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11 Attorneys for AFFINITY INSURANCE  
SERVICES INC.

12 UNITED STATES DISTRICT COURT  
13  
14 CENTRAL DISTRICT OF CALIFORNIA

15 LANCE JOHNSON, individually and  
16 on behalf of all others similarly situated,

17 Plaintiff,

18 vs.

19 AFFINITY INSURANCE SERVICES  
INC., WHICH WILL DO BUSINESS  
20 IN CALIFORNIA AS AON AFFINITY  
INSURANCE SERVICES, INC.;  
21 VIRGINIA SURETY COMPANY,  
INC., and DOES 1-10 Inclusive,

22 Defendants.  
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Case No. 2:20-cv-07020

**NOTICE OF REMOVAL**

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that Defendant Affinity Insurance Services, Inc.  
3 dba Aon Affinity Insurance Services Inc. (“Affinity”) hereby removes the above-  
4 captioned matter, commenced as Case Number 20STCV22641 in the Superior Court  
5 of the State of California for the County of Los Angeles (the “Action”), to the  
6 United States District Court for the Central District of California, pursuant to 28  
7 U.S.C. §§ 1332(d), 1441, 1446, and 1453. In support of its Notice of Removal,  
8 Affinity states the following:

9 1. On June 11, 2020, Plaintiff Lance Johnson, individually and on behalf  
10 of a putative class, filed the Action in the Superior Court of the State of California  
11 for the County of Los Angeles against Affinity and Virginia Surety Company, Inc.  
12 (“Virginia Surety”) (collectively, “Defendants”).

13 2. At the earliest, Plaintiff first served Affinity with a summons and a  
14 copy of the Complaint on July 22, 2020. This removal petition is therefore timely  
15 under 28 U.S.C. § 1446(b).

16 3. Plaintiff asserts claims for (1) violation of California’s Unfair  
17 Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (2) breach of  
18 contract; and (3) bad faith breach of an insurance contract. Plaintiff seeks an order  
19 requiring Defendants to “engage in corrective advertising” regarding the insurance  
20 products at issue. Compl. ¶ 97; Prayer D. Plaintiff also seeks, *inter alia*,  
21 compensatory damages, punitive damages, statutory enhanced damages, and  
22 attorneys’ fees and costs. Prayer ¶¶ C–H.

23 4. The Action is a putative class action over which this Court has original  
24 jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A) (the “Class Action Fairness Act”  
25 or “CAFA”). It is (i) a class action; (ii) in which at least one member of the putative  
26 class of plaintiffs is a citizen of a state different from that of a Defendant; (iii) the  
27 number of members of the putative class of plaintiffs is not less than 100; and (iv)  
28 the amount allegedly in controversy exceeds \$5,000,000, exclusive of interest and

costs. *See* 28 U.S.C. § 1332(d)(2), (d)(5)(B). Because the Action meets CAFA’s requirements, it may be removed to this Court under the provisions of 28 U.S.C. §§ 1446 and 1453.

5. Where CAFA’s requirements are met, as they are here, CAFA permits any defendant to remove unilaterally “without the consent of all defendants.” *See* 28 U.S.C. § 1453(b); *see also United Steel v. Shell Oil Co.*, 549 F.3d 1204, 1208–1209 (9th Cir. 2008). In addition, Affinity’s co-defendant Virginia Surety need not join or consent to Affinity’s notice of removal because it appears that Virginia Surety has not yet been served in the state court action. *See Salveson v. W. States Bankcard Ass’n*, 731 F.2d 1423, 1429 (9th Cir. 1984).

### **CAFA’s Requirements for Removal Are Satisfied**

6. Covered Class Action. A case satisfies CAFA’s class action requirement if it is “filed under Rule 23 of the Federal Rules of Civil Procedure or similar State statute . . . authorizing an action to be brought by 1 or more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B). The Action satisfies this definition, because Plaintiff brings his suit “as a class action pursuant to California [Civil Code] § 382,” Compl. ¶ 8, which is California’s equivalent to Rule 23 of the Federal Rules of Civil Procedure. *See Baumann v. Chase Inv. Serv. Co.*, 747 F.3d 1117, 1121 (9th Cir. 2014) (referring to Cal. Civ. Code § 382 as “the California class action statute”).

7. Diversity. The diversity requirement of § 1332(d) is satisfied if at least one putative class member is a citizen of a different state than at least one defendant. 28 U.S.C. § 1332(d)(2)(A). Here, Plaintiff is a citizen of California, and Affinity is a citizen of Pennsylvania, where it is incorporated and headquartered. Compl. ¶¶ 11, 13. CAFA’s diversity requirement is therefore satisfied. Furthermore, Plaintiff purports to bring the Action on behalf of “[a]ll consumers who, between the applicable statute of limitations and the present, purchased trip protection/insurance policies guaranteed by” either Affinity or Virginia Surety “and were denied

1 coverage.” Compl. ¶ 47. So defined, the class includes members nationwide, and  
 2 CAFA’s diversity requirement is satisfied.

