

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
MICHAEL NOCELLA and
THE NOCELLA AGENCY

Plaintiffs,

Index No.:

-against-

**VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT
AND EQUITABLE RELIEF**

ALLSTATE INSURANCE COMPANY,

Defendant(s),
-----X

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Plaintiffs, Michael Nocella (“Nocella”) and The Nocella Agency (“the Agency”), collectively “the plaintiffs” by way of Complaint for Declaratory Judgment against, Defendant, Allstate Insurance Company, referred to as (“Allstate”), allege and say as follows:

INTRODUCTION

1. This is an action for declaratory relief to settle important questions concerning the claims and position of Allstate in their decision to terminate the Exclusive Agency Agreement with Nocella, and the Nocella Agency.
2. The issues arise from the wrongful termination of Nocella and the Agency, for cause, without written explanation or verbal explanation, regarding Allstate’s allegation that Nocella and an employee of the Agency submitted false or inaccurate information to the company in regards to four accounts the Agency for homeowner’s insurance application.
3. The wrongful termination, based upon Nocella practicing the only company wide procedure, of which Allstate is aware of, to input information to obtain an inspection for

a customer's application for homeowner's insurance, will result in irreparable and irreversible damage to Nocella, the Agency, his business, his good will and reputation, millions of dollars of loss wages, benefits, bonuses and retirement.

4. Having received an official termination letter and put on notice that he has ninety (90) days to sell his business or surrender it to Allstate at significantly reduced sales price, Nocella and the Agency, file this action in order to obtain a declaration that he has not breached the Exclusive Agency Agreement; a declaration that Allstate cannot terminate his agreement; a declaration that he did not submit false or inaccurate information intentionally against Allstate policy; a declaration that Allstate has no set or clear policy or procedure for its agents to comply with when inputting information on a home for a homeowner's insurance application; a declaration that there is no express or implied rule or policy against submitting house credentials for a homeowner's insurance policy into the system more than once; that Allstate is complicit in the company wide procedure of inputting home credential to obtain an inspection when submitting an homeowner's insurance application.

PARTIES

5. Plaintiff, Michael Nocella, is an individual residing in the State of New York, County of Suffolk, town of Sayville, with an address of 9 Gibbons Court Sayville, New York 11782.
6. Plaintiff, The Nocella Agency, is a corporation, duly licensed to do business in the State of New York, with a principal place of business located at 4250 Veterans Memorial Highway Holbrook, New York 11741.

7. Defendant, Allstate Insurance Company, is a corporation, incorporated under the laws of the State of Illinois, with a home office address of 2775 Sanders Road, A2E Northbrook, Illinois 60062.

JURISDICTION AND VENUE

8. This proceeding is brought pursuant to CPLR § 3001 and CPLR Article 63 .
9. Venue is proper in Suffolk County, New York State, pursuant to CPLR § 503 because it is where the plaintiff resides.

FACTS

Agency History

10. Michael Nocella began working as an Allstate Insurance Agent on May1, 2012, starting his business from what is called “scratch” or not having purchase an already existing book of accounts.
11. Upon information and belief, Nocella agreed to go “scratch” in lieu of purchasing a book of accounts because he was told by Field Sales Leaders of Allstate he would be able to incorporate the business he wrote while a scratch agent into any larger book of accounts he purchased.
12. Upon information and belief, Nocella was misled and was not able to incorporate the business he wrote as a scratch agent with the book purchased in 2014.
13. In August of 2015, Nocella purchased an Allstate book of business for \$265,000.00, which had an earned premium value of \$1.2 million dollars.
14. On September 1, 2014, Nocella signed and Allstate R3001S Exclusive Agency Agreement, and The Nocella Agency began operating business.

15. Upon information and belief, Allstate did not lend or finance Nocella's purchase in any regard, nor do they hold a security interest in the book of accounts.
16. Upon information and belief the purchase of the accounts was from a private individual not Allstate.
17. Upon information and belief, Nocella was the owner and has an economic interest in the earned premiums and commission of his customers.
18. Upon information and belief Allstate owns any business produced or the account.
19. Upon information and belief Allstate, pursuant to the Exclusive Agreement, can require an agent who is terminated or voluntarily terminates their agreement, to sell their book of business to an Allstate approved buyer in ninety days. The seller would then retain full compensation for the sale.
20. Upon information and belief, failing to sell within ninety days would result in the election of a Termination Payment or TPP, at reduced price then the open market.
21. Upon information and belief, in three and half years, Nocella, who has invested approximately \$3.5 million dollars into The Nocella Agency, has produced a significant amount of business that now has the value in earned premium at \$5.5 million dollars; such a book would sell for \$1.6 million dollars.
22. Upon information and belief in the past three and a half years, Nocella has been recognized personally as a top agent in the company, receiving top 25 producer honors, and awarded top producer for auto and home sales in 2017.
23. Upon information and belief, The Nocella Agency has grown to one the top agencies in the company, and finished 2017 with the best retention loss ratio, earning the Agency Best In Company.

