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8 **UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

9  
10 LOUIS B. EDLESON, on behalf of  
himself and all others similarly situated,

11  
12 Plaintiff,

13 vs.

14 TRAVEL INSURED INTERNATIONAL,  
INC., and UNITED STATES FIRE  
15 INSURANCE COMPANY,

16 Defendants.

Case No. '21CV323 WQHAGS

**CLASS ACTION COMPLAINT  
FOR:**

- 1. **UNJUST ENRICHMENT;**  
**and**
- 2. **UNFAIR COMPETITION**  
**(California Business and**  
**Professions Code § 17200).**

**DEMAND FOR JURY TRIAL**

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1 Plaintiff, individually and on behalf of all others similarly situated (the  
2 “Class,” as defined below), files this class action complaint against Travel Insured  
3 International, Inc. and United States Fire Insurance Company (“Defendants”) for  
4 unjust enrichment and unfair competition. Plaintiff alleges the following (a) upon  
5 personal knowledge with respect to the matters pertaining to Plaintiff; and (b) upon  
6 information and belief with respect to all other matters, based upon, among other  
7 things, the investigations undertaken by Plaintiff’s counsel. Plaintiff believes that  
8 substantial additional evidentiary support will exist for the allegations set forth  
9 below after a reasonable opportunity for discovery.

10 **I. INTRODUCTION**

11 1. This is a class action for damages and restitution against Travel  
12 Insured International, Inc. (“Travel Insured”) and United States Fire Insurance  
13 Company (“U.S. Fire Insurance”) (collectively, “Defendants”) arising from their  
14 unfair business practices towards Plaintiff and other similarly situated travel  
15 insurance policyholders. Plaintiff and the Class seek to represent: (1) persons who  
16 purchased a travel protection plan from Travel Insured which included an array of  
17 travel-related protections offering coverage for both pre- and post-departure perils;  
18 (2) whose insured travel plans were canceled prior to departure; and (3) did not  
19 receive any *pro rata* refund for that portion of the gross policy premium which was  
20 paid exclusively for post-departure coverages that were unearned by Defendants  
21 because of the cancellation of those trips. Plaintiff and the Class have suffered  
22 injury in the form of monetary loss and other harms because they paid premiums for  
23 insurance coverages that could not materialize due to cancellation of their trips.  
24 Defendants were never exposed to, or assumed, any transferred risk of loss. In other  
25 words, Defendants are collecting premiums for illusory insurance coverage.

26 2. Travel insurance provides reimbursement in the event of financial loss  
27 or hardship related to travel. Travel insurance is available to cover a wide array of  
28

1 risks associated with travel, including both pre-departure risks, such as the loss of  
2 prepaid nonrefundable deposits or payments if a trip is canceled prior to departure,  
3 as well as risks that arise exclusively post-departure, such as interruption of a trip,  
4 medical or dental emergencies during a trip, and lost, stolen or damaged baggage.  
5 By its nature, this second category of coverages – exclusively for post-departure  
6 risks – is insurance coverage providing coverage for travel related risks that can  
7 only arise after travel is underway.

8         3. Travel Insured administers single trip travel insurance plans on behalf  
9 of U.S. Fire Insurance and other insurers. Travelers can purchase travel insurance  
10 from Travel Insured through several distribution channels, including from a travel  
11 agent (either online or traditional “brick and mortar”), and any Travel Insured travel  
12 partner.

13         4. U.S. Fire Insurance underwrites travel insurance policies sold by  
14 Travel Insured. *See* Plaintiff’s Travel Protection Plan documents attached hereto as  
15 **Exhibit A**.

16         5. Defendants offer a variety of single-trip “Travel Protection Plans,”  
17 which can include some or all of the travel insurance protections offered by  
18 Defendants. Typically, the more perils covered, the more expensive the gross  
19 premium for all the policy coverages combined within a single plan.

20         6. The Travel Protection Plans sold by Defendants include travel  
21 insurance benefits that are applicable exclusively post-departure, meaning that  
22 Defendants are not at risk of having to cover the associated risks prior to  
23 commencement of actual travel by the insured.

24         7. When a customer buys a Travel Protection Plan from Defendants, he  
25 or she receives a policy which describes the terms and conditions of the purchased  
26 travel insurance. The Schedule of Benefits delineates the different policy benefits  
27 provided by the policy.

