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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**

17 STEVEN BAKER AND MELANIA KANG
18 D/B/A CHLOE'S CAFE, a California general
19 partnership, individually and on behalf of
20 themselves and all others similarly situated,

20 Plaintiff,

21 vs.

22 OREGON MUTUAL INSURANCE
23 COMPANY, an Oregon Corporation,

24 Defendant.

Case No.

**CLASS ACTION COMPLAINT
DEMAND FOR JURY TRIAL**

1. Declaratory Judgment – Business Income Coverage
2. Declaratory Judgment – Civil Authority Coverage
3. Declaratory Judgment – Extra Expense Coverage
4. Declaratory Judgment – Business Income From Dependent Properties Coverage

1 Plaintiff, Steven Baker and Melania Kang d/b/a Chloe's Cafe (together, "Chloe's Cafe"
2 or "Plaintiff"), by and through its undersigned attorneys, brings this action on behalf of
3 themselves and all others similarly situated against Defendant Oregon Mutual Insurance
4 Company ("Oregon Mutual" or "Defendant"):

5 **INTRODUCTION**

6 1. This is a class action brought by Plaintiff Chloe's Cafe against Defendant Oregon
7 Mutual, related to insurance policies that insure Plaintiff's properties, business operations, and
8 potential liability in connection with Plaintiff's business operations. These insurance policies
9 include Business Income coverage, Extra Expense coverage, coverage for loss due to the actions
10 of a Civil Authority, and Business Income and Business Income from Dependent Properties
11 coverage, but do not contain any exclusions for viruses such as COVID-19.

12 2. Plaintiff is a small business that purchased Oregon Mutual's insurance policy and
13 made premium payments for a policy that, in the event of a catastrophe requiring a shutdown of
14 business operations, would require Oregon Mutual's to honor its contractual obligation to
15 provide coverage. In March 2020, such a catastrophe took place when Plaintiff was forced to
16 close its retail businesses due to the COVID-19 pandemic. All across the country, including in
17 San Francisco, California, government authorities issued closure orders to retail establishments,
18 including the business operated by Chloe's Cafe, in an effort to stop the rapid spread of the
19 deadly COVID-19 virus. Orders from Civil Authorities requiring businesses to close have
20 resulted in massive losses to businesses throughout the country. As a result, many insureds,
21 including Plaintiff, filed claims for Business Income coverage, Extra Expense coverage,
22 coverage for losses due to the actions of a Civil Authority, and Business Income from
23 Dependent Properties.

24 3. In response to the business interruption claims filed by Plaintiff and thousands of
25 other class members resulting from the COVID-19 pandemic, Defendant Oregon Mutual has
26 systematically denied and continues to deny and refuses to provide payment for insurance
27 claims for coverage for similar losses and expenses by insureds holding policies that are, in all
28 material respects, identical. Defendant's decision to not provide coverage and/or its decision to

1 refuse to pay claims under the common policy forms issued to Plaintiff and the putative class
2 members constitutes a breach of contract and provides them with the right to seek a declaratory
3 judgment pursuant to 28 U.S.C. § 2201(a) on behalf of itself and the class members establishing
4 that they are entitled to receive the benefit of the insurance coverage it purchased and for
5 indemnification of the businesses losses it has sustained.

6 **PARTIES, JURISDICTION AND VENUE**

7 4. Steven Baker and Melania Kang are co-owners of a small business, “Chloe’s
8 Café,” located in San Francisco, California, organized under the laws of California as a general
9 partnership, with a principal place of business in San Francisco, California. Both Baker and
10 Kang are residents of San Francisco, California.

11 5. Defendant Oregon Mutual is an Oregon business corporation with its principal
12 place of business in McMinnville, Oregon. Oregon Mutual Insurance is an insurance company
13 engaged in the business of selling insurance contracts to commercial entities such as Plaintiff in
14 California and across the country.

15 6. At all times material, Oregon Mutual engaged in substantial and not isolated
16 activity on a continuous and systematic basis in the state of California by issuing and selling
17 insurance policies in California and by contracting to insure property located in California.

18 7. This Court has subject matter jurisdiction over this action under 28 U.S.C. §
19 1332(a) because it involves citizens of different states and the amount in controversy exceeds
20 \$75,000.

