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17 *Pro hac vice applications to be submitted

18 Attorneys for Plaintiff
19 Great Northern Resources, Inc.

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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

17 GREAT NORTHERN RESOURCES, INC.,
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19 Plaintiff,
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21 v.
22 KATY COBA, in her Official Capacity as State
23 Chief Operating Officer and Director of the
24 OREGON DEPARTMENT OF
25 ADMINISTRATIVE SERVICES; OREGON
26 DEPARTMENT OF ADMINISTRATIVE
27 SERVICES; THE CONTINGENT; and DOES
28 1-10,

Defendants.

Case No.:

**COMPLAINT FOR DECLARATORY,
INJUNCTIVE, OR OTHER RELIEF**

1 Plaintiff Great Northern Resources, Inc. complains of Defendants Katy Coba, in her
2 official capacity as Chief Operating Officer and Director of the Oregon Department of
3 Administrative Services; Oregon Department of Administrative Services; and The Contingent and
4 alleges:

5 **INTRODUCTION**

6 1. Plaintiff Great Northern Resources, Inc. (“Great Northern”) brings this lawsuit to
7 challenge the constitutionality of the State of Oregon’s use of strict race-based criteria for
8 distributing money from the Oregon Cares Fund for Black Relief and Resiliency (the “Fund”), a
9 \$62-million dollar grant program established by the Oregon Legislature to provide financial relief
10 to individuals and businesses that have been adversely impacted by the Covid-19 pandemic.
11 Grants from the Fund are only available to individuals and business owners who “self-identify as
12 Black.” This express use of race in distributing government money is unprecedented and blatantly
13 unconstitutional.

14 2. Great Northern is a small, family-run logging company based in Eastern Oregon
15 that harvests salvage timber and sells it to a local mill. Like many small businesses around the
16 state – and around the country – Great Northern’s business has suffered as a result of the
17 pandemic. Just when Great Northern was preparing its first timber delivery of the year, the local
18 mill stopped making new log purchases due to the uncertainty of the future markets for lumber.
19 Great Northern’s timber has dried, cracked, and is not in condition to be sold to the mill.

20 3. After more than seven months of slow operations, the company has exhausted its
21 modest operating capital reserves and its revenue is far eclipsed by costs and expenses. Great
22 Northern estimates that the mill’s closure and subsequent moratorium on buying timber cost the
23 business \$100,000, and the company projects a \$200,000 loss for the year because of the
24 pandemic’s continuing economic effects.

25 4. The pandemic’s harm to Great Northern should qualify it to compete in any
26 government-aid program for businesses that have been affected by Covid-19. And yet the
27 company is ineligible to receive a grant from the Fund because its owner is not Black.

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1 Servs., *Administrative Overview* (Jan. 2014). DAS is responsible for overseeing the State’s
2 management and distribution of funds received from the Federal government through the
3 Coronavirus Aid, Relief, and Economic Security Act’s \$150 billion Coronavirus Relief Fund. As
4 COO and Director of DAS, Coba is responsible for managing and coordinating DAS’ programs
5 and operations, including the grant program and Fund that is the subject of this litigation. Coba is
6 sued in her official capacity.

7 12. Defendant The Contingent is a Portland-based nonprofit corporation organized
8 under Oregon law. As set forth in further detail below, for all relevant purposes The Contingent
9 has acted jointly with the State of Oregon and Defendant DAS by administering the Fund such that
10 it is a state actor and has been acting under color of state law.

11 13. The true names or capacities – whether individual, corporate, associate, or
12 otherwise – of the Defendants named herein as Does 1-10, are presently unknown to Plaintiff, and
13 are therefore sued by these fictitious names. Plaintiff prays for leave to amend this Complaint to
14 show the true names or capacities of these Defendants if and when they have been determined.

15 GENERAL ALLEGATIONS

16 **A. The Oregon Legislature Established The Fund To Provide Coronavirus Relief Grants** 17 **On The Basis Of Race.**

18 14. On July 14, 2020, the Oregon Legislature’s Joint Emergency Board approved a \$62
19 million grant to establish the Fund, using money allocated to the State by the Federal government
20 in the CARES Act’s \$150 billion Coronavirus Relief Fund. The Fund is a grant program overseen
21 by DAS and administered by two Oregon-based community organizations (The Contingent and the
22 Black United Fund of Oregon) that are responsible for reviewing applications and making funding
23 decisions.

24 15. DAS is “responsible for transmitting the [grant] funds and working with The
25 Contingent on ensuring that federal spending, reporting, and other legal requirements are met,
26 including that the funds are expended by December 30, 2020.” Exhibit 1, Oregon State Leg. Joint
27 Emergency Bd., Leg. Fiscal Office Analysis, Agenda Item 3: Oregon Cares Fund for Black Relief
28 and Resiliency (July 14, 2020) (“Cares Fund Agenda Report”), at p. 2.

1 16. The Contingent is the recipient of the \$62 million grant from DAS and is the
2 organization responsible for managing business grants from the Fund. The Black United Fund of
3 Oregon is responsible for managing grants to individuals from the Fund.

