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KING COUNTY
SUPERIOR COURT CLERK
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CASE #: 21-2-11932-4 SEA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

SPIRE HOSPITALITY, LLC, SPIRE
SEATAC MANAGEMENT, LLC, AWH
ABQ HOTEL, LLC,

Plaintiffs,

v.

EVEREST INDEMNITY INSURANCE
COMPANY,

Defendant.

No.

COMPLAINT

1. DECLARATORY JUDGMENT
2. BREACH OF CONTRACT

Plaintiffs Spire Hospitality, LLC ("Spire"), Spire SeaTac Management, LLC ("SeaTac"), and AWH ABQ Hotel, LLC ("AWH ABQ") (collectively "Plaintiffs"), for their Complaint for breach of contract, declaratory judgment, and damages against Defendant Everest Indemnity Insurance Company ("Everest" or "Defendant"), allege as follows:

I. INTRODUCTION

1. Plaintiffs collectively manage and/or own two large, full-service hotels in Washington – one in King County and one in Snohomish County – as well as other full-service hotels and resorts in other states (collectively, the "Hotels"). This action arises from Everest's effective denial of coverage for Plaintiffs' losses arising from the SARS-CoV-2 virus ("Coronavirus") and the disease it causes, Coronavirus Disease 2019 ("COVID-19"), and the direct

COMPLAINT FOR DECLARATORY JUDGMENT
AND BREACH OF CONTRACT BY SPIRE
HOSPITALITY, LLC, SPIRE SEATAC
MANAGEMENT, LLC, AWH ABQ HOTEL, LLC - 1

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Seattle WA 98101
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1 physical loss of or damage to property and business interruption they caused under the "all-risk"
2 insurance policy Everest sold to Spire for the policy period December 15, 2019 to December 15,
3 2020 (the "Policy").

4 2. The Policy was drafted by Everest and "insures against all risk of direct physical loss
5 of or damage to property. . . except as hereinafter excluded[.]" Neither virus, communicable disease,
6 nor pandemics are excluded causes of loss under the Policy. Indeed, infectious disease is a "peril
7 insured against" under the Policy. Nevertheless, Everest has asserted that only very limited coverage
8 under certain Policy provisions is potentially available for Plaintiffs' losses, a position that has
9 effectively denied coverage for the bulk of the losses, contrary to Plaintiffs' reasonable expectations
10 of broad coverage under the all-risk Policy.

11 3. Plaintiffs seek a judgment declaring the scope of Everest's obligation to pay
12 Plaintiffs' losses under the Policy, as well as breach of contract damages for Everest's failure to
13 honor its contractual obligations.¹

14 II. PARTIES

15 4. Spire is a limited liability company formed under the laws of Delaware with its
16 principal place of business in the State of Texas.

17 5. SeaTac is a limited liability company formed under the laws of Delaware with its
18 principal place of business in the State of Washington.

19 6. AWH ABQ is a limited liability company formed under the laws of Delaware with its
20 principal place of business in New Mexico. AWH ABQ's sole member is a limited liability
21 company whose members include a limited liability company whose members include citizens of
22 New Jersey. For purposes of federal diversity jurisdiction, AWH ABQ is a citizen of at least New
23 Jersey.

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26 ¹ As alleged herein, this action includes all losses associated with all Hotels, except for the Los Angeles Marriott
Burbank Airport and Seattle Airport Marriott, with respect to which this action includes only Spire's and/or SeaTac's
management fee-related claims.

1 travel, the hotel's proximity to Seattle-Tacoma International Airport (just 1.7 miles away) was a
2 major selling point for the hotel. In addition to the airport, the hotel is within five miles of many
3 businesses and attractions that also draw guests and patrons to the hotel, including but not limited to
4 the accesso ShoWare Center Arena, Tukwila Family Fun Center; Saltwater State Park; Seahurst
5 Park; Salmon Creek Ravine Park and many notable restaurants, bars, and other attractions. And the
6 hotel is located at the gateway to Seattle, a business and recreational destination for travelers from
7 all over the world. As of January 2020, the Seattle Airport Marriot employed over 198
8 Washingtonians. Following the emergence of Coronavirus and COVID-19 and the physical loss of
9 or damage they caused to the hotel and to other types of property within five miles of the hotel that
10 attract guests and customers to the hotels (known as "Leader Property" in the Policy), 91 employees
11 were laid off and two were furloughed. Moreover, at least ten employees of the Seattle Airport
12 Marriot reported testing positive for COVID-19.

13 13. Spire also manages the Embassy Suites Seattle North Lynnwood, located in
14 Lynwood, Washington. The 240-room hotel includes numerous amenities including an indoor pool,
15 spa tub, fitness center, restaurant and lounge/bar. It is within five miles of many businesses and
16 attractions that also draw guests and patrons to the hotel, including but not limited to the Lynwood
17 Convention Center, the Alderwood Mall, several parks and nature areas, and many notable
18 restaurants, bars, and other attractions. As of January 2020, the Hotel employed over 83
19 Washingtonians. Following the emergence of Coronavirus and COVID-19 and the physical loss of
20 or damage they caused to the hotel and the Leader Property, 37 employees were laid off and one was
21 furloughed. Moreover, at least one employee of the hotel reported testing positive for COVID-19.

22 14. Other Hotels in Spire's portfolio include:

23 a. DoubleTree Albuquerque, in Albuquerque, New Mexico, which is owned by
24 AWH ABQ, and which is within five miles of many businesses and attractions that also draw
25 guests and patrons to the hotel, including but not limited to: Albuquerque Convention Center,
26 Civic Plaza, Historic El Rey Theater, Albuquerque Museum, New Mexico Museum of

1 Natural History, University of New Mexico, ABQ BioPark and Albuquerque Zoo-Asia, and
2 restaurants, bars, and other attractions, including the city of Albuquerque itself.

3 b. Embassy Suites Colorado Springs in Colorado Springs, Colorado which is
4 within five miles of many businesses and attractions that also draw guests and patrons to the
5 hotel, including but not limited to: United States Air Force Academy and Falcon Stadium,
6 Pulpit Rock Park and Ute Valley Park, and restaurants, bars, and other attractions, including
7 Colorado Springs itself.

8 c. Embassy Suites Denver Tech Center North in Denver, Colorado which is
9 within five miles of many businesses and attractions that also draw guests and patrons to the
10 hotel, including but not limited to: the Denver Tech Center corporate office park, Cherry
11 Creek State Park, University of Denver and Magness Arena, Fiddler's Green Amphitheater,
12 and restaurants, bars, and other attractions, including the city of Denver itself.

13 d. Crowne Plaza Atlanta Midtown in Atlanta, Georgia which is within five miles
14 of many businesses and attractions that also draw guests and patrons to the hotel, including
15 but not limited to: Georgia Aquarium, World of Coca Cola, Centennial Olympic Park, Martin
16 Luther King, Jr. National Historic Park, Mercedes Benz Stadium (MLS), State Farm Arena
17 (NBA), The Georgia Institute of Technology and Bobby Dodd Stadium, Georgia World
18 Congress Center, and restaurants, bars, and other attractions, including the city of Atlanta
19 itself.

20 e. Staybridge Suites Atlanta Midtown in Atlanta, Georgia which is within five
21 miles of many businesses and attractions that also draw guests and patrons to the hotel,
22 including but not limited to: Georgia Aquarium, World of Coca Cola, Centennial Olympic
23 Park, Martin Luther King, Jr. National Historic Park, Mercedes Benz Stadium (MLS), State
24 Farm Arena (NBA), The Georgia Institute of Technology and Bobby Dodd Stadium, Georgia
25 World Congress Center, and restaurants, bars, and other attractions, including the city of
26 Atlanta itself.

1 f. Cincinnati Marriott at RiverCenter in Covington, Kentucky which is within
2 five miles of many businesses and attractions that also draw guests and patrons to the hotel,
3 including but not limited to: Great American Ballpark (MLB) and Paul Brown Stadium
4 (NFL), Duke Energy Convention Center, Northern Kentucky Convention Center, Cincinnati
5 Museum Center, Cincinnati Zoo and Botanical Garden, University of Cincinnati, Xavier
6 University, and restaurants, bars, and other attractions, including the Cincinnati area itself.

7 g. DoubleTree Annapolis in Annapolis, Maryland which is within five miles of
8 many businesses and attractions that also draw guests and patrons to the hotel, including but
9 not limited to: United States Naval Academy, Navy Marine Corps Memorial Stadium,
10 Annapolis Town Center shopping mall, and restaurants, bars, and other attractions, including
11 the city of Annapolis itself.

12 h. Holiday Inn Boston Dedham in Dedham, Massachusetts which is within five
13 miles of many businesses and attractions that also draw guests and patrons to the hotel,
14 including but not limited to: Noanet Woodlands, Cutler Park Reservation, Curry College,
15 Blue Hills Reservation and Ski Area, and restaurants, bars, and other attractions, including
16 the Boston area itself.

17 i. Holiday Inn Boston Marlborough in Marlborough, Massachusetts which is
18 within five miles of many businesses and attractions that also draw guests and patrons to the
19 hotel, including but not limited to: Crane Swamp Nature Preserve, Apex Entertainment,
20 Callahan State Park, and restaurants, bars, and other attractions.

21 j. Holiday Inn Boston Peabody in Peabody, Massachusetts which is within five
22 miles of many businesses and attractions that also draw guests and patrons to the hotel,
23 including but not limited to: Lynn Woods, Breakheart Reservation, Salem, Massachusetts
24 historical sites, and restaurants, bars, and other attractions, and the Boston area.

25 k. DoubleTree Grand Rapids Airport in Grand Rapids, Michigan, which is
26 within five miles of many businesses and attractions that also draw guests and patrons to the

1 hotel, including but not limited to: Gerald R. Ford International Airport, Davenport
2 University, Calvin University, Frederick Meijer Gardens and Sculpture Park, Aquinas
3 College, and restaurants, bars, and other attractions.

4 l. Embassy Suites Detroit Livonia Novi in Livonia, Michigan which is within
5 five miles of many businesses and attractions that also draw guests and patrons to the hotel,
6 including but not limited to: Schoolcraft College, Madonna University, and restaurants, bars,
7 shopping, and other attractions.

8 m. Renaissance Minneapolis Bloomington Hotel in Bloomington, Minnesota,
9 which is within five miles of many businesses and attractions that also draw guests and
10 patrons to the hotel, including but not limited to: The Mall of America, Hyland Hills Ski
11 Area, Hyland Lake Park Reserve Recreation Area, and restaurants, bars, and other
12 attractions.

13 n. Hilton Jackson in Jackson, Mississippi, which is within five miles of many
14 businesses and attractions that also draw guests and patrons to the hotel, including but not
15 limited to: Tougaloo College, LeFleur's Bluff State Park, Mississippi Veterans Memorial
16 Stadium (college football), and restaurants, bars, and other attractions.

17 o. High Peaks Resort Lake Placid in Lake Placid, New York, which is within
18 five miles of many businesses and attractions that also draw guests and patrons to the hotel,
19 including but not limited to: Lake Placid Winter Olympic Museum, Lake Placid Olympic Ski
20 Jumping Complex and Olympic Cauldron, Mirror Lake Public Beach, Lake Placid Olympic
21 Training Center, and restaurants, bars, and other attractions.

22 p. Embassy Suites Cincinnati Northeast Blue Ash in Blue Ash, Ohio, which is
23 within five miles of many businesses and attractions that also draw guests and patrons to the
24 hotel, including but not limited to: University of Cincinnati Blue Ash College, Sharon Woods
25 Park, Heritage Village Museum, and restaurants, bars, and other attractions.

1 q. DoubleTree Nashville Downtown in Nashville, Tennessee, which is within
2 five miles of many businesses and attractions that also draw guests and patrons to the hotel,
3 including but not limited to: Nissan Stadium (NFL), Bridgestone Arena (NHL), Country
4 Music Hall of Fame and Museum, Tennessee State Museum, Ryman Auditorium/Grand Ole
5 Opry, Frist Art Museum, Schermerhorn Symphony Center, Musicians Hall of Fame and
6 Museum, Vanderbilt University, Belmont University, and restaurants, bars, and other
7 attractions, as well as the city of Nashville itself.

8 r. Embassy Suites El Paso in El Paso, Texas, which is within five miles of many
9 businesses and attractions that also draw guests and patrons to the hotel, including but not
10 limited to: El Paso International Airport, El Paso Convention and Performing Art Center, El
11 Paso Coliseum, El Paso Zoo, Chamizal National Memorial Park and Cultural Center, and
12 restaurants, bars, and other attractions.

13 s. Embassy Suites Laredo in Laredo, Texas, which is within five miles of many
14 businesses and attractions that also draw guests and patrons to the hotel, including but not
15 limited to: Laredo International Airport, Texas A&M International University, Lake Casa
16 Blanca International State Park, and restaurants, bars, and other attractions.

17 t. Topnotch Resort Stowe in Stowe, Vermont, which is within five miles of
18 many businesses and attractions that also draw guests and patrons to the hotel, including but
19 not limited to: Stowe Mountain Resort, Mount Mansfield State Forest, and restaurants, bars,
20 and other attractions.

21 u. Los Angeles Marriott Burbank Airport in Burbank, California, which is
22 managed by Spire and is within five miles of many businesses and attractions that also draw
23 guests and patrons to the hotel, including but not limited to: Hollywood Burbank Airport,
24 Walt Disney Studios, Universal Studios Hollywood, Los Angeles Zoo, Griffith Park, and
25 restaurants, bars, and other attractions, including the Los Angeles area itself.

1 15. As a part of its prudent business practices and in recognition of its responsibilities to
2 its employees, its community, its customers and the Hotels, Spire maintains insurance coverage.
3 Spire specifically maintains "all risk" commercial property coverage with Everest, covering not only
4 more commonly occurring risks like fire, but also entirely unanticipated and novel risks that may
5 arise. As described below, the Policy provides coverage for all "loss of or damage to" property
6 unless specifically excluded (emphasis added).

7 **B. Coronavirus and COVID-19**

8 16. COVID-19 is a severe infectious disease caused by Coronavirus. Coronavirus causes
9 serious systemic illness and death.² Coronavirus is primarily spread through airborne transmission,
10 and it cannot be effectively removed from the air, or even from many surfaces, by means of routine
11 surface cleaning.

12 17. The existence and presence of Coronavirus and COVID-19 are not completely
13 reflected in the reported cases or individuals' positive test results, as only a portion of the population
14 has been tested. For example, in June 2020, the Centers for Disease Control and Prevention
15 ("CDC") estimated that the number of people in the U.S. who had been infected with COVID-19
16 was ten times higher than the number of reported cases.³ Additionally, at least 40% of people
17 infected with COVID-19 are asymptomatic.⁴ COVID-19 also includes a pre-symptomatic
18 incubation period of up to 14 days, during which time infected people can transmit COVID-19 to
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23 ² Tianna Hicklin, *Immune cells for common cold may recognize SARS-COV-2*, NAT. INST. OF HEALTH (Aug. 18, 2020),
<https://www.nih.gov/news-events/nih-research-matters/immune-cells-common-cold-may-recognize-sars-cov-2> (last
24 visited Sept. 2, 2021), Ex. 1.

25 ³ Lena H. Sun & Joel Achenbach, *CDC chief says coronavirus cases may be 10 times higher than reported*, WASH.
POST (June 25, 2020), <https://www.washingtonpost.com/health/2020/06/25/coronavirus-cases-10-times-larger/> (last
26 visited Sept. 2, 2021), Ex. 2.

27 ⁴ Ellen Cranley, *40% of people infected with Covid-19 are asymptomatic, a new CDC estimate says*, BUS. INSIDER
28 (July 12, 2020), [https://www.businessinsider.com/cdc-estimate-40-percent-infected-with-covid-19-asymptomatic-](https://www.businessinsider.com/cdc-estimate-40-percent-infected-with-covid-19-asymptomatic-2020-7)
2020-7 (last visited Sept. 2, 2021), Ex. 3.

1 other people, given that they release infectious droplets and aerosols into the air and onto surfaces
2 without having experienced symptoms and without realizing that they are contagious or infected.⁵

3 18. Studies have demonstrated that pre-symptomatic individuals have an even greater
4 ability to transmit COVID-19 than other infected people because they carry high levels of “viral
5 load” during a period when they have no symptoms and therefore are unaware that they are
6 infectious.⁶ The National Academy of Sciences has concluded that “the majority of transmission is
7 attributable to people who are not exhibiting symptoms, either because they are still in the pre-
8 symptomatic stage or the infection is asymptomatic.”⁷

9 19. As early as February 26, 2020, the CDC advised that COVID-19 was spreading freely
10 without the ability to document the source of new infections, also known as community transmission
11 or community spread.

