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23 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
24 **COUNTY OF SANTA CLARA**

25 FORTY NINERS SC STADIUM) Civil Action No. _____
26 COMPANY LLC, FORTY NINERS)
27 STADIUM MANAGEMENT COMPANY)
28 LLC, and FORTY NINERS FOOTBALL) **COMPLAINT**
COMPANY, LLC)
Plaintiffs,) **JURY TRIAL DEMANDED**
vs.)
AMERICAN HOME ASSURANCE)
COMPANY,)
Defendant.)

1 Plaintiffs, Forty Niners SC Stadium Company LLC, Forty Niners Stadium Management
2 Company LLC, and Forty Niners Football Company LLC¹ (hereafter “Plaintiffs” or “Insureds”),
3 file this Complaint for damages and declaratory judgment against Defendant, American Home
4 Assurance Company (“AHAC”) alleging the following:

5 **I. INTRODUCTION**

6 1. This action for breach of contract and declaratory judgment arises out of AHAC’s
7 failure to comply with its obligations and provide coverage for Plaintiffs’ loss under the “all risks”
8 insurance policies sold by AHAC to Plaintiffs (the “Policies”).

9 2. Plaintiffs manage and are tenants of Levi’s Stadium.

10 3. Based in California, Levi’s Stadium seats over 68,500 spectators and was designed
11 and built to host world-class sporting and entertainment events, including National Football
12 League (“NFL”) games for the San Francisco 49ers (“49ers”), NFL public training camps, NFL-
13 related sponsorship events, collegiate football games, concerts, festivals, shows, and tours.
14 Notably, Levi’s Stadium hosted Super Bowl 50, WrestleMania, and the 2019 College Football
15 Playoff National Championship.

16 4. Levi’s Stadium also provides upscale restaurant services at Bourbon Steak and
17 Bourbon Pub. It also contains numerous concession stands, the 49ers Team Store, a retail store
18 selling 49ers apparel and merchandise, and the 49ers Museum, which showcases 11 unique gallery
19 and exhibit spaces.

20 5. Further, with over 400,000 square feet of unparalleled event space featuring premium
21 amenities and fully customizable experiences, Levi’s Stadium offers a variety of unique spaces
22 that people can use for both public and private events, including, without limitation, birthday
23 parties, weddings, high school proms, business conferences and corporate events, and charitable
24 functions. Levi’s Stadium also provides dining options at numerous luxury suite spaces and
25 concession stands.

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27
28 ¹ Forty Niners Football Company LLC constitutes a Named Insured under the AHAC Policies as it is an affiliate of
Forty Niners SC Stadium Company LLC.

1 6. Moreover, Levi’s Stadium is widely known for being one of the most high-tech
2 stadiums in the world and has been recognized and awarded as the “Sports Facility of the Year”
3 by Sports Business Journal and “Venue of the Year” by the Stadium Business Awards in 2015.

4 7. Levi’s Stadium’s operation, however, is now threatened by SARS-CoV-2, sometimes
5 called “Coronavirus” or by one of the names of the disease that it causes and that spreads it:
6 “COVID-19.” SARS-CoV-2 is referred to as COVID-19 herein.

7 8. Due to COVID-19, Plaintiffs’ property has suffered “direct physical loss or
8 damage”—under the plain and ordinary meaning of that term. Any jury would find that the stadium
9 has suffered a direct physical loss or damage because COVID-19 impaired Plaintiffs’ property by
10 making the stadium unusable in the same manner as it had been used prior to the outbreak of
11 COVID-19.

12 9. Once able to freely welcome visitors from all over the world and pack fans into Levi’s
13 Stadium to enjoy world-class sporting events, entertainment events, and private events, Plaintiffs
14 were forced to close the stadium entirely for approximately five months and were forced to close
15 the stadium entirely again after briefly reopening it for a specific purpose at a limited capacity.
16 49ers preseason games, 49ers public training camp sessions, 49ers sponsorship events, concerts
17 by BTS and Justin Bieber, Monster Jam, shows, school events, fundraising events, holiday parties
18 and other catered and non-NFL related events previously scheduled at Levi’s Stadium were
19 cancelled or postponed due to COVID-19—however, many of the events that have merely been
20 *postponed* and not *cancelled* were not rescheduled for any time during 2020 or 2021.

21 10. Upon reopening the stadium to specifically allow the 49ers to begin training camp in
22 August 2020, Plaintiffs were required to drastically reduce their business operations and strictly
23 limit the number of people permitted to enter Levi’s Stadium. Any staff member or employee
24 entering Levi’s Stadium was required to wear a mask, remain six feet apart from others, and follow
25 other social distancing measures. No fans or spectators were allowed inside Levi’s Stadium.

26 11. On or about November 28, 2020, Levi’s Stadium was forced to completely close
27 again. From that point in time until the end of the 2020 football season, Plaintiffs were unable even
28 to utilize the stadium to host 49ers games or other professional and collegiate sports games or

1 activities that require close physical contact. Among other things, Plaintiffs were forced to: cancel
2 highly anticipated events like scheduled 49ers games; make significant structural alterations,
3 changes and/or repairs to their property; and completely restrict fans from entering the stadium
4 due to COVID-19 and resultant government orders issued by local and state civil authorities that
5 mandated the closure of businesses, like Plaintiffs' businesses ("Closure Orders"). To do anything
6 else would lead to the emergence or reemergence of COVID-19 at Levi's Stadium.

7 12. Even throughout the 2021 football season, Plaintiffs were still unable to utilize the
8 stadium in the way it had been used prior to the outbreak of COVID-19. For example, certain
9 indoor events required guests to provide proof of vaccination, or a negative COVID-19 test result
10 and to wear masks or face coverings; the Bourbon Steak restaurant was used only as a tailgate
11 experience and open only during home games; and the 49ers Museum was closed for
12 approximately 16 months, from March 2020 to August 2021, and reopened in a limited capacity
13 only on home game weekends and with shortened hours due to COVID-19. Plaintiffs are also
14 required to comply with strict COVID-19 related protocols provided by the NFL, which continue
15 to impose restrictions on the use and availability of Plaintiffs' property.

16 13. These losses are direct. Plaintiffs are not seeking reimbursement from AHAC after
17 someone obtained a judgment against Plaintiffs for getting them sick. Such a loss might be
18 categorized as an indirect loss. Plaintiffs are asking AHAC to pay for the loss and damage to their
19 property and for their loss of business income occasioned directly by being unable to use their
20 property.

21 14. These losses are physical. Plaintiffs are unable to use Levi's Stadium in the manner
22 in which they had previously used it.² The property has lost its functionality and its ability to
23 generate revenue. The probability of illness prevents the use of the space in its normal way in no
24 less of a way than, on a rainy day, a crumbling and open roof from the aftermath of a tornado

25 _____
26 ² Note, however, that Plaintiffs are not seeking recovery for their loss of use. Plaintiffs are seeking coverage for their
27 loss of business income. As an example that drives home the difference, some law firms have been unable to use their
28 office space because of COVID-19, but nevertheless the law firms' business income has increased and they thus have
faced no loss of business income. A claim by such a law firm for not being able to use its office space would be a
"loss of use" claim. But the law firm would have no loss of *business income* claim. Here, Plaintiffs' businesses have
stalled because of the impairment of their business space, and Plaintiffs are seeking the loss of business income under
the business interruption coverage of their property insurance policies.

1 would make the interior space of a business unusable. Moreover, the SARS-CoV-2 virus that
2 causes COVID-19 is physical—it can be seen, counted, measured, and destroyed; it replicates itself
3 and destroys other cells and organisms. Importantly, it can exist in the air and on surfaces for
4 indeterminate periods of time, and can be transferred from the air and surfaces into human bodies.
5 The presence of the virus in a facility is a *physical* presence, and it is a damaging one.

