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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

GOOD GEORGE LLC., an Oregon limited liability company,

Plaintiff,

v.

THE CINCINNATI INSURANCE COMPANY, an Ohio corporation,

Defendant.

Case No.

COMPLAINT  
(Breach of Contract; Breach of Covenant of Duty of Good Faith and Fair Dealing; Declaratory Judgment)

**CLAIM NOT SUBJECT TO MANDATORY ARBITRATION**

Amount Claimed: \$500,000  
Statutory Fee Authority: ORS 21.160(1)(C)  
Filing Fee: \$594

Plaintiff Good George LLC alleges as follows:

**PARTIES**

1.

Good George LLC (“Good George”), is an Oregon limited liability company that operates Revolution Hall and other music and entertainment venues, and associated food and beverage businesses, in Portland, Oregon. Good George has its principal place of business in Portland, Oregon.

2.

The Cincinnati Insurance Company (“Cincinnati”) is an Ohio corporation with its principal place of business in Fairfield, Ohio. Cincinnati conducts business in the State of Oregon including but not limited to selling insurance policies in Multnomah County.

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1 **JURISDICTION AND VENUE**

2 3.

3 This Court has subject matter jurisdiction because the policy of insurance at issue  
4 insures property in this county and was issued in this county.

5 4.

6 Venue is proper in this Court because the insurance policy at issue insures  
7 property in and was issued in this county.

8 **FACTUAL BACKGROUND**

9 **Good George and the Cincinnati Policy**

10 5.

11 Good George is an independent, locally-based entertainment venue owner and  
12 operator. Good George’s flagship venue is Revolution Hall, a repurposed former Portland high  
13 school in Southeast Portland that features a large theater, a rooftop bar, and several indoor bars  
14 and restaurants. Revolution Hall is a vital part of Portland’s cultural community, hosting local  
15 and touring performers year-round and providing a community gathering place close to  
16 downtown Portland.

17 6.

18 Good George purchased a commercial property insurance policy from Defendant  
19 Cincinnati, numbered EPP 031 83 98, with a policy period of April 9, 2018 through April 9,  
20 2021 (the “Policy”).

21 7.

22 The Policy provides coverage for “direct ‘loss’ to Covered Property at the  
23 ‘premises’ caused by or resulting from any Covered Cause of Loss.”

24 8.

25 “Loss” is defined in the Policy as “accidental physical loss or accidental physical  
26 damage.”

1 9.

2 The Policy states that “Covered Cause of Loss means direct ‘loss’ unless the  
3 ‘loss’ is excluded or limited in this Coverage Part.”

4 10.

5 Because the only causes of loss that are not covered by the Policy are those that  
6 are specifically excluded by the Policy, the Policy provides what is commonly known as “all-  
7 risk” coverage.

8 11.

9 The Policy contains two “forms” that provide business income and extra expense  
10 coverage: 1) the “Building and Personal Property Coverage (Including Special Causes of Loss)”  
11 Form, numbered FM 101 05 16; and 2) the “Business Income (and Extra Expense)” Form,  
12 numbered FA 213 05 16. Each of these forms provide that Cincinnati “will pay for the actual  
13 loss of ‘Business Income’ . . . due to the necessary ‘suspension’ of [the insured’s] ‘operations’  
14 during the ‘period of restoration.’”

15 12.

16 The Policy also provides coverage for “Extra Expense,” which is defined in the  
17 Policy as “necessary expenses” sustained by the insured “during the ‘period of restoration’ that  
18 [the insured] would not have sustained if there had been no direct ‘loss’ to property caused by or  
19 resulting from a Covered Cause of Loss.”

20 13.

21 “Suspension” is defined in the Policy as the “slowdown or cessation of [the  
22 insured’s] business activities; and [t]hat a part or all of the ‘premises’ is rendered untenable.”

23 14.

24 “Period of restoration” is defined in the Policy as the period that “[b]egins at the  
25 time of direct ‘loss’ and [e]nds on the earlier of” the date when the insured’s property “should be

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1 repaired, rebuilt, or replaced with reasonable speed and similar quality” or when the insured  
2 resumes operations at a new permanent location.

3 15.

