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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

GLACIAL CRYOTHERAPY LLC,
individually and on behalf of all others similarly
situated,

Plaintiff,

v.

EVANSTON INSURANCE COMPANY,

Defendant.

No.

COMPLAINT—CLASS ACTION

JURY DEMAND

I. INTRODUCTION

Plaintiff, Glacial Cryotherapy LLC, individually and on behalf of all other similarly situated members of the defined national class, and the defined Washington state subclasses (collectively, the “Class Members”), by and through the undersigned attorneys, brings this class action against Defendant Evanston Insurance Company (“Defendant” or “Evanston”) and alleges as follows based on personal knowledge and information and belief:

II. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one member of the proposed Class is a citizen of a state different from that of Defendant, the proposed Class has more than 100 members, and

1 the aggregate amount in controversy exceeds \$5,000,000. The Court has supplemental
2 jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367.

3 2. This Court has personal jurisdiction over Defendant because Defendant is
4 registered to do business in Washington, has sufficient minimum contacts in Washington, and
5 otherwise intentionally avails itself of the markets within Washington through its business
6 activities, such that the exercise of personal jurisdiction by this Court is proper. Moreover,
7 jurisdiction exists because Plaintiff's claims arise out of and directly relate to Defendant's
8 contacts with Washington. Plaintiff has standing to bring each claim against Defendant as a class
9 representative whose claims are typical and common of the class under Federal Rule of Civil
10 Procedure 23.
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12 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because the
13 Court has personal jurisdiction over Defendant, a substantial portion of the alleged wrongdoing
14 occurred in this District and the State of Washington, and Defendant has sufficient contacts with
15 this District and the State of Washington.
16

17 4. Venue is proper in the Western District of Washington pursuant to 28 U.S.C.
18 § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims at
19 issue in this Complaint arose in this District. Plaintiff's place of business is in King County. This
20 action is therefore appropriately filed in this District.
21

22 **III. PARTIES**

23 5. Plaintiff Glacial Cryotherapy owns and operates a health-based business in Lake
24 Forest Park, King County, Washington, that provides whole-body and localized cryotherapy, and
25 other therapeutic treatments, using state-of-the-art machinery and equipment. Cryotherapy is a
26 completely dry, noninvasive, hyper-cooling process that lowers one's skin temperature by up to

1 30 degrees Fahrenheit during a single session. Cryotherapy is used to accelerate the body's
2 natural recovery from exercise or overuse by lowering skin and core temperatures and reducing
3 inflammation.

4 6. Defendant Evanston is an insurance carrier incorporated and domiciled in Illinois
5 with its principal place of business in Illinois.

7 7. Defendant Evanston is authorized to write, sell, and issue business insurance
8 policies in forty-nine states and the District of Columbia. Defendant conducted business within
9 these states by selling and issuing business insurance policies to policyholders, including
10 Plaintiff.

11 8. Defendant is vicariously liable for the acts and omissions of its employees and
12 agents.

13 IV. NATURE OF THE CASE

14 9. Plaintiff Glacial Cryotherapy is a physical health and wellness business that
15 provides cryotherapy, light therapy, and infra-red sauna therapy using sophisticated machines
16 and high-tech equipment to deliver therapeutic treatments to the body.

17 10. Historic photographs of Glacial Cryotherapy below depict portions of its interior,
18 and some of its machines and equipment:
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11. This lawsuit is filed to ensure that Plaintiff and other similarly-situated policyholders receive the insurance benefits to which they are entitled and for which they paid.

12. Defendant issued one or more “all-risk” insurance policies to Plaintiff (the “Policy”), which provide broad property and business interruption coverage.

13. The Policy includes a Building and Personal Property Coverage Form and related endorsements, with coverages that include Business Income and Extra Expense, Extended Business Income, Civil Authority, and a Coverage Extension, insuring Glacial Cryotherapy’s property, business equipment and machinery, and business income, with effective dates of July 23, 2019 to July 23, 2020.

14. The Policy described the insured occupancy of the premises in its “Commercial Property Coverage Part Declarations” as falling under the “Class Description” of “Health or

1 Exercise Clubs.” The governmental response to the COVID-19 pandemic did not permit any
2 operations or access to premises consistent with “health or exercise clubs.”

3 15. Plaintiff’s business property includes property owned and/or leased by Plaintiff
4 and used by Plaintiff and its customers for its specified business purposes, including machine
5 and equipment-based therapeutic treatments. Access to some or all of this property and
6 Plaintiff’s premises was prohibited by the governmental response to the COVID-19 pandemic.
7

8 16. Plaintiff’s business property includes a whole-body cryotherapy chamber,
9 localized cryotherapy machines, an infra-red sauna, celluma light therapy machines and beds,
10 and Normatec recovery systems, all of which are designed to provide in-person, on-site
11 treatments to customers.

