

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

THE DISTRICT OF COLUMBIA and
THE STATE OF MARYLAND,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States of America,

Defendant.

Civil Action No. 8:17-cv-01596-PJM

DECLARATION OF RACHEL J. ROGINSKY, ISHC

EXPERT DECLARATION OF RACHEL J. ROGINSKY, ISHC

I. Experience and Qualifications

1. I am currently the Owner and Founder of Pinnacle Advisory Group, Inc. Pinnacle Advisory Group is one of the nation's leading, full-service hospitality consulting firms. Pinnacle Advisory Group is comprised of five divisions: consulting; valuation; development services; litigation support; and asset management. Pinnacle's clients benefit from the services of a total of 14 professionals located in offices in Boston, New York City, Washington, DC, Los Angeles, Tampa, and Portland. Pinnacle Advisory Group clients include local, regional, national, and international financial institutions, REITs, private equity firms, hotel companies, developers, public sector agencies, airport authorities, hotel management companies, attorneys, and colleges/universities. Since 1991, Pinnacle Advisory Group has advised on more than \$60 billion of hotel, resort, and convention assets throughout the United States and Caribbean.
2. I earned my Bachelor of Science degree from Cornell School of Hotel Administration in 1979. Cornell's hotel school is considered the leading hospitality program in the world.
3. I have more than 30 years of experience in hospitality consulting. After graduating from Cornell, I started my career in hospitality operations and then worked with the national accounting firm Pannell Kerr Forster, eventually becoming a Principal, overseeing their Management Advisory Services practice in New England. In 1991, I founded Pinnacle Advisory Group.
4. I have authored and co-authored industry journal articles and several books related to the hospitality business. I am the co-editor and an author for *Hotel Investments - Issues and Perspectives*, published by the American Hotel and Lodging Educational Institute. With five editions (1995, 1999, 2003, 2006, 2011, and 2014), this book is used by most major hotel schools and many hotel industry leaders.
5. I am an adjunct professor at Boston University School of Hospitality Administration. I currently teach Hospitality Market Feasibility and Valuation in the undergraduate program; I will be teaching a similar course in the graduate program in the spring of 2018. I am also a regular guest lecturer at Cornell School of Hotel Administration and other prestigious institutes of higher education, including Johnson & Wales, University of New Hampshire, Massachusetts Institute of Technology, and Florida International University.
6. I am the Chair Emeritus of the International Society of Hospitality Consultants (ISHC). ISHC is a respected source for hospitality expertise and counsel, represented by some two hundred of the industry's most respected professionals from across six continents. I have been a Board Member for over six years, have led numerous committees, and was the Chairman in 2015.
7. I am on the New England Real Estate Journal Hotel Industry Advisory Board and am a long-time Board Member for the Massachusetts Lodging Association.
8. My expertise includes assessing competition in the hotel industry, and I have regularly assessed the nature and extent of competition among hotels throughout most major markets within the United States. Annually, I review and determine competitive sets of hotels for over 150 geographic areas in the United States. My expertise also includes evaluating impact that results from hotel competition. Specifically, I have authored reports and have given presentations on hotel impact issues, and my firm has taken a lead role in preparing impact studies for most major hotel companies.

9. I have been certified as an expert witness on hotel industry issues in numerous state and federal courts.
10. I provided a declaration in August 2017 addressing hotel competition issues for the plaintiffs in a similar case against the defendant pending in the Southern District of New York. (*Citizens for Responsibility and Ethics in Washington v. Donald J. Trump*, No. 1:17-cv-00458-GBD (S.D.N.Y.).)
11. I am regularly sought after as a hotel industry expert by major news organizations, including but not limited to *The New York Times*, *The Wall Street Journal*, and *The Boston Globe*. I have spoken at major hotel events such as the American Lodging Investment Summit, the International Restaurant and Foodservice Show, and events sponsored by the Real Estate Finance Association, New England Women in Real Estate, and the Urban Land Institute.
12. Pinnacle Advisory Group is being compensated for the time I spend on this matter at my normal and customary rate (currently, \$400/hour, except for testimony and trial preparation, which I currently bill at \$500/hour).

II. Assignment and Materials Reviewed

13. I was retained by plaintiffs' counsel in this case to evaluate the nature and extent of any competition, in general and specifically for government business, (a) between the Walter E. Washington Convention Center (the "DC Convention Center") and the event and meeting spaces in the Trump International Hotel Washington, DC (the "Trump Hotel"), (b) between the MGM Hotel and Casino at National Harbor in Oxon Hill, Maryland (the "MGM Hotel") and the Trump Hotel, both for lodging and for events and meetings, and (c) between the Gaylord National Resort & Convention Center at National Harbor (the "Gaylord Hotel") and the Trump Hotel, both for lodging and for events and meetings. In addition, counsel requested that I describe the government demand for high quality special event and meeting spaces and for high quality lodging in the Washington, DC metropolitan area. Finally, counsel asked that I review the Trump Hotel's income statements for February-April 2017 (which include the year-to-date April 2017 income statement) to compare the hotel's actual performance to its budgeted performance and to the performance of a set of competitors defined by the Trump Hotel.
14. The materials that I reviewed include websites with information about: the District of Columbia's conference and event venues; Destination DC; the MGM Hotel; the Trump Hotel; and federal government agencies in the District of Columbia and Prince George's County, Maryland. Additionally, I reviewed George Mason University's Center for Regional Analysis' website, which provides data and research about the Washington, DC regional economy. I also reviewed: catering menus from the Trump Hotel; income statements of the Trump Hotel for the months of February, March and April 2017, originally published on the General Services Administration's website; Smith Travel Research reports about the Washington, DC lodging market; data on U.S. government economic activity in the D.C. area; Macomber International Inc.'s review of ancillary facility elements of casino license applicants, prepared for the Maryland Lottery and Gaming Control Commission's Video Lottery Facility Location Commission; Washington Post and Politico articles about the performance of the Trump Hotel and about events held there; Washington Business Journal articles about the impact of the federal government on the Washington, DC metropolitan area economy; articles about the Washington, DC real estate, hotel, and tourism markets; the 2016 state of downtown report of the Downtown DC Business Improvement District; the Saudi US Relations Information Service website regarding Saudi government events at area hotels; TripAdvisor reviews of the MGM Hotel, the Gaylord Hotel and the Trump Hotel; WeddingWire.com reviews of the Trump Hotel; news and event pages on the website of the Food and Drug Administration; websites of the National Institute

