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2  
3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

5 WEIMAC LLC, a Washington limited liability  
6 company; BIG FOOD, INC., a Washington  
7 corporation d/b/a The Ballroom; CHINA WEST  
8 LTD., a Washington corporation d/b/a Talarico's  
9 Pizzeria & Lounge; CHINESE TAKEOUT, LLC,  
10 a Washington limited liability company, d/b/a  
11 Beer Star; JWD4 DESIGN, LLC, a Washington  
12 limited liability company d/b/a Bastille;  
13 POQUITOS, LLC, a Washington limited liability  
14 company d/b/a Poquitos Seattle; PQ2, LLC, a  
15 Washington limited liability company d/b/a  
16 Poquitos Bothell; RHLV, LLC, a Washington  
17 limited liability company d/b/a Rhein Haus  
18 Leavenworth; RHTA, LLC, a Washington limited  
19 liability company d/b/a Rhein Haus Tacoma;  
20 SCOTCH BAR, LLC, a Washington limited  
21 liability company d/b/a MacLeod's Fish & Chips;  
22 SEAPLANE, LLC, a Washington limited liability  
23 company d/b/a Seaplane Kitchen & Bar; VT2,  
LLC, a Washington limited liability company  
d/b/a Rhein Haus Seattle; VT3, LLC, a  
Washington limited liability company d/b/a  
Rhein Haus Denver; WWD3, LLC, a Washington  
limited liability company d/b/a Stoneburner;  
DGBT, LLC, a Washington limited liability  
company d/b/a Beer Star Tacoma; ALPEN ROSE  
INN, LLC, a Washington limited liability  
company d/b/a Blue Elk Inn; and JLW, LLC, a  
Washington limited liability company,

Plaintiffs,

v.

FIREMAN'S FUND INSURANCE COMPANY,

Defendant.

Case Number:

**COMPLAINT FOR DECLARATORY  
JUDGMENT, BREACH OF  
CONTRACT, VIOLATION OF THE  
INSURANCE FAIR CONDUCT ACT,  
VIOLATION OF THE CONSUMER  
PROTECTION ACT, AND  
COMMON LAW BAD FAITH**

**JURY DEMAND**

1 COME NOW the Plaintiffs and allege as follows:

2 **I. PARTIES**

3 1. Weimac, LLC, (Weimac) is a Washington limited liability company in good  
4 standing with the state of Washington, located in King County, Washington, and is a named  
5 insured under the insurance policies.

6 2. Big Food, Inc., d/b/a “The Ballroom” is a Washington corporation in good  
7 standing with the state of Washington, located in King County, Washington, and is a named  
8 insured under the insurance policies.

9 3. China West Ltd. d/b/a “Talarico’s Pizzeria & Lounge” is a Washington  
10 corporation located in King County, Washington, and is a named insured under the insurance  
11 policies.

12 4. Chinese Takeout, LLC, d/b/a “Beer Star” is a Washington limited liability  
13 company in good standing with the state of Washington, located in King County, Washington,  
14 and is a named insured under the insurance policies.

15 5. JWD4 Design, LLC, d/b/a “Bastille” is a is a Washington limited liability  
16 company in good standing with the state of Washington, located in King County, Washington,  
17 and is a named insured under the insurance policies.

18 6. Poquitos, LLC, d/b/a “Poquitos Seattle” is a is a Washington limited liability  
19 company in good standing with the state of Washington, located in King County, Washington,  
20 and is a named insured under the insurance policies.

21 7. PQ2, LLC, d/b/a “Poquitos Bothell” is a is a Washington limited liability  
22 company in good standing with the state of Washington, located in King County, Washington,  
23 and is a named insured under the insurance policies.

1           8.       RHLV, LLC, d/b/a “Rhein Haus Leavenworth” is a is a Washington limited  
2 liability company in good standing with the state of Washington, located in Chelan County,  
3 Washington, and is a named insured under the insurance policies.

4           9.       RHTA, LLC, d/b/a “Rhein Haus Tacoma” is a is a Washington limited liability  
5 company in good standing with the state of Washington, located in Pierce County, Washington,  
6 and is a named insured under the insurance policies.

7           10.      Scotch Bar, LLC, d/b/a “MacLeod’s Fish & Chips” is a is a Washington limited  
8 liability company in good standing with the state of Washington, located in King County,  
9 Washington, and is a named insured under the insurance policies.

10          11.      SeaPlane, LLC, d/b/a “Seaplane Kitchen & Bar” is a is a Washington limited  
11 liability company in good standing with the state of Washington, located in King County,  
12 Washington, and is a named insured under the insurance policies.

13          12.      VT2, LLC, d/b/a “Rhein Haus Seattle” is a is a Washington limited liability  
14 company in good standing with the state of Washington, located in King County, Washington,  
15 and is a named insured under the insurance policies.

