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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SUNEET S. BATH, DMD PS, d/b/a  
Impressions Dentistry Family Cosmetics,  
individually and on behalf of others similarly  
situated,

Plaintiff,

v.

TRAVELERS CASUALTY INSURANCE  
COMPANY OF AMERICA, an insurance  
company,

Defendant.

No.: 2:20-cv-00774

NOTICE OF REMOVAL OF DEFENDANT  
TRAVELERS CASUALTY INSURANCE  
COMPANY OF AMERICA

TO: Clerk of the Court  
AND TO: Sunet S. Bath, DMD PS, Plaintiff  
AND TO: Ian S. Birk and Keller Rohrback, LLP, and Mark A. Wilner and Gordon  
Tilden Thomas & Cordell, Attorneys for Plaintiff

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Travelers Casualty  
Insurance Company of America (“Travelers”) hereby removes to this Court the state court  
action described below.

///

**I. BACKGROUND**

1  
2           1.       On April 17, 2020, Plaintiff Suneet S. Bath d/b/a Impressions Dentistry Family  
3 Cosmetics filed a Complaint (the “Original Complaint”) in the Washington State Superior  
4 Court in and for Thurston County, in the matter entitled *Suneet S. Bath, DMD PS v.*  
5 *Travelers Casualty Insurance Company of America*, Case No. 20-2-01421-34 (the “State  
6 Court Action”).<sup>1</sup>

7           2.       On April 22, 2020, Plaintiff served a copy of the Original Complaint on the  
8 Office of the Washington Insurance Commissioner (the “OIC”), which accepted service on  
9 behalf of Travelers. The OIC subsequently mailed a copy of the Original Complaint to  
10 Travelers—in other words, Travelers did not actually receive a copy of the Original  
11 Complaint until after April 22, 2020.<sup>2</sup>

12           3.       On May 13, 2020, Plaintiff filed an Amended Complaint (the “Amended  
13 Complaint”) in the Washington State Superior Court in and for Thurston County converting  
14 the matter to a class action.<sup>3</sup> Plaintiff now asserts claims against Travelers individually and  
15 on behalf of all other similarly situated members of a proposed national class and  
16 Washington subclasses.

17           4.       This Notice of Removal is timely filed within 30 days of Travelers’s receipt of  
18 the Original Complaint pursuant to 28 U.S.C. § 1446(b).<sup>4</sup>

19 ///

20 \_\_\_\_\_  
21 <sup>1</sup> Original Complaint, *Bath v. Travelers Cas. Ins. Co. of Am.*, Thurston Cty Case No. 20-2-01421-34.

22 <sup>2</sup> See *Anderson v. State Farm Mut. Auto. Ins. Co.*, 917 F.3d 1126, 1130 (9th Cir 2019) (holding that  
23 “the thirty-day removal clock under 28 U.S.C. § 1446(b)(1) does not begin upon service on and  
receipt by a statutorily designated agent, and began in this case only when [the insurer] actually  
received [the insured’s] complaint”).

24 <sup>3</sup> Amended Complaint, *Bath v. Travelers Cas. Ins. Co. of Am.*, Thurston County Case No. 20-2-  
25 01421-34.

26 <sup>4</sup> See 28 U.S.C. § 1446(b)(1) (permitting removal within 30 days after the defendant receives service  
of process); see also *Anderson*, 917 F.3d at 1130.

**II. JURISDICTION**

5. The State Court Action may be removed to this Court pursuant to 28 U.S.C. § 1441(b) because there is complete diversity of citizenship between Travelers and Plaintiff, and the amount in controversy exceeds \$75,000, thus granting this Court original jurisdiction under 28 U.S.C. § 1332(a).

6. Complete diversity exists between the class representative and the defendant because Plaintiff and Travelers are citizens of different states.<sup>5</sup>

a. When removing a class action under § 1332(a), only the citizenship of the named parties counts for purposes of determining complete diversity—that is, all class representatives must be diverse from all defendants.<sup>6</sup> The citizenship of unnamed class members is disregarded during the diversity analysis under § 1332(a).<sup>7</sup>

b. Plaintiff, the only class representative, is a Washington professional services corporation with its principal place of business in Washington.

c. Travelers, the only defendant, is a Connecticut corporation with its principal place of business in Connecticut.