12 20. COVID-19 is highly contagious, uniquely resilient, and potentially deadly. The
13 degree to which an infectious disease is contagious is measured by R_0 , a term that defines the
14 average number of other people who are likely to become infected by one person with that disease.
15 The R_0 is a measure of the transmissibility of a pathogen and is determined by estimating the
16 susceptibility of individuals in the population to disease, the transmissibility of the pathogen and
17 importantly, the likelihood and duration of contact between individuals in a population, a parameter

21 ⁵ See *Coronavirus disease 2019 (COVID-19) Situation Report – 73*, WHO (Apr. 2, 2020),
22 <https://apps.who.int/iris/bitstream/handle/10665/331686/nCoVsitrep02Apr2020-eng.pdf?sequence=1&isAllowed=y>
(last visited Sept. 2, 2021), Ex. 4; Minghui Yang et al., *SARS-CoV-2 Detected on Environmental Fomites for Both*
23 *Asymptomatic and Symptomatic Patients with COVID-19*, 203 AM. J. RESPIRATORY & CRITICAL CARE MED. 3 (Feb.
1, 2021), <https://www.atsjournals.org/doi/10.1164/rccm.202006-2136LE> (last visited Sept. 2, 2021), Ex. 5.

24 ⁶ See, e.g., Xi He et al., *Temporal dynamics in viral shedding and transmissibility of COVID-19*, 26 NATURE MED.
672-75, 674 (Apr. 15, 2020), <https://www.nature.com/articles/s41591-020-0869-5> (last visited Sept. 2, 2021), Ex. 6;
25 Lirong Zou et al., *SARS-CoV-2 Viral Load in Upper Respiratory Specimens of Infected Patients*, NEW ENG. J. MED.
382, 1177-79 (Mar. 19, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMc2001737> (last visited Sept. 2, 2021),
Ex. 7.

26 ⁷ Seyed M. Moghadas et al., *The implications of silent transmission for the control of COVID-19 outbreaks*, 117 PNAS
30, 17513-15 (July 28, 2020), <https://www.pnas.org/content/117/30/17513> (last visited Sept. 2, 2021), Ex. 8.

1 that is directly determined by the physical properties of the environment in which contact occurs.⁸
2 Studies have concluded that one person with COVID-19 could infect as many as 5.7 others ($R_0 \approx$
3 5.7), which is much higher than seasonal influenza for example, where on average, one person will
4 infect only 1.3 others ($R_0 \approx 1.3$).⁹

5 21. Coronavirus can remain infectious for "much longer time periods than generally
6 considered possible."¹⁰

7 22. The World Health Organization ("WHO") states that "[t]he disease spreads primarily
8 from person to person through small droplets from the nose or mouth, which are expelled when a
9 person with COVID-19 coughs, sneezes, or speaks...People can catch COVID-19 if they breathe in
10 these droplets from a person infected with the virus...These droplets can land on objects and
11 surfaces around the person such as tables, doorknobs and handrails. People can become infected by
12 touching these objects or surfaces, then touching their eyes, nose or mouth."¹¹

13 23. People infected with Coronavirus spread the virus not only from small droplets but
14 also from aerosols expelled from their nose and mouth when they cough, sneeze, or speak. People
15 become infected with Coronavirus and the resultant COVID-19 disease if they breathe in these
16 droplets or aerosols expelled by an infected person. Droplets and aerosols can be expelled in close
17 proximity (1-2 meters) or can be carried on air currents tens of meters.¹²

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20 ⁸ Anthony R. Ives & Claudio Bozzuto, *Estimating and explaining the spread of COVID-19 at the county level in the*
21 *USA*, 4 COMM'NS BIOLOGY 60 (Jan. 5, 2021), <https://www.nature.com/articles/s42003-020-01609-6> (last visited
22 Sept. 2, 2021), Ex. 9.

21 ⁹ M. Cevik, C.C.G. Bamford & A. Ho, *COVID-19 pandemic-a focused review for clinicians*, 26 CLINICAL
22 MICROBIOLOGY & INFECTION 7, 842-47 (July 1, 2020),
23 [https://www.clinicalmicrobiologyandinfection.com/article/S1198-743X\(20\)30231-7/fulltext](https://www.clinicalmicrobiologyandinfection.com/article/S1198-743X(20)30231-7/fulltext) (last visited Sept. 2,
24 2021), Ex. 10.

23 ¹⁰ Shane Riddell et al., *The effect of temperature on persistence of SARS-CoV-2 on common surfaces*, 17 VIROLOGY
24 J. 145 (Oct. 7, 2020), <https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7> (last visited Sept. 2,
25 2021), Ex. 11.

24 ¹¹ *Q&A on coronaviruses (COVID-19)*, WHO (updated Apr. 17, 2020),
25 [https://web.archive.org/web/20200506094904/https://www.who.int/emergencies/diseases/novel-coronavirus-
26 *2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses* \(last visited Sept. 2, 2021\), Ex. 12.](https://web.archive.org/web/20200506094904/https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses)

26 ¹² Lidia Morawska & Donald K. Milton, *It Is Time to Address Airborne Transmission of Coronavirus Disease 2019*
27 *(COVID-19)*, 71 CLINICAL INFECTIOUS DISEASES 9, 2311-13 (Dec. 3, 2020),
28 <https://pubmed.ncbi.nlm.nih.gov/32628269/> (last visited Sept. 2, 2021), Ex. 13.

1 **C. Coronavirus and COVID-19 Cause Physical Loss of or Damage to Property**

2 24. The omnipresence of Coronavirus and COVID-19 is enabled by multiple modes of
3 viral transmission, including respiratory droplet, airborne/aerosolized, and fomite transmission (*i.e.*,
4 transmission from surfaces and objects).¹³ These transmission methods demonstrate that Coronavirus
5 and COVID-19 cause physical loss of or damage to property.

6 **1. Respiratory Droplet/Airborne Transmission**

7 25. The presence of Coronavirus in the air physically alters and transforms the content of
8 the room air as shown in the following illustrations which depict normal room air at the molecular
9 level in comparison to room air infested with aerosolized Coronavirus at increasing concentration.
10 Normal room air and room air infested with aerosolized Coronavirus is also compared to room air
11 containing ammonia to depict the similarities in the physical alteration caused by aerosolized
12 Coronavirus and ammonia—and ammonia is a substance that courts have held causes physical loss
13 of or damage to property by impairing the functional use of the property. As depicted, aerosolized
14 Coronavirus causes the same physical loss of or damage to property as does ammonia, smoke, soot,
15 radon gas, asbestos and other hazardous substances.

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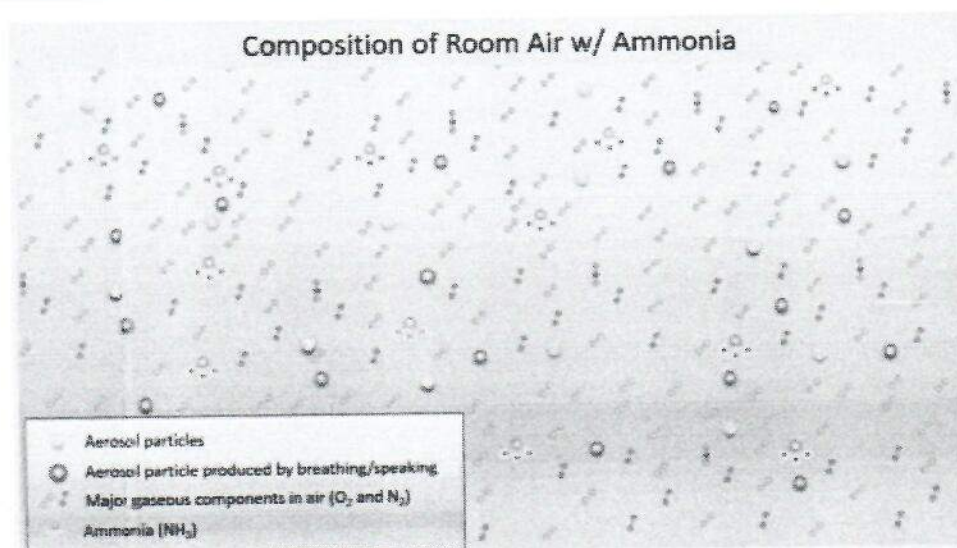
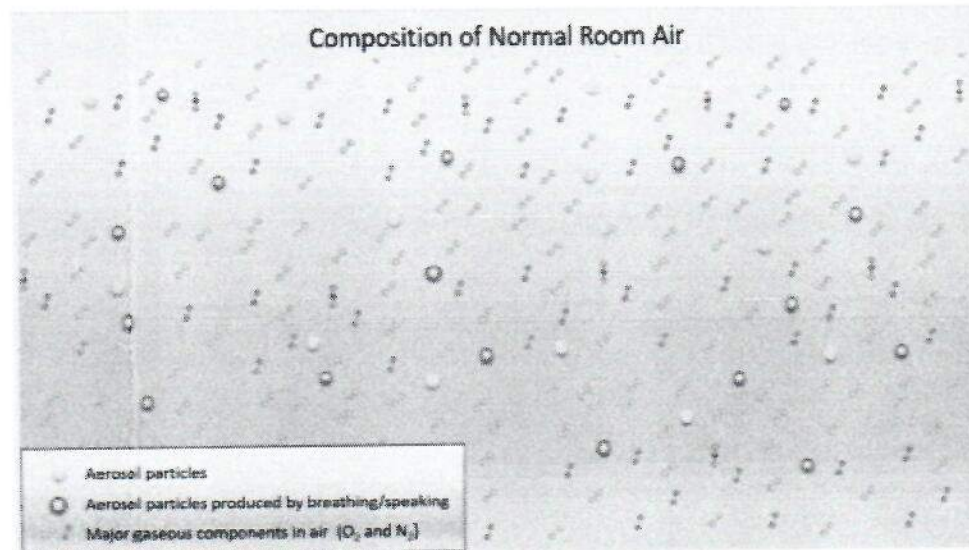
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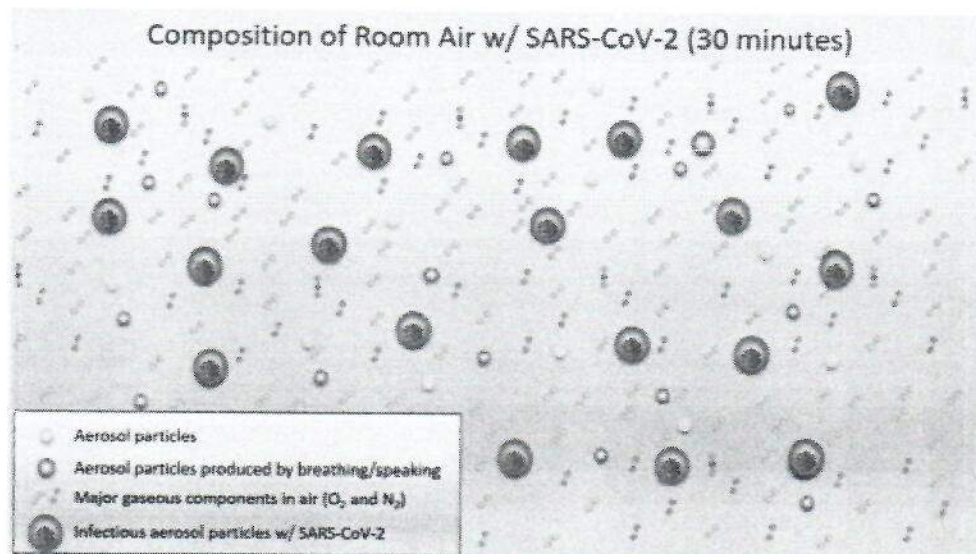
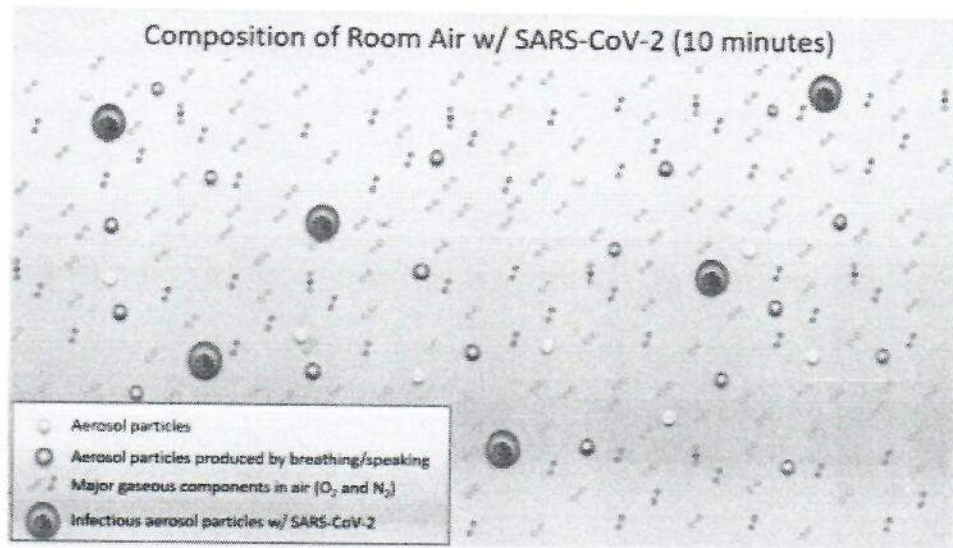
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26 ¹³ See, e.g., *Scientific Brief: Transmission of SARS-CoV-2: implications for infection prevention precautions*, WHO
(July 9, 2020), [https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-](https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions)
27 infection-prevention-precautions (last visited Sept. 2, 2021), Ex. 14.

Composition of Room Air – Normal vs. Ammonia vs. SARS-CoV-2 Over Time





26. Respiratory transmission of COVID-19 occurs through exposure to an infected person's respiratory particles, such as from saliva or mucus.¹⁴ Respiratory transmission of Coronavirus is commonly divided into droplet (larger particles that have a transmission range of about six feet) and airborne (smaller particles that can remain suspended in the air for prolonged periods of time) modes of transmission. Though convenient, this binary division is an

¹⁴ *Id.*

1 oversimplification that underscores transmission risk.¹⁵ Humans produce a wide range of particle
2 sizes when coughing, sneezing, talking, singing, or otherwise dispersing droplets, with virions
3 predominating in the smallest particles.¹⁶ Respiratory particles produced by the average person can
4 travel almost 20 feet by sneezing.¹⁷ An M.I.T. researcher has found that virus-laden "clouds"
5 containing clusters of droplets can travel 23 to 27 feet.¹⁸ A recent review article on viral, host, and
6 environmental factors reported on the "abundant evidence" that proximity is a significant factor in
7 measuring Coronavirus transmission risks.¹⁹

8 27. Airborne transmission involves the spread of the infectious agent caused by the
9 dissemination of droplet nuclei (aerosols) from, for example, exhaled breath, that remain infectious
10 when suspended in the air over long distances and time.²⁰ These tiny particles can remain suspended
11 "for indefinite periods unless removed by air currents or dilution ventilation."²¹ As a result, the risk

15 ¹⁵ Kevin P. Fennelly, *Particle sizes of infectious aerosols: implications for infection control*, 8 LANCET RESPIRATORY
16 MED. 9, 914-24 (Sept. 1, 2020), [https://www.thelancet.com/journals/lanres/article/PIIS2213-2600\(20\)30323-](https://www.thelancet.com/journals/lanres/article/PIIS2213-2600(20)30323-4/fulltext)
17 4/fulltext (last visited Sept. 2, 2021), Ex. 15.

18 ¹⁶ *Id.*

19 ¹⁷ *Id.*

20 ¹⁸ Lydia Bourouiba, *Turbulent Gas Clouds and Respiratory Pathogen Emissions, Potential Implications for Reducing*
21 *Transmission of COVID-19*, 323 JAMA 18, 1837-38 (Mar. 26, 2020),
22 <https://jamanetwork.com/journals/jama/fullarticle/2763852> (last visited Sept. 2, 2021), Ex. 16.

23 ¹⁹ Eric A. Meyerowitz et al., *Transmission of SARS-CoV-2: A Review of Viral, Host, and Environmental Factors*,
24 ANNALS INTERNAL MED. (Jan. 2021), <https://www.acpjournals.org/doi/10.7326/M20-5008> (last visited Sept. 2,
25 2021), Ex. 17.

