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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

KLOS Enterprises, LLC,

Plaintiff,

vs.

The Cincinnati Insurance Company;
Glendale Insurance, L.L.C.

Defendants.

Case No. CV2020-010496

VERIFIED COMPLAINT

(Commercial Court Assignment Requested)

(Declaratory Judgment, Breach of Contract,
Bad Faith, Conversion, Promissory
Estoppel, Negligent Misrepresentation,
Producer Malpractice)

Plaintiff KLOS Enterprises, LLC dba Arizona Broadway Theatre dba Center Stage
Catering ("KLOS"), for its complaint against Defendants Cincinnati Insurance Company
(Cincinnati) and Glendale Insurance, L.L.C. (Glendale) states and alleges as follows:

INTRODUCTION

1
2 1. This action arises out of an insurance dispute over the insurance coverage
3 available for business losses suffered by KLOS flowing from an insurance policy issued by
4 Cincinnati and sold by independent insurance producers with Glendale. KLOS seeks a
5 declaration of its rights and Defendant Cincinnati's obligations under the insurance policy,
6 damages for breach of contract for its refusal to agree to coverage for certain business losses
7 and extra expenses arising from the current COVID-19 pandemic, resulting employee
8 exposures and risk mitigation expenses, governmental restrictions on its operations and extra
9 expenses, restrictions on ingress and/or egress to its premises as a result of the current
10 pandemic, business income losses occasioned by such restrictions, damages for breach of
11 Cincinnati's breach of the implied covenant of good faith and fair dealing, damages for
12 promissory estoppel as an alternative theory of recovery, and conversion, along with interest,
13 attorney's fees, costs and such other relief as this Court may deem just and proper.

14 2. This action also arises out of claims versus Glendale arising out of its failure to
15 use professional care and diligence required of it during the course and scope of its sale of a
16 renewal policy of insurance to Plaintiff effective around March 1, 2020.

JURISDICTION AND VENUE

17
18 3. The acts and omissions, complained of herein, by Cincinnati occurred within
19 and were directed at its insured which maintained an office located within the State of Arizona,
20 County of Maricopa and within the jurisdiction of this Court.

21 4. The acts and omissions, complained of herein, by Glendale occurred within and

1 were likewise directed at its client KLOS within the State of Arizona and within the
2 jurisdiction of this Court.

3 5. Cincinnati conducts business in the State of Arizona and has been conducting
4 such business at all relevant times alleged in this Complaint giving rise to the harm alleged
5 herein; Cincinnati is an Ohio corporation with its principal place of business in Ohio authorized
6 to issue commercial insurance policies within the State of Arizona. It has therefore availed
7 itself to the personal jurisdiction of this Court.

8 6. Glendale is an Arizona limited liability company with its principal place of
9 business in Arizona and is authorized to conduct business and sell insurance products as a
10 licensed independent insurance producer within the state of Arizona.

11 7. The amount in controversy exceeds the minimal jurisdictional amount for this
12 Court. Accordingly, this Court has subject matter jurisdiction over this controversy.

13 8. The allegations set forth in this Complaint arise out of and relate to a dispute
14 between business organizations; a business organization on the one hand (KLOS) and its
15 insurer under a commercial insurance policy (Cincinnati) as well as an insurance producer
16 (Glendale) on the other; therefore the case is eligible for consideration by the specialized
17 "commercial court" program within this County pursuant to Ariz. R. Civ. P. 8.1(a)(1)(A)-(C),
18 (b)(13).

19 9. Venue is proper within the Maricopa County Superior Court, State of Arizona.

20 10. This Court has jurisdiction over the dispute as it arises out of a policy sold, issued
21 and distributed to an Arizona limited liability company and all acts occurred in or were

1 directed to persons or entities within Maricopa County, Arizona.

2 11. Pursuant to Local Rule 26.2(c)(3)(C), Tier three discovery is proper in this
3 action due to its complex nature and because the amount in controversy exceeds \$300,000 in
4 value.

5 **GENERAL ALLEGATIONS**

6 12. **Plaintiff.** KLOS is an Arizona limited liability company organized and existing
7 under the laws of the State of Arizona, and maintains its principal place of business in
8 Maricopa County, Arizona.

9 13. **Defendant.** Defendant Cincinnati throughout the relevant time periods
10 identified in this Complaint is an Ohio corporation, with its statutory home offices located in
11 Fairfield, Ohio. At all times relevant to this action, Cincinnati was licensed and authorized to
12 engage in the insurance business in the State of Arizona and did engage in and conduct
13 business within the state of Arizona.

14 14. **Defendant.** Defendant Glendale is an Arizona limited liability company with
15 its home office located in Glendale, Arizona. At all times relevant to this action, Glendale
16 was licensed and authorized to engage in the insurance business in the State of Arizona and
17 did engage in and conduct business within the state of Arizona.

18 15. Around March 1, 2020, Glendale sold and Cincinnati issued and renewed a
19 commercial insurance policy in Arizona to KLOS, policy number EPP0108627 for policy
20 period March 1, 2020 through March 1, 2021. The insurance policy provided in relevant part,
21 coverage for business personal property and business income loss coverage with extra expense

1 coverage for up to twelve months of Actual Losses Sustained.

2 16. The policy was issued to KLOS and included losses sustained at 7701 W.
3 Paradise Lane, Peoria, Arizona 85382-4959 (the "Theatre").

4 17. Plaintiff timely paid premiums for this policy believing that Cincinnati would
5 provide coverage as required by the terms and conditions of the policy and that Defendant
6 Glendale sold Plaintiff a policy that would provide all coverage consistent with its timely and
7 necessary needs around March 2020.

8 18. Plaintiff purchased insurance from Cincinnati believing they had business
9 income and extra expense coverage that would apply for all risks including but not limited to
10 risks of business loss in the tragic event of a business exposure to a virus, losses flowing from
11 government closure orders, and losses flowing from restrictions to ingress or egress to its
12 premises.

13 19. Plaintiff purchased insurance from Cincinnati believing that they had protection
14 for business income and extra expenses required in the untenable event of a shutdown or
15 business interruption resulting from a global pandemic.

16 20. Plaintiff purchased insurance From Cincinnati and paid premiums believing that
17 the policy language would provide them with protection in the event of either accidental
18 physical loss or accidental physical damage to property.