3 8. The Putative Class Exceeds 100 Members. Plaintiff alleges “the  
 4 proposed class is composed of thousands of persons,” exceeding CAFA’s 100-  
 5 member requirement. Compl. ¶ 55; 28 U.S.C. § 1332(d)(5)(B).

6 9. Amount in Controversy. CAFA’s amount in controversy requirement  
 7 is met if the claims of individual class members, when aggregated, exceed  
 8 \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2), (6). That is the  
 9 case here.<sup>1</sup> As noted, Plaintiff brings the Action on behalf of a putative class  
 10 consisting of “[a]ll consumers who, between the applicable statute of limitations and  
 11 the present, purchased trip protection/insurance policies guaranteed by” either  
 12 Affinity or Virginia Surety “and were denied coverage.” Compl. ¶ 47. The  
 13 applicable statute of limitations for Plaintiff’s claims is four years. *Aryeh v. Canon*  
 14 *Bus. Sols., Inc.*, 55 Cal. 4th 1185, 1193 (2013) (UCL); *Gilkyson v. Disney*  
 15 *Enterprises, Inc.*, 244 Cal. App. 4th 1336, 1341 (2016) (breach of contract);  
 16 *Hewlett-Packard Co. v. ACE Prop. & Cas. Ins. Co.*, 2009 WL 10694998, at \*3  
 17 (N.D. Cal. Jan. 30, 2009), *aff’d*, 378 F. App’x 658 (9th Cir. 2010) (bad faith breach  
 18 of insurance contract).<sup>2</sup> In the four years preceding this Action, Affinity has denied  
 19 over 25,000 claims. The \$5,000,000 amount in controversy would be satisfied if the  
 20 average claim paid during this period was as little as \$200 per claim, and in fact the  
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22  
 23 <sup>1</sup> An evidentiary showing of the amount in controversy is unnecessary to support a  
 24 notice of removal. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S.  
 25 81, 87 (2014) (“[T]he defendant’s amount-in-controversy allegation should be  
 26 accepted when not contested by the plaintiff or questioned by the court.”). The  
 27 notice of removal need include no more than a “plausible assertion” that the amount  
 28 in controversy exceeds CAFA’s jurisdictional requirements. *Ibarra v. Manheim*  
*Invs., Inc.*, 775 F.3d 1193, 1197–98 (9th Cir. 2015).

<sup>2</sup> To the extent Plaintiff’s bad faith breach of insurance contract claim is premised  
 on a tort theory, the applicable statute of limitations is two years. *Id.*

1 average claim paid during that period is far greater. If one assumes that the value of  
 2 granted and denied claims are comparable, the amount in controversy more than  
 3 plausibly exceeds \$5,000,000.

4 10. In addition, the value of any injunctive relief—including requiring  
 5 Affinity to engage in corrective advertising—as well as the amount of any attorneys’  
 6 fees award, are included within the amount in controversy, further ensuring that the  
 7 \$5,000,000 figure is easily satisfied here. *See Gonzales v. CarMax Auto*  
 8 *Superstores, LLC*, 840 F.3d 644, 648–49 (9th Cir. 2016) (“[T]he amount in  
 9 controversy . . . includes, *inter alia*, damages (compensatory, punitive, or  
 10 otherwise) and the cost of complying with an injunction, as well as attorneys’ fees  
 11 . . . .”); *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002); *Perez v. Nidek*  
 12 *Co. Ltd.*, 657 F. Supp. 2d 1156, 1162 (S.D. Cal. 2009).<sup>3</sup>

13 11. No CAFA Exceptions. The Action does not fall within any exclusion  
 14 to removal jurisdiction recognized by 28 U.S.C. § 1332(d).

15 **Other Procedural Requirements for Removal Are Satisfied**

16 12. Removal to Proper Court. This Court is part of the “district and  
 17 division embracing the place where” the Action was filed—that is, Los Angeles  
 18 County, California. 28 U.S.C. § 1446(a).

19 13. Pleadings and Process. As required by 28 U.S.C. § 1446(a), attached as  
 20 Exhibit A is “a copy of all process, pleadings, and orders served upon” Affinity in  
 21 the Action.

22 14. Filing and Service. A copy of this Notice of Removal is being filed  
 23 with the Clerk of the Superior Court of the State of California for the County of Los  
 24 \_\_\_\_\_

25 <sup>3</sup> In asserting that the amount in controversy requirement is met here, Affinity of  
 26 course does not concede that Plaintiff’s claims have merit or that the putative class  
 27 ultimately would be entitled to any amount of monetary relief. *See Lewis v. Verizon*  
 28 *Commc’ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010) (“The amount in controversy is  
 simply an estimate of the total amount in dispute, not a prospective assessment of  
 defendant’s liability.”).