16          13.      VT3, LLC, d/b/a “Rhein Haus Denver” is a Washington limited liability  
17 company in good standing with the state of Washington, and is a named insured under the  
18 insurance policies.

19          14.      WWD3, LLC, d/b/a “Stoneburner” is a is a Washington limited liability  
20 company in good standing with the state of Washington, located in King County, Washington,  
21 and is a named insured under the insurance policies.

1 15. DGPT, LLC, d/b/a “Beer Star Tacoma” is a is a Washington limited liability  
2 company in good standing with the state of Washington, located in Pierce County, Washington,  
3 and is a named insured under the insurance policies.

4 16. Alpen Rose Inn, LLC, d/b/a Blue Elk Inn is a Washington limited liability  
5 company in good standing with the state of Washington, located in Chelan County, Washington,  
6 and is a named insured under the insurance policies.

7 17. JLW, LLC is a Washington corporation in good standing with the state of  
8 Washington, located in King County, Washington, and is a named insured under the insurance  
9 policies.

10 18. Defendant Fireman’s Fund Insurance Company (“Fireman’s Fund”) is an  
11 insurance company organized according to the laws of the state of California and conducts  
12 business in the state of Washington. Fireman’s Fund issued the insurance policy number  
13 USC009830190 to Weimac with a policy period of November 14, 2019 to November 14, 2020  
14 (“the Policy”).

15 **II. JURISDICTION AND VENUE**

16 19. This Court has jurisdiction of the subject matter of this action and over the  
17 parties and is the proper venue for this action.

18 20. This Court has personal jurisdiction over Defendant because Defendant is  
19 registered to do business in Washington, has sufficient minimum contacts in Washington, and  
20 otherwise intentionally avails itself of the markets within Washington through its business  
21 activities, such that the exercise of jurisdiction by this Court is proper. Moreover, the claims of  
22 Plaintiff and all of the entities managed by Weimac in this case arise out of and directly relate  
23

1 to Defendant’s contacts with Washington which is the location where the policy was sold to  
2 Weimac to cover all the Plaintiffs.

3 21. Pursuant to 28 U.S.C. § 1332(a), “[t]he district courts shall have original  
4 jurisdiction of all civil actions where the matter in controversy exceeds the sum value of  
5 \$75,000, exclusive of interest and costs, and is between...citizens of different States.”  
6 Additionally, there are Washington State questions of law, and supplemental jurisdiction  
7 through 28 U.S.C. § 1367. This claim is in excess of \$5,000,000.

8 22. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) and (3)  
9 because the Court has personal jurisdiction over Defendant, a substantial portion of the alleged  
10 wrongdoing occurred in this District and the state of Washington, and Defendant has sufficient  
11 contacts with this District and the state of Washington. Furthermore, the vast majority of  
12 Plaintiffs which operate under and through Weimac are located in Washington. This action is  
13 therefore appropriately filed in the Seattle Division because a substantial portion of the events  
14 giving rise to this lawsuit arose in King County.

15 **III. FACTS**

16 23. Plaintiffs, (collectively referred to as “Weimac” or “Plaintiffs”) own and operate  
17 several well-known and profitable dining and entertaining establishments. These  
18 establishments are comprised of a functioning system of real and personal property, methods,  
19 tools, personnel and products which operate cohesively to generate revenue. After suffering  
20 deprivation of, restricted access to, and/or limited functionality of property due to compliance  
21 with proclamations designed to prevent the spread of COVID-19, Weimac looked to its  
22 commercial property insurer, Fireman’s Fund Insurance Company (“Fireman’s Fund”) for  
23 payment of policy benefits, including but not limited to business income loss. In response,

1 Fireman’s Fund failed to reasonably investigate Weimac’s claim, denied Weimac’s claim  
2 through a template denial letter addressed to an insured who is a stranger to the insurance  
3 contract between Weimac and Fireman’s Fund, and wrongfully denied Weimac’s claim by  
4 misstating policy coverage and facts both publicly available and specifically communicated to  
5 Fireman’s Fund. Additionally, Fireman’s Fund sought additional time to investigate the matter  
6 when its position of denial was outcome determinative.

7 24. Weimac provided Fireman’s Fund, statutory notice pursuant to RCW 48.30.015  
8 of its intent to bring this lawsuit unless the basis for Weimac’s claim was promptly and  
9 reasonably resolved. Fireman’s Fund responded by doubling down, and again misstating policy  
10 coverage and facts surrounding Weimac’s claim. This notice was also sent to the Washington  
11 State Insurance Commissioner and at least twenty days elapsed.

12 **A. The Policy**

13 25. Fireman’s Fund Policy No. USC 009830190 (“The Policy”) is an “all-risk”  
14 policy, “providing coverage for all risks unless the specific risk is excluded” and shifts “the risk  
15 of loss away from [the insured]” and “place[s] it upon the insurer.” *Vision One, LLC v.*  
16 *Philadelphia Indem. Ins. Co.*, 174 Wn.2d 501, 514, 276 P.3d 300, 306 (2012).

