

CAUSE NO. 2021-11255

PLAINTIFFS' THIRD AMENDED PETITION

COME NOW, Plaintiffs Criss-A-Less, Inc. d/b/a Third Planet Sci-Fi and Fantasy Superstore and T.J. Johnson, and file this Third Amended Petition against Defendants ASDN Houston, LLC d/b/a Crowne Plaza River Oaks, Pacifica Companies, LLC, and Crowne Plaza (Houston) River Oaks Hotel (*in rem*) and in support thereof would respectfully show the Court as follows:

1.

DISCOVERY LEVEL, CONTROL PLAN AND MONETARY RELIEF

1. Plaintiffs intend to conduct discovery under Level 2 of Rule 190 of the Texas Rules of Civil Procedure.
 2. This suit is not governed by the expedited-actions process of Rule 169 of the Texas Rules of Civil Procedure because Plaintiffs seek monetary relief aggregating more than \$250,000.
 3. Plaintiffs seek monetary relief over \$250,000 but not more than \$1,000,000, excluding interest, statutory or punitive damages, penalties, and attorney fees and costs.

II.
PARTIES

4. Plaintiff Criss-A-Less, Inc., d/b/a Third Planet Sci-Fi and Fantasy Superstore is a corporation residing in Harris County, Texas.

5. Plaintiff T.J. Johnson is an individual residing in Harris County, Texas.

6. Defendant ASDN Houston, LLC d/b/a Crowne Plaza River Oaks (“ASDN”) is a limited liability company doing business in Texas. It has appeared and answered herein and may be served through its counsel of record.

7. Defendant Pacifica Companies, LLC (“Pacifica”) is a limited liability company doing business in Texas. It has appeared and answered herein and may be served through its counsel of record.

8. Defendant Crowne Plaza (Houston) River Oaks Hotel (*in rem*) is the real property (including the hotel and other improvements) located at or about 2712 Southwest Freeway, Houston, Texas 77098 (the “Hotel”) owned and operated by ASDN and/or Pacifica who have both appeared and answered herein and may be served through their counsel of record. Plaintiffs assert all claims in this action not only against ASDN and Pacifica, but also *in rem* against the Hotel itself.

III.
JURISDICTION AND VENUE

9. This Court has jurisdiction over this matter as the amount in controversy exceeds the Court’s minimum jurisdictional requirements.

10. Venue is proper in Harris County, Texas because it is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred.

IV.
FACTS

11. Plaintiff Criss-A-Less, Inc. operates the Third Planet Sci-Fi and Fantasy Super Store (“Third Planet”) which specializes in a full line of science fiction and fantasy games, comic books, and collectables. Opened in 1975, Third Planet is believed to be the longest continuously running sole proprietorship comic bookstore in the nation. Generations of Houstonians have come to this store to buy comics, games, toys, books, movies, models, apparel, and other novelties to light the imagination of both children and adults. Third Planet is a Houston icon, and its history reflects the spirit and grit of Houston over the past half century.

12. In 1988, Third Planet moved to its current location at Wakeforest Avenue and Interstate 59 and became the first superstore of its kind in the nation. Plaintiff T.J. Johnson purchased the property where Third Planet is located and owns it to this day. Johnson has operated Third Planet from the start through Criss-A-Less. An icon in his own right, Johnson is an army veteran and lifelong bowler. When he is not busy operating Third Planet, he spends his time racking up professional bowling titles in the Senior Circuit.

13. Defendants own and operate the Hotel on the lot immediately to the east. The Hotel towers over its humble one-story neighbor. Sadly, the Hotel has long been a location for illicit activities. Physical assault, sexual assault, public disturbances, criminal mischief, burglary, theft, prostitution, and other criminal activity commonly occur and are permitted to occur on the Hotel premises. It is no surprise, then, that the criminal activity noted above extends beyond the physical property line of the Hotel. ASDN and Pacifica know about the Hotel’s troubles and the harm caused to its neighbors.