1 Angeles, and is being served on all counsel of record, consistent with 28 U.S.C.  
2 § 1446(d). The Superior Court of the State of California for the County of Los  
3 Angeles is located within this district.

4 15. No Waiver or Admission. This Notice of Removal is filed for the  
5 purpose of establishing jurisdiction only. Affinity denies the allegations and  
6 damages claimed in the Complaint and files this Notice without waiving any  
7 defenses, exceptions, or obligations that may exist in its favor in either state or  
8 federal court. Nothing in this Notice constitutes an admission of any of the  
9 allegations in the Complaint, including whether Plaintiff is entitled to bring this case  
10 as a class action or recover any relief whatsoever as a result of his claims.

11 BASED ON THE FOREGOING, Affinity hereby removes this Action, now  
12 pending in the Superior Court of the State of California for the County of Los  
13 Angeles, Case Number 20STCV22641, to the United States District Court for the  
14 Central District of California.

15  
16 DATED: August 5, 2020


MUNGER, TOLLES & OLSON LLP

17  
18  
19 By: /s/ Mark B. Helm

20 MARK B. HELM

21 Attorneys for AFFINITY INSURANCE  
22 SERVICES INC.  
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**ORIGINAL****FILED**  
Superior Court of California  
County of Los Angeles**JUN 11 2020**Sherri R. Carter, Executive Officer/Clerk of Court  
By  Deputy  
Isaac Lovv

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 FOR THE COUNTY OF LOS ANGELES

LANCE JOHNSON, individually, and on  
 behalf of all others similarly situated,

Plaintiff,

vs.

AFFINITY INSURANCE SERVICES,  
 INC. WHICH WILL DO BUSINESS IN  
 CALIFORNIA AS AON AFFINITY  
 INSURANCE SERVICES, INC.;  
 VIRGINIA SURETY COMPANY, INC.;  
 and DOES 1-10 Inclusive,

Defendant(s).

Case No. **20STCV22641**

**CLASS ACTION COMPLAINT**

- (1) Violation of Unfair Competition Law  
 (Cal. Business & Professions Code  
 §§ 17200 *et seq.*).
- (2) Breach of Contract
- (3) Bad Faith Breach of Insurance  
 Contract

**Jury Trial Demanded**

**BY FAX**

1 Plaintiff LANCE JOHNSON ("Plaintiff"), individually and on behalf of all others  
2 similarly situated, alleges as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this class action Complaint against Defendant AFFINITY  
5 INSURANCE SERVICES, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS AON  
6 AFFINITY INSURANCE SERVICES, INC. (hereinafter "Defendant") to stop Defendant's  
7 practice of falsely advertising and selling travel insurance/trip protection plans that they have  
8 no intention of honoring and to obtain redress for a class of consumers ("Class Members") who  
9 were misled, within the applicable statute of limitations period, by Defendant.

10 2. Plaintiff brings this class action Complaint against Defendant VIRGINIA  
11 SURETY COMPANY, INC. (hereinafter "Defendant") to stop Defendant's practice of falsely  
12 advertising and selling travel insurance/trip protection plans that they have no intention of  
13 honoring and to obtain redress for a class of consumers ("Class Members") who were misled,  
14 within the applicable statute of limitations period, by Defendant.

15 3. Defendants advertised, promoted, and included certain travel protections to  
16 consumers through travel agencies and cruise ships to induce them to purchase travel insurance  
17 and protection ("the Class Products"), whereby if there was a trip interruption, Defendants  
18 would reimburse Plaintiff for his losses.

19 4. Insurance is of particular value to consumers because they provide a guarantee  
20 of the value of a good after it is purchased, and protection for that good if certain unexpected  
21 contingencies occur. This is particularly true for trip insurance, where trips and excursions are  
22 purchased well in advance of the time of a trip, and unexpected occurrences that can result in a  
23 trip interruption are common.

24 5. Defendants misrepresented to Plaintiff and others similarly situated by failing to  
25 disclose in either in the contract itself that Defendants would not honor the represented trip  
26 protections with which the parties contracted to provide.

27 6. Defendants' misrepresentations to Plaintiff and others similarly situated induced  
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1 them to purchase Defendant's Class Products.

2 7. Defendants took advantage of Plaintiff and similarly situated consumers unfairly  
3 and unlawfully.

#### 4 JURISDICTION AND VENUE

5 8. This class action is brought pursuant to California Code of Civil Procedure § 382.  
6 All causes of action in the instant complaint arise under California Statutes.

7 9. This Court has personal jurisdiction over Defendants, because Defendants sell  
8 insurance, advertise insurance policies, and market to consumers in the State of California.

9 10. This matter is properly venued in the Superior Court of the State of California  
10 for the County of Los Angeles because Defendant does business within the state of California  
11 and the County of Los Angeles, and a significant portion, if not all, of the conduct giving rise  
12 to Plaintiff's claims happened here.