Allstate's Investigation

24. On December 19, 2017, Nocella was informed by an Allstate Investigator that he was under investigation for allegedly submitting inaccurate documentation to the company when submitting information for a homeowner's insurance policy.
25. Upon information and belief, the investigation was pertaining to four accounts of The Nocella Agency, located in Sayville, New York and Patchogue, New York.
26. Upon information and belief, an employee of The Nocella Agency, Christina Guigliano, was also interviewed as part of the investigation.
27. Upon information and belief, after learning what the investigation was about, Nocella made multiple attempts to have the Territorial and Field Sales leaders assist him with the investigation with no response and no assistance whatsoever.
28. Upon information and belief Nocella continued to request assistance from the Allstate territorial and field sales leaders, asking them to help him find a purchaser in the event he was terminated and had to sell. He was never responded or offered any assistance.
29. Upon information and relief, Allstate field sales leader, Greg Damadeo, created a conflict of interest by intimating to Nocella that if he had to sell he would buy, leaving Nocella feeling alienated from the people he believed would be helping him through a difficult time to clear this issue up.
30. Upon information and belief, on or around February 17, 2018, Nocella received his bonus for 2017.
31. On March 1, 2018, Nocella was asked to meet Territorial Sales Leader, Ankur Chaturvedi, at a Starbucks, where Nocella was handed a termination notice stating he had ninety (90) days or till July 1, 2018, to find a purchaser for his business.

32. Upon information and belief, Nocella immediately called Nancy Fuestel, from Human Resources as he the notice indicated she would assist with any question Ankur Chaturvedi also directed Nocella to call Nancy Feustel. Nocella was again stonewalled and told there was nothing more she can do.
33. Upon information and belief, Nancy Feustel is in possession of supporting documents for the termination decision and in spite of multiple requests by the plaintiff, she has not provided them.
34. Upon information and belief, plaintiffs were terminated for cause pursuant to the Exclusive Agency Agreement, Page 8, Section XVII (b)(3), for allegedly entering inaccurate information in the processing of a homeowner's insurance application.
35. Upon information and belief, Christina Guigliano received a termination letter terminated her appointments with Allstate on March 5, 2018, three days after counsel for Nocella notify Allstate of his legal representation.
36. Upon information and belief, Nocella and Guigliano, allegedly entered home credentials that were not exact, which generated a CRM score which initiated an inspection of the property.
37. Upon information and belief, CRM means Catastrophe Risk Management.
38. Upon information and belief, the information to be submitted to generate a CRM score is as follow: square footage (living area and finished living area), dog presence, deadbolt indicator, park status, smoke detector, home style, number of families, year built, construction type, number of stories, perimeter choice, shape, measured perimeter, main home wall height and percent and basement depth.

39. Upon information and belief, Allstate has not provided any means for its agents to determine any of the above listed value that need to be inputted to an exact.
40. Upon information and belief, Allstate agents are expected to enter accurate information.
41. Upon information and belief, Agents ascertain the information by asking the customer, the internet or any other database available. The source of the information is not always correct, accurate or updated. The customer may not know or may not be telling the truth regarding some of the information.
42. Upon information and belief, Allstate agents, company wide, operate under the same objective, which is to get an inspector to the property since the inspection is the only method to get close to accurate numbers as possible. If the system says the original numbers inputted are rejected, Agents make some amendments to get the inspection scheduled. Taking human error into consideration it is unlikely that the inspection always yields one hundred percent accurate numbers.
43. Upon information and belief, Allstate managers, supervisor or leaders of the company are all aware of the method and objective of every agent of the company.
44. Upon information and belief, there is no exact formula available to any agent or the public that demonstrates how a CRM score is obtained, thereby leaving the agent to guess at what information would need to be amended.
45. Upon information and belief, there is no express or implied written statement or warning or policy or procedure that states an Allstate agent cannot enter the home credentials more than once for an application. The computer allows the agents to do so.
46. Upon information and belief, there is no express or implied statement or warning or policy or procedure, verbally, audibly or visually issued to any Allstate agent, including

Nocella that agents are not supposed to enter information in the system more than once when ascertain a CRM score on a homeowner's application.

47. Upon information and belief, Allstate has not offered, required, suggested or made available to any Allstate agent, including Nocella, any educational classes, seminars, meeting, tutorials, focus groups, conferences or any other form of educational means, on the CRM process.
48. Upon information and belief, Allstate has not offered, required, suggested or made available to any Allstate agent, including Nocella, any educational classes, seminars, meeting, tutorials, focus groups, conferences or any other form of educational means, on the exact procedure Allstate wants its agents to follow when entering CRM score information.
49. Upon information and belief, there is no express or implied written statement or warning or policy or procedure that is clearly stated in any of the Allstate issued manuals, including but not limited to, the R3001S Exclusive Agency Agreement, the Supplement for the R3001 Agreement, the Exclusive Agency Independent Contractor Manual, the Agency Standards Manual or any Allstate issued manual to its agents, stating the number of times an agent shall submit information to obtain a CRM score, how a CRM score is actually calculated, the method or procedure Allstate expects agents to follow when gathering information to submit that would ensure it was exact.
50. Upon information and belief, Allstate acknowledges and recognizes that the inspection is the final and only determinant in the issuance of homeowner's insurance.