14. On the west side of the Hotel facing Third Planet, the Hotel maintains an open-air fire escape with balconies, wherein Hotel guests, residents, tenants, patrons, customers, or visitors can stand outside on each floor of the Hotel. Defendants have allowed guests, residents, tenants, patrons, customers, or visitors of the Hotel to throw all manner of projectiles off those landings and onto Third Planet's roof and parking lot.

15. Lit cigarette butts thrown from the Hotel have landed in trucks in the Third Planet parking lot, and twice have caused fires. All manner of items, from ceramic mugs, plates, silverware, and bottles to cinder blocks, luggage racks, and ladders, have pelted the building and property, causing damage to Third Planet's roof and parking lot.

16. By 2008, Johnson installed a new roof on the building. Since then, he has paid for and/or installed himself multiple patches to the roof to repair the damage caused by the barrage of projectiles thrown from the Hotel.

17. Despite numerous reports, complaints, and notices by Plaintiffs and others to Hotel management, Defendants have taken no action to discourage—let alone prevent—guests, residents, tenants, patrons, customers, or visitors of the Hotel from throwing debris and heavy objects from the Hotel balconies onto Third Planet's roof and parking lot.

18. On or about March 3, 2019, matters escalated to a new level of destruction. Hotel guests, residents, tenants, patrons, customers, or visitors launched at minimum fourteen large metal-cannister fire extinguishers from the Hotel onto Third Planet's roof and parking lot. The cannisters landed on the roof with explosive impact. This caused significant compromise to the structural integrity of the roof. In sum, the roof was irreparably damaged.

19. Then came the rain.

20. Items in the store sell from a few dollars to thousands of dollars. Third Planet sells collectors' items, with an emphasis on comic books. For the older, collectable items, they are literally irreplaceable. Some are one-of-a-kind. Others are extremely rare. Water damage can render worthless many of these valuable items. Third Planet has suffered water damage to its inventory stemming from the damage caused by the torrent of fire extinguishers launched from the Hotel.

21. As always, complaints to Defendants were greeted with silence. After the destruction caused by the parade of fire extinguishers hurled from the Hotel, Third Planet continues to be peppered with material thrown from Hotel balconies. Each new impact further undermines the integrity of the roof. Simple patching of the roof is not an option. A new roof is required.

22. By sheer fortune, heavy debris has yet to strike a customer, patron, or any other person. However, there is no guarantee luck will hold. It should not take physical injury or jeopardy to human life to force Defendants to take appropriate remedial steps. Defendants must stop allowing the Hotel to be used as a launching pad for projectiles aimed at Third Planet. Given the continuous ongoing risk created by the reckless behavior of Defendants, Plaintiffs have no other choice but to file suit so they may operate safely, preserve their inventory, and not endanger the safety of customers, patrons, and others.

V.
ORIGIN STORY

23. Defendant, Pacifica has previously filed special exceptions, complaining that it could not sufficiently understand the claims and allegations against it. To aid in clarifying the facts of this case, plaintiffs provide the facts in illustrated form.



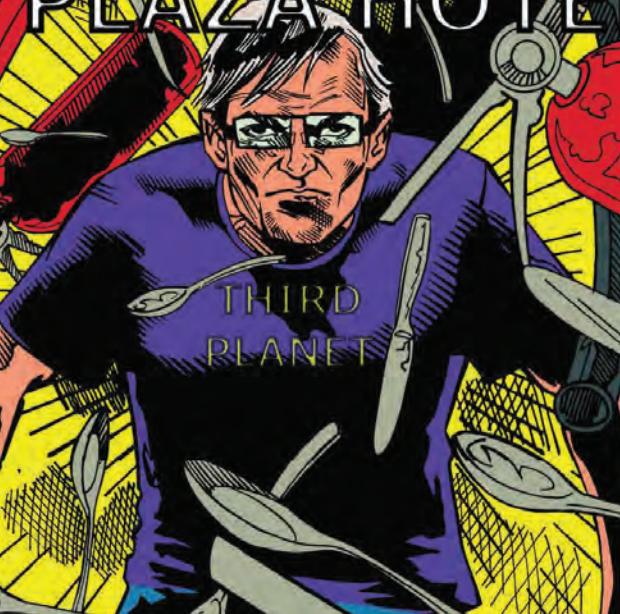
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CAUSE NO. 2021-11255