1 8. Defendants can readily identify the pro rata share of the gross premium  
2 which is attributable to each policy benefit purchased by the insured under that  
3 person's specific plan.

4 9. Defendants' Travel Protection Plans do not address how to handle  
5 premium refunds with respect to Defendants' legal obligation to refund any portion  
6 of the gross insurance premium that was paid in advance for specific post-departure  
7 coverages that were in fact never provided.

8 10. If an insurer assumes no risk in a contract for insurance, then the  
9 insurer has suffered no bargained for detriment, and in the absence of that  
10 consideration the insured's premium must be returned.

11 11. When a policyholder informs Defendants that his or her trip is  
12 canceled, Defendants do not return the pro rata portion of the gross premium which  
13 the insured paid exclusively for coverage of post-departure risks – which risks are  
14 never assumed by, or transferred to Defendants, when the trip is canceled prior to  
15 commencement of actual travel.

16 12. "If an insurer assumes no risk in a contract for insurance, then the  
17 insurer has suffered no bargained for detriment, and in the absence of that  
18 consideration the insured's premium must be returned." *Anderson v. Travelex Ins.*  
19 *Servs., Inc.*, No. 8:18-CV-362, 2019 U.S. Dist. LEXIS 73407, at \*3 (D. Neb. May  
20 1, 2019).

21 13. When an insured's trip is canceled prior to departure, Defendants are  
22 obligated to return the portion of the premium paid for coverage of risks that are  
23 only applicable post-departure. This is because the portion of the gross premium  
24 paid in exchange for these exclusive post-departure benefits is unearned because  
25 Defendants were never at risk of having to cover the perils of actual travel.

26 14. The American Academy of Actuaries Travel Insurance Task Force  
27 found in its 2018 report that: "if a policy includes only benefits that cover post-  
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1 departure exposures (*e.g.*, trip interruption, medical), there is no risk exposure  
2 between the policy purchase date and the departure date. Consequently, no  
3 premium should be earned for the pre-departure period.” American Academy of  
4 Actuaries Travel Insurance Task Force, “Travel Insurance: An Actuarial  
5 Perspective,” at 18 (Sept. 2018).

6 15. Defendants did not provide any consideration in return for the portion  
7 of the gross premium associated with post-departure perils, which Defendants  
8 always require be paid in advance of travel.

9 16. Defendants’ systematic failure to return the unused and unearned  
10 premium to purchasers of Travel Insured’s Travel Protection Plans is  
11 unconscionable, unjust, and unlawful. Each member of the proposed Class (defined  
12 below) has been similarly damaged by Defendants’ misconduct and is entitled to  
13 restitution of the portion of the gross premium that Defendants accepted in  
14 exchange for insuring against post-departure risks, but for which they never  
15 provided any coverage (*i.e.*, assumed the specified risks) in return.

16 **II. PARTIES**

17 17. Plaintiff Louis B. Edleson is a citizen and resident of San Diego,  
18 California.

19 18. Defendant Travel Insured International, Inc. is a corporation with its  
20 principal place of business at 855 Winding Brook Drive, Glastonbury, CT 06033.

21 19. Defendant United States Fire Insurance Company’s principal place of  
22 business is located in Morristown, NJ. It is licensed in all 50 states, DC, the Virgin  
23 Islands and Puerto Rico. U.S. Fire Insurance underwrites Travel Insured Travel  
24 Protection Plans that are issued to insureds across the country.

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1           **III. JURISDICTION AND VENUE**

2           20. This Court has original jurisdiction over the claims asserted herein  
3 individually and on behalf of the class pursuant to 28 U.S.C. § 1332, as amended by  
4 the Class Action Fairness Act of 2005. Subject matter jurisdiction is proper  
5 because: (1) the amount in controversy in this class action exceeds five million  
6 dollars, exclusive of interest and costs; and (2) there are more than 100 Class  
7 Members; (3) at least one member of the Class is diverse from Defendants; and (4)  
8 Defendants are not governmental entities.

9           21. Personal jurisdiction is proper as Defendants have purposefully availed  
10 themselves of the privilege by conducting business activities within this state.  
11 Venue is proper in this District pursuant to 28 U.S.C. § 1391, as a substantial part of  
12 the events giving rise to the claims asserted herein occurred in this District. At all  
13 pertinent times, Defendants were (and remain) in the business of marketing,  
14 advertising, distributing, and selling travel insurance throughout this state and  
15 nationwide.

