

THE HONORABLE JAMES L. ROBERT

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

HADASSAH SHELLENBERGER,  
individually and on behalf of all others  
similarly situated,

Plaintiff,

v.

AIG WARRANTYGUARD, INC.,  
and WHIRLPOOL CORPORATION,

Defendants.

Case No.: 2:24-cv-00657-JLR

**DEFENDANT AIG  
WARRANTYGUARD, INC.'S  
MOTION TO DISMISS PLAINTIFF  
HADASSAH SHELLENBERGER'S  
FIRST AMENDED COMPLAINT**

NOTE ON MOTION CALENDAR:  
December 11, 2024

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

	<b>Page(s)</b>
I. INTRODUCTION AND RELIEF REQUESTED.....	5
II. RELEVANT PROCEDURAL HISTORY AND THE ALLEGATIONS IN THE FAC.....	7
A. This Court Already Dismissed the Original Complaint Its Entirety.....	7
B. Plaintiff Purchases a KitchenAid Dishwasher in April 2020.....	8
C. Several Months After Purchasing the Dishwasher, Plaintiff Begins to Receive Mailers Advertising an Extended Service Plan for the Dishwasher.....	9
D. Plaintiff Purchases a Three-Year Service Plan But Omits Any Specific Allegations About When She Entered into the Service Contract. ....	10
E. The Service Contract Allows AIGWG to Repair or Buyout Plaintiff’s Dishwasher in Its Sole Discretion.....	10
F. In Late 2022, Plaintiff’s Dishwasher Malfunctions and AIGWG Subsequently Offers to Buy Out the Appliance Under the Terms of the Service Contract.....	12
III. LEGAL STANDARD.....	13
IV. ARGUMENT.....	14
A. Plaintiff Fails to State a Claim Under the CPA. ....	14
1. Plaintiff Has Not Pled Her CPA Claim with Particularity.....	14
2. Plaintiff Still Fails to Plausibly Allege that AIGWG’s Conduct Was “Unfair or Deceptive” and Therefore, She Cannot State a Claim for Violation of Washington’s Consumer Protection Act.....	15
B. Plaintiff Does Not State a Claim for Breach of Contract.....	20
1. Plaintiff Does Not Plausibly Allege AIGWG Breached Any Provision of the Service Contract. ....	21
2. Plaintiff’s Breach of Contract Claim Also Fails Because She Does Not Allege Recoverable Damages.....	23
C. Plaintiff Cannot State a Claim for Breach of the Implied Covenant of Good Faith and Fair Dealing.....	24
D. The Court Should Dismiss Plaintiff’s FAC With Prejudice .....	25
V. CONCLUSION.....	25

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page(s)**

**FEDERAL CASES**

*Ashcroft v. Iqbal*,  
556 U.S. 662 (2009).....13, 14

*Babrauskas v. Paramount Equity Mortg.*,  
2013 U.S. Dist. LEXIS 152561 (W.D. Wash. Oct. 2023) .....24

*Brotherson v. Prof. Basketball Club, L.L.C.*,  
604 F. Supp. 2d 1276 (W.D. Wash. 2009).....17

*Davis v. HSBC Bank Nev., N.A.*,  
691 F.3d 1152 (9th Cir. 2012) .....18, 20

*Hard 2 Find Accessories, Inc. v. Amazon.com, Inc.*,  
58 F. Supp. 3d 1166 (W.D. Wash. 2014), *aff'd*, 691 F. App'x 406 (9th Cir. 2017)....21, 24

*Kearns v. Ford Motor Co.*,  
567 F.3d 1120 (9th Cir. 2009) .....14

*Mickelson v. Chase Home Fin., LLC*,  
2012 U.S. Dist. LEXIS 53418 (W.D. Wash. Apr. 16, 2012).....20

*Salas v. Whirlpool Corp.*,  
2024 U.S. Dist. LEXIS 31916 (C.D. Cal. Jan. 24, 2024) .....18, 19, 20

*Sprewell v. Golden State Warriors*,  
266 F.3d 979 (9th Cir. 2001), *opinion amended on denial of reh'g*, 275 F.3d 1187  
(9th Cir. 2001).....14

*Steckman v. Hart Brewing, Inc.*,  
143 F.3d 1293 (9th Cir. 1998) .....25

*Storey v. Amazon.com Servs. LLC*,  
2024 U.S. Dist. LEXIS 101945 (W.D. Wash. June 7, 2024).....17, 18

**STATE CASES**

*134<sup>th</sup> St. Lofts, LLC v. iCap Nw. Opportunity Fund, LLC*,  
479 P.3d 367 (Wash. Ct. App. 2020) .....24

*Farmers Ins. Co. of Wash. v. Miller*,  
549 P.2d 9 (Wash. 1976).....21

1 *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins.,*  
 2 719 P.2d 531 (Wash. 1986).....16

3 *Hearst Commc’ns, Inc. v. Seattle Times Co.,*  
 4 115 P.3d 262 (Wash. 2005).....21, 23

5 *Wright v. Lyft, Inc.,*  
 6 406 P.3d 1149 (Wash. 2017).....16

7 **FEDERAL STATUTES**

8 RCW § 19.86.020 .....16

9 **STATE STATUTES**

10 RCW § 198.6 *et seq.* .....7

11 **RULES**

12 Fed. R. Civ. P. 9(b) .....14, 15

13 Fed. R. Civ. P. 12(b)(6).....13

14 **OTHER AUTHORITIES**

15 Washington Consumer Protection Act..... *passim*

**I. INTRODUCTION AND RELIEF REQUESTED**

On September 11, 2024, this Court dismissed Plaintiff Hadassah Shellenberger’s (“Plaintiff”) Complaint in its entirety for reasons that should have signaled to Plaintiff that her case was beyond repair. But one ground in particular strikes at the heart of this case and demonstrates why Plaintiff cannot state a claim for relief: “Defendants’ marketing materials expressly directed Ms. Shellenberger to the complete terms and conditions of a valid contract that she could have reviewed before freely entering. Ms. Shellenberger cannot ignore readily available contract terms and then plausibly claim she was deceived by those terms.” Dkt. 45 at 19 (Motion to Dismiss Order (“MTD Or.”)). Plaintiff’s response? To bring virtually the same complaint alleging – yet again – that Defendants misrepresented the characteristics of the plan, the service standards it provides, and the rights it conferred while ignoring the plain terms of her actual contract.