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THIRD PLANET v. CROWNE PLAZA HOTEL

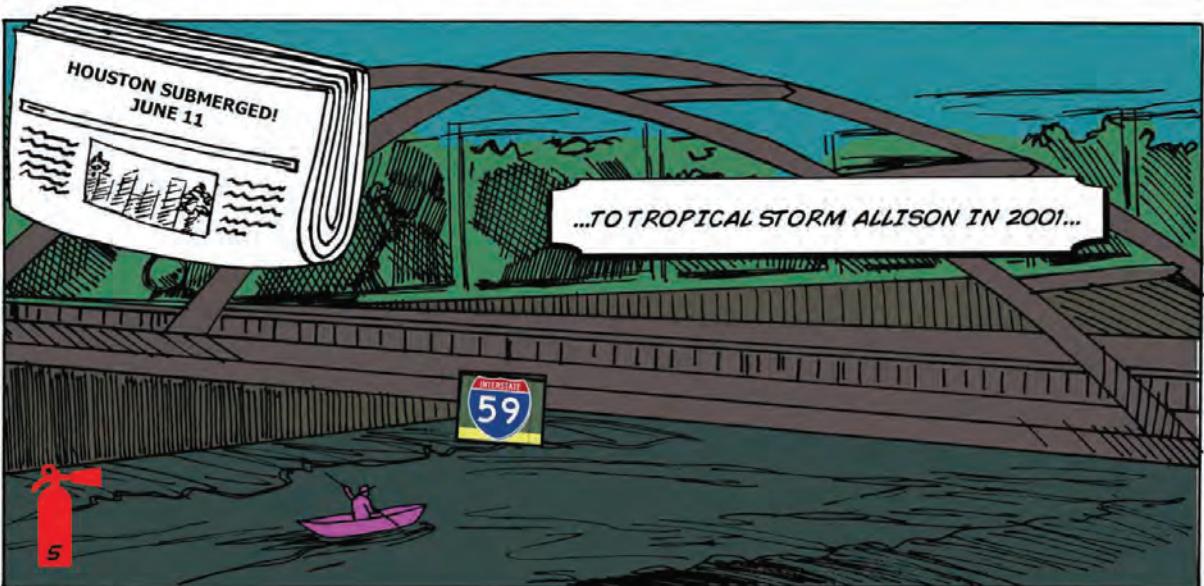


PLAINTIFFS' THIRD AMENDED PETITION

IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS 151ST JUDICIAL DISTRICT

THIRD PLANET SCIENCE FICTION AND FANTASY SUPER STORE
IS BELIEVED TO BE THE LONGEST CONTINUOUSLY RUNNING
SOLE PROPRIETORSHIP COMIC BOOK STORE IN THE NATION.







8

IN 1988, THIRD PLANET MOVED TO ITS CURRENT LOCATION
AT WAKEFOREST AVENUE AND I-59.
JOHNSON PURCHASED THE PROPERTY AND OWNS IT TO THIS DAY.

9

LOOMING NEXT DOOR TO THIRD PLANET IS THE CROWNE PLAZA RIVER OAKS HOTEL. THE HOTEL IS OPERATED BY ASDN HOUSTON, LLC AND ITS PARENT COMPANY, PACIFICA COMPANIES, LLC. SADLY, THE CROWNE PLAZA HAS LONG BEEN A LOCATION FOR ILLICIT ACTIVITIES. ASDN HOUSTON AND PACIFICA COMPANIES KNOW ABOUT THE HOTEL'S TROUBLES AND THE HARM CAUSED TO ITS NEIGHBORS.

