

1 James J. Pisanelli, Esq., Bar No. 4027
2 JJP@pisanellibice.com

3 Debra L. Spinelli, Esq., Bar No. 9695
4 DLS@pisanellibice.com

5 PISANELLI BICE PLLC
6 400 South 7th Street, Suite 300
7 Las Vegas, Nevada 89101
8 Telephone: 702.214.2100
9 Facsimile: 702.214.2101

10 John N. Ellison, Esq. (*pro hac vice* application forthcoming)
11 REED SMITH LLP
12 1717 Arch Street, Suite 3100
13 Philadelphia, PA 19103
14 Telephone: (215) 851-8100
15 Email: JEllison@ReedSmith.com

16 Richard P. Lewis, Esq. (*pro hac vice* application forthcoming)
17 REED SMITH LLP
18 599 Lexington Avenue
19 New York, NY 10022
20 Telephone: (212) 521-5400
21 Email: RLewis@ReedSmith.com

22 *Attorneys for WP 6 Restaurant Management*
23 *Group, LLC*

24 **UNITED STATES DISTRICT COURT**

25 **DISTRICT OF NEVADA**

26 WP 6 RESTAURANT MANAGEMENT
27 GROUP, LLC

28 Plaintiff,

v.

ZURICH AMERICAN INSURANCE
COMPANY,

Defendant.

CASE NO.:

COMPLAINT

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COMPLAINT

Plaintiff WP 6 Restaurant Management Group, LLC (“Wolfgang Puck”) brings this action against Defendant Zurich American Insurance Company (“Zurich American”), and in support, alleges as follows:

NATURE OF THE ACTION

1. Wolfgang Puck brings this insurance coverage action against Zurich American for declaratory judgment and for damages for breach of contract, bad faith, breach of the implied covenant of good faith and fair dealing, and violations of Nevada’s Unfair Claims Settlement Practices Act.

2. Wolfgang Puck seeks to have this Court declare the rights of Wolfgang Puck and the responsibilities of Zurich American under policy number ERP0082839-05 (the “Zurich American All Risk Policy,” attached hereto as **Exhibit A**).

3. Wolfgang Puck seeks payment under the Zurich American All Risk Policy for business income and contingent business income losses, costs, and expenses due to direct physical loss of or damage to property insured under the Zurich American All Risk Policy, and loss of income as a result of orders of civil authorities.

4. Wolfgang Puck also seeks damages for Zurich American’s breach of its contractual obligations, bad faith, breach of the implied covenant of good faith and fair dealing, and violations of Nevada’s Unfair Claims Settlement Practices Act.

THE PARTIES

5. Plaintiff WP 6 Restaurant Management Group, LLC is incorporated under the laws of Nevada with its principal place of business at 955 Kelly Johnson Drive, Las Vegas, Nevada, 89119-3789.

6. Defendant Zurich American Insurance Company is incorporated under the laws of New York with its principal place of business located in Schaumburg, Illinois.

1 **JURISDICTION AND VENUE**

2 7. This Court has subject matter jurisdiction over this civil action pursuant to
3 28 U.S.C. § 1332(a)(1) and § 1332(c)(1), because the amount in controversy (exclusive of interest
4 and costs) exceeds \$75,000, and because there is complete diversity of citizenship of the parties.

5 8. Venue for this action is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2),
6 because Zurich American is a resident of this judicial district for purposes of
7 28 U.S.C. § 1391(a)(2) and because a substantial part of the events or omissions giving rise to this
8 claim occurred in and around this judicial district.

9 **GENERAL ALLEGATIONS**

10 **Wolfgang Puck’s Business**

11 9. In 1981, Wolfgang Puck opened Spago Restaurant in California. Spago has been
12 recognized as one of the top restaurants in the United States since 2004. Following the success of
13 Spago, Wolfgang Puck expanded its business to more than a dozen fine dining restaurants, as well
14 as premium catering services, more than 80 Wolfgang Puck Express operations, and management
15 services to restaurants around the world.

16 10. Wolfgang Puck’s restaurant locations—as discussed more fully below—are
17 located in California, Nevada, Florida, Hawaii, and New York.

18 11. In addition, Wolfgang Puck earns income through royalty, licensing fee and
19 commission agreements with various restaurants and establishments located throughout the
20 United States and the world (collectively referred to as “Dependent Time-Element Locations”).

21 12. Many of the insured locations described above are also located within one mile of
22 property that attracts customers to Wolfgang Puck’s businesses (“Attraction Properties”). For
23 example, the insured locations in Florida are within one mile from Disney World; those located in
24 Nevada are within one mile from the MGM Grand, Mandalay, Venetian, and Palazzo Hotels, as
25 well as the Shops at Summerlin; those located in California are within one mile from UCLA, and
26 Spago Beverly Hills, and those located in New York are within one mile from the Downtown
27 Four Seasons.

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1 **The SARS-CoV-2 Global Pandemic**

2 13. SARS-CoV-2 is the virus that causes the disease commonly referred to as
3 COVID-19. Health authorities first identified the disease in Wuhan, in the Hubei Province of
4 China, and, in an unprecedented and fortuitous event that has not occurred in more than a century,
5 a pandemic of global proportions ensued with the virus rapidly spreading around the world.

6 14. On January 30, 2020, during the term of the Zurich American All Risk Policy, the
7 World Health Organization (“WHO”) declared the COVID-19 outbreak a Public Health
8 Emergency of International Concern.

9 15. The next day, the United States Department of Health and Human Services
10 declared that a public health emergency existed nationwide because of confirmed cases of
11 COVID-19 in the United States.

12 16. The rapid spread of COVID-19 is due in part to the highly transmissible character
13 of the virus. For example, as of March 1, 2020 there were 42,198 confirmed COVID-19 cases
14 across the globe. That number increased to 747,899 confirmed cases in April and 2,421,669 cases
15 in May.¹ As of August 12, 2020, there had been more than 5 million cases in the United States
16 and nearly 170,000 deaths.² Worldwide there have been 20 million confirmed cases and over
17 700,000 deaths.

18 17. According to the Center for Disease Control (“CDC”), “everyone is at risk for
19 getting COVID-19.” A person may become infected by: (1) coming into close contact (about six
20 feet) with a person who has COVID-19;³ (2) becoming exposed to respiratory droplets when an
21 infected person talks, sneezes, or coughs; and/or (3) touching surfaces or objects that have the
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23
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25 ¹ See <https://graphics.reuters.com/CHINAHEALTHMAP/0100B59S39E/index.html>.

26 ² See <https://www.cnn.com/interactive/2020/health/coronavirus-us-maps-and-cases/>.

27 ³ Recent studies indicate that the virus may even be transmitted when individuals
28 are distanced more than six feet apart. See <https://www.nytimes.com/2020/08/11/health/coronavirus-aerosols-indoors.html>.

1 virus on them, and then touching his or her mouth, eyes, or nose.⁴ In other words, one of the main
2 vectors for transmission of the virus is from person to property to person.

3 18. Asymptomatic individuals may also transmit the virus.⁵ At least 44% of all
4 infections occur from people without any symptoms.⁶ Thus even individuals who appear healthy
5 and present no identifiable symptoms of the disease have and continue to spread the virus by
6 breathing, speaking, or touching objects and surfaces.

7 19. According to a report in The New York Times, “[a]n infected person talking for
8 five minutes in a poorly ventilated space can produce as many viral droplets as one infectious
9 cough.”⁷ In addition, one human sneeze can expel droplets that can travel up to 27 feet at nearly a
10 hundred miles an hour.⁸

11 20. Although these virus-containing droplets are very small, they are still physical
12 objects that can travel and attach to other surfaces and cause or threaten to cause further
13 infections, loss or damage.

