

Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

WADE K. MARLER, DDS, et al.,

Plaintiffs,

v.

ASPEN AMERICAN INSURANCE
COMPANY,

Defendant.

No. 2:20-cv-00616-BJR

CONSOLIDATED AMENDED CLASS
ACTION COMPLAINT

JURY TRIAL DEMAND

I. INTRODUCTION

Plaintiffs Wade K. Marler, DDS, Karla Aylen, DDS, PLLC, Kathryn L. Jagow, DDS, and Ronald A. Mikkelsen, DDS (collectively, “Plaintiffs”), individually and on behalf of all other similarly situated members of the defined national class, and the defined Washington State subclasses (the “Class Members”), by and through the undersigned attorneys, bring this consolidated¹ class action complaint against Aspen Insurance Company (“Defendant”) and allege as follows based on personal knowledge and information and belief:²

¹ The cases are consolidated by Court Order. Order on Consolidation, Dkt. # 41 (Nov. 10, 2020).

² As of this filing, Defendant has not produced certified policies to Plaintiffs. *See* Scheduling Order, Dkt. # 42 at 1 (Nov. 10, 2020).

II. JURISDICTION AND VENUE

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2 1. This Court has subject matter jurisdiction pursuant to the Class Action Fairness
3 Act of 2005, 28 U.S.C. § 1332(d), because at least one member of the proposed Class and
4 subclass is a citizen of a state different from that of Defendant, the proposed Class and subclass
5 each consist of more than 100 class members, and the aggregate amount in controversy exceeds
6 \$5,000,000. The Court has supplemental jurisdiction over Plaintiffs' state law claims under 28
7 U.S.C. § 1367.

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

15
16 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because the
17 Court has personal jurisdiction over Defendant, a substantial portion of the alleged wrongdoing
18 occurred in this District and the state of Washington, and Defendant has sufficient contacts with
19 this District and the state of Washington.

20
21 4. Venue is proper in the Western District of Washington pursuant to 28 U.S.C.
22 § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims at
23 issue in this Complaint arose in this District. Plaintiffs' places of business are in King,
24 Snohomish, and Thurston counties. This action is therefore appropriately filed in this District.

III. PARTIES

A. Plaintiffs

5. Plaintiff Wade K. Marler, DDS, operates a family dental practice located at 17203 SE 270th Pl., Covington, Washington 98502.

6. Plaintiff Karla Aylen, DDS PLLC, owns and operates a dental practice located at 11066 5TH Ave NE #208 Seattle, Washington 98125.

7. Plaintiff Kathryn L. Jagow, DDS, owns and operates a dental practice located at 22905 56th Avenue West, #101, Mountlake Terrace, Washington 98043.

8. Plaintiff Ronald A. Mikkelsen, DDS, owns and operates a family dental practice located at 140 North Percival St., Suite B, Olympia, Washington.

9. Plaintiffs Marler, Aylen, Jagow, and Mikkelsen have insured business property that includes but is not limited to their buildings, dental chairs, x-ray machines, dentistry tools, and other related dentistry equipment and materials.

B. Defendant

10. Defendant Aspen American Insurance Company is an insurance carrier incorporated and domiciled in the State of Texas, with its principal place of business in Rocky Hill, Connecticut.

11. Aspen is authorized to write, sell, and issue business insurance policies in all 50 States, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. Aspen conducted business within these regions states by selling and issuing insurance policies to policyholders, including Plaintiffs.

12. Defendant is vicariously liable for the acts and omissions of its employees and agents.

IV. NATURE OF THE CASE

13. This lawsuit is filed to ensure that Plaintiffs and other similarly-situated policyholders receive the insurance benefits to which they are entitled and for which they paid.

14. Defendant Aspen issued one or more “all risk” insurance policies to Plaintiffs, including Building, Blanket Dental Practice Personal Property and Income Coverage Part, form number ASPDTPR001 0117, and related endorsements (“the Policies”), insuring Plaintiffs’ property and business practices and other coverages.

15. Plaintiffs’ business properties include property owned and/or leased by them and used for general business purposes for the specific purpose of dentistry and related business activities.

16. Defendant’s Policies issued to Plaintiffs promise to pay Plaintiffs for “RISKS OF DIRECT PHYSICAL LOSS” to covered property and includes coverage for risks of both “loss of or damage to” covered property.

