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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

B AND F ENTERPRISES NORTHWEST, LLC
dba BAKE’S PLACE, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

AMCO INSURANCE COMPANY,

Defendant.

No.

COMPLAINT—CLASS ACTION

JURY DEMAND

I. INTRODUCTION

Plaintiff B and F Enterprises Northwest, LLC dba Bake’s Place (“Plaintiff” or “Bake’s Place”), individually and on behalf of all other similarly situated members of the defined national class, and the defined Washington State subclasses (collectively, the “Class Members”), by and through the undersigned attorneys, brings this consolidated class action complaint against Defendant AMCO Insurance Company (“Defendant”) and alleges the following based on personal knowledge and information and belief:

1 **II. JURISDICTION AND VENUE**

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 Plaintiff’s 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 Plaintiff and all of the Washington Subclass Members in this case arise out of and directly relate
14 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. Plaintiff’s place of business is in King County. This
24 action is therefore appropriately filed in this District.
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1 **III. PARTIES**

2 5. Plaintiff Bake’s Place owns and operates restaurant, bar, and private event space
3 in downtown Bellevue, Washington.

4 6. Defendant AMCO Insurance Company is an insurance company incorporated in
5 Iowa with its principal place of business in Columbus, Ohio. Defendant is one of several
6 subsidiary insurer entities owned by parent company Nationwide Mutual Insurance Company.

7 7. Defendant is authorized and/or licensed to write, sell, and issue business
8 insurance policies in all fifty states and the District of Columbia. Defendant and its sister entities
9 owned by the same parent company conducted business within these regions by selling and
10 issuing insurance policies to policyholders, including Plaintiff.

11 8. Defendant is vicariously liable for the acts and omissions of its employees and
12 agents.
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15 **IV. NATURE OF THE CASE**

16 9. Bake’s Place owns and operates restaurant, bar, and private event space in
17 downtown Bellevue, Washington. Bake’s Place features a chef-driven seasonal menu, a well
18 curated wine and spirits list that includes over 200 whiskies, and an ever-evolving craft cocktail
19 program. Inside the restaurant, high vaulted ceilings give way to a spacious, multi-level dining
20 room making it one of the most ideal spots for private events in Bellevue.

21 10. Historic photographs depicting Bake’s Place’s indoor dining and bar space
22 follow:¹
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¹ Bake’s Place, <https://www.bakesplacebellevue.com/> (last visited Mar. 1, 2021).

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12 11. This lawsuit is filed to ensure that Bake’s Place and other similarly situated
13 policyholders receive the insurance benefits to which they are entitled and for which they paid.

14 12. Defendant issued one or more “all risk” insurance policies to Plaintiff, including a
15 businessowners policy and related endorsements (“the Policy”), insuring Plaintiff’s property and
16 business, and providing related coverages, under at least policy number ACP BPF 3056661959.

17 13. The Policy described the insured occupancy of the premises as falling under the
18 “Classification” of “CALIFORNIA CUISINE – FINE DINING – WITH BAR,” further
19 “Described as: RESTAURANT.” The governmental response to the COVID-19 pandemic did
20 not permit any operations or access to the premises consistent with “fine dining.”
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23 14. Plaintiff’s business property includes property owned and/or leased by Plaintiff
24 and used for its specified business purposes. Access to some or all of this property and premises
25 was prohibited by the governmental response to COVID-19.
26

1 15. Plaintiff's business property includes indoor bar, dining, and entertainment space
2 with typical restaurant facilities for bar, dining, and entertainment services, including bar stools,
3 microphones, bar counters, tables, chairs, serving ware, glassware, utensils, menus, condiment
4 and napkin dispensers, and other related equipment and property for customer use while
5 ordering, eating, drinking, participating in live events, and socializing inside the premises.
6

7 16. Defendant promised to pay Plaintiff for risks of "direct physical loss of or damage
8 to" to covered property, and includes coverage for risks of both "loss of or damage to" covered
9 property.