6 15. These losses are losses. They are the loss of functionality of the space for business
7 purposes. The losses are the diminishment of the physical space in the stadium. Once able to hold
8 over 68,500 fans, Levi’s Stadium was limited to zero fans for the 2020 NFL season. For the final
9 two months of the NFL Season, Levi’s Stadium was also closed to NFL players, 49ers employees,
10 and other football staff.

11 16. These losses constitute damage. The SARS-CoV-2 virus, a physical object, has been
12 present in and around Plaintiff’s Covered Property, impairing its function for their ordinary and
13 intended uses, forcing its closure, requiring steps to be taken to physically restore the Covered
14 Property to a usable state, and altering the structure of ambient air and Covered Property’s surfaces:

- 15 a. Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) is a
16 betacoronavirus that is genetically related to several other zoonotic
17 coronaviruses, including SARS-CoV-1, the etiological agent of SARS.
18 SARS-CoV-2 causes coronavirus disease 2019 (COVID-19) in humans.
19 SARS-CoV-2 has glycoprotein “spikes” that are able to bind to human
20 angiotensin converting enzyme 2 (ACE-2) receptors, which is present on
21 human respiratory epithelial cells. After binding to ACE-2, the virus is able
22 to enter the cells and make copies of itself, which are then released. These
23 released infectious viral particles are then expelled in respiratory secretions
24 as respiratory droplets into a multiphase, turbulent gas cloud during
25 breathing, coughing, sneezing, talking, and singing. There are large and
26 small respiratory droplets within the cloud. Large respiratory droplets can
27 infect other people either directly, through direct contact with respiratory
28 mucosal surfaces, or indirectly, by contaminating surfaces which are then

1 touched by another person who subsequently touches her or his mouth,
2 nose, or eyes. The small droplets remain in the air as an aerosol, which can
3 remain suspended in the air for hours, travel prolonged distances indoors
4 along air currents induced by the HVAC system, and travel from room to
5 room, infecting people directly through contact with, and inhalation of, the
6 aerosol. Particles from the aerosol can also contaminate surfaces.

7 b. Because SARS-Co-V-2 spread is logarithmic, a key purpose of government
8 closure orders is to prevent the spread of SARS-CoV-2. In the absence of
9 closure, there will be people infected with SARS-CoV-2 present on a
10 premise, causing contamination of air and physical surfaces with infectious
11 SARS-CoV-2 particles, leading to virus transmission and additional cases
12 of COVID-19.

13 c. The virus is indirectly transmitted when a person touches an infested object
14 or surface that is infested with the SAR-CoV-2 virus (i.e., fomite
15 transmission). The virus can survive on hard and soft surfaces for a period
16 of time ranging from a few hours to a few days.

17 d. Aerosol transmission, particularly during aerosol generating procedures,
18 such as fans talking and cheering, is believed to be a common mode of
19 transmission in public settings. If a person is infected with SARS-CoV-2,
20 whether symptomatic or asymptomatic, and goes to a game or concert,
21 infectious viral particles can be aerosolized into the air. Infection clusters
22 suggest that aerosol, droplet and fomite transmission explain SARS-CoV-2
23 transmission amongst humans.

24 e. Nonetheless, the virus, while imperceptible to the human eye without
25 enhancement, is undeniably present in the air, and on objects and surfaces
26 where infected humans congregate. The objects and surface and space are,
27 essentially, rendered useless, in that they should not be utilized while virus
28 is present.

- 1 f. The virus cannot be observed by the human eye without enhancement. No
2 one can see the virus in the air, on one's hands, or on a surface. This, of
3 course, makes it difficult to eliminate the virus, or eradicate its transmission,
4 from air or surfaces. The presence of the virus is only observed through the
5 infection rate.
- 6 g. Merely cleaning surfaces may reduce but does not altogether eliminate the
7 risk of transmission. There may be surfaces with residual infectious virus,
8 and aerosolized infectious particles. In other words, disinfection may
9 temporarily eliminate a virus that was present prior to disinfection;
10 however, a space may remain contaminated if an aerosol is present, and
11 immediately become contaminated thereafter if another infected person is
12 present in the area.
- 13 h. The presence of the virus, whether circulating or stagnant, has changed the
14 object, surface or premises, in that it has become dangerous to handle and/or
15 enter, and cannot be used. Its use can only be restored with remedial action
16 and sufficient time for the contaminated air to be evacuated, as suggested
17 by the CDC and other infectious disease experts.
- 18 i. The virus, observable only through microscopy and reflected by the public
19 transmission rates, does physically exist and will survive in the air and on
20 hard and soft surfaces. The virus can remain viable and infectious in
21 aerosols for hours and on surfaces up to days. The virus may be inhaled
22 from aerosols or spread to hands from a contaminated surface and then to
23 the nose or mouth, causing infection. Notably, clearance of aerosols or
24 disinfection of a contaminated surface is temporary and will easily become
25 contaminated again when the virus is reintroduced by another infected
26 person, and this contamination will provide a constant modality for
27 infection to people.

28 //

- 1 j. The virus' presence in a community, evidenced by infection rates, means
2 that live virus has been transferred in the air and to objects and surfaces.
3 When aerosolized or an object or surface contains live virus, the virus is
4 physically present in the air and on surfaces and objects, but imperceptible
5 to the human eye. Nevertheless, the air, objects and surfaces should not be
6 used. The transmission of the virus can occur through breathing, aerosol
7 generating procedures, or touching surfaces or objects contaminated with
8 virus from an infected person.
- 9 k. Aerosol, droplet, and fomite transmission are the basis for masking, eye
10 protection, use of gowns and gloves in the healthcare setting, social
11 distancing, hand-washing, stay-at-home orders, home-shelter orders,
12 distance learning, reduced capacity and/or occupancy limits, and other
13 measures implemented in various executive orders. The virus is physically
14 present in the community, including in the air and on objects and surfaces.
15 Aerosol and fomite transmission are real, and due to constant reinfestation
16 of air and surface areas, it is simply impossible to entirely eradicate the virus
17 from indoor and enclosed spaces and such surfaces if there continue to be
18 unmasked people in the area.
- 19 l. Reducing capacity in public settings is one way to reduce the presence of
20 virus on objects and surfaces and, therefore, reduce the risk of transmission,
21 especially during times of rising infection rates. Wearing masks reduces,
22 but does not eliminate, the likelihood of virus being aerosolized and
23 transferred to objects and hard surfaces.
- 24 m. Even with cleaning and disinfecting, the presence of virus on objects and
25 surfaces, though reduced, cannot be reliably eliminated because these
26 surfaces will continue to become contaminated as people spread the virus.
27 The only way to ensure the total absence of virus on objects and surfaces is
28 to prevent access to an environment, especially an indoor or enclosed

1 environment with full capacity.

2 17. For the policy period from July 15, 2017 to July 15, 2020, AHAC issued Commercial
3 Property Policy No. 020413463 to Plaintiffs (the “2017-2020 Policy”). For the policy period from
4 July 15, 2021 to July 15, 2022, AHAC issued Commercial Property Policy No. 018258111 to
5 Plaintiffs (the “2021-2022 Policy”) (hereafter, collectively “Policies”). The coverages under the
6 Policies apply to real and personal property, unless excluded, at or within 1,000 feet of a “covered
7 location” that Plaintiffs own, operate, control or for which they are under an obligation to insure
8 for direct physical loss or damage. *See* Policy No. 020413463, attached hereto as Exhibit 1 at
9 SANFRANCISCO0025; *see also* Policy No. 018258111, attached hereto as Exhibit 2 at
10 SANFRANCISCO16.

