

1 MANATT, PHELPS & PHILLIPS, LLP
BRAD W. SEILING (SBN 143515)
2 Email: BSeiling@manatt.com
2049 Century Park East, Suite 1700
3 Los Angeles, California 90067
Telephone: (310) 312-4000
4 Facsimile: (310) 312-4224

5 BRANDON P. REILLY (SBN: 278012)
Email: BReilly@manatt.com
6 IVETTE ZAMORA (SBN 286243)
Email: IZamora@manatt.com
7 695 Town Center Drive, 14th Floor
Costa Mesa, CA 92626-1924
8 Telephone.: (714) 371-2500
Facsimile: (714) 371-2550

9 *Attorneys for Defendant*
10 AFLAC INCORPORATED

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13

14 SONYA VALENZUELA, individually
15 and on behalf of all others similarly
situated,

16 Plaintiff,

17 vs.

18 AFLAC INCORPORATED, a Georgia
19 corporation; and DOES 1 through 25,
inclusive,

20 Defendants.
21

Case No. 2:22-cv-06348

NOTICE OF REMOVAL

[From the Superior Court of
California, County of Los Angeles,
Case No. 22STCV23742]

Action Filed: July 22, 2022
Action Removed: September 6, 2022

1 **TO THE CLERK OF THE ABOVE ENTITLED COURT:**

2 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446,
3 and 1453, defendant Aflac Incorporated (“Aflac”) hereby removes the above-
4 captioned putative class action from the Superior Court of California, County of
5 Los Angeles, to the United States District Court for the Central District of
6 California. This Court has jurisdiction over this action pursuant to 28 U.S.C. §
7 1332(d) and the Class Action Fairness Act (“CAFA”). In support of removal, Aflac
8 states the following:

9 1. On July 22, 2022, Plaintiff filed a putative class action complaint
10 against Aflac in the Superior Court of California, County of Los Angeles, captioned
11 *Valenzuela v. Aflac Incorporated*, No. 22STCV23742 (the “State Court Action”).

12 2. A copy of the State Court Action is attached hereto as **Exhibit A** (the
13 “Complaint”).

14 3. The Complaint alleges that Aflac’s website, <https://www.aflac.com>
15 (the “Website”) “secretly deployed ‘keystroke monitoring’ software that Defendant
16 uses to surreptitiously intercept, monitor, and record the communications (including
17 keystrokes and mouse clicks) of all visitors to its Website” in violation of the
18 California Invasion of Privacy Act (“CIPA”), California Penal Code § 631. *See*
19 *Compl.* ¶¶ 1-3.

20 4. Plaintiff purports to bring the claims on behalf of a California class of
21 persons, with the following proposed membership:

22 All persons within California who (1) within one year of
23 the filing of this Complaint visited Defendant’s website,
24 and (2) whose electronic communications were caused to be
25 intercepted, recorded, and/or monitored by Defendant
without prior consent.

26 *Id.* ¶ 19.

27 5. Plaintiff believes the number of Class Members to be “in the tens of
28 thousands, if not more.” *Id.* ¶ 20.

1 6. Plaintiff asserts that Plaintiff and each Class Member is entitled to
 2 statutory damages of at least \$2,500 per violation, plus injunctive relief, punitive
 3 damages, and attorneys’ fees and costs. *Id.* ¶ 31, Prayer for Relief ¶ 6.

4 7. On August 5, 2022, Plaintiff served the Complaint and summons on
 5 Aflac. The time for Aflac to answer or otherwise plead in the state court action is
 6 September 6, 2022 and thus has not expired.

7 8. This Notice of Removal is filed within the time prescribed under 28
 8 U.S.C. § 1446(b).

9 **GROUNDNS FOR REMOVAL**

10 9. This Court has subject matter jurisdiction over Plaintiff’s claims under
 11 CAFA.

12 10. Under CAFA, codified in relevant part at 28 U.S.C. § 1332(d)(2) and
 13 1453(b), this Court has original jurisdiction over this action because: (1) this is a
 14 class action where the putative class includes more than 100 members; (2) there is
 15 minimal diversity of citizenship; and, (3) the amount in controversy exceeds
 16 \$5,000,000.

17 11. “‘No antiremoval presumption attends cases invoking CAFA, which
 18 Congress enacted to facilitate adjudication of certain class actions in federal court.’”
 19 *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014).
 20 “‘CAFA’s ‘provisions should be read broadly, with a strong preference that
 21 interstate class actions should be heard in a federal court if properly removed by
 22 any defendant.’” *Id.* (quoting S. Rep. No. 109-14, p. 43 (2005)).

