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

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

Plaintiff,

v.

RUBY RECEPTIONISTS, INC.,

Defendant.

Civil No. 17CV48545

**ANSWER TO SECOND AMENDED  
CLASS ACTION COMPLAINT**

Assigned Judge: Hon. Shelley D. Russell

Defendant Ruby Receptionists, Inc. (“Ruby”), through its undersigned counsel, hereby answers plaintiff Maiden Insurance LLC’s (“Plaintiff”) Second Amended Class Action Complaint (“Second Amended Complaint”) as follows:

**INTRODUCTION**

1. Paragraph 1 simply identifies Plaintiff and states that allegations in subsequent paragraphs are based upon Plaintiff’s personal knowledge and upon an investigation conducted by Plaintiff’s counsel, to which no response is required. To the extent a response is required, Ruby lacks knowledge and information sufficient to form a belief as to Plaintiff’s personal knowledge or the factual investigation of Plaintiff’s counsel and, on that basis, denies the allegations in paragraph 1.

1           2.       Paragraph 2 simply identifies the purported class that Plaintiff seeks to represent  
2 and the services forming the basis of Plaintiff’s claims, to which no response is required. To the  
3 extent that a response is required, Ruby denies that this action is subject to class treatment or that  
4 any class can or should be certified in this action.

5           3.       Ruby admits that it bills receptionist minutes in half-minute increments and that  
6 calls are rarely placed in a hold queue. Ruby denies the remaining allegations set forth in paragraph  
7 3.

8                                   **JURISDICTION AND VENUE**

9           4.       Ruby admits the allegation set forth in paragraph 4.

10          5.       Ruby admits the allegation set forth in paragraph 5.

11          6.       Ruby admits that Ruby has consented to this Court’s jurisdiction. Ruby denies the  
12 remaining allegations set forth in paragraph 6.

13          7.       Ruby admits the allegation set forth in paragraph 7.

14                                   **THE PARTIES**

15          8.       Ruby admits that Plaintiff retained Ruby to provide receptionist services on or  
16 about September 2017. Ruby lacks knowledge and information sufficient to form a belief as to  
17 Plaintiff’s alleged insurance business in Ranson, West Virginia, and on that basis denies those  
18 allegations. Ruby denies the remaining allegations set forth in paragraph 8.

19          9.       Ruby admits the allegations in paragraph 9.

20                                   **STATEMENT OF FACTS**

21          10.       Ruby admits the allegations in paragraph 10.

22          11.       Ruby admits the allegations in paragraph 11.

23          12.       Ruby admits that it offers services priced according to several different plans, and  
24 that some, but not all, calls are charged according to the length of the call. Ruby denies the  
25 remaining allegations in paragraph 12.

26

1 13. Ruby admits that a set of “frequently asked questions” appears on the website  
2 www.callruby.com and speak for themselves. Ruby denies the remaining allegations in paragraph  
3 13.

4 14. Ruby admits that it markets its services to a variety of clients, including law firms.  
5 Ruby denies the remaining allegations in paragraph 14.

6 15. Ruby denies the allegations in paragraph 15.

7  
8 ***Ruby’s Rounding-Up of Receptionist Minutes Beyond the Represented and Agreed Upon  
Amounts***

9 16. Ruby admits that receptionist minutes are billed in half-minute increments and that  
10 calls are rounded up to the nearest half-minute. Ruby denies the remaining allegations in paragraph  
11 16.

12 17. Ruby denies the allegations in paragraph 17.

13  
14 ***Ruby’s Charging for Time Periods Beyond Those in Which a Receptionist is “Involved  
in the Call”***

15 18. Ruby admits that its clients include law firms and small businesses located  
16 throughout the United States. Ruby denies the remaining allegations in paragraph 18.

17 19. Ruby denies the allegations in paragraph 19.

18 20. Ruby admits that no provision contained in any agreement between Ruby and  
19 Plaintiff prohibits Ruby from placing callers on hold. Ruby denies the remaining allegations in  
20 paragraph 20.

21 21. Ruby denies the allegations in paragraph 21.

22 22. Ruby denies the allegations in paragraph 22.

23 **CLASS ACTION ALLEGATIONS**

24 23. Paragraph 23 contains no allegations of fact and no response is required. To the  
25 extent a response is required, Ruby denies that this action is subject to class treatment or that any  
26 class can or should be certified in this action.