11 18. Under the Policies, “covered location” means “[t]he location(s) as specified in the
12 most recent Statement of Locations and Values on file” with AHAC. *See* Exhibit 1 at
13 SANFRANCISCO0067; *see also* Exhibit 2 at SANFRANCISCO0060.

14 19. Levi’s Stadium (also referred to throughout the Complaint as “Covered Property”) is
15 a “covered location,” which Plaintiffs operate, control or are otherwise obligated to insure for
16 direct physical loss or damage.

17 20. Plaintiffs acquired “all-risk” property coverage to protect themselves in the event that
18 Levi’s Stadium suddenly had to suspend operations for reasons outside of their control or if
19 Plaintiffs had to act in order to prevent further property damage. Plaintiffs obtained these Policies,
20 which provide coverages for Property Damage with Additional Coverages and Time Element.

21 21. The Policies provide Time Element Coverage for business income losses occurring
22 as a result of direct physical loss or damage of the type insured under the Policies, and AHAC
23 agreed to pay for expenses incurred in reducing such loss. *See* Exhibit 1 at
24 SANFRANCISCO0047-48; *see also* Exhibit 2 at SANFRANCISCO0040-41.

25 22. The Policies also provide Civil Authority coverage for business income losses,
26 including extra expense incurred, resulting from the partial or total prohibition of access to
27 property by a civil authority. *See* Exhibit 1 at SANFRANCISCO0052; *see also* Exhibit 2 at
28 SANFRANCISCO0045.

1 23. The Policies also provide coverage for business income losses, including extra
2 expense incurred, due to the partial or total prevention of ingress to or egress from Plaintiffs’
3 property. *See id.*

4 24. The Policies also provide coverage for business income losses sustained and extra
5 expense incurred due to direct physical loss or damage to insured property that attracts business to
6 a Covered Location. *See* Exhibit 1 at SANFRANCISCO0049; *see also* Exhibit 2 at
7 SANFRANCISCO0042.

8 25. The Policies also provide coverage for “reasonable and necessary costs” that
9 Plaintiffs incurred to “temporarily protect or preserve” the insured property. *See* Exhibit 1 at
10 SANFRANCISCO0035; *see also* Exhibit 2 at SANFRANCISCO0028.

11 26. Unlike many policies that provide Business Interruption and other Time Element
12 coverages or Time Element coverage extensions, the Policies do not include, and are not subject
13 to, any exclusion for losses caused by the spread of viruses or communicable diseases.

14 27. AHAC drafted a limited “pollution or contamination” exclusion that originally
15 defined pollutants or contaminants to include “virus,” but that provision does not apply to pollution
16 or contamination that results from direct physical loss or damage resulting from a covered cause
17 of loss, including the cost to clean up pollutants or contaminants from covered property at the
18 covered location resulting from such loss or damage. Moreover, “virus” was removed from the
19 definition of “pollution or contamination” by endorsement.

20 28. Plaintiffs were forced to suspend certain operations and business at their stadium due
21 to the direct physical loss or damage caused by COVID-19 and the resultant Closure Orders issued
22 by civil authorities in California, as well as in order to take necessary steps to prevent further
23 damage and minimize the suspension of business and continue operations.

24 29. Plaintiffs suffered direct physical loss or damage to their stadium due to COVID-19
25 and the resultant Closure Orders and incurred Time Element, Contingent Time Element, Extra
26 Expense, Civil Authority, Ingress & Egress, Preservation of Property, and Attraction Property
27 losses due to COVID-19 and the resultant Closure Orders.

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1 44. AHAC did not exclude or limit coverage for losses from the spread of virus in the
2 Time Element coverages, Special Coverages, or other coverages of the Policies, which provide
3 business interruption coverage. Indeed, the Policies do not include, and are not subject to, any
4 exclusion for losses caused by the spread of viruses or communicable diseases. Thus, losses due
5 to COVID-19 are a “Covered Cause of Loss” under the Policies.

6 45. In the Policies, AHAC agreed to pay for the Time Element losses of Plaintiffs due to
7 the “necessary partial or total interruption of [the Insureds’] business operations, services or
8 production during the period of indemnity.” *See* Exhibit 1 at SANFRANCISCO0047; *see also*
9 Exhibit 2 at SANFRANCISCO0040.

10 46. The Time Element coverage of the Policies also provides at least 14 “Additional Time
11 Element Coverages,” including, among others: (i) “Extra Expense,” for costs incurred in order to
12 temporarily continue business “as nearly normal as practicable;” (ii) “Contingent Time Element,”
13 for loss sustained by the Insureds’ direct supplier or direct customer; (iii) “Interruption by Civil
14 and Military Authority,” for losses sustained when access is partially or totally prohibited by an
15 order of civil or military authority; (iv) “Ingress & Egress,” for losses and costs due to impairment
16 of physical ingress to or egress from a Covered Location; and (v) “Attraction Property,” for losses
17 sustained and costs incurred due to direct physical loss or damage to insured property that attracts
18 business to a Covered Location. *See* Exhibit 1 at SANFRANCISCO0049-55; *see also* Exhibit 2 at
19 SANFRANCISCO0042-49. AHAC agreed to pay for such Additional Time Element losses. *Id.*

20 47. For Time Element and all other applicable coverages, this period of time under the
21 Policies “shall not be cut short by the end of the policy period.” *See* Exhibit 1 at
22 SANFRANCISCO0072; *see also* Exhibit 2 at SANFRANCISCO0064.

23 48. AHAC also agreed to pay expenses incurred by the Insureds to reduce their Time
24 Element losses. *See* Exhibit 1 at SANFRANCISCO0048; *see also* Exhibit 2 at
25 SANFRANCISCO0041.

26 49. The Property Damage with Additional Coverages of the Policies include
27 “Preservation of Property” coverage, in which AHAC also agreed to pay the reasonable and
28 necessary costs for actions taken to “temporarily protect or preserve” Covered Property, provided

1 that such actions are necessary due to “imminent direct physical loss or damage” to Covered
2 Property. *See* Exhibit 1 at SANFRANCISCO0035-36; *see also* Exhibit 2 at
3 SANFRANCISCO0035.

4 50. Due to the actual presence of COVID-19, the Covered Property suffered direct
5 physical loss or damage. Due to COVID-19, the Covered Property has become unsafe for its
6 intended purpose and thus suffered physical loss or damage. The business functions of the Covered
7 Property were impaired as a result. If Plaintiffs continued to simply conduct business as they
8 normally would have in the past prior to COVID-19, the virus would manifest, and guests,
9 employees, and other visitors to the Covered Property would risk infection and serious illness or
10 death. This is not a non-physical or remote loss such as one occasioned by a breach of contract,
11 loss of a market, or the imposition of a governmental penalty. Instead, it is a direct physical loss
12 because of the changed physical environment. In its current condition, Plaintiffs’ property is not
13 functional for its usual business purposes.

14 51. Moreover, the presence of virus constitutes physical damage to property, as the
15 insurance industry has recognized since at least 2006. When preparing so-called “virus” exclusions
16 to be placed in some policies, but not others, the insurance industry drafting arm, The Insurance
17 Services Office (“ISO”), circulated a statement to state insurance regulators that included the
18 following:

19 Disease-causing agents may render a product impure (change its quality or
20 substance), or enable the spread of disease by their presence on interior
21 building surfaces or the surfaces of personal property. When disease-
22 causing viral or bacterial contamination occurs, potential claims involve the
23 cost of replacement of property (for example, the milk), cost of
24 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.

25 52. The presence of virus or disease has resulted in physical damage to Covered Property
26 in that manner in this case.