21 8. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d) because
22 there is diversity between Defendant and at least one member of each class; there are more than
23 one hundred members of each class; and the amount in controversy exceeds \$5,000,000
24 exclusive of interest and costs. This Court also has subject matter jurisdiction under 28 U.S.C.
25 §§ 2201 and 2202 and is authorized to grant declaratory relief under these statutes.

26 9. Venue is proper in the San Francisco Division of this District to 28 U.S.C. §
27 1391(b)(2) because a substantial part of the events and/or omissions giving rise to the claim
28 occurred in this District and/or a substantial party of the property that is the subject of the action

1 17. The Policy also provides “Extra Expense” coverage, pursuant to which
2 Defendant will pay “necessary Extra Expense you incur during the ‘period of restoration’ that
3 you would not have incurred if there had been no direct physical loss of or damage to property
4 caused at the described premises.”

5 18. The terms of the Policy also provide the insured with insurance coverage for
6 Business Income, along with any necessary extra expenses incurred, when access to the
7 Insured’s properties is specifically prohibited by Civil Authority Orders. This additional
8 coverage is identified as coverage under “Civil Authority” and states that Defendant “will pay
9 for the actual loss of Business Income you sustain and necessary Extra Expense caused by
10 action of civil authority that prohibits access to the described premises due to directy physical
11 loss or damage to property.”

12 19. The Civil Authority coverage is an independent basis for business interruption
13 coverage that can be triggered even when the standard business interruption coverage is not.

14 20. The Policy also provided coverage for “Business Income From Dependent
15 Properties,” pursuant to which Defendant “will pay for the actual loss of Business Income you
16 sustain due to physical loss or damage at the premises of a dependent prioperty caused by or
17 resulting from any Covered Cause of Loss.”

18 21. Defendant’s standardized language in the Policy regarding coverage for loss of
19 Business Income coverage, Extra Expenses coverage, coverage for loss due to the actions of a
20 Civil Authority, and Business Income From Dependent Properties Coverage, is present in every
21 policy issued by Oregon Mutual Insurance to Plaintiff and the putative class members that
22 provides coverage for Business Income, Extra Expenses, coverage for loss due to the actions of
23 a Civil Authority, and Business Income From Depedent Properties.

24 22. The Policy utilizes, in part, policy forms and language published by the
25 Insurance Services Office, Inc. (“ISO”), which publishes policy forms for use by the insurance
26 industry—as evidenced by the ISO copyright designation at the bottom of some pages of the
27 Policy.

28

1 23. Despite the fact that, prior to the effective date of the Policy, ISO published and
2 made available for use a standard virus exclusion form, Oregon Mutual chose *not* to include the
3 ISO standard virus exclusion form in the Policy. Indeed, the word “virus” only appears in the
4 policy when discussing computer viruses.

5 24. The Policy does not contain any exclusion which would apply to allow
6 Defendant OREGON MUTUAL to completely deny coverage for losses caused by COVID-19
7 and related actions of civil authorities taken in response to COVID-19.

8 25. Because the Policy is an all-risk policy and does not exclude Plaintiff’s losses,
9 Plaintiff’s losses are covered up to the applicable limits of insurance.

10 **B. The COVID-19 Pandemic**

11 26. COVID-19 is a novel coronavirus that originated in Wuhan, China at the end of
12 2019 and rapidly spread around the world, infecting millions of people, including over 2.15
13 million Americans. Over 150,000 Americans died due to COVID-19.

14 27. COVID-19 is a physical substance that can cause lethal illness. COVID-19 can
15 be present outside the body in viral fluid particles. COVID-19 is highly contagious and easily
16 communicable through droplets in the air and on surfaces.

17 28. The scientific community, and those personally affected by the virus, recognize
18 COVID-19 as a cause of real physical loss and damage. Contamination of the Insured Property
19 would be a direct physical loss requiring remediation to clean the surfaces within the Insured
20 Property.

21 29. COVID-19 remains capable of being transmitted on a variety of inert physical
22 surfaces for various periods of time. For example, reports issued by the National Institute of
23 Health (“NIH”) indicates that COVID-19 remains stable and transmittable in airborne aerosols
24 for up to three hours, on copper for up to four hours, on cardboard for up to 24 hours, and on
25 plastic and stainless steel for up to two to three days. Moreover, the COVID-19 pandemic has
26 been exacerbated by the fact that the virus physically infects and stays on surfaces of some
27 objects or materials for up to 28 days.