4 17. The Fund is explicitly targeted at providing relief to the “Black community,” to
5 support “Black relief and resiliency.” Ex. 1, Cares Fund Agenda Report at p. 1. To be eligible for
6 relief funds, individuals, families, and businesses must (1) live in or be based in Oregon, (2)
7 demonstrate hardship due to COVID-19, and (3) “self-identify as Black.” *Id.* Likewise,
8 community-based non-profits are eligible for funds if they can demonstrate a significant tie to the
9 Black community, which includes having an “[o]rganizational environment [that] is Black-focused
10 and [being] recognized by the community served as a Black-serving organization,” and at least
11 33% of the staff and a majority of the organization’s leadership must be Black. *Id.* Individuals
12 and families are eligible to receive grants up to \$3,000, and businesses and community-based non-
13 profits can receive up to \$100,000 in grants. *Id.*

14 18. As part of the application process, individuals, families, and businesses seeking
15 grants from the Fund must state whether they “identify” as Black – and funding decisions are
16 based on whether applicants satisfy this threshold criteria.

17 19. Consistent with restrictions imposed by the federal government through the CARES
18 Act, all funds allocated to the grant program must be expended by December 30, 2020. Cares
19 Fund Agenda Report at p. 2.

20 **B. Great Northern Applies For A Coronavirus Relief Grant From The Fund.**

21 20. Logging is an important business in Oregon. The State boasts 5 of the 10 largest
22 sawmills (by volume of sawn wood) in the country. Oregon leads the nation in softwood lumber
23 production, plywood production, and engineered wood. Sixty-five percent of Grant County in
24 Eastern Oregon is classified as forestland, and twenty percent of county residents have forest
25 sector jobs.

26 21. Great Northern is a small, family-run logging company based in Grant County. It
27 was founded in 1991. The focus of Great Northern’s business is selective harvesting and timber
28 salvage – along with thinning and fuel reduction – on privately-owned and federally-managed

1 lands in Grant County, and then selling merchantable timber to local sawmills. Salvage logging is
2 the practice of harvesting dead, dying, diseased, or down timber, which is essential to responsible
3 and sustainable forest management.

4 22. Around the time Great Northern was preparing its first delivery of the year in
5 March 2020, the local mill stopped making new log purchases because of uncertainty in the timber
6 market induced by the pandemic. By the time the mill started buying again several months later,
7 Great Northern's timber had dried and cracked, and was not in condition to be sold to the mill.
8 (Unlike fresh timber that can sit for six months or more before being processed and cut into
9 lumber, salvage logs have a short life span before they crack.)

10 23. Like many small businesses around the state, Great Northern's business has
11 suffered during the pandemic. After over seven months of slow operations, the company has
12 exhausted its modest operating capital reserves and company revenue is far eclipsed by its costs
13 and expenses. Great Northern estimates that the mill's closure and subsequent moratorium on
14 buying timber cost the business \$100,000.

15 24. Over the past few months, Great Northern has applied to several government-relief
16 programs to mitigate the impact of the pandemic, but so far it has received no financial assistance.

17 25. In April 2020, Great Northern applied for a grant of up to \$10,000 from the U.S.
18 Small Business Administration's economic injury disaster loan program. The SBA denied the
19 company's application. Great Northern submitted a second application to the SBA, which was
20 also denied.

21 26. In connection with its grant applications, the SBA informed Great Northern that it
22 could obtain a loan from the SBA's COVID-19 EIDL program, but the company declined because
23 it decided it would be too risky to take on debt given the uncertain economic outlook.

24 27. On September 24, 2020, Great Northern applied for an emergency grant through the
25 Greater Eastern Oregon Development Corporation. The application was denied. Great Northern
26 resubmitted an application to the program on October 19, 2020. As of this filing, Great Northern
27 has not received a response to its second application.

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1 28. On October 4, 2020, Great Northern submitted a grant application to the Fund
2 through the Contingent’s website. As part of the application, Great Northern described the
3 pandemic’s impact on its business, including the effect of the mill closure and moratorium
4 discussed above.

5 29. Great Northern also submitted financial details showing that its revenue had
6 dropped from approximately \$150,000 in 2019 to less than \$30,000 in 2020, and that the company
7 projected a loss of approximately \$200,000 for the year.

8 30. Finally, the application asked: “What percentage of owners of this business identify
9 as Black?” Great Northern answered “0.”

10 31. According to the Contingent, the earliest Great Northern will receive a response is
11 October 31. But that response will be a denial: Great Northern is ineligible for a grant because its
12 owner isn’t Black. Great Northern brings this suit now, however, because it has sustained an
13 injury-in-fact by being forced to compete in a race-based system for government benefits. *See*
14 *Adarand Constructors*, 515 U.S. at 211; *Northeastern Fla. Chapter, Associated Gen. Contractors*
15 *of Am.*, 508 U.S. at 666. Furthermore, time is of the essence because all funds in the grant
16 program must be expended by December 30.

17 **C. Defendants’ Use Of Race To Distribute Grants From The Fund Violates The Equal**
18 **Protection Clause And Federal Antidiscrimination Law.**

19 32. The Fourteenth Amendment’s equal protection clause provides that, “No State shall
20 . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const., Amdt.
21 14, § 1.