10

LIT CIGARETTE BUTTS THROWN FROM THE CROWNE PLAZA HAVE LANDED IN TRUCKS IN THE THIRD PLANET PARKING LOT....

11

....AND TWICE HAVE CAUSED FIRES.

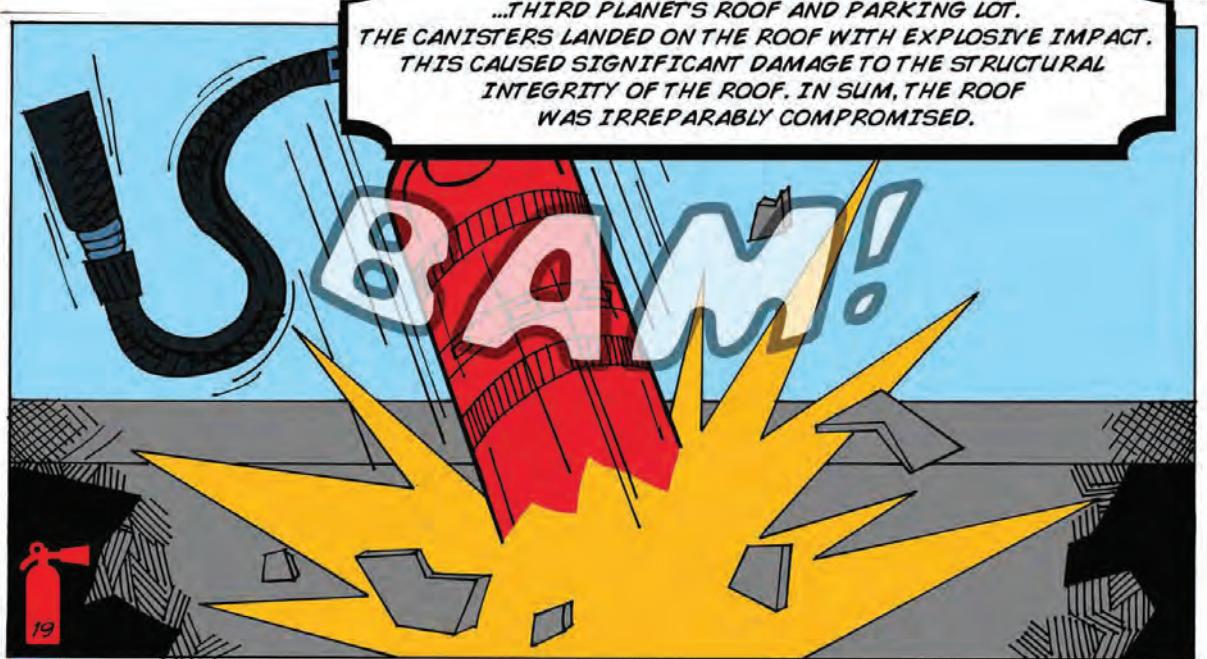