#### 13 THE PARTIES

14 11. Plaintiff LANCE JOHNSON is a citizen and resident of the State of California,  
15 County of Los Angeles.

16 12. Defendant VIRGINIA SURETY COMPANY, INC. is a corporation that does  
17 business in California, including Los Angeles County, that is incorporated in Illinois.

18 13. Defendant AFFINITY INSURANCE SERVICES, INC. WHICH WILL DO  
19 BUSINESS IN CALIFORNIA AS AON AFFINITY INSURANCE SERVICES, INC. is a  
20 corporation that does business in California, including Los Angeles County, that is incorporated  
21 in Pennsylvania.

22 14. Plaintiff alleges, on information and belief, that Defendants' sell insurance  
23 throughout California, by means of, at the very least, the internet.

24 15. Plaintiff is informed and believes, and thereon alleges, that at all time relevant,  
25 Defendants' sales of products and services are governed by the controlling law in the state in  
26 which they do business and from which the sales of products and services, and the allegedly  
27 unlawful acts occurred, which is California.

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1 is advertised by Defendant Aon through and in conjunction with the ticket agency that sold the  
2 cruise to Plaintiff. Defendant and ticket agency's promotions strongly encourage the purchase  
3 of travel protection insurance at the time of shore excursion and cruise vacation purchases.

4       22. The insurance policy/contract for the Defendant Aon, which was printed and  
5 distributed thereon by Defendant Aon, stated that the purchase of travel protection insurance  
6 included the following trip interruption protection: The Company will reimburse You, up to the  
7 Maximum Benefit shown on the Confirmation of Coverage, if You join Your Trip after  
8 departure or are unable to continue on the covered Trip due to any of the following reasons that  
9 are Unforeseen and takes place after departure: Your Sickness, *Accidental Injury* or death, that  
10 results in medically imposed restrictions as certified by a Physician at the time of Loss  
11 preventing your continued participation in the Trip." Defendant's policy further stated that, "We  
12 will reimburse You, up to the Maximum Benefit Amount shown in the Schedule of Benefits,  
13 for unused, prepaid non-refundable Payments or Deposits for Your land or water Travel  
14 Arrangements."

15       23. Plaintiff purchased the trip protection insurance from Defendant Aon in reliance  
16 on the aforementioned representations, namely that Defendant would provide the trip protection  
17 services that it represents that it would provide in its advertisements and promotional materials.

18       24. Similarly, Plaintiff obtained a Citibank credit card, and used that card to purchase  
19 his cruise based on the advertisement of travel benefits by Defendant Virginia Surety. Plaintiff  
20 would not have used the credit card issued by Citibank to purchase his cruise tickets if he had  
21 known that Defendant Virginia Surety was falsely advertising the trip protection benefits.

22       25. On March 6, 2019, Plaintiff and his wife flew to Santiago, Chile to prepare to  
23 board their cruise ship. After the 17-hour flight, while disembarking, the Plaintiff's wife felt  
24 severe pain in her foot. Plaintiff and his wife quickly reported to the Princess Cruise ship  
25 physician, who told Plaintiff that she needed to stay off of her feet, and was relegated to a  
26 wheelchair not only for the duration of the 17-day cruise, but for the next month after Plaintiff  
27 and his wife had returned home due to soft tissue damage in her foot.

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1           26.   Needless to say, Plaintiff and his wife, due to the medical condition of the  
2 Plaintiff's wife, were unable to engage in the three-day, \$5000 shore excursion hike to Machu  
3 Pichu in the Andes mountains.

4           27.   Princess Cruises urged Plaintiff and his wife to cancel their excursion, and  
5 informed them that due to the amount of walking and hiking involved, there was simply no way  
6 that Plaintiff's wife would be able to do the excursion in her current medical condition, as she  
7 was wheelchair bound.

8           28.   Plaintiff and his wife were unable to attend the Machu Pichu shore excursion  
9 because of her injury and medical condition, per the instructions of Princess Cruise ship's Shore  
10 Excursion department, and their ship physician.

11          29.   Thereafter, upon Plaintiff's return to Los Angeles, he requested reimbursement  
12 for the ship excursion under Defendant Aon's trip protection policy.

13          30.   Despite their clear representations and advertisements as to trip insurance for  
14 unforeseen medical accidents/conditions, Defendant Aon refused to reimburse Plaintiff for the  
15 pre-paid, non refundable shore excursion, despite documentation from the ship physician of  
16 Plaintiff's injury and clear inability to hike in the Andes mountains, and despite their clear  
17 representations that this was a covered incident. Every time Plaintiff challenged AON's  
18 pretextual reasons for declining the claim, they did not defend their position but instead came  
19 up with another, different, pretextual reason. They did this at least four times, and many of the  
20 "excuses" they used, were in fact, false (such as claiming that Plaintiff did not purchase shore  
21 excursion tickets at the same time of purchasing the cruise tickets, which was decidedly false.).

