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Attorney for Plaintiff, JOHN DOE

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION

JOHN DOE, an individual)	Case No.:
Plaintiff,)	VERIFIED COMPLAINT FOR
vs.)	INJUNCTIVE RELIEF AND DAMAGES
NAMELESS UNDERWRITERS)	
INSURANCE COMPANY; BIG-BOX)	Judge:
STORES, INC.; FUEL CORPORATION;)	Dept.:
PROPANE, INC.; and DOES 1-50, inclusive)	
Defendants)	

Plaintiff JOHN DOE hereby files this COMPLAINT upon NAMELESS UNDERWRITERS INSURANCE COMPANY; BIG-BOX STORES, INC.; FUEL CORPORATION; PROPANE, INC.; and DOES 1-50, inclusive. Plaintiff alleges the following:

GENERAL ALLEGATIONS

1. Plaintiff JOHN DOE (“DOE”) is a resident of California whose address is 123 Main Street, Oceanside, California 92054.
2. DOE is informed, believes, and thereon alleges that at all material times herein alleged, Defendant NAMELESS UNDERWRITERS INSURANCE COMPANY (“NAMELESS”) is a Connecticut Corporation registered to conduct business in California using foreign corporation number C1234567.

1 3. DOE is informed, believes, and thereon alleges that at all material times herein
2 alleged, Defendant BIG-BOX STORES, INC. (“BIG-BOX”) is a Delaware Corporation
3 registered to conduct business in California using foreign corporation number C1234567.

4 4. DOE is informed, believes, and thereon alleges that at all material times herein
5 alleged, Defendant FUEL CORPORATION (“FUEL”) is a Canadian Corporation that declared
6 bankruptcy around April, 2008, and whose current status is unknown.

7 5. DOE is informed, believes, and thereon alleges that at all material times FUEL
8 conducted business using the name “Pseudonym”, among others.

9 6. DOE is informed, believes, and thereon alleges that at all material times herein
10 alleged, Defendant PROPANE, INC. (“PROPANE”) is a Pennsylvania Corporation registered to
11 conduct business in California using foreign corporation number C1234567.

12 7. DOE is presently unaware of the true names and capacities of the Defendants
13 sued herein as DOES 1 through 50, and therefore sues them by these fictitious names. DOE will
14 amend this Complaint to state their true names and capacities when they have been ascertained.
15 DOE is informed and believes that each of the fictitiously named Defendants is responsible in
16 some manner for the occurrences alleged herein.

17 8. All references in this complaint to “Defendants” means every named defendant,
18 including the DOE defendants.

19 9. DOE is informed and believes that all of the Defendants, including those sued in
20 the name of DOE, are, and were the agents, servants, and employees of the other Defendants,
21 and in doing the things herein mentioned, are, and were acting within the scope of their authority
22 as such agents, servants, and employees with the direction, permission and/or consent of the
23 other Defendants.

24 10. Venue of this action is proper in the above-referenced court because the real
25 property that is the subject of this action is located in the City of Oceanside, Court of San Diego,
26 State of California, DOE is a California resident, and defendants BIG-BOX, NAMELESS, and
27 PROPANE are registered California Corporations.

28

1 11. On or about December, 2007, DOE purchased a used barbeque grill (“GRILL”)
2 from the Thrift Store located at 1234 Main Avenue, Vista, California 92083, which had been
3 manufactured by Defendant FUEL CORPORATION.

4 12. On January 19, 2008, DOE exchanged the empty propane cylinder for his GRILL
5 for a full one (hereinafter referred to as the “TANK”) at a store located in Oceanside, California
6 owned by Defendant BIG-BOX.

7 13. DOE is informed, believes and thereon alleges that the TANK was refilled by
8 Defendant PROPANE.

9 14. On May 16, 2008, at approximately 10:45 a.m., a fire broke out at DOE’s home at
10 123 Main Street in Oceanside, California (“HOME”).

11 15. DOE was not using the GRILL at the time of the fire.

12 16. The fire severely damaged DOE’s home and belongings.

13 17. For eighteen (18) years, DOE made timely payments on his Fire Insurance Policy
14 purchased from Defendant NAMELESS, a copy of which is attached hereto as Exhibit “A”
15 [Policy Number 123456789], (the “POLICY”).

16 18. Within two (2) hours of the fire, NAMELESS was notified of the incident.

17 19. On May 20, 2008, Investigator1 of Unified Investigations and Sciences
18 investigated the cause and origin of the fire and determined the source of the fire was the GRILL
19 and TANK.