7. The amount in controversy exceeds \$75,000 for at least one named plaintiff, exclusive of interest and costs.

a. When removing a class action under § 1332(a), the amount in controversy requirement is met if the matter in controversy exceeds \$75,000 for at

<sup>5</sup> See *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (holding that at the removal stage, the defendant need only “allege (not prove) diversity”).

<sup>6</sup> *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 398 (9th Cir. 2010); *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1021 n. 4 (9th Cir. 2007) (citing *Snyder v. Harris*, 394 U.S. 332, 340 (1969)).

<sup>7</sup> *Gibson v. Chrysler Corp.*, 261 F.3d 927, 931 n. 2 (9th Cir. 2001) (citing *Supreme Tribe of Ben-Hur v. Cauble*, 255 U.S. 356, 366-67 (1921)).

1 least one named plaintiff.<sup>8</sup> The Court then has supplemental jurisdiction under §  
 2 1367(a) over claims of putative class members, even if some of those fall below  
 3 \$75,000.<sup>9</sup>

4 b. In declaratory relief actions, “the amount in controversy is measured by  
 5 the value of the object of the litigation.”<sup>10</sup> The value of the object of the litigation is  
 6 determined by “the pecuniary result to either party which the judgment would directly  
 7 produce.”<sup>11</sup>

8 c. Where a plaintiff’s complaint does not specify the amount in  
 9 controversy, the defendant may do so in the notice of removal.<sup>12</sup> Further, a notice of  
 10 removal “need include only a plausible allegation that the amount in controversy  
 11 exceeds the jurisdictional threshold.”<sup>13</sup>

12 d. In the Amended Complaint, Plaintiff seeks two forms of declaratory  
 13 relief: (1) Plaintiff seeks a declaration that insurance policies issued by Travelers  
 14 provide coverage for Plaintiff’s alleged past and continued losses of business income  
 15 and extra expenses resulting from the interruption to its business caused by the  
 16 COVID-19 pandemic;<sup>14</sup> and (2) Plaintiff seeks a declaration that Travelers is

18 \_\_\_\_\_  
 19 <sup>8</sup> *Lewis*, 627 F.3d at 398 (9th Cir. 2010) (citing *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545  
 U.S. 546, 558-559 (2005) (internal citation omitted)).

20 <sup>9</sup> *Exxon Mobil*, 545 U.S. at 558-59.

21 <sup>10</sup> *Corral v. Select Portfolio Servicing, Inc.*, 878 F.3d 770, 775 (9th Cir. 2017) (quoting *Cohn v.*  
 22 *Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002)).

23 <sup>11</sup> *Corral v. Select Portfolio Servicing, Inc.*, 878 F.3d 770, 775 (9th Cir. 2017) (quoting *In re Ford*  
*Motor Co./Citibank (S. Dakota), N.A.*, 264 F.3d 952, 958 (9th Cir. 2001)).

24 <sup>12</sup> *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 84 (2014).

25 <sup>13</sup> *Id.* at 89.

26 <sup>14</sup> Amended Complaint, VII. Prayer at ¶ 1.

1 responsible for timely and fully paying for all such past and continued losses.<sup>15</sup>

2 Plaintiff also seeks pre-judgment interest, and its reasonable attorney fees and costs.<sup>16</sup>

3 e. In addition, Plaintiff seeks an award of damages.<sup>17</sup> Plaintiff seeks to  
4 recover contractual damages for benefits allegedly owed under a policy or policies  
5 issued by Travelers, including but not limited to alleged policy benefits owed for  
6 business interruption, extra expense, extended business interruption, interruption by  
7 civil authority, and other expenses.<sup>18</sup>