The Damages Suffered by Plaintiffs

51. Upon information and belief, The Nocella Agency's current earned premium value is \$5,143,276.00.
52. Upon information and belief, Allstate calculated a potential termination payment or TPP based upon the previous owners earned premium and is not including any new business produced by Nocella and the Agency since he has not owned the book for 5 years or more.
53. Upon information and belief, that calculate TPP value is \$98,325.74. That is the value Nocella would be compensated if unable to procure a buyer in 90 days.
54. Upon information and belief, if the TPP value was calculated including all of Nocella's new business, in which his agency alone added the value to the book, the amount would be \$771,491.40 that is \$673,165.60 difference.
55. Upon information and belief, Nocella can sell his book on the open market for \$1.6 million dollars.
56. Upon information and belief, any purchaser would only be able to borrow from a lender 100 percent of the TPP value of \$98,325.74 for a \$1.6 million dollar purchase, rather \$771,491.40 if the TPP value was calculated fairly. In ninety days it would be near impossible to find an Allstate approved buyer that has a cash flow available to buy this book.
57. Upon information and belief, Allstate stands to make a \$1,501,674.26 windfall should they only be required to pay the \$98,325.74 TPP value.

58. Upon information and belief, Nocella was informed he would no longer be receiving his commission checks starting March 19, 2018. He stands to lose millions of dollars of commission that renew and be paid residually for nearly twenty years.
59. Upon information and belief, when the Agency makes the Best in Company list, Nocella would be benefitted with bonuses, all-expense paid vacations to the highly coveted vacation destinations, endless business opportunities all over the country, social and business events with the owners and top executives of the company. Nocella is no longer in line for this due to his illegal termination.
60. Upon information and belief, Nocella has done all he can to mitigate and solve the company wide issue that he is being targeted for. Allstate has failed at any mitigation attempt and has retaliated and stonewalled the process.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST ALLSTATE FOR A
DECLARATORY JUDGMENT**

61. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1-60 of the Complaint, as if fully set forth at length herein.
62. An actual and justiciable controversy exists between Plaintiffs and Defendant as to whether the termination of Nocella's Exclusive Agency Agreement was legal, appropriate and with cause.
63. Allstate is and was and at all times relevant to this action, aware of the practice and procedures its agents undertook to obtain an inspection when process a customer's homeowners insurance application.
64. Allstate was complicit in this company procedure.
65. Allstate never issued any warning to plaintiffs, or any agent regarding the procedure to be against company policy.

66. Allstate did not have any, and to date does not have any, implemented policy on how agents should be submit information to obtain a CRM or how many times to do so.
67. By reason of the foregoing, Plaintiffs Michael Nocella and the Nocella Agency, seek a declaratory judgment, that Michael Nocella and the Nocella Agency have complied fully with R3001S Exclusive Agency Agreement and have not acted in any manner in violation of Section XVII (b)(3) of said agreement.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST ALLSTATE FOR A
DECLARATORY JUDGMENT THAT ALLSTATE HAS NO LEGALLY
CONTRACTUAL REASON TO TERMINATE PLAINTIFFS' AGENCY
AGREEMENT**

68. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1-67 of the Complaint, as if fully set forth at length herein.
69. An actual and justiciable controversy exists between Plaintiffs and Defendant as to whether the termination of Nocella's Exclusive Agency Agreement was legal, appropriate and with cause.
70. Allstate is and was and at all times relevant to this action, aware of the practice and procedures its agents undertook to obtain an inspection when process a customer's homeowners insurance application.
71. Allstate was complicit in this company procedure.
72. Allstate never issued any warning to plaintiffs, or any agent regarding the procedure to be against company policy.
73. Allstate did not have any, and to date does not have any, implemented policy on how agents should be submit information to obtain a CRM or how many times to do so.

74. By reason of the foregoing, Plaintiffs Michael Nocella and the Nocella Agency, seek a declaratory judgment, that Allstate has no legal grounds pursuant to the agreement to terminate plaintiffs' exclusive agency agreement.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST ALLSTATE FOR A
DECLARATORY JUDGMENT THAT MICHAEL NOCELLA DOES NOT HAVE
TO SELL THE BOOK OF BUSINESS AT ISSUE IN THIS CASE**

75. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1-74 of the Complaint, as if fully set forth at length herein.