of Standards and Technology and the Department of Treasury; and the Facebook and Twitter pages of Events DC, the MGM Hotel, the Gaylord Hotel, and the Trump Hotel. I also reviewed the defendant's memorandum in support of his motion to dismiss, and the Declaration of Christopher Muller submitted in this case.

15. I consulted with Anne Purcell, Pinnacle's Vice President in the Washington, DC office, for her knowledge of the hotel industry in the Washington, DC metropolitan area. As a hotel expert with over 30 years of experience, I also relied upon my general knowledge of the hotel industry, which is based in part on my regular review of industry publications such as Smith Travel Research reports, reports on office vacancy and office development statistics, employment rates, and job growth and tourism data, such as data on international and domestic visitation to particular geographic areas.

III. The Nature of Competition in the Hospitality Industry

16. Two hotels are competitors if they both offer services or products to the same market, market segment, or customer group. The same may be said for meeting and event space within the hotel, whether it is competing with meeting and event space located within a different hotel or with a free-standing event or meeting venue. To be a competitor, each needs to be considered a viable substitute by a group of consumers. Consumers determine whether lodging and meeting facilities are viable substitutes based on location, facilities, class and image, services, amenities, and price. Competition occurs among lodging and meeting facilities that are similar with respect to these factors.
17. Important attributes in choosing a hotel include location, facilities, services, amenities, class and image, and price. Additional important attributes in choosing a meeting or event facility include: size and configuration of space; available dates; proximity to airports; ease of access to the facility; the reputation of the facility for hosting meetings; and the availability of experienced suppliers such as audiovisual firms and security. In general, meeting and event planners are looking for an attractive, clean, well lit, technologically supported facility with efficient staff that can handle the group's size, offer diverse menus for meals and breaks, and have sufficient equipment to do a variety of room set ups as needed.
18. While hotel and event space competitors often are located near each other, they can be located miles apart or even in different geographic regions, depending on the purpose of a guest's visit. For example, a company planning a retreat might consider hotels in different regions as long as the candidates are within the distance the company is willing to travel for the retreat.
19. Hotels may compete with non-hotels for particular types of services. For example, a hotel's fine-dining restaurant might directly compete with local restaurants, and a hotel spa might compete with a local health club.
20. Hotels and meeting venues that attract a common set of visitors compete with each other even if they also attract customers that are not within this common set. That is, hotels and meeting venues are competitors even if they market to and attract customers from pools of visitors that overlap only in part, or overlap only under special circumstances. If, for whatever reason, demand increases for rooms at one hotel or at a meeting venue, that will result in more customers from its pool of potential customers staying at that hotel or meeting venue, and fewer from that pool staying at competing hotels or renting competing meeting spaces.

21. Events at hotels and other venues are normally arranged by sales staff who earn bonuses for reaching sales goals or by third party planners who earn commissions.
22. The room rental is often only one of several expenses incurred by an event or meeting host. Event and meeting hosts frequently also purchase food, decorations, and various other supplies and services.

IV. Summary of Conclusions

23. The DC Convention Center in downtown Washington, DC competes with the Trump Hotel to host meetings and special events of up to about 1,200 guests. These venues attract overlapping types of meetings and special events and have several common characteristics.¹
24. The Gaylord Hotel and the MGM Hotel, both located at National Harbor, a resort development in Oxon Hill, Maryland, compete with the Trump Hotel to host meetings and special events. All three hotels attract overlapping types of meetings and special events, and their respective meeting and event spaces have several common characteristics. In addition, the MGM Hotel and Gaylord Hotel compete with the Trump Hotel for lodging business unassociated with events and meetings. All three hotels attract overlapping pools of overnight guests and provide overnight guests with several common characteristics.
25. A prime attraction at the National Harbor complex is the MGM Casino. Attendees at meetings and special events taking place at the Gaylord Hotel or the MGM Hotel, and guests staying overnight at these hotels, are more likely to spend money at the MGM Casino than they would if their special event or meeting were held at the Trump Hotel or if they stayed overnight at the Trump Hotel.
26. The numerous federal government offices and foreign embassies in the District of Columbia and its surrounding suburbs generate substantial government demand for high quality special events and meeting spaces and for high quality lodging in the Washington, DC metropolitan area. Given this substantial government demand, and the competition between the Trump Hotel and the other venues discussed herein, I conclude that this competition includes competition for government business.
27. In the first four months of 2017, just a few months after the Trump Hotel opened in September 2016, the hotel greatly outperformed its previously projected average daily room rate and its previously projected occupancy, and even exceeded the average daily room rate of a group of far more established hotels that the Trump Hotel, itself, identified as its closest competitors.

