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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY

VITA COFFEE, LLC, a Washington limited liability company d/b/a CAFFE VITA COFFEE ROASTING CO.,

Plaintiff,

v.

FIREMAN'S FUND INSURANCE COMPANY,

Defendant.

NO.

COMPLAINT FOR

- (1) VIOLATION OF INSURANCE FAIR CONDUCT ACT, RCW 48.30 ET SEQ.;
- (2) BREACH OF CONTRACT; AND
- (3) VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT, RCW 19.86 ET SEQ.

Plaintiff Vita Coffee, LLC d/b/a Caffe Vita Coffee Roasting Co. ("Caffe Vita") alleges as follows:

**I. PARTIES**

1.1 Caffe Vita is a Washington limited liability company in good standing with the state of Washington, located in King County, Washington, and is the named insured under the insurance policies referenced herein.



1 **A. The Policy.**

2 3.5 Through Vita Coffee’s Policy, Fireman’s Fund agreed to “pay for the actual loss  
3 of business income” sustained by Vita Coffee “due to the necessary suspension” of its  
4 operations during the period of restoration, arising from “direct physical loss or damage to  
5 property” at the Locations, or within 1,000 feet, caused by or resulting from a covered cause of  
6 loss.

7 3.6 “Suspension” means “the slowdown or cessation of” Vita Coffee’s operations,  
8 “or that a part or all of the described premises is rendered untenable.” The Policy defines  
9 “operations” as “usual and customary business activities . . . occurring at the location.”

10 3.7 The Policy defines a “covered cause of loss” as risks of direct physical loss or  
11 damage not excluded or limited in the Coverage Form.

12 3.8 “Business Income” is defined under the Policy in relevant part as (1) the net  
13 profit or loss before income taxes from Vita Coffee’s operations including the sales of  
14 merchandise or services, the net sales value of manufacturing production; and (2) continuing  
15 normal operating expenses incurred, including continuing normal payroll expenses.

16 3.9 “Extra Expense” is defined as the necessary expenses Vita Coffee incurs during  
17 the period of restoration, over and above expenses it would have normally incurred had there  
18 been no covered loss, in order to: (1) avoid or minimize the suspension of business and to  
19 continue operations at the Locations or at replacement or temporary locations, including  
20 relocation expenses; (2) minimize the suspension of business if Vita Coffee cannot continue  
21 operations; or (3) repair or replace covered property to the extent it reduces the amount of loss  
22 that otherwise would have been payable under the Business Income and Extra Expense  
23 Coverage.

1           3.10    The Policy includes an extension for “Civil Authority Coverage,” under which  
2 Fireman’s Fund promised to pay for the actual loss of business income and necessary extra  
3 expense sustained by Vita Coffee due to the necessary suspension of operations caused by  
4 action of civil authority that prohibits access to its Locations. The Civil Authority Coverage is  
5 triggered when a civil authority’s prohibition of access (a) arises from direct physical loss or  
6 damage other than at the insured locations; (b) is caused by a covered cause of loss; and (c)  
7 occurs within one mile of any insured location.

8           3.11    The Policy also includes an extension for Dependent Property Coverage. Under  
9 this extension, Fireman’s Fund promised to pay for the actual loss of business income and  
10 necessary extra expense sustained due to the necessary suspension of operations during the  
11 period of restoration at a location, when the suspension is due to direct physical loss or damage  
12 at the location of a dependent property caused by or resulting from a covered cause of loss.

13           3.12    “Dependent Property” is defined as property operated by others upon whom  
14 Vita Coffee depends to accept its products.

15           3.13    In addition, the Policy includes an extension for Communicable Disease  
16 Coverage, under which extension Fireman’s Fund promised to pay for the actual loss of  
17 business income and necessary extra expense sustained due to the necessary suspension of  
18 operations during the period of restoration, due to direct physical loss or damage to property at  
19 a location caused by or resulting from a covered communicable disease event.

20           3.14    A “communicable disease event” is defined as an event where a public health  
21 authority has ordered an insured location be “evacuated” due to the outbreak of a  
22 communicable disease at such location.