22 33. “[T]he central purpose of the Fourteenth Amendment was to eliminate racial
23 discrimination emanating from official sources in the States.” *Pena-Rodriguez v. Colorado*, 137 S.
24 Ct. 855, 867 (2017) (quoting *McLaughlin v. Florida*, 379 U.S. 184, 192 (1964)). “Laws that
25 explicitly distinguish between individuals on racial grounds fall within the core of [the Fourteenth
26 Amendment’s] prohibition.” *Shaw v. Reno*, 509 U.S. 630, 642 (1993). “[A]t the heart of the
27 Constitution’s guarantee of equal protection lies the simple command that the Government must
28 treat citizens as individuals, not as simply components of a racial, religious, sexual or national

1 class.” *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 730 (2007)
2 (plurality opinion of Roberts, C.J.) (quoting *Miller v. Johnson*, 515 U.S. 900, 911 (1995)) (internal
3 citation omitted). Put simply, “[d]istinctions between citizens solely because of their ancestry are
4 by their very nature odious to a free people whose institutions are founded upon the doctrine of
5 equality.” *Rice v. Cayetano*, 528 U.S. 495, 517 (2000) (internal quotation marks omitted).

6 34. “[O]ne form of injury under the Equal Protection Clause is being forced to compete
7 in a race-based system that may prejudice [a] plaintiff.” *Parents Involved*, 551 U.S. at 719
8 (plurality opinion of Roberts, C.J.) (citing *Adarand Constructors*, 515 U.S. at 211; and
9 *Northeastern Fla. Chapter, Associated Gen. Contractors of Am.*, 508 U.S. at 666).

10 35. “[A]ll racial classifications, imposed by whatever federal, state, or local
11 governmental actor, must be analyzed by a reviewing court under strict scrutiny.” *Adarand*
12 *Constructors*, 515 U.S. at 227. Under strict scrutiny, the government has the burden of proving
13 that racial classifications “are narrowly tailored measures that further compelling governmental
14 interests.” *Id.* “The reasons for strict scrutiny are familiar. Racial classifications raise special
15 fears that they are motivated by an invidious purpose. Thus, [the Supreme Court has] admonished
16 time and again that, ‘[a]bsent searching judicial inquiry into the justification for such race-based
17 measures, there is simply no way of determining . . . what classifications are in fact motivated by
18 illegitimate notions of racial inferiority or simple racial politics.’” *Johnson v. California*, 543 U.S.
19 499, 505–06 (2005) (quoting *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989)).

20 36. Defendants’ use of race as the qualifying factor in distributing grants from the Fund
21 fails strict scrutiny. It is not based on a compelling interest, nor is it narrowly tailored. *Aderand*,
22 515 U.S. at 227.

23 37. The Supreme Court has stated repeatedly that addressing past societal
24 discrimination is not a compelling interest. “[G]eneralized assertion[s]” of discrimination cannot
25 justify remedial race-based action because they “provide[] no guidance for a legislative body to
26 determine the precise scope of the injury it seeks to remedy. It ‘has no logical stopping point.’”
27 *J.A. Croson Co.*, 488 U.S. at 498 (quoting *Wygant v. Jackson Bd. Of Educ.*, 476 U.S. 267, 275
28 (1986)). Likewise, “[a] generalized assertion of past discrimination in a particular . . . region is not

1 adequate because it ‘provides no guidance for a legislative body to determine the precise scope of
2 the injury it seeks to remedy.’” *Shaw v. Hunt*, 517 U.S. 899, 909 (1996) (citation omitted); *see*
3 *also J.A. Croson Co.*, 488 U.S. at 499 (“an amorphous claim” of past discrimination insufficient to
4 justify race-based quota system). Rather, the Equal Protection Clause requires the government to
5 identify discrimination with specificity, have actual evidence of discrimination that demonstrates
6 race-based action is necessary, and tailor any race-conscious action to that discrimination. *Shaw*,
7 517 U.S. at 909; *see also J.A. Croson Co.*, 488 U.S. at 500, 504.

8 38. But the Oregon Legislature did precisely what the Supreme Court has said it cannot
9 do: It established the Fund based upon claims of generalized discrimination. The Joint
10 Emergency Board’s scant legislative record focuses broadly on general notions of past and present
11 societal discrimination. *See Multnomah County Board of County Commissioners, Letter in*
12 *Support of The Oregon Cares Fund* (July 10, 2020) (arguing that “Oregon’s (and the country’s)
13 racist history has created a present in which Black Oregonians have been disproportionately
14 impacted by the COVID pandemic,” and claiming that “The Oregon Cares Fund would address
15 this disproportionate impact by providing direct funding to Black individuals and families, Black-
16 led businesses, and Black-owned organizations.”); Washington County Administrative Office,
17 *Letter RE: Emergency funding for the Oregon Cares Fund for Black Relief and Resiliency* (July
18 13, 2020) (“We join the call for accountability and concrete change to end racial injustice and the
19 brutality that it gives rise to. We support the movement to dismantle systemic racism. We know
20 that systemic racism contributes to economic, social, and health disparities that directly impact our
21 county. [¶] We must, therefore, become an active part of the remedy. We are writing to
22 respectfully urge you to support the Funding of the Oregon Cares Fund for Black Relief and
23 Resiliency.”).

