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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

CARLOS O. CABALLERO DDS, MS, PS,
d/b/a Master Orthodontics, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

MASSACHUSETTS BAY INSURANCE
COMPANY,

Defendant.

No.

COMPLAINT—CLASS ACTION

JURY DEMAND

I. INTRODUCTION

Plaintiff Carlos O. Caballero DDS, MS, PS d/b/a Master Orthodontics (“Plaintiff” or “Caballero”), 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 Massachusetts Bay Insurance Company (“Defendant” or “MBIC”) 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. This Court has personal jurisdiction over Defendant because Defendant registered
9 to do business in Washington, has sufficient minimum contacts with Washington, and otherwise
10 intentionally avails itself of the markets within Washington through its business activities, such
11 that the exercise of jurisdiction by this Court is proper. Moreover, the claims of Plaintiff and all
12 of the Washington subclass members in this case arise out of and directly relate to Defendant’s
13 contacts with Washington.

14
15 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because the
16 Court has personal jurisdiction over Defendant, a substantial portion the alleged wrongdoing
17 occurred in this District and the state of Washington, and Defendant has sufficient contacts with
18 this District and the state of Washington.

19
20 4. Venue is proper in the Western District of Washington pursuant to 28 U.S.C.
21 §1391(b)(2) because a substantial part of the events or omissions giving rise to the claims at
22 issue in this Complaint arose in this District. Plaintiff’s places of business are located in
23 Bremerton, Washington, Kitsap County; Port Orchard, Washington, Kitsap County; and Gig
24 Harbor, Washington, Kitsap County. This action is therefore appropriately filed in the Tacoma
25 Division because a substantial portion of the events giving rise to this lawsuit arose in Kitsap
26 County.

III. PARTIES

1
2 5. Plaintiff Carlos O. Caballero DDS, MS, PS d/b/a Master Orthodontics, owns and
3 operates an orthodontics practice in three locations, 55 NE Fairgrounds Rd., #100 and #102,
4 Bremerton, Washington, 1890 Pottery Ave., Port Orchard, WA 98366, and 4700 Point Fosdick
5 Dr. NW, #204, Gig Harbor, WA 98335.

6
7 6. Defendant Massachusetts Bay Insurance Company is an insurance carrier
8 incorporated in New Hampshire and Massachusetts and whose headquarters are located in
9 Worcester, Massachusetts.

10 7. Defendant MBIC is authorized to write, sell, and issue business insurance policies
11 in all fifty states and the District of Columbia. MBIC conducted business within these states by
12 selling and issuing business insurance policies to policyholders, including Caballero.

13
14 **IV. NATURE OF THE CASE**

15 8. Plaintiff Caballero provides orthodontics services.

16 9. Due to COVID-19 and proclamations and orders by Washington Governor Jay
17 Inslee and/or other civil authorities, Plaintiff was forced to suspend or dramatically limit its
18 orthodontics practice.

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

22 11. MBIC issued one or more insurance policies to Plaintiff, including a
23 Businessowners Insurance Policy and related endorsements, insuring Plaintiff's property and
24 business practice and other coverages at all relevant times.
25
26

1 12. Plaintiff's business property includes property owned and/or leased by Plaintiff
2 and used for general business purposes for the specific purpose of providing orthodontics
3 services and other related business activities.

4 13. MBIC Businessowners Coverage promises to pay Plaintiff for risks of "direct
5 physical loss of or damage to" to covered property and includes coverage for risks for "loss of or
6 damage to" covered property.

7 14. MBIC's Businessowners Coverage Form provides Plaintiff with Business Income
8 Coverage, Extra Expense Coverage, Extended Business Income Coverage, Civil Authority
9 Coverage, and Denial of Access to Premises Coverage.

10 15. Plaintiff paid all premiums for the coverage when due.