12 17. Defendant promised to pay Plaintiff for “direct physical loss of or physical
13 damage to” covered property, and its Policy includes coverages for risks of both “loss of or
14 damage to” covered property.
15

16 18. The Policy expressly defines “Covered Causes of Loss” as meaning “direct
17 physical loss.”

18 19. On information and belief, Defendant and affiliated entities owned by the same
19 parent company issued materially identical policies to thousands of businesses throughout
20 Washington and in other states.
21

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

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

25 22. COVID-19 is a highly contagious virus that rapidly and easily spreads; it
26 continues to spread across the United States, including in the State of Washington.

1 23. In many infected persons, COVID-19 causes severe illness and requires
2 hospitalization, including intubation. The virus has killed over 500,000 people in the United
3 States to date. Persons who survive the virus have experienced ongoing cognitive, neurological,
4 and physical impacts from the virus, even after the virus is no longer actively detected in their
5 bodies.

6 24. The COVID-19 virus is a physical substance that spreads from person to person
7 through respiratory droplets that reach another person and that are produced when an infected
8 person breathes, talks, coughs, or sneezes. It also spreads when virus respiratory droplets are
9 exhaled and aerosolized, and deposited on a surface or object (e.g., weights, exercise equipment,
10 handles, machinery, door knobs, touch screens, computer keyboards, water fountains, and
11 writing or eating utensils) and those objects are then touched by another person who then touches
12 their own mouth, nose, or eyes. COVID-19 is caused by a novel (new) coronavirus that has not
13 previously been seen in humans.¹

14 25. COVID-19 remains stable and transmittable in aerosols for up to three hours and
15 up to two or three days on certain surfaces. Persons infected with COVID-19 can be
16 asymptomatic. COVID-19 is spread by breathing, talking, and touching shared or common
17 objects or surfaces. Guidance issued by the United States Centers for Disease Control and
18 Prevention (“CDC”) recommends avoiding indoor activities, maintaining social distance of at
19 least six feet between people, and not sharing exercise items such as resistance bands, to slow or
20 stop the spread of COVID-19.²

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¹ See, e.g., *Coronavirus (COVID-19): Frequently Asked Questions*, CDC (updated Feb. 25, 2021),
<https://www.cdc.gov/coronavirus/2019-ncov/faq.html>.

² *Coronavirus (COVID-19): Personal and Social Activities*, CDC (updated Feb. 19, 2021),
<https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/personal-social-activities.html>.

1 26. Public health data throughout the United States, and on a state-by-state basis,
2 shows that COVID-19 has been detected in every state.

3 27. The first confirmed case of COVID-19 in King County, and indeed nationwide,
4 was noted on January 21, 2020.³

5 28. Public health data throughout the United States shows the number of COVID-19
6 tests administered, the rate of positive testing, the numbers of persons diagnosed with COVID-
7 19, the number of persons hospitalized due to COVID-19, the number of deaths from COVID-
8 19, and other related statistics, by state, county, and sometimes by city.⁴

9 29. As of February 24, 2021, at least 319,498 individuals in the State of Washington
10 have tested positive for COVID-19, 18,155 have been hospitalized, and 4,942 have died due to
11 the COVID-19 virus.⁵

12 30. As of February 24, 2021, at least 81,738 individuals in King County have tested
13 positive for COVID-19, 5,117 have been hospitalized, and 1,390 have died due to the COVID-19
14 virus.⁶

15 31. The presence of any COVID-19 aerosolized or suspended droplets or particles in
16 the air or otherwise circulating in an indoor environment renders that physical space, or physical
17 property within that space, unsafe and unusable.
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23 ³ Casey McNertney, *Coronavirus in Washington State: A Timeline of the Outbreak Through March 2020*, KIRO 7
24 News (updated Apr. 3, 2020, 2:03 AM), <https://www.kiro7.com/news/local/coronavirus-washington-state-timeline-outbreak/IM65JK66N5BYTIAPZ3FUZSKMUE/>.

25 ⁴ See, e.g., *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. Times (updated Feb. 26, 2021, 7:56 AM),
26 <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html?action=click&module=Top%20Stories&pgtype=Homepage> (reflecting COVID-19 statistics, on a state-by-state, county-by-county, and aggregated basis since March 2020).