20 20. DOE has been informed, believes, and on that basis alleges that the source of the
21 fire that the GRILL and/or TANK were defective.

22 21. On May 28 2008, Investigator2 of Unified Cause and Origin removed the GRILL,
23 TANK, and spatulas from the HOME.

24 22. On June 5, 2008, attorney Joe Blow of Bloe and Blow in Scottsdale, Arizona
25 contacted DOE and demanded that he not disturb the site of the incident before the cause and
26 origin investigators representing the TANK and GRILL manufacturers have an opportunity to
27 investigate the site.

28

1 23. On June 5, 2008, NAMELESS adjuster Adjuster1 was at the site of the fire with
2 personnel from Apex Construction performing a walk-through of the premises in order to
3 prepare a “Scope of Work” identifying what needed to be done to remove the damaged portions
4 of the HOME and rebuild the way it was a minute before the fire.

5 24. On June 24, 2008, Investigator2 of Unified Cause and Origin, representing
6 PROPANE, were at the HOME.

7 25. On July 3, 2008, Investigator2 and Investigator3 Unnamed Investigations
8 (Fallbrook, CA) representing FUEL were at the HOME.

9 26. On July 10, 2008, Tester1 of Test Construction advised DOE that he had taken a
10 sample of ceiling and given it to a lab for analysis who had determined that it did not contain
11 asbestos.

12 27. DOE is informed, believes, and thereon alleges that Test’s sampling was not
13 performed in accordance with California’s OSHA Regulations.

14 28. On November 17, 2008, DOE received a report from an independent asbestos
15 inspection company which detailed asbestos contamination in DOE’s home (built in 1959). This
16 report flatly contradicts the findings by NAMELESS agent, Test Construction.

17 29. On July 29, 2008, at DOE’s request, Trust Construction (“Trust”) created a 55-
18 page Scope of Work in which it estimated the total cost to repair damages to the HOME to be
19 Two Hundred Eighty Four Thousand, Four Hundred Forty One Dollars and Eighty Cents
20 (\$284,441.80).

21 30. DOE was advised that Trust’s Scope of Work took twelve (12) man-hours to
22 complete.

23 31. On September 19, 2008, NAMELESS issued DOE and his Loan Servicer, First
24 Loan Services, a check in the amount of One Hundred Seventy Five Thousand, Four Hundred
25 Forty Nine Dollars and Fourteen Cents (\$175,449.14) as “Building ACV Settlement -- Dwelling
26 ACV settlement of Structure Damage less the deductible”.

1 32. On February 25, 2009, at 6:49 p.m., DOE received a call from NAMELESS
2 supervisor Supervisor1, in which NAMELESS admitted that it owed DOE more than the
3 September 19, 2008 payment.

4 33. On November 13, 2008, DOE advised NAMELESS that the City of Oceanside
5 cited him with an administrative warning regarding a Public Nuisance designation on his
6 property.

7 34. On or about November 17, 2008, NAMELESS requested and received Ironclad's
8 Scope of Work related to restoration of DOE's home.

9 35. On November 18, 2008, NAMELESS's adjuster, Adjuster3 visited the HOME.

10 36. Also at the site were DOE and his personal assistant, Assistant1, as well as Trust's
11 Estimator, its estimator, and its independent salesman Sales Guy.

12 37. The stated purpose of the November 18, 2008 meeting was to agree on a Scope of
13 Work between Ironclad and NAMELESS.

14 38. At the meeting, Trust advised DOE that NAMELESS agreed with Trust's Scope
15 of Work.

16 39. On November 23, 2009, NAMELESS sent DOE a letter which explained its
17 calculations regarding the September 19, 2008 settlement check.

18 40. In its November 23, 2009 letter, NAMELESS falsely states that the parties had an
19 "agreed repair estimate from Party3 Construction".

20 41. In its November 23, 2009 letter, NAMELESS states that it deducted Fourteen
21 Thousand, Five Hundred Sixty Three Dollars and Eighty Nine Cents (\$14,563.89) for
22 "depreciation".

23 42. The POLICY states that, in the event of loss, the HOME is covered at
24 "replacement cost without deduction for depreciation".

25 43. In its November 23, 2009 letter, NAMELESS falsely infers that it had no
26 knowledge of Trust's estimate that it had verbally approved only five (5) days earlier.

27

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1 44. In its November 23, 2009 letter, NAMELESS falsely states that DOE advised it
2 that he had “previously reached an agreed settlement for [his] total loss personal property with a
3 representative of Adjuster4”.

