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 UNDERWRITERS INC., a New York corporation, individually  
 and on behalf of United States Aircraft Insurance Group  
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10 **UNITED STATES DISTRICT COURT**  
 11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 UNITED STATES AVIATION 13 UNDERWRITERS INC., a New York corporation, individually and on behalf of 14 United States Aircraft Insurance Group,  15 Plaintiff,  16 vs.  17 AEROSPIKE IRON, LLC, a California 18 Limited Liability Company; and CHARLES BRANDES, a California 19 Resident,  20 Defendants.	) Case No. <u>'21CV0758 GPC JLB</u> ) <b>COMPLAINT FOR RECISSION</b> ) <b>AND DECLARATORY RELIEF;</b> ) <b>DEMAND FOR JURY TRIAL</b>
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 22 COMES NOW Plaintiff UNITED STATES AVIATION UNDERWRITERS  
 23 INC., a New York corporation, individually and on behalf of United States Aircraft  
 24 Insurance Group and alleges as follows:

25 **PARTIES**

26 1. Plaintiff, United States Aviation Underwriters Inc. (“USAU”), is a New  
 27 York corporation with its principal place of business located at 125 Broad Street, New  
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1 York, New York 10004. USAU is the Manager of United States Aircraft Insurance  
2 Group (“USAIG”) and its member companies. USAIG is a pool of multiple property  
3 and casualty insurance companies. The two participating companies on the policy at  
4 issue are ACE American Insurance Company and National Liability & Fire Insurance  
5 Company. ACE American Insurance Company is a Pennsylvania corporation with its  
6 principal place of business in Philadelphia, Pennsylvania. National Liability & Fire  
7 Insurance Company is a Connecticut corporation with its principal place of business  
8 in Nebraska. For purposes of this Complaint USAU, USAIG, and the two participating  
9 companies will be referred to collectively as “Plaintiff” or “USAIG.”

10 2. Defendant Aerospike Iron, LLC (“Aerospike”) is a California single-  
11 member limited liability company. The single member of Aerospike is Charles  
12 Brandes, an individual who is a California citizen domiciled in California.

13 3. Defendant Charles Brandes (“Brandes”) is an individual who is a California  
14 citizen domiciled in California.

### 15 JURISDICTION AND VENUE

16 4. This Court has federal diversity jurisdiction over this action pursuant to 28  
17 U.S.C. Section 1332(a), because: (1) the amount in controversy exceeds \$75,000, and  
18 (2) there is complete diversity between Plaintiff and Defendants.

19 5. Venue is proper in this District under 28 U.S.C. Section 1391(b)(1) and  
20 (b)(2) because defendants reside within this District, and the events or omissions  
21 giving rise to Plaintiff’s claims occurred in this District.

### 22 FACTUAL ALLEGATIONS

23 **A. Defendants reach out to USAIG seeking a quote to insure their new**  
24 **Aircraft. They intentionally misrepresent who would be operating the**  
25 **Aircraft.**

26 6. In or about August 2020, Scott Kitchens reached out to insurance broker  
27 Pacific Coast Aviation Insurance (“Pacific Coast”) to inquire about obtaining  
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1 insurance. When he did so, Kitchens was acting as the agent and representative of  
2 Defendants Aerospike and Brandes (collectively “Defendants”). Kitchens reached out  
3 to Pacific Coast at Defendants’ instruction.

4 7. Kitchens represented to Pacific Coast that he was Defendants’ “Director of  
5 Aviation,” and that Defendants were looking to obtain an insurance policy to cover an  
6 aircraft they were purchasing. The aircraft was a 2008 Dassault Falcon 900EX aircraft,  
7 FAA registration number N718AK (now N823RC) (“Aircraft”). As Defendants’  
8 representative and agent, Kitchens affirmatively represented to Pacific Coast that the  
9 Aircraft would be piloted by pilots Randy Judd and/or Jerome Eyquem. Kitchens also  
10 represented that he would not be operating the Aircraft. Further, Kitchens did not  
11 disclose that he could not legally operate the Aircraft because he did not hold a valid  
12 pilot’s license.

