

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

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EUGENE J. LAKA,      :
                    :   Index No. _____
                    :
                    :   Plaintiff,
                    :
                    :   -against-
                    :
AFLAC NEW YORK and KENNETH MEIER, :
                    :
                    :   Defendants.
                    :
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**COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff EUGENE J. LAKA ("Plaintiff"), by his undersigned counsel, brings this Complaint against Defendants AFLAC NEW YORK ("AFLAC" or the "Company") and KENNETH MEIER for breach of contract, common law fraud, deceptive acts and practices in violation of New York General Business Law § 349, and alleges as follows.

**PRELIMINARY STATEMENT**

1. Plaintiff, a 75-year-old former sales associate of AFLAC currently suffering from a debilitating illness, was terminated by AFLAC purportedly "without cause or reason" upon a 30-day termination notice in 2014 on the eve of his 10-year anniversary at the Company and the full contractual vesting of his renewal commissions, which vesting would have entitled him to receive his full commissions from the accounts he had opened over his many years of loyal and impeccable service for the Company.

2. Plaintiff was 71-years old at the time, disabled, and only a few months away from that important 10-year anniversary threshold when AFLAC threw him out on the street in the most humiliating and unfair manner following his complaints about an unethical treatment of one of AFLAC's policyholders by the Company, and considerably reduced his renewal commissions to which he was contractually entitled under his Associate's Agreement with Defendant AFLAC.

3. While the Associate's Agreement permits Defendant AFLAC to terminate its sales associates "without cause or reason, upon giving thirty (30) days prior written notice," neither this clause nor any other provision in the Agreement allows, nor could it allow, Defendant AFLAC to terminate its associates **for the wrongful or unlawful causes or reasons.**

4. Here, Plaintiff alleges, and fully intends to come up to proof at trial, that Defendant AFLAC terminated him for **wrongful and unlawful reasons, such as retaliation, age and disability discrimination, and/or a bad-faith denial of his renewal commissions on the eve of their full contractual vesting.**

5. Both Defendants then **concealed** from Plaintiff these true wrongful and unlawful reasons for his termination (while Defendant MEIER conceded that the termination was a "punitive action") through misrepresentations, misleading statements and omissions, and other deceptive acts in order to prevent Plaintiff from bringing a timely lawsuit.

6. Accordingly, Plaintiff brings a claim against Defendant AFLAC for a bad-faith breach of the Associate's Agreement arising out of that wrongful discharge and the resulting loss of the renewal commissions he was entitled to under the contract.

7. Plaintiff also brings a claim against both Defendants for common law fraud based on Defendants' concealment of the true wrongful and unlawful reasons for Plaintiff's termination thereby depriving Plaintiff of his proprietary claims against AFLAC, which are now past their respective statutes of limitations.

8. Plaintiff also brings a claim for deceptive acts and practices in violation of New York General Business Law § 349 against both because Defendants' own deceptive acts prevented Plaintiff from bringing a timely lawsuit.

9. Plaintiff also brings a claim for deceptive acts and practices under New York General Business Law § 349 and seeks damages and reasonable attorney's fees pursuant to §349(h).

10. Plaintiff's Associate's Agreement with Defendant AFLAC contains a draconian arbitration agreement that is procedurally and substantively unconscionable and unenforceable.

11. Accordingly, this Action followed.

### **PARTIES**

12. Plaintiff Laka is a former sales associate of AFLAC, residing at 695 Wyona Street, Brooklyn, New York. Plaintiff Laka joined AFLAC in early 2005 and was terminated by the Company upon

30-day "no cause" notice in late 2014, a few months before his 10-year anniversary with the Company.

13. Defendants AFLAC is a New York corporation licensed pursuant to the provisions of Article 42 of the New York Insurance Law and engaged in the business of providing supplemental life, health, and accident insurance in the State of New York.

14. Defendant AFLAC is a wholly-owned subsidiary of American Family Life Assurance Company of Columbus ("Aflac Columbus"), and Aflac Columbus is turn a wholly-owned subsidiary of Aflac Incorporated, a Fortune 500 company.

15. Defendant AFLAC is headquartered in Albany, NY, and has an office at 14 Wall Street, New York, New York, among other locations in the State of New York.

16. In response to Plaintiff's desperate attempt to find out what he was being punished, Defendant AFLAC, which knew the true wrongful and unlawful reasons for Plaintiff's termination, concealed those true reasons from Plaintiff through false and misleading statements and omissions. In particular, Defendant AFLAC deliberately and fraudulently concealed from Plaintiff that his termination was done not "without cause or reason" but for wrongful and unlawful reasons: retaliatory, discriminatory, and/or in a bad-faith breach of contract to deprive Plaintiffs of his earned commissions.

17. Defendant MEIER, Plaintiff's indirect supervisor during the relevant period, was a State Sales Coordinator for Defendant

AFLAC at the time and has since been promoted to the position of Territory Vice President at AFLAC's parent company.

