Location**, and personal property in which the  
2 Insured has an insurable interest; . . .”

3 129. The All Risk Policies define **Location** broadly as “the location as specified in the  
4 Statement of Values, but if not so specified, location means any building, yard, dock, wharf, pier or  
5 bulkhead or any group of the foregoing bounded on all sides by public streets, clear **Land** space or  
6 open waterways, each not less than fifty feet wide. Any bridge or tunnel crossing such street, space or  
7 waterway shall render such separation inoperative for the purpose of this definition.”

8 130. The All Risk Policies define **Miscellaneous Unnamed Location(s)** broadly as “a  
9 location that has not been included in the Statement of Values on file with the Company and has not  
10 been reported to the Company as may be required in the Policy provisions elsewhere.”

11 131. The All Risk Policies also provide coverage for Newly Acquired Property, which  
12 includes “real or personal property of the type insured under this Policy that is rented, leased, or  
13 purchased by the Insured after the inception date of this Policy.”

14 132. For the reasons described above, PANDA sustained actual loss, including but not  
15 limited, to substantial sums spent to remediate physical damage to its insured properties, such as for  
16 the cleanup and removal of SARS-CoV-2 from the premises, improving air filtration systems,  
17 remodeling and reconfiguring physical spaces, and other measures to reduce or eliminate the presence  
18 of the SARS-CoV-2 virions on its insured properties. Such remediation measures have been ongoing  
19 because of the continuous and repeated recurrence of SARS-CoV-2 virions.

20 133. In addition to physical damage, PANDA also has suffered direct physical loss. The  
21 onsite SARS-CoV-2 virions – including emanating from PANDA’s associates and its guests – fomites,  
22 and respiratory droplets or droplet nuclei containing SARS-CoV-2 virions have attached to and  
23 deprived, partially and totally, PANDA of the physical use and functionality of its insured properties  
24 by making them unsafe and unusable and thereby lost.

25 134. These direct physical losses to PANDA’s insured properties include, without  
26 limitation, the rendering of PANDA’s insured properties from a satisfactory state to an unsafe state  
27 and/or unsatisfactory for use because of the fortuitous presence and effect of SARS-CoV-2 virions,  
28 fomites, and respiratory droplets or droplet nuclei directly upon the property.

1 135. These direct physical losses to PANDA include, without limitation, the direct physical  
2 loss of the ability to use PANDA’S insured properties for its intended purpose.

3 136. PANDA also has incurred substantial costs in an attempt to mitigate the suspension of  
4 its restaurant operations, including, without limitation, expenses incurred for reconfiguration to its  
5 restaurant models, to the extent possible, to remote working and re-formatting of various programs.  
6 With respect to compensation for its associates specifically, PANDA was required to comply with  
7 costly regulations governing hazard pay, personal protective equipment (“PPE”), and increased pay  
8 for associate sick leave. PANDA would not have incurred those costs but for either physical loss of  
9 or damage to property (or both) caused by SARS-CoV-2 virions and COVID-19.

10 **TIME ELEMENT COVERAGE UNDER THE ALL RISK POLICIES**

11 137. The All Risk Policies also provide coverage for Time Element (Gross Earnings), which  
12 “cover[s] the actual loss sustained by the Insured during the Period of Interruption directly resulting  
13 from a Covered Cause of Loss to Insured Property.”

14 138. Additional Time Element Coverages under the All Risk Policies include, without  
15 limitation, Extra Expense, Contingent Time Element, Interruption by Civil or Military Authority,  
16 Ingress & Egress, Extended Period of Indemnity, Newly Acquired Property, Professional Fees,  
17 Spoilage.

18 139. By their terms, the various time element coverages broadly protect PANDA from losses  
19 occasioned by the interruption of operations. The onset of COVID-19, the ensuing governmental  
20 orders and directives, either physical loss of or damage to property (or both) caused by SARS-CoV-2  
21 virions and COVID-19, and the effects of all of these on PANDA’s business and property triggered  
22 the time element coverages described above. PANDA paid nearly two million dollars for its annual  
23 premiums in anticipation of those coverages being provided.

