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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA

NACCARATO RESTAURANT GROUP,  
INC., a Washington corporation,

Plaintiff,

v.

FIREMAN’S FUND INSURANCE  
COMPANY, a California corporation,

Defendant.

No.

**COMPLAINT FOR: (1) DECLARATORY  
RELIEF; (2) BREACH OF CONTRACT; (3)  
ANTICIPATORY REPUDIATION OF  
CONTRACT; (4) INSURANCE BAD  
FAITH; AND (5) VIOLATIONS OF  
CONSUMER PROTECTION ACT**

**JURY DEMAND**

Plaintiff Naccarato Restaurant Group, Inc. (“NRG”) alleges as follows:

**I. INTRODUCTION**

1. The COVID-19 pandemic and resulting government shutdown orders have caused an acclaimed restaurant that was part of the fabric of downtown Tacoma, Washington for 15 years, the Pacific Grill, to permanently close. The losses and damages that NRG, the company that operates the restaurant and a related catering business, has suffered are covered under the insurance policy it purchased from Defendant Fireman’s Fund Insurance Company (“Fireman’s Fund”), which provides all-risks coverage for “direct physical loss of or damage.” The presence of COVID-19 at and/or around NRG’s insured locations has caused physical loss and damage, contaminating and thereby altering physical surfaces in a way that created a risk of serious illness

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1 and death for NRG’s staff and customers. Yet Fireman’s Fund has not provided coverage, forcing  
2 NRG to bring this lawsuit.

3 **II. THE PARTIES**

4 2. NRG is a Washington corporation with its principal place of business in Tacoma,  
5 Washington.

6 3. Fireman’s Fund is a California corporation with its principal place of business in  
7 Illinois. Fireman’s Fund conducts business and sells insurance policies in Pierce County,  
8 Washington.

9 **III. JURISDICTION AND VENUE**

10 4. This Court has jurisdiction over this action under 28 U.S.C. § 1332 because there is  
11 complete diversity of citizenship as to the parties and the amount in controversy exceeds \$75,000,  
12 exclusive of interests and costs.

13 5. Venue is proper under 28 U.S.C. § 1391 because NRG’s principal place of business  
14 is in the Western District of Washington and a substantial portion of the events and omissions  
15 giving rise to NRG’s claim and losses occurred within the Western District of Washington.

16 **IV. FACTUAL BACKGROUND**

17 **A. The COVID-19 Pandemic and the Resulting Government Shutdown Orders**

18 6. COVID-19 is a communicable disease that can be spread from person-to-person and  
19 on contaminated surfaces.<sup>1</sup> Washington State has been at the forefront of the COVID-19 outbreak  
20 in the United States, with the first confirmed case and death.<sup>2</sup> Through November 6, 2020,

21 \_\_\_\_\_  
22 <sup>1</sup> See *Modes of transmission of virus causing COVID-19: implications for IPC precaution recommendations*,  
23 WHO.INT (Mar. 29, 2020), available at <https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations>; *Coronavirus Disease 2019 – How It Spreads*, CDC.GOV (June 1, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>; Bill Chappell & Allison Aubrey, *CDC Advice On Surface Spread Of COVID-19 'Has Not Changed,' Agency Says*, NPR.ORG (May 22, 2020), available at <https://www.npr.org/sections/coronavirus-live-updates/2020/05/22/861193550/advice-on-surface-spread-of-covid-19-has-not-changed-cdc-says>.

25 <sup>2</sup> See Hallie Golden, *Why Washington state is at the center of the US coronavirus outbreak*, THE GUARDIAN

1 Washington State had more than 114,000 confirmed cases and more than 2,435 deaths.<sup>3</sup> There has  
2 been an outbreak of cases in the Tacoma, Washington area, where NRG’s insured locations are  
3 located.<sup>4</sup>

4 7. In addition to causing an unfathomable loss of life, COVID-19 has devastated the  
5 economy. COVID-19 has caused thousands of businesses to permanently shutter and tens of  
6 millions of Americans to lose their jobs. COVID-19 has inflicted particularly severe economic  
7 hardship on restaurants, including in Washington State.