18. Defendant MEIER expressly admitted to Plaintiff that Plaintiff's termination was a "punitive action" by Defendant AFLAC but refused to disclose any reasons for it, falsely claiming that his "independent contractor" status prevented him from finding out or disclosing those reasons, and refused in any other way to assist Plaintiff Laka, who was 71 at the time of his termination and suffering from cancer treatment complications, in the matter of his "punitive" termination by Defendant AFLAC.

19. In response to Plaintiff's desperate attempt to find out what he was being punished, Defendant MEIER, which knew the true wrongful and unlawful reasons for Plaintiff's termination, concealed those true reasons from Plaintiff through false and misleading statements and omissions. In particular, Defendant MEIER deliberately and fraudulently concealed from Plaintiff that his termination was done not "without cause or reason" but for wrongful and unlawful reasons: retaliatory, discriminatory, and/or in a bad-faith breach of contract to deprive Plaintiffs of his earned commissions.

20. Defendant MEIER resides at 19 Markwood Road, Forest Hills, New York.

### **FACTS**

21. Plaintiff Laka joined Defendant AFLAC as a sales agent pursuant to his Associate's Agreement dated February 1, 2005, and

had worked as a loyal sales agent for Aflac for almost ten years, having been terminated by Aflac in June 2014 upon a 30-day "without cause or reason" notice just a few months short of his 10-year anniversary and the full contractual vesting of his renewal commissions.

22. Paragraph 6.2 of Plaintiff's Associate's Agreement with Aflac New York states:

**Vesting After Ten Years**. After ten (10) years of contracted service with AFLAC, Associate shall have a vested right to receive 100% of the Renewal Commissions as earned payable on Policies Associate produced, irrespective of the production requirements of Paragraphs 6.1.1 and 6.1.4 above, until termination of this Agreement and unless forfeited as provided in this Agreement.

23. At the time of his termination by Defendant AFLAC, Plaintiff was 71 years and six months short of the 10-year anniversary of his service for Aflac.

24. In 2009, Plaintiff was diagnosed with cancer and was undergoing radio- and chemo-therapy during 2010-11 while continuing to produce for Aflac with the same unwavering commitment and dedicated service that he had demonstrated throughout his long career with Aflac.

25. In 2013, Plaintiff submitted a disability claim to Defendant AFLAC but received no information as to its disposition, and no disability benefits.

26. In early 2014, after a policyholder named Donald Corbitts on Plaintiff's Farells Limousine Service account was

improperly denied coverage by Defendant AFLAC, Plaintiff reported the improper denial to his superiors, and then fought for Mr. Corbitts' benefits for the period of over four months it took him to convince Aflac to do the right thing and restore the benefits.

27. Plaintiff's correspondence seeking to right the wrong on behalf of the policyholder spans the period of March through July 2014 and fills in a 2-inch thick binder. Plaintiff's invariably courteous letters sent on behalf of Mr. Corbitts show how Plaintiff selflessly put a policyholder's interests above his own, and ultimately forced Defendant AFLAC to restore Mr. Corbitts' benefits.

28. Shockingly, Plaintiff himself had to pay a very stiff price for it: Defendant AFLAC terminated Plaintiff's contract in apparent retaliation for his efforts, after almost 10 years of impeccable service for the Company, and a few months short of his 10-year anniversary and the full vesting of his hard-earned commissions.

29. Thus, on June 26, 2014, Defendant AFLAC sent Plaintiff a one-page form letter, "an official 30-day notice of the termination of your current agreement(s) and appointment(s), if applicable, to represent Aflac New York. We are sending this notice to you pursuant to Aflac New York's right to terminate your contract without cause upon notice as contained in your current agreement(s) to represent Aflac New York... If you have any

questions, please contact your state sales coordinator." The letter was signed "Field Contracting."

30. On July 11, 2014, Plaintiff wrote a desperate plea to his state sales coordinator Defendant MEIER:

Hi Ken,

This past Wednesday I received the attached letter from Aflac Field Contracting, dated June 26, 2014 informing me that my Aflac NY Associate's Agreement for my Writing Number 12699 will be terminated in 30 days (i.e. on July 28, 2014), without providing any explanation for this action or recourse. The letter states; "If you have any questions, please contact your state sales coordinator."

I first phoned Aflac Field Contracting and they reiterated their position that they had no information as to who initiated this action or why and that I should contact you. I then phoned Bill Whicher, as a courtesy, to see if he could shed any light on the matter -- he told me he couldn't and that I should contact you.

In accordance with Mark Charrette's letter to me dated April 27, 2005 I was appointed an Aflac NY Associate and assigned Writing Number 12699, which means that in 9 months, on April 27, 2015 I will have met my 10 year association period to qualify me for FULL VESTING for all my residual commissions, a status that I will be denied if the termination of my Writing Number is allowed to be carried out.

I contacted Aflac this morning and they confirmed to me that:

a) The Total Policies in Force for my Writing Number as of today is \$111,743.00, on which I'm currently receiving residual commissions and which will be terminated if the intended action is actually carried out.

b) This year (2014) I have written a total of \$22,421.00 of new policies in terms of annual premiums.

c) On May 23, 2014 I successfully passed the examinations for the two required Aflac courses, "Acting with Integrity" and "Anti-Money Laundering" and my administrative obligations as an Aflac Associate are in good standing.