27 53. Losses caused by COVID-19 and the related orders issued by local and state
28 authorities triggered the Time Element, Contingent Time Element, Extra Expense, Civil Authority,

1 Ingress/Egress, Preservation of Property, and Attraction Property provisions of the Policies.
2 Plaintiffs also reasonably and necessarily incurred expenses to reduce their Time Element losses.

3 **B. COVID-19 Is A Highly Contagious and Deadly Communicable Disease**

4 54. COVID-19, a disease resulting from the SARS-CoV-2 novel coronavirus, is a deadly
5 communicable disease that has already infected over 78 million people in the United States and
6 killed more than 947,000 Americans.³

7 55. As discussed in great detail in paragraph 16, *supra*, and incorporated herein by
8 reference, COVID-19 is a highly contagious and deadly communicable disease.

9 56. Per the CDC, “COVID-19 spreads when an infected person breathes out droplets and
10 very small particles that contain the virus. These droplets and particles can be breathed in by other
11 people or land on their eyes, noses, or mouth. In some circumstances, they may contaminate
12 surfaces they touch. People who are closer than 6 feet from the infected person are most likely to
13 get infected. COVID-19 is spread in three main ways: Breathing in air when close to an infected
14 person who is exhaling small droplets and particles that contain the virus; Having these small
15 droplets and particles that contain virus land on the eyes, nose, or mouth, especially through
16 splashes and sprays like a cough or sneeze; Touching eyes, nose, or mouth with hands that have
17 the virus on them.”⁴

18 57. The virus that causes COVID-19 most commonly spreads between people who are in
19 close contact with one another (within about 6 feet, or 2 arm lengths). It spreads through respiratory
20 droplets or small particles, such as those in aerosols, produced when an infected person coughs,
21 sneezes, sings, talks, or breathes. These particles can be inhaled into the nose, mouth, airways, and
22 lungs and cause infection. This is thought to be the main way the virus spreads.

23 58. Droplets can also land on surfaces and objects and be transferred by touch. A person
24 may get COVID-19 by touching the surface or object that has the virus on it and then touching
25 their own mouth, nose, or eyes. A scientific study investigating the stability of COVID-19 in
26 different environmental conditions found that, following COVID-19 contamination, the virus

27 ³ See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last viewed March 2, 2022).

28 ⁴ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last viewed March 2, 2022).

1 could be detected hours later for tissues and paper, days later for wood, cloth and glass.⁵ COVID-
2 19 also remains active on plastic and stainless steel surfaces for up to three days, on cardboard for
3 24 hours, on copper for four hours, and is detectable in aerosols for up to three hours.⁶ All of these
4 materials are used by Plaintiffs and are otherwise present in Levi's Stadium.

5 59. The time between exposure to the coronavirus and first symptoms, otherwise known
6 as the incubation period, for COVID-19 can last up to 14 days.⁷ Some COVID-19 patients show
7 symptoms, and some are asymptomatic. Even asymptomatic persons can transmit COVID-19 for
8 an extended period of time, thought to be even longer than 14 days.⁸ Those people who eventually
9 show symptoms can also spread the disease even in their pre-symptomatic state.⁹

10 60. Research has also indicated that the coronavirus can spread through the air. For
11 example, airborne viral particles are known to have spread into a facility's heating and ventilation
12 ("HVAC") system, leading to transmission of the coronavirus from person to person. One study
13 found the presence of the coronavirus within the HVAC system servicing hospital ward rooms of
14 COVID-19 patients. This study detected SARS-CoV-2 RNA in ceiling vent openings, vent
15 exhaust filters, and central ducts that were located more than 50 meters from the patients' rooms.¹⁰

16 61. The Environmental Protection Agency ("EPA") has previously compiled several
17 studies reflecting "epidemiological evidence suggestive of [coronavirus] transmission through
18 aerosol." Based on these and other studies, the EPA has recommended that facilities make
19 improvements to their ventilation and HVAC systems by, for example, increasing ventilation with
20 outdoor air and air filtration.¹¹

21 62. Accordingly, COVID-19 causes physical loss and damage by, among other things,
22 destroying, distorting, corrupting, attaching to, and physically altering property, including its

23 ⁵ See Alex W.H. Chin, et al., Stability of SARS-CoV-2 in different environmental conditions, *The Lancet Microbe*
24 (April 2, 2020), [https://doi.org/10.1016/S2666-5247\(20\)30003-3](https://doi.org/10.1016/S2666-5247(20)30003-3).

25 ⁶ See [https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-](https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-days)
26 [days](https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-days).

27 ⁷ See [https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-](https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html#:~:text=The%20incubation%20period%20for%20COVID,CoV%2D2%20infection)
28 [patients.html#:~:text=The%20incubation%20period%20for%20COVID,CoV%2D2%20infection](https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html#:~:text=The%20incubation%20period%20for%20COVID,CoV%2D2%20infection). (last viewed
March 2, 2022).

⁸ See <https://www.acpjournals.org/doi/10.7326/M20-3012>.

⁹ See [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2)
[19.pdf?sfvrsn=5ae25bc7_2](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2).

¹⁰ See <https://www.researchsquare.com/article/rs-34643/v1>.

¹¹ See <https://www.epa.gov/coronavirus/indoor-air-and-coronavirus-covid-19>.

1 surfaces, and by rendering property unusable, uninhabitable, unfit for intended function, dangerous
2 and unsafe. While mitigation efforts have been undertaken and remain ongoing, COVID-19 has
3 caused such physical loss and damage to Plaintiff's Covered Property, as described further below.

4 63. First, respiratory droplets (*i.e.*, droplets larger than 5-10 μm) expelled from infected
5 individuals land on, attach, and adhere to surfaces and objects. In doing so, they structurally change
6 the property and its surface by becoming a part of that surface. This structural alteration makes
7 physical contact with those previously safe, inert surfaces (*e.g.*, walls, handrails, furniture) unsafe.

8 64. Second, when individuals carrying the coronavirus breathe, talk, cough, or sneeze,
9 they expel aerosolized droplet nuclei (*i.e.*, those smaller than 5 μm) that remain in the air and, like
10 dangerous fumes, make the premises unsafe and affirmatively dangerous. This process alters the
11 structural properties of air in buildings from safe and breathable to unsafe and dangerous.

12 65. Fomites, droplets, droplet nuclei, and aerosols containing the coronavirus are not
13 theoretical, intangible, or incorporeal, but rather are dangerous physical substances that have a
14 material, tangible existence.

15 66. When the coronavirus and COVID-19 attach to and adhere on surfaces and materials,
16 they become a part of those surfaces and materials, converting the surfaces and materials to fomites
17 (contaminated surfaces). This represents a physical change in the affected surface or material,
18 which constitutes physical loss and damage.

19 67. The presence of COVID-19 within a facility causes physical loss and damage by
20 necessitating remedial measures that include without limitation extensive cleaning and
21 disinfecting, repairing or replacing air filtration systems, remodeling and reconfiguring physical
22 spaces, and other measures to reduce or eliminate the presence of cases of COVID-19 and the
23 coronavirus on-site.

24 68. The presence of cases of COVID-19 within a facility causes physical loss and damage
25 by transforming the facility from property that is usable and safe for humans into a property that
26 is unsatisfactory for use, uninhabitable, unfit for its intended function, and extremely dangerous
27 and potentially deadly for humans.

28 69. In addition, the presence of COVID-19 on property creates the imminent threat of

1 further damage to that property or to nearby property. Individuals who come into contact, for
2 example, with respiratory droplets at one location in the facility by touching a doorknob or gripping
3 the arms of a stadium chair, will carry those droplets on their hands and deposit them elsewhere in
4 the facility, causing additional damage and loss.