76. An actual and justiciable controversy exists between Plaintiffs and Defendant as to whether Nocella must sell his business within ninety days.

77. Allstate has failed to properly instruct its agents and has allowed all agencies to operate in the fashion described above, but seeks to have plaintiffs sell their business due to the incompetence and complicity of Allstate.

78. Allstate did not have any, and to date does not have any, implemented policy on how agents should be submit information to obtain a CRM or how many times to do so.

79. By reason of the foregoing, Plaintiffs Michael Nocella and the Nocella Agency, seek a declaratory judgment that they do not have to sell the book of business.

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST ALLSTATE FOR A
DECLARATORY JUDGMENT THAT THE NOCELLA AGENCY SHALL
CONTINUE BUSINESS AS USUAL WITHOUT INTERRUPTION OR
DISTRUBANCE BY ALLSTATE**

80. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1-79 of the Complaint, as if fully set forth at length herein.

81. An actual and justiciable controversy exists between Plaintiffs and Defendant as to whether Nocella and the Nocella Agency and its employees should be able to continue their business without interruption by Allstate.

82. Allstate having taken measures such as shutting off email access, transferring calls and changing passwords has demonstrated its intent on damage Nocella and the Agency.
83. Allstate is and was and at all times relevant to this action, aware of the practice and procedures its agents undertook to obtain an inspection when process a customer's homeowners insurance application.
84. Allstate has failed to property instruct its agents and has allowed all agencies to operate in the fashion described above, but seeks to have plaintiffs sell their business due to the incompetence and complicity of Allstate.
85. Allstate was complicit in this company procedure and has done nothing to educate its agents.
86. By reason of the foregoing, Plaintiffs Michael Nocella and the Nocella Agency, seek a declaratory judgment that business should go back to operating as it usually did, with all its employees intact, and no interruption by Allstate.

**AS AND FOR A FIFTH ACTION AGAINST ALLSTATE FOR A
DECLARATORY JUDGEMENT THAT THE NOCELLA AGENCY BOOK OF
BUSINESS TERMINATION PAYOUT (TPP) AMOUNT IS NO LESS THAN
\$771,491.40, THE VALUE AT THE COMMENCEMENT OF THIS ACTION, AND
WOULD ONLY INCREASE WITH THE INCREASE IN VALUE OF THE
EARNED PREMIUMS**

87. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1-86 of the Complaint, as if fully set forth at length herein.
88. An actual and justiciable controversy exist between Plaintiffs and Defendant as to whether Nocella and the Nocella Agency book of business has a Termination Payout (TPP) value of \$771,491.40 or greater.

89. Allstate in an oppressive, illegal, arbitrary and unconscionable manner calculates termination payout value without giving credit to new business written if an agent does not own a book for 5 or more year.
90. Such a calculation is the definition of unfairness and inequity.
91. Allstate is well aware of the significant it receives due to said method of calculating TPP.
92. Allstate has attempted to value the book in issue at \$98,325.60. This is a gross under calculation.
93. By reason of the foregoing, Plaintiffs Michael Nocella and the Nocella Agency, seek a declaratory judgment, that the Termination Payout value or TPP is \$771,491.40 or more.

**AS AND FOR A SIXTH CAUSE OF ACTION AGAINST ALLSTATE FOR A
DECLARATORY JUDGMENT THAT ALLSTATE SHALL EXPLICITLY AND
CLEARLY ISSUE POLICY AND PROCEDURE FOR INPUTTING, PROVIDING
OR SUBMITTING ANY INFORMATION TO THE COMPANY FOR ANY
PURPOSE WHATSOEVER**

94. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1-93 of the Complaint, as if fully set forth at length herein.
95. An actual and justiciable controversy exists between Plaintiffs and Defendant as to whether Allstate should issue explicitly clear policy and procedure for submitting information to the company.
96. To date Allstate has not implemented clear policy or procedure on inputting information to obtain an inspection when submitting a homeowner's insurance application.
97. Said failure to implement policy or procedure has cultivated a companywide procedure that Allstate now seeks to punish plaintiffs for.
98. Allstate has knowledge of the company wide practice, is complicit and benefits from it.

99. By reason of the foregoing, Plaintiffs Michael Nocella and the Nocella Agency, seek a declaratory judgment that Allstate explicitly and clearly provide policy and procedure for agents to follow when inputting, submitting or providing information to the company.

**AS AND FOR A SEVENTH CAUSE OF ACTION AGAINST ALLSTATE FOR A
DECLARATORY JUDGMENT THAT THE RELATIONSHIP BETWEEN
ALLSTATE AND THE PLAINTIFFS IS A PRINCIPAL/AGENT
RELATIONSHIP**

100. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1-99 of the Complaint, as if fully set forth at length herein.

101. An actual and justiciable controversy exists between Plaintiffs and Defendant as to whether Allstate and the Plaintiffs have a principal-agent relationship.