17. Defendant’s Blanket Dental Practice Personal Property and Income Coverage Part issued to Plaintiffs includes Practice Income Coverage, Extra Expense Coverage, Extended Practice Income and Civil Authority Coverage.

18. The policies that Defendant issued to Plaintiffs are materially identical on all relevant matters.

19. On information and belief, Defendant issued materially identical policies to thousands of businesses throughout Washington and the other states and regions, specified above, where it conducts business.

20. Plaintiffs paid all premiums for the coverages when due.

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

3 22. COVID-19 is a highly contagious virus that rapidly and easily spreads; it
4 continues to spread across the United States including in Washington State.

5 23. In many infected persons, COVID-19 causes severe illness and requires
6 hospitalization, including intubation. The virus has killed over 250,000 people in the United
7 States as of this filing. Persons who survive the virus have experienced ongoing cognitive and
8 physical impacts from the virus, even after the virus is no longer actively detected in their
9 bodies.
10

11 24. The COVID-19 virus is a physical substance that spreads from person to person
12 through respiratory droplets that reach another person and that are produced when an infected
13 person breaths, talks, coughs or sneezes. It also spreads when virus respiratory droplets are
14 exhaled and aerosolized, and deposited on a surface or object (e.g., furniture, equipment,
15 instruments, tables, door knobs, chairs, touch screens, to name merely a few) and those objects
16 are then touched by another person who then touches their own mouth, nose or eyes. COVID-19
17 is caused by a novel (new) coronavirus that has not previously been seen in humans.
18

19 25. COVID-19 remains stable and transmittable in aerosols for up to three hours and
20 up to two or three days on surfaces. Persons infected with COVID-19 can be asymptomatic yet
21 still spread the virus. Guidance issued by the United States Centers for Disease Control &
22 Prevention (CDC) recommends avoiding indoor activities, adhering to strict sanitation
23 protocols, and maintaining social distance of at least six feet from others in order to minimize
24 the spread of COVID-19.
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1 26. The CDC also cognizes that “dental settings have unique characteristics that
2 warrant specific infection control considerations,” and that the most critical dental services must
3 be prioritized in a way that minimizes harm to patients from delaying care while minimizing
4 harm to personnel and patients from potential exposure to COVID-19 infection.

5 27. In March 2020, the American Dental Association (“ADA”) recommended that
6 dental providers close their offices for all but emergency care. Upon expiration of that guideline
7 in April 2020, the ADA recommended that dental providers keep their offices closed to all but
8 urgent and emergency procedures.
9

10 28. Public health data throughout the United States, and on a state-by-state basis,
11 shows that COVID-19 has been detected in every state.

12 29. The first confirmed case of COVID-19 in King County was on January 21,
13 2020.³

14 30. The first confirmed case of COVID-19 in Snohomish County was also on
15 January 21, 2020.⁴

16 31. The first confirmed case of COVID-19 in Thurston County was on March 11,
17 2020.⁵

18 32. Public health data throughout the United States shows the number of COVID-19
19 tests administered, the rate of positive testing, the numbers of persons diagnosed with COVID-
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25 ³ See [https://www.kiro7.com/news/local/coronavirus-washington-state-timeline-
26 outbreak/IM65JK66N5BYTIAPZ3FUZSKMUE/](https://www.kiro7.com/news/local/coronavirus-washington-state-timeline-outbreak/IM65JK66N5BYTIAPZ3FUZSKMUE/).

⁴ *Id.*

⁵ See <https://www.theolympian.com/latest-news/article241100416.html>.

19, the number of persons hospitalized due to COVID-19, the number of deaths from COVID-19, and other related statistics, by state, county, and sometimes by city.⁶

33. As of November 19, over 137,000 persons in Washington State have tested positive for COVID-19; over 9,600 have been hospitalized, and over 2,600 have died due to the COVID-19 virus.⁷

34. As of November 19, 2020, over 36,000 persons in King County have tested positive for COVID-19; over 2,900 have been hospitalized, and 846 have died due to the COVID-19 virus.⁸

35. As of November 19, 2020, over 12,000 persons in Snohomish County have tested positive for COVID-19; over 1,000 persons have been hospitalized and 258 have died due to the COVID-19 virus.⁹

36. As of November 19, 2020, over 2,400 persons in Thurston County have tested positive for COVID-19; over 180 persons have been hospitalized and 44 have died due to the COVID-19 virus.¹⁰

37. The presence of any COVID-19 aerosolized or suspended droplets or particles in the air or otherwise circulating in an indoor environment renders that physical space, or physical property, unsafe and unusable.