14 21. Current evidence suggests that SARS-CoV-2 may remain viable for hours to days
15 on surfaces made from a variety of materials.⁹ The virus can survive and remain virulent on
16 stainless steel and plastic for 3 to 6 days, on glass and banknotes for 3 days, and on wood and
17 cloth for 24 hours.¹⁰ Testing of similar viruses suggests SARS-CoV-2 can survive on ceramics
18 and silicon for at least 5 days.¹¹ Studies from the National Institutes of Health support the

19 _____
20 ⁴ <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses>.

21 ⁵ *Id.*

22 ⁶ <https://www.nature.com/articles/s41591-020-0869-5>.

23 ⁷ <https://www.nytimes.com/interactive/2020/04/14/science/coronavirus-transmission-cough-6-feet-ar-ul.html>.

24 ⁸ <https://www.nationalgeographic.com/science/2020/04/coronavirus-covid-sneeze-fluid-dynamics-in-photos/>.

25 ⁹ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cleaning-disinfection.html>.

26 ¹⁰ [https://www.thelancet.com/journals/lanmic/article/PIIS2666-5247\(20\)30003-3/fulltext](https://www.thelancet.com/journals/lanmic/article/PIIS2666-5247(20)30003-3/fulltext).

27 ¹¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4659470/>.

1 proposition that the virus may be detected in aerosols for up to three hours, on plastic and
2 stainless steel for up to three days, and on cardboard for up to twenty-four hours.¹² In addition,
3 the CDC confirmed that the virus was identified on surfaces of the Diamond Princess Cruise ship
4 a full 17 days after the cabins were vacated.¹³

5 22. Restaurants are reportedly particularly susceptible to circumstances favorable to
6 the spread of the virus, because they are indoors and involve close contact between people and
7 frequent touching of the same property by different people. A recent article, published by the
8 CDC, analyzed a case study of three families (families A, B, and C) who had eaten at an
9 air-conditioned restaurant in Guangzhou, China.¹⁴ One member of family A, patient A1, had
10 recently traveled from Wuhan, China. On January 24, 2020, that family member ate at a
11 restaurant with families A, B, and C. By February 5, 2020, 4 members of family A, 3 members of
12 family B, and 2 members of family C had become ill with COVID-19. The only known source
13 for those affected persons in families B and C was patient A1 at the restaurant.

14 23. Without a vaccine, effective control of the spread of COVID-19 relies on measures
15 designed to reduce human-to-human, human-to-surface, and surface-to-human exposure.

16 **The Global, National, State and Local Response**

17 24. The earliest confirmed deaths in the United States due to COVID-19 occurred in
18 California in early and mid-February 2020.

19 25. Beginning in early March 2020, state and local governments issued orders
20 suspending or severely curtailing the operations of all “non-essential” or “high risk” businesses in
21 response to the virus, including restaurants such as those owned, operated, or managed by
22 Wolfgang Puck (“Closure Orders”). Other orders, to the same effect, directed citizens to stay at
23 home except for certain limited activities.

24
25 ¹² [https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-](https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-days)
26 [may-remain-surfaces-days.](https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-days)

27 ¹³ [https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm.](https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm)

28 ¹⁴ Li H *et al* COVID-19 Outbreak Associated with Air Conditioning in Restaurant
Guangzhou, China, 2020 *Emerging Infectious Diseases*, 26(7), 1628-1631.
[https://dx.doi.org/10.3201/eid2607.200764.](https://dx.doi.org/10.3201/eid2607.200764)

1 26. State and local governments issued the Closure Orders in response to the
2 ubiquitous physical loss of or damage to property caused by COVID-19 in different states and
3 localities, including those states and localities where Wolfgang Puck's businesses are located, as
4 well as property within close physical proximity to Wolfgang Puck locations.

5 27. The physical loss of or damage to Wolfgang Puck's restaurants due to COVID-19
6 as well as the Closure Orders caused Wolfgang Puck to suffer substantial business income and
7 related losses and expenses, all of which are insured under the Zurich American All Risk Policy.

8 28. In March 2020, states, counties, and cities where Wolfgang Puck's insured
9 restaurants are located declared states of emergency to help prepare for broader spread of
10 COVID-19.

11 29. In March 2020, states, counties, and cities where Wolfgang Puck's insured
12 restaurants are located issued Closure Orders prohibiting all restaurants within those
13 counties/cities from serving food on premises and bars from serving alcohol. The Closure Orders
14 only allowed restaurants to continue to operate for purposes of preparing and offering food to
15 customers via delivery service, to be picked up, or for drive-thru (subject to certain restrictions).
16 These Closure Orders, together with similar orders issued by government officials, effectively
17 limited Wolfgang Puck's restaurants' on-premises dining and operations, resulting in an
18 interruption of necessary operations and an immediate business income loss.

19 30. The Closure Orders recognize that the presence of COVID-19 in or on property
20 must be presumed given the ubiquitous and highly-contagious nature of COVID-19, and that
21 without limiting or suspending the operations of non-essential businesses (such as restaurants),
22 COVID-19 will continue to cause physical loss of or damage to property as well as threaten the
23 health, life, and safety of patrons and employees.

24 31. In other words, the presence of COVID-19 particles: renders items of physical
25 property unsafe and premises unsafe; impairs the value, usefulness and normal function of
26 physical property; and, causes direct physical harm, direct physical damage, and/or direct physical
27 loss to property.

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1 32. The presence of people infected with or carrying COVID-19 particles also renders
2 physical property in their vicinity unsafe and/or unusable resulting in direct physical loss to that
3 property.

4 33. While these Closure Orders are a matter of public record, certain Closure Orders
5 affecting those locations insured under the Zurich American All-Risk Policy are discussed
6 below.¹⁵

7 **A. Los Angeles County, California**

8 34. On March 19, 2020, Governor Gavin Newsom issued Executive Order N-33-20,
9 ordering all state residents—“immediately”—to stay at home, “except as needed to maintain
10 continuity of operations of the federal critical infrastructure sectors,” as outlined at
11 www.cisa.gov/critical-infrastructure-sectors. California’s stay at home order did not have an end
12 date, and as of June 29, 2020, the Governor’s website stated that the order was still in effect but
13 modified under the Governor’s May 4, 2020 reopening announcement.

14 35. On March 19, 2020, the Mayor of the City of Los Angeles issued a “Safer at
15 Home” order, effective until April 19, 2020, requiring residents stay at home except for essential
16 activities.

17 36. On July 2, 2020, the Mayor of the City of Los Angeles issued a subsequent “Safer
18 at Home” order, substituting and superseding the March 19, 2020 order (revised on May 27,
19 2020), prohibiting restaurants and retail food facilities from offering dine-in services, but
20 permitting restaurants to offer limited outdoor seating and take-out and delivery services.

21 37. Other California County and city officials have issued similar orders declaring that
22 the virus causes and has caused or imminently threatens physical loss of or damage to property
23 and human health.

24 38. The Closure Orders confirm that the presence or suspected presence of COVID-19
25 caused and continues to cause damage to these locations by rendering them too dangerous to
26 operate.

27 ¹⁵ The Closure Orders identified in this Complaint are for illustrative purposes only,
28 and are not intended to be an exhaustive list of the Closure Orders contributing in whole
or part to Wolfgang Puck’s losses.

