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9
10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 COMMERCE & INDUSTRY INSURANCE) CASE NO.:
13 COMPANY,)
14 Plaintiff,) **COMPLAINT FOR**
15 vs.) **RESCISSION OF INSURANCE**
16 STARWOOD MANAGEMENT, LLC,) **CONTRACT AND FOR**
etc., et al.,) **DECLARATORY RELIEF**
17 Defendants.)

18
19 **INTRODUCTION**

20 1. This is an action for declaratory judgment and further relief pursuant to 28 U.S.C.
21 §§ 2201 and 2202 and for rescission of insurance contract pursuant to Nevada Revised Statutes §
22 687B.110 and declaratory relief pursuant to Nevada Revised Statutes § 30.010, et seq.

23 2. This action is brought in connection with an aviation insurance policy (the
24 “Starwood Policy”) issued to defendant “Starwood Management, LLC” insuring defendant’s
25 Gulfstream G-1159A airplane, registration number N39LF. A true and correct copy of the
26 Starwood Policy is attached to this complaint as Exhibit “B”.

27 **THE PARTIES**

28 3. Plaintiff, Commerce & Industry Insurance Company (“C&I”) is a corporation

1 organized and existing under the laws of the State of New York and has its principal place of
2 business in New York, New York. At all times relevant to this action, C&I was and is an
3 admitted property-casualty insurer in the State of Nevada.

4 4. Defendant Starwood Management, LLC (“Starwood”), is a limited liability
5 company organized and existing under the laws of the State of Nevada, and has its principal
6 place of business at 3540 West Sahara Avenue, Suite 202, Las Vegas, Nevada, 89102-5816.
7 C&I is informed and believes, and on the basis of that information and belief, alleges that Ed
8 Nunez, also known as Eduardo Nunez, also known as Christian Esquino, is the alter ego of
9 Starwood and that there is such a unity of interest in ownership that Nunez is inseparable from
10 Starwood and that adherence to the fiction of Starwood as an entity separate from Nunez would,
11 under the circumstances, sanction a fraud or promote an injustice. Starwood described its
12 business in the application for the policy of insurance alleged below as “private aircraft
13 management.”

13 **JURISDICTION AND VENUE**

14 5. This court has jurisdiction pursuant to 28 U.S.C. § 1332. On information and
15 belief, there is complete diversity of citizenship between C&I (a New York corporation
16 principally located in New York), and Starwood (a Nevada limited liability company principally
17 located in Nevada). The amount in controversy, exclusive of interest and costs, exceeds the sum
18 of \$75,000.

19 6. Venue is proper in the District of Nevada pursuant to 28 U.S.C. § 1391 because
20 the Policy was issued to Starwood at its Las Vegas, Nevada address, the airplane was registered
21 to Starwood at its Las Vegas, Nevada address and was represented to be principally kept in
22 Nevada.

23 **GENERAL ALLEGATIONS**

24 7. C&I issued its Gold Medallion Comprehensive Business Aircraft Policy no. GM
25 019331571-01 to Wing Financial as the original named insured effective January 17, 2011 to
26 January 17, 2012, (the “Wing Policy”). Endorsement 19 of the Wing Policy amended the named
27 insured to Starwood Management, LLC, effective at the policy inception date of January 17,
28 2011. The subject 1984 Gulfstream G-1159A airplane, N39LF (“Subject Aircraft”), was added
to the Wing Policy as a covered aircraft by Endorsement 24, effective May 19, 2011. A true and

1 correct copy of the Wing Policy is attached to this complaint as Exhibit "A".

2 8. C&I renewed coverage under policy no. GM 019331571-02 for the period
3 January 17, 2012 to January 17, 2013 ("Starwood Policy"). The Starwood Policy afforded
4 Physical Damage Coverage covering four Scheduled Aircraft. One of these four Scheduled
5 Aircraft was the Subject Aircraft, N39LF. The Subject Aircraft had an insured value of
6 \$1,500,000. True and correct copies of the Wing Policy and Starwood Policy (collectively the
7 "Policies"), are attached to this complaint as exhibits and incorporated by reference as though
8 fully set forth at length. A true and correct copy of the Federal Aviation Administration aircraft
9 registration report for N39LF is attached to this complaint as Exhibit "C" and incorporated by
10 reference.