16           **IV. FACTUAL ALLEGATIONS**

17           **A. Defendants’ Travel Insurance Policies and Practices**

18           22. Travel insurance is an insurance product for covering unforeseen  
19 losses incurred *while travelling*, either internationally or domestically. Basic  
20 policies cover emergency medical expenses while overseas, while comprehensive  
21 policies typically include coverage for trip cancellation, lost luggage, flight delays,  
22 public liability, and other expenses.

23           23. Defendants sell travel insurance policies. These policies are designed  
24 specifically to cover the perils associated with a specific trip.

25           24. Pursuant to an agreement executed between Travel Insured and U.S.  
26 Fire Insurance, Travel Insured is responsible for collecting and refunding premium  
27 payments in connection with the travel insurance underwritten by U.S. Fire  
28

1 Insurance. Travel Insured is the plan administrator.

2 25. Travel Insured offers a variety of Travel Protection Plans. The  
3 premiums for the plans are based on the risk assumed by Defendants. Travel  
4 insurance companies state that the risk they face is determined by a number of  
5 factors, almost many of which are based on perils that could potentially occur, if at  
6 all, once a trip commences. As stated by one travel insurance company:

7  
8 **Your Price Depends on the Element of Risk**

9 When figuring out how much travel insurance costs, remember the price you  
10 pay depends in large part on how large of a trip investment you are making –  
11 your trip cost!

12 Age, trip cost, plan type, number of travelers, and for some plans destination  
13 and trip length: all these factors can help determine risk, and often determine  
14 the cost of your policy.<sup>1</sup>

15 26. Travel Protection Plans, including those sold by Defendants, protect  
16 against perils for both pre-departure and post-departure events.

17 27. *Pre-departure insurance coverage* is often provided jointly by  
18 Defendants as “Trip Cancellation” insurance coverage, which is a common pre-  
19 departure coverage offered by Defendants.

20 28. Other times, Travel Insured may provide pre-departure trip  
21 cancellation protection as a non-insurance benefit provided directly by the tour  
22 operator or provider.

23 29. The common denominator of Travel Insured’s single-trip Travel  
24 Protection Plans (regardless of how the pre-departure protection is provided) is that

25 <sup>1</sup> See website of Berkshire Hathaway Travel Protection, available at  
26 <https://www.bhttp.com/how-much-does-travel-insurance-cost>, last visited Feb. 22,  
27 2021.



1 they include at least one insurance benefit provided by Defendants covering a peril  
2 which can only arise post-departure and has zero possibility of ever occurring prior  
3 to commencement of the single insured trip.

4 30. The *post-departure insurance coverages* offered in Defendants' Travel  
5 Protection Plans include benefits for Trip Interruption, Missed Connection, Travel  
6 Delay, Medical Expense/Emergency Evacuation, Baggage and Personal Effects and  
7 Baggage Delay coverages.

8 31. The effective date for which various insurance coverage takes effect  
9 differs depending on the type of coverage. For example, the pre-departure insurance  
10 coverage Trip Cancellation coverage begins "12:01 a.m. on the day after the date  
11 the appropriate premium for this policy for Your Trip is received by the Company  
12 or its authorized representative prior to the scheduled departure time on the  
13 Scheduled Departure Date of Your Trip."

14 32. Post-departure coverages, on the other hand, are not effective until the  
15 trip has commenced. Defendants did not agree to assume post-departure risks until  
16 the post-departure coverages took effect, which, according to Plaintiff's policy, was  
17 the date and time the covered trip actually begins.

18 33. In the Travel Protection Plan sold to Plaintiff, the post-departure  
19 Travel Delay coverage does not commence until a person is "en route to and from  
20 the Covered Trip." The Travel Insured policy, therefore, specifically provides that  
21 post-departure risks are not assumed, and therefore do not attach, until the time that  
22 the insured actually departs on their covered travel.

23 34. All other post-departure coverages begin "when You depart on the first  
24 Travel Arrangement (or alternate travel arrangement if You must use an alternate  
25 Travel Arrangement to reach Your Trip destination) for Your Trip." Regardless of  
26 the specific benefits offered, the coverage for post-departure benefits in Defendants'  
27 Travel Protection Plans expressly do not take effect until the trip begins.

1 35. Regardless of the purchase platform utilized, or the specific benefits  
2 included in any purchased Travel Protection Plan, Defendants, as a matter of  
3 standard course and practice, do not refund any portion of the gross premium paid,  
4 including those premiums paid exclusively in exchange for post-departure coverage  
5 even when an insured does not commence the insured trip.