5 **C. Federal, State, and Local Governments Issue Civil Authority Orders Because of**
6 **COVID-19**

7 70. On March 11, 2020, the World Health Organization (“WHO”) declared the COVID-
8 19 outbreak as a pandemic.¹² On March 13, 2020, President Trump declared a national emergency
9 due to the outbreak in the United States.¹³

10 71. The presence of COVID-19 is direct physical loss or damage to property. In response
11 to the direct physical loss or damage to property due to COVID-19, civil authorities across the
12 United States issued orders requiring the suspension or restriction of business at a wide range of
13 establishments, including civil authorities with jurisdiction over business activities at Levi’s
14 Stadium.

15 72. Indeed, many governmental bodies specifically found that COVID-19 causes
16 property damage when issuing Closure Orders. *See* Sixth Supp. to San Francisco Mayoral
17 Proclamation Declaring the Existence of a Local Emergency, 26 (Mar. 27, 2020)¹⁴ (“This order
18 and the previous orders issued during this emergency have all been issued ... also because the
19 virus physically is causing property loss or damage due to its proclivity to attach to surfaces for
20 prolonged periods of time”); Napa Cty. Cal. Health & Human Service Agency, Order of the Napa
21 Cty. Health Officer (Mar. 18, 2020)¹⁵ (issuing restrictions based on evidence of the spread of
22 COVID-19 within the Bay Area and Napa County “and the physical damage to property caused
23 by the virus”); N.Y.C. Emergency Exec. Order No. 100, at 2 (Mar. 16, 2020)¹⁶ (emphasizing the
24 virulence of COVID-19 and that it “physically is causing property loss and damage”); N.Y.C.

25 _____
26 ¹² *See* <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

27 ¹³ *See* <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

28 ¹⁴ https://sfgov.org/sunshine/sites/default/files/sotf_061020_item3.pdf

¹⁵ <https://www.countyofnapa.org/DocumentCenter/View/16687/3-18-2020-Shelter-at-Home-Order>

¹⁶ <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-100.pdf>

1 Emergency Exec. Order No. 103 at 1 (March 25, 2020)¹⁷ (“actions taken to prevent the spread of
2 COVID-19 “have led to property loss and damage”); Harris Cty. Tex. Office of Homeland Security
3 & Emergency Mgmt., Order of Cty. J. Lina Hidalgo, at 2 (Mar. 24, 2020)¹⁸ (emphasizing that the
4 COVID-19 virus can cause “property loss or damage” due to its contagious nature and
5 transmission through “person-to-person contact, especially in group settings”); City of Key West
6 Fla. State of Local Emergency Directive 2020-03, at 2 (Mar. 21, 2020)¹⁹ (COVID-19 is “causing
7 property damage due to its proclivity to attach to surfaces for prolonged periods of time”); City
8 of Oakland Park Fla. Local Public Emergency Action Directive, at 2 (Mar. 19, 2020)²⁰ (COVID-
9 19 is “physically causing property damage”); Panama City Fla. Resolution No. 20200318.1 (Mar.
10 18, 2020)²¹ (stating that the resolution is necessary because of COVID-19’s propensity to spread
11 person to person and because the “virus physically is causing property damage”); Exec. Order of
12 the Hillsborough Cty. Fla. Emergency Policy Group, at 2 (Mar. 27, 2020)²² (in addition to COVID-
13 19’s creation of a “dangerous physical condition,” it also creates “property or business income loss
14 and damage in certain circumstances”); Colorado Dep’t of Pub. Health & Env’t, Updated Public
15 Health Order No. 20-24, at 1 (Mar. 26, 2020)²³ (emphasizing the danger of “property loss,
16 contamination, and damage” due to COVID-19’s “propensity to attach to surfaces for prolonged
17 periods of time”); and City of Durham NC, Second Amendment to Declaration of State of
18 Emergency, at 8 (effective Mar. 26, 2020)²⁴ (prohibiting entities that provide food services from
19 allowing food to be eaten at the site where it is provided “due to the virus’s propensity to physically
20 impact surfaces and personal property”).

21 73. As discussed above, due to the highly contagious nature of COVID-19, the rising
22 number of confirmed cases of COVID-19, and as a consequence of physical loss or damage caused

23 _____
24 ¹⁷ <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-103.pdf>

25 ¹⁸ https://www.taa.org/wp-content/uploads/2020/03/03-24-20-Stay-Home-Work-Safe-Order_Harris-County.pdf

26 ¹⁹ https://www.cityofkeywest-fl.gov/egov/documents/1584822002_20507.pdf

27 ²⁰ <https://oaklandparkfl.gov/DocumentCenter/View/8408/Local-Public-Emergency-Action-Directive-19-March-2020-PDF>

28 ²¹ <https://www.pcgov.org/AgendaCenter/ViewFile/Item/5711?fileID=16604>

²² <https://www.hillsboroughcounty.org/library/hillsborough/mediacenter/documents/administrator/epg/saferathomeorder.pdf>

²³ <https://www.pueblo.us/DocumentCenter/View/26395/Updated-Public-Health-Order---032620>

²⁴ https://durhamnc.gov/DocumentCenter/View/30043/City-of-Durham-Mayor-Emergency-Dec-Second-Amdmt-3-25-20_FINAL

1 by COVID-19, federal, state, and local governments issued Closure Orders limiting the amount of
2 people who could congregate in a group, requiring many businesses to close, and ordering
3 individuals to stay at home except to participate in “essential” activities, such as going to the
4 grocery store to purchase necessities or going to a doctor for a pressing medical issue.

5 74. In California, authorities have issued several Closure Orders with a variety of
6 restrictions impacting the business activities of Plaintiffs, including the following:

7 75. On March 4, 2020, the Governor of California, Gavin Newsom, issued a State of
8 Emergency in response to COVID-19.²⁵ On March 13, 2020, the County of Santa Clara issued an
9 order prohibiting any public or private gatherings of more than 100 people.²⁶ Subsequently, on
10 March 16, 2020, the County of Santa Clara mandated that “[a]ll individuals living within Santa
11 Clara County” to “shelter at their place of residence” except to engage in “Essential Activities”
12 and ceased all but non-essential businesses activities and operations.²⁷ The March 16 order has
13 been extended multiple times with limited modifications.²⁸

14 76. Similarly, on March 19, 2020, Governor Newsom mandated that “all individuals
15 living in the State of California to stay home or at their place of residence” except as needed to
16 continue “critical infrastructure sectors” identified by the federal government.²⁹

17 77. Accordingly, due to COVID-19 and related government Closure Orders, Levi’s
18 Stadium, a non-essential and non-critical business/facility, was required to close and operations
19 were suspended beginning on March 13, 2020. Staff and employees, with limited exceptions, were
20 required to work remotely. As a result, 49ers preseason games and previously-scheduled public
21 training camp sessions, along with various concerts, shows, activities, and other catered and non-
22 49ers related events previously scheduled to occur at Levi’s Stadium were cancelled and/or
23 postponed, preventing Levi’s Stadium from being used for its intended purposes.

24
25 ²⁵ <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>.

26 ²⁶ <https://www.sccgov.org/sites/covid19/Documents/03-13-20-Health-Officer-Order.pdf>.

27 ²⁷ <https://www.sccgov.org/sites/covid19/Documents/03-16-20-Health-Officer-Order-to-Shelter-in-Place.pdf>.

28 ²⁸ <https://www.sccgov.org/sites/covid19/Documents/03-31-20-Health-Officer-Order-to-Shelter-in-Place.pdf>;

29 <https://www.sccgov.org/sites/covid19/Documents/05-04-20-Health-Officer-Order.pdf>;

<https://www.sccgov.org/sites/covid19/Documents/05-18-20-Health-Officer-Order.pdf>.