10 17. The policy coverages issued by Defendant to Plaintiff include Business Income
11 Coverage, Extra Expense Coverage, Extended Business Income Coverage, and Civil Authority
12 Coverage.
13

14 18. The Policy expressly defines a "Covered Cause of Loss" as meaning "direct
15 physical loss."

16 19. On information and belief, Defendant and affiliated entities owned by the same
17 parent company issued materially identical policies to thousands of businesses throughout
18 Washington and in other states.

19 20. Plaintiff paid all premiums for the coverages when due.

20 21. On or about January 2020, the United States of America saw its first cases of
21 persons infected by COVID-19, which has been designated a worldwide pandemic.
22

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

25 23. In many infected persons, COVID-19 causes severe illness and requires
26 hospitalization, including intubation. The virus has killed over 500,000 people in the United

1 States to date. Persons who survive the virus have experienced ongoing cognitive, neurological,
2 and physical impacts from the virus, even after the virus is no longer actively detected in their
3 bodies.

4 24. The COVID-19 virus is a physical substance that spreads from person to person
5 through respiratory droplets that reach another person and that are produced when an infected
6 person breathes, talks, coughs, or sneezes. It also spreads when virus respiratory droplets are
7 exhaled and aerosolized, and deposited on a surface or object (e.g., tables, chairs, bar stools,
8 microphones, glassware, kitchen and culinary equipment, door knobs, touch screens, computer
9 keyboards, and writing or eating utensils) and those objects are then touched by another person
10 who then touches their own mouth, nose, or eyes. COVID-19 is caused by a novel (new)
11 coronavirus that has not previously been seen in humans.²

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14 25. COVID-19 remains stable and transmittable in aerosols for up to three hours and
15 up to two or three days on surfaces. Persons infected with COVID-19 can be asymptomatic yet
16 still spread the virus. Guidance issued by the Centers for Disease Control and Prevention
17 (“CDC”) recommends avoiding indoor activities, adhering to strict sanitation protocols, and
18 maintaining social distance of at least six feet from others in order to minimize the spread of
19 COVID-19.³

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

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² See, e.g., *Coronavirus (COVID-19): Frequently Asked Questions*, CDC (updated Mar. 1, 2021),
<https://www.cdc.gov/coronavirus/2019-ncov/faq.html>.

³ See *Coronavirus (COVID-19): Personal and Social Activities*, CDC (updated Feb. 19, 2021),
<https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/personal-social-activities.html>.

1 27. The first confirmed case of COVID-19 in King County was noted on January 21,
2 2020.⁴

3 28. Public health data throughout the United States shows the number of COVID-19
4 tests administered, the rate of positive testing, the numbers of persons diagnosed with COVID-
5 19, the number of persons hospitalized due to COVID-19, the number of deaths from COVID-
6 19, and other related statistics, by state, county, and sometimes by city.⁵

7
8 29. As of February 26, 2021, at least 321,079 individuals in the State of Washington
9 have tested positive for COVID-19, 19,319 have been hospitalized, and 4,956 have died due to
10 the COVID-19 virus.⁶

11 30. As of February 26, 2021, at least 82,061 individuals in King County have tested
12 positive for COVID-19, 5,125 have been hospitalized, and 1,394 have died due to the COVID-19
13 virus.⁷

14
15 31. The presence of any COVID-19 aerosolized or suspended droplets or particles in
16 the air or otherwise circulating in an indoor environment renders that physical space, or physical
17 property, unsafe and unusable.

18 32. The presence of any COVID-19 aerosolized or suspended droplets or particles in
19 the air or otherwise circulating in an indoor environment causes direct physical damage to
20 property and/or direct physical loss of property.
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23 ⁴ Casey McNertney, *Coronavirus in Washington State: A Timeline of the Outbreak Through March 2020*, KIRO 7
News (updated Apr. 3, 2020, 2:03 AM), <https://www.kiro7.com/news/local/coronavirus-washington-state-timeline-outbreak/IM65JK66N5BYTIAPZ3FUZSKMUE/>.