6 36. This practice is wrongful and unjust, as it allows Defendants to retain  
7 benefits when no services have been (or ever will be) provided. Defendants are not  
8 at risk of ever having to cover any post-departure perils until an insured begins his  
9 or her trip. When an insured trip is canceled prior to departure, Defendants have  
10 neither accepted nor assumed any transferred risk of loss associated with post-  
11 departure perils, and as such, provide no consideration in exchange for, and have  
12 not earned, the premiums they have been paid to cover those particular risks.  
13 Therefore, when an insured's trip is canceled prior to commencement, Defendants  
14 are required, but systematically fail, to return the pro rata portion of any gross  
15 premium already paid which represents Defendants' charges for purportedly  
16 insuring against post-departure perils.

17 37. Indeed, Defendants provide no coverage for post-departure perils until  
18 the trip is actually commenced. Any coverage for post-departure perils prior to  
19 commencement of a trip is thus illusory and does not provide adequate  
20 consideration in exchange for a premium payment.

21 **B. Allegations Regarding Plaintiff's Insurance**

22 38. On July 30, 2019, Plaintiff purchased a cruise travel package from  
23 Viking for a cruise scheduled for October 10, 2020. He purchased the tour through  
24 his travel agent for himself and his wife. Plaintiff paid \$15,466.20 for the trip.

25 39. At the same time, Plaintiff purchased a Travel Protection Plan from  
26 Travel Insured, Plan Number 190807RTL02153 (the "Plan") for which he paid a  
27 total of \$1,234.00 in premium.

1           40. The Travel Protection Plan that Mr. Edleson purchased included both  
2 pre- and post- departure benefits. Significantly, almost all the coverages are for  
3 post-departure benefits, meaning Defendants are never at risk for paying out a  
4 single penny of these coverages under circumstances where the travel/trip never  
5 commences because it is canceled in advance. Section II of the policy is entitled  
6 “Coverages” and contains the various benefits of the policy. Coverage A in Section  
7 II, entitled “Trip Cancellation,” provides benefits in the form of partial  
8 reimbursement of non-refundable deposits and payments the insured paid for the  
9 travel. This is the only coverage provided by the policy for benefits related to pre-  
10 departure events.

11           41. Significantly, even with respect to the Coverage A Trip Cancellation  
12 benefit, Defendants face no risk with respect to payments that the travel company  
13 refunds, since the policy specifically only applies to “non-refundable” costs. Thus,  
14 if the travel company reimburses the insured for costs or payments made for travel  
15 after a trip is canceled, Defendants are not liable for such costs or expenses.

16           42. The rest of the Coverages provided by the travel insurance all pertain  
17 to events/risks that can occur only after a trip commences. Thus, under Section II,  
18 the following additional Coverages apply to post-departure events:

19           ●     **Coverage B** – Trip Interruption (applies to events occurring after the  
20 scheduled Departure Date, such as when “You must depart after Your Scheduled  
21 Departure Date”)

22           ●     **Coverage C** – Travel Delay (applies to events occurring solely after  
23 Departure Date, such as if delay of travel caused by the common carrier, and other  
24 events occurring during trip such as hijacking, natural disaster, riot, etc.)

25           ●     **Coverage D** – Missed Connection (applies to missed connections  
26 during trip)

27           ●     **Coverage E** – Itinerary Change (applies “in the event Your Travel  
28

1 Supplier makes a change in Your Trip itinerary after Your Scheduled Departure  
2 Date”)

3       •     **Coverage F** – Change Fee  
4       •     **Coverage G** – Reimbursement of Miles or Reward Points  
5       •     **Coverage H** – Baggage and Personal Effects (covers damage to  
6 baggage and personal effects that occurs “while on a Trip”)

7       •     **Coverage I** – Non-Medical Emergency Evacuation (covers certain  
8 expenses incurred “while on Your Trip”)

9       •     **Coverage J** – Accident & Sickness Medical Expense (covers certain  
10 expenses incurred “during your Trip”)

11       •     **Coverage K** – Emergency Medical Evacuation (covers certain  
12 expenses related to “a Sickness or Injury during the course of Your Trip”)

13       •     **Coverage L** – 24-Hour Accidental Death and Dismemberment (covers  
14 certain expenses related to “an Injury occurring during Your Trip”)

15       •     **Coverage M** – Air Flight Only Accidental Death and Dismemberment  
16 (covers death or dismemberment occurring during trip)

17       •     **Coverage N** – Rental Car Damage (covers damage to rental car  
18 sustained during trip)

19       43.    The coverages for these post-departure perils did not take effect until  
20 commencement of the trip. As a result, in circumstances where the trip is canceled  
21 prior to the departure date, Defendants bear zero risk of paying any benefits under  
22 these coverages, which constitute the vast majority of coverages under the policy.