1 39. As a result of the Closure Orders, access was prohibited at the following Wolfgang
2 Puck locations:

- 3 1. 176 N. Canon Drive, Beverly Hills, CA
- 4 18. 8687 Melrose Avenue, West Hollywood, CA
- 5 21. 308 Westwood Plaza, Los Angeles, CA
- 6 28. 800 West Olympic Boulevard, Los Angeles, CA

7 40. As a result of the Closure Orders, access was prohibited at the following
8 Dependent Time-Element locations:

- 9 5. 9500 Wilshire Boulevard, Los Angeles, CA
- 10 8. 701 Stone Canyon Road, Los Angeles, CA

11 41. During the policy period, and as a result of the presence of and/or threat of
12 COVID-19 causing physical loss of or damage to property insured under the Zurich American
13 All-Risk Policy, Wolfgang Puck suffered a loss in excess of \$3,000,000 at the above-identified
14 locations, and continues to suffer such losses.

15 42. As a result of the Closure Orders, and for a period of 30 days while the Closure
16 Orders were in effect, Wolfgang Puck suffered a loss in excess of \$1,000,000 at the
17 above-identified locations, and continues to suffer such losses.

18 **B. Clark County, Nevada**

19 43. On March 12, 2020, Governor Sisolak declared a state of emergency in the state of
20 Nevada, citing the presence of COVID-19 and its impact on lives and property.

21 44. On March 20, 2020, Governor Sisolak issued Declaration of Emergency
22 Directive 003 ordering: (i) all non-essential businesses that promote recreational social
23 gatherings as well as those that promote extended periods of public interaction to close, and
24 (ii) food establishments to cease onsite dining. This order was effective March 20, 2020
25 at 11:59 P.M. and originally set to expire on April 16, 2020, but it was extended to May 15, 2020
26 per Directive 016.

27 45. On March 31, 2020, Governor Sisolak issued Declaration of Emergency
28 Directive 010, ordering all residents to stay at home except for certain essential activities. This

1 order was originally set to expire on April 30, 2020, but it was extended to May 15, 2020 per
2 Directive 016.

3 46. On April 29, 2020, Governor Sisolak issued a Directive explaining, among other
4 things, the basis for the closure and stay-at-home orders stating specifically that the ability of
5 COVID-19 “to survive on surfaces for indeterminate periods of time renders some property
6 unusable” See Nevada Declaration of Emergency Directive No. 16, dated April 29, 2020.

7 47. The Closure Orders confirmed that the presence or suspected presence of
8 COVID-19 caused damage to these locations by rendering them too dangerous to operate.

9 48. As a result of the Closure Orders, access was prohibited at the following Wolfgang
10 Puck locations:

- 11 5. 3950 Las Vegas Boulevard, Las Vegas, NV
- 12 7. 3799 Los Vegas Boulevard, Las Vegas, NV
- 13 10. 3325 Las Vegas Boulevard, Las Vegas, NV
- 14 12. 3720 Las Vegas Boulevard, Las Vegas, NV
- 15 14. 10955 Oval Park Drive, Summerlin South, NV
- 16 25. 955 Kelly Johnson Drive, Las Vegas, NV
- 17 27. 955 Kelly Johnson Drive, Las Vegas, NV

18 49. As a result of the Closure Orders, access was prohibited at the following
19 Dependent Time-Element location:

- 20 1. 3600 Las Vegas Boulevard, Las Vegas, NV

21 50. During the policy period, and as a result of the presence of and/or threat of
22 COVID-19 causing physical loss of or damage to property insured under the Zurich American
23 All-Risk Policy, Wolfgang Puck suffered a loss in excess of \$6,000,000 at the above-identified
24 locations, and continues to suffer such losses.

25 51. As a result of these Closure Orders, and for a period of 30 days while the Closure
26 Orders were in effect, Wolfgang Puck suffered a loss in excess of \$1,000,000 at the
27 above-identified locations, and continues to suffer such losses.

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1 **C. Maui, Hawaii**

2 52. The Governor of Hawaii issued a proclamation ordering the entire state to stay at
3 home and work from home starting at 12:01 AM, March 25 through April 30 but exempting
4 essential workers and certain essential needs.

5 53. The Closure Order confirmed that the presence or suspected presence of
6 COVID-19 caused damage to these locations by rendering them too dangerous to operate.

7 54. As a result of the Closure Order, access was prohibited at the following
8 Wolfgang Puck location:

9 9. 3900 Wailea Alanui Drive, Maui, HI.

10 55. During the policy period, and as a result of the presence of and/or threat of
11 COVID-19 causing physical loss of or damage to property insured under the Zurich American
12 All-Risk Policy, Wolfgang Puck has suffered a loss in excess of \$800,000 at the above-identified
13 locations, and continues to suffer such losses.

14 56. As a result of the Closure Order, and for a period of 30 days while the Closure
15 Order was in effect, Wolfgang Puck suffered a loss at this location and continues to suffer losses.

16 **D. New York City, New York**

17 57. On March 16, 2020, Governor Cuomo issued Emergency Executive Order
18 No. 100, declaring a disaster emergency for the entire State of New York, stating in relevant part
19 that the Order was given “because of the propensity of the virus to spread person to person and
20 also because the *virus physically is causing property loss and damage.*” (emphasis added).

21 58. On March 20, 2020, Governor Cuomo issued Executive Order 202.8, which
22 required non-essential businesses to close in-office personnel functions effective March 22, 2020
23 at 8:00 P.M. Also, on March 20, 2020, Governor Cuomo issued the “New York State on
24 PAUSE” order, which was a 10-point policy: (i) requiring all non-essential businesses to close,
25 effective March 22, 2020 at 8:00 P.M.; (ii) prohibiting non-essential gatherings of any size; and
26 (iii) requiring social distancing when leaving the home to obtain essential services or items.
27 New York’s stay-at-home order was effective on March 22, 2020 and until May 15, 2020 per
28 Executive Order 202.31.

1 59. City of New York Mayor de Blasio announced that limited outdoor dining could
2 begin to reopen on June 22, 2020, and as of July 10, 2020, in-door dining continues to be
3 prohibited.

4 60. These Closure Orders confirmed that the presence or suspected presence of
5 COVID-19 caused damage to these locations by rendering them too dangerous to operate.

6 61. As a result of the Closure Orders, access was prohibited at the following Wolfgang
7 Puck location:

8 17. 99 Church Street, New York, NY.

9 62. During the policy period, and as a result of the presence of and/or threat of
10 COVID-19 causing physical loss of or damage to property insured under the Zurich American
11 All-Risk Policy, Wolfgang Puck suffered a loss in excess of \$800,000 at the above-identified
12 location, and continues to suffer such losses.

13 63. As a result of the Closure Orders, and for a period of 30 days while the Closure
14 Orders were in effect, Wolfgang Puck suffered a substantial loss at this location, and continues to
15 suffer losses.

16 **E. Orange County, Florida**

17 64. On March 20, 2020, Governor Ron DeSantis issued Executive Order No. 2020-70
18 requiring closure of on-premises services at all restaurants.

19 65. On April 1, 2020, Governor DeSantis issued Executive Order No. 20-91 requiring
20 all persons in the state to stay at home and only leave their homes as necessary to obtain or
21 provide essential services or conduct essential activities. This order was effective at 12:01 A.M.
22 on April 3, 2020 and until April 30, 2020.

23 66. The Closure Orders confirmed that the presence or suspected presence of
24 COVID-19 caused damage to these locations by rendering them too dangerous to operate.

25 67. As a result of the Closure Orders, access was prohibited at the following
26 Wolfgang Puck locations:

27 19. 1780 East Buena Vista Drive, Lake Buena Vista, FL

28 26. 1514 East Lake Buena Vista Drive, Orlando, FL

1 68. During the policy period, and as a result of the presence of and/or threat of
2 COVID-19 causing physical loss of or damage to property insured under the Zurich American
3 All-Risk Policy, Wolfgang Puck suffered a loss in excess of \$1,000,000 at the above-identified
4 locations, and continues to suffer such losses.

