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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

ALAN and CONNIE HILL, individually and as the marital community thereof, Plaintiffs, v. FARMERS PROPERTY AND CASUALTY INSURANCE COMPANY, an inter-insurance exchange owned by their policyholders and organized under the laws of the State of California and a wholly owned subsidiary of Farmers Group, Inc., Defendant.	No.: 2:25-cv-00048-TOR DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT 2/2/26 Without Oral Argument ORAL ARGUMENT REQUESTED

Defendant Farmers Property and Casualty Insurance Company ("Farmers") submits this response to plaintiffs Alan and Connie Hill's ("Plaintiffs") Motion for Summary Judgment (the "Motion"), and relies on the points and authorities cited herein, the other pleadings and documents on file with the Court, and the declarations of Francis J. Maloney and Bernard Maddox. For the reasons discussed below, Plaintiffs are not entitled to prevail as a matter of law, and thus, the Court should deny Plaintiffs' Motion in all respects.

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I. INTRODUCTION

Plaintiffs' Motion for Summary Judgment should be denied in full because:

1. The Policy's relevant terms exclude coverage for failure to use reasonable care to maintain heat at the Property;

2. Plaintiffs failed to maintain *any* heat at the Property, thereby excluding coverage; and

3. The Declaration of Alan Hill should be disregarded or stricken.

II. STATEMENT OF DISPUTED FACTS

Per LR 56(c)(1)(B), Defendant has filed a separate Statement of Disputed Material Facts in support of its response to the Motion.

III. LEGAL AUTHORITY

A. Summary Judgment Standard

Summary judgment is proper when the "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). "One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses[.]" Celotex *Corp. v. Catrett*, 477 U.S. 317, 323-24, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). As the movant, Plaintiffs have the initial burden to identify those portions of the record which it believes demonstrate the absence of a genuine issue of material fact and its entitlement to judgment as a matter of law. *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*., 809 F.2d 626, 630 (9th Cir. 1987). The nonmoving party must then go beyond the pleadings and designate specific facts showing that there is a genuine issue for trial. *Celotex Corp.,* 477 U.S. at 324. In deciding whether there is a disputed issue of material fact, the inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp*., 475

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U.S. 574, 587 (1986). More than a "metaphysical doubt" is required to establish a genuine issue of material fact. *Id*., at 586.

B. Policy Interpretation

In a diversity case, the federal district court follows the substantive law of the state in which it sits. *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78, 82 L. Ed. 1188, 58 S. Ct. 817 (1938); *St. Paul Fire and Marine Insurance Co. v. Weiner*, 606 F.2d 864, 867 (9th Cir. 1979). Washington's substantive law applies here.

Under Washington law, interpretation of the language of an insurance policy is a matter of law for the court to decide. *Kitsap Cty. v. Allstate Ins. Co*., 136 Wn.2d 567, 575, 964 P.2d 1173 (1998). An insurance policy should be construed as a whole, with the policy being given a fair, reasonable, and sensible construction as would be given by the average person purchasing insurance. *Am. Nat'l Fire Ins. Co. v. B & L Trucking & Constr. Co.*, 134 Wn.2d 413, 427, 951 P.2d 250 (1998). When interpreting a policy's terms, words and phrases are not analyzed in isolation. *Allstate Ins. Co. v. Peasley*, 131 Wn.2d 420, 424, 932 P.2d 1244 (1997). Instead, the policy is read in its entirety and effect is given to each provision. *Id.* at 424. Clear and unambiguous language in an insurance policy will be enforced. Where the contract language is clear and unambiguous, the courts should not rewrite the policy under the guise of construing the language. *Batdorf v. Transamerica Title Ins. Co*., 41 Wn. App. 254, 702 P.2d 1211 (1985). If the language of the policy is susceptible to two reasonable and fair interpretations, ambiguity exists. *Vadheim v. Continental Ins. Co*., 107 Wn.2d 836, 840-41, 734 P.2d 17 (1987). Only if an ambiguity remains after examination will the ambiguity be resolved in favor of the insured. *Transcontinental Ins. Co. v. Washing Public Util. Dists' Util. Sys.*, 111 Wn.2d 452, 760 P.2d 337 (1988).