17 26. The Policy contains coverage forms which create coverage for the losses  
18 experienced by Weimac. The following forms create coverage for Weimac for the losses  
19 outlined below:

- 20 • Property-Gard Pinnacle Coverage Form 25000) 01 03 – Business Income and Extra  
21 Expense Coverage (“Form 2500000”); and
- 22 • Property-Gard Pinnacle – Washington State Exception Endorsement Form 250115  
23 01 13 (“WA Endorsement”).

1 Coverage exists under Section II., Business Income and Extra Expense, Section A of Form  
2 250000, for the losses suffered by Weimac. Section II.A. provides: “We will pay for the actual  
3 loss of **business income** and necessary **extra expense** you sustain due to the necessary  
4 **suspension of your operations** during the **period of restoration** arising from direct physical  
5 loss of or damage to property at a **location**, or within 1,000 feet of such **location**, caused by or  
6 resulting from a **covered cause of loss**<sup>1</sup>.”

7 27. The following relevant definitions are found in Section XIV of Form 250000 to  
8 assist in determining if coverage under Section II. A., is limited:

- 9 • “**Covered cause of loss** means risks of *direct physical loss or damage* not excluded or  
10 limited in this Coverage Form. (emphasis added).” (Section XIV.A.13).
- 11 • “**Location** means the legal boundaries of a parcel of property at the address described  
12 in the Declarations...” (Section XIV.A.33).
- 13 • “**Period of restoration** means the period of time that begins immediately after the time  
14 of direct physical loss or damage caused by or resulting from a **covered cause of loss**  
15 to property at the **location** and ends on the earlier of: (1) the date when such property at  
16 the **location** should be repaired, rebuilt or replaced with reasonable speed and like kind  
17 and quality; or (2) The date when business is resumed at a new permanent location.”  
18 (Section XIV.A.50.).

19 28. Based on the definition of **covered cause of loss**, the policy covers the risk of  
20 loss of Weimac property that Weimac suffered in order to comply with the above referenced  
21 proclamations. Furthermore, because of the circular and redundant use of “**covered cause of**  
22 **loss**” and “direct physical loss” with respect to causation requirements in Section II.A., and  
23 Section XIV.A.50, the policy is vague and ambiguous with respect to Business Income and  
Extra Expense coverage limitations.

24 29. The Policy does not define the term “direct physical loss.” When terms are  
undefined, Washington requires courts to use their “plain, ordinary, and popular” meaning,

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<sup>1</sup> Terms in bold are defined by the Definitions section of the Policy.

1 which means they must be interpreted as they would be understood by the average lay person.  
2 *Boeing Co. v. Aetna Cas. & Sur. Co.*, 113 Wn.2d 869, 876, 784 P.2d 507 (1990). Insurance  
3 provisions must be interpreted liberally to provide coverage whenever possible. *Bordeaux, Inc.,*  
4 *v. Am. Safety Ins. Co.*, 145 Wn. App. 687, 694, 186 P.3d 1188 (2008). Insurance policies are  
5 construed in favor of coverage because “the purpose of insurance is to insure.” *Phil Schroeder,*  
6 *Inc v Royal Globe Ins. Co.*, 99 Wn.2d 65, 68, 659 P.2d 509 (1983). If a term in a policy is  
7 ambiguous, the policyholder’s reasonable interpretation of the policy must be accepted. *Holden*  
8 *v. Farmers Insurance Co of Washington*, 169 Wn.2d 750, 760, 239 P.3d 344 (2010). Dictionary  
9 definitions of “loss” include: “destruction,” “ruin,” or “deprivation.” Even the term “damage”  
10 is not limited to the physical alteration of property but includes any reduction in its value as  
11 well as functionality.

12 30. Because the term “direct physical loss” is not defined by the Policy, it is not  
13 limited to physical damage, but includes deprivation, loss of functionality, or restricted access  
14 to said property.

15 31. The Policy also contains “Extensions of Coverage” forms which create  
16 coverage for Weimac’s losses. Under Section V.E., the Policy provides extensions applicable  
17 to Business Income and Extra Expense under Form 250000 of the Policy: Civil Authority  
18 Coverage; and Dependent Property Coverage.