28 ²⁹ <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf>.

1 78. In August 2020, the County of Santa Clara allowed the 49ers to begin private training
2 camp at Levi’s Stadium. Subsequently, with the County of Santa Clara’s permission, Levi’s
3 Stadium hosted five home games from September 13, 2020 through the end of the 2020 NFL
4 season in January 2021. However, the county did not approve or allow any fans to enter Levi’s
5 Stadium for any of the home games during the 2020 NFL season.

6 79. On or about October 20, 2020, Dr. Mark Ghaly, California’s Health and Human
7 Services secretary, announced new guidelines for the State of California’s reopening plan.³⁰ Per
8 the new guidelines, pro sports stadiums, including Levi’s Stadium, were allowed to reopen at 20%
9 capacity.³¹ However, the Santa Clara County Department of Public Health responded by
10 announcing that the county had no plans to reopen sporting stadiums to fans or visitors.³²

11 80. On November 19, 2020, the State of California’s Department of Public Health issued
12 a Limited Stay at Home order, requiring that all non-essential work and activities, movement, and
13 gatherings cease between 10:00 p.m. and 5:00 a.m.³³

14 81. On November 28, 2020, the County of Santa Clara issued a Mandatory Directive on
15 Travel, which strongly discouraged leisure and non-essential travel, and required individuals
16 entering Santa Clara County from a point of origin greater than 150 miles from the County’s
17 borders to quarantine for 14 days upon arrival.³⁴

18 82. On the same day, the County of Santa Clara also issued another Mandatory Directive
19 for Collegiate and Professional Athletics, which prohibited “all athletic activities that involve
20 contact or close proximity” until December 21, 2020.³⁵ “Any collegiate or professional athletic
21 team or program that travels outside the County to engage in athletic activity allowed in the County
22 must comply with the Mandatory Directive for Travel.”³⁶

23 //

24
25 ³⁰ See <https://sacramento.cbslocal.com/2020/10/20/49ers-levis-stadium-fans-coronavirus-santa-clara/>.

26 ³¹ See *id.*

27 ³² *Id.*

28 ³³ <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/limited-stay-at-home-order.aspx>.

³⁴ See <https://www.sccgov.org/sites/covid19/Pages/travel-directive.aspx>.

³⁵ See <https://www.sccgov.org/sites/covid19/Documents/Mandatory-Directives-Collegiate-and-Professional-Athletics.pdf>.

³⁶ *Id.*

1 83. Subsequently, on December 3, 2020, the State of California’s Department of Public
2 Health issued a Regional Stay at Home Order, mandating that all individuals “stay home or at their
3 place of residence except as necessary to conduct activities associated with the operation,
4 maintenance, or usage of critical infrastructure” for at least three weeks.³⁷ As such, all business
5 operations involving outdoor recreational facilities, retail, restaurants, offices, entertainment
6 production including professional sports,” like Plaintiffs’ business operations, were required to
7 cease in compliance with the December 3rd order.³⁸

8 84. Since then, the State of California began reopening the economy per the Department
9 of Public Health’s guidelines; however, certain indoor “mega” events of large crowds of at least
10 1,000 people still require guests to provide proof of vaccination, or a negative COVID-19 test
11 result, and to wear masks or face coverings.³⁹ Further, the NFL continues to require football teams,
12 like Plaintiffs, to comply with strict COVID-19 related protocols.

13 **D. The Impact of COVID-19 and the Closure Orders on Plaintiffs’ Covered Property**

14 85. At the time of this filing, in the County of Santa Clara alone, there have been over
15 304,000 cases of COVID-19 with over 2,000 deaths.⁴⁰ In California, there have been over 8
16 million cases of COVID-19 and over 84,000 deaths due to COVID-19.⁴¹ COVID-19 has been
17 pervasive throughout the County of Santa Clara and California since the beginning of the
18 pandemic.

19 86. The presence of COVID-19 caused direct physical loss or damage to Plaintiffs’
20 Covered Property, by: (i) causing direct physical loss or damage to the Covered Property; (ii)
21 denying use of and damaging the Covered Property; (iii) requiring physical repair and/or structural
22 alterations to the Covered Property; and/or (iv) causing a necessary suspension of operations
23 during a “period of indemnity.”

24 //

26 ³⁷ See <https://www.gov.ca.gov/wp-content/uploads/2020/12/12.3.20-Stay-at-Home-Order-ICU-Scenario.pdf>.

27 ³⁸ See *id.*; see also <https://www.gov.ca.gov/2020/12/03/california-health-officials-announce-a-regional-stay-at-home-order-triggered-by-icu-capacity/>.

28 ³⁹ <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Beyond-Blueprint-Framework.aspx>

⁴⁰ <https://covid19.sccgov.org/dashboards>.

⁴¹ <https://covid19.ca.gov/state-dashboard/>.

1 87. At the time of this filing, at least twenty-seven individuals have tested positive for
2 COVID-19 and were physically present at Levi's Stadium.

3 88. As discussed in Section I, the 49ers play their home games at Levi's Stadium. In
4 addition to hosting 49ers games, public and private training camp sessions, and 49ers-related
5 sponsorship events, Levi's Stadium also hosts numerous concerts, other sporting events,
6 entertainment events, private events, and shows. Levi's Stadium also has a museum and restaurants
7 for guests to visit and enjoy.

8 89. However, because of the spread and presence of COVID-19, the functional spaces in
9 Levi's Stadium have been diminished. For example, the stadium seats, luxury suites, and eateries
10 in Levi's Stadium lost their normal functionality and the space could not be used from March 2020
11 until mid-August 2021. Numerous events, including 49ers games and training camp, Monster Jam,
12 concerts by BTS and Justin Bieber, high school proms, business conferences and corporate events,
13 charitable functions, and other public and private events have been cancelled or postponed.

14 90. In August 2020, the County of Santa Clara allowed the 49ers to begin training camp
15 at Levi's Stadium, yet the functional uses of the football field and stadium were at a limited,
16 diminished, and reduced capacity.

17 91. Due to the surging COVID-19 cases in California, the County of Santa Clara issued
18 the Mandatory Directive for Collegiate and Professional Athletics on or about November 28, 2020.
19 As a result, Plaintiffs were forced to completely shut down football activities at Levi's Stadium
20 again, and for the rest of the season—over six weeks—the 49ers were unable to play at the stadium.
21 Because Plaintiffs were unable to even utilize Levi's Stadium to host any NFL games, the NFL
22 games that were previously scheduled to take place at Levi's Stadium were relocated for the rest
23 of the season due to COVID-19. As a result of COVID-19 and related Closure Orders, the 49ers
24 were forced to relocate to Arizona for the rest of the season on or about November 28, 2020 in
25 order to continue participating in NFL games. Because of the relocation, additional expenses have
26 been incurred. The 49ers had to rent approximately 180 hotel rooms to house the players, coaches,
27 and staff members, and had to provided food and beverages daily to all team employees who were
28

1 forced to relocate. Moreover, various facilities and equipment were rented for the team's training
2 and participation in their remaining games.

3 92. At the time of this filing, Plaintiffs have not hosted any concerts and shows and hosted
4 a very limited number of non-NFL related entertainment events in 2021. In fact, the primary use
5 of Levi's Stadium in 2021 was as a COVID-19 vaccination site for Santa Clara County. The
6 Bourbon Steak restaurant was used only as a tailgate experience and open only during home games.
7 The 49ers Museum was closed for approximately 16 months, from March 2020 to August 2021,
8 and reopened in a limited capacity with fewer days and operating hours due to COVID-19.