23       44.    In or around March 2020, the cruise operator canceled the tour due to  
24 the COVID-19 pandemic.

25       45.    In April 2020, Mr. Edleson filed a Trip Cancellation Claim Form with  
26 Travel Insured.

27 ///

1           46.    Subsequently, the cruise operator (Viking) offered and paid to Plaintiff  
2 a refund of the cost of the trip.

3           47.    Defendants never properly responded to Plaintiff’s Trip Cancellation  
4 Claim Form.

5           48.    In September 2020, Plaintiff followed up with Defendants with respect  
6 to the Trip Cancellation Claim Form, and requested a refund of the premium paid  
7 for the travel insurance.

8           49.    Travel Insured responded to the claim in a series of emails between  
9 October 2020 and January 2021, in which Travel Insured refused to refund the  
10 premium. Instead, Travel Insured only offered a voucher for use on future travel  
11 insurance, which was worthless because the COVID-19 pandemic made any travel  
12 impossible.

13           50.    Neither Defendant ever refunded any premiums paid toward the Travel  
14 Protection Plan purchased by Plaintiff.

15           51.    Defendants’ failure to refund the premium for the travel insurance  
16 allowed Defendants to be unjustly enriched. Because Plaintiff never commenced  
17 his trip, the risks associated with post-departure perils never attached and none of  
18 the post-departure coverages were effective. Thus, there was no consideration for  
19 the portion of the premium paid for post-departure benefits. Therefore, Defendants  
20 were obligated to return that portion of the gross premium that Mr. Edleson paid for  
21 benefits exclusively covering post-departure risks.

22           52.    Defendants’ practice of failing to refund any portion of the premiums  
23 paid for post-departure benefits is systematic and uniform whenever an insured  
24 cancels an insured trip, or a trip is canceled by the trip provider as occurred here,  
25 before he or she embarks on the trip.

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1           **V. CLASS ACTION ALLEGATIONS**

2           53. Plaintiff brings this action both on behalf of Plaintiff and as a class  
3 action pursuant to F.R.C.P. 23(a) and (b)(3), on behalf of the following Class:

4                   All persons (including natural persons, corporations,  
5 firms, partnerships, associations and other organizations  
6 of persons) in the United States who, during the  
7 applicable limitations period (the “Class Period”)  
8 purchased a single trip Travel Protection Plan from  
9 Defendants that included any coverages applicable  
10 exclusively to post-departure risks, canceled their insured  
trip or their trip was canceled prior to the scheduled  
departure date, and did not receive a refund of any portion  
of the premium for the policy.

11           54. This definition specifically excludes the following persons or entities:  
12 (a) any Defendants named herein; (b) any of Defendants’ parent companies,  
13 subsidiaries, and affiliates; (c) any of Defendants’ officers, directors, management,  
14 employees, subsidiaries, affiliates, or agents; (d) all governmental entities; and (e)  
15 the judges and chambers staff in this case, as well as any members of their  
16 immediate families. Plaintiff reserves the right to expand, modify, or alter the class  
17 definition in response to information learned during discovery.

18           55. This action is properly brought as a class action under F.R.C.P. 23 for  
19 the following reasons:

20                   A. **Numerosity:** The proposed Class is so numerous and  
21 geographically dispersed throughout the United States that the joinder of all Class  
22 Members is impracticable. While Plaintiff does not know the exact number and  
23 identity of all Class Members, Plaintiff is informed and believes that there are  
24 thousands of Class Members. The precise number of Class Members can be  
25 ascertained through discovery;

26                   B. **Commonality and Predominance:** There are questions of law  
27 and fact common to the proposed Class which predominate over any questions that  
28

1 may affect particular Class Members. Such common questions of law and fact  
2 include, but are not limited to:

3 • Whether Plaintiff and the Class Members purchased travel  
4 insurance from Defendants;

