

THE HONORABLE RICARD S. MARTINEZ

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JENNIFER B. NGUYEN, individually and on
behalf of others similarly situated,

Plaintiff,

v.

TRAVELERS CASUALTY INSURANCE
COMPANY OF AMERICA,

Defendants.

No. 2:20-CV-00597-RSM

AMENDED CLASS ACTION
COMPLAINT

JURY DEMAND

I. INTRODUCTION

Plaintiff, Jennifer B. Nguyen, DDS, PLLC, individually and on behalf of all other similarly situated members of the defined national class and Washington State subclasses (collectively, the “Class Members”), by and through the undersigned attorneys, brings this class action against Travelers Casualty Insurance of America (“Defendant” or “Travelers”) 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

1 13. On information and belief, Defendant issued materially identical policy provisions
2 to other policyholders concerning business interruption coverage for the relevant period.

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

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

6 16. In light of this pandemic, Washington Governor Jay Inslee issued certain
7 proclamations and orders affecting many persons and businesses in Washington, whether
8 infected with COVID-19 or not, requiring certain public health precautions. Among other things,
9 Governor Inslee's "Stay Home, Stay Healthy" order required the closure of all non-essential
10 businesses, including Plaintiff's business.

11 17. Governor Inslee's "PROCLAMATION BY THE GOVERNOR AMENDING
12 PROCLAMATION 20-05: 20-24 Restrictions on Non-Urgent Medical Procedures," dated March
13 19, 2020, also provides, in part:

14
15
16 WHEREAS, the health care personal protective equipment supply chain in
17 Washington State has been severely disrupted by the significant increased use of
18 such equipment worldwide, such that there are now critical shortages of this
19 equipment for health care workers. To curtail the spread of the COVID-19
20 pandemic in Washington State and to protect our health care workers as they
21 provide health care services, it is necessary to immediately prohibit all hospitals,
22 ambulatory surgery centers, and dental, orthodontic, and endodontic offices in
23 Washington State from providing health care services, procedures and surgeries
24 that require personal protective equipment, which if delayed, are not anticipated
25 to cause harm to the patient within the next three months.

26 18. By order of Governor Inslee, dentists including Plaintiff were prohibited from
providing dental services but for urgent and emergency procedures.

19. No COVID-19 virus has been detected on Plaintiff's business premises

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

1 21. Plaintiff's property will continue to sustain direct physical loss or damage covered
2 by the Traveler's policy or policies, including but not limited to business interruption, extra
3 expense, interruption by civil authority, and other expenses.

4 22. Plaintiff's property cannot be used for its intended purposes.

5 23. As a result of the above, Plaintiff has experienced and will experience loss
6 covered by the Travelers policy or policies.

7 24. Plaintiff contacted Defendant Travelers about her loss but was verbally told by
8 telephone that her loss would not be covered under her Travelers Businessowners' Policy.

9 25. Upon information and belief Travelers intends to deny or has denied Plaintiff's
10 claim for coverage and has or will continue to deny coverage for other similarly situated
11 policyholders.
12

13
14 **V. CLASS ACTION ALLEGATIONS**

15 26. This matter is brought by Plaintiff Nguyen on behalf of herself and those similarly
16 situated, under Federal Rules of Civil Procedure 23(b)(1), 23(b)(2), and 23(b)(3).

17 27. The Classes that Plaintiff Nguyen seek to represent are defined at this time as:

18 A. ***Business Income Breach of Contract Class:*** All persons and entities in
19 the United States issued a Travelers policy with Business Income Coverage who suffered
20 a suspension of their business at the covered premises related to COVID-19 and/or orders
21 issued by Governor Inslee, other Governors, and/or other civil authorities and whose
22 Business Income claim has been denied by Travelers.