24 ⁵ See, e.g., *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. Times (updated Mar. 1, 2021, 3:58 PM),
25 <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html?action=click&module=Top%20Stories&pgtype=Homepage> (reflecting COVID-19 statistics, on a state-by-state, county-by-county, and aggregated
26 basis since March 2020).

⁶ *COVID-19 Data Dashboard*, Wash. State Dep't of Health (last updated Feb. 27, 2021, 4:25 PM),
<https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard>.

⁷ *Id.*

1 33. The presence of any COVID-19 droplets or particles on physical surfaces renders
2 items of physical property unsafe and unusable.

3 34. The presence of any COVID-19 droplets or particles on physical surfaces causes
4 direct physical damage to property and/or direct physical loss of property.
5

6 35. The presence of people infected with or carrying COVID-19 particles at premises
7 renders the premises, including property located at that premises, unsafe and unusable, resulting
8 in direct physical damage and/or direct physical loss to the premises and property.

9 36. Loss of functionality of property that has not been physically altered constitutes
10 direct physical loss of property and/or direct physical damage to property.

11 37. On February 29, 2020, Washington Governor Jay Inslee issued Proclamation 20-
12 05, declaring a State of Emergency for all counties in the State of Washington as a result of the
13 COVID-19 outbreak.⁸
14

15 38. Thereafter, Governor Inslee issued a series of proclamations and orders affecting
16 many persons and businesses in the State of Washington, whether infected with COVID-19 or
17 not, requiring certain public health precautions.

18 39. Some local agencies acted even more quickly than the state. On February 27,
19 2020, the Northshore School District closed Bothell High School to completely disinfect the
20 entire school because of concerns about the safety of school property stemming from COVID-
21 19.⁹ On March 2, 2020, Everett Public Schools Superintendent Dr. Ian B. Saltzman made a
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⁸ Proclamation 20-05 of Washington Gov. Jay Inslee (Feb. 29, 2020),

[https://www.governor.wa.gov/sites/default/files/proclamations/20-05%20Coronavirus%20\(final\).pdf](https://www.governor.wa.gov/sites/default/files/proclamations/20-05%20Coronavirus%20(final).pdf).

⁹ See Michelle Reid, *Letter to Families: Bothell High School Closure*, Northshore School District (Feb. 26, 2020),

<https://www.nsd.org/blog/~board/superintendent-blog/post/letter-to-families-bothell-high-school-closure>.

1 similar announcement closing schools, highlighting that Everett Schools would clean both
2 schools and school buses.¹⁰

3 40. Issued March 12, 2020, Proclamation 20-08 closed all public and private K-12
4 schools in King, Pierce, and Snohomish counties.¹¹ Issued March 13, 2020, Proclamation 20-09,
5 “Statewide K-12 School Closures,” extended the school closure to the entire state.¹²
6

7 41. Also on March 13, 2020, Governor Inslee issued Proclamation 20-11, “Statewide
8 Limits on Gatherings,” which prohibited all gatherings of 250 people or more in all Washington
9 counties, including King County.¹³

10 42. On March 16, 2020, Governor Inslee issued Proclamation 20-13, “Statewide
11 Limits: Food and Beverage Services, Areas of Congregation” which amended Proclamation 20-
12 05.¹⁴ The proclamation prohibits “any number of people from gathering in any public venue in
13 which people congregate for purposes of . . . food and beverage service.”¹⁵ The proclamation
14 further prohibited “the onsite consumption of food and/or beverages” in all restaurants, bars,
15 taverns, and for catered events.¹⁶
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20 ¹⁰ See Ian B. Saltzman, *Superintendent’s Message, March 2, 2020*, Everett Public Schools (Mar. 2, 2020),
21 <https://www.everettsd.org/Page/32622>.

