THE HONORABLE MAFÉ RAJUL
Department 35

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

JENIFER K. DEMARRE & RYAN A. DEMARRE,

PLAINTIFFS,

vs.

MUTUAL OF ENUMCLAW INSURANCE COMPANY,

DEFENDANT.

NO. 21-2-10304-5 SEA

AMENDED COMPLAINT FOR DAMAGES

CLASS ACTION

JURY TRIAL DEMANDED

Plaintiffs, individually and on behalf of a proposed class under Washington Court Rule 23, allege:

I. INTRODUCTION

1. Defendant Mutual of Enumclaw Insurance Company ("MOE") sells insurance to consumers, taking in roughly $500 million in premiums each year from a customer base that is primarily in Washington. MOE engages in illegal claims-handling practices with respect to the adjustment and payment of total loss claims under its auto insurance policies. Plaintiffs seek recovery for themselves and on behalf of proposed classes of Washington consumers injured by these unfair claims-handling practices.

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2. First, in determining the actual cash value of a lost vehicle, MOE improperly deducts from the prices of comparable vehicles (in some cases, vehicles not even actually for sale at the dealerships identified as selling them) an amount for "typical negotiation"—despite this not being one of the permitted deductions under Washington law and even though MOE provides no information from which this adjustment could be verified as accurate or reliable. Second, MOE deducts an estimate of the salvage value of the vehicle without determining that a salvage company is willing to purchase the totaled vehicle, an express requirement for lawful settlement practices.

3. Jenifer and Ryan Demarre purchased and paid all premiums on an MOE auto policy for their 2015 Chevy Silverado truck. Plaintiffs suffered the improper settlement practices described above with respect to their October 31, 2019 loss of their Silverado.

4. Each of these insurance practices is forbidden under Washington law and constitute a breach of the insurance contract, a violation of the Consumer Protection Act, and insurance bad faith.

II. PARTIES

5. Plaintiffs Jenifer K. Demarre and Ryan A. Demarre reside in the State of Washington in Pierce County.

6. Defendant MOE is a domestic insurer which maintains a business office in Pierce County, Washington, at 1111 Fawcett Ave, Ste 201, Tacoma, WA 98402, and whose "Home Office" is at 1460 Wells Street, Enumclaw, WA 98022.

III. JURISDICTION AND VENUE

7. This Court has jurisdiction under RCW 2.08.010 because Plaintiffs seek damages in excess of three hundred dollars and as an action to enforce the Consumer Protection Act under RCW 19.86.090.

8. Venue is proper in Pierce County Superior Court under RCW 4.12.025 because the acts and transactions occurred here, Plaintiffs' causes of action arose in Pierce County,

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Plaintiffs reside in Pierce County, and Defendant is a domestic insurer, headquartered in Washington, which maintains and operates a business office in Pierce County.

IV. FACTUAL ALLEGATIONS

9. MOE solicits consumers to purchase auto insurance coverage for their vehicles.

10. MOE sold Plaintiffs a Personal Auto Policy renewal for four of their vehicles, including their 2015 Chevrolet Silverado, Policy Number PA51058084 (the "Demarre Policy"). The Demarre Policy became effective May 4, 2019 and expired November 4, 2019. Plaintiffs are both named insureds under the Demarre Policy.

11. Plaintiffs paid all premiums due to Defendant and otherwise complied with all obligations under the Demarre Policy.

MOE's Auto Policies

12. MOE's auto policies, like the Demarre Policy, provide under Coverage Part D for payment for "direct and accidental loss to your covered auto."

13. Under Coverage Part C, the policies require MOE to pay for "Property Damage sustained by the covered person and caused by an accident" as part of "damages which the covered person is legally entitled to recover" in instances where an insured of the Defendant is in an accident with an uninsured or underinsured motorist.

14. The Demarre Policy provides that MOE, at its option, "may pay for the loss in money or repair or replace the damaged or stolen property."

15. Under Coverage Part D, the maximum that MOE is obligated to pay under the policies is the "actual market value" of the property at the time of the loss, which is defined as "the amount that it would cost, at the time of loss, to buy a vehicle of the same make, model, body type, model year and equipment, with substantially similar mileage and physical condition."

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Plaintiffs' Auto Loss

16. On October 31, 2019, Plaintiffs' 2015 Chevrolet Silverado burst into flames while parked. The cause of the fire was unclear.

17. Plaintiffs submitted a claim to MOE for the loss, which was assigned claim number 550000135532.

18. MOE investigated the claim, determined that the insurance coverage applied, and declared that the vehicle was a total loss.