24 39. The legislative analysis briefly mentions that “National and state data show that the
25 Black community is one of the communities experiencing a disproportionate share of negative
26 economic and health effects due to COVID-19,” referencing a single draft report from the National
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1 Bureau of Economic Research. Ex. 1, Cares Fund Agenda Report, at p. 1.¹ Even accepting as
 2 true the unfortunate circumstance that members of the Black community have been
 3 disproportionately impacted by the pandemic, this is not a form of “discrimination” that can be
 4 remedied by a race-based program. In any event, the promoters of the Fund tied this disparate
 5 impact from the pandemic to generalized conditions by asserting that the pandemic has
 6 “widen[ed]” pre-existing “gaps” due to “400 years” of prior generalized discrimination within
 7 society. “[R]emedying past societal discrimination does not justify race-conscious government
 8 action.” *Parents Involved*, 551 U.S. at 731 (opinion of Roberts, C.J.); *Shaw*, 517 U.S. at 909–910
 9 (“[A]n effort to alleviate the effects of societal discrimination is not a compelling interest”); *see*
 10 *also Wygant*, 476 U.S. at 276 (plurality opinion) (“Societal discrimination, without more, is too
 11 amorphous a basis for imposing a racially classified remedy.”); *id.* at 288 (opinion of O’Connor,
 12 J.) (agreeing with plurality that “a governmental agency’s interest in remedying ‘societal’
 13 discrimination . . . cannot be deemed sufficiently compelling to pass constitutional muster under
 14 strict scrutiny”).

15 40. In fact, the materials presented to the legislature confirm that the Fund was
 16 motivated by a general desire to remedy past societal discrimination, which is not constitutionally
 17 permissible. Yet the Fund’s proponents put general societal discrimination front and center in the
 18 materials they submitted to the Joint Emergency Board:

19 The Black community across Oregon is in the midst of two pandemics. The first is
 20 this country’s 400 years of racial violence and strategic divestment from the Black
 21 community, deepened here in Oregon through intentional policy and practice.
 22 More recently, it is the Covid-19 pandemic that is widening the gaps between the
 23 average white Oregonian and the average Black Oregonian. This gap must be
 24 narrowed through targeted investment in our community—**for Black people, for
 Black-owned businesses, and for Black community based organizations.** And
 that narrowing includes **The Oregon Cares Fund. The Oregon Cares Fund
 (TOCF) is a \$62 million targeted investment in the Black community from the
 CARES Act’s Coronavirus Relief Fund (CRF).**

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 27 ¹ The report is Robert W. Fairlie, NBER Working Paper 27309, *The Impact of COVID-19
 On Small Business Owners: Evidence of Early-Stage Losses From The April 2020 Current
 Population Survey*, Nat’l Bureau of Econ. Research (June 2020), online at
 28 <https://www.nber.org/papers/w27309.pdf>.

1 **Historic Disparities**

2 The myriad of issues requiring remedy prior to and exacerbated by the COVID-19
3 pandemic are institutional, and cannot be mitigated through one singular effort or
4 fund. Black people began this pandemic far behind the average Oregonian whether
5 it is in health, education, or economic prosperity. . . . Immediate intervention is
6 necessary to enable the Black community to meet basic needs and help us begin to
7 chart a course for our collective recovery.

8 Exhibit 2, Oregon State Leg. Joint Emergency Bd., July 14, 2020 Meeting Materials, Ex. 9,
9 Testimony – The Oregon Cares Fund, *The Oregon Cares Fund: A Fund For Black Relief And*
10 *Resiliency*, p. 3 of exhibit (labeled as page 8) (emphasis in original).

11 41. Because Oregon did not link the grant program to specific, “identified
12 discrimination,” Defendants cannot establish that the program furthers a compelling state interest –
13 and it is therefore “almost impossible” to conduct a narrow-tailoring inquiry. *J.A. Croson Co.*, 488
14 U.S. at 507. The Legislature’s superficial analysis confirms that Defendants cannot meet their
15 burden of showing that the use of race to distribute grants is narrowly tailored. Among other
16 things, narrow tailoring requires “serious, good faith consideration of workable race-neutral
17 alternatives.” *Grutter v. Bollinger*, 539 U.S. 206, 339 (2003); *see also J.A. Croson Co.*, 488 U.S.
18 at 507 (minority set-aside program was not narrowly tailored in part because city had not
19 considered “the use of race-neutral means” to achieve its interest); *Wygant*, 476 U.S. at 280 n.6
20 (plurality opinion) (noting that the term “narrowly tailored” “require[s] consideration” of “lawful
21 alternative and less restrictive means”). But here, the Oregon Legislature gave no consideration of
22 race-neutral alternatives – it just established a grant program that is reserved for members of a
23 particular race.

24 42. This record demonstrates that Defendants’ use of race as a basis for eligibility for
25 Fund grants cannot satisfy strict scrutiny. The Legislature failed to identify discrimination with
26 specificity and failed to develop a “strong basis in evidence” before taking race-conscious action.
27 *Shaw*, 517 U.S. at 909. The legislative record shows that the Fund is an attempt to address general
28 societal discrimination. Accordingly, the use of race as the basis for distributing grants from the
29 Fund violates the Constitution’s Equal Protection guarantee.