13 8. On behalf of Defendants, Pacific Coast subsequently sent a Request for  
14 Quotation to USAIG, seeking a quote to insure the Aircraft.

15 9. As part of the underwriting process, Defendants were also required to submit  
16 Pilot Questionnaires for the individuals who would be operating the Aircraft.  
17 Defendants submitted Pilot Questionnaires for Judd and Eyquem. By doing so,  
18 Defendants represented that Judd and Eyquem were the two individuals they approved  
19 to operate the Aircraft. Defendants did not submit a Pilot Questionnaire for Kitchens.  
20 Defendants also never disclosed the fact that Kitchens would ever operate the Aircraft.  
21 On the contrary, Defendants, through their agent Kitchens, affirmatively represented  
22 that Kitchens would never operate the Aircraft. Nor did Defendants disclose that  
23 Kitchens was not licensed or qualified to operate the Aircraft.

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1 **B. Based upon Defendants’ representations, USAIG issues an insurance policy**  
2 **to them. Unbeknownst to USAIG at the time it does so, Defendants had**  
3 **made numerous intentional misrepresentations and failed to disclose/**  
4 **actively concealed material facts as to who would operate the Aircraft.**

5 10. Based upon the Pilot Questionnaires submitted by Defendants, Judd and  
6 Eyquem appeared to be qualified to pilot the Aircraft. Accordingly, in reliance upon  
7 Defendants’ affirmative representations that Judd and Eyquem were the two pilots  
8 approved to operate the Aircraft, USAIG issued All-Clear Aircraft Policy Number  
9 SIHL1-G605 (“Policy”) to Named Insureds Aerospike and Brandes, covering the  
10 policy period of August 25, 2020 to August 25, 2021.

11 11. Among other things, the Policy provided Aircraft Physical Damage  
12 Coverage for the Aircraft, as well as liability coverage for bodily injury and property  
13 damage arising out of the ownership, maintenance or use thereof. However, a threshold  
14 to coverage was that the Aircraft be flown by a “pilot or pilots described” in the Policy.  
15 The Policy “described” the pilots as “[a]ny pilot who has been approved by” Brandes  
16 and/or Aerospike to pilot the Aircraft. Also implicit in the parties’ agreement was that  
17 the “approved” pilot would actually be licensed and qualified to fly the type of aircraft  
18 insured under the Policy: a Dassault Falcon 900EX. USAIG was induced to issue this  
19 particular policy language based upon Defendants’ material misrepresentations that  
20 the Aircraft would be operated by pilots with adequate training to operate a Dassault  
21 Falcon 900EX aircraft, and their concealment/failure to disclose the fact that two  
22 unqualified individuals would be the actual operators.

23 12. Unbeknownst to USAIG, at the time Defendants made their representations  
24 that the Aircraft would be piloted by Judd and/or Eyquem, Defendants knew those  
25 representations were false. On the contrary, Defendants had no intention of utilizing  
26 Judd or Eyquem to regularly operate the Aircraft. After utilizing Judd and Eyquem,  
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1 who had piloted the Aircraft for its previous owner, to ferry the Aircraft to Defendants’  
2 location in California, Defendants only utilized their services on one other occasion.

3 13. Instead, unbeknownst to USAIG, Defendants intended to utilize two  
4 unqualified individuals to operate the Aircraft: Kitchens and Nathan Russell. As  
5 Defendants knew or should have known but failed to disclose to USAIG, Kitchens did  
6 not hold a valid license and therefore could not legally operate the Aircraft or any other  
7 aircraft. Russell’s credentials prohibited him from piloting the Aircraft without a  
8 properly licensed pilot in command. Thus, neither Kitchens nor Russell qualified as  
9 pilots who could legally operate the Aircraft. Moreover, neither Kitchens nor Russell  
10 were qualified to fly a Dassault Falcon 900EX aircraft.