19. Plaintiffs and MOE could not reach an agreed value for the total loss vehicle.

20. On December 6, 2019, MOE sent Plaintiffs an email stating that while there remained a disagreement on the valuation of the vehicle, MOE had determined that $41,677.79 was the fair market value of the vehicle and MOE would "move forward at this time, and conclude handling based on the information [MOE] had received to date" and "send you payment with paperwork to review." Plaintiffs estimated fair market value of their truck was at least $10,000 more than MOE's estimate. Plaintiffs responded a few hours later that MOE's valuation was not acceptable.

21. A couple of days later, Plaintiffs received a letter from MOE dated December 6, 2019, with a settlement check in the amount of $26,292.79. The letter stated that the settlement amount was based on MOE's actual cash value estimate of $37,908 plus tax, license and transfer fees, and less Plaintiffs' deductible and a $15,135 salvage deduction. The letter informed Plaintiffs that if they did not contact MOE by December 16, 2019, MOE would assume they were retaining the vehicle.

22. MOE's determination that the actual cash value of the Silverado was $37,908 was based on an estimate it obtained from a third-party vendor, Audatex. The estimate is branded an "Autosource report." The Autosource report was attached to the December 6, 2019 letter that included the settlement check.

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23. This Autosource report, which MOE uses in all similar claims, estimates an actual cash value based on the asking or actual sale price of comparable vehicles. Autosource then makes adjustments based on differences between the vehicles, such as the total mileage or differences in after-market upgraded parts.

Total Loss Settlement under Washington Law

24. Washington has a comprehensive regulatory scheme governing insurance companies handling of total loss vehicle claims. *See* WAC 284-30-391. When the insurer and insured do not reach an agreed value, "the insurer must adjust and settle vehicle total losses using the methods" set forth in WAC 284-30-391.[1]

25. When an insurer elects to settle a total loss by way of a cash payment to the insured, the insurer must "Base all offers on itemized and verifiable dollar amounts for vehicles that are currently available, or were available within ninety days of the date of loss, using appropriate deductions or additions for options, mileage or condition when determining comparability." WAC 284-30-391(4)(b).

26. If the claimant retains the total loss vehicle, the insurer may deduct the salvage value from the settlement amount. However, "Upon a request by the claimant, the insurer must provide the name and address of a salvage entity or dismantler who will purchase the salvage for the amount deducted with no additional charge. This purchase option must remain available for at least thirty days after the settlement agreement is reached and the claimant must be advised that the salvage entity may not honor its offer if the condition of the salvage has changed." WAC 284-30-391(5)(c).

MOE's "Typical Negotiation" Deduction

27. The December 6, 2019 settlement offer MOE provided to Plaintiffs was based on an actual cash value estimate that included deductions from the price of comparable vehicles

[1] A total loss means "that the insurer has determined that the cost of parts and labor, plus the salvage value, meets or exceeds, or is likely to meet or exceed, the 'actual cash value' of the loss vehicle." WAC 284-30-320(18)

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for "typical negotiation" in amounts ranging from $2,010 to $2,445—6% of the quoted sales price, rounded to the nearest dollar.

28. In Plaintiffs' case, the Autosource report purports to identify four comparable 2015 Chevrolet Silverados, three in Washington and one in Oregon. The list price of each was reduced to "account for typical negotiation." For example, the purported advertised price of one 2015 Silverado was $40,758 and was adjusted downward by $2,445.

29. The Washington Administrative Code requires offers to be based on "itemized and verifiable dollar amounts for vehicles" and specifies that the only deductions permissible are for "options, mileage or condition[s]." WAC 284-30-391(4)(b).

30. MOE's deduction for "typical negotiation" violates WAC 284-30-391 in multiple ways, each of which is independently sufficient to render MOE's practice a violation of the regulation, including:

a. **Not verifiable**. The deduction for "typical negotiation" is not verifiable. The calculations for these deductions are hidden in the fine print of the Autosource report, and are explained by only the conclusory assertion that "In the case of this 2015 Chevrolet Silverado K3500, the difference between the asking price and selling price is generally 6%." The report does not disclose any information about the methodology for reaching the 6% figure. It offers no justification or explanation for the use of such an estimate of consumers' average negotiation prowess, much less such an estimate that apparently does not account for any variables relevant to negotiation other than the make and model of vehicle.

b. **Based on times and/or areas outside scope of WAC**. The report does not include any actual selling prices for the 2015 Chevrolet Silverado and included a list price from a different state to (purportedly) locate four comparable vehicles. It follows that, if there was any empirical basis for

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the "typical negotiation" deduction, then the sales that formed the basis for that figure must necessarily have involved unknown vehicles outside the permissible time period or geographic scope of WAC 284-30-391's methodology for examining comparable vehicles.

c. **Not a permitted deduction**. The "typical negotiation" deduction is not a permissible deduction under the WAC. *See* WAC 284-30-391(4)(b).

