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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JAE Y. HONG, DDS, PS, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

VALLEY FORGE INSURANCE COMPANY,

Defendant.

COMPLAINT—CLASS ACTION

JURY DEMAND

I. INTRODUCTION

Plaintiff, JAE Y. HONG, DDS, PS, 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 Defendant Valley Forge Insurance Company (“Valley Forge” or “Defendant”) and alleges as follows based on personal knowledge and information and belief:

II. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship from Defendant, there are 100 or more Class members nationwide, and the aggregate amount in

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

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

4 16. In light of this pandemic, on February 29, 2020, Washington Governor Jay Inslee
5 issued Proclamation 20-5, declaring a State of Emergency for all counties in the state of
6 Washington as the result of COVID-19.

7 17. Thereafter, Governor Inslee issued a series of certain proclamations and orders
8 affecting many persons and businesses in Washington, whether infected with COVID-19 or not,
9 requiring certain public health precautions.
10

11 18. On March 19, 2020, Governor Inslee issued Proclamation 20-24, “Restrictions on
12 Non-Urgent Medical Procedures.” The proclamation provides, in part:
13

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

20 19. By order of Governor Inslee, oral and maxillofacial surgical businesses, including
21 Plaintiff’s, were prohibited from providing services but for urgent and emergency procedures.

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

23 21. Plaintiff’s property sustained direct physical loss and/or damage related to
24 COVID-19 and/or the proclamations and orders.
25
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1 related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil
2 authorities and whose Business Income claim has been denied by Valley Forge.

3 C. ***Business Income Declaratory Relief Class:*** All persons and entities in the
4 United States issued a Valley Forge policy with Business Income Coverage who suffered
5 a 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 Valley Forge policy with Business
10 Income Coverage who suffered a suspension of their business at the covered premises
11 related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil
12 authorities.
13

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

20 F. ***Extended Business Income Breach of Contract Washington Subclass:***
21 All persons and entities in the State of Washington issued a Valley Forge policy with
22 Extended Business Income Coverage who suffered a suspension of their business at the
23 covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or
24 other civil authorities and whose Extended Business Income claim has been denied by
25 Valley Forge.
26

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

7 H. ***Extended Business Income Declaratory Relief Washington Subclass:*** All
8 persons and entities in the State of Washington issued a Valley Forge policy with
9 Extended 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.
12

13 I. ***Extra Expense Breach of Contract Class:*** All persons and entities in the
14 United States issued a Valley Forge policy with Extra Expense Coverage who sought to
15 minimize losses from the suspension of their business at the covered premises in
16 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,
17 and/or other civil authorities and whose Extra Expense claim has been denied by Valley
18 Forge.
19

20 J. ***Extra Expense Breach of Contract Washington Subclass:*** All persons
21 and entities in the State of Washington issued a Valley Forge policy with Extra Expense
22 Coverage who sought to minimize losses from the suspension of their business at the
23 covered premises in connection with COVID-19 and/or orders issued by Governor Inslee,
24 and/or other civil authorities and whose Extra Expense claim has been denied by Valley
25 Forge.
26

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

7 L. ***Extra Expense Declaratory Relief Washington Subclass:*** All persons and
8 entities in the State of Washington issued a Valley Forge policy with Extra Expense
9 Coverage who sought to minimize losses from the suspension of their business at the
10 covered premises in connection with COVID-19 and/or orders issued by Governor Inslee,
11 and/or other civil authorities.
12

13 M. ***Civil Authority Breach of Contract Class:*** All persons and entities in the
14 United States issued a Valley Forge policy with Civil Authority Coverage who suffered a
15 suspension of their practice and/or extra expense 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 Civil Authority claim has been denied by Valley Forge.
18

19 N. ***Civil Authority Breach of Contract Washington Subclass:*** All persons
20 and entities in the State of Washington issued a Valley Forge policy with Civil Authority
21 coverage who suffered a suspension of their business and/or extra expense at the covered
22 premises related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil
23 authorities and whose Civil Authority claim has been denied by Valley Forge.
24

25 O. ***Civil Authority Declaratory Relief Class:*** All persons and entities in the
26 United States issued a Valley Forge policy with Civil Authority Coverage who suffered a
suspension of their practice at the covered premises related to COVID-19 and/or orders

1 issued by Governor Inslee, other Governors, and/or other civil authorities.