⁶ See, e.g., *The New York Times*, Covid in the U.S.: Latest Map and Case Count (reflecting COVID-19 statistics, on a state-by-state, county-by-county, and aggregated basis since March 2020), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html?action=click&module=Top%20Stories&pgtype=Homepage> (last visited Nov. 19, 2020).

⁷ Washington State Department of Health, *COVID-19 Data Dashboard*, <https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard> (last visited Nov. 19, 2020)

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

1 38. The presence of any COVID-19 aerosolized or suspended droplets or particles in
2 the air or otherwise circulating in an indoor environment causes direct physical damage to
3 property and direct physical loss of property.

4 39. The presence of any COVID-19 droplets or particles on physical surfaces renders
5 items of physical property unsafe and unusable.

6 40. The presence of any COVID-19 droplets or particles on physical surfaces causes
7 direct physical damage to property and direct physical loss of property.
8

9 41. The presence of people infected with or carrying COVID-19 particles at premises
10 renders the premises, including property located at that premises, unsafe and unusable, resulting
11 in direct physical damage and direct physical loss to the premises and property.

12 42. Loss of functionality of property that has not been physically altered constitutes
13 direct physical loss of property and/or direct physical damage to property.

14 43. On February 29, 2020, Washington Governor Jay Inslee issued Proclamation 20-
15 05, declaring a State of Emergency for all counties in the State of Washington as a result of the
16 COVID-19 outbreak. Thereafter, he issued a series of proclamations and orders affecting many
17 persons and businesses in Washington, whether infected with COVID-19 or not, requiring
18 certain public health precautions.
19

20 44. On March 19, 2020, Governor Inslee issued a “PROCLAMATION BY THE
21 GOVERNOR AMENDING PROCLAMATION 20-05: 20-24 Restrictions on Non Urgent
22 Medical Procedures,” which prohibited dental practitioners from providing dental services but
23 for urgent and emergency procedures:
24

25 WHEREAS, the health care person protective equipment supply chain in
26 Washington State has been severely disrupted by the significant increased use of
such equipment worldwide, such that there are now critical shortages of this

1 equipment for health care workers. To curtail the spread of the COVID-19
2 pandemic in Washington State and to protect our health care workers as they
3 provide health care services, it is necessary to immediately prohibit all hospitals,
4 ambulatory surgery centers, and dental orthodontic, and endodontic offices in
Washington State from providing health care services, procedures and surgeries
that require personal protective equipment, which if delayed, are not anticipated
to cause harm to the patient within the next three months.

5 45. Proclamation 20-24 provides that one of the reasons it was issued was that “the
6 worldwide COVID-19 pandemic and its progression throughout Washington State continues to
7 threaten the life and health of our people as well as the economy of Washington State, and
8 remains a public disaster affecting life, health, property or the public peace.”
9

10 46. On information and belief, Proclamation 20-24 refers to the health of
11 Washingtonians and property damage throughout Washington State, including King, Snohomish
12 and Thurston Clark Counties where Plaintiffs’ businesses are located.

13 47. On March 23, 2020, Governor Inslee issued Proclamation 20-25, “Stay Home—
14 State Healthy.” The proclamation requires that “[a]ll people in Washington State [] immediately
15 cease leaving their home or place of residence except: (1) to conduct or participate in essential
16 activities, and/or (2) for employment in essential business activities.”
17

18 48. On March 23, 2020, Mr. John Weisman, Secretary of Washington State’s
19 Department of Health, issued a list of directives and orders regarding healthcare matters and
20 mandated that all healthcare practitioners, including dental practitioners, cease all elective and
21 non-urgent medical procedures and appointments as of the close of business on March 24, 2020,
22 and throughout the duration of the catastrophic health emergency.
23

24 49. On March 25, 2020, the Washington State Dental Association recommended that
25 all dental practices follow the mandates and orders of the Washington Department of Health and
26

1 postpone all non-emergency or non-urgent dental procedures throughout the duration of the
2 catastrophic health emergency.