9 93. Aside from the NFL football games that occurred beginning in mid-August 2021,
10 business operations of Plaintiffs, most of which involved large gatherings at the insured property,
11 were initially cancelled or postponed, and many events that were merely postponed were not
12 rescheduled during 2020 or 2021, nor have they taken place as of the date of this filing.

13 94. All of Plaintiffs' business operations have been and continue to be severely
14 negatively impacted.

15 95. To date, Plaintiffs' losses exceed tens of millions of dollars in business
16 income/business interruption losses and various costs to remediate the stadium and to ensure the
17 health and safety of employees, 49ers players, and coaches due to COVID-19 and related
18 government Closure Orders, and these losses continue to increase. These losses also include, but
19 are not limited to: unsold or refunded tickets for 49ers games; lost revenue from 49ers-related
20 sponsorships; costs related to testing 49ers players, coaches, and employees specifically for
21 COVID-19; costs and expenses for relocating the 49ers players, coaches, IT staff, and other
22 supporting staff to Arizona for over six weeks once the November 28, 2020 Closure Order was
23 enacted; increased costs for professional cleaning services; costs in purchasing PPE and other
24 items to protect against COVID-19; food and beverage spoilage; the utilization of existing
25 employees solely for COVID-19 screening instead of their normal duties; and cancellations of
26 numerous concerts, shows, school events, fundraising events, holiday parties and other catered and
27 non-NFL related events.

28 //

1 96. Moreover, the presence of COVID-19 at Plaintiffs’ property has caused “direct
2 physical loss of or damage” to Plaintiffs’ property and is further evidenced by the numerous recent
3 alterations made to Levi’s Stadium and their business operations.

4 97. In order to safely separate individuals, plexiglass partitions, protection shields, and/or
5 other barriers were installed and bolted in the press box, media areas, coaches’ booths, and in
6 multiple locker rooms including those of the 49ers, visiting team, referees, coaches, and ball
7 personnel. Further, several lockers and walls were completely removed from locker rooms to
8 permit spacing for social distancing. New signage, markings, and decals were placed on the walls
9 and floors of the facilities in the stadium to promote social distancing and comply with safety
10 guidelines.

11 98. Thus, there have been many obvious structural alterations, changes and/or repairs
12 made to the stadium and the operations of Plaintiffs in order to continue their businesses after
13 experiencing direct property damage, which was caused by COVID-19, and to avoid imminent
14 threat of further property damage. Had fans or visitors been permitted to enter the stadium in 2020,
15 Plaintiffs would have implemented additional operational changes and physical and structural
16 alterations, such as remodeling concession stands, eliminating stands for condiments for food,
17 and/or erecting numerous hand sanitizer stands throughout the stadium, and would have incurred
18 increased costs and expenses for these changes. In fact, since operations have reopened in mid-
19 August 2021, Plaintiffs have supplemented their ticket scanning operations to include self-
20 scanning turnstiles and have accelerated their transition to make their front and back concession
21 operations and transactions contactless. Further, Plaintiffs have installed face covering signage and
22 regularly purchase face coverings to provide to patrons if needed while indoors as mandated by
23 the Santa Clara Health Department.

24 99. COVID-19 has rendered Plaintiffs’ property unfit for its intended business functions.
25 In its current condition, Plaintiffs’ property is not functional for its business purpose because of
26 the changed physical environment due to COVID-19. COVID-19 also presented an imminent
27 threat of immediate damage or loss to Plaintiffs’ property, forcing Plaintiffs to take costly action
28 to prevent further damage or loss.

1 100. The Closure Orders prohibited access to Plaintiffs’ Covered Property, and the area
2 immediately surrounding the Covered Property, in response to dangerous physical conditions
3 resulting from a Covered Cause of Loss causing damage to property other than the Covered
4 Property.

5 101. As a result of the actual presence of COVID-19 and the Closure Orders, Plaintiffs
6 suffered Time Element losses and incurred Extra Expense.

7 **E. Plaintiffs’ “All Risk” Policies Cover Plaintiffs’ Claim**

8 102. AHAC sold “all risk” insurance policies to Plaintiffs, which provide coverage for
9 “direct physical loss or damage” to the Covered Property by “a peril or other type of loss, *not*
10 *otherwise excluded* under this Policy” (emphasis added). *See* Exhibit 1 at SANFRANCISCO0023
11 and SANFRANCISCO0066; *see also* Exhibit 2 at SANFRANCISCO0016 and
12 SANFRANCISCO0059.

13 103. As discussed above, AHAC did not exclude or limit coverage for losses from viruses
14 or communicable diseases in the Policies. Thus, COVID-19 is covered under the Policies.

15 **1. COVID-19 Triggered Coverage Under the “All Risks” Policies**

16 104. Coverage under the Policies is triggered due to the actual presence of COVID-19 at
17 the Covered Property and the ongoing threat of immediately impending COVID-19 and resulting
18 loss or damage.

19 105. Furthermore, the presence of COVID-19 on property within 1,000 feet of the Covered
20 Property triggered coverage under the Policies.

21 106. COVID-19 has caused and continues to cause direct physical loss and damage, as
22 described above, to property, including Plaintiffs’ Covered Property.

23 107. Additionally, COVID-19 has caused and continues to cause Plaintiffs to experience
24 covered business interruption and business income losses.

25 108. Plaintiffs submitted their claim for loss to AHAC under their Policies due to the
26 presence of COVID-19 and the Closure Orders, and AHAC denied the claim.

27 //

28 //

1 **2. Multiple Coverages are Triggered Under the “All Risks” Policies**

2 109. Plaintiffs’ claim also triggered numerous coverage “extensions” in the Policies under
3 the Additional Time Element Coverages section. These include, but are not limited to, the
4 following:

5 ***a. AHAC Should Compensate Plaintiffs for Their Losses Because COVID-19 Triggered the Policies’ Time Element Coverage***

6 110. Under the Policies, Plaintiffs are covered for Time Element/business income losses.

7 111. Due to the actual presence of COVID-19 at the Covered Property, Plaintiffs have
8 suffered business income losses as a direct result of physical loss and damage that is insured by
9 the Policies, as described above.

10 112. According to the Policies, Plaintiffs are covered from the date of the loss until the
11 date their operations are restored.

12 113. Moreover, AHAC agreed to pay expenses incurred by the Insureds to reduce their
13 Time Element losses.

14 ***b. AHAC Should Compensate Plaintiffs for Their Reasonable and Necessary Costs Incurred to Temporarily Protect or Preserve Their Property Because COVID-19 Triggered the Policies’ Preservation of Property Additional Coverage***

15 ***b. AHAC Should Compensate Plaintiffs for Their Reasonable and Necessary Costs Incurred to Temporarily Protect or Preserve Their Property Because COVID-19 Triggered the Policies’ Preservation of Property Additional Coverage***
16
17 114. Due to the spread or actual presence of COVID-19 and the ongoing threat of
18 imminently impending physical loss or damage (as described above) at the Covered Property,
19 Plaintiffs incurred costs to temporarily protect or preserve their insured property, including all
20 costs associated with having to reduce operations at Levi’s Stadium and the costs to make the
21 property safe. The Policies provide coverage for such costs to the extent they are reasonable and
22 necessary.

23 115. Such costs were reasonably necessary because incurring the costs prevented further
24 insured physical loss or damage.

25 116. Accordingly, under the Policies, AHAC must compensate Plaintiffs for those costs.

26 ***c. AHAC Should Compensate Plaintiffs for Their Losses Because COVID-19 Triggered the Policies’ Civil Authority Coverage***

27 117. Due to the actual physical presence of COVID-19 at Levi’s Stadium and other nearby
28 properties, the local and state governments in California issued orders which partially or totally

1 prohibited access to Levi's Stadium.