8 8. Federal, state and local official have issued orders prohibiting business and other  
9 activity as a result of COVID-19. In Washington State, Governor Inslee has issued many such  
10 orders, including the following:

- 11 a. On February 29, 2020, Washington Governor Jay Inslee declared a state of  
12 emergency as a result of the COVID-19 outbreak.<sup>5</sup>
- 13 b. On March 16, 2020, Governor Inslee issued a proclamation prohibiting in-person  
14 dining at restaurants as a result of the COVID-19 outbreak, stating that COVID-19  
15 “remains a public disaster affecting life, health, [and] property.”<sup>6</sup>
- 16 c. On March 23, 2020, Governor Inslee issued a “stay at home” proclamation,  
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18 (Mar. 14, 2020), available at <https://www.theguardian.com/world/2020/mar/14/coronavirus-washington-state-us-outbreak>.

19 <sup>3</sup> COVID-19 Data Dashboard, Washington State Department of Health,  
20 <https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard> (last accessed November 6, 2020).

21 <sup>4</sup> See *2019 Novel Coronavirus Outbreak (Covid-19) - Current Status in Washington State*, DOH.WA.GOV (last accessed  
22 June 16, 2020), available at <https://www.doh.wa.gov/Emergencies/Coronavirus/>.

23 <sup>5</sup> Jay Inslee, *Proclamation By The Governor– 20-25* (Feb. 29, 2020), available at  
24 [https://www.governor.wa.gov/sites/default/files/20-05%20Coronavirus%20%28final%29.pdf?utm\\_medium=email&utm\\_source=govdelivery](https://www.governor.wa.gov/sites/default/files/20-05%20Coronavirus%20%28final%29.pdf?utm_medium=email&utm_source=govdelivery).

25 <sup>6</sup> Jay Inslee, *Proclamation By The Governor Amending Proclamation 20-05 – 20-13 – Statewide Limits: Food and Beverage Services, Areas of Congregation* (March 16, 2020), available at  
26 <https://www.governor.wa.gov/sites/default/files/proclamations/20-13%20Coronavirus%20Restaurants-Bars%20%28tmp%29.pdf>.

1 directing all people in Washington State “to immediately cease leaving their home  
2 or place of residence” except to conduct essential activities, and stating that  
3 COVID-19 had “broadly spread” through Washington State, “continues to threaten  
4 the life and health of our people as well as the economy of Washington State,” and  
5 “remains a public disaster affecting life, health, property or the public peace.”<sup>7</sup>

6 d. On April 2, 2020, Governor Inslee issued a proclamation extending the “stay at  
7 home” order and the prohibition on in-person dining to May 4, 2020.<sup>8</sup>

8 e. On May 4, 2020, Governor Inslee issued a proclamation extending the “stay at  
9 home” order and prohibition on in-person dining to May 30, 2020.<sup>9</sup>

10 9. Restaurants were not able to reopen until June 1, 2020 and, when they did,  
11 Washington State imposed restrictions on their operations, including the number of customers they  
12 were able to serve. Many restaurants are experiencing financial distress and/or have permanently  
13 closed.

14 **B. The COVID-19 Pandemic and Resulting Government Orders Force NRG to**  
15 **Permanently Close its Businesses, including the Acclaimed Pacific Grill Restaurant**

16 10. Gordon Naccarato is an award-winning chef and restaurateur from Tacoma. After  
17 working at acclaimed restaurants, he started his own groundbreaking restaurant in Aspen,

18 \_\_\_\_\_  
19 <sup>7</sup> Jay Inslee, *Proclamation By The Governor Amending Proclamation 20-05 – 20-25 – Stay Home – Stay*  
20 *Healthy* (Mar. 23, 2020), available at [https://www.governor.wa.gov/sites/default/files/proclamations/20-25%20Coronavirus%20Stay%20Safe-Stay%20Healthy%20%28tmp%29%20%28002%29.pdf?utm\\_medium=email&utm\\_source=govdelivery](https://www.governor.wa.gov/sites/default/files/proclamations/20-25%20Coronavirus%20Stay%20Safe-Stay%20Healthy%20%28tmp%29%20%28002%29.pdf?utm_medium=email&utm_source=govdelivery).