19 21. The policy provides its insured with coverage for "all risks" except for those
20 risks which have been specifically excluded.

21 22. The policy does not contain any exclusion for loss caused by a virus such as

1 COVID-19.

2 23. The policy provides coverage for accidental physical loss or damage to covered
3 property.

4 24. The policy includes coverage for loss of business income resulting from a
5 covered cause of loss during a necessary suspension of operations during a period of
6 restoration.

7 25. Period of restoration means the time period when losses begin through the time
8 period they end and business operations can resume.

9 26. "Suspension" means the slowdown or cessation of business activities and a part
10 or all of the business premises are rendered untenable.

11 27. The policy provides coverage if an insured must suspend its operations due to a
12 covered cause of loss.

13 28. Cincinnati promised its insured that it would pay for up to eighteen months of
14 actual loss sustained by its insured due to a covered cause of loss.

15 29. Cincinnati also promised it would pay for extra expenses that would not have
16 been incurred if there had been no direct loss. Extra expenses promised to its insured included
17 but are not limited to costs needed to avoid or minimize suspension of business and to continue
18 operations and costs to repair or replace property needed to reduce otherwise payable losses.

19 30. Cincinnati promised to provide its insured with extended business income
20 coverage, civil authority coverage and ingress and egress coverage.

21 31. Cincinnati promised to pay for ingress and egress losses sustained by its insured

1 including business income and necessary extra expenses resulting from prevention of existing
2 ingress or egress to a premises listed on the insurance policy declarations page issued to its
3 insured.

4 32. Coverage under the policy Cincinnati issued to Plaintiff provides business
5 income and extra expense coverage for loss relating to prevention of ingress or egress to
6 property specified in the policy declarations page not otherwise prohibited by a civil authority.

7 33. Lost business income means net income plus continuing normal operating
8 expenses sustained and payroll.

9 34. Loss means accidental physical loss or accidental physical damage.

10 35. In early January 2020, after receiving substantial public information about risk
11 of pandemic, persons within the United States became infected with a highly contagious virus.
12 On January 31, 2020, the United States Department of Health and Human Services Secretary
13 declared a public health emergency to address the 2019 novel coronavirus (COVID-19).

14 36. According to the World Health Organization, "The disease spreads primarily
15 from person to person through small droplets from the nose or mouth, which are expelled when
16 a person with COVID-19 coughs, sneezes, or speaks. These droplets are relatively heavy, do
17 not travel far and quickly sink to the ground. People can catch COVID-19 if they breathe in
18 these droplets from a person infected with the virus. This is why it is important to stay at least
19 1 [meter] away from others. *These droplets can land on objects and surfaces around the*
20 *person such as tables, doorknobs and handrails.*" "How does COVID-19 spread?," World
21 Health Organization (April 17, 2020) (emphasis added), available at <https://www.who.int>

1 /emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-
2 coronaviruses.

3 37. On January 26, 2020, the Arizona Department of Health Services confirmed the
4 first case of coronavirus in the State of Arizona.

5 38. On January 28, 2020, surgical mask sales sold out in Tempe, Arizona after public
6 reports disclosed that the first case of coronavirus was a student at Arizona State University.

7 39. By January 31, 2020, it was common knowledge that the COVID-19 virus is
8 highly contagious and easily spread affecting millions in a matter of months and spreading
9 through respiratory droplets and lingering on surfaces for hours.

10 40. On February 26, 2020, Arizona State University cancelled its study abroad
11 programs in South Korea after the United States Centers for Disease Control and Prevention
12 elevated South Korea to a level three status, discouraging all non-essential travel to that
13 country.

14 41. On February 27, 2020, the Governor of the State of Arizona in an interview with
15 KTAR news radio explained that Arizona had a coronavirus response plan in place and that
16 he receives daily briefing on the infection, its contagiousness and community spread.

17 42. On March 2, 2020, Dr. Cara Christ, Director of the Arizona Department of
18 Health Services announced at a press conference that Arizona was monitoring 250 returning
19 travelers for coronavirus explaining that "we can expect additional cases in Arizona."

20 43. On March 3, 2020, another reported infection was made public concerning a
21 presumed positive case originating from contact with a person presumed to have tested

1 positive outside Arizona.

2 44. On March 11, 2020, the Governor of the State of Arizona declared a Public
3 Health Emergency due to the need to prepare for, prevent, respond to and mitigate the spread
4 of COVID-19.

5 45. On March 16, 2020, the United States Centers for Disease Control and
6 Prevention issued guidance recommending individuals avoid social gatherings of more than
7 ten people and avoid any businesses that allow gathering of more than ten people; instead
8 recommending the use of drive-thru, pickup or delivery options at business, restaurants and
9 bars, all of which were designed to slow the spread of the COVID-19 virus.

10 46. Plaintiff owns the Theatre and operates as a catering and banquet restaurant
11 company which contracts with ABT Performing Arts Association, Inc. to provide food and
12 beverage services to ABT Performing Arts Association, Inc. who produces Broadway style
13 musicals and plays in Arizona throughout the year at the Theatre. In addition to providing
14 dining services to ABT Performing Arts Association, Inc., KLOS caters private events and
15 oversees the rental of other portions of the Theatre to the general public.

16 47. The public health emergencies identified by state and federal agencies directly
17 impacted Plaintiff's ability to operate both the Theatre and its catering and banquet business.

18 48. On March 19, 2020, seeking to slow the community spread of the COVID-19
19 virus the Governor of the State of Arizona issued an executive order requiring certain
20 businesses to close operations the next day until further notice.

21 49. Plaintiff was forced to cease normal operations after the March 19, 2020

1 executive order and shortly thereafter submitted a claim for business income coverage and
2 other coverage with Cincinnati with assistance from Glendale.

3 50. The Governor of the State of Arizona issued another executive order on March
4 30, 2020 expanding the closure order to apply to all but non-essential businesses.

5 51. On July 9, 2020, the Governor of the State of Arizona issued Executive Order
6 2020-47 which dictated strict rules regarding the operation of restaurants and, further,
7 provided additional provisions and requirements for all businesses.