V. The Walter E. Washington Convention Center and the Trump Hotel Compete with Each Other

28. The DC Convention Center is located at 801 Mount Vernon Place, NW Washington, DC 20001. It is 10 blocks (0.9 miles) from the Trump Hotel. The DC Convention Center has 2.3 million square feet of convention and exhibit space. Included in this space is a 52,000 square foot ballroom that divides into two sections of approximately 19,000 square feet each and one section of 14,000 square feet, and numerous smaller meeting rooms that range from 550 square feet to 4,200 square feet. According to Destination DC's website, the DC Convention Center generates over \$400 million in economic activity for the city annually. In 2016, the DC Convention Center held over 200 events with 1.4 million attendees. The DC Convention Center generates revenue from groups holding conferences, shows, and meetings within its facilities. While the majority of events held at the DC Convention Center have large numbers

¹ In Appendix A, I have a facilities comparison chart that provides information on room sizes for the event and meeting spaces at the Trump Hotel, the DC Convention Center, the MGM Hotel and the Gaylord Hotel.

of attendees, the DC Convention Center also hosts smaller meetings, including meetings of federal government agencies such as the Food and Drug Administration, the Treasury Department, and the National Institutes of Standards and Technology (within the Department of Commerce).

29. The Trump Hotel is located at 1100 Pennsylvania Avenue, NW, Washington, DC. Formerly the Old Post Office Pavilion, the building was converted to the 263-room Trump International Hotel Washington, DC in September 2016. In addition to its 263 guest rooms, the Trump Hotel has a large portfolio of ballroom, event, and meeting spaces, including: the 13,200 square foot Presidential Ballroom, which is divisible by two and can seat up to 1,200 for a meal or accommodate 1,500 standing for a cocktail reception; the Lincoln Library, which can accommodate 150 people; and the Franklin Study, which can accommodate 110 people. There is also a selection of meeting rooms which can accommodate between 12 and 96 people, including the Madison, Eisenhower, Washington, Roosevelt, Jefferson, Reagan, Wilson, Adams, Kennedy, Grant, and Patton rooms, and the DJT Boardroom.

A. Location

30. Both the DC Convention Center and the Trump Hotel are located in downtown Washington, DC and are accessible to the Metro Rail system. They are less than one mile and a 10 minute cab ride (without traffic) apart. Both are in desirable neighborhoods that are close to numerous restaurants, bars, and major tourist attractions such as the National Mall and the Smithsonian museums. The facilities are similarly accessible to the market area's demand generators, such as numerous federal agencies (e.g., Internal Revenue Service, the Federal Bureau of Investigation, the United States Agency for International Development, and the Environmental Protection Agency), law firms (e.g., Hogan Lovells, Covington & Burling, Arnold & Porter, Morgan Lewis, Crowell Moring, and Latham & Watkins), lobbying firms (e.g., Brownstein Hyatt and Podesta Group), and large businesses (e.g., Carlyle Group, Microsoft, and IBM). Both facilities are a 15 minute cab ride (without traffic) or a 20 minute Metro Rail ride from Ronald Reagan Washington National Airport.

B. Facilities and Services

31. Both the DC Convention Center and the Trump Hotel have meeting space suitably sized to host events and meetings attended by up to about 1,200 guests. Both the DC Convention Center and the Trump Hotel provide attractive, clean, well lit, and technologically supported facilities with sufficient equipment to do a variety of room set ups as needed, and with an efficient staff that can handle large and small groups. Both venues have meetings rooms with high ceilings which enhance audiovisual projection. Both facilities provide high-end catering such as customized three-course dinners with locally sourced ingredients, themed receptions with cooked-to-order food stations, as well as customized menu planning for lunches, breakfasts, and coffee breaks. Both provide good security to protect attendees. In short, both venues are high quality and offer comparable services with regard to planning and executing special events and meetings.

C. Class and Image

32. The DC Convention Center and the Trump Hotel are of similar class and image. The DC Convention Center has a four star rating on TripAdvisor with 81% of 163 review rating the facility 'Excellent' or 'Very Good'. Meetings & Events magazine has rated the DC Convention Center in the top three of 50 convention centers in the U.S. CVent, a global meeting, event and technology company used by meeting planners to find venues, ranks Washington, DC as the sixth best convention city out of 50 that were ranked.
33. The Trump Hotel opened in September 2016 and is in excellent condition. Formerly the Old Post Office Pavilion, an extensive renovation was completed to convert the building from office space and a food court to a hotel. The building, which was constructed in 1899, features a nine-story glass enclosed atrium

and many original details. The Trump Hotel has received a four diamond rating from AAA, a rating that less than 6% of the hotels reviewed are able to obtain. Based on these facts, both venues have a comparable class and image.

D. Pricing - Banquet and Meeting Space

34. Convention centers and hotels typically offer different pricing for meetings and special events based on a variety of factors such as the time of year the event is held, the number of attendees, the day of the week the event is held, the event planner's budget, and set up time required. The cost of a plated 3-course dinner at the DC Convention Center is in the range of \$52-\$80; the cost of a 3-course plated dinner at the Trump Hotel is in the range of \$95 to \$105. Even high-end event spaces will negotiate their prices during slower time periods or whenever they are not operating at their capacity goals. Demand for event space is slower from November to February (excluding peak holidays) and on Sunday and Thursday nights. And an event space may have difficulty reaching its capacity goals for any number of reasons. Whatever the reason for weak demand, an event space will typically respond by lowering its rates.
35. I thus expect that event and meeting prices at the Trump Hotel during slow months and slow days of the week, and whenever a particular event and meeting space is open and time is running short to fill it, are comparable to those of the DC Convention Center.