21 <sup>8</sup> Jay Inslee, *Proclamation By The Governor Amended Proclamations 20-05 and 20-25 – 20-25.1 – Extending*  
22 *Stay Home – Stay Healthy to May 4, 2020* (April 2, 2020), available at  
23 <https://www.governor.wa.gov/sites/default/files/proclamations/20-25.1%20-%20COVID-19%20-%20Stay%20Home%2C%20Stay%20Healthy%20Extension%20%28tmp%29%29.pdf>.

24 <sup>9</sup> Jay Inslee, *Proclamation By The Governor Amended Proclamations 20-05, 20-25, 20-25.1, and 20-25.1 –*  
25 *20-25.3 – Adjusting and Extending Stay Home – Stay Healthy to May 31, 2020* (May 4, 2020), available at  
26 [https://www.governor.wa.gov/sites/default/files/20-25.3%20-%20COVID-19%20Stay%20Home%20Stay%20Healthy%20-%20Reopening%20%28tmp%29.pdf?utm\\_medium=email&utm\\_source=govdelivery](https://www.governor.wa.gov/sites/default/files/20-25.3%20-%20COVID-19%20Stay%20Home%20Stay%20Healthy%20-%20Reopening%20%28tmp%29.pdf?utm_medium=email&utm_source=govdelivery).

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1 Colorado, which the *New York Times* described as the “Best Place to Eat Between the Coasts.”  
2 Naccarato himself was named by *Food and Wine Magazine* as one of the top 10 best new chefs in  
3 America.

4 11. Naccarato eventually moved back to Tacoma and opened the Pacific Grill in 2005,  
5 an “iconic restaurant that helped resurrect downtown Tacoma.”<sup>10</sup> Naccarato helped form NRG,  
6 which operated the Pacific Grill and a related catering business.

7 12. The Pacific Grill was able to survive the economic downturn of 2008 and other  
8 challenges over the 15 years it operated. But the damages and losses caused by the COVID-19  
9 pandemic and related government shutdown orders were insurmountable.

10 13. COVID-19 has been physically present at and/or within one-hundred feet of NRG’s  
11 insured locations. Like mold spores and other bacteria, COVID-19 has a material existence; the  
12 fact that this existence is at a microscopic level does not change this fact. The physical presence of  
13 COVID-19 has caused physical loss and damage at NRG’s insured locations by, among other  
14 things, contaminating and thereby altering physical surfaces in a way that created a risk of serious  
15 illness and death for NRG’s staff and customers. Physical loss and damage to property can occur  
16 even if such loss or damage is not visible to the human eye.

17 14. On or around April 3, 2020, the Pacific Grill shut down because of the COVID-19  
18 pandemic and resulting government shutdown orders. Although it briefly offered takeaway steaks  
19 to cook at home, it never reopened for in-person dining, delivery or carryout. On or around  
20 September 10, 2020, the Pacific Grill and its related catering operations permanently closed.  
21 Many Tacoma residents mourned the restaurant’s loss.<sup>11</sup>

22 \_\_\_\_\_  
23 <sup>10</sup> Kristine Sherred and Chase Hutchinson, *Restaurant that helped resurrect downtown Tacoma has closed for*  
24 *good*, TACOMA NEWS TRIB. (Sept. 10, 2020), available at  
[https://www.thenewstribune.com/entertainment/restaurants/tnt-  
25 diner/article245394360.html#:~:text=Pacific%20Grill%2C%20the%20iconic%20restaurant,downtown%20Tacoma%2C%20has%20closed%20permanently.](https://www.thenewstribune.com/entertainment/restaurants/tnt-diner/article245394360.html#:~:text=Pacific%20Grill%2C%20the%20iconic%20restaurant,downtown%20Tacoma%2C%20has%20closed%20permanently.)