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IV. ARGUMENT

A. As a Preliminary Matter, the Declaration of Alan Hill Should Be Disregarded or Stricken

Mr. Hill's declaration should be disregarded. Plaintiffs attempt to circumvent Mr. Hill's unequivocal deposition testimony that directly contradicts his declaration. His declaration states that he "went to the duplex nearly daily and listened to make sure the furnace was running." **ECF 13, ¶ 3**. Mr. Hill testified at his deposition that that last time he checked the duplex before the Loss was January 13th – at least six days before the Loss. *Declaration of Francis J. Maloney ("Maloney Decl.")*, ¶ 5, Ex. 3, 20:16-19; 35:25—36:25; 37:9-12.

The Ninth Circuit characterizes this tactic (submitting a declaration that contradicts prior deposition testimony to create a question of fact on summary judgment) as a "sham," and district courts are within their discretion to ignore declarations that are inconsistent with prior deposition testimony. *See, e.g., Yeager v. Bowlin*, 693 F.3d 1076, 1080-1081 (9th Cir. 2012). The "sham" declaration rule is subject to two findings: (1) that the inconsistency between the prior judicial admission and the subsequent affidavit or declaration is "clear and unambiguous," and (2) that the contradiction between the affidavit or declaration and the prior pleading is "actually a sham." *Van Asdale v. Int'l Game Tech.*, 577 F.3d 989, 998 (9th Cir. 2009); *Gerawy v. United States Bakery, Inc.*, No. 2:19-CV-00417-SAB, 2022 U.S. Dist. LEXIS 22721 (E.D. Wash. Feb. 8, 2022).

The contradictory declaration is "actually a sham" if it is used to "create" an issue of fact to avoid summary judgment, but not where the declaration is "the result of an honest discrepancy, a mistake, or the result of newly discovered evidence." *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 267 (9th Cir. 1991). Where these findings are met, the District Court should preclude the conflicting

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declaration. *Ptp Oneclick v. Avalara, Inc*., No. C19-0640JLR, 2020 U.S. Dist. LEXIS 148519, at *20-21 (W.D. Wash. May 27, 2020).

Thes two requirements are met here. First, the inconsistency between Mr. Hill's deposition testimony and his declaration is clear and unambiguous. At deposition, Mr. Hill testified, as follows:

> **Q:** Do you remember the date in January that the coldest weather was supposed to hit before the loss?
>
> **A:** The 13th.
>
> **Q:** The 13th?
>
> **A:** The 13th of January, yeah.
>
> **Q:** So, the date of the loss was January 19, 2024.
>
> **A:** Yes
>
> **Q:** So, the 13th would be approximately six days before. Does that sound correct?
>
> **A:** That does sound correct.
>
> **Q:** Okay.
>
> **A:** Time enough for pipes to thaw.
>
> **Q:** Okay. At any time between the 13th and the 19th did you return to check on 204?
>
> **A:** I didn't think it was necessary. The furnace was working the last time I was there.

Maloney Decl., ¶ 5, Ex. 3, 36:21—37:12). By contrast, in his declaration Mr. Hill declares the following:

> "I did take steps to maintain heat in the duplex. I had been asked by the tenant to check on the duplex while he was out of town. I did so daily. I went to the duplex nearly daily and listened to make sure the furnace was running."

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ECF 13, ¶ 3. Mr. Hill's declaration directly contradicts his deposition testimony that he did not return to the Property between January 13th and 19th. This clear and unambiguous inconsistency speaks for itself.