23 B. ***Business Income Breach of Contract Washington Subclass:*** All persons
24 and entities in the State of Washington issued a Travelers policy with Business Income
25 Coverage who suffered a suspension of their business at the covered premises related to
26

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

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

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

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

18 F. ***Extended Business Income Breach of Contract Washington Subclass:***
19 All persons and entities in the State of Washington issued a Travelers policy with
20 Extended Business Income Coverage who suffered a suspension of their business at the
21 covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or
22 other civil authorities and whose Extended Business Income claim has been denied by
23 Travelers.
24

25 G. ***Extended Business Income Declaratory Relief Class:*** All persons and
26 entities in the United States issued a Travelers policy with Extended Business Income

1 Coverage who suffered a suspension of their business at the covered premises related to
2 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
3 authorities.

4 H. ***Extended Business Income Declaratory Relief Washington Subclass:*** All
5 persons and entities in the State of Washington issued a Travelers policy with Extended
6 Business Income coverage who suffered a suspension of their business at the covered
7 premises related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil
8 authorities.

9
10 I. ***Extra Expense Breach of Contract Class:*** All persons and entities in the
11 United States issued a Travelers 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, and whose Extra Expense coverage claim has been denied
15 by Travelers.

16
17 J. ***Extra Expense Breach of Contract Washington Subclass:*** All persons
18 and entities in the State of Washington issued a Travelers policy with Extra Expense
19 Coverage who sought to minimize losses from the suspension of their business at the
20 covered premises in connection with COVID-19 and/or orders issued by Governor Inslee,
21 and/or other civil authorities and whose Extra Expense claim has been denied by
22 Travelers.

23
24 K. ***Extra Expense Declaratory Relief Class:*** All persons and entities in the
25 United States issued a Travelers policy with Extra Expense Coverage who sought to
26 minimize losses from the suspension of their business at the covered premises in

1 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,
2 and/or other civil authorities.

3 L. ***Extra Expense Declaratory Relief Washington Subclass:*** All persons and
4 entities in the State of Washington issued a Travelers 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.

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

14
15 N. ***Civil Authority Breach of Contract Washington Subclass:*** All persons
16 and entities in the State of Washington issued a Travelers policy with Civil Authority
17 coverage who suffered a suspension of their business and/or extra expense at the covered
18 premises related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil
19 authorities and whose Civil Authority claim has been denied by Travelers.

20
21 O. ***Civil Authority Declaratory Relief Class:*** All persons and entities in the
22 United States issued a Travelers policy with Civil Authority Coverage who suffered a
23 suspension of their business at the covered premises related to COVID-19 and/or orders
24 issued by Governor Inslee, other Governors, and/or other civil authorities.

25
26 P. ***Civil Authority Declaratory Relief Washington Subclass:*** All persons and
entities in the State of Washington issued a Travelers policy with Civil Authority

1 Coverage who suffered a suspension of their business at the covered premises related to
2 COVID-19 and/or orders issued by Governor Inslee, and/or other civil authorities.

3 28. Excluded from the Class are Defendant's officers, directors, and employees; the
4 judicial officers and associated court staff assigned to this case; and the immediate family
5 members of such officers and staff.
6

7 29. Plaintiff reserves the right to amend the above-described Class definitions based
8 on information obtained in discovery, including Defendant's internal records presently
9 unavailable to Plaintiff.

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

12 31. **Numerosity:** The members of the Class are so numerous that joinder of all
13 members would be impractical. Plaintiff is informed and believes that the proposed Class
14 contains thousands of members. The precise number of class members can be ascertained
15 through discovery, which will include Defendant's records of policyholders.
16

17 32. **Commonality and Predominance:** Common questions of law and fact
18 predominate over any questions affecting only individual members of the Class. Common
19 questions include, but are not limited to, the following:
20

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

23 B. Whether Travelers acted in a manner common to the class and wrongfully
24 denied claims for coverage arising from COVID-19 and/or closure orders issued by
25 Governor Inslee and others civil authorities;
26

1 C. Whether Business Income coverage in Travelers' policies of insurance
2 applies to a suspension of business related to COVID-19 and/or closure orders issued by
3 Governor Inslee and others civil authorities;

