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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

MAIDEN INSURANCE LLC, on Behalf of
Itself and All Others Similarly Situated,

Plaintiff,

v.

RUBY RECEPTIONISTS, INC.,

Defendant.

Case No. 17CV48545
**SECOND AMENDED CLASS ACTION
COMPLAINT**

NOT SUBJECT TO MANDATORY
ARBITRATION

JURY TRIAL DEMANDED

Fee Authority: ORS 21.160(e) (amount
claimed exceeds \$10 million)

INTRODUCTION

1. Maiden Insurance LLC (“Plaintiff” or “Maiden”) by its undersigned counsel, alleges the following upon personal knowledge as to its own acts, and upon information and belief as to all other matters. Plaintiff’s information and belief are based upon an investigation conducted by counsel.

2. Plaintiff brings this action on its own behalf, and as a class action against Defendant Ruby Receptionists, Inc. (“Ruby”) on behalf of all persons or entities in the United States who have been clients for its call answering and messaging services within the limitations periods for the causes of action alleged herein.

3. Ruby systematically overcharges clients above its disclosed and contractually agreed upon rates, by charging its clients for time callers are spent in a hold queue waiting for Ruby staff to become available to receive a call or message, as well as by rounding up its billable receptionist time.

1 **JURISDICTION AND VENUE**

2 4. This Court has jurisdiction over all causes of action asserted herein pursuant to
3 ORS 14.030.

4 5. This Court additionally has jurisdiction over this matter, and this matter is
5 properly venued in this Court, because the “Ruby Receptionists Terms and Conditions” agreed to
6 by the parties and each Ruby client, explicitly provides:

7 The laws and jurisdiction of the state of Oregon shall govern any
8 and all matters of dispute between Ruby and Client. Any dispute
9 arising from these Terms and Conditions shall be resolved in the
state or federal courts located in Multnomah County, Oregon, and
the parties irrevocably consent to jurisdiction in such courts.

10 6. Based upon the above Terms and Conditions, Ruby has explicitly consented to
11 have this action heard in this Court, and has waived any right of removal or transfer of this
12 matter to any other Court, whether or not such court would otherwise have jurisdiction or venue
13 absent the agreement of the parties.

14 7. Venue is additionally proper in this Court because Ruby’s headquarters are
15 located in this County.

16 **THE PARTIES**

17 8. Maiden is in the insurance business and is located in Ranson, West Virginia.
18 Kathleen Fallon Maiden is the member and organizer of Maiden. On or about September 2017,
19 Maiden retained the services of Ruby to provide receptionist services, and recently discovered
20 that it has been systematically overcharged for such services.

21 9. Ruby is a Delaware corporation, and maintains its corporate headquarters in
22 Portland, Oregon. Ruby, operator of the website callruby.com, is a leading provider of remote
23 telephone reception services in the United States, providing live answering of telephone calls,
24 and related routing and messaging of those calls.

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1 **STATEMENT OF FACTS**

2 10. Ruby has offered outsourced remote telephone receptionist services to businesses
3 in the United States since 2003.

4 11. Through its call center facilities, including the call center located in Portland,
5 Oregon, Ruby offers clients the ability to receive incoming calls, and route them back to the
6 client or to accept messages.

7 12. Ruby offers its services to clients on a timed basis, with service plans providing
8 for minimum amounts of “Receptionist Minutes” at fixed prices, plus the provision of additional
9 “Receptionist Minutes” for additional fees.

10 13. On its website, Ruby provides a page of “frequently asked questions,” including
11 how a “Receptionist Minute” is calculated. It explains:

12 **What is a “receptionist minute”?**

13 We only charge for the time that the receptionist is involved in the
14 call; there are no charges per transfer, per message, or for the time
that you talk to your caller.

15 See <https://www.callruby.com/services/faqs/>

16 14. Ruby markets its services to businesses with high value calls such as law firms,
17 and these clients pay dearly for its services. For example, the Plaintiff agreed to pay \$2.54 per
18 minute (\$152.40 per hour) for Ruby to receive and handle its calls.

19 15. Despite the very explicit representations of Ruby, during all time periods relevant
20 to this Complaint, it has calculated “receptionist minutes” in a very different manner than it has
21 represented or which the parties agreed upon, including time periods well beyond “the time that
22 the receptionist is involved in the call,” and systematically overcharges its clients for its services
23 by 1) rounding up receptionist time beyond that actually spent involved handling a call; and 2)
24 by charging for receptionist time while a caller is in a hold queue waiting for the call to be
25 received when no receptionist is involved with the call.