8 52. Executive Order 2020-47, Paragraph 8, also set forth the enforcement provision
9 that the failure to comply with the Executive Order and any other guidance issued by the
10 Arizona Department of Health Services related to precautions to mitigate the spread of
11 COVID-19 shall constitute a public nuisance pursuant to A.R.S. § 36-601(A) and action shall
12 be taken to "abate the nuisance" including "immediate closure of the facility."

13 53. Carriers of the COVID-19 virus may be asymptomatic and when persons
14 become ill, the outcome can be deadly creating a destructive public health crisis not seen in
15 years.

16 54. Upon information and belief, physical presence of COVID-19 has been shown
17 to exist at Plaintiff's property as demonstrated by at least one positive infection occurring in
18 at least one of Plaintiff's employees.

19 55. The public health crisis and community spread of COVID-19 infected at least
20 one key KLOS employee and required Plaintiff to continue to cease its operations which to
21 the date of this Complaint have still not yet been fully restored.

1 56. Plaintiff's property and business location has been rendered unsafe and unusable
2 as a result of the COVID-19 exposure issues raised during this health crisis and due to the risk
3 of and actual presence of the COVID-19 virus at its premises. The presence of a few patrons
4 or many patrons on site results in further contagion risk and renders property unsafe.

5 57. The mere presence of and risk of presence of COVID-19 at Plaintiff's property
6 requires risk mitigation cost and rendered its premises unusable as intended.

7 58. The mere presence of and risk of presence of COVID-19 as well as government
8 shutdown orders or separate prevention of ingress and/or egress to the premises occasioned by
9 the presence of COVID-19 at Plaintiff's premises rendered it unusable as intended triggering
10 coverage on the Cincinnati insurance policy.

11 59. Plaintiff's risk mitigation costs and sanitation strategies also require additional
12 expense and cost.

13 60. The expenses and business income loss resulting from government shutdown
14 orders, from prevention of ingress and/or egress to its premises from the presence of and risk
15 of infectious COVID-19 rendering its premises unusable for its intended purpose, and from
16 the COVID-19 virus triggered KLOS's business income coverage that it purchased from
17 Cincinnati believing that because it timely paid its insurance premiums, its insurer would
18 provide protection and coverage to it in times of need.

19 61. Harm to the property by COVID-19 located on surfaces on Plaintiff's premises
20 together with Arizona government shutdown orders and/or prevention of ingress/egress due to
21 presence of and risk of COVID-19 at Plaintiff's premises demonstrates a sufficient showing

1 of direct accidental physical loss or accidental physical damage to the premises insured by
2 Cincinnati which should have triggered coverage for claims.

3 62. Cincinnati promised to pay Plaintiff for its business income and necessary extra
4 expenses occurring as a result of prevention of ingress or egress to Plaintiff's business
5 locations not specifically caused by an order from a civil authority or government shutdown
6 order.

7 63. The extra expenses and business income losses not directly resulting from
8 government shutdown orders resulting from the COVID-19 virus triggered KLOS's business
9 income and extra expense coverage that it purchased from Cincinnati believing that because
10 it timely paid its insurance premiums, its insurer would provide protection and coverage to it
11 in times of need.

12 64. During any and all time periods in which the Arizona Governor's Executive
13 orders did not specifically limit or prohibit ingress or egress access to Plaintiff's business
14 operations, Plaintiff nevertheless suffered loss of business income and necessary extra expense
15 while existing ingress or egress to its property was rendered unsafe during a time of the
16 COVID-19 virus pandemic and major health crisis and during the time period in which
17 infectious COVID-19 were upon information and belief present at the premises creating
18 unnecessary risk to patrons and employees.

19 65. Upon information and belief, Cincinnati did not reasonably consider applicable
20 ingress or egress coverage when it denied Plaintiff's claims and Plaintiff suffered substantial
21 losses in business income and necessary extra expenses as a result.

1 66. The Cincinnati Insurance April 14, 2020 claim denial letter rejecting all
2 Plaintiff's claims did not refer to ingress or egress coverage.

3 67. The Cincinnati Insurance April 14, 2020 claim denial letter did not construe
4 coverage in a manner that gives equal consideration to the interest of its insureds.

5 68. Physical or structural destruction of property is not a prerequisite for a showing
6 of accidental physical loss or accidental physical damage to property triggering coverage on
7 an all risk insurance policy. *See, e.g., Western Fire Ins. Co. v. First Presbyterian Church*, 165
8 Colo. 34, 36-37, 437 P.2d 52, 54-55 (1968); *Largent v. State Farm Fire & Cas. Co.*, 116 Or.
9 App. 595, 597-98, 842 P.2d 445, 446 (Or. App. 1992); *Gregory Packaging Inc. v. Travelers*
10 *Prop. Cas. Co. of America*, 2014 U.S. Dist. LEXIS 165232, *19 (D. N.J. Nov. 25, 2014);
11 *Cooper v. Travelers Indem. Co.*, 113 Fed. Appx. 198, 200 (9th Cir. Mem. 2004); *Mehl v. The*
12 *Travelers Home & Marine Ins. Co.*, 218 U.S. Dist. LEXIS 74552, No. 16-cv-1325 (E.D. Mo.
13 May 2, 2018); *General Mills v. Gold Medal Ins. Co.* 622 N.W.2d 147, 152 (Minn. Ct. App.
14 2001).

15 69. Upon information and belief, in its claim denial letter dated April 14, 2020 and
16 its overall claim evaluation process, Cincinnati construed its insurance policy with Plaintiff
17 unreasonably with an eye toward denying claims presented to it as a cost mitigation strategy
18 rather than acting with equal consideration to its insured.

19 70. In its claim denial letter dated April 14, 2020 and its overall claim evaluation
20 process, Cincinnati unreasonably construed its insurance policy to require tangible or
21 structural alteration of property before concluding that business income or any other coverage

1 applies.

2 71. Upon information and belief, in its claims denial letter dated April 14, 2020, and
3 in its overall claims evaluation process, Cincinnati unreasonably concluded that the terms
4 “accidental physical loss” and “accidental physical damage” are one in the same and should
5 be given the same meaning when construing coverage for loss.

6 72. In its claim denial letter dated April 14, 2020 and in its approximately nineteen
7 day claims evaluation process, Cincinnati did not consider that the terms “accidental physical
8 damage” and “accidental physical loss” must be given different meanings when construing
9 coverage on the policy Cincinnati issued to Plaintiff.