11 16. On or about January 2020, the United States of America saw its first cases of
12 persons infected by COVID-19, which has been designated a worldwide pandemic.
13

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

20 18. On March 19, 2020, Governor Inslee issued Proclamation 20-24, "Restrictions on
21 Non Urgent Medical Procedures." The proclamation provides, in part:

22 WHEREAS, the health care person protective equipment supply chain in Washington
23 State has been severely disrupted by the significant increased use of such equipment
24 worldwide, such that there are now critical shortages of this equipment for health care
25 workers. To curtail the spread of the COVID-19 pandemic in Washington State and to
26 protect our health care workers as they 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,

1 procedures and surgeries that require personal protective equipment, which if delayed,
2 are not anticipated to cause harm to the patient within the next three months[.]

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

9 20. Governor Inslee has extended Proclamation until May 31, 2020.

10 21. By order of Governor Inslee, orthodontists including Plaintiff were prohibited
11 from providing services but for urgent and emergency procedures.
12

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

14 23. Plaintiff’s property has sustained direct physical loss and/or damages related to
15 COVID-19 and/or the proclamations and orders.

16 24. Plaintiff’s property will continue to sustain direct physical loss or damage covered
17 by the MBIC policy or policies, including but not limited to business interruption, extra expense,
18 extended business interruption, interruption by civil authority, denial of access to premises, and
19 other expenses.
20

21 25. Plaintiff’s property cannot be used for its intended purposes.

22 26. As a result of the above, Plaintiff has experienced and will experience loss
23 covered by the MBIC policy or policies.
24

25 27. Upon information and belief, MBIC intends to deny Caballero’s claim, and MBIC
26 has denied, and will deny coverage for other similarly situated policyholders.

1 premises related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil
2 authorities.

3 E. ***Extra Expense Breach of Contract Class:*** All persons and entities in the
4 United States insured under a MBIC policy with Extra Expense coverage who incurred
5 expenses while seeking to minimize losses from the suspension of business at the covered
6 premises in connection with COVID-19 and/or orders issued by Governor Inslee, other
7 Governors, and/or other civil authorities and whose Extra Expense claim was denied by
8 MBIC.
9

10 F. ***Extra Expense Breach of Contract Washington Subclass:*** All persons
11 and entities in the State of Washington insured under a MBIC policy with Extra Expense
12 coverage who incurred expenses while seeking to minimize losses from the suspension of
13 business at the covered premises in connection with COVID-19 and/or orders issued by
14 Governor Inslee, and/or other civil authorities and whose Extra Expense claim was
15 denied by MBIC.
16

17 G. ***Extra Expense Declaratory Relief Class:*** All persons and entities in the
18 United States insured under a MBIC policy with Extra Expense coverage who incurred
19 expenses while seeking to minimize losses from the suspension of their business at the
20 covered premises in connection with COVID-19 and/or orders issued by Governor Inslee,
21 other Governors, and/or other civil authorities.
22

23 H. ***Extra Expense Declaratory Relief Washington Subclass:*** All persons and
24 entities in the State of Washington insured under a MBIC policy with Extra Expense
25 coverage who incurred expenses while seeking to minimize losses from the suspension of
26

1 their business at the covered premises in connection with COVID-19 and/or orders issued
2 by Governor Inslee, and/or other civil authorities.

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

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

15 K. ***Extended Business Income Declaratory Relief Class:*** All persons and
16 entities in the United States insured under a MBIC policy with Extended Business
17 Income coverage who suffered a suspension of their business at the covered premises due
18 to COVID-19 related to COVID-19 and/or orders issued by Governor Inslee, other
19 Governors, and/or other civil authorities.
20

21 L. ***Extended Business Income Declaratory Relief Washington Subclass:*** All
22 persons and entities in the State of Washington insured under a MBIC policy with
23 Extended Business Income coverage who suffered a suspension of their business at the
24 covered premises due to COVID-19 related to COVID-19 and/or orders issued by
25 Governor Inslee, and/or other civil authorities.
26

1 M. **Civil Authority Breach of Contract Class:** All persons and entities in the
2 United States insured under a MBIC policy with Civil Authority coverage who suffered a
3 loss of business income and/or extra expense related to the impact of COVID-19 and/or
4 orders issued by Governor Inslee, other Governors, and/or other civil authorities and
5 whose Civil Authority claim was denied by MBIC.
6