In the First Amended Complaint (“FAC”), Plaintiff brings three claims against Defendants AIG WarrantyGuard, Inc. (“AIGWG”) and Whirlpool Corporation (“Whirlpool”) for (1) Violations of the Washington Consumer Protection Act (“CPA”), (2) Breach of Contract, and (3) Breach of the Implied Covenant of Good Faith and Fair Dealing. These three claims fail for many reasons, most of which the Court addressed the first time. As to the CPA claim, the only real difference between the FAC and the Complaint is how Plaintiff attempts to plead around the disclaimer language directing her to the “complete terms and conditions” of the service plan. She now alleges that she did “not notice” the disclaimer language, which “urged” her to review the “complete terms and conditions” of the Service Contract prior to purchase. FAC ¶ 48. But this new allegation, even if true, does not save the CPA claim because the Court already concluded that “[a]ny reasonable consumer—even the least sophisticated reader—would notice the disclaimer and understand its message.” MTD Or. 16. Along the same lines, Plaintiff continues to gloss over her receipt of the Service Contract even though the Court ordered Plaintiff to specifically allege the details concerning her receipt of the Service Contract. *Id.* at 27 (“Ms. Shellenberger shall allege whether, when, and how she

1 received a copy of the Service Plan contract...”). She skirts the Court’s order by stating when  
2 she allegedly did *not* receive it (*i.e.*, at the time of purchase) as opposed to when she actually  
3 *did* receive it. *See* FAC ¶ 53. Regardless, as this Court already recognized, Plaintiff’s admission  
4 that she obtained the Service Contract from the website in the disclaimer establishes that the  
5 contract has always been available to her, including *prior* to purchase. Contrary to Plaintiff’s  
6 version of events in the FAC, her admission, the exhibits attached to the FAC, and the Service  
7 Contract show she had every opportunity to review the “complete terms and conditions” of the  
8 Service Contract and even seek a refund under the contract’s 60-day “free-look” provision.  
9 This dooms her CPA claim.

10 Plaintiff’s claim for Breach of Contract fares no better because she continues to  
11 advance a theory that was already rejected by this Court. For the *second time*, Plaintiff  
12 contends that AIGWG breached the Service Contract by failing to repair, replace, or buyout  
13 her appliance when she initiated her service claim in September 2022. However, Plaintiff also  
14 admits that AIGWG bought out her appliance several months later in February 2023 pursuant  
15 to the terms of the Service Contract. Although she takes issue with the delay between  
16 September 2022 and February 2023, the Service Contract does not place any temporal  
17 limitations on the resolution of a service claim. To the contrary, the Service Contract exempts  
18 AIGWG from liability for any service delays. *See* MTD Or. 24. Because AIGWG properly  
19 exercised its right to buyout Plaintiff’s appliance and she concedes receiving the buyout, she  
20 fails to plausibly allege a breach of the Service Contract and any recoverable damages. And  
21 finally, Plaintiff cannot state a claim for Breach of the Implied Covenant of Good Faith and  
22 Fair Dealing because the Service Contract authorizes the very conduct which she challenges  
23 (*i.e.*, the buyout of her dishwasher in AIGWG’s sole discretion).

24 In the end, Plaintiff’s three claims for relief fail for many reasons, most of which the  
25 Court already addressed in its MTD Order. For these reasons and those set forth herein, the  
26  
27

1 Court should dismiss the FAC in its entirety but this time with prejudice.<sup>1</sup>

2 **II. RELEVANT PROCEDURAL HISTORY AND THE ALLEGATIONS IN THE**  
3 **FAC**

4 **A. This Court Already Dismissed the Original Complaint Its Entirety.**

5 On May 10, 2024, Plaintiff Hadassah Shellenberger filed a class action complaint  
6 against Defendants and asserted three claims for (1) Violations of the CPA (RCW § 198.6 *et*  
7 *seq.*), (2) Breach of Contract, and (3) Breach of the Implied Covenant of Good Faith and Fair  
8 Dealing. *See generally* Complaint (“Compl.”). Soon thereafter, AIGWG moved to dismiss the  
9 Complaint on the basis it failed to state a claim. *See* Dkt. 23 (AIGWG’s Original Motion to  
10 Dismiss). The Court granted AIGWG’s motion in its entirety on September 11, 2024. In the  
11 MTD Order, the Court stated in pertinent part:

12 **The court warns Ms. Shellenberger that it will not tolerate strategic**  
13 **omission of pertinent facts that may undermine her claims.** Any  
14 amended complaint reasserting a CPA claim must allege with  
15 particularity the circumstances of the fraudulent conduct by providing  
16 the most complete, clear picture of the alleged facts as possible. *See*  
17 Fed. R. Civ. P. 9(b). **In particular, Ms. Shellenberger shall allege**  
18 **whether, when, and how she received a copy of the Service Plan**  
19 **contract, including whether the contract was provided to her at the**  
20 **time she received a confirmation email following her purchase of**  
21 **the Service Plan.** (*See* Compl. ¶¶ 49-50 (alleging that after she  
22 purchased her Service Plan, Ms. Shellenberger “received a confirmation  
23 email” with “details about her KitchenAid Plan, such as the dates of  
24 coverage and the model number of her covered dishwasher”.) Failure  
25 to comply may warrant a finding of bad faith and/or sanctions, up to and  
26 including dismissal of her claims with prejudice.

21 MTD Or. 27 (emphasis added).

22 On October 2, 2024, Plaintiff filed the FAC, which asserts the same claims against  
23 Defendants for (1) Violations of the CPA, (2) Breach of Contract, and (3) Breach of the Implied  
24 Covenant of Good Faith and Fair Dealing. *See generally* FAC. Plaintiff continues to seek to  
25

27 <sup>1</sup> AIGWG joins in Whirlpool’s arguments in its concurrently filed Motion to Dismiss; however,  
28 in the interest of brevity, we do not repeat them here.

1 represent a putative class of Washington consumers who were allegedly deceived into  
2 purchasing extended service contracts for a Whirlpool brand home appliance. *See* FAC ¶ 87.

3 The FAC does not deviate significantly from the Complaint, and it does not address the  
4 Court’s directive to plead the specifics surrounding her receipt of the Service Contract. FAC  
5 ¶ 87. To the contrary, Plaintiff continues in the FAC to strategically omit details about when  
6 she received the Service Contract. Although she alleges that she did not receive it on the date  
7 of purchase, she does not specify when she actually received it. *See id.* ¶ 53 (“The email did  
8 not include Plaintiff’s Service Contract. Plaintiff did not receive a copy of her Service Contract  
9 for review, from Defendants or otherwise, prior to purchase, at the time of purchase, or on the  
10 date of purchase.”); ¶ 55 (“Defendants emailed Plaintiff’s Certificate of Coverage to Plaintiff  
11 several days later. Plaintiff’s Service Contract was also sent to her at a later date, but Plaintiff  
12 does not recall whether it was mailed or emailed to her.”). Plaintiff also acknowledges what is  
13 apparent from the face of the marketing mailers she received (attached as Exhibits 4-6 to the  
14 FAC), which is that they referred to the “complete terms and conditions” of the service plan.  
15 *Id.* ¶ 48. In order to plead around this, Plaintiff now claims that she did “not notice” the  
16 disclaimer language prior to purchasing her service plan even though this Court already  
17 concluded that any “reasonable consumer...would notice the disclaimer and understand its  
18 message.” *Id.*; MTD Or. 16. As set forth below, the amendments in the FAC do not save  
19 Plaintiff’s claims and instead only further demonstrate that she cannot state a claim against  
20 AIGWG arising out of the service plan at issue in this case.