⁵ *COVID-19 Data Dashboard*, Wash. State Dep't of Health (last updated 2/25/21, 5:38 PM),
<https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard>.

⁶ *Id.*

1 32. The presence of any COVID-19 aerosolized or suspended droplets or particles in
2 the air or otherwise circulating in an indoor environment causes direct physical damage to
3 property and/or direct physical loss of property.

4 33. The presence of any COVID-19 droplets or particles on physical surfaces renders
5 items of physical property unsafe and unusable.

6 34. The presence of any COVID-19 droplets or particles on physical surfaces causes
7 direct physical damage to property and/or direct physical loss of property.

8 35. The presence of people infected with or carrying COVID-19 particles at premises
9 renders the premises, including property located at that premises, unsafe and unusable, resulting
10 in direct physical damage and/or direct physical loss to the premises and property.

11 36. Loss of functionality of property that has not been physically altered constitutes
12 direct physical loss of property and/or direct physical damage to property.

13 37. Other premises and businesses in close proximity to Plaintiff were closed and
14 suffered direct physical loss. This occurred at least through governmental orders affecting many
15 such places.

16 38. On February 29, 2020, Washington Governor Jay Inslee issued Proclamation 20-
17 05, declaring a State of Emergency for all counties in the State of Washington as the result of the
18 COVID-19 outbreak.⁷

19 39. Thereafter, Governor Inslee issued a series of certain proclamations and orders
20 affecting many persons and businesses in Washington, whether infected with COVID-19 or not,
21 requiring certain public health precautions.

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⁷ Proclamation 20-05 of Washington Gov. Jay Inslee (Feb. 29, 2020),

[https://www.governor.wa.gov/sites/default/files/proclamations/20-05%20Coronavirus%20\(final\).pdf](https://www.governor.wa.gov/sites/default/files/proclamations/20-05%20Coronavirus%20(final).pdf).

1 40. Some local agencies acted even more quickly than the state. On February 27,
2 2020, the Northshore School District closed Bothell High School to completely disinfect the
3 entire school because of concerns about the safety of school property stemming from COVID-
4 19.⁸ On March 2, 2020, Everett Public Schools Superintendent Dr. Ian B. Saltzman made a
5 similar announcement closing schools, highlighting that Everett Schools would clean both
6 schools and school buses.⁹
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8 41. Issued March 12, 2020, Proclamation 20-08 closed all public and private K-12
9 schools in King, Pierce, and Snohomish counties.¹⁰ Issued March 13, 2020, Proclamation 20-09
10 extended the school closure to the entire state.¹¹
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12 42. On March 13, 2020, Governor Inslee issued Proclamation 20-11, “Statewide
13 Limits on Gatherings,” which prohibited all gatherings of 250 people or more in all Washington
14 counties, including King County.¹²

15 43. Issued March 16, 2020, Proclamation 20-13 closed all non-essential retail
16 including theaters, gyms, performance venues, dance studios, bowling alleys, fitness centers,
17 barbershops and hair/nail salons, tattoo parlors, and indoor dining at restaurants.¹³
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20 ⁸ See Michelle Reid, *Letter to Families: Bothell High School Closure*, Northshore School District (Feb. 26, 2020),
21 <https://www.nsd.org/blog/~board/superintendent-blog/post/letter-to-families-bothell-high-school-closure>.

22 ⁹ See Ian B. Saltzman, *Superintendent’s Message, March 2, 2020*, Everett Public Schools (Mar. 2, 2020),
23 <https://www.everettsd.org/Page/32622>.

24 ¹⁰ Proclamation 20-08 of Washington Gov. Jay Inslee (Mar. 12, 2020),
25 <https://www.governor.wa.gov/sites/default/files/proclamations/20-08%20Coronavirus%20%28tmp%29.pdf>

26 ¹¹ Proclamation 20-09 of Washington Gov. Jay Inslee, *Statewide K-12 School Closures* (Mar. 13, 2020),
<https://www.governor.wa.gov/sites/default/files/proclamations/20-09%20Coronavirus%20Schools%20Amendment%20%28tmp%29.pdf>.

¹² Proclamation 20-11 of Washington Gov. Jay Inslee, *Statewide Limits on Gatherings* at p. 2 (Mar. 13, 2020),
<https://www.governor.wa.gov/sites/default/files/proclamations/20-11%20Coronavirus%20Gatherings%20Amendment%20%28tmp%29.pdf>.