22 ¹¹ Proclamation 20-08 of Washington Gov. Jay Inslee (Mar. 12, 2020),
23 <https://www.governor.wa.gov/sites/default/files/proclamations/20-08%20Coronavirus%20%28tmp%29.pdf>.

24 ¹² Proclamation 20-09 of Washington Gov. Jay Inslee, *Statewide K-12 School Closures* (Mar. 13, 2020),
25 <https://www.governor.wa.gov/sites/default/files/proclamations/20-09%20Coronavirus%20Schools%20Amendment%20%28tmp%29.pdf>.

26 ¹³ Proclamation 20-11 of Washington Gov. Jay Inslee, *Statewide Limits on Gatherings* at p. 2 (Mar. 13, 2020),
<https://www.governor.wa.gov/sites/default/files/proclamations/20-11%20Coronavirus%20Gatherings%20Amendment%20%28tmp%29.pdf>.

¹⁴ Proclamation 20-13 of Washington Gov. Jay Inslee, *Statewide Limits: Food and Beverage Services, Areas of Congregation* (Mar. 16, 2020), <https://www.governor.wa.gov/sites/default/files/proclamations/20-13%20Coronavirus%20Restaurants-Bars%20%28tmp%29.pdf>.

¹⁵ *Id.* at p. 2.

¹⁶ *Id.*

1 43. Proclamation 20-13 further states that the pandemic “remains a public disaster
2 affecting life, health, property or the public peace.”¹⁷

3 44. Also on March 16, 2020, Governor Inslee issued Proclamation 20-14, “Reduction
4 of Statewide Limits on Gatherings,” which prohibited all gatherings of fifty people or more in all
5 Washington counties, including King County, and further prohibited gatherings of fewer people
6 unless organizers of those activities complied with certain social distancing and sanitation
7 measures.¹⁸

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9 45. On March 23, 2020, Governor Inslee issued Proclamation 20-25, “Stay Home –
10 Stay Healthy.”¹⁹ The proclamation, which amends prior proclamations, requires that “[a]ll people
11 in Washington State [] immediately cease leaving their home or place of residence except: (1) to
12 conduct or participate in essential activities, and/or (2) for employment in essential business
13 services.”²⁰ The proclamation prohibits “all non-essential businesses in Washington State from
14 conducting business, within the limitations provided herein.”²¹

15
16 46. Proclamation 20-25 continues a State of Emergency, and states that “the
17 worldwide COVID-19 pandemic and its progression in Washington State continues to threaten
18 the life and health of our people as well as the economy of Washington State, and remains a
19 public disaster affecting life, health, property or the public peace.”²² The proclamation allows for
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¹⁷ *Id.* at p. 1.

¹⁸ Proclamation 20-14 of Washington Gov. Jay Inslee, *Reduction of Statewide Limits on Gatherings* (Mar. 16, 2020), <https://www.governor.wa.gov/sites/default/files/proclamations/20-14%20COVID-19%20-%20Prohibitions%20on%20Gatherings%20%28tmp%29.pdf>.

¹⁹ Proclamation 20-25 of Washington Gov. Jay Inslee, *Stay Home – Stay Healthy* (Mar. 23, 2020), <https://www.governor.wa.gov/sites/default/files/proclamations/20-25%20Coronavirus%20Stay%20Safe-Stay%20Healthy%20%28tmp%29%20%28002%29.pdf>.

²⁰ *Id.* at p. 3.

²¹ *Id.* at p. 2.

²² *Id.* at p. 1.