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12 **C. Defendants allow two unqualified individuals to operate the Aircraft. They**  
13 **are so unqualified they cannot even get the Aircraft to lift off the ground,**  
14 **and run it into an unimproved area of the airport.**

15 14. Despite the fact that Kitchens and Russell were not legally qualified as  
16 pilots to operate the Aircraft, on February 13, 2021, Defendants allowed Kitchens and  
17 Russell to attempt to do so. Upon takeoff, however, Kitchens and Russell were so  
18 woefully unqualified to operate the Aircraft that it never lifted off the ground, and they  
19 were forced to abort the takeoff. They ran the Aircraft straight off the end of the runway  
20 and into an unimproved area of the airport. As a result of the aborted takeoff  
21 (“Incident”), the landing gear was sheared off resulting in over \$75,000 in damages.  
22 The Aircraft also sustained other damage.

23 15. In addition, the fuel that was loaded on the Aircraft at the time of the Incident  
24 spilled into a vernal pool. As a result, environmental cleanup efforts were undertaken  
25 to remediate the potential damage caused by the spill.  
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1 16. On or about February 13, 2021, Pacific Coast reported the Incident to  
2 USAIG. USAIG then conducted an investigation, and now brings this Complaint for  
3 rescission of the Policy and declaratory relief.

4 **FIRST CAUSE OF ACTION—RESCISSION**

5 17. USAIG incorporates by reference each of the allegations set forth above.

6 18. Defendants expressly and affirmatively represented to USAIG that Judd  
7 and/or Eyquem would be piloting the Aircraft, and that Scott Kitchens expressly would  
8 not be piloting the Aircraft. Defendants submitted pilot questionnaires for Judd and  
9 Eyquem, and intentionally failed to submit a pilot questionnaire for Kitchens. By doing  
10 so, Defendants represented to USAIG that Judd and Eyquem were approved to operate  
11 the Aircraft, and Kitchens was not.

12 19. Defendants knew and intended that USAIG would use and rely upon the  
13 information they provided to USAIG regarding who would be piloting the Aircraft to  
14 among other things, (1) evaluate the risks proposed to be insured, (2) decide whether  
15 to offer coverage to Defendants, (3) determine whether to include certain terms and  
16 exclusions from coverage in any policy offered to Defendants, (4) determine whether  
17 to include any conditions to coverage offered to Defendants, and (5) set premiums.

18 20. At the time Defendants made the statements to USAIG, Defendants knew  
19 they were false, and in fact had expressly intended for Kitchens to fly the Aircraft even  
20 though he was not a licensed pilot. Defendants also knew Russell was not qualified to,  
21 and could not legally, fly the Aircraft without a licensed and qualified pilot in  
22 command of the flight. When Defendants made the misrepresentations to USAIG,  
23 Defendants knew the statements they made were material to the issues related to  
24 whether USAIG would issue an insurance policy to them. In the alternative,  
25 Defendants made the statements recklessly, without consideration as to whether the  
26 statements were true or false. Defendants made the materially false misrepresentations  
27 with the intent that USAIG rely upon them, which USAIG did by issuing the Policy.

1 21. Defendants also failed to disclose and/or actively concealed material facts,  
2 including but not limited to the facts that: (1) Kitchens would be operating the Aircraft;  
3 (2) Kitchens was not a licensed pilot; (3) Russell would be operating the Aircraft in  
4 violation of his limited license; and (4) neither Kitchens nor Russell were qualified to  
5 operate Dassault Falcon 900EX aircraft.

6 22. The types of misrepresentations, non-disclosures, and/or concealments  
7 Defendants made to USAIG materially affected the risk assumed and insured against  
8 by USAIG under the Policy. USAIG justifiably relied upon the information disclosed  
9 by Defendants when it issued the Policy.

10 23. The misrepresented, non-disclosed, and/or concealed information was  
11 material in that, had USAIG known the true facts, it would not have issued the Policy  
12 at all.