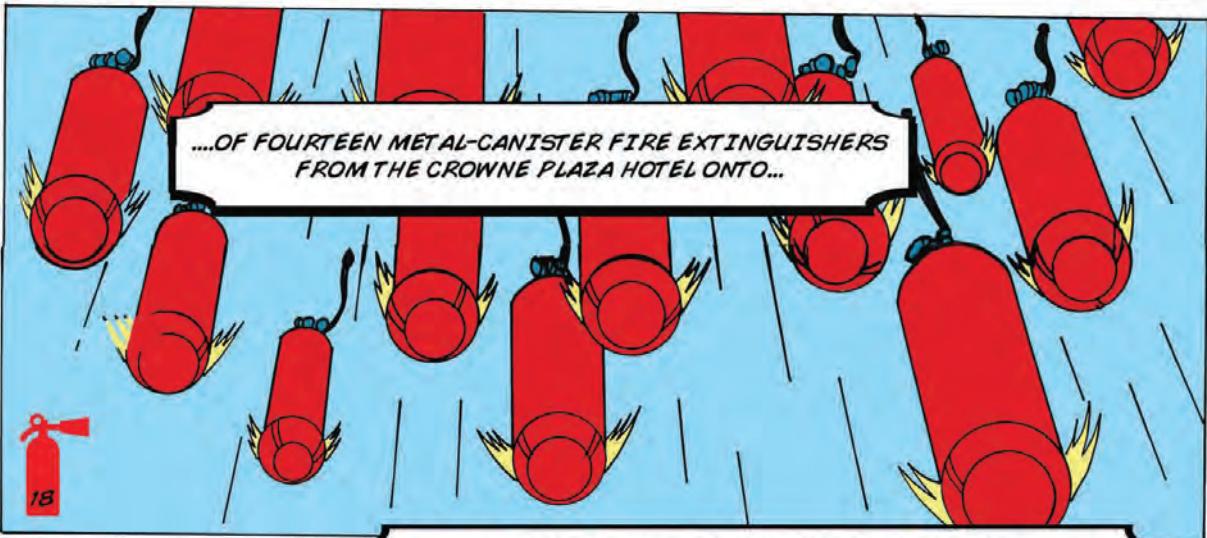
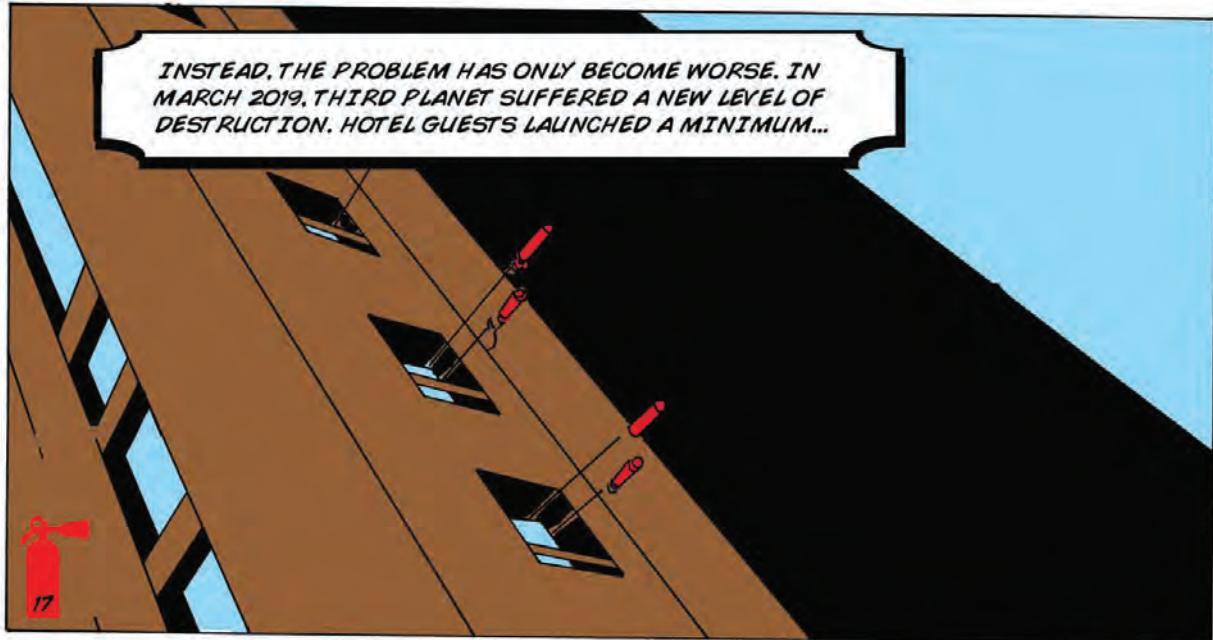


THROUGHOUT THE ONGOING BARRAGE OF PROJECTILES,
JOHNSON MADE MULTIPLE COMPLAINTS TO
ASDN HOUSTON.