4 The Policy contains an “Additional Coverage” for “Civil Authority,” which provides  
5 coverage on the following essential terms: “When a Covered Cause of Loss causes damage to  
6 property other than Covered Property at a ‘premises,’ [Cincinnati] will pay for the actual loss of  
7 Business Income and necessary Extra Expense” that the insured sustains “caused by action of civil  
8 authority that prohibits access to the ‘premises.’”

9 16.

10 The Policy also provides other coverages and terms relevant to the loss sustained  
11 by Good George as described herein, including but not limited to coverage for business income  
12 loss resulting from prevention of “Ingress” and “Egress” and coverage for losses incurred to  
13 protect covered property from further damage.

14 17.

15 The Policy expressly provides that “two or more coverages in this policy [may]  
16 apply to the same ‘loss.’”

17 18.

18 Good George intended to rely on the insurance coverage provided by the Policy to  
19 keep the business alive in the event of a natural disaster, or other event not excluded by the  
20 Policy causing business income and other loss.

21 **The Pandemic**

22 19.

23 In or around December of 2019, a novel coronavirus began to spread in China.  
24 China provided the genetic sequence for what has become known as the 2019 Novel Coronavirus  
25 (also known as SARS-CoV-2) on or about January 12, 2020. The World Health Organization  
26 (“WHO”) later named the disease that may result from infection by SARS-CoV-2, “COVID-19.”

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20.

In January 2020, health officials reported that a Washington State resident tested positive for SARS-CoV-2 infection, and that he was the first known U.S. resident infected by the virus. Officials announced that the first death in the United States from COVID-19 (they believed at the time) occurred in King County, Washington on February 28, 2020.

21.

The WHO recognized on January 25, 2020, that the 2019 Novel Coronavirus is a “global threat to human health . . . .” On January 30, 2020, the WHO Director declared the 2019 Novel Coronavirus outbreak “a Public Health Emergency of International Concern.”

22.

On March 11, 2020, the Director of the WHO determined that the rapidly spreading SARS-CoV-2 virus and COVID-19 disease constituted a worldwide pandemic. WHO saw “alarming levels of spread and severity” of SARS-Cov-2 and COVID-19. WHO representatives stated: “Pandemic is not a word to use lightly or carelessly . . . . We have never before seen a pandemic sparked by a coronavirus. This is the first pandemic caused by a coronavirus. And we have never before seen a pandemic that can be controlled, at the same time.”

23.

The United States Center for Disease Control (“CDC”) has stated, among other things, that a “pandemic is a global outbreak of disease. Pandemics happen when a new virus emerges to infect people and can spread between people sustainably. Because there is little to no pre-existing immunity against the new virus, it spreads worldwide.”

24.

The WHO has explained that SARS-CoV-2 primarily spreads through respiratory droplets expelled when an infected person talks, sneezes, and coughs, and by “fomites,” objects

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1 and surfaces contaminated by the respiratory droplets. Emerging research suggests also that  
2 SARS-CoV-2 spreads by becoming aerosolized, or through airborne transmission.

3 25.

4 Emerging research on the virus and reports indicate that SARS-CoV-2 physically  
5 infects and can stay alive on surfaces for at least 17 days, a characteristic that renders property  
6 exposed to the contagion potentially unsafe and dangerous. Other research indicates that the  
7 virus may linger on surfaces for up to four weeks in lower temperatures.

8 26.

9 SARS-CoV-2 reportedly has an incubation period of 2–12 days, during which  
10 time it can be spread by an infected person even before symptoms develop in the infected person.  
11 During periods of time relevant to this complaint testing for the SARS-CoV-2 virus, either of  
12 persons or surfaces, was not widely available.

13 27.

14 On March 24, 2020, the World Health Organization indicated that the United  
15 States had the potential to become the center of the SARS-CoV-2 pandemic.

16 28.

17 As of April 11, 2020, all 50 states as well as the U.S. Virgin Islands, the Northern  
18 Mariana Islands, Washington, D.C., Guam and Puerto Rico had received a federal disaster  
19 declaration as a result of the pandemic. As of April 11, 2020, American Samoa was the only  
20 U.S. territory that was not under a major disaster declaration.