I have been servicing all my accounts diligently and assisting policy holders with their questions and claims problems to their satisfaction.

Therefore, I cannot imagine what possible reason there can be for the termination of my Associates' Agreement or who would be motivated at Aflac to initiate such an action.

You should also know that I was in continuous treatment for Rectal Cancer from January 2010 to October 2011 and, although I'm currently in remission, I suffer from severe, disabling side effects from the radiation and chemotherapy treatments. In spite of these medical conditions I wrote new business during my treatment and since. Therefore, since I'm 71 years of age and disabled, this action is apparently a discriminatory action against an elderly disabled person without cause or material justification.

I respectfully ask that you look into this matter and take whatever action is needed to rescind this termination decision as soon as possible. And, for my information, I would like to know who initiated this action and the reason they did so.

Best regards, Eugene J. Laka

31. Defendant MEIER responded on July 14, 2014 (emphasis added throughout unless otherwise indicated):

Eugene,

I am not aware of anyone in our state operation who initiated any request for you to be terminated. **As an independent contractor myself, I can not answer any questions about the status of your renewals with Aflac-NY with any authority.** I did look into your requests to the best of my ability and was advised that you should contact the Aflac Trust department, to try to rescind the termination and answer any vesting questions. The best option is to email the Aflac Trust department at [AflacTrust@aflac.com](mailto:AflacTrust@aflac.com).

Best,  
Ken

32. On July 21, 2014, Plaintiff wrote back:

I've heard nothing from Aflac Trust and a call to Aflac WWHQ revealed that no notes had been posted to my message to them of July 14th.

**If I'm to be terminated without even being informed why, nor given an opportunity to correct any**

***misinformation with only 9 months remaining to my 10 year vesting, there's something very seriously wrong with Aflac's view of professional and equitable conduct towards its Associates.***

Won't they tell you why they've taken this action and why they're not providing me the opportunity to correct the record?

33. In his response on July 22, 2014, Defendant MEIER again used his "independent contractor" status to deflect any responsibility: "Being that we are both independent contractors, WWHQ will not release personal information to me."

34. Defendant MEIER's claimed "independent contractor" status in response to Plaintiff's desperate pleas for help or at least any explanation was false and in bad faith. In fact, In the third quarter of 2014, *i.e.*, at the time of Plaintiff's termination, Defendant AFLAC changed the status of its sales associates with the titles of state sales coordinators, state training coordinators and broker development coordinators from Form 1099 to the W-2 status -- with no change whatsoever in their positions, daily activities, job description, responsibilities, or anything else in their lives, including that of Defendant MEIER, who was AFLAC's State Sales Coordinator at the time of that conversion.

35. The 1099 to W-2 conversion was announced in July 2014. On September 26, 2014, Defendant MEIER wrote the following in an email about his own conversion:

***I was going to go deep and say that I started with Aflac in 96 and my career as an independent contractor ends on Monday, so let's go out on top at***

**100% of MPI and a perfect career like Jeter.  
Fortunately nothing really changes on Monday except  
my title.**

36. Accordingly, Defendant MEIER's hiding behind his 1099 status to stonewall Plaintiff's inquiries while at the same time he was converted into W-2 with no "real[] changes" was false and in bad faith.

37. Defendant MEIER also stated in his July 22, 2014 email to Plaintiff: "I am sure they will respond before following through on any punitive action." Defendant MEIER was right about that - Defendant AFLAC's decision to terminate Plaintiff after almost 10 years of impeccable service was nothing but "punitive."

38. Plaintiff wrote in response to Defendant MEIER's blithe comment "I am sure they will respond":

I understand, thank you for informing me. As best I can tell the termination of both of my writing numbers will occur on Monday, July 28, 2014 automatically if the two termination letters are not cancelled or rescinded, therefore the punitive action has already been taken -- the clock simply hasn't run out. This leaves precious little time for Aflac Trust to inform me of the reason(s) for the termination decision, and it leaves open whether or not I'll be afforded an opportunity to contest it and have it reversed before the 28th. It's possible, perhaps likely, that I will have no recourse to protest this conduct as an Aflac Associate given the manner in which they've stacked the deck, but I am a shareholder of Aflac and that affords me considerable latitude for action if this matter is handled inequitably. As you can probably understand this matter has become a nerve wracking episode - I've generated well over \$100,000 in long-term revenues for Aflac, one would think that they wouldn't put a person who has done them such service through this kind of an ordeal. Obviously they don't feel that way or they wouldn't be conducting themselves in this manner.

Since both of their termination letters specifically instruct me to obtain information about their action from you, personally, and you inform me that you are powerless to even determine the reasons for these actions let alone correct them, this raises for Aflac a very disturbing issue of improper conduct of the worse possible kind, totally blocking a person from any means of dealing with the action they've already taken within a reasonable time frame. Such conduct compromises Aflac's integrity as an organization - I'm astonished they're not aware of that fact given the "Acting with Integrity" lessons they require Aflac Associates to learn each year.

If I was in your position I'd be mad as hell, because the organization has compromised you as well and has made you look like a department store mannequin and not a senior manager with any actual authority after referring associates to you to deal with their professional issues and then hobbling you from doing so in the process.

