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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

LA COCINA DE OAXACA LLC, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

TRI-STATE INSURANCE COMPANY OF
MINNESOTA,

Defendant.

No.

COMPLAINT—CLASS ACTION

JURY DEMAND

I. INTRODUCTION

Plaintiff LA COCINA DE OAXACA LLC, individually and on behalf of all other similarly situated members of the defined national class (the “Class Members”), by and through the undersigned attorneys, brings this class action against Defendant TRI-STATE INSURANCE COMPANY OF MINNESOTA (“Defendant” or “Tri-State Insurance”) 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 member of the proposed Class is a citizen

1 13. Plaintiff's business property includes property owned and/or leased by Plaintiff
2 and used for the specific purpose of operating a dine-in restaurant and bar and other related
3 business activities.

4 14. The Policy issued by Defendant is an "all-risk" policy that provides broad
5 property and business interruption coverage except where excluded.
6

7 15. Tri-State Insurance Businessowners Property Coverage promises to pay Plaintiff
8 for risks of "direct physical loss of or damage" to covered property and includes coverage for
9 risks of "loss of or damage to" covered property.

10 16. Tri-State Insurance's Businessowners Property Coverage provides Plaintiff with
11 Business Income Coverage, Extended Business Income Coverage, Extra Expense Coverage, and
12 Civil Authority Coverage.
13

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

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

17 19. COVID-19 remains stable and transmittable in aerosols for up to three hours and
18 up to two or three days on certain surfaces. Persons infected with COVID-19 can be
19 asymptomatic. COVID-19 is spread by breathing, talking, and touching shared or common
20 objects or surfaces. Guidance issued by the United States Centers for Disease Control &
21 Prevention recommends avoiding indoor activities and maintaining social distance of at least six
22 feet between people to slow or stop the spread of COVID-19.¹
23

24
25 ¹ *Coronavirus Disease 2019 (COVID-19): Personal and Social Activities*, Centers for Disease Control & Prevention
26 (updated July 30, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/personal-social-activities.html>.

1 20. On February 29, 2020, Washington Governor Jay Inslee issued Proclamation 20-
2 5, declaring a State of Emergency for all counties in the state of Washington as the result of
3 COVID-19. Thereafter, he issued a series of certain proclamations and orders affecting many
4 persons and businesses in Washington, whether infected with COVID-19 or not, requiring
5 certain public health precautions.
6

7 21. On March 16, 2020, Governor Inslee issued Proclamation 20-13, entitled,
8 “Statewide Limits: Food and Beverage Services, Areas of Congregation.”

9 22. Proclamation 20-13 states that “the COVID-19 disease has and continues to
10 spread quickly across the state of Washington, beyond the original community outbreaks in
11 King, Pierce, and Snohomish counties....”

12 23. Proclamation 20-13 prohibits “any number of people from gathering in any public
13 venue in which people congregate for purposes of . . . food and beverage service[.]” The
14 proclamation prohibits “the onsite consumption of food and/or beverages in a public venue”
15 from March 17, 2020, to March 31, 2020.
16

17 24. Proclamation 20-13 states that one of the reasons for its restrictions is that “the
18 worldwide COVID-19 pandemic and its progression in Washington State continues to threaten
19 the life and health of our people as well as the economy of Washington State, and remains a
20 public disaster affecting life, health, property, or the public peace.”
21

22 25. On March 23, 2020, Governor Inslee issued Proclamation 20-25, “Stay Home—
23 State Healthy.” The proclamation, which amends Proclamation 20-13, requires that “[a]ll people
24 in Washington State [] immediately cease leaving their home or place of residence except: (1) to
25 conduct or participate in essential activities, and/or (2) for employment in essential business
26

1 activities.” The proclamation prohibits “all non-essential businesses in Washington State from
2 conducting business, within the limitations provided herein.”

3 26. Governor Inslee’s Proclamations and Orders related to COVID-19 have been
4 extended and modified from time to time.

5 27. By order of Governor Inslee, restaurants including Plaintiff were prohibited from
6 operating their businesses except according to the terms of the proclamations and orders.
7

8 28. Governors and civil authorities in other states have issued similar orders and
9 proclamations, for similar reasons.

10 29. Plaintiff closed its restaurant on or about March 16, 2020 due to Proclamation 20-
11 13.

