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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF KING

9 QUEST DIAGNOSTICS, INCORPORATED,

10 Plaintiff,

11 v.

12 AIG SPECIALTY INSURANCE COMPANY,
13 UNDERWRITERS AT LLOYD'S
14 SYNDICATES NO. KLN 0510 and TMKS
15 1880, PARTNER IRELAND INSURANCE
16 DAC, ENDURANCE AMERICAN
17 SPECIALTY INSURANCE COMPANY,
18 STEADFAST INSURANCE COMPANY,
19 AVIVA INSURANCE LTD., XL
20 INSURANCE AMERICA INC., and ACE
21 AMERICAN INSURANCE COMPANY,

22 Defendant.

No.

COMPLAINT

23 Plaintiff Quest Diagnostics, Incorporated (“Quest” or “Plaintiff”), by and through the
24 undersigned attorneys, brings this action against Defendants, AIG Specialty Insurance Company
25 (“AIG”), Underwriters at Lloyd’s Syndicates Nos. KLN 0510 and TMKS 1880 (“Lloyd’s
26 Underwriters”), Partner Ireland Insurance DAC (“Partner Re”), Endurance American Specialty
Insurance Company (“Endurance”), Steadfast Insurance Company (“Steadfast”), Aviva
Insurance Ltd. (“Aviva”), XL Insurance America Inc. (“XL”), and ACE American Insurance

1 Company (“ACE”) (collectively, herein referred to as the “Defendants,” the “Insurers” or the
2 “Defendant-Insurers”), and alleges as follows:

3 **I. INTRODUCTION**

4 1. This is an action by Quest seeking insurance coverage for certain business income
5 losses suffered by Quest arising from civil authority orders that prohibited access to property of
6 Quest’s customers, including health care providers and other types of entities that are the source
7 of business for Quest. Specifically, the Defendant-Insurers issued “all risk” policies of insurance
8 to Quest for losses that Quest incurred arising from various forms of loss or damage taking place
9 during the relevant policy period (the “Policies”). The Policies not only provide coverage for
10 Quest’s financial losses arising out of direct physical loss or damage to its own property, but also
11 provide extensions of coverage for contingent business interruption relating to its customers
12 and/or suppliers, as well as for business interruption because of orders of civil or military
13 authority and because of prohibition of ingress and egress to relevant property.

14 2. In this case, Quest has suffered substantial business income loss as a result of
15 multiple civil authority orders; – namely, orders of state and local governments around the
16 country that prohibited access of patrons to the business premises of Quest’s customers, which
17 are health care providers and other entities that are the source of Quest’s medical diagnostic
18 testing business. Specifically, these civil authority orders were put into place by governmental
19 entities during the Spring of 2020 because of the existence of physical loss or damage not
20 excluded in the Policies – namely, the certain and increasingly pervasive presence of the SARS-
21 CoV-2 virus (the “coronavirus”) in the communities of Quest’s insured properties and those of
22 Quest’s customers, as well as in other areas within the jurisdiction of these civil authorities. The
23 certain and increasingly pervasive presence of the coronavirus in these areas constituted both
24 loss or damage to real and personal property and loss or damage to human health and human
25 welfare. This loss or damage to property and to human health and welfare was the basis for the
26 issuance of the orders by civil authorities that, among other measures, prohibited access to the

1 premises of Quest’s customers that were located within 5 miles of Quest’s insured locations,
2 resulting in business income losses suffered by Quest.

3 3. Quest has made a claim for coverage to the Defendant-Insurers under the
4 extension of coverage that they expressly afforded for Interruption by Civil or Military
5 Authority, and the Defendant-Insurers have responded by sending a denial of coverage letter,
6 dated September 20, 2021. The Defendant-Insurers’ denial letter stated erroneous reasons for
7 denying coverage that are contrary to their policy language and contrary to applicable law.
8 Hence, Quest brings this lawsuit against the Defendant-Insurers to enforce its contractual rights
9 to insurance coverage.

