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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NOSKENDA INC., individually and on behalf  
of all others similarly situated, ,

Plaintiff,

v.

VALLEY FORGE INSURANCE COMPANY,  
Defendant.

No.

COMPLAINT—CLASS ACTION

JURY DEMAND

**I. INTRODUCTION**

Plaintiff Noskenda Inc. (“Noskenda” or “Plaintiff”), individually and on behalf of all other similarly situated members of the defined national class and Washington State sub-classes (collectively, the “Class Members”), by and through the undersigned attorneys, brings this class action against Defendant Valley Forge Insurance Company (“Valley Forge” or “Defendant”) and alleges as follows based on personal knowledge and information and belief:

**II. JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship from Defendant, there are 100 or more Class members nationwide, and the aggregate amount in controversy exceeds \$5,000,000. The Court has supplemental jurisdiction over Plaintiff’s state law claims under 28 U.S.C. § 1367.



1 conducted business in the state of Washington by selling and issuing business insurance policies  
2 to policyholders including Plaintiff.

3 **IV. NATURE OF THE CASE**

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

6 9. Defendant issued one or more insurance policies to Plaintiff, a businessowners  
7 policy and related endorsements (“the Policy”), insuring Plaintiff’s property and business  
8 practice and other coverages, with effective dates of August 12, 2019 to August 12, 2020.

9 10. Plaintiff’s business property includes property owned and/or leased by Plaintiff  
10 and used for general business purposes for the specific purpose of providing print shop services  
11 and related business activities.

12 11. Defendant insurance policy issued to Plaintiff promises to pay Plaintiff for “direct  
13 physical loss of or physical damage to” to covered property.

14 12. The Policy includes coverage for risks of both damage to and loss of covered  
15 property.

16 13. Defendant’s insurance policy issued to Plaintiff includes Business Income  
17 Coverage, Extra Expense Coverage, Extended Business Income Coverage and Civil Authority  
18 Coverage.

19 14. Plaintiff paid all premiums for the coverage when due.

20 15. 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 16. In light of this pandemic, Washington Governor Jay Inslee issued certain  
23 proclamations and orders affecting many persons and businesses in Washington, whether  
24  
25  
26

1 infected with COVID-19 or not, requiring certain public health precautions. Among other things,  
2 Governor Inslee’s “Stay Home, Stay Healthy” prohibited, within limitations provided, “all  
3 people in Washington State from leaving their homes” and “all non-essential businesses in  
4 Washington State from conducting business[.]”

5 17. Plaintiff was not deemed to be an “essential business” as determined by Governor  
6 Inslee.  
7

8 18. No COVID-19 virus has been detected on Plaintiff’s business premises.

9 19. Plaintiff’s property sustained direct physical loss and/or damage related to  
10 COVID-19 and/or the proclamations and orders.

11 20. Plaintiff’s property will continue to sustain direct physical loss or damage covered  
12 by the Valley Forge policy or policies, including but not limited to business interruption, extra  
13 expense, interruption by civil authority, and other expenses.  
14

15 21. Plaintiff’s property could not be used for its intended purposes.

16 22. As a result of the above, Plaintiff has experienced and will experience loss  
17 covered by the Valley Forge policy or policies.

18 23. Upon information and belief, Valley Forge intends to deny or has denied  
19 Plaintiff’s claim for coverage and has or will continue to deny coverage for other similarly  
20 situated policyholders.  
21

22 **V. CLASS ACTION ALLEGATIONS**

23 24. This matter is brought by Plaintiff on behalf of itself and those similarly situated,  
24 under Federal Rules of Civil Procedure 23(b)(1), 23(b)(2), and 23(b)(3).