11 9. The Policies' Physical Damage Coverage defined Physical Damage in pertinent
12 part as "accidental, direct physical loss of or damage to Scheduled Aircraft . . . during the policy
13 period."

14 10. The Policies' Physical Damage Coverage as to Scheduled Aircraft provided that
15 C&I would "pay for Physical Damage or Disappearance to a Scheduled Aircraft."

16 11. The Policies included Form UE48B (1/05), HI-JACKING AND OTHER PERILS
17 EXCLUSION CLAUSE (AVIATION) AVN48B, which amended the exclusions applicable to
18 the Physical Damage Coverage to provide that the Policies do not cover claims caused by: "(f)
19 confiscation, nationalization, seizure, restraint, detention, appropriation, requisition for title or
20 use by or under the order of any Government (whether civil, military or de facto) or public or
21 local authority. . ."

22 12. For an additional premium and at the request of Starwood, the Policies also
23 included Form GLD426 (1/05) EXTENDED COVERAGE ENDORSEMENT, WAR RISK FOR
24 PHYSICAL DAMAGE COVERAGE, EXTORTION, AND HI-JACKING EXTRA EXPENSE
25 COVERAGE. This endorsement had the effect of deleting the confiscation exclusion alleged in
26 paragraph 11 of this complaint and states in pertinent part: "We will pay for physical loss of or
27 Physical Damage to any Scheduled Aircraft (unless excluded by Exclusion (G) below that is
28 caused by an Occurrence during the policy period arising out of the following perils: . . . (e)
confiscation, nationalization, seizure, restraint, detention, appropriation, requisition for title, use
by, or under the order of any government, public or local authority, whether civil, military or de

1 facto . . .”

2 13. The Policies also included Form 52160, NEVADA AMENDATORY
3 ENDORSEMENT, which states in pertinent part: “2. MIDTERM CANCELLATION, If this
4 policy has been in effect for seventy (70) days or more, or if this policy is a renewal of a policy
5 the Insurer issued, the Insurer may cancel only for one or more of the following reasons: * * *
6 b) Conviction of the Insured or Other Insured(s) of a crime arising out of acts increasing the
7 hazard insured against; c) Discovery of fraud or material misrepresentation in obtaining the
8 policy or in presenting a claim thereunder; * * * .”

9 14. SECTION IV GENERAL POLICY CONDITIONS, of the basic policy form
10 (GLD02 (1/05)) included in the Policies states, “O. REPRESENTATION – By accepting this
11 policy, you agree that the statements in the Application and Declarations are true and that they
12 are your statements and representations. You agree that this policy is issued in reliance on the
13 truth of those representations. This policy includes all of the agreements between you and us or
14 our authorized agents concerning this insurance.” (Policies – Form GLD02 (1/05), Page 35)

15 15. The Wing Policy was issued prior to Starwood’s actual submission of the required
16 written application for the Policies. C&I made submission of a completed written application a
17 condition of continued coverage under the Policies. Starwood submitted to C&I an application
18 dated February 23, 2011 for the Policies that was signed on Starwood’s behalf by “Ed Nunez.”
19 A true and correct copy of this application is attached to this complaint as Exhibit “D” and is
20 incorporated by reference as though fully set forth at length. On page 2 of Exhibit “D” there
21 appears the question: “Has any applicant, or officer or partner thereof, or pilot been convicted in
22 or indicted in a legal action involving drugs?” This question on the application was answered,
23 “No”.

24 16. Ed Nunez, also known as Christian Esquino, was one of thirteen defendants in
25 United States District Court for the Middle District of Florida Case No. 90-163-Cr-Orl-19,
26 entitled *United States of America v. Damian Tedone, et al.* The docket and indictment for this
27 case show that:

- 28 a. An arrest warrant was issued for Christian Esquino on April 18, 1991;
- b. Christian Esquino was arrested April 23, 1991;
- c. Christian Esquino was arraigned on May 9, 1991;

- 1 d. Christian Esquino was indicted on one count of CONSPIRACY TO
- 2 POSSESS WITH INTENT TO DISTRIBUTE (COCAINE (SCHED II)),
- 3 in violation of 21 U.S.C. §§ 848 & 846, on April 18, 1991;
- 4 e. A superseding information was filed on March 22, 1993; and
- 5 f. Christian Esquino pled guilty and was sentenced on the superseding
- 6 information on August 30, 1993.