22          31.   Plaintiff thereafter sought reimbursement through Citibank's travel protection  
23 policy issued through Defendant Virginia Surety. Despite Defendant Virginia's clear and  
24 explicit travel protection benefits within the policy that that Plaintiff purchased, Defendant  
25 Virginia refused to reimburse Plaintiff for the non-refundable, pre-paid shore excursion because  
26 he did not get in writing from the doctor that they should not go on the shore excursion, even  
27 though the doctor verbally informed them of the same.

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1           32. Defendants' knowledge of the fact that Plaintiff and similarly situated consumers  
2 could not reap the benefits of the insurance policies is demonstrated by the fact that when  
3 Plaintiff attempted to make a clearly qualified claim under the trip insurance policies,  
4 Defendants refused to honor the written policies that were advertised to the Plaintiff.

5           33. Defendant Aon later claimed that shore excursions were not covered by its  
6 policy, a fact that, if true, was clearly omitted from the insurance policy/contracts that  
7 consumers who purchase trip insurance would need to know.

8           34. Plaintiff had no reasonable way of knowing that his non-refundable shore  
9 excursion would not be covered by Defendants' trip and travel protection policies, because the  
10 policies specifically stated that qualifying incidents would be covered, i.e., Plaintiff had no  
11 reasonable opportunity to find out that Defendants would not honor the policy.

12           35. Defendants were aware that Plaintiff could not have reasonably known that it  
13 would not honor the policy.

14           36. Had Plaintiff known that Defendants would not honor the insurance policies as  
15 represented, Plaintiff would not have purchased the trip protection insurance from Defendant  
16 Aon, prepaid for non-refundable shore excursions, or used the credit card issued by Citibank  
17 with the travel protection policy guaranteed by Virginia Surety. Rather, Plaintiff would have  
18 considered purchasing a different type of trip, not purchasing travel insurance at all, and not  
19 pre-paying for any non-refundable trip expenses.

20           37. Plaintiff was significantly emotionally and financially upset by Defendants'  
21 refusals to honor their trip insurance policies as advertised.

22           38. Such sales tactics employed on Defendants rely on falsities and have a tendency  
23 to mislead and deceive a reasonable consumer, such as using such broad general terms as  
24 "covers trip interruptions and medical problems".

25           39. Plaintiff is informed, believes, and thereupon alleges that such representations  
26 were part of a common scheme to mislead consumers and incentivize them to purchase travel  
27 insurance products from Defendants.

28





1           50.     The Restitution Subclass. The Class is divided into several subclasses, including  
2 a Restitution Subclass. The Restitution Subclass consists of all California customers and former  
3 customers of Defendants Aon and Virginia who lost money or property during the four-year  
4 period preceding the filing of this Complaint by means of Household's violation of California  
5 Business and Professions Code Sections 17000 et seq. (the "UCL") as alleged below.

6           51.     The Breach of Contract Subclass. The Breach of Contract Subclass consists of  
7 all California customers and former customers of Defendants Aon and Virginia who otherwise  
8 would have qualified for benefits under Defendant's travel protection insurance but were denied  
9 such benefits.

10          52.     As used herein, the term "Class Members" shall mean and refer to the members  
11 of the Class described above.

12          53.     Excluded from the Class are Defendant, its affiliates, employees, agents, and  
13 attorneys, and the Court.

14          54.     Plaintiff reserves the right to amend the Class, and to add additional subclasses,  
15 if discovery and further investigation reveals such action is warranted.

16          55.     Upon information and belief, the proposed class is composed of thousands of  
17 persons. The members of the class are so numerous that joinder of all members would be  
18 unfeasible and impractical.

19          56.     Plaintiff is informed and believes and on that basis alleges that for at least the  
20 past four years, Defendants have marketed and sold travel insurance to California consumers,  
21 either in connection with the issuance of a credit card, or in addition to the purchase of a trip  
22 through various travel-related agencies, which includes bookings for ships, airplanes, trains,  
23 etc..

24          57.     No violations alleged in this complaint are contingent on any individualized  
25 interaction of any kind between class members and Defendants.

26          58.     Rather, all claims in this matter arise from the identical, false, affirmative written  
27 statements that Defendants would provide insurance and trip protection to the Class Members,  
28



when in fact, such representations were false.