10 II. JURISDICTION AND VENUE

11 4. This Court has original jurisdiction over this matter pursuant to RCW 2.08.010
12 and RCW 7.24.020 because this case originates in Washington, among other states, involves
13 insured property in Washington, alleges an amount in controversy that exceeds the jurisdictional
14 threshold, and is seeking determination of the construction of a written contract to obtain a
15 declaration of rights, status or other legal relations thereunder. No other court is vested with
16 exclusive jurisdiction for this controversy.

17 5. This Court has personal jurisdiction over this matter because Quest and the
18 Defendant-Insurers conduct business in King County and because certain actions and events
19 giving rise to this cause of action occurred in King County.

20 6. Venue is proper in this Court pursuant to RCW 48.05.220.

21 III. PARTIES

22 7. Plaintiff Quest owns and operates medical diagnostic testing laboratories and
23 patient service centers (“PSC’s”) located in King County and throughout the country. Quest
24 provides a range of medical diagnostic testing services. Quest is incorporated in the State of
25 Delaware, and has its principal place of business in Secaucus, New Jersey.

1 8. Upon information and belief, Defendant AIG Specialty Insurance Company is an
2 insurance company incorporated in the State of Illinois, with its principal place of business in
3 New York, New York. AIG is an insurance carrier authorized to write, sell, and issue
4 commercial insurance policies in Washington to policyholders. AIG issued one of the insurance
5 policies that is the subject of this lawsuit, as referenced in paragraph 16 below.

6 9. Upon information and belief, Defendant Underwriters at Lloyd's Syndicates No.
7 KLN 0510 and TMKS 1880 are underwriting syndicates comprising limited liability companies
8 organized under the laws of England, with their principal places of business in London, England.
9 Lloyd's Underwriters is an insurer authorized to write, sell, and issue commercial insurance
10 policies in Washington to policyholders. Lloyd's Underwriters issued one of the insurance
11 policies that is the subject of this lawsuit, as referenced in paragraph 16 below.

12 10. Upon information and belief, Defendant Partner Ireland Insurance DAC is an
13 insurance company incorporated in Ireland, with its principal place of business in Dublin,
14 Ireland. Partner Re is an insurance carrier authorized to write, sell, and issue commercial
15 insurance policies in Washington to policyholders. Partner Re issued one of the insurance
16 policies that is the subject of this lawsuit, as referenced in paragraph 16 below.

17 11. Upon information and belief, Defendant Endurance American Specialty Insurance
18 Company is an insurance company incorporated in the State of Delaware, with its principal place
19 of business in Wilmington, Delaware. Endurance is an insurance carrier authorized to write, sell,
20 and issue commercial insurance policies in Washington to policyholders. Endurance issued one
21 of the insurance policies that is the subject of this lawsuit, as referenced in paragraph 16 below.

22 12. Upon information and belief, Defendant Steadfast Insurance Company is an
23 insurance company incorporated in the State of Illinois, with its principal place of business in
24 Schaumburg, Illinois. Steadfast is an insurance carrier authorized to write, sell, and issue
25 commercial insurance policies in Washington to policyholders. Steadfast issued one of the
26 insurance policies that is the subject of this lawsuit, as referenced in paragraph 16 below.

1 g. Lloyd's Underwriters Policy No. PTNAM2004878

2 h. Partner Re Policy No. PTNAM2004884

3 17. The "Named Insured" in these Policies is "Quest Diagnostics, Inc."

4 18. The Policies' collective per occurrence limit of liability is \$750,000,000, subject
5 to various sub-limits of liability stated in the Policies, and subject to the respective percentage
6 shares of each subscribing Defendant-Insurer.

7 19. The Policies are "all risk" policies that provide broad property and business
8 interruption coverage for "all risk of direct physical loss or damage to property" except as
9 expressly excluded.

10 20. The Policies also provide additional coverage for business interruption under the
11 coverage entitled: "Interruption by Civil or Military Authority," which extends coverage "to
12 insure loss sustained during the period not to exceed 30 days when as a result of, direct physical
13 loss or damage not excluded in Clause 6., access to property within 5 miles of the Insured's
14 Location is prohibited by order or action of Civil or Military Authority."

