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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NUE LLC d/b/a NUE SEATTLE, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

OREGON MUTUAL INSURANCE
COMPANY,

Defendant.

No.

COMPLAINT—CLASS ACTION

JURY DEMAND

I. INTRODUCTION

Plaintiff NUE LLC d/b/a NUE SEATTLE (“NUE”) individually and on behalf of all other similarly situated members of the defined national class and the defined Washington subclasses (the “Class Members”), by and through the undersigned attorneys, brings this class action against Defendant Oregon Mutual Insurance Company (“Defendant” or “Oregon Mutual”) and alleges as follows based on personal knowledge and information and belief:

II. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one member of the proposed Class and

1 13. Oregon Mutual Businessowners Property Coverage promises to pay Plaintiff for
2 risks of “direct physical loss of or damage” to covered property and includes coverage for risks
3 of “loss of or damage to” covered property.

4 14. Oregon Mutual’s Businessowners Property Coverage provides Plaintiff with
5 Business Income Coverage, Extended Business Income Coverage, Extra Expense Coverage,
6 Civil Authority Coverage, and Ingress Or Egress Coverage.
7

8 15. Plaintiff paid all premiums for the coverage when due.

9 16. On or about January 2020, the United States of America saw its first cases of
10 persons infected by COVID-19, which has been designated a worldwide pandemic.

11 17. On February 29, 2020, Washington Governor Jay Inslee issued Proclamation 20-
12 5, declaring a State of Emergency for all counties in the state of Washington as the result of
13 COVID-19. Thereafter, he issued a series of certain proclamations and orders affecting many
14 persons and businesses in Washington, whether infected with COVID-19 or not, requiring
15 certain public health precautions.
16

17 18. On March 16, 2020, Governor Inslee issued Proclamation 20-13, “Statewide
18 Limits: Food and Beverage Services, Areas of Congregation.” The proclamation prohibits “any
19 number of people from gathering in any public venue in which people congregate for purposes of
20 . . . food and beverage service[.]” The proclamation prohibits “the onsite consumption of food
21 and/or beverages in a public venue” from March 17, 2020, to March 31, 2020.
22

23 19. Proclamation 20-13 does not prohibit prepared food or beverages “legally
24 delivered or taken out of the venue for consumption or the purchasing of groceries that are not
25 consumed within the premises, more commonly known as drive-through, take-out, and delivery
26 services.”

1 20. On March 23, 2020, Governor Inslee issued Proclamation 20-25, “Stay Home—
2 State Healthy.” The proclamation, which amends Proclamation 20-13, requires that “[a]ll people
3 in Washington State [] immediately cease leaving their home or place of residence except: (1) to
4 conduct or participate in essential activities, and/or (2) for employment in essential business
5 activities.” The proclamation prohibits “all non-essential businesses in Washington State from
6 conducting business, within the limitations provided herein.”
7

8 21. Proclamation 20-25 allows for restaurants and food services to operate only to
9 “provid[e] delivery or take-away services” and “so long as proper social distancing and
10 sanitation measures are established and implemented.”
11

12 22. Governor Inslee has extended Proclamation 20-25 until May 31, 2020.

13 23. By order of Governor Inslee, restaurants including Plaintiff were prohibited from
14 operating their businesses except according to the terms of the proclamations and orders.

15 24. Since Governor Inslee’s order on March 17, Nue has been unable to have
16 customers enter into its dining room or eat any meals on its premises.

17 25. Nue has not been able to use its restaurant for its full insured purposed of sit-
18 down dining and full-service bar.

19 26. No COVID-19 virus has been detected on Plaintiff’s business premises.

20 27. Plaintiff’s property has sustained direct physical loss and/or damages related to
21 COVID-19 and/or the proclamations and orders.
22

23 28. Plaintiff’s property will continue to sustain direct physical loss or damage covered
24 by the Oregon Mutual policy or policies, including but not limited to business interruption, extra
25 expense, interruption by civil authority, and other expenses.

26 29. Plaintiff’s property cannot be used for its intended purposes.

1 30. As a result of the above, Plaintiff has experienced and will experience loss
2 covered by the Oregon Mutual policy or policies.