26 <sup>11</sup> See, e.g., Sue Kidd, *Pacific Grill in Tacoma has closed Permanently*, DINE PIERCE COUNTY (Sept. 10, 2020),

1 **B. NRG Purchased an Insurance Policy with Fireman’s Fund that Covers the Losses and**  
2 **Damages it Has Suffered**

3 15. NRG purchased a property insurance policy from Fireman’s Fund (the “Policy”),  
4 numbered MZX 80996099, that covers NRG’s losses and damages at its two insured locations:  
5 1502 Pacific Ave, Tacoma, Washington 98402 (where the Pacific Grill was located) and 2702 East  
6 D St., Tacoma, Washington 98421. A truer and correct copy of the policy is attached hereto as  
7 Exhibit “A.” The Policy limit is about \$2.2 million, and the Policy period is from July 20, 2019 to  
8 July 20, 2020.

9 16. The Policy is an “all-risk” policy, meaning that it “provide[s] coverage for all risks  
10 unless the specific risk is excluded” and “shift[s] the risk of loss away from [the insured] and  
11 place[s] it upon an insurer.” *Vision One, LLC v. Philadelphia Indem. Ins. Co.*, 174 Wash.2d 501,  
12 514 (2012).

13 17. The Policy covers “direct physical loss of or damage . . . caused by or resulting  
14 from any Covered Cause of Loss.”

15 18. The Policy also provides Business Income coverage, stating: “We will pay for the  
16 actual loss of Business Income you sustain due to the necessary suspension of your **operations**  
17 during the **period of restoration**. The suspension must be caused by direct physical loss of or  
18 damage to property” at a covered location or to personal property within 100 feet of a covered  
19 location.<sup>12</sup>

20 19. In addition to this general grant of coverage for loss of Business Income, the Policy  
21 provides at least the following applicable Additional Coverages:

- 22 a. The Policy provides Extended Business Income coverage, stating that Fireman’s  
23 Fund “will pay for the actual loss of Business Income [NRG] incur[s] during the  
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available at <https://dinepiercecounty.com/2020/09/10/pacific-grill-in-tacoma-has-closed-permanently/>.

25 <sup>12</sup> Unless otherwise indicated in this Complaint, bold type face signifies terms defined in the Policy.

1 period” that “[b]egins on the date property . . . is actually repaired, rebuilt or  
2 replaced and **operations** are resumed” and “[e]nds on the earlier of: (a) The date  
3 you could restore your operations, with reasonable speed, to the condition that  
4 would have existed if no direct physical loss or damage occurred; or (b) 30  
5 consecutive days after the date” the property is “actually repaired, rebuilt or  
6 replaced and **operations** are resumed.”

7 b. The Policy provides coverage for Extra Expense, which “means necessary expenses  
8 [incurred] during the **period of restoration**” that the insured “would not have  
9 incurred if there had been no direct physical loss or damage to property caused by  
10 or resulting from a Covered Cause of Loss.” Fireman’s Fund provides this  
11 coverage to “avoid or minimize the suspension of business and to continue  
12 operations.”

13 c. The Policy provides Civil Authority coverage for the “actual loss of Business  
14 Income” sustained and “necessary Extra Expense caused by action of a civil  
15 authority that prohibits access to the described premises due to direct physical loss  
16 of or damage to property, other than at the described premises, caused by or  
17 resulting from any Covered Cause of Loss.”