26 ²⁰ Lydia Bourouiba, *Turbulent Gas Clouds and Respiratory Pathogen Emissions, Potential Implications for Reducing*
27 *Transmission of COVID-19*, 323 JAMA 18, 1837-38 (Mar. 26, 2020),
28 <https://jamanetwork.com/journals/jama/fullarticle/2763852> (last visited Sept. 25, 2021), Ex. 16; see also Jose-Luis
Jimenez, *COVID-19 Is Transmitted Through Aerosols. We Have Enough Evidence, Now It Is Time to Act*, TIME (Aug.
25, 2020), <https://time.com/5883081/covid-19-transmitted-aerosols/> (last visited Sept. 3, 2021), Ex. 18; Ramon
Padilla & Javier Zarracina, *WHO agrees with more than 200 medical experts that COVID-19 may spread via the air*,
USA TODAY (updated Sept. 21, 2020), [www.usatoday.com/in-depth/news/2020/04/03/coronavirus-protection-how-](http://www.usatoday.com/in-depth/news/2020/04/03/coronavirus-protection-how-masks-might-stop-spread-through-coughs/5086553002/)
masks-might-stop-spread-through-coughs/5086553002/ (last visited Sept. 3, 2021), Ex. 19; Wenzhao Chen et al.,
Short-range airborne route dominates exposure of respiratory infection during close contact, 176 BLDG. & ENV'T
(June 2020), <https://www.sciencedirect.com/science/article/pii/S0360132320302183> (last visited Sept. 2, 2021), Ex.
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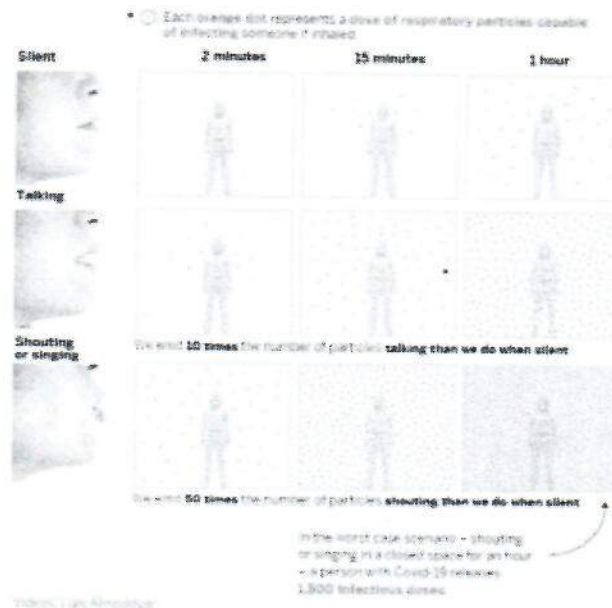
21 ²¹ Kevin P. Fennelly, *Particle sizes of infectious aerosols: implications for infection control*, 8 LANCET RESPIRATORY
MED. 9, P914-24 (Sept. 1, 2020), [https://www.thelancet.com/journals/lanres/article/PIIS2213-2600\(20\)30323-](https://www.thelancet.com/journals/lanres/article/PIIS2213-2600(20)30323-4/fulltext)
4/fulltext (last visited Sept. 2, 2021), Ex. 15.

27 COMPLAINT FOR DECLARATORY JUDGMENT
28 AND BREACH OF CONTRACT BY SPIRE
HOSPITALITY, LLC, SPIRE SEATAC
MANAGEMENT, LLC, AWH ABQ HOTEL, LLC - 15

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1 of disease transmission increases substantially in enclosed environments, compared to outdoor
2 settings.²²

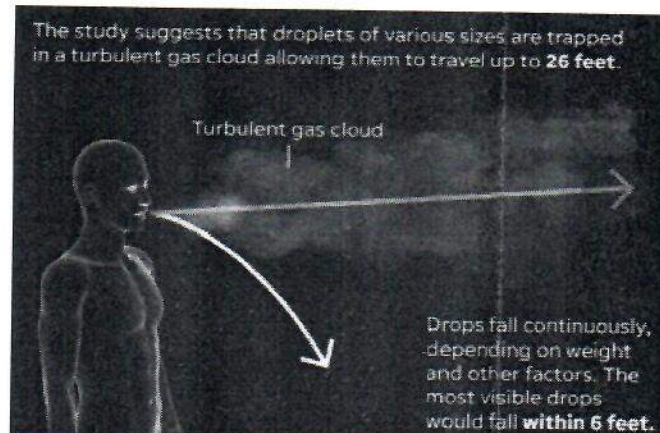
3 28. The airborne transmission of Coronavirus within buildings is depicted in the
4 following illustrations:



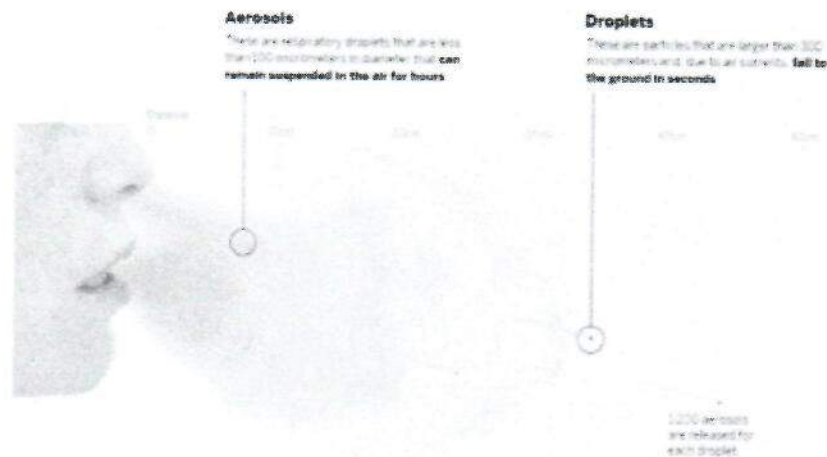
23

23 ²² Muge Cevik et al., *Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) Transmission Dynamics Should*
24 *Inform Policy*, 73 CLINICAL INFECTIOUS DISEASES, Issue Supp. 2 (Aug. 1, 2021),
<https://academic.oup.com/cid/advance-article/doi/10.1093/cid/ciaa1442/5910315> (last visited Sept. 3, 2021), Ex. 21.

25 ²³ Luis Almodovar, *Breathing, speaking and shouting (illustration)*, in Mariano Zafra & Javier Salas, *A room, a bar and*
26 *a classroom: how the coronavirus is spread through the air*, EL PAÍS (Oct. 29, 2020),
https://english.elpais.com/society/2020-10-28/a-room-a-bar-and-a-class-how-the-coronavirus-is-spread-through-the-air.html?fbclid=IwAR1jmVExKaRBcT9-IUHe9RV-xBO-XlShPIftZsdyn1ltCeoNEXwtV_YP4q0 (last visited Sept. 3, 2021).



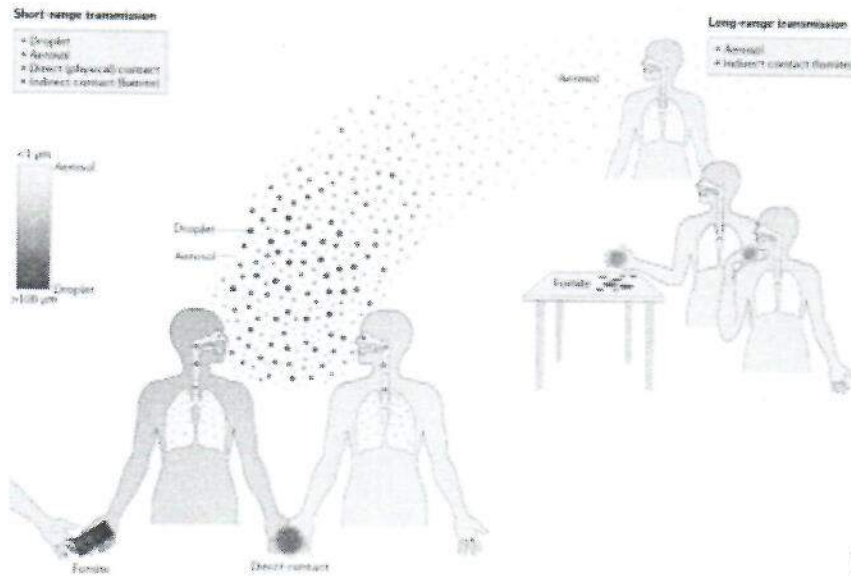
24



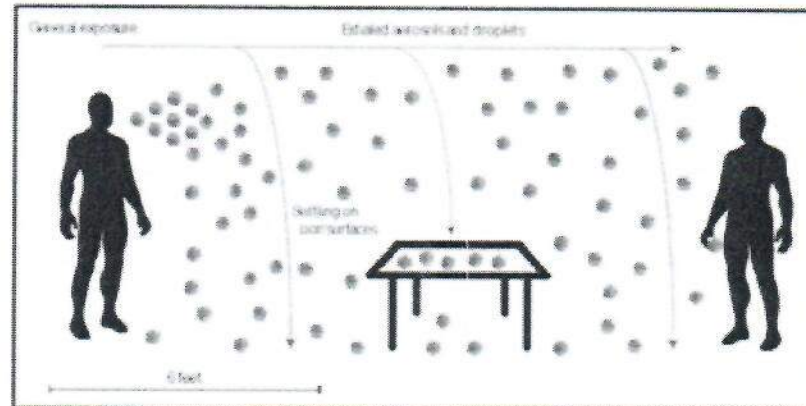
25

²⁴ How cough and sneeze droplets travel (illustration), in Ramon Padilla & Javier Zarracina, *WHO agrees with more than 200 medical experts that COVID-19 may spread via the air*, USA TODAY (updated Sept. 21, 2020), <https://www.usatoday.com/in-depth/news/2020/04/03/coronavirus-protection-how-masks-might-stop-spread-through-coughs/5086553002/> (last visited Sept. 3, 2021).

²⁵ Coronavirus aerosols and droplets (illustration), in Mariano Zafra & Javier Salas, *A room, a bar and a classroom: how the coronavirus is spread through the air*, EL PAÍS (Oct. 29, 2020), https://english.elpais.com/society/2020-10-28/a-room-a-bar-and-a-class-how-the-coronavirus-is-spread-through-the-air.html?fbclid=IwAR1jmVExKaRBcT9-IUHe9RV-xBO-XIShPIfZsdyN1hCeONEXwtV_YP4q0 (last visited Sept. 3, 2021).



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27

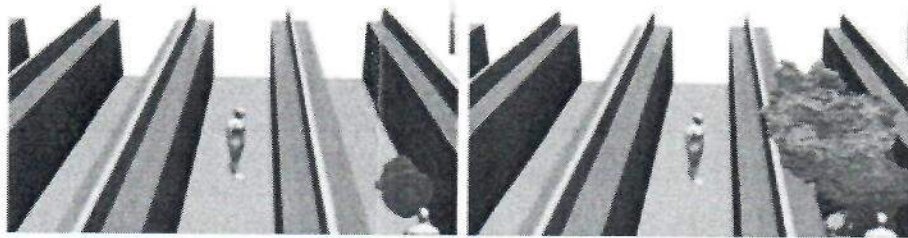
²⁶ Major modes of transmission of respiratory viruses during short-range and long-range transmission (illustration), in Nancy H.L. Leung, *Transmissibility and transmission of respiratory viruses*, 19 NATURE REV. MICROBIOLOGY 528-45 (Mar. 22, 2021), <https://www.nature.com/articles/s41579-021-00535-6> (last visited Sept. 3, 2021).

²⁷ The Cycle of Property Damage by Persons with COVID-19 in Air and On Surfaces (illustration), in Treasure Island, LLC's Motion to Amend Complaint, Exhibit K at 11, *Treasure Island, LLC v. Affiliated FM Ins. Co.*, No. 2:20-cv-00965-JCM-EJY (Mar. 8, 2021) (No. 85-2).

COVID-19 Aerosolized Spread in a Supermarket

Immediately

Less Than 1 Minute



2 Minutes



28

29. Available videos demonstrate Coronavirus “aerosol clouds” lingering indoors in a supermarket, transmitting COVID-19 and rendering the business premises unsafe, uninhabitable, unfit for its intended use or causing it to lose, in whole or in part, its functional use.²⁹

30. The WHO and the scientific community have studied the spread of Coronavirus through aerosols in indoor settings via air circulation systems. For example, on April 5, 2021, the CDC concluded that:

- “[t]he principal mode by which people are infected with [Coronavirus] ... is through exposure to respiratory droplets carrying infectious virus”; and
- “when a person with suspected or confirmed COVID-19 has been

²⁸ Mikko Auvinen & Antti Hellsten (animation), Marie Szaniszlo, *Simulation shows how the coronavirus can spread in supermarkets*, Boston Herald (updated Apr. 11, 2020), <https://www.bostonherald.com/2020/04/09/simulation-shows-how-the-coronavirus-can-spread-in-supermarkets/> (last visited Sept. 3, 2021).

²⁹ See e.g., David Mercer, *Coronavirus lingers in air longer than previously thought, scientists warn*, SKY NEWS (Apr. 10, 2020), <https://news.sky.com/story/coronavirus-3d-model-reveals-how-covid-19-can-spread-in-supermarket-11971373> (last visited Sept. 3, 2021).

indoors, virus can remain suspended in the air for minutes to hours.”³⁰

31. Investigation of over 7,000 COVID-19 cases found that all outbreaks involving three or more people occurred indoors.³¹

32. Moreover, the CDC published a research letter concluding that a restaurant’s air conditioning system triggered the transmission of Coronavirus, spreading it to people who sat at separate tables downstream of the restaurant’s airflow.³² Moreover, one study detected Coronavirus inside HVAC systems transmitted over 180 feet from its source.³³

33. A recently published (February 2021) systematic review of airborne transmission of Coronavirus corroborated the CDC’s concerns and recommended procedures to improve ventilation of indoor air environments to decrease bioaerosol concentration and reduce Coronavirus’ spread.³⁴

34. Additionally, on May 7, 2021, the CDC issued a scientific warning of the risks of airborne indoor transmission of Coronavirus from aerosols at distances greater than six feet from the source, stating that “transmission of SARS-CoV-2 from inhalation of virus in the air farther than six feet from an infectious source can occur” and that:

With increasing distance from the source, the role of inhalation likewise increases. Although infections through inhalation at distances greater than six feet from an infectious source are less likely than at closer distances, the phenomenon has been repeatedly documented under certain preventable circumstances. These transmission

³⁰ *Science Brief: SARS-CoV-2 and Surface (Fomite) Transmission for Indoor Community Environments*, CDC (updated Apr. 5, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html> (last visited Sept. 3, 2021), Ex. 22.

³¹ Hua Qian et al., *Indoor transmission of SARS-CoV-2*, 31 *INDOOR AIR* 3, 639-45 (May 2021), <https://pubmed.ncbi.nlm.nih.gov/33131151/> (last visited Sept. 3, 2021), Ex. 23.

³² Jianyun Lu et al., *COVID-19 outbreak associated with air conditioning in restaurant, Guangzhou, China*, 2020, 26 *EMERGING INFECTIOUS DISEASES* 7 (July 2020), https://wwwnc.cdc.gov/eid/article/26/7/20-0764_article (last visited Sept. 3, 2021), Ex. 24; see also Keun-Sang Kwon et al., *Evidence of Long-Distance Droplet Transmission of SARS-CoV-2 by Direct Air Flow in a Restaurant in Korea*, 35 *J. KOREAN MED. SCI.* 46, e415 (Nov. 30, 2020), <https://jkms.org/DOIx.php?id=10.3346/jkms.2020.35.e415> (last visited Sept. 3, 2021), Ex. 25.

³³ Karolina Nissen et al., *Long-distance airborne dispersal of SARS-CoV-2 in COVID-19 wards*, *SCI. REPS.* 10, 19589 (Nov. 11, 2020), <https://www.nature.com/articles/s41598-020-76442-2> (last visited Sept. 3, 2021), Ex. 26.

³⁴ Zahra Noorimotlagh et al., *A systematic review of possible airborne transmission of the COVID-19 virus (SARS-CoV-2) in the indoor air environment*, 193 *ENV’T RSCH.* 110612, 1-6 (Feb. 2021), https://www.sciencedirect.com/science/article/pii/S0013935120315097?dgcid=rss_sd_all (last visited Sept. 3, 2021), Ex. 27.

1 events have involved the presence of an infectious person exhaling virus indoors for
2 an extended time (more than 15 minutes and in some cases hours) leading to virus
3 concentrations in the air space sufficient to transmit infections to people more than 6
4 feet away, and in some cases to people who have passed through that space soon after
the infectious person left. Per published reports, factors that increase the risk of SARS-
CoV-2 infection under these circumstances include:

- 5 • **Enclosed spaces with inadequate ventilation or air handling** within
6 which the concentration of exhaled respiratory fluids, especially very
fine droplets and aerosol particles, can build-up in the air space.
- 7 • **Increased exhalation** of respiratory fluids if the infectious person is
8 engaged in physical exertion or raises their voice (e.g., exercising,
shouting, singing).
- 9 • **Prolonged exposure** to these conditions, typically more than 15
minutes.³⁵

10 35. The CDC has recommended “ventilation interventions” to help reduce exposure to
11 the airborne Coronavirus in indoor spaces, including increasing airflow and air filtration (such as
12 with high-efficiency particulate air (“HEPA”) fan/filtration systems).³⁶ These and other remedial
13 measures must be implemented, at high cost and extra expense, to mitigate loss and reduce the
14 amount of Coronavirus present in the space and to make property safer for its intended use. These
15 extreme measures demonstrate that Coronavirus and COVID-19 cause direct physical loss of or
16 damage to interior spaces. Even then, those interventions cannot be guaranteed to eliminate the
17 aerosolized Coronavirus in an indoor space. Nor do they eliminate it immediately.