5 69. As a result of the Closure Orders, and for a period of 30 days with the Closure
6 Orders were in effect, Wolfgang Puck suffered a loss in excess of \$1,000,000 at these locations,
7 and continues to suffer losses.

8 **F. Atlantic City, New Jersey**

9 70. On March 21, 2020, Governor Murphy issued Executive Order No. 107 (2020)
10 limiting all restaurants, dining establishments, and food courts, with or without liquor licenses to
11 offering food delivery or take-out services only.

12 71. On June 26, 2020, Governor Murphy, through Executive Order No. 157, allowing
13 restaurants to offer in-person indoor dining provided that occupancy was limited to no more than
14 25% of the restaurant's capacity.

15 72. On July 2, 2020, Governor Murphy, through Executive Order No. 162, extended
16 all prior Executive Orders concerning COVID-19.

17 73. These Closure Orders confirmed that the presence or suspected presence of
18 COVID-19 caused damage to these locations by rendering them too dangerous to operate.

19 74. As a result of the Closure Orders, access was prohibited at the following
20 Dependent Time-Element location:

21 2. One Borgata Way, Atlantic City, NJ

22 75. During the policy period, and as a result of the presence of and/or threat of
23 COVID-19 causing physical loss of or damage to property insured under the Zurich American
24 All-Risk Policy, Wolfgang Puck suffered a loss in excess of \$30,000 at the above-identified
25 location, and continues to suffer such losses.

26 76. As a result of the Closure Orders, and for a period of 30 days while the Closure
27 Orders were in effect, Wolfgang Puck suffered a substantial loss at this location, and continues to
28 suffer losses.

1 **G. Singapore**

2 77. On April 3, 2020, the Ministry of Trade and Industry in Singapore required all
3 non-essential business premises to close effective April 7, 2020, limiting restaurants to take-out
4 only. This order remained in effect until June 19, 2020.

5 78. The Closure Order confirmed that the presence or suspected presence of
6 COVID-19 caused damage to these locations by rendering them too dangerous to operate.

7 79. As a result of the Closure Order, access was prohibited at the following Dependent
8 Time-Element Locations:

9 15. 2 Bayfront Avenue, Suite B1-7, Singapore (Cut at Marina Bay Sands)

10 16. 10 Bayfront Avenue, Tower 2, Singapore (Spago at Marina Bay Sands)

11 80. During the policy period, and as a result of the presence of and/or threat of
12 COVID-19 causing physical loss of or damage to property insured under the Zurich American
13 All-Risk Policy, Wolfgang Puck suffered a loss in excess of \$300,000 at the above-identified
14 locations, and continues to suffer such losses.

15 81. As a result of the Closure Orders, and for a period of 30 days while the Closure
16 Orders were in effect, Wolfgang Puck suffered a substantial loss at these locations, and continues
17 to suffer losses.

18 **H. London, United Kingdom**

19 82. On or about March 20, 2020, Prime Minister Boris Johnson announced sweeping
20 measures shutting down restaurants, pubs, and other non-essential businesses, and limiting
21 restaurants to take-out and delivery only. Those restrictions were partially lifted in July when the
22 Prime Minister opened restaurants and bars at limited capacity, with additional restrictions.

23 83. The Closure Orders confirmed that the presence or suspected presence of
24 COVID-19 caused damage to these locations by rendering them too dangerous to operate.

25 84. As a result of the Closure Orders, access was prohibited at the following
26 Dependent Time-Element location:

27 12. 45 Park Lane, Mayfair Westminster, London, United Kingdom

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1 85. During the policy period, and as a result of the presence of and/or threat of
2 COVID-19 causing physical loss of or damage to property insured under the Zurich American
3 All-Risk Policy, Wolfgang Puck suffered a loss in excess of \$40,000 at the above-identified
4 location, and continues to suffer such losses.

5 86. As a result of the Closure Orders, and for a period of 30 days while the Closure
6 Orders were in effect, Wolfgang Puck suffered a substantial loss at these locations, and continues
7 to suffer losses.

8 **I. Istanbul, Turkey**

9 87. On or about March 21, 2020, the Turkish government enforced measures shutting
10 down restaurants and other non-essential businesses, limiting restaurants to take-out and delivery
11 only. Those restrictions were partially lifted on May 27, 2020 when restaurants and bars were
12 allowed to re-open at limited capacity, with additional restrictions.

13 88. The Closure Order confirmed that the presence or suspected presence of
14 COVID-19 caused damage to these locations by rendering them too dangerous to operate.

15 89. As a result of the Closure Order, access was prohibited at the following Dependent
16 Time-Element location:

17 9. Mim Kemal Oke Cad No. 35, Nisantasi Sish, Istanbul, Turkey (Spago at
18 the St. Regis)

19 90. During the policy period, and as a result of the presence of and/or threat of
20 COVID-19 causing physical loss of or damage to property insured under the Zurich American
21 All-Risk Policy, Wolfgang Puck suffered a loss in excess of \$4,000 at the above-identified
22 location, and continues to suffer such losses.

23 91. As a result of the Closure Orders, and for a period of 30 days while the Closure
24 Orders were in effect, Wolfgang Puck has suffered a substantial loss at this locations, and
25 continues to suffer losses.

26 **J. Manama, Bahrain**

27 92. On March 26, 2020, the Government of Bahrain issued an order prohibiting
28 persons from ordering food and beverages in all restaurants and cafes within the country, with the

1 exception of take-out and delivery. In May 2020, while other businesses were gradually allowed
2 to re-open, Bahrain’s government continued to enforce these restrictions with respect to
3 restaurants.

4 93. The Closure Orders confirmed that the presence or suspected presence of
5 COVID-19 caused damage to these locations by rendering them too dangerous to operate.

6 94. As a result of the Closure Orders, access was prohibited at the following
7 Dependent Time-Element location:

8 3. PO Box 1669, Manama, Bahrain (CUT at the Four Seasons)

9 95. During the policy period, and as a result of the presence of and/or threat of
10 COVID-19 causing physical loss of or damage to property insured under the Zurich American
11 All-Risk Policy, Wolfgang Puck suffered a loss in excess of \$200,000 at the above-identified
12 locations, and continues to suffer such losses.

13 96. As a result of Closure Orders, and for a period of 30 days while the Closure Orders
14 were in effect, Wolfgang Puck has suffered a substantial loss, and continues to suffer such losses.

15 97. In addition to the losses described above, Wolfgang Puck has also suffered
16 business income losses through its royalty agreements with various restaurants and establishments
17 all of which have been forced to suspend their operations due to the physical loss of or damage to
18 their locations from the presence or suspected presence of COVID-19 and those Closure Orders
19 recognizing physical loss of or damage to property.

20 **Wolfgang Puck’s Satisfaction of Conditions Precedent under the Zurich American Policy**

21 98. Wolfgang Puck gave timely notice of its covered losses to Zurich American.

22 99. Zurich American acknowledged this notice and, in the guise of conducting the
23 investigation required of it by law and the customs and practices of the insurance industry,
24 requested certain information from Wolfgang Puck. While Wolfgang Puck was in the course of
25 responding to this request, Zurich American preemptively breached the Zurich American All Risk
26 Policy and issued a standard-form denial letter, complete with a blank spot for “[the insured].”
27 Zurich American did not conduct a good faith investigation of Wolfgang Puck’s claim, and did
28 not consider the specific facts or the law applicable to Wolfgang Puck’s claim in issuing its

1 boilerplate denial of coverage. In doing so, Zurich American put its interests ahead of
2 Wolfgang Puck's interests and breached its duties of good faith and fair dealing.