3 50. On March 30, 2020, Governor Inslee issued Proclamation 20-25, “Proclamation
4 By the Governor Amending 20-05, Stay Home—Stay Healthy,” affecting persons and residents
5 within the State of Washington, which includes a “Stay-at-Home Order” requiring all persons
6 living in Washington to stay in their homes or places of residences except under certain
7 specified circumstances.
8

9 51. On November 15, 2020, Governor Inslee issued Proclamation 20-25.8, which
10 amended Proclamations 20-05 and 20-25, et seq.

11 52. Proclamation 20-25.8 is entitled “Stay Safe – Stay Healthy,” “Rollback of
12 County-by-County Phased Reopening Responding to a COVID-19 Outbreak Surge.” The
13 Proclamation reversed, for a period of at least 30 days, the prior loosening of certain restrictions
14 on public gatherings, professional services, and other recreational, religious, business and social
15 activities.
16

17 53. Governor’s Inslee’s proclamations and orders related to COVID-19 have been
18 extended and modified from time to time.

19 54. Plaintiffs have complied with the proclamations and orders which have required
20 them to close, suspend, and/or curtail their businesses.

21 55. Plaintiffs complied with the proclamations and orders by preventing the public,
22 including their customers, clients, and patients, from entering their places of business to
23 participate in business activities which were routine and allowed prior to the issuance of the
24 Proclamations and Orders.
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1 56. As a result of the proclamations and orders, Plaintiffs were prohibited from
2 operating their dental businesses except according to the terms of the proclamations and orders,
3 were unable to engage in their full dental practices and unable to use their dental practices for
4 their full insured purposes.

5 57. Plaintiffs invested in their business properties, insured their business properties,
6 insured the income they derive from their business properties, but were deprived of their
7 properties' functionality due to their government's response to the COVID-19 pandemic.
8

9 58. Loss caused by Governor Inslee's orders and proclamations and/or related to
10 COVID-19 rendered Plaintiffs' property unusable for its intended and insured purpose.

11 59. Governors and civil authorities in other states have issued similar orders and
12 proclamations, for similar reasons.

13 60. Plaintiffs' property sustained direct physical loss and/or direct physical property
14 damage related to the proclamations and orders, and/or COVID-19.
15

16 61. Plaintiffs' property will continue to sustain direct physical loss or damage
17 covered by Defendant's policy or policies, including but not limited to business interruption,
18 extra expense, interruption by civil authority, and other expenses.

19 62. Plaintiffs have been unable to use their insured physical properties for their full
20 intended business purposes.

21 63. Plaintiffs suffered direct physical loss of use of the covered properties for their
22 intended purposes.
23

24 64. As a result of the above, Plaintiffs have experienced and will experience loss
25 covered by Defendant's policy or policies.
26

1 65. Plaintiffs' suspension of their businesses in response to the Governor's
2 proclamations and orders caused Plaintiffs to suffer a business loss.

3 66. Plaintiffs have incurred additional and extra expenses, including costs for
4 sanitizer, cleaning equipment and protocols, new equipment, and PPE, in order to operate their
5 businesses in accordance with the proclamations and orders.

6 67. Plaintiffs complied with all requirements in Defendant's policy or policies.

7 68. Upon information and belief, Defendant has denied all claims submitted for
8 business income coverage that relate to governmental proclamations or orders and/or COVID-
9 19 and has done so without meaningful investigation.

10 69. Upon information and belief, Defendant has undertaken no meaningful
11 investigation regarding whether there is any presence of COVID-19 at Plaintiffs' insured
12 premises.

13 70. Upon information and belief, Defendant has undertaken no meaningful
14 investigation regarding the timing, scope, or impact of governmental proclamations or closure
15 orders that affect its insureds' businesses or business properties.

16 71. Upon information and belief, Defendant has undertaken no meaningful
17 investigation regarding the community spread of COVID-19 in the vicinity of their insureds'
18 businesses.

19 72. Upon information and belief, Defendant has denied and will deny coverage to
20 Plaintiffs and all other similarly situated policyholders based on Defendant's uniform policy to
21 deny business interruption claims related to COVID-19.
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V. CLASS ACTION ALLEGATIONS

73. This matter is brought by Plaintiffs on behalf of themselves and those similarly situated, under Federal Rule of Civil Procedure 23(a), 23(b)(1), 23(b)(2), and 23(b)(3).

74. Prosecuting separate actions by individual class members, in lieu of proceeding as a class action, would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendant.