13 24. Pursuant to California Civil Code Section 1691, California Insurance Code  
14 Sections 330, 331, 350, 351, 358, 359 and 650, and all other applicable grounds,  
15 USAIG is entitled to rescind the Policy in its entirety, thus rendering it void *ab initio*.  
16 USAIG hereby offers to return premiums paid by Defendants.

17 **SECOND CAUSE OF ACTION—DECLARATORY RELIEF**

18 25. USAIG incorporates by reference each of the allegations set forth above.

19 26. Under the express terms of the Policy, a threshold to coverage for any  
20 occurrence is that the Aircraft was operated by a licensed and qualified pilot at the  
21 time of the occurrence.

22 27. At the time of the Incident, Kitchens did not hold a valid pilot's license, and  
23 therefore does not qualify as a "pilot" under the Policy. In addition, Russell's license  
24 expressly prohibited him from acting as a pilot of the Aircraft if there was not another  
25 licensed pilot in command of the flight. Thus, at the time of the Incident, neither  
26 Kitchens or Russell qualified as a "pilot."

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1 28. In addition, implicit in the agreement was that Defendants would only allow  
2 the Aircraft to be piloted by individuals licensed and qualified to operate Dassault  
3 Falcon 900EX aircraft. At the time of the Incident, neither Kitchens nor Russell were  
4 licensed or qualified to operate a Dassault Falcon 900EX, as proven by the fact that  
5 they could not even execute a routine takeoff in perfect conditions.

6 29. As a result, an actual and justiciable controversy has arisen and now exists  
7 between the parties, within the jurisdiction of this Court, relating to whether USAIG  
8 can rightfully deny any and all claims arising out of or related to the Incident, including  
9 but not limited to the hull claim for damages to the Aircraft, any claim for clean-up  
10 costs related to the resultant fuel spill, and all other Incident-related coverages sought  
11 under the Policy (collectively “Claim”), based upon the fact that the Claim does not  
12 fall within the coverage provided by the Policy.

13 30. For the reasons set forth above and pursuant to 28 U.S.C.A. § 2201 and/or  
14 California state law, this Court should find and declare that the Claim is not covered  
15 under the Policy, based upon its express terms and conditions, the intention of the  
16 parties, and the public policy of the State of California.

### 17 **RESERVATION OF RIGHTS**

18 31. Nothing in this Complaint should be construed as a waiver by USAIG of any  
19 coverage or policy defenses under the Policy and/or the applicable law. USAIG  
20 expressly reserves the right to raise any and all coverage or policy defenses, rely upon  
21 all other Policy terms, conditions, exclusions and/or limitations, and rely upon the  
22 applicable law, as defenses to coverage for any claim made under the Policy, as  
23 appropriate.

### 24 **PRAYER FOR RELIEF**

25 32. Wherefore, USAIG prays for the following relief:

- 26 a. That the Court grant USAIG relief under their First Cause of  
27 Action and declare the Policy rescinded and void *ab initio*;



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- b. That the Court grant USAIG relief under their Second Cause of Action and declare that the Claim submitted by Defendants, and all other potential claims arising out of or related to the February 13, 2021, incident, do not fall within the coverage provided by the Policy, as a matter of law, based upon the Policy’s express terms and conditions, and/or based upon the public policy of the State of California, and that USAIG has no duty to defend or indemnify Defendants with respect to the Claim, or any other claims arising out of the February 13, 2021 incident;
- c. That USAIG be awarded its costs of court; and
- d. That the Court grant USAIG such other relief to which it is entitled at law and/or in equity.

Dated: April 16, 2021

CUNNINGHAM SWAIM, LLP

By: /s/ Michael J. Terhar  
Ross Cunningham (*PHV Pending*)  
Michael J. Terhar  
Steven D. Sanfelippo (*Admission Pending*)  
Jonathan E. Hembree  
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**DEMAND FOR JURY TRIAL**

USAIG hereby demands a jury trial.

Dated: April 16, 2021

CUNNINGHAM SWAIM, LLP

By: /s/ Michael J. Terhar  
Michael J. Terhar  
Ross Cunningham (*PHV Pending*)  
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