18 20. The Policy also covers “the actual loss of **crisis event business income** [the  
19 insured] sustain[s] due to the necessary **suspension** of [its] operations during the **crisis event**  
20 **period of restoration**,” which “must be caused by or result from a **covered crisis event** at [the  
21 insured’s] **covered premises**.” The Policy defines **suspension** to mean the “slowdown or  
22 cessation of your business activities” or that “a part or all of the **covered premises** is rendered  
23 untenable.” The Policy defines **covered premises** to mean “that part of the location [the  
24 insured occupies] which is covered by this policy including the area within 100 feet thereof.”

25 21. The Policy defines a **covered crisis event** to include **premises contamination**. The  
26

1 Policy defines **premises contamination** to include the “[n]ecessary closure of [the insured’s]  
2 **covered premises** due to any sudden, accidental and unintentional contamination or impairment of  
3 the **covered premises** or other property on the **covered premises** which results in clear,  
4 identifiable, internal or external visible symptoms of bodily injury, illness, or death of any  
5 person(s).” The Policy also defines **premises contamination** to include contamination by  
6 **communicable disease**, which it defines to mean “any disease or any related or resulting diseases,  
7 viruses, complexes, symptoms, manifestations, effects, conditions, or illnesses.”

8 **B. There are No Applicable Exclusions that Bar or Limit Coverage**

9 22. There are no applicable exclusions that bar or limit coverage for NRG’s claim under  
10 the Policy. For example, in its Causes of Loss Form, the Policy contains Exclusion 2.d.(3), which  
11 states that Fireman’s Fund “will not pay for loss or damage caused by or resulting from . . .  
12 [d]isease.” However, the Washington Changes endorsement, numbered CP 01 60 12 98, amends  
13 the Policy to remove Exclusion 2.d. of the Causes of Loss and then provides a replacement  
14 exclusion that does not contain a disease exclusion or any other applicable exclusion.

15 **C. NRG Tendered its Claim More than Two Months Ago; Fireman’s Fund Has Not**  
16 **Provided Coverage**

17 23. On or around August 25, 2020, NRG tendered a claim for property damage and  
18 business interruption coverage resulting from losses incurred as a result of COVID-19 and related  
19 government shutdown orders. Fireman’s Fund has not provided coverage, forcing NRG to file this  
20 lawsuit.

21 24. There are at least three lawsuits pending against Fireman’s Fund in the Western  
22 District of Washington based on its failure to provide coverage for COVID-19-related damages  
23 and losses, including one lawsuit brought by a restaurant group. As such, NRG expects that  
24 Fireman’s Fund will deny coverage as to its claim.

25 **V. FIRST CLAIM – FOR DECLARATORY RELIEF THAT THE POLICY PROVIDES**

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**COVERAGE**

25. NRG repeats and realleges the allegations in the preceding paragraphs.

26. NRG seeks the Court’s declaration of the parties’ rights and duties under the Policy pursuant to 28 U.S.C. § 2201(a). An actual controversy exists between NRG and Fireman’s Fund concerning the availability of coverage under the Policy for NRG’s claim.

27. The controversy between NRG and Fireman’s Fund is ripe for judicial review, including for at least the following reasons:

- a. NRG tendered its claim to Fireman’s Fund on August 25, 2020. Fireman’s Fund has had more than sufficient time to make a coverage determination but has unreasonably delayed in doing so in violation of Washington Administrative Code (“WAC”) 284-30-370.
- b. Fireman’s Fund has failed to timely pay NRG for the covered losses that it has incurred.
- c. There are at least three cases pending in the Western District of Washington, including one brought by a restaurant group, in which the Fireman’s Fund has denied coverage. As such, NRG expects that Fireman’s Fund will deny coverage as to its claim.

28. NRG seeks a declaration from the Court that:

- a. NRG’s claim triggered coverage under the Policy, including coverage under the Policy provisions described above;
- b. No exclusions in the Policy apply to bar or limit coverage for NRG’s claim; and
- c. The Policy covers NRG’s claim.