E. Competition

36. The DC Convention Center and the Trump Hotel are both venues that provide facilities and services for meetings and special events in downtown Washington, DC. An event planner looking for high quality, high class event space with a full range of available services in downtown Washington for a meeting or event for up to 1,200 people could choose either the DC Convention Center or the Trump Hotel subject to availability and comparable pricing. I conclude, therefore, that subject to availability and comparable pricing, the DC Convention Center and the Trump Hotel compete for meetings and special events for up to 1,200 people.

VI. The MGM National Harbor Hotel and the Trump International Hotel DC Compete with Each Other

37. The 308-room MGM Hotel opened in December 2016 at National Harbor in Oxon Hill, Maryland. The MGM Hotel is a \$1.3 billion integrated casino resort complex located approximately 10 miles from downtown Washington, DC and seven miles from Reagan National Airport. The hotel has over 28,000 square feet of meeting space which includes a 16,000 square foot ballroom that seats up to 1000 guests; it has nine restaurants and a 3,000 seat arena. The 125,000 square foot casino has capacity for 9,000 gamblers.
38. The National Harbor complex is a 350-acre mixed-use destination located along 1.5 miles of the Potomac River in Prince George's County, Maryland. In addition to the MGM Hotel, National Harbor includes the Gaylord Hotel, the Tanger Outlets, six additional hotels, hundreds of residential and office units, more than 160 shops, more than 40 restaurants, a marina, and The Capital Wheel – a 180-foot observation wheel featuring panoramic views of the nation's capital.

A. Location

39. The MGM Hotel is located in Oxon Hill, Maryland, approximately 10 miles south of the Trump Hotel (a 15-20 minute cab ride without traffic). Although the MGM hotel and the Trump Hotel are in different locations, both facilities are accessible to a common set of demand generators. These demand generators include Washington, DC tourist attractions, federal government agencies or installations in Prince George's County, such as Andrews Air Force Base, and federal agencies in Arlington and Alexandria,

Virginia, and Suitland, Maryland, such as the Pentagon, the U.S Patent & Trademark Office, and the U.S. Census Bureau. Distances to these federal agencies are as follows:

- a. Andrews Air Force Base: 10 miles from the MGM Hotel; 13 miles from the Trump Hotel;
- b. Pentagon: 10 miles from the MGM Hotel; 3.5 miles from the Trump Hotel;
- c. U.S. Patent & Trademark Office: 6 miles from the MGM Hotel; 8.7 miles from the Trump Hotel; and
- d. U.S. Census Bureau: 8 miles from the MGM Hotel; the Trump Hotel is one block from the main office of the Department of Commerce (which (organizationally) includes the Census Bureau). (The Census Bureau could decide to hold a meeting or conference near its office in Suitland, Maryland or near the Commerce Department building in downtown D.C.)

40. The two hotels are accessible to national and local groups seeking meeting or event space in the Washington, DC metropolitan area. Reagan National Airport is located between the two hotels, about four miles from the Trump Hotel and seven miles from the MGM Hotel. Because of its location within National Harbor, the MGM Hotel is within walking distance of numerous restaurants and retail shops, and, as noted, the hotel includes a casino. In addition, National Harbor is a taxi ride from Washington, DC attractions such as the National Mall and many museums. Similarly, given the Trump Hotel's location in downtown Washington, DC, it is also close to numerous restaurants, retail shops, District of Columbia tourist attractions, and federal government agencies.

B. Facilities, Services, and Amenities

41. Both the MGM Hotel and the Trump Hotel are full-service, higher-end hotel facilities. Both hotels provide luxuriously appointed guest rooms and suites and ample meeting space. The Trump Hotel has a 13,200 square foot ballroom and a total of 38,000 square feet of meeting and event spaces, compared to the MGM's 16,000 square foot ballroom and a total of over 28,000 square feet of meeting and event spaces. Both the MGM Hotel and the Trump Hotel provide attractive, clean, well lit, technologically supported facilities with sufficient equipment to do a variety of room set ups as needed, and with an efficient staff that can handle large and small groups. Both venues have meeting rooms with high ceilings which enhances audiovisual projection. Both hotels provide a minimum of three meals/day at on-site food and beverage facilities. Both provide 24/7 room service, bathrobes, and turn down services to hotel guests. Both include a fitness center and spa. Both provide similar amenities such as high-speed Internet access in all rooms, complimentary Wi-Fi in public areas, laundry and valet services, and a concierge desk. As such, the two hotels provide comparable facilities, services, and amenities.