25 25. The Classes that Plaintiff seeks to represent are defined at this time as:  
26

1           A.     ***Business Income Breach of Contract Class:*** All persons and entities in  
2 the United States issued a Valley Forge policy with Business Income Coverage who  
3 suffered a suspension of their practice at the covered premises related to COVID-19  
4 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities  
5 and whose Business Income claim has been denied by Valley Forge.  
6

7           B.     ***Business Income Breach of Contract Washington Subclass:*** All persons  
8 and entities in the State of Washington issued a Valley Forge policy with Business  
9 Income Coverage who suffered a suspension of their business at the covered premises  
10 related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil  
11 authorities and whose Business Income claim has been denied by Valley Forge.  
12

13           C.     ***Business Income Declaratory Relief Class:*** All persons and entities in the  
14 United States issued a Valley Forge policy with Business Income Coverage who suffered  
15 a suspension of their practice at the covered premises related to COVID-19 and/or orders  
16 issued by Governor Inslee, other Governors, and/or other civil authorities.  
17

18           D.     ***Business Income Declaratory Relief Washington Subclass:*** All persons  
19 and entities in the State of Washington issued a Valley Forge policy with Business  
20 Income Coverage who suffered a suspension of their business at the covered premises  
21 related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil  
22 authorities.  
23

24           E.     ***Extended Business Income Breach of Contract Class:*** All persons and  
25 entities in the United States issued a Valley Forge policy with Extended Business Income  
26 Coverage who suffered a suspension of their business at the covered premises related to

1 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil  
2 authorities and whose Extended Business Income claim has been denied by Valley Forge.

3 F. ***Extended Business Income Breach of Contract Washington Subclass:***

4 All persons and entities in the State of Washington issued a Valley Forge policy with  
5 Extended Business Income Coverage who suffered a suspension of their business at the  
6 covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or  
7 other civil authorities and whose Extended Business Income claim has been denied by  
8 Valley Forge.  
9

10 G. ***Extended Business Income Declaratory Relief Class:*** All persons and

11 entities in the United States issued a Valley Forge policy with Extended Business Income  
12 Coverage who suffered a suspension of their business at the covered premises related to  
13 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil  
14 authorities.  
15

16 H. ***Extended Business Income Declaratory Relief Washington Subclass:*** All

17 persons and entities in the State of Washington issued a Valley Forge policy with  
18 Extended Business Income coverage who suffered a suspension of their business at the  
19 covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or  
20 other civil authorities.  
21

22 I. ***Extra Expense Breach of Contract Class:*** All persons and entities in the

23 United States issued a Valley Forge policy with Extra Expense Coverage who sought to  
24 minimize losses from the suspension of their business at the covered premises in  
25 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,  
26

1 and/or other civil authorities and whose Extra Expense claim has been denied by Valley  
2 Forge.

3 J. ***Extra Expense Breach of Contract Washington Subclass:*** All persons  
4 and entities in the State of Washington issued a Valley Forge policy with Extra Expense  
5 Coverage who sought to minimize losses from the suspension of their business at the  
6 covered premises in connection with COVID-19 and/or orders issued by Governor Inslee,  
7 and/or other civil authorities and whose Extra Expense claim has been denied by Valley  
8 Forge.  
9

10 K. ***Extra Expense Declaratory Relief Class:*** All persons and entities in the  
11 United States issued a Valley Forge policy with Extra Expense Coverage who sought to  
12 minimize losses from the suspension of their business at the covered premises in  
13 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,  
14 and/or other civil authorities.  
15

16 L. ***Extra Expense Declaratory Relief Washington Subclass:*** All persons and  
17 entities in the State of Washington issued a Valley Forge policy with Extra Expense  
18 Coverage who sought to minimize losses from the suspension of their business at the  
19 covered premises in connection with COVID-19 and/or orders issued by Governor Inslee,  
20 and/or other civil authorities.  
21

22 M. ***Civil Authority Breach of Contract Class:*** All persons and entities in the  
23 United States issued a Valley Forge policy with Civil Authority Coverage who suffered a  
24 suspension of their practice and/or extra expense at the covered premises related to  
25 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil  
26 authorities and whose Civil Authority claim has been denied by Valley Forge.

1           **N.     *Civil Authority Breach of Contract Washington Subclass:*** All persons  
2 and entities in the State of Washington issued a Valley Forge policy with Civil Authority  
3 coverage who suffered a suspension of their business and/or extra expense at the covered  
4 premises related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil  
5 authorities and whose Civil Authority claim has been denied by Valley Forge.  
6

7           **O.     *Civil Authority Declaratory Relief Class:*** All persons and entities in the  
8 United States issued a Valley Forge policy with Civil Authority Coverage who suffered a  
9 suspension of their practice at the covered premises related to COVID-19 and/or orders  
10 issued by Governor Inslee, other Governors, and/or other civil authorities.  
11

12           **P.     *Civil Authority Declaratory Relief Washington Subclass:*** All persons and  
13 entities in the State of Washington issued a Valley Forge policy with Civil Authority  
14 Coverage who suffered a suspension of their business at the covered premises related to  
15 COVID-19 and/or orders issued by Governor Inslee, and/or other civil authorities.  
16

17           26.     Excluded from the Classes are Defendant’s officers, directors, and employees; the  
18 judicial officers and associated court staff assigned to this case; and the immediate family  
19 members of such officers and staff. Plaintiff reserves the right to amend the above-described  
20 Class definitions based on information obtained in discovery including Defendant’s internal  
21 records presently unavailable to Plaintiff.

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

24           28.     **Numerosity:** The members of the Class are so numerous that joinder of all  
25 members would be impractical. Plaintiff is informed and believes that the proposed Class  
26



1 contains hundreds of members. The precise number of class members can be ascertained through  
2 discovery, which will include Defendant's records of policyholders.

3       29.     **Commonality and Predominance:** Common questions of law and fact  
4 predominate over any questions affecting only individual members of the Class. Common  
5 questions include, but are not limited to, the following:  
6

7           A.     Whether the class members suffered covered losses based on common  
8 policies issued to members of the Class;

9           B.     Whether Valley Forge acted in a manner common to the class and  
10 wrongfully denied claims for coverage relating to COVID-19 and/or orders issued by  
11 Governor Inslee, other Governors, and/or other civil authorities;

12           C.     Whether Business Income Coverage in Valley Forge's policies of  
13 insurance applies to a suspension of practice relating to COVID-19 and/or orders issued  
14 by Governor Inslee, other Governors, and/or other civil authorities;

15           D.     Whether Extended Business Income Coverage in Valley Forge's policies  
16 of insurance applies to a suspension of practice relating to COVID-19 and/or orders  
17 issued by Governor Inslee, other Governors, and/or other civil authorities;

18           E.     Whether Extra Expense Coverage in Valley Forge's policies of insurance  
19 applies to efforts to minimize a loss at the covered premises relating to COVID-19 and/or  
20 orders issued by Governor Inslee, other Governors, and/or other civil authorities;

21           F.     Whether Civil Authority Coverage in Valley Forge's policies of insurance  
22 applies to a suspension of practice relating to COVID-19 and/or orders issued by  
23 Governor Inslee, other Governors, and/or civil authorities;  
24  
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1           G.     Whether Valley Forge has breached its contracts of insurance through a  
2 blanket denial of all claims based on business interruption, income loss or closures  
3 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or  
4 other civil authorities;

5           H.     Whether, because of Defendant's conduct, Plaintiff and the class members  
6 have suffered damages; and if so, the appropriate amount thereof; and  
7

8           I.     Whether, because of Defendant's conduct, Plaintiff and the class members  
9 are entitled to equitable and declaratory relief, and if so, the nature of such relief.

10        30.    **Typicality:** Plaintiff's claims are typical of the claims of the members of the  
11 classes. Plaintiff and all the members of the classes have been injured by the same wrongful  
12 practices of Defendant. Plaintiff's claims arise from the same practices and course of conduct  
13 that give rise to the claims of the members of the Class and are based on the same legal theories.  
14

15        31.    **Adequacy:** Plaintiff will fully and adequately assert and protect the interests of  
16 the classes and has retained class counsel who are experienced and qualified in prosecuting class  
17 actions. Neither Plaintiff nor its attorneys have any interests contrary to or in conflict with the  
18 Class.

19        32.    **Federal Rule of Civil Procedure 23(b)(1), the Risk of Inconsistent or Varying**  
20 **Adjudications and Impairment to Other Class Members' Interests:** Plaintiff seeks  
21 adjudication as to the interpretation, and resultant scope, of Defendant's policies, which are  
22 common to all members of the class. The prosecution of separate actions by individual members  
23 of the classes would risk inconsistent or varying interpretations of those policy terms and create  
24 inconsistent standards of conduct for Defendant.  
25  
26

1           33.     **Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:**

2 Defendant acted or refused to act on grounds generally applicable to Plaintiff and other members  
3 of the proposed classes making injunctive relief and declaratory relief appropriate on a classwide  
4 basis.