3 100. Wolfgang Puck has brought this Complaint to enforce its rights to full coverage for
4 its losses, and Wolfgang Puck seeks a declaration of its rights under the coverage sold by Zurich
5 American, along with direct and consequential damages for Zurich American's breach of
6 contract. Wolfgang Puck also seeks damages for Zurich American's bad faith, breach of the
7 implied covenant of good faith and fair dealing, and violations of Nevada's Unfair Claims
8 Settlement Practices Act.

9 **The Zurich American All Risk Policy**

10 A. **The Zurich American All Risk Policy Is a Standard-Form Insurance Policy**
11 **Drafted by Zurich American.**

12 101. The Zurich American All Risk Policy is a standard-form, all-risk property
13 insurance policy with a policy period of January 1, 2020 through January 1, 2021. *See* Ex. A.

14 102. The Zurich American All Risk Policy is labeled as a "Zurich EDGE Policy," and
15 nearly every standard-form policy form included in the Zurich American All Risk Policy has a
16 footer with an "EDGE" number.

17 B. **Wolfgang Puck's Rights under the Zurich American All Risk Policy.**

18 103. In exchange of significant premiums paid to Zurich American by its insured
19 Wolfgang Puck, Zurich American owes Wolfgang Puck a fiduciary duty and a duty of good faith
20 and fair dealing.

21 104. Wolfgang Puck has satisfied all conditions precedent to obtaining coverage for its
22 losses under the Zurich American All Risk Policy.

23 C. **The Insuring Agreement**

24 105. The Insuring Agreement of the Zurich American All Risk Policy is as follows:

25 1.01. INSURING AGREEMENT

26 This Policy Insures against direct physical loss of or damage caused by a **Covered**
27 **Cause of Loss** to Covered Property, at an Insured Location described in
28 Section II-2.01, all subject to the terms, conditions and exclusions stated in this
Policy.

1 **Covered Cause of Loss** is defined in § 7.11 to mean: “All risks of direct physical loss of or
2 damage from any cause unless excluded.”

3 **D. The Insured Locations**

4 106. The Insured Location provision of the Zurich American All Risk Policy is as
5 follows:

6 2.01 INSURED LOCATION

7 This Policy insures an Insured Location unless otherwise provided.

8 An Insured Location is a **Location**:

9 2.01.01. Scheduled on this Policy by a Schedule of Locations attached to this
10 Policy; Per Appendix E.

11 107. In relevant part, Schedule E, lists the following Insured Locations:¹⁶

- 12 1. 176 N. Canon Drive, Beverly Hills, CA
- 13 5. 3950 Las Vegas Boulevard, Las Vegas, NV
- 14 7. 3799 Los Vegas Boulevard, Las Vegas, NV
- 15 9. 3900 Wailea Alanui Drive, Maui, HI
- 16 10. 3325 Las Vegas Boulevard, Las Vegas, NV
- 17 12. 3720 Las Vegas Boulevard, Las Vegas, NV
- 18 14. 10955 Oval Park Drive, Summerlin South, NV
- 19 17. 99 Church Street, New York, NY
- 20 18. 8687 Melrose Avenue, West Hollywood, CA
- 21 19. 1780 East Buena Vista Drive, Lake Buena Vista, FL
- 22 21. 308 Westwood Plaza, Los Angeles, CA
- 23 25. 955 Kelly Johnson Drive, Las Vegas, NV
- 24 26. 1514 East Lake Buena Vista Drive, Orlando, FL
- 25 27. 955 Kelly Johnson Drive, Las Vegas, NV
- 26 28. 800 West Olympic Boulevard, Los Angeles, CA

27
28 ¹⁶ To the extent any additional locations are listed on the schedule of insured locations, such locations are on file with Zurich American.

1 108. The Zurich American All Risk Policy also insures **Direct Dependent Time**
2 **Element Locations** and **Indirect Dependent Time Element Locations**, as follows:

3 7.16 Direct Dependent Time Element Location –

4 7.16.01. Any Location of a direct: customer, supplier, contract manufacturer
5 or contract service provider to the Insured;

6 7.16.02. Any Location of any company under a royalty, licensing fee or
7 commission agreement with the Insured.

8 7.16.03 A Direct Dependent Time Element Location does not include
9 Locations that are Insured Locations under this Policy or the Locations of any
10 company directly or indirectly supplying to, or receiving from the Insured,
11 electricity, fuel, gas, steam, refrigeration, sewage, voice, data or video.

12 * * *

13 7.25. Indirect Dependent Time Element Location—

14 7.25.01. Any Location of a company that is a direct: customer supplier,
15 contract manufacturer or contract service provider to a Direct Dependent Time
16 Element Location.

17 7.25.02. Any Location of a company that is an indirect: customer, supplier,
18 contract manufacturer or contract service provider to a Direct Dependent Time
19 Element Location.

20 7.25.03. An Indirect Dependent Time Element Location does not include
21 Locations that are Insured Locations under this Policy or the Locations of any
22 company directly or indirectly supplying to, or receiving from the Insured,
23 electricity, fuel, gas, steam, refrigeration, sewage, voice, data or video.

24 109. The Dependent Time-Element Locations insured under the Zurich American All
25 Risk Policy are located in Nevada, New Jersey, California, Bahrain, Singapore, Turkey, and
26 Great Britain.¹⁷

27 **E. Policy Limits of Liability**

28 110. The Policy Limit of the Zurich American All Risk Policy “is \$50,000,000 for the
total of all coverages combined regardless of the number of Locations involved. . . .”

Section 2.03.

111. The Zurich American All Risk Policy provides that listed limits are per
Occurrence unless an **Annual Aggregate** is listed:

¹⁷ A complete list of those dependent locations insured under the Zurich American All Risk Policy is on file with Zurich American.

1 2.03.03. When an **Annual Aggregate** Limit of Liability is shown, the
2 Company's maximum amount payable will not exceed such Limit of Liability
3 during the **Policy Year** regardless of the number of **Locations**, Coverages or
4 **Occurrences** involved.

5 * * *

6 2.03.05. Limits of Liability in an **Occurrence** apply to the total loss or
7 damage, including any insured Time Element loss, at all **Locations** and for all
8 Coverages involved.

9 **Annual Aggregate** is defined at § 7.02 to be: “The maximum amount of loss or damage payable
10 in any one (1) **Policy Year** regardless of the number of **Occurrences** within the same policy
11 year.”

12 112. In § 2.02.06, the Zurich American All Risk Policy lists a \$250,000 limit for
13 “PROFESSIONAL FEES.”

14 113. In § 2.02.06, the Zurich American All Risk Policy lists a \$1,000,000 limit for
15 “CONTINGENT TIME ELEMENT,” per occurrence “but not to exceed a \$1,000,000 limit per
16 scheduled Direct Dependent Time Element Location,” and a \$1,000,000 limit per ATTRACTION
17 PROPERTY.

18 114. In § 2.03.08, the Zurich American All Risk Policy lists “Time and Distance
19 Limitations,” of which the following is relevant:

20 30 day period for property within 5 mile(s) CIVIL OR MILITARY AUTHORITY
21 but not to exceed a \$1,000,000 limit.

22 Because no **Annual Aggregate** is listed, the \$1,000,000 limit is a per **Occurrence** limit.

23 **F. Deductible**

24 115. At § 2.05.05.01, the Zurich American All Risk Policy states that “[t]he deductible
25 is \$10,000 combined Property Damage (PD) and Time Element (TE) per **Occurrence**”

26 **G. Property Damage – Covered Property**

27 116. In Section III, Property Damage, the Zurich American All Risk Policy identifies
28 the following Covered Property:

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3.01. COVERED PROPERTY

This Policy insures the following property, unless otherwise excluded elsewhere in this Policy, located at an Insured Location or within 1,000 feet thereof or as otherwise provided for in this Policy.