* * *

1 43. As set forth above, DAS is the agency responsible for implementing the Fund,
2 which included transmitting \$62 million in federal relief funds to the Contingent to establish the
3 Fund, and “working with The Contingent on ensuring that federal spending, reporting, and other
4 legal requirements are met.” Ex. 1, Cares Fund Agenda Report at p. 2. This includes ensuring that
5 the Fund satisfy the Oregon Legislature’s directive that grant recipients meet the “[s]pecific
6 requirement[]” that they “self-identify as Black.” *Id.* at p. 1.

7 44. The Contingent was jointly engaged with DAS to administer the Fund and charged
8 by the Oregon Legislature to distribute grants on the condition that recipients “self-identify as
9 Black.” The Contingent is therefore liable as a state actor for the purposes of 42 U.S.C.
10 section 1983 because the Oregon Legislature “create[d] the legal framework governing [the
11 Contingent’s] conduct,” “delegate[d] [the State’s] authority” to the Contingent to deploy race-
12 based classifications when overseeing the Fund, and generally “provided a mantle of authority” to
13 the Contingent such that the organization was acting as the state itself when distributing grants
14 from the Fund. *Nat’l Collegiate Athletic Ass’n v. Tarkanian*, 488 U.S. 179, 192 (1988).

15 45. For those same reasons, Defendants’ intentional discrimination against Plaintiff
16 violates federal antidiscrimination law. The Supreme Court has “explained that discrimination that
17 violates the Equal Protection Clause of the Fourteenth Amendment committed by an institution
18 that accepts federal funds also constitutes a violation of Title VI [of the Civil Rights Act of 1964].”
19 *Gratz v. Bollinger*, 539 U.S. 244, 276 n.23 (2003). To a similar end, “purposeful discrimination
20 that violates the Equal Protection Clause of the Fourteenth Amendment will also violate [42
21 U.S.C.] § 1981.” *Id.*; *see also Grutter v. Bollinger*, 539 U.S. 306, 343 (2003) (noting that “the
22 prohibition against discrimination in § 1981 is co-extensive with the Equal Protection Clause”).

23 46. An actual and judicially cognizable controversy exists between Plaintiff and
24 Defendants regarding whether the Defendants’ use of race as an essential factor in distributing
25 grants from the Fund violates the Equal Protection Clause, Title VI of the Civil Rights Act of
26 1964, and 42 U.S.C. § 1981. Plaintiff desires a judicial declaration of its rights and Defendants’
27 duties regarding the constitutionality of Defendants’ distribution of government benefits on the
28 basis of race.

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CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

VIOLATION OF 42 U.S.C. § 1983 (EQUAL PROTECTION)

(As to Defendants Coba and The Contingent)

47. Plaintiff incorporates here by reference paragraphs 1 through 46, *supra*, as if fully set forth herein.

48. As set forth above, Defendants, acting under color of state law, have used race as an essential factor in considering applications and distributing grants from the Fund, *i.e.*, applicants must “self-identify as Black” to be eligible. By distributing government benefits on the basis of race, Defendants denied Plaintiff of the opportunity to compete on an equal basis for a coronavirus relief grant from the Fund, in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution.

SECOND CAUSE OF ACTION

VIOLATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 (42 U.S.C. § 2000d)

(As to All Defendants)

49. Plaintiff incorporates here by reference paragraphs 1 through 46, *supra*, as if fully set forth herein.

50. As set forth above, the State of Oregon received funds received from the Federal government through the Coronavirus Aid, Relief, and Economic Security Act’s \$150 billion Coronavirus Relief Fund, and used those funds to establish the Fund and grant program administered by Defendants.

51. Defendants have used race as an essential factor in considering applications and distributing grants from the Fund, *i.e.*, applicants must “self-identify as Black” to be eligible. By failing to consider Plaintiff’s grant application on an equal basis as applicants that “self-identify as Black,” Defendants have intentionally discriminated against Plaintiff on the basis of race in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq.

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1 **THIRD CAUSE OF ACTION**

2 **VIOLATION OF 42 U.S.C. § 1981 (EQUAL RIGHTS UNDER LAW)**

3 **(As to Defendants Coba and The Contingent)**

4 52. Plaintiff incorporates here by reference paragraphs 1 through 46, *supra*, as if fully
5 set forth herein.

6
7 53. As set forth above, Defendants, acting under color of state law, have used race as an
8 essential factor in considering applications and distributing grants from the Fund, *i.e.*, applicants
9 must “self-identify as Black” to be eligible. By failing to consider Plaintiff’s grant application on
10 an equal basis as applicants that “self-identify as Black,” Defendants have intentionally
11 discriminated against Plaintiff and impaired Plaintiff’s right to make a contract on the basis of race
12 in violation of 42 U.S.C. § 1981.

13 **PRAYER FOR RELIEF**

14 Wherefore, Plaintiff prays for judgment as follows:

15 1. Plaintiff respectfully requests that this Court, pursuant to 28 U.S.C. section 2201,
16 enter a declaratory judgment stating that Defendants’ use of race as an essential factor in
17 considering grant applications submitted to the Fund, and restricting government benefits to those
18 who “self-identify as Black,” violates the Equal Protection Clause of the Fourteenth Amendment.