102. The agreement states on page 1, clause A and page 2, clause A under duties and conditions that Nocella is acting as an agent.

103. By reason of the foregoing, Plaintiffs Michael Nocella and the Nocella Agency, seek a declaratory judgment, that Allstate and the plaintiffs have a principal-agent relationship.

**AS AND FOR AN EIGHTH CAUSE OF ACTION AGAINST ALLSTATE FOR
NEGLIGENCE**

104. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1-103 of the Complaint, as if fully set forth at length herein.

105. Allstate did owe a duty of reasonable care to the plaintiffs in the investigation of the issue at hand.

106. The duty and the standard of care was breached by the lack of information provided during the investigation, the vague and cryptic nature of the investigation, the

length of the investigation, the failure of the territorial and field sales leaders in protecting, defending or guiding the plaintiffs.

107. The duty and the standard of care was breached when the fields sales leader created a conflict of interest with Nocella stating he would purchase his book, "if it came to it".

108. Allstate's breach is the proximate cause of the injury and damages suffered by the plaintiffs.

109. Plaintiffs have been in damaged in an amount that exceeds jurisdictional limits and is continuing to accrue.

110. By reason of the foregoing, Allstate is negligent in their breach of their duty, proximately causing damage to the plaintiffs.

AS AND FOR A NINTH CAUSE OF ACTION AGAINST ALLSTATE FOR BREACH OF CONTRACT-WRONGFUL TERMINATION

111. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1-110 of the Complaint, as if fully set forth at length herein.

112. An Exclusive Agency Agreement exists between plaintiffs and defendant.

113. The agreement specifically states said agreement can be terminated by the agent voluntarily or by Allstate.

114. Allstate is attempting to terminate the agreement for cause, and have not provided any information regarding this determination.

115. Plaintiffs have not acted in any manner consistent with the enumerated reasons in the agreement to be terminated for cause.

116. By reasons of the foregoing, Allstate has breached the agreement by wrongfully terminating Nocella.

AS AND FOR A TENTH CAUSE OF ACTION AGAINST ALLSTATE FOR VIOLATING New York Insurance Law § 3425

117. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1-116 of the Complaint, as if fully set forth at length herein.
118. Allstate's intention to no longer compensate Nocella for his commission is a direct of N.Y. Ins. 3425 (D), which states, terminated agent or broker shall be entitled to receive commissions on accounts of all business continued or written, at the insurers prevailing commission rate.
119. By reason of the foregoing, Allstate has failed to establish an exception exists or a valid reason to discontinue commission payments and thereby violates NY Ins. Law 3425 (D).

AS AND FOR AN ELEVENTH CAUSE OF ACTION AGAINST ALLSTATE FOR BREACH OF IMPLIED CONTRACT OF GOOD FAITH AND FAIR DEALING

120. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1-119 of the Complaint, as if fully set forth at length herein.
121. Plaintiffs and defendant have an agreement.
122. Allstate's wrongful termination has deprived plaintiffs of their right to receive benefits under the agreement such as commissions, bonuses and additional benefits the agreement provides.
123. Allstate has breached the agreement and the implied agreement of good faith and fair dealing by wrongfully terminating the agreement.
124. By reason of the foregoing Allstate is liable for breaching the implied contract of good faith and fair dealing.

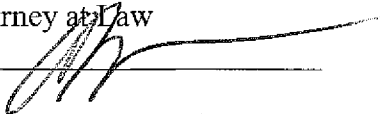
WHEREFORE, Michael Nocella and the Nocella Agency pray for relief as follows:

1. For a judicial determination and order pursuant to CPLR § 3001, declaring that Michael Nocella and the Nocella Agency have complied fully with R3001S Exclusive Agency Agreement and have not acted in any manner in violation of Section XVII (b)(3) of said agreement;
2. For a judicial determination and order pursuant to CPLR § 3001 that Allstate has no legal grounds pursuant to the agreement to terminate plaintiffs' exclusive agency agreement;
3. For a judicial determination and order pursuant to CPLR § 3001 that they do not have to sell the book of business;
4. For a judicial determination and order pursuant to CPLR § 3001 that business should go back to operating as it usually did, with all its employees intact, and no interruption by Allstate;
5. For a judicial determination and order pursuant to CPLR § 3001 that the Termination Payout value or TPP is \$771,491.40 or more;
6. For a judicial determination and order pursuant to CPLR § 3001 that Allstate explicitly and clearly provide policy and procedure for agents to follow when inputting, submitting or providing information to the company;
7. For a judicial determination and order pursuant to CPLR § 3001 that Allstate and the plaintiffs have a principal-agent relationship.
8. That Allstate was negligent in its investigation and dealing with plaintiffs during said investigation;
9. That Allstate breached the agreement by wrongfully terminating plaintiffs' exclusive agency agreement.