1 restaurants and food services to operate only to “provid[e] delivery or take-away services” and
2 “so long as proper social distancing and sanitation measures are established and implemented.”²³

3 47. On November 15, 2020, Governor Inslee issued Proclamation 20-25.8, “Stay Safe
4 – Stay Healthy” “Rollback of County-by-County Phased Reopening Responding to a COVID-19
5 Outbreak Surge,” which amended Proclamation 20-05 and 20-25, *et seq.*²⁴ The proclamation
6 again closed restaurants and bars for indoor dine-in service.
7

8 48. Proclamation 20-25.8 also prohibits indoor operations at a variety of business
9 locations throughout King County and elsewhere in the State of Washington, including but not
10 limited to other restaurants and bars, fitness facilities and gyms, bowling centers, and movie
11 theaters.²⁵

12 49. Governor’s Inslee’s proclamations and orders related to COVID-19 (collectively,
13 “the proclamations and orders”) have been extended and modified from time to time.²⁶
14

15 50. Plaintiff has complied with the proclamations and orders which have required it to
16 close, suspend, and/or curtail its business.

17 51. Among other things, Plaintiff complied with the proclamations and orders by
18 preventing the public, including its customers, clients, and performers, from entering its places of
19 business to participate in business activities such as consuming food and beverages and private
20 events, which were routine and allowed prior to the issuance of the proclamations and orders.
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24 ²³ *Id.* at p. 5.

25 ²⁴ Proclamation 20-25.8 of Washington Gov. Jay Inslee, “*Stay Safe – Stay Healthy*” *Rollback of County-by-County
26 Phased Reopening Responding to a COVID-19 Outbreak Surge* (Mar. 23, 2020),
https://www.governor.wa.gov/sites/default/files/proclamations/proc_20-25.8.pdf.

²⁵ *Id.* at pp. 3-4.

²⁶ *See, e.g., Restaurant, Tavern, Breweries, Wineries and Distilleries COVID-19 Requirements*, Wash. Gov. Jay
Inslee (updated Nov. 16, 2020), [https://www.governor.wa.gov/sites/default/files/COVID19%20Phase%202%20
and%203%20Restaurant%20and%20Tavern%20Guidance.pdf?utm_medium=email&utm_source=govdelivery](https://www.governor.wa.gov/sites/default/files/COVID19%20Phase%202%20and%203%20Restaurant%20and%20Tavern%20Guidance.pdf?utm_medium=email&utm_source=govdelivery).

1 52. In order to comply with the proclamations and orders, Plaintiff was forced to
2 suspend its business and incur extra expense.

3 53. In order to comply with the proclamations and orders, Plaintiff was unable to use
4 its restaurant, bar, and private event space for its insured purpose of sit-down dining, bar, and
5 live entertainment.

6 54. Plaintiff invested in its business property, insured the business property, and
7 insured the income derived from its business property, but Plaintiff was deprived of its
8 property's functionality due to the government's response to the COVID-19 pandemic.

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

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

13 57. Plaintiff's property sustained direct physical loss and/or direct physical property
14 damage related to the proclamations and orders, and/or COVID-19.

15 58. Plaintiff's business and property will continue to sustain direct physical loss or
16 damage covered by Defendant's Policy, including but not limited to business interruption, extra
17 expense, interruption by civil authority, and other expenses.

18 59. Plaintiff suffered direct physical loss of use of the covered properties for its
19 intended purposes.

20 60. As a result of the above, Plaintiff has experienced and will experience loss
21 covered by Defendant's Policy.

22 61. Plaintiff's suspension of its business in response to the proclamations and orders
23 caused Plaintiff to suffer a business loss.

1 62. Plaintiff complied with all requirements in the Policy.

2 63. Plaintiff made a claim for insurance benefits on March 13, 2020.

3 64. Defendant denied Plaintiff's claim for insurance benefits by form letter dated
4 March 25, 2020, under claim number 339116-GK.

5 65. Defendant made no meaningful investigation of Plaintiff's claim or its loss.