YET THEY HAVE TAKEN NO ACTIONS TO DISCOURAGE--LET ALONE
PREVENT--CROWNE PLAZA RESIDENTS FROM THROWING DEBRIS
AND HEAVY OBJECTS FROM THE HOTEL BALCONIES ONTO
THIRD PLANET'S ROOF.

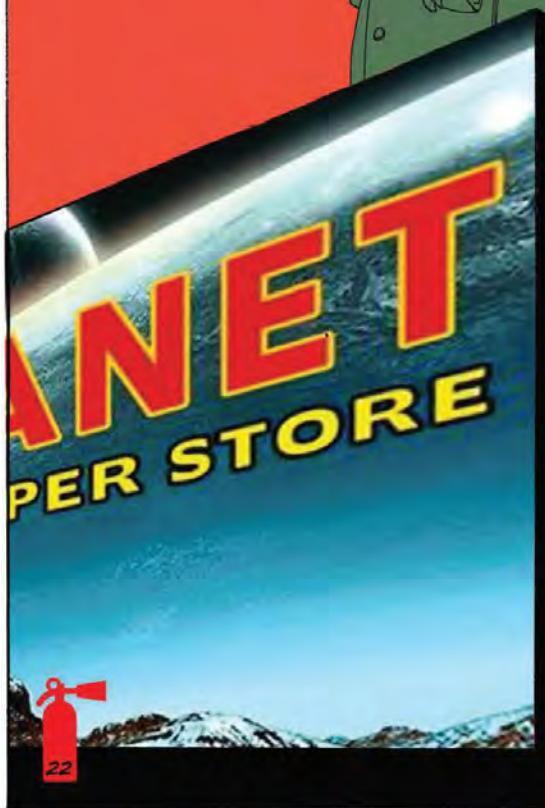








BY SHEER FORTUNE, HEAVY DEBRIS HAS YET TO STRIKE A PERSON. THERE IS NO GUARANTEE THIS LUCK WILL HOLD, THOUGH, WITH THE DAMAGE TO HIS BUILDING AND BUSINESS AND THE RISK TO THE PUBLIC, JOHNSON FACES HIS GREATEST CHALLENGE YET...



THE RECKLESS BEHAVIOR OF ASDN HOUSTON AND PACIFICA COMPANIES HAS LEFT THIRD PLANET AND JOHNSON WITH NO OTHER CHOICE BUT TO FILE SUIT SO THAT THEY CAN OPERATE PEACEFULLY, PRESERVE THEIR INVENTORY, AND NOT ENDANGER THE SAFETY OF THEIR CUSTOMERS.





24

PENCILS & BREAKDOWNS
MICHAEL CHARLES

PENCILS & BREAKDOWNS
MAURICE TERRY JR.

INKS & EDITS
MICHAEL BROOKS

FLATS & COLORS
BENJAMIN CARBONERO

VI.
CAUSES OF ACTION

24. Plaintiffs incorporate the foregoing paragraphs into the following claims by reference.

A. Negligence

25. Defendants owe a legal duty of reasonable care to prevent their guests, residents, tenants, patrons, customers, or visitors from dropping or throwing their wares, equipment, and other items as projectiles onto the land or property where Third Planet is located. Defendants breached their duty—even after repeated complaints. In addition, and/or in the alternative, Defendants breached their duty on a continuing and ongoing basis resulting in repeated injury due to their repetitive wrongful conduct, acts, or omissions. The breach was the direct, proximate, and/or producing cause of harm, injury, and damage to Plaintiffs.