10. That Allstate violated New York Insurance Law § 3425;
11. That Allstate breached the implied contract of good faith and fair dealing.
12. For the recovery of plaintiffs' attorney fees and costs.
13. For such additional and further relief, in law and equity, as the Court may deem just and proper.

Dated: March 10, 2018
Commack, NY

Anthony P. DellUniversita
Attorney at Law



5036 Jericho Turnpike-Suite 305
Commack, New York 11725
(631) 462-6900
Attorney for Plaintiffs

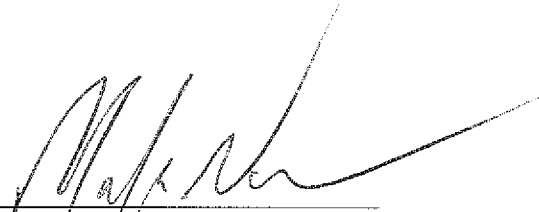
VERIFICATION

STATE OF NEW YORK)

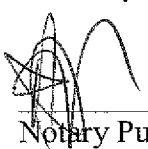
COUNTY OF SUFFOLK) ss:

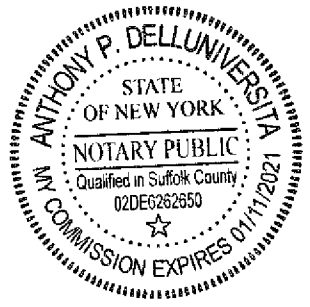
MICHAEL NOCELLA, being duly sworn deposes and says:

I am the individual Plaintiff in the within action herein and the owner of the Nocella Agency; I have read the annexed **SUMMONS AND VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT** and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.


Michael Nocella

Sworn to before me the 10th
day of March, 2018


Notary Public



REQUEST FOR JUDICIAL INTERVENTION

UCS-840 (7/2012)

Suffolk Supreme COURT, COUNTY OF Suffolk

Index No:

Date Index Issued:

CAPTION: Enter the complete case caption. Do not use et al or et ano. If more space is required, attach a caption rider sheet.

MICHAEL NOCELLA, THE NOCELLA AGENCY

Plaintiff(s)/Petitioner(s)

For Court Clerk Use Only:

IAS Entry Date

Judge Assigned

RJI Date

-against-

ALLSTATE INSURANCE COMPANY

Defendant(s)/Respondent(s)

NATURE OF ACTION OR PROCEEDING:

Check ONE box only and specify where indicated.

<p>MATRIMONIAL</p> <p><input type="checkbox"/> Contested</p> <p>NOTE: For all Matrimonial actions where the parties have children under the age of 18, complete and attach the MATRIMONIAL RJI Addendum. For Uncontested Matrimonial actions, use RJI form UD-13.</p>	<p>COMMERCIAL</p> <p><input type="checkbox"/> Business Entity (including corporations, partnerships, LLCs, etc.)</p> <p><input type="checkbox"/> Contract</p> <p><input checked="" type="checkbox"/> Insurance (where insurer is a party, except arbitration)</p> <p><input type="checkbox"/> UCC (including sales, negotiable instruments)</p> <p><input type="checkbox"/> Other Commercial:</p> <p>NOTE: For Commercial Division assignment requests [22 NYCRR § 202.70(D)], complete and attach the COMMERCIAL DIV RJI Addendum.</p>
<p>TORTS</p> <p><input type="checkbox"/> Asbestos</p> <p><input type="checkbox"/> Breast Implant</p> <p><input type="checkbox"/> Environmental:</p> <p><input type="checkbox"/> Medical, Dental, or Podiatric Malpractice</p> <p><input type="checkbox"/> Motor Vehicle</p> <p><input type="checkbox"/> Products Liability:</p> <p><input type="checkbox"/> Other Negligence:</p> <p><input type="checkbox"/> Other Professional Malpractice:</p> <p><input type="checkbox"/> Other Tort:</p>	<p>REAL PROPERTY: How many properties does the application include?</p> <p><input type="checkbox"/> Condemnation</p> <p><input type="checkbox"/> Mortgage Foreclosure: <input type="checkbox"/> Residential <input type="checkbox"/> Commercial</p> <p>Property Address:</p> <p>NOTE: For Mortgage Foreclosure actions involving a one- to four-family, owner-occupied, residential property, or an owner-occupied condominium, complete and attach the FORECLOSURE RJI Addendum.</p> <p><input type="checkbox"/> Tax Certiorari - Section: Block: Lot:</p> <p><input type="checkbox"/> Tax Foreclosure</p> <p><input type="checkbox"/> Other Real Property:</p>
<p>OTHER MATTERS</p> <p><input type="checkbox"/> Certificate of Incorporation/Dissolution [see NOTE under Commercial]</p> <p><input type="checkbox"/> Emergency Medical Treatment</p> <p><input type="checkbox"/> Habeas Corpus</p> <p><input type="checkbox"/> Local Court Appeal</p> <p><input type="checkbox"/> Mechanic's Lien</p> <p><input type="checkbox"/> Name Change</p> <p><input type="checkbox"/> Pistol Permit Revocation Hearing</p> <p><input type="checkbox"/> Sale or Finance of Religious/Not-for-Profit Property</p> <p><input type="checkbox"/> Other:</p>	<p>SPECIAL PROCEEDINGS</p> <p><input type="checkbox"/> CPLR Article 75 (Arbitration) [see NOTE under Commercial]</p> <p><input type="checkbox"/> CPLR Article 78 (Body or Officer)</p> <p><input type="checkbox"/> Election Law</p> <p><input type="checkbox"/> MHL Article 9.60 (Kendra's Law)</p> <p><input type="checkbox"/> MHL Article 10 (Sex Offender Confinement-Initial)</p> <p><input type="checkbox"/> MHL Article 10 (Sex Offender Confinement-Review)</p> <p><input type="checkbox"/> MHL Article 81 (Guardianship)</p> <p><input type="checkbox"/> Other Mental Hygiene:</p> <p><input type="checkbox"/> Other Special Proceeding:</p>