6 66. Without any basis, Defendant's denial letter conclusively asserts, and in so doing
7 misrepresents the coverage, that there has been "no direct physical loss or damage to Covered
8 Property at the described premises."
9

10 67. Defendant concedes that Plaintiff suffered a suspension of business operations,
11 but incorrectly concludes, again misrepresenting the coverage, that the suspension was "not a
12 result of direct physical loss or damage to property at the described premises."
13

14 68. Defendant's denial letter also concludes wrongly and without any basis that
15 "[t]here has been no damage to property within 1 mile of your premises from a Covered Cause of
16 Loss."
17

18 69. Upon information and belief, Defendant has denied all claims submitted to it for
19 business income coverage that relate to governmental proclamations or orders and/or COVID-19.

20 70. Upon information and belief, Defendant has undertaken no meaningful
21 investigation regarding whether there is any presence of COVID-19 at Plaintiff's insured
22 premises.

23 71. Upon information and belief, Defendant has undertaken no meaningful
24 investigation regarding the timing, scope, or impact of governmental proclamations or closure
25 orders that affect its insured's business or business property.
26

1 72. Upon information and belief, Defendant has undertaken no meaningful
2 investigation regarding the community spread of COVID-19 in the vicinity of Plaintiff's
3 business.

4 73. Upon information and belief, Defendant has denied and will deny coverage to
5 Plaintiff and all other similarly situated policyholders based on Defendant's uniform policy to
6 deny business interruption claims stemming from government closure orders related to COVID-
7 19.

8 74. Defendant's across-the-board coverage denials are not consistent with its policy
9 language and with its obligations to investigate losses arising under its policies. Courts have
10 found coverage or reasonable grounds for coverage during the COVID-19 pandemic in one or
11 more ways, including based on: (1) the actual or potential presence of virus in the air in the
12 vicinity of the policyholder's business; (2) the necessity of modifying physical behaviors through
13 the use of social distancing, avoiding confined indoor spaces, and/or not congregating in the
14 same physical area as others; (3) governmental orders requiring that physical spaces such as the
15 policyholder's business be shut down or that other property not be used for its insured business
16 purposes; and/or (4) the need to mitigate the threat or actual physical presence of virus on door-
17 handles, tables, silverware, surfaces, in heating and air conditioning systems and any other of the
18 places where virus may be found.
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22 **V. CLASS ACTION ALLEGATIONS**

23 75. This matter is brought by Plaintiff on behalf of itself and those similarly situated,
24 under Federal Rule of Civil Procedure 23(a), 23(b)(1), 23(b)(2), and 23(b)(3).
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1 76. Prosecuting separate actions by individual class members, in lieu of proceeding as
2 a class action, would create a risk of inconsistent or varying adjudications that would establish
3 incompatible standards of conduct for Defendant.

4 77. As alleged above, Defendant has acted or refused to act on grounds that apply
5 generally to the proposed Class and Subclasses, such that final injunctive relief or declaratory
6 relief is appropriate.

7 78. The questions of law or fact common to Class and Subclass Members
8 predominate over any questions affecting only individual members, and a class action is superior
9 to other methods for fairly and efficiently adjudicating this controversy.

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

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

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

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

3 D. ***Business Income Declaratory Relief Washington Subclass:*** All persons
4 and entities in the state of Washington issued one of Defendant's policies with Business
5 Income Coverage who suffered a suspension of their business at the covered premises
6 related to COVID-19 and/or proclamations or orders issued by Governor Inslee, and/or
7 other civil authorities.
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9 E. ***Extra Expense Breach of Contract Class:*** All persons and entities in the
10 United States issued one of Defendant's policies with Extra Expense coverage who
11 incurred expenses while seeking to minimize the suspension of business at the covered
12 premises in connection with COVID-19 and/or proclamations or orders issued by
13 Governor Inslee, other Governors, and/or other civil authorities whose Extra Expense
14 claim has been denied by Defendant.
15

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

23 G. ***Extra Expense Declaratory Relief Class:*** All persons and entities in the
24 United States issued one of Defendant's policies with Extra Expense Coverage who
25 incurred expenses while seeking to minimize the suspension of business at the covered
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1 premises in connection with COVID-19 and/or proclamations or orders issued by
2 Governor Inslee, other Governors, and/or other civil authorities.