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1 ***Ruby’s Rounding-Up of Receptionist Minutes Beyond the Represented and Agreed***
2 ***Upon Amounts***

3 16. Although Ruby’s representations and agreements with its clients provide that they
4 will be billed only for “the time that the receptionist is involved in the call,” Ruby inexplicably
5 rounds up all of its charges for receptionist time to the next half minute. For purposes of
6 illustration, for a call in which a Ruby receptionist is involved with a caller for 2:01, Ruby bills
7 its clients for 2:30, rather than the 2:01 “that the receptionist is involved in the call.” Given that
8 Ruby has many thousands of clients, these systematic overcharges are significant for each
9 individual client in the Class, and constitute a vast windfall for Ruby in the aggregate.

10 17. No disclosure of Ruby’s rounding up of its Receptionist Minutes is ever made to
11 clients prior to their entering into a contract for services. Instead, only after clients have agreed
12 to the “Ruby Receptionists Terms and Conditions” on its website by registering for the service
13 are Ruby’s clients provided with a “Welcome” email. Buried in the “Welcome” email, is an
14 invitation to “Check out our list of handy FAQs by clicking here.” That link in the “Welcome”
15 email leads not to the FAQs which potential clients can view with links from Ruby’s homepage
16 and which state that “Receptionist Minutes” include only time a receptionist is actually involved
17 in the call. Instead, the link in the “Welcome” email leads to a different set of FAQs which are
18 unreachable from, and unlinked to, Ruby’s homepage. This hidden and undisclosed FAQ page
19 provides information on Ruby’s rounding practices. This inconspicuous and obscure FAQ page,
20 provided only after clients have contracted with Ruby, and which contradicts the information
21 previously provided to its clients, is legally insufficient to alter the terms of the explicit “Ruby
22 Receptionists Terms and Conditions.”

23 ***Ruby’s Charging for Time Periods Beyond Those in Which a Receptionist is “Involved***
24 ***in the Call”***

25 18. Since it began operations in 2003, Ruby’s client roster has grown to include
26 thousands of law firms and other small businesses throughout the United States. Although its

1 call volume during this time has increased exponentially, Ruby's staffing of receptionists to
2 answer and respond to these calls has not grown apace.

3 19. As a result of Ruby's inability or unwillingness to increase its staff sufficiently to
4 immediately answer, receive, and handle incoming calls, Ruby's call center receptionists
5 regularly ask callers to be placed in a hold queue so that the receptionists can first respond to
6 other previously queued calls.

7 20. While nothing in the parties' agreement forbids Ruby from placing clients in a
8 hold queue prior to handling them, Ruby overcharges and overbills its clients by including time
9 periods in which callers are placed in the hold queue within its billable "receptionist minutes,"
10 despite the fact that no receptionist is "involved in the call" during this period of time, and
11 despite the fact that the caller is placed on hold entirely for the convenience of Ruby, in order to
12 accommodate its own preferred minimal staffing levels.

13 21. Callers are regularly and routinely placed on hold for as much as several minutes
14 or more. Time on hold is additionally subject to Ruby's unauthorized rounding up of
15 receptionist time in excess of what is called for in the parties' agreements, resulting in double
16 overcharges, well beyond the amounts represented by Ruby or contemplated or agreed to by
17 members of the Class. Due to these systematic overcharges and miscalculations, Plaintiff has
18 been billed as much as two minutes and thirty seconds for Ruby to handle a wrong number.

19 22. Ruby's systematic practice of overbilling its clients for its services has led to
20 material overcharges and payments by members of the Class, all of whom have been harmed by
21 Ruby's failure to comply with the agreed upon terms of its contracts with its clients.

22 **CLASS ACTION ALLEGATIONS**

23 23. Pursuant to ORCP 32, Plaintiff brings this case as a representative party on behalf
24 of a class initially defined as follows (the "Class"):

25 All persons or entities in the United States who have been clients for
26 Ruby's call answering and messaging services at any time during the
period from October 13, 2011, through the date of this Complaint.

1 24. Excluded from the Class are Defendant, any entity in which Defendant has a
2 controlling interest or that has a controlling interest in (or is under common control with)
3 Defendant, and Defendant’s legal representatives, assignees, and successors. Also excluded are
4 the judge to whom this case is assigned and any member of the judge’s immediate family.