8 f. Based upon financial information Plaintiff provided to Travelers in  
9 connection with the underwriting of its policy, Travelers understands that Plaintiff  
10 seeks to recover more than \$75,000, exclusive of interests and costs, for its alleged  
11 contractual damages. That is, exclusive of interest and costs, the amount in  
12 controversy for Plaintiff alone plainly exceeds \$75,000. Out of respect for Plaintiff's  
13 potential concerns about confidentiality, Travelers has not set forth Plaintiff's  
14 financial information in detail herein; but Travelers will make this financial  
15 information available to the Court if requested or in the event that a motion to remand  
16 is filed. Travelers will submit this information under seal if Plaintiff so requests and  
17 the Court allows. Because the amount in controversy for the named plaintiff exceeds  
18 the jurisdictional minimum required for removal, the class action as a whole may be  
19 properly removed to this Court.<sup>19</sup>

20 8. This Court also has jurisdiction under the Class Action Fairness Act of 2005

21 \_\_\_\_\_  
<sup>15</sup> *Id.* at ¶ 2.

22 <sup>16</sup> *Id.* at ¶¶ 4-5.

23 <sup>17</sup> *Id.* at ¶ 3.

24 <sup>18</sup> *See id.*, IV. Nature of Case at ¶ 23; V. Class Action Allegations at ¶¶ 28(A)-(B), (E)-(F), (I)-(J),  
25 and (M)-(N).

26 <sup>19</sup> *Exxon Mobil*, 545 U.S. at 558-559.

1 (“CAFA”), 28 U.S.C. § 1332(d), because this lawsuit is a “class action,” as defined by  
 2 CAFA, in which there is minimal diversity of citizenship, and the aggregate amount in  
 3 controversy on the claims of the proposed class members exceeds \$5 million.

4 a. CAFA applies “to any class action before or after the entry of a class  
 5 certification order by the court with respect to that action.”<sup>20</sup> This case is a “class  
 6 action” under CAFA because it was brought under a state statute or rule, namely  
 7 Washington Civil Rule 23 authorizing an action to be brought by one or more  
 8 representative persons as a class action.<sup>21</sup>

9 b. This case satisfies the minimal diversity requirement of CAFA because  
 10 at least one member of the putative class is a citizen of a state different from at least  
 11 one defendant.<sup>22</sup> The named Plaintiff is a citizen of Washington, where it is  
 12 incorporated and has its principal place of business.<sup>23</sup> Travelers is a citizen of  
 13 Connecticut, where it is incorporated and has its principal place of business.<sup>24</sup>

14 c. This case satisfies CAFA’s amount in controversy requirement because  
 15 the matter in controversy exceeds the sum of \$5 million, exclusive of interest and  
 16 costs.<sup>25</sup> CAFA provides that “the claims of the individual class members shall be  
 17 aggregated to determine whether the matter in controversy exceeds the sum or value of  
 18

19  
 20  
 21 <sup>20</sup> 28 U.S.C. § 1332(d)(8).

22 <sup>21</sup> See 28 U.S.C. § 1332(d)(1)(B); Amended Complaint, V. Class Action Allegations at ¶ 27.

23 <sup>22</sup> See 28 U.S.C. § 1332(d)(2)(A).

24 <sup>23</sup> Amended Complaint, III. Parties at ¶ 3.

25 <sup>24</sup> *Id.* at ¶ 4.

26 <sup>25</sup> 28 U.S.C. § 1332(d)(2).

1 \$5,000,000, exclusive of interest and costs.”<sup>26</sup> As the Supreme Court has explained,  
2 “the statute tells the District Court to determine whether it has jurisdiction by adding  
3 up the value of the claim of each person who falls within the definition of [the  
4 plaintiff’s] proposed class and determine [sic] whether the resulting sum exceeds \$5  
5 million. If so, there is jurisdiction and the court may proceed with the case.”<sup>27</sup> The  
6 Supreme Court has further explained that “no antiremoval presumption attends cases  
7 involving CAFA, which Congress enacted to facilitate adjudication of certain class  
8 actions in federal court.”<sup>28</sup> To satisfy the statutory requirements for removal, “a  
9 defendant’s notice of removal need include only a plausible allegation that the amount  
10 in controversy exceeds the jurisdictional threshold.”<sup>29</sup>