4 45. In its November 23, 2009 letter, NAMELESS falsely states that it has “issued
5 advances of \$35,000 against [his] personal property loss”, when in fact those payment were not
6 advances and were totally unrelated to DOE’s personal property loss.

7 46. DOE is informed, believes, and thereon alleges that those payments were for
8 current living expenses.

9 47. The September 19, 2008 check was issued to DOE, but also improperly issued to
10 DOE’s Loan Servicer, First Loan Services.

11 48. On April 22, 2010, DOE filed a Declaratory Relief action in San Diego Superior
12 Court, Case Number XXXXXXXXXXXXXXXXXXXXXXXX, to have the check properly re-issued.
13 That case is pending as of the date hereof.

14 49. DOE is informed, believes, and thereon alleges that on or about March 1, 2009,
15 NAMELESS requested and received a digital copy of Trust’s Scope of Work.

16 50. On March 6, 2009, NAMELESS left DOE a telephone message in which it stated
17 that NAMELESS “went through” and “agreed with” Trust’s Scope of Work, but removed Ten
18 Thousand Dollars (\$10,000) for “supervision” and put back the current price amounts set by
19 software that Trust had allegedly “overridden”.

20 51. On March 6, 2009, NAMELESS emailed DOE a copy of NAMELESS’s Scope of
21 Work, which DOE had expected to be consistent with Trust’s estimate.

22 52. To DOE’s great surprise, the total for the March 6, 2009 estimate sent by
23 NAMELESS was Two Hundred Sixteen Thousand, Nine Hundred Sixty Two Dollars and Fifty
24 Nine Cents (\$216,962.59), a full Sixty Seven Thousand, Four Hundred Ninety Eight Dollars and
25 Twenty One Cents (\$67,498.21) lower than Trust’s July 29, 2008 estimate.

26 53. On April 14, 2009, DOE sent NAMELESS an email detailing the problems with
27 the March 6, 2009 Scope of Work created by NAMELESS.

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1 54. NAMELESS had adjusted the estimate for depreciation, in spite of the fact that
2 the POLICY provides for full replacement cost without deduction for depreciation.

3 55. NAMELESS had eliminated the data from corresponding to the removal of
4 damaged materials, in spite of the fact that repair and/or replacement cannot occur without first
5 removing such materials.

6 56. In spite of the fact that NAMELESS agreed to a home repair estimate of Two
7 Hundred Sixteen Thousand, Nine Hundred Sixty Two Dollars and Fifty Nine Cents
8 (\$216,962.59), it has yet to make any settlement payment beyond the September 19, 2008 One
9 Hundred Seventy Five Thousand, Four Hundred Forty Nine Dollars and Fourteen Cents
10 (\$175,449.14) payment.

11 57. NAMELESS has agreed that it owes DOE an additional Forty One Thousand,
12 Five Hundred Thirteen Dollars and Forty Five Cents (\$41,513.45) which it has yet to pay.

13 58. On July 16, 2009, the City of Oceanside issued a NOTICE AND ORDER re
14 PUBLIC NUISANCE with respect to DOE's property (the "Oceanside Notice"), a copy of which
15 is attached hereto as Exhibit "D".

16 59. The Oceanside Notice requires DOE to make all necessary repairs to his home
17 within thirty (30) days, or the City will take its own action.

18 60. DOE alone, and through his attorney, subsequently contacted the City of
19 Oceanside and received an extension to that deadline which has since expired.

20 61. Although the City of Oceanside has not yet enforced the Oceanside Notice, DOE
21 is informed and believes that enforcement is imminent.

22 62. As a result of the fire, many of DOE's heirlooms and antiques were damaged or
23 destroyed.

24 63. On September 9 2008, DOE submitted an estimate by Restoration3 and
25 Conservation for restoration/repair of DOE's various antiques totaling \$3,768.61 to
26 NAMELESS.

27 64. On November 18, 2008, Agent5, employed by NAMELESS's agent, Agency5,
28 visited the HOME.

1 65. On November 18, 2008, DOE accompanied Agency5's representative to the
2 antique restoration company to photograph and examine DOE's antiques.

3 66. On March 6, 2009, DOE received an incomplete inventory list from NAMELESS,
4 as submitted by its agent, Agency5.

5 67. On April 16, 2009, DOE approved a partial settlement regarding his personal
6 property damaged by the fire.

7 68. NAMELESS has yet to provide payment for the April 16, 2009 partial settlement.

8 69. NAMELESS lacks any good cause for failing to provide such payment.