59. There are common questions of law and fact as to the Class Members that predominate over questions affecting only individual members, including but not limited to:

- (a) Whether Defendants engaged in unlawful, unfair, or deceptive business practices in advertising trip protection policies with its products to Plaintiff and other Class Members with no intention of honoring them;
- (b) Whether Defendants made misrepresentations with respect to its trip protection insurance policies;
- (c) Whether Defendants breached the contract of the insurance policy it sold to Plaintiff and class members, and whether that breach was in bad faith;
- (d) Whether Defendants violated California Bus. & Prof. Code § 17200, *et seq.* California Bus. & Prof. Code § 17500, *et seq.*, California Civ. Code § 1750, *et seq.*, California Civ. Code § 1790, *et seq.*, and 15 U.S.C. § 2310, *et seq.*;
- (e) Whether Plaintiff and Class Members are entitled to equitable and/or injunctive relief;
- (f) Whether Defendants' unlawful, unfair, and/or deceptive practices harmed Plaintiff and Class Members; and
- (g) The method of calculation and extent of damages for Plaintiff and Class Members.

60. Plaintiff is a member of the class he seeks to represent.

61. The claims of Plaintiff are not only typical of all class members, they are identical.

62. All claims of Plaintiff and the class are based on the exact same legal theories.

63. Plaintiff has no interest antagonistic to, or in conflict with, the class.

64. Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class Member, because Plaintiff was induced by Defendants' misrepresentations during

1 the Class Period. Defendants' unlawful, unfair and/or fraudulent actions concerns the same  
2 business practices described herein irrespective of where they occurred or were experienced.  
3 Plaintiff's claims are typical of all Class Members as demonstrated herein.

4 65. Plaintiff will thoroughly and adequately protect the interests of the class, having  
5 retained qualified and competent legal counsel to represent himself and the class.

6 66. Common questions will predominate, and there will be no unusual manageability  
7 issues.

### 8 **FIRST CAUSE OF ACTION**

#### 9 **Violation of Unfair Competition Law**

10 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

11 67. Plaintiff incorporates by reference each allegation set forth above.

12 68. Actions for relief under the unfair competition law may be based on any business  
13 act or practice that is within the broad definition of the UCL. Such violations of the UCL occur  
14 as a result of unlawful, unfair or fraudulent business acts and practices. A plaintiff is required  
15 to provide evidence of a causal connection between a defendant's business practices and the  
16 alleged harm--that is, evidence that the defendant's conduct caused or was likely to cause  
17 substantial injury. It is insufficient for a plaintiff to show merely that the defendant's conduct  
18 created a risk of harm. Furthermore, the "act or practice" aspect of the statutory definition of  
19 unfair competition covers any single act of misconduct, as well as ongoing misconduct.

#### 20 **UNFAIR**

21 69. California Business & Professions Code § 17200 prohibits any "unfair ...  
22 business act or practice." Defendants' acts, omissions, misrepresentations, and practices as  
23 alleged herein also constitutes "unfair" business acts and practices within the meaning of the  
24 UCL in that its conduct is substantially injurious to consumers, offends public policy, and is  
25 immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any  
26 alleged benefits attributable to such conduct. There were reasonably available alternatives to  
27 further Defendants' legitimate business interests, other than the conduct described herein.

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1 Plaintiff reserves the right to allege further conduct which constitutes other unfair business acts  
2 or practices. Such conduct is ongoing and continues to this date.

3 70. In order to satisfy the “unfair” prong of the UCL, a consumer must show that the  
4 injury: (1) is substantial; (2) is not outweighed by any countervailing benefits to consumers or  
5 competition; and, (3) is not one that consumers themselves could reasonably have avoided.

6 71. Here, Defendants’ conduct has caused and continues to cause substantial injury  
7 to Plaintiff and members of the Class. Plaintiff and members of the Class have suffered injury  
8 in fact due to Defendant’s decision to mislead consumers. Thus, Defendants’ conduct has  
9 caused substantial injury to Plaintiff and the members of the Class.

10 72. Moreover, Defendants’ conduct as alleged herein solely benefits Defendants  
11 while providing no benefit of any kind to any consumer. Such deception utilized by Defendants  
12 convinced Plaintiff and members of the Class that Defendants would provide them with an  
13 insurance policy and that Defendants would honor that insurance policy upon purchasing  
14 Defendants’ Class Products. In fact, Defendants knew that they had no intention of providing  
15 the advertised trip protections, and thus unfairly profited. Thus, the injury suffered by Plaintiff  
16 and the members of the Class are not outweighed by any countervailing benefits to consumers.

17 73. Finally, the injury suffered by Plaintiff and members of the Class is not an injury  
18 that these consumers could reasonably have avoided. After Defendants falsely represented the  
19 insurance policies, consumers changed their position by purchasing the Class Products, thus  
20 causing them to suffer injury in fact. Defendants failed to take reasonable steps to inform  
21 Plaintiff and class members that the advertisements were false. As such, Defendants took  
22 advantage of Defendants’ position of perceived power in order to deceive Plaintiff and the Class.  
23 Therefore, the injury suffered by Plaintiff and members of the Class is not an injury which these  
24 consumers could reasonably have avoided.

25 74. Thus, Defendants’ conduct has violated the “unfair” prong of California Business  
26 & Professions Code § 17200.



