

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 Washington subclass is a citizen of a state different from that of Defendant, the proposed Class
2 and subclass each consist of more than 100 class members, and the aggregate amount in
3 controversy exceeds \$5,000,000. The Court has supplemental jurisdiction over Plaintiff's state
4 law claims under 28 U.S.C. § 1367.

5 2. This Court has personal jurisdiction over Defendant because Defendant registered
6 to do business in Washington, has sufficient minimum contacts in Washington, and otherwise
7 intentionally avails itself of the markets within Washington through its business activities, such
8 that the exercise of jurisdiction by this Court is proper. Moreover, the claims of Plaintiff and all
9 of the Washington subclass members in this case arise out of and directly relate to Defendant's
10 contacts with Washington.

11 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because the
12 Court has personal jurisdiction over Defendant, a substantial portion of the alleged wrongdoing
13 occurred in this District and the state of Washington, and Defendant has sufficient contacts with
14 this District and the state of Washington.

15 4. Venue is proper in the Western District of Washington pursuant to 28 U.S.C.
16 §1391(b)(2) because a substantial part of the events or omissions giving rise to the claims at
17 issue in this Complaint arose in this District. Plaintiff's place of business is located in Seattle,
18 Washington, King County. This action is therefore appropriately filed in the Seattle Division
19 because a substantial portion of the events giving rise to this lawsuit arose in King County.

20 21 22 23 **III. PARTIES**

24 5. Plaintiff NUE owns and operates a dine-in restaurant and bar located at 1514th
25 Ave., Seattle, WA 98122.

1 6. Defendant Oregon Mutual is an Oregon corporation with its headquarters and
2 principal place of business in McMinnville, Oregon.

3 7. Oregon Mutual is authorized to write, sell, and issue business insurance policies
4 in Washington, Oregon, California, Idaho, and Nevada. Oregon Mutual conducted business
5 within these states by selling and issuing business insurance policies to policyholders, including
6 NUE.
7

8 IV. NATURE OF THE CASE

9 8. Nue specializes in “global street food,” offering “sit-down” meals from around
10 the world, together with a full bar and menu of creative cocktails.

11 9. Due to COVID-19 and a state-ordered mandated closure, Plaintiff was forced to
12 suspend or dramatically reduce its restaurant business operations.
13

14 10. Plaintiff intended to rely on its business insurance to maintain income in case of
15 an insured loss. This lawsuit is filed to ensure that Plaintiff and other similarly-situated
16 policyholders receive the insurance benefits to which they are entitled and for which they paid.

17 11. Oregon Mutual issued one or more insurance policies to Plaintiff, including a
18 Businessowners Protector Policy and related endorsements (collectively, “the Policy”), insuring
19 Plaintiff’s property and business practice and other coverages from November 11, 2019 to
20 November 10, 2020.
21

22 12. Plaintiff’s business property includes property owned and/or leased by Plaintiff
23 and used for general business purposes for the specific purpose of operating a restaurant and
24 other related business activities.
25
26

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

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

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

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

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

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

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

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

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

. . .

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

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

V. CLASS ACTION ALLEGATIONS

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

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

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

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

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

10 D. Whether Extended Business Income coverage in Oregon Mutual's policies
11 of insurance applies to a suspension of practice relating to COVID-19 and/or orders
12 issued by Governor Inslee, other Governors, and/or civil authorities;
13

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

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

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

24 H. Whether Oregon Mutual has breached its contracts of insurance through a
25 blanket denial of all claims based on business interruption, income loss or closures
26

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

43. **Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:**
 Defendant acted or refused to act on grounds generally applicable to Plaintiff and other members of the proposed classes making injunctive relief and declaratory relief appropriate on a classwide basis.

44. **Federal Rule of Civil Procedure 23(b)(3), Superiority:** A class action is superior to all other available methods of the fair and efficient adjudication of this lawsuit. While the aggregate damages sustained by the classes are likely to be in the millions of dollars, the individual damages incurred by each class member may be too small to warrant the expense of individual suits. Individual litigation creates a risk of inconsistent and/or contradictory decisions and the court system would be unduly burdened by individual litigation of such cases. A class action would result in a unified adjudication, with the benefits of economies of scale and supervision by a single court.

VI. CAUSES OF ACTION

Count One—Declaratory Judgment

(Brought on behalf of the Business Income Coverage Declaratory Relief Class, Business Income Coverage Declaratory Relief Washington Subclass, Extended Business Income Declaratory Relief Class, Extended Business Income Declaratory Relief Washington Subclass, Extra Expense Declaratory Relief Class, Extra Expense Declaratory Relief Washington Subclass, Civil Authority Declaratory Relief Class, Civil Authority Declaratory Relief Washington Subclass, Ingress Or Egress Declaratory Relief Class, and Ingress Or Egress Declaratory Relief Washington Subclass)

45. Previous paragraphs alleged are incorporated herein.

46. This is a cause of action for declaratory judgment pursuant to the Declaratory 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,

Extended Business Income Declaratory Relief Class, Extended Business Income Declaratory Relief Washington Subclass, Extra Expense Declaratory Relief Class, and Extra Expense Declaratory Relief Washington Subclass, Civil Authority Declaratory Relief Class, Civil Authority Declaratory Relief Washington Subclass, Ingress Or Egress Declaratory Relief Class, and Ingress Or Egress Declaratory Relief Washington Subclass.

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

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

Count Two—Breach of Contract

(Brought on behalf of the Business Income Coverage Breach of Contract Class, Business Income Coverage Breach of Contract Washington Subclass, Extended Business Income Breach of Contract Class, Extended Business Income Breach of Contract Washington Subclass, Extra Expense Breach of Contract Class, Extra Expense Breach of Contract 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)

50. Previous paragraphs alleged are incorporated herein.

51. Plaintiff brings this cause of action on behalf of the Business Income Coverage Breach of Contract Class, Business Income Coverage Breach of Contract Washington Subclass, Extended Business Income Breach of Contract Class, Extended Business Income Breach of Contract Washington Subclass, Extra Expense Breach of Contract Class, Extra Expense Breach of Contract 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.

1 52. The Policy is a contract under which Plaintiff and the class paid premiums to
2 Oregon Mutual in exchange for Oregon Mutual's promise to pay Plaintiff and the class for all
3 claims covered by the Policy.

4 53. Plaintiff has paid its insurance premiums.

5 54. Upon information and belief, Oregon Mutual denied coverage for other similarly
6 situated policyholders.

7 55. Denying coverage for the claim is a breach of the insurance contract.

8 56. Plaintiff is harmed by the breach of the insurance contract by Oregon Mutual.

9
10 **VII. PRAYER**

11 1. A declaratory judgment that the policy or policies cover Plaintiff's losses and
12 expenses resulting from the interruption of Plaintiff's business related to COVID-19 and/or
13 orders issued by Governor Inslee, other Governors, and/or other authorities.

14 2. A declaratory judgment that Defendant is responsible for timely and fully paying
15 all such losses.

16 3. Damages.

17 4. Pre- and post-judgment interest at the highest allowable rate.

18 5. Reasonable attorney fees and costs.

19 6. Such further and other relief as the Court shall deem appropriate.

20
21 **VIII. JURY DEMAND**

22 Plaintiff demands a jury trial on all claims so triable.

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

Amy Williams-Derry, WSBA #28711

Lynn L. Sarko, WSBA #16569

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11 4818-9051-6411, v. 2