5 • Whether the insured travel covered by the travel insurance was  
6 canceled by Class Members or another party prior to the departure date;

7 • The duration of the wrongful acts carried out by Defendants in  
8 furtherance of the wrongful conduct;

9 • Whether by virtue of the trip being canceled prior to departure,  
10 Defendants faced no risk of having to cover post-departure perils and thus retained  
11 unearned premiums;

12 • Whether Defendants acted on grounds common to Plaintiff and  
13 the Class, including refusing to return any portion of the premiums for the travel  
14 insurance under circumstances where the travel was canceled prior to the departure  
15 date;

16 • Whether Plaintiff and the other members of the Class were  
17 injured by Defendants' conduct and, if so, the determination of the appropriate  
18 Class-wide measure of damages; and

19 • Whether Defendants unjustly enriched themselves to the  
20 detriment of Plaintiff and the members of the Class, thereby entitling Plaintiff and  
21 the members of the Class to disgorgement of all benefits derived by Defendants.

22 C. **Typicality:** Plaintiff's claims are typical of the claims of the  
23 members of the proposed Class. Plaintiff and the Class have been injured by the  
24 same wrongful practices of Defendants. Plaintiff's claims arise from the same  
25 practices and conduct that give rise to the claims of the Class and are based on the  
26 same legal theories; and

27  
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1           **D. Adequacy of Representation:** Plaintiff will fairly and  
2 adequately protect the interests of the Class in that he has no interests antagonistic  
3 to those of the other members of the Class, and Plaintiff has retained attorneys  
4 experienced in antitrust class actions and complex litigation as counsel.

5           56. A class action is superior to other available methods for the fair and  
6 efficient adjudication of this controversy for at least the following reasons:

7           a. Given the size of individual Class Member's claims and the  
8 expense of litigating those claims, few, if any, Class Members could afford to or  
9 would seek legal redress individually for the wrongs Defendants committed against  
10 them and absent Class Members have no substantial interest in individually  
11 controlling the prosecution of individual actions;

12           b. This action will promote an orderly and expeditious  
13 administration and adjudication of the proposed Class claims, economies of time,  
14 effort and resources will be fostered, and uniformity of decisions will be insured;

15           c. Without a class action, Class Members will suffer damages, and  
16 Defendants' violations of law will proceed without remedy while Defendants  
17 reaped and retained the substantial proceeds of their wrongful conduct; and

18           d. Plaintiff knows of no difficulty that will be encountered in the  
19 management of this litigation which would preclude its maintenance as a class  
20 action.

21           57. Plaintiff intends to provide notice to the proposed Class by sending  
22 notice to Class Members by U.S. mail using contact information for Class Members  
23 that is within the custody and control of Defendants. Defendants maintain mailing  
24 addresses and email addresses for each member of the Class, and thus records exist  
25 that can be used to provide actual notice of the pendency of this action to Class  
26 Members.

27 ///



1 VI. CLAIMS FOR RELIEF

2 COUNT ONE

3 Unjust Enrichment  
4 (Against All Defendants)

5 58. Plaintiff incorporates by reference the allegations in the preceding  
6 paragraphs.

7 59. As a result of their unlawful conduct described above, Defendants have  
8 been unjustly enriched.

9 60. Defendants have been unjustly enriched by the receipt of, at a  
10 minimum, unlawfully inflated prices and profits on sales of the travel insurance  
11 during the Class Period. Plaintiff and other members of the Class have conferred a  
12 benefit upon Defendants, in the form of the premiums paid to Defendants for travel  
13 insurance, under circumstances where there was no risk to Defendants because the  
14 insured trips were canceled months before any travel was to take place. Defendants  
15 have appreciated and knowingly retained that benefit without lawful justification or  
16 excuse. Defendants have refused to return the unearned, risk-free premiums, or any  
17 portion thereof.

18 61. Defendants have benefited from their unlawful acts and it would be  
19 inequitable for them to be permitted to retain any of the ill-gotten gains resulting  
20 from the overpayment of premiums made by Plaintiff and members of the Class.

21 62. Plaintiff and members of the Class are entitled to the amount of  
22 Defendants' ill-gotten gains resulting from their unlawful, unjust, and inequitable  
23 conduct. Plaintiff and members of the Class are entitled to the establishment of a  
24 constructive trust consisting of all ill-gotten gains from which Plaintiff and  
25 members of the Class may make claims on a pro rata basis.