1 30. The Center for Disease Control (“CDC”) issued guidance recommending people
2 not to gather in groups larger than 10. Pursuant to CDC guidelines, people face increased danger
3 of contracting COVID-19 in places where people congregate and are in close proximity to one
4 another, and especially in indoor environments.

5 31. COVID-19 has been transmitted in a variety of ways, including transmission (a)
6 by way of human contact with surfaces and items of physical property; (b) by human to human
7 contact and interaction, including places like bars and restaurants, retail stores, and hair and
8 beauty salons, and the like; and (c) through airborne particles emitted into the air and even
9 recirculated through air conditioning units.

10 32. The presence of COVID-19 particles renders physical property unsafe and
11 impairs its value, usefulness, and/or normal function, causing direct physical harm to property
12 and resulting in direct physical loss and physical damage to property.

13 33. The presence of COVID-19 particles and/or the presence of persons infected
14 with COVID-19 or carrying COVID-19 particles at premises renders the premises unsafe,
15 thereby impairing the premises’ value, usefulness, and/or normal function, and resulting in
16 direct physical loss to and of the premises and property.

17 **C. The Covered Cause of Loss**

18 34. The presence of COVID-19 has caused civil authorities throughout the country to
19 issue order requiring the suspension of business at a wide range of establishments, including
20 civil authorities with jurisdiction over Plaintiff’s business (the “Closure Orders”).

21 35. As of the date this complaint is filed, California had over 492,000 confirmed
22 COVID-19 cases, and over 8,633 deaths.

23 36. In response to the public health emergency caused by the COVID-19 pandemic,
24 civil authorities across the United States, including the civil authorities with jurisdiction over
25 Plaintiff in California, have issued Closure Order restricting and prohibiting access to Plaintiff’s
26 insured property and the insured properties of other putative class members.

27 37. On March 4, 2020, Governor Newsom of the State of California proclaimed the
28 existence of a disaster emergency in the State of California due to the COVID-19 pandemic.

1 38. Notably, on March 19, 2020, California Governor Newsom issued Executive
2 Order N033-20, which ordered all individuals living in the State of California to stay at home or
3 at their place of residence, except as needed to maintain continuity of operations of the federal
4 critical infrastructure sectors as defined in the Order.

5 39. Governor Newsom’s “Stay At Home” orders, like other similar orders entered by
6 Civil Authorities across the United States, were partially entered to stop physical damage and
7 physical loss of property caused by COVID-19’s presence.

8 40. State courts such as the Pennsylvania Supreme Court have already entered
9 rulings adopting Plaintiff’s position that physical loss and damage exists resulting in coverage
10 here. *See Friends of DeVito, et. al v. Wolf*, No. 68 MM 2020 (Pa. April 13, 2020). Furthermore,
11 orders issued in states such as New York, Colorado, Washington, Indiana, New Mexico, North
12 Carolina, Missouri, and Illinois have all recognized that COVID-19 poses a specific threat to
13 property and can cause property loss and damage.

14 41. Additionally, in San Francisco, Mayor London Breed entered an order on April
15 30, 2020, indicating that that emergency order “and the previous orders issued during this
16 emergency have all been issued because of the propensity of the virus to spread person to
17 person and also *because the virus is causing property loss or damage due to its proclivity to*
18 *attach to surfaces for prolonged periods of time.*”

19 42. The Mayor the City of Los Angeles entered a similar order on March 19, 2020,
20 ordering people to stay at home and explaining that the “Order is given because, among other
21 reasons, the COVID-19 virus can spread easily from person to person *and it is physically*
22 *causing property loss or damage due to its tendency to attach to surfaces for prolonged periods*
23 *of time.*”

24 43. The Closure Orders issued by California authorities covering California non-
25 essential businesses (such as Plaintiff’s) are similar to Closure Orders that have been issued
26 nationwide by state and local civil authorities.

27 44. The presence of COVID-19 caused direct physical loss of and/or damage to the
28 Insured Property under the Policy by, among other things, damaging the property, denying

1 access to the property, preventing customers and patients from physically occupying the
2 property, causing the property to be physically uninhabitable by customers and patients, causing
3 its function to be nearly eliminated or destroyed, and/or causing a suspension of business
4 operations on the premises.