15 21. The Policies do not contain any exclusion prohibiting coverage for business
16 income loss caused by communicable diseases or pandemics, such as the coronavirus or the
17 resulting pandemic.

18 **B. The Coronavirus and the COVID-19 Pandemic**

19 22. The coronavirus is physical in nature and gives rise to the "Novel Coronavirus
20 Disease 2019" (commonly referred to as "COVID-19") in humans.

21 23. The coronavirus is transmitted between persons and also from surfaces of
22 property to persons. According to the World Health Organization ("WHO"), the coronavirus can
23 spread from person to person through small droplets expelled from the nose or mouth when a
24 person with COVID-19 coughs, sneezes, exhales, or speaks. These droplets may be breathed in
25 by another person or land on another person and cause infection if they reach the eyes, nose or
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1 mouth. Additionally, the droplets may land on objects and cause infection when another person
2 touches the object or surface and then touches his or her eyes, nose, or mouth.

3 24. Upon information and belief, the coronavirus also is transmitted through aerosols
4 produced by infected individuals talking, coughing or singing, and which can remain suspended
5 in air for an extended time and move over extended distances. These particles can remain
6 infectious while suspended over long distances and times.

7 25. Upon information and belief, the aerosol particles can remain suspended
8 indefinitely unless removed by air currents or ventilation, and studies have shown that
9 businesses' air conditioning systems trigger the transmission of the virus.

10 26. Upon information and belief, while COVID-19 is incubating in their bodies,
11 which can take up to 14 days, infected persons can be contagious and transmit the disease, even
12 prior to showing any symptoms.

13 27. Upon information and belief, individuals in the pre-symptomatic stage have an
14 even greater ability to transmit COVID-19 because they carry high levels of the coronavirus in
15 their bodies at that stage and are typically unaware that they are infectious. Some infected
16 individuals remain asymptomatic, and these individuals may still spread the coronavirus by
17 breathing, speaking, or touching objects and surfaces.

18 28. A study by the Centers for Disease Control ("CDC") found that 59% of all
19 transmission came from asymptomatic transmission, comprising 35% from pre-symptomatic
20 individuals and 24% from individuals who never developed symptoms. As such, the number of
21 reported positive test cases reflects only a portion of the individuals who were likely shedding
22 SARS-CoV-2 on persons and property in their vicinity.

23 29. Upon information and belief, the coronavirus may remain viable for hours to days
24 on surfaces made from a variety of materials. Reportedly, the virus can survive and remain
25 virulent on stainless steel and plastic for 3 to 6 days, on glass and banknotes for 3 days, and on
26 wood and cloth for 24 hours.

1 30. The CDC has reported that the coronavirus was found on surfaces of the Diamond
2 Princess cruise ship 17 days after the cabins were vacated. And , on information and belief,
3 other studies suggest that the coronavirus can remain active on inert surfaces for up to, and
4 perhaps longer than, 28 days. Inanimate objects that are physically altered by the adherence of a
5 virus, like the coronavirus, and allow for the transmission of the virus from one susceptible
6 person to another are referred to as “fomites.”

7 31. Droplets containing the coronavirus are physically present in the air and are
8 physically present and adhere to the surfaces of both real and personal property.

9 32. The coronavirus was first identified on December 31, 2019, when the Chinese
10 government notified the WHO of a “pneumonia of unknown cause” discovered in China’s
11 Wuhan province.

12 33. The United States reported its first confirmed COVID-19 case on January 20,
13 2020. That first confirmed case was in Washington State, and the individual was a resident of
14 Seattle, King County.

15 34. On January 30, 2020, the WHO declared the COVID-19 outbreak a “Public
16 Health Emergency of International Concern.”

17 35. By early February, 2020, in the United States, the coronavirus was spreading
18 largely undetected.

19 36. On February 29, 2020, King County suffered its first death from COVID-19,
20 which was also Washington State’s first death from the coronavirus.