9 70. NAMELESS has yet to compensate DOE for amounts related to mold
10 remediation, asbestos remediation, code upgrades (energy and seismic), preparation of house
11 plans, Oceanside building department fees, additional living expense as well as other claims.

12 71. NAMELESS is aware that it is liable for such amounts, and has repeatedly been
13 advised by DOE of same.

14 72. In addition to the losses related to his HOME and personal belongings, DOE has
15 significant damages related to the severe disruption of his business. These damages are
16 continuing in nature and shall be proven at the time of trial.

17 73. In addition to the losses related to his HOME and personal belongings, DOE's
18 health has suffered severe emotional distress, including hypertension, stress, anguish, insomnia,
19 nervousness, grief, anxiety, worry, and mental anguish related to both the losses and the
20 additional issues resulting from defendants' failure to adjust his claim. These damages are
21 continuing in nature and shall be proven at the time of trial.

22 74. DOE is informed, believes, and thereon alleges that, as a result of its 1999
23 examination, the Insurance Commissioner determined that NAMELESS violated provisions of
24 the Unfair Practices Act (CIC § 790.03(h), and the Fair Claims Settlement Practices Regulations
25 (CCR, Title 10, Chapter 5, Section 2695.1 et seq.) no less than fifty-seven (57) times.

26 75. DOE is informed, believes, and thereon alleges that, as a result of its 2003
27 examination, the Insurance Commissioner determined that NAMELESS violated provisions of
28

1 the Unfair Practices Act (CIC § 790.03(h) and the Fair Claims Settlement Practices Regulations
2 (CCR, Title 10, Chapter 5, Section 2695.1 et seq.) no less than one-hundred and one (101) times.

3 **FIRST CAUSE OF ACTION AGAINST NAMELESS AND THE DOE DEFENDANTS**
4 **FOR BAD FAITH - FAILURE TO PROPERLY INVESTIGATE CLAIM**

5 76. Plaintiff incorporates by reference paragraphs 1 through 75 as though set forth in
6 full here.

7 77. NAMELESS and the DOE Defendants owed DOE a duty to diligently search for
8 and consider evidence that supported coverage of the claimed losses.

9 78. NAMELESS and the DOE Defendants acted unreasonably and without proper
10 cause when they failed to conduct a full, fair, and thorough investigation of all of the bases of the
11 claim.

12 79. As a direct and proximate result of NAMELESS and the DOE Defendants'
13 actions, DOE has been damaged.

14 80. DOE has not been fully compensated for his property losses.

15 81. DOE's business has been disrupted and lost money as a result.

16 82. DOE has suffered severe emotional distress.

17 83. DOE has been forced to hire an attorney to recover his benefits under the
18 POLICY, and incur related fees and costs.

19 84. DOE has been forced to file suit to recover under the POLICY and incur related
20 fees and costs.

21 85. NAMELESS and the DOE Defendants' failure to properly investigate DOE claim
22 was a substantial factor in causing DOE's harm.

23 86. NAMELESS and the DOE Defendants' actions were willful, oppressive,
24 malicious, and violations of public policy, and are therefore subject to punitive damages.

25 87. DOE hereby requests an award of punitive and exemplary damages to in a sum
26 sufficient to punish NAMELESS and the DOE Defendants and to deter them from further similar
27 misconduct, and to set an example for others who may be inclined to behave like NAMELESS
28 and the DOE Defendants. Further, all other compensatory and statutory damages inclusive of

1 statutory and equitable attorneys' fees are hereby requested. The court is requested in its
2 equitable power, if needed, to award fees under Civil Code Procedure § 1021.5.

3 88. DOE has suffered irreparable harm as a result of NAMELESS and the DOE
4 Defendants' activities, and will continue to suffer irreparable injury that cannot adequately be
5 remedied at law unless NAMELESS and the DOE Defendants, and their officers, agents and
6 employees, and all persons acting with them or on their behalf, are enjoined from engaging in
7 any further similar acts.

8 89. DOE hereby request this Court to immediately enjoin NAMELESS and the DOE
9 Defendants, and their officers, agents and employees, and all persons acting with them or on
10 their behalf, from engaging in any further similar acts.

11 **SECOND CAUSE OF ACTION AGAINST NAMELESS AND THE DOE DEFENDANTS**
12 **FOR BREACH OF CONTRACTUAL DUTY TO PAY A COVERED CLAIM**

13 90. Plaintiff incorporates by reference paragraphs 1 through 89 as though set forth in
14 full here.

15 91. DOE suffered losses as a result of the fire which were covered under the
16 POLICY.

17 92. NAMELESS was notified of the losses.