Doesn't this disturb you in the least? Who's monitoring the conduct of Alfac's "integrity police," Aflac Trust, to prevent abuse of authority by them? Perhaps it should be John B. Veihmeyer, CEO and Chairman of Alfac's outside auditors, KPMG LLP.

39. Plaintiff also sent a copy of the July 22, 2014 letter to Aflac Trust, and stated:

As I've outlined in my message to Ken Meier there's absolutely no reasonable basis for terminating my Aflac NY writing number 9 months prior to vesting, when there is \$111,743 worth of annual premiums in effect that Aflac will continue to enjoy as their revenue, but I will be deprived of any residual commissions from my labor.

Notwithstanding the fact that the associates' agreement gives Aflac the right to terminate an associate's writing number without giving their reason for doing so by simply providing a 30 day notice of termination, no one in my upline could provide any credible reason for this action. Indeed, I consider these terminations as grossly inequitable and unfounded. If there have been any grievances made against me I'm unaware of them and if I knew what they were and by whom they were made I am certain I could provide corroborated factual proof that they were made out of malice and had absolutely no basis in fact.

I respectfully request that both letters be rescinded, temporarily, to allow time for a personal conference in Aflac's Garden City offices with representatives of Aflac Trust, myself and those members of my upline who wish to attend, Ken Meier, Pat Ruhle and/or Bill Whicher to allow me to respond directly to any allegations of misconduct by third parties. If this termination is allowed to be executed without my having the ability to answer my accusers, whether their identities are revealed or not, I will consider this an inexcusable abuse of authority and I will take such measures that shall make Aflac's heinous treatment of its associate for a period approaching ten years a matter of public notice in appropriate national and worldwide Internet forums, the press and such other media as may be available to me. **Depriving a 71 year old man of the income he's earned, when he's still suffering the ravages of two years of cancer treatments seems hardly the sort of conduct any organization can be proud of, especially in view of the fact that in the current year alone he's generated over \$22,000 of annual revenue for Aflac in a medical state that can only be described as "disabled."**

40. Around the same time, Plaintiff also complained about an underpayment of his renewal commissions, writing to Kim Elsey, Aflac's Field Compensation specialist, on July 17, 2014:

Apparently there has been a misunderstanding. The issue that I raised, and that I thought would be investigated is the following: I've been advised on two separate occasions recently that the total annual premiums in force on all of the policies that I've written now amounts to over \$111,700.00. I feel strongly that if I were being paid the appropriate residual commissions on this amount of on-going total amount of premiums they would be significantly higher than what I've been credited for, for some period of time.

Starting with my June 30, 2014 statement I feel it would be appropriate to determine if my residual commissions credited to my statement fully reflect a volume of business in force of over \$111,700 or not, and if not how great the shortfall is. The next logical question would be, if an underpayment is found for June 2014 how far back do these underpayments go back to and the total amount I've been underpaid.

Would it be possible for Field Compensation to examine this question, and if so, how long will it take to obtain a report of your findings?

41. In what has become a pattern, Defendant AFLAC deflected all of Plaintiff's reasonable complaints and requests for explanation with a brisk non-response. On June 17, 2014, AFLAC's Ms. Elsey denied Plaintiff's request with an incoherent response, stating *inter alia*: "Commission are paid as policies paid to date advances. This is for first year and renewals. Your commissions each month will fluctuate based upon what policies/accounts are paying."

42. On July 24, 2014, Plaintiff reported to Aflac's auditors KPMG, directly notifying its Chairman John B. Veihmeyer, with copies to the SEC and the EEOC New York District Office:

Since Aflac management is conducting itself in an egregiously unlawful and unethical manner I felt that it was necessary to bring this matter to your personal attention, as both an Aflac Associate and a Registered Aflac Shareholder, before their misconduct allowed them to wrongfully terminate my associate's agreements and my Aflac NY Writing Number - 12699 and Aflac USA Writing Number - EW093, this coming Monday, July 28th, as best as I can tell. The attached copy of the email I sent to Aflac Trust, the unit within Aflac that is apparently engineering my terminations, makes their unlawful and unethical conduct abundantly clear. I will provide the full record of this matter as soon as I have been informed with whom to share it with at your firm and I'm willing to meet with them in person to answer any questions.

I respectfully request that you (or an associate you designate) contact the appropriate person in Aflac management to have them immediately cancel both intended termination actions until such time as I've been provided a written statement of the reasons for these purported terminations and have been afforded an opportunity to respond to them. Since my service with

Aflac is approaching 10 years, at which time I would be fully vested, the purported terminations are particularly egregious. I've produced over \$22,000 worth of policy revenues this year, and Aflac is enjoying over \$113,000 worth of continuing premium revenues from my efforts on its behalf since I became an Associate in 2005. The purported terminations are without cause and are not only detrimental to my personal financial interests but to the interests of all other Aflac shareholders as well.

Under your authority as Aflac's auditor I believe you have a fiduciary responsibility to Aflac shareholders, among which I also count myself, to investigate this matter. After this matter have been fully resolved there are two additional equally distasteful events that mark my history with Aflac that also need to reopened and reviewed by impartial investigators.