24 140. PANDA has sustained actual loss and incurred extra expense because state and local  
25 authorities throughout the country, where PANDA has insured properties, have issued orders that  
26 impair, limit, restrict, or prohibit partial or total access to insured property, including, in some  
27 instances, complete business closures, and continued business closures for certain insured properties.

28 141. These civil or military orders, including, but not limited to, orders of health authorities,

1 limiting, restricting, prohibiting, or impairing access to PANDA insured properties have all been  
2 issued as a direct result of, among other things, either physical loss of or damage to property (or both)  
3 caused by the SARS-CoV-2 virions and COVID-19, including, but not limited to, physical damage  
4 either at insured properties or within proximity thereof. This direct physical damage is caused by the  
5 physical presence of, and structural damage caused by, SARS-CoV-2 virions and COVID-19 –  
6 including from PANDA’s own guests and associates – on furniture, doors, floors, bathroom facilities,  
7 restaurant supplies, and in the air within the insured properties and HVAC systems at the insured  
8 properties. Such direct physical loss of or damage to property (or both) is of the type insured by the  
9 All Risk Policies generally as well as by the time element coverage provisions specifically.

10 142. Numerous outbreaks of COVID-19 throughout the country, where PANDA’s insured  
11 properties are located, also have led to numerous discrete direct physical loss of or damage to property  
12 (or both) at or within close proximity of the insured properties, and those losses or damages have in  
13 turn led to numerous discrete civil or military orders limiting, restricting, impairing, or prohibiting  
14 access to insured locations. The direct physical loss of or damage to property (or both) also includes,  
15 but is not limited, to SARS-CoV-2 virions physically attaching themselves to the exterior and interior  
16 walls of PANDA’S insured properties, as well as doors, furniture, bathroom facilities, restaurant  
17 equipment, tables, inventory, and supplies, and converting these once safe and usable surfaces and  
18 premises to unsafe and deadly vehicles of transmission for the dangerous SARS-CoV-2 virions and  
19 COVID-19 which resulted in complete or partial closure of PANDA’S insured properties. These  
20 losses are of the type insured by the All Risk Policies generally as well as under the time element  
21 provisions specifically.

22 **COMMUNICABLE DISEASE COVERAGE UNDER THE ALL RISK POLICIES**

23 143. The 2019-2020 Policies provide Time Element coverage for Communicable Disease:  
24

25 Subject to the Annual Aggregate for Communicable Disease, we  
26 will pay actual **business income** loss sustained by you and  
27 **communicable disease extra expense** and **crisis response**  
28 **expenses** incurred by you, during the **period of indemnity** due to  
an **order of the health authority** during the policy period that  
results in a partial or total suspension of your business operations at  
your **location**.

1 144. Crisis response expenses means reasonable and necessary expenses incurred:

- 2 a. For public relations to restore the reputation and stature of
- 3 your **location**, and
- 4 b. To assist you to recover money from any governmental
- 5 program or agency for **communicable disease extra**
- 6 **expense** incurred by your **location**.

7 With respect to Subsections 2.c. and 2.d. above, such purchases  
8 must be over and above the standard stock, equipment and materials  
9 held by you, that is not reimbursable or provided from any other  
10 source.

11 145. Communicable disease extra expense means reasonable and necessary extra expenses  
12 to:

- 13 a. Cleanup, remove and dispose of any property at your
- 14 location that is contaminated by the presence of a
- 15 communicable disease, and
- 16 b. Restore your location to its original condition, in a manner
- 17 to satisfy the minimum requirements of any law or
- 18 ordinance regulating communicable diseases;
- 19 c. Purchase vaccines, antibiotics, anti-viral medications, or
- 20 other similar medications; and
- 21 d. Purchase medical equipment (excluding hospital beds) or
- 22 ordinary medical materials.

23 With respect to Subsections 2.c. and 2.d. above, such purchases  
24 must be over and above the standard stock, equipment and materials  
25 held by you, that is not reimbursable or provided from any other  
26 source.