31. For these three independent reasons, the "typical negotiation" deductions used by MOE are unlawful, regardless of the percentage used.

MOE's Salvage Deduction

32. MOE's December 6, 2019 settlement offer provided to Plaintiffs also included a "salvage" deduction of $15,135.

33. Plaintiffs requested that MOE provide the name and address of the salvage entity who would purchase the truck at the quoted amount as required under WAC 284-30-391(5)(c).

34. MOE informed Plaintiffs that Co-Part was the salvage company MOE was using to determine the salvage amount.

35. However, upon investigation, Plaintiffs discovered that Co-Part would not buy the truck. A Co-Part representative further explained that Co-Part does not buy vehicles from insureds, but instead sells vehicles at auction for insurance companies.

36. Because MOE failed to follow the requirements of WAC 284-30-391(5)(c), the salvage deduction in any amount was an illegal settlement practice.

37. On information and belief, when determining a salvage deduction for a settlement offer, MOE does not identify a salvage entity who would purchase the vehicle at the quoted amount.

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Use of Improper or Nonexistent Comparable Vehicles

38. Under WAC 284-30-391(4)(b), MOE's actual cash value estimate must be based on "itemized and verifiable dollar amounts for vehicles that are currently available, or were available within ninety days of the date of loss."

39. However, upon investigation, Plaintiffs discovered that none of the four vehicles listed in the Autosource report supporting the December 6, 2019 cash settlement had ever been available for sale by the dealers at which they were listed.

40. On information and belief, Autosource reports systematically fail to identify cars that were actually for sale.

Mandatory Appraisal Process

41. On March 16, 2020, the Demarre's attorney, Sam Leonard, gave MOE notice of representation and demanded a copy of MOE's settlement offer and a list of the comparators used.

42. April 20, 2020, MOE demanded a mandatory appraisal settlement pursuant to the Demarre policy.

43. The Demarre Policy required Plaintiffs to pay for their own appraiser. Plaintiffs hired Harber Appraisal to represent them. Darrell M. Harber estimated the Silverado's fair market value as $57,169.68. Plaintiffs paid Harber Appraisal $7,300 for its work.

44. MOE's appraiser estimated Plaintiffs' vehicle fair market value at $46,828—over $5,000 more than MOE's original valuation. MOE's appraiser supported his estimate with two purported comparable vehicles. The estimate did not provide the options on either comparable or the VIN numbers or license numbers of those vehicles.

45. Harber Appraisals and MOE's appraiser ultimately reached an agreement that the vehicle's fair market value was $51,257.00. They also agreed on an estimated salvage valuation of $8,200. The $8,200 salvage valuation was not based on an offer to buy and neither appraiser had consulted with potential buyers.

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46. MOE paid Plaintiffs $47,858.29 for the vehicle. The net settlement amount was based on a fair market value of $51,257.00 plus $4,920.67 for tax, $81.12 for tabs and $49.50 for the title transfer fee and less $250 for a deductible and $8,200 for a salvage deduction.

47. On information and belief, the salvage deduction was not based on an offer to buy from a salvage entity or dismantler that Plaintiffs could have taken advantage of.

V. CLASS ACTION ALLEGATIONS

48. Plaintiffs bring this suit as a class action pursuant to Washington Superior Court Civil Rule 23. Plaintiffs assert claims on behalf of themselves and on behalf of two proposed classes of similarly situated people.

49. **Class Definitions**.

a. **Unfair Settlement Class:** All MOE insureds with Washington policies issued in Washington State, who received compensation for the total loss of their own vehicles under their first party coverages (Coverages Part C and D) and who received a settlement offer from MOE based on a total loss valuation that used a deduction for typical negotiation. Excluded from this proposed class are the assigned judge, the judge's staff and family, MOE employees, and claims for accidents with dates of loss occurring prior to March 6, 2019.

b. **Salvage Class:** All MOE insureds with Washington policies issued in Washington State, who received compensation for the total loss of their own vehicles under their first party coverages (Coverages Part C and D) and who received a settlement offer from MOE based on a total loss valuation that included a salvage deduction. Excluded from this proposed class are the assigned judge, the judge's staff and family, MOE employees, and claims for accidents with dates of loss occurring prior to February 26, 2015.