5 25. The Class is so numerous that joinder of all members is impracticable. Upon
6 information and belief, the Class has more than 100 members.

7 26. There are numerous questions of law and fact common to Plaintiff and members
8 of the Class, all to be adjudged with relation to the laws of Oregon, pursuant to the “Ruby
9 Receptionists Terms and Conditions” agreed to by the Parties. These common questions of law
10 and fact include, but are not limited to, the following:

11 a. Whether Ruby unlawfully overcharges its clients for its services by
12 rounding up receptionist time beyond that actually spent involved handling a call;

13 b. Whether Ruby unlawfully overcharges for receptionist time while a caller
14 is in a hold queue waiting for the call to be received, when no receptionist is involved with the
15 call;

16 c. Whether Ruby has breached its Contracts with the Class;

17 d. Whether Ruby has been unjustly enriched as a result of the billing
18 practices complained of herein; and

19 e. Whether Class members are entitled to damages, restitution, injunctive
20 relief, an accounting, constructive trust, or other monetary or equitable relief, and, if so, the
21 methodology of determining such relief.

22 27. Plaintiff’s claims are typical of the claims of the Class. Plaintiff’s claims and the
23 claims of the Class arise out of the same common course of conduct by Defendant and are based
24 on the same legal, equitable, and remedial theories.

25 28. Plaintiff fairly and adequately protects the interests of the Class. Plaintiff has
26 retained competent and capable attorneys with experience in complex and class action litigation.

1 Plaintiff and its counsel are committed to prosecuting this action vigorously on behalf of the
2 Class and have the financial resources to do so. Neither Plaintiff nor its counsel have interests
3 that are contrary to or that conflict with those of the proposed Class.

4 29. Defendant has engaged in a common course of conduct toward Plaintiff and
5 members of the Class. The common issues arising from this conduct that affect Plaintiff and
6 members of the Class predominate over any individual issues. Adjudication of these common
7 issues in a single action has important and desirable advantages of judicial economy.

8 30. A class action is the superior method for the fair and efficient adjudication of this
9 controversy. Classwide relief is essential to compel Defendant to comply with its obligations
10 under Oregon law. The interest of individual members of the Class in individually controlling
11 the prosecution of separate claims against Defendant is small because the damages and other
12 remedies available in an individual action against Defendant for failing to comply with its
13 obligations under Oregon law are small. Class treatment is superior to multiple individual suits
14 or piecemeal litigation because it conserves judicial resources, promotes consistency and
15 efficiency of adjudication, provides a forum for small claimants, and deters illegal activities.
16 There will be no significant difficulty in the management of this case as a class action.

17 **FIRST CAUSE OF ACTION**

18 **(Breach of Contract)**

19 31. Plaintiff repeats and realleges the allegations of paragraphs 1 through 30 above.

20 32. Plaintiff engaged Ruby to provide various services to Plaintiffs pursuant to the
21 terms of the agreement between the parties (the “Agreement”).

22 33. The Agreement is a valid and enforceable contract, supported by due
23 consideration on all sides. Plaintiff has fully performed, complied with, and/or satisfied all
24 obligations, terms, and conditions of its contractual relationship with Defendant.

25 34. Pursuant to the Agreement, Ruby agreed to, *inter alia*, provide a virtual
26 receptionist service dedicated to creating real, meaningful connections with Plaintiff’s callers,

1 and for such services, only charge for the time that the receptionist is “involved in the call.”
2 According to the Agreement, there are no charges per transfer, per message, or for the time
3 Plaintiff or other members of the Class talk to their callers.

4 35. Defendant materially breached the parties’ Agreement by 1) rounding up
5 receptionist time beyond the time actually involved in handling the call; and 2) charging for
6 receptionist time while callers were in a hold queue waiting for their call to be received when no
7 receptionist was involved with the call.

8 36. Plaintiff and the other members of the Class have been and will continue to be
9 harmed as a direct and proximate result of Defendant’s breach of the parties’ Agreement.

10 37. An accounting is necessary because it is difficult to determine the full extent of
11 the harm caused by Defendant’s misconduct and because Defendant is in complete control of
12 information needed to make such a determination.

13 38. Plaintiff and the other members of the Class have suffered damages in an amount
14 to be determined at trial.

15 **SECOND CAUSE OF ACTION**

16 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

17 39. Plaintiff repeats and realleges the allegations of paragraphs 1 through 38 above.

