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8 Mutual Insurance Company

10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE DISTRICT OF ARIZONA**

12 Chase Whitehead, a single man,  
13 Plaintiff,  
14 v.  
15 Amica Mutual Insurance Company, a  
16 Rhode Island corporation,  
17 Defendant.

Case No. CV-22-1978-PHX-DJH

**ANSWER**

(Honorable Diane J. Humetewa)

19 Defendant Amica Mutual Insurance Company (“Amica”) hereby answers  
20 Plaintiff Chase Whitehead’s Class Action Complaint (“Complaint”).

21 **I. THE PARTIES**

22 1. In response to Paragraph 1, Amica:

23 A. admits it issued an auto insurance policy that provided insurance to  
24 Plaintiff, that the policy provided uninsured and underinsured motorist coverage, and  
25 that the policy provided insurance coverage for more than one vehicle; and

26 B. lacks knowledge or information sufficient to form a belief about  
27 the truth of the remaining allegations in Paragraph 1 and, therefore, denies them.  
28

1           2.       Amica admits the allegations in Paragraph 2, but notes that Paragraph 2  
2 includes a typographical error in the spelling of Rhode Island.

3 **II.    NATURE OF THE ACTION**

4           3.       Paragraph 3 states legal conclusions to which no response is required. To  
5 the extent a response is required Amica denies the allegations in Paragraph 3.

6           4.       Paragraph 4 does not make factual allegations for which a response is  
7 required, it merely defines a term used in the Complaint. To the extent a response is  
8 required, Amica denies the allegations in Paragraph 4.

9           5.       Paragraph 5 does not make factual allegations for which a response is  
10 required, it merely defines a term used in the Complaint. To the extent a response is  
11 required, Amica denies the allegations in Paragraph 5.

12           6.       Answering Paragraph 6, Amica:

13               A.       avers that the first sentence in Paragraph 6 states a legal conclusion  
14 to which no response is required. To the extent the first sentence requires a response,  
15 Amica denies this sentence and states that each claim is considered based on the merits  
16 of that claim.

17               B.       in response to the second sentence in Paragraph 6, avers that it  
18 responds to insureds' claims based on each claim's merits and denies any contrary  
19 allegation, denies that it places its own interests ahead of its insureds' interests, and  
20 denies any remaining allegations.

21           7.       Amica lacks knowledge or information sufficient to form a belief about  
22 the truth of the allegations in Paragraph 7 and, therefore, denies them.

23           8.       Amica lacks knowledge or information sufficient to form a belief about  
24 the truth of the allegations in Paragraph 8 and, therefore, denies them.

25           9.       Amica lacks knowledge or information sufficient to form a belief about  
26 the truth of the allegations in Paragraph 9 and, therefore, denies them.

27           10.      Amica lacks knowledge or information sufficient to form a belief about  
28 the truth of the allegations in Paragraph 10 and, therefore, denies them.

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1 11. Amica lacks knowledge or information sufficient to form a belief about  
2 the truth of the allegations in Paragraph 11 and, therefore, denies them.

3 12. Amica admits the allegations in Paragraph 12.

4 13. Amica lacks knowledge or information sufficient to form a belief about  
5 the truth of the allegations in Paragraph 13 and, therefore, denies them.

6 14. Amica lacks knowledge or information sufficient to form a belief about  
7 the truth of the allegations in Paragraph 14 and, therefore, denies them.

8 15. Amica lacks knowledge or information sufficient to form a belief about  
9 the truth of the allegations in Paragraph 15 and, therefore, denies them.

10 16. Amica admits the allegations in Paragraph 16.

11 17. Amica admits the allegations in Paragraph 17.

12 18. Amica admits the allegations in Paragraph 18.

13 19. Amica lacks knowledge or information sufficient to form a belief about  
14 the truth of the allegations in Paragraph 19 and, therefore, denies them.

15 20. In response to Paragraph 20, Amica:

16 A. admits Plaintiff made a demand on November 9, 2020;

17 B. admits that Plaintiff's November 9, 2020 letter asked for payment  
18 in "no later than 30 days;" and

19 C. denies the remaining allegations.

20 21. Answering Paragraph 21, Amica:

21 A. admits it paid Plaintiff \$100,000; and

22 B. denies the remaining allegations.

23 22. Amica denies the allegations in Paragraph 22.

24 23. In response to Paragraph 23, Amica:

25 A. admits Plaintiff made a second demand by letter dated August 30,  
26 2022; and

27 B. denies the remaining allegations.

28 24. Amica denies the allegations in Paragraph 24.