In these circumstances I don't believe it's unreasonable for me to request that you promptly notify me of the action you have taken in response to this appeal and what effect, if any, it has had.

43. Plaintiff then sent several other messages to KPMG but received no response.

44. Following numerous follow-up emails and calls from Plaintiff, Aflac Trust responded on July 28, 2014: "Please be advised that Aflac exercised its contractual right to terminate the Agreement in accordance with Paragraph Nine, Section 9.2. You may request arbitration as provided in Paragraph Ten of the Agreement. If you wish to request arbitration, please submit a written request to: Arbitration Officer, c/o AFLAC Legal Division, 1932 Wynnton Road, Columbus, Georgia 31999. Thank you for understanding our position."

45. Plaintiff then attempted to commence arbitration proceedings as directed by Aflac Trust by writing to Aflac's Arbitration Officer on August 3, 2014:

I hereby request an arbitration to deal with a number of matters in which I was subjected to unlawful, fraudulent and abusive conduct by managers and employees of Aflac:

I believe the termination Aflac Trust refers to was unlawful and was conducted in a manner that not only violated my legal rights but was needlessly abusive and demeaning.

An account which I personally recruited to become an Aflac corporate sponsor, Gracious Home, was transferred to a broker, Dreyfuss & Birke, LLC, after a senior official of that organization fraudulently claimed that they had an Aflac NY Writing Number when, in fact, they did not. There were multiple irregularities in this scandal, all of which were ignored by Aflac management.<sup>[1]</sup>

The formal, written request by the Director of Human Resources of the YWCA of New York to Kenneth C. Meier, the NY State Sales Coordinator that I be installed as their Servicing Associate for three of their Aflac Groups was improperly ignored and I was fraudulently denied the assignment of these Groups. Discovery will be required to ascertain if other forms of fraudulent and improper conduct was committed by Aflac managers.<sup>[2]</sup>

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<sup>1</sup> In 2011, after a year of assiduous work, Plaintiff managed to sign up the Gracious Home store chain and its large number of employees onto AFLAC policies. A few years later, the chain encountered financial troubles and was sold to another company, which had its own insurance broker, but the Gracious Home employees wanted to keep their AFLAC policies. The broker on the new account, Dreyfuss & Birke, LLC, did not have a valid New York writing number, but simply crossed out Plaintiff's writing number on the account paperwork and inserted its own fake writing number instead. When the fraud was discovered, Defendant AFLAC reassigned the account back to Plaintiff. However, AFLAC did not report the broker to the NY DOBI; instead, two months after the conversion, the broker was reinstated, and Plaintiff was completely cut off from that large account that he had opened and cultivated, in favor of the same broker who had just been caught using a fake writing number. Not only was Plaintiff cut off from writing any further policies at Gracious Home, most of the residual commissions that he was entitled to on the huge number of policies that he had written were wrongfully redirected to Dreyfuss & Birke, and repeated attempts on Plaintiff's part to remedy this injustice were summarily dismissed by AFLAC.

<sup>2</sup> This large account was unhappy with the service provided by AFLAC's agent, and Plaintiff was sent to remedy the situation. Plaintiff convinced the employer to sign an agreement, but AFLAC then turned around and reassigned the account salvaged by Plaintiff to the same agent who had ruined it in the first place, simply because he was part of AFLAC's notorious "Good Old Boys club" and Plaintiff was not.

The Aflac Field Compensation unit, after I brought their attention to irregularities in the magnitude of my residual commissions, initially provided an incomprehensible and illogical explanation and when pressed referred me to the State Sales Coordinator for the resolution of my complaint, a task he and his staff are not equipped to resolve.

During the period of time required to prepare for the first hearing it is possible that additional grievances will be noted for my formal submission to the Arbitrators and I reserve the right to do so. Although Aflac Trust informed me of my contractual right to submit my complaints to your organization for arbitration it neglected to provide any instructions, guidelines, time and cost requirements or any form of explanatory material as to how I must prepare for this arbitration and the rules and procedures under which it shall be conducted. I hereby respectfully request a complete set of explanatory materials that will allow me to prepare myself for this arbitration and to enforce my rights in the course of its execution.

46. Defendant AFLAC responded to Plaintiff's complaint to Aflac Trust through its in-house counsel Catherine Coppedge's letter of September 3, 2014, stating:

This will acknowledge receipt of your email to our Aflac Trust Department dated August 29, 2014 regarding the above-referenced matter. **While I certainly understand that you are displeased with Aflac's decision to terminate your Associate's Agreement, Aflac is not required to provide a reason. Aflac was simply exercising its contractual right to terminate the agreement by providing the parties with a 30-day notice. Aflac has done nothing more than what the contract permits it to do.**

Please be advised that Aflac hereby names as its party arbitrator under the terms of the arbitration provision of those Agreements William L. Tucker of the law firm of Page, Scrantom, Sprouse, Tucker & Ford, P.C., Synovus Centre, Third Floor, 1111 Bay Avenue, Columbus, GA 31901, 706.243.5604 (office), 706.596.9992 (fax). Please advise me at your earliest convenience the identity and address for your arbitrator. At that point, the arbitrators will attempt to select a third and neutral arbitrator.