Second, Mr. Hill's Declaration also represents an actual "sham." For example, there is no indication that Mr. Hill's declaration was submitted to clear up an honest mistake or newly discovered evidence. *See e.g., MKB Contractors v. Am. Zurich Ins. Co.*, 49 F. Supp3d 814, 829 (W.D. Wash. 2014) (finding that "nowhere in his declaration does [he] reference or try to explain his prior inconsistent deposition testimony or try to harmonize the two statements."). The purpose is implied from the use Plaintiffs make of the declaration: an attempt to create coverage where no coverage exists by strategically twisting reality to fit their narrative – that Plaintiffs used reasonable care to maintain heat when, the facts present do not support such a conclusion.

B. Farmers Concedes Dismissal as to Affirmative Defenses Three and Four.

Farmers concedes dismissal of the following affirmative defenses: **failure to mitigate** (affirmative defense three); and **contributory fault** (affirmative defense four).

C. There is No Coverage For The Loss Because the Policy's Relevant Terms Exclude Coverage for Failure to Use Reasonable Care to Maintain Heat.

"An insured has the burden of proving that coverage is triggered, while the insurer has the burden of proving that an exclusion applies." *Windcrest Owners Ass'n v. Allstate Ins. Co.*, 24 Wn.App2d 866, 871, 524 P3d 683 (2022). The relevant terms of the Policy are as follows:

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SECTION I – LOSSES WE COVER
(SPECIAL PERILS)

* * * * *

SECTION I – BROAD NAMED PERILS

Whenever Broad Named Perils is referred to in this policy, the following causes of loss will apply for sudden and accidental direct physical loss.

* * * * *

14. **Freezing** of plumbing, heating, air conditioning or automatic fire protective sprinkler system or of a domestic appliance.
We do not pay for loss on the **residence premises** while the dwelling is unoccupied, unless **you** have used reasonable care to maintain heat in the building or have shut off the water supply and drained the water from all plumbing and appliances.

* * * * *

SECTION I – LOSSES WE DO NOT COVER

* * * * *

3. **We** do not cover loss or damage to the property described in Coverage A and Coverage B which results directly or indirectly from any of the following:

* * * * *

G. freezing of a plumbing, heating, air conditioning, or automatic fire protective sprinkler system, or of a domestic appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing. This exclusion does not apply if you have used reasonable care to maintain heat in the building or if you shut off the water supply and drained the plumbing and appliance of water. …

Maloney Decl., ¶ 3, Ex. 1, pp. 18, 21.

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1. Plaintiffs Failed to Use Reasonable Care to Maintain Heat at the Property.

Plaintiffs assert that "[t]he sheer amount of time they have gone without a frozen pipe speaks to the reasonableness of their efforts to heat the home." **ECF No. 11, at 9**. They assert that because they went ten (10) years without encountering frozen pipes before the Loss, they therefore must have used reasonable efforts then, and now, because they took the same steps they always did. *See id.* at 9, 10. But Plaintiffs cannot rely upon conclusory statements to support their position that they used reasonable care to maintain heat at the Property *in this instance*. As indicated above, by the plain language of the Policy, Plaintiffs were not afforded coverage unless they used "reasonable care to maintain heat in the building." And under Washington law, insureds have an affirmative duty to read their policy and be on notice of the terms and conditions of the policy. *See Dombrowsky v. Farmers Ins. Co.*, 84 Wn.App 245, 257, 928 P2d 1127 (1996).

a. It is undisputed that Plaintiffs had a history of failing to maintain the HVAC unit and where on notice that the HVAC would fail if they did not change the filter once a month.

In the months leading up to the Loss, Plaintiffs demonstrated a lack of awareness and reasonable care for how to effectively maintain the furnace at the Property. This is evidenced by the fact that in July of 2023 (approximately 6-months before the Loss), they were informed that the furnace filter was "100% clogged." *Maloney Decl.*, ¶ 4, Ex. 2, p. 6. Holliday Heating, the company that performed the maintenance, noted that the error history on the control board was reporting "all 'high limit' errors." *Id.* Holliday replaced the filter, tested the furnace, and it was back in proper operating and heating correctly. Plaintiffs were

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informed that the filter needed to be changed monthly, at least during heating season. *Id.* at p. 2.