10 73. Cincinnati unreasonably rejected the appropriate conclusion that “accidental
11 physical loss” is not synonymous with “accidental physical damage” in its April 14, 2020
12 denial and its approximate nineteen day claims evaluation process.

13 74. Cincinnati unreasonably failed to consider that even absent a physical alteration
14 of its insured’s premises, a physical loss may occur simply because the premises is
15 uninhabitable or unusable for its intended purpose.

16 75. Cincinnati unreasonably failed to conclude that accidental physical loss occurs
17 due to an imminent threat and/or actual release of COVID-19 that causes physical loss of
18 utility to the premises insured by Plaintiff.

19 76. At the time it submitted claims for coverage and continuing forward, the
20 premises insured by Plaintiff was and continues to be uninhabitable and/or unusable for its
21 intended purpose and should be considered a physical loss or physical damage under the

1 Cincinnati insurance policy.

2 77. Cincinnati failed to consider the specific facts and circumstances of KLOS'
3 claim during its approximate nineteen day claims evaluation process.

4 78. Based on the lack of an explicit virus exclusion in its insurance policy with
5 Cincinnati, Plaintiff had a reasonable expectation of coverage for losses related to a virus
6 pandemic in its "all risk" insurance policy with Cincinnati.

7 79. Cincinnati could have but did not add an endorsement to Plaintiff's insurance
8 policy excluding any coverage for losses occasioned by virus or bacteria exposure.

9 80. Upon information and belief, Cincinnati issued the commercial policy to
10 plaintiff drawing on specific policy language, endorsements, exclusions and terms directly
11 from the trade association known as the Insurance Services Office (ISO).

12 81. Upon information and belief, ISO provides a range of services to its customers
13 in the property casualty insurance industry maintaining actuarial data, underwriting guidance,
14 claims information and other tools to its insurance carrier clients.

15 82. According to its web site, "ISO provides advisory services and information to
16 many insurance companies. On your insurance policies, you may see notices showing ISO
17 (Insurance Services Office, Inc.) as the copyright owner. That's because ISO develops and
18 publishes policy language that many insurance companies use as the basis for their
19 products." www.verisk.com/insurance/about/faq.

20 83. Cincinnati's policy issued to Plaintiff contained references to ISO as the
21 copyright holder drawing from copyrighted material provided to it from ISO with its

1 permission.

2 84. Cincinnati's policy form FM 101 05 16 contains the following language on each
3 of the forty pages of this form: "Includes copyrighted material of Insurance Services Office,
4 Inc. with its permission."

5 85. Cincinnati controlled all policy language in the insurance policy issued to
6 Plaintiff choosing what ISO language to include or not to include and Plaintiff did not
7 participate in nor did it have any bargaining power to alter or negotiate specific terms of the
8 Policy Cincinnati issued to it; Plaintiff had no ability to change or modify policy terms chosen
9 or omitted from the policy issued to it.

10 86. Upon information and belief, in 2006, ISO issued an information circular to its
11 insurance company customers recommending that insurers include a policy exclusion form
12 adding an endorsement specifically excluding coverage for losses due to bacteria and viruses.

13 87. Upon information and belief, in 2006, ISO recommended to its insurance
14 company clients that its clients/insurance carriers exclude claims for coverage "caused by or
15 resulting from any virus, bacterium or other microorganism that induces or is capable of
16 inducing physical distress, illness or disease."

17 88. Upon information and belief, in 2006, ISO recommended carriers exclude
18 coverage for claims relating to bacteria or viruses based in part on SARS, rotavirus and
19 influenza infections which alerted ISO to possible exposure to costly claims for coverage that
20 existed at the time.

21 89. Upon information and belief, in 2006, at the time it recommended coverage

1 exclusions for virus and bacteria exposure, the organization recognized that generalized policy
2 exclusions may be wholly insufficient to limit coverage for "all risk" insurance policies that
3 did not exclude coverage for viruses or bacteria exposure.

4 90. Upon information and belief, ISO provided sample virus/bacteria exclusion
5 forms to its customers as far back as 2006 and Cincinnati had access to these forms yet did not
6 adopt any exclusion endorsement excluding coverage for losses due to viruses or bacteria
7 exposure.

8 91. Upon information and belief, Cincinnati had access to proposed policy
9 exclusions for loss due to viruses or bacteria exposure from ISO over the past fourteen years
10 but did not adopt any endorsements excluding coverage to Plaintiff.

11 92. On or about March 26, 2020, KLOS reported that it suspended all business
12 operations and presented a claim for all applicable coverage to Cincinnati.

13 93. Nineteen days after presenting a claim for coverage, on April 14, 2020,
14 Cincinnati Insurance denied KLOS's claim.

15 94. Because Cincinnati did not include any exclusions or endorsements excluding
16 coverage for losses due to viruses or bacteria exposure, and because Plaintiff submitted a claim
17 for coverage for direct accidental physical loss or accidental physical damages to its premises,
18 Cincinnati wrongfully denied claims presented to it.

19 95. Upon information and belief, Cincinnati wrongfully denied Plaintiff's claims for
20 coverage related to the COVID-19 virus based not upon a reasonable interpretation of its
21 policy but instead as a risk and cost mitigation strategy to protect its financial position rather

1 than acting reasonably and complying with its insurance contract obligations owed to its
2 insured.

3 96. Upon information and belief, Cincinnati neither sought nor considered any
4 sworn statements of loss in connection with its denial of coverage.

5 97. Upon information and belief, before systematically denying KLOS's claim for
6 coverage, Cincinnati could have but did not ask KLOS for a sworn statement seeking the
7 following types of information:

- 8 ▪ Whether its insured claims accidental direct physical loss of or damage to real
9 property, personal property, stock and supplies, and/or merchandise.
- 10 ▪ Describe the nature of that physical loss or damage.
- 11 ▪ Whether any confirmed cases of COVID-19 occurred at the premises.
- 12 ▪ Whether the premises been tested for the presence of COVID-19.
- 13 ▪ Whether the premises is currently closed and when it closed.
- 14 ▪ Whether the premises can only open with physical and structural alterations,
15 protective partitions, air system modifications and other physical alteration of
16 the premises to protect members of the public and employees so that the
17 premises could be used for its intended purpose.
- 18 ▪ Whether ingress or egress to its premises has been prevented rendering its
19 premises unusable for its intended purpose.
- 20 ▪ Whether suppliers or customers have been prevented from providing or
21 receiving services or information.