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- 1           25.    Answering Paragraph 25, Amica:
- 2                A.    admits it paid the \$100,000 policy limit; and
- 3                B.    denies the remaining allegations.
- 4           26.    Answering Paragraph 26, Amica:
- 5                A.    admits Paragraph 26 quotes a portion of the Limit of Liability
- 6 provision for the Uninsured Motorist coverage in the Policy; and
- 7                B.    denies that Paragraph 26 fully sets forth the Limit of Liability
- 8 provision or that it fully sets forth the parties’ respective rights and obligations under the
- 9 Policy.
- 10           27.    Paragraph 27 states a legal conclusion to which no response is required.
- 11 To the extent a response is required Amica denies the allegations in Paragraph 27.
- 12           28.    Paragraph 28 states legal conclusions to which no response is required. To
- 13 the extent a response is required Amica denies the allegations in Paragraph 28.
- 14           29.    In response to Paragraph 29, Amica:
- 15                A.    admits it did not provide separate written notice to Plaintiff within
- 16 30 days of receiving notice of the accident;
- 17                B.    denies that A.R.S. § 20-259.01(H) required Amica to provide such
- 18 separate written notice, or that Amica failed to comply with the statute by not providing
- 19 such separate written notice; and
- 20                C.    denies the remaining allegations.
- 21           30.    Paragraph 30 states legal conclusions to which no response is required. To
- 22 the extent a response is required Amica denies the allegations in Paragraph 30.
- 23           31.    Amica admits Paragraph 31 quotes a portion of the Policy but denies that
- 24 it fully sets forth the parties’ respective rights and obligations under the Policy.
- 25           32.    Paragraph 32 states a legal conclusion to which no response is required.
- 26 To the extent a response is required Amica denies the allegations in Paragraph 32.
- 27           33.    Paragraph 33 states a legal conclusion to which no response is required.
- 28 To the extent a response is required Amica denies the allegations in Paragraph 33.

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1 34. Paragraph 34 states a legal conclusion to which no response is required.  
2 To the extent a response is required Amica denies the allegations in Paragraph 34.

3 35. In response to Paragraph 35, Amica:

4 A. admits that at the time of their accident, Plaintiff did not have  
5 multiple policies issued to him by Amica; and

6 B. denies the remaining allegations.

7 36. Amica denies the allegations in Paragraph 36.

8 37. Amica denies the allegations in Paragraph 37.

9 38. Amica denies the allegations in Paragraph 38.

10 39. Amica denies the allegations in Paragraph 39.

11 40. Amica denies the allegations in Paragraph 40.

12 41. Amica admits Paragraph 41 states what Plaintiff seeks in this lawsuit but  
13 denies he is entitled to what he seeks.

14 42. Amica admits the allegations in Paragraph 42.

15 43. Amica admits Plaintiff's contention is stated in Paragraph 43 but denies  
16 that this contention is factually or legally correct.

17 44. Amica denies Paragraph 44 accurately states Amica's position.

18 45. Amica denies the allegations in Paragraph 45.

19 46. Amica denies the allegations in Paragraph 46.

20 47. Amica admits Paragraph 47 states what Plaintiff seeks in this lawsuit but  
21 denies he is entitled to what he seeks.

22 48. Amica denies the allegations in Paragraph 48.

23 49. Amica denies the allegations in Paragraph 49.

24 50. Amica denies the allegations in Paragraph 50.

25 51. Paragraph 51 states a legal conclusion to which no response is required.  
26 To the extent a response is required Amica states that Paragraph 51 is an incomplete and  
27 sometimes inaccurate statement of Arizona law and, therefore, denies the allegations.

28 52. Amica denies the allegations in Paragraph 52.

1 53. Amica denies the allegations in Paragraph 53.

2 54. Amica denies the allegations in Paragraph 54.

3 55. Amica denies the allegations in Paragraph 55.

4 56. Amica denies the allegations in Paragraph 56.

5 57. Amica denies the allegations in Paragraph 57.

6 58. Amica denies the allegations in Paragraph 58.

7 59. Amica denies the allegations in Paragraph 59.

8 60. Amica denies the allegations in Paragraph 60.

9 61. Amica denies the allegations in Paragraph 61.

10 62. Amica denies the allegations in Paragraph 62.

11 63. Amica denies the allegations in Paragraph 63.