B. Trespass

26. Plaintiffs own or have the right to possess the land or property where Third Planet is located. Defendants (1) entered Plaintiffs' land or property, (2) caused, allowed, or permitted entry onto Plaintiffs' land or property, (3) aided, assisted, advised, or encouraged entry onto Plaintiffs' land or property, and/or (4) ratified or adopted entry onto Plaintiffs' land or property for its own benefit. The entry was physical, intentional, voluntary, and unauthorized. The entry was the direct, proximate, and/or producing cause of harm, injury, and damage to Plaintiffs.

C. Nuisance

27. Plaintiffs have a private interest in the land or property where Third Planet is located. A condition substantially interfered with Plaintiffs' interest in the use and enjoyment

of the land and property causing Plaintiffs unreasonable discomfort and/or annoyance. Defendants created and/or maintained the condition intentionally, negligently, and/or by other abnormally dangerous conduct. The condition was the direct, proximate, and/or producing cause of harm, injury, and damage to Plaintiffs.

D. Suit to Abate Common Nuisance

28. Defendants maintain a place to which persons habitually go to engage in various criminal, illegal, or illicit activity, conduct, or acts as described in Chapter 125 of the Texas Civil Practice & Remedies Code. Defendants knowingly tolerate the criminal, illegal, or illicit activity, conduct, or acts. Defendants have failed to make reasonable attempts to stop, prevent, or abate the criminal, illegal, or illicit activity, conduct, or acts.

E. Request for Permanent Injunction

29. Plaintiffs ask the Court to set their request for a permanent injunction for a full trial on the merits and, after trial, issue a permanent injunction against Defendants to prevent further incursions onto Plaintiffs' land or property, including (without limitation) and/or in addition to an order that requires the Hotel to close for one year after the date of judgment, appoints a receiver to manage the Hotel for one year after the date of judgment, and requires all other actions necessary to abate the nuisance.

**VII.
CONDITIONS PRECEDENT**

30. All conditions precedent have been performed or have occurred.

**VIII.
DEMAND FOR JURY**

31. Plaintiffs demand a jury and have tendered the appropriate jury fee.

IX.
PRAYER

32. For these reasons, Plaintiffs Criss-A-Less, Inc. d/b/a Third Planet Sci-Fi and Fantasy Superstore and T.J. Johnson respectfully ask the Court to enter a judgment in their favor against Defendants for the following:

- a. actual/compensatory damages, both direct (general) and consequential (special), and including (without limitation) the following:
 - (1) cost to replace the ruined roof, roof membrane, roof insulation, roof decking, and other roof-related components of the building;
 - (2) cost to replace the ruined interior ceiling grid and tiles of the building;
 - (3) cost to repair all damaged parts of the building and parking lot;
 - (4) lost value of ruined merchandise and other building contents;
 - (5) cost to pack, move, store, and move back merchandise and other building contents before, during, and after roof replacement and all damage repairs;
 - (6) cost to move, store, and move back air conditioning unit and other items on or near the roof of the building before, during, and after roof replacement and all damage repairs;
 - (7) lost profits for the period that Third Planet is shut down to pack, move, store, and move back merchandise and other building contents during roof replacement and all damage repairs, and

- (8) all other costs and expenses related to roof replacement and all damage repairs;
- b. permanent injunction, including (without limitation) and/or in addition to an order that requires the Hotel to close for one year after the date of judgment, appoints a receiver to manage the Hotel for one year after the date of judgment, and requires all other actions necessary to abate the nuisance and/or common nuisance;
- c. punitive/exemplary damages;
- d. attorney's fees and expenses;
- e. pre-judgment and post-judgment interest; and
- f. all such other and further relief, whether at law or in equity, to which Plaintiffs may be justly entitled.

Respectfully submitted,

FELDMAN & FELDMAN, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded electronically through the electronic filing manager on June 23, 2021 to the following parties and/or counsel of record:

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