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50. Plaintiffs reserve the ability to revise the proposed class definitions including through briefing on class certification.

51. **Numerosity.** The exact number of insureds similarly situated to Plaintiffs in the proposed classes is currently unknown but can be readily determined from the records maintained by Defendant. However, given the size of MOE as a company, its uniform claims-handling practices, and that approximately half of MOE's customers are in Washington, Plaintiffs estimate that the proposed classes each number in the hundreds, making joinder impractical.

52. **Typicality.** Plaintiffs' claims are typical of the claims of each of the proposed classes. Plaintiffs, like the proposed class members, purchased a standard MOE auto insurance policy, paid premiums, and made a claim for loss when their insured vehicle was damaged. MOE interprets and applies its standard auto insurance policies and endorsements uniformly across all Washington vehicles that it insures. MOE elected to declare the vehicle a total loss but underpaid the loss based upon MOE's common claims-handling practices. Plaintiffs' interests in obtaining compensation for the loss are identical to those of other unnamed members of the proposed classes. Each class member's damages with regard to the "typical negotiation" deduction is either the "typical negotiation" deduction amount in their settlement with MOE or the amount they paid to an appraiser to resolve their claim.

53. **Adequacy.** Plaintiffs will fairly and adequately protect the interests of the proposed classes. Plaintiffs' counsel will fairly and adequately prosecute the case on behalf of the proposed classes. Plaintiffs seek to hold MOE accountable for its uniform claims-handling practices to which they and all other Washington consumers are entitled. Plaintiffs do not have any interests that are antagonistic to those of the proposed classes. Plaintiffs are ready and willing to bring this class action in a representative capacity on behalf of the proposed classes. Plaintiffs have hired experienced class counsel who do not have any interests that are antagonistic to those of Plaintiffs or the proposed classes.

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54. **Commonality and Predominance.** Questions of law and fact are common across the proposed classes. Those questions of law and fact predominate over any questions affecting only individual members. The common and predominant questions of law and fact include, but are not limited to:

a. Whether MOE has a policy or practice of including "typical negotiation" price reductions in total loss settlement estimates;

b. Whether MOE has a policy or practice, when determining a salvage deduction for a settlement offer, of failing to identify a salvage entity who would purchase the vehicle at the quoted amount;

c. Whether Autosource reports systematically fail to identify cars that were actually for sale;

d. Whether the MOE's conduct violated the Washington Administrative Code;

e. Whether MOE's conduct is unfair or deceptive to consumers of auto insurance;

f. Whether MOE's claims-handling practices impact the public interest;

g. Whether MOE's conduct breached its contracts of insurance; and

h. The nature and extent of Class-wide injury and the measure of compensation for such injury.

55. **Superiority.** A class action is the superior method for the fair and efficient adjudication of this controversy. The damages at issue in this case for Plaintiffs and each of the proposed class members may be exceeded by the cost of litigation. Thus, the interest of the proposed class members in controlling and prosecuting individual actions is low and individual members would have difficulty maintaining an individual action. A class action is the superior (and only) realistic way to hold MOE accountable for its misconduct. Moreover, hundreds or thousands of individual actions would greatly congest the Washington state courts. A class

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action is the most cost-effective way for consumers like Plaintiffs and members of the proposed classes to recover for their economic and pecuniary losses resulting from MOE's misconduct. Each of the proposed class member's damages can be uniformly calculated using data available in MOE's sophisticated systems of record. On information and belief, MOE's sophisticated systems of record contain electronic and aggregate information regarding total loss valuations and settlement offers.

VI. FIRST CAUSE OF ACTION
Breach of Contract
(On behalf of Plaintiffs and all proposed classes)

56. Plaintiffs re-allege and incorporate by reference the allegations set forth in all of the paragraphs of this Complaint as though fully stated herein.

57. MOE's insurance policies are contracts between MOE and the members of the proposed class including Plaintiffs.

58. In exchange for payment of premiums, MOE agreed to insure Plaintiffs' and the proposed class members' vehicles and provide payment for covered loss up to "the amount that it would cost, at the time of loss, to buy a vehicle of the same make, model, body type, model year and equipment, with substantially similar mileage and physical condition."

59. Plaintiffs and all proposed class members satisfied all of their duties and obligations and complied with all conditions precedent of their insurance policies.