19 32. Under Section V.E.2. Civil Authority Coverage, Weimac is insured against the  
20 “actual loss of **business income** and necessary **extra expense**” sustained “due to the necessary  
21 **suspension of operations** caused by action of civil authority that prohibits access to a  
22 **location.**” According to Section V.E.2., the “prohibition of access to such location by a civil  
23 authority must: (1) arise from direct physical loss or damage to property other than at such



1 location; (2) be caused by or result from a **covered cause of loss**; and (3) occur within the  
2 number of miles stated in the Declarations from such **location**.” Weimac has sustained loss of  
3 business income due to the necessary suspension of operations caused by action of civil  
4 authority that prohibits access to locations. Again, the term “direct physical loss” is not defined  
5 by the Policy. Further, because of the circular and redundant use of the term “direct physical  
6 loss” with respect to causation requirements in Section V.E.2., and Section XIV.A.13, the  
7 policy is vague and ambiguous with respect to Civil Authority Coverage limitations.

8 33. Under Section V.E.4. Dependent Property Coverage, Weimac is insured against  
9 the “actual loss of **business income** and necessary **extra expense**” sustained “due to the  
10 necessary **suspension of operations** during the **period of restoration** at a **location**. The  
11 suspension must be due to direct physical loss or damage at the **location** of a **dependent**  
12 **property**, situated inside or outside of the Coverage Territory, caused by or resulting from a  
13 **covered cause of loss**.” The following relevant definitions are found in Section XIV of Form  
14 250000 to assist in determining if coverage under Section V.E.4., is limited:

- 15 • **Dependent property** means property operated by others upon whom you depend to: (a)  
16 deliver materials or services to you or to others for your account other than **utility**  
17 **services** (Contributing Locations); (b) Accept your products or services (Recipient  
18 Locations); (c) Manufacture products for delivery to your customers under contract of  
19 sale (Manufacturing Locations); and (d) Attract customers to your business (Leader  
Locations).
- **Location** means the legal boundaries of a parcel of property at the address described in  
the Declarations.

20 Based on the definition of **covered cause of loss**, **dependent property**, and **location**, the losses  
21 Weimac suffered, due to direct physical loss at **dependent property** operated by others whom  
22 Weimac depended, are covered. Again, the term “direct physical loss” is not defined by the  
23 Policy. Further, because of the circular and redundant use of the term “direct physical loss”

1 with respect to causation requirements in Section V.E.4., and Section XIV.A.13, the policy is  
2 vague and ambiguous with respect to Dependent Property Coverage limitations.

3 **B. COVID-19**

4 34. According to the United States Centers for Disease Control (“CDC”), COVID-  
5 19 is caused by the virus severe acute respiratory syndrome coronavirus 2 (“SARS-CoV-2”), a  
6 new virus in humans causing respiratory illness which can be spread from person-to-person.  
7 SARS-CoV-2 is primarily spread through exposure to respiratory droplets carrying the  
8 infectious virus. These droplets are released when someone with COVID-19 sneezes, coughs,  
9 or talks. Infectious droplets can land in the mouths or noses of people who are nearby or  
10 possibly be inhaled into the lungs. Respiratory droplets can land on hands, objects or surfaces  
11 around the person when they cough or talk, and people can then become infected with SARS-  
12 CoV-2 from touching hands, objects or surfaces with droplets and then touching their eyes,  
13 nose or mouth.

14 35. Due to the highly infectious nature of SARS-CoV-2, the severity of the  
15 symptoms of COVID-19 and the rate of incidence of hospitalization and death, governments,  
16 private entities and individuals worldwide have taken necessary steps to reduce the spread of  
17 the SARS-CoV-2 and the proliferation of COVID-19.

18 36. Plaintiffs are not alleging that SARS-CoV-2 has contaminated Weimac  
19 properties. Plaintiffs are alleging that compliance with proclamations and/or orders resulting in  
20 deprivation of, restricted access to and/or loss of functionality of covered property constitutes  
21 direct physical loss to property covered by the Policy.

22 **C. States of Emergency and Closure Orders**

23 **1. Nation and World**

1           37.     In January 2020, the United States of America saw its first cases of persons  
2 infected by SARS-CoV-2 and sick with COVID-19.    On January 31, 2020, the United States  
3 Department of Health and Human Services declared a public health emergency for COVID-19  
4 beginning January 27, 2020. On March 11, 2020, the World Health Organization declared that  
5 the emerging threat from the SARS-CoV-2 constituted a global pandemic.

6           38.     On March 13, 2020, the President of the United States declared the COVID-19  
7 outbreak a national emergency.

8                           **2. State of Washington**

9           39.     On February 29, 2020, Washington Governor Jay Inslee issued Proclamation  
10 20-5, declaring a State of Emergency for all counties in the state of Washington as a result of  
11 COVID-19. Thereafter, he issued a series of certain proclamations and orders affecting many  
12 persons and businesses in Washington, whether infected with SARS-CoV-2 or not, requiring  
13 certain public health precautions. These proclamations and orders recognized that COVID-19  
14 is a “respiratory disease that can result in serious illness or death” and “a public disaster that  
15 affects life, health, property or the public peace.” Proclamation 20-5 stated the Washington  
16 State Department of Health confirmed localized person-to-person spread of SARS-CoV-2 in  
17 Washington State, “significantly increasing the risk of exposure and infection to Washington  
18 State’s general public and creating an extreme public health risk that may spread quickly[.]”