1 98. Upon information and belief, Cincinnati conducted no witness interviews to
2 support its denial of KLOS's claim for coverage.

3 99. Upon information and belief, Cincinnati did not consider or request any
4 examinations under oath to support its denial of KLOS's claim for coverage.

5 100. Upon information and belief, Cincinnati did not consider any records or loss
6 reports to understand the business income claim and to support its denial of KLOS's claim for
7 coverage.

8 101. Upon information and belief, after receiving KLOS's claim for coverage
9 Cincinnati did not request or consider any KLOS's business records supporting extra expenses
10 that KLOS had been facing as a result of cessation of its operations.

11 102. Upon information and belief, after receiving KLOS's claim for coverage,
12 Cincinnati did not inspect the insured's premises to confirm the extent of and presence of
13 infectious COVID-19 located on surfaces on Plaintiff's premises and preventing it from use
14 for its intended purposes.

15 103. Upon information and belief, after receiving KLOS's claim for coverage,
16 Cincinnati did not engage any professionals to assist in a determination of how risk of and
17 actual presence of COVID-19 could be remediated during a period of restoration as well as
18 the extra expenses required to remediate and to make the premises usable for its intended
19 purposes.

20 104. In its Corporate Financial Highlight Section of its 10Q report filed with the
21 Securities and Exchange Commission in March 2020, Cincinnati contends that "[v]irtually all

1 of our commercial property policies do not provide coverage for business interruption claims
2 unless there is direct physical damage or loss to property. Because a virus does not produce
3 direct physical damage or loss to property, no coverage exists for this peril – rendering an
4 exclusion unnecessary. For this reason, most of our standard market commercial property
5 policies in states where we actively write business do not contain a specific exclusion for
6 COVID-19. While we will evaluate each claim based on the specific facts and circumstances
7 involved, our commercial property policies do not provide coverage for business interruption
8 claims unless there is direct physical damage or loss to property.”

9 [https://www.sec.gov/ix?doc=/Archives/edgar/data/20286/000002028620000041/cinf-](https://www.sec.gov/ix?doc=/Archives/edgar/data/20286/000002028620000041/cinf-2020331x10q.htm#sAD30F707ECD655FBB68006C22F92C146)
10 [2020331x10q.htm#sAD30F707ECD655FBB 68006C22F92C146.](https://www.sec.gov/ix?doc=/Archives/edgar/data/20286/000002028620000041/cinf-2020331x10q.htm#sAD30F707ECD655FBB68006C22F92C146)

11 105. Upon information and belief, Cincinnati wrongfully adopted a national standard
12 to support claim denials for business interruption claims submitted to it and relied upon an
13 improper legal standard and an unreasonable claims evaluation process to deny KLOS's claim
14 for coverage.

15 106. Upon information and belief, to support its claim denial, Cincinnati used a claim
16 denial template form it used regularly during this time period in March and April, 2020 as a
17 tool to deny all pandemic related business loss claims without conducting a detailed
18 investigation of the loss claims submitted by its insured and without evaluating the claim
19 presented to it based on the specific facts and circumstances involved.

20 107. Upon information and belief, Cincinnati's approximate nineteen day claim
21 investigation process did not act with an eye toward acting reasonably toward its insured, but

1 instead with an eye toward cherry-picking records and information allegedly supporting a
2 denial of the claim for coverage of prospectively costly pandemic claims.

3 108. By cherry-picking records and information allegedly supporting a denial of the
4 claim for coverage and/or ignoring its obligations to conduct a reasonable investigation,
5 Cincinnati failed to give due consideration to the interests of its insureds.

6 109. During its investigation, Cincinnati ignored and/or misinterpreted relevant and
7 material insurance policy terms which should have verified coverage exists for this claim.

8 110. As a part of its investigation, Cincinnati could have received and reviewed
9 documents, business records to verify loss, and had the opportunity to conduct examinations
10 under oath.

11 111. Upon request, Cincinnati could have had access to all business records and
12 personnel to verify the loss and could have received and reviewed records showing the efforts
13 undertaken to mitigate loss which would have confirmed that coverage existed under the
14 Policy.

15 112. Cincinnati relied upon an unreasonable and/or ambiguous interpretation of the
16 Policy by insisting that its insured has no claim for coverage because the COVID-19 did not
17 cause accidental loss or damage to property.

18 113. The Policy at issue in this Complaint is an "all-risk" policy meaning that it
19 provides coverage for virus related claims unless it expressly excludes coverage, which it does
20 not.

21

**COUNT I
(DECLARATORY RELIEF
VERSUS CINCINNATI ONLY)**

114. Plaintiff hereby repeats, reiterates, and realleges all of the foregoing allegations as if more fully set forth herein.

115. Plaintiff seeks declaratory relief pursuant to A.R.S. Section 12-1831 *et. seq.* and Ariz. R. Civ. P. 57.

116. The rights, status and legal relations of the parties are affected due to Cincinnati's improper contention that it may deny coverage for the loss claim made by KLOS.

117. Cincinnati's claim denial contending that its insured did not present a claim covered by the Policy constitutes unreasonable conduct, is wrongful, violates KLOS's reasonable expectations that it would be covered in case of loss occurring during the coverage period and is tantamount to acting unreasonably and converting monies which should have been used to pay this claim.

118. Cincinnati has refused to and continues to refuse to provide coverage for the claim presented to it by its insured.

119. Cincinnati's claim denial was wrongful, forms an improper basis from which it denies coverage and presents a justiciable controversy between the parties as to the respective rights and obligations under the policy.

120. KLOS seeks a judicial determination to resolve the present controversy over the coverage owed it on the policy.

121. Issuing declaratory relief by this Court would terminate some of the existing

1 controversy between the parties.

2 122. This action arises out of an insurance contract between the parties and thus
3 Plaintiff is entitled to an award of reasonable attorney's fees and costs pursuant to A.R.S.
4 §§ 12-341, 12-341.01.