3 31. Plaintiff filed a claim on March 24, 2020 for losses covered by the Policy. Oregon
4 Mutual denied coverage on April 10, 2020 by letter to Plaintiff.

5 32. Oregon Mutual's April 10, 2020 denial letter to Nue states:

6
7 Oregon Mutual Insurance has completed its investigation into your claimed loss. Please
8 be advised that Oregon Mutual Insurance can find no coverage . . . for your loss resulting
9 from the COVID-19 event.

10 . . .

11 Your loss appears to have been caused by the COVID-19 event. Our investigation
12 determined that there was no direct physical loss of or damage to property. Because there
13 is no direct physical loss or damage to property, there is no coverage[.]

14 33. Upon information and belief, Oregon Mutual has denied and will deny coverage
15 to other similarly situated policyholders.

16 V. CLASS ACTION ALLEGATIONS

17 34. This matter is brought by Plaintiff on behalf of itself and those similarly situated,
18 under Federal Rules of Civil Procedure 23(b)(1), 23(b)(2), and 23(b)(3).

19 35. The Classes and Subclasses that Plaintiff seeks to represent are defined as:

20 A. ***Business Income Coverage Breach of Contract Class:*** All persons and
21 entities in the United States insured under an Oregon Mutual policy with Business
22 Income Coverage who suffered a suspension of their business at the covered premises
23 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or
24 other civil authorities and whose Business Income claim has been denied by Oregon
25 Mutual.

1 B. ***Business Income Coverage Breach of Contract Washington Subclass:***

2 All persons and entities in the State of Washington insured under an Oregon Mutual
3 policy with Business Income Coverage who suffered a suspension of their business at the
4 covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or
5 other civil authorities and whose Business Income claim has been denied by Oregon
6 Mutual.
7

8 C. ***Business Income Coverage Declaratory Relief Class:*** All persons and

9 entities in the United States insured under an Oregon Mutual policy with Business
10 Income Coverage who suffered a suspension of their business at the covered premises
11 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or
12 other civil authorities.
13

14 D. ***Business Income Coverage Declaratory Relief Washington Subclass:*** All

15 persons and entities in the State of Washington insured under an Oregon Mutual policy
16 with Business Income Coverage who suffered a suspension of their business at the
17 covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or
18 other civil authorities.
19

20 E. ***Extended Business Income Breach of Contract Class:*** All persons and

21 entities in the United States insured under an Oregon Mutual policy with Extended
22 Business Income coverage who suffered a suspension of their business at the covered
23 premises related to COVID-19 and/or orders issued by Governor Inslee, other Governors,
24 and/or other civil authorities and whose Extended Business Income claim has been
25 denied by Oregon Mutual.
26

1 F. ***Extended Business Income Breach of Contract Washington Subclass:***

2 All persons and entities in the State of Washington insured under an Oregon Mutual
3 policy with Extended Business Income coverage who suffered a suspension of their
4 business at the covered premises related to COVID-19 and/or orders issued by Governor
5 Inslee, and/or other civil authorities and whose Extended Business Income claim has
6 been denied by Oregon Mutual.
7

8 G. ***Extended Business Income Declaratory Relief Class:*** All persons and

9 entities in the United States insured under an Oregon Mutual policy with Extended
10 Business Income coverage who suffered a suspension of their business at the covered
11 premises due to COVID-19 related to COVID-19 and/or orders issued by Governor
12 Inslee, other Governors, and/or other civil authorities.
13

14 H. ***Extended Business Income Declaratory Relief Washington Subclass:*** All

15 persons and entities in the State of Washington insured under an Oregon Mutual policy
16 with Extended Business Income coverage who suffered a suspension of their business at
17 the covered premises due to COVID-19 related to COVID-19 and/or orders issued by
18 Governor Inslee, and/or other civil authorities.
19

20 I. ***Extra Expense Breach of Contract Class:*** All persons and entities in the

21 United States insured under an Oregon Mutual policy with Extra Expense coverage who
22 incurred expenses while seeking to minimize losses from the suspension of business at
23 the covered premises in connection with COVID-19 and/or orders issued by Governor
24 Inslee, other Governors, and/or other civil authorities and whose Extra Expense claim has
25 been denied by Oregon Mutual.
26