18 40. The implied covenant of good faith and fair dealing is incorporated by law into
19 the Agreement. This implied covenant required Defendant to exercise good faith and fair
20 dealing in connection with the parties’ performance under the Agreement and to act in a manner
21 consistent with the parties’ expectations.

22 41. Plaintiff had an objectively reasonable expectation that it would be billed fairly
23 and accurately.

24 42. Defendant breached the implied covenant of good faith and fair dealing contained
25 in the parties’ Agreement by, *inter alia*: (a) wrongfully billing for time that had been rounded up,
26 to the benefit of Defendant; and (b) wrongfully charging for receptionist time while callers were

1 in a hold queue waiting for their calls to be received while no receptionist was involved with the
2 call.

3 43. Defendant's conduct was directly contrary to the parties' clear intent and
4 reasonable expectations that Defendant would not charge Plaintiff or other members of the Class
5 for time in excess of that in which a receptionist is actually involved in the call, without rounding
6 up, or for periods of time in which callers remained in a hold queue waiting for their calls to be
7 received.

8 44. Plaintiff and the other members of the Class have been and will continue to be
9 harmed as a direct and proximate result of Defendant's breaching of its implied covenant of good
10 faith and fair dealing.

11 45. An accounting is necessary because it is difficult to determine the full extent of
12 the harm caused by Defendant's misconduct and because Defendant is in complete control of
13 information needed to make such a determination.

14 46. Plaintiff and the other members of the Class have suffered damages in an amount
15 to be determined at trial.

16 **THIRD CAUSE OF ACTION**

17 **(Unjust Enrichment)**

18 47. Plaintiff repeats and realleges the allegations of paragraphs 1 through 46 above.

19 48. Defendant was unjustly enriched by its wrongful conduct at the expense and to
20 the detriment of Plaintiff and the other members of the proposed Class. Defendant was aware
21 that it had received the benefit of its wrongfully obtained overcharges.

22 49. It would be inequitable and unconscionable for Defendant to enjoy the benefit of
23 its wrongful conduct.

24 50. An accounting is necessary because it is difficult to determine the full extent of
25 Defendant's unjust enrichment and because Defendant is in complete control of information
26 needed to make such a determination.

1 51. Plaintiff and the other members of the proposed Class are entitled to recover any
2 and all amounts proven to have enriched Defendant arising from Defendant’s wrongful conduct,
3 which amounts will be determined at trial.

4 **FOURTH CAUSE OF ACTION**

5 **(Money Had and Received – Accounting)**

6 52. Plaintiff repeats and realleges the allegations of paragraphs 1 through 51 above.

7 53. The overcharges deceptively obtained by Defendant from Plaintiff and the other
8 members of the proposed Class justly and equitably belong to Plaintiff and the Class.

9 54. Defendant’s actions harmed Plaintiff and the Class by causing Plaintiff and the
10 other members of the Class to overpay for the services at issue.

11 55. Ruby is indebted to Plaintiff and the other members of the proposed Class the
12 amount had and received by Defendant.

13 56. Permitting Defendant to wrongfully retain the benefits and profits (in the form of
14 money rightfully belonging to Plaintiff and the other members of the Class) from its unlawful
15 scheme would be unjust and unconscionable.

16 57. Despite demand, Defendant has wrongfully failed and refused to pay said sum to
17 Plaintiffs and the other members of the Class.

18 58. An accounting is necessary because it is difficult to determine the full extent of
19 the money had and received and wrongfully retained by Defendant and because Defendant is in
20 complete control of information needed to make such a determination.

21 59. Plaintiff and the other members of the Class have been damaged in an amount to
22 be proven at trial.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff requests of this Court the following prayer for relief, on behalf
3 of itself and Class members:

4 A. An order certifying the Class pursuant to ORCP 32 and appointing Plaintiff and
5 its counsel to represent it and the Class;

6 B. An award of damages in an amount to be determined at trial;

7 C. Restitution and disgorgement of amounts overcharged and received by Defendant;

8 D. Pre-judgment interest;

9 E. Post-judgment interest;

10 F. Declaratory relief;

11 G. An order requiring an accounting with respect to (i) the amounts Defendant
12 unlawfully overcharged its clients by rounding up receptionist time beyond that actually spent
13 involved handling a call; (ii) the amounts Defendant unlawfully overcharged for receptionist
14 time while a caller was in a hold queue waiting for the call to be received, when no receptionist
15 was involved with the call; and (iii) the amounts Defendant wrongfully received and retained as
16 a result of its unlawful overcharging practices;