19           40.     On March 11, 2020, Governor Inslee issued Proclamation 20-07, which  
20 prohibited gatherings in King County of 250 people or more for social, spiritual, or recreational  
21 activities. This Proclamation confirmed “significant community spread” of SARS-CoV-2 in  
22 King County, and that COVID-19 “remains a public disaster affecting life, health, property and  
23 the public peace[.]”

1 41. On March 13, 2020, Governor Inslee issued Proclamation 20-11, which  
2 extended Proclamation 20-07 to prohibit gatherings of 250 or more people statewide until  
3 March 31, 2020.

4 42. On March 16, 2020, Governor Inslee issued Proclamation 20-13, prohibiting (1)  
5 any number of people from gathering in any public venue in which people congregate for  
6 purposes of food and beverage service, including all public venues in which the serving,  
7 provision, or consumption of prepared food or beverages occurs at a table, bar, or for  
8 consumption within, and (2) onsite consumption of food or beverages in a public venue,  
9 including but not limited to restaurants, food courts, bars, coffee shops, and all other similar  
10 venues in which people congregate for the consumption of food or beverages.

11 43. On March 23, 2020, Governor Inslee issued Proclamation 20-25, the “Stay  
12 Home – Stay Healthy” order, which prohibited all people statewide from leaving their homes  
13 except to engage in essential activities. Essential activities permitted included obtaining  
14 necessary supplies and services, engaging in activities essential for health and safety, caring for  
15 another, and engaging in outdoor exercise. By order of the proclamation, on March 25, 2020  
16 all “non-essential” businesses in Washington State were ordered to cease operations except for  
17 performing basic minimum operations.

18 44. Governor Inslee issued Proclamation 20-25.1 extending Proclamation 20-25 to  
19 May 4, 2020. And on May 4, 2020, Governor Inslee extended Proclamations 20-25 and 20-25.1  
20 through May 31, 2020. Thereafter until July 2, 2020, the State of Washington allowed county  
21 by county phased reopenings and relaxed certain limitations, but did not allow restaurants to  
22 fully reopen.

1           45.     On July 2, 2020, due to increased COVID-19 infection rates across the state,  
2 Governor Inslee issued a freeze on all counties to freeze the rollback of restrictions.

3           46.     On November 15, 2020, Governor Inslee issued Proclamation 20-25.8, Rollback  
4 of County-by-County Phased Reopening Responding to a COVID-19 Outbreak Surge.  
5 Proclamation 20-25.8 recognized that SARS-CoV-2 is “spread through very small droplets  
6 called aerosols that are expelled from our mouths when we breathe, talk, sing, vocalize, cough,  
7 or sneeze, that these aerosols linger in air, and that a significant risk factor for spreading the  
8 virus is prolonged, close contact with an infected person indoors...,” and in order to “reduce  
9 the severe increases in COVID-19 cases and hospitalizations we are currently facing, and to  
10 reduce the increase in deaths from COVID-19 that likely will follow, it is necessary to  
11 immediately modify prior prohibitions and guidance.” Proclamation 20-25.8 closed indoor  
12 dine-in service for all restaurants and bars beginning November 18, 2020, imposed restrictions  
13 on outdoor dining service and allowed to-go service to be provided.

14           47.     Weimac complied with the proclamations and orders referenced above.

15                           **3. State of Colorado**

16           48.     On March 19, 2020, the Colorado Department of Public Health & Environment  
17 issued Public Health Order 20-22, which in part closed restaurants and bars to slow the spread  
18 of COVID-19. The order specifically “encouraged” affected businesses “to offer food and  
19 beverage using delivery service, window service, walk-up service, drive-through service, or  
20 drive-up service.” On March 22, 2020, Colorado Governor Jared Polis issued Executive Order  
21 D 2020 013, instructing employers in Colorado to reduce their in-person workforce by fifty  
22 percent to help prevent the spread of COVID-19.

1 49. On March 25, 2020 Governor Polis issued Executive Order D 2020 017,  
2 instructing residents of Colorado to stay at home due to the presence of COVID-19 in Colorado  
3 in order to reduce the spread of SARS-CoV-2. The order applied to businesses such as  
4 restaurants and bar take-out services. On March 27, 2020, the Colorado Department of Public  
5 Health & Environment issued Public Health Order 20-24, implementing stay at home  
6 requirements. The order authorized restaurants and bars to offer take-out and delivery services.

7 50. On April 1, 2020, the Colorado Department of Public Health & Environment  
8 issued the Third Updated Public Health Order 20-24, implementing stay at home requirements.  
9 On April 9, 2020, Order 20-24 was extended and continued to authorize restaurants and bars to  
10 offer take-out and delivery services. Restrictions varying in degree based on a county by county  
11 basis have continued for restaurants and bars through today.