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1 **COUNT TWO**

2 **Violation of the Unfair Competition Law**

3 **(California Business and Professions Code § 17200 *et seq.*)**

4 **(Against All Defendants)**

5 63. Plaintiff incorporates by reference and realleges the preceding  
6 allegations as though fully set forth herein.

7 64. Defendants committed acts of unfair competition, as described above,  
8 in violation of the Unfair Competition Law (“UCL”).

9 65. Defendants’ conduct constitutes an “unlawful” business practice within  
10 the meaning of the UCL, and includes, without limitation, the following:

11 A. Engaging in the conduct alleged in the complaint, pursuant to  
12 which Defendants have been unjustly enriched, as set forth above, including  
13 collecting premiums for illusory insurance coverage; and

14 B. Engaging in unfair and anti-competitive conduct and restraining  
15 trade, and otherwise manipulating the market for travel insurance services in  
16 violation of the law.

17 66. Defendants’ conduct separately constitutes an “unfair” business  
18 practice within the meaning of the UCL because Defendants’ practices have caused  
19 and are “likely to cause substantial injury” to Plaintiff and members of the Class  
20 that is not “reasonably avoidable” by them.

21 67. Defendants’ conduct, as alleged herein, is and was contrary to public  
22 policy, immoral, unethical, oppressive, unscrupulous and/or substantially injurious  
23 to consumers. Any purported benefits arising out of Defendants’ conduct do not  
24 outweigh the harms caused to the victims of Defendants’ conduct.

25 68. Defendants’ conduct is also “unfair” because it represents predatory  
26 and opportunistic misconduct. Defendants have used and are continuing to use the  
27 misfortune caused by a global pandemic to retain premiums for travel insurance  
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1 under circumstances where the insured risk ceased to exist months before the travel  
2 was set to occur. Rather than return the premiums in whole or part, Defendants  
3 have pocketed a windfall from consumers' misfortune under circumstances where  
4 other insurers have returned premiums or portions thereof. Here, Defendants'  
5 conduct not only violates the letter of the law, but it also contravenes the spirit and  
6 purpose of the laws. The conduct threatens an incipient violation of each of those  
7 laws and has both an actual and a threatened impact on competition.

8 69. Defendants' conduct, as described above, also constitutes a  
9 "fraudulent" business practice within the meaning of the UCL. Defendants' activity  
10 with respect to the travel insurance services and the market for travel insurance has  
11 resulted in Defendants' fraudulently retaining premiums that were unearned and  
12 where Defendants faced no risk, and where the future travel that Defendants insured  
13 did not shift any economic risk for the transaction to Defendants.

14 70. Plaintiff and members of the Class have suffered injury in fact and  
15 have lost money as a result of Defendants' violations of the UCL in that they paid  
16 for the premiums and have been denied a return of the premiums or any portion of  
17 the premiums. They are therefore entitled to restitution and injunctive relief  
18 pursuant to California Business and Professions Code § 17203.

19 **VII. PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff, on behalf of himself and the Class, respectfully  
21 requests that the Court:

22 A. Certify the Class defined herein pursuant to Federal Rules of Civil  
23 Procedure 23(a) and (b)(3), and designate Plaintiff as the representative of, and his  
24 undersigned counsel as Counsel for the Class;

25 B. Enter judgments against each Defendant and in favor of Plaintiff and  
26 the Class predicated on Defendants' unjust enrichment;

27 C. Award Plaintiff and the Class actual and compensatory damages as  
28

1 allowed by law in an amount to be determined at trial;

2 D. Award Plaintiff and the Class restitution and/or disgorgement of ill-  
3 gotten gains, as appropriate;

4 E. Award Plaintiff and the Class attorneys’ fees and costs of suit;

5 F. Award Plaintiff and the Class pre-judgment and post-judgment  
6 interest, as allowed by law;

7 G. Award Plaintiff and the Class injunctive relief, as appropriate; and

8 H. Award such further and additional relief as the Court may deem just  
9 and proper.

10 **VIII. DEMAND FOR JURY TRIAL**

11 Pursuant to Federal Rule of Civil Procedure 38, Plaintiff, on behalf of himself  
12 and the proposed Class, demands a trial by jury on all issues so triable.

13

14 Dated: February 23, 2021

Respectfully submitted,  
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Francis A. Bottini, Jr. (SBN 175783)  
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*s/ Francis A. Bottini, Jr.*  
Francis A. Bottini, Jr.

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