18 93. NAMELESS breached its duty to pay DOE for all of his losses under the
19 POLICY.

20 94. As a direct and proximate result of NAMELESS's actions, DOE has been
21 damaged.

22 95. DOE has not been fully compensated for his property losses.

23 96. DOE's business has been disrupted and lost money as a result.

24 97. DOE has suffered severe emotional distress.

25 98. DOE has been forced to hire an attorney to recover his benefits under the
26 POLICY, and incur related fees and costs.

27 99. DOE has been forced to file suit to recover under the POLICY and incur related
28 fees and costs.

1 100. NAMELESS's breach of its contractual duty to pay DOE's covered claims was a
2 substantial factor in causing DOE's harm.

3 101. NAMELESS's actions were willful, oppressive, malicious, and violations of
4 public policy, and are therefore subject to punitive damages.

5 102. DOE hereby requests an award of punitive and exemplary damages to in a sum
6 sufficient to punish NAMELESS and to deter it from further similar misconduct, and to set an
7 example for others who may be inclined to behave like NAMELESS. Further, all other
8 compensatory and statutory damages inclusive of statutory and equitable attorneys' fees are
9 hereby requested. The court is requested in its equitable power, if needed, to award fees under
10 Civil Code Procedure § 1021.5.

11 103. DOE has suffered irreparable harm as a result of NAMELESS's activities, and
12 will continue to suffer irreparable injury that cannot adequately be remedied at law unless
13 NAMELESS, and its officers, agents and employees, and all persons acting with it or on its
14 behalf, are enjoined from engaging in any further similar acts.

15 104. DOE hereby request this Court to immediately enjoin NAMELESS, and its
16 officers, agents and employees, and all persons acting with it or on its behalf, from engaging in
17 any further similar acts.

18 **THIRD CAUSE OF ACTION AGAINST NAMELESS AND THE DOE DEFENDANTS**
19 **FOR BREACH OF THE IMPLIED OBLIGATION OF GOOD FAITH AND FAIR**
20 **DEALING - FAILURE OR DELAY IN PAYMENT**

21 105. Plaintiff incorporates by reference paragraphs 1 through 104 as though set forth in
22 full here.

23 106. DOE suffered losses as a result of the fire which were covered under the
24 POLICY.

25 107. NAMELESS and the DOE Defendants were notified of the loss.

26 108. NAMELESS and the DOE Defendants unreasonably, and without proper cause,
27 failed to pay policy benefits.

28 109. As a direct and proximate result of NAMELESS and the DOE Defendants'
actions, DOE has been damaged.

1 110. DOE has not been fully compensated for his property losses.

2 111. DOE's business has been disrupted and lost money as a result.

3 112. DOE has suffered severe emotional distress.

4 113. DOE has been forced to hire an attorney to recover his benefits under the
5 POLICY, and incur related fees and costs.

6 114. DOE has been forced to file suit to recover under the POLICY and incur related
7 fees and costs.

8 115. NAMELESS and the DOE Defendants' failure to pay policy benefits was a
9 substantial factor in causing DOE's harm.

10 116. NAMELESS and the DOE Defendants' actions were willful, oppressive,
11 malicious, and violations of public policy, and are therefore subject to punitive damages.

12 117. DOE hereby requests an award of punitive and exemplary damages to in a sum
13 sufficient to punish NAMELESS and the DOE Defendants and to deter them from further similar
14 misconduct, and to set an example for others who may be inclined to behave like NAMELESS
15 and the DOE Defendants. Further, all other compensatory and statutory damages inclusive of
16 statutory and equitable attorneys' fees are hereby requested. The court is requested in its
17 equitable power, if needed, to award fees under Civil Code Procedure § 1021.5.

18 118. DOE has suffered irreparable harm as a result of NAMELESS and the DOE
19 Defendants' activities, and will continue to suffer irreparable injury that cannot adequately be
20 remedied at law unless NAMELESS and the DOE Defendants, and their officers, agents and
21 employees, and all persons acting with them or on their behalf, are enjoined from engaging in
22 any further similar acts.

23 119. DOE hereby request this Court to immediately enjoin NAMELESS and the DOE
24 Defendants, and their officers, agents and employees, and all persons acting with them or on
25 their behalf, from engaging in any further similar acts.

1 **FOURTH CAUSE OF ACTION AGAINST NAMELESS FOR BREACH OF COVENANT**
2 **OF GOOD FAITH AND FAIR DEALING**

3 120. Plaintiff incorporates by reference paragraphs 1 through 119 as though set forth in
4 full here.