12 **III. JURISDICTION AND VENUE**

13 64. In response to Paragraph 64, Amica does not dispute that jurisdiction and  
14 venue are proper in this Court.

15 65. Paragraph 65 states a legal conclusion to which no response is required.  
16 Amica does not dispute that jurisdiction and venue are proper in this Court.

17 66. Paragraph 66 states a legal conclusion to which no response is required.  
18 Amica does not dispute that jurisdiction and venue are proper in this Court.

19 67. Paragraph 67 states a legal conclusion to which no response is required.  
20 Amica does not dispute that jurisdiction and venue are proper in this Court.

21 68. Paragraph 68 states a legal conclusion to which no response is required.  
22 Amica does not dispute that jurisdiction and venue are proper in this Court.

23 **IV. CLASS ALLEGATIONS**

24 69. In response to Paragraph 69, Amica admits the Plaintiff purports to allege  
25 a class action but denies that class action treatment is appropriate for Plaintiff's claims.

26 70. In response to Paragraph 70, Amica admits the Plaintiff proposes to  
27 represent two classes of individuals but denies that class action treatment is appropriate  
28 for Plaintiff's claims.

1           **A. Class One: Stacked Uninsured Motorist Coverage**

2           71. In response to Paragraph 71, Amica admits the Plaintiff proposes to  
3 represent a class of individuals, as defined in Paragraph 71, but denies that class action  
4 treatment is appropriate for Plaintiff’s claims or that any such class is properly, or can  
5 be properly, defined.

6           **B. Class Two: Stacked Underinsured Motorist Coverage**

7           72. In response to Paragraph 72, Amica admits the Plaintiff proposes to  
8 represent a class of individuals, as defined in Paragraph 72, but denies that class action  
9 treatment is appropriate for Plaintiff’s claims or that any such class is properly, or can  
10 be properly, defined.

11          73. Amica denies the allegations in Paragraph 73.

12           **C. Numerosity**

13          74. Paragraph 74 states a legal conclusion to which no response is required.  
14 To the extent a response is required Amica denies the allegations in Paragraph 74.

15          75. Paragraph 75 states a legal conclusion to which no response is required.  
16 To the extent a response is required Amica denies the allegations in Paragraph 75.

17          76. Amica denies the allegations in Paragraph 76.

18          77. Amica denies the allegations in Paragraph 77.

19           **D. Commonality**

20          78. Paragraph 78 states a legal conclusion to which no response is required.  
21 To the extent a response is required Amica denies the allegations in Paragraph 78.

22          79. Amica denies the allegations in Paragraph 79.

23          80. Amica denies the allegations in Paragraph 80.

24          81. Amica denies the allegations in Paragraph 81.

25           **E. Typicality**

26          82. Paragraph 82 states a legal conclusion to which no response is required.  
27 To the extent a response is required Amica denies the allegations in Paragraph 82.

28          83. Amica denies the allegations in Paragraph 83.

1 84. Amica denies the allegations in Paragraph 84.

2 **F. Adequacy**

3 85. Paragraph 85 states a legal conclusion to which no response is required.  
4 To the extent a response is required Amica denies the allegations in Paragraph 85.

5 86. Paragraph 86 states a legal conclusion to which no response is required.  
6 To the extent a response is required Amica denies the allegations in Paragraph 86.

7 87. In response to Paragraph 87, Amica states that there is no class and that  
8 class action treatment is not appropriate for Plaintiff's claims and denies the allegations  
9 inconsistent with this statement. Amica lacks knowledge or information sufficient to  
10 form a belief about the truth of the remaining allegations in Paragraph 87 and, therefore,  
11 denies the allegations.

12 88. In response to Paragraph 88, Amica states that there is no class and that  
13 class action treatment is not appropriate for Plaintiff's claims and denies the allegations  
14 inconsistent with this statement. Amica lacks knowledge or information sufficient to  
15 form a belief about the truth of the remaining allegations in Paragraph 88 and, therefore,  
16 denies the allegations.

17 89. Amica lacks knowledge or information sufficient to form a belief about  
18 the truth of the allegations in Paragraph 89 and, therefore, denies the allegations.

19 90. Amica lacks knowledge or information sufficient to form a belief about  
20 the truth of the allegations in Paragraph 90 and, therefore, denies the allegations.

21 91. Amica lacks knowledge or information sufficient to form a belief about  
22 the truth of the allegations in Paragraph 91 and, therefore, denies the allegations.