11  
12 d. Based on Plaintiffs’ allegations, the amount in controversy for the  
13 proposed class claims exceeds \$5 million. Plaintiff seeks to certify 16 proposed classes  
14 or subclasses, some of which are nationwide in scope and others which are limited to  
15 persons and entities in the State of Washington.<sup>30</sup> One of the nationwide proposed  
16 classes, for example, is defined as “All persons and entities in the United States insured  
17 under a TCICA [i.e., Travelers] policy with Business Income coverage who suffered a  
18 suspension of their business at the covered premises related to COVID-19 and/or orders  
19  
20  
21

22 <sup>26</sup> *Id.*; § 1332(d)(6).

23 <sup>27</sup> *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 592 (2013).

24 <sup>28</sup> *Dart*, 574 U.S. at 89.

25 <sup>29</sup> *Id.*

26 <sup>30</sup> Amended Complaint, V. Class Action Allegations at ¶ 28.

1 issued by Governor Inslee, other Governors, and/or civil authorities and whose  
 2 Business Income claim was denied by TCICA.”<sup>31</sup> Travelers has received more than  
 3 5,000 claims for losses of business income nationwide related to COVID-19. It is likely  
 4 that the vast majority, if not all, of these alleged business income losses exceed \$10,000.  
 5 But even assuming a nominal sum of \$1,000 for each loss of business income claim,  
 6 the amount in controversy as alleged exceeds \$5 million.

7  
 8 e. None of the exceptions to CAFA jurisdiction applies. No defendant is a citizen  
 9 of the state in which the action was filed, i.e., Washington State. Accordingly, 28  
 10 U.S.C. §§ 1332(d)(3) and (d)(4) do not apply. Section 1332(d)(5)(A) does not apply  
 11 because no defendant is a State, State official or other governmental entity against  
 12 which this Court may be foreclosed from ordering relief. Section 1332(d)(5)(B) does  
 13 not apply because the number of members of all proposed plaintiff classes in the  
 14 aggregate exceeds 100, as set forth above. Section 1332(d)(9) does not apply because  
 15 Plaintiffs’ claims do not involve securities or the internal affairs or governance of a  
 16 corporation or other form of business enterprise. Accordingly, this Court has original  
 17 jurisdiction under CAFA.  
 18

### 19 **III. VENUE AND ASSIGNMENT**

20 9. Venue is proper in the United States District Court for the Western District of  
 21 Washington because it is the district embracing the place where the State Court Action is  
 22 pending.<sup>32</sup>

23 10. Assignment is proper to the Tacoma Division of the Western District of  
 24

25 <sup>31</sup> *Id.* at ¶ 28(A).

26 <sup>32</sup> 28 U.S.C. § 1441(a); *see also Polizzi v. Cowles Magazines, Inc.*, 345 U.S. 663, 666 (1953).

1 Washington because Plaintiff filed its Complaint in Thurston County, Washington, and  
2 alleges that the causes of action arose in Thurston County, Washington.<sup>33</sup>

3 **IV. PROCEDURAL REMOVAL**

4 11. In accordance with 28 U.S.C. § 1446(a) and Local Civil Rule 101, a true and  
5 correct copy of the process, pleadings, and orders, as well as any additional records in the  
6 State Court Action are attached to this Notice.

7 12. In accordance with 28 U.S.C. § 1446(d), Travelers will file, in Thurston  
8 County Superior Court, a notice to Plaintiff and to the State Court Clerk of Removal to the  
9 U.S. District Court.

10 13. By filing this Notice, Travelers does not waive, and expressly reserves, all  
11 rights, defenses, and objections of any nature that Travelers may have against Plaintiff's  
12 claims.

13 DATED: May 22, 2020.

14 BULLIVANT HOUSER BAILEY PC

15  
16 By s/Daniel R. Bentson  
17 Daniel R. Bentson, WSBA #36825  
18 E-mail: dan.bentson@bullivant.com  
Owen R. Mooney, WSBA #45779  
Email: owen.mooney@bullivant.com

19 Attorneys for Defendant Travelers Casualty  
20 Insurance Company of America

21  
22  
23  
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26 <sup>33</sup> See LCR 3(e).