4 D. Whether Travelers' Extra Expense Coverage applies to efforts to minimize
5 a loss related to COVID-19 and/or closure orders issued by Governor Inslee and others
6 civil authorities;

7 E. Whether Travelers' Extended Business Income Coverage applies to a
8 suspension of business related to COVID-19 and/or closure orders issued by Governor
9 Inslee and others civil authorities;

10 F. Whether Travelers' Civil Authority Coverage applies to a suspension of
11 business due to the impact of COVID-19 and/or closure orders issued by Governor Inslee
12 and others civil authorities;

13 G. Whether Travelers has breached its contracts of insurance through a
14 blanket denial of all claims based on business interruption, business income loss or
15 closures related to COVID-19 and/or closure orders issued by Governor Inslee and others
16 civil authorities;

17 H. Whether, because of Defendant's conduct, Plaintiff Nguyen and the Class
18 Members have suffered damages; and if so, the appropriate amount thereof; and

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

22 33. **Typicality:** Plaintiff claims are typical of the claims of the members of the
23 classes. Plaintiff Nguyen and all the members of the classes have been injured by the same
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1 wrongful practices of Defendant. Plaintiff Nguyen’s claims arise from the same practices and
2 course of conduct that give rise to the claims of the members of the Class and are based on the
3 same legal theories.

4 34. **Adequacy:** Plaintiff will fully and adequately assert and protect the interests of
5 the classes and has retained class counsel who are experienced and qualified in prosecuting class
6 actions. Neither Plaintiff Nguyen nor her attorneys have any interests contrary to or in conflict
7 with the Class.
8

9 35. **Federal Rule of Civil Procedure 23(b)(1), the Risk of Inconsistent or Varying**
10 **Adjudications and Impairment to Other Class Members’ Interests:** Plaintiff seeks
11 adjudication as to the interpretation, and resultant scope, of Defendant’s policies, which are
12 common to all members of the class. The prosecution of separate actions by individual members
13 of the classes would risk of inconsistent or varying interpretations of those policy terms and
14 create inconsistent standards of conduct for Defendant.
15

16 36. **Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:**
17 Defendant acted or refused to act on grounds generally applicable to Plaintiff and other members
18 of the proposed classes making injunctive relief and declaratory relief appropriate on a classwide
19 basis.
20

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

1 action would result in a unified adjudication, with the benefits of economies of scale and
2 supervision by a single court.

3 **VI. CAUSES OF ACTION**

4 **Count One—Declaratory Judgment**

5 *(Brought on behalf of the Business Income Declaratory Relief Class, Business Income*
6 *Declaratory Relief Washington Subclass, Extended Business Income Declaratory Relief Class,*
7 *Extended Business Income Declaratory Relief Washington Subclass, Extra Expense*
8 *Declaratory Relief Class, Extra Expense Declaratory Relief Washington Subclass, Civil*
9 *Authority Declaratory Relief Class, and Civil Authority Declaratory Relief Washington*
10 *Subclass)*

11 38. Previous paragraphs alleged are incorporated herein.

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

14 40. Plaintiff Nguyen brings this cause of action on behalf of the Business Income
15 Declaratory Relief Class, Business Income Declaratory Relief Washington Subclass, Extended
16 Business Income Declaratory Relief Class, Extended Business Income Declaratory Relief
17 Washington Subclass, Extra Expense Declaratory Relief Class, Extra Expense Declaratory Relief
18 Washington Subclass, Civil Authority Declaratory Relief Class, and Civil Authority Declaratory
19 Relief Washington Subclass.

20 41. Plaintiff Nguyen seeks a declaratory judgment declaring that Plaintiff Nguyen's
21 and class members losses and expenses resulting from the interruption of their business are
22 covered by the Policy.

23 42. Plaintiff Nguyen seeks a declaratory judgment declaring that Travelers is
24 responsible for timely and fully paying all such claims.