7 True and correct copies of the April 18, 1991 indictment and documents from the court's docket
8 in *United States of America v. Tedone, et al.*, are attached to this complaint as Exhibit "E" and
9 incorporated by reference as though fully set forth at length. Exhibit "E" shows that on March
10 22, 1993, a superseding information was filed against Christian Esquino charging him with
11 CONSPIRACY TO COMMIT OFFENSE: CONCEALMENT FROM THE IRS OF THE
12 EXISTENCE, SOURCE AND TRANSFER OF CASH. Exhibit "D" shows that as a result of
13 this information, Christian Esquino was convicted, sentenced to five years in prison and served
14 prison time.

15 17. The answer of Ed Nunez a/k/a Christian Esquino to the question on the
16 application for the Policies (Exhibit "D"), was false, in that he in fact had been indicted on drug
17 related criminal charges prior to the date of the application. Had Nunez/Esquino answered the
18 application question truthfully, C&I would have declined to issue a policy to Starwood and/or
19 would have rescinded the Policies upon receipt of Starwood's truthful application.

20 18. On February 3, 2012, United States Marshals, acting on behalf of the United
21 States Department of Drug Enforcement Administration, confiscated the Subject Aircraft after it
22 landed at Tucson, Arizona airport on a flight from Mexico.

23 19. After confiscation of the Subject Aircraft, Starwood submitted a claim to C&I
24 under the Starwood Policy's Physical Damage Coverage.

25 20. C&I has retained counsel and commenced proceedings (pursuant to a reservation
26 of rights as to these coverage issues) in the United States District Court for the District of
27 Arizona in an attempt to obtain release of the Subject Aircraft, and has incurred attorneys' fees
28 and costs in connection with the legal proceedings on its Petition for Remission, Case No. M3-
10-0148.

FIRST CAUSE OF ACTION FOR RESCISSION OF THE POLICY

1
2 21. C&I incorporates by reference the allegations of paragraphs 1 through 20 above
3 into its first cause of action as though fully set forth at length.

4 22. Nevada Revised Statutes section 687B.110 states:

687B.110. Representations in applications.

5
6 All statements and descriptions in any application for an
7 insurance policy or annuity contract, by or in behalf of the
8 insured or annuitant, shall be deemed to be representations and
9 not warranties. Misrepresentations, omissions, concealment of
10 facts and incorrect statements shall not prevent a recovery
11 under the policy or contract unless either:

12 1. Fraudulent;

13 2. Material either to the acceptance of the risk, or to the
14 hazard assumed by the insurer; or

15 3. The insurer in good faith would either not have issued
16 the policy or contract, or would not have issued it at the same
17 premium rate, or would not have issued a policy or contract in
18 as large an amount, or would not have provided coverage with
19 respect to the hazard resulting in the loss, if the true facts had
20 been made known to the insurer as required either by the
21 application for the policy or contract or otherwise.

22 23. Starwood's answer to the question on the application as to any convictions or
23 indictments of its applicants, officers or partners in any legal proceeding involving drugs was
24 knowingly false.

25 24. Starwood's false answer to this question in the application for the Policies was
26 material to C&I's evaluation whether to agree to insure Starwood.

27 25. Had Starwood answered the question on the application alleged above truthfully,
28 C&I would have declined to insure Starwood altogether and/or would have immediately
rescinded the Wing Policy effective January 17, 2011 upon receipt of the true facts, and would
not have renewed the coverage by issuing the Starwood Policy.

29 26. By filing and effecting service on Starwood of this complaint, C&I hereby tenders
to Starwood all premiums paid for the Policies.

30 27. An actual controversy exists between C&I and Starwood in that C&I contends
that the Policies are rescinded effective January 17, 2011 based on Starwood's misrepresentation

1 and concealment of facts material to C&I's decision whether to agree to insure Starwood. C&I
2 is informed and believes, and on the basis of that information and belief alleges, that Starwood
3 contends the contrary.

4 28. This court's judicial declaration as to whether the Policies are rescinded effective
5 January 17, 2011 is necessary at this time so that the parties may ascertain their respective rights
6 and obligations.