C. Class and Image

42. The MGM Hotel and the Trump Hotel are of similar class and image. According to Macomber International's consulting report presented to the Maryland Lottery and Gaming Control Commission's Video Lottery Facility Location Commission in December 2013, the MGM brand is unique and is positioned to serve the "4-star" market. The report states that MGM presents a modern, sophisticated image while offering elements at the 5-star and über, world class quality levels. Both the MGM Hotel and the Trump Hotel offer services typically found in higher-end hotels. For example, both hotels offer deluxe bedding and linens in all guest rooms and suites, business center services, valet, turn down service, and 24/7 concierge. The MGM Hotel and the Trump Hotel are both AAA four diamond hotels; there are currently only 18 hotels with a AAA four diamond rating (including the MGM and the Trump) of approximately 800 hotels in the greater Washington, DC metropolitan area. As of November 6, 2017, the Trump Hotel is ranked 12th of 142 hotels in Washington, DC by TripAdvisor, with a 4.5 star classification based on 539 reviews. As of November 6, 2017, the MGM Hotel is ranked #1 of the 4 Oxon Hill, Maryland hotels ranked on TripAdvisor and has a 3.5 star rating on TripAdvisor based on 268 reviews. The MGM Hotel has nine

restaurants including the first restaurant in the Washington, DC area by celebrity chef Marcus Samuelsson, as well as restaurants by famous local restaurateurs José Andrés and Michael and Bryan Voltaggio. Similarly, the Trump Hotel is home to BLT Prime by Celebrity Chef David Burke. Based on these facts, both venues exhibit comparable class and image.

D. Pricing – Lodging and Banquet/Meeting Space

43. Hotels typically offer a variety of room rates, and these rates differ based on facilities, class and image, seasonal factors, business strategies, and locational advantages. Demand for hotel rooms is seasonal, and the slowest months are November to February. Similarly, such demand varies by day of the week, with the slowest days being Sundays and Thursdays. A hotel may have difficulty reaching its occupancy goals for any number of reasons. Whatever the reason for weak demand, a hotel will normally respond by lowering its rates.
44. For a point of comparison, I reviewed standard rooms/best available rate at the Trump Hotel and the MGM Hotel for a series of dates in January, February, and March 2018, a time period of traditionally weak demand. The room rates at the Trump Hotel, including fees and taxes, ranged from \$540 to \$590. During the same time frame, the room rates at the MGM Hotel, including fees and taxes, ranged from \$300 to \$625. Regardless of any price differential between the hotels, guests attending an event at either hotel may stay overnight if they do not want to drive home or drive to another hotel. And if the hotels are competing for group meeting business from the federal government, they would be competing at the same federal government lodging per diem.² Prince George's County has the same federal government lodging per diem as downtown Washington, DC. Based on these facts, I conclude that both venues charge comparable prices for overnight rooms when the Trump Hotel is experiencing weaker demand and if and when they are competing for federal government group business.
45. Hotels typically offer a range of prices for meetings and special events based on a variety of factors such as the time of year the event is held, the number of attendees, the day of the week the event is held, the event planner's budget, and set up time required. The cost of a plated 3-course dinner at the MGM Hotel is in the range of \$80 to \$110; the cost of a 3-course plated dinner at the Trump Hotel is in the range of \$95 to \$105. Menu prices for both venues thus are comparable. Hotels may charge a rental fee for event space. Rental fees can vary depending on the time of day, the day of the week, the month of the year, and the amount of food and beverage to be served at the event. Rental fees are usually waived when there are overnight guest rooms utilized in conjunction with the event. Normally, neither the Trump Hotel nor the MGM Hotel charges a room rental fee for events with catered meals such as dinners or receptions if certain revenue thresholds are met. At the MGM Hotel, for smaller meetings of 50 people or fewer with

² The federal government per diem is the daily allowance for lodging, meals, and incidental expenses for federal government employees established by the General Services Administration. Since fiscal year 2005, lodging per diem rates have been based on average daily room rate data collected from properties best representing mid-range hotels in each market and account for seasonality in pricing. For example, the GSA per diem rate for Washington, DC and Prince George's County has been set at \$201 for January and February of 2018 and \$253 for March of 2018. According to Federal Travel Regulations, federal government employees must find lodging at per diem rates. As long as the per diem rate is available, federal government employees can stay at any class of hotel, including a four-diamond hotel. However, if travelers cannot find rooms at the per diem reimbursement rates, the FTR permits reimbursement up to 300% of the applicable maximum per diem rate, pursuant to FTR §§ 301-11.300 through 301-11.306. For example, the per diem multiplier would be granted if a federal government employee travels to a city that is hosting a large, city-wide convention or event, and the only rooms available are priced above the per diem rate.

no overnight lodging, meeting room rental fees range from \$500 to \$1,000 per room per day, depending on the amount of food and beverage ordered for the meeting, the room assigned, and the time of day, the day of the week, and the month of the year in which the event is held. Rental fees at the Trump Hotel for a meeting of 50 people or fewer also depend on these same factors and start at \$750 per room. Thus, both venues charge comparable prices for event and meeting space.

E. Competition

46. The MGM Hotel and the Trump Hotel both provide overnight lodging accommodations, as well as facilities and services for meetings and special events in the Washington, DC metropolitan area. Because the meeting and event spaces of both venues are of a similar class, are comparable in size and amenities, and offer comparable pricing, a meeting or event planner looking for space in the Washington, DC region to hold a meeting, reception, or special event for up to 1,000 people could choose either the MGM Hotel or the Trump Hotel. I conclude that the two venues compete for meetings and special events for up to 1,000 people. This competition for meetings and special events, in turn, can generate overnight guest business, when attendees at meetings and events choose to spend the night at the hotel. Because of the comparable class and image and amenities of each hotel, I further conclude that the MGM Hotel and the Trump Hotel also compete for overnight guests not associated with an event or meeting when their respective room rates are comparable.