75. As alleged above, Defendant has acted or refused to act on grounds that apply generally to the proposed class and subclasses, such that final injunctive relief or declaratory relief is appropriate.

76. The questions of law or fact common to class and subclass members predominate over any questions affecting only individual members, and a class action is superior to other methods for fairly and efficiently adjudicating this controversy.

77. The Classes and Subclasses that Plaintiffs seeks to represent are defined as:

A. ***Practice Income Breach of Contract Class:*** All persons and entities in the United States issued one of Defendant's policies with Practice Income Coverage who suffered a suspension of their business at the covered premises related to COVID-19 and/or proclamations or orders issued by Governor Inslee, other Governors, and/or other civil authorities, and whose Practice Income claim has been denied by Defendant.

B. ***Practice Income Breach of Contract Washington Subclass:*** All persons and entities in the State of Washington issued one of Defendant's policies with Practice Income Coverage who suffered a suspension of their business at the covered premises related to COVID-19 and/or proclamations or orders issued by Governor Inslee, and/or other civil authorities and whose Practice Income claim has been denied by Defendant.

1 C. ***Practice Income Declaratory Relief Class:*** All persons and entities in the
2 United States issued one of Defendant's policies with Practice Income Coverage who
3 suffered a suspension of their business at the covered premises related to COVID-19
4 and/or proclamations or orders issued by Governor Inslee, other Governors, and/or civil
5 authorities.

6 D. ***Practice Income Declaratory Relief Washington Subclass:*** All persons
7 and entities in the State of Washington issued one of Defendant's policies with Practice
8 Income Coverage who suffered a suspension of their business at the covered premises
9 related to COVID-19 and/or proclamations or orders issued by Governor Inslee, and/or
10 other civil authorities.

11 E. ***Extra Expense Breach of Contract Class:*** All persons and entities in the
12 United States issued one of Defendant's policies with Extra Expense coverage who
13 incurred expenses while seeking to minimize the suspension of business at the covered
14 premises in connection with COVID-19 and/or proclamations or orders issued by
15 Governor Inslee, other Governors, and/or other civil authorities whose Extra Expense
16 claim has been denied by Defendant.

17 F. ***Extra Expense Breach of Contract Washington Subclass:*** All persons
18 and entities in the State of Washington issued one of Defendant's policies with Extra
19 Expense Coverage who incurred expenses while seeking to minimize the suspension of
20 business at the covered premises in connection with COVID-19 and/or proclamations or
21 orders issued by Governor Inslee, and/or other civil authorities and whose Extra Expense
22 claim has been denied by Defendant.
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1 G. ***Extra Expense Declaratory Relief Class:*** All persons and entities in the
 2 United States issued one of Defendant's policies with Extra Expense Coverage who
 3 incurred expenses while seeking to minimize the suspension of business at the covered
 4 premises in connection with COVID-19 and/or proclamations or orders issued by
 5 Governor Inslee, other Governors, and/or other civil authorities.

6 H. ***Extra Expense Declaratory Relief Washington Subclass:*** All persons
 7 and entities in the State of Washington issued one of Defendant's policies with Extra
 8 Expense Coverage who incurred expenses while seeking to minimize the suspension of
 9 business at the covered premises in connection with COVID-19 and/or proclamations or
 10 orders issued by Governor Inslee, and/or other civil authorities.

11 I. ***Extended Practice Income Breach of Contract Class:*** All persons and
 12 entities in the United States issued one of Defendant's policies with Extended Practice
 13 Income Coverage who suffered a suspension of their business at the covered premises
 14 related to COVID-19 and/or proclamations or orders issued by Governor Inslee, other
 15 Governors, and/or other civil authorities and whose Extended Practice Income claim has
 16 been denied by Defendant.

17 J. ***Extended Practice Income Breach of Contract Washington Subclass:***
 18 All persons and entities in the State of Washington issued one of Defendant's policies
 19 with Extended Practice Income Coverage who suffered a suspension of their business at
 20 the covered premises related to COVID-19 and/or proclamations or orders issued by
 21 Governor Inslee, and/or other civil authorities and whose Extended Practice Income
 22 claim has been denied by Defendant.
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1 K. ***Extended Practice Income Declaratory Relief Class:*** All persons and
 2 entities in the United States issued one of Defendant's policies with Extended Practice
 3 Income Coverage who suffered a suspension of their business at the covered premises
 4 related to COVID-19 and/or proclamations or orders issued by Governor Inslee, other
 5 Governors, and/or other civil authorities.