21 29.

22 No later than March 13, 2020, at least one person physically present in downtown  
23 Portland, Oregon, where Good George is located, was reported to have tested positive for  
24 infection by SARS-CoV-2.

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1 **Governmental Orders**

2 30.

3 On March 8, 2020, Oregon Governor Kate Brown issued Executive Order 20-03,  
4 declaring a state of emergency as a result of the presence and transmission of SARS-CoV-2,  
5 pursuant to ORS 401.165 *et seq.*

6 31.

7 On March 12, 2020, Governor Brown issued Executive Order 20-05 (“Order 20-  
8 05”), prohibiting gatherings of 250 people or more, and stating, “COVID-19 spreads person-to-  
9 person through coughing and sneezing, close personal contact, such as touching or shaking  
10 hands, or touching an object or surface with the virus on it, and then touching your mouth, nose,  
11 or eyes. The symptoms are fever, cough and difficulty breathing.” Order 20-05 was  
12 immediately effective and scheduled to expire on April 8, 2020, unless Governor Brown  
13 extended it.

14 32.

15 On March 17, 2020, Governor Brown issued Executive Order 20-07 (“Order 20-  
16 07”), which among other things, banned gatherings of more than 25 people and prohibited  
17 restaurants from offering dine-in or “on-premises” service and consumption of food or  
18 beverages. Order 20-07 was immediately effective.

19 33.

20 Also on March 17, 2020, Governor Brown issued Executive Order 20-08, which  
21 stated in part:

22 COVID-19 may cause respiratory disease leading to serious illness  
23 or death. The World Health Organization considers COVID-19 to  
24 be a global pandemic. *COVID-19 spreads person-to-person through*  
25 *coughing, sneezing, close personal contact, including touching a*  
26 *surface with the virus on it and then touching your mouth, nose, or*  
*eyes.*

1 State and local public health officials advise that the virus is  
2 circulating in the community and expect the number of cases to  
3 increase. The United States Centers for Disease Control and  
4 Prevention (CDC) reports that COVID-19 is most contagious when  
5 the individual is most symptomatic, but may also spread before  
6 symptoms appear. CDC recommends measures to limit spread of the  
7 disease in the community, including limitations on events and  
8 gatherings.

(Emphasis added.)

34.

9 On March 23, 2020, Governor Brown issued Executive Order 20-12 (“Order 20-  
10 12”), which “prohibit[ed] the operation of” certain businesses, including “social and private  
11 clubs” and “theaters.” Order 20-12 was immediately effective and remained in effect until  
12 Governor Brown terminated it.

35.

13 On April 7, 2020, Governor Brown issued Executive Order 20-14, which  
14 extended Order 20-07.

36.

15 Subsequently Governor Brown implemented a phased reopening process that  
16 impacted all businesses, including Good George, which made reopening dependent on State  
17 approval of county-specific reopening plans. In June, 2020, the Sate approved a plan that  
18 included allowing restaurants in Multnomah County to offer limited on-premises consumption of  
19 food and beverages beginning on June 19, 2020.

20 **Good George’s Response to the Pandemic**

21 37.

22 On or about March 12, 2020, Good George closed its premises to customers and  
23 suspended its operations due to the pandemic, the presumptive, likely and actual presence of the  
24 SARS-CoV-2 virus, and Order 20-07 and other governmental directives.  
25  
26



1 38.

2 Since that time, Good George has attempted to mitigate its losses by selling or  
3 attempting to sell certain products or services, constituting a significant slowdown if not  
4 complete cessation of its operations.

5 39.

6 Good George was forced to lay off or furlough employees, cancel performances,  
7 refund ticket costs to customers, cancel orders from suppliers, incur expenses to mitigate loss,  
8 and take other actions with a significant impact on its business, its business partners and its  
9 community, as a result of the suspension of its operations and Defendant’s failure to pay losses  
10 covered under the Policy.

11 40.

12 Good George’s suspension of its operations is ongoing.

13 **Good George’s Losses**

14 41.