17 H. An order enjoining Defendant from (i) unlawfully overcharging its clients by
18 rounding up receptionist time beyond that actually spent involved handling a call; and (ii)
19 unlawfully overcharging for receptionist time while a caller was in a hold queue waiting for the
20 call to be received, when no receptionist was involved with the call;

21 I. Attorneys' fees, costs, disbursements, and expenses of suit, including expert
22 witness fees; and

23 J. Such other relief as the Court may deem appropriate.

24 **JURY TRIAL DEMANDED**

25 Plaintiff hereby demands a trial by jury on all matters so triable.

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1 DATED this 20th day of June, 2019.

2 **STOLL STOLL BERNE LOKTING &**
3 **SHLACHTER P.C.**

4 By: s/ Cody Berne

5 **Keith S. Dubanevich, OSB No. 975200**

6 **Cody Berne, OSB No. 142797**

7 209 SW Oak Street, Suite 500

8 Portland, OR 97204

9 Telephone: (503) 227-1600

10 Facsimile: (503) 227-6840

11 Email: kdubanevich@stollberne.com

12 cberne@stollberne.com

13 -And-

14 **KAPLAN FOX & KILSHEIMER LLP**

15 Laurence D. King (admitted *pro hac vice*)

16 Mario M. Choi (admitted *pro hac vice*)

17 Matthew B. George (admitted *pro hac vice*)

18 350 Sansome Street, Suite 400

19 San Francisco, CA 94104

20 Telephone: (415) 772-4700

21 Facsimile: (415) 772-4709

22 Email: lking@kaplanfox.com

23 mchoi@kaplanfox.com

24 mgeorge@kaplanfox.com

25 -And-

26 **LAX LLP**

Robert I. Lax (admitted *pro hac vice*)

380 Lexington Avenue, 31st Floor

New York, NY 10168

Telephone: (212) 818-9150

Facsimile: (212) 208-4309

Email: rlax@lax-law.com

-And-

BARON & HERSKOWITZ

Jon M. Herskowitz (admitted *pro hac vice*)

9100 S Dadeland Blvd #1704

Miami, FL 33156

Telephone: (305) 670-0101

Fax: (305) 670-2393

Email: jon@bhfloridalaw.com

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-And-

BROD LAW FIRM, PC
Gregory J. Brod (admitted *pro hac vice*)
96 Jessie Street
San Francisco, CA 94105
Telephone: (415) 397-1130
Email: gregb@brodfirm.com

Attorneys for Maiden Insurance LLC

Trial Attorney: Keith S. Dubanevich, OSB No. 975200

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I caused to be served a correct copy of the foregoing **SECOND**
3 **AMENDED CLASS ACTION COMPLAINT** on the following named person(s) on the date
4 and manner indicated below, addressed to said person(s) at the address of each shown below per
5 UTCR 21.100 as follows:

6 Andrew R. Escobar
7 Jeffrey DeGroot
8 Austin Rainwater
9 DLA Piper LLP
10 701 Fifth Avenue, Suite 4300
Seattle, WA 98104
andrew.escobar@dlapiper.com
jeffrey.degroot@dlapiper.com
austin.rainwater@dlapiper.com

By Hand Delivery
 By Overnight Delivery
 By Facsimile Pursuant to ORCP 9 F
 By U.S. Mail with postage prepaid
 By E-Mail Pursuant to ORCP 9 G
 Electronically by OJD E-File & Serve
at the party’s email address as recorded on the
date of service in the eFiling system pursuant
to UTCR 21.100.

11 Andrew D. Day
12 DLA Piper LLP
13 400 Capitol Mall Suite 2400
Sacramento, CA 95814-4428
andrew.day@dlapiper.com

14 *Attorneys for Defendant*

15 DATED this 20th day of June, 2019.

16 **STOLL STOLL BERNE LOKTING & SHLACHTER P.C.**

17
18 By: s/ Cody Berne
19 **Keith S. Dubanevich, OSB No. 975200**
Cody Berne, OSB No. 142797

20 209 SW Oak Street, Suite 500
21 Portland, OR 97204
22 Telephone: (503) 227-1600
Facsimile: (503) 227-6840
23 Email: kdubanevich@stollberne.com
cberne@stollberne.com

24 *Attorneys for Maiden Insurance LLC*