1 J. ***Extra Expense Breach of Contract Washington Subclass:*** All persons
2 and entities in the State of Washington insured under an Oregon Mutual policy with Extra
3 Expense coverage who incurred expenses while seeking to minimize losses from the
4 suspension of business at the covered premises in connection with COVID-19 and/or
5 orders issued by Governor Inslee, and/or other civil authorities and whose Extra Expense
6 claim has been denied by Oregon Mutual.
7

8 K. ***Extra Expense Declaratory Relief Class:*** All persons and entities in the
9 United States insured under an Oregon Mutual policy with Extra Expense coverage who
10 incurred expenses while seeking to minimize losses from the suspension of their business
11 at the covered premises in connection with COVID-19 and/or orders issued by Governor
12 Inslee, other Governors, and/or other civil authorities.
13

14 L. ***Extra Expense Declaratory Relief Washington Subclass:*** All persons and
15 entities in the State of Washington insured under an Oregon Mutual policy with Extra
16 Expense coverage who incurred expenses while seeking to minimize losses from the
17 suspension of their business at the covered premises in connection with COVID-19
18 and/or orders issued by Governor Inslee, and/or other civil authorities.
19

20 M. ***Civil Authority Breach of Contract Class:*** All persons and entities in the
21 United States insured under an Oregon Mutual policy with Civil Authority coverage who
22 suffered a loss of business income and/or extra expense related to the impact of COVID-
23 19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
24 authorities and whose Civil Authority claim has been denied by Oregon Mutual.
25

26 N. ***Civil Authority Breach of Contract Washington Subclass:*** All persons
and entities in the State of Washington insured under an Oregon Mutual policy with Civil

1 Authority coverage who suffered a loss of business income and/or extra expense related
2 to the impact of COVID-19 and/or orders issued by Governor Inslee, and/or other civil
3 authorities and whose Civil Authority claim has been denied by Oregon Mutual.

4 O. ***Civil Authority Declaratory Relief Class:*** All persons and entities in the
5 United States insured under an Oregon Mutual policy with Civil Authority coverage who
6 suffered a loss of business income and/or extra expense related to COVID-19 and/or
7 orders issued by Governor Inslee, other Governors, and/or other civil authorities.

8 P. ***Civil Authority Declaratory Relief Washington Subclass:*** All persons and
9 entities in the State of Washington insured under an Oregon Mutual policy with Civil
10 Authority coverage who suffered a loss of business income and/or extra expense related
11 to the impact of COVID-19 19 and/or orders issued by Governor Inslee, and/or other civil
12 authorities.

13 Q. ***Ingress Or Egress Coverage Breach of Contract Class:*** All persons and
14 entities in the State of Washington insured under an Oregon Mutual policy with Ingress
15 Or Egress coverage who suffered a loss of business income and/or extra expense related
16 to the impact of COVID-19 19 and/or orders issued by Governor Inslee, and/or other civil
17 authorities.

18 R. ***Ingress Or Egress Coverage Breach of Contract Washington Subclass:***
19 All persons and entities in the State of Washington insured under an Oregon Mutual
20 policy with Ingress Or Egress coverage who suffered a loss of business income and/or
21 extra expense related to the impact of COVID-19 19 and/or orders issued by Governor
22 Inslee, and/or other civil authorities.
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1 S. ***Ingress Or Egress Coverage Declaratory Relief Class:*** All persons and
2 entities in the State of Washington insured under an Oregon Mutual policy with Ingress
3 Or Egress coverage who suffered a loss of business income and/or extra expense related
4 to the impact of COVID-19 19 and/or orders issued by Governor Inslee, and/or other civil
5 authorities.

6 T. ***Ingress and Egress Coverage Declaratory Relief Washington Subclass:***
7 All persons and entities in the State of Washington insured under an Oregon Mutual
8 policy with Ingress Or Egress coverage who suffered a loss of business income and/or
9 extra expense related to the impact of COVID-19 19 and/or orders issued by Governor
10 Inslee, and/or other civil authorities.

11 36. Excluded from the Classes and Subclasses are Defendant’s officers, directors, and
12 employees; the judicial officers and associated court staff assigned to this case; and the
13 immediate family members of such officers and staff. Plaintiff reserves the right to amend the
14 Class definition based on information obtained in discovery.