5 121. DOE and NAMELESS entered into a contract, described hereinabove as the
6 POLICY.

7 122. DOE did all of the significant things that the contract required him to do.

8 123. All conditions required for NAMELESS's performance have occurred.

9 124. NAMELESS unfairly interfered with DOE's right to receive his benefits under
10 the POLICY

11 125. As a direct and proximate result of NAMELESS's actions, DOE has been
12 damaged.

13 126. DOE has not been fully compensated for his property losses.

14 127. DOE's business has been disrupted and lost money as a result.

15 128. DOE has suffered severe emotional distress.

16 129. DOE has been forced to hire an attorney to recover his benefits under the
17 POLICY, and incur related fees and costs.

18 130. DOE has been forced to file suit to recover under the POLICY and incur related
19 fees and costs.

20 131. NAMELESS's failure to pay policy benefits was a substantial factor in causing
21 DOE's harm.

22 132. NAMELESS's actions were willful, oppressive, malicious, and violations of
23 public policy, and are therefore subject to punitive damages.

24 133. DOE hereby requests an award of punitive and exemplary damages to in a sum
25 sufficient to punish NAMELESS and to deter it from further similar misconduct, and to set an
26 example for others who may be inclined to behave like NAMELESS. Further, all other
27 compensatory and statutory damages inclusive of statutory and equitable attorneys' fees are
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1 hereby requested. The court is requested in its equitable power, if needed, to award fees under
2 Civil Code Procedure § 1021.5.

3 134. DOE has suffered irreparable harm as a result of NAMELESS's activities, and
4 will continue to suffer irreparable injury that cannot adequately be remedied at law unless
5 NAMELESS, and its officers, agents and employees, and all persons acting with it or on its
6 behalf, are enjoined from engaging in any further similar acts.

7 135. DOE hereby request this Court to immediately enjoin NAMELESS, and its
8 officers, agents and employees, and all persons acting with it or on its behalf, from engaging in
9 any further similar acts.

10 **FIFTH CAUSE OF ACTION AGAINST NAMELESS AND THE DOE DEFENDANTS**
11 **FOR BREACH OF CONTRACT**

12 136. Plaintiff incorporates by reference paragraphs 1 through 135 as though set forth in
13 full here.

14 137. The POLICY represents a binding contract between DOE and NAMELESS.

15 138. DOE has done all, or substantially all, of the significant things that he was
16 required to do under the POLICY, and to any significant things that DOE did not do, he was
17 excused therefrom.

18 139. All conditions required by the contract for NAMELESS's performance have
19 occurred.

20 140. The POLICY required NAMELESS to provide timely and complete payment for
21 all of DOE's losses related to the fire which were covered by the POLICY.

22 141. As set forth herein, NAMELESS failed to perform its obligations under the
23 POLICY in that it has failed to fully compensate DOE for his losses related to the fire which
24 were covered by the POLICY.

25 142. As a result of NAMELESS's failure to fully compensate DOE for his losses
26 related to the fire which were covered by the POLICY, DOE has suffered damages.

27 143. DOE has not been fully compensated for his property losses.

28 144. DOE's business has been disrupted and lost money as a result.

1 145. DOE has been forced to hire an attorney to recover his benefits under the
2 POLICY, and incur related fees and costs.

3 146. DOE has been forced to file suit to recover under the POLICY and incur related
4 fees and costs.

5 **SIXTH CAUSE OF ACTION AGAINST BIG-BOX, FUEL, PROPANE, AND THE DOE**
6 **DEFENDANTS FOR NEGLIGENCE**

7 147. Plaintiff incorporates by reference paragraphs 1 through 146 as though set forth in
8 full here.

9 148. DOE is informed, believes, and thereon alleges that BIG-BOX, FUEL,
10 PROPANE, and the DOE DEFENDANTS designed, manufactured, supplied, inspected, and
11 refilled the GRILL and/or TANK.

12 149. DOE is informed, believes, and thereon alleges that BIG-BOX, FUEL,
13 PROPANE, and the DOE DEFENDANTS failed to use the amount of care in designing,
14 manufacturing, and inspecting the GRILL and/or TANK, and/or refilling the TANK that a
15 reasonably careful designer, manufacturer, supplier, and/or refiller would use in similar
16 circumstances to avoid exposing others to a foreseeable risk of harm.

17 150. DOE was harmed by the negligence of BIG-BOX, FUEL, PROPANE, and the
18 DOE DEFENDANTS.

19 151. DOE has suffered significant losses to both his real and personal property,
20 including numerous items of incalculable sentimental value.