23 **This is a “Class Action” With More Than 100 Putative Class Members**

24 12. This action meets CAFA’s definition of a class action, which is “any
 25 civil action filed under Rule 23 of the Federal Rules of Civil Procedure or similar
 26 State statute or rule or judicial procedure authorizing an action to be brought by 1 or
 27 more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B).
 28

1 13. The putative class Plaintiff seeks to represent includes more than 100
2 members; indeed, Plaintiff alleges that she “believes the number to be in the tens of
3 thousands, if not more.” Compl. ¶ 20.

4 **There is Minimal Diversity of Citizenship**

5 14. There is minimal diversity of citizenship among the parties. Minimal
6 diversity exists when “any member of a class of plaintiffs is a citizen of a State
7 different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

8 15. For diversity purposes, a person is a “citizen” of the state in which he
9 or she is domiciled. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir.
10 2001). Plaintiff alleges that Plaintiff “is an adult resident of California.” Compl. ¶
11 7. Aflac is informed and believes that Plaintiff is a citizen of California.

12 16. Further, all putative Class Members would be citizens of California
13 based on the class definition in the Complaint.

14 17. For CAFA removal purposes, an unincorporated association is “a
15 citizen of the state where it has its principal place of business and the State under
16 whose laws it is organized.” 28 U.S.C. § 1332(d)(10).

17 18. Aflac is a Nebraska corporation with its principal place of business in
18 Georgia. Therefore, for purposes of CAFA, Aflac is diverse from Plaintiff and all
19 Class Members.

20 **The Alleged Amount in Controversy Exceeds \$5,000,000**

21 19. The amount in controversy requirement under CAFA is satisfied if
22 “the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of
23 interest and costs.” 28 U.S.C. § 1332(d)(2). For purposes of determining the
24 amount in controversy, CAFA expressly requires that “the claims of the individual
25 class members shall be aggregated.” 28 U.S.C. § 1332(d)(6).

26 20. The bar for establishing the amount in controversy is low—the notice
27 of removal “need include only a plausible allegation that the amount in controversy
28 exceeds the jurisdictional threshold.” *Owens*, 574 U.S. at 89.

1 21. Aflac denies the validity and merit of Plaintiff’s claim, the legal
2 theories upon which it is based, and that Plaintiff and the putative classes are
3 entitled to any alleged claim for monetary or other relief. Solely for the purposes of
4 removal, however, and without conceding that Plaintiff or the putative class is
5 entitled to damages, the aggregated claims alleged on behalf of the putative classes
6 establish that the amount in controversy exceeds the jurisdictional minimum of
7 \$5,000,000.

8 22. Plaintiff seeks to represent a putative class she estimates to be in the
9 tens of thousands, and seeks at least \$2,500 in statutory damages for each Class
10 Member for each alleged violation—it would take only a fraction of this
11 membership (2,000 members) in the putative class to put \$5,000,000 of statutory
12 damages in play.

13 23. Aflac alleges that at least 2,000 Californians visited the Website and
14 interacted with a chatbot during the class period.

15 24. When a plaintiff “is seeking recovery from a pot that Defendant has
16 shown could exceed \$5 million,” the amount in controversy is satisfied for purposes
17 of CAFA jurisdiction. *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 401 (9th
18 Cir. 2010).

19 25. Moreover, Plaintiff seeks injunctive relief, attorneys’ fees, and
20 punitive damages in this putative class action Complaint, and each of those also
21 adds to the amount in controversy. *See In re Ford Motor Co./Citibank (S. Dakota),*
22 *N.A.*, 264 F.3d 952, 958 (9th Cir. 2001) (the potential cost to the defendant of
23 complying with the injunction creates the amount in controversy for jurisdictional
24 purposes); *Fritsch v. Swift Transportation Co. of Arizona, LLC*, 899 F.3d 785, 795
25 (9th Cir. 2018) (amount in controversy includes all reasonable attorneys’ fees not
26 merely through the date of removal, but through resolution of the action); *Bayol v.*
27 *Zipcar, Inc.*, No. 14-CV-02483-TEH, 2015 WL 4931756, at *9 (N.D. Cal. Aug. 18,

28

1 2015) (applying “conservative” 1:1 ratio for punitive damages to hold that the
2 federal court had jurisdiction under CAFA).

3 26. Aflac denies that Plaintiff is entitled to any punitive or other damages
4 whatsoever, or to injunctive relief or attorneys’ fees, but even a conservative one-
5 to-one ratio for putative damages would further elevate the amount in controversy
6 well above the \$5,000,000 CAFA statutory minimum.