21 The following factual allegations are drawn from the face of the FAC. Even when  
22 accepted as true, Plaintiff fails to state a claim against AIGWG.<sup>2</sup>

23 **B. Plaintiff Purchases a KitchenAid Dishwasher in April 2020.**

24 Plaintiff alleges that in or around April 2020, she purchased a KitchenAid dishwasher  
25 from Best Buy for \$1,084.99. FAC ¶ 38. She further alleges that at the same time, she

26  
27 <sup>2</sup> AIGWG accepts as true the allegations made in the FAC as it must for purposes of this Motion  
but reserves the right to challenge such allegations should the FAC not be dismissed.



1 purchased a Geek Squad Protection Plan from Best Buy (the “GSP Plan”) to protect her  
2 dishwasher. *Id.* She contends that the GSP Plan provided for all necessary repairs needed  
3 during the term of the service plan in the event of a covered malfunction. *Id.* ¶ 39.

4 **C. Several Months After Purchasing the Dishwasher, Plaintiff Begins to**  
5 **Receive Mailers Advertising an Extended Service Plan for the Dishwasher.**

6 In the months after she purchased the dishwasher, Plaintiff allegedly began to receive  
7 mailers from what she believed was KitchenAid. FAC ¶ 40. Those mailers allegedly urged  
8 Plaintiff to purchase an extended service plan and offered repair or replacement benefits for  
9 covered malfunctions at no out-of-pocket expenses by paying for 100% of the required parts  
10 and labor for such repairs. *Id.* ¶¶ 41-42. Plaintiff attaches other subsequently received  
11 marketing mailers with allegedly identical language to those mailers as Exhibits 4-6 to the  
12 FAC. *Id.* ¶ 41.

13 The first pages of Exhibits 4-6 contain a disclaimer which states in pertinent part:

14 KitchenAid Service Plans are offered, sold and issued by  
15 AIGWarrantyGuard, Inc., 650 Missouri Avenue, Jeffersonville,  
16 IN 47130, an affiliate of American International Group, Inc.  
17 (AIG). Limitations and exclusions apply. **See the complete  
terms and conditions at [serviceplans.kitchenaid.com/details](https://www.kitchenaid.com/serviceplans/details).**  
KitchenAid is not affiliated with AIG or any of its affiliates.

18 FAC at Ex. 4, p. 1 (emphasis added). The subsequent pages in Exhibits 4-6 also direct  
19 consumers to “visit [serviceplans.kitchenaid.com](https://www.serviceplans.kitchenaid.com) for more information.” *Id.* Ex. 4, p. 3. Plaintiff  
20 confirms that she obtained the Service Contract attached to the FAC as Exhibit 8 from the  
21 KitchenAid website referenced in the marketing mailers. FAC ¶ 67, n.3 (“Attached as Exhibit  
22 8 is a copy of the Service Contract which, according to Defendants’ website, governs  
23 Shellenberger’s KitchenAid Plan.”). Therefore, as this Court has already recognized, the  
24 Service Contract was available to Plaintiff on the website identified in the disclaimer on  
25 Exhibits 4-6 had Plaintiff wished to review it at any time, including prior to purchase. *See*  
26 MTD Or. 16.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

technical information are on extended backorder for a minimum of forty-five (45) calendar days, We will determine if an Exchange or Buyout will be made. All contractual obligations for the specified Product are fulfilled, in lieu of repairs, upon Exchange or Buyout of Your Product.

**20. EXCHANGE OR BUYOUT.** We have the option, at Our sole discretion, to (a) Exchange Your Product with a replacement product with similar features and functionality, or (b) Buyout Your Product with a cash settlement based on the original purchase price of the covered Product, excluding taxes, delivery and installation fees. The value of the Exchange or Buyout will be determined according to the age of the covered Product using the following depreciation schedule: Product Age Reimbursement Amount 1-5 years (day 366-1825) 75% of Original purchase price of the covered Product 6-10 years (day 1826-3650) 45% of Original purchase price of the covered Product 11-15 years (day 3651-5475) 25% of Original purchase price of the covered Product You have up to forty-five (45) days from the date of authorization to complete your Product Buyout transaction. We will have satisfied all contractual obligations owed for the specified Product if We Exchange or Buyout Your Product under this section. Technological advances may result in a replacement Product with a lower selling price than the original Product. If We Exchange or Buyout the Product, the covered Product becomes Our property and We may, at Our discretion, require the product to be returned to Us (or our designee) at Our expense. The Insurer and Obligor shall not be deemed to provide cover and the Insurer or Obligor shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Insurer, its parent company or its ultimate controlling entity to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union or the United States of America.

*Id.* ¶¶ 12, 20.

The Service Contract expressly precludes any incidental or consequential damages arising out of delays in servicing or the inability to service a covered appliance:

**25. INCIDENTAL/CONSEQUENTIAL DAMAGES AND WARRANTIES.** US, THE DEALER/RETAILER, MANUFACTURER, AND THEIR AGENTS, CONTRACTORS, OR LICENSEES WILL NOT UNDER ANY CIRCUMSTANCES

1 BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL  
2 DAMAGES, INCLUDING, BUT NOT LIMITED TO, PROPERTY  
3 DAMAGE, LOST TIME, LOST DATA RESULTING FROM THE  
4 BREAKDOWN OR FAILURE OF ANY EQUIPMENT OR FROM  
5 DELAYS IN SERVICING OR THE INABILITY TO RENDER  
6 SERVICE ON ANY COVERED EQUIPMENT. EXCLUSION IS  
7 MADE OF ANY IMPLIED WARRANTY OF FITNESS FOR A  
8 PARTICULAR PURPOSE. THERE ARE NO EXPRESS OR  
9 IMPLIED WARRANTIES MADE HEREIN.

10 *Id.* at Ex. 8, ¶ 25. Finally - and crucially - it contains a free-look provision, which allows the  
11 consumer to cancel the contract within the first 60 days and receive a refund.<sup>3</sup>

12 **17. CANCELLATION AND REFUND.** You may cancel this  
13 Contract at any time for any reason. If You cancel this Contract within  
14 sixty (60) days of the date purchased, You will receive a refund of the  
15 full purchase price less any claims. If You cancel this Contract  
16 thereafter, You will be refunded the remaining days of coverage on a  
17 monthly prorated basis, less costs for service performed (if  
18 applicable). Neither You, the Dealer or We are obligated to renew this  
19 Contract beyond the current term. You may cancel this Contract via  
20 phone by calling 1-866-265-0028 or by sending written notice of  
21 cancellation to Whirlpool Cancellations, 650 Missouri Ave,  
22 Jeffersonville, IN 47130 or by email to  
23 whirlpoolcancellations@sndirect.com.