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

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

16 J. ***Extended Business Income Breach of Contract Washington Subclass:***
17 All persons and entities in the state of Washington issued one of Defendant’s policies
18 with Extended Business Income Coverage who suffered a suspension of their business at
19 the covered premises related to COVID-19 and/or proclamations or orders issued by
20 Governor Inslee, and/or other civil authorities and whose Extended Business Income
21 claim has been denied by Defendant.

23 K. ***Extended Business Income Declaratory Relief Class:*** All persons and
24 entities in the United States issued one of Defendant’s policies with Extended Business
25 Income Coverage who suffered a suspension of their business at the covered premises
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1 related to COVID-19 and/or proclamations or orders issued by Governor Inslee, other
2 Governors, and/or other civil authorities.

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

8
9 M. ***Civil Authority Breach of Contract Class:*** All persons and entities in the
10 United States issued one of Defendant's policies with Civil Authority Coverage who
11 suffered a suspension of their business at the covered premises related to the impact of
12 COVID-19 and/or proclamations or orders issued by Governor Inslee, other Governors,
13 and/or other civil authorities and whose Civil Authority Coverage claim has been denied
14 by Defendant.

15
16 N. ***Civil Authority Breach of Contract Washington Subclass:*** All persons
17 and entities in the state of Washington issued one of Defendant's policies with Civil
18 Authority Coverage who suffered a suspension of their business at the covered premises
19 related to the impact of COVID-19 and/or proclamations or orders issued by Governor
20 Inslee, and/or other civil authorities and whose Civil Authority claim has been denied by
21 Defendant.

22
23 O. ***Civil Authority Declaratory Relief Class:*** All persons and entities in the
24 United States issued one of Defendant's policies with Civil Authority Coverage who
25 suffered a suspension of their business at the covered premises related to COVID-19
26

1 and/or proclamations or orders issued by Governor Inslee, other Governors, and/or other
2 civil authorities.

3 **P. *Civil Authority Declaratory Relief Washington Subclass:*** All persons and
4 entities in the state of Washington issued one of Defendant's policies with Civil
5 Authority Coverage who suffered a suspension of their business at the covered premises
6 related to COVID-19 and/or proclamations or orders issued by Governor Inslee, and/or
7 other civil authorities.
8

9 80. Excluded from the Classes and Subclasses are Defendant's officers, directors,
10 agents, and employees; the judicial officers and associated court staff assigned to this case; and
11 the immediate family members of such officers and staff. Plaintiff reserves the right to amend the
12 Class definition, including based on information obtained in discovery.
13

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

16 82. **Numerosity:** The Class Members are so numerous that joinder of all members
17 would be impractical. Plaintiff is informed and believe that each proposed Class and Subclass
18 contains thousands of members. The precise number of Class Members can be ascertained
19 through discovery, which will include Defendant's records of policyholders.
20

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

24 A. Whether the Class and Subclass Members suffered cognizable losses
25 under the Defendant's policies;
26

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

4 C. Whether Business Income Coverage in Defendant’s policies of insurance
5 apply to a suspension of business relating to COVID-19 and/or orders issued by
6 Governor Inslee, other Governors, and/or other civil authorities;

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

10 E. Whether Extended Business Income Coverage in Defendant’s policies of
11 insurance apply to a suspension of business relating to COVID-19 and/or orders issued
12 by Governor Inslee, other Governors, and/or civil authorities;

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

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

19 H. Whether Defendant has breached its contracts of insurance through a
20 blanket denial of all claims based on business interruption, income loss or closures
21 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or
22 other civil authorities; and
23
24
25
26

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

4 84. **Typicality:** Plaintiff's claims are typical of the claims of the members of the
5 classes. Plaintiff and all the members of the classes have been injured by the same wrongful
6 practices of Defendant. Plaintiff's claims arise from the same policies, practices, and course of
7 conduct that give rise to the claims of the Class Members, are based on the same or materially
8 similar policy forms, and are based on the same legal theories.