23

1           3.15 Finally, the Policy includes an extension for Business Access Coverage,  
2 promising to pay for the actual loss of business income and necessary extra expense sustained  
3 due to the suspension of operations at a location, if access to the location is “impaired or  
4 obstructed.” To trigger coverage, the impairment or obstruction must (1) arise from direct  
5 physical loss or damage to property other than at such location, (2) be caused by or result from  
6 a covered cause of loss (not excluded), and (3) occur within 1 mile from such location.

7 **B. Vita Coffee’s Losses due to the Pandemic and Closure Orders.**

8 **1. States of Emergency and Closure Orders.**

9           3.16 On January 31, 2020, the United States Department of Health and Human  
10 Services Secretary Alex Azar declared a public health emergency for COVID-19 beginning  
11 January 27, 2020.

12           3.17 On March 11, 2020, the World Health Organization declared that the emerging  
13 threat from the coronavirus constituted a global pandemic.

14           3.18 On March 13, 2020, the President of the United States declared the COVID-19  
15 outbreak a national emergency.

16 **a. Washington**

17           3.19 On February 29, 2020, Washington Governor Inslee issued Proclamation 20-05,  
18 which declared a state of emergency and recognized that COVID-19 is “a respiratory disease  
19 that can result in serious illness or death” and “a public disaster that affects life, health,  
20 property or the public peace.” Proclamation 20-05 stated the Washington State department of  
21 Health confirmed localized person-to-person spread of COVID-19 in Washington State,  
22 “significantly increasing the risk of exposure and infection to Washington State’s general  
23 public and creating an extreme public health risk that may spread quickly[.]”

1           3.20    On March 11, 2020, Governor Inslee issued Proclamation 20-07, which  
2 prohibited gatherings in King County of 250 people or more for social, spiritual, or  
3 recreational activities. This Proclamation confirmed “significant community spread” of  
4 COVID-19 in King County, and that COVID-19 “remains a public disaster affecting life,  
5 healthy, property and the public peace[.]”

6           3.21    On March 13, 2020, Governor Inslee issued Proclamation 20-11, which  
7 extended Proclamation 20-07 to prohibit gatherings of 250 or more people statewide until  
8 March 31, 2020.

9           3.22    On March 16, 2020, Governor Inslee issued Proclamation 20-13, prohibiting (1)  
10 any number of people from gathering in any public venue in which people congregate for  
11 purposes of food and beverage service, including all public venues in which the serving,  
12 provision, or consumption of prepared food or beverages occurs at a table, bar, or for  
13 consumption within, and (2) onsite consumption of food or beverages in a public venue,  
14 including but not limited to restaurants, food courts, bars, coffee shops, and all other similar  
15 venues in which people congregate for the consumption of food or beverages.

16           3.23    On March 16, 2020, Governor Inslee also issued Proclamation 20-14, extending  
17 Proclamation 20-11 to prohibit (1) gatherings of 50 or more people statewide and (2) gatherings  
18 of fewer than 50 people unless organizers of the activity comply with social distancing and  
19 sanitation measures established by the CDC or the Washington State Department of Health  
20 guidelines.

21           3.24    On March 23, 2020, Governor Inslee issued Proclamation 20-25, the “Stay-  
22 Home – Stay Healthy” order, which prohibits all people statewide from leaving their homes  
23 except to engage in essential activities. Permitted essential activities included obtaining

1 necessary supplies and services, engaging in activities essential for health and safety, caring for  
2 another, and engaging in outdoor exercise. Effective midnight on March 25, 2020, all non-  
3 essential business in Washington State were ordered to cease operations except for performing  
4 basic minimum operations.

5 3.25 On April 2, 2020, Governor Inslee issued Proclamation 20-25.1 extending  
6 Proclamation 20-25 to May 4, 2020.

7 3.26 On May 4, 2020, Governor Inslee extended Proclamations 20-25 and 20-25.1  
8 through May 31, 2020.