24 *Id.* at Ex. 8, ¶ 17.

25 **F. In Late 2022, Plaintiff’s Dishwasher Malfunctions and AIGWG  
26 Subsequently Offers to Buy Out the Appliance Under the Terms of the  
27 Service Contract.**

28 Plaintiff alleges that in or around September 2022, a gasket on the dishwasher allegedly  
began to malfunction and she submitted a claim for repair under the Service Contract.<sup>4</sup> FAC ¶  
59. She was allegedly informed that there were no service appointments available in the  
network so she had the option to contact an independent repair company to fix her appliance

<sup>3</sup> Plaintiff was eligible for a 100% refund within 30 days, and a 90% refund between 31 and 60 days per Section 17 of the Service Contract and the specific Washington resident provision. FAC at Ex. 8, p. 4.

<sup>4</sup> Plaintiff also alleges an earlier repair. She contends that soon after purchase in April 2020, the same gasket on the dishwasher door panel started to ripple and lift from the door panel. FAC ¶ 58. Plaintiff contacted Whirlpool and replaced the gasket under the manufacturer’s warranty. *Id.*

1 and then seek reimbursement under the Service Contract. *Id.* ¶ 60. She was also allegedly  
2 informed that the third-party repair service would have to comply with the terms and conditions  
3 of the Service Contract. *Id.* ¶ 61. Plaintiff alleges that she spent over a week calling local  
4 service providers but was unsuccessful. *Id.* ¶ 63. She further alleges that around September  
5 26, 2022, she made multiple calls to Whirlpool requesting repair of her appliance but was  
6 provided with no service, repair, or buyout under the Service Contract. *Id.* ¶ 64. Though the  
7 dishwasher was not repaired in September 2022, Plaintiff continued to use the appliance until  
8 it allegedly stopped working in February 2023. *Id.* ¶ 65. At that time, Plaintiff submitted a  
9 claim under the Service Contract and was informed that her appliance would be bought out for  
10 \$764.36. *Id.* ¶ 68.

11 In short, according to her own allegations and the exhibits to the FAC, Plaintiff  
12 purchased a dishwasher in April 2020 that was repaired shortly thereafter under the original  
13 manufacturer warranty. Then, after nearly three years of use, her dishwasher was unable to be  
14 repaired and AIGWG offered her a buyout of \$764.36 pursuant to Sections 12 and 20 of the  
15 Service Contract.

16 Plaintiff dedicates a significant portion of the FAC—just as in the original Complaint—  
17 alleging that AIGWG and Whirlpool engaged in deceptive business practices through their  
18 marketing of extended service plans for the Whirlpool family of appliances. But as detailed in  
19 the Court’s MTD Order, the marketing materials make clear the parties’ rights and obligations,  
20 including the buyout provision as an express contractual right of AIGWG. *Id.* at Ex. 8, ¶¶ 12,  
21 20; MTD Or. 23 (“The contract expressly permits Defendants to elect, in their sole discretion,  
22 a repair, replacement, or buyout.”).

### 23 III. LEGAL STANDARD

24 A complaint must be dismissed under Rule 12(b)(6) if it fails to state a claim upon  
25 which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). Indeed, a complaint that lacks  
26 plausibly alleged facts to support its legal theory must be dismissed. *Ashcroft v. Iqbal*, 556  
27 U.S. 662, 678 (2009). The Court need not accept allegations that are merely conclusory,

1 unwarranted deductions of fact, or unreasonable inferences. *Sprewell v. Golden State*  
2 *Warriors*, 266 F.3d 979, 988 (9th Cir. 2001), *opinion amended on denial of reh’g*, 275 F.3d  
3 1187 (9th Cir. 2001). A plaintiff must therefore plead factual content that allows the court to  
4 draw the reasonable inference that defendant is liable for the misconduct alleged. *Ashcroft*,  
5 556 U.S. at 678.

#### 6 IV. ARGUMENT

##### 7 A. Plaintiff Fails to State a Claim Under the CPA.

8 Plaintiff fails to state a claim under the CPA for two reasons that the Court previously  
9 identified as deficiencies in the MTD Order. First, Plaintiff does not plead the CPA claim with  
10 particularity as required under Rule 9(b). And second, she does not allege any “unfair or  
11 deceptive” conduct by AIGWG giving rise to a claim for violations of the CPA. Contrary to  
12 Plaintiff’s version of events in the FAC, she received notice of the “complete terms and  
13 conditions” of her service plan in advance of purchase. In light of this, she cannot plausibly  
14 allege that AIGWG engaged in deceptive practices, particularly when she admittedly did not  
15 review the contractual language and premises her claim on blind ignorance.

##### 16 1. Plaintiff Has Not Pled Her CPA Claim with Particularity.

17 Plaintiff’s CPA claim sounds in fraud and is therefore subject to Rule 9(b)’s heightened  
18 pleading standard. *See Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009) (under  
19 Rule 9(b), fraud allegations must “be specific enough to give defendants notice of the particular  
20 misconduct...so that they can defend against the charge and not just deny that they have done  
21 anything wrong.”) (alteration in original). Plaintiff’s Complaint was dismissed on this basis,  
22 and the FAC fares no better. *See* MTD Or. 21 (“Without pleading the ‘what’ or ‘when’ of this  
23 website visit, Ms. Shellenberger fails to allege with particularity how any specific  
24 representation on the website fraudulently induced her to purchase a Service Plan. Thus, Ms.  
25 Shellenberger fails to meet Rule 9(b)’s requirements with respect to Defendants’ alleged  
26 misrepresentations.”).