5 45. The Closure Orders of civil authorities prohibited access to Plaintiff and other
6 class members' Insured Properties, and the areas immediately surrounding the Insured
7 Properties, in response to dangerous physical conditions resulting from a covered cause of loss.

8 46. As a result of the presence of COVID-19 and the Closure Orders, Plaintiff and
9 other class members sustained a suspension of business operations, sustained losses of business
10 income, and incurred extra expenses. Plaintiff has also sustained business income losses due to
11 direct physical loss or physical damage at the premises of dependent properties.

12 47. Plaintiff's losses and expenses have continued through the date of filing this
13 action.

14 48. Plaintiff's losses and expenses are not excluded from coverage under the Policy.
15 Because the Policy is an all-risk policy and Plaintiff has complied with its contractual
16 obligations, Plaintiff is entitled to payment for these losses and expenses.

17 49. Consistent with the terms and procedures of the Policy, Plaintiff submitted a
18 claim for loss to Defendant under the Policy due to the presence of COVID-19 and the
19 shutdown Civil Authority orders.

20 50. In violation of the Policy's plain language and its own contractual obligations,
21 Oregon Mutual denied Plaintiff's claim and refuses to pay for Plaintiff's losses and expenses.

22 **CLASS ACTION ALLEGATIONS**

23 51. Plaintiff brings this action pursuant to Rules 23(a), 23(b)(1), 23(b)(2), 23(b)(3),
24 and 23(c)(4) of the Federal Rules of Civil Procedure, individually and on behalf of all others
25 similarly situated. This action satisfies the numerosity, commonality, typicality, adequacy,
26 predominance, and superiority requirements of those provisions.

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1 52. Plaintiff seeks to represent nationwide classes defined as:

- 2 a. All persons and entities with Business Income coverage under a property
3 insurance policy issued by Oregon Mutual that suffered a suspension of business
4 due to COVID-19 at the premises covered by the business income coverage (the
5 “Business Income Declaratory Judgment Class”).
- 6 b. All persons and entities with Civil Authority coverage under a property insurance
7 policy issued by Oregon Mutual that suffered loss of Business Income and/or
8 Extra Expense caused by a Closure Order (the “Civil Authority Declaratory
9 Judgment Class”).
- 10 c. All persons and entities with Extra Expense coverage under a property insurance
11 policy issued by Oregon Mutual that sought to minimize the suspension of
12 business in connection with COVID-19 at the premises covered by their Oregon
13 Mutual property insurance policy (the “Extra Expense Declaratory Judgment
14 Class”).
- 15 d. All persons and entities with Business Income and Business Income from
16 Dependent Properties coverage under a property insurance policy issued by
17 Defendant that suffered an actual loss of Business Income caused by direct
18 physical loss or physical damage at a dependent property or properties (“the
19 Dependent Property Business Interruption Declaratory Judgment Class”).

20 53. Excluded from each defined Class is Defendant and any of its members, affiliates,
21 parents, subsidiaries, officers, directors, employees, successors, or assigns; governmental entities;
22 and the Court staff assigned to this case and their immediate family members. Plaintiff reserves
23 the right to modify or amend each of the Class definitions, as appropriate, during the course of
24 this litigation.

25 54. This action has been brought and may properly be maintained on behalf of each
26 Class proposed herein under the criteria of Rule 23 of the Federal Rules of Civil Procedure.

27 55. **Numerosity—Federal Rule of Civil Procedure 23(a)(1).** The members of each
28 defined Class are so numerous that individual joinder of all Class Members is impracticable.

1 While Plaintiff is informed and believes that there are thousands of members of each Class, the
2 precise number of Class Members is unknown to Plaintiff but may be ascertained from
3 Defendant's books and records. Class Members may be notified of the pendency of this action
4 by recognized, Court- approved notice dissemination methods, which may include U.S. Mail,
5 electronic mail, internet postings, and/or published notice.