12 **D. Weimac’s Covered Losses Under the Policy**

13 51. Weimac incorporates for all purposes the preceding allegations in the foregoing  
14 paragraphs.

15 52. By the orders and proclamations referenced above as well as other forthcoming  
16 proclamations and orders, Weimac and certain vendors, suppliers and customers were  
17 prohibited from engaging in conduct except according to the terms of said orders and  
18 proclamations, in order to avoid community spread of SARS-CoV-2 and the proliferation of  
19 COVID-19.

20 53. As a result of compliance with the orders and proclamations referenced above,  
21 Weimac sustained actual loss of business income and necessary extra expense covered by  
22 Section II.A. (“Business Income and Extra Expense Coverage”) of the Policy. This actual loss  
23 of business income was due to compliance with the orders and proclamations which restricted

1 movements of customers and employees, as well as the necessary suspension of Weimac's  
2 operations, which suspensions have continued completely or in part throughout the pendency  
3 of said orders and proclamations. This actual loss of business income and necessary extra  
4 expense arose from direct physical loss at Weimac's locations. Such direct physical loss  
5 includes, but is not limited to the deprivation of, limited functionality of and/or restricted access  
6 to Weimac's property by customers, employees, vendors and suppliers. The aforementioned  
7 direct physical loss was caused by or resulted from a covered cause of loss (i.e. a risk of direct  
8 physical loss or damage not excluded or limited in Form 250000).

9 54. Further, and in the alternative to the extent applicable, as a result of compliance  
10 with the orders and proclamations referenced above, Weimac sustained actual loss of business  
11 income and necessary extra expense covered by Section V.E.2. ("Civil Authority Coverage")  
12 of The Policy. These losses were due to the restricted movements of customers and employees,  
13 as well as the necessary suspension of Weimac's operations, which suspensions have continued  
14 completely or in part throughout the pendency of said orders and proclamations. This actual  
15 loss of business income and necessary extra expense was caused by action of civil authority  
16 that prohibited (and continues to prohibit) access to Weimac's locations. Such prohibition of  
17 access: (1) arises from direct physical loss or damage to property other than at Weimac's  
18 locations (e.g. compliance with proclamations and orders restricting physical movement, and  
19 deprivation of access to and limiting functionality of property); (2) is caused by or results from  
20 a covered cause of loss (i.e. risk of direct physical loss not excluded or limited in Form 250000);  
21 and (3) occurs within 1 mile of Weimac's locations.

22 55. Further, and in the alternative to the extent applicable, as a result of compliance  
23 with the orders and proclamations referenced above, Weimac sustained actual loss of business

1 income and necessary extra expense covered by Section XIV.A.13. (“Dependent Property  
2 Coverage”) of The Policy. These losses were due to the restricted movements of customers and  
3 employees, as well as the necessary suspension of Weimac’s operations, which suspensions  
4 have continued completely or in part throughout the pendency of said orders and proclamations.  
5 These suspensions were due to direct physical loss at the locations of dependent properties (i.e.  
6 vendors, suppliers, customers and/or consumers) caused by or resulting from compliance with  
7 orders and proclamations referenced above. The aforementioned direct physical losses were  
8 caused by or resulted from a covered cause of loss (i.e. a risk of direct physical loss or damage  
9 not excluded or limited in Form 250000).

10 **E. Exclusions Inapplicable**

11 56. Washington State Exception Endorsement Form 250115 01 13 (“WA  
12 Endorsement”) replaces Section IV, Exclusions, Item A and A.1. As a result, “loss or damage  
13 will be considered to have been caused by an excluded event if the occurrence of that event  
14 *directly and solely* results in loss or damage; or *initiates a sequence of events* that results in loss  
15 or damage, regardless of the nature of any intermediate or final event in that sequence (emphasis  
16 added).”

17 57. Compliance with the above proclamations or orders which resulted in restricted  
18 movement of employees and customers, deprivation of, limited functionality of or restricted  
19 access to property, and suspension of Weimac’s business is the cause of loss alleged by Weimac  
20 (“cause of loss”). This cause of loss is not an excluded event, as defined by the Policy.  
21 Furthermore, no other exclusions or limitations apply to the cause of loss alleged by Weimac.  
22  
23



1                   **F. Weimac’s Communication with Fireman’s Fund**

2           58.     On April 24, 2020, Weimac received a letter from Allianz Global Corporate &  
3 Specialty (“AGCS”) acting on behalf of Fireman’s Fund as the claims adjustment firm. AGCS  
4 denied Weimac’s claim through a template denial letter addressed to an insured who is a  
5 stranger to the insurance contract between Weimac and Fireman’s Fund, and wrongfully denied  
6 Weimac’s claim by misstating policy coverage, adding language to policy coverage resulting  
7 in denial of coverage, and misstating or mischaracterizing facts both publicly available and  
8 specifically communicated to Fireman’s Fund.