1 In the FAC, Plaintiff, once again, asserts a litany of grievances about her service plan  
 2 without tying those gripes to her personal experience. For example, she alleges that the  
 3 benefits she received under the service plan were “inconsistent with those she would have  
 4 received under KitchenAid manufacturer’s warranty,” but she neither provides a copy of the  
 5 manufacturer’s warranty nor alleges any concrete facts regarding what she received under the  
 6 service plan versus the manufacturer’s warranty. FAC ¶¶ 69. She also alleges that the  
 7 representations that the service plans “cover appliance malfunctions at no out-of-pocket  
 8 expenses to the consumer and pay for 100% of the required parts and labor...cannot be  
 9 reconciled with the Service Contract provisions which limit Defendants’ liability...to a one-  
 10 time payment...” *Id.* ¶¶ 69-70. Yet, she does not allege that she incurred any “out-of-pocket  
 11 expenses.” To the contrary, she alleges that she received a cash settlement (the opposite of  
 12 “out-of-pocket expenses”) of \$764.36 for her appliance. *Id.* ¶ 68. She further alleges that “if  
 13 the coverage limitations in her Service Contract...had been disclosed to [her] prior to her plan  
 14 purchase, she would not have purchased the KitchenAid Plan.” *Id.* ¶ 72. Once again, the  
 15 conclusory allegations of deception are undermined by Plaintiff’s own exhibits to the FAC,  
 16 which demonstrate that terms of the service plan were disclosed to Plaintiff *prior* to purchase.  
 17 *Id.* ¶ 48 (“Plaintiff did not notice the fine print disclaimer at the bottom of the KA Plan Offer  
 18 which urges the reader to visit Defendants’ website to read the complete terms and conditions  
 19 governing the plan.”). What’s clear from the FAC is that Plaintiff’s general allegations do not  
 20 directly relate to what *actually* occurred to her. Once again, she fails to plead the “who, what,  
 21 when, where, and how” of the alleged fraud as required by Rule 9(b)—undoubtedly because  
 22 there was no deceit here. The FAC repeats this fundamental pleading error from the Complaint  
 23 and as such, the Court should dismiss the CPA claim, but this time with prejudice.

24 **2. Plaintiff Still Fails to Plausibly Allege that AIGWG’s Conduct Was**  
 25 **“Unfair or Deceptive” and Therefore, She Cannot State a Claim for**  
 26 **Violation of Washington’s Consumer Protection Act.**

27 Plaintiff continues to allege that AIGWG violated the CPA by omitting certain material

1 terms from its marketing materials, including the buyout option. *See* FAC ¶¶ 95-104. The CPA  
2 prohibits unfair methods of competition and “unfair or deceptive” acts or practices in the  
3 conduct of any trade or commerce. *See* RCW § 19.86.020. To state a claim under the CPA,  
4 plaintiff must establish five elements: (1) an “unfair or deceptive” act or practice (2) in trade  
5 or commerce (3) that affects the public interests, (4) injury to plaintiff’s business or property,  
6 and (5) causation. *Wright v. Lyft, Inc.*, 406 P.3d 1149, 1153 (Wash. 2017). Plaintiff’s failure  
7 to satisfy any one of these elements is “fatal” to her CPA claim. *Hangman Ridge Training*  
8 *Stables, Inc. v. Safeco Title Ins.*, 719 P.2d 531, 539 (Wash. 1986).

9 Plaintiff alleges that AIGWG failed to disclose material terms of the Service Contract  
10 such as the buyout benefit, and that the marketing communications disclosed information that  
11 was inconsistent with the terms and conditions of the Service Contract. FAC ¶¶ 73-79. Plaintiff  
12 further alleges that the mailers caused Plaintiff to purchase and overpay for a service plan that  
13 she would not have otherwise purchased. *Id.* ¶ 99. However, just as she failed to do in the  
14 Complaint, Plaintiff once again fails to enumerate the supposed deceptive facts or omissions  
15 for her CPA claim’s charging allegations. FAC ¶¶ 95-104; MTD Or. 12 (“Ms. Shellenberger  
16 asserts a litany of grievances about her Service Plan, without enumerating or citing the  
17 particular misrepresentations and omissions that she challenges in connection with her CPA  
18 claims. The amorphous nature of Ms. Shellenberger’s CPA claims makes it difficult to evaluate  
19 their sufficiency.”) (internal citations omitted). In paragraphs 73-79 of the FAC, Plaintiff  
20 claims that certain service plan attributes are misleading, but each one of them is specifically  
21 addressed by the Service Contract. The Court should disregard these generic allegations  
22 because Plaintiff does not link any of them to her experience specifically. Moreover, as this  
23 Court previously concluded, a plaintiff simply cannot state a plausible claim for deception due  
24 to unwanted parts of the contract because the Service Contract’s rights and obligations are  
25 conspicuously disclosed. *See* MTD Or. 14 (“To begin, the contract specifically addresses most  
26 all of the allegedly deceptive conduct referenced in the complaint. This includes (but it not  
27 necessarily limited to) misrepresentations and omissions concerning: Defendants’ entitlement



1 to pay for, rather than furnish, the labor and materials necessary for repairs; Defendants’  
2 entitlement to exercise a buyout at their option; the settlement payout value; the requirement  
3 to surrender the covered appliance upon a buyout; and the termination of coverage upon a  
4 buyout.”) (internal citations omitted). For the following reasons, Plaintiff failed to cure the  
5 deficiencies of the CPA claim in the Complaint because she does not state factual allegations  
6 to satisfy the first essential element of her claim – that AIGWG engaged in conduct which was  
7 either “unfair or deceptive.” Plaintiff has taken no steps to cure this defective claim because  
8 there is nothing she can do. The CPA claim should be dismissed, again, for the same reasons  
9 – this time with prejudice.

10 *First*, Plaintiff’s theory of deception continues to rest on the unremarkable contention  
11 that reasonable consumers do not read all the terms and conditions of their contracts and the  
12 baseless contention that she should not be expected to do so. The law provides exactly the  
13 opposite. Parties to a valid contract are bound by its terms even if they choose not to read  
14 them. *See Storey v. Amazon.com Servs. LLC*, 2024 U.S. Dist. LEXIS 101945, at \*19 (W.D.  
15 Wash. June 7, 2024) (granting motion to dismiss plaintiff’s CPA claim because complaint did  
16 not allege that the contract was “grossly unfair or unconscionable or that it is otherwise  
17 invalid...” and “conduct conforming with a valid contract is generally not unfair or deceptive  
18 for purposes of a CPA claim.”). *See also, Brotherson v. Prof. Basketball Club, L.L.C.*, 604 F.  
19 Supp. 2d 1276, 1285 (W.D. Wash. 2009) (granting summary judgment on plaintiff’s CPA  
20 claim and noting that “a party who accepts a written offer without reading it nonetheless  
21 *objectively* manifests his or her assent to its terms.”).

22 As set forth in Section II.C. above, the marketing communications that Plaintiff  
23 allegedly received identified the complete terms and conditions of the Service Contract at  
24 “serviceplans.kitchenaid.com/details.” FAC at Exs. 4-6, p. 1. Plaintiff concedes this point in  
25 the FAC: “**Plaintiff did not notice the fine print disclaimer at the bottom of the KA Plan**  
26 **Offer which urges the reader to visit Defendants’ website to read the complete terms and**

1 **conditions governing the plan.”**<sup>5</sup> (emphasis added). In other words, AIGWG made Plaintiff  
 2 aware that the marketing materials did *not* contain the “complete terms and conditions” of the  
 3 Service Contract. *Id.* If Plaintiff wished to review the “complete terms and conditions,” she  
 4 had the easy option of visiting the website “serviceplans.kitchenaid.com/details” for additional  
 5 details.