6 **56. Commonality and Predominance—Federal Rule of Civil Procedure 23(a)(2)**
7 **and 23(b)(3).** This action involves common questions of law and fact, which predominate over
8 any questions affecting only individual Class Members, including, without limitation:

- 9 a. Oregon Mutual issued all-risk policies to the members of the Class in exchange
10 for payment of premiums by the Class Members;
 - 11 b. whether the Class suffered a covered loss based on the common policies issued
12 to members of the Class;
 - 13 c. whether Oregon Mutual wrongfully denied all claims based on COVID-19;
 - 14 d. whether Oregon Mutual Business Income coverage applies to a suspension of
15 business caused by COVID-19;
 - 16 e. whether Oregon Mutual Civil Authority coverage applies to a loss of Business
17 Income caused by the orders of state governors requiring the suspension of
18 business as a result of COVID-19;
 - 19 f. whether Oregon Mutual's Extra Expense coverage applies to efforts to minimize
20 a loss caused by COVID-19;
 - 21 g. whether Oregon Mutual's Dependent Property Business Interruption coverage
22 applies to a loss of income caused by loss or damage to dependent properties;
 - 23 h. whether Oregon Mutual has breached its contracts of insurance through a blanket
24 denial of all claims based on business interruption, income loss or closures
25 related to COVID-19 and the related closures; and
 - 26 i. whether Plaintiff and the class are entitled to an award of reasonable attorney
27 fees, interest and costs.
- 28

1 57. **Typicality—Federal Rule of Civil Procedure 23(a)(3).** Plaintiff’s claims are
2 typical of the other Class Members’ claims because Plaintiff and the other Class Members are
3 all similarly affected by Defendant’s refusal to pay under its Business Income, Civil Authority,
4 and Extra Expense coverages. Plaintiff’s claims are based upon the same legal theories as those
5 of the other Class Members. Plaintiff and the other Class Members sustained damages as a
6 direct and
7 proximate result of the same wrongful practices in which Defendant engaged.

8 58. **Adequacy of Representation—Federal Rule of Civil Procedure 23(a)(4).**
9 Plaintiff is an adequate Class representative because its interests do not conflict with the
10 interests of the other Class Members who it seeks to represent, Plaintiff has retained counsel
11 competent and experienced in complex class action litigation, including successfully litigating
12 class action cases similar to this one, where insurers breached contracts with insureds by failing
13 to pay the amounts owed under its policies, and Plaintiff intends to prosecute this action
14 vigorously. The interests of the above-defined Classes will be fairly and adequately protected by
15 Plaintiff and its counsel.

16 59. **Inconsistent or Varying Adjudications and the Risk of Impediments to**
17 **Other Class Members’ Interests—Federal Rule of Civil Procedure 23(b)(1).** Plaintiff seeks
18 class-wide adjudication as to the interpretation, and resultant scope, of Defendant’s Business
19 Income, Civil Authority, and Extra Expense coverages. The prosecution of separate actions by
20 individual members of the Classes would create an immediate risk of inconsistent or varying
21 adjudications that would establish incompatible standards of conduct for the Defendant.
22 Moreover, the adjudications sought by Plaintiff could, as a practical matter, substantially impair
23 or impede the ability of other Class Members, who are not parties to this action, to protect their
24 interests.

25 60. **Declaratory and Injunctive Relief—Federal Rule of Civil Procedure**
26 **23(b)(2).** Defendant acted or refused to act on grounds generally applicable to Plaintiff and the
27 other Class Members, thereby making appropriate final injunctive relief and declaratory relief,
28 as described below, with respect to the Class Members.

1 72. Plaintiff and the other Civil Authority Declaratory Judgment Class Members
2 have complied with all applicable provisions of the policies and/or those provisions have been
3 waived by Oregon Mutual, or Oregon Mutual is estopped from asserting them, and yet Oregon
4 Mutual has abrogated its insurance coverage obligations pursuant to the policies' clear and
5 unambiguous terms and has wrongfully and illegally refused to provide coverage to which
6 Plaintiff and the other Class Members are entitled.

7 73. Oregon Mutual denied claims related to COVID-19 on a uniform and class wide
8 basis, without individual bases or investigations, such that the Court can render declaratory
9 judgment irrespective of whether members of the Class have filed a claim.