12 30. Plaintiff began offering some take-away meals for customers beginning about
13 May 28, 2020. However, customers were still prohibited from entering Plaintiff’s restaurant,
14 using Plaintiff’s tables, chairs, or durable tableware, or consuming any food or drink on its
15 premises.
16

17 31. In late June 2020, Plaintiff was able to have a limited number of customers enter
18 its dining room and eat meals on its premises. However, to comply with state requirements,
19 Plaintiff is operating at a dramatically reduced capacity. Much of Plaintiff’s insured property,
20 including its bar seating, tables, chairs, and tableware are still physically unused and unusable
21 due to state requirements to socially distance customers and to operate at a reduced capacity.
22

23 32. La Cocina de Oaxaca has not been able to use its restaurant for its full insured
24 purposed of full sit-down dining and bar.
25
26

1 33. Plaintiff's property has sustained direct physical loss and/or damages related to
2 COVID-19 and/or the proclamations and orders.

3 34. Plaintiff's property will continue to sustain direct physical loss or damage covered
4 by the Tri-State Insurance policy or policies, including but not limited to business income, extra
5 expense, interruption by civil authority, and other expenses.
6

7 35. Plaintiff's property cannot be used for its intended purposes.

8 36. As a result of the above, Plaintiff has experienced and will experience loss
9 covered by the Tri-State Insurance policy or policies.

10 37. Plaintiff filed a claim on March 19, 2020 for losses covered by the Policy. Tri-
11 State Insurance denied coverage on May 8, 2020 by letter to Plaintiff.

12 38. Tri-State Insurance's May 8, 2020 denial letter to La Cocina de Oaxaca states:

13
14 Tri-State Insurance has completed its investigation of the claim filed for reduced sales . . .
15 resulting from the state of emergency declared in Washington State concerning the
16 COVID-19 viral outbreak . . . [T]here is no coverage for this claim.

17 39. Upon information and belief, Tri-State Insurance has denied and will deny
18 coverage to other similarly situated policyholders.

19 V. CLASS ACTION ALLEGATIONS

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

22 41. The Classes that Plaintiff seeks to represent are defined as:

23 A. ***Business Income Breach of Contract Class:*** All persons and entities in
24 the United States issued a Tri-State Insurance policy with Business Income Coverage
25 who suffered a suspension of their business at the covered premises related to COVID-19
26

1 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities
2 and whose Business Income claim has been denied by Tri-State Insurance.

3 B. ***Business Income Declaratory Relief Class:*** All persons and entities in the
4 United States issued a Tri-State Insurance policy with Business Income Coverage who
5 suffered a suspension of their business at the covered premises related to COVID-19
6 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities.
7

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

15 D. ***Extended Business Income Declaratory Relief Class:*** All persons and
16 entities in the United States issued a Tri-State Insurance policy with Extended Business
17 Income Coverage who suffered a suspension of their business at the covered premises
18 due to COVID-19 related to COVID-19 and/or orders issued by Governor Inslee, other
19 Governors, and/or other civil authorities.
20

21 E. ***Extra Expense Breach of Contract Class:*** All persons and entities in the
22 United States issued a Tri-State Insurance policy with Extra Expense Coverage who
23 incurred expenses while seeking to minimize losses from the suspension of business at
24 the covered premises in connection with COVID-19 and/or orders issued by Governor
25 Inslee, other Governors, and/or other civil authorities and whose Extra Expense claim has
26 been denied by Tri-State Insurance.

1 F. ***Extra Expense Declaratory Relief Class:*** All persons and entities in the
2 United States issued a Tri-State Insurance policy with Extra Expense Coverage who
3 incurred expenses while seeking to minimize losses from the suspension of their business
4 at the covered premises in connection with COVID-19 and/or orders issued by Governor
5 Inslee, other Governors, and/or other civil authorities.
6

7 G. ***Civil Authority Breach of Contract Class:*** All persons and entities in the
8 United States issued a Tri-State Insurance policy with Civil Authority Coverage who
9 suffered a loss of business income and/or extra expense related to the impact of COVID-
10 19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
11 authorities and whose Civil Authority claim has been denied by Tri-State Insurance.
12

13 H. ***Civil Authority Declaratory Relief Class:*** All persons and entities in the
14 United States issued a Tri-State Insurance policy with Civil Authority Coverage who
15 suffered a loss of business income and/or extra expense related to COVID-19 and/or
16 orders issued by Governor Inslee, other Governors, and/or other civil authorities.
17

18 42. Excluded from the Classes are Defendant's officers, directors, and employees; the
19 judicial officers and associated court staff assigned to this case; and the immediate family
20 members of such officers and staff. Plaintiff reserves the right to amend the Class definition
21 based on information obtained in discovery.

