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6
7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**

9 Fred Heidarpour and Sidney Naiman,
individually and on behalf of all others
10 similarly situated,

11 Plaintiff,

12 v.

13 Arch Insurance Group, Inc., a Delaware
corporation, and Affinity Insurance
14 Services, Inc. d/b/a Aon Affinity, a
Pennsylvania corporation,

15 Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

16
17 Plaintiffs Fred Heidarpour and Sidney Naiman brings this Class Action
18 Complaint and Demand for Jury Trial (“Complaint”) against Defendants Arch
19 Insurance Group, Inc. (“Arch”) and Affinity Insurance Services, Inc. d/b/a Aon
20 Affinity (“Aon”) seeking damages and restitution arising from Defendants’
21 unlawful conduct towards Plaintiffs and other similarly-situated travel insurance
22 policyholders. Plaintiffs and the members of the alleged Class purchased a travel
23 insurance policy underwritten by Arch and administered by Aon which included an
24 array of travel-related coverage protections for both pre-and post-departure perils.
25 Plaintiffs’ trip (and the trips of the alleged Class Members) were subsequently
26 canceled due to the COVID-19 pandemic prior to departure, but Plaintiffs and the

1 alleged Class did not receive any pro rata refund for the portion of the policy
2 premium paid for post-departure coverages that were unearned by Defendants
3 because of the cancellation of those trips. Plaintiffs, for their Complaint, allege as
4 follows upon personal knowledge as to themselves and their own acts and
5 experiences, and, as to all other matters, upon information and belief, including
6 investigation conducted by their attorneys.

7 **PARTIES**

8 1. Plaintiff Fred Heidarpour is a natural person and resident of Scottsdale,
9 Maricopa County, Arizona.

10 2. Plaintiff Sidney Naiman is a natural person and resident of Scottsdale,
11 Maricopa County, Arizona.

12 3. Defendant Arch Insurance Group, Inc. is a corporation organized and
13 existing under the laws of the State of Delaware with its principal place of business
14 located in Jersey City, New Jersey. Defendant conducts business throughout this
15 District, the State of Arizona, and the United States.

16 4. Defendant Affinity Insurance Services, Inc. is a corporation organized
17 and existing under the laws of the Commonwealth of Pennsylvania with its
18 principal place of business located in Chicago, Illinois. Defendant does business as
19 Aon Affinity, conducts business throughout this District, the State of Arizona, and
20 the United States.

21 **JURISDICTION AND VENUE**

22 5. This Court has jurisdiction over the subject matter of this action under
23 the Class Action Fairness Act, 28 U.S.C. § 1332(d), *et seq.* (“CAFA”) because there
24 are over 100 class members, there is minimal diversity, and there is over \$5,000,000
25 at issue when the claims of the Classes are aggregated. None of the exceptions to
26 CAFA applies.

1 after a trip has departed, meaning that Defendants are at no risk of having to cover
2 the associated risk until actual travel by the insured commences. Such coverage
3 includes trip delay, a missed connection, medical emergencies, evacuations, lost
4 baggage, and delayed baggage.

5 12. Defendants can readily identify the pro rata share of the gross premium
6 which is attributable to each policy benefit purchased by each insured.

7 13. Defendants refuse to return any portion of the gross premiums paid for
8 its travel plans for trips that are cancelled and never take place, including the
9 portion of the premiums paid for coverage of post-departure risk even though
10 Defendants never assumed those risks. In other words, Defendants were never at
11 risk of having to cover the perils of actual travel because the travel never took
12 place. As a result, Defendants have failed to provide any consideration in return for
13 the portion of the premiums paid in advance to cover post-departure perils.

14 14. Such refusal to return the unused premium to policyholders is unjust
15 and unlawful.

16 **FACTS SPECIFIC TO PLAINTIFF**

17 15. Plaintiffs Heidarpour and Naiman booked a cruise with Norwegian
18 Cruise Line on September 25, 2019.

19 16. At the time of booking in September 25, 2019, Plaintiffs also
20 purchased Defendants' World Travel Holdings LeisureCare travel insurance policy
21 to protect their trip.

22 17. The cruise was to depart on May 29, 2020.

23 18. However, due to the COVID-19, Norwegian canceled Plaintiffs'
24 cruise. Plaintiffs were notified of the cancellation on April 24, 2020.