18 36. The inability to guarantee complete or immediate elimination of aerosolized
19 Coronavirus in indoor spaces can be observed acutely by comparing the infection rates of “essential
20 workers” with that of the general public. Essential workers are defined by the CDC to be those who
21 conduct “operations and services in industries that are essential to ensure the continuity of critical
22

23
24 ³⁵ *Scientific Brief: SARS-CoV-2 Transmission*, CDC (updated May 7, 2021), https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/sars-cov-2-transmission.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fscience%2Fscience-briefs%2Fscientific-brief-sars-cov-2.html (last visited Sept. 3, 2021), Ex. 28.

25
26 ³⁶ *Ventilation in Buildings*, CDC (updated June 2, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html#:~:text=HEPA%20filters%20are%20even%20more,with%20SARS%2DCoV%2D2> (last visited Sept. 3, 2021), Ex. 29.

1 functions in the United States.”³⁷

2 37. After the first wave of mass business closures in March and April of 2020, employees
3 of so-called “essential businesses” that were eventually allowed to re-open or operate at reduced
4 capacities (i.e., essential workers) were faced with elevated rates of infection when compared to the
5 general public, demonstrating that their workplaces were unfit and unsafe for normal use.³⁸ For
6 example:

- 7 • One study found that 20% of essential grocery store workers tested positive for
8 COVID-19, a much higher rate of infections than others in their surrounding
9 communities³⁹ and that those grocery store workers with interactions with the public
10 tested positive for COVID-19 at a rate five times greater than the general
11 population.⁴⁰
- 12 • Essential workers (e.g., liquor store employees) accounted for 87% of excess deaths
13 in California⁴¹ and over 60% in New York City.⁴²
- 14 • Nursing home residents and employees accounted for at least 35% of all COVID-19
15 deaths in the United States.⁴³

18
19 ³⁷ See *Interim List of Categories of Essential Workers Mapped to Standardized Industry Codes and Titles*, CDC (updated
Mar. 29, 2021), <https://www.cdc.gov/vaccines/covid-19/categories-essential-workers.html> (last visited Sept. 3, 2021).

20 ³⁸ Joanna Gaitens et al., *COVID-19 and Essential Workers: A Narrative Review of Health Outcomes and Moral Injury*, 18
INT’L J. ENV’T RSCH. PUB. HEALTH 4, 1446 (Feb. 4, 2021), <https://www.mdpi.com/1660-4601/18/4/1446> (last visited
21 Sept. 3, 2021), Ex. 30.

21 ³⁹ *Id.*

22 ⁴⁰ Fan-Yun Lan et al., *Association between SARS-CoV-2 infection, exposure risk and mental health among a cohort of
essential retail workers in the USA*, 78 OCCUPATIONAL ENV’T MED. 237-43 (Oct. 30, 2020),
23 <https://oem.bmj.com/content/oemed/78/4/237.full.pdf> (last visited Sept. 3, 2021), Ex. 31.

24 ⁴¹ Yea-Hung Chen et al., *Excess mortality associated with the COVID-19 pandemic among Californians 18-65 years of
age, by occupational sector and occupation: March through November 2020*, 16 PLOS ONE 6, e0252454 (June 4,
2021), <https://pubmed.ncbi.nlm.nih.gov/34086762/> (last visited Sept. 3, 2021), Ex. 32.

25 ⁴² *The plight of essential workers during the COVID-19 pandemic*, 395 LANCET 1587 (May 23, 2020),
[https://www.thelancet.com/action/showPdf?pii=S0140-6736\(20\)2931200-9](https://www.thelancet.com/action/showPdf?pii=S0140-6736(20)2931200-9) (last visited Sept. 3, 2021), Ex. 33.

26 ⁴³ Artis Curiskis et al., *Federal COVID Data 101: Working with CMS Nursing Home Data*, ATLANTIC (Mar. 4, 2021),
<https://covidtracking.com/analysis-updates/federal-covid-data-101-working-with-cms-nursing-home-data> (last visited
27 Sept. 3, 2021), Ex. 34.

28 COMPLAINT FOR DECLARATORY JUDGMENT
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38. Similar findings have been reported across various sectors of essential workers, including elevated rates of infection for emergency services personnel (e.g., firefighters, police), prison correctional officers, and transportation and factory workers, among others.⁴⁴

2. **Fomite (i.e., Surface and Object) Transmission**

39. COVID-19 may also be transmitted to people from physical objects, materials, or surfaces. "Fomites" are physical objects or materials that carry, and are capable of transmitting infectious agents, altering these objects to become vectors of disease.⁴⁵ Fomite transmission has been demonstrated as highly efficient for viruses, both from object-to-hand and from hand-to-mouth.⁴⁶

40. In addition, while fomite transmission may not be the primary route of transmission for COVID-19, fomite transmission is significant and has been estimated to be responsible for up to 25% of all deaths due to COVID-19 since lockdowns were imposed.⁴⁷

41. The WHO has described fomite transmission as follows:

Respiratory secretions or droplets expelled by infected individuals can contaminate surfaces and objects, creating fomites (contaminated surfaces). **Viable SARS-CoV-2 virus and/or RNA detected by RT-PCR can be found on those surfaces for periods ranging from hours to days**, depending on the ambient environment (including temperature and humidity) and the type of surface, in particular at high concentration in health care facilities where COVID-19 patients were being treated. Therefore, transmission may also occur indirectly through touching surfaces in the immediate environment or objects contaminated with virus from an infected person . . .⁴⁸ (Emphasis added).

⁴⁴ *Id.*

⁴⁵ *Fomite*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/fomite> (last visited Sept. 3, 2021).

⁴⁶ P. Rusin, S. Maxwell, & C. Gerba, *Comparative surface-to-hand and fingertip-to-mouth transfer efficiency of gram-positive bacteria, gram-negative bacteria, and phage*, 93 J. APPLIED MICROBIOLOGY 4, 585-92 (Sept. 18, 2002), <https://pubmed.ncbi.nlm.nih.gov/12234341/> (last visited Sept. 3, 2021), Ex. 35.

⁴⁷ A. Meiksin, *Dynamics of COVID-19 transmission including indirect transmission mechanisms: a mathematical analysis*, 148 EPIDEMIOLOGY & INFECTION e257, 1-7 (Oct. 23, 2020), <https://www.cambridge.org/core/journals/epidemiology-and-infection/article/dynamics-of-covid19-transmission-including-indirect-transmission-mechanisms-a-mathematical-analysis/A134C5182FD44BEC9E2BA6581EF805D3> (last visited Sept. 3, 2021), Ex. 36.

⁴⁸ See, e.g., *Scientific Brief: Transmission of SARS-CoV-2: implications for infection prevention precautions*, WHO (July 9, 2020), <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions> (last visited Sept. 3, 2021), Ex. 14.

42. In addition to studies cited by the WHO,⁴⁹ numerous other studies and scientific articles have discussed fomite transmission as a mode of virus transmission, including, but not limited to:

- A study of a COVID-19 outbreak published by the CDC identifying elevator buttons and restroom taps as possible causes of the “rapid spread of SARS-CoV-2” in a shopping mall in China.⁵⁰
- A National Institutes of Health study published in the New England Journal of Medicine finding that Coronavirus survives up to four hours on copper, up to 24 hours on cardboard, and up to three days on plastic and stainless steel, and suggesting that people may acquire the virus through the air and after touching contaminated objects.⁵¹
- An American Society for Microbiology article discussing fomite infection as involving both porous and non-porous surfaces, and occurring through a fomite’s contact with bodily secretions, hands, aerosolized virus from talking, sneezing, coughing, etc., or other airborne viral particles that settle after a disturbance of a fomite (e.g., shaking a contaminated textile such as a blanket).⁵² According to the researchers, “[o]nce a fomite is contaminated, the transfer of infectious virus may readily occur between inanimate and animate objects, or vice versa, and between two separate fomites (if brought together).”⁵³ Generally, frequently touched surfaces can become highly transmissible fomites.⁵⁴
- A CDC research letter reporting that Coronavirus can remain viable on polystyrene plastic, aluminum, and glass for 96 hours in indoor living spaces.⁵⁵
- A *Journal of Hospital Infection* article citing studies revealing that human coronaviruses can persist on inanimate surfaces like metal,

⁴⁹ *Id.*

⁵⁰ Jing Cai et al., *Indirect Virus Transmission in Cluster of COVID-19 Cases, Wenzhou, China*, 26 EMERGING INFECTIOUS DISEASES 6 (June 2020), https://wwwnc.cdc.gov/eid/article/26/6/20-0412_article (last visited Sept. 3, 2021), Ex. 37.

⁵¹ *New coronavirus stable for hours on surfaces*, NAT’L INST. HEALTH (Mar. 17, 2020), <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last visited Sept. 3, 2021), Ex. 38.

⁵² Stephanie A. Boone & Charles P. Gerba, *Significance of Fomites in the Spread of Respiratory and Enteric Viral Disease*, 73 APPLIED & ENV’T MICROBIOLOGY 6, 1687-96 (Mar. 2007), <https://aem.asm.org/content/73/6/1687> (last visited Sept. 3, 2021), Ex. 39.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Boris Pastorino et al., *Prolonged Infectivity of SARS-CoV-2 in Fomites*, 26 EMERGING INFECTIOUS DISEASES 9 (Sept. 2020), https://wwwnc.cdc.gov/eid/article/26/9/20-1788_article (last visited Sept. 3, 2021), Ex. 40.

glass, or plastic for up to nine days.⁵⁶

43. Importantly, Coronavirus has been detected on environmental objects and surfaces from symptomatic, pre-symptomatic and asymptomatic individuals.⁵⁷ Fomites are known to transform the surface of property into a potentially deadly Coronavirus transmission device.

44. As noted above, Coronavirus can remain infectious for a considerable length of time. For example, in the Journal of Virology, researchers demonstrated that Coronavirus can survive up to 28 days at room temperature (68°F) on a variety of surfaces including glass, steel, vinyl, plastic, and paper.⁵⁸ A CDC report from March 27, 2020, stated that Coronavirus was identified on surfaces of the cabins on the Diamond Princess cruise ship 17 days after the cabins were vacated but before they were disinfected.⁵⁹

45. Numerous other scientific studies and articles have identified the persistence of Coronavirus on doorknobs, toilets, faucets, and other high-touch points, as well as on commonly overlooked surfaces such as floors.⁶⁰

46. While the detection of viral RNA on surfaces or in the air does not necessarily mean that Coronavirus is *currently* present and infectious, it demonstrates that Coronavirus was in fact present. Studies have demonstrated the transmission of laboratory-confirmed Coronavirus infection via surfaces.⁶¹

⁵⁶ G. Kampf et al., *Persistence of coronaviruses on inanimate surfaces and their inactivation with biocidal agents*, 104 J. HOSP. INFECTION 3, 246-51 (Mar. 1, 2020), <https://www.journalofhospitalinfection.com/action/showPdf?pii=S0195-6701%2820%2930046-3> (last visited Sept. 3, 2021), Ex. 41.

⁵⁷ Minghui Yang et al., *SARS-CoV-2 Detected on Environmental Fomites for Both Asymptomatic and Symptomatic Patients with COVID-19*, 203 AM. J. RESPIRATORY & CRITICAL CARE MED. 3, 374-78 (Feb. 1, 2021), <https://www.atsjournals.org/doi/pdf/10.1164/rccm.202006-2136LE> (last visited Sept. 3, 2021), Ex. 5.

⁵⁸ *Id.*

⁵⁹ Leah F. Moriarty et al., *Public Health Responses to COVID-19 Outbreaks on Cruise Ships — Worldwide, February–March 2020*, 69 MMWR 12, 347-52 (Mar. 27, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm> (last visited Sept. 3, 2021), Ex. 42.

⁶⁰ Zhen-Dong Guo et al., *Aerosol and Surface Distribution of Severe Acute Respiratory Syndrome Coronavirus 2 in Hospital Wards, Wuhan, China*, 2020, 26 EMERGING INFECTIOUS DISEASES 7, 1583-91 (July 2020), <https://pubmed.ncbi.nlm.nih.gov/32275497/> (last visited Sept. 3, 2021), Ex. 43.

⁶¹ Nancy HL Leung, *Transmissibility and transmission of respiratory viruses*, 19 NATURE REV. MICROBIOLOGY 8, 528-45 (Aug. 2021), <https://pubmed.ncbi.nlm.nih.gov/33753932/> (last visited Sept. 3, 2021), Ex. 44; G. Kampf et al.,

1 **3. These Modes of Transmission Cause Physical Loss of or Damage to Property**

2 47. The presence of Coronavirus in and on property, including in indoor air, on surfaces,
3 and on objects, causes physical loss of or damage to property by causing physical harm to and
4 altering property and otherwise making it incapable of being used for its intended purpose – just as if
5 asbestos, ammonia, radon gas, cat urine, fumes, sulfuric gases emitted from Chinese drywall, carbon
6 monoxide, mold, or salmonella were in the air or on surfaces of the premises.

7 48. Among other things, the presence of Coronavirus transforms everyday surfaces and
8 objects into fomites, causing a tangible change of the property into a transmission vehicle for disease
9 from one host to another. The WHO's description of fomite transmission of COVID-19 expressly
10 recognizes this physical alteration of property, describing viral droplets as “creating fomites
11 (contaminated surfaces).”⁶² “Creating” involves making or bringing into existence something new⁶³
12 – such as something that is in an altered state from what it was before Coronavirus was present on, in
13 and around the property.

14 49. Coronavirus adheres to surfaces and objects, harming and physically changing and
15 physically altering those objects by becoming a part of their surface and making physical contact
16 with them unsafe for their ordinary and customary use. For example, Plaintiffs' Hotels each feature
17 countless fixtures, counters, point of sale areas, restroom taps, elevator buttons, door handles, linens,
18 exercise equipment, and many other surfaces on which the Coronavirus can deposit, transforming
19 the surfaces into fomites ripe for Coronavirus transmission. Once Coronavirus is in, on, or near
20 property, it is easily spread by the air, people, and objects, from one area to another, causing
21 additional physical loss of or damage to property.

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23
24 *Persistence of coronaviruses on inanimate surfaces and their inactivation with biocidal agents*, 104 J. HOSP.
INFECTIONS 3, 246-51 (Mar. 2020), <https://pubmed.ncbi.nlm.nih.gov/32035997/> (last visited Sept. 3, 2021), Ex. 41.

25 ⁶² See, e.g., *Scientific Brief: Transmission of SARS-CoV-2: implications for infection prevention precautions*, WHO
(July 9, 2020), [https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-](https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions)
26 infection-prevention-precautions (last visited Sept. 3, 2021), Ex. 14 (emphasis added).

27 ⁶³ See, e.g., *Create*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/create> (last visited Sept. 3,
28 2021), Ex. 45.

50. Additionally, the presence of the dangerous and potentially fatal Coronavirus in and on property, including in indoor air, on surfaces, and on objects, renders the property lost, unsafe and unfit for its normal usage or causes the loss, in whole or in part, of the functional use of that property. Respiratory particles (including droplets and airborne aerosols) and fomites are physical substances that alter the physical properties of the interiors of buildings to make them unsafe, untenable, uninhabitable, and unfit for normal use or causes the loss, in whole or in part, of their functional use.

51. In addition to being found in air samples,⁶⁴ Coronavirus remains stable in body secretions (respiratory, urine, feces), on surfaces, and in sewage, particularly at lower temperatures.⁶⁵ **D. Coronavirus Cannot be Removed or Eliminated by Routine Cleaning**

52. Coronavirus cannot be removed by routine surface cleaning.

53. In fact, the CDC has recently released guidance stating that there is little evidence to suggest that routine use of disinfectants can prevent the transmission of Coronavirus from fomites in community settings.⁶⁶ The CDC concluded that according to a more quantitative microbial risk assessment study, “surface disinfection once- or twice-per-day had little impact on reducing estimated risks” of Coronavirus transmission.⁶⁷

54. A number of studies have similarly demonstrated that Coronavirus is “much more resilient to cleaning than other respiratory viruses so tested.”⁶⁸ The measures that must be taken to

⁶⁴ Zhen-Dong Guo et al., *Aerosol and Surface Distribution of Severe Acute Respiratory Syndrome Coronavirus 2 in Hospital Wards, Wuhan, China*, 2020, 26 EMERGING INFECTIOUS DISEASES 7, 1583-91 (July 2020), <https://pubmed.ncbi.nlm.nih.gov/32275497/> (last visited Sept. 3, 2021), Ex. 43.