9 **b. Oregon**

10 3.27 On March 8, 2020, Oregon Governor Kate Brown issued Executive Order 20-  
11 03, declaring a statewide emergency in Oregon due to the threat to public health and safety  
12 created by the coronavirus. As of that date, there were 14 presumptive or confirmed  
13 coronavirus cases in Oregon.

14 3.28 On March 12, 2020, Governor Kate Brown issued Executive Order 20-05, which  
15 restricted “social, spiritual, and recreational gatherings” of 250 people or more if a distance of  
16 at least three feet between individuals could not be maintained.

17 3.29 On March 17, 2020, Governor Brown issued Executive Order 20-07, prohibiting  
18 restaurants, cafes, coffee shops, and other similar establishments that offer food or drink from  
19 allowing on-premises consumption of food or drink. In addition, Executive Order 20-07  
20 prohibiting gatherings of 25 people or more for social, spiritual, and recreational purposes if a  
21 distance of at least 3 feet could not be maintained.

1           3.30    On March 23, 2020, Governor Brown issued Executive Order 20-12, ordering  
2 individuals to stay at home to the maximum extent possible and prohibiting non-essential social  
3 and recreational gatherings if a distance of at least 6 feet could not be maintained.

4           3.31    On April 7, 2020, Governor Brown extended Executive Order 20-07 prohibiting  
5 on-premises consumption of food and drink, to remain in effect until terminated.

6           3.32    On May 1, 2020, Governor Brown extended the state of emergency in Oregon  
7 through July 6, 2020.

8                   **c.       California**

9           3.33    On March 4, 2020, California Governor Gavin Newsom declared a state of  
10 emergency in California due to the coronavirus.

11           3.34    On March 12, 2020, California Governor Gavin Newsom issued Executive  
12 Order N-25-20, which in part ordered all residents of California to heed any orders of state and  
13 local public health officials, including social distancing measures, to control the spread of  
14 COVID-19.

15           3.35    On March 16, 2020, the California Department of Public Health published a  
16 “guidance document” for “retail food, beverage, and other related service venues” to prevent  
17 the spread of COVID-19. That guidance stated restaurants should be closed for in-restaurant  
18 seated dining.

19           3.36    On March 19, 2020, Governor Newsom issued Executive Order N-33-2020,  
20 ordering all California residents to stay home or at their place of residence to prevent the spread  
21 of COVID-19.



1                   **d.     New York**

2           3.37    On March 7, 2020, New York Governor Andrew Cuomo declared a state of  
3 emergency in New York due to the coronavirus.

4           3.38    On March 12, 2020, Governor Andrew Cuomo issued an Executive Order  
5 ordering any places of business or public accommodation to operate at no greater than 50  
6 percent occupancy or seating capacity for thirty days.

7           3.39    On March 16, 2020, Governor Andrew Cuomo issued an Executive Order  
8 ordering all restaurants and bars to cease serving patrons food or beverage for on-premises  
9 consumption.

10          3.40    On March 16, 2020, New York Mayor Bill De Blasio issued an Emergency  
11 Executive Order, which in part closed cafes until further notice, except for take-out or delivery  
12 service. In part, Mayor De Blasio’s Emergency Executive Order specifies that the order is  
13 given because of the virus” propensity to spread “and also because the virus physically is  
14 causing property loss and damage.”

15          3.41    On March 18, 2020, Governor Andrew Cuomo ordered all non-essential  
16 employers to reduce their in-person workforce at any location by 50% no later than March 20  
17 at 8:00 P.M.

18          3.42    On March 19, 2020, Governor Andrew Cuomo ordered non-essential employers  
19 to reduce their in-person workforce by 75% no later than March 21 at 8:00 P.M.

20          3.43    On March 20, 2020, Governor Andrew Cuomo ordered non-essential employers  
21 to reduce their in-person workforce by 100% no later than March 22 at 8:00 P.M.

22          3.44    On March 29, 2020, Governor Andrew Cuomo extended prior Executive Orders  
23 closing or restricting public and private businesses and places of public accommodation

1 through April 15, 2020. On April 7, those orders were extended again through April 29. On  
2 April 16, those orders were extended again through May 15, 2020.