¹³ Proclamation 20-13 of Washington Gov. Jay Inslee, *Statewide Limits: Food and Beverage Services, Areas of Congregation* (Mar. 16, 2020), <https://www.governor.wa.gov/sites/default/files/proclamations/20-13%20Coronavirus%20Restaurants-Bars%20%28tmp%29.pdf>.

1 44. Proclamation 20-13 states that “the COVID-19 disease has and continues to
2 spread quickly across the [S]tate of Washington, beyond the original community outbreaks in
3 King, Pierce, and Snohomish counties.”¹⁴

4 45. Proclamation 20-13 prohibits “any number of people from gathering in any public
5 venue in which people congregate for purposes of . . . fitness and other similar activities.”¹⁵ The
6 proclamation further prohibits “the operation of public venues in which people congregate for
7 entertainment, social or recreational purposes, including but not limited to . . . gyms, fitness
8 centers . . . and other similar venues, which prohibition shall remain in effect until midnight on
9 March 31, 2020, unless extended beyond that date.”¹⁶

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

14 47. On information and belief, Proclamation 20-13 refers to property damage
15 throughout the State of Washington, including in King County where Plaintiff’s business is
16 located.

17 48. On March 16, 2020, Governor Inslee issued Proclamation 20-14, “Reduction of
18 Statewide Limits on Gatherings,” which prohibited gatherings of fifty people or more in all
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¹⁴ *Id.* at p. 1.

¹⁵ *Id.* at p. 2.

¹⁶ *Id.* at p. 3.

¹⁷ *Id.* at p. 1.

1 Washington counties, including King County, and further prohibited gatherings of fewer people
2 unless organizers of such gatherings complied with social distancing and sanitation guidelines.¹⁸

3 49. Issued March 19, 2020, Proclamation 20-24 placed restrictions on non-urgent
4 medical and dental services, largely shuttering those offices.¹⁹

5 50. On March 23, 2020, Governor Inslee issued Proclamation 20-25, “Stay Home –
6 Stay Healthy.”²⁰ The proclamation, which amends Proclamation 20-05, requires that “[a]ll
7 people in Washington State [] immediately cease leaving their home or place of residence
8 except: (1) to conduct or participate in essential activities, and/or (2) for employment in essential
9 business services.”²¹ The proclamation prohibits “all non-essential businesses in Washington
10 State from conducting business, within the limitations provided herein.”²²

11 51. Proclamation 20-25 continues a State of Emergency, and states that “the
12 worldwide COVID-19 pandemic and its progression in Washington State continues to threaten
13 the life and health of our people as well as the economy of Washington State, and remains a
14 public disaster affecting life, health, property or the public peace.”²³

15 52. On August 3, 2020, Governor Inslee issued additional restrictions regarding the
16 operation of indoor fitness gyms and studios, effective as of August 10, 2020.²⁴

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21 ¹⁸ Proclamation 20-14 of Washington Gov. Jay Inslee, *Reduction of Statewide Limits on Gatherings* (Mar. 16, 2020),
<https://www.governor.wa.gov/sites/default/files/proclamations/20-14%20COVID-19%20-%20Prohibitions%20on%20Gatherings%20%28tmp%29.pdf>.

22 ¹⁹ Proclamation 20-24 of Washington Gov. Jay Inslee, *Restrictions on Non Urgent Medical Procedures* (Mar. 19,
23 2020), <https://www.governor.wa.gov/sites/default/files/proclamations/20-24%20COVID-19%20non-urgent%20medical%20procedures%20%28tmp%29.pdf>.

24 ²⁰ Proclamation 20-25 of Washington Gov. Jay Inslee, *Stay Home – Stay Healthy* (Mar. 23, 2020),
<https://www.governor.wa.gov/sites/default/files/proclamations/20-25%20Coronavirus%20Stay%20Safe-Stay%20Healthy%20%28tmp%29%20%28002%29.pdf>.

25 ²¹ *Id.* at p. 3.

26 ²² *Id.* at p. 2.

²³ *Id.* at p. 1.