6 As the Court already concluded, Plaintiff cannot rest a CPA claim on her own refusal  
 7 to review available contractual terms and conditions. *See* MTD Or. 16 (“Any reasonable  
 8 consumer – even the least sophisticated reader—would notice the disclaimer and understand  
 9 its message.”). *See generally, Storey*, 2024 U.S. Dist. LEXIS 101945, at \*18-19 (disagreeing  
 10 with plaintiff’s position that reasonable consumers should not be expected to look beyond the  
 11 checkout page in contract-based interactions). The reference to the complete terms and  
 12 conditions of the Service Contract on the marketing mailers does not give rise to an “unfair or  
 13 deceptive” business practice by AIGWG. It reflects that the terms and conditions were readily  
 14 available to her. *See Salas v. Whirlpool Corp.*, 2024 U.S. Dist. LEXIS 31916, at \*17 (C.D.  
 15 Cal. Jan. 24, 2024) (“Where the service contract’s terms were made available, then the  
 16 purchaser has no [consumer protection] claim...” (citation omitted), *Davis v. HSBC Bank*  
 17 *Nev., N.A.*, 691 F.3d 1152, 1163-64 (9th Cir. 2012).

18 *Second*, as this Court already held, the disclaimer on the marketing materials was clear  
 19 and conspicuous. *See* MTD Or. 16 (“Any reasonable consumer—even the least sophisticated  
 20 reader—would notice the disclaimer and understand its message.”). *See also Salas*, 2024 U.S.  
 21 Dist. LEXIS 31916, at \*23 (holding that the presentation of exclusions and limitations in a  
 22 nearly identical version of the Service Contract at issue here “satisfies the statutory definition  
 23 of ‘clear and conspicuous...’”). The same is true for the provisions in the Service Contract

---

24  
 25 <sup>5</sup> In the Complaint, Plaintiff alleged that she visited the “KitchenAid website” at some point  
 26 prior to purchase of the Service Contract. Compl. ¶ 46; *id.* at Ex. 4, p. 1. However, this  
 27 allegation has since been deleted from the FAC, presumably because Plaintiff understands it  
 28 dooms her CPA claim. Although the Court ordered Shellenberger not to hide facts, she does  
 so in plain sight by excising this admission from the FAC.

1 which discuss the buyout benefit. *See* MTD Or. 17 (“To remove any doubt, the court concludes  
2 for the reasons set forth in AIGWG’s motion that the contract terms are clear and conspicuous  
3 and not hidden in a maze of fine print.”). These provisions are bolded and capitalized, including  
4 the following provisions, which advise consumers like Plaintiff that AIGWG may, in its sole  
5 discretion, buyout the product instead of repairing it:

6 **10. SERVICE EVENT.** After We authorize Your claim, We  
7 will at Our option complete the lesser of (a) the repair of Your  
8 Product with new or refurbished parts, or (b) Exchange or  
9 Buyout Your Product as provided in Section 20. The decision to  
10 repair Your Product or Exchange or Buyout will be made solely  
11 by Us. If Your Product requires repair, service will be provided  
12 by an authorized service provider.

13 **12. UNABLE TO REPAIR.** If We determine that We are  
14 unable to repair Your Product for any reason, such as the  
15 unavailability of functional parts, service, or technical  
16 information, We will Exchange or Buyout Your Product as  
17 provided in Section 14. We may provide at Our discretion, an  
18 Exchange or Buyout, as provided in Section 14 when parts are  
19 on extended backorder or technical information is unavailable,  
20 for a minimum of forty-five (45) calendar days...

21 **20. EXCHANGE OR BUYOUT.** We have the option, at Our  
22 sole discretion, to (a) Exchange Your Product with a  
23 replacement product with similar features and functionality, or  
24 (b) Buyout Your Product with a cash settlement based on the  
25 original purchase price of the covered Product, excluding taxes,  
26 delivery and installation fees. The value of the Exchange or  
27 Buyout will be determined according to the age of the covered  
28 Product using the following depreciation schedule: Product Age  
Reimbursement Amount 1-5 years (day 366-1825) 75% of  
Original purchase price of the covered Product 6-10 years (day  
1826-3650) 45% of Original purchase price of the covered  
Product 11-15 years (day 3651-5475) 25% of Original purchase  
price of the covered Product You have up to forty-five (45) days  
from the date of authorization to complete your Product Buyout  
transaction. We will have satisfied all contractual obligations  
owed for the specified Product if We Exchange or Buyout Your  
Product under this section...

24 FAC at Ex. 8, ¶¶ 10, 12, 20.

25 *There was no deception here.* If Plaintiff had reviewed the Service Contract prior to  
26 purchase (or even after purchase), she would have seen the express and clear references to the  
27 buyout benefit throughout the Service Contract. *Id.*; *Salas*, 2024 U.S. Dist. LEXIS 31916, at

1 \*23 (“Plaintiff also complains that some terms refer to other terms, so a consumer has to read  
2 them all to understand the contract. But this does not mean the terms are not ‘clear and  
3 conspicuous.’ It just means that a consumer interested in knowing the terms of a contract has  
4 to read the contract.”); *Mickelson v. Chase Home Fin., LLC*, 2012 U.S. Dist. LEXIS 53418, at  
5 \*5 (W.D. Wash. Apr. 16, 2012) (dismissing CPA claims because “[o]nly grossly unfair or  
6 unconscionable contracts where the material terms were hidden in a maze of fine print are  
7 properly found to be unfair or deceptive.”) (internal quotations omitted); *Davis*, 691 F.3d at  
8 1163-64.

9 *Third*, the “free look” provision in the Service Contract allowed Plaintiff to cancel  
10 within 60 days after the date of purchase and receive a refund.<sup>6</sup> FAC at Ex. 8 ¶¶ 15, 17. To  
11 the extent Plaintiff had concerns with the buyout option, among other provisions in the Service  
12 Contract, she had every opportunity to cancel without any penalty. *Id.* *She failed to do so.*  
13 This is fatal to her claim. *Salas*, 2024 U.S. Dist. LEXIS 31916, at \*18-19 (“Plaintiff fails to  
14 plead any facts showing he was ‘damaged’ by receiving the Service Contract three days after  
15 he purchased it instead of ‘at or before the time he purchased it, given that he had 60 days to  
16 review and cancel the Service Contract.”); *id.* at \*35 (“Plaintiff has failed to allege ‘any damage  
17 as a result of’ Defendants’ providing the [Service Contract] three days after purchase,  
18 especially since Plaintiff could have terminated the Service Plan.”).

19 For these reasons, Plaintiff fails to state a claim for a violation of the CPA based on  
20 AIGWG’s allegedly “unfair or deceptive” conduct and the claim should be dismissed with  
21 prejudice.