1           24.     Ruby admits that neither Ruby, nor any entity in which Ruby has a controlling  
2 interest, nor the judge to whom this case is assigned, nor any member of the judge’s immediate  
3 family, is eligible for inclusion in any putative class for which Plaintiff intends to seek certification,  
4 as this action is not subject to class treatment and no class should be certified in this action. Ruby  
5 denies the remaining allegations in paragraph 24.

6           25.     Ruby denies the allegations in paragraph 25.

7           26.     Ruby denies the allegations in paragraph 26.

8           27.     Ruby denies the allegations in paragraph 27.

9           28.     Ruby denies the allegations in paragraph 28.

10          29.     Ruby denies the allegations in paragraph 29.

11          30.     Ruby denies the allegations in paragraph 30.

### 12                                       **FIRST CAUSE OF ACTION**

#### 13                                       **(Breach of Contract)**

14          31.     Ruby incorporates by reference its responses to paragraphs 1 through 30 of the  
15 Amended Complaint, as though fully stated herein.

16          32.     Ruby admits that it entered into an agreement with Plaintiff to provide certain  
17 services. Ruby denies the remaining allegations in paragraph 32.

18          33.     Ruby admits that Ruby and Plaintiff entered into a valid and enforceable contract.  
19 Ruby denies the remaining allegations in paragraph 33.

20          34.     Ruby admits that it entered into an agreement with Plaintiff to provide certain  
21 services. Ruby denies the remaining allegations in paragraph 34.

22          35.     Ruby denies the allegations in paragraph 35.

23          36.     Ruby denies the allegations in paragraph 36.

24          37.     Ruby denies the allegations in paragraph 37.

25          38.     Ruby denies the allegations in paragraph 38.

26

1 **SECOND CAUSE OF ACTION**

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

3 39. Ruby incorporates by reference its responses to paragraphs 1 through 38 of the  
4 Amended Complaint, as though fully stated herein.

5 40. Paragraph 40 contains only a legal conclusion to which no response is required. To  
6 the extent a response is required, Ruby denies the allegations in paragraph 40.

7 41. Ruby lacks knowledge and information sufficient to form a belief as to the  
8 allegations in paragraph 41 and, on that basis, denies the allegations in paragraph 41.

9 42. Ruby denies the allegations in paragraph 42.

10 43. Ruby denies the allegations in paragraph 43.

11 44. Ruby denies the allegations in paragraph 44.

12 45. Ruby denies the allegations in paragraph 45.

13 46. Ruby denies the allegations in paragraph 46.

14 **THIRD CAUSE OF ACTION**

15 **(Unjust Enrichment)**

16 47. Ruby incorporates by reference its responses to paragraphs 1 through 46 of the  
17 Amended Complaint, as though fully stated herein.

18 48. Ruby denies the allegations in paragraph 48.

19 49. Ruby denies the allegations in paragraph 49.

20 50. Ruby denies the allegations in paragraph 50.

21 51. Ruby denies the allegations in paragraph 51.

22 **FOURTH CAUSE OF ACTION**

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

24 52. Ruby incorporates by reference its responses to paragraphs 1 through 51 of the  
25 Amended Complaint, as though fully stated herein.

26 53. Ruby denies the allegations in paragraph 53.

1 54. Ruby denies the allegations in paragraph 54.

2 55. Ruby denies the allegations in paragraph 55.

3 56. Ruby denies the allegations in paragraph 56.

4 57. Ruby denies the allegations in paragraph 57.

5 58. Ruby denies the allegations in paragraph 58.

6 59. Ruby denies the allegations in paragraph 59.

7 **PRAYER FOR RELIEF**

8 With respect to Plaintiff's prayer for relief, Ruby denies that Plaintiff is entitled to any  
9 relief whatsoever, and denies all other allegations contained in the prayer for relief.

10 **DEFENSES AND AFFIRMATIVE DEFENSES**

11 1. Plaintiff fails to state a claim upon which relief can be granted.

12 2. Plaintiff's claims fail because Plaintiff and the putative class have suffered no  
13 ascertainable loss or damages.

14 3. Plaintiff and/or others alleged to be members of the putative class lack standing to  
15 assert the claims stated in the Second Amended Complaint and to seek some or all of the relief  
16 requested.