5 **COUNT II**
6 **(BREACH OF CONTRACT**
7 **VERSUS CINCINNATI ONLY)**

8 123. Plaintiff hereby repeats, reiterates, and realleges all of the foregoing allegations
9 as if more fully set forth herein.

10 124. Cincinnati promised to provide coverage for claims presented to it in case of
11 losses covered by the terms and conditions of the Policy listing KLOS as insured on its Policy
12 Number EPP0108627.

13 125. Cincinnati accepted timely payment of insurance premiums from its insured
14 promising to provide coverage in times of loss.

15 126. Notwithstanding its promise to provide coverage for claims presented to it in
16 times of loss, Cincinnati wrongfully and in breach of its agreement to pay for losses, rejected
17 the claim for coverage for business income, extra expense, ingress/egress and civil authority
18 coverage for losses at issue in this Complaint. Cincinnati breached the Policy by failing to
19 and refusing to pay benefits for a claim involving losses which occurred during the applicable
20 policy coverage period beginning in March 2020.

21 127. KLOS has been damaged and continues to suffer damages as a result of the
unpaid claims and interest on these unpaid claims.

129. In addition to unpaid benefits due on the Cincinnati policy issued to its insured, KLOS suffered additional damages representing the amount of the fees incurred to recover damages flowing from said breach including costs and attorneys' fees incurred therein.

130. This action arises out of an insurance contract dispute between the parties and the Plaintiff KLOS is entitled to an award of reasonable attorneys fees and costs incurred pursuant to A.R.S. §§ 12-341 to 341.01.

COUNT III
(BREACH OF THE IMPLIED DUTY OF GOOD FAITH AND FAIR DEALING
VERSUS CINCINNATI ONLY)

11 131. Plaintiff hereby repeats, reiterates, and realleges all of the foregoing allegations
12 as if more fully set forth herein.

13 132. The Policy providing coverage to KLOS includes an implied obligation to act in
14 good faith and deal fairly with regard to its investigation of claims, coverage determinations
15 and with regard to treatment of its insureds with equal consideration to its own interests.

16 133. The duty of good faith and fair dealing is non-delegable and belongs to
17 Cincinnati and all of its agents acting on its behalf.

18 134. Cincinnati continues to owe its insured an obligation of good faith and fair
19 dealing.

135. During the course of its investigation for coverage, Cincinnati breached its duty of good faith and fair dealing owed to KLOS.

1 136. Specifically, Cincinnati breached the duty of good faith and fair dealing by
2 denying a legitimate claim presented by KLOS, cherry-picking and misinterpreting various
3 policy terms, failing to conduct a reasonable investigation including reviewing records and
4 information that supports a claim denial and failing to construe policy provisions properly and
5 reasonably.

6 137. Cincinnati further breached its duty of good faith and fair dealing by failing to
7 adequately and timely investigate claims and information tending to support payment of
8 claims submitted to it by the Plaintiff.

9 138. Cincinnati further breached its duty of good faith and fair dealing by
10 unreasonably denying adjustment and payment of claims for payment presented to it and
11 forcing its insured to jump through arbitrary, costly and unnecessary litigation hoops to
12 consider its claim and to attempt to force litigation to save it from costly claims that could
13 have but were not excluded before it issued KLOS a policy of insurance.

14 139. Cincinnati further breached its duty of good faith and fair dealing by failing to
15 treat KLOS reasonably and with the equal consideration to that of its own interests in saving
16 expense and minimizing claims payments.

17 140. Upon information and belief, Cincinnati further breached its duty of good faith
18 and fair dealing owed to its insured KLOS by failing to consider that coverage exists when as
19 here, it produced direct physical damage or loss to property.

20 141. Upon information and belief, Cincinnati breached its duty of good faith and fair
21 dealing owed to its insured KLOS by unreasonably relying on an improper national standard

1 to deny claims presented to by its Arizona insured and by conducting an unreasonable and
2 improper claims evaluation with an eye toward denying coverage rather than treating its
3 insured fairly.

4 142. Cincinnati systematically and unreasonably denied KLOS's claims for coverage
5 presented to it without conducting any reasonable investigation to evaluate specific facts and
6 circumstances involved.

7 143. Cincinnati did not reasonably consider all applicable and relevant facts and
8 circumstances involved in the claim presented by KLOS based upon its own financial interests
9 without giving equal consideration to the interest of its insured.

10 144. Cincinnati's claims investigation process was wholly unreasonable, omitted any
11 reasonable consideration for the facts and circumstances involved and failed to give due
12 consideration to KLOS's claims and interests presented to it.

13 145. Cincinnati continues to improperly stand by its claim denial and continues to act
14 unreasonably knowing that its conduct has been and continues to be unreasonable.

15 146. Cincinnati knew, should have known and/or was conscious of the fact that its
16 conduct denying the claim presented to it for loss has been and continues to be unreasonable.

17 147. As a direct and proximate result of Defendant's conduct, KLOS suffered
18 damages, and will continue to suffer damages in the amount of the unreasonably delayed
19 benefits due under the policy in an amount to be proven at trial.

20 148. As a further direct and proximate result of the Defendant's conduct, KLOS
21 suffered and continues to suffer damages in the amount of pre- and post-judgment interest

1 upon the amount of benefits that Defendant has unreasonably denied and in amount to be
2 proven at trial.

3 149. As a result of the claim denial, KLOS has been compelled to hire counsel and
4 pay fees and costs in an attempt to recover unpaid benefits due under the policy. So in addition
5 to unpaid benefits due on the Cincinnati policy, KLOS suffered additional damages
6 representing the amount of the fees incurred to recover damages flowing from said breach
7 including costs and attorneys' fees incurred therein.

8 **COUNT IV**
9 **(CONVERSION**
10 **VERSUS CINCINNATI ONLY)**

11 150. Plaintiff hereby repeats, reiterates, and realleges all of the foregoing allegations
12 as if more fully set forth herein.

13 151. The elements of conversion are essentially are the act of wrongful dominion or
14 control; over personal property; in denial of or inconsistent; and with the rights of another.
15 *Case Corp. V. Gerkey*, 208 Ariz. 140, 143, 91 P. 3d 362, 365 (App. 2004).