At the time of the January 19, 2024 loss, Holliday Heating was called to the property to repair the HVAC. They found the HVAC was not operating because of the same condition that had been present 6 months earlier—the control board was reporting "all 'high limit' errors" because the filter had not been replaced and had again clogged. *See Maloney Decl.*, ¶ 4, Ex. 2, p. 3.

In April of 2024 – after the Loss, Plaintiffs again called Holliday Heating to come to the Property due to the furnace "not staying on for very long, homeowner does not know if they are without heat." *Id.* It appears that Plaintiffs subsequently cancelled the appointment with Holliday because they knew that the filter just needed to be changed. *Id.* Based on the foregoing, Plaintiffs were on notice but nonetheless disregarded Holliday's express recommendation to replace the filter once a month.

b. Plaintiffs did not use reasonable care to maintain heat at the Property as evidenced by the utility bills and clogged furnace filter.

During the time the tenant was out of town and the Property was unoccupied, Plaintiffs paid the utility bills. *Maloney Decl.*, ¶ 8, Ex. 6, 30:10-20. This included Avista, to which Plaintiffs pay electric and natural gas to. *See Declaration of Bernard Maddox*, ¶ 7, Ex. A. The heating bills for the Property suggest that from October 2023 through January 19, 2024, heat was not maintained. *See id.*

Between October 10, 2023, and November 8, 2023, the average natural gas usage at the Property was effectively zero—only the pilot light was on. *See id.* (emphasis added). Between November 8, 2023, and December 11, 2023, the

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average natural gas usage at the Property was the same—effectively zero. *See id.* (emphasis added). Between December 11, 2023, and January 11, 2024, the average natural gas usage at the Property remained unchanged--zero. *See id.* (emphasis added). From January 11, 2024, until the date of loss on January 19, the daily utility records show the natural gas usage remained at zero. *Id*. Only after the loss was discovered do the utility records show the gas and heat were turned back on. *Id*. Thus, the undisputed evidence shows that for at least three whole months before the loss Plaintiffs did not maintain heat at the Property. Despite the Avista bills consistently reading essentially zero usage for natural gas, and Mr. Hill reviewing the bills when he received them during the tenant's absence, Plaintiffs took no steps or measure to investigate. *See Maloney Decl.*, ¶ 5, Ex. 3, 31:5-13. This was not "reasonable care."

> **Q.** When you visited 204 [W. Prince Ave.] during the time that the tenant was out of town, did you ever check the furnace itself?
>
> **A.** No, I didn't.
>
> **Q.** Okay. How did you know that it was functioning properly during that period?
>
> **A.** Well, those two times I mentioned, when it said 40 degrees, I said, "That's a little colder than I want." In my own head, I said that. And so it didn't have a dial, but it has a button that you push if you want to increase the temperature it's supposed to be. So I turned it up a few degrees, maybe 10 degrees, something in that era – area, and I heard the fan go on and left. Like I said, those were both days I was working. I go to work early in the morning. And so I bugged out, hearing the fan working. The furnace was working.
>
> *****
>
> **Q.** Okay. Prior to the loss, when you went to 204 and checked the temperature and realized it was low and turned up the temperature, did you ever not hear it kick on, the furnace kick on?

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> **A.** No. Both times I heard the fan, thinking that was the furnace going on. That was the noise I heard.

Maloney Decl., ¶ 5, Ex. 3, 19:10—20:1; 31:5-19. *See also Maloney Decl.*, ¶ 6, Ex. 4, 41:7-11 ("whether the heat was blowing or not, it sounded like the furnace was running because the fan was on. There is on, off, and auto.").