²⁴ Memorandum of Washington Gov. Jay Inslee, *Indoor Fitness and Training – Proclamation 20-25, et seq.* (Aug. 3, 2020),

1 53. On November 15, 2020, Governor Inslee issued Proclamation 20-25.8, “Stay Safe
2 – Stay Healthy” “Rollback of County-by-County Phased Reopening Responding to a COVID-19
3 Outbreak Surge,” which amended Proclamation 20-05 and 20-25, *et seq.*²⁵ The proclamation
4 again closed restaurants and bars for indoor dine-in service.²⁶

5 54. Proclamation 20-25.8 also prohibits indoor operations at a variety of business
6 locations throughout King County and elsewhere in the State of Washington, including but not
7 limited to restaurants and bars, bowling centers, movie theaters, museums, and in-store retail.²⁷

8 55. Governor Inslee’s proclamations and orders related to the COVID-19 pandemic
9 (collectively, “the proclamations and orders”) have been extended and modified from time to
10 time.
11

12 56. By order of Governor Inslee, therapeutic health and wellness businesses,
13 including Glacial Cryotherapy, were prohibited from operating their businesses except according
14 to the terms of the proclamations and orders.
15

16 57. Plaintiff has complied with the proclamations and orders which have required it to
17 close, suspend, and/or curtail its business.

18 58. Among other things, Plaintiff complied with the proclamations and orders by
19 preventing the public, including its customers and employees, from entering its place of business
20 to participate in therapeutic treatments which were routine and allowed prior to the issuance of
21 the proclamations and orders.
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24 https://www.governor.wa.gov/sites/default/files/COVID19Phase2FitnessMemo.pdf?utm_medium=email&utm_source=govdelivery.

25 ²⁵ Proclamation 20-25.8 of Washington Gov. Jay Inslee, “*Stay Safe – Stay Healthy*” *Rollback of County-by-County*
Phased Reopening Responding to a COVID-19 Outbreak Surge (Mar. 23, 2020),

26 https://www.governor.wa.gov/sites/default/files/proclamations/proc_20-25.8.pdf.

²⁶ *See id.* at pp. 3-4.

²⁷ *Id.*

1 59. In order to comply with the proclamations and orders, Plaintiff was forced to
2 suspend its business and incur extra expense.

3 60. Due to Governor Inslee’s orders, beginning on or about March 16, 2020, Plaintiff
4 was unable to use its physical business tenancy and other insured property therein for their
5 intended purposes.

6 61. Plaintiff invested in its business property, insured the business property, and
7 insured the income derived from its business property, but Plaintiff was deprived of its
8 property’s functionality due to the government’s response to the COVID-19 pandemic.

9 62. Loss caused by Governor Inslee’s orders and proclamations and/or related to
10 COVID-19 rendered Plaintiff’s property unusable for its intended and insured purpose.

11 63. Governors and civil authorities in other states have issued similar orders and
12 proclamations, for similar reasons.

13 64. Plaintiff’s property and covered movable business property have sustained direct
14 physical loss and/or damage related to COVID-19, property damage related to COVID-19,
15 and/or the proclamations and orders.

16 65. Plaintiff’s property will continue to sustain direct physical loss or damage covered
17 by the Policy, including but not limited to business interruption, extra expense, interruption by
18 civil authority, and other expenses.

19 66. Plaintiff suffered direct physical loss of use of the covered properties for its
20 intended purposes.

21 67. As a result of the above, Plaintiff has experienced and will experience loss
22 covered by Defendant’s Policy.

1 68. Plaintiff's suspension of its business in response to the proclamations and orders
2 caused Plaintiff to suffer a business loss.

3 69. Plaintiff complied with all requirements in the Policy.

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

5 71. Plaintiff filed a claim with Defendant for its losses covered by the Policy in
6 March 2020.

7 72. Defendant assigned a claim number to Plaintiff's claim.

8 73. Defendant verbally denied coverage for Plaintiff's claim by telephone
9 conversation with Plaintiff on or about March 27, 2020.

10 74. Defendant said it would provide Plaintiff with a written letter confirming its
11 denial of the claim within a week following its verbal denial.

12 75. Plaintiff never received from Defendant any written denial of its claim.

13 76. Defendant made no meaningful investigation of Plaintiff's claim or its loss.

14 77. Upon information and belief, Defendant has denied all claims submitted to it for
15 business income coverage that relate to governmental proclamations or orders and/or COVID-19.

16 78. Upon information and belief, Defendant has undertaken no meaningful
17 investigation regarding whether there is any presence of COVID-19 at Plaintiff's insured
18 premises.

19 79. Upon information and belief, Defendant has undertaken no meaningful
20 investigation regarding the timing, scope, or impact of governmental proclamations or closure
21 orders that affect its insured's business or business property.

1 80. Upon information and belief, Defendant has undertaken no meaningful
2 investigation regarding the community spread of COVID-19 in the vicinity of Plaintiff's
3 business.

4 81. Upon information and belief, Defendant has denied and will deny coverage to
5 Plaintiff and all other similarly situated policyholders based on Defendant's uniform policy to
6 deny business interruption claims stemming from government closure orders related to COVID-
7 19.