60. The failure by an insurer to follow WAC requirements in settling an insurance claim is a breach of the insurance contract.

61. MOE's deduction of amounts for "typical negotiation" as part of its settlement offer violated WAC 284-30 *et seq*. and therefore breached the insurance contract.

62. MOE's deduction of a salvage estimate from its settlement offer based on information from a salvage company that was unwilling to purchase the salvage violated WAC 284-30 *et seq*. and therefore breached the insurance contract.

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63. As a result of MOE's breach, Plaintiffs and proposed class members were injured because either they did not receive the full amount of payment to which they were entitled under the contract or because MOE's breach caused the class member to pay out-of-pocket for an appraisal, damaging them in an amount to be proven at trial.

VII. SECOND CAUSE OF ACTION
Per Se Violation of Washington's Consumer Protection Act, RCW 19.86 et seq.
(On behalf of Plaintiffs and all proposed classes)

64. Plaintiffs re-allege and incorporate by reference the allegations set forth in all of the paragraphs of this Complaint as though fully stated herein.

65. Plaintiffs and members of the proposed classes are "persons" within the meaning of the CPA. RCW 19.86.010(1).

66. The CPA prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." RCW 19.86.020.

67. MOE is an "insurer" as defined by WAC 284-30-320(8) and is therefore subject to Washington's Unfair Claims Settlement Practices Regulations, WAC 284-30 *et seq*.

68. Actions prohibited by WAC 284-30-391 are *per se* violations of the CPA. RCW 19.86.170.

69. MOE's practices violated multiple provisions of WAC 284-30-391 which were enacted to regulate insurers and protect insureds, including using a "typical negotiation" deduction and including comparable vehicles that were never for sale in actual cash value estimates, *see* WAC 284-30-391(4)(b), and including salvage deductions when the salvager was not willing to purchase the vehicle. WAC 284-30-391(5)(c). These practices drive down MOE's valuations of total loss vehicles, unfairly reducing the amounts insureds are paid for such vehicles and increasing the likelihood that insured will be required to engage an appraiser in order to obtain fair compensation for their vehicle.

70. Defendant is engaged in the business of insurance, and the conduct described in this complaint occurred in "trade" and "commerce" within the meaning of the Washington

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Consumer Protection Act, RCW § 19.86.010(2).

71. MOE's improper settlement offers impacted the public interest because they injured Plaintiffs and hundreds of other persons and have the capacity to injure hundreds more, and because the business of insurance is vital to the public interest. RCW 19.86.093; RCW 48.01.030.

72. There exists a real and substantial potential for repetition of this conduct in the future because MOE is a large insurance provider in Washington State and, on information and belief, continues these unlawful claims-handling practices. MOE generates significant revenue as a result of these unlawful practices, all at the expense of Washington consumers.

73. MOE's unfair and deceptive acts or practices caused Plaintiffs and proposed class members to suffer injury to their business or property. For Plaintiffs alone, the injury is greater than $10,000.

74. As a direct and proximate result of Defendant's deceptive acts or practices, Plaintiffs and proposed class members have suffered injury in fact and lost money.

75. MOE is liable to Plaintiffs and proposed class members for treble the amount of their damages under RCW 19.86.090.

76. MOE is liable to Plaintiffs and proposed class members for their reasonable attorneys' fees and costs under RCW 19.86.090.

VIII. THIRD CAUSE OF ACTION

Non-Per Se Unfair or Deceptive Business Practices in Violation of Washington's Consumer Protection Act, RCW 19.86 et seq.
(On behalf of Plaintiffs and all proposed classes)

77. Plaintiffs re-allege and incorporate by reference the allegations set forth in all of the paragraphs of this Complaint as though fully stated herein.

78. The conduct described above and throughout this Complaint, including reducing settlement offers on the basis of "typical negotiation" deductions, salvage deductions for which the salvage company is unwilling to purchase the vehicle, and comparable sales for cars not for sale in the relevant period, is unfair within the meaning of the Washington Consumer

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Protection Act, RCW 19.86.010, et seq.

79. Including in the fine print of the comparable sales analysis the methodologically dubious "typical negotiation" deduction is a deceptive act.

80. Listing a salvage deduction without determining if the provider of the salvage quote is actually willing to purchase the vehicle at that price is a deceptive act.

81. Listing as comparable sales some vehicles that were not for sale at the identified car dealership during the relevant time is a deceptive act.