10 74. An actual case or controversy exists regarding Plaintiff and the other Civil
11 Authority Declaratory Judgment Class Members' rights and Oregon Mutual's obligations under
12 the policies to reimburse Plaintiff and the other Civil Authority Declaratory Judgment Class
13 Members for the full amount of covered Civil Authority losses incurred by Plaintiff and the
14 other Civil Authority Declaratory Judgment Class Members in connection with Closure Orders
15 and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

16 75. Pursuant to 28 U.S.C. § 2201, Plaintiff and the other Civil Authority Declaratory
17 Judgment Class Members seek a declaratory judgment from this Court declaring the following:

- 18 a. Plaintiff and the other Civil Authority Declaratory Judgment Class Members'
19 Civil Authority losses incurred in connection with the Closure Orders and the
20 necessary interruption of their businesses stemming from the COVID-19
21 pandemic are insured losses under their policies; and
22 b. Oregon Mutual is obligated to pay Plaintiff and the other Civil Authority
23 Declaratory Judgment Class Members the full amount of the Civil Authority
24 losses incurred and to be incurred in connection with the covered losses related
25 to the Closure Orders and the necessary interruption of their businesses
26 stemming from the COVID-19 pandemic.

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1 **THIRD CAUSE OF ACTION**

2 **DECLARATORY JUDGMENT – EXTRA EXPENSE COVERAGE**

3 **(Claim Brought on Behalf of the Extra Expense Declaratory Judgment Class)**

4 76. Plaintiff repeats and realleges Paragraphs 1-61 as if fully set forth herein.

5 77. Plaintiff brings this Cause of Action individually and on behalf of the other
6 members of the Extra Expense Declaratory Judgment Class.

7 78. Plaintiff's Oregon Mutual insurance policy, as well as those of the other Extra
8 Expense Declaratory Judgment Class Members, are contracts under which Oregon Mutual was
9 paid premiums in exchange for its promise to pay Plaintiff and the other Extra Expense
10 Declaratory Judgment Class Members' losses for claims covered by the policy.

11 79. Plaintiff and the other Extra Expense Declaratory Judgment Class Members have
12 complied with all applicable provisions of the policies and/or those provisions have been
13 waived by Oregon Mutual, or Oregon Mutual is estopped from asserting them, and yet Oregon
14 Mutual has abrogated its insurance coverage obligations pursuant to the policies clear and
15 unambiguous terms and has wrongfully and illegally refused to provide coverage to which
16 Plaintiff and the other Class Members are entitled.

17 80. Oregon Mutual denied claims related to COVID-19 on a uniform and class wide
18 basis, without individual bases or investigations, such that the Court can render declaratory
19 judgment irrespective of whether members of the Class have filed a claim.

20 81. An actual case or controversy exists regarding Plaintiff and the other Extra
21 Expense Declaratory Judgment Class Members' rights and Oregon Mutual's obligations under
22 the policies to reimburse Plaintiff and the other Extra Expense Declaratory Judgment Class
23 Members for the full amount of Extra Expense losses incurred by Plaintiff in connection with
24 Closure Orders and the necessary interruption of their businesses stemming from the COVID-19
25 pandemic.

26 82. Pursuant to 28 U.S.C. § 2201, Plaintiff and the other Extra Expense Declaratory
27 Judgment Class Members seek a declaratory judgment from this Court declaring the following:
28

- 1 a. Plaintiff and the other Extra Expense Declaratory Judgment Class Members’
2 Extra Expense losses incurred in connection with the Closure Orders and the
3 necessary interruption of their businesses stemming from the COVID-19
4 pandemic are insured losses under their policies; and
- 5 b. Oregon Mutual is obligated to pay Plaintiff and the other Extra Expense
6 Declaratory Judgment Class Members for the full amount of the Extra Expense
7 losses incurred and to be incurred in connection with the covered losses related
8 to the Closure Orders during the relevant time period and the necessary
9 interruption of their businesses stemming from the COVID-19 pandemic.

10 **FOURTH CAUSE OF ACTION**

11 **DECLARATORY JUDGMENT –**
12 **DEPENDENT PROPERTY BUSINESS INTERRUPTION COVERAGE**

13 **(Claim Brought on Behalf of the**
14 **Dependent Property Business Interruption Declaratory Judgment Class)**

14 83. Plaintiff repeats and realleges Paragraphs 1-61 as if fully set forth herein.

15 84. Plaintiff brings this Cause of Action both individually and on behalf of the other
16 members of the Dependent Property Business Interruption Declaratory Judgment Class.

17 85. Under 28 U.S.C. §§ 2201 and 2202, this Court has jurisdiction to declare the
18 rights and other legal relations of the parties in dispute.