16 152. Cincinnati intentionally exercised dominion and control over the claims savings
17 resulting from its denial of coverage but which should have been used to pay and adjust the
18 property loss claim that KLOS presented to it.

19 153. Cincinnati acted inconsistent with its duties of control to act with the same
20 consideration to its insureds and to act in way that recognizes obligations owed to
21 policyholders during the claims administration process.

155. Cincinnati intentionally interfered with the rights of its insured by cherry-picking policy interpretation to support a claims denial, ignoring investigation obligations and efforts and records and information that would have supported accepting the claim and instead acting inconsistent with proper claims administrative process.

8 156. KLOS was deprived possession or use of the claims proceeds misappropriated
9 by Cincinnati.

10 157. Cincinnati's interference with KLOS's rights caused damages in an amount to
11 be proven at trial, but at least in the reasonable estimated value of the business income and
12 extra expense loss claims presented but denied.

15 158. KLOS hereby repeats, reiterates, and realleges all of the foregoing allegations
16 as if more fully set forth herein.

17 159. Elements of a claim for promissory estoppel are, a promise made by the
18 Defendant (to provide coverage in case of loss); which the promisor should reasonably foresee
19 would cause the Plaintiff, the promisee to rely (insurer should reasonably believe its insured
20 would expect payment on a claim for coverage in case of loss); upon which the promisee
21 actually relies to its detriment (insured submits a claim for coverage and carrier denies the

1 claim) and injustice can be avoided only by enforcement of the promise. *Johnson Int'l v. City*
2 *of Phoenix*, 192 Ariz. 466, 474, 967 P.2d 607, 615 (App. 1998); *citing* Restatement (Second)
3 of Contracts § 90.

4 160. As an alternative claim for recovery, all these elements of promissory estoppel
5 claim have been met under these circumstances.

6 161. Cincinnati made a promise to provide coverage in case of loss in exchange for
7 premium payments that KLOS made to it.

8 162. Cincinnati should have reasonably foreseen that KLOS would rely to its
9 detriment on Defendant's promise to provide coverage in case of loss.

10 163. KLOS actually relied upon Cincinnati's promise to pay for claims in times of
11 loss by continuing its business operations and renewing its insurance coverage in a time of
12 heightened exposure to a pandemic.

13 164. KLOS relied to its detriment upon Cincinnati's promise to provide coverage for
14 losses occurring within the applicable policy coverage period because the insurer denied its
15 claim for coverage involving the loss presented to it.

16 165. Injustice can be avoided by enforcing the promise made by Cincinnati to provide
17 coverage for the claim made for at least the loss of business income plus extra expense.

18 166. No reasonable justification exists for the Cincinnati's decision to deny the claim
19 presented to it for payment of the loss.

20 167. As an alternative theory of recovery regarding the allegations set forth in this
21 lawsuit, there is an absence of a remedy provided by law.

1 168. Plaintiff suffered damages arising out of the claim for promissory estoppel in an
2 amount to be proven at trial.

3 **COUNT VI**
4 **(NEGLIGENT MISREPRESENTATION**
5 **VERSUS CINCINNATI ONLY)**

6 169. KLOS hereby repeats, reiterates, and realleges all of the foregoing allegations
7 as if more fully set forth herein.

8 170. Elements of a claim for negligent misrepresentation follow: a Defendant
9 provides false information in a business transaction; the Defendant intended for Plaintiff to
10 rely or knew it would reasonably rely on incorrect information, Defendant failed to exercise
11 reasonable care in obtaining or communication the incorrect information, Plaintiff justifiably
12 relied on the incorrect information; and resulting damage. *KB Home Tucson, Inc. v. Charter*
13 *Oak Fire Ins. Co.*, 236 Ariz. 326, 334, 340 P.3d 405, 413 n. 7 (App. 2014).

14 171. Cincinnati Insurance promises to members of the public and to its policyholders
15 that it has a Pandemic Team in place during the COVID-19 pandemic.
16 <https://www.cinfin.com/covid-19/business-resiliency> (last accessed 7/30/2020).

17 172. Cincinnati promises that "Currently the team is using our business continuity
18 plans to ensure associates can serve agents and policyholders and that vendor and supplier
19 risks are mitigated *so business operations may continue.*" *Id.* (emphasis added).

20 173. Cincinnati promises its policy holders and the public that "Our detailed
21 pandemic plans allow for our associates to care for themselves and their family, *while*

1 *maintaining business operations.* Cincinnati Insurance stands ready to serve you during this
2 unprecedented time in our company's – and country's – history." *Id.* (emphasis added).

3 174. Cincinnati promises to its policyholders and to the public that during the current
4 COVID-19 pandemic that it is "Fulfilling the Insurance Promise" to its policyholders. *Id.*

5 175. Cincinnati represents to the public and its policyholders, "We are in the business
6 of helping policyholders recover financially after a loss. *We look for coverage, not exceptions,*
7 *when paying claims.* You'll appreciate the prompt and personal service our local claims
8 representatives deliver to help you get back on track." *Id.* (emphasis added).

9 176. Cincinnati promises its policyholders, "We continuously strengthen service by
10 offering agents and policyholders a stronger local presence, unparalleled claims service, and
11 competitive insurance products for your business, home, auto and life insurance needs." *Id.*

12 177. In its marketing materials and business proposal provided to KLOS before
13 renewing its policy of insurance to KLOS, Cincinnati represented that its "business is helping
14 people recover financially after losses, [and] working to preserve their dignity in the process."

15 178. In its business proposal, Cincinnati promised to provide business income and
16 extra expense as well as extra costs benefits with no waiting period.

17 179. In its marketing and business proposal materials, Cincinnati promised to provide
18 KLOS with coverage for "common pollutants [and] uncommon protection."

19 180. Cincinnati's marketing materials and business proposal for coverage renewal
20 extended to KLOS included overall coverage for "everyday pollutants ...found in everyday
21 businesses... [including] gaseous or airborne pollutants released from machinery, equipment

1 or materials you took to your work site... [and/or] [f]umes from machinery, equipment or
2 materials used to maintain your premises.” (emphasis added).

3 181. Cincinnati explained in its marketing materials and business insurance renewal
4 proposal to KLOS that “[t]he common substances you use in your business expose you to
5 financial loss.”