22 **B. Plaintiff Does Not State a Claim for Breach of Contract.**

23 Plaintiff attempts to repackage her breach of contract claim in the FAC, but the claim  
24 remains defective because she cannot demonstrate that AIGWG breached the material terms

25 <sup>6</sup> The Court may consider the terms of the Service Contract, which is attached as Exhibit 8 to  
26 the FAC. It provides: “This right to void the Contract is not transferable and applies only to  
27 the original Contract purchaser. A ten (10%) percent penalty per month will be added to a  
28 refund that is not made within thirty (30) days of return of the Contract to Us...” FAC at Ex.  
8 ¶ 26.

1 of the Service Contract. She also does not allege any recoverable damages under the Service  
2 Contract. Her failure to do so, once again, proves fatal to this claim.

3 A claim for breach of contract has four elements: a valid contract, performance by the  
4 plaintiff or excuse for nonperformance, breach by defendant, and damages. *Hard 2 Find*  
5 *Accessories, Inc. v. Amazon.com, Inc.*, 58 F. Supp. 3d 1166, 1171 (W.D. Wash. 2014)  
6 (“Plaintiff fails to identify which section of [the contract] is at issue and allegedly breached.  
7 This failure is fatal to Plaintiff’s claim.”), *aff’d*, 691 F. App’x 406 (9th Cir. 2017). When  
8 interpreting a contract, courts are limited to the language of the contract itself. *See Hearst*  
9 *Commc’ns, Inc. v. Seattle Times Co.*, 115 P.3d 262, 267 (Wash. 2005). Courts cannot change  
10 the terms of a contract by inserting words that are not there or ignoring words that do appear  
11 in the contract. *Farmers Ins. Co. of Wash. v. Miller*, 549 P.2d 9, 11 (Wash. 1976) (“[T]he court  
12 cannot rule out of the contract language which the parties thereto have put into it, nor can the  
13 court revise the contract under the theory of construing it, nor can the court create a contract  
14 for the parties which they not make themselves, nor can the court impose obligations which  
15 never before existed.”). The contract’s words must be given their plain meaning. *Hearst*  
16 *Commc’ns, Inc.*, 115 P.3d at 267.

17 **1. Plaintiff Does Not Plausibly Allege AIGWG Breached Any**  
18 **Provision of the Service Contract.**

19 For the *second time*, Plaintiff asks this Court to treat her September 2022 and February  
20 2023 service claims as wholly independent from one another for breach of contract purposes.  
21 FAC ¶¶ 115-¶ 116. However, the Court has already rejected Plaintiff’s “invitation to treat her  
22 September 2022 and February 2023 warranty claims as wholly independent from one another  
23 for breach of contract purposes.” MTD Or. 24. Even more fatal to this claim, Plaintiff cannot  
24 establish that AIGWG failed to perform an obligation under any provision in the Service  
25 Contract. Plaintiff alleges that AIGWG breached Sections 1 and 10 of the Service Contract,  
26 which provide:

27 **1. WHAT IS COVERED.** We will furnish labor, parts, and/or

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

replacement equipment (or pay for same) necessary to repair operational or mechanical breakdowns of the Product(s) listed on the Certificate of Coverage, provided such service is necessitated by Product failure during normal usage. The Product(s) specified and covered includes only equipment as originally configured. Coverage also applies to the parts and accessories that are necessary to the covered Product’s functionality, but does not apply to accessories that are used in conjunction with or to enhance the performance of the covered Product(s).

**10. SERVICE EVENT.** After We authorize Your claim, We will at Our option complete the lesser of (a) the repair of Your Product with new or refurbished parts, or (b) Exchange or Buyout Your Product as provided in Section 20. The decision to repair Your Product or Exchange or Buyout will be made solely by Us. If Your Product requires repair, service will be provided by an authorized service provider.

FAC at Ex. 8 ¶¶ 1, 10. Plaintiff contends that AIGWG failed to resolve Plaintiff’s September 2022 claim as required under Sections 1 and 10 of the Service Contract because it did not service, repair, or buyout her appliance at that time. *Not so.* AIGWG fulfilled its obligations stemming from the September 2022 claim when it bought out her appliance in February 2023. The Service Contract makes clear that AIGWG cannot be held liable for any delays in servicing or its inability to render services on a covered appliance.<sup>7</sup> FAC at Ex. 8 ¶¶ 4, 25 (“Neither Us nor the Dealer, Manufacturer, or Retailer shall be liable for any damages whatsoever arising out of delays, either before or after a day or time of service is agreed upon.”); (“US, THE DEALER/RETAILER, MANUFACTURER, AND THEIR AGENTS, CONTRACTORS, OR LICENSEES WILL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO...LOST TIME...RESULTING FROM...DELAYS IN SERVICING OR THE INABILITY TO RENDER SERVICE...”); MTD Or. 24 (“Ms. Shellenberger essentially argues that Defendants breached the contract by

<sup>7</sup> Plaintiff herself alleges that she was going to try and find someone to repair her dishwasher herself in September 2022. But, presumably after some time, she too was unable to find someone to repair her appliance and so, after she let AIGWG know, she was offered a buyout. This sequence of events—a buyout in lieu of repair—is governed under the Service Contract, and is not a breach.

1 failing to resolve her September 2022 claim by the time she filed a second claim for the same  
2 product five months later. The contract imposes no such deadline.”).

3  
4 And, Plaintiff admits that AIGWG offered her a buyout benefit in the amount of  
5 \$764.36 in February 2023. FAC ¶ 66. Plaintiff tries to foreclose AIGWG’s right to do what  
6 the Service Contract says it could do – namely, offer a buyout in lieu of repair. Sections 10  
7 and 20 unequivocally allow AIGWG to exercise the buyout benefit in “[its] sole discretion” at  
8 any time during the term. FAC at Ex. 8, ¶¶ 10, 20. Section 12 further provides for a buyout  
9 whenever there is an inability to repair. And there is no temporal limitation as this Court has  
10 already concluded. MTD Or. 24. These provisions in the Service Contract preclude Plaintiff  
11 from pursuing a claim for breach of contract arising out of its alleged inability to render repair  
12 services until it exercised the buyout benefit in February 2023. Simply put, AIGWG cannot  
13 breach a contractual duty it never assumed: the duty to render repair services if it was unable  
14 to do so or determine in its sole discretion to exercise the buyout option. *See Hearst Commc’ns,*  
15 *Inc.*, 115 P.3d at 267.