**CERTIFICATE OF SERVICE**

I hereby certify that on May 22, 2020, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system, and caused to be served as follows

Ian S. Birk  
Keller Rohrback LLP  
1201 Third Avenue, Suite 3200  
Seattle, Washington 98101  
Telephone: 206.623.1900  
E-mail: [ibirk@kellerrohrback.com](mailto:ibirk@kellerrohrback.com)

- via hand delivery.
- via first class mail.
- via email.

Mark A. Wilner  
Gordon Tilden Thomas & Cordell  
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Seattle, WA 98101  
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*Attorneys for Plaintiff*

Monica Tofoleanu  
Monica Tofoleanu, Legal Assistant

4829-3191-4173.1

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question, 4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

## ATTACHMENT TO CIVIL COVER SHEET

*SUNEET S. BATH, DMD PS v. TRAVELERS CASUALTY INSURANCE COMPANY OF AMERICA*

## I.(c) Attorneys for Plaintiff:

Ian S. Birk  
 Keller Rohrback LLP  
 1201 Third Avenue, Suite 3200  
 Seattle, WA 98101  
 (206) 623-1900

Mark A. Wilner  
 Gordon Tilden Thomas & Cordell LLP  
 One Union Square  
 600 University Street, Suite 2915  
 Seattle, WA 98101  
 (206) 467-6477

## VIII. Notice of Related Cases:

<b>Case Name</b>	<b>Judge</b>	<b>Case No.</b>
<i>Nguyen v. Travelers Casualty Insurance Company of America</i>	Ricardo S. Martinez	W.D. WA 2:20-cv-00597-RSM
<i>Fox v. Travelers Casualty Insurance Company of America</i>	Ricardo S. Martinez	W.D. WA 2:20-cv-00598-RSM
<i>Stans Bar-B-Q LLC v. The Charter Oak Fire Insurance Co.</i>	Ricardo S. Martinez	W.D. WA 2:20-cv-00613-RSM
<i>Khuzi Hsue, DDS, PS v. Travelers Casualty Insurance Company of America</i>	Ricardo S. Martinez	W.D. WA 2:20-cv-00622-RSM
<i>Kashner v. Travelers Indemnity Insurance Company of America</i>	Ricardo S. Martinez	W.D. WA 2:20-cv-00627-RSM

The Honorable Christopher Lanese

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SUPERIOR COURT OF WASHINGTON IN AND FOR THURSTON COUNTY

SUNEET S. BATH, DMD PS d/b/a Impressions  
Dentistry Family Cosmetics, individually and on  
behalf of others similarly situated,

Plaintiff,

v.

TRAVELERS CASUALTY INSURANCE  
COMPANY OF AMERICA, an insurance  
company,

Defendant.

No. 20-2-01421-34

AMENDED COMPLAINT—CLASS  
ACTION

**I. INTRODUCTION**

Plaintiff Suneet S. Bath DMD PS d/b/a Impressions Dentistry Family Cosmetics (“Bath” or “Plaintiff”), individually and on behalf of all other similarly situated members of the defined national class and the defined Washington subclasses (the “Class Members”), by and through the undersigned attorneys, brings this class action against Defendant TCICA Casualty Insurance Company of America (“TCICA” or “Defendant”) and alleges as follows based on personal knowledge and information and belief:

1 **II. JURISDICTION**

2 1. This Court has original jurisdiction pursuant to RCW 2.08.010 because the case  
3 originates in Washington and amount in controversy exceeds the jurisdictional threshold.

4 2. This Court has personal jurisdiction over Defendant because Defendant  
5 registered to do business in Washington, has sufficient minimum contacts with Washington, and  
6 otherwise intentionally avails itself of the markets within Washington through its business  
7 activities, such that the exercise of jurisdiction by this Court is proper pursuant to RCW  
8 4.28.185. Moreover, the claims of Plaintiff and all of the Washington subclass members in this  
9 case arise out of and directly relate to Defendant’s contacts with Washington.  
10

11 **III. PARTIES**

12 3. Plaintiff Suneet S. Bath, DMD PS d/b/a Impressions Dentistry Family Cosmetics  
13 (Bath) owns and operates a dental business with its principal place of business located at 4538  
14 Martin Way E., Olympia, WA 98516.