On January 19, 2024, the furnace filter was 100% clogged. *See Maloney Decl.*, ¶ 4, Ex. 2, p. 3. On the date of the Loss, Holliday Heating was called to the Property and upon inspecting the furnace, Holliday "[f]ound the furnace filter 100% clogged." *Id.* Holliday replaced the filter and test cycled the furnace, after which it was operational and heating the Property correctly. *Id.* This is exactly what had happened when Holliday was previously at the Property in July 2023, which was the last time the furnace filter was changed. *See Maloney Decl.*, ¶ 4, Ex. 2, p. 1. Holliday recommended that the filter be changed *monthly*, at least during the heating season. *Id.* Plaintiffs did not follow Holliday's recommendation, resulting in a clogged furnace filter and no heat being maintained at the Property.

Plaintiffs testified that it was the tenant's responsibility to make sure the furnace filter is changed periodically. *Maloney Decl.*, ¶ 6, Ex. 4, 20:19—21:7; *Id.* at ¶ 5, Ex. 3, 45:1-21. But other than asking the tenant to change the filter, Plaintiffs do not have any way of confirming whether the tenant is adhering to the recommendation or not. *See Maloney Decl.*, ¶ 5, Ex. 3, 45:10—46:1; *Id.* at ¶ 6, Ex. 4, 21:4-10. It is undisputed that the tenant left the property in October and the loss occurred in mid-January. During this period the Plaintiffs knew and had been put on notice by Holliday that the furnace filter should have been changed monthly, or 2-3 times during that period. And because the Hills were watching their own property while their tenants were abroad, the responsibility to change the filters

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during this period would have fallen on Plaintiffs. They failed to take this reasonable care.

c. It is undisputed that Plaintiffs did not check the Property for at least six days prior to the Loss despite sub-zero temperatures.

The parties agree that in the days leading up to the Loss the temperature in Spokane was frigidly cold, at times even reaching below zero. *See Maloney Decl.*, ¶ 5, Ex. 3, 20:5-15. Mr. Hill himself testified that on the coldest day – January 13, 2024, it was officially 10 degrees below zero. *See id.* This was six days before the Loss. When cold weather strikes, Mr. Hill typically opens all the cupboards and cabinets to allow the interior heat to get into those spaces. *Id.* at 18:17—19:2. He testified that, even knowing how cold it was going to be in Spokane, he did not turn on the water because he did not think it would be cold enough due to the Property being heated, even though he typically would turn on water at a trickle to ensure that pipes did not freeze. *Id.* at 18:17—19-9.[1]

At the time of the Loss the tenant who rented the Property was out of town and Mr. Hill was checking on the Property during their absence. The tenant had been gone since October 2023. *See id.* at 15:21—16:17. Mr. Hill went inside the Property a couple of times a week and drove past it almost daily on his way to work. *Id.* at 16:22—17:3. There were at least two instances that Mr. Hill checked the actual temperature inside of the Property – during both instances the thermostat indicated it was 40 degrees inside; feeling like that this was colder than he wanted, Mr. Hill proceeded to increase the temperature by ten degrees, demonstrating that he believed 50 degrees was a reasonable temperature to keep the Property at given the absurdly low temperatures in Spokane. *Id.* at 17:21—18:1; 19:10—20:1; 34:7-

[1] Mr. Hill testified that he typically would turn on water at a trickle to ensure that pipes did not freeze. *Maloney Decl.*, ¶ 5, Ex. 3, 18:17—19:2.

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24. At the time of the second visit on or about January 13, and despite having previously turned the thermostat up from 40 to 50 degrees at his previous visit, Mr. Hill inexplicably found the temperature was still at 40 degrees. Although realizing that the temperature was not holding at the Property when he increased it to 50 degrees via the thermostat, Mr. Hill did not investigate further. *Id.* at 35:6-17.