21 37. On March 11, 2020, the WHO characterized the widespread outbreak of COVID-
22 19 a “pandemic.”

23 38. On March 13, 2020, the U.S. federal government declared the coronavirus and
24 COVID-19 to be a national emergency. Three days later, on March 16, 2020, the CDC and
25 members of the national Coronavirus Task Force issued public guidance titled “30 Days to Slow
26 the Spread,” which for the first time recommended significant social-distancing measures, such

1 as working from home, avoiding gatherings of more than 10 people, and avoiding bars and
2 restaurants.

3 39. Individual state governments took a lead role within the United States in
4 addressing the spreading coronavirus. Starting during the middle to latter part of March 2020,
5 state governors and other governmental authorities across the country began issuing orders
6 imposing restrictions on commercial businesses, social activities, and the movement of people, to
7 reduce the further contact of the coronavirus with persons and property and to protect against
8 additional injury and damage to human health and welfare. Many states restricted, or outright
9 prohibited, the operation of “non-essential” or “non-life-sustaining” businesses, prohibited public
10 gatherings, ordered the postponement of non-essential medical procedures and required
11 individuals to “stay at home” and not enter other properties except for essential purposes, such as
12 shopping for food or caring for an elderly relative.

13 40. For example, in the State of Washington, where Quest operates diagnostic testing
14 facilities and PSC’s, the governor of Washington issued the following orders, among others, as
15 the result of the presence and spread of COVID-19 across the state and the coronavirus’ ability to
16 attach and survive on surfaces:

17 a. On March 16, 2020, Governor Jay Inslee issued Proclamation 20-13 “to
18 help preserve and maintain life, health, property or the public peace” and
19 among other measures, prohibited gatherings of a number of people for the
20 purposes of public entertainment, recreation, food and beverage service,
21 theater, bowling, fitness and other similar activities, as well as the
22 operation of all retail stores.

23 b. On March 19, 2020, Governor Inslee issued Proclamation 20-24, titled
24 “Restrictions on Non-Urgent Medical Procedures.” This proclamation
25 recognized that the coronavirus pandemic “remains a public disaster
26 affecting life, health, property of the public peace” and provided, in

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relevant part:

WHEREAS, the health care personal protective equipment supply chain in Washington State has been severely disrupted by the significant increased use of such equipment worldwide, such that there are now critical shortages of this equipment for health care workers. To curtail the spread of the COVID-19 pandemic in Washington State and to protect our health care workers as they provide health care services, it is necessary to immediately prohibit all hospitals, ambulatory surgery centers, and dental, orthodontic, and endodontic offices in Washington State from providing health care services, procedures and surgeries that require personal protective equipment, which if delayed, are not anticipated to cause harm to the patient within the next three months[.]

c. On March 23, 2020, Governor Inslee issued Proclamation 20-25, titled “Stay Home - Stay Healthy,” further recognizing that the pandemic “remains a public disaster affecting life, health, property or the public peace” and prohibiting all people from “leaving their homes or participating in social, spiritual and recreational gatherings of any kind... and all non-essential businesses in Washington State from conducting business, within the limitations provided herein.” Essential businesses were also “prohibited from operating ... unless they establish and implement social distancing and sanitation measures[.]”

41. Governors and other state and local governmental officials issued similar orders in states across the United States, including in additional states where Quest maintains property and business operations insured under the Policies.

42. For example, in Illinois, on March 20, 2020, Governor J.B. Pritzker issued Executive Order 2020-10, noting that, “in a short period of time, COVID-19 has rapidly spread throughout Illinois, necessitating updated and more stringent guidance from federal, state and local public health officials.” Governor Pritzker went on to issue a “stay at home” order, stating in part: “With exceptions as outlined below, all individuals currently living within the State of Illinois are ordered to stay at home or at their place of residence except as allowed in this Executive Order.” He further ordered that: “All businesses and operations in the State, except

1 Essential Businesses and Operations, as defined below, are required to cease all activities within
2 the State except Minimum Basic Operations, as defined below.”

