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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

<p>CASCADIA DENTAL SPECIALISTS INC., individually and on behalf of all others similarly situated,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>AMERICAN FIRE AND CASUALTY COMPANY,</p> <p style="text-align: right;">Defendant.</p>
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No.

COMPLAINT—CLASS ACTION

JURY DEMAND

I. INTRODUCTION

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

1 **II. JURISDICTION AND VENUE**

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

7
8 2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because the
9 Court has personal jurisdiction over Defendant, a substantial portion the alleged wrongdoing
10 occurred in this District and the state of Washington, and Defendant has sufficient contacts with
11 this District and the state of Washington.

12 3. Venue is proper in the Western District of Washington pursuant to 28 U.S.C.
13 § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims at
14 issue in this Complaint arose in this District. Plaintiff’s business is located in Bellevue, King
15 County. This action is therefore appropriately filed in the Seattle Division because a substantial
16 portion of the events giving rise to this lawsuit arose in King County.

17
18 **III. PARTIES**

19 4. Plaintiff Cascadia Dental Specialists Inc. owns and operates a dental business
20 located at 14700 NE 8th St. Ste. 205, Bellevue, WA 98007.

21 5. Defendant American Fire and Casualty Company is an insurance carrier
22 incorporated and domiciled in New Hampshire, with its principal place of business in Boston,
23 Massachusetts.

24 6. American Fire is authorized to write, sell, and issue business insurance policies in
25 the District of Columbia and forty-nine (49) states, including Washington. American Fire
26

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

3 **IV. NATURE OF THE CASE**

4 7. Due to COVID-19 and a state-ordered mandated closure, Plaintiff's dental
5 business has been interrupted, curtailed, and suspended.

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

9 9. American Fire issued one or more insurance policies to Plaintiff, including the
10 Commercial Protector Policy and related endorsements (collectively, "the Policy"), insuring
11 Plaintiff's property and business and other coverages from July 1, 2019, to July 1, 2020.

12 10. Plaintiff's business property includes property owned and/or leased by Plaintiff
13 and used for general business purposes for the specific purpose of operating a dental business
14 and other business activities.

15 11. Defendant American Fire's insurance policy issued to Plaintiff promises to pay
16 Plaintiff for "direct physical loss of or physical damage to" covered property.

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

19 13. Defendant American Fire's insurance policy issued to Plaintiff includes Business
20 Income Coverage, Extra Expense Coverage, Extended Business Income Coverage and Civil
21 Authority Coverage.

22 14. Plaintiff paid all premiums for the coverage when due.
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1 15. On or about January 2020, the United States of America saw its first cases of
2 persons infected by COVID-19, which has been designated a worldwide pandemic.

3 16. In light of this pandemic, on February 29, 2020, Washington Governor Jay Inslee
4 issued Proclamation 20-5, declaring a State of Emergency for all counties in the state of
5 Washington as the result of COVID-19. Thereafter, Governor Inslee issued a series of certain
6 proclamations and orders affecting many persons and businesses in Washington, whether
7 infected with COVID-19 or not, requiring certain public health precautions.
8

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

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

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

24 19. Governor Inslee has extended Proclamation 20-25 until May 31, 2020.

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

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

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

4 23. Plaintiff's property will continue to sustain direct physical loss or damage covered
5 by the American Fire policy or policies, including but not limited to business interruption, extra
6 expense, interruption by civil authority, and other expenses.
7

8 24. Plaintiff's property cannot be used for its intended purposes.

9 25. As a result of the above, Plaintiff has experienced and will experience loss
10 covered by the American Fire policy or policies.

11 26. On March 26, 2020, Plaintiff submitted a claim for its losses covered by the
12 Policy.
13

14 27. On April 6, 2020, American Fire denied coverage. In a letter to Plaintiff,
15 American Fire stated:

16 This letter is to inform you that we have conducted an investigation for your claim for the
17 reported loss of income due to a declaration of emergency from the American Dental
18 Association and a subsequent, [*sic*] "stay at home" order from the governor of
19 Washington requiring the closure of some businesses for a period of time beginning
20 March 23, 2020 for a time of "at least two weeks." This order directly affected your
21 dental practice forcing a closure of the business until the order has been lifted.