47. Plaintiff responded on October 8, 2014, with the subject line "FAILURE TO RESPOND TO MY REQUEST FOR INFORMATION":

In my above referenced letter of August 3rd in the last paragraph I requested:  
"Although Aflac Trust informed me of my contractual right to submit my complaints to your organization for arbitration it neglected to provide any instructions, guidelines, time and cost requirements or any form of explanatory material as to how I must prepare for this arbitration and the rules and procedures under which it shall be conducted. I hereby respectfully request a complete set of explanatory materials that will allow me to prepare myself for this arbitration and to enforce my rights in the course of its execution."  
Your letter to me of September 3rd fails to provide any of this explanatory information. Since Aflac has complete control over this arbitration process if it doesn't provide me this data I have absolutely no basis upon which to insure that I'm properly equipped to engage in this arbitration.

48. Further in that letter, Plaintiff set out his position that the contract arbitration provisions were unenforceable because they "inflict substantive unfairness on the weaker party, because their terms are not within the reasonable expectations of that party, and because their terms are clearly unduly oppressive, unconscionable, and contrary to public policy."

49. On October 9, Plaintiff also wrote to Mr. Ensor, a partner of the law firm of Alston & Bird LLP:

I just received an email from Ms. Coppedge instructing me to direct all communications regarding a possible arbitration of my disputes with Aflac to you. Therefore I'm sending the attached email I sent to Ms. Coppedge on October 8<sup>th</sup> to you for your response. Ms. Coppedge also referred me to paragraph 10 of my Aflac Associate's Agreement for information concerning the arbitration procedure. ***I was never provided a copy of that agreement*** therefore her suggestion isn't

particularly helpful. Would it be possible for you to secure a copy and email it to me?

50. As stated in Plaintiff's letter, he had never been provided with a copy of his Associate's Agreement, had never seen Aflac's arbitration agreement included in it, and had no information or "instructions, guidelines, time and cost requirements or any form of explanatory material as to how I must prepare for this arbitration and the rules and procedures under which it shall be conducted."

51. Defendant AFLAC eventually provided Plaintiff with a copy of his Associate's Agreement for the first time on October 10, 2014, in response to his repeated requests.<sup>3</sup>

52. On October 13, 2014, Plaintiff received an email from Mr. Ensor of Alston & Bird, stating *inter alia* that Mr. Ensor was looking into the matters raised by Plaintiff and would communicate further.

53. However, Plaintiff then had not heard from anyone for more than a month, leading him to write back on November 16, 2014.

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<sup>3</sup> When Plaintiff commenced working for Defendant AFLAC in 2005, he was asked to sign a copy of the Associate's Agreement during a training event, being presented with it as a "sign it now and let's get it over with" formality, without being given a copy of the Agreement or an opportunity to review it. On April 27, 2005, Plaintiff received a welcome letter from Defendant AFLAC's Vice President Mark Charrette telling Plaintiff that he was "now appointed to represent the number one provider of guaranteed-renewable supplemental insurance," and enclosing Plaintiff's writing number but not a copy of the Associate's Agreement.

In his November 16 email, Plaintiff again requested to know the reason why Defendant AFLAC had terminated him.

54. Further, Plaintiff raised an issue of "a loan with the Aflac Federal Credit Union, presently with a balance of approximately \$4,300, on the basis of my good faith reliance that I would continue to be able to use my Aflac NY State Writing Number to generate income to pay off this loan. **By terminating my writing number in the manner Aflac did it has created a force majeure situation for me in that I'm being forced to pay off a loan for which my ability to do so has been blocked by Aflac's action.** I respectfully request that Aflac arrange to have the outstanding balance of this loan expunged in its entirety since their action has created this financial impasse."

55. Plaintiff also raised the matter of his renewal commissions in the email to Mr. Ensor: "although none of the statements furnished to me report what percentage of my residual payments are being paid to me, whether it's 75% or 100%, I have to assume that it's the lesser amount because I was terminated 8 months prior to my reaching 10 years of service with Aflac. If that is indeed the case, and I would like a clear statement as to what percentage I'm being paid, a diminution of the percentage of my residual payments under such circumstances is patently unfair and raises the question if such a diminution was not one of the causal factors motivating Aflac's termination of my writing

number. I respectfully request that I be paid 100% of my residual payments, if that's not what I'm currently receiving."

56. Mr. Ensor responded to Plaintiff on November 18, 2014, writing *inter alia*:

First, as Ms. Coppedge indicated in her September 3, 2014 letter, your Associate's Agreement was terminated pursuant to Paragraph 9.2 of the Agreement, which provides that "[e]ither party may terminate this Agreement at will, without cause or reason, upon giving thirty (30) days prior written notice to the other party." **Accordingly, even though I am certain that Aflac had good reason(s) to terminate your Associate's Agreement, the Company terminated your Agreement pursuant to Paragraph 9.2, which does not require that a reason be provided.** Second, Aflac and the Aflac Federal Credit Union are two separate entities. As such, you will have to communicate directly with Aflac Federal Credit Union about your loan balance. Third, your assumption that you are receiving 75% of your Renewal Commissions based upon your years of contracted service is correct. Aflac will not agree to pay you 100% of your Renewal Commissions.