Count Two—Breach of Contract

(Brought on behalf of the Business Income Breach of Contract Class, Business Income Breach of Contract Washington Subclass, Extended Business Income Breach of Contract Class, Extended Business Income Breach of Contract Washington Subclass, Extra Expense Breach of Contract Class, Extra Expense Breach of Contract Washington Subclass, Civil Authority Breach of Contract Class, and Civil Authority Breach of Contract Washington Subclass)

43. Previous paragraphs alleged are incorporated herein.

44. Plaintiff Nguyen brings this cause of action on behalf of the Business Income Breach of Contract Class, Business Income Breach of Contract Washington Subclass, Extended Business Income Breach of Contract Class, Extended Business Income Breach of Contract Washington Subclass, Extra Expense Breach of Contract Class, Extra Expense Breach of Contract Washington Subclass, Civil Authority Breach of Contract Class and Civil Authority Breach of Contract Washington Subclass.

45. The Policy is a contract under which Plaintiff Nguyen and the class paid premiums to Travelers in exchange for Travelers’s promise to pay Plaintiff Nguyen and the class for all claims covered by the Policy.

46. Plaintiff Nguyen has paid its insurance premiums.

47. Upon information and belief, Travelers intends to deny or has denied Plaintiff’s claim for coverage and has or will continue to deny coverage for other similarly situated policyholders.

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

49. Plaintiff Nguyen is harmed by the breach of the insurance contract by Travelers.

VII. REQUEST FOR RELIEF

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

5
6 2. A declaratory judgment that the defendant is responsible for timely and fully
7 paying all such losses.

8 3. Damages.

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

10 5. Pre-judgment interest.

11 6. Reasonable attorney fees and costs.

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

VIII. DEMAND FOR JURY

14 Plaintiff Nguyen demands a jury trial on all claims so triable.

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19 DATED this 3rd day of June, 2020.

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KELLER ROHRBACK L.L.P.

By: s/ Ian S. Birk
By: s/ Lynn L. Sarko
By: s/ Gretchen Freeman Cappio
By: s/ Irene M. Hecht
By: s/ Amy Williams Derry
By: s/ Maureen Falecki
By: s/ Nathan Nanfelt

Ian S. Birk, WSBA #31431
Lynn L. Sarko, WSBA #16569
Gretchen Freeman Cappio, WSBA #29576
Irene M. Hecht, WSBA #11063
Amy Williams Derry, WSBA #28711
Maureen Falecki, WSBA #18569
Nathan Nanfelt, WSBA #45273
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Telephone: (206) 623-1900
Fax: (206) 623-3384
Email: ibirk@kellerrohrback.com
Email: lsarko@kellerrohrback.com
Email: gcappio@kellerrohrback.com
Email: ihecht@kellerrohrback.com
Email: awilliams-derry@kellerrohrback.com
Email: mfalecki@kellerrohrback.com
Email: nnanfelt@kellerrohrback.com

By: s/ Alison Chase
Alison Chase, CA Bar #226976
801 Garden Street, Suite 301
Santa Barbara, CA 93101
Email: achase@kellerrohrback.com
Telephone: (805) 456-1496
Fax: (805) 456-1497

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that on 3rd day of June, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to the following:

Daniel R. Benston, WSBA #36825
Owen R. Mooney, WSBA #45779
BULLIVANT HOUSER BAILEY PC
925 Fourth Avenue, Suite 3800
Seattle, WA 98104
Telephone: (206) 292-8930
Email: dan.benston@bullivant.com
Email: owen.mooney@bullivant.com

Wystan M. Ackerman
Stephen E. Goldman
ROBINSON & COLE LLP
280 Turnbull Street
Hartford, CT 06103
Telephone: (860) 275-8200
Email: wackerman@rc.com
Email: sholden@rc.com
Email: sgoldman@rc.com
Email: akowalsky@rc.com

Counsel for Defendant

Counsel for Defendant

s/ Chris Jarman
Chris Jarman, Legal Assistant

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