**VI. SECOND CLAIM – FOR BREACH OF CONTRACT**

29. NRG repeats and realleges the allegations in the preceding paragraphs.

30. The Policy is a valid and enforceable contract between NRG and Fireman’s Fund.

1 31. In the Policy, Fireman’s Fund agreed to cover NRG against all risks of physical loss  
2 or damage not otherwise excluded, including coverage for Business Income, Extended Business  
3 Income, Extra Expense, Civil Authority, and Crisis Management.

4 32. There are no exclusions in the Policy that bar coverage.

5 33. NRG has complied and is ready to comply with all applicable Policy provisions,  
6 including by paying premiums and providing timely notice of its claim.

7 34. Fireman’s Fund has breached the Policy in material ways described above,  
8 including by failing to timely pay NRG for covered losses that it has incurred.

9 35. NRG has suffered and continues to suffer damages as a result of Fireman’s Fund’s  
10 breach of the Policy in an amount to be determined at trial, including pre-judgment interest.

11 36. As a direct and proximate result of Fireman’s Fund’s breach of its contractual  
12 duties, NRG has been forced to incur attorneys’ fees, expert costs, investigation costs and other  
13 expenses in order to prosecute this action, the sole purpose of which is to obtain the benefits of  
14 NRG’s insurance contract.

15 **VII. THIRD CLAIM – FOR ANTICIPATORY REPUDIATION OF CONTRACT**

16 37. NRG repeats and realleges the allegations in the preceding paragraphs.

17 38. The Policy is a valid and enforceable contract between NRG and Fireman’s Fund.

18 39. In the Policy, Fireman’s Fund agreed to cover NRG against all risks of physical loss  
19 or damage not otherwise excluded, including coverage for Business Income, Extended Business  
20 Income, Extra Expense, Civil Authority, and Crisis Management.

21 40. There are no exclusions in the Policy that bar coverage.

22 41. NRG has complied and is ready to comply with all of its obligations under the  
23 Policy, including by paying premiums and providing timely notice of its claim.

24 42. Even though NRG has complied and is ready to comply with its obligations under  
25 the Policy, Fireman’s Fund has made clear that it will deny NRG coverage for its claim, including

1 by denying coverage sought by at least three policyholders who have filed COVID-19 business  
2 interruption cases against Fireman’s Fund that are pending in the Western District of Washington.

3 43. Fireman’s Fund has unequivocally expressed that it is repudiating and will not fully  
4 and completely perform its obligations under the Policy.

5 44. Fireman’s Fund has failed to timely pay NRG for covered losses that it has  
6 incurred.

7 45. As a result of Fireman’s Fund’s conduct, NRG has suffered and continues to suffer  
8 damages in an amount to be determined at trial, including prejudgment interest.

9 46. As a direct and proximate result of Fireman’s Fund’s breach of its contractual  
10 duties, NRG has been forced to incur attorneys’ fees, expert costs, investigation costs and other  
11 expenses in order to prosecute this action, the sole purpose of which is to obtain the benefits of  
12 NRG’s insurance contract.

13 **VIII. FOURTH CLAIM – FOR INSURANCE BAD FAITH**

14 47. An insurer owes its insured an independent duty of good faith under Washington  
15 State law, including to deal fairly with the insured and to not engage in any action that  
16 demonstrates a greater concern for its own financial interest than the insured’s financial risk. *See,*  
17 *e.g.,* Revised Code of Washington (“RCW”) 48.01.030 (“The business of insurance is one affected  
18 by the public interest, requiring that all persons be actuated by good faith, abstain from deception,  
19 and practice honesty and equity in all insurance matters. Upon the insurer, the insured, their  
20 providers, and their representatives rests the duty of preserving inviolate the integrity of  
21 insurance.”).

22 48. The duty of good faith requires an insurer to conduct a reasonable investigation  
23 before refusing to pay a claim submitted by its insured. An insurer must also have a reasonable  
24 justification before refusing to pay a claim. An insurer who refuses to pay a claim, without  
25 conducting a reasonable investigation or without having a reasonable justification, fails to act in

1 good faith.