3 **2. Vita Coffee's Covered Losses under the Policy.**

4 3.45 Research and reports from the CDC indicate that the novel coronavirus that  
5 causes COVID-19 can physically infect and can stay alive on surfaces for at least 17 days, a  
6 characteristic that renders property exposed to the contagion potentially unsafe and dangerous.  
7 Other research indicates that the virus may linger on surfaces for up to four weeks.

8 3.46 The infectious particles of COVID-19 are invisible to the naked eye and it is not  
9 feasible to test every surface to determine if it has been contaminated. A surface that is touched  
10 by a person infected with COVID-19 is presumed to be contaminated.

11 3.47 A study documented in the *Journal of Hospital Infection* found that human  
12 coronaviruses can remain infectious on inanimate surfaces at room temperature for up to nine  
13 days.<sup>1</sup> In another study, COVID-19 was identified on a variety of surfaces up to 17 days after  
14 ship cabins were vacated.<sup>2</sup> According to a study in *The New England Journal of Medicine*,  
15 COVID-19 was detectable for up to four hours on copper, up to 24 hours on cardboard, and up  
16 to two to three days on plastic and stainless steel.<sup>3</sup>

17 3.48 On March 16, 2020, Vita Coffee announced it would only offer takeaway  
18 service for its 10 Seattle locations.

19 3.49 On March 18, 2020, Vita Coffee announced that it had temporarily closed five  
20 cafes in Seattle and its 9 other locations in Seattle, Los Angeles, New York, and Portland  
21 would be open for takeaway orders only.

22  
23 <sup>1</sup> <https://www.journalofhospitalinfection.com/action/showPdf?pii=S0195-6701%2820%2930046-3>.

<sup>2</sup> [https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm?s\\_cid=mm6912e3\\_w](https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm?s_cid=mm6912e3_w).

1 3.50 On March 20, 2020, Vita Coffee announced that it had temporarily closed its  
2 cafe in Los Angeles.

3 3.51 On March 23, 2020, Vita Coffee announced that it had temporarily closed its  
4 two cafes in New York City.

5 3.52 On March 24, 2020, Vita Coffee publicly announced that it would temporarily  
6 close the remainder of its cafes in Seattle.

7 3.53 On March 25, 2020, Vita Coffee publicly announced that “our 14 locations [are]  
8 now closed[.]”

9 3.54 Vita Coffee’s insured locations have suffered a direct physical loss or damage  
10 resulting from a covered cause of loss.

11 3.55 “Direct physical loss or damage” covered by the Policy includes a hazardous  
12 condition that renders the property unsafe, uninhabitable, or unusable for its intended purpose  
13 or normal operations; it does not require tangible injury or visible damage.

14 3.56 The pandemic outbreak has occurred without limit throughout each city where  
15 Vita Coffee has locations and has thus contaminated property within 1 mile of each of the  
16 insured locations. The continuous presence of the coronavirus on or around Vita Coffee’s  
17 premises has rendered the premises unsafe and unfit for its intended use, and therefore caused  
18 physical property damage or loss under the Policy.

19 3.57 Vita Coffee’s Locations include inanimate surfaces that can remain infectious  
20 for many days, as described above including copper, cardboard, plastic, and stainless steel,  
21 exposing Vita Coffee’s employees and customers to risk of infection.

22  
23 <sup>3</sup> <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces>.

1           3.58   Losses due to a pandemic and government closure orders are not excluded under  
2 the Policy.

3           3.59   As a result of the civil authority closure orders described above, Vita Coffee has  
4 suspended its operations and suffered substantial business income losses and necessary extra  
5 expenses. Vita Coffee is prohibited from operating its Locations for normal operations; it  
6 cannot offer food or drink for on-premises consumption and customers are prohibited from  
7 normally accessing or using its stores due to a pandemic and stay-at-home orders. On-premises  
8 consumption of food and beverage by customers is a significant part of Vita Coffee’s usual and  
9 customer business activities, as is sale to other restaurants for on-site service. This is a direct  
10 physical loss because the insured locations have been fortuitously rendered unusable and  
11 untenable for their intended purpose and usual operations.