⁶⁵ Nevio Cimolai, *Environmental and decontamination issues for human coronaviruses and their potential surrogates*, 92 J. MED. VIROLOGY 11, 2498-510 (June 12, 2020), <https://onlinelibrary.wiley.com/doi/10.1002/jmv.26170> (last visited Sept. 3, 2021), Ex. 46.

⁶⁶ *Science Brief: SARS-CoV-2 and Surface (Fomite) Transmission for Indoor Community Environments*, CDC (updated Apr. 5, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html> (last visited Sept. 3, 2021), Ex. 22.

⁶⁷ *Id.* (citing A. K. Pitol & T. R. Julian, *Community transmission of SARS-CoV-2 by fomites: Risks and risk reduction strategies*, ENV'T SCI. & TECH. LETTERS (2020), Ex. 47).

⁶⁸ Nevio Cimolai, *Environmental and decontamination issues for human coronaviruses and their potential surrogates*, 92 J. MED. VIROLOGY 11, 2498-510 (June 12, 2020), <https://onlinelibrary.wiley.com/doi/10.1002/jmv.26170> (last visited Sept. 3, 2021), Ex. 46.

1 attempt to remove and disinfect Coronavirus from property are significant and depend on the
2 concentration of Coronavirus, myriad surface characteristics (e.g., type of surface, temperature,
3 porosity) and extend far beyond ordinary or routine cleaning.

4 55. Efficacy of decontaminating agents for viruses is based on a number of factors,
5 including the initial amount of virus present, surface porosity, contact time with the decontaminating
6 agent, dilution, temperature, and pH, among many others. No reported studies have investigated the
7 efficacy of surface cleaning (with soap or detergent not containing a registered disinfectant) for
8 reducing concentrations of Coronavirus on non-porous surfaces.⁶⁹ However, in one study, detergent
9 surfactants were not recommended as single agents, but rather in conjunction with other complex
10 disinfectant solutions.⁷⁰

11 56. Additionally, unlike cleaning a visible substance such as dust, Coronavirus is
12 invisible to the naked eye, making it challenging to accurately determine the efficacy of
13 decontaminating agents and “how clean is clean,” or if surface disinfection was even effective.
14 Moreover, the toxicity of an agent may inhibit the growth of cells used to determine the presence of
15 virus, making it difficult to determine if lower levels of infectious virus are actually still present on
16 treated surfaces.⁷¹

17 57. In order to be effective, cleaning and decontamination procedures require strict
18 adherence to protocols not necessarily tested under “real life” conditions in the midst of a
19 widespread wave of pervasive Coronavirus spread, where treated surfaces or objects may not
20 undergo even exposure or adequate contact time.⁷² Indeed, studies of coronaviruses have
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23 ⁶⁹ *Science Brief: SARS-CoV-2 and Surface (Fomite) Transmission for Indoor Community Environments*, CDC (updated
24 Apr. 5, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html>
(last visited Sept. 3, 2021), Ex. 22.

25 ⁷⁰ Nevio Cimolai, *Environmental and decontamination issues for human coronaviruses and their potential surrogates*,
92 J. MED. VIROLOGY 11, 2498-510 (June 12, 2020), <https://onlinelibrary.wiley.com/doi/10.1002/jmv.26170> (last
26 visited Sept. 3, 2021), Ex. 46.

27 ⁷¹ *Id.*

28 ⁷² *Id.*

1 demonstrated viral RNA persistence on objects despite cleaning with 70% alcohol.⁷³

2 58. When considering disinfection and decontamination, the safety of products and
3 procedures must be considered as well, due to the risks of harmful chemical accumulation,
4 breakdown of treated materials, flammability, and potential for allergen exposure.⁷⁴

5 59. With respect to textiles (e.g., sheets, blankets, and towels) – exceedingly common
6 items used at the Hotels – studies have demonstrated that virus can survive on fabrics and be
7 transferred to skin and other surfaces, “suggesting it is biologically plausible that . . . infectious
8 diseases can be transmitted directly through contact with contaminated textiles.”⁷⁵ Coronavirus,
9 which was dispersed onto and into the very fabric of these items at the Hotels, therefore caused
10 physical loss of or damage to those commonly used textiles, transforming them into hazardous
11 material.

12 60. Recent studies demonstrate that even extraordinary cleaning measures do not remove
13 Coronavirus from surfaces. For example, a 2021 study by the largest hospital network in New York
14 State demonstrated that even *after* trained hospital personnel used disinfection procedures in
15 Coronavirus patient treatment areas, much of the virus *survived* in those areas – proving that even
16 intense, non-routine surface cleaning does not remove it from surfaces – let alone from the air.⁷⁶

17 61. Given the inadequacy of conventional cleaning procedures, and in response to the
18 physical loss of or damage to property at the Hotels caused by the presence of Coronavirus and
19 COVID-19 on surfaces, disinfection and decontamination measures have included, but are not
20

21
22 ⁷³ Joon Young Song et al., *Viral Shedding and Environmental Cleaning in Middle East Respiratory Syndrome*
23 *Coronavirus Infection*, 47 INFECTION & CHEMOTHERAPY 4, 252-55 (Dec. 2015),
<https://www.ijournal.org/DOIx.php?id=10.3947/ic.2015.47.4.252> (last visited Sept. 3, 2021), Ex. 48.

24 ⁷⁴ *Id.*

25 ⁷⁵ Lucy Owen & Katie Laird, *The role of textiles as fomites in the healthcare environment: a review of the infection*
control risk, 8 PEER J. LIFE & ENV'T e9790, 1-35 (Aug. 25, 2020), <https://peerj.com/articles/9790/> (last visited Sept.
3, 2021), Ex. 49.

26 ⁷⁶ Zarina Brune et al., *Effectiveness of SARS-CoV-2 Decontamination and Containment in a COVID-19 ICU*, 18 INT'L J.
27 ENV'T RSCH. & PUB. HEALTH 5, 2479 (Mar. 3, 2021), <https://www.mdpi.com/1660-4601/18/5/2479> (last visited Sept.
3, 2021), Ex. 50.

1 limited to, the use of harsh chemicals to perform deep disinfection, and the removal and disposal of
2 porous materials like textiles.

3 62. Plaintiffs have also, as a result of or in connection with the physical loss of or damage
4 to its property, removed or decommissioned property within the Hotels and otherwise reconfigured
5 and altered interior spaces to respond to and restore the physical loss of or damage caused by
6 Coronavirus.

7 63. None of the above-referenced surface cleaning measures, however, remove
8 Coronavirus from the room air. And, in fact, many actually exacerbate the damage to the room air.
9 Aerosolized Coronavirus particles and virions specifically cannot be eliminated by routine surface
10 cleaning and in some cases cleaning contaminated surfaces (i.e., floors) could reasonably result in
11 re-aerosolization of Coronavirus.

12 64. Cleaning Coronavirus from surfaces in an indoor space does not remove aerosolized
13 Coronavirus particles from the room air any more than cleaning friable asbestos particles that have
14 landed on a surface will remove the friable asbestos particles suspended in the air. In each case,
15 people can inhale and become infected with Coronavirus or develop asbestos-related diseases.

16 65. Moreover, given the ubiquity and pervasiveness of Coronavirus, no amount of
17 cleaning or ventilation intervention will prevent a person infected with Coronavirus who is
18 contagious from entering an indoor space and exhaling millions of additional Coronavirus droplets
19 and infectious aerosols into the air, thereby further: (a) filling the room air and physically altering it
20 with aerosolized Coronavirus that can be inhaled; and (b) depositing infectious Coronavirus droplets
21 on the surfaces, physically altering and transforming those surfaces into disease-transmitting
22 fomites.

23 66. Many of the surfaces and materials discussed in the studies and articles cited above
24 are used throughout the Hotels as part of their operations, including plastics, glass, metals, and cloth
25 and fabrics. Similarly, these surfaces and materials are used in virtually all office buildings, stores,
26 shopping centers, restaurants, movie theaters, museums, entertainment and sports venues, and other

businesses and amenities throughout the U.S. and the around the globe. Thus, Plaintiffs are not able to remove or eliminate Coronavirus from their property with routine cleaning.

67. The only way to reduce the presence of Coronavirus from property and prevent its continuous reintroduction is to close down property to the public, or at least reduce the level of the public's use of the premises.

E. Coronavirus Was Present at the Hotels and Leader Properties

68. At least 79 Hotel employees (including at least 11 in Washington) have confirmed to Plaintiffs that they have contracted COVID-19. Given the high percentage of asymptomatic cases of COVID-19, it is certain that the actual number of Hotel employees who had contracted COVID-19 was substantially greater. This is proof of the actual, certain presence of Coronavirus at the Hotels.

69. Additionally, given that Coronavirus is highly contagious, the global pervasive status of COVID-19, and the heavily trafficked common areas in and around the Hotels, it is statistically certain, or near-certain, that many other individuals at or in the vicinity of the Hotels contracted and carried Coronavirus. Two examples of this are the Hotels located respectively in King and Snohomish Counties, Washington, discussed further below in the context of applied infection fatality rate biostatistics.

70. The first confirmed case of COVID-19 in the United States was reported from Snohomish County on or about January 21, 2020,⁷⁷ and the first known death from COVID-19 in the United States was reported from King County on or about February 29, 2020.⁷⁸ By early March 2020, Coronavirus and COVID-19 had spread rapidly throughout the area, with numerous new infections and deaths reported daily, as well as the closure of businesses and cancellation of events.⁷⁹

⁷⁷ See, e.g., *Case of 2019 novel coronavirus confirmed in Washington State Resident*, WASH. ST. DEPT. HEALTH, (Jan. 21, 2020), <https://www.doh.wa.gov/Newsroom/Articles/ID/1068/Case-of-2019-novel-coronavirus-confirmed-in-Washington-state-resident-20-006> (last visited Sept. 3, 2021).

⁷⁸ See, e.g., *CDC, Washington State Report First COVID-19 Death*, CDC (Feb. 29, 2020), <https://www.cdc.gov/media/releases/2020/s0229-COVID-19-first-death.html> (last visited Sept. 3, 2021).

⁷⁹ See, e.g., Casey McNerthney, *Coronavirus in Washington state: A timeline of the outbreak through March 2020*, KIRO 7 (Apr. 3, 2020), <https://www.kiro7.com/news/local/coronavirus-washington-state-timeline-outbreak/1M65JK66N5BYTIAPZ3FUZSKMUE/> (last visited Sept. 3, 2021).

The Seattle area had become an early epicenter. By April 13, 2020, there were 10,411 COVID-19 cases and 508 deaths from COVID-19 in Washington.⁸⁰ As of September 2, 2021, there have been over 512,000 confirmed cases and over 6,600 deaths in Washington.⁸¹

71. Moreover, the high number of COVID-19 deaths indicates a significantly higher number of cases than those confirmed by COVID-19 tests.⁸² The infection fatality rate ("IFR") for COVID-19, defined as the proportion of individuals who die of the disease among all infected individuals, varies by age, as shown in the table below.⁸³

IFR TABLE FOR KING AND SNOHOMISH COUNTIES, WASHINGTON

<u>Age</u>	<u>Proportion of U.S. Population (2010)⁸⁴</u>	<u>Proportion of King County (2019)⁸⁵</u>	<u>Proportion of Snohomish County (2019)⁸⁶</u>	<u>IFR</u>	<u>Infections Per Death</u>
0-17	0.24	0.200	0.224	0.00002	50,000
18-49	0.44	0.485	0.437	0.0005	2,000
50-64	0.19	0.180	0.199	0.006	167
65+	0.13	0.135	0.140	.09	11

⁸⁰ *Coronavirus in Washington state: Updates from April 13-14*, KING 5 (updated Apr. 15, 2020), <https://www.king5.com/article/news/health/coronavirus/washington-state-seattle-coronavirus-updates-real-time/281-fcd62677-cfc3-4477-8a3c-60262c0ceab4> (last visited Sept. 3, 2021).

⁸¹ *COVID-19 Data Dashboard*, WASH. STATE DEP'T HEALTH (updated Sept. 2, 2021), <https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard> (last visited Sept. 3, 2021).

⁸² Andrew T. Levin et al. *Assessing the age specificity of infection fatality rates for COVID-19: systematic review, meta-analysis, and public policy implications*, 35 EUR. J. EPIDEMIOLOGY 12, 1123-38 (Dec. 8, 2020), <https://pubmed.ncbi.nlm.nih.gov/33289900/> (last visited Sept. 3, 2021), Ex. 51.

⁸³ *COVID-19 Pandemic Planning Scenarios*, CDC (updated Mar. 19, 2021), <https://www.cdc.gov/coronavirus/2019-nCoV/hcp/planning-scenarios.html> (last visited Sept. 3, 2021), Ex. 52. Results reproduced from Table 1 (current best estimate).

⁸⁴ *Age and Sex Composition: 2010*, U.S. CENSUS BUREAU, at 2 tbl.1 (May 2011), <https://www.census.gov/prod/cen2010/briefs/c2010br-03.pdf> (last visited Sept. 3, 2021).

⁸⁵ *County Population by Characteristics: 2010-2019*, U.S. CENSUS BUREAU, at Washington dataset link (updated Apr. 20, 2021), <https://www.census.gov/data/tables/time-series/demo/popest/2010s-counties-detail.html> (last visited Sept. 3, 2021).

⁸⁶ *County Population by Characteristics: 2010-2019*, U.S. CENSUS BUREAU, at New York dataset link (updated Apr. 20, 2021), <https://www.census.gov/data/tables/time-series/demo/popest/2010s-counties-detail.html> (last visited Sept. 3, 2021).

72. In the U.S., the average IFR across all age demographics represented in the table above (taking into account each category's proportion to the population as a whole) is 0.013, meaning that there is approximately one death for every 77 infections. The death toll in the U.S. attributable to Coronavirus and COVID-19 stands at 554,929 through April 5, 2021.⁸⁷ That statistic, however, corresponds to 42,478,281 cases, which is significantly larger than the 30.7 million cases confirmed through testing.⁸⁸

73. The IFR is a statistical quantity estimated from data using seroprevalence studies.⁸⁹ As more data becomes available, the accuracy of the estimation continues to improve. Current estimates of IFR used by the CDC come from peer-reviewed statistical analyses using data from 27 studies and 34 locations,⁹⁰ and account for the range of uncertainty of IFR estimates according to best standards of statistical practice.

74. The IFR estimates can vary by county based on age demographics. For example, the COVID-19 IFR for King County, WA is estimated to be 0.0135 using the above table, which means that each death in King County corresponds to about 74.2 cases. Accounting for uncertainty in IFR estimation gives plausible range of variation in King between 0.010 (corresponding to 98.9 cases for each death) to 0.0169 (corresponding to 59.3 cases for each death). For Snohomish County, the IFR estimate is 0.0140 (corresponding to 71.5 infections per death), with plausible range of variation from 0.0105 (corresponding to 95.3 cases per death) to 0.0175 (corresponding to 57.2 cases per death). These numbers are based on uncertainty reported by a peer-reviewed multi-location, multi-

⁸⁷ *Coronavirus in the U.S.: Latest Map and Case Count*, NY TIMES (updated Apr. 5, 2021), <http://web.archive.org/web/20210405192416/https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (last visited Sept. 3, 2021).

⁸⁸ *Id.*

⁸⁹ Seroprevalence studies use blood tests to identify people in a population who have antibodies against the Coronavirus. See *Large-scale Geographic Seroprevalence Surveys*, CDC (updated Oct. 2, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/geographic-seroprevalence-surveys.html> (last visited Sept. 3, 2021), Ex. 53.

⁹⁰ Andrew T. Levin et al., *Assessing the age specificity of infection fatality rates for COVID-19: systematic review, meta-analysis, and public policy implications*, 35 EUR. J. EPIDEMIOLOGY 12, 1123-38 (Dec. 2020), <https://pubmed.ncbi.nlm.nih.gov/33289900/> (last visited Sept. 3, 2021), Ex. 51.

1 study meta-analysis.⁹¹ A meta-analysis is a quantitative statistical analysis of several separate but
2 similar experiments or studies in order to test the pooled data for statistical significance.⁹²

3 75. Daily prevalence of COVID-19 cases varied over 2020 in King and Snohomish
4 counties, with maximum daily prevalence reaching 0.44% (plausible range of variation from 0.35%
5 to 0.58%) for King County, and 0.58% (plausible range of variation from 0.46% to 0.77%) in
6 Snohomish County. Simply put, the greater the daily prevalence of COVID-19, the more
7 widespread the disease and Coronavirus were among the populations where the Hotels are located.