7 **REMOVAL IS PROCEDURALLY PROPER**

8 27. Removal is timely because Aflac filed this notice within thirty days of
9 Plaintiff’s August 5, 2022 service of the Complaint on Aflac. *See* 28 U.S.C. §
10 1446(b)(1).

11 28. Removal to this Court is proper because the United States District
12 Court for the Central District of California embraces the location where the State
13 Court Action was commenced and is pending—Los Angeles, California. *See* 28
14 U.S.C. §§ 89(b), 1441(a).

15 29. Aflac submits with this notice a copy of all process, pleadings, and
16 orders served upon it in this action as **Exhibit B**. *See* 28 U.S.C. § 1446(a).

17 30. Aflac will provide prompt written notice to Plaintiff, through counsel,
18 of this removal, in accordance with 28 U.S.C. § 1446(d).

19 31. Aflac will promptly file a copy of this notice of removal with the Clerk
20 of the Superior Court of the State of California in and for the County of Los
21 Angeles in accordance with 28 U.S.C. § 1446(d).

22 **NON-WAIVER**

23 32. If the Court determines that the pleadings and other documents to date
24 lack adequate information from which to ascertain the prerequisites to jurisdiction
25 under CAFA, the time within which to remove will have not begun to run, and
26 Aflac reserves the right to remove this action at the appropriate time. *Kuxhausen v.*
27 *BMW Fin. Servs. NA LLC*, 707 F.3d 1136, 1139 (9th Cir. 2013).

28 33. Aflac does not waive, and expressly preserves, all objections and

1 defenses it may have, including but not limited to those permitted pursuant to Rules
2 4 and 12 of the Federal Rules of Civil Procedure.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: September 6, 2022

MANATT, PHELPS & PHILLIPS, LLP

By: _____
Ivette Zamora

Attorneys for Defendant
AFLAC INCORPORATED

Exhibit A

Electronically FILED by Superior Court of California, County of Los Angeles on 07/22/2022 03:54 PM Sherri R. Carter, Executive Officer/Clerk of Court, by G. Carini, Deputy Clerk

1 PACIFIC TRIAL ATTORNEYS
 A Professional Corporation
 2 Scott J. Ferrell, Bar No. 202091
 sferrell@pacifictrialattorneys.com
 3 David W. Reid, Bar No. 267382
 dreid@pacifictrialattorneys.com
 4 Victoria C. Knowles, Bar No. 277231
 vknowles@pacifictrialattorneys.com
 5 4100 Newport Place Drive, Ste. 800
 Newport Beach, CA 92660
 6 Tel: (949) 706-6464
 Fax: (949) 706-6469

7 Attorneys for Plaintiff and Proposed Class

8
 9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 10 **FOR THE COUNTY OF LOS ANGELES**
 11

12 SONYA VALENZUELA, individually and on
13 behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 AFLAC INCORPORATED, a Georgia
17 corporation; and DOES 1 through 25, inclusive,

18 Defendants.

Case No. **22STCV23742**

**CLASS ACTION COMPLAINT FOR
VIOLATION OF PENAL CODE § 631**

19
20
21
22
23
24
25
26
27
28

1 **INTRODUCTION**

2 1. Plaintiff Sonya Valenzuela (“Plaintiff”) brings this class action on her own behalf and
3 on behalf of all other Californians similarly situated against Defendant for its illegal wiretapping of
4 their electronic communications with Defendant’s website, <https://www.aflac.com> (the “Website”).

5 2. Unbeknownst to visitors to the Website, Defendant has secretly deployed “keystroke
6 monitoring” software that Defendant uses to surreptitiously intercept, monitor, and record the
7 communications (including keystrokes and mouse clicks) of all visitors to its Website. Defendant
8 neither informs visitors nor seeks their express or implied consent prior to this wiretapping.

9 3. Defendant has violated and continues to violate the California Invasion of Privacy Act
10 (“CIPA”), California Penal Code § 631, entitling Plaintiff and Class Members to relief pursuant
11 thereto.

12 **JURISDICTION AND VENUE**

13 4. This Court has jurisdiction over all causes of action asserted herein.

14 5. Venue is proper in this Court because Defendant knowingly engages in activities
15 directed at consumers in this County and engaged in the wrongful conduct alleged herein against
16 residents of this County.

17 6. Any out-of-state participants can be brought before this Court pursuant to California’s
18 “long-arm” jurisdictional statute.

19 **PARTIES**

20 7. Plaintiff Sonya Valenzuela is an adult resident of California.

21 8. Defendant is a Georgia corporation. Defendant does business and affects commerce
22 within the state of California and with California residents.

23 9. The above-named Defendants, and their subsidiaries and agents, are collectively
24 referred to as “Defendants.” The true names and capacities of the Defendants sued herein as DOE
25 DEFENDANTS 1 through 25, inclusive, are currently unknown to Plaintiff, who therefore sues such
26 Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally
27 responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
28

1 Complaint to reflect the true names and capacities of the DOE Defendants when such identities
2 become known.

3 10. Plaintiff is informed and believes that at all relevant times, every Defendant was acting
4 as an agent and/or employee of each of the other Defendants and was acting within the course and
5 scope of said agency and/or employment with the full knowledge and consent of each of the other
6 Defendants.

7 11. Plaintiff is informed and believe that each of the acts and/or omissions complained of
8 herein was made known to, and ratified by, each of the other Defendants.

9 **FACTUAL ALLEGATIONS**

10 12. Without warning visitors or seeking their consent, Defendant has secretly deployed
11 wiretapping software on its Website. This software allows Defendant to surreptitiously record every
12 aspect of a visitor's interaction with the Website, including keystrokes, mouse clicks, data entry and
13 other electronic communications.

14 13. Defendant's actions amount to the digital equivalent of both looking over a consumer's
15 shoulder and eavesdropping on a consumer's conversation. Defendant's conduct is not only illegal, it
16 is offensive: indeed, a recent study conducted by the Electronic Privacy Information Center, a
17 respected thought leader regarding digital privacy, found that: (1) nearly 9 in 10 adults are "very
18 concerned" about data privacy; and (2) 75% of adults are unaware of the true extent to which
19 companies gather, store, and exploit their personal data. See <https://archive.epic.org/privacy/survey/>
20 (last downloaded July 2022).

21 14. Within the past year, Plaintiff visited Defendant's Website. Plaintiff communicated
22 with a "person" that Plaintiff believed to be an actual human customer service representative. In
23 reality, Defendant's Website utilizes a sophisticated "chatbot" that convincingly impersonates an
24 actual human that encourages consumers to share their personal information. At the same time, the
25 Defendant simultaneously records and stores the entire conversation using secretly embedded
26 wiretapping technology.

1 15. Both the “chatbot” and “replay” technology were created by third party providers who
2 license the technology to Defendant and with whom Defendant routinely shares the contents of the
3 wiretapped communications.

4 16. Defendant did not inform Plaintiff, or any of the Class Members, that Defendant was
5 secretly monitoring, recording, and sharing Plaintiff’s and the Class’s communications.

6 17. Defendant did not seek Plaintiff’s or the Class Members’ consent to monitoring,
7 recording, and sharing the electronic communications with the Website.

8 18. Plaintiff and Class Members did not know at the time of the communications that
9 Defendant was secretly intercepting, monitoring, recording, and sharing the electronic
10 communications.

11 **CLASS ALLEGATIONS**

12 19. Plaintiff brings this action individually and on behalf of all others similarly situated (the
13 “Class”) defined as follows:

14 **All persons within California, who (1) within one year of the filing of this**
15 **Complaint visited Defendant’s website, and (2) whose electronic communications**
16 **were caused to be intercepted, recorded, and/or monitored by Defendant without**
17 **prior consent.**

18 20. NUMEROSITY: Plaintiff does not know the number of Class Members but believes the
19 number to be in the tens of thousands, if not more. The exact identities of Class Members may be
20 ascertained by the records maintained by Defendant.

21 21. COMMONALITY: Common questions of fact and law exist as to all Class Members,
22 and predominate over any questions affecting only individual members of the Class. Such common
23 legal and factual questions, which do not vary between Class members, and which may be determined
24 without reference to the individual circumstances of any Class Member, include but are not limited to
25 the following:

- 26 a. Whether Defendant caused Plaintiff’s and the Class’s electronic communications with
27 the Website to be recorded, intercepted and/or monitored;
28 b. Whether Defendant violated CIPA based thereon;

- 1 c. Whether Plaintiff and Class Members are entitled to statutory damages pursuant to Cal.
2 Penal Code § 631(a);
3 d. Whether Plaintiff and Class Members are entitled to punitive damages pursuant to Cal.
4 Civil Code § 3294; and
5 e. Whether Plaintiff and Class Members are entitled to injunctive relief.

6 22. TYPICALITY: As a person who visited Defendant’s Website and had her electronic
7 communications recorded, intercepted and monitored, Plaintiff is asserting claims that are typical to
8 the Class.

9 23. ADEQUACY: Plaintiff will fairly and adequately protect the interests of the members
10 of The Class. Plaintiff has retained attorneys experienced in the class action litigation. All individuals
11 with interests that are actually or potentially adverse to or in conflict with the class or whose inclusion
12 would otherwise be improper are excluded.

13 24. SUPERIORITY: A class action is superior to other available methods of adjudication
14 because individual litigation of the claims of all Class Members is impracticable and inefficient. Even
15 if every Class Member could afford individual litigation, the court system could not. It would be
16 unduly burdensome to the courts in which individual litigation of numerous cases would proceed.

17 **CAUSE OF ACTION**

18 **Violations of the California Invasion of Privacy Act**

19 **Cal. Penal Code § 631**

20 25. Section 631(a) of California’s Penal Code prohibits and imposes liability upon any
21 entity that “by means of any machine, instrument, contrivance, or in any other manner,” (1)
22 “intentionally taps, or makes any unauthorized connection, whether physically, electrically,
23 acoustically, inductively, or otherwise, with any telegraph or telephone wire, line, cable, or instrument,
24 including the wire, line, cable, or instrument of any internal telephonic communication system,” or (2)
25 “willfully and without the consent of all parties to the communication, or in any unauthorized manner,
26 reads, or attempts to read, or to learn the contents or meaning of any message, report, or
27 communication while the same is in transit or passing over any wire, line, or cable, or is being sent
28 from, or received at any place within this state” or (3) “uses, or attempts to use, in any manner, or for

1 any purpose, or to communicate in any way, any information so obtained, or who aids, agrees with,
2 employs, or conspires with any person or persons to unlawfully do, or permit, or cause to be done any
3 of the acts or things mentioned above in this section”.

4 26. Section 631 of the California Penal Code applies to internet communications and thus
5 applies to Plaintiff’s and the Class’s electronic communications with Defendant’s Website. (“Though
6 written in terms of wiretapping, Section 631(a) applies to Internet communications. It
7 makes liable anyone who ‘reads, or attempts to read, or to learn the contents’ of a communication
8 ‘without the consent of all parties to the communication.’ Cal. Penal Code § 631(a).” *Javier v.*
9 *Assurance IQ, LLC*, 21-16351, 2022 WL 1744107, at *1 (9th Cir. May 31, 2022).

10 27. The software employed by Defendant on its Website to record Plaintiff’s and the
11 Class’s electronic communications qualifies as a “machine, instrument, contrivance, or ... other
12 manner” used to engage in the prohibited conduct alleged herein.

13 28. At all relevant times, Defendant intentionally caused the internet communication
14 between Plaintiff and Class Members with Defendant’s website to be tapped and recorded.

15 29. At all relevant times, Defendant willfully, and without the consent of all parties to the
16 communication, caused to be intercepted, read or attempted to be read, logged, and stored, the contents
17 of electronic communications of Plaintiff and Class Members with its Website, while the electronic
18 communications were in transit over any wire, line or cable, or were being sent from or received at any
19 place within California.

20 30. Plaintiff and Class Members did not consent to any of Defendant’s actions in
21 implementing wiretaps on its Website, nor did Plaintiff or Class Members consent to Defendant’s
22 intentional access, interception, recording, monitoring, reading, learning and collection of Plaintiff and
23 Class Members’ electronic communications with the Website.

24 31. Defendant’s conduct constitutes numerous independent and discreet violations of Cal.
25 Penal Code § 631(a), entitling Plaintiff and Class Members to injunctive relief and statutory damages
26 of at least \$2,500.00 per violation.


27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiff prays for the following relief against Defendant:

- 1 1. An order certifying the Class, naming Plaintiff as the representative of the Class and
- 2 Plaintiff's attorneys as Class counsel;
- 3 2. An order declaring Defendant's conduct violates CIPA;
- 4 3. An order of judgment in favor of Plaintiff and the Class and against Defendant on the
- 5 cause of action asserted herein;
- 6 4. An order enjoining Defendant's conduct as alleged herein and any other injunctive
- 7 relief that the Court finds proper;
- 8 5. Statutory damages to Plaintiff and the Class pursuant to Cal. Penal Code § 631(a);
- 9 6. Punitive damages to Plaintiff and the Class pursuant to Cal. Civil Code § 3294;
- 10 7. Prejudgment interest;
- 11 8. Reasonable attorneys' fees and costs incurred in this action pursuant to Cal. Code Civ.
- 12 Proc. § 1021.5; and
- 13 9. All other relief that would be just and proper as a matter of law or equity, as determined
- 14 by the Court.

15 Dated: July 22, 2022

PACIFIC TRIAL ATTORNEYS, APC

16
17 By: 
18 Scott. J. Ferrell
Attorneys for Plaintiff

ClassAction.org

This complaint is part of ClassAction.org's searchable [class action lawsuit database](#)