7 N. **Civil Authority Breach of Contract Washington Subclass:** All persons
8 and entities in the State of Washington insured under a MBIC policy with Civil Authority
9 coverage who suffered a loss of business income and/or extra expense related to the
10 impact of COVID-19 and/or orders issued by Governor Inslee, and/or other civil
11 authorities and whose Civil Authority claim was denied by MBIC.
12

13 O. **Civil Authority Declaratory Relief Class:** All persons and entities in the
14 United States insured under a MBIC policy with Civil Authority coverage who suffered a
15 loss of business income and/or extra expense related to COVID-19 and/or orders issued
16 by Governor Inslee, other Governors, and/or other civil authorities.
17

18 P. **Civil Authority Declaratory Relief Washington Subclass:** All persons and
19 entities in the State of Washington insured under a MBIC policy with Civil Authority
20 coverage who suffered a loss of business income and/or extra expense related to the
21 impact of COVID-19 19 and/or orders issued by Governor Inslee, and/or other civil
22 authorities.
23

24 Q. **Denial of Access to Premises Breach of Contract Relief Class:** All
25 persons and entities in the United States insured under a MBIC policy with Denial of
26 Access to Premises coverage who suffered a loss of business income and/or extra
expense related to the impact of COVID-19 and/or orders issued by Governor Inslee,

1 other Governors, and/or other civil authorities and whose Denial of Access to Premises
2 claim was denied by MBIC.

3 R. ***Denial of Access to Premises Breach of Contract Washington Subclass:***

4 All persons and entities in the state of Washington insured under a MBIC policy with
5 Denial of Access to Premises coverage who suffered a loss of business income and/or
6 extra expense related to the impact of COVID-19 and/or orders issued by Governor
7 Inslee, other Governors, and/or other civil authorities and whose Denial of Access to
8 Premises claim was denied by MBIC.

9
10 S. ***Denial of Access to Premises Declaratory Relief Class:*** All persons and
11 entities in the United States insured under a MBIC policy with Denial of Access to
12 Premises coverage who suffered a loss of business income and/or extra expense related to
13 the impact of COVID-19 and/or orders issued by Governor Inslee, other Governors,
14 and/or other civil authorities.

15
16 T. ***Denial of Access to Premises Declaratory Relief Washington Subclass:***

17 All persons and entities in the state of Washington insured under a MBIC policy with
18 Denial of Access to Premises coverage who suffered a loss of business income and/or
19 extra expense related to the impact of COVID-19 and/or orders issued by Governor
20 Inslee, other Governors, and/or other civil authorities.

21
22 30. Excluded from the Classes and Subclasses are Defendant's officers, directors, and
23 employees; the judicial officers and associated court staff assigned to this case; and the
24 immediate family members of such officers and staff. Plaintiff reserves the right to amend the
25 Class definition based on information obtained in discovery.
26

1 31. This action may properly be maintained on behalf of each proposed Class under
2 the criteria of Rule 23 of the Federal Rules of Civil Procedure.

3 32. **Numerosity:** The members of the Class are so numerous that joinder of all
4 members would be impractical. Plaintiff is informed and believes that the proposed Class and
5 Subclass contains hundreds of members. The precise number of class members can be
6 ascertained through discovery, which will include Defendant's records of policyholders.
7

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

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

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

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

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

22 E. Whether Extended Business Income coverage in MBIC's policies of
23 insurance applies to a suspension of business relating to COVID-19 and/or orders issued
24 by Governor Inslee, other Governors, and/or civil authorities;
25
26

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

4 G. Whether Denial of Access to Premises coverage in MBIC's policies of
5 insurance applies to a suspension of business relating to COVID-19 and/or orders issued
6 by Governor Inslee, other Governors, and/or civil authorities;

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

11 I. Whether, because of Defendant's conduct, Plaintiff and the class members
12 have suffered damages; and if so, the appropriate amount thereof; and
13

14 J. Whether, because of Defendant's conduct, Plaintiff and the class members
15 are entitled to equitable and declaratory relief, and if so, the nature of such relief.
16

17 34. **Typicality:** Plaintiff's claims are typical of the claims of the members of the
18 classes. Plaintiff and all the members of the classes have been injured by the same wrongful
19 practices of MBIC. Plaintiff's claims arise from the same practices and course of conduct that
20 give rise to the claims of the members of the Class and are based on the same legal theories.
21