25 19. Norwegian refunded Plaintiffs for the cost of the cruise, however
26 Defendants refuse to issue any refunds for the travel insurance purchased in relation
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1 to the now-canceled cruise.

2 20. Defendants' practice of failing to refund any portion of the premiums
3 paid is systematic and uniform when an insured trip is canceled.

4 21. To redress these injuries, Plaintiff, on behalf of herself and the Classes
5 of similarly situated individuals, seeks appropriate injunctive relief, and an award of
6 actual damages to the class members, together with costs and reasonable attorneys'
7 fees.

8 CLASS ALLEGATIONS

9 22. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure
10 23(b)(2) and Rule 23(b)(3) on behalf of herself and all others similarly situated and
11 seeks certification of the following Class:

12 All persons in the United States who (1) purchased a single trip travel
13 insurance plan from Defendants; (2) which included coverages
14 applicable only to post-departure risk; (3) whose trips associated with
15 the plan were canceled prior to the scheduled departure; and (4) did
16 not receive a refund from Defendants for the portion of the insurance
premium designed to cover post-departure benefits.

17 23. The following individuals are excluded from the Class: (1) any Judge
18 or Magistrate presiding over this action and members of their families; (2)
19 Defendants, their subsidiaries, parents, successors, predecessors, and any entity in
20 which Defendants or their parents have a controlling interest and their current or
21 former employees, officers and directors; (3) Plaintiff's attorneys; (4) persons who
22 properly execute and file a timely request for exclusion from the Class; (5) the legal
23 representatives, successors or assigns of any such excluded persons; and (6) persons
24 whose claims against Defendants have been fully and finally adjudicated and/or
25 released. Plaintiff anticipates the need to amend the class definitions following
26 appropriate discovery.

1 24. **Numerosity:** The exact size of the Class is unknown and not available
2 to Plaintiff at this time, but it is clear that individual joinder is impracticable. On
3 information and belief, Defendants have sold thousands are travel insurance policies
4 for trips that have been canceled prior to departure and has failed to provide any
5 refunds of the unearned premiums. Class members can be easily identified through
6 Defendants' records.

7 25. **Typicality:** Plaintiff' claims are typical of the claims of other
8 members of the Class, in that Plaintiff and the members of the Class sustained
9 damages arising out of Defendants' uniform wrongful conduct.

10 26. **Adequate Representation:** Plaintiff will fairly and adequately
11 represent and protect the interests of the Class and have retained counsel competent
12 and experienced in class actions. Plaintiff have no interests antagonistic to those of
13 the Class, and Defendants have no defenses unique to Plaintiffs. Plaintiff and their
14 counsel are committed to vigorously prosecuting this action on behalf of the
15 members of the Class and have the financial resources to do so. Neither Plaintiffs
16 nor their counsel have any interest adverse to the Class.

17 27. **Commonality and Predominance:** There are many questions of law
18 and fact common to the claims of Plaintiff and the Class, and those questions
19 predominate over any questions that may affect individual members of the Class.
20 Common questions for the Class include, but are not necessarily limited to the
21 following:

- 22 a. Whether Defendants retained unearned, risk-free
23 premiums paid exclusively for post-departure perils;
24 b. Whether by virtue of a trip being canceled prior to
25 departure Defendants faced any risk of having to cover post-departure
26 perils;

1 c. Whether by virtue of a trip being canceled prior to
2 departure Defendants provided any consideration in exchange for
3 premiums paid to cover post-departure perils;

4 d. Whether it is unjust for Defendants to retain the portion of
5 the premiums paid for post-departure coverage when a trip is canceled
6 prior to departure; and

7 e. The proper measure of damages.

8 **28. Superiority & Manageability:** This case is additionally appropriate
9 for class certification under Rule 23(b)(3) because class proceedings are superior to
10 all other available methods for the fair and efficient adjudication of this
11 controversy. Joinder of all parties is impracticable, and the damages suffered by the
12 individual members of the Class will likely be relatively small, especially given the
13 burden and expense of individual prosecution of the complex litigation necessitated
14 by Defendant's actions. Thus, it would be virtually impossible for the individual
15 members of the Class to obtain effective relief from Defendants' misconduct. Even
16 if members of the Class could sustain such individual litigation, it would still not be
17 preferable to a class action, because individual litigation would increase the delay
18 and expense to all parties due to the complex legal and factual controversies
19 presented in this Complaint. By contrast, a class action presents far fewer
20 management difficulties and provides the benefits of single adjudication, economy
21 of scale, and comprehensive supervision by a single Court. Economies of time,
22 effort and expense will be fostered and uniformity of decisions ensured. Also, there
23 are no pending governmental actions against Defendants for the same conduct.