8 76. The high prevalence of infectious COVID-19 cases makes it statistically certain or
9 near-certain that Coronavirus droplets and aerosols were frequently dispersed into the air and on
10 property in, on and around the Hotels, rendering routine cleaning even less effective at removing
11 Coronavirus from surfaces at the Hotels and completely ineffective at removing aerosolized
12 Coronavirus particles and virions from the air inside those properties.

13 77. Between March 1, 2020, and December 31, 2020, the Seattle Airport Marriot hotel
14 had a total of 48,616 occupied rooms. Starting with the extremely conservative assumption that each
15 occupied room had only one guest and correlating the number of occupied rooms to the prevalence
16 of infectious cases in King County is telling: during this period, the Hotel experienced an estimated
17 58.8 visits from guests infectious with COVID-19, with a plausible range of variation from 47.0 to
18 78.4. Over same period, the Embassy Suites hotel in Lynwood, Washington had a total of 20,176
19 occupied rooms. Again, starting with the extremely conservative assumption that each occupied
20 room had only one guest and correlating the number of occupied rooms to the prevalence of
21 infectious cases in Snohomish County is telling: during this period, the Hotel experienced an
22 estimated 31.5 visits from guests infectious with COVID-19, with plausible range of variation from
23 25.2 to 42.0. The foregoing numbers drastically underestimate the true number of such visits, since
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26 ⁹¹ *Id.*

⁹² *Meta-analysis*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/meta-analysis> (last visited Sept. 3, 2021).

1 they are based on tallies of occupied rooms, whereas the total number of customers is always larger
2 than the number of rooms they occupy. Moreover, the counts of occupied rooms do not include any
3 information about special events or visitors taking their meals and/or meetings at the Hotels.

4 78. And due to the high prevalence of infectious cases, Coronavirus was statistically
5 certain or near certain to be present at the myriad Leader Properties throughout Washington and the
6 other locales in which the Hotels are located.

7 79. The CDC keeps track of known infections by county, and each of the U.S.'s over
8 3,142 county and county-equivalents has reported COVID-19 infections.

9 80. Thus, the presence of Coronavirus at the Hotels, as well as many nearby Leader
10 Properties, was certain or virtually certain. This can also be confirmed with certainty or near-
11 certainty by statistical modeling based on the known incidences of infection, despite the lack of
12 commercially available tests for air or surface presence of Coronavirus, and despite the shortage of
13 either rapid or laboratory COVID-19 tests and testing sites that could have otherwise resulted in
14 testing being administered to every individual who was on-site at the relevant times.⁹³

15 81. Early in the course of Coronavirus and COVID-19, testing was limited, and thus
16 potentially thousands more people were infected than were reported.⁹⁴ National and local incidence
17 and prevalence rates clearly demonstrated the high magnitude of COVID-19 infections (and deaths)
18 and the pervasiveness of Coronavirus throughout the states and counties in which the Hotels are
19 located.

20 82. Epidemiologists have explained that "the percent positive is a critical measure
21 because it gives us an indication of how widespread infection is in the area where the testing is
22

23
24 ⁹³ See, e.g., Aron Chande et al., *Real-time, interactive website for US-county-level COVID-19 event risk assessment*, 4
25 NATURE HUM. BEHAV. 1313-19 (Nov. 9, 2020), <https://www.nature.com/articles/s41562-020-01000-9> (last visited
26 Sept. 3, 2021), Ex. 54.

27 ⁹⁴ See, e.g., Benedict Carey & James Glanz, *Hidden Outbreaks Spread Through U.S. Cities Far Earlier Than*
28 *Americans Knew, Estimates Say*, N.Y. TIMES (updated July 6, 2020), <https://nytimes.com/2020/04/23/us/coronavirus-early-outbreaks-cities.html> (last visited Sept. 3, 2021), Ex. 55.

1 occurring[.]”⁹⁵ The percent positive is a crucial indicator to determine whether a business can safely
2 remain open. As a threshold for the percent positive being “too high,” the WHO stated that the
3 percent positive should remain below 5% for at least two weeks before re-opening.⁹⁶

4 83. Washington presents a powerful example of how the above-referenced statistical
5 modeling confirms the presence of the Coronavirus at the Hotels (in addition to its certain presence
6 as demonstrated by the Hotel employees who reported contracting COVID-19). With respect to the
7 testing that was then available, local positivity rates demonstrated the pervasiveness of the
8 Coronavirus in Washington by March 2020 and the certitude based on statistical modeling that the
9 Washington Hotels and their nearby Leader Properties suffered from the presence of the
10 Coronavirus.

11 84. As of March 31, 2020, Washington had a 7-day moving positivity average rate of
12 9.3%⁹⁷—nearly double the WHO’s 5% guideline—indicating uncontrolled community spread of
13 Coronavirus and its certain or virtually certain presence in the Washington Hotels in the month of
14 March 2020.⁹⁸

15 85. The other states where the Hotels are located experienced a similar spread of
16 Coronavirus and COVID-19 and the same physical loss of or damage to property as the Hotels
17 experienced in Washington. For example: as of March 31, 2020, New York State reported a daily
18 positivity rate of 50.4%, a 7-day rolling average of 45.1%, and a 14-day rolling average of 39.5%;⁹⁹
19 as of March 31, 2020, Georgia had a 7-day moving positivity average rate of 22.2%;¹⁰⁰ as of April 1,

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22 ⁹⁵ David Dowdy & Gypsyamber D’Souza, *COVID-19 Testing: Understanding the “Percent Positive,”* JOHNS HOPKINS
BLOOMBERG SCH. PUB. HEALTH (Aug. 20, 2020), [https://www.jhsph.edu/covid-19/articles/covid-19-testing-](https://www.jhsph.edu/covid-19/articles/covid-19-testing-understanding-the-percent-positive.html)
23 [understanding-the-percent-positive.html](https://www.jhsph.edu/covid-19/articles/covid-19-testing-understanding-the-percent-positive.html) (last visited Sept. 3, 2021), Ex. 56.

24 ⁹⁶ *Id.*

25 ⁹⁷ *Daily State-By-State- Testing Trends*, JOHNS HOPKINS UNIV. MED. (last updated Sept. 3, 2021),
26 <https://coronavirus.jhu.edu/testing/individual-states/washington> (last visited Sept. 3, 2021).

27 ⁹⁸ *Id.*

28 ⁹⁹ *Percentage Positive Results by Region Dashboard*, NY.GOV (updated Sept. 2, 2021),
<https://forward.ny.gov/percentage-positive-results-region-dashboard> (last visited Sept. 3, 2021).

¹⁰⁰ *Daily State-By-State- Testing Trends*, JOHNS HOPKINS UNIV. MED. (updated Sept. 3, 2021),
<https://coronavirus.jhu.edu/testing/individual-states/georgia> (last visited Sept. 3, 2021).

2020, Massachusetts had a daily positivity 7-day moving average of 18.2%;¹⁰¹ and as of March 31, 2020, Maryland reported a 7-day positivity rate of 13.72% and a daily positivity rate of 16.76% (with those numbers both over 25% by April 17, 2020).¹⁰²

F. The Presence of Coronavirus in the Indoor Air of the Hotels As Well As on Surfaces Caused the Physical Loss of or Damage to those Hotels by Drastically Diminishing the Functional Use of the Hotels

86. Due to the prevalence (ratio of infected persons in a population) and incidence (ratio of new cases) of COVID-19 infections in the U.S., the Hotels were at consistently high risk for the presence of the airborne Coronavirus from infected patrons and employees, some of whom would have been asymptomatic and unknowing spreaders of Coronavirus. Coronavirus can be released into the air when infected persons breathe, talk, cough, sneeze, or sing, and such releases can infiltrate ventilation systems, as well as myriad surfaces (*i.e.*, fomites), such as dermal contact surfaces (*e.g.*, elevator buttons, restroom taps, point of sale equipment, doorknobs, railings, etc.). Coronavirus has deposited, and continues to deposit, and therefore elevate contagion risks on, myriad dermal contact surfaces, which are transformed into disease-spreading fomites. These fomites can pose transmission risks for persons contacting those surfaces.

87. It is undisputed that air within a property laden with asbestos fibers is unsafe for people. It is no different for a property that has Coronavirus physically invading and physically altering its air – the building has been damaged because the virus invades and physically transforms the air and makes it unsafe for breathing.

88. The introduction of Coronavirus into the indoor air at the Hotels directly and physically changes, alters, and transforms the composition of the air – such that it now contains a concentration of potentially deadly SARS-CoV-2 infectious particles and virions (whereas before it did not). The presence of Coronavirus in the air of the Hotels physically alters and transforms

¹⁰¹ *Daily State-By-State-Testing Trends*, JOHNS HOPKINS UNIV. MED. (updated Sept. 3, 2021), <https://coronavirus.jhu.edu/testing/individual-states/massachusetts> (last visited Sept. 3, 2021).

¹⁰² *Coronavirus Disease 2019 (COVID-19) Outbreak*, MARYLAND.GOV (updated Sept. 3, 2021), <https://coronavirus.maryland.gov/> (last visited Sept. 3, 2021).

1 indoor air on the property into a transmission vector for COVID-19. And the presence of
2 Coronavirus impairs the functional use of the property in the same manner as the presence any other
3 hazardous, toxic or noxious substance would, causing the physical loss of or damage to the property.

4 89. As with asbestos in the air, the presence of an unsafe agent, such as Coronavirus, in
5 the air of the premises alone results in risk or the appearance of risk. In fact, the risk of death due to
6 exposure to Coronavirus is orders of magnitude higher than the risk of death due to exposure to
7 asbestos. Indeed, recent estimates indicate that approximately 2,600 Americans die from asbestos
8 exposure (mesothelioma) per year, compared with over 600,000 deaths due to Coronavirus exposure
9 in the last year alone.¹⁰³ It is undisputed that the air within a property filled with asbestos fibers is
10 unsafe for people. It is no different for a property that has Coronavirus – an external force –
11 physically invading and physically altering its air space; in fact, the Coronavirus is exponentially
12 more deadly than exposure to asbestos fiber.

13 **G. Government Orders and the Closure and Reopening of the Hotels**

14 90. On March 16, 2020, the CDC and the national Coronavirus Task Force issued public
15 guidance titled “30 Days to Slow the Spread” of COVID-19, which called for restrictive social
16 distancing measures, such as working from home, avoiding gatherings of more than 10 people, and
17 staying away from bars and restaurants.¹⁰⁴

18 91. State and local governments in the United States recognized the unprecedented and
19 mushrooming outbreaks of COVID-19 across the nation and the Coronavirus’ catastrophic impact
20 through the direct physical loss of or damage to property and lives. As a consequence, all of the
21 states where the Hotels are located issued “State of Emergency” or similar declarations in early
22 March 2020. Thereafter, each of the states where the Hotels are located issued “Stay Home” or

24 ¹⁰³ Rengyi Xu et al., *Association between mesothelioma and non-occupational asbestos exposure: systematic review and*
25 *meta-analysis*, 17 ENV’T HEALTH 1, 90 (Dec. 19, 2018),

<https://ehjournal.biomedcentral.com/articles/10.1186/s12940-018-0431-9> (last visited Sept. 3, 2021), Ex. 57.

26 ¹⁰⁴ *The President’s Coronavirus Guidelines for America. 30 Days to Slow the Spread*, The White House and CDC (Mar.
27 16, 2020), [https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/03/03_16_20_coronavirus-](https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/03/03_16_20_coronavirus-guidance_8.5x11_315PM.pdf)
28 [guidance_8.5x11_315PM.pdf](https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/03/03_16_20_coronavirus-guidance_8.5x11_315PM.pdf) (last visited Sept. 3, 2021).

1 similar orders encouraging or requiring residents to stay home except for specified purposes, and
2 closing or sharply limiting non-essential businesses.

3 92. The states, counties and cities where the Hotels are located issued orders which did
4 some or all of the following: (a) shut down hotels entirely; (b) limited hotels to essential guests; (c)
5 established capacity limits for hotels; and/or (d) established cleaning, disinfection, social distancing
6 and other protocols hotels were required to comply with. These orders also closed or subjected the
7 Hotels' amenities (such as restaurants, bars, fitness centers, pools, spas, and event space) to similar
8 restrictions. Even after reopening and/or after certain restrictions were lifted, the Hotels remain
9 subject to orders requiring the continued closure of, or severe limitations on, hotel amenities and
10 requiring costly cleaning, disinfection, social distancing, and other protocols.

11 93. The following are illustrative examples of such government orders:

12 a. On March 16, 2020, Governor Inslee issued an order closing restaurants, bars,
13 entertainment, and recreational facilities, and limiting the size of gatherings.¹⁰⁵ Among other
14 things, the March 16, 2020 order expressly stated, among its justifications, that the COVID-
15 19 pandemic was a "public disaster affecting . . . property;" that state government agencies
16 were working with local health officials "in alleviating the impacts to . . . property;" and that
17 among its objectives was to "help preserve and maintain . . . property[.]"¹⁰⁶

18 b. On March 23, 2020, Governor Inslee issued a "Stay Home – Stay Healthy"
19 order requiring every Washingtonian to stay home unless they needed to pursue an essential
20 activity, banning all gatherings for social, spiritual, and recreational purposes, and closing all
21 businesses except essential businesses.¹⁰⁷ Among other things, the March 23, 2020 order

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24 ¹⁰⁵ Wash. Proclamation No. 20-13, *Statewide Limits: Food and Beverage Services, Areas of Congregation* (Mar. 16,
2020), [https://www.governor.wa.gov/sites/default/files/proclamations/20-13%20Coronavirus%20Restaurants-](https://www.governor.wa.gov/sites/default/files/proclamations/20-13%20Coronavirus%20Restaurants-Bars%20%28tmp%29.pdf)
25 [Bars%20%28tmp%29.pdf](https://www.governor.wa.gov/sites/default/files/proclamations/20-13%20Coronavirus%20Restaurants-Bars%20%28tmp%29.pdf) (last visited Sept. 3, 2021).

26 ¹⁰⁶ *Id.*

27 ¹⁰⁷ Wash. Proclamation No. 20-25, *Stay Home – Stay Healthy* (Mar. 23, 2020),
28 [https://www.governor.wa.gov/sites/default/files/proclamations/20-25%20Coronavirus%20Stay%20Safe-](https://www.governor.wa.gov/sites/default/files/proclamations/20-25%20Coronavirus%20Stay%20Safe-Stay%20Healthy%20%28tmp%29%20%28002%29.pdf)
[Stay%20Healthy%20%28tmp%29%20%28002%29.pdf](https://www.governor.wa.gov/sites/default/files/proclamations/20-25%20Coronavirus%20Stay%20Safe-Stay%20Healthy%20%28tmp%29%20%28002%29.pdf) (last visited Sept. 3, 2021).

1 expressly stated, among its justifications, that the COVID-19 pandemic was a “public
2 disaster affecting . . . property;” that state government agencies were working with local
3 health officials “in alleviating the impacts to . . . property;” and that among its objectives was
4 to “help preserve and maintain . . . property[.]”¹⁰⁸

5 c. On March 19 and 20, 2020, the Colorado Department of Public Health and
6 Environment (“CDPHE”) ordered the closing of all bars, restaurants, spas, and nonessential
7 personal services.¹⁰⁹

8 d. On March 27, 2020, the CDPHE issued a “Stay at Home” Order that
9 permitted hotels to remain open, but required hotels to comply with social distancing,
10 cleaning, disinfection, and other requirements.¹¹⁰

11 e. The “Stay at Home” Order explained that “COVID-19[] physically
12 contributes to property loss, contamination, and damage due to its propensity to attach to
13 surfaces for prolonged periods of time.” Accordingly, the Order was expressly issued to
14 “reduce the property damage caused by COVID-19[.]”¹¹¹

15 f. The CDPHE allowed the reopening of bars, restaurants, spas, and nonessential
16 personal services as of June 5, 2020, conditioned by capacity, social distancing, and other
17 restrictions.¹¹²

18 g. On March 23, 2020, Massachusetts Governor Baker issued COVID-19 Order
19 No. 13, requiring the closure of non-essential workplaces and limited gatherings to 10
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22 ¹⁰⁸ *Id.*

23 ¹⁰⁹ CDPHE Order No. 20-22, *Updated Notice of Public Health Order 20-22 Closing Bars, Restaurants, Theaters,*
Gymnasiums, Casinos, Nonessential Personal Services Facilities, and Horse Track and Off-Track Betting Facilities
Statewide (Mar. 19, 2020); *see also* CDPHE Order No. 20-23, *Amended Notice of Public Health Order 20-23*
Implementing Social Distancing Measures (Mar. 20, 2020). CDPHE Orders are available at
24 <https://covid19.colorado.gov/public-health-executive-orders> (last visited Sept. 3, 2021).