VII. The Gaylord Hotel and the Trump Hotel Compete with Each Other

47. The 2,000-room Gaylord Hotel opened in April 2008. It is located at National Harbor in Oxon Hill, Maryland approximately 10.5 miles from downtown Washington (a 20 minute cab ride without traffic) and seven miles from Reagan National Airport. The hotel has extensive facilities including 550,000 square feet of meeting space, two restaurants, three bars, a coffee bar, and retail shops. In addition to its meeting space, the hotel has a fitness center, large indoor pool, and parking for a fee.
48. In recent years, the Gaylord Hotel has rented space to foreign and domestic government entities, such as the Internal Revenue Service and the Saudi Arabian Cultural Mission, an agency of the government of Saudi Arabia.

A. Location

49. The Gaylord Hotel is located in Oxon Hill, Maryland, approximately 10.5 miles south of the Trump Hotel (a 20 minute cab ride without traffic). Although the Gaylord Hotel and the Trump Hotel are in different locations, both facilities are accessible to a common set of demand generators. These demand generators include Washington, DC tourist attractions; federal government agencies; installations in Prince George's County such as Andrews Air Force Base; and federal agencies in Arlington, Virginia, Alexandria, Virginia, and Suitland, Maryland, such as the Pentagon, the U.S Patent and Trademark Office, and the U.S. Census Bureau. Distances to these federal agencies are as follows:
- a. Andrews Air Force Base: 10 miles from the Gaylord Hotel; 13 miles from the Trump Hotel;
 - b. Pentagon: 10 miles from the Gaylord Hotel; 3.5 miles from the Trump Hotel;
 - c. U.S. Patent & Trademark Office: 6 miles from the Gaylord Hotel; 8.7 miles from the Trump Hotel; and
 - d. U.S. Census Bureau: 8 miles from the Gaylord Hotel; the Trump Hotel is one block from the main office of the Department of Commerce.
50. The two hotels are accessible to national and local groups seeking meeting or events space in the Washington, DC metropolitan area. Reagan National Airport is located between the two hotels, about four miles from the Trump Hotel and seven miles from the Gaylord Hotel. Because of its location within National Harbor, the Gaylord Hotel is within walking distance of numerous restaurants, retail shops, and

the MGM Hotel's casino. In addition, it is a taxi ride from Washington, DC attractions such as the National Mall and Smithsonian Museums. Given the Trump Hotel's location in downtown Washington, DC, it is also close to numerous restaurants, retail shops, Washington, DC tourist attractions, and federal government agencies.

B. Facilities, Services, and Amenities

51. Both the Gaylord Hotel and the Trump Hotel are full service, higher end hotel facilities. Both hotels provide nicely appointed guest rooms and suites and ample meeting space. The Trump Hotel has a 13,200 square foot ballroom and a total of 38,000 square feet of meeting and event space compared to the Gaylord's 51,000 square foot Potomac ballroom and 550,000 square feet of total event space. The meeting space on the Gaylord's Ballroom level includes two smaller ballrooms, the Cherry Blossom Ballroom (7,957 square feet) and Woodrow Wilson Ballroom (13,780 square feet), as well as smaller breakout space. These smaller rooms are similar in size to meeting spaces at the Trump Hotel. Both the Gaylord Hotel and the Trump Hotel provide attractive, clean, well lit, technologically supported facilities with sufficient equipment to do a variety of room set ups as needed, and with an efficient staff that can handle large and small groups. Both venues have meetings rooms with high ceilings which enhances audiovisual projection. Both hotels provide a minimum of three meals/day at on-site food and beverage facilities; both provide 24/7 room service, bathrobes, and a fitness center and spa. Both provide similar amenities such as high-speed Internet access in all rooms, complimentary Wi-Fi in public areas, laundry and valet services, and a concierge desk. As such, the two hotels provide comparable facilities, services, and amenities.

C. Class and Image

52. The Gaylord Hotel and the Trump Hotel are of similar class and image. Both hotels offer services typically found in higher end hotels. For example, both hotels offer deluxe bedding and linens in all guest rooms and suites, business center services, valet parking, room service, and a concierge. The Trump Hotel, given its extensive recent renovation, does have larger bathrooms, many with both a shower and a bathtub. Despite these differences, the Gaylord Hotel and the Trump Hotel are both AAA four diamond hotels. As of November 6, 2017, the Trump Hotel is ranked the 12th best of 142 hotels in Washington, DC by TripAdvisor, with a 4.5 star classification based on 539 reviews. As of November 6, 2017, the Gaylord is ranked #2 of 5 National Harbor hotels ranked on TripAdvisor and has a 4 star rating based on 4,625 reviews. Based on these facts, both venues exhibit comparable class and image.

D. Pricing – Lodging and Banquet/Meeting Space

53. Hotels typically offer a variety of room rates, and these rates differ based on facilities, class and image, seasonal factors, business strategies, and locational advantages. Demand for hotel rooms is seasonal, and the slowest months are November to February. Similarly, such demand varies by day of the week, with the slowest days being Sundays and Thursdays. A hotel may have difficulty reaching its occupancy goals for any number of reasons. Whatever the reason for weak demand, a hotel will normally respond by lowering its rates.
54. For a point of comparison, I reviewed standard rooms/best available rate for a series of dates in January, February, and March 2018, a period of traditionally weak demand. The room rates at the Trump Hotel, including fees and taxes, ranged from \$540 to \$590. During the same time frame, the room rates at the Gaylord Hotel, including fees and taxes, ranged from \$325 to \$450. If the hotels are competing for group meeting business from the federal government, they would be competing at the same federal government lodging per diem. Prince George's County has the same federal government lodging per diem as downtown Washington, DC. Based on these facts, I conclude that both venues charge comparable prices

when the Trump Hotel is experiencing weaker demand and if and when they are competing for federal government group business.