24 **29. Conduct Similar Towards All Class Members:** By committing the
25 acts set forth in this pleading, Defendants have acted or refused to act on grounds
26 substantially similar towards all members of the Classes so as to render final

1 injunctive relief and corresponding declaratory relief appropriate so as to warrant
2 certification under Rule 23(b)(2).

3 **FIRST CAUSE OF ACTION**
4 **Unjust Enrichment**
5 **(On Behalf of Plaintiffs and the Class)**

6 30. Plaintiffs repeat and reallege the above paragraphs of this Complaint
7 and incorporates them herein by reference.

8 31. Defendants have been unjustly enriched at the expense of Plaintiffs and
9 the alleged Class as a result of Defendants' misconduct.

10 32. Plaintiffs and the Class conferred a benefit upon Defendants in the
11 form of premiums paid and Defendants, by refusing to refund the unearned
12 premiums, have retained that benefit without lawful justification.

13 33. When a trip is canceled prior to departure, it is unjust for Defendants to
14 retain the premiums paid for post-departure benefits because Defendants are never
15 at risk of having to pay any post-departure benefits.

16 34. Defendants' retention of these premiums is also unjust because they
17 have provided no consideration in return for the premiums paid for post-departure
18 benefits.

19 35. Defendants refuse to refund premiums without a valid basis—its
20 policies do not set forth the right of Defendants to withhold refund of premiums
21 paid for post-departure benefits in the event a trip is canceled prior to departure.

22 **PRAYER FOR RELIEF**

23 **WHEREFORE**, Plaintiffs Fred Heidarpour and Sid Naiman, individually
24 and on behalf of the Class, pray for the following relief:

25 A. An order certifying the Class as defined above, appointing Plaintiff as
26 the representative of the Class, and appointing his counsel as Class Counsel;

1 B. An award of actual monetary loss from such violations, all to be paid
2 into a common fund for the benefit of the Plaintiff and the Class Members;

3 C. An order declaring that Defendants' actions, as set out above, are
4 unjust and inequitable;

5 D. An order requiring Defendant to disgorge any ill-gotten funds acquired
6 as a result of its unlawful practices;

7 E. An injunction protecting the interests of the Class;

8 F. An award of reasonable attorneys' fees and costs to be paid out of the
9 common fund prayed for above; and

10 G. Such other and further relief that the Court deems reasonable and just.

11 **JURY DEMAND**

12 Plaintiff requests a trial by jury of all claims that can be so tried.

13
14 Respectfully submitted,

15 Dated: May 18, 2020

16 **FRED HEIDARPOUR AND SID**
17 **NAIMAN**, individually and on behalf of all
18 others similarly situated,

19 By: /s/ Penny L. Koepke
20 One of Plaintiff's Attorneys

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Attorneys for Plaintiff and the Class

** Pro Hac Vice admission to be sought*

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): Sidney Naiman ; Fred Heidarpour Defendant(s): Arch Insurance Group, Inc. ;
Affinity Insurance Services, Inc.

County of Residence: Maricopa

County of Residence: Outside the State of
Arizona

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Defendant's Atty(s):

Penny Koepke (Sidney Naiman)
Maxwell & Morgan P.C.
4854 E. Baseline Road, Suite 104
Mesa, Arizona 85206
480-833-1001

II. Basis of Jurisdiction: 4. Diversity (complete item III)

III. Citizenship of Principal
Parties (Diversity Cases Only)

Plaintiff:- 1 Citizen of This State
Defendant:- 2 Citizen of Another State

IV. Origin : 1. Original Proceeding

V. Nature of Suit: 190 Other Contract

VI. Cause of Action: 28 U.S.C. 1332. Unjust enrichment claim regarding travel
insurance.

VII. Requested in Complaint

Class Action: Yes
Dollar Demand:

Jury Demand: Yes

VIII. This case is not related to another case.

Signature: /s/ Penny Koepke

Date: 05/18/2020

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014