25 ¹¹⁰ CDPHE Second Updated Order No. 20-24, *Second Updated Public Health Order 20-24 Implementing Stay at Home*
Requirements (Mar. 27, 2020).

26 ¹¹¹ *Id.*

27 ¹¹² CDPHE Sixth Amended Order No. 20-28, *Sixth Amended Public Health Order 20-28 Safer at Home and in the Vast,*
Great Outdoors (June 5, 2020).

persons.¹¹³ The March 23, 2020 Order was extended multiple times, through May 18, 2020. Exhibit A to the March 31, 2020 Order provided that hotels are essential and allowed to operate “only to the degree those lodgings are offered or provided to accommodate the COVID-19 Essential Workforce.”¹¹⁴ In addition to barring non-essential guests, the March 23 and 31, 2020 Orders closed most hotel amenities including bars, restaurants, fitness centers, pools, and spas. Plaintiffs’ Massachusetts Hotels remained nominally open, but accommodated only handful of guests serviced by a skeleton crew of employees.

h. Massachusetts hotels were not permitted to reopen to non-essential guests until Phase 2 on June 8, 2020, and reopened subject to numerous continuing capacity, social distancing, disinfection and other requirements.¹¹⁵ Hotel amenities such as fitness centers, pools, spas, and event spaces remained subject to capacity, social distancing and other requirements, and restaurants remained limited to take out services.

i. On March 16, 2020, Michigan Governor Whitmer issued an executive order restricting the use of “places of public accommodation” in order to, among other things, “protect life and property” from Coronavirus and COVID-19.¹¹⁶ This included closing “to ingress, egress, use, and occupancy by members of the public” all restaurants, food courts, bars, taverns, club, theaters, indoor and outdoor performance venues and spas.¹¹⁷

¹¹³ Mass. COVID-19 Order No. 13, *Order Assuring Continued Operation of Essential Services in the Commonwealth, Closing Certain Workplaces, and Prohibiting Gatherings of More than 10 People* (Mar. 23, 2020), <https://www.mass.gov/doc/march-23-2020-essential-services-and-revised-gatherings-order/download> (last visited Sept. 3, 2020).

¹¹⁴ Mass. COVID-19 Order No. 21, *Order Extending the Closing of Certain Workplaces and the Prohibition on Gatherings of More than 10 People* (Mar. 31, 2020), <https://www.mass.gov/doc/march-31-2020-essential-services-extension-order/download> (last visited Sept. 3, 2021); see also Exhibit A to this order at *COVID-19 Essential Services* (updated Mar. 31, 2020), <https://www.mass.gov/doc/march-31-essential-services-list/download> (last visited Sept. 3, 2021).

¹¹⁵ Michelle Williams, *Massachusetts to enter Phase 2 of reopening plan on Monday, June 8*, MASS LIVE (updated June 8, 2020), <https://www.masslive.com/coronavirus/2020/06/massachusetts-to-enter-phase-2-of-reopening-plan-on-monday-june-8.html> (last visited Sept. 3, 2021).

¹¹⁶ Mich. Exec. Order No. 2020-9, *Temporary restrictions on the use of places of public accommodation* (Mar. 16, 2020), <http://gtchd.org/DocumentCenter/View/13736/Executive-Order-Places-of-Public-Accommodation?bidId=> (last visited Sept. 3, 2021).

¹¹⁷ *Id.*

j. On March 23, 2020, Governor Whitmer issued a statewide “Stay Home, Stay Safe” order, designed to, among other things, “protect life and property” from the Coronavirus and COVID-19.¹¹⁸ Among other things, the order prohibited all businesses and operations from requiring workers to leave their homes except under special circumstances, and banned public and private gatherings of any number of people outside a single household. While the March 23, 2020 Order permitted hotels to remain open for the purpose of providing shelter, it ordered the closure of essentially all hotel amenities.¹¹⁹ This was affirmed by April 24, 2020 Order providing that hotels are permitted to remain open “provided that . . . they do not offer additional in-house amenities such as gyms, pools, spas, dining, entertainment facilities, meeting rooms, or like facilities.”¹²⁰

k. When Michigan began to slowly ease restrictions in phases and by county, additional orders imposed capacity, social distancing, cleaning and disinfection, and other requirements.¹²¹ These limitations were necessary, among other reasons, “to protect life and property”¹²² and required reopening businesses to, among other things:

i. “[I]ncrease facility cleaning and disinfection to limit exposure to COVID-19, especially on high-touch surfaces (e.g., door handles), paying special attention to parts, products, and shared equipment (e.g., tools, machinery, vehicles)”;

ii. “Require the use of work gloves where appropriate to prevent skin contact with contaminated surfaces”;

¹¹⁸ Mich. Exec. Order No. 2020-21, *Temporary requirement to suspend activities that are not necessary to sustain or protect life – RESCINDED* (Mar. 24, 2020), https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-522626--,00.html (last visited Sept. 3, 2021).

¹¹⁹ Mich. Exec. Order No. 2020-21, *Executive Order 2020-21 FAQs [No longer effective]*, https://www.michigan.gov/coronavirus/0,9753,7-406-98178_98455-522631--,00.html (last visited Sept. 3, 2021).

¹²⁰ Mich. Exec. Order No. 2020-59, *Temporary requirement to suspend activities that are not necessary to sustain or protect life – RESCINDED* (Apr. 24, 2020), https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-526894--,00.html (last visited Sept. 3, 2021).

¹²¹ *Governor Whitmer Amends MI Safe Start Order to Limit Indoor Gatherings, Save Lives*, MICHIGAN.GOV (July 29, 2020), https://www.michigan.gov/whitmer/0,9309,7-387-90499_90640-535163--,00.html (last visited Sept. 3, 2021).

¹²² *Id.*

1 iii. “Train employees on . . . [d]istance that the virus can travel in the air,
2 as well as the time it remains viable in the air and on environmental surfaces”;

3 iv. “Establish an enhanced cleaning and sanitizing protocol for high-touch
4 areas like restrooms, credit-card machines, keypads, counters, shopping carts, and
5 other surfaces”;

6 v. “Disinfect high-touch surfaces in offices”;

7 vi. “Limit shared items for customers (e.g., condiments, menus) and clean
8 high-contact areas after each customer (e.g., tables, chairs, menus, payment tools)”;

9 vii. “Ensure that ventilation systems operate properly[.]”

10 1. By March 19, 2020 Order, the New Mexico Department of Health (“NM
11 DOH”) directed citizens to “stay at home” except as “absolutely necessary for their health,
12 safety, or welfare,” restricted gathering size to 10, limited restaurants, bars, and food service
13 establishments to take-out and home delivery, ordered a variety of businesses to close
14 including “resort spas [and] athletic facilities” and limited hotels to no more than “fifty
15 percent of maximum occupancy” with an exception for providing lodging to healthcare
16 workers.¹²³ The March 19, 2020 Order was explicitly based on the “threat to the health,
17 safety, wellbeing and property of the residents in the State” posed by COVID-19.

18 m. On March 23, 2020, the NM DOH issued an order restricting public
19 gatherings to five individuals and directing all “non-essential” New Mexico businesses to
20 close entirely.¹²⁴ While hotels remained limited to fifty percent capacity, the NM DOH
21 orders collectively prohibited essentially all hotel amenities such as fitness centers, pools and
22 spas from operating, and limited bars and restaurants to take out.

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24 ¹²³ NM DOH Amended Pub. Health Order, *Public Health Emergency Order Limiting Mass Gatherings and*
25 *Implementing Other Restrictions Due to COVID-19* (Mar. 19, 2020), [https://www.nmceb.org/wp-](https://www.nmceb.org/wp-content/uploads/2021/02/UPDATED_DOH_PHO_3_19_2020.pdf)
26 [content/uploads/2021/02/UPDATED_DOH_PHO_3_19_2020.pdf](https://www.nmceb.org/wp-content/uploads/2021/02/UPDATED_DOH_PHO_3_19_2020.pdf) (last visited Sept. 3, 2021).

27 ¹²⁴ NM DOH Pub. Health Order, *Public Health Emergency Order Closing All Businesses and Non-Profit Entities Except*
28 *for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19* (Mar. 23,
2020), <https://cv.nmhealth.org/wp-content/uploads/2020/03/SignedPHO03-24-2019.pdf> (last visited Sept. 3, 2021).

n. On April 6, 2020, New Mexico's restriction on hotels was tightened to a maximum of "twenty-five percent of maximum occupancy."¹²⁵ On June 1, 2020, the capacity restriction on hotels was raised to fifty-percent of maximum occupancy, and gyms, pools were permitted to operate at fifty-percent capacity.¹²⁶ Subsequent orders changed the capacity limitations for hotels and other New Mexico businesses, including hotel amenities such as bars, restaurants, fitness centers, pools, and spas multiple times. Hotels and hotel amenities remain subject to capacity, and extensive social distancing, disinfection, and other health and safety related requirements.¹²⁷

o. On March 24, 2020, Vermont Governor Scott issued Addendum 6 to Executive Order No. 01-20, the "Stay Home/Stay Safe" Order, which directed Vermont residents to stay home absent "essential reasons" and mandated that all businesses except for specified categories to "suspend in-person business operations."¹²⁸ "Lodging" businesses were permitted to operate only "to the extent required to support COVID-19 response, critical infrastructure and national security."

p. On May 15, 2020, Governor Scott issued Addendum 14 to Executive Order No. 01-20, which permitted lodging facilities to resume operations on a limited basis

¹²⁵ NM DOH Pub. Health Order, *Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending the March 23, 2020 Public Health Emergency Order Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19* (Apr. 6, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/04/040620-DOH-PHO.pdf> (last visited Sept. 3, 2021).

¹²⁶ NM DOH Pub. Health Order, *Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending the March 23, 2020, April 6, 2020, April 11, April 30, 2020, May 5, 2020, and May 15, 2020, Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19* (June 1, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/06/060120-PHO.pdf> (last visited Sept. 3, 2021).

¹²⁷ *COVID Safe Practices for Hotels, Resorts, and Lodging*, NM DOH, <http://web.archive.org/web/20210426191652/https://cv.nmhealth.org/covid-safe-practices/hotels-resorts-and-lodging/> (last visited Sept. 3, 2021).

¹²⁸ Vt. Exec. Order 01-20, Add. 6 (Mar. 14, 2020), <https://governor.vermont.gov/sites/scott/files/documents/ADDENDUM%206%20TO%20EXECUTIVE%20ORDER%2001-20.pdf> (last visited Sept. 3, 2021).

beginning May 22, 2020.¹²⁹ Pursuant to this Order, lodging was permissible for Vermont residents, and for out of state guests that certify they self-quarantined for a “minimum of 14 days prior to lodging overnight in Vermont.”

q. Spire’s Vermont Hotel, TopNotch Resort, was forced to close entirely from March 17, 2020 to June 6, 2020. When the TopNotch Resort reopened, it did so pursuant to numerous government orders severely restricting its operations as well as the bars, restaurants, fitness centers, pools, spas, and other resort amenities. Vermont continued to provide separate guidance for various sectors, including “lodging,” “restaurants/bars,” and “ski resorts,” respectively.¹³⁰ For example, restaurants and bars were required to “[d]isinfect all front-of-house surfaces including door handles, screens, phones, pens, keyboards; as well as tables, chairs and other areas of high hand contact frequently.”¹³¹

94. Restrictive orders were also issued by governmental authorities in the other states in which the Hotels are located, including Georgia, Kentucky, Maryland, Minnesota, Mississippi, New York, Ohio, Tennessee, Texas, and California.

H. The Toll to Plaintiffs from Coronavirus and COVID-19

95. Plaintiffs experienced direct physical loss of or damage to their property in at least four ways:

(1) the presence of Coronavirus in the indoor air and on surfaces at each of the Hotels drastically diminished the functional use of those Hotels;

(2) through state, local and agency governmental orders that drastically limited Plaintiffs’ use of their property, causing them to lose the normal use and function of their

¹²⁹ Vt. Exec. Order No. 1-20, Add. 14 (May 22, 2020).

<https://governor.vermont.gov/sites/scott/files/documents/ADDENDUM%2014%20TO%20EXECUTIVE%20ORDER%2001-20.pdf> (last visited Sept. 3, 2021)

¹³⁰ *Stay Home Stay Safe Sector Specific Guidance*, VERMONT.GOV,

<http://web.archive.org/web/20210225134228/https://accd.vermont.gov/covid-19/business/stay-home-stay-safe-sector-specific-guidance#bars-restaurants-catering-and-food-service> (last visited Sept. 3, 2021).

¹³¹ *Id.*

1 property (in either total or in part):

2 (3) through the need to modify physical behaviors through the use of social
3 distancing, avoiding confined indoor spaces, and avoiding congregating in the same physical
4 area as others, in order to reduce or minimize the potential for viral transmission; and

5 (4) through the need to mitigate the threat or actual physical presence of Coronavirus
6 on frequently-touched surfaces and objects, including door handles, bathrooms faucets,
7 miscellaneous surfaces, as well as in heating and air conditioning systems and in or on any
8 other of the multitude of places that Coronavirus has been or could be found.

9 96. Plaintiffs' losses to date exceed \$50 million.

10 97. The economic devastation caused by the physical loss of or damage to property from
11 Coronavirus and COVID-19 has affected every industry sector across the globe, and the hotel
12 industry is amongst the hardest hit. U.S. hotels experienced all-time lows with a paltry 44%
13 occupancy rate in 2020, down 33% from 2019.¹³² Revenue per room dropped to just \$45, down
14 48% from 2019.¹³³ 2020 is said to be the "worst year in living memory" for the "reeling"
15 industry.¹³⁴ Hotel industry professionals estimate that "every hotel in America has lost 20 to 35
16 percent of its value" from April to October 2020 alone.¹³⁵ Indeed, the blended occupancy rate at the
17 Hotels in 2020 was only 38.5%.

18 98. Coronavirus and COVID-19 have been disastrous for the hotel industry worldwide.
19 According to statistics, the hotel industry will be among the last industries to recover from the
20 impact of Coronavirus and COVID-19. In April 2020, the American Hotel & Lodging Association
21

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23 ¹³² *COVID-19 Travel Industry Research*, U.S. TRAVEL ASS'N (Jan. 2021), <https://www.ustravel.org/toolkit/covid-19-travel-industry-research> (last visited Sept. 3, 2021).

24 ¹³³ *Id.*

25 ¹³⁴ Konrad Putzier, *Hotel Owners Continue to Reel From the Pandemic*, WALL ST. J. (Jan. 2, 2021),
<https://www.wsj.com/articles/hotel-owners-continue-to-reel-from-the-pandemic-11609563815> (last visited Sept. 3,
2021).

26 ¹³⁵ C. J. Hughes, *Pummeled by the Pandemic, Hotel Owners Get Creative With Their Space*, N.Y. TIMES (Oct. 6, 2020),
<https://www.nytimes.com/2020/10/06/business/hotels-transformation-offices-shelters-coronavirus.html> (last visited
27 Sept. 3, 2021).

1 released new data showing the impact of Coronavirus and COVID-19 to the travel industry is nine
2 times worse than 9/11, with forecasted occupancy rates for 2020 hitting record lows, worse than
3 rates in 1933 during the Great Depression.¹³⁶ As of February 2021, \$1.7 billion hotel employee
4 salaries were being lost each week. Furthermore, as of end of February 2021, lost hotel revenue
5 each week amounted to \$2.8 billion, with projections warning that the total revenue loss for 2020
6 exceeded 50%.¹³⁷

7 99. To protect its property and business income interests as well as that of the Hotels,
8 Spire had purchased the all-risk Policy. The Policy, for which Everest collected lucrative premiums,
9 includes various business interruption coverages that are triggered when physical loss of or damage
10 to property occurs. But Everest has refused to honor its full coverage obligations under the Policy,
11 forcing Plaintiffs to turn to this Court for relief.

12 **I. The Everest All-Risk Policy and Potentially Applicable Coverages**

13 100. In exchange for a substantial premium, Everest sold Spire the Policy, policy number
14 RP5CF00090-191, for the Policy Period¹³⁸ December 15, 2019 to December 15, 2020.

15 101. Spire fully paid the premium for the Policy.

16 102. Plaintiffs are insureds under the Policy, which provides that Spire Hospitality, LLC
17 “and its affiliated, subsidiary, and associated companies and/or corporations and the insured’s
18 interest in trusts, partnerships and joint ventures as now exist or may hereafter be constituted or
19 acquired including their interests as agents for others for which the insured has the responsibility for
20 placing insurance and any party in interest which the insured is responsible to insure hereinafter
21 referred to as ‘the Insured[.]’”