19 86. Plaintiff’s Policy, as well as the policies of other Dependent Property Business
20 Interruption Declaratory Judgment Class members, are insurance contracts under which
21 Defendant was paid premiums in exchange for promises to pay Dependent Property Business
22 Interruption Declaratory Judgment Class members’ losses for claims covered by the Policy.

23 87. In the Policy, Defendant promised to pay for losses of business income sustained
24 as a result of perils not excluded under the Policy. Specifically, Defendant promised to pay for
25 losses of business income sustained due to direct physical loss or physical damage at the
26 premises of a dependent property.

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1 88. Plaintiff and Dependent Property Business Interruption Declaratory Judgment
2 Class members suffered losses of business income due to direct physical loss and/or physical
3 damage at the premises of dependent properties.

4 89. These losses triggered business income from dependent properties coverage
5 under the Policy and other Dependent Property Business Interruption Declaratory
6 Judgment Class members' policies.

7 90. Plaintiff and the other Dependent Property Business Interruption Declaratory
8 Judgment Class members have complied with all applicable provisions of their respective
9 policies, including payment of premiums.

10 91. Defendant, without justification, disputes that the Policy and other Dependent
11 Property Business Interruption Declaratory Judgment Class members' policies provide coverage
12 for these losses.

13 92. Plaintiff seeks a Declaratory Judgment that its Policy and other Dependent
14 Property Business Interruption Declaratory Judgment Class members' policies provide coverage
15 for the losses of business income attributable to the facts set forth above.

16 93. An actual case or controversy exists regarding Plaintiff's and other Dependent
17 Property Business Interruption Declaratory Judgment Class members' rights and Defendant'
18 obligations to reimburse Plaintiff and other Dependent Property Business Interruption
19 Declaratory Judgment Class members for the full amount of these losses. Accordingly, the
20 Declaratory Judgment sought is justiciable.

21 94. Pursuant to 28 U.S.C. § 2201, Plaintiff and the other Extra Expense Declaratory
22 Judgment Class Members seek a declaratory judgment from this Court declaring the following:

23 a. The Policy and other Dependent Property Business Interruption Declaratory
24 Judgment Class members' policies provide coverage for Class members' losses
25 of business income from dependent properties.

26 b. Oregon Mutual is obligated to pay Plaintiff and the other Dependent Property
27 Business Interruption Declaratory Judgment Class Members the full amount of
28 the dependent property income losses incurred and to be incurred in connection

1 with the covered losses related to the Closure Orders and the necessary
2 interruption of their businesses stemming from the COVID-19 pandemic.

3
4 **REQUEST FOR RELIEF**

5 WHEREFORE, Plaintiff, individually and on behalf of the other Class Members, respectfully
6 requests that the Court enter judgment in its favor and against Defendant as follows:

- 7 a. Entering an order certifying the proposed nationwide Classes, as requested herein,
8 designating Plaintiff as Class representative, and appointing Plaintiff's undersigned
9 attorneys as Counsel for the Classes;
- 10 b. Entering declaratory judgments on Counts I–IV in favor of Plaintiff and the
11 members of the Business Income Declaratory Judgment Class, the Civil Authority
12 Declaratory Judgment Class, Extra Expense Declaratory Judgment Class, and the
13 Dependent Property Business Interruption Declaratory Judgment Class, as follows:
- 14 i. Business Income, Civil Authority, Extra Expense, and Dependent Property
15 Business Interruption losses incurred in connection with the Closure Orders
16 and the necessary interruption of their businesses stemming from the
17 COVID-19 pandemic are insured losses under their policies; and
- 18 ii. Oregon Mutual is obligated to pay for the full amount of the Business
19 Income, Civil Authority, Extra Expense, and Dependent Property Business
20 Interruption losses incurred and to be incurred related to COVID-19, the
21 Closure Orders and the necessary interruption of their businesses stemming
22 from the COVID-19 pandemic.
- 23 c. Ordering Defendant to pay both pre- and post-judgment interest on any amounts
24 awarded;
- 25 d. Ordering Defendant to pay attorneys' fees and costs of suit; and
- 26 e. Ordering such other and further relief as may be just and proper.
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JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims so triable.

Dated: August 6, 2020

Respectfully submitted,

By: /s/ William F. "Chip" Merlin

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