9           59.     On August 18, 2020, counsel for Weimac provided notice to AGCS and  
10 Fireman’s Fund pursuant to Revised Code of Washington 48.30.15 et al. for violations of the  
11 Insurance Fair Conduct Act (“IFCA”) and Consumer Protection Act (“CPA”), said violations  
12 arising from the wrongful denial of Weimac claims.

13           60.     On September 3, 2020, AGCS corresponded with counsel for Plaintiff and again  
14 wrongfully denied Weimac’s claim by misstating policy coverage, adding language to policy  
15 coverage resulting in denial of coverage, and misstating or mischaracterizing facts both publicly  
16 available and specifically communicated to Fireman’s Fund.

17                                   **IV. CLAIMS FOR RELIEF**

18                                   **FIRST CAUSE OF ACTION**  
19                                   **(Declaratory Judgment)**

20           61.     Weimac re-alleges and reasserts the preceding paragraphs as if fully set forth  
21 herein.

22           62.     Weimac seeks relief in the form of a declaratory judgment pursuant to the  
23 Uniform Declaratory Judgments Act, RCW 7.24.010 *et seq.*

1 63. Weimac seeks a declaratory judgment declaring that Weimac losses and  
2 expenses resulting from the interruption of their businesses are covered by the Policy issued by  
3 Fireman’s Fund to Weimac.

4 64. In the alternative, and to the extent applicable, Weimac seeks a declaratory  
5 judgment declaring that:

- 6 i. Weimac has sustained actual loss of business income and necessary extra  
7 expense covered by Section II.A. (“Business Income and Extra Expense  
8 Coverage”) of the Policy;
- 9 ii. Weimac has sustained actual loss of business income and necessary extra  
10 expense covered by Section V.E.2. (“Civil Authority Coverage”) of The  
11 Policy;
- 12 iii. Weimac has sustained actual loss of business income and necessary extra  
13 expense covered by Section XIV.A.13. (“Dependent Property Coverage”) of  
14 The Policy; and/or
- 15 iv. The cause of loss alleged by Weimac is a covered cause of loss as defined  
16 by the Policy; and/or
- 17 v. The Policy’s exclusions and/or limitations do not apply to the causes of loss  
18 or losses and expenses alleged and/or suffered by Weimac.

19 **SECOND CAUSE OF ACTION**  
20 **(Breach of Contract)**

21 65. Weimac re-alleges and reasserts the preceding paragraphs as if fully set forth  
22 herein.

23 66. The Policy is a contract under which Weimac paid premiums to Fireman’s Fund  
in exchange for Fireman’s Fund’s promise to pay Weimac for claims covered by the Policy.

1 67. Weimac has paid the insurance premiums.

2 68. Pursuant to the terms of the Policy, Fireman’s Fund agreed to pay for the actual  
3 loss of business income and necessary extra expense covered by the Policy. Defendant  
4 Fireman’s Fund has breached its contractual obligations to Weimac by failing and refusing to  
5 pay any loss of business income or necessary extra expense incurred by Weimac.

6 69. Defendant Fireman’s Fund’s breach of contract has proximately caused harm to  
7 Weimac and damages to Weimac in an amount to be determined at the time of trial.

8 **THIRD CAUSE OF ACTION**  
9 **(Violation of Insurance Fair Conduct Act (“IFCA”))**

10 70. Weimac re-alleges and reasserts the preceding paragraphs as if fully set forth  
11 herein.

12 71. Defendant Fireman’s Fund’s acts and omissions constitute multiple violations  
13 of the insurance regulatory provisions of the Washington Administrative Code (“WAC”).  
14 Specifically, defendant Fireman’s Fund has violated WAC 283-30 *et al.*; more specifically  
15 WAC 284-30-330, WAC 284-30-360, and WAC 284-30-370 (IFCA), as well as unreasonably  
16 denying payment of coverage and benefits to Weimac in violation of RCW 48.30 *et al.*, more  
17 specifically RCW 48.30.010 and RCW 48.30.015.

18 72. Defendant Fireman’s Fund breached IFCA in a number of ways including, but  
19 not limited to, failing to handle Weimac’s claims in a reasonable manner, not attempting in  
20 good faith to effectuate a prompt, fair, and equitable settlement of Weimac’s claims, and failing  
21 to treat Weimac’s interests equal with its own interests during the investigation, evaluation, and  
22 adjustment of Weimac’s claims.

23 73. Defendant Fireman’s Fund unreasonably delayed and/or denied payment of  
benefits to Weimac, when payment of those benefits clearly was reasonably warranted.