82. Defendant's systematic practices of including improper deductions, offering salvage estimates that are not based on quotes from salvage companies, and using vehicles for comparable sales that were not for sale at the dealership identified during the relevant time are immoral, unethical, oppressive, and/or unscrupulous. These practices drive down MOE's valuations of total loss vehicles, unfairly reducing the amounts insureds are paid for such vehicles and increasing the likelihood that insured will be required to engage an appraiser in order to obtain fair compensation for their vehicle.

83. Defendant's claims-handling practices outlined in this Complaint repeatedly occurred in trade or commerce within the meaning of the Washington Consumer Protection Act, RCW 19.86.010(2) and RCW 19.86.020, and were and are capable of deceiving a substantial portion of the public.

84. The acts complained of herein are ongoing or have a substantial likelihood of being repeated.

85. MOE's claims-handling practices impacted the public interest because they injured Plaintiffs and hundreds of other persons and have the capacity to injure hundreds more, and because insurance is vital to the public interest. RCW 19.86.093, RCW 48.030.

86. As a direct and proximate result of Defendant's deceptive acts or practices, Plaintiffs and proposed class members have suffered injury in fact and lost money.

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87. Plaintiffs and proposed class members are therefore entitled to legal relief against Defendant, including recovery of actual damages, treble damages, attorneys' fees, costs of suit, and such further relief as the Court may deem proper.

IX. FOURTH CAUSE OF ACTION
Insurance Bad Faith
(On behalf of Plaintiffs and all proposed classes)

1. Plaintiffs re-allege and incorporate by reference the allegations set forth in all of the paragraphs of this Complaint as though fully stated herein.

2. As their insurer, MOE owed a fiduciary duty to Plaintiffs and the members of the proposed class to act in good faith and exercise its discretion reasonably.

3. MOE breached that fiduciary duty by engaging in total loss settlement practices that contravene Washington law, seeking to reduce settlement offers and obtain an unfair advantage in negotiation. Each of these tactics—using "typical negotiation" deductions, salvage deductions without a salvage company willing to purchase the vehicle, and comparable vehicles that were not for sale during the relevant period—constitutes unreasonable, frivolous, or unfounded claims-handling practices that lacked any basis in the policy or at law.

4. By breaching its duty of good faith, MOE directly and proximately caused Plaintiffs and members of the proposed class to suffer damages in an amount to be proven at trial.

5. For breaching its duty of good faith, MOE is also liable to Plaintiffs and proposed class members for their reasonable attorneys' fees and costs.

X. FIFTH CAUSE OF ACTION
Declaratory Judgment
(On behalf of Plaintiffs and all proposed classes)

6. Plaintiffs re-allege and incorporate by reference the allegations set forth in all of the paragraphs of this Complaint as though fully stated herein.

7. Plaintiffs and the proposed class members seek a judgment from this Court declaring that the auto insurance policies issued by MOE, and all MOE policies containing the

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same relevant language, do not permit MOE to make deductions for "typical negotiation" costs from the comparator vehicles when determining actual cash value, do not permit deduction of salvage price in the absence of a salvage company willing to purchase the vehicle, and do not permit the use of comparators in the determination of actual cash value when the comparators are not currently for sale or for sale within ninety days of the date of loss.

XI. RELIEF REQUESTED

WHEREFORE, Plaintiffs requests that this Court:

A. Certify this action as a class action pursuant to CR 23;

B. Appoint Plaintiffs as the class representatives for both classes pursuant to CR 23;

C. Appoint Plaintiffs' counsel as class counsel for both classes pursuant to CR 23;

D. Enter a judgment for Injunctive and declaratory relief declaring Defendant's deceptive and/or unfair acts or practices to be unlawful, and enjoining Defendant from engaging in each of the unfair and deceptive acts set forth herein;

E. Enter declaratory judgment as to the insurance contracts as requested in Section XII, *supra*;

F. Enter judgment for a monetary award in favor of Plaintiffs and proposed class members against MOE for:

i. An amount to be proven at trial awarding Plaintiffs and members of the proposed classes all of their damages, including consequential damages, resulting from MOE's wrongful conduct as described herein; or, in the alternative, disgorgement of the sums that MOE has improperly underpaid its insureds;

ii. Treble the damages suffered by Plaintiffs and the proposed class members pursuant to RCW 19.86.090 and RCW 48.30.015(2);

iii. All reasonable costs and attorneys' fees incurred by Plaintiffs and members of the proposed classes;

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iv. Prejudgment interest on all actual damages awarded; and

G. For any other relief as may be just, legal, and proper.

RESPECTFULLY SUBMITTED AND DATED this 7th day of October, 2021.

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