STATUS OF ACTION OR PROCEEDING:

Answer YES or NO for EVERY question AND enter additional information where indicated.

YES NO

Has a summons and complaint or summons w/notice been filed?

YES NO

If yes, date filed:

Has a summons and complaint or summons w/notice been served?

YES NO

If yes, date served:

Is this action/proceeding being filed post-judgment?

YES NO

If yes, judgment date:

NATURE OF JUDICIAL INTERVENTION:

- Infant's Compromise
- Note of Issue and/or Certificate of Readiness
- Notice of Medical, Dental, or Podiatric Malpractice Date Issue Joined:
- Notice of Motion Relief Sought: Return Date:
- Notice of Petition Relief Sought: Return Date:
- Order to Show Cause Relief Sought: Return Date:
- Other Ex Parte Application Relief Sought:
- Poor Person Application
- Request for Preliminary Conference
- Residential Mortgage Foreclosure Settlement Conference
- Writ of Habeas Corpus
- Other: temporary restraining order

RELATED CASES: List any related actions. For Matrimonial actions, include any related criminal and/or Family Court cases. If additional space is required, complete and attach the **RJI Addendum**. If none, leave blank.

Case Title	Index/Case No.	Court	Judge (if assigned)	Relationship to Instant Case

PARTIES: For parties without an attorney, check "Un-Rep" box AND enter party address, phone number and e-mail address in space provided. If additional space is required, complete and attach the **RJI Addendum**.

Un-Rep	Parties:	Attorneys and/or Unrepresented Litigants:	Issue Joined (Y/N):	Insurance Carrier(s):
	List parties in caption order and indicate party role(s) (e.g., defendant; 3rd-party plaintiff).	Provide attorney name, firm name, business address, phone number and e-mail address of all attorneys that have appeared in the case. For unrepresented litigants, provide address, phone number and e-mail address.		
<input type="checkbox"/>	Name: NOCELLA, MICHAEL Role(s): Plaintiff/Petitioner	ANTHONY DELLUNIVERSITA, Anthony P. DellUniversita- Law Office of Michael J. Alber, 5036 Jericho Turnpike Suite 305, Commack, NY 11725, 631-462-6900, anthony@apdlaw1.com	NO	
<input type="checkbox"/>	Name: THE NOCELLA AGENCY Role(s): Plaintiff/Petitioner	ANTHONY DELLUNIVERSITA, Anthony P. DellUniversita- Law Office of Michael J. Alber, 5036 Jericho Turnpike Suite 305, Commack, NY 11725, 631-462-6900, anthony@apdlaw1.com	NO	
<input type="checkbox"/>	Name: ALLSTATE INSURANCE COMPANY Role(s): Defendant/Respondent	Emily Renfro, 2775 Sander Road A2E, Northbrook, IL 60062	NO	
<input type="checkbox"/>	Name: Role(s):			
<input type="checkbox"/>	Name: Role(s):			

I AFFIRM UNDER THE PENALTY OF PERJURY THAT, TO MY KNOWLEDGE, OTHER THAN AS NOTED ABOVE, THERE ARE AND HAVE BEEN NO RELATED ACTIONS OR PROCEEDINGS, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION PREVIOUSLY BEEN FILED IN THIS ACTION OR PROCEEDING.