22 28. Upon information and belief, American Fire has denied and will deny all similar
23 claims for coverage.

24 V. CLASS ACTION ALLEGATIONS

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

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

1 A. ***Business Income Breach of Contract Class:*** All persons and entities in
2 the United States insured under an American Fire policy with Business Income Coverage
3 who suffered a suspension of their business 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 American Fire.
6

7 B. ***Business Income Coverage Breach of Contract Washington Subclass:***
8 All persons and entities in the State of Washington insured under an American Fire
9 policy with Business Income Coverage who suffered a suspension of their business at the
10 covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or
11 other civil authorities and whose Business Income claim has been denied by American
12 Fire.
13

14 C. ***Business Income Declaratory Relief Class:*** All persons and entities in the
15 United States insured under an American Fire policy with Business Income Coverage
16 who suffered a suspension of their business at the covered premises related to COVID-19
17 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities.
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19 D. ***Business Income Coverage Declaratory Relief Washington Subclass:*** All
20 persons and entities in the State of Washington insured under an American Fire policy
21 with 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 other civil authorities.
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25 E. ***Extended Business Income Breach of Contract Class:*** All persons and
26 entities in the United States insured under an American Fire policy with Extended
Business Income Coverage who suffered a suspension of their business at the covered

1 premises related to COVID-19 and/or orders issued by Governor Inslee, other Governors,
2 and/or other civil authorities and whose Extended Business Income claim has been
3 denied by American Fire.

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

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

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

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

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

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

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

21 United States insured under an American Fire policy with Extra Expense Coverage who
22 sought to minimize losses from the suspension of their business at the covered premises
23 in connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,
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1 and/or other civil authorities and whose Extra Expense claim has been denied by
2 American Fire.

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

10 K. ***Extra Expense Declaratory Relief Class:*** All persons and entities in the
11 United States insured under an American Fire policy with Extra Expense Coverage who
12 sought to minimize losses from the suspension of their business at the covered premises
13 in 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 insured under an American Fire policy with Extra
18 Expense coverage who sought to minimize losses from the suspension of their business at
19 the covered premises in connection with COVID-19 and/or orders issued by Governor
20 Inslee, and/or other civil authorities.
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22 M. ***Civil Authority Breach of Contract Class:*** All persons and entities in the
23 United States insured under an American Fire policy with Civil Authority Coverage who
24 suffered a suspension of their business and/or extra expense at the covered premises
25 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or
26

1 other civil authorities and whose Civil Authority claim has been denied by American
2 Fire.

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

9
10 O. ***Civil Authority Declaratory Relief Class:*** All persons and entities in the
11 United States insured under an American Fire policy with Civil Authority Coverage who
12 suffered a suspension of their business at the covered premises related to COVID-19
13 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities.

14
15 P. ***Civil Authority Declaratory Relief Washington Subclass:*** All persons and
16 entities in the State of Washington insured under an American Fire policy with Civil
17 Authority coverage who suffered a suspension of their business at the covered premises
18 related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil
19 authorities.

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

25
26 32. This action may properly be maintained on behalf of each proposed Class under
the criteria of Rule 23 of the Federal Rules of Civil Procedure.