3 43. As another example in Oregon, on March 23, 2020, Governor Kate Brown issued
4 Executive Order 20-12, observing that, “[o]n March 19, 2020, I ordered the postponement of
5 non-urgent health care procedures, in order to conserve protective equipment and hospital beds
6 for the state’s COVID-19 emergency response efforts.” Governor Brown also noted that “State
7 and local public health officials advise that the virus is circulating in the community and expect
8 the number of cases to increase. ... The number of COVID-19 cases continues to rise in Oregon.
9 On March 8, 2020, at the time I declared an emergency, there were 14 presumptive or confirmed
10 cases in Oregon. By March 12, 2020, there were 21. As of today, there are at least 161 cases and
11 five deaths. ... In a short time, COVID 19 has spread rapidly.” Hence, Governor Brown went on
12 to issue a “stay at home” order directing: “It is essential to the health, safety and welfare of the
13 State of Oregon during the ongoing state of emergency that, to the maximum extent possible,
14 individuals stay at home or at their place of residence, consistent with the directives set forth in
15 my Executive Orders and guidance issued by the Oregon Health Authority.”

16 44. In Colorado, on March 19, 2020, Governor Jared Polis issued Executive Order D-
17 2020-09, observing that, “[a]s the number of cases of COVID-19 continues to rise nationally,
18 internationally, and statewide, it is clear that Colorado is facing a historic public health
19 challenge.” Governor Polis’ Executive Order 2020-09 ordered the temporary cessation of all
20 elective and non-essential surgeries and medical procedures.

21 45. In Tennessee, on March 23, 2020, Governor Bill Lee issued Executive Order No.
22 18, prohibiting non-emergency medical procedures: “All hospitals and surgical outpatient
23 facilities in the State of Tennessee shall not perform non-essential procedures, which includes
24 any medical procedure that is not necessary to address a medical emergency or to preserve the
25 health and safety of a patient, as determined by a licensed medical provider. In addition, on
26 March 30, 2020, Governor Lee observed in Executive Order No. 22 that, “despite numerous

1 actions taken in recent weeks to limit the spread of COVID-19, in the last five (5) days, the
2 number of cases in Tennessee has more than doubled, and there are now at least 72 counties with
3 cases, indicating that COVID-19 is spreading throughout all areas of the State and presents a
4 serious risk to the health, safety and welfare of all Tennesseans, which requires further statewide
5 action to contain the spread of COVID-19 and preserve the State’s health care resources;” and,
6 accordingly, Governor Lee ordered that “[b]usinesses or organizations that do not perform
7 Essential Services shall not be open for access or use by the public or its members.” Further,
8 Governor Lee’s Order stated that “all persons in Tennessee are urged to stay at home, except for
9 when engaging in Essential Activity or Essential Services as defined in this Order.”

10 46. In Maryland, on March 30, 2020, Governor Lawrence Hogan issued Executive
11 Order 20-03-30-01, which amended prior executive orders relating to the COVID-19 pandemic
12 and stated that, “[t]o protect the public health, welfare, and safety, prevent the transmission of
13 the novel coronavirus, control the spread of COVID-19 and save lives, it is necessary to control
14 and direct the movement of individuals in Maryland, including those on the public streets;” and
15 “It is further necessary to control and direct in Maryland the occupancy and use of buildings and
16 premises, as well as places of amusement and assembly.” Thus, Governor Hogan issued a “stay
17 at home” order directing that “[a]ll persons living in the State of Maryland are hereby ordered,
18 effective as of 8:00pm on March 30, 2020, to stay in their homes or places of residence” except
19 for exempt activities specified in the Order.

20 47. In Massachusetts, on March 23, 2020, Governor Charles Baker issued COVID-19
21 Order No. 13, reciting that “the number of presumptive positive and confirmed cases of COVID-
22 19 continues to rise exponentially in the Commonwealth. As of March 22, 2020, the Department
23 of Public Health had reported 646 cases of COVID-19, including 5 deaths, with 13 of the 14
24 counties in the Commonwealth impacted.” The Order directed that “[a]ll businesses and other
25 organizations that do not provide COVID-19 Essential Services shall close their physical
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1 workplaces and facilities ('brick-and-mortar premises') to workers, customers, and the public as
2 of 12:00 noon on March 24, 2020..."