3.01.01. The Insured’s interest in buildings (or structures) including new construction, additions, alterations, and repairs that the Insured owns, occupies, leases or rents.

3.01.02. The Insured’s interest in Personal Property, including Improvements and Betterments.

3.01.03. Property of Others will not extend any Time Element Coverage provided under this Policy to the owner of the property and is limited to property:

3.01.03.01. In the Insured’s care, custody or control;

3.01.03.02. In which the Insured has an insurable interest or obligation;

3.01.03.03. For which the Insured is legally liable; or

3.01.03.04. For which the Insured has agreed in writing prior to any loss or damage to provide coverage.

H. Property Damage – Exclusions

117. In Section III Property Damage, the Zurich American All Risk Policy contains the following Contamination Exclusion:

3.03. EXCLUSIONS

The following exclusions apply unless specifically stated elsewhere in this Policy:

3.03.01. This Policy excludes the following unless it results from direct physical loss or damage not excluded by this Policy.

3.03.01.01. **Contamination**, and any cost due to **Contamination** including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy, except as provided by the Radioactive Contamination Coverage of this Policy.

118. Unlike other Exclusions in Section III Property Damage, the **Contamination** Exclusion bars coverage only for “cost[s],” and not “[l]oss or damage” or “direct physical loss or damage.” *See* §§ 3.03.01.03, 3.03.02.01, 3.03.02.02, 3.03.02.03, 3.03.02.05 and 3.03.03.

119. As used in the Zurich American Policy, the term “costs” clearly refers to out-of-pocket expenditures. *See, e.g.,* §§ 5.02.06, 5.02.06.01, 5.02.07, 5.02.10 and 5.02.12.

1 “Costs” does not refer to “losses” such as the “loss” covered by the time element coverage,
2 including the Civil or Military Authority provision.

3 120. The Zurich American All Risk Policy defines **Contamination** and **Contaminants**
4 as follows:

5 7.09. **Contamination(Contaminated)** - Any condition of property due to
6 the actual presence of any foreign substance, impurity, pollutant, hazardous
7 material, poison, toxin, pathogen or pathogenic organism, bacteria, virus,
8 disease causing or illness causing agent, **Fungus**, mold or mildew.

9 7.10. **Contaminant(s)** - Any solid, liquid, gaseous, thermal or other
10 irritant, pollutant or contaminant, including but not limited to smoke,
11 vapor, soot, fumes, acids, alkalis, chemicals, waste (including materials to
12 be recycled, reconditioned or reclaimed), asbestos, ammonia, other
13 hazardous substances, **Fungus** or **Spores**.

14 121. As discussed more fully below, this provision is amended by endorsement to the
15 Zurich American All-Risk Policy.

16 **I. Time Element - Coverages**

17 122. In Section IV, the Zurich American All Risk Policy provides the following Time
18 Element coverage:

19 SECTION IV - TIME ELEMENT

20 4.01. LOSS INSURED

21 4.01.01. The Company will pay for the actual Time Element loss the
22 Insured sustains, as provided in the Time Element Coverages, during the
23 Period of Liability. The Time Element loss must result from the necessary
24 **Suspension** of the Insured’s business activities at an Insured Location. The
25 **Suspension** must be due to direct physical loss of or damage to Property
26 (of the type insurable under this Policy other than **Finished Stock**) caused
27 by a **Covered Cause of Loss** at the **Location**, or as provided in Off
28 Premises Storage for Property Under Construction Coverages.

123. The Zurich American All Risk Policy provides the following for Gross Earnings, a
Time Element Coverage:

4.02.01. GROSS EARNINGS

4.02.01.01. Gross Earnings loss is the actual loss sustained by the
Insured during the Period of Liability.

4.02.01.02. Gross Earnings value is determined as follows:

- 1 4.02.01.02.01. The sum of:
- 2 4.02.01.02.01.01. Total net sales value of production;
- 3 4.02.01.02.01.02. Total net sales of **Merchandise**;
- 4 4.02.01.02.01.03. The rental income; and
- 5 4.02.01.02.01.04. Other income derived from the Insured's business
- 6 activities.
- 7 4.02.01.02.02. Less the cost of the following:
- 8 4.02.01.02.02.01. **Raw Stock** from which production is derived;
- 9 4.02.01.02.02.02. Supplies consisting of materials consumed directly
- 10 in conversion of **Raw Stock** into **Finished Stock** or in supplying the
- 11 service(s) sold by the Insured;
- 12 4.02.01.02.02.03. **Merchandise** sold, including related packaging
- 13 materials; and
- 14 4.02.01.02.02.04. Service(s) purchased from outsiders (not Insured's
- 15 employees) for resale, which do not continue under contract.
- 16 4.02.01.02.03. Gross Earnings loss is determined as follows:
- 17 Gross Earnings value that would have been earned during the Period of Liability,
- 18 less charges and expenses that do not necessarily continue during the Period of
- 19 Liability.
- 20 Consideration shall be given to the continuation of normal charges and expenses,
- 21 including **Ordinary Payroll** for the number of consecutive days as stated in the
- 22 Declarations but not to exceed the limit shown for **Ordinary Payroll**, to the extent
- 23 necessary to resume the Insured's business activities with the same quality of
- 24 service that existed immediately preceding the loss.

20 124. The Zurich American All Risk Policy contains the following Expense to Reduce
21 Loss provision:

22 4.02.01.02.04. This Policy will also pay the reasonable and necessary
23 expenses incurred (except the cost to extinguish a fire) by the Insured to
24 reduce the amount of Gross Earnings loss during the Period of Liability.
25 This Policy will pay for such expenses to the extent that they do not exceed
the amount of Gross Earnings loss that otherwise would have been payable.
This provision will not pay for the cost of permanent repair or replacement
of property that has suffered direct physical loss or damage.

26 125. The Zurich American All Risk Policy contains the following Extended Period of
27 Liability provision:

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1 4.02.02. EXTENDED PERIOD OF LIABILITY

2 Upon the termination of the coverage for Gross Earnings loss under 4.02.01.01.
3 this Policy will continue to pay the actual Gross Earnings loss sustained by the
Insured until the earlier of:

4 4.02.02.01. The date the Insured could restore its business with due
5 diligence, to the condition that would have existed had no direct physical
loss or damage occurred to the Insured's Covered Property; or

6 4.02.02.02. The number of consecutive days as stated in the Declarations.

7 126. The Zurich American All Risk Policy contains the following Extra Expense Time
8 Element Coverage:

9 4.02.03. EXTRA EXPENSE

10 The Company will pay for the reasonable and necessary Extra Expenses incurred
11 by the Insured, during the Period of Liability, to resume and continue as nearly as
12 practicable the Insured's normal business activities that otherwise would be
necessarily suspended, due to direct physical loss of or damage caused by a
13 **Covered Cause of Loss** to Property of the type insurable under this policy at a
Location.

14 The Company will reduce the amount payable as Extra Expense by the fair market
value remaining at the end of the Period of Liability for property obtained in
connection with the above.

15 Extra Expenses mean that amount spent to continue the Insured's business
16 activities over and above the expenses the Insured would have normally incurred
had there been no direct physical loss of or damage caused by a **Covered Cause of**
17 **Loss** to Property of the type insurable under this policy at a **Location**. Extra
Expense does not include any Gross Earnings loss, the cost of permanent repair or
18 replacement of property that has suffered direct physical loss or damage, or
expenses otherwise payable elsewhere in the Policy.