19 2. Plaintiff respectfully requests that this Court enter a declaratory judgment stating
20 that Defendants’ use of race as an essential factor in considering grant applications submitted to
21 the Fund, and restricting government benefits to those who “self-identify as Black,” violates Title
22 VI of the Civil Rights Act of 1964.

23 3. Plaintiff respectfully requests that this Court enter a declaratory judgment stating
24 that by using of race as an essential factor in considering grant applications submitted to the Fund
25 and failing to consider Plaintiff’s grant application on an equal basis as applicants that “self-
26 identify as Black,” Defendants have intentionally discriminated against Plaintiff and impaired
27 Plaintiff’s right to make a contract on the basis of race in violation of 42 U.S.C. section 1981.
28

1 4. Plaintiff respectfully requests that this Court enter a preliminary and permanent
2 injunction enjoining Defendants, or any other person or entity acting in concert with them or under
3 the authority of the State of Oregon, from using race as an essential factor in distributing relief
4 funds allocated to the state by the Federal government from the CARES Act’s Coronavirus Relief
5 Fund.

6 5. Plaintiff respectfully requests nominal and compensatory damages.

7 6. Plaintiff respectfully requests costs of suit, including reasonable attorneys’ fees
8 under 42 U.S.C. section 1988 and any other applicable law, and all further relief to which Plaintiff
9 may be justly entitled.

10 Dated: October 29, 2020

MURPHY & BUCHAL LLP

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By s/ James L. Buchal
JAMES L. BUCHAL
Attorneys for Plaintiff
Great Northern Resources, Inc.

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Item 3: Department of Administrative Services

Oregon Cares Fund for Black Relief and Resiliency

Analyst: Theresa McHugh

Request: Increase the Federal Funds expenditure limitation established for the Department of Administrative Services established at the April 23, 2020 meeting of the Emergency Board by \$62,000,000 from funding made available to states through the Coronavirus Relief Fund (CRF) for a grant to The Contingent, an organization with pre-existing state contract relationships, in partnership with the Black United Fund, to be used for Black relief and resiliency.

Description: National and state data show that the Black community is one of the communities experiencing a disproportionate share of negative economic and health effects due to COVID-19. The National Bureau of Economic Research reported that African-American businesses have been hit the hardest by the pandemic. The Contingent (formerly known as the Portland Leadership Foundation), which serves all 36 counties in Oregon, is a nonprofit organization that will, in partnership with the Black United Fund, work with community based organizations to provide relief to the Black community.

Work has begun to establish the application and award processes, as well as to comply with CRF spending and reporting requirements. It is anticipated the majority of the funds will be used to provide economic relief to Black individuals and businesses; the Black United Fund will take the lead on grants to individuals and families and The Contingent will take the lead on grants to businesses. The Contingent has data systems in place to track grants awarded and to provide information on how the funds are spent and the resulting effect on people and businesses receiving the funds.

Initial information indicates that the application process will be online, and grants will be issued in amounts of \$500 to \$3,000 for individuals and families and \$2,000 to \$100,000 for businesses and community based nonprofit organizations. Specific requirements for individuals, families, and businesses include:

- Must live in, be a resident of, or be a business based in Oregon
- Must self-identify as Black
- Must demonstrate employment, economic, or business interruptions due to COVID-19

Specific requirements for community-based nonprofits include:

- 501(c)3 in good standing
- Significant percentage of clients are from the Black community
- Organizational environment is Black-focused and recognized by the community served as a Black-serving organization
- Full-time staff must be at least 33% Black, and organization leadership is majority Black
- Must demonstrate business interruption due to COVID-19 and/or administer Oregon Cares Fund grants

The Black United Fund and The Contingent will review applications and make recommendations to a Council of Trust, which will be composed of Black leaders from across Oregon. The Council of Trust

must approve all funding decisions. Council members will serve until the funds are expended or for a one-year term if additional funding opportunities become available.

The Department of Administrative Services will be the state agency responsible for transmitting the funds and working with The Contingent on ensuring that federal spending, reporting, and other legal requirements are met, including that the funds are expended by December 30, 2020.

Recommendation: The Co-Chairs of the Emergency Board recommend increasing the Federal Funds expenditure limitation established for the Department of Administrative Services established at the April 23, 2020 meeting of the Emergency Board by \$62,000,000 from funding made available to states through the Coronavirus Relief Fund (CRF) for a grant to The Contingent, an organization with pre-existing state contract relationships, in partnership with the Black United Fund, to be used for Black relief and resiliency.

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The Oregon Cares Fund Overview **A fund for Black Relief and Resiliency**

The Black community across Oregon is in the midst of two pandemics. The first is this country's 400 years of racial violence and strategic divestment from the Black community, deepened here in Oregon through intentional policy and practice. More recently, it is the COVID-19 pandemic that is widening the gaps between the average white Oregonian and the average Black Oregonian. This gap must be narrowed through targeted investment in our community—**for Black people, for Black-owned businesses, and for Black community based organizations**. And that narrowing includes **The Oregon Cares Fund. The Oregon Cares Fund (TOCF) is a \$62 million targeted investment in the Black community from the CARES Act's Coronavirus Relief Fund (CRF).**

Historic Disparities

The myriad of issues requiring remedy prior to and exacerbated by the COVID-19 pandemic are institutional, and cannot be mitigated through one singular effort or fund. Black people began this pandemic far behind the average Oregonian whether it is in health, education, or economic prosperity. **We know from recent history, during the 2008 recession, that Black households lost 40% of their wealth and have not recovered in a manner commensurate to white households.¹ Massive job loss, decreases in homeownership, asset poverty, and lack of access to capital has made the Black community less resilient to economic shocks.** These factors impact the stability and wellbeing of the entire community, and left unchecked, will lead to more pronounced disparate outcomes for the impending decade. Immediate intervention is necessary to enable the Black community to meet basic needs and help us begin to chart a course for our collective recovery.