8 82. Defendant's across-the-board coverage denials are not consistent with its policy
9 language and with its obligations to investigate losses arising under its policies. Courts have
10 found coverage or reasonable grounds for coverage during the COVID-19 pandemic in one or
11 more ways, including based on (1) the actual or potential presence of virus in the air in the
12 vicinity of the policyholder's business; (2) the necessity of modifying physical behaviors through
13 the use of social distancing, avoiding confined indoor spaces, and/or not congregating in the
14 same physical area as others; (3) governmental orders requiring that physical spaces such as the
15 policyholder's business be shut down or that other property not be used for its insured business
16 purposes; and/or (4) the need to mitigate the threat or actual physical presence of virus on door-
17 handles, tables, silverware, surfaces, equipment, in heating and air conditioning systems and any
18 other places where virus may be found.
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22 **V. CLASS ACTION ALLEGATIONS**

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

25 84. The Classes and Subclasses that Plaintiff seeks to represent are defined as:
26

1 A. ***Business Income Breach of Contract Class:*** All persons and entities in
2 the United States issued an Evanston policy with Business Income Coverage who
3 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 Evanston.
6

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

13 C. ***Business Income Declaratory Relief Class:*** All persons and entities in the
14 United States issued an Evanston policy with Business Income Coverage who suffered a
15 suspension of their business at the covered premises related to COVID-19 and/or orders
16 issued by Governor Inslee, other Governors, and/or other civil authorities.
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18 D. ***Business Income Declaratory Relief Washington Subclass:*** All persons
19 and entities in the state of Washington issued an Evanston policy with Business Income
20 Coverage who suffered a suspension of their business at the covered premises related to
21 COVID-19 and/or proclamations or orders issued by Governor Inslee, and/or other civil
22 authorities.
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24 E. ***Extra Expense Breach of Contract Class:*** All persons and entities in the
25 United States issued one of Defendant's policies with Extra Expense coverage who
26 incurred expenses while seeking to minimize the suspension of business at the covered
premises in connection with COVID-19 and/or proclamations or orders issued by

1 Governor Inslee, other Governors, and/or other civil authorities whose Extra Expense
2 claim has been denied by Defendant.

3 F. ***Extra Expense Breach of Contract Washington Subclass:*** All persons
4 and entities in the state of Washington issued one of Defendant’ policies with Extra
5 Expense Coverage who incurred expenses while seeking to minimize the suspension of
6 business at the covered premises in connection with COVID-19 and/or proclamations or
7 orders issued by Governor Inslee, and/or other civil authorities and whose Extra Expense
8 claim has been denied by Defendant.

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10 G. ***Extra Expense Declaratory Relief Class:*** All persons and entities in the
11 United States issued one of Defendant’s policies with Extra Expense Coverage who
12 incurred expenses while seeking to minimize the suspension of business at the covered
13 premises in connection with COVID-19 and/or proclamations or orders issued by
14 Governor Inslee, other Governors, and/or other civil authorities.

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16 H. ***Extra Expense Declaratory Relief Washington Subclass:*** All persons and
17 entities in the state of Washington issued one of Defendant’s policies with Extra Expense
18 Coverage who incurred expenses while seeking to minimize the suspension of business at
19 the covered premises in connection with COVID-19 and/or proclamations or orders
20 issued by Governor Inslee, and/or other civil authorities.

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

1 **J. *Extended Business Income Breach of Contract Washington Subclass:***

2 All persons and entities in the state of Washington issued one of Defendant’s policies
3 with Extended Business Income Coverage who suffered a suspension of their business at
4 the covered premises related to COVID-19 and/or proclamations or orders issued by
5 Governor Inslee, and/or other civil authorities and whose Extended Business Income
6 claim has been denied by Defendant.
7

8 **K. *Extended Business Income Declaratory Relief Class:*** All persons and

9 entities in the United States issued an Evanston policy with Extended 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, other Governors, and/or other civil
12 authorities.
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14 **L. *Extended Business Income Declaratory Relief Washington Subclass:*** All

15 persons and entities in the state of Washington issued one of Defendant’s with Extended
16 Business Income Coverage who suffered a suspension of their business at the covered
17 premises related to COVID-19 and/or proclamations or orders issued by Governor Inslee,
18 and/or other civil authorities.
19

20 **M. *Civil Authority Breach of Contract Class:*** All persons and entities in the

21 United States issued an Evanston policy with Civil Authority Coverage who suffered a
22 suspension of their business and/or extra expense at the covered premises related to
23 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
24 authorities and whose Civil Authority claim has been denied by Evanston.
25

26 **N. *Civil Authority Breach of Contract Washington Subclass:*** All persons

and entities in the state of Washington issued one of Defendant’s policies with Civil

1 Authority Coverage who suffered a suspension of their business at the covered premises
2 related to the impact of COVID-19 and/or proclamations or orders issued by Governor
3 Inslee, and/or other civil authorities and whose Civil Authority claim has been denied by
4 Defendant.