**FRAUDULENT**

75. California Business & Professions Code § 17200 prohibits any “fraudulent ... business act or practice.” In order to prevail under the “fraudulent” prong of the UCL, a consumer must allege that the fraudulent business practice was likely to deceive members of the public.

76. The test for “fraud” as contemplated by California Business and Professions Code § 17200 is whether the public is likely to be deceived. Unlike common law fraud, a § 17200 violation can be established even if no one was actually deceived, relied upon the fraudulent practice, or sustained any damage.

77. Here, not only were Plaintiff and the Class members likely to be deceived, but these consumers were actually deceived by Defendants. Such deception is evidenced by the fact that Defendants did not provide Plaintiff with the insurance policy as advertised by Defendants. Plaintiff’s reliance upon Defendants’ deceptive statements is reasonable due to the unequal bargaining powers of Defendants against Plaintiff. For the same reason, it is likely that Defendants’ fraudulent business practice would deceive other members of the public.

78. As explained above, Defendants deceived Plaintiff and other Class Members by representing the protections covered by the insurance policies that Defendants sold.

79. Thus, Defendants’ conduct has violated the “fraudulent” prong of California Business & Professions Code § 17200.

**UNLAWFUL**

80. California Business and Professions Code Section 17200, et seq. prohibits “any unlawful...business act or practice.”

81. As explained above, Defendants deceived Plaintiff and other Class Members by falsely representing insurance policies.

82. Defendants used false advertising, marketing, and misrepresentations to induce Plaintiff and Class Members to purchase Class Products from Defendant, in violation of California Business and Professions Code Section 17500, et seq. Had Defendant not falsely

1 advertised, marketed, or misrepresented the nature of its products, Plaintiff and Class Members  
2 would not have purchased the Class Products from Defendant. Defendant's conduct therefore  
3 caused and continues to cause economic harm to Plaintiff and Class Members.

4 83. These representations by Defendants are therefore an "unlawful" business  
5 practice or act under Business and Professions Code Section 17200 *et seq.*

6 84. Defendants have thus engaged in unlawful, unfair, and fraudulent business acts  
7 entitling Plaintiff and Class Members to judgment and equitable relief against Defendants, as  
8 set forth in the Prayer for Relief. Additionally, pursuant to Business and Professions Code  
9 section 17203, Plaintiff and Class Members seek an order requiring Defendants to immediately  
10 cease such acts of unlawful, unfair, and fraudulent business practices and requiring Defendants  
11 to correct its actions.

12 **SECOND CAUSE OF ACTION**

13 **(Breach of Contract against all Defendants)**

14 85. Plaintiff incorporates the allegations above as if set forth fully herein.

15 86. The Defendants entered into a contract with each member of the Breach of  
16 Contract subclass that is set forth in the insurance policies provided by each.

17 87. The contract contained a term that the Defendants would reimburse Plaintiff in  
18 the event of an injury that restricted or impacted their vacation. Yet Defendant breached the  
19 contract by denying the Plaintiff's claim on false and pretextual basis.

20 88. Each member of the class performed all conditions, covenants, and obligations  
21 of the contract except for those conditions, covenants and obligations he was excused from  
22 performing by reason of the Defendants' conduct.

23 89. As a direct and proximate cause of the Defendants' breach of the contract, each  
24 member of the breach of contract subclass has suffered damages in an amount to be determined  
25 at the time of trial.

26 ///

27 ///



**THIRD CAUSE OF ACTION**

**(Bad Faith Breach of Insurance Contract Against All Defendants)**

90. Plaintiff incorporates all allegations alleged above as if set forth fully herein.

91. The insurance policy is a contract, and like all contract and especially all contracts of insurance, contains an implied covenant of good faith and fair dealings that the Defendants will deal fairly with each member of the Breach of Contract subclass in processing his or her claims under the Contract.

92. Defendants intentionally and in bad faith breached the implied covenant of good faith and fair dealing as to each member of the Breach of Contract subclass when it refused to pay valid claims on false and pretextual basis.

93. As a direct and proximate cause of Defendants' breach of the contracts of insurance it provided, each member of the breach of contract subclass has suffered damages in an amount to be determined at the time of trial.

94. As a further direct and proximate result of Defendants' bad faith breach of the Contract, Plaintiff (on behalf of each member of the Breach of Contract Subclass) has retained legal counsel and incurred attorneys' fees in an effort to obtain the benefits of the insurance policies. The Breach of Contract Subclass is therefore entitled to recover attorneys fees (in an amount to be determined at trial) under *Brandt v. Superior Court*, 37 Cal.3d 813 (1985).

95. Defendants' bad faith breach of the Contract was malicious and oppressive and justifies an award of punitive damages in an amount to be determined at the time of trial.

**MISCELLANEOUS**

96. Plaintiff and Class Members allege that they have fully complied with all contractual and other legal obligations and fully complied with all conditions precedent to bringing this action or all such obligations or conditions are excused.