15 4. Defendant TCICA Casualty Insurance Company of America is an insurance  
16 carrier domiciled in Connecticut and whose headquarters are located in Hartford, Connecticut.

17 5. Defendant is authorized to write, sell, and issue business insurance policies in all  
18 fifty states and the District of Columbia. Defendant conducted business within Washington by  
19 selling and issuing business insurance policies to policyholders, including Bath.  
20

21 **IV. NATURE OF THE CASE**

22 6. Due to COVID-19 and proclamations and orders by Washington Governor Jay  
23 Inslee and/or other civil authorities, Plaintiff was forced to suspend or dramatically limit its  
24 dental business.  
25  
26

1           7.       Plaintiff intended to rely on its business insurance to maintain income in case of  
2 an insured loss. This lawsuit is filed to ensure that Plaintiff and other similarly-situated  
3 policyholders receive the insurance benefits to which they are entitled and for which they paid.

4           8.       Defendant issued one or more insurance policies to Plaintiff, including a  
5 Businessowners Coverage Policy and related endorsements (“the Policy”), insuring Plaintiff’s  
6 property and business practice at all relevant times, including the periods of January 1 to  
7 December 31, 2019, and January 1 to December 31, 2020.

8           9.       Plaintiff’s business property includes property owned and/or leased by Plaintiff  
9 and used for general business purposes for the specific purpose of dental services and other  
10 related business activities.

11           10.      Defendant promises to pay Plaintiff for risks of “direct physical loss of or  
12 damage to” covered property.

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

15           12.      The Policy expressly defines property damage as including “loss of use” of  
16 property.

17           13.      Defendant’s Businessowners Coverage Form provides Plaintiff with Business  
18 Income Coverage, Extra Expense Coverage, Extended Business Income Coverage, and Civil  
19 Authority Coverage.

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

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

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

7           17.     On March 19, 2020, Governor Inslee issued Proclamation 20-24, “Restrictions on  
8 Non Urgent Medical Procedures.” The proclamation provides, in part:

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

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

24           19.     Governor Inslee has extended Proclamation until May 31, 2020.

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

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



1 premises related to COVID-19 and/or orders issued by Governor Inslee, and/or other  
2 civil authorities and whose Business Income claim was denied by TCICA.

3 C. ***Business Income Coverage Declaratory Relief Class:*** All persons and  
4 entities in the United States insured under a TCICA policy with Business Income  
5 Coverage who suffered a suspension of their business at the covered premises related to  
6 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil  
7 authorities.  
8

9 D. ***Business Income Coverage Declaratory Relief Washington Subclass:***  
10 All persons and entities in the State of Washington insured under a TCICA policy with  
11 Business Income Coverage who suffered a suspension of their business at the covered  
12 premises related to COVID-19 and/or orders issued by Governor Inslee, and/or other  
13 civil authorities.  
14

15 E. ***Extra Expense Breach of Contract Class:*** All persons and entities in the  
16 United States insured under a TCICA policy with Extra Expense coverage who incurred  
17 expenses while seeking to minimize losses from the suspension of business at the  
18 covered premises in connection with COVID-19 and/or orders issued by Governor  
19 Inslee, other Governors, and/or other civil authorities and whose Extra Expense claim  
20 was denied by TCICA.  
21

22 F. ***Extra Expense Breach of Contract Washington Subclass:*** All persons  
23 and entities in the State of Washington insured under a TCICA policy with Extra  
24 Expense coverage who incurred expenses while seeking to minimize losses from the  
25 suspension of business at the covered premises in connection with COVID-19 and/or  
26

1 orders issued by Governor Inslee, and/or other civil authorities and whose Extra Expense  
2 claim was denied by TCICA.