COVID-19 is Exacerbating Poverty in the Black Community

Black workers have been disproportionately considered essential during this pandemic. They are working in sectors that place them on the frontline, exposing them to illness at high rates while being overrepresented in low-wage jobs and underrepresented in living wage jobs.

In Oregon, as of March 15th, approximately 8,127 Black Oregonians filed for unemployment, and that number has continued to grow. The current unemployment rate in the Black community is as high as 21%.²

¹ American Civil Liberties Union. Impact of the US Housing Crisis on the Racial Wealth Gap Across Generations. New York, NY: ACLU, June 2015.

https://www.aclu.org/sites/default/files/field_document/discrimlend_final.pdf

² 2018 Oregon's Black labor force population estimates 39,148 – 8,127 = 31,021; 8,127/39,148 = 20.76%) NOTE: we would prefer to present exact numbers but the State does not provide them, citing unreliable data so they work off of American Community Survey (ACS) estimates and not current figures.

Those living below the poverty level (25.5%) experience unemployment at almost 7 times the rate of people at or above the poverty level (3.9%)³. From 2006-2010, 29% of Black families in Oregon lived in poverty compared to 12% of white families. According to a 2019 report in Multnomah County, 52% of Black households experience asset poverty compared with 24% of white households, and this is further evidenced by the fact that white households make on average \$67,715 per annum, more than twice the income of Black households, whose average household income is \$29,864 per annum.⁴

“During a downturn, groups that have historically been excluded from labor markets tend to be the first people let go—wage and unemployment gaps continue to increase.”⁵ While not exactly revelatory, this is a major thrust behind our effort, and writing to you today.

High rates of poverty, and the prevalence of low income jobs, create a disparate financial burden on Black Oregonians. A 2015 Portland Housing Bureau report revealed approximately 68.8% of Black renters and 42.9% of Black homeowners are cost burdened, spending over 30% or more of their income on rent or housing costs. With unemployment rates rising in industries where Black people are overrepresented, and the \$600 Unemployment “bonus” that some Black residents were relying upon to make ends meet set to expire in July, we will not only see a spike in cost burdened renters and homeowners, but a spike in homelessness. **Homelessness has already been declared a statewide emergency. For example, Black people in Multnomah County, although comprising a mere 7.2% of the general county population, constitute no less than 16.1% of the Housing and Urban Development (HUD) defined homeless population.**

In order to eradicate the health inequities that are worsening health outcomes for the Black community, economic inequities must be addressed as well as the toxic stress that results from poverty and racism.⁶ And health inequities, much like one’s zip code, can be a clear indicator of Black economic security, or lack thereof.

COVID-19 is decimating gains made by Black owned businesses since the Great Recession

A report published this week by the National Bureau of Economic Research found that **“African-American businesses were hit the hardest by COVID-19. The number of African-American business owners plummeted from 1.1 million in February 2020 to 640,000 in April,” a 41% decrease⁷. Among those who are still open and operating, almost half expect to close within 6 months if conditions remain the same.**

³ 2013-2017 American Community Survey 5-Year Estimates. US Census Bureau - 2018 - American Community Survey.

⁴ Multnomah County. (2019). “Poverty in Multnomah County”. December 3.

⁵ American Civil Liberties Union. Impact of the US Housing Crisis on the Racial Wealth Gap Across Generations. New York, NY: ACLU, June 2015.

⁶ Multnomah County Report Card on Racial and Ethnic Disparities. (2014). Multnomah County Department of County Human Services. Retrieved from <https://multco.us/file/37530/download>

⁷ Fairlie, R. (2020). "The Impact of COVID-19 on Small Business Owners: Evidence of Early-Stage Losses from the April 2020 Current Population Survey" *National Bureau of Economic Research*. <https://www.nber.org/papers/w27309.pdf>

Programs established to support small business were not designed with the Black community in mind. This is evident through the mechanisms and outcomes from the CARES Act Paycheck Protection Program (PPP). Nationally, **51% of Black small businesses applied for less than \$20,000 in temporary funding from the federal government, and only 1 in 10 (12%) received the assistance they requested.** (Our group is strongly in support of full disclosure of the federal data outlining which businesses, by state, by amount, received funding assistance through the PPP). At the time of this Color of Change report⁸, **66% of minority-owned businesses reported they either received no assistance or were still waiting to hear whether they will receive any help whatsoever.**

In Oregon, the number of Small Business Administration (SBA) loans to African American-owned businesses is down 94 % since 2007. **Last year, the SBA backed just four loans to black-owned businesses in our state⁹.** The Oregonian cites that “local governments have also created small business relief programs, but the need has far outstripped the available funds.” Without direct debt-free cash investments in Black-owned businesses the very inequities the state and federal government have allowed to flourish will further deepen.