Between January 13 and 19, 2024, the temperature in Spokane remained significantly below freezing. *See Maloney Decl.*, ¶ 7, Ex. 5. Even with these unusually low temperatures, Mr. Hill did not check on the Property between January 13 and 19 – six days, even though the temperature was below zero and in the single digits at times. *Maloney Decl.*, ¶ 5, Ex. 3, 35:25—36:25; 37:1-12. And as Mr. Hill notes in his Motion's supporting declaration, because he is a school bus driver he is keenly aware of temperature and tracks them on a regular basis. **ECF 13, ¶ 30**. He is therefore presumed to have known of the frigid temperatures in the week leading up to the loss yet failed to go inside to check on the property even though he was driving by it on a daily basis. While the efforts Plaintiffs took in the *past* to avoid freezing pipes may have been reasonable, here, given the extreme low temperatures, those efforts were not reasonable in January 2024.

When the Loss was discovered on January 19, 2024, the water in the toilet tank was <u>frozen solid</u>. *Maddox Decl.*, ¶ 8 (emphasis added). The temperature at the Property would have to be extremely cold for an extended period –multiple days—for that to occur. *Id.*[2] Not having heat in a home, in the winter, when there

[2] The fact that the water in the toilet was frozen solid also negates Plaintiffs' contention that they visited the Property daily. Had they been there one or even two days before the loss, they would have found that the Property was too cold and rectified the issue and prevented the loss.

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are sub-zero temperatures is not reasonable as a matter of law. And under the terms of the Policy, coverage is excluded when an insured fails to use reasonable care to maintain heat in an unoccupied property. *See Maloney Decl.*, ¶ 3, Ex. 1, pp. 18, 21. Plaintiffs did not use reasonable care to maintain heat; there is no coverage for the Loss.

The term "reasonable care" is not ambiguous as asserted by Plaintiffs. It means just that: the degree of care, diligence, and precaution that an ordinarily prudent and careful person would exercise under similar circumstances. To the contrary, "'[w]here terms are undefined, they 'must be given their 'plain, ordinary, and popular meaning.'" *George v. Farmers Ins. Co.*, 106 Wn App 430, 440, 23 P3d 552 (2001) (quoting *Kitsap County v. Allstate Ins. Co.*, 136 Wn.2d 567, 576, 964 P.2d 1173 (1998)). When interpreting a policy's terms, words and phrases are not analyzed in isolation. *Allstate Ins. Co. v. Peasley*, 131 Wn.2d 420, 424, 932 P.2d 1244 (1997). Instead, the policy is read in its entirety; a phrase cannot be interpreted in isolation. *Id*. Clear and unambiguous language in an insurance policy will be enforced. Where the contract language is clear and unambiguous, the courts should not rewrite the policy under the guise of construing the language. *Batdorf v. Transamerica Title Ins. Co*., 41 Wn. App. 254, 702 P.2d 1211 (1985). If the language of the policy is susceptible to two reasonable and fair interpretations, ambiguity exists. *Vadheim v. Continental Ins. Co*., 107 Wn.2d 836, 840-41, 734 P.2d 17 (1987).

Here, no ambiguity exists. According to *Merriam-Webster's*, "reasonable" may be defined as: not extreme or excessive; possessing sound judgment. *See Reasonable*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/reasonable (last accessed Jan 5, 2026). "Care," has been defined as: painstaking or watchful attention; maintenance. *See Care*, MERRIAM-

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WEBSTER, https://www.merriam-webster.com/dictionary/care (last accessed Jan 5, 2026). Taken together and applied to the context of this matter, the plain and ordinary meaning of "reasonable care" means exhibiting watchful attention with sound judgment to maintain heat at the Property. *See Batdorf*, 41 Wn.App at 258 ("language which is clear and unambiguous must be given effect in accordance with its plain meaning and may not be construed by the courts."). "Where policy language is 'clear and unambiguous' and not fairly susceptible to two different reasonable interpretations, however, courts may not create an ambiguity." *George*, 106 Wn.App at 439 (citing *Kitsap County v. Allstate Ins. Co.*, 136 Wn.2d 567, 576, 964 P.2d 1173 (1998)) (citing *Am. Star Ins. Co. v. Grice*, 121 Wn.2d 869, 874, 854 P.2d 622 (1993))).