6 L. ***Extended Practice Income Declaratory Relief Washington Subclass:*** All
 7 persons and entities in the State of Washington issued one of Defendant's with Extended
 8 Practice Income Coverage who suffered a suspension of their business at the covered
 9 premises related to COVID-19 and/or proclamations or orders issued by Governor
 10 Inslee, and/or other civil authorities.

11 M. ***Civil Authority Breach of Contract Class:*** All persons and entities in the
 12 United States issued one of Defendant's policies with Civil Authority Coverage who
 13 suffered a suspension of their business at the covered premises related to the impact of
 14 COVID-19 and/or proclamations or orders issued by Governor Inslee, other Governors,
 15 and/or other civil authorities and whose Civil Authority claim has been denied by
 16 Defendant.

17 N. ***Civil Authority Breach of Contract Washington Subclass:*** All persons
 18 and entities in the State of Washington issued one of Defendant's policies with Civil
 19 Authority Coverage who suffered a suspension of their business at the covered premises
 20 related to the impact of COVID-19 and/or proclamations or orders issued by Governor
 21 Inslee, and/or other civil authorities and whose Civil Authority claim has been denied by
 22 Defendant.

O. **Civil Authority Declaratory Relief Class:** All persons and entities in the United States issued one of Defendant's policies with Civil Authority Coverage who suffered a suspension of their business at the covered premises related to COVID-19 and/or proclamations or orders issued by Governor Inslee, other Governors, and/or other civil authorities.

P. **Civil Authority Declaratory Relief Washington Subclass:** All persons and entities in the State of Washington issued one of Defendant's policies with Civil Authority Coverage who suffered a suspension of their business at the covered premises related to COVID-19 and/or proclamations or orders issued by Governor Inslee, and/or other civil authorities.

78. Excluded from the Class are Defendant's officers, directors, agents, and employees; the judicial officers and associated court staff assigned to this case; and the immediate family members of such officers and staff. Plaintiffs reserve the right to amend the Class definition, including based on information obtained in discovery.

79. This action may properly be maintained on behalf of each proposed Class under the criteria of Rule 23 of the Federal Rules of Civil Procedure.

80. **Numerosity:** The members of the Class are so numerous that joinder of all members would be impractical. Plaintiffs are informed and believe that each proposed Class and Subclass contains thousands of members. The precise number of Class Members can be ascertained through discovery, which will include Defendant's records of policyholders.

81. **Commonality and Predominance:** Common questions of law and fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

1 A. Whether the class and subclass members suffered cognizable losses under
2 the Defendant's policies;

3 B. Whether Defendant acted in a manner common to the Class and Subclass
4 in denying claims for coverage relating to COVID-19 and/or orders issued by Governor
5 Inslee, other Governors, and/or other civil authorities;

6 C. Whether Practice Income Coverage in Defendant's policies of insurance
7 applies to a suspension of business relating to COVID-19 and/or orders issued by
8 Governor Inslee, other Governors, and/or other civil authorities;

9 D. Whether Extra Expense Coverage in Defendant's policies of insurance
10 applies to efforts to minimize a loss relating to COVID-19 and/or orders issued by
11 Governor Inslee, other Governors, and/or other civil authorities;

12 E. Whether Extended Practice Income Coverage in Defendant's policies of
13 insurance applies to a suspension of business relating to COVID-19 and/or orders issued
14 by Governor Inslee, other Governors, and/or civil authorities;

15 F. Whether Civil Authority Coverage in Defendant's policies of insurance
16 applies to a suspension of business relating to COVID-19 and/or orders issued by
17 Governor Inslee, other Governors, and/or civil authorities; and

18 G. Whether Defendant carried out a blanket denial of all claims based on
19 business interruption, income loss or closures related to COVID-19 and/or orders issued
20 by Governor Inslee, over Governors, and/or other civil authorities.

21 H. Whether Defendant has breached its contracts of insurance through a
22 blanket denial of all claims based on business interruption, income loss or closures
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related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities; and

I. Whether, because of Defendant's conduct, Plaintiffs and the Class Members are entitled to equitable and declaratory relief, and if so, the nature of such relief.