21 152. DOE has suffered severe emotional distress.

22 153. DOE's business has been severely disrupted and lost money as a result.

23 154. DOE has been forced to hire an attorney to recover his damages, and has incurred
24 related fees and costs.

25 155. DOE has been forced to file suit to recover his damages and incur related fees and
26 costs.

27 156. The negligence of BIG-BOX, FUEL, PROPANE, and the DOE DEFENDANTS
28 was a substantial factor in causing DOE's harm.

1 **SEVENTH CAUSE OF ACTION AGAINST BIG-BOX, PROPANE, AND THE DOE**
2 **DEFENDANTS FOR BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

3 157. Plaintiff incorporates by reference paragraphs 1 through 157 as though set forth in
4 full here.

5 158. DOE is informed, believes, and thereon alleges that he purchased the TANK from
6 BIG-BOX, PROPANE, and the DOE DEFENDANTS.

7 159. At the time of purchase, BIG-BOX, PROPANE, and the DOE DEFENDANTS
8 were in the business of selling tanks for barbecue grills, or by their special relationship, they held
9 themselves out as having special knowledge or skill regarding tanks for barbecue grills.

10 160. At the time of purchase, the TANK was not of the same quality as those generally
11 acceptable in the trade.

12 161. At the time of purchase, the TANK was not fit for the ordinary purposes for
13 which such goods are used.

14 162. At the time of purchase, the TANK did not conform to the quality established by
15 the usage of trade.

16 163. Following the fire, DOE took reasonable steps within a reasonable time to notify
17 BIG-BOX, PROPANE, and the DOE DEFENDANTS that the TANK did not have the expected
18 quality.

19 164. DOE is informed, believes, and thereon alleges that, as a result of BIG-BOX,
20 PROPANE, and the DOE DEFENDANTS' breach, DOE was harmed.

21 165. DOE has not been fully compensated for his property losses.

22 166. DOE's business has been disrupted and lost money as a result.

23 167. DOE has suffered severe emotional distress.

24 168. DOE has been forced to hire an attorney to recover his benefits under the
25 POLICY, and incur related fees and costs.

26 169. DOE has been forced to file suit to recover under the POLICY and incur related
27 fees and costs.

1 170. DOE is informed, believes, and thereon alleges that the BIG-BOX, PROPANE,
2 and the DOE DEFENDANTS' breaches were a substantial factor in causing his harm.

3 171. BIG-BOX, PROPANE, and the DOE DEFENDANTS' actions were willful,
4 oppressive, malicious, and violations of public policy, and are therefore subject to punitive
5 damages.

6 172. DOE hereby requests an award of punitive and exemplary damages to in a sum
7 sufficient to punish BIG-BOX, PROPANE, and the DOE DEFENDANTS, and to deter it from
8 further similar misconduct, and to set an example for others who may be inclined to behave like
9 BIG-BOX, PROPANE, and the DOE DEFENDANTS. Further, all other compensatory and
10 statutory damages inclusive of statutory and equitable attorneys' fees are hereby requested. The
11 court is requested in its equitable power, if needed, to award fees under Civil Code Procedure §
12 1021.5.

13 173. DOE has suffered irreparable harm as a result of BIG-BOX, PROPANE, and the
14 DOE DEFENDANTS' activities, and will continue to suffer irreparable injury that cannot
15 adequately be remedied at law unless BIG-BOX, PROPANE, and the DOE DEFENDANTS, and
16 their officers, agents and employees, and all persons acting with them or on their behalf, are
17 enjoined from engaging in any further similar acts.

18 174. DOE hereby request this Court to immediately enjoin BIG-BOX, PROPANE, and
19 the DOE DEFENDANTS, and their officers, agents and employees, and all persons acting with
20 them or on their behalf, from engaging in any further similar acts.

21 **EIGHTH CAUSE OF ACTION AGAINST BIG-BOX, PROPANE, AND THE DOE**
22 **DEFENDANTS FOR BREACH OF IMPLIED WARRANTY OF**
23 **FITNESS FOR A PARTICULAR PURPOSE**

24 175. Plaintiff incorporates by reference paragraphs 1 through 174 as though set forth in
25 full here.

26 176. DOE is informed, believes, and thereon alleges that he purchased the TANK from
27 BIG-BOX, PROPANE, and the DOE DEFENDANTS.
28

1 177. At the time of purchase, BIG-BOX, PROPANE, and the DOE DEFENDANTS
2 knew or had reason to know that DOE intended to use the TANK for a particular purpose,
3 namely safely providing fuel for a barbecue grill.