15 As a result of the pandemic, including but not limited to loss of customers and  
16 loss of employees, and or in the alternative as a result of the presumptive, likely and actual  
17 presence of the virus in the community, including employees and customers, and on and about  
18 the premises, property at Good George’s premises was rendered physically unfit or unsafe for  
19 ordinary or intended use, rendered substantially unusable, and/or lost physical utility, and  
20 therefore it was necessary for Good George to suspend operations.

21 42.

22 Good George’s necessary suspension of its operations for the reasons described  
23 above, beginning on or about March 12, 2020, and continuing to date, was caused by direct  
24 accidental physical loss to property at its covered premises.

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43.

Good George has incurred actual loss of business income due to the suspension of its operations as described above, in an amount to be proven at trial but not less than \$495,000 (the “Pandemic Time Element Loss”).

44.

Good George has also incurred necessary expenses following the suspension of its operations described above that it would not have incurred if there had been no accidental direct physical loss to its property as described above. Good George incurred these extra expenses in order to reduce its business income loss including minimizing the suspension of its business, and to prevent further damage to the property, in an amount to be proven at trial but not less than \$5,000 (the “Pandemic Extra Expense Loss”).

45.

And or in the alternative, the governmental orders described above and other similar orders constitute multiple instances of “action of civil authority” within the meaning of the Policy on the basis that a “Covered Cause of Loss”—the pandemic and/or virus —caused “damage” to property other than the insured’s property; that the orders “prohibited access” to the insured’s premises; that the orders “prohibited access” to the “area immediately surrounding” the “damaged property” “as a result of the damage” by limiting gatherings and other public and private activities; and that the orders were issued “in response to dangerous physical conditions” resulting from the “damage:” the pandemic and/or presence of the virus.

46.

And or in the alternative the pandemic, and or in the alternative the presence of the virus in the community, employees and customers other than on the premises, prevented existing ingress and egress to the insured’s property due to direct loss to property contiguous to the insured’s property.

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47.

On or about March 20, 2020, Good George informed Cincinnati of its claim for Policy benefits as a result of the Pandemic Time Element Loss and the Pandemic Extra Expense Loss.

48.

On or about May 27, 2020, Cincinnati denied Good George’s claim for Pandemic Time Element Loss and Pandemic Extra Expense Loss.

49.

Following the suspension of its business beginning on or about March 12, 2020, and during the period of Pandemic Time Element Loss in which Good George was attempting to mitigate its losses through partial resumption of some operations, Good George experienced an occurrence and cause of loss separate from the cause of Pandemic Time Element Loss, which itself caused time element loss and extra expense (the “Civil Commotion Time Element Loss” and “Civil Commotion Extra Expense Loss”), which were reported to Cincinnati under the Policy. Neither the Civil Commotion Time Element Loss nor the Civil Commotion Extra Expense Loss are the subject of this lawsuit at this time. Good George reserves the right to amend this lawsuit to include claims relating to the Civil Commotion Time Element Loss and the Civil Commotion Extra Expense Loss.

**FIRST CLAIM FOR RELIEF**  
**(Breach of Contract)**

50.

Good George realleges and incorporates each preceding paragraph as if fully set forth herein.

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51.

Good George paid substantial premiums to Cincinnati in consideration for Cincinnati’s promise to pay Good George’s claims for business income loss and extra expense covered by the Policy. The Policy constitutes a contract between the parties.

52.

Good George complied with all conditions precedent to coverage under the Policy with regard to the Pandemic Time Element Loss and the Pandemic Extra Expense Loss, except for any obligations that were waived or excused.

53.

Cincinnati breached its express and implied duties under the Policy by, among other things, denying coverage under the terms of the Policy for the Pandemic Time Element Loss and the Pandemic Extra Expense Loss.

54.

By breaching the terms of the Policy, Cincinnati has caused and continues to cause Good George damages in an amount to be proven at trial, but not less than \$500,000.

55.

As a result of Cincinnati’s breach, Good George has been required to retain counsel and incur attorney fees and other costs, for which Cincinnati is liable pursuant to, among other laws, ORS 742.061.

**SECOND CLAIM FOR RELIEF**

**(Breach of the Covenant of Good Faith and Fair Dealing)**

56.