5 *O. Civil Authority Declaratory Relief Class:* All persons and entities in the
6 United States issued an Evanston policy with Civil Authority Coverage who suffered a
7 suspension of their business at the covered premises related to COVID-19 and/or orders
8 issued by Governor Inslee, other Governors, and/or other civil authorities.

9 *P. Civil Authority Declaratory Relief Washington Subclass:* All persons and
10 entities in the state of Washington issued one of Defendant's policies with Civil
11 Authority Coverage who suffered a suspension of their business at the covered premises
12 related to COVID-19 and/or proclamations or orders issued by Governor Inslee, and/or
13 other civil authorities.
14

15
16 85. Excluded from the Classes are Defendant's officers, directors, and employees; the
17 judicial officers and associated court staff assigned to this case; and the immediate family
18 members of such officers and staff. Plaintiff reserves the right to amend the Class definitions
19 based on information obtained in discovery.

20
21 86. This action may properly be maintained on behalf of each proposed Class under
22 the criteria of Federal Rule of Civil Procedure 23.

23 87. **Numerosity:** The members of the Class are so numerous that joinder of all
24 members would be impractical. Plaintiff is informed and believes that each proposed Class has
25 hundreds of members. The precise number of Class Members can be ascertained through
26 discovery, which will include Defendant's records of policyholders.

1 88. **Commonality and Predominance:** Common questions of law and fact
2 predominate over any questions affecting only individual members of the Class. Common
3 questions include, but are not limited to, the following:

4 A. Whether the Class and Subclass Members suffered cognizable losses
5 under the Defendant’s policies;

6 B. Whether Evanston acted in a manner common to the Class and Subclass in
7 denying claims for coverage relating to COVID-19 and/or orders issued by Governor
8 Inslee, other Governors, and/or other civil authorities;

9 C. Whether Business Income Coverage in Evanston’s policies of insurance
10 applies to a suspension of business relating to COVID-19 and/or orders issued by
11 Governor Inslee, other Governors, and/or other civil authorities;

12 D. Whether Extended Business Income Coverage in Evanston’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 other civil authorities;

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

18 F. Whether Civil Authority Coverage in Evanston’s policies of insurance
19 applies to a suspension of business relating to COVID-19 and/or orders issued by
20 Governor Inslee, other Governors, and/or civil authorities;

21 G. Whether Defendant carried out a blanket denial of all claims based on
22 business interruption, income loss or closures related to COVID-19 and/or orders issued
23 by Governor Inslee, other Governors, and/or other civil authorities;

1 H. Whether Evanston has breached its contracts of insurance through a
2 blanket denial of all claims based on business interruption, income loss or closures
3 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or
4 other civil authorities; and

5 I. Whether, because of Defendant's conduct, Plaintiff and the Class
6 Members are entitled to equitable and declaratory relief, and if so, the nature of such
7 relief.
8

9 89. **Typicality:** Plaintiff's claims are typical of the claims of the members of the
10 classes. Plaintiff and all the members of the classes have been injured by the same wrongful
11 policies and practices of Defendant. Plaintiff's claims arise from the same policies, practices, and
12 course of conduct that give rise to the claims of the members of the Class and are based on the
13 same legal theories.
14

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

19 91. **Federal Rule of Civil Procedure 23(b)(1), the Risk of Inconsistent or Varying**
20 **Adjudications and Impairment to Other Class Members' Interests:** Plaintiff seeks
21 adjudication as to the interpretation, and resultant scope, of Defendant's policies, which are
22 common to all members of the class. The prosecution of separate actions by individual members
23 of the classes would risk inconsistent or varying interpretations of those policy terms and create
24 inconsistent standards of conduct for Defendant. The policy interpretations sought by Plaintiff
25 could also impair the ability of absent Class Members to protect their interests.
26

1 92. **Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:**

2 Defendant acted or refused to act on grounds generally applicable to Plaintiff and other members
3 of the proposed class making injunctive relief and declaratory relief appropriate on a classwide
4 basis.