3 G. ***Extra Expense Declaratory Relief Class:*** All persons and entities in the  
4 United States insured under a TCICA policy with Extra Expense coverage who incurred  
5 expenses while seeking 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  
7 Inslee, other Governors, and/or other civil authorities.

8 H. ***Extra Expense Declaratory Relief Washington Subclass:*** All persons  
9 and entities in the State of Washington insured under a TCICA policy with Extra  
10 Expense coverage who incurred expenses while seeking to minimize losses from the  
11 suspension of their business at the covered premises in connection with COVID-19  
12 and/or orders issued by Governor Inslee, and/or other civil authorities.

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

19 J. ***Extended Business Income Breach of Contract Washington Subclass:***  
20 All persons and entities in the State of Washington insured under a TCICA policy with  
21 Extended Business Income coverage who suffered a suspension of their business at the  
22 covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or  
23  
24  
25  
26

1 other civil authorities and whose Extended Business Income claim was denied by  
2 TCICA.

3 K. ***Extended Business Income Declaratory Relief Class:*** All persons and  
4 entities in the United States insured under a TCICA policy with Extended Business  
5 Income coverage who suffered a suspension of their business at the covered premises  
6 due to COVID-19 related to COVID-19 and/or orders issued by Governor Inslee, other  
7 Governors, and/or other civil authorities.  
8

9 L. ***Extended Business Income Declaratory Relief Washington Subclass:***  
10 All persons and entities in the State of Washington insured under a TCICA policy with  
11 Extended Business Income coverage who suffered a suspension of their business at the  
12 covered premises due to COVID-19 related to COVID-19 and/or orders issued by  
13 Governor Inslee, and/or other civil authorities.  
14

15 M. ***Civil Authority Breach of Contract Class:*** All persons and entities in the  
16 United States insured under a TCICA policy with Civil Authority coverage who suffered  
17 a loss of business income and/or extra expense related to the impact of COVID-19  
18 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities  
19 and whose Civil Authority claim was denied by TCICA.  
20

21 N. ***Civil Authority Breach of Contract Washington Subclass:*** All persons  
22 and entities in the State of Washington insured under a TCICA policy with Civil  
23 Authority coverage who suffered a loss of business income and/or extra expense related  
24 to the impact of COVID-19 and/or orders issued by Governor Inslee, and/or other civil  
25 authorities and whose Civil Authority claim was denied by TCICA.  
26

1           O.     **Civil Authority Declaratory Relief Class:** All persons and entities in the  
2 United States insured under a TCICA policy with Civil Authority coverage who suffered  
3 a loss of business income and/or extra expense related to COVID-19 and/or orders  
4 issued by Governor Inslee, other Governors, and/or other civil authorities.  
5

6           P.     **Civil Authority Declaratory Relief Washington Subclass:** All persons  
7 and entities in the State of Washington insured under a TCICA policy with Civil  
8 Authority coverage who suffered a loss of business income and/or extra expense related  
9 to the impact of COVID-19 19 and/or orders issued by Governor Inslee, and/or other  
10 civil authorities.

11           29.    Excluded from the Classes and Subclasses are Defendant’s officers, directors,  
12 and employees; the judicial officers and associated court staff assigned to this case; and the  
13 immediate family members of such officers and staff. Plaintiff reserves the right to amend the  
14 Class definition based on information obtained in discovery.  
15

16           30.    This action may properly be maintained on behalf of each proposed Class under  
17 the criteria of CR 23.

18           31.    **Numerosity:** The members of the Class are so numerous that joinder of all  
19 members would be impractical. Plaintiff is informed and believes that the proposed Class and  
20 Subclass contains hundreds of members. The precise number of class members can be  
21 ascertained through discovery, which will include Defendant’s records of policyholders.  
22

23           32.    **Commonality and Predominance:** Common questions of law and fact  
24 predominate over any questions affecting only individual members of the Class. Common  
25 questions include, but are not limited to, the following:  
26

1           A.     Whether the class members suffered covered losses based on common  
2 policies issued to members of the Class and Subclass;

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

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

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

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

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

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

22           H.     Whether, because of Defendant's conduct, Plaintiff and the class  
23 members have suffered damages; and if so, the appropriate amount thereof; and  
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 33. **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 TCICA. Plaintiff's claims arise from the same practices and course of conduct that  
7 give rise to the claims of the members of the Class and are based on the same legal theories.