17 4. Plaintiff's claims and/or those asserted by members of the putative class fail  
18 because plaintiff and/or others alleged to be members of the putative class failed to take reasonable  
19 steps to mitigate their alleged damages, if any, and their recovery must be barred or diminished  
20 accordingly.

21 5. Plaintiff's allegations that this action should be certified as a class action or  
22 representative action are barred by Plaintiff's failure to allege facts sufficient to warrant class  
23 certification and/or an award of class damages. Plaintiff likewise failed to set forth any facts  
24 supporting any other form of representative action.

25 6. The putative class cannot be certified under ORCP 32, given the necessarily  
26 individualized nature of the claims, which predominate over common questions of law and fact.

1 7. Plaintiff's claims are barred, in whole or in part, by the applicable statute of  
2 limitations.

3 8. Plaintiff's claims and/or those asserted by members of the putative class are barred  
4 by the doctrine of unclean hands.

5 9. Plaintiff and/or members of the putative class are estopped from recovering from  
6 Ruby.

7 10. Plaintiff and/or members of the putative class have waived any right to recovery  
8 from defendant.

9 Ruby reserves the right to amend, modify, revise or supplement its Answer, and to plead  
10 such further affirmative defenses and take such further actions as it may deem proper and necessary  
11 in its defense upon the completion of their investigation into Plaintiff's allegations.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Ruby respectfully requests that this Court:

- 14 1. Dismiss Plaintiff's Second Amended Complaint with prejudice;  
15 2. Award Ruby its costs and its attorneys' fees; and  
16 3. Award Ruby such other relief as the Court may deem just and proper.

17 DATED this 28th day of June, 2019.

18 DLA PIPER LLP (US)

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*Attorneys for defendant Ruby Receptionists*

**CERTIFICATE OF SERVICE**

I declare that on June 28, 2019, I caused a true and correct copy of the foregoing document to be served on the following in the manner indicated:

<p>Keith S. Dubanevich, OSB No. 975200  Cody Berne, OSB No. 142797  STOLL STOLL BERNE LOKTING &amp;  SHLACHTER P.C.  209 SW Oak Street, Suite 500  Portland, OR 97204  Tel: 503.227.1600  Fax: 503.227.6840  E-mail: kdubanevich@stollberne.com  E-mail: cberne@stollberne.com</p> <p>Attorneys for Plaintiff</p>	<p><input type="checkbox"/> Via Hand Delivery  <input type="checkbox"/> Via U.S. Mail  <input checked="" type="checkbox"/> Via Email  <input checked="" type="checkbox"/> Via Electronic Service  [OJD E-Notification]</p>
<p>Laurence D. King, Admitted <i>Pro Hac Vice</i>  Mario M. Choi, Admitted <i>Pro Hac Vice</i>  Matthew B. George, Admitted <i>Pro Hac Vice</i>  KAPLAN FOX &amp; KILSHEIMER LLP  350 Sansome Street, Suite 400  San Francisco, CA 94104  Tel: 415.772.4700  Fax: 415.772.4709  E-mail: lking@kaplanfox.com  E-mail: mchoi@kaplanfox.com  E-mail: mgeorge@kaplanfox.com</p> <p>Attorneys for Plaintiff</p>	<p><input type="checkbox"/> Via Hand Delivery  <input type="checkbox"/> Via U.S. Mail  <input checked="" type="checkbox"/> Via Email  <input checked="" type="checkbox"/> Via Electronic Service  [OJD E-Notification]</p>
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<p>7 Gregory J. Brod, Admitted <i>Pro Hac Vice</i>  8 BROD LAW FIRM, PC  9 96 Jessie Street  10 San Francisco, CA 94105  11 Tel: 415.397.1130  12 E-mail: gregb@brodfirm.com</p> <p>13 Attorneys for Plaintiff</p>	<p><input type="checkbox"/> Via Hand Delivery  <input type="checkbox"/> Via U.S. Mail  <input checked="" type="checkbox"/> Via Email  <input checked="" type="checkbox"/> Via Electronic Service  [OJD E-Notification]</p>

14 I declare under penalty of perjury under the laws of the state of Oregon that the foregoing  
15 is true and correct.

16 Dated this 28th day of June, 2019.

17 s/ Rachel Evans

18 Rachel Evans, Legal Practice Specialist

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