27 146. **Order of the health authority** means “a written order partially or totally suspending  
28 your business operations due to the presence of a communicable disease(s) at your **location** issued by  
a governmental health authority having jurisdiction over such business operations.”

147. PANDA has confirmed the actual presence and/or statistically certain presence of the  
SARS-CoV-2 virions in or on PANDA’s insured properties, and due to the various state and local  
governmental orders spanning across North America, including orders issued from the local health  
departments, was unexpectedly forced to shutter its doors or otherwise restrict operations, resulting in  
devastating actual losses.

148. PANDA was also required to incur extra expenses, including without limitation, to  
cleanup and remove the presence of SARS-CoV-2 on its properties, to purchase equipment to



1 adequately protect its associates and guests from the danger of SAR-CoV-2, and to restore its  
2 properties to their original condition and reputation.

3 149. For the reasons described through this complaint, the onset of COVID-19, the  
4 confirmed physical presence at PANDA's locations, the ensuing orders of governmental and health  
5 authorities, and the effects of both on PANDA's business and the physical loss of and damage to  
6 PANDA has triggered the Communicable Disease coverages in the 2019-20 All Risk Policies.

7 150. The Communicable Disease coverages are not the only coverages available under the  
8 All Risk Policies that insure against either physical loss of or damage to property or both from the  
9 effects of COVID-19 and SARS-CoV-2. PANDA's economic losses and the property's loss of  
10 physical and economic functionality that are due to the actual not suspected presence of communicable  
11 disease as described above trigger multiple coverages under the All Risk Policies. PANDA paid nearly  
12 two million dollars for its annual premium in anticipation of those coverages being provided without  
13 delay.

14 **NO EXCLUSIONS APPLY TO PANDA'S LOSSES AND DAMAGES**

15 151. No exclusions under the All Risk Policies unambiguously preclude coverage for  
16 PANDA'S claim. And, more specifically, no exclusions unambiguously preclude coverage for either  
17 physical loss of or damage to property (or both) from the effects of COVID-19 and SARS-CoV-2 and  
18 the ensuing orders and emergency directives.

19 152. As described above, PANDA also has a reasonable expectation that the emergence of  
20 COVID-19, the ensuing orders and later emergency directives, either physical loss of or damage to  
21 property (or both) caused by SARS-CoV-2 virions and COVID-19, and the effects of all of these on  
22 PANDA's business and insured properties would trigger multiple coverages under the All Risk  
23 Policies described above, as no exclusion unambiguously applied to preclude coverage and PANDA  
24 had paid for extremely broad "all risk" coverage.

25 **PANDA'S CLAIM AND INSURER DEFENDANTS' WRONGFUL DENIAL OF**  
26 **COVERAGE**

27 153. PANDA submitted timely notice of its claim to INSURER DEFENDANTS.

28 154. From March 2020, the news media had become dominated by reports of insurers,

1 including, in particular, those providing “all risk” or property policies, uniformly denying coverage  
2 without investigation and that a singular position had developed across the industry that insurers would  
3 not accept or even investigate the availability of coverage for claims stemming from SARS-CoV-2  
4 and the governmental orders. This position was also well documented in the courts, with insurers  
5 launching aggressive attacks at the pleading stage to challenges its policyholders’ claims for coverage,  
6 including INSURER DEFENDANTS.

7 155. To date, the INSURER DEFENDANTS have not paid PANDA’s claim and have not  
8 confirmed any intent to pay PANDA’s claim. Instead, INSURER DEFENDANTS’ actions reported  
9 in the media and positions in publically filed lawsuits demonstrate that they have no intention of paying  
10 PANDA’s claim without a court order, forcing PANDA to bring the present action.

11 **FIRST CAUSE OF ACTION**

12 **(For Anticipatory Breach of Contract against the Insurer Defendants)**

13 156. PANDA repeats and re-alleges the allegations in the preceding paragraphs of this  
14 Complaint as if fully set forth herein.