19
20 This is a “pure” Extra Expense provision, covering expenses incurred simply because of damage
21 to property and not only those expenses incurred to avoid or minimize Business Interruption loss.

22 127. It is universally accepted that the purpose of time element insurance of the type
23 provided by the Zurich American All Risk Policy is to provide the full level of economic
24 protection that the policyholder would have experienced had there been no event causing the loss.

25 **J. Time Element – Exclusions**

26 128. Section IV, Time Element, has a section for Exclusions, which typically bar
27 coverage for “loss” in various circumstances. *See* §§ 4.02.05.01.01, 4.02.05.01.02, 4.02.05.01.03,
28 4.02.05.01.04, 4.02.05.01.05.

1 129. None of the exclusions identified above precludes recovery in any way for the
2 losses suffered by Wolfgang Puck.

3 **K. Time Element—Period of Liability**

4 130. The Zurich American All Risk Policy contains the following Period of Liability:

5 4.03. PERIOD OF LIABILITY

6 4.03.01. The Period of Liability applying to all Time Element
7 Coverages, except Leasehold Interest, and as shown below or if otherwise
8 provided under any Special Coverage, and subject to any Time Limit
9 provided in 2.03.08., is as follows:

10 4.03.01.01. For building and equipment: The period starting from the
11 time of physical loss or damage of the type insured against and ending
12 when with due diligence and dispatch the building and equipment could be
13 repaired or replaced, and made ready for operations under the same or
14 equivalent physical and operating conditions that existed prior to the
15 damage. The expiration of this Policy will not limit the Period of Liability.

12 **L. Civil or Military Authority Coverage**

13 131. The Zurich American All Risk Policy contains the following Civil or Military
14 Authority provision covering “loss” sustained by Wolfgang Puck:

15 5.02.03. CIVIL OR MILITARY AUTHORITY

16 The Company will pay for the actual Time Element loss sustained by the
17 Insured, as provided by this Policy, resulting from the necessary
18 **Suspension** of the Insured’s business activities at an Insured Location if the
19 **Suspension** is caused by order of civil or military authority that prohibits
20 access to the **Location**. That order must result from a civil authority’s
21 response to direct physical loss of or damage caused by a **Covered Cause**
22 **of Loss** to property not owned, occupied, leased or rented by the Insured or
23 insured under this Policy and located within the distance of the Insured’s
24 Location as stated in the Declarations. The Company will pay for the
25 actual Time Element loss sustained, subject to the deductible provisions
26 that would have applied had the physical loss or damage occurred at the
27 Insured Location, during the time the order remains in effect, but not to
28 exceed the number of consecutive days following such order as stated in
the Declarations up to the limit applying to this Coverage.

24 **M. Contingent Time Element Coverage**

25 132. The Zurich American All Risk Policy contains the following Contingent Time
26 Element coverage:

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5.02.05. CONTINGENT TIME ELEMENT

This Policy covers the actual Time Element loss as provided by the Policy, sustained by the Insured during the Period of Liability directly resulting from the necessary **Suspension** of the Insured’s business activities at an Insured Location if the **Suspension** results from direct physical loss of or damage caused by a Covered Cause of Loss to Property (of the type insurable under this Policy) at **Direct Dependent Time Element Locations, Indirect Dependent Time Element Locations, and Attraction Properties** located worldwide¹⁸

N. Professional Fees Coverage

133. The Zurich American All Risk Policy contains the following Professional Fees coverage:

5.02.23. PROFESSIONAL FEES

This Policy covers the actual costs incurred by the Insured, of reasonable fees paid to the Insured's accountants, architects, auditors, engineers, or other professionals and the cost of using the Insured’s employees, for producing and certifying any details contained in the Insured's books or documents, or such other proofs, information or evidence required by the Company resulting from loss or damage payable under this Policy for which the Company has accepted liability. This Coverage will not include the fees and costs of attorneys, **Public Adjusters**, and loss appraisers, all including any of their subsidiary, related or associated entities either partially or wholly owned by them or retained by them for the purpose of assisting them, nor the fees and costs of loss consultants who provide consultation on coverage or negotiate claims.

O. Occurrence

134. The Zurich American All Risk Policy contains the following definition of “Occurrence”:

7.38. **Occurrence** - All loss(es) or damage that is attributable directly or indirectly to one cause or a series of similar or related causes. All such loss(es) or damage will be treated as one **Occurrence**. However, if **Occurrence** is specifically defined anywhere in this Policy, that definition will apply to the applicable coverage provided.

¹⁸ The Zurich American All Risk Policy excludes certain countries under this coverage grant, none of which applies to Wolfgang Puck’s loss(es) that are the subject of this Complaint.

1 12. The following is deleted from SECTION VII – DEFINITIONS:

2 **Contaminant(s)** - Any solid, liquid, gaseous, thermal or other
3 irritant, pollutant or contaminant, including but not limited to
4 smoke, vapor, soot, fumes, acids, alkalis, chemicals, waste
(including materials to be recycled, reconditioned or reclaimed),
asbestos, ammonia, other hazardous substances, **Fungus** or **Spores**.

5 And replaced with the following:

6 **Contaminant(s)** - Any solid, liquid, gaseous, thermal or other
7 irritant, including but not limited to smoke, vapor, soot, fumes, acids,
8 alkalis, chemicals, waste (including materials to be recycled, reconditioned
or reclaimed), other hazardous substances, **Fungus** or **Spores**.

9 **Wolfgang Puck’s Covered Loss**

10 138. Wolfgang Puck suffered losses of income when: 1) global leaders, including the
11 United States government, failed to respond adequately and properly to protect businesses and the
12 public from the physical loss of or damage to property and personal injury caused by the
13 uncontrolled and mismanaged spread of COVID-19 from overseas throughout the United States,
14 including Nevada and other states and countries where Wolfgang Puck’s restaurants and
15 Dependent Time-Element Locations are located; and 2) the Closure Orders in the states and cities
16 in which Wolfgang Puck’s Insured Locations and Dependent Time-Element Locations are
17 located confirmed the existence of property damage at those locations and in response prohibited
18 or limited access to those locations. The Closure Orders were issued in response to direct
19 physical loss of or damage to: (1) Insured Locations, Dependent Time-Element Locations, and
20 property within five miles of the Insured Locations; (2) physical loss of or damage to Attraction
21 Properties within one mile of the Insured Locations, and (3) the ubiquitous presence of
22 COVID-19 in the cities and states that were the subject of the Closure Orders.

23 139. As discussed more fully above, one of the main vectors of transmission of
24 COVID-19 is from person to property to person. Under existing law, property that is affected or
25 feared to be affected by the presence of substances injurious to health, like COVID-19, has
26 suffered “direct physical loss” or “damage.”

27 140. Wolfgang Puck has incurred various professional fees in presenting its claim to
28 Zurich American.

1 **Zurich American’s Adjustment**

2 141. Wolfgang Puck gave timely notice of its loss described in the foregoing allegations
3 to Zurich American on March 16, 2020.

4 142. On March 17, 2020, Zurich American acknowledged Wolfgang Puck’s notice of
5 loss and subsequently orally requested that Wolfgang Puck provide it with various information,
6 which Wolfgang Puck agreed to do.