5 93. **Federal Rule of Civil Procedure 23(b)(3), Superiority:** A class action is

6 superior to all other available methods of the fair and efficient adjudication of this lawsuit. While
7 the aggregate damages sustained by the classes are likely to be in the millions of dollars, the
8 individual damages incurred by each Class Member may be too small to warrant the expense of
9 individual suits. Individual litigation creates a risk of inconsistent and/or contradictory decisions
10 and the court system would be unduly burdened by individual litigation of such cases. A class
11 action would result in a unified adjudication, with the benefits of economies of scale and
12 supervision by a single court.
13
14

15 **VI. CAUSES OF ACTION**

16 **Count One—Declaratory Judgment**

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

23 94. Previous paragraphs alleged are incorporated herein.

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

26 96. Plaintiff brings this cause of action on behalf of the Business Income Declaratory
Relief Class, Business Income Declaratory Relief Washington Subclass, Extra Expense

Declaratory Relief Class, Extra Expense Declaratory Relief Washington Subclass, Extended

1 Business Income Declaratory Relief Class, Extended Business Income Declaratory Relief
2 Washington Subclass, Civil Authority Declaratory Relief Class, and Civil Authority Declaratory
3 Relief Washington Subclass.

4 97. Plaintiff seeks a declaratory judgment declaring that Plaintiff and Class Members'
5 losses and expenses resulting from the interruption of their business are covered by the Policy.
6

7 98. Plaintiff seeks a declaratory judgment declaring that Evanston is responsible for
8 timely and fully paying all such claims.

9 **Count Two—Breach of Contract**

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

16 99. Previous paragraphs alleged are incorporated herein.

17 100. Plaintiff brings this cause of action on behalf of the Business Income Breach of
18 Contract Class, Business Income Breach of Contract Washington Subclass, Extra Expense
19 Breach of Contract Class, Extra Expense Breach of Contract Washington Subclass, Extended
20 Business Income Breach of Contract Class, Extended Business Income Breach of Contract
21 Washington Subclass, Civil Authority Breach of Contract Class, and Civil Authority Breach of
22 Contract Washington Subclass.

23 101. The Policy is a contract under which Plaintiff and the class paid premiums to
24 Evanston in exchange for Evanston's promise to pay Plaintiff and the class for all claims covered
25 by the Policy.

26 102. Plaintiff has paid its insurance premiums.

1 103. Plaintiff contacted Defendant in or about March 2020 to ask whether Evanston
2 would provide coverage for its losses.

3 104. Defendant denied Plaintiff's claim for coverage.

4 105. On information and belief, Evanston has denied, and will continue to deny
5 coverage for other similarly situated policyholders.
6

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

8 107. Plaintiff is harmed by the breach of the insurance contract by Evanston.

9 **VII. REQUEST FOR RELIEF**

10 1. Class action status under Federal Rule of Civil Procedure 23.

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

15 3. A declaratory judgment that the Defendant is responsible for timely and fully
16 paying all such losses.

17 4. Damages.

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

19 6. Reasonable attorney fees and costs.

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

22 **VIII. JURY DEMAND**

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

24 DATED this 2nd day of March, 2021.

25
26 KELLER ROHRBACK L.L.P.

By: s/ Amy Williams-Derry

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By: s/ Lynn L. Sarko

By: s/ Ian S. Birk

By: s/ Gretchen Freeman Cappio

By: s/ Irene M. Hecht

By: s/ Nathan L. Nanfelt

By: s/ Gabriel E. Verdugo

Amy Williams-Derry, WSBA #28711

Lynn L. Sarko, WSBA #16569

Ian S. Birk, WSBA #31431

Gretchen Freeman Cappio, WSBA #29576

Irene M. Hecht, WSBA #11063

Nathan Nanfelt, WSBA #45273

Gabriel E. Verdugo, WSBA #44154

1201 Third Avenue, Suite 3200

Seattle, WA 98101

Telephone: (206) 623-1900

Fax: (206) 623-3384

Email: awilliams-derry@kellerrohrback.com

Email: lsarko@kellerrohrback.com

Email: ibirk@kellerrohrback.com

Email: gcappio@kellerrohrback.com

Email: ihecht@kellerrohrback.com

Email: nnanfelt@kellerrohrback.com

Email: gverdugo@kellerrohrback.com

By: s/ Alison Chase

Alison Chase, *pro hac vice forthcoming*

801 Garden Street, Suite 301

Santa Barbara, CA 93101

Telephone: (805) 456-1496

Fax: (805) 456-1497

Email: achase@kellerrohrback.com

***Attorneys for Plaintiff and the Proposed
Classes***