15 37. This action may properly be maintained on behalf of each proposed Class under
16 the criteria of Rule 23 of the Federal Rules of Civil Procedure.

17 38. **Numerosity:** The members of the Class are so numerous that joinder of all
18 members would be impractical. Plaintiff is informed and believes that each proposed Class and
19 Subclass contains hundreds of members. The precise number of class members can be
20 ascertained through discovery, which will include Defendant’s records of policyholders.

21 39. **Commonality and Predominance:** Common questions of law and fact
22 predominate over any questions affecting only individual members of the Class. Common
23 questions include, but are not limited to, the following:

1 A. Whether the class members suffered covered losses based on common
2 policies issued to members of the Class and Subclass;

3 B. Whether Oregon Mutual acted in a manner common to the Class and
4 Subclass by wrongfully denying claims for coverage relating to COVID-19 and/or orders
5 issued by Governor Inslee, other Governors, and/or other civil authorities;

6 C. Whether Business Income coverage in Oregon Mutual's policies of
7 insurance applies to a suspension of practice relating to COVID-19 and/or orders issued
8 by Governor Inslee, other Governors, and/or other civil authorities;

9 D. Whether Extended Business Income coverage in Oregon Mutual's policies
10 of insurance applies to a suspension of practice relating to COVID-19 and/or orders
11 issued by Governor Inslee, other Governors, and/or civil authorities;

12 E. Whether Extra Expense coverage in Oregon Mutual's policies of
13 insurance applies to efforts to minimize a loss relating to COVID-19 and/or orders issued
14 by Governor Inslee, other Governors, and/or other civil authorities;

15 F. Whether Civil Authority coverage in Oregon Mutual's policies of
16 insurance applies to a suspension of practice relating to COVID-19 and/or orders issued
17 by Governor Inslee, other Governors, and/or civil authorities;

18 G. Whether Ingress Or Egress coverage in Oregon Mutual's policies of
19 insurance applies to a suspension of practice relating to COVID-19 and/or orders issued
20 by Governor Inslee, other Governors, and/or civil authorities;

21 H. Whether Oregon Mutual has breached its contracts of insurance through a
22 blanket denial of all claims based on business interruption, income loss or closures
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1 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or
2 other civil authorities;

3 I. Whether, because of Defendant's conduct, Plaintiff and the class members
4 have suffered damages; and if so, the appropriate amount thereof; and

5 J. Whether, because of Defendant's conduct, Plaintiff and the class members
6 are entitled to equitable and declaratory relief, and if so, the nature of such relief.
7

8 40. **Typicality:** Plaintiff's claims are typical of the claims of the members of the
9 classes. Plaintiff and all the members of the classes have been injured by the same wrongful
10 practices of Oregon Mutual. Plaintiff's claims arise from the same practices and course of
11 conduct that give rise to the claims of the members of the Class and are based on the same legal
12 theories.
13

14 41. **Adequacy:** Plaintiff will fully and adequately assert and protect the interests of
15 the classes and has retained class counsel who are experienced and qualified in prosecuting class
16 actions. Neither Plaintiff nor its attorneys have any interests contrary to or in conflict with the
17 Class.
18

19 42. **Federal Rule of Civil Procedure 23(b)(1), the Risk of Inconsistent or Varying**
20 **Adjudications and Impairment to Other Class Members' Interests:** Plaintiff seeks
21 adjudication as to the interpretation, and resultant scope, of Defendant's policies, which are
22 common to all members of the class. The prosecution of separate actions by individual members
23 of the classes would risk inconsistent or varying interpretations of those policy terms and create
24 inconsistent standards of conduct for Defendant. The policy interpretations sought by Plaintiff
25 could also impair the ability of absent class members to protect their interests.
26

1 43. **Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:**

2 Defendant acted or refused to act on grounds generally applicable to Plaintiff and other members
3 of the proposed classes making injunctive relief and declaratory relief appropriate on a classwide
4 basis.