82. **Typicality:** Plaintiffs' claims are typical of the claims of the members of the classes. Plaintiffs and all the members of the classes have been injured by the same wrongful practices of Defendant. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of the members of the Class, are based on the same or materially similar policy forms, and are based on the same legal theories.

83. **Adequacy:** Plaintiffs will fully and adequately assert and protect the interests of the classes and have retained class counsel who are experienced and qualified in prosecuting class actions. Neither Plaintiffs nor their attorneys have any interests contrary to or in conflict with the Class.

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

85. **Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:** Defendant acted or refused to act on grounds generally applicable to Plaintiffs and other

members of the proposed classes making injunctive relief and declaratory relief appropriate on a class-wide basis.

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

VI. CAUSES OF ACTION

Count One—Declaratory Judgment

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

87. Previous paragraphs alleged are incorporated herein.

88. This is a cause of action for declaratory judgment pursuant to the Declaratory Judgment Act, codified at 28 U.S.C. § 2201.

89. Plaintiffs bring this cause of action on behalf of the Practice Income Coverage Declaratory Relief Class, Practice Income Declaratory Washington Subclass, Extra Expense Declaratory Relief Class, Extra Expense Declaratory Relief Washington Subclass, Extended Practice Income Declaratory Relief Class, Extended Practice Income Declaratory Relief

1 Washington Subclass, Civil Authority Declaratory Relief Class, and Civil Authority Declaratory
2 Relief Washington Subclass.

3 90. Plaintiffs seek a declaratory judgment declaring that Plaintiffs' and Class
4 Members' losses and expenses resulting from the interruption of their business are covered by
5 the Defendant's policies.

6 91. Plaintiffs seeks a declaratory judgment declaring that Defendant is responsible
7 for timely and fully paying all such claims.
8

9 **Count Two—Breach of Contract**

10 *(Brought on behalf of the Practice Income Coverage Breach of Contract Class,*
11 *Practice Income Coverage Breach of Contract Washington Subclass, Extra Expense Breach*
12 *of Contract Class, Extra Expense Breach of Contract Washington Subclass, Extended*
13 *Practice Income Breach of Contract Class, Extended Practice Income Breach of Contract*
Washington Subclasses, Civil Authority Breach of Contract Class, and Civil Authority
Breach of Contract Washington Subclass)

14 92. Previous paragraphs alleged are incorporated herein.

15 93. Plaintiffs bring this cause of action on behalf of the Practice Income Coverage
16 Breach of Contract Class, Practice Income Breach of Contract Washington Subclass, Extra
17 Expense Breach of Contract Class, Extra Expense Breach of Contract Washington Subclass,
18 Extended Practice Income Breach of Contract Class, Extended Practice Income Breach of
19 Contract Washington Subclass, Civil Authority Breach of Contract Class, and Civil Authority
20 Breach of Contract Washington Subclass.
21

22 94. The policies are contracts under which Plaintiffs and the class paid premiums to
23 Defendant in exchange for Defendant's promise to pay Plaintiffs and the class for all claims
24 covered by the policy.

25 95. Plaintiffs have paid their insurance premiums.
26

1 96. Plaintiffs have been denied coverage for his losses covered by the Defendant's
2 policies.

3 97. Upon information and belief, Defendant has denied, and will continue to deny
4 coverage for Plaintiffs and other similarly situated policyholders.

5 98. Denying coverage for the claims is a breach of the insurance contract.

6 99. Plaintiffs are harmed by the breach of the insurance contract by Defendant.
7

8 **VII. PRAYER FOR RELIEF**

9 1. Class Action status under Fed. R. Civ. P. 23.

10 2. A declaratory judgment that the policy or policies cover the Plaintiffs' losses and
11 expenses resulting from the interruption of the Plaintiffs' business by COVID-19 and/or orders
12 issued by Governor Inslee, other Governors, and/or other authorities.

13 3. A declaratory judgment that the Defendant is responsible for timely and fully
14 paying all such losses.

15 4. Damages.

16 5. Pre-judgment interest at the highest allowable rate.

17 6. Reasonable attorney fees and costs.

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

20 **VIII. JURY DEMAND**

21 Plaintiffs demand a jury trial on all claims so triable.

22 DATED this 20th day of November, 2020.

23 KELLER ROHRBACK L.L.P.

24 By: s/ Amy Williams-Derry

25 By: s/ Lynn L. Sarko

26 By: s/ Ian S. Birk

 By: s/ Gretchen Freeman Cappio

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