5           34.     **Federal Rule of Civil Procedure 23(b)(3), Superiority:** A class action is

6 superior to all other available methods of the fair and efficient adjudication of this lawsuit. While  
7 the aggregate damages sustained by the classes are likely to be in the millions of dollars, the  
8 individual damages incurred by each class member may be too small to warrant the expense of  
9 individual suits. Individual litigation creates a risk of inconsistent and/or contradictory decisions  
10 and the court system would be unduly burdened by individual litigation of such cases. A class  
11 action would result in a unified adjudication, with the benefits of economies of scale and  
12 supervision by a single court.  
13  
14

15                                   **VI.     CAUSES OF ACTION**

16                                   **Count One—Declaratory Judgment**

17                   *(Brought on behalf of the Business Income Declaratory Relief Class, Business Income*  
18 *Declaratory Relief Washington Subclass, Extended Business Income Declaratory Relief Class,*  
19 *Extended Business Income Declaratory Relief Washington Subclass, Extra Expense*  
20 *Declaratory Relief Class, Extra Expense Declaratory Relief Washington Subclass, Civil*  
21 *Authority Declaratory Relief Class, and Civil Authority Declaratory Relief Washington*  
22 *Subclass)*

23           35.     Previous paragraphs alleged are incorporated herein.

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

26           37.     Plaintiff brings this cause of action on behalf of the Business Income Declaratory  
Relief Class, Business Income Declaratory Relief Washington Subclass, Extended Business  
Income Declaratory Relief Class, Extended Business Income Declaratory Relief Washington

COMPLAINT CLASS ACTION) - 11

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

4 38. Plaintiff seeks a declaratory judgment declaring that Plaintiff and Class Members'  
5 losses and expenses resulting from the interruption of their business are covered by the Policy.

6 Plaintiff seeks a declaratory judgment declaring that Valley Forge is responsible for timely and  
7 fully paying all such claims.  
8

9 **Count Two—Breach of Contract**

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

16 39. Previous paragraphs alleged are incorporated herein.

17 40. Plaintiff brings this cause of action on behalf of the Business Income Breach of  
18 Contract Class, Business Income Breach of Contract Washington Subclass, Extended Business  
19 Income Breach of Contract Class, Extended Business Income Breach of Contract Washington  
20 Subclass, Extra Expense Breach of Contract Class, Extra Expense Breach of Contract  
21 Washington Subclass, Civil Authority Breach of Contract Class and Civil Authority Breach of  
22 Contract Washington Subclass.

23 41. The Policy is a contract under which Plaintiff and the class paid premiums to  
24 Valley Forge in exchange for Valley Forge's promise to pay plaintiff and the class for all claims  
25 covered by the Policy.

26 42. Plaintiff has paid its insurance premiums.

1 43. Plaintiff submitted a claim to Valley Forge for its covered loss, and Valley Forge  
2 denied coverage.

3 44. On information and belief, Valley Forge has denied coverage for other similarly  
4 situated policyholders.

5 45. Denying coverage for the claim is a breach of the insurance contract.

6 46. Plaintiff is harmed by the breach of the insurance contract by Valley Forge.  
7

8 **VII. PRAYER FOR RELIEF**

9 1. A declaratory judgment that the policy or policies cover Plaintiff's losses and  
10 expenses resulting from the interruption of the Plaintiff's business related to COVID-19 and/or  
11 orders issued by Governor Inslee, other Governors, and/or other authorities.

12 2. A declaratory judgment that the defendant is responsible for timely and fully  
13 paying all such losses.

14 3. Damages.

15 4. Class action status under Fed. R. Civ. P. 23.

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

17 6. Attorney fees and costs under *Olympic Steamship* and/or other applicable law.

18 7. Such further and other relief as the Court shall deem appropriate.  
19  
20

21 **VIII. JURY TRIAL DEMANDED**

22 Plaintiff demands a jury trial on all claims so triable.  
23

24 DATED this 4th day of June, 2020.  
25  
26

1 KELLER ROHRBACK L.L.P.

2  
3 By s/Ian S. Birk

4 By: s/ Lynn L. Sarko

5 By: s/ Gretchen Freeman Cappio

6 By: s/ Irene M. Hecht

7 By: s/ Amy Williams-Derry

8 By: s/ Maureen M. Falecki

9 By: s/ Nathan L Nanfelt -

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