15 157. PANDA’s All Risk Policies are valid and enforceable contracts between PANDA and  
16 the INSURER DEFENDANTS.

17 158. PANDA has satisfied, is excused from performing, or the INSURER DEFENDANTS  
18 have waived or are estopped from insistence upon performance of, all conditions of the All Risk  
19 Policies, including but not limited to payment of required premiums, provision of timely notice of  
20 claim, and submission of a Proof of Loss.

21 159. INSURER DEFENDANTS agreed in their insurance contracts to provide insurance  
22 coverage for all risks of either physical loss of or damage to property (or both) not otherwise excluded.

23 160. PANDA anticipates that INSURER DEFENDANTS will refuse to pay despite the fact  
24 that PANDA is entitled to coverage under the All Risk Policies.

25 161. SARS-CoV-2 has caused and continues to cause either physical loss of or damage to  
26 PANDA’s insured properties and to properties within close proximity of PANDA’s insured properties  
27 (or both).

28 162. PANDA has suffered actual losses and incurred extra expense due to either physical

1 loss of or damage to property (or both) caused by SARS-CoV-2, including the actual and confirmed  
2 presence of COVID-19 on its properties, which is a risk not excluded by the All Risk Policies.

3 163. No Policy exclusion applies to preclude or limit coverage.

4 164. The INSURER DEFENDANTS are contractually obligated under the All Risk Policies  
5 to indemnify PANDA for the full amount of its losses, including extra expense and costs resulting  
6 from, among other things, (i) direct physical loss of or damage to property (or both) caused by COVID-  
7 19, (ii) civil or military authority orders, including orders of the health authority, (iii) obstruction of  
8 ingress and egress, (iv) communicable disease, (v) contingent time element losses, (vi) extra expense  
9 losses, (vii) professional fees, subject only to the applicable deductibles and limits of liability in the  
10 All Risk Policies.

11 165. The anticipatory breaches occurred when the INSURER DEFENDANTS absolutely  
12 repudiated their contractual obligations by failing to pay PANDA's claim and declaring an  
13 unconditional intent not to perform under the All Risk Policies according to their terms.

14 166. As a direct and proximate result of their anticipatory breach of contract, the INSURER  
15 DEFENDANTS have deprived PANDA of the benefits of the insurance coverage for which substantial  
16 premiums were paid, which entitles PANDA to money damages, including interest according to law.

17 167. PANDA's losses as a result of the INSURER DEFENDANTS' anticipatory breach of  
18 contract are continuing, and PANDA reserves the right to seek the full and exact amount of its damages  
19 at the time of trial.

20 **SECOND CAUSE OF ACTION**

21 **(For Breach of Contract against the Insurer Defendants)**

22 168. PANDA repeats and re-alleges the allegations in the preceding paragraphs of this  
23 Complaint as if fully set forth herein.

24 169. PANDA's All Risk Policies are valid and enforceable contracts between PANDA and  
25 the INSURER DEFENDANTS.

26 170. PANDA has satisfied, is excused from performing, or the INSURER DEFENDANTS  
27 have waived or are estopped from insistence upon performance of, all conditions of the All Risk  
28 Policies, including but not limited to payment of required premiums, provision of timely notice of

1 claim, and submission of a Proof of Loss.

2 171. INSURER DEFENDANTS agreed in their insurance contracts to provide insurance  
3 coverage for all risks of either physical loss of or damage to property (or both) not otherwise excluded.

4 172. SARS-CoV-2 has caused and continues to cause either physical loss of or damage to  
5 PANDA's insured properties and to properties within close proximity of PANDA's insured properties  
6 (or both).

7 173. PANDA has suffered actual losses and incurred extra expense due to either physical  
8 loss of or damage to property (or both) caused by SARS-CoV-2, a risk not excluded by the All Risk  
9 Policies.

10 174. No Policy exclusion applies to preclude or limit coverage.