**PRAYER FOR RELIEF**

97. Plaintiff, on behalf of himself and the Class, requests the following relief:

- 1 (a) An order certifying the Class and appointing Plaintiff as Representative  
2 of the Class;
- 3 (b) An order certifying the undersigned counsel as Class Counsel;
- 4 (c) An order requiring Defendants, at their own cost, to notify all Class  
5 Members of the unlawful and deceptive conduct herein;
- 6 (d) An order requiring Defendants to engage in corrective advertising  
7 regarding the conduct discussed above;
- 8 (e) Actual damages suffered by Plaintiff and Class Members as applicable  
9 from being induced to call Defendants under false pretenses;
- 10 (f) Punitive damages, as allowable, in an amount determined by the Court or  
11 jury;
- 12 (g) Any and all statutory enhanced damages;
- 13 (h) All reasonable and necessary attorneys' fees and costs provided by  
14 statute, common law or the Court's inherent power;
- 15 (i) Pre- and post-judgment interest; and
- 16 (j) All other relief, general or special, legal and equitable, to which Plaintiff  
17 and Class Members may be justly entitled as deemed by the Court.

18 **REQUEST FOR JURY TRIAL**

19 98. Plaintiff requests a trial by jury as to all claims so triable.

20  
21 Dated: May 11, 2020

Respectfully submitted,

22 LAW OFFICES OF TODD M. FRIEDMAN , PC

23  
24 By: 

TODD M. FRIEDMAN, ESQ.  
Attorney for Plaintiff



ORIGINAL

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):

Todd M. Friedman, Esq. SBN 216752

Law Offices of Todd M. Friedman

21550 Oxnard St., Suite 780

Woodland Hills, CA 91367

TELEPHONE NO.: 323-306-4234

FAX NO.: 866-633-0228

ATTORNEY FOR (Name): Plaintiff, Lance Johnson

FOR COURT USE ONLY

FILED  
Superior Court of California  
County of Los Angeles

JUN 11 2020

Sherri R. Carter, Executive Officer/Clerk of Court

By Isaac Love Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles

STREET ADDRESS: 111 N. Hill St.

MAILING ADDRESS: 111 N. Hill St.

CITY AND ZIP CODE: Los Angeles, CA 90012

BRANCH NAME: Stanley Mosk Courthouse

CASE NAME:

Lance Johnson v. Affinity Insurance Services Inc. et al.

RECEIVED  
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## CIVIL CASE COVER SHEET

- ☒ **Unlimited** (Amount demanded exceeds \$25,000) ☐ **Limited** (Amount demanded is \$25,000 or less)

## Complex Case Designation

- ☐ **Counter** ☐ **Joinder**

Filed with first appearance by defendant  
(Cal. Rules of Court, rule 3.402)

CASE NUMBER:

20STCV22641

JUDGE:

DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

## Auto Tort

- ☐ Auto (22)  
☐ Uninsured motorist (46)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- ☐ Asbestos (04)  
☐ Product liability (24)  
☐ Medical malpractice (45)  
☐ Other PI/PD/WD (23)

## Non-PI/PD/WD (Other) Tort

- ☒ Business tort/unfair business practice (07)  
☐ Civil rights (08)  
☐ Defamation (13)  
☐ Fraud (16)  
☐ Intellectual property (19)  
☐ Professional negligence (25)  
☐ Other non-PI/PD/WD tort (35)

## Employment

- ☐ Wrongful termination (36)  
☐ Other employment (15)

## Contract

- ☐ Breach of contract/warranty (06)  
☐ Rule 3.740 collections (09)  
☐ Other collections (09)  
☐ Insurance coverage (18)  
☐ Other contract (37)

## Real Property

- ☐ Eminent domain/Inverse condemnation (14)  
☐ Wrongful eviction (33)  
☐ Other real property (26)

## Unlawful Detainer

- ☐ Commercial (31)  
☐ Residential (32)  
☐ Drugs (38)

## Judicial Review

- ☐ Asset forfeiture (05)  
☐ Petition re: arbitration award (11)  
☐ Writ of mandate (02)  
☐ Other judicial review (39)

Provisionally Complex Civil Litigation  
(Cal. Rules of Court, rules 3.400-3.403)

- ☐ Antitrust/Trade regulation (03)  
☐ Construction defect (10)  
☐ Mass tort (40)  
☐ Securities litigation (28)  
☐ Environmental/Toxic tort (30)  
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

## Enforcement of Judgment

- ☐ Enforcement of judgment (20)

## Miscellaneous Civil Complaint

- ☐ RICO (27)  
☐ Other complaint (not specified above) (42)

## Miscellaneous Civil Petition

- ☐ Partnership and corporate governance (21)  
☐ Other petition (not specified above) (43)

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses  
b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court  
c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive

4. Number of causes of action (specify): 3

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 11, 2020

Todd M. Friedman

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

## NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

BY FAX

05/16/2020