1 33. **Numerosity:** The members of the Class are so numerous that joinder of all
2 members would be impractical. Plaintiff is informed and believes that the proposed Class
3 contains thousands of members. The precise number of class members can be ascertained
4 through discovery, which will include Defendant’s records of policyholders.
5

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

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

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

14 C. Whether Business Income Coverage in American Fire’s policies of
15 insurance applies to a suspension of business relating to COVID-19 and/or orders issued
16 by Governor Inslee, other Governors, and/or other civil authorities;

17 D. Whether Extended Business Income Coverage in American Fire’s policies
18 of insurance applies to a suspension of business relating to COVID-19 and/or orders
19 issued by Governor Inslee, other Governors, and/or other civil authorities;

20 E. Whether Extra Expense Coverage in American Fire’s policies of insurance
21 applies to efforts to minimize a loss at the covered premises relating to COVID-19 and/or
22 orders issued by Governor Inslee, other Governors, and/or other civil authorities;
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1 F. Whether Civil Authority Coverage in American Fire’s policies of
2 insurance applies to a suspension of business relating to COVID-19 and/or orders issued
3 by Governor Inslee, other Governors, and/or civil authorities;

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

8 H. Whether, because of Defendant’s conduct, Plaintiff and the class members
9 have suffered damages; and if so, the appropriate amount thereof; and
10

11 I. Whether, because of Defendant’s conduct, Plaintiff and the class members
12 are entitled to equitable and declaratory relief, and if so, the nature of such relief.
13

14 35. **Typicality:** Plaintiff’s claims are typical of the claims of the members of the
15 classes. Plaintiff and all the members of the classes have been injured by the same wrongful
16 practices of Defendant. Plaintiff’s claims arise from the same practices and course of conduct
17 that give rise to the claims of the members of the Class and are based on the same legal theories.

18 36. **Adequacy:** Plaintiff will fully and adequately assert and protect the interests of
19 the classes and has retained class counsel who are experienced and qualified in prosecuting class
20 actions. Neither Plaintiff nor its attorneys have any interests contrary to or in conflict with the
21 Class.
22

23 37. **Federal Rule of Civil Procedure 23(b)(1), the Risk of Inconsistent or Varying**
24 **Adjudications and Impairment to Other Class Members’ Interests:** Plaintiff seeks
25 adjudication as to the interpretation, and resultant scope, of Defendant’s policies, which are
26 common to all members of the class. The prosecution of separate actions by individual members

1 of Contract Washington Subclass, Civil Authority Breach of Contract Class and Civil Authority
2 Breach of Contract Washington Subclass.

3 47. The Policy is a contract under which Plaintiff and the class paid premiums to
4 American Fire in exchange for American Fire's promise to pay plaintiff and the class for all
5 claims covered by the Policy.

6 48. Plaintiff has paid its insurance premiums.

7 49. American Fire denied coverage for Plaintiff's claim.

8 50. Upon information and belief, American Fire has denied, and will continue to deny
9 coverage for other similarly situated policyholders.

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

11 52. Plaintiff is harmed by the breach of the insurance contract by American Fire.

12 VII. PRAYER FOR RELIEF

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

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

18 3. Damages.

19 4. Pre- and post-judgment interest at the highest allowable rate.

20 5. Reasonable attorney fees and costs.

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

VIII. JURY DEMAND

Plaintiff demands a jury trial on all claims so triable.

DATED this 14th day of May, 2020.

KELLER ROHRBACK L.L.P.

By: s/ Amy Williams-Derry

By: s/ Lynn L. Sarko

By: s/ Ian S. Birk

By: s/ Gretchen Freeman Cappio

By: s/ Irene M. Hecht

By: s/Maureen Falecki

By: s/Nathan L. Nanfelt

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Attorneys for Plaintiff

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

CASCADIA DENTAL SPECIALISTS INC., individually and on behalf of all others similarly situated

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

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

KELLER ROHRBACK L.L.P. 1201 Third Avenue, Suite 3200, Seattle, WA 98101 (206) 623-1900

DEFENDANTS

AMERICAN FIRE AND CASUALTY

County of Residence of First Listed Defendant Cheshire County, NH (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 (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

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

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Property, etc.

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 (specify), 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): 28 U.S.C. § 1391(b)

Brief description of cause: Insurance bad faith

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 Ricardo S. Martinez DOCKET NUMBER 2:20-cv-00620-RSM

DATE 05/14/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Amy Williams-Derry

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE