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U.S. DISTRICT COURT
MIDDLE DISTRICT OF TN

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**MARIO OCHOA and TENNESSEE
INSURANCE PROFESSIONALS, LLC,**)

Plaintiffs)

vs.)

**ALLSTATE INSURANCE COMPANY
and ERIC HARVEY,**)

Defendants)

Case No. 3 11 0233

JURY DEMAND

COMPLAINT

Comes the Plaintiffs, Mario Ochoa and Tennessee Insurance Professionals, LLC,
by and through counsel, and would show the Court as follows:

1. Plaintiff Mario Ochoa is an individual residing within this State.
2. Plaintiff Tennessee Insurance Professionals, LLC is a limited liability company registered to do business in, and doing business in, this State (hereafter, the "LLC").
3. Defendant Allstate Insurance Company (hereafter, "Allstate") is a corporation incorporated under the laws of Illinois and was at all relevant times registered to do business in, and doing business in, this State. Allstate may be served through the Commissioner of the Tennessee Department of Commerce and Insurance at 500 James Robertson Parkway, Nashville, TN 37243.
4. Defendant Eric Harvey is an individual residing and doing business in this State. He was a Territory Sales Leader for Allstate during the relevant time period and

may be served at Allstate's office at 555 Marriott Way, Nashville, TN 37211.

JURISDICTION & VENUE

5. This Court has jurisdiction over this matter pursuant 42 U.S.C. § 1981.
6. This Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367.
7. Venue is proper in that the acts complained of occurred within the confines of the jurisdiction of this court.

FACTUAL ALLEGATIONS

8. Mr. Ochoa is Hispanic and, as such, is in a class protected by federal and state laws prohibiting discrimination.
9. Mr. Ochoa is an agent licensed by the State of Tennessee to sell insurance.
10. After obtaining his insurance license in August 2009, Mr. Ochoa worked as a producer in an Allstate insurance agency owned by Russell Seaver.
11. Mr. Ochoa primarily marketed and sold auto insurance to the Hispanic community in Murfreesboro, Tennessee. He very quickly became a top producer of auto insurance for Allstate in the region.
12. Mr. Ochoa and Mr. Seaver proposed to Allstate that Mr. Ochoa open a satellite office under Mr. Seaver's Allstate agency. Allstate did not approve of this proposal due to Mr. Seaver not meeting his Resources for Growth (RFG) targets in 2009.
13. Consequently, Mr. Ochoa decided to start his own Allstate agency. In order to do so, Allstate required that Mr. Ochoa have access to \$120,000 in liquid assets, clear background checks and submit an acceptable business plan and marketing plan.
14. Mr. Ochoa met Allstate's initial requirements, and Allstate conditionally

approved of Mr. Ochoa opening his own Allstate agency.

15. In order to be appointed as an agent, Allstate imposed many other requirements on Mr. Ochoa. Allstate required that Mr. Ochoa obtain an office subject to Allstate's approval and make 100% of the investment to get the office up and running. Allstate also required that Mr. Ochoa attend training at his own cost, including a 1-week new agent orientation in Chicago, Illinois and a 4-week new agent orientation in Nashville, Tennessee.

16. Pursuant to Allstate's encouragement, Mr. Ochoa formed a business entity – Tennessee Insurance Professionals LLC (the "LLC") – to own his new agency. Mr. Ochoa is the only member of the LLC, which was formed on March 1, 2010.

17. Mr. Ochoa obtained an office at 1810 Old Fort Parkway, Suite F, in Murfreesboro to set up his agency (hereafter, the "Office").

18. In order to secure the Office, Mr. Ochoa had to personally guarantee a 5-year lease for the LLC that would begin on May 1, 2010 and terminate on April 30, 2015.

19. Mr. Ochoa identified and secured the Office with no assistance whatsoever from Allstate.

20. In March and April 2010, Mr. Ochoa attended Allstate's training sessions in Chicago and Nashville. He paid for all the costs and living expenses associated with attending these sessions.

21. During the new agent orientation, Allstate trained Mr. Ochoa and the other new agents to verify their clients' prior insurance coverage. Determining prior insurance coverage was pertinent because insureds were eligible for increasing discounts on premiums if they had prior insurance coverage ranging from 6-months to 5-years.

22. Allstate instructed its agents to run a CCDB report that often reflected an individual's history of insurance coverage.

23. The CCDB report was one of three reports Allstate directed its agents to run as part of the Allstate quote system. The other two reports included a credit report and an MVR (otherwise known as a motor vehicle record).

24. Agents were trained by Allstate to obtain written proof of six months prior insurance coverage if it was not reflected in the CCDB report.

25. If insurance coverage older than six months did not appear on the CCDB report, Allstate instructed its agents to declare insurance coverage prior to six months by verbally asking clients whether they had such coverage and accepting their clients' representations on the matter as true. Clients then verified the representation by signing the insurance application.

26. Near the end of the training and after Mr. Ochoa made a significant investment into starting an Allstate agency, Mr. Ochoa and the other new agents were presented with an Exclusive Agency Agreement, form #R3001C.

27. Allstate required that all of its agents execute the Exclusive Agency Agreement to be appointed as an agent by Allstate. Allstate did not allow any negotiation of the terms of the Exclusive Agency Agreement.

28. The Exclusive Agency Agreement contains a non-competition and non-solicitation provision restricting agents from soliciting Allstate's customers or potential customers for one year after the termination of the agent's relationship with Allstate.

29. The Exclusive Agency Agreement also restricts an agent from working within one mile of the office used by the agent, even though the offices were obtained

and leased by the agents.

30. The Exclusive Agency Agreement incorporates by reference a “Supplement” that is 292 pages. Allstate did not provide a copy of the Supplement or provide access to the Supplement before the new agents, including Mr. Ochoa, were required to sign the Exclusive Agency Agreement.

31. Mr. Ochoa signed the Exclusive Agency Agreement on behalf of himself and the LLC on or about March 16, 2010 (the “Agreement”). A copy of the Agreement is attached hereto as **Exhibit A**.

32. Allstate signed the Agreement on May 1, 2010 and, by its terms, the Agreement became effective on that date.

33. The Agreement imposes numerous and onerous conditions on Plaintiffs.

34. In contrast, the Agreement does not impose any material condition on Allstate. In the Agreement, Allstate promises to appoint the LLC as an agent of Allstate, but has the power to terminate the appointment at any time with or without cause. The Agreement also provides that Allstate will pay Plaintiffs commissions pursuant to the commission schedule in the 292-page Supplement, but purportedly reserves Allstate the ability to modify the commission schedule at any time.

35. On May 1, 2010, Plaintiffs opened for business and began selling insurance for Allstate out of the Office.

36. Plaintiffs had invested approximately \$45,000 to get the Allstate insurance agency in operation. This amount does not include the cost of advertising materials that Plaintiffs purchased and used to promote the Allstate agency.

37. Mr. Ochoa again targeted his sales efforts to the Hispanic community and

again did extremely well. Mr. Ochoa continued to be a top producer for Allstate in the region.

38. Rather than support Plaintiffs as Allstate promised, Defendants have engaged, and continue to engage, in unfair, unconscionable, and unlawful conduct towards Plaintiffs.

39. In May, 2010, Defendant Eric Harvey, Territory Sales Leader for Allstate, advertised a contest – the “One from Everyone” contest – promising that Defendants would provide an iPad to the agent in the territory who wrote the most auto policies.

40. Plaintiffs won the “One from Everyone” contest. Defendants acknowledged Plaintiffs’ achievement and e-mailed every Allstate agent in the region announcing Plaintiffs as the winner of the contest.

41. Rather than providing the iPad as promised, however, Defendants gave Plaintiffs a \$25 gift card to BP and a letter congratulating them for winning the contest.

42. Defendants failed to provide any explanation as to why they did not live up to their promise.

43. In June of 2010, Micky Lundy, Field Processing Specialist for Allstate, informed Mr. Ochoa that Kim Gould, an employee in Allstate’s Compliance Department, was “out to get [him].”

44. The following month, Allstate forced Plaintiffs to terminate Plaintiffs’ producer – Tiffany Hanvy – because of an e-mail that she supposedly sent to her ex-husband in January of 2011, prior to the LLC’s formation.

45. Allstate’s forced termination of Ms. Hanvy caused Plaintiffs to lose a substantial investment because Plaintiffs had paid to market Ms. Hanvy through mailers,

radio advertising and billboards.

46. Despite being harassed and treated unfairly by Allstate, Plaintiffs continued to out-perform other agents in the region for selling auto insurance for Allstate.

47. Darrell Brock, Allstate's Field Sales Leader, notified Mr. Ochoa that he would likely win Allstate's National Rookie of the Year and would be considered a "Preferred Agency" by the end of the year if he continued to sell auto policies like he had been doing. Being classified as a Preferred Agency would allow the LLC to purchase other agencies or books.

48. In August 2010, Plaintiffs hired Sharon Pack, a licensed sales producer, to work at the agency. Plaintiffs paid for Ms. Pack's education, licensing and training to get her started.

49. Allstate's Strategic Deployment Leader, James Conlan, trained Ms. Pack how to declare prior insurance coverage at Plaintiffs' Office.

50. Ms. Pack was instructed in the same manner that Mr. Ochoa had been trained in new agent orientation. In other words, Mr. Conlan, on behalf of Allstate, told Ms. Pack that she could verify orally whether the client had insurance coverage older than six months, and that she did not need documentation on insurance coverage older than six months. Mr. Conlan demonstrated this technique on an actual quote that Ms. Pack was working on without the customer present.

51. In October of 2010, Allstate cancelled Mr. Ochoa's advertisements on a Latino radio station, LaLey 1380AM, without notifying him.

52. Jonathan Ruckman, Regional Marketing Manager for Allstate, asked the sales manager at the radio station to not tell Mr. Ochoa that his ads had been pulled.

53. Later that month, Allstate conducted an audit of Plaintiffs' books. Kim Gould, with Allstate's Compliance Department, informed Mr. Ochoa that Allstate was changing its procedures to obtain proof of prior coverage.

54. Mr. Ochoa complained that Allstate's quote system did not identify and return information – otherwise known as “hits” – on the majority of his Hispanic clients because many lack a social security number and/or because the manner in which his clients' surnames are identified in the system.

55. Ms. Gould acknowledged Allstate's system limitation and told Mr. Ochoa that he should enter transaction notes on each client that lacked a hit. Mr. Ochoa complied with this suggestion going forward.

56. Ms. Gould never told Mr. Ochoa that he had to obtain written proof of insurance coverage older than six months.

57. Micky Lundy, Field Processing Specialist for Allstate, subsequently informed Mr. Ochoa that Allstate was out to get him and that he had a “big target on [his] back.”

58. Mr. Lundy suggested that Mr. Ochoa make copies of everything pertaining to his clients – including driver's licenses and written proof of prior coverage beyond six months – even though such procedures were not required by Allstate.

59. The following day, Mr. Ochoa complained to Darrell Brock, Allstate's Field Sales Leader, that he was being singled out because his clients were non-traditional (Hispanic) and complained that his clients were being automatically classified as high risk – and therefore were charged the highest premiums – because the Allstate quote system did not return hits on them. Mr. Brock had no answers or suggestions in response

to Mr. Ochoa's complaints.

60. On October 28, 2010, a representative from Allstate's Human Resources Department demanded that Mr. Ochoa attend a meeting in Franklin, Tennessee the following day and bring 11 specific customer files with him to the meeting.

61. Mr. Ochoa attended the meeting during which he was questioned by an investigator for Allstate via video-conference.

62. The investigator interrogated Mr. Ochoa regarding the lack of documentation for his clients' prior insurance coverage older than six months, even though Allstate's policies and procedures only required written proof of the previous six months coverage.

63. Mr. Ochoa told the investigator that he declared prior coverage older than six months by verbally confirming such coverage with the client and having the client sign off on the application verifying the representation regarding coverage.

64. Mr. Ochoa had been declaring such coverage in the exact manner he had been taught in new agent orientation, in the same manner his producer had been trained in his Office in August, and in the same manner set forth in Allstate's policies and procedures.

65. On November 18, 2010, Defendant Eric Harvey called Mr. Ochoa and told him that Allstate decided to terminate his Agreement with Allstate because of the recommendations from Allstate's investigator.

66. Mr. Ochoa asked Mr. Harvey about the status of his licensed producer – Sharon Pack – since Plaintiffs had invested significantly in credentialing and training her. Mr. Harvey stated that Ms. Pack could keep writing insurance for 90 days.

67. On January 6, 2011, Darrell Williams, Allstate's Field Sales Leader, delivered Plaintiffs' termination notice signed by Defendant Eric Harvey, which provided that Plaintiffs' termination was effective immediately. A copy of the termination letter is attached hereto as **Exhibit B**.

68. Mr. Williams stated that the agency must be immediately shut down and that Ms. Pack, Plaintiffs' licensed sales producer, must be terminated immediately as well. Allstate did not allow Ms. Pack to continue working for 90 days as previously represented by Defendant Eric Harvey.

69. Mr. Williams took all of Plaintiffs' customer files, marketing materials, stationary and other items and forwarded their phones to a call center.

70. The termination letter states that Allstate was terminating the Agreement for "reasons that include providing false information to the company."

71. Defendants' purported reason for terminating Allstate's Agreement with Plaintiffs is untrue.

72. Mr. Ochoa never provided false information to Allstate. Rather, Mr. Ochoa provided information regarding prior insurance coverage in the exact manner Allstate had trained him and other agents and in compliance with Allstate's policies and procedures.

73. Defendants' true reason for terminating Plaintiffs and treating Plaintiffs unconscionably is because of Mr. Ochoa's race and origin and his clients' race and origin.

74. Despite the falsity of Allstate's accusations against Mr. Ochoa, Allstate publicized those accusations. Allstate sent a letter to the Tennessee Department of

Commerce and Insurance intentionally and dishonestly representing that Plaintiffs supplied false information to Allstate. A copy of the letter is attached here as **Exhibit C**.

75. The termination letter also states that Plaintiffs have the option of selling Plaintiffs' book of business to an approved buyer or accepting Allstate's termination payment, which payment is conditioned upon compliance with the confidentiality and non-solicitation provisions of the Agreement.

76. According to the termination letter, if Allstate approves of a prospective buyer, the sale of the book of business must be completed on or before May 1, 2011.

77. If Plaintiffs do not present a buyer or the buyer is not approved, Allstate represented in the letter that it would automatically process the termination payment.

78. On the evening of January 6, 2010, Mr. Ochoa requested Allstate management to provide his Compensation Report so he could terminate his producer and calculate the compensation owed to her.

79. To date, Allstate has not provided Mr. Ochoa with the requested Compensation Report, even though the report is easy to produce and contains information to which Plaintiffs are entitled.

80. In fact, Allstate has not provided any response whatsoever to Mr. Ochoa's requests for his Compensation Report.

81. On January 12, 2011, Plaintiffs submitted a proposal to Allstate for Russell Seaver, an established Allstate agent, to purchase their book of business and open an agency in Plaintiffs' Office.

82. Given that Mr. Seaver is already an Allstate agent, there is no lawful reason why Allstate would not approve of the purchase.

83. Again, however, Allstate has not responded to Plaintiffs' proposal, even though Plaintiffs have followed up on such requests on January 26, February 11, February 15, and February 18, 2011. A copy of the correspondence regarding such requests are attached hereto as **Exhibits D and E**.

84. Furthermore, and most egregiously, Allstate has failed and refused to respond to Plaintiffs' requests to approve the sale of their book of business while at the same time demanding that Plaintiffs close on the sale of their book of business by May 1, 2011, or be forced to accept Allstate's termination payout. In other words, Allstate is giving Plaintiffs a deadline, but is obstructing Plaintiffs' ability to meet such deadline.

85. The termination payment would benefit Allstate because they can obtain Plaintiffs' book of business for below market value and impose more unreasonable conditions on Plaintiffs.

86. Allstate likely realizes that any rejection of the proposed transaction would be clear bad faith given that the proposed purchaser is already an Allstate agent. Consequently, Allstate has chosen to not give any response whatsoever.

87. Moreover, Allstate has indicated that if it does approve of a sale, it would impose unreasonable conditions on the approval that would be certain to destroy any contract for the sale of Plaintiffs' book of business and drive away any potential buyer.

88. For example, Darrell Williams, on behalf of Allstate, initially indicated that any approval by Allstate of the proposed transaction would be conditioned upon Allstate's treatment of Mr. Seaver's new agency at Plaintiffs' Office as a multi-book location that would not qualify for the Agency Development Bonus.

89. Mr. Williams later indicated that if Allstate did approve of the proposed

transaction, it would be on the condition that Mr. Seaver merge his book of business with Plaintiffs' book of business.

90. Allstate's new condition would require that Mr. Seaver's Resources for Growth (RFG) target figures be reestablished, thereby making it impossible for Mr. Seaver to earn any bonus in his established agency or the agency purchased from Plaintiffs. No buyer would purchase Plaintiffs' agency with that condition imposed on the transaction by Allstate.

91. Allstate's new condition is unreasonable and has not been imposed on other non-Hispanic agents selling their books of business.

92. Not surprisingly, Mr. Seaver recently withdrew his offer to purchase Mr. Ochoa's book of business.

93. Meanwhile, Plaintiffs are obligated to lease the Office for another four years, but are purportedly restricted from working in the Office by the non-competition provision in the Agreement.

94. On January 26, 2011 Mr. Ochoa e-mailed Mr. Williams asking for certain reports pertaining to Plaintiffs' business through 1/31/11, including the CSRP, the Lost Ratio Report, the TPP Report, and the Compensation Report (which had been also requested on January 6, 2011).

95. Mr. Ochoa needs the requested reports to determine the commissions that Allstate owes him and the commissions that he owes his producer. Furthermore, the Lost Ratio Report is critical to Mr. Ochoa obtaining appointments to sell insurance from other insurance agencies.

96. Again, Allstate has not provided the requested information even though

Plaintiffs are entitled to such information and it is easy to produce.

97. In fact, Allstate has not provided any response whatsoever to the requests even though Plaintiffs followed up on their requests for information on February 11, February 15, and February 18. *See* Exhibits D and E.

98. Moreover, despite forwarding Plaintiffs' phone lines to Allstate's Customer Care Center on January 6, 2011, Allstate has failed and refused to transfer the contract with AT&T to become financially responsible for such phone lines. Plaintiffs are continuing to receive invoices for the phone lines to which he has no access.

99. When Mr. Ochoa's wife followed up with Allstate to determine why it had not completed AT&T's transfer of responsibility form previously sent to Allstate, she was informed that James Conlan, Allstate's Strategic Deployment Leader, had told the Allstate employee handling the matter to "sit tight."

100. Defendants have engaged in a campaign to harass, intimidate and ruin Plaintiffs because of Mr. Ochoa's and his clients' race and ethnicity. Clearly, Defendants' behavior is unfair, unconscionable and unlawful.

101. As a result, Plaintiffs have suffered numerous damages, including, but not limited to, past and future commissions, pain and suffering, lost investment, lease payments for the Office, phone bills, attorney's fees and other miscellaneous expenses.

**COUNT I: DISCRIMINATION IN THE ENFORCEMENT OF
CONTRACTS IN VIOLATION OF 42 U.S.C. § 1981**

102. Plaintiffs incorporate paragraphs 1 through 101 as if restated herein.

103. Mr. Ochoa is in a racial and ethnic class protected by state and federal law.

104. Allstate treated Mr. Ochoa less favorably than its insurance agents who were not Hispanic and treated the LLC less favorably than the agencies owned by non-

Hispanics.

105. Allstate intentionally treated Mr. Ochoa and the LLC unfavorably because of Mr. Ochoa's race and origin.

106. In doing so, Allstate has violated 42 U.S.C. § 1981 prohibiting discrimination in the making and enforcement of contracts.

107. As a result, Plaintiffs have suffered damages in an amount to be proven at trial.

**COUNT II: DISCRIMINATION IN VIOLATION
OF THE TENNESSEE HUMAN RIGHTS ACT**

108. Plaintiffs incorporate paragraphs 1 through 101 as if restated herein.

109. Allstate treated Mr. Ochoa less favorably than its agents who were not Hispanic and treated the LLC less favorably than the agencies owned by non-Hispanics.

110. Allstate intentionally treated Mr. Ochoa unfavorably because of his race and origin.

111. Allstate has engaged in discriminatory practices as defined in § Tenn. Code Ann. § 4-21-102 and § 4-21-301 and has, therefore, violated the Tennessee Human Rights Act.

112. As a result, Plaintiffs have suffered damages in an amount to be proven at trial.

**COUNT III: BREACH OF CONTRACT AND
THE DUTY OF GOOD FAITH AND FAIR DEALING**

113. Plaintiffs incorporate paragraphs 1 through 101 as if restated herein.

114. Tennessee law requires that parties to a contract act in good faith and deal fairly.

115. The Agreement and termination letter requires that the sale of Plaintiffs' business be approved by Allstate.

116. In its termination letter, Allstate requires that Plaintiffs must close on the sale of their book of business by May 1, 2011 or be forced to accept Allstate's unfavorable termination payment.

117. On January 12, 2011, Plaintiffs requested Allstate's approval in selling their book of business to Russell Seaver.

118. Given that Mr. Seaver is already an agent for Allstate, there is no lawful reason why Allstate should not approve of such sale.

119. To date, Allstate has not responded, either in approval or disapproval, to Plaintiffs' proposed transaction.

120. Allstate's lack of response has made it impossible for Plaintiffs to close on the sale of their business to Mr. Seaver and has made it impossible to find another purchaser and close on the sale of the book of business to that purchaser by the May 1st deadline imposed by Allstate.

121. Allstate's only response indicated that if it did approve of the sale, it would be on the condition that Ms. Seaver merge his book of business with Plaintiffs' book of business.

122. Such a condition would make it impossible for Mr. Seaver or any other established agent to make a bonus.

123. Allstate has not imposed that unreasonable requirement on other sales proposed by non-Hispanic agents.

124. Furthermore, Plaintiffs continue to be liable on the five-year lease for the

Office that they are supposedly restricted from using by the non-competition and non-solicitation provision in the Agreement.

125. Allstate is intentionally failing and refusing to approve of Plaintiffs' proposed transaction to force him to accept the termination payment and to make it difficult on him to continue work as an insurance agent in the State.

126. Allstate's refusal to approve Plaintiffs' proposed sale of their book of business is in bad faith.

127. Furthermore, Allstate's failure to provide the information requested by Plaintiffs and pertaining to Plaintiffs' business is in bad faith.

128. Finally, Allstate's failure to transfer financial responsibility of Plaintiffs' phone lines that Allstate forwarded to its call center is in bad faith.

129. Allstate's conduct breaches the requirement Tennessee imposes on parties in every contract to act reasonably and in good faith.

130. Plaintiffs have been damaged as a result of Allstate's breach of the Agreement in an amount to be proven at trial.

COUNT IV: INTENTIONAL INTERFERENCE WITH BUSINESS RELATIONSHIPS

131. Plaintiffs incorporate paragraphs 1 through 101 as if restated herein.

132. Plaintiffs had a business relationship with Russell Seaver and a prospective contract for Mr. Seaver to purchase Plaintiffs' book of business.

133. Allstate was aware of the relationship and prospective contract because Mr. Ochoa informed Allstate of the proposed transaction.

134. Allstate has caused a breach of the prospective contract by not approving the transaction under reasonable conditions.

135. Allstate's conduct is intentional, malicious and/or reckless.

136. Allstate has violated Tenn. Code Ann. § 47-50-109 by procuring a breach of contract and has violated Tennessee common law for intentionally interfering with business relationships.

137. Plaintiffs have been damaged as a result of Allstate's actions in an amount to be proven at trial.

**COUNT V: VIOLATIONS OF THE TENNESSEE
CONSUMER PROTECTION ACT**

138. Plaintiffs incorporate paragraphs 1 through 101 as if restated herein.

139. Allstate's conduct towards Plaintiffs and actions pursuant to the Agreement constitute unfair and deceptive acts or practices affecting the conduct of trade or commerce in this State.

140. Consequently, Allstate has violated the Tennessee Consumer Protection Act, Tenn. Code Ann § 47-18-101 *et seq.*

141. Allstate's actions, which violate the Tennessee Consumer Protection Act, were willful and knowing.

142. Plaintiffs have been damaged by Allstate's unfair and deceptive acts or practices in an amount to be proven at trial.

COUNT VI: BREACH OF CONTRACT

143. Plaintiffs incorporate paragraphs 1 through 101 as if restated herein.

144. Defendants offered to give an iPad to the insurance agent in a certain region who bound the most auto policies in the month of May.

145. Plaintiffs competed in and won the contest by binding the most auto policies of any Allstate insurance agent in the region during the month of May.

146. Defendants acknowledged that Plaintiffs won the contest.

147. Rather than give Plaintiffs an iPad as represented and promised, Defendants awarded Plaintiffs a \$25 BP card for winning the contest and gave them a letter congratulating them for their achievement.

148. In doing so, Defendants breached their contract with Plaintiffs.

149. As a result, Plaintiffs have been damaged and are entitled a new iPad or its equivalent value.

COUNT VII: DEFAMATION

150. Plaintiffs incorporate paragraphs 1 through 101 as if restated herein.

151. Defendants represented to the Tennessee Department of Commerce and Insurance and others that Plaintiffs supplied them false information.

152. Defendants' representations regarding Plaintiffs were untrue.

153. Defendants' statements regarding Plaintiffs constitute defamation.

154. As a result, Plaintiffs have suffered damages in an amount to be proven at trial.

COUNT VIII: DECLARATORY JUDGMENT

155. Plaintiffs incorporate paragraphs 1 through 101 as if restated herein.

156. Plaintiffs have never been employed by Defendants.

157. Rather, Plaintiffs have an Agreement with Allstate under which they were considered independent contractors for Allstate.

158. The Agreement contains a non-competition and non-solicitation provision purporting to restrict Plaintiffs from soliciting any customers of Allstate or operating any office within 1-mile of Plaintiffs' Office.

159. Plaintiffs obtained and secured the Office with no assistance whatsoever from Allstate.

160. Plaintiffs are still liable on the 5-year lease for the Office.

161. Plaintiffs developed their clients through marketing to the Hispanic community in the area with no support from Allstate.

162. The non-competition and non-solicitation provision in the Agreement is unenforceable and void as against Tennessee public policy.

163. Plaintiffs are entitled to a declaratory judgment, pursuant to Tenn. Code Ann § 29 14 101 *et seq.*, declaring that the non-competition and non-solicitation agreement is not enforceable and void.

WHEREFORE, PREMISES CONSIDERED, PLAINTIFFS PRAY:

- a) That Defendants be served with a copy of the Summons and Complaint and be required to answer within the time prescribed by law;
- b) That Plaintiffs be awarded a declaratory judgment stating that the non-competition and non-solicitation provision in the Agreement is not enforceable and void.
- c) That Plaintiffs be awarded money damages for back commissions, front commissions, compensatory damages, treble damages, and punitive damages.
- d) That Plaintiffs be awarded reasonable costs, expenses and attorneys' fees expended herein;
- e) That a jury be impaneled to hear this case; and
- f) That Plaintiffs be awarded any and all other relief to which they may be entitled.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Andrea M', written over a horizontal line.

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