57. Indeed, while the Agreement provided for termination "without cause or reason," that was not what happened to Plaintiff: Defendant AFLAC had terminated Plaintiff not for any "good reason(s)" alluded to by Alston's Mr. Ensor, but for all the wrong and illegal reasons: retaliation, discrimination based on his age or disability, and for preventing Plaintiff from reaching the 10-year anniversary and the full vesting on his renewal commissions - and then concealed those true reasons for his termination from Plaintiff. And as Defendant MEIER, himself an Aflac high-ranking executive, clearly stated, Defendant AFLAC terminated Plaintiff for "punitive" reasons.

58. Accordingly, Plaintiff learned only in the fall of 2014 that he would have to pay his own arbitration costs, including significant arbitrator's fees (in addition to his legal fees), which were much higher than the costs he would have had to pay in any court action.

59. Defendant AFLAC did not offer Plaintiff to pay for the arbitrator, or to advance or reimburse arbitration costs, making the arbitration process prohibitively expensive and burdensome for the 71-year-old cancer survivor whom Defendant AFLAC had ruthlessly and viciously fired after almost 10 years of impeccable service, and whom it further impoverished by cutting off his income stream from his earned renewal commissions.

60. Plaintiff did not have the resources required to pay attorneys' fees and the prohibitive arbitration costs, including arbitrator's fees, and did not pursue arbitration because he could not afford to do so, both financially, physically, and emotionally particularly in Columbus, GA, where he was told and understood the arbitration to take place, and particularly considering his age and the chemotherapy-induced peripheral neuropathy he was suffering from that prohibited him from walking normally or traveling.

61. Defendant AFLAC had no legitimate reason or basis whatsoever to terminate Plaintiff, a model employee whose only "transgression" was to report improper practices up the ladder in a good-faith and ultimately successful effort to correct them.

62. Instead, Aflac had terminated Mr. Plaintiff for illegal, discriminatory and/or retaliatory reasons, wrongfully denying him the 10-year full vesting of the renewal commissions under the contract, cutting off the renewal commissions he had been entitled to, and causing significant injuries to his property in the form of lost commissions and denied employment benefits, as well as personal injuries including severe emotional distress and mental and physical suffering. The abusive manner of termination itself added insult to Plaintiff's injury, compounding it.

63. Defendant AFLAC's termination of Plaintiff is emblematic of how cruelly AFLAC could treat even its veteran agent with an impeccable record of loyal service. Clearly and admittedly, what Defendant AFLAC had done to Plaintiff was purely a "**punitive action**" - the question is, what was Plaintiff punished for by the so-called "most ethical company globally" and the so-called "most admired company in America"?

64. Defendant AFLAC's Associates' Agreement contains a mandatory arbitration provision that is procedurally and substantively unconscionable and unenforceable.

65. *First*, it is procedurally unconscionable because the manner of its execution, as alleged herein, afforded Plaintiff no reasonable opportunity to review and understand the terms of the contract, or to protect his interests as the weaker party in the contracting process employed by Defendant AFLAC.

66. Even in forcing Plaintiff into arbitration in 2014, Defendant AFLAC failed to provide Plaintiff with any "instructions, guidelines, time and cost requirements or any form of explanatory material as to how [he] must prepare for this arbitration and the rules and procedures under which it shall be conducted."

67. *Second*, the severe one-sidedness of the Agreement in AFLAC's favor makes it substantively unconscionable. As a threshold matter, the Agreement carves out from its scope virtually all material contractual claims that Defendant AFLAC may have against the associates -- while Plaintiff has to arbitrate any and all of his claims against AFLAC. See Associate's Agreement ¶ 10.1 ("Except for an action by Aflac to enforce provisions contained in Paragraphs 1.4 ["Aflac Intellectual Property"], 3 ["Confidential and Protected Information"], 8 ["Restricted Conduct"], 10.5 ["Injunctive Relief"] or 10.6 [Covenant Not to Sue]")."

68. *Third*, the Agreement requires Plaintiff to arbitrate any dispute not only with AFLAC itself but also with any of AFLAC's "past and present officers, stockholders, employees, associates, coordinators, agents and brokers of Aflac" and "regardless of whether Aflac is a party." The severe lack of mutuality in this provision is manifest, as AFLAC's officers and other affiliates are not similarly bound to arbitrate any of their claims against

Plaintiff, making the Agreement even further one-sided and lacking mutuality.

69. *Fourth*, the cost-prohibitive nature of the Agreement makes it unconscionable. The Agreement saddles Plaintiff with all arbitration costs, including his arbitrator's fees, which are significant and prohibitive for most associates, including Plaintiff. If Plaintiff proceeded to litigate in court, he would have incurred much lower costs and fees compared to Defendant AFLAC's mandatory arbitration.

70. This cost-prohibitive feature of the Agreement deprives Plaintiff of his substantive rights and a reasonable right of access to a neutral forum, rendering it substantively unconscionable.