Dated: 03/10/2018

ANTHONY PAUL DELLUNIVERSITA
SIGNATURE

4369294
ATTORNEY REGISTRATION NUMBER

ANTHONY PAUL DELLUNIVERSITA
PRINT OR TYPE NAME

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF Suffolk

MICHAEL NOCELLA, THE NOCELLA AGENCY

Plaintiff(s)/Petitioner(s)

-against-
ALLSTATE INSURANCE COMPANY

Defendant(s)/Respondent(s)

X

Index No:

RJI No. (if any):

COMMERCIAL DIVISION

Request for Judicial Intervention Addendum

COMPLETE WHERE APPLICABLE [add additional pages if needed]:

Plaintiff/Petitioner's cause(s) of action [check all that apply]:

- Breach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g. unfair competition), or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings (e.g. sales of assets or securities; corporate restructuring; partnership, shareholder, joint venture, and other business agreements; trade secrets; restrictive covenants; and employment agreements not including claims that principally involve alleged discriminatory practices)
- Transactions governed by the Uniform Commercial Code (exclusive of those concerning individual cooperative or condominium units)
- Transactions involving commercial real property, including Yellowstone injunctions and excluding actions for the payment of rent only
- Shareholder derivative actions — without consideration of the monetary threshold
- Commercial class actions — without consideration of the monetary threshold
- Business transactions involving or arising out of dealings with commercial banks and other financial institutions
- Internal affairs of business organizations
- Malpractice by accountants or actuaries, and legal malpractice arising out of representation in commercial matters
- Environmental insurance coverage
- Commercial insurance coverage (e.g. directors and officers, errors and omissions, and business interruption coverage)
- Dissolution of corporations, partnerships, limited liability companies, limited liability partnerships and joint ventures — without consideration of the monetary threshold
- Applications to stay or compel arbitration and affirm or disaffirm arbitration awards and related injunctive relief pursuant to CPLR Article 75 involving any of the foregoing enumerated commercial issues — without consideration of the monetary threshold

Plaintiff/Petitioner's claim for compensatory damages [exclusive of punitive damages, interest, costs and counsel fees claimed]:

Plaintiff/Petitioner's claim for equitable or declaratory relief [brief description]:

Injunction

Defendant/Respondent's counterclaim(s) [brief description, including claim for monetary relief]:

I REQUEST THAT THIS CASE BE ASSIGNED TO THE COMMERCIAL DIVISION. I CERTIFY THAT THE CASE MEETS THE JURISDICTIONAL REQUIREMENTS OF THE COMMERCIAL DIVISION SET FORTH IN 22 NYCRR § 202.70(a), (b) and (c).

Dated: 03/10/2018

ANTHONY PAUL DELLUNIVERSITA
SIGNATURE

ANTHONY PAUL DELLUNIVERSITA
PRINT OR TYPE NAME



STATE OF NEW YORK
UNIFIED COURT SYSTEM
SUFFOLK COUNTY
SUPREME COURT
COMMERCIAL DIVISION

C. RANDALL HINRICHS
District Administrative Judge
Suffolk County

WARREN G. CLARK
District Executive

MICHAEL SCARDINO
Chief Clerk

NOTICE OF ASSIGNMENT TO THE COMMERCIAL DIVISION

Your filing has been assigned to the Commercial Division of this court and is subject to *Section 202.70 Rules of the Commercial Division of Supreme Court.*

E-filing is mandatory for Commercial Division Cases in Suffolk County, at the time of the filing of a Commercial Division Request for Judicial Intervention (RJI) Addendum your matter will be randomly assigned to a Commercial Division Justice. The assigned justice will be indicated in the NYSCEF system and on the New York State Courts E-Courts website. Note that your assigned justice may be in either Riverhead or Central Islip.

Pursuant to Rule 19:

Orders to Show Cause. Motions shall be brought on by order to show cause only when there is genuine urgency (e.g., applications for provisional relief), a stay is required or a statute mandates so proceeding. See Rule 20. Absent advance permission, reply papers shall not be submitted on orders to show cause.

Counsel are directed to contact the chambers of the assigned justice to schedule when a proposed Order to Show Cause will be presented. If after contacting chambers the assigned judge is unavailable, and the application cannot wait until the judge is available, counsel are directed to appear at the **Riverhead Special Term Clerk's Office** for assignment to the special term justice on duty.

The Commercial Division Justices are:

Justice Elizabeth H. Emerson
210 Center Drive
Riverhead, NY 11901
631-852-2781

Justice James C. Hudson
1 Court Street
Riverhead, NY 11901
631-852-3290

Justice Jerry Garguilo
400 Carleton Avenue
Central Islip, NY 11722
631-853-7703

Preliminary Conference Request. A preliminary conference shall be held within 45 days of assignment of the case to a Commercial Division justice, or as soon thereafter as is practicable. If a Request for Judicial Intervention is accompanied by a dispositive motion, the preliminary conference shall take place within 30 days following the decision of such motion (if not rendered moot) or at such earlier date as scheduled by the justice presiding. Notice of the preliminary conference date will be sent by the court at least five days prior thereto. If a Request for Judicial Intervention is not accompanied by a dispositive motion, the preliminary conference will be scheduled in the assigned justice's courtroom after review by the Commercial Division Court Attorney Referee in the DCM Part.

Rev.7/27/17