6 182. Notwithstanding representations made that gave the impression to its insured
7 that coverage would be provided for pollutants found in its business, in its coverage denial
8 letter to KLOS dated April 14, 2020, Cincinnati denied coverage for claims made to it on the
9 basis of a claimed policy exclusion for pollutants.

10 183. By making these promises to its policyholders, Cincinnati intended for KLOS
11 to rely or knew it would reasonably rely on representations it made publicly.

12 184. In its coverage denial letter dated April 14, 2020, Defendant Cincinnati provided
13 false information to Plaintiff about lack of insurance coverage to Plaintiff in the course of its
14 insurance business transaction with KLOS.

15 185. Cincinnati intended for KLOS to rely or knew it would reasonably rely on
16 incorrect coverage investigation conclusions communicated in its coverage denial letter dated
17 April 14, 2020.

18 186. By failing to conduct a reasonable investigation into the facts and circumstances
19 of claims for coverage presented to it, Cincinnati failed to “fulfill its insurance promise” to its
20 policyholder KLOS.

21

1 187. Cincinnati failed to exercise reasonable care in obtaining or communicating the
2 correct information to its policyholder about both its coverage investigation process and its
3 claims evaluation process to help get its customers "back on track."

4 188. By denying coverage for claims made by KLOS within less than three weeks of
5 receiving a notice of claim and without taking one examination under oath, without reviewing
6 a proof of loss statement and without evaluating the coverage claims as applied to the specific
7 facts and circumstances presented to it by KLOS, and without examining the extent to which
8 remediation efforts during the period of restoration could return the premises to a position
9 where it could be used for its intended purpose, Cincinnati failed to "look for coverage, not
10 exceptions" and negligently misrepresented the promises made to KLOS in the course of its
11 business relationship.

12 189. When it made claims for coverage, KLOS justifiably relied on Cincinnati's
13 representations that it would serve policyholders, look for coverage, not exceptions and would
14 find a way for business operations to continue in a manner to "fulfill the insurance promise."

15 190. KLOS suffered damages as a direct and proximate result of Cincinnati's
16 negligent misrepresentations made to its policyholders about coverage, coverage
17 investigation, the COVID-19 pandemic continuity plans, fulfilling promises to policyholders
18 and finding coverage not exceptions when claims are made.

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**COUNT VII
(PRODUCER MALPRACTICE
VERSUS GLENDALE ONLY)**

191. KLOS hereby repeats, reiterates, and realleges all of the foregoing allegations as if more fully set forth herein.

192. As a licensed insurance producer, Defendant Glendale and its licensed insurance producer employees owed a duty to Plaintiff to exercise reasonable care, skill and diligence in carrying out duties in procuring commercial insurance coverage for Plaintiff.

193. Defendant Glendale and its licensed insurance producer employees should have taken reasonable steps to consult with its client before expiration of commercial insurance during late 2019 and early 2020 to ensure that the Cincinnati policy provided business income and extra expense coverage for pandemic related losses or that KLOS had other options to consider for such coverage.

194. Despite actual knowledge of a raging pandemic in Arizona, Glendale did not take any steps before renewing coverage to ascertain whether coverage existed for business income and extra expense coverage on the Cincinnati policy or provide KLOS with other options before renewing the policy with Cincinnati.

195. Defendant Glendale breached its duty of care owed to KLOS by failing to properly advise its customer on coverage and options during a time period when businesses faced heightened risks to COVID-19 exposure.

196. Glendale's breach of its duty owed to KLOS to use reasonable skill and render thorough and complete advice to its client and recommend various coverage to KLOS was

1 both an actual and proximate cause of KLOS's losses it sustained from Cincinnati's claim
2 denial.

3 197. As a direct and proximate result of its failure to use reasonable care owed to its
4 client, Plaintiff suffered damages in an amount to be proven at trial.

5 **WHEREFORE**, KLOS respectfully requests that the Court grant the following relief
6 against Cincinnati and Glendale as follows:

7 A. Entering a declaratory judgment that the Policy provides coverage to KLOS for
8 the claim presented to Cincinnati and ordering it to reimburse KLOS for the full extent of its
9 losses required by the terms and conditions of the policy;

10 B. Entering judgment in favor of KLOS on its breach of contract claim against
11 Cincinnati, ordering Defendant to pay all compensatory and consequential damages arising or
12 resulting from the Cincinnati's breach of the terms of its policy;

13 C. Entering judgment in favor of KLOS for compensatory damages occurring as a
14 direct and proximate result of Cincinnati's breach of its implied covenant of good faith and
15 fair dealing;

16 D. Entering a judgment representing the amount wrongfully converted by
17 Cincinnati resulting from its decision to wrongfully deny the claim for damages flowing from
18 the losses sustained and premiums retained during the coverage period as specified in this
19 Complaint;

20 E. Entering a judgment for damages flowing from the promissory estoppel claim
21 as an alternative theory of recovery and representing the amount of the loss;

1 F. Awarding KLOS prejudgment interest;

2 G. Awarding KLOS its costs and reasonable attorneys' fees incurred herein
3 pursuant to A.R.S. § 12-341 *et seq.* and or other applicable rule, statute and the Policy;

4 H. Awarding KLOS its general and special damages resulting from Glendale's
5 breach of its insurance producer duties owed to it in an amount to be proven at trial; and

6 I. For such other relief as the Court deems just and proper.

7 RESPECTFULLY SUBMITTED this 28th day of August 2020.

8 GUTTILLA MURPHY ANDERSON, P.C.

9
10 By: 

Ryan W. Anderson

Attorneys for Plaintiff

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12
13
14 UDELMAN LAW FIRM P.L.C.

15
16 By: 

(with permission)

Randall S. Udelman

Attorneys for Plaintiff

VERIFICATION

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

I, Kiel F. Klaphake, upon my oath depose and state as follows:

I am a Member of KLOS Enterprises, LLC ("Plaintiff"), and am authorized to make this Verification on behalf of Plaintiff in the above-captioned proceeding. I have read the foregoing Complaint and I hereby verify that the statements and allegations contained therein are true and correct, except as to those matters stated upon information and belief, and as to those, I believe them to be true.

FURTHER, AFFIANT SAYETH NOT.



Kiel F. Klaphake
Member
KLOS Enterprises, LLC