12           3.60   The multiple orders issued by the states where Vita Coffee operates prohibit  
13 public access to the insured Locations for usual operations, “impairing” access to the insured  
14 Locations.

15           3.61   The proclamations of California, New York, Oregon and Washington are public  
16 health authority orders. Those orders require that the insured locations be “evacuated,” because  
17 the states’ orders removed customers from insured Locations for safety reasons.

18           3.62   A significant part of Vita Coffee’s business is the sale of whole bean and ground  
19 coffee to dine-in restaurants, cafes, and bakeries to serve to their patrons. These establishments  
20 are “dependent property,” prevented from operating due to the pandemic and the resulting  
21 business restrictions. Vita Coffee suspended operations at its Locations due to “direct physical  
22 loss or damage” at dependent property.  
23

1           3.63    The outbreak of COVID-19 occurred “at” Vita Coffee’s insured locations, as  
2 stated by the governors’ proclamations and closure orders confirming the outbreak occurred  
3 and is occurring in King County, Washington; Multnomah County, Oregon; Los Angeles  
4 County, California; and Kings and New York Counties, New York, where each of the insured  
5 locations are located “at.”

6           3.64    Vita Coffee’s losses are not excluded under the Mortality and Disease exclusion,  
7 because that exclusion is limited to excluding losses associated with death only or, in the  
8 alternative, losses arising from an illness suffered by an individual at a Location.

9           3.65    Vita Coffee’s losses are not excluded under the Government Action exclusion,  
10 because Vita Coffee’s losses are not “expenses [it] would not have otherwise incurred.”

11           3.66    The covered losses suffered by Vita Coffee and owed under the Policy are  
12 increasing every day, but current projections show Vita Coffee’s losses will exceed \$650,000  
13 by the end of June. As a result of these catastrophic losses, Vita Coffee has been forced to  
14 furlough its workers.

15 **C.    Vita Coffee’s Communications with Fireman’s Fund.**

16           3.67    On March 12, 2020, Vita Coffee notified Fireman’s Fund of their loss.

17           3.68    On March 27, 2020, Fireman’s Fund sent Vita Coffee a reservation of rights  
18 letter, stating they were investigating Vita Coffee’s claim under the Policy.

19           3.69    On April 10, 2020, Fireman’s Fund sent Vita Coffee a letter stating it was still  
20 investigating coverage.

21           3.70    On April 22, 2020, Fireman’s Fund responded to Vita Coffee’s letters and  
22 declined coverage, claiming the loss (1) was not covered under Business Income and Extra  
23 Expense coverage, because the suspension of operations was not due to actual physical loss or

1 damage to property; (2) was excluded under the “Mortality and Disease Exclusion;” (3) was  
2 excluded under the “Government Action” exclusion; (4) was not covered under the extended  
3 Communicable Disease Event Coverage; (5) was not covered under the extended Business  
4 Access Coverage; and (6) was not covered under the extended Civil Authority Coverage.  
5 Fireman’s Fund’s April 22 denial letter did not discuss the Dependent Property Coverage  
6 extension.

7 3.71 On May 4, 2020, Vita Coffee responded to Fireman Fund’s April 22 letter  
8 disputing the basis for each of the denials by Fireman’s Fund.

9 3.72 On May 4, 2020, Vita Coffee filed an Insurance Fair Conduct Act 20-day  
10 Notification Sheet (“IFCA Notice”) with the Office of the Insurance Commissioner and sent a  
11 copy to Fireman’s Fund.

12 **IV. CLAIMS FOR RELIEF**

13 **A. First Claim: Violation of Insurance Fair Conduct Act (“IFCA”).**  
14 **(RCW 48.30 et seq.)**

15 4.1 Vita Coffee realleges, as if fully set forth herein, each and every allegation  
16 contained in the preceding paragraphs of this Complaint.