55. Hotels typically offer different pricing for meetings and special events based on a variety of factors such as the time of year the event is held, the number of attendees, the day of the week the event is held, the event planner's budget, and set up time required. The cost of a plated 3-course dinner at the Gaylord Hotel is in the range of \$87 to \$120; the cost of a 3-course plated dinner at the Trump Hotel is in the range of \$95 to \$105. Menu prices for both venues thus are comparable. Hotels may charge a rental fee for the use of its event space. Rental fees can vary depending on the time of day, the day of the week, the month of the year, and the amount of food and beverage to be served at the event. Rental fees are usually waived when there are overnight guest rooms utilized in conjunction with the event. Normally, neither the Trump Hotel nor the Gaylord Hotel charges a room rental fee for events with catered meals such as dinners or receptions if certain revenue thresholds are met. At the Gaylord Hotel, for smaller meetings of 50 people or fewer with no overnight lodging, meeting room rental fees range from \$500 to \$1,000 per room per day, depending on the amount of food and beverage ordered, the room assigned, and the time of day, the day of the week, and the month of the year in which the event is held. Rental fees at the Trump Hotel for meetings of 50 people or fewer also depend on these same factors and start at \$750 per room. Thus, both venues charge comparable prices for event and meeting space.

E. Competition

56. The Gaylord Hotel and the Trump Hotel both provide overnight lodging accommodations, as well as facilities and services for meetings and special events in the Washington, DC metropolitan area. Because the meeting and event spaces of both venues are of a similar class, are comparable in size and amenities, and offer comparable pricing, a meeting or event planner looking for space in the Washington, DC region to hold a meeting, reception, or special event for up to 1,200 people could choose either the Gaylord Hotel or the Trump Hotel. I conclude that the two venues compete for meetings and special events for up to 1,200 people. This competition for meetings and special events, in turn, can generate overnight guest business, when attendees at meetings and events choose to spend the night at the hotel. Because of the comparable class and image and amenities of each hotel, I further conclude that the Gaylord Hotel and the Trump Hotel also compete for overnight guests not associated with an event or meeting when their respective room rates are comparable.

VIII. There Is Substantial Government Demand for High-Quality Lodging and High-Quality Special Event and Meeting Space in the Washington, DC Metropolitan Area

57. Within a 4.5-mile radius of downtown District of Columbia, where both the Trump Hotel and the DC Convention Center are located, there are 177 foreign embassies and 61 federal buildings, including 15 Cabinet department buildings such as the Department of Justice and the Department of the Treasury. In addition, there are eight federal agencies in Prince George's County within a seven-mile radius of National Harbor, home of the MGM Hotel and the Gaylord Hotel.

58. The federal government spends hundreds of millions of dollars each year on conferences and meetings. According to data published by each federal agency on conferences costing more than \$100,000 each, in FY 2016 (October 1, 2015 to September 30, 2016), the federal government spent approximately \$177 million on 579 conferences costing over \$100,000 each. The government paid the attendance costs for 194,000 attendees, who constitute only a fraction of the total attendance. These data are tracked as a result of the Office of Management and Budget's Memorandum M-12-12 issued in May 2012, which requires federal agencies to report on conferences costing more than \$100,000. These reports must include the location of the conference, the date of the conference, and the total number of individuals

whose travel expenses or other conference expenses were paid by the agency. Office of Management and Budget does not require federal agencies to report on meetings where less than \$100,000 is spent; therefore, the total amount the federal government spent on meetings in FY 2016 is much higher than \$177 million, and the total number of such meetings and attendees far exceeds 579 and 194,000, respectively.

59. The District of Columbia hosted 88 federal meetings (costing over \$100,000) in FY 2016, more than any other city. In FY 2016, the Washington, DC metropolitan area hosted approximately 30% of the 579 federal meetings that cost over \$100,000.
60. Federal government agencies hold meetings and conferences in the Washington, DC metropolitan area on many topics. These meetings and conferences have included education and training seminars, research and scientific symposiums, job orientations, federal agency meetings with small businesses, meetings and receptions with and for foreign diplomats, and meetings to roll out new government initiatives such as healthcare reform.
61. These meetings and events generate substantial demand for high end hotels and high end meeting spaces, as well for quality lodging and event space at federal government per diem rates, in the District of Columbia, and Prince George's County, Maryland. For example, the annual and spring meetings of the World Bank and the International Monetary Fund are held in the District of Columbia and generate demand for overnight lodging and meeting space at many hotels and event spaces throughout the city. The annual meeting is held in the District of Columbia two out of every three years, while the spring meeting is held every year in the District of Columbia. About 10,000 people attend the meetings, including about 3,500 members of delegations from the member countries of the World Bank and the IMF, and approximately 1,000 representatives of both domestic and international media. These meetings generate government demand for high end hotels and high quality event spaces in the Washington, DC metropolitan area.
62. According to the Bureau of Labor Statistics, in the Washington, DC metropolitan region, there are over 700,000 workers directly or indirectly employed by the federal government or federal government contractors. According to the Brookings Institution, the Washington DC metropolitan area has a \$400 billion economy which substantially consists of the provision of services, particularly by the federal government. Through direct employment and other spending, the federal government accounts for 38 percent of economic output in the Washington, DC metropolitan area. Hotels and event facilities garner the majority of their transient and conference demand through employers, large and small, located in their immediate area. Because the federal government and its contractors generate a substantial portion of the economic activity in the Washington, DC metropolitan area, government activities are a very important source of demand for both hotels and restaurants in the area.
63. Foreign embassies in the District of Columbia use meeting and event space at hotels and other venues in the District of Columbia for a variety of purposes including meetings, dinners, and receptions. Most foreign embassies in the District of Columbia host a "National Day." National Day is a designated date to celebrate the nation's Independence Day or its founding as a republic, or to honor a patron saint or revered ruler. Many embassies do not have the space to host celebrations on-site and frequently use hotels. For example, Albania celebrated its Independence Day at the Marriott Wardman Park in November 2012, Oman celebrated its National Day at the Four Seasons in the District of Columbia in November 2012, and the Philippines hosted its National Day at the Hay Adams in the District of Columbia in June 2013. The Bahrain and Kuwaiti embassies celebrated their National Days at the Trump Hotel in