16 **2. Plaintiff’s Breach of Contract Claim Also Fails Because She Does**  
17 **Not Allege Recoverable Damages.**

18 Plaintiff’s breach of contract claim also fails because she does not allege any damages  
19 associated with a cognizable breach. Indeed, Plaintiff continues to allege that she is entitled to  
20 the value of repair services under the service plan even though this Court already ruled that the  
21 claimed damages do not give rise to a claim for breach of contract. MTD Or. 24-25. The  
22 problem for Plaintiff, which arose in the Complaint and has not been remedied in the FAC, is  
23 that she *admits* she received the buyout benefit in February 2023 – an outcome under the  
24 Service Contract that satisfies all of AIGWG’s obligations. FAC ¶¶ 66-68. Section 10 of the  
25 Service Contract specifies that Plaintiff will receive, at the option of AIGWG, the lesser of  
26 repairs to the dishwasher or the buyout benefit. *Id.* at Ex. 8, ¶ 10 (“We will at Our option  
27 complete the lesser of (a) the repair of Your Product with new or refurbished parts, or (b)

1 Exchange or Buyout Your Product as provided in Section 20.”). As the Court already  
2 concluded, Plaintiff cannot seek the value of repairs under the Service Contract as she admits  
3 to receiving the buyout benefit in the Complaint. FAC ¶ 119; MTD Or. (“Because the buyout  
4 satisfies all of Defendants’ obligations under the contract with respect to a covered product,  
5 and Ms. Shellenberger admits to receiving a buyout payment for her dishwasher, she received  
6 the full benefit of her bargain.”). This forecloses Plaintiff’s claim for breach of contract as a  
7 matter of law because she fails to allege any recoverable damages under the Service Contract.

8 For these reasons, Plaintiff fails to state a claim for breach of contract, and this claim  
9 should be dismissed with prejudice.

10 **C. Plaintiff Cannot State a Claim for Breach of the Implied Covenant of Good**  
11 **Faith and Fair Dealing.**

12 Plaintiff essentially asserts the same defective allegations in the FAC as those in the  
13 Complaint in support of her claim for breach of the duty of good faith and fair dealing. She  
14 contends that AIGWG deprived her from receiving a repair or buyout in September 2022 when  
15 she first made her service claim. FAC ¶ 127.

16 Under Washington law, every contract has an implied duty of good faith and fair  
17 dealing that obligates the parties to cooperate with each other so that each party may obtain the  
18 full benefit of performance. *Hard 2 Find*, 58 F.Supp.3d at 1173. However, the duty relates  
19 only to performance of specific contract terms: as a matter of binding Washington law, there  
20 is no “free-floating” duty of good faith that attaches during negotiations or that injects new  
21 substantive obligations into an existing contract. *See Babrauskas v. Paramount Equity Mortg.*,  
22 2013 U.S. Dist. LEXIS 152561, at \*14-15 (W.D. Wash. Oct. 2023). Moreover, the duty cannot  
23 add or contradict express terms in a contract and cannot be used to interpret contractual  
24 provisions in a manner that expands the scope of their plain meaning. *See 134<sup>th</sup> St. Lofts, LLC*  
25 *v. iCap Nw. Opportunity Fund, LLC*, 479 P.3d 367, 375-76 (Wash. Ct. App. 2020).

26 Here, Plaintiff has no claim for breach of the duty of good faith and fair dealing because  
27 the parties’ contract expressly discloses and allows the conduct that she challenges. The terms



1 of the Service Contract do not impose any obligations on AIGWG with regard to delays in  
2 performing service or when it exercises the buyout benefit. *See* FAC at Ex. 8 *generally*. In  
3 fact, the Service Contract specifically *exempts* AIGWG from liability for any delays in service  
4 and provides that AIGWG may elect, in its sole discretion, to exercise the buyout benefit. *Id.*  
5 at Ex. 8, ¶¶ 4, 20 (“Neither Us nor the Dealer, Manufacturer, or Retailer shall be liable for any  
6 damages whatsoever arising out of delays, either before or after a day or time of service is  
7 agreed upon.”); (“We have the option, at Our sole discretion, to...(b) Buyout Your Product  
8 with a cash settlement...”). Once again by this claim, Plaintiff seeks to change the terms of  
9 the deal she struck by imposing obligations on AIGWG which simply do not exist in the  
10 Service Contract. Because AIGWG’s alleged conduct was authorized by the Service Contract,  
11 Washington law forecloses Plaintiff’s claim as she seeks to engraft obligations on AIGWG  
12 which simply do not exist.

#### 13 **D. The Court Should Dismiss Plaintiff’s FAC With Prejudice**

14 As set forth herein, the FAC should be dismissed with prejudice because Plaintiff has  
15 failed to demonstrate that further amendment will cure the deficiencies raised by the Court in  
16 the MTD Order. *See Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1298 (9th Cir. 1998)  
17 (“Although there is a general rule that parties are allowed to amend their pleadings, it does not  
18 extend to cases in which any amendment would be an exercise in futility, or where the amended  
19 complaint would also be subject to dismissal.”). Plaintiff, once again, failed to allege her CPA  
20 claim with particularity and provide “the most complete, clear picture of the alleged facts as  
21 possible.” MTD Or. 27. The same is true for the breach of contract and breach of the covenant  
22 of good faith and fair dealing claims, which rely on the same deficient factual allegations from  
23 the original Complaint. Simply put, the allegations in the FAC – which are nearly identical to  
24 those in the original Complaint – demonstrate that Plaintiff’s claims cannot be salvaged by  
25 further amendment and as such, the FAC should be dismissed with prejudice.

#### 26 **V. CONCLUSION**

27 AIGWG respectfully requests that the Court dismiss the FAC with prejudice.

1  
2 Dated: October 30, 2024

I certify that this memorandum contains 7,845 words, in compliance with Local Civil Rules.

3  
4 By: s/Donald J. Verfurth

Donald J. Verfurth, WSBA #15554  
dverfurth@grsm.com

**GORDON REES SCULLY MANSUKHANI**

701 Fifth Avenue, Suite 2100  
Seattle, WA 98104

Phone: (206) 695-5111

Facsimile: (877) 634-3032

5  
6  
7  
8 Rachel E. K. Lowe (*Admitted Pro Hac Vice*)

rachel.lowe@alston.com

**ALSTON & BIRD**

350 South Grand Avenue, 51<sup>st</sup> Floor  
Los Angeles, CA 90071

Phone: (213) 576-1000

Facsimile: (213) 576-1100

9  
10  
11  
12 David B. Carpenter (*Admitted Pro Hac Vice*)

david.carpenter@alston.com

**ALSTON & BIRD**

One Atlantic Center  
1201 West Peachtree Street, Suite 4900  
Atlanta, GA 30309-3424

Phone: (404) 881-7000

Facsimile: (404) 881-7777

13  
14  
15  
16 Adam Kaiser (*Admitted Pro Hac Vice*)

adam.kaiser@alston.com

**ALSTON & BIRD**

90 Park Avenue  
New York, NY 10016-1387

Phone: (212) 210-9522

Facsimile: (212) 922-3942

17  
18  
19  
20  
21 Attorneys for Defendant  
AIG WARRANTYGUARD, INC.