Good George realleges and incorporates each preceding paragraph as if fully set forth herein.

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1 57.

2 Every contract, including the Policy, contains an obligation of good faith and fair  
3 dealing, performance, and enforcement. Cincinnati had discretion in its performance of certain  
4 obligations under the Policy.

5 58.

6 Cincinnati's refusal to pay Policy benefits to Good George for the Pandemic Time  
7 Element Loss and Pandemic Extra Expense Loss was unreasonable and without proper cause and  
8 therefore breached the covenant of good faith and fair dealing inherent in the Policy.

9 59.

10 Cincinnati breached its implied duties of good faith and fair dealing in the  
11 performance of its obligations under the Policy in at least the following ways: 1) failing to  
12 adequately investigate Good George's claim, including failing to adopt reasonable interpretations  
13 of undefined and disputed terms in the Policy; 2) failing to provide a proper explanation for the  
14 basis relied on for its denial of Good George's claim in relation to the facts or applicable law; 3)  
15 by misrepresenting facts and the terms of the Policy in an effort to improperly deny or limit its  
16 coverage obligations; 4) by compelling Good George to initiate this litigation in order to recover  
17 Policy benefits; and 5) on information and belief, by failing to adopt and implement reasonable  
18 standards for the prompt and correct investigation of Good George's claim.

19 60.

20 As a direct result of Cincinnati's breach of the covenant of good faith and fair  
21 dealing, Good George has been damaged in an amount to be proven at trial.

22 61.

23 As a direct result of Cincinnati's conduct Good George has been required to retain  
24 the services of an attorney and to incur attorney fees and other costs resulting from the need to  
25 contest Cincinnati's denial.

26 ///

1 62.

2 As a direct result of the conduct of Cincinnati as alleged above, Good George has  
3 been damaged and injured, and is therefore entitled to recover:

4 a) reasonable attorney fees incurred by Good George in obtaining Policy benefits  
5 in an amount to be proved at trial under applicable law, including ORS 742.061;

6 b) costs and expenses associated with the need to contest Cincinnati's denial that  
7 are not recoverable under ORS 742.061; and

8 c) an award of consequential damages resulting from Cincinnati's conduct, in an  
9 amount to be proven at trial.

10 **THIRD CLAIM FOR RELIEF**

11 **(Declaratory Judgment)**

12 63.

13 Good George realleges and incorporates each preceding paragraphs as if fully set  
14 forth herein.

15 64.

16 A justiciable controversy exists between Good George and Cincinnati regarding  
17 coverage under the Policy for the business income loss and extra expense suffered by Good  
18 George as a result of the Pandemic Time Element Loss and the Pandemic Extra Expense Loss.  
19 The Court can resolve the controversy through entry of a Judgment declaring the rights and  
20 liabilities of Good George and Cincinnati relative to coverage under the Policy for Good  
21 George's business income loss and extra expense. Good George requests appropriate declaratory  
22 relief to establish its rights.

23 65.

24 For the reasons set forth above, Good George is entitled to a declaration that  
25 Cincinnati has breached the Policy and that Cincinnati is obligated to cover Good George's  
26 business income losses up to the Policy's limits.

1 **DEMAND FOR JURY TRIAL**

2 66.

3 Plaintiff demands a trial by jury on all claims for which a right to jury trial  
4 applies.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Good George prays for judgment as follows:

7 1. On its First Claim for Relief, for judgment in favor of Good George and  
8 against Cincinnati in an amount to be proven at trial, but not less than \$500,000;

9 2. On its Second Claim for Relief, for judgment in favor of Good George and  
10 against Cincinnati in an amount to be proven at trial;

11 3. On its Third Claim for Relief, for a judgment declaring that Cincinnati has  
12 breached the Policy and that Cincinnati is obligated to cover Good George’s business income  
13 losses up to the Policy limits;

14 4. For its reasonable attorney fees and costs incurred pursuant to applicable  
15 law including ORS 742.061;

16 5. For pre-judgement interest at the highest applicable statutory rate; and

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6. For such other and further relief as the Court deems just, equitable, and proper.

DATED this 2nd day of September, 2020.

MILLER NASH GRAHAM & DUNN LLP

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