23 **G. Rule 23(B)(2)**

24 92. Paragraph 92 states a legal conclusion to which no response is required.  
25 To the extent a response is required Amica denies the allegations in Paragraph 92.

26 93. Paragraph 93 states a legal conclusion to which no response is required.  
27 To the extent a response is required Amica denies the allegations in Paragraph 93.

28 94. Amica denies the allegations in Paragraph 94.

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1 95. Amica denies the allegations in Paragraph 95.

2 96. Amica denies the allegations in Paragraph 96.

3 97. Amica denies the allegations in Paragraph 97.

4 98. Paragraph 98 does not contain any factual allegations that require a  
5 response. To the extent a response is required, Amica denies the allegations in  
6 Paragraph 98.

7 **H. Rule 26(B)(3)**

8 99. Paragraph 99 states a legal conclusion to which no response is required.  
9 To the extent a response is required Amica denies the allegations in Paragraph 99.

10 100. Paragraph 100 does not set forth any factual allegations that require a  
11 response.

12 101. Paragraph 101 states a legal conclusion to which no response is required.  
13 To the extent a response is required Amica denies the allegations in Paragraph 101.

14 102. Paragraph 102 states a legal conclusion to which no response is required.  
15 To the extent a response is required Amica denies the allegations in Paragraph 102.

16 103. Paragraph 103 states a legal conclusion to which no response is required.  
17 To the extent a response is required Amica denies the allegations in Paragraph 103.

18 104. Amica denies the allegations in Paragraph 104.

19 105. In response to Paragraph 105, Amica states that there is no existing class  
20 or class members and that class action treatment is not appropriate for Plaintiff's claims  
21 and denies the allegations inconsistent with this statement. Paragraph 105 also states a  
22 legal conclusion to which no response is required. To the extent a response is required  
23 Amica denies the allegations in Paragraph 105.

24 106. Amica denies the allegations in Paragraph 106.

25 107. Amica denies the allegations in Paragraph 107.

26 108. Amica denies the allegations in Paragraph 108.

27

28

1 109. Paragraph 109 does not set forth any factual allegations that require a  
2 response. To the extent a response is required, Amica denies the allegations in  
3 Paragraph 109.

4 **RULE 26.2 TIER DESIGNATION**

5 120. In response to the unnumbered Paragraph that appears below Paragraph  
6 109 of the Complaint with a header “Rule 26.2 Tier Designation,” Amica does not  
7 dispute Plaintiff’s Tier 3 designation.

8 121. In response to the unnumbered Paragraph that appears below Paragraph  
9 109 and begins with “WHEREFORE” and to each of its subparagraphs numbered 1  
10 through 13, Amica denies Plaintiff is entitled to any relief he requests.

11 122. Except those allegations expressly admitted, Amica denies any remaining  
12 allegations in the Complaint, including as to any headers not expressly addressed.

13 **DEMAND FOR JURY TRIAL**

14 Amica demands a trial by jury on all claims and defenses so triable.

15 **AFFIRMATIVE DEFENSES**

- 16 1. The Complaint fails to state a claim upon which relief may be granted.  
17 2. Amica did not breach the policy.  
18 3. Amica acted reasonably and in good faith.  
19 4. Plaintiff’s claims are subject to the Policy and Arizona law.  
20 5. The doctrines of unjust enrichment and quantum meruit bar Plaintiff’s and  
21 some or all putative class members’ claims.  
22 6. By virtue of Plaintiff’s and some or all of the putative class members’  
23 own acts and conduct, Plaintiff’s and/or putative class members have waived their rights  
24 and/or are estopped from asserting their claims.  
25 7. Any damages awarded against Amica are subject to an offset of any and  
26 all amounts recovered by Plaintiff or any putative class members through any claim(s)  
27 and/or lawsuit(s) for which Plaintiff or any putative class members seek recovery from  
28 Amica.

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1           8.     Some or all putative class members lack standing to bring the claims  
2 alleged in the Complaint because they have no injury in fact.

3           9.     The pendency of prior filed actions or the individual resolution of claims  
4 bars this action in whole or in part.

5           10.    An applicable statute of limitations bars Plaintiff and/or some putative  
6 class members' claims.

7           11.    To the extent Plaintiff and/or any putative class member failed to  
8 truthfully and completely complete their application for insurance with Amica, their  
9 claims are barred.