71. *Finally*, the Associate's Agreement contains a provision requiring parties to "keep confidential any decision of an arbitrator," which give an obvious information advantage to the Company, a repeat arbitration player, and was held unconscionable by courts for that reason.

72. Accordingly, this Action followed.

### **CLAIMS**

#### **Count I - Breach of Contract (against Defendant AFLAC)**

73. Plaintiff repeats and realleges all allegations of the Complaint as if set forth herein.

74. Plaintiff and Defendant AFLAC are parties to a valid and binding contract (except its arbitration provision), the Associate's Agreement dated February 1, 2005.

75. Plaintiff fully performed his obligations under the Agreement and is not in breach thereof.

76. Defendant AFLAC is in material breach of the Associate's Agreement as alleged herein and summarized below.

77. *First*, Defendant AFLAC is in breach of Paragraph 9.2 of the Agreement, which provides that "[e]ither party may terminate this Agreement at will, without cause or reason, upon giving thirty (30) days prior written notice to the other party." Defendant AFLAC breached this provision because it terminated Plaintiff for wrongful and unlawful reasons as alleged herein.

78. *Second*, Defendant AFLAC is in breach of Article 5 the Associate's Agreement, which entitles Plaintiff to a certain stream of earned commissions (renewal commissions), which Defendant AFLAC wrongfully misappropriated, in breach of that Article.

79. *Third*, Defendant AFLAC is in breach of the implied covenant of good-faith and fair dealing inherent in every contract by the operation of New York law. Defendant AFLAC breached that covenant by terminating Plaintiff for wrongful and unlawful reasons on the eve of his 10-year anniversary at the Company and the automatic vesting of 100% of his renewal commission.

80. Defendant AFLAC is liable to Plaintiff for his contractual damages, including consequential damages, in an amount to be determined by jury at trial.

**Count II - Fraud  
(Against all Defendants)**

81. Plaintiff repeats and realleges all allegations of the Complaint as if set forth herein.

82. Defendants made knowingly false statements and omissions of material facts, with the intent that Plaintiff would rely on those knowingly false statements to his detriment, which he reasonably did.

83. Defendant AFLAC misrepresented on numerous occasions particularly alleged in the Complaint that Plaintiff was terminated "without cause or reason."

84. This statement was false because Plaintiff was in fact terminated for wrongful and unlawful reasons: retaliatory, discriminatory, and in pursuit of a bad-faith objective of denying Plaintiff his commissions earned by (almost) 10 years of impeccable service.

85. Defendant AFLAC knew full well the true reasons for Plaintiff's termination but intended Plaintiff to rely on its false statements to his detriment.

86. Plaintiff was entitled to rely on those statements, and had little choice given the disparity of power between him and Defendant AFLAC, its Trust Department, in-house counsel Ms.

Coppedge, its outside counsel Alston & Bird LLP, and its party arbitrator William L. Tucker of the law firm of Page, Scrantom, Sprouse, Tucker & Ford, P.C., all awaiting him in Columbus, Ga.

87. Defendant MEIER also made knowingly false statements in response to Plaintiff's desperate requests for any information about his sudden termination, claiming that his 1099 status preventing him from communicating with Defendant AFLAC on the subject. Those statements were false because, as Defendant MEIER himself admitted contemporaneously, that title was meaningless.

88. As a direct and proximate result of his justifiable reliance on Defendants' knowingly false statements, Plaintiff suffered injuries to his property in that he was deprived of his proprietary claims for retaliation and other causes of action, which are now past their short statutes of limitations.

89. Defendants are jointly and severally liable to Plaintiff for his damages, including exemplary damages for their egregious misconduct, in an amount to be determined by jury at trial.

**Count III – Deceptive Acts and Practices  
in violation of NYGBL §349 (Against all Defendants)**

90. Plaintiff repeats and realleges all allegations of the Complaint as if set forth herein.

91. Section 349 of the New York General Business Law ("NYGBL") provides in paragraph (a): "Deceptive acts or practices in the conduct of any business, trade or commerce or in the

furnishing of any service in this state are hereby declared unlawful."

92. Paragraph (h) provides: "any person who has been injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. . . . The court may award reasonable attorney's fees to a prevailing plaintiff."

93. Defendants have engaged in deceptive acts or practices in the conduct of their business within the meaning of paragraph (a) of Section 349 of the NY GBL.

94. Plaintiff is a person injured by reason of Defendants' deceptive acts or practices within the meaning of paragraph (h) of Section 349 of the NY GBL.

95. Defendants are jointly and severally liable to Plaintiff for his damages in an amount to be determined by jury at trial, as well as his attorney's fees.

**PRAYER FOR RELIEF AND JURY DEMAND**

WHEREFORE, Plaintiff respectfully requests:

- A. Compensatory, consequential and exemplary damages in an amount to be determined at trial for losses incurred by Plaintiff but not less than \$10,000,000 (TEN MILLION DOLLARS);
- B. Interest on those damages, at the maximum allowable rate;
- C. Attorney's fees and costs;

D. Such other relief as is just, fair and equitable;

E. A jury trial on all counts.

April 16, 2018

Respectfully Submitted,



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