2 49. Fireman’s Fund had a duty to investigate, evaluate, and decide NRG’s claim in  
3 good faith. Fireman’s Fund breached its duty by unreasonably investigating, evaluating, and/or  
4 denying the claim by, among other things, failing to timely acknowledge that COVID-19 is a  
5 covered cause of loss under the Policy.

6 50. A violation of one or more of the Washington State claim-handling standards set  
7 forth below is a breach of the duty of good faith, an unfair method of competition, an unfair or  
8 deceptive act or practice in the business of insurance, and a breach of the insurance contract.  
9 Fireman’s Fund’s conduct violated Washington State claim-handling standards, which: (1) require  
10 it to fully disclose all pertinent coverages; (2) prohibit misrepresentations regarding relevant facts  
11 or coverage; (3) prohibit the practice of refusing to pay claims without conducting a reasonable  
12 investigation; (4) require Fireman’s Fund to provide a reasonable explanation of the relevant facts,  
13 law, and policy language and how its policy language supports a denial of NRG’s claim; and (5)  
14 require a prompt and fair claims evaluation that does not put the insurer’s interest ahead of its  
15 insured.

16 51. Fireman’s Fund has failed to comply with the duty of good faith it owes NRG for  
17 the reasons identified above. Fireman’s Fund’s actions and omissions were unreasonable,  
18 unfounded, and frivolous under the circumstances and constitute a breach of Fireman’s Fund’s  
19 duty of good faith.

20 52. As a direct and proximate result of Fireman’s Fund’s conduct, NRG has been  
21 damaged in an amount to be proven at trial.

22 **IX. FIFTH CLAIM – FOR VIOLATIONS OF THE CONSUMER PROTECTION ACT**

23 53. NRG repeats and realleges the allegations in the preceding paragraphs.

24 54. Fireman’s Fund’s violations of the claims-handling procedures set forth in WAC  
25 284-30-370 are a *per se* violation of the Washington Consumer Protection Act (“CPA”), RCW

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1 19.86.010, *et seq.*

2 55. NRG is a consumer who is informed and believes, and based thereon alleges, that  
3 Fireman's Fund's conduct was deceptive, impacted the public, and had the capacity to deceive.

4 56. As a result of Fireman's Fund's violations, NRG has suffered and is continuing to  
5 suffer damages, and is entitled to an award of damages in an amount to be determined at trial,  
6 along with CPA penalties of up to \$25,000 per violation and attorneys' fees under the CPA.

7 **XI. PRAYER FOR RELIEF**

8 NRG prays for judgment against Fireman's Fund as follows:

- 9 1. For declaratory relief, including:
- 10 a. NRG's claim triggered various coverage provisions in the Policy;
- 11 b. No exclusions in the Policy apply to bar or limit coverage for NRG's claim;
- 12 c. The Policy covers NRG's claim; and
- 13 d. Fireman's Fund owes money damages for NRG's covered claim.
- 14 2. For money damages against Fireman's Fund in an amount to be proven at trial but  
15 in excess of \$75,000;
- 16 3. For pre- and post-judgment interest as provided by law;
- 17 4. For an award of attorneys' fees and costs;
- 18 5. For penalties and attorneys' fees under the CPA; and
- 19 6. For such other and further relief as the Court deems just and proper.

20 **XII. JURY TRIAL DEMANDED**

21 NRG demands trial by jury on all issues so triable.

22 Dated the 11<sup>th</sup> day of November, 2020.

23

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26 COMPLAINT FOR: (1) DECLARATORY RELIEF;  
27 (2) BREACH OF CONTRACT; (3) ANTICIPATORY  
REPUDIATION OF CONTRACT; (4) INSURANCE  
BAD FAITH; AND (5) VIOLATIONS OF  
CONSUMER PROTECTION ACT - 13

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