10          12.    Arbitration and award, appraisal, assumption of risk, contributory or  
11 comparative negligence, discharge in bankruptcy, duress, failure of consideration, fraud,  
12 illegality, laches, license, payment, release, set-off and/or recoupment, statute of frauds,  
13 unclean hands, and/or waiver bar Plaintiff's or putative class members' claims.

14          13.    To the extent the evidence in this case reveals, the doctrines of res  
15 judicata, collateral estoppel, claim preclusion, or issue preclusion bar Plaintiff and/or  
16 putative class members' claims.

17          14.    To the extent the evidence reveals, the doctrine of Accord and Satisfaction  
18 bars Plaintiff and/or putative class members' claims.

19          15.    The doctrine of ratification, including through the renewal of the  
20 respective insurance policies, bars Plaintiff and/or putative class members' claims.

21          16.    To the extent Plaintiff individually, or any member of any putative class,  
22 failed to mitigate, minimize, or avoid any damage they allegedly sustained, their claims  
23 or claimed damages are barred in whole or in part, by such failure.

24          17.    To the extent that improper treatment damaged Plaintiff and members of  
25 the putative class, such injuries and damages were the result of negligence, omission, or  
26 affirmative conduct of third persons or parties for whose conduct Plaintiff may not hold  
27 Amica responsible.

28

1 18. Plaintiff cannot maintain this suit as a class action because, among other  
2 reasons: (1) Plaintiff will not fairly and adequately protect the interests of the putative  
3 class; (2) common issues of fact or law do not predominate over questions affecting  
4 only individual members; (3) a class action is not an appropriate method for the fair and  
5 efficient adjudication of the controversy; (4) Plaintiff cannot satisfy the other  
6 requirements of maintaining a class action; (5) class action is not an appropriate or  
7 superior method for addressing Plaintiff's claims because individual questions exceed  
8 the common questions; (6) aggregation of claims would deny Amica due process by  
9 depriving Amica of its right to discover and present bona fide legal and factual defenses  
10 unique to a specific policyholder and transaction, including the defenses of no damages  
11 and those listed in this Answer; and (7) the putative class is not ascertainable and its  
12 members are not identifiable.

13 19. Amica opposes class certification and disputes the propriety of class  
14 treatment.

15 20. Plaintiff and putative class members are not entitled to attorney's fees.

16 21. The ratio between compensatory damages and the amount of punitive  
17 damages may be a factor in assessing the effectiveness of an award. In addition, the  
18 difference between the punitive damages awarded and the civil penalty authorized for  
19 imposing comparable cases may be considered.

20 22. In seeking the imposition of punitive damages, Amica's basic protection  
21 against punishment without notice afforded by the due process clause of the 14th  
22 Amendment of the United States Constitution and the Arizona Constitution is violated.  
23 Amica is entitled to receive notice, not only of the conduct that will subject it to  
24 punishment but also the severity of the penalty that the State may impose.

25 23. An award of punitive damages in this action would violate Amica's rights  
26 under the due process clause of the 14th Amendment of the United States Constitution  
27 and the Arizona Constitution and that a state is prohibited from imposing grossly  
28 excessive punishment on tortfeasors. To that extent, the degree of reprehensibility of

1 Amica’s conduct, if any, must be considered when determining whether punishment is  
2 excessive. An imposition of damages must not be grossly out of proportion to the  
3 severity of the offense, if any offense is established.

4 24. Under A.R.S. § 12-341.01, Amica is entitled to recover reasonable  
5 attorney fees because it did not breach the Policy, did not breach the implied covenant  
6 of good faith and fair dealing, and this matter arises from a contract, the Policy.

7 25. Disclosure and discovery may reveal acts which support other affirmative  
8 defenses.

9 26. Accordingly, Amica incorporates all affirmative defenses set forth in  
10 FRCP 8.

11 WHEREFORE, Amica prays for judgment as follows:

- 12 c. That the Court deny any request to certify this as a class action;
- 13 d. That Plaintiff take nothing against Amica by this Complaint;
- 14 e. That Amica be awarded its attorney’s fees under A.R.S. § 12-341.01;
- 15 f. That Amica be awarded its taxable costs; and
- 16 g. For such other and further relief as the Court deems just and proper.

17  
18 Dated this 23rd day of August, 2023.

19  
20 **Jaburg & Wilk, P.C.**

21 /s/Ian M. Fischer  
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27 Attorneys for Defendant Amica Mutual Insurance  
28 Company

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*Certificate of Service*

I hereby certify that on 23rd day of August, 2023, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing, and for transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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/s/Debra Gower \_\_\_\_\_

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