7 SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF

8 **Cancellation of Policy**

9 29. C&I incorporates by reference the allegations of paragraphs 1 through 28 above
10 into its second cause of action as though fully set forth at length.

11 30. Ed Nunez, also known as Christian Esquino, was a defendant in United States
12 District Court, Southern District of California Case No. 3:02 CR 333, *United States of America*
13 *v. Christian Esquino, et al.* This case involved a conspiracy by which Christian Esquino
14 purchased aircraft from the Mexican government, falsified their log books and other items,
15 registered them with the Federal Aviation Administration and re-sold them at inflated prices
16 based on the falsified log books and other items. C&I is informed and believes, and on the basis
17 of that information and belief, alleges that in 2004 Christian Esquino pled guilty to a single count
18 of conspiracy to commit fraud involving an aircraft, was sentenced to and served a 24-month
19 prison sentence, and was immediately deported to Mexico upon his release from prison. C&I
20 further is informed and believes and on the basis of that information and belief, alleges that in a
21 hearing in this criminal case on a motion seeking Christian Esquino's release from custody on
22 bail prior to his guilty plea, his attorney stated in open court that Christian Esquino was then
23 aware that he had been under investigation by the United States Department of Drug
24 Enforcement Administration for drug trafficking for a period of in excess of a year.

25 31. Starwood concealed from C&I the information regarding the false identity of
26 Christian Esquino a/k/a Ed Nunez, his 1991 indictment and 1993 conviction in *United States v.*
27 *Tedone, et al.*, his 2004 conviction in *United States v. Esquino*, and his deportation to Mexico
28 following the completion of his prison sentence in *United States v. Esquino*.

32. C&I was unaware of these facts until it conducted its investigation of Starwood's
claim arising from the confiscation of the Subject Aircraft by the United States Marshals.

1 33. These facts entitle C&I to cancel the Policies pursuant to the CANCELLATION
2 provisions of Endorsement 21, Form 52160 of the Starwood Policy set forth above because
3 Nunez's concealment of his false identity and his convictions of these crimes arise out of acts
4 increasing the hazard insured against, and constitute fraud and material misrepresentation in
5 obtaining the Policies and in the presentation of Starwood's claim under the Starwood Policy
6 arising from the confiscation of the Subject Aircraft by the United States Marshals.

7 34. An actual controversy exists between C&I and Starwood in that C&I contends
8 that these facts entitle C&I to cancel the Policies pursuant to the CANCELLATION provisions
9 of Form 52160 as alleged in Paragraph 33. C&I is informed and believes, and the basis of that
10 information and belief, alleges that Starwood contends the contrary.

11 35. This court's judicial declaration as to whether these facts entitle C&I to cancel the
12 Policies pursuant to the CANCELLATION provisions of Form 52160 of the Starwood Policy as
13 alleged above is necessary at this time so that the parties may ascertain their rights.

14 **PRAYER**

15 WHEREFORE, C&I prays for judgment against Starwood as follows:

16 On the First Cause of Action:

17 1. For a judgment that the Policies are rescinded effective January 17, 2011;

18 On the Second Cause of Action:

19 2. For a judicial declaration that C&I is entitled to cancel the Policies;

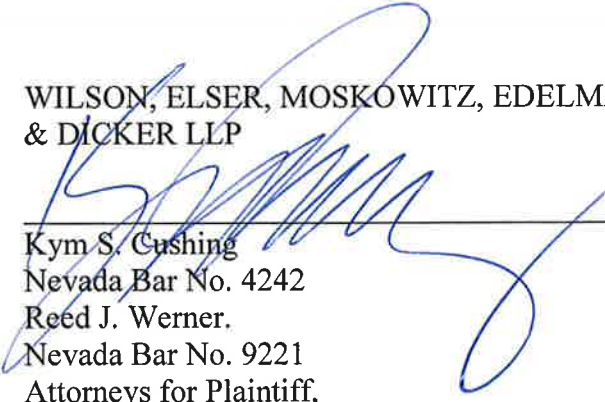
20 On All Causes of Action:

21 3. For costs of suit; and

22 For such other and further legal or equitable relief as the Court deems just and proper.

23 DATED: July 10, 2012

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