4 178. At the time of purchase, BIG-BOX, PROPANE, and the DOE DEFENDANTS
5 knew or had reason to know that DOE was relying on their skill and judgment to select or furnish
6 a product that was suitable for the particular purpose.

7 179. DOE justifiably relied on BIG-BOX, PROPANE, and the DOE DEFENDANTS'
8 skill and judgment.

9 180. DOE is informed, believes, and thereon alleges that the TANK was not suitable
10 for the particular purpose.

11 181. Following the fire, DOE took reasonable steps within a reasonable time to notify
12 BIG-BOX, PROPANE, and the DOE DEFENDANTS that the TANK was not suitable for its
13 purpose.

14 182. DOE is informed, believes, and thereon alleges that, as a result of BIG-BOX,
15 PROPANE, and the DOE DEFENDANTS' breach, DOE was harmed.

16 183. DOE has not been fully compensated for his property losses.

17 184. DOE's business has been disrupted and lost money as a result.

18 185. DOE has suffered severe emotional distress.

19 186. DOE has been forced to hire an attorney to recover his benefits under the
20 POLICY, and incur related fees and costs.

21 187. DOE has been forced to file suit to recover under the POLICY and incur related
22 fees and costs.

23 188. DOE is informed, believes, and thereon alleges that the failure of the TANK to be
24 suitable was a substantial factor in causing his harm.

25 189. BIG-BOX, PROPANE, and the DOE DEFENDANTS' actions were willful,
26 oppressive, malicious, and violations of public policy, and are therefore subject to punitive
27 damages.

28

1 190. DOE hereby requests an award of punitive and exemplary damages to in a sum
2 sufficient to punish BIG-BOX, PROPANE, and the DOE DEFENDANTS, and to deter it from
3 further similar misconduct, and to set an example for others who may be inclined to behave like
4 BIG-BOX, PROPANE, and the DOE DEFENDANTS. Further, all other compensatory and
5 statutory damages inclusive of statutory and equitable attorneys' fees are hereby requested. The
6 court is requested in its equitable power, if needed, to award fees under Civil Code Procedure §
7 1021.5.

8 191. DOE has suffered irreparable harm as a result of BIG-BOX, PROPANE, and the
9 DOE DEFENDANTS' activities, and will continue to suffer irreparable injury that cannot
10 adequately be remedied at law unless BIG-BOX, PROPANE, and the DOE DEFENDANTS, and
11 their officers, agents and employees, and all persons acting with them or on their behalf, are
12 enjoined from engaging in any further similar acts.

13 192. DOE hereby request this Court to immediately enjoin BIG-BOX, PROPANE, and
14 the DOE DEFENDANTS, and their officers, agents and employees, and all persons acting with
15 them or on their behalf, from engaging in any further similar acts.

16 **NINTH CAUSE OF ACTION AGAINST BIG-BOX, FUEL, PROPANE, AND THE DOE**
17 **DEFENDANTS FOR STRICT PRODUCTS LIABILITY**

18 193. Plaintiff incorporates by reference paragraphs 1 through 192 as though set forth in
19 full here.

20 194. As set forth hereinabove, DOE is informed, believes, and thereon alleges that he
21 was harmed by a product distributed, manufactured, and/or sold by BIG-BOX, FUEL,
22 PROPANE, and the DOE DEFENDANTS that contained a manufacturing defect, and/or was
23 defectively designed.

24 195. DOE is informed, believes, and thereon alleges that the GRILL and/or TANK
25 contained a manufacturing defect when it left BIG-BOX, FUEL, PROPANE, and/or the DOE
26 DEFENDANTS' possession.

27 196. DOE is informed, believes, and thereon alleges that the GRILL and/or TANK did
28 not perform as safely as an ordinary consumer would have expected at the time of use.

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- H. Fees and costs in an amount to be determined at the time of trial;
- I. Interest on all damages, fees, costs and other relief at the maximum legal rate; and
- J. For all other relief that this Court may deem just and proper.

DEMAND FOR JURY TRIAL

DOE hereby demands a jury trial as provided by California law.

DATED: May ____, 20xx

By: _____
Attorney for Plaintiff,
JOHN DOE

VERIFICATION

I, JOHN DOE, am Plaintiff in this action. I have read the foregoing Verified Complaint and know the contents thereof. The matters asserted herein are within my knowledge and personal experience, except for those matters alleged on information and belief, and for those allegations, I believe them to be true. I am over the age of eighteen years old and am competent to testify to these matters, if called upon to do so.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May __, 20xx, at _____, California.

JOHN DOE