COVID-19 is crippling the ability of Black Community Based Organizations to intercede on behalf of the community

Black-led organizations are not given the same funding and resources as their non Black counterparts. This lack of trust in the Black community has devastating impacts as the Black community depends on trusted community based organizations for the dissemination of resources and information. Fabricated concerns about organizational capacity, and budget provide veiled ways for systematic disinvestment to perpetuate in the not for profit realm. This observation was also made by Echoing Green, an early-stage funder in social innovation, and the Bridgespan Group, a philanthropic consultancy. Among organizations focused on improving the outcomes of Black boys, for example, groups with Black leaders had 45 % less revenue, and unrestricted assets that were 91% lower, than their counterparts with white leaders¹⁰. **We need to invest in the structural foundation upon which the Black community depends- Black led organizations and trusted Black community leaders.**

The Oregon Cares (Black Relief and Resiliency) Fund

⁸ Color of Change Presentation. “Federal Stimulus Survey Findings” <https://theblackresponse.org/wp-content/uploads/2020/05/COC-UnidosUS-Abbreviated-Deck-F05.13.20.pdf>, Page 2.

⁹ Spencer, M. “Coalition warns business relief measures leave out people of color” Portland Business Journal, <https://www.bizjournals.com/portland/news/2020/04/21/coalition-warns-business-relief-measures-leave-out.html>

¹⁰ Dorset, C, et al. (2020). “Overcoming the Racial Bias in Philanthropic Funding”. *Stanford Social Innovation Review*. May 24. https://ssir.org/articles/entry/overcoming_the_racial_bias_in_philanthropic_funding

The Oregon Cares Fund, a fund for Black relief and resiliency should be seeded with a \$62 million allocation of CRF funds. We believe this is a baseline for funding. The State received \$1,388,506,837 in Coronavirus Relief Funds. **Clearly, the distribution of CRF funds should not and must not flow based solely on per capita population figures. They should reflect investment in those disproportionately affected by the pandemic and those who face an uphill recovery due to the pre-existing bias in our economic and public systems.**

Federal Poverty levels, while problematic, are the most basic metric our country uses to measure such disproportionality, and we have used it for our estimations here. According to United States Census data, while Black people make up 2% of Oregon's population, we represent at least 4% of Oregonians living in poverty¹¹. **Census data has a documented history of undercounting the Black community and it categorically excludes Black people claiming more than one race. The actual number of Black people in Oregon and Black people living in poverty is likely much higher.** To account for this undercount and the disproportionate percent of Black Oregonians impacted by poverty, we modestly request that 4.5% of CRF funding (\$62 million) be allocated for The Oregon Cares Fund.

It should be noted that this baseline request of \$62 million is being solicited without adjustments for the aforementioned Black Oregonians that might have received interim rental assistance, the federally supported \$600/week "bonus" for unemployment benefits, or any other recently received relief associated with the ravages of COVID-19, such as various municipalities' small business emergency funds and other vehicles. Those benefits, while useful, do not address the assistance required to navigate the next six months, and should not be used as a marker in some zero-sum analysis about how best to distribute these funds. It is also unclear how the State can meaningfully report whether any of these programs were provided equitably.

This fund (TOCF) will be **managed and distributed to community based organizations by the Black United Fund and The Contingent, our respected community-based partners.** The Contingent serves all 36 counties in Oregon and currently has a partnership with the Oregon Department of Human Services (DHS) for the Every Child foster family recruitment efforts. Community based organizations are best positioned to advertise and manage the intake of recipients for this funding in local communities across Oregon.

This funding will provide economic relief for individuals and small businesses to be utilized toward meeting their pressing needs as outlined above. These payments will create a lifeline for families, small businesses, and the community based organizations that are a vital source of support and job opportunities in our communities' ecosystem.

Note: The State has failed to provide disaggregated data to better understand demographic impacts of COVID-19 on its most vulnerable communities

¹¹ Poverty USA. Website. <https://www.povertyusa.org/data/2018/OR>

The extrapolation of national data, along with the historic and semi-recent local data of how Oregon treats its Black residents—worse than other states across many measures—presents the evidence that Black Oregonians are faring much worse in this pandemic than white Oregonians. While we wish we had access to better, more granular data to know exactly how this pandemic is disproportionately affecting Black Oregonians, we do not. Put simply, the State has never prioritized the policies, practices or systems required to hold itself accountable to equitable services. While the ‘Decolonizing Data’ group (comprised of a multitude of researchers of color based in Oregon and focused on acquiring the missing data) has done yeoman’s work on several issues related to the disaggregation and reporting of data, most recently on the OHSU/OHA Key to Oregon study, there remains much work to do. However, the aforementioned estimate of 4.5% was deemed an accurate-enough assessment of Oregon’s Black population.

At this critical juncture, the State of Oregon has an opportunity to protect the health and well-being of Oregonians by targeting investments in the Black community. If decisive action is not taken and these investments are not made, similar to the Great Recession, we will have to undertake ever more costly efforts in years to come to attempt to make up for lost ground.

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