2 118. Because of this, Plaintiffs suffered and continue to suffer actual losses and incurred
3 extra expenses. The Policies afford coverage to Plaintiffs due to the civil authority orders which
4 have caused and continue to cause substantial losses and extra expenses to Plaintiffs.

5 ***d. AHAC Should Compensate Plaintiffs for Their Losses Because COVID-***
6 ***19 Triggered the Policies' Ingress & Egress Coverage***

7 119. Due to COVID-19 and the physical loss and damage of COVID-19 at Levi's Stadium
8 and other nearby properties, Plaintiffs' businesses have been interrupted because of the partial or
9 total prevention of physical ingress or egress to and from Levi's Stadium.

10 120. The business income losses caused by the prevention of ingress or egress to and from
11 Levi's Stadium is covered under the Policies.

12 ***e. AHAC Should Compensate Plaintiffs for Their Losses Because COVID-***
13 ***19 Triggered the Policies' Extra Expense Coverage***

14 121. The physical presence of COVID-19 at Levi's Stadium and other nearby properties
15 has impaired Plaintiffs' business operations, causing Plaintiffs to incur extra expenses.

16 122. Plaintiffs have incurred and continue to incur extra expenses in an effort to restore
17 their business operations "as nearly normal as practicable." These expenses are in addition to what
18 Plaintiffs would have normally incurred in conducting their businesses without the presence of
19 COVID-19.

20 ***f. AHAC Should Compensate Plaintiffs for Their Losses Because COVID-***
21 ***19 Triggered the Policies' Contingent Time Element Coverage***

22 123. The Policies also provide coverage for actual business income loss sustained and
23 extra expense incurred resulting from direct physical loss or damage sustained by Plaintiffs' direct
24 suppliers or direct customers.

25 124. Plaintiffs suffered and continue to suffer actual losses and incurred extra expenses
26 directly resulting from physical loss or damage sustained by Plaintiffs' direct suppliers or direct
27 customers due to COVID-19.

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1 *g. AHAC Should Compensate Plaintiffs for Their Losses Because COVID-*
2 *19 Triggered the Policies' Attraction Property Coverage*

3 125. The Policies also provide coverage for actual business income loss sustained and
4 extra expense incurred resulting from physical loss or damage to property of the type insured that
5 is within one mile of Levi's Stadium and attracts business to Levi's Stadium.

6 126. Plaintiffs suffered and continue to suffer actual business income losses or damage to
7 the attraction properties of the same type as described above with respect to Plaintiffs' property
8 within one mile of Levi's Stadium.

9 *h. AHAC Should Compensate Plaintiffs for Their Losses Because COVID-*
10 *19 Triggered the Policies' Logistics Extra Cost Coverage*

11 127. The Policies also provide coverage for reasonable and necessary extra cost sustained
12 due to normal movement of such goods or materials being disrupted as a result of direct physical
13 loss or damage by a covered cause of loss to property of the type insured under the Policies in the
14 coverage territory.

15 128. Plaintiffs suffered and continue to suffer actual losses and extra costs of the same
16 type described above with respect to Plaintiff's property in the coverage territory.

17 *i. AHAC Should Compensate Plaintiffs for Their Losses Because COVID-*
18 *19 Triggered the Policies' Rental Value Coverage*

19 129. The Policies also provide coverage for rental value loss due to direct physical loss or
20 damage by a covered cause of loss to covered property held for rental to others at a covered
21 location.

22 130. Plaintiffs suffered and continue to suffer rental value loss of the same type as
23 described above with respect to covered property held for rental to others at a covered location.

24 **3. No Exclusion Applies Which Affects Coverage**

25 131. The Policies contain no exclusion which limits or bars coverage for the spread or
26 presence of COVID-19 at or near Levi's Stadium, the physical loss and damage to property at
27 Levi's Stadium, and/or the Time Element/business interruption losses which have resulted and will
28 continue to result from the physical loss and damage to Plaintiffs' property.

132. AHAC drafted a limited "pollution or contamination" exclusion that originally
defined pollutants or contaminants to include "virus," but that provision does not apply to pollution

1 or contamination that results from direct physical loss or damage resulting from a covered cause
2 of loss, including the cost to clean up pollutants or contaminants from covered property at the
3 covered location resulting from such loss or damage. Moreover, “virus” was removed from the
4 definition of “pollution or contamination” by endorsement.

5 133. On December 18, 2020, AHAC denied Plaintiffs’ claim.

6 134. To the extent the Court finds that any exclusion(s) apply, they are unenforceable.

7 135. To the extent that the Court or fact-finder interprets the Policies to require Plaintiffs
8 to complete any conditions precedent for coverage and performance under the Policies, AHAC’s
9 denial of the claim constitutes a material breach, excusing any alleged failure (if any) by Plaintiffs
10 to complete conditions precedent.

11 136. Plaintiffs have complied with the Requirements in Case of Loss or Damage provision
12 in the Policies. To the extent the Court or fact-finder interprets the Policies to require additional
13 compliance, AHAC’s denial constitutes a material breach, excusing any alleged failure (if any) by
14 Plaintiffs to comply with all requirements.

15 **V. CLAIMS ALLEGED**
16 **COUNT I**
17 **Declaratory Judgment**

18 137. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 – 136 as
19 if set out in full herein.

20 138. Plaintiffs seek the Court’s declaration of the parties’ rights and duties under the
21 Policies pursuant to Cal. Civ. Proc. Code §§ 1060-1062.5. An actual controversy within its
22 jurisdiction exists between Plaintiffs and Defendant regarding the availability of coverage under
23 the Policies for Plaintiffs’ claims.

24 139. The controversy between Plaintiffs and Defendant is ripe for judicial review.

25 140. Therefore, Plaintiffs seek a declaration from this Court that:

- 26 a. The various coverage provisions under the Policies identified in this Complaint,
27 including but not limited to Time Element, Preservation of Property, Civil
28 Authority, Ingress & Egress, Extra Expense, Contingent Time Element, Attraction

1 Property, Logistics Extra Cost, and Rental Value Coverage, are triggered by
2 Plaintiffs' claim;

3 b. The Policies cover Plaintiffs' claim; and

4 c. No Policy exclusion applies to prohibit or limit coverage for Plaintiffs' claim.

5 **COUNT II**

6 **Breach of Contract**

7 141. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 – 136 as
8 if set out in full herein.

9 142. The Policies constitute valid and existing contracts of insurance requiring Defendant
10 AHAC to properly compensate Plaintiffs for their losses.

11 143. Plaintiffs sustained damages due to the actual physical presence of COVID-19, the
12 existence and ongoing threat and spread of COVID-19, and the civil authority orders requiring the
13 closure of and/or reduced operations at Levi's Stadium resulting from COVID-19, but Defendant
14 AHAC has failed to comply with its contractual obligations and has failed to compensate Plaintiffs
15 for their claim.

16 144. AHAC has breached the contracts by failing to pay Plaintiffs for their Time Element
17 or business interruption losses.

18 145. Plaintiffs are entitled to actual damages as a result of AHAC's breach of contract.

19 146. Plaintiffs have been required to retain the services of attorneys to commence this
20 action and are further entitled to attorneys' fees and costs.

21 **VI. RELIEF REQUESTED**

22 **Wherefore,** Plaintiffs pray for judgment against AHAC as follows:

23 1) A declaration from this Court that:

24 a. The various coverage provisions identified in this Complaint are triggered
25 by Plaintiffs' claim;

26 b. No exclusion in the Policies apply to prohibit or limit coverage for
27 Plaintiffs' claim; and

28 c. The Policies cover Plaintiffs' claim.

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