2 P. **Civil Authority Declaratory Relief Washington Subclass:** All persons and
3 entities in the State of Washington issued a Valley Forge policy with Civil Authority
4 Coverage who suffered a suspension of their business at the covered premises related to
5 COVID-19 and/or orders issued by Governor Inslee, and/or other civil authorities.
6

7 29. Excluded from the Classes are Defendant's officers, directors, and employees; the
8 judicial officers and associated court staff assigned to this case; and the immediate family
9 members of such officers and staff. Plaintiff reserves the right to amend the above-described
10 Class definitions based on information obtained in discovery including Defendant's internal
11 records presently unavailable to Plaintiff.

12 30. This action may properly be maintained on behalf of each proposed Class under
13 the criteria of Rule 23 of the Federal Rules of Civil Procedure.
14

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

19 32. **Commonality and Predominance:** Common questions of law and fact
20 predominate over any questions affecting only individual members of the Class. Common
21 questions include, but are not limited to, the following:
22

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

25 B. Whether Valley Forge acted in a manner common to the class and
26 wrongfully denied claims for coverage relating to COVID-19 and/or orders issued by

1 Governor Inslee, other Governors, and/or other civil authorities;

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

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

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

11 F. Whether Civil Authority Coverage in Valley Forge’s policies of insurance
12 applies to a suspension of practice relating to COVID-19 and/or orders issued by
13 Governor Inslee, other Governors, and/or civil authorities;

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

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

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

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26 33. **Typicality:** Plaintiff’s claims are typical of the claims of the members of the

1 classes. Plaintiff and all the members of the classes have been injured by the same wrongful
2 practices of Defendant. Plaintiff's claims arise from the same practices and course of conduct
3 that give rise to the claims of the members of the Class and are based on the 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 nor its attorneys have any interests contrary to or in conflict with the
7 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 inconsistent or varying interpretations of those policy terms and create
14 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 brings this cause of action on behalf of the Business Income Declaratory
15 Relief Class, Business Income Declaratory Relief Washington Subclass, Extended Business
16 Income Declaratory Relief Class, Extended Business Income Declaratory Relief Washington
17 Subclass, Extra Expense Declaratory Relief Class, Extra Expense Declaratory Relief Washington
18 Subclass, Civil Authority Declaratory Relief Class, and Civil Authority Declaratory Relief
19 Washington Subclass.

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

22 42. Plaintiff seeks a declaratory judgment declaring that Valley Forge is responsible
23 for timely and fully paying all such claims.

24 **Count Two—Breach of Contract**

25 *(Brought on behalf of the Business Income Breach of Contract Class, Business*
26 *Income Breach of Contract Washington Subclass, Extended Business Income Breach*
of Contract Class, Extended Business Income Breach of Contract Washington

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

3 3. Damages.

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

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

6 6. Reasonable attorney fees and costs.

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

8
9 **VIII. JURY TRIAL DEMANDED**

10 Plaintiff demands a jury trial on all claims so triable.

11 DATED this 9th day of June, 2020.

12 KELLER ROHRBACK L.L.P.

13 By: s/ Amy Williams Derry

14 By: s/ Lynn L. Sarko

15 By: s/ Ian S. Birk

16 By: s/ Gretchen Freeman Cappio

17 By: s/ Irene M. Hecht

18 By: s/ Maureen Falecki

19 By: s/ Nathan Nanfelt

20 Amy Williams Derry, WSBA #28711

21 Lynn L. Sarko, WSBA #16569

22 Ian S. Birk, WSBA #31431

23 Gretchen Freeman Cappio, WSBA #29576

24 Irene M. Hecht, WSBA #11063

25 Maureen Falecki, WSBA #18569

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