3 48. In New York, on March 23, 2020, Governor Andrew Cuomo issued Executive
4 Order 202-10, noting that "both travel-related cases and community contact transmission of
5 COVID-19 have been documented in New York State and are expected to continue." The Order
6 issued directives relating to the medical care for COVID-19 patients and included a provision
7 that the New York Commissioner of Health was authorized to direct all general hospitals,
8 ambulatory surgery centers, office based surgery practices and diagnostic and treatment centers
9 to increase the number of beds available to COVID-19 patients by cancelling all elective
10 surgeries and procedures, as the Commissioner of Health shall define.

11 49. In New Jersey, on March 23, 2020, Governor Phil Murphy issued Executive
12 Order 109, noting that, "as of March 23, 2020, there were at least 1,914 positive cases of
13 COVID-19 in New Jersey, with at least 20 of those cases having resulted in death. To expand
14 treatment options for COVID-19 patients, Governor Murphy ordered that, "[b]eginning at 5:00
15 p.m., on Friday, March 27, 2020, all 'elective' surgeries performed on adults, whether medical or
16 dental, and all 'elective' invasive procedures performed on adults, whether medical or dental, are
17 suspended in the State."

18 50. In Texas, on March 31, 2020, Governor Greg Abbott, issued Executive Order
19 GA-14 which recounted his earlier disaster proclamation of March 13, 2020, declaring that "the
20 novel coronavirus (COVID-19) poses and imminent threat of disaster for all counties in the State
21 of Texas. Governor Abbott cited his authority under Section 418 of the Texas Government Code,
22 including Section 418.018(c) that the "governor may control ingress and egress to and from a
23 disaster area and the movement of persons and the occupancy of premises in the area;" and
24 directed that "every person in Texas shall, except where necessary to provide or obtain essential
25 services or reopened services, minimize social gatherings and minimize in-person contact with
26 people who are not in the same household."

1 51. A number of other governmental orders issued by state and local officials
2 prohibiting the movement of people, temporarily closing the operation of businesses, and
3 restricting the performance of non-essential medical procedures also explicitly mention the threat
4 the coronavirus poses to property and human health and how the widespread physical presence
5 of the coronavirus in the jurisdiction was the basis for the issuance of the orders.

6 52. The impact of the COVID-19 pandemic upon life and property has been
7 staggering across the United States and the world. Although the precise number and locations of
8 COVID-19 infected persons is unknown, as of the filing date of this Complaint, there have been
9 more than 350 million confirmed infections throughout the world, with more than 5.6 million
10 confirmed deaths, according to the WHO. Within the United States, the WHO reports that there
11 have been more than 70 million confirmed cases of COVID-19, with more than 860,000
12 confirmed deaths.

13 53. This COVID-19 public health crisis has directly and physically damaged
14 property, has physically damaged human health and human welfare, and has caused the loss of
15 use of property across the State of Washington, across all of the states throughout the United
16 States, and has directly forced businesses everywhere to physically limit the use of, and access
17 to, property and has restricted people from entering and/or inhabiting physical buildings at given
18 points in time.

19 **C. Quest Suffers Business Income Loss from Orders of Civil Authority**

20 54. Many metropolitan areas in the United States have been particularly overwhelmed
21 by the pandemic, including metropolitan areas in which Quest has diagnostic testing laboratories
22 and PSC's and other property insured under the Policies.

23 55. For instance, the King County, Washington Department of Health published a
24 Seroprevalence Survey in August of 2020 which noted that "[while] [t]he true number of
25 infections in King County residents since late January 2020 is unknown[,] [m]athematical
26 models based on detected cases of active infection along with other sources of data have

1 produced estimates which are 10 or more times higher than reported cases in other parts of the
2 United States (US).”

3 56. By mid-August, 2020, the Department of Health estimated that about 4% of King
4 County or 90,000 residents had antibodies against the coronavirus, which were generated by
5 natural infection.

6 57. Upon information and belief, a study of seroprevalence, i.e. the number of
7 individuals who had antibodies against the coronavirus, was completed for first responders and
8 other medical workers in New York City from May to July 2020, and found that of over 22,500
9 participants, 22.5% tested positive for coronavirus antibodies resulting from natural infection.
10 Seroprevalence was highest in correctional staff (39.2%) and emergency medical technicians
11 (38.3%), with laboratory technicians registering 10.1%.

12 58. Upon information and belief, a study of seroprevalence in Miami-Dade County,
13 Florida residents yielded similar results, finding that as of April 24, 2020, 6% of Miami-Dade’s
14 2.75 million residents had antibodies against the coronavirus from natural infection.

15 59. Given that, beginning in early 2020, a significant percentage of the U.S.
16 population carried the coronavirus at any given time, it was statistically certain or near-certain
17 that the coronavirus was present in the communities of every major metropolitan area in the
18 country by April 2020, and thus the coronavirus was present on property located in those areas,
19 physically altering those properties and causing them to become physically uninhabitable,
20 unsafe, and unfit for their normal and intended uses, thereby resulting in physical loss or damage
21 to property, as well as causing substantial damage to human health and human welfare.

22 60. Quest is afforded coverage under the Policies for business income loss resulting
23 from the civil authority orders applicable to King County and to other metropolitan areas and
24 locations around the country wherein, because of the presence of and rapid spread of the
25 coronavirus, and the resulting damage and threat of damage the virus posed to property and
26 public health, civil authority orders prohibited access of patrons to the business premises of

1 Quest's customers located within five miles of Quest's insured properties, and thereby severely
2 limited those customers' requests for Quest's diagnostic testing services.

3 **D. Quest Requests Coverage for its Losses, and Defendant-Insurers Deny Coverage**

4 61. On or about April 13, 2020, Quest gave the Defendant-Insurers timely notice of
5 its claim for coverage for business income losses resulting from the COVID-19 pandemic.

6 62. On or about March 23, 2021, in furtherance of its claim for coverage for losses
7 relating to civil authority orders, Quest provided the Defendant-Insurers a compilation of those
8 civil authority orders on which Quest's coverage claim was based.

9 63. On or about August 1, 2021, Quest provided the Defendant-Insurers a further
10 claim submission with a detailed explanation of its claim, including a schedule providing a
11 calculation of Quest's losses that were the subject of its claim.

12 64. On or about September 20, 2021, the Defendant-Insurers sent Quest a letter
13 denying coverage for Quest's claim. This denial letter sets forth the following erroneous
14 positions on which their denial of coverage was based:

15 a. The Defendant-Insurers contended that the COVID-19 pandemic did not
16 cause any physical loss or damage to relevant property, although they did
17 not identify what property they considered to be "relevant," and the
18 Defendant-Insurers further contended that all cited government orders
19 were issued in response to the general outbreak of COVID-19, rather than
20 in response to any physical loss or damage to "the insured locations." This
21 contention by the Defendant-Insurers is wrong for multiple reasons.

22 i. First, the "Interruption by Civil or Military Authority" provision
23 (as well as the Ingress/ Egress provision) is an extension of
24 coverage which only requires "direct physical loss or damage not
25 excluded." In this case, there was substantial physical loss or
26 damage to property. Moreover, the Policies provide that any direct

1 physical loss or damage will trigger such coverage, not just
2 physical loss or damage to property as Defendant-Insurers contend.
3 The Defendant-Insurers themselves explicitly acknowledge in their
4 September 20, 2021 denial letter that the presence of COVID-
5 19/coronavirus can, among other things, cause or threaten “damage
6 to human health or human welfare.” Hence, the Defendant-Insurers
7 acknowledge that the presence of the coronavirus constitutes
8 “damage,” as that term is used in their Policies.

9 ii. Second, the extension of coverage for Interruption by Civil or
10 Military Authority (as well as the Ingress/Egress coverage) does
11 not require that there be any physical damage to “insured
12 locations.”

13 iii. Third, because of the damage that had been caused by the
14 coronavirus, and the continued threat of additional damage, state
15 and local officials issued orders applicable to locations around the
16 United States restricting or prohibiting access to property,
17 including the premises of customers of Quest located within a 5-
18 mile radius of Quest insured locations. These civil authority orders
19 directly resulted in business income losses suffered by Quest and,
20 as such, fall squarely within the Interruption by Civil Authority
21 coverage of the Policies, as well as the Ingress/Egress coverage.

22 b. In support of their denial of coverage, the Defendant-Insurers also contend
23 that the Policies’ “Pollutants or Contaminants” exclusion, as well as the
24 AIG Policy’s specific “Pollution, Contamination, Debris Removal
25 Exclusion,” apply to preclude coverage.

26 i. The Defendant-Insurers’ contention is incorrect because these

1 exclusions, by their terms, expressly apply only to instances of
2 “release” or “escape” or “dispersal” or “discharge” of a pollutant
3 or contaminant from a containment area, which then causes loss.
4 These pollution and contamination exclusions do not apply to the
5 transmission of the coronavirus from person to person or from
6 property to person. Moreover, these exclusions apply to
7 environmental impairment, and not to the type of losses suffered
8 by Quest at issue in this case.

9 c. The Defendant-Insurers also erroneously base their denial of coverage on
10 the contention that certain of the Policies contain a Microorganism
11 Exclusion, which excludes “loss [or] damage ... directly or indirectly
12 arising out of or relating to ... [m]old, mildew, fungus, spores or other
13 microorganism of any type, nature or description...[.]” This exclusion is
14 inapplicable to Quest’s claim for coverage.

15 65. The Defendant-Insurers’ Policies do not contain any coverage exclusion
16 applicable to business income losses arising from communicable diseases or pandemics. The
17 Defendant-Insurers knowingly and voluntarily chose not to incorporate such exclusions in their
18 Policies when issuing them to Quest.

19 66. Specifically, upon information and belief, prior to issuing the Policies to Quest,
20 the Defendant-Insurers understood – including through, but not limited to, the Defendant-
21 Insurers’ participation in insurance industry trade organizations – the potential impact of
22 communicable diseases, viruses and related pandemics on the coverage obligations of
23 commercial property insurers to their policyholders, including their ability to cause physical loss
24 or damage to property or to human health.

25 67. For example, after an outbreak of Severe Acute Respiratory Syndrome (“SARS”)
26 in 2003, various insurers and insurance organizations began to draft exclusions in an attempt to

1 prevent policyholders from recovering for damage and losses resulting from communicable
2 disease, viruses, or related pandemics. One such effort was mounted by the Insurance Services
3 Office (“ISO”), the insurance industry’s policy forms drafting organization, which prepared and
4 circulated in July 2006 a circular # LI-CF-2006-175 titled “New Endorsements Filed to Address
5 Exclusion of Loss Due to Virus or Bacteria.”

6 68. In that 2006 circular, ISO acknowledged that viruses arguably satisfy the “direct
7 physical loss or damage” language of all-risk property insurance policies, stating:

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

13 69. ISO introduced this 2006 standard-form virus exclusion under the form numbers
14 CP 01 40 07 06 and CP 01 75 07 06, and it was available to the insurance industry, including the
15 Defendant-Insurers.

16 70. Thus, at the time the Defendant-Insurers underwrote and sold the Policies to
17 Quest in 2020, the Defendant-Insurers knew how to include language in its Policies attempting to
18 exclude coverage for loss or damage caused by viruses, communicable diseases and/or
19 pandemics. And yet, the Defendant-Insurers chose not to include such an exclusion in the
20 Policies. In the absence of such an exclusion, the Policies provide coverage for loss or damage
21 caused by viruses, communicable diseases and/or pandemics.

22 V. CAUSES OF ACTION

23 Count One – Declaratory Judgment

24 71. Quest incorporates by reference the allegations of paragraphs 1-70 above, as if
25 fully set forth herein.

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