17 4.2 Fireman’s Fund is an insurer engaged in the business of insurance and Vita  
18 Coffee is a first party claimant.

19 4.3 Through its actions detailed above, Fireman’s Fund unreasonably denied Vita  
20 Coffee’s claims for coverage and unreasonably denied payment of benefits to Vita Coffee. In  
21 so doing, Fireman’s Fund violated its obligations under Washington’s claim handling  
22 regulations. *See* RCW 48.30.010; RCW 48.30.015; WAC 284-30-330, and WAC 284-30-350.  
23

1 4.4 As a result, Vita Coffee has suffered actual damages in an amount to be proven  
2 at trial.

3 **B. Second Claim: Breach of Contract.**

4 4.5 Vita Coffee realleges, as if fully set forth herein, each and every allegation  
5 contained in the preceding paragraphs of this Complaint.

6 4.6 Fireman’s Fund breached its insurance contract with Vita Coffee by refusing  
7 coverage and refusing to pay Vita Coffee’s claim for coverage and benefits under the Policy.

8 4.7 Vita Coffee has been damaged by Fireman’s Fund’s breach of its contract with  
9 Vita Coffee in an amount to be proven at trial.

10 4.8 Because Vita Coffee is forced to file suit against Fireman’s Fund to obtain the  
11 benefits of its Policy, Fireman’s Fund is liable to Vita Coffee for its attorneys’ and consultants’  
12 fees under *Olympic Steamship Co. v. Centennial Ins. Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991).

13 **C. Third Claim: Violation of the Consumer Protection Act (“CPA”)**  
14 **(RCW 19.86 et seq.)**

15 4.9 Vita Coffee realleges, as if fully set forth herein, each and every allegation  
16 contained in the preceding paragraphs of this Complaint.

17 4.10 Vita Coffee is a “person” under RCW 19.86.010(1).

18 4.11 Fireman’s Fund is a “person” engaged in “trade” or “commerce” under RCW  
19 19.86.010(1) and (2).

20 4.12 The CPA protects consumers by promoting fair competition in commercial  
21 markets for goods and services. To achieve that goal, the CPA prohibits any person from using  
22 “unfair methods of competition or unfair or deceptive acts or practices in the conduct of any  
23 trade or commerce[.]” RCW 19.86.020.

1 4.13 By the conduct described in detail above and incorporated herein, Fireman’s  
2 Fund engaged in unfair or deceptive acts in violation of the CPA.

3 4.14 A violation of the insurance code or a regulation promulgated thereunder  
4 constitutes an unfair practice under the CPA, including an unreasonable denial of coverage.  
5 RCW 48.30.010.

6 4.15 Fireman’s Fund’s unfair and deceptive conduct occurred in trade or commerce  
7 and impacts the public interest. Fireman’s Fund is in the business of selling insurance and  
8 advertises the same to consumers throughout Washington. Fireman’s Fund is capable of  
9 injuring other consumers by denying, in bad faith, business losses covered by their insurance  
10 policies in violation of the CPA. In addition, Fireman’s Fund violated a statute that contains a  
11 specific legislative declaration of public interest impact. *See* RCW 19.86.093(2); RCW  
12 48.01.030 (the business of insurance is one affected by the public interest).

13 4.16 As a direct and proximate result of Fireman Fund’s unfair and deceptive  
14 practices, Vita Coffee has suffered damages. Vita Coffee is entitled to recover actual damages,  
15 treble damages, attorneys’ fees and costs, and all other relief allowed under RCW 19.86.090.

16 **V. RELIEF REQUESTED**

17 Vita Coffee seeks the following relief in this action:

18 5.1 On the First Claim, a judgment in its favor and against Fireman’s Fund for  
19 actual damages in an amount to be proven at trial;

20 5.2 Increase the total award of damages for the First Claim as permitted by law,  
21 including RCW 48.30.15(2);

22 5.3 On the Second Claim, a judgment in its favor and against Fireman’s Fund for  
23 actual damages in an amount to be proven at trial;