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

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

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

22 37. **CR 23(b)(3), Superiority:** A class action is superior to all other available  
23 methods of the fair and efficient adjudication of this lawsuit. While the aggregate damages  
24  
25  
26

1 sustained by the classes are likely to be in the millions of dollars, the individual damages  
2 incurred by each class member may be too small to warrant the expense of individual suits.  
3 Individual litigation creates a risk of inconsistent and/or contradictory decisions and the court  
4 system would be unduly burdened by individual litigation of such cases. A class action would  
5 result in a unified adjudication, with the benefits of economies of scale and supervision by a  
6 single court.  
7

## 8 VI. CAUSES OF ACTION

### 9 Count One—Declaratory Judgment

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

16 38. Previous paragraphs alleged are incorporated herein.

17 39. This is a cause of action for declaratory judgment pursuant to the Uniform  
18 Declaratory Judgments Act, RCW 7.24.010 *et seq.*

19 40. Plaintiff brings this cause of action on behalf of the Business Income Coverage  
20 Declaratory Relief Class, Business Income Coverage Declaratory Relief Washington Subclass,  
21 Extra Expense Declaratory Relief Class, Extra Expense Declaratory Relief Washington  
22 Subclass, Extended Business Income Declaratory Relief Class, Extended Business Income  
23 Declaratory Relief Washington Subclass, Civil Authority Declaratory Relief Class, and Civil  
24 Authority Declaratory Relief Washington Subclass.

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

1 42. Plaintiff seeks a declaratory judgment declaring that TCICA is responsible for  
2 timely and fully paying all such claims.

3 **Count Two—Breach of Contract**

4 *(Brought on behalf of the Business Income Coverage Breach of Contract Class,*  
5 *Business Income Coverage Breach of Contract Washington Subclass, Extra Expense Breach*  
6 *of Contract Class, Extra Expense Breach of Contract Washington Subclass, Extended*  
7 *Business Income Breach of Contract Class, Extended Business Income Breach of Contract*  
8 *Washington Subclass, Civil Authority Breach of Contract Class, and Civil Authority Breach*  
9 *of Contract Washington Subclass)*

10 43. Previous paragraphs alleged are incorporated herein.

11 44. Plaintiff brings this cause of action on behalf of the Business Income Coverage  
12 Breach of Contract Class, Business Income Coverage Breach of Contract Washington Subclass,  
13 Extended Business Income Breach of Contract Class, Extended Business Income Breach of  
14 Contract Washington Subclass, Civil Authority Breach of Contract Class, Civil Authority  
15 Breach of Contract Washington Subclass, Extra Expense Breach of Contract Class, and Extra  
16 Expense Breach of Contract Washington Subclass.

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

20 46. Plaintiff has paid its insurance premiums.

21 47. Upon information and belief, TCICA has denied, and will continue to deny  
22 coverage for other similarly situated policyholders.

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

24 49. Plaintiff is harmed by the breach of the insurance contract by TCICA.  
25  
26

**VII. PRAYER**

1  
2 1. A declaratory judgment that the policy or policies cover Plaintiff’s losses and  
3 expenses resulting from the interruption of Plaintiff’s business related to COVID-19 and/or  
4 orders issued 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. Pre- and post-judgment interest at the highest allowable rate.

10 5. Reasonable attorney fees and costs.

11 6. Such further and other relief as the Court shall deem appropriate.

12 DATED this 13th day of May, 2020.

13 KELLER ROHRBACK L.L.P.

14  
15 By: s/ Ian S. Birk

16 Ian S. Birk, WSBA #31431

17 GORDON TILDEN THOMAS & CORDELL

18 By: s/Mark A. Wilner

19 Mark A. Wilner WSBA #31550

20 **Attorneys for Plaintiffs**

21  
22 4841-0638-3548, v. 3