9
10 85. **Adequacy:** Plaintiff will fully and adequately assert and protect the interests of
11 the classes and have retained class counsel who are experienced and qualified in prosecuting
12 class actions. Neither Plaintiff nor their attorneys have any interests contrary to or in conflict
13 with the Class.

14
15 86. **Federal Rule of Civil Procedure 23(b)(1), the Risk of Inconsistent or Varying**
16 **Adjudications and Impairment to Other Class Members' Interests:** Plaintiff seeks
17 adjudication as to the interpretation, and resultant scope, of Defendant's policies, which are
18 common to all Class Members. The prosecution of separate actions by individual members of the
19 classes would risk inconsistent or varying interpretations of those policy terms and create
20 inconsistent standards of conduct for Defendant. The policy interpretations sought by Plaintiff
21 could also impair the ability of absent Class Members to protect their interests.

22
23 87. **Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:**
24 Defendant acted or refused to act on grounds generally applicable to Plaintiff and other members
25 of the proposed classes making injunctive relief and declaratory relief appropriate on a class-
26 wide basis.

1 92. Plaintiff seeks a declaratory judgment declaring that Plaintiff's and Class
2 Members' losses and expenses resulting from the interruption of their business are covered by
3 the Defendant's policies.

4 93. Plaintiff seeks a declaratory judgment declaring that Defendant is responsible for
5 timely and fully paying all such claims.
6

7 **Count Two—Breach of Contract**

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

14 94. Previous paragraphs alleged are incorporated herein.

15 95. Plaintiff bring this cause of action on behalf of the Business Income Breach of
16 Contract Class, Business Income Breach of Contract Washington Subclass, Extra Expense
17 Breach of Contract Class, Extra Expense Breach of Contract Washington Subclass, Extended
18 Business Income Breach of Contract Class, Extended Business Income Breach of Contract
19 Washington Subclass, Civil Authority Breach of Contract Class, and Civil Authority Breach of
20 Contract Washington Subclass.

21 96. The policies are contracts under which Plaintiff and the Class paid premiums to
22 Defendant in exchange for Defendant's promise to pay Plaintiff and the Class for all claims
23 covered by the policy.

24 97. Plaintiff has paid its insurance premiums.

25 98. Plaintiff has been denied coverage for its losses covered by the Policy.

26 99. Upon information and belief, Defendant has denied, and will continue to deny
coverage for Plaintiff and other similarly situated policyholders.

1 100. Denying coverage for the claims is a breach of the insurance contract.

2 101. Plaintiff is harmed by the breach of the insurance contract by Defendant.

3 **VII. PRAYER FOR RELIEF**

4 1. Class action status under Federal Rule of Civil Procedure 23.

5 2. A declaratory judgment that the policy or policies cover the Plaintiff’s losses and
6 expenses resulting from the interruption of the Plaintiff’s business by COVID-19 and/or orders
7 issued by Governor Inslee, other Governors, and/or other authorities.

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

10 4. Damages.

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

12 6. Reasonable attorney fees and costs.

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

14 **VIII. JURY DEMAND**

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

16 DATED this 3rd day of March, 2021.

17 KELLER ROHRBACK L.L.P.

18 By: s/ Amy Williams-Derry

19 By: s/ Lynn L. Sarko

20 By: s/ Ian S. Birk

21 By: s/ Gretchen Freeman Cappio

22 By: s/ Irene M. Hecht

23 By: s/ Gabriel E. Verdugo

24 By: s/ Nathan L. Nanfelt

25 Amy Williams-Derry, WSBA #28711

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