5 44. **Federal Rule of Civil Procedure 23(b)(3), Superiority:** A class action is

6 superior to all other available methods of the fair and efficient adjudication of this lawsuit. While
7 the aggregate damages sustained by the classes are likely to be in the millions of dollars, the
8 individual damages incurred by each class member may be too small to warrant the expense of
9 individual suits. Individual litigation creates a risk of inconsistent and/or contradictory decisions
10 and the court system would be unduly burdened by individual litigation of such cases. A class
11 action would result in a unified adjudication, with the benefits of economies of scale and
12 supervision by a single court.
13
14

15 **VI. CAUSES OF ACTION**

16 **Count One—Declaratory Judgment**

17 *(Brought on behalf of the Business Income Coverage Declaratory Relief Class,*
18 *Business Income Coverage Declaratory Relief Washington Subclass, Extended Business*
19 *Income Declaratory Relief Class, Extended Business Income Declaratory Relief Washington*
20 *Subclass, Extra Expense Declaratory Relief Class, Extra Expense Declaratory Relief*
21 *Washington Subclass, Civil Authority Declaratory Relief Class, Civil Authority Declaratory*
22 *Relief Washington Subclass, Ingress Or Egress Declaratory Relief Class, and Ingress Or*
23 *Egress Declaratory Relief Washington Subclass)*

24 45. Previous paragraphs alleged are incorporated herein.

25 46. This is a cause of action for declaratory judgment pursuant to the Declaratory
26 Judgment Act, codified at 28 U.S.C. § 2201.

 47. Plaintiff brings this cause of action on behalf of the Business Income Coverage
Declaratory Relief Class, Business Income Coverage Declaratory Relief Washington Subclass,

1 Extended Business Income Declaratory Relief Class, Extended Business Income Declaratory
2 Relief Washington Subclass, Extra Expense Declaratory Relief Class, and Extra Expense
3 Declaratory Relief Washington Subclass, Civil Authority Declaratory Relief Class, Civil
4 Authority Declaratory Relief Washington Subclass, Ingress Or Egress Declaratory Relief Class,
5 and Ingress Or Egress Declaratory Relief Washington Subclass.
6

7 48. Plaintiff seeks a declaratory judgment declaring that Plaintiff's and class members
8 losses and expenses resulting from the interruption of their business are covered by the Policy.

9 49. Plaintiff seeks a declaratory judgment declaring that Oregon Mutual is responsible
10 for timely and fully paying all such claims.

11 **Count Two—Breach of Contract**

12 *(Brought on behalf of the Business Income Coverage Breach of Contract Class,*
13 *Business Income Coverage Breach of Contract Washington Subclass, Extended Business*
14 *Income Breach of Contract Class, Extended Business Income Breach of Contract Washington*
15 *Subclass, Extra Expense Breach of Contract Class, Extra Expense Breach of Contract*
16 *Washington Subclass Civil Authority Breach of Contract Class, Civil Authority Breach of*
Contract Washington Subclass, Ingress Or Egress Breach of Contract Class, and Ingress Or
Egress Breach of Contract Washington Subclass)

17 50. Previous paragraphs alleged are incorporated herein.

18 51. Plaintiff brings this cause of action on behalf of the Business Income Coverage
19 Breach of Contract Class, Business Income Coverage Breach of Contract Washington Subclass,
20 Extended Business Income Breach of Contract Class, Extended Business Income Breach of
21 Contract Washington Subclass, Extra Expense Breach of Contract Class, Extra Expense Breach
22 of Contract Washington Subclass, Civil Authority Breach of Contract Class, Civil Authority
23 Breach of Contract Washington Subclass, Ingress Or Egress Breach of Contract Class, and
24 Ingress Or Egress Breach of Contract Washington Subclass.
25
26

1 DATED this 5th day of May, 2020.

2 KELLER ROHRBACK L.L.P.

3 By: s/ Amy Williams-Derry

4 By: s/ Lynn L. Sarko

5 By: s/ Gretchen Freeman Cappio

6 By: s/ Irene M. Hecht

7 By: s/ Ian S. Birk

8 By: s/ Maureen Falecki

9 By: s/ Nathan Nanfelt

10 Amy Williams-Derry, WSBA #28711

11 Lynn L. Sarko, WSBA #16569

12 Gretchen Freeman Cappio, WSBA #29576

13 Irene M. Hecht, WSBA #11063

14 Ian S. Birk, WSBA #31431

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4818-9051-6411, v. 2