December 2016 and February 2017, respectively. The Trump Hotel hosted the Prime Minister of Malaysia and a retinue of Malaysian diplomats in September 2017.

64. In sum, the federal government and foreign embassies generate substantial meeting, special event, and lodging demand, including high-end demand and federal government per diem demand, in the District of Columbia and in the adjacent suburbs, including Prince George's County. Given this substantial government demand, and the competition between the Trump Hotel and the other venues discussed above, I conclude that this competition includes competition for government business.

IX. The Trump Hotel Has Outperformed Both Its Budget and Its Competitive Set

65. A hotel's monthly Income Statement, prepared by the hotel manager, typically compares the hotel's budgeted income to actual income, by month and year-to-date. A hotel's annual budget is typically prepared prior to the beginning of the budget year.

66. I have reviewed the monthly income statement for April 2017 for the Trump Hotel. This statement shows that actual year-to-date performance substantially exceeded the budgeted year-to-date performance for all key factors: Occupancy; Average Daily Room Rate; Rooms Revenue; Food and Beverage Revenue; Gross Operating Profit; and Net Operating Income. The following table presents this data.

	April 2017 Year-To-Date Actual	April 2017 Year-To-Date Budget	Variance %
Occupancy	44.9%	40.6%	4.3%
Average Daily Room Rate	\$652.98	\$416.19	56.9%
Rooms Revenues	\$9,254,000	\$5,333,000	73.5%
Food & Beverage Revenue	\$8,236,000	\$6,002,000	37.2%
Gross Operating Profit	\$3,750,000	(\$395,000)	>500%
Net Operating Income	\$1,965,000	(\$2,137,000)	192%

67. In addition to comparing their actual and budgeted operating performance, hotels often compare their actual occupancy and average daily room rate to the average occupancy and average daily room rate of a set of hotels they select as their closest competitors. Hotels determine the occupancy and average daily rate of his set of rivals by requesting Smith Travel Research reports that provide this information aggregated across these rivals. Smith Travel Research collects data monthly from a large number of hotels nationwide. The April 2017 year-to-date Smith Travel Research report obtained by the Trump Hotel shows

that the hotel underperformed its closest rivals in occupancy, but far exceeded the rivals' average daily room rates. A low occupancy is typical for hotels in their first two to three years of operation as they ramp up their business. The Trump Hotel's low occupancy rate relative to its closest rivals in the first four months of 2017 is not surprising given that it opened in September 2016. A new hotel also often has a lower average daily room rate compared to its more established rivals. Yet, in the first four months of 2017, the Trump Hotel far exceeded the average daily room rate of the set of more established hotels that it identified as its closest rivals.

68. The following table provides the occupancy and average daily room rate figures as reported to Smith Travel Research for the Trump Hotel and for the set of rivals selected by the Trump Hotel:

Year-To-Date April 2017	Trump Hotel	Competitive Set
Occupancy	44.4%	69.5%
Average Daily Room Rate	\$660.28	\$495.91

This comparison shows that the guests staying at the Trump Hotel have been willing to pay a premium price above the rates of the Trump Hotel's closest competitors, as defined by the Trump Hotel.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th day of November, 2017 in Boston, Massachusetts.

Rachel J Roginsky

APPENDIX A

Facilities Comparison Chart

	Total Meeting Space (SF)	Largest Meeting/Ball room	Largest Room Seated Meal Capacity	Largest Room Reception Capacity	Largest Room Meeting Capacity	Other Meeting Space (SF)
Trump Hotel	20,479	13,200	1,200	1,335	660	7,279
DC Convention Center	2,300,000	52,000	2,780	4,000	2,460	2,248,000
Gaylord Hotel Nat'l Harbor	546,889	51,402	3,000	5,100	5,500	495,487
MGM National Harbor	27,231	16,137	840	1,000	1,000	11,094

(A) All measurements are in square feet

Source: Hotel & venue websites

	Host Meal for 1000	Host Reception for 1000	Host Meeting for 500	Breakout Meeting space for 500
Trump Hotel	✓	✓	✓	✓
DC Convention Center	✓	✓	✓	✓
Gaylord Hotel Nat'l Harbor	✓	✓	✓	✓
MGM National Harbor	✓	✓	✓	✓

Source: Hotel & venue websites