11 175. The INSURER DEFENDANTS are contractually obligated under the All Risk Policies  
12 to indemnify PANDA for the full amount of its losses, including extra expense and costs resulting  
13 from, among other things, (i) direct physical loss of or damage to property (or both) caused by COVID-  
14 19, (ii) civil or military authority orders, including orders of the health authority, (iii) obstruction of  
15 ingress and egress, (iv) communicable disease, (v) contingent time element losses, (vi) extra expense  
16 losses, (vii) professional fees, subject only to the applicable deductibles and limits of liability in the  
17 All Risk Policies.

18 176. The INSURER DEFENDANTS have refused to pay for PANDA's loss and expenses  
19 in breach of the All Risk Policies.

20 177. As a direct and proximate result of their breach of contract, the INSURER  
21 DEFENDANTS have deprived PANDA of the benefits of the insurance coverage for which substantial  
22 premiums were paid, which entitles PANDA to money damages, including interest according to law.

23 178. PANDA's losses as a result of the INSURER DEFENDANTS' breach of contract are  
24 continuing, and PANDA reserves the right to seek the full and exact amount of its damages at the time  
25 of trial.

26 **THIRD CAUSE OF ACTION**

27 **(For Declaratory Relief against the Insurer Defendants)**

28 179. PANDA repeats and re-alleges the allegations in the preceding paragraphs of this

1 Complaint as if fully set forth herein.

2 180. PANDA seek a declaration of the parties' rights and duties under the All Risk Policies  
3 in accordance with Nevada Uniform Declaratory Judgment Act (NRS 30.010 et seq.).

4 181. An actual and justiciable controversy exists between PANDA and the INSURER  
5 DEFENDANTS concerning the INSURER DEFENDANTS' contractual duties to indemnify  
6 PANDA's claims for property damage losses, time element losses, and other losses, costs, and  
7 expenses under the All Risk Policies.

8 182. The controversy between PANDA and INSURER DEFENDANTS is ripe for judicial  
9 review.

10 183. The controversy is of sufficient immediacy to justify the issuance of declaratory relief.

11 184. Accordingly, pursuant to NRS 30.010, *et seq.*, this Court should enter a declaratory  
12 judgment in favor of PANDA and against the INSURER DEFENDANTS, declaring that there is  
13 coverage available for PANDA's claims up to the full limits or applicable sublimits of the All Risk  
14 Policies and declaring any other relief this Court deems proper. Such a declaration would resolve the  
15 current controversy between PANDA and the INSURER DEFENDANTS.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, PANDA prays for relief as follows:

- 18 a) On the First Cause of Action, PANDA requests that the Court enter  
19 judgment against INSURER DEFENDANTS, awarding PANDA damages  
20 in an amount in excess of \$15,000, in an amount to be determined at trial,  
21 plus consequential damages, attorneys' fees, and pre- and post-judgment  
22 interest to the extent permitted by law;
- 23 b) On the Second Cause of Action, PANDA requests that the Court enter  
24 judgment against INSURER DEFENDANTS, awarding PANDA damages  
25 in an amount in excess of \$15,000, in an amount to be determined at trial,  
26 plus consequential damages, attorneys' fees, and pre- and post-judgment  
27 interest to the extent permitted by law;

28

- 1 c) On the Third Cause of Action, PANDA requests that the Court enter a  
2 declaratory judgment in favor of PANDA against the INSURER  
3 DEFENDANTS that PANDA's losses are covered under the All Risk  
4 Policies, declaring that INSURER DEFENDANTS are required to pay  
5 PANDA, up to the applicable limits of the All Risk Policies, for claimed  
6 amounts under the All Risk Policies;
- 7 d) For all Causes of Action, all pre-judgment and post-judgment interest as  
8 allowed by law and all PANDA's costs incurred as a consequence of having  
9 to prosecute this lawsuit, including attorneys' fees; and
- 10 e) Such other and further relief as the Court deems just and proper.

11 **JURY DEMAND**

12 In accordance with NRCP 38(b), PANDA hereby demands a trial by jury on all issues so  
13 triable.

14 DATED this 18<sup>th</sup> day of March, 2022.

15 KEMP JONES, LLP

16 /s/ Don Springmeyer

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