22 43. 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 44. **Numerosity:** The members of the Class are so numerous that joinder of all
25 members would be impractical. Plaintiff is informed and believes that each proposed Class has
26

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

3 45. **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 Tri-State Insurance acted in a manner common to the Class by
10 wrongfully denying claims for coverage relating to COVID-19 and/or orders issued by
11 Governor Inslee, other Governors, and/or other civil authorities on the same grounds
12 and/or otherwise in breach of the law of contracts;

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

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

19 E. Whether Extra Expense coverage in Tri-State Insurance's policies of
20 insurance applies to efforts to minimize a loss relating to COVID-19 and/or orders issued
21 by Governor Inslee, other Governors, and/or other civil authorities;

22 F. Whether Civil Authority coverage in Tri-State Insurance's policies of
23 insurance applies to a suspension of practice relating to COVID-19 and/or orders issued
24 by Governor Inslee, other Governors, and/or civil authorities;
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1 G. Whether Tri-State Insurance has breached its contracts of insurance
2 through a blanket denial of all claims based on Business Income, 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 46. **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 Tri-State Insurance. Plaintiff’s claims arise from the same practices and course of
13 conduct that give rise to the claims of the members of the Class and are based on the same legal
14 theories.
15

16 47. **Adequacy:** Plaintiff will fully and adequately assert and protect the interests of
17 the classes and has retained class counsel who are experienced and qualified in prosecuting class
18 actions. Neither Plaintiff nor its attorneys have any interests contrary to or in conflict with the
19 Class.
20

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

1 inconsistent standards of conduct for Defendant. The policy interpretations sought by Plaintiff
2 could also impair the ability of absent class members to protect their interests.

3 49. **Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:**
4 Defendant acted or refused to act on grounds generally applicable to Plaintiff and other members
5 of the proposed classes making injunctive relief and declaratory relief appropriate on a classwide
6 basis.

7
8 50. **Federal Rule of Civil Procedure 23(b)(3), Superiority:** A class action is
9 superior to all other available methods of the fair and efficient adjudication of this lawsuit. While
10 the aggregate damages sustained by the classes are likely to be in the millions of dollars, the
11 individual damages incurred by each class member may be too small to warrant the expense of
12 individual suits. Individual litigation creates a risk of inconsistent and/or contradictory decisions
13 and the court system would be unduly burdened by individual litigation of such cases. A class
14 action would result in a unified adjudication, with the benefits of economies of scale and
15 supervision by a single court.
16

17 **VI. CAUSES OF ACTION**

18 **Count One—Declaratory Judgment**

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

22 51. Previous paragraphs alleged are incorporated herein.

23 52. This is a cause of action for declaratory judgment pursuant to the Declaratory
24 Judgment Act, codified at 28 U.S.C. § 2201.
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1 53. Plaintiff brings this cause of action on behalf of the Business Income Coverage
2 Declaratory Relief Class, Extended Business Income Declaratory Relief Class, Extra Expense
3 Declaratory Relief Class, and Civil Authority Declaratory Relief Class.

4 54. Plaintiff seeks a declaratory judgment declaring that Plaintiff's and class members
5 losses and expenses resulting from the interruption of their business are covered by the Policy.
6

7 55. Plaintiff seeks a declaratory judgment declaring that Tri-State Insurance is
8 responsible for timely and fully paying all such claims.

9 **Count Two—Breach of Contract**

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

13 56. Previous paragraphs alleged are incorporated herein.

14 57. Plaintiff brings this cause of action on behalf of the Business Income Coverage
15 Breach of Contract Class, Extended Business Income Breach of Contract Class, Extra Expense
16 Breach of Contract Class, and Civil Authority Breach of Contract Class.

17 58. The Policy is a contract under which Plaintiff and the class paid premiums to Tri-
18 State Insurance in exchange for Tri-State Insurance's promise to pay Plaintiff and the class for
19 all claims covered by the Policy.

20 59. Plaintiff has paid its insurance premiums.

21 60. Tri-State Insurance denied coverage for Plaintiff and other similarly situated
22 policyholders.
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1 61. Denying coverage for the claim is a breach of the insurance contract.

2 62. Plaintiff is harmed by the breach of the insurance contract by Tri-State Insurance.

3 **VII. REQUEST FOR RELIEF**

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

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

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

10 4. Damages.

11 5. Pre- and post-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.

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1 DATED this 3rd day of August, 2020.

2 KELLER ROHRBACK L.L.P.

3 By: s/ Amy Williams-Derry

4 By: s/ Lynn L. Sarko

5 By: s/ Ian S. Birk

6 By: s/ Gretchen Freeman Cappio

7 By: s/ Irene M. Hecht

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