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June 9, 2023

Jonathan Hacker
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The Honorable Chief Justice Patricia Guerrero
and Honorable Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, California 94102

Re: *Another Planet Entertainment v. Vigilant Insurance Co.* (Case No. S277893), Notice of Errata to Correct Answer Brief on the Merits

Dear Chief Justice Guerrero and Associate Justices:

Respondent Vigilant Insurance Company's Answer Brief on the Merits in the above-referenced case was filed in this Court on June 5, 2023. Counsel wishes to make the following correction to the Answer Brief.

On page 11, on the fifth line of the second paragraph of the introduction, the reference to "eleven federal circuits" should instead state "seven federal circuits," as later made clear in the body of the brief, at pages 43-44.

The corrected page of the brief is appended to this letter.

Respectfully submitted,

/s/ Jonathan D. Hacker

Jonathan D. Hacker (pro hac vice)
Attorney for Respondent Vigilant Insurance Company

ISSUE PRESENTED

The U.S. Court of Appeals for the Ninth Circuit requested that this Court answer the following question:

Can the actual or potential presence of the COVID-19 virus on an insured's premises constitute "direct physical loss or damage to property" for purposes of coverage under a commercial property insurance policy?

Another Planet Ent., LLC v. Vigilant Ins. Co., 56 F.4th 730, 734 (9th Cir. 2022).

INTRODUCTION

The certified question requires the Court to determine whether inert physical property suffers "direct physical loss or damage" when microscopic viral particles temporarily rest on the property before disintegrating or being wiped away.

The question all but answers itself. In California as elsewhere, insurance policies that cover "direct physical loss or damage" to property are triggered only when the property experiences a distinct, demonstrable, physical alteration. Applying materially identical standards, seven federal circuits, eight state high courts, scores of state appellate courts, and hundreds of state and federal trial courts have correctly recognized that because viral particles resting on inert physical property do not cause any structural alteration to the property, the temporary presence of such particles does not qualify as "direct physical damage or loss" to the property as a matter of law.

State of California)
County of Los Angeles)
)

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I declare under penalty of perjury that the foregoing is true and correct:

Signature: /s/ Kirstin Largent

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **ANOTHER PLANET ENTERTAINMENT v. VIGILANT INSURANCE
COMPANY**

Case Number: **S277893**

Lower Court Case Number:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

6/9/2023

Date

/s/Court Services

Signature

Hacker, Jonathan (456553)

Last Name, First Name (PNum)

O'Melveny & Myers LLP

Law Firm