By way of example, the IFCA and CPA both hinge on whether the insurance company's denial or conduct was "reasonable." *See, e.g., Perez-Crisantos v. State Farm Fire & Cas. Co*., 187 Wash. 2d 669, 683-84, 389 P.3d 476, 482-83 (2017); *Jelinek v. Am. Nat'l Prop. & Cas. Co*., 747 F. App'x 513, 515 (9th Cir. 2018). Nonetheless, Washington and Federal Courts regularly grant summary judgment in favor of insurance companies where the facts are clear that the conduct was "reasonable" as a matter of law. See, e.g., *Perez-Crisantos, supra; Country Preferred Ins. Co. v. Hurless,* No. C11-1349RSM, 2012 U.S. Dist. LEXIS 86334 (W.D. Wash. June 21, 2012); *MK Lim, Inc. v. Greenwich Ins. Co.,* No. C10-374 MJP, 2011 U.S. Dist. LEXIS 126395 (W.D. Wash. May 23, 2011).

Unfortunately, the facts show here, as a matter of law, Plaintiffs did not exhibit watchful attention with sound judgment or reasonable care. This is demonstrated by the fact that Plaintiffs knew, based on past history, that the furnace filter needed to be changed on a monthly or bi-monthly basis, but that had not occurred since the previous summer. It is unreasonable, as a matter of law, to

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not change the filter under these circumstances and to not maintain heat at an unoccupied house during a stretch of frigidly cold weather. It is unreasonable, as a matter of law, to not check one's furnace when the utility company is reporting that your natural gas usage is zero, despite hearing the furnace fan turn on when increasing the temperature via the thermostat. It is unreasonable to not check on the condition of the furnace when the thermostat temperature failed to hold at the 50 degrees setting it had been set on a prior visit. And following that failure to maintain the 50-degree setting, it is unreasonable to not check an unoccupied rental property for at least six-days, when the daily average temperature is significantly below freezing, and in fact never rose above 20 degrees. These actions, or inactions, are further supported by the fact that the water in the toilet tank was frozen solid on the date of the Loss, something that would have taken multiple days to occur. *Maddox Decl.*, ¶ 8.

The Policy language is clear: Farmers does not cover a loss caused by freezing plumbing, in an unoccupied building, when the property is unoccupied *unless* reasonable care has been exercised to maintain heat in the building. Overall, the actions taken by Plaintiffs to "maintain heat" at the Property were not "reasonable care" in these circumstances. Because the Policy required Plaintiffs to take "reasonable care to maintain heat in the [Property]," to which they failed to do, there is no coverage for the Loss and Plaintiffs' motion for summary judgment should be denied (and Farmers' cross-motion for summary judgment granted).

V. CONCLUSION

For the reasons stated above, Plaintiffs' motion for summary judgment should be denied because 1) the Policy required them to use reasonable care to maintain heat at the Property, 2) The evidence shows Plaintiffs failed to use

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reasonable care to maintain heart to the Property, therefore excluding coverage for the Loss, and 3) the Declaration of Alan Hill should be stricken, or, in the alternative, disregarded.

DATED: January 9, 2026

MALONEY LAUERSDORF REINER, PC

By */s/ Francis J. Maloney*

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CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2026, I served the foregoing DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT on the following party at the following address:

Ryan Best
Best Law PLLC
905 W Riverside Ave., Ste 409
Spokane, WA 99201
ryan.best@bestlawspokane.com
Attorney for Plaintiffs

☒ by electronic means through the Court's ECF System on the date set forth above.

☐ by mailing a full, true and correct copy thereof in a sealed, first-class postage paid envelope, addressed to the attorneys as shown above, and deposited with the United States Postal Office at Portland, Oregon on the date set forth above.

☐ by emailing to each of the foregoing a copy thereof to the email address above.

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MALONEY LAUERSDORF REINER, PC

By */s/ Francis J. Maloney*
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