22 35. **Adequacy:** Plaintiff will fully and adequately assert and protect the interests of
23 the classes and has retained class counsel who are experienced and qualified in prosecuting class
24 actions. Neither Plaintiff nor its attorneys have any interests contrary to or in conflict with the
25 Class.
26

1 45. Plaintiff brings this cause of action on behalf of the Business Income Coverage
2 Breach of Contract Class, Business Income Coverage Breach of Contract Washington Subclass,
3 Extended Business Income Breach of Contract Class, Extended Business Income Breach of
4 Contract Washington Subclass, Civil Authority Breach of Contract Class, Civil Authority Breach
5 of Contract Washington Subclass, Extra Expense Breach of Contract Class, Extra Expense
6 Breach of Contract Washington Subclass, Denial of Access to Premises Breach of Contract
7 Class, and Denial of Access to Premises Breach of Contract Washington Subclass.
8

9 46. The Policy is a contract under which Plaintiff and the class paid premiums to
10 MBIC in exchange for MBIC's promise to pay Plaintiff and the class for all claims covered by
11 the Policy.
12

13 47. Plaintiff has paid its insurance premiums.
14

15 48. Upon information and belief, MBIC has denied, and will continue to deny
16 coverage for other similarly situated policyholders.
17

18 49. Denying coverage for the claim is a breach of the insurance contract.
19

20 50. Plaintiff is harmed by the breach of the insurance contract by MBIC.
21

22 VII. PRAYER

23 1. A declaratory judgment that the policy or policies cover Plaintiff's losses and
24 expenses resulting from the interruption of Plaintiff's business related to COVID-19 and/or
25 orders issued by Governor Inslee, other Governors, and/or other authorities.
26

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

3. Damages.

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

- 1 5. Reasonable attorney fees and costs.
2 6. Such further and other relief as the Court shall deem appropriate.

3 **VIII. JURY DEMAND**

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

5 DATED this 8th day of May, 2020.

6 KELLER ROHRBACK L.L.P.

7
8 By: s/ Amy Williams-Derry

9 By: s/ Lynn L. Sarko

10 By: s/ Gretchen Freeman Cappio

11 By: s/ Irene M. Hecht

12 By: s/ Ian S. Birk

13 By: s/ Maureen Falecki

14 By: s/ Nathan Nanfelt

Amy Williams-Derry, WSBA #28711

Lynn L. Sarko, WSBA #16569

Gretchen Freeman Cappio, WSBA #29576

Irene M. Hecht, WSBA #11063

Ian S. Birk, WSBA #31431

Maureen Falecki, WSBA #18569

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21 By: s/ Alison Chase (Pro hac applic. to be filed)

22 Alison Chase, CA Bar #226976

801 Garden Street, Suite 301

23 Santa Barbara, CA 93101

Email: achase@kellerrohrback.com

24 Telephone: (805) 456-1496

Fax: (805) 456-1497

25 *Attorneys for Plaintiff*

26 4820-7486-9179, v. 2

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

CARLOS O. CABALLERO DDS, MS, PS, d/b/a Master Orthodontics, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Kitsap 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

MASSACHUSETTS BAY INSURANCE COMPANY

County of Residence of First Listed Defendant Hillsborough 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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, 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)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes sub-sections like PERSONAL INJURY, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, 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 (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 DOCKET NUMBER

DATE 05/08/2020 SIGNATURE OF ATTORNEY OF RECORD s/ Amy Williams-Derry

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.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Washington

CARLOS O. CABALLERO DDS, MS, PS d/b/a
Master Orthodontics, individually and on behalf of all
others similarly situated,

Plaintiff(s)

v.

MASSACHUSETTS BAY INSURANCE COMPANY,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) MASSACHUSETTS BAY INSURANCE COMPANY
ONE EXECUTIVE PARK DRIVE
SUITE 200
BEDFORD, NH 03012

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are:

Amy Williams-Derry, Lynn L. Sarko, Gretchen Freeman Cappio,
Irene M. Hecht, Ian S. Birk, Maureen Falecki, Nathan Nanfelt
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: