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9
10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF MARICOPA**

12 STATE OF ARIZONA, *ex rel.*
13 MARK BRNOVICH, Attorney General

14 Plaintiff,

15 v.

16 ARCH VACATIONS, INC., an Arizona
17 corporation; DARLENE ZIEBELL, a single
18 woman, personally and in her official
19 capacities as President and Director of Arch
20 Vacations, Inc.

21 Defendants.

Case No: CV 2016-015861

**CIVIL COMPLAINT FOR INJUNCTIVE
AND OTHER RELIEF**

(Non Classified: Consumer Fraud, Violations
of the Arizona Telephone Solicitations
Statutes)

21 Plaintiff, the State of Arizona, *ex rel.* Mark Brnovich, the Attorney General ("the State")
22 alleges as follows:

23 **JURISDICTION AND VENUE**

24 1. The State brings this action under the Arizona Consumer Fraud Act, A.R.S. § 44-
25 1521, *et seq.*, to obtain injunctive relief, restitution, civil penalties, disgorgement of profits,
26

1 investigative expenses, attorney's fees and costs, and other relief to prevent the unlawful acts
2 and practices alleged in this Complaint and to remedy the consequences of past unlawful acts
3 and practices.

4 2. This Court has jurisdiction to enter appropriate orders both before and following a
5 liability determination under A.R.S. § 44-1528, to provide temporary and permanent injunctive
6 relief to prevent further occurrence of the unlawful acts and practices alleged in this Complaint,
7 and to provide other relief, including restitution, civil penalties, disgorgement of profits, costs of
8 investigation and attorney's fees.

9 3. Venue is proper in Maricopa County, Arizona pursuant to A.R.S. § 12-401.

10 PARTIES

11 4. Plaintiff is the State of Arizona, *ex rel.* Mark Brnovich, the Attorney General,
12 who is authorized to bring this action by the Arizona Consumer Fraud Act, A.R.S. § 44-1521, *et*
13 *seq.*

14 5. Defendant Arch Vacations, Inc. ("Arch") is an Arizona corporation that has
15 operated since at least September 2012 to the present with its principal place of business in
16 Maricopa County, Arizona.

17 6. Defendant Darlene Ziebell resides in Maricopa County, Arizona and Illinois. At
18 all times relevant to this Complaint, Defendant Ziebell directed, managed, and controlled Arch's
19 business as the corporation's President and as a director. "Defendants" collectively refers to
20 Defendant Arch and Defendant Ziebell.

21 7. Defendant Ziebell had knowledge of and actively participated in the acts and
22 practices described in this Complaint both as an individual and as a director for and President of
23 Defendant Arch.

24 FACTUAL BACKGROUND

25 8. Defendants market, advertise, and sell certificates that may be redeemed for
26 bundled vacation packages ("Arch Travel Certificates").

1 19. From July 2015 to the present, Defendants have engaged in telemarketing from
2 Arch's principal place of business, 3420 East Shea Boulevard, Phoenix, Arizona 85028.

3 20. From September 2012 to July 2015 Defendants performed telemarketing at 4635
4 East Cactus Road, Scottsdale, Arizona 85254, which was Defendants' principal place of
5 business until July 2015.

6 21. Defendants have never registered as a telemarketing seller with the Arizona
7 Secretary of State.

8 22. Defendants have never posted a bond as a telemarketing seller with the Arizona
9 Secretary of State.

10 **DEFENDANTS' ADVERTISEMENTS AND REPRESENTATIONS TO CONSUMERS**

11 23. Defendants primarily make representations to consumers in sales presentations
12 conducted over the telephone. Defendants also advertise products and services through emails
13 that are sent to consumers after consumers subscribe to Arch's email list. Consumers can agree
14 to be subscribed to Arch's email list during telemarketing contact or through visiting Arch's
15 website.

16 24. After making contact with a consumer, Defendants attempt to sell one or more
17 Arch Travel Certificates by representing that the consumer may redeem an Arch Travel
18 Certificate by selecting travel components of the consumer's choice and that Defendants will
19 secure reservations for the selected travel components on the consumer's behalf.

20 25. Defendants make representations to consumers from telemarketing scripts, and
21 Defendants instruct salespersons to strictly adhere to the telemarketing scripts. Deviating from
22 the telemarketing scripts is a punishable offense for a salesperson.

23 26. Representations made to consumers from the telemarketing scripts included:

- 24 a. The consumer is "entitled to receive" "an important limited time elite
25 benefit" "because of a previous vacation you've taken with one of our
26 numerous travel partners."

- 1 b. The telemarketing phone call is offering a “vacation benefit” to the
2 consumer receiving the call that “is not available to the general public.”
3 c. Arch and Arch’s “travel partners” “created a customized bundled vacation
4 collection specifically for you.”
5 d. Repeated representations that after purchase, an Arch Travel Certificate
6 would have no expiration date.
7 e. By making a purchase as a result of the telemarketing phone call, the
8 consumer is “basically paying for tomorrow’s vacation at today’s prices.”
9 f. The consumer “may book your cruise immediately, however all monies for
10 your [Arch Travel Certificate] must be paid in full 90 days prior to your
11 sailing date.”
12 g. The consumer’s “welcome letter, ten day satisfaction guarantee, all of your
13 terms and conditions, along with your personal client ID [and] password for
14 your own private website will arrive, signature required, in the next seven
15 to ten days[.]”

16 27. Representations made to consumers in email advertisements included:

- 17 a. Arch possessed “state of the art technology providing travelers resources
18 for all phases of travel planning, the ability to access current reservations
19 and a way to communicate with their assigned personal travel concierge.”
20 b. Consumers who make travel arrangements through Arch can “select where
21 they want to go, when they want to go, the cruise line, hotel and activities
22 of [the consumer’s] choice.”
23 c. Consumers who purchase an Arch Travel Certificate would have
24 “flexibility in designing their own vacation package,” which included
25 “allowing for travel up to two years into the future and within certain
26 timeframes.”

1 d. Consumers could “make changes to their [Arch Travel Certificate]
2 reservations.”

3 28. These representations made during telephone solicitations and in email
4 advertisements created an impression that consumers could make and change travel reservations
5 through Defendants without paying additional fees and that the price of an Arch Travel
6 Certificate would cover the cost of a vacation.

7 29. Defendants’ email advertisements likewise created an impression that purchasing
8 an Arch Travel Certificate granted a consumer the flexibility to take a vacation without incurring
9 significant additional costs.

10 30. During their initial contact with consumers, Defendants do not always disclose
11 that additional fees and charges are likely to apply to any vacation package the consumer selects.

12 31. Defendants’ advertisements and telemarketing sales presentations create an
13 impression that a consumer may “lock in” the price of a future vacation by purchasing an Arch
14 Travel Certificate, meaning the consumer will not have to pay additional fees to take a vacation
15 after purchasing an Arch Travel Certificate.

16 32. In fact, purchasing an Arch Travel Certificate does not “lock in” the cost of travel
17 components for consumers, and a consumer may be required to pay hundreds or thousands of
18 dollars more in fees, taxes, and additional charges. The cost of securing travel component
19 reservations often exceeds the price that Defendants charge for an Arch Travel Certificate.
20 After making their reservations, consumers often learned that their Arch Travel Certificate did
21 not cover charges such as a different type of cruise cabin, port fees, taxes, and other fees.

22 33. Additionally, consumers who purchased an Arch Travel Certificate did not “pay[]
23 for tomorrow’s vacation at today’s prices” because Defendants do not necessarily make travel
24 component reservations at the same price a consumer pays for an Arch Travel Certificate.

25 34. As evidenced by their telemarketing scripts, Defendants represent to consumers
26 that their travel certificates will not expire. However, Defendants’ written terms and conditions

1 given to consumers after their purchase of an Arch Travel Certificate provide that a consumer
2 “has up to eighteen (18) months from date of purchase to redeem certificates. Any certificate
3 not redeemed within eighteen (18) months from date of purchase is expired and void with no
4 refunds due to the purchaser.”

5 35. During their initial contact with consumers, Defendants do not disclose the terms
6 and conditions of purchasing an Arch Travel Certificate. Instead, terms and conditions are sent
7 to consumers via delivery service after purchase.

8 36. Defendants’ terms and conditions include a cancellation provision that allows
9 consumers to cancel an Arch Travel Certificate purchase for any reason within ten (10) days.
10 Notwithstanding this provision, consumers typically do not receive the terms and conditions
11 stating Defendants’ cancellation policy until between seven (7) and ten (10) days after
12 purchasing an Arch Travel Certificate.

13 37. Although Defendants represent to consumers that Defendants will secure travel
14 component reservations for consumers who redeem Arch Travel Certificates, Defendants do not
15 always secure the reservations selected by consumers.

16 38. Defendants often make an initial reservation that allows for the full cost to be paid
17 at a later date.

18 39. Defendants often attempt to wait to make travel component reservations until
19 closer to a consumer’s travel date.

20 40. Defendants do not disclose to consumers at the time an Arch Vacation Certificate
21 is purchased that Defendants may wait to make travel component reservations on the
22 consumer’s behalf until up to one (1) day before the consumer’s departure date.

23 41. Defendants sometimes fail to secure travel component reservations on a
24 consumer’s behalf because Defendants wait too long to pay the full cost of the reservation,
25 which results in the travel vendor cancelling the initial reservation.

26 42. Because Defendants do not always secure travel component reservations selected

1 by consumers, some consumers have not been able to take the vacation the consumers selected
2 when redeeming the Arch Travel Certificate purchased from Defendants.

3 43. Because Defendants do not always secure travel component reservations selected
4 by consumers, some consumers pay significantly higher costs to take the vacation they selected
5 months earlier.

6 44. Defendants did not respond to some consumers who sought to ask questions
7 regarding travel component reservations or sought an explanation regarding why Defendants
8 have not made certain travel component reservations.

9 45. Some consumers, after not receiving confirmation that Defendants have secured
10 and paid for reservations selected by the consumer, made direct inquiries with a travel vendor
11 about the status of their reservations.

12 46. After discovering that Defendants had not made reservations, consumers made
13 their own reservations with travel vendors and sought a refund from Defendants.

14 47. Defendants refused refunds for consumers who discovered through contact with
15 travel vendors that Defendants had not made travel component reservations.

16 **VIOLATIONS OF THE ARIZONA CONSUMER FRAUD ACT, A.R.S. § 44-1521, et seq.**

17 48. The allegations set forth in the previous paragraphs are incorporated by reference
18 as though fully recited in the following paragraphs.

19 49. The Arizona Consumer Fraud Act provides that “[t]he act, use or employment by
20 any person of any deception, deceptive or unfair act or practice, fraud, false pretense, false
21 promise, misrepresentation, or concealment, suppression or omission of any material fact with
22 intent that others rely upon such concealment, suppression or omission, in connection with the
23 sale or advertisement of any merchandise whether or not any person has in fact been misled,
24 deceived or damaged thereby, is declared to be an unlawful practice.” A.R.S. § 44-1522(A).

25 50. Defendants’ acts, practices, and conduct described in the preceding paragraphs
26 were deceptive, unfair, or constituted fraud, false pretenses, false promises, or

1 misrepresentations to consumers under the Arizona Consumer Fraud Act.

2 51. For all violations alleged, Defendants knew or should have known that the acts,
3 practices, and conduct described in this Complaint were deceptive, unfair, or constituted fraud,
4 false pretenses, false promises, or misrepresentations to consumers under the Arizona Consumer
5 Fraud Act.

6 52. For all violations alleged, Defendants acted willfully, as defined by A.R.S. § 44-
7 1531(B), while engaging in the acts, practices, and conduct described in this Complaint.

8 53. Under A.R.S. §§ 44-1528 and -1531, Defendants' violations of the Arizona
9 Consumer Fraud Act entitle the State to awards of restitution, civil penalties, disgorgement of
10 profits, attorneys' fees and costs, investigative expenses and any other relief necessary to
11 prevent the unlawful actions and practices alleged in this Complaint and to remedy the
12 consequences of past unlawful acts.

13 **I. DECEPTIVE NET IMPRESSIONS OF MERCHANDISE**

14 54. Defendants' advertisements and sales presentations create misleading impressions
15 that purchasing an Arch Travel Certificate allow consumers to take vacations merely by
16 redeeming the certificate.

17 55. In fact, consumers who redeem an Arch Travel Certificate generally must pay
18 additional costs and fees that were not included in the advertised purchase price for Arch Travel
19 Certificates sold by Defendants.

20 56. Defendants' representations have a tendency and capacity to convey misleading
21 impressions to consumers and are therefore deceptive in violation of A.R.S. § 44-1522.

22 **II. UNFAIR PRACTICE OF OMITTING IMPORTANT FACTS ABOUT**
23 **MERCHANDISE WHEN PURCHASED**

24 57. Defendants use and employ an unfair practice of omitting important facts about
25 the terms and conditions of Arch Travel Certificates, including omitting disclosure of the
26 booking process, which results in consumers not understanding when Defendants will make

1 travel component reservations.

2 58. Similarly, Defendants employ an unfair practice of not sending consumers the
3 terms and conditions of Arch Travel Certificates until the cancellation period nearly expires.

4 59. Such acts and practices are unfair in violation of A.R.S. § 44-1522.

5 **III. VIOLATIONS OF THE ARIZONA TELEPHONE SOLICITATIONS STATUTE,**

6 **A.R.S. § 44-1271, *et seq.***

7 60. Defendants are “sellers” as defined under the Arizona Telephone Solicitations
8 Statute, A.R.S. § 44-1271(15). Accordingly, Defendants were required to comply with the
9 mandates of the Statute.

10 61. Defendants have never registered with the Secretary of State as required by
11 A.R.S. § 44-1272(A).

12 62. Defendants have never posted a bond as sellers are required to do in accordance
13 with A.R.S. § 44-1274(A).

14 63. Defendants conducted sales presentations without providing the required
15 disclosures as required by A.R.S. § 44-1276.

16 64. Under A.R.S. § 44-1278(C), Defendants’ violations of the Arizona Telephone
17 Solicitations Statute constitute unlawful practices under the Arizona Consumer Fraud Act,
18 A.R.S. § 44-1521, *et seq.*

19 **PRAYER FOR RELIEF**

20 Wherefore, the State respectfully requests that the Court:

21 65. Enter an injunction against Defendants permanently prohibiting them from
22 engaging in the unlawful acts and practices alleged in this Complaint and from doing any acts in
23 furtherance of such unlawful acts and practices, pursuant to A.R.S. § 44-1528(A).

24 66. Order Defendants to restore to all persons any money and property acquired by
25 any unlawful means or practices alleged in the Complaint, as deemed appropriate by the Court,
26 pursuant to A.R.S. § 44-1528(A)(2);