7 143. While Wolfgang Puck was attempting to gather information responsive to Zurich
8 American’s requests, Zurich American preemptively denied coverage. In relevant part, Zurich
9 American’s denial of coverage under the Civil or Military Authority coverage was as follows:

10 We understand that **[the insured]** is presenting a claim under Section 5.02.03. of
11 the Policy (“Civil or Military Authority”)

12 We note that, in order for coverage to apply under Section 5.02.03, there must be a
13 necessary suspension of the Insured’s business activities as a result of an order of
14 civil or military authority that has been issued as a result of direct physical loss of
or damage to property not owned by the Insured as a result of a “Covered Cause of
Loss.” Moreover, the order of civil or military authority must prohibit access to the
“Insured Location” in order to trigger coverage under this provision of the Policy.

15 The presence of the COVID-19 virus does not constitute “direct physical loss or
16 damage” to property. Moreover, to the extent any order of civil or military
17 authority was issued because of the presence of the COVID-19 virus or to stop the
18 spread of COVID-19 virus, such order would not be the result of a “Covered Cause
19 of Loss.” Significantly, as addressed above, the presence of the COVID-19 virus
20 is excluded as a cause of loss under the **Contamination** exclusion (Section
3.03.01.01); accordingly, any order of civil authority affecting WP6 Restaurant
Management Group, LLC does not result from a covered cause of loss and civil
authority coverage would not be available. Moreover, to the extent access to the
“Location” is not prohibited, coverage would not be available for this additional
reason.

21 Letter, dated May 16, 2020, from Lindsey Harrell of Zurich American to Michael Lubitz of
22 Wolfgang Puck, at 3. As indicated by the use of “**[the insured]**,” and by the fact that Zurich
23 American wrote this letter before receiving, let alone analyzing, the information it had requested
24 from Wolfgang Puck, Zurich American’s denial of coverage was sent in bad faith, and was not
25 based on an investigation of the actual facts of Wolfgang Puck’s claim.

26 144. Zurich American further based its one-size-fits-all denial of coverage on a number
27 of other exclusions which do not conceivably apply to the specifics of Wolfgang Puck’s losses
28 and which Zurich American asserted in bad faith. Indeed, many of these exclusions were simply

1 recited and Zurich American asserted that “to the extent” Wolfgang Puck made a claim for
2 excluded costs, there would be no coverage. These reasons for denying coverage were not tied to
3 the claim that Wolfgang Puck has made and is making and Zurich American asserted them in bad
4 faith.

5 145. Wolfgang Puck’s actual covered loss from the events described above, due in part
6 to the global community and United States government’s mishandling of the spread of COVID-19
7 and the closure orders, is in well in excess of \$75,000.

8 **COUNT ONE: DECLARATORY JUDGMENT**

9 146. Wolfgang Puck repeats and re-alleges each of the allegations contained in
10 paragraphs 1-145 as if the same were set forth below.

11 147. Wolfgang Puck has an actual and present controversy with Zurich American
12 regarding its entitlement to and amount of insurance coverage available under the Zurich
13 American All Risk Policy to pay for Wolfgang Puck’s business income losses and related costs
14 and expenses. It is therefore appropriate for this Court to declare the rights of the parties.

15 148. This controversy is ripe and of sufficient immediacy to justify the issuance of a
16 declaratory judgment.

17 149. Wolfgang Puck is entitled to have the Zurich American All Risk Policy interpreted
18 in a reasonable manner that maximizes its insurance coverage.

19 150. Under the circumstances, it is necessary and appropriate for the Court to declare
20 Wolfgang Puck’s rights and Zurich American’s obligations under the all-risk coverage provided
21 in the Zurich American All Risk Policy. Declaratory relief from this Court will resolve
22 outstanding issues between Wolfgang Puck and Zurich American regarding Wolfgang Puck’s
23 rights under the Zurich American All Risk Policy.

24 **COUNT TWO: BREACH OF CONTRACT**

25 151. Wolfgang Puck repeats and re-alleges each of the allegations contained in
26 paragraphs 1-145 as if the same were set forth below.

27 152. In return for premiums paid to it by Wolfgang Puck, Zurich American agreed to
28 pay for all losses covered under the Zurich American Policy.

1 153. Wolfgang Puck provided timely notice of its claim to Zurich American, and
2 Wolfgang Puck has otherwise performed or has been excused from performance of its obligations
3 under the Zurich American All Risk Policy.

4 154. Wolfgang Puck's losses are the result of Covered Causes of Loss within the
5 meaning of the Zurich American All Risk Policy that entitle Wolfgang Puck to be reimbursed for
6 those losses.

7 155. Zurich American was obligated to adjust the total loss and pay Wolfgang Puck for
8 the total loss, subject to the applicable deductible.

9 156. Zurich American breached its obligations under the Zurich American All Risk
10 Policy by failing to:

11 a) timely adjust the loss; and,

12 b) pay Wolfgang Puck the total amount of its loss.

13 157. As a direct and proximate result of Zurich American's breach of contract,
14 Wolfgang Puck has been deprived of the benefits of insurance coverage, which Wolfgang Puck
15 had expected to receive, and for which Wolfgang Puck paid substantial premiums.

16 158. As a direct and proximate result of Zurich American's breach of contract,
17 Wolfgang Puck has also incurred additional consequential damages, including without limitation,
18 attorneys' fees and other expenses in bringing this action, which damages are not subject to the
19 Zurich American All Risk Policy's limits of liability.

20 159. Indeed, given the nature of the business income/time element coverage of the
21 Zurich American All Risk Policy, which is intended to replace the income that would otherwise
22 be earned by the insured party in the event of an insured loss to covered property, Zurich
23 American was aware that a failure to pay a covered time element claim in a timely manner under
24 the Zurich American All Risk Policy would cause consequential damages and losses to
25 Wolfgang Puck.

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1 176. Among other things, Zurich American violated the Act and engaged in unfair
2 practices in the following ways:

- 3 a) “Failing to adopt and implement reasonable standards for the prompt
4 investigation and processing of claims arising under insurance policies;”
5 b) “Failing to effectuate prompt, fair and equitable settlements of claims in
6 which liability of the insurer has become reasonably clear;”
7 c) “Compelling insureds to institute litigation to recover amounts due under an
8 insurance policy by offering substantially less than the amounts ultimately
9 recovered in actions brought by such insureds, when the insureds have made
10 claims for amounts reasonably similar to the amounts ultimately recovered;”
11 d) “Failing to settle claims promptly, where liability has become reasonably
12 clear, under one portion of the insurance policy coverage in order to influence
13 settlements under other portions of the insurance policy coverage;” and
14 e) “Failing to provide promptly to an insured a reasonable explanation of the
15 basis in the insurance policy, with respect to the facts of the insured's claim
16 and the applicable law, for the denial of the claim or for an offer to settle or
17 compromise the claim.”

18 177. Zurich American failed to act in good faith and violated the Act when it refused to
19 conduct a good faith investigation of Wolfgang Puck’s coverage and when it refused without
20 proper cause to compensate Wolfgang Puck for a loss covered by the Zurich American All Risk
21 Policy.

22 178. Zurich American acted in bad faith and violated the Act by engaging in unfair
23 insurance practices in the ways set forth at greater length above. Accordingly, Zurich American
24 is liable to Wolfgang Puck for all damages sustained as a result of its conduct in violation of the
25 Act.

26 179. As a result of Zurich American’s tortious conduct, and oppression, fraud or malice,
27 express or implied, Wolfgang Puck is also entitled to punitive damages under NRS § 42.0005(1).

28 180. It has been necessary for Wolfgang Puck to retain counsel to bring this action.
Accordingly, Wolfgang Puck is entitled to recover their attorneys’ fees and costs incurred herein.

PRAYER FOR RELIEF

WHEREFORE, Wolfgang Puck respectfully pray that this Court:

1. Declare that Zurich American is obligated to pay Wolfgang Puck’s benefits owed
under the Zurich American All Risk Policy;