1 74. Weimac provided the required 20 day notice pursuant to IFCA. Defendant failed  
2 to reasonably respond to the IFCA complaint and otherwise failed to resolve the basis for  
3 Weimac's IFCA notice within the 20-day period specified by IFCA. Such failure to resolve  
4 and reasonably respond to said notice, as required by RCW 48.30.015 constitute violations of  
5 IFCA.

6 75. Defendant's breaches of IFCA proximately caused harm and resulted in actual  
7 damages to Weimac. In addition, Weimac have sustained additional damages for their  
8 attorney's fees and costs as a result of the wrongful and unreasonable acts of defendant  
9 Fireman's Fund. Accordingly, Weimac are entitled to recovery of these sums under RCW  
10 48.30.015(1).

11 76. Having acted unreasonably in handling Weimac's claims, and having violated  
12 WAC 284-30-330, WAC 284-30-360, WAC 284-30-370, RCW 48.30.010, and RCW  
13 48.30.015, amongst other applicable laws, Weimac is entitled to treble damages under RCW  
14 48.30*et seq.* and RCW 19.86 *et seq.*

15 **FOURTH CAUSE OF ACTION**  
16 **(Violation of the Consumer Protection Act ("CPA"))**

17 77. Weimac re-alleges and reasserts the preceding paragraphs as if fully set forth  
18 herein.

19 78. Defendant Fireman's Fund's violations of the Washington Administrative Code  
20 and other unreasonable actions, as alleged herein, harmed Weimac and constitute per se  
21 violations of RCW 19.86 *et seq.*, the CPA.

22 79. Defendant Fireman's Fund's bad faith and unreasonable claims handling  
23 conduct, as alleged herein, also constitute violations of RCW 19.86 *et seq.*, the CPA.

1 80. Defendant's breaches of CPA proximately caused harm and resulted in actual  
2 damages to Weimac. In addition, Weimac have sustained additional damages for their  
3 attorney's fees and costs as a result of the wrongful and unreasonable acts of defendant  
4 Fireman's Fund.

5 **FIFTH CAUSE OF ACTION**  
6 **(Common Law Bad Faith)**

7 81. Weimac re-alleges and reasserts the preceding paragraphs as if fully set forth  
8 herein.

9 82. Defendant Fireman's Fund had a duty to act in good faith in the investigation  
10 and adjustment of Weimac's claims.

11 83. Defendant Fireman's Fund also had a duty to treat Weimac's interests equal with  
12 its own during the investigation and adjustment of Weimac's claims.

13 84. Defendant Fireman's Fund's acts and omissions, as described above, constitute  
14 a breach of its duty of good faith in violation of Washington statutory, administrative, and  
15 decisional law.

16 85. Defendant's breach of its duty proximately caused harm and resulted in actual  
17 damages to Weimac including attorneys' fees and costs.

18 **V. RELIEF REQUESTED**

19 WHEREFORE, Plaintiffs request relief as follows:

20 1. For declaratory judgment as alleged above, that Weimac's losses and expenses  
21 are covered by the Policy;

22 2. For declaratory judgment that Defendant is responsible for timely and fully  
23 paying all such losses;

1           3.     For special and general damages suffered by Weimac, in amounts to be proven  
2 at the time of trial;

3           4.     For judgment against Defendant for breach of contract;

4           5.     For judgment against Defendant for violations of the Washington  
5 Administrative Code, WAC 284-30-330 *et seq.*;

6           6.     For judgment against Defendant for violations of the Consumer Protection Act,  
7 RCW 19.86 *et seq.*;

8           7.     For judgment against defendants for insurance bad faith;

9           8.     For judgment against Defendant for violations of the Insurance Fair Conduct  
10 Act, RCW 48.30.015 *et seq.*;

11          9.     For an award of compensatory and exemplary damages pursuant to RCW 19.86  
12 *et seq.*;

13          10.    For an award of Weimac's actual damages sustained, including reasonable  
14 attorney's fees and litigation costs pursuant to RCW 48.30.015(1);

15          11.    For an award of treble damages for Defendant's unreasonable denial of payment  
16 of benefits pursuant to RCW 48.30.015(2);

17          12.    For judgment against Defendant for Weimac's reasonable attorney's fees, actual  
18 and statutory litigation costs, including expert witness fees, as allowed by law, including but  
19 not limited to, RCW 19.86 *et seq.*, RCW 48.30.015 *et seq.*, and *Olympic Steamship v.*  
20 *Centennial Ins. Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991);

21          13.    For pre- and post-judgment interest at the highest allowable rate; and

22          14.    For such other and further relief as the Court deems just and equitable.  
23

1 **VI. JURY DEMAND**

2 Plaintiffs demand a jury trial on all claims so triable.

3 DATED this 8<sup>th</sup> day of January, 2021.

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9 *PRO HAC VICE PENDING*