23 ¹³⁶ *New report shows severity of COVID-19 impacts on hotel industry*, NIAGARA FRONTIER PUBL’NS (Apr. 24, 2020),
24 <https://www.wnypapers.com/news/article/current/2020/04/24/141176/new-report-shows-severity-of-covid-19-impacts-on-hotel-industry> (last visited Sept. 3, 2021).

25 ¹³⁷ Hannah Madison, *COVID-19’s Negative Impact on the Restaurant and Hospitality Industry*, MD. REP. (Feb. 25,
26 2021), <https://marylandreporter.com/2021/02/25/covid-19s-negative-impact-on-the-restaurant-and-hospitality-industry/> (last visited Sept. 3, 2021).

27 ¹³⁸ Unless otherwise noted, capitalized and bolded terms herein are capitalized and bolded in the Policy.

1 103. The Policy is part of a program of property insurance sold to Spire, and was drafted
2 by Everest and/or the other insurers participating in the program. It was not drafted by Plaintiffs.

3 104. The Policy Everest sold to Spire insures against "all risk of direct physical loss of or
4 damage," and provides coverage for property damage losses, business interruption losses, and other
5 losses.

6 105. The Policy Limit is \$60,000,000 per occurrence. The Policy deductible is \$25,000
7 for "[a]ll losses, damages or expenses arising out of any one occurrence."

8 106. The Policy does not exclude virus, communicable disease, or pandemics as causes of
9 loss. Thus, under the Policy, the entire \$60,000,000 Policy Limit is potentially available for
10 Plaintiffs' losses.

11 107. The Policy's full terms and conditions are set forth therein, but as relevant here, the
12 Policy provides as follows:

13 **Business Interruption Coverages**

14 108. The Policy covers Business Interruption loss "resulting from necessary interruption of
15 business conducted by the Insured, whether total or partial, and caused by loss, damage, or
16 destruction covered herein during the term of this policy to real and personal property[.] By way of
17 clarification, this policy shall also cover the loss of fee income to the Insured as stipulated under a
18 management and/or related services agreement between the Insured and another party which is not
19 realizable due to loss, damage, or destruction covered herein during the term of this policy to
20 locations managed by the Insured and covered under this policy."

21 109. The Policy further provides: "If such loss occurs during the term of this policy, it
22 shall be adjusted on the basis of ACTUAL LOSS SUSTAINED by the Insured, consisting of the net
23 profit which is thereby prevented from being earned and of all charges and expenses only to the
24 extent that these must necessarily continue during the interruption of business including Ordinary
25 payroll and only to the extent such charges and expenses would have been earned had no loss
26 occurred."

1 110. As set forth above, Coronavirus and COVID-19 caused direct physical loss of or
2 damage to property at the Hotels and its Leader Properties that is "loss, damage, or destruction
3 covered herein[.]"

4 111. Coronavirus and COVID-19 also rendered such property unfit and unsafe for its
5 normal usages at normal capacities, depriving Plaintiffs of their property (the Hotels).

6 112. Neither Coronavirus nor COVID-19 is excluded under the Policy.

7 113. The Hotels' operations were severely limited, and at least in one instance a Hotel was
8 forced to close entirely, as a result of physical loss of or damage to property during the Policy
9 Period. As such, Plaintiffs have sustained and continue to sustain substantial losses, including, with
10 respect to Spire and SeaTac, management/services agreement fee income insured under the
11 Policy.¹³⁹

12 114. The Policy includes an Extended Period of Indemnity of up to 365 days. In relevant
13 part, this provision provides coverage "to restore the Insured's business to the condition that would
14 have existed had no loss occurred[.]" The 365-day period begins at the later of: (i) the date on which
15 the liability of the Company for loss or damage would otherwise terminate; or (ii) the date on which
16 repair, replacement, or rebuilding of the property that has been damaged is actually completed[.]

17 115. The Policy covers Extra Expense "resulting from loss, damage, or destruction
18 covered herein during the term of this policy to real or personal property[.]" "Extra Expense" is
19 defined as "the excess of the total chargeable to the operation of the Insured's business over and
20 above the total cost that would normally have been incurred to conduct the business had no loss or
21 damage occurred."

22 116. As set forth herein, Plaintiffs and the Hotels incurred Extra Expense to resume and
23 continue as nearly as practicable their normal business activities that would otherwise be suspended
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26 ¹³⁹ With respect to the Los Angeles Marriott Burbank Airport and Seattle Airport Marriott, this action includes only
27 Spire's and/or SeaTac's management fee-related claims.

1 due to direct physical loss of or damage to property caused by Coronavirus and COVID-19,
2 including costs associated with altering property to protect it from physical loss of or damage, as
3 well as protecting the safety of employees and customers, such as erecting barriers, altering air
4 circulation, reconfiguring indoor spaces, disinfecting surfaces and materials, providing PPE to
5 employees, providing PPE to guests, and social distancing signage.

6 **Time Element Extensions**

7 117. The Policy includes numerous "Time Element Extensions" that apply to Plaintiffs'
8 and the Hotels' losses from Coronavirus and COVID-19, and apply on a per-occurrence basis.

9 118. The Time Element Extensions apply to "loss resulting from damage to or destruction
10 by causes of loss insured against"—as set forth herein, Coronavirus and COVID-19 are "causes of
11 loss insured against."

12 119. The Policy provides Contingent Time Element coverage that "insures against loss
13 resulting from damage to or destruction by causes of loss insured against, to: . . . property that
14 wholly or partially prevents any direct or indirect supplier of goods and/or services to the Insured
15 from rendering their goods and/or services, or property that wholly or partially prevents any direct or
16 indirect receiver of goods and/or services from the Insured from accepting the Insured's goods
17 and/or services, such supplier or receiver to be located anywhere in the world."

18 120. The Policy provides Leader Property coverage that, as amended by endorsement,
19 "insures against loss resulting from damage to or destruction by causes of loss insured against, to: . .
20 . property not owned or operated by the Insured, located in the same building, complex, or within [5
21 miles] of the Insured, which attracts business to the Insured."

22 121. In plain English, the Policy provides coverage for the insureds' losses if properties of
23 Plaintiffs' customers or suppliers suffer direct physical loss of or damage unless expressly excluded
24 under the Policy, or if properties that attract business to the insureds' business suffer such physical
25 loss of or damage to property. The Policy covers all risks of loss and does not contain any relevant
26 exclusions for Plaintiffs' losses.

1 122. Among other things, as set forth herein, Coronavirus and COVID-19 caused direct
2 physical loss of or damage at properties that attract customers to the Hotels, including the many
3 business amenities and tourist attractions within a short distance of the Hotels and the cities
4 themselves in which the Hotels are located.

5 123. Additionally, as set forth herein, Coronavirus and COVID-19 rendered such
6 properties unfit and unsafe for their normal usages, resulting in the deprivation of use of such
7 properties.

8 124. The Policy provides Interruption by Civil or Military Authority coverage for "the loss
9 sustained during the period of time when access to real or personal property is impaired by order or
10 action of civil or military authority issued in connection with or following a peril insured against
11 within 10 statute[sic] miles of the insured."

12 125. Coronavirus and COVID-19 caused direct physical loss of or damage to property
13 throughout the city of Seattle, the State of Washington, and all other states, and caused the
14 deprivation of use of such property, including property within ten (10) miles of each of the Hotels,
15 giving rise to the actions of civil authority, including various state and local orders discussed herein.
16 These orders impaired access to the Hotels. As alleged herein, Coronavirus and COVID-19 are
17 "perils insured against."

18 126. The Policy provides Ingress/Egress coverage for "loss sustained during the period of
19 time when, in connection with or following a peril insured against, access to or egress from real or
20 personal property is impaired within 10 statute[sic] miles of the insured."

21 127. Coronavirus and COVID-19 caused direct physical loss of or damage to property
22 throughout the City of Seattle, the State of Washington, and all other states, and caused the
23 deprivation of use of such property, including property within ten (10) miles of each of the Hotels.
24 The areas within a 10-mile radius of the Hotels, like the rest of the cities where the Hotels are
25 located, were non-viable destinations in general, thus impairing access to the Hotels. As alleged
26 herein, Coronavirus and COVID-19 are "perils insured against."

1 128. Endorsement 9 of the Policy, titled "Infectious Disease", provides coverage, subject
2 to an annual aggregate sublimit, in relevant part for "loss as insured hereunder when there is an
3 interruption or interference with the business of the Insured as a consequence of:

4 1. Infectious or contagious disease manifested by any person while on the
5 premises of the Insured;

6 ...

7 3. Closing of the whole or part of the premises of the Insured by order of a
8 competent public authority consequent upon the existence or threat of
hazardous conditions either actual or suspected at the premises of the insured.

9 4. This policy is further extended to cover the actual loss sustained and the
10 extra expense incurred by the insured due to the necessary interruption of the
11 insured's business as a result of compliance with a Declared Public Health
Emergency.

12 129. A Declared Public Health Emergency means a written declaration by a local, state or
13 federal agency or official authorized by applicable public health law to declare such an emergency.

14 130. The Policy contains no language limiting coverage for Coronavirus or COVID-19 to
15 that provided under the Infectious Disease provisions. In any case, the Infectious Disease coverage
16 applies to the narrow circumstances set forth therein and does not limit broader coverage for the
17 losses experienced by Plaintiffs and the Hotels due to physical loss of or damage to property caused
18 by Coronavirus and COVID-19.

19 131. The Policy also contains a Sue and Labor clause which states, in relevant part: "In
20 case of actual or imminent loss or damage covered by this policy except imminent loss or damage as
21 respects an "accident", it shall, without prejudice to this insurance, be lawful and necessary for the
22 Insured, their factors, servants, or assigns to sue, labor and travel for, in and about the defense, the
23 safeguard, and the recovery of property or any part of the property insured hereunder[.]" The clause
24 further states: "This Company shall pay the expenses so incurred."

25 132. Plaintiffs and the Hotels undertook costly measures necessary to protect their
26 property and the Hotels from imminent and further "loss of or damage" covered by the Policy, and to

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1 protect as much as possible, the health, safety and welfare of their employees and customers. These
2 measures included, among other things, altering the premises to protect them from loss of or damage
3 to property, and taking measures to protect the safety of their employees and customers, such as
4 erecting barriers, altering air circulation, reconfiguring indoor spaces, disinfecting surfaces and
5 materials, providing PPE to employees, providing PPE to guests, and social distancing signage.
6 Additionally, during times of low or no occupancy at the Hotels, to mitigate their losses and protect
7 their property, Plaintiffs and the Hotels incurred costs associated with security, fire monitoring,
8 elevator maintenance, pest control, utilities, and other maintenance.

9 133. No exclusions apply to Plaintiffs' claim.

10 134. Plaintiffs also expect that additional coverages and provisions under the Policy may
11 become relevant and applicable when the calculation of their full losses is fully known. The
12 foregoing is not a comprehensive discussion of all potentially applicable Policy coverages, terms,
13 and conditions, which are fully set forth in the Policy.

14 **J. Everest Denies Plaintiffs' Claim**

15 135. On or about March 16, 2020, Spire provided notice to Everest of Plaintiffs' losses
16 from Coronavirus and COVID-19.

17 136. On April 22, 2020, Everest, through a third-party adjuster, sent Spire a perfunctory
18 information request. Everest did not send an adjuster to any of the Hotels to investigate the losses.

19 137. On or about August 3, 2020, Spire—still in the midst of dealing with massive
20 challenges to its business—provided responses to Everest's requests, and attached spreadsheets
21 regarding "COVID Related Information" and containing daily revenue by location, profit and loss
22 statements for each location showing the losses suffered by the Hotels as a result of COVID-19, and
23 other information.

24 138. In response to the request for information, Spire stated that Plaintiffs' business
25 interruption losses resulted from the "actual and/or likely presence of COVID-19" at the insured
26 premises and in cities where insured properties are located, as well as at "Leader Properties" that

1 attract customers to the Hotels. Spire also stated that the presence of COVID-19 led to
2 governmental orders that affected the insured locations' ability to operate, and that it incurred costs
3 associated with safeguarding and preserving insured property, including costs associated with
4 "security, fire monitoring, elevator maintenance, pest control, utilities, maintenance, and
5 sanitization."

6 139. After an unexplained delay of over four months, and without having ever visited any
7 of the Hotels or conducting any meaningful investigation of the losses (as Everest is required to do
8 under applicable insurance law and regulations, as well as insurance industry custom and practice),
9 on December 18, 2020, Everest denied coverage for the vast majority of Plaintiffs' claim. Everest
10 summarily concluded that "there was no direct physical loss or damage to Spire's property" –
11 ignoring the mounting evidence to the contrary and mischaracterizing the applicable Policy
12 language. Everest only acknowledged that limited coverage was potentially available under the
13 Policy's Infectious Disease coverage, subject to a relatively low annual aggregate sublimit that
14 would not come anywhere close to defraying the Hotels' severe losses. These many months later,
15 Everest has not even made any payment under the Infectious Disease provision.

16 140. Everest also asserted that relevant governmental orders were "not issued as the result
17 of any peril insured against" for the purposes of CIVIL OR MILITARY AUTHORITY coverage –
18 ignoring the very text and context of the relevant orders, discussed herein.

19 141. Everest also spuriously cited the Policy's "SEEPAGE AND/OR POLLUTION
20 AND/OR CONTAMINATION EXCLUSION" as barring coverage. But that exclusion does not
21 even mention virus, communicable disease, or pandemics, and it is also clearly inapplicable by its
22 terms.

23 142. Everest leapt to these conclusions despite never visiting or sending an adjuster to the
24 Hotels to verify the accuracy of its assertions. Because of Everest's wrongful denial of coverage and
25 inadequate claim investigation, Plaintiffs have suffered and continue to suffer significant damages.

FIRST CAUSE OF ACTION
(DECLARATORY JUDGMENT)

143. Plaintiffs incorporate the above Paragraphs by reference.

144. This is a cause of action for declaratory judgment pursuant to the Uniform Declaratory Judgments Act, RCW 7.24.010 *et seq.*

145. An actual and justiciable controversy exists between Plaintiffs and Everest concerning their respective rights and obligations under the Policy.

146. As such, this Court has the authority to issue a declaratory judgment concerning the respective rights and obligations of Plaintiffs and Everest under the Policy.

147. Plaintiffs seek a declaratory judgment declaring that the losses Plaintiffs have suffered are covered by the Policy, specifically: (1) with respect to all Hotels except Los Angeles Marriott Burbank Airport and Seattle Airport Marriott, all business interruption and other losses arising from Coronavirus and/or COVID-19; and (2) with respect to Los Angeles Marriott Burbank Airport and Seattle Airport Marriott, lost management fee income arising from Coronavirus and/or COVID-19.

148. Plaintiffs seek a declaratory judgment declaring that Everest is responsible for fully and timely paying these losses.

SECOND CAUSE OF ACTION
(BREACH OF CONTRACT)

149. Plaintiffs incorporates the above Paragraphs by reference.

150. The Policy is a valid and enforceable contract.

151. Plaintiffs paid substantial premiums for the Policy and the promises of coverage contained therein. Plaintiffs performed all of their obligations owed under the Policy or was excused from performance. Everest denied Plaintiffs' claim and has refused to pay or otherwise honor its promises. In denying coverage for Plaintiffs' insurance claim as alleged above, Everest breached the

1 contract (that is, the Policy). As a result, Plaintiffs suffered and continues to suffer damage in an
2 amount to be proven at trial, but currently estimated to exceed \$50 million.

3 PRAYER FOR RELIEF

4 Wherefore, Plaintiffs pray for judgment as follows:

5 1. A declaratory judgment that the losses Plaintiffs have suffered are covered by the
6 Policy, specifically: (1) with respect to all Hotels except Los Angeles Marriott Burbank Airport and
7 Seattle Airport Marriott, all business interruption and other losses arising from Coronavirus and/or
8 COVID-19; and (2) with respect to Los Angeles Marriott Burbank Airport and Seattle Airport
9 Marriott, lost management fee income arising from Coronavirus and/or COVID-19.

10 2. A declaratory judgment that Everest is responsible for fully and timely paying such
11 losses.

12 3. Damages in an amount to be proven at trial, specifically: (1) with respect to all Hotels
13 except Los Angeles Marriott Burbank Airport and Seattle Airport Marriott, damages associated with
14 business interruption and other losses arising from Coronavirus and/or COVID-19; and (2) with
15 respect to Los Angeles Marriott Burbank Airport and Seattle Airport Marriott, damages associated
16 with lost management fee income arising from Coronavirus and/or COVID-19.

17 4. Pre-judgment and post-judgment interest at the maximum legal rate;

18 5. An award of court costs and attorneys' fees; and

19 6. Such other, further, and different relief as this Court may deem just and proper.

20 JURY DEMAND

21 Plaintiffs hereby demands a trial by jury on all issues so triable in this action.

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26 //

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18 DATED this 9th day of Spetember, 2021.

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