

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION**

PAUL WASGATT,
Plaintiff,

v.

ALLSTATE INSURANCE COMPANY,
GLENN T. SHAPIRO, SCOTT BLUME, and
EDWARD NORCIA,

Defendants.

CIVIL ACTION NO. 4:20-CV-40118

**DEFENDANTS ALLSTATE INSURANCE COMPANY, GLENN T. SHAPIRO, SCOTT
BLUME AND EDWARD NORCIA’S ANSWER TO PLAINTIFF’S COMPLAINT AND
COUNTERCLAIM OF DEFENDANT ALLSTATE INSURANCE COMPANY**

Defendants Allstate Insurance Company (“Allstate”), Glenn T. Shapiro (“Mr. Shapiro”), Scott Blume (“Mr. Blume”) and Edward Norcia (“Mr. Norcia”) (collectively, “Defendants”) hereby answers each of the paragraphs of the Complaint as set forth below. Any allegation in the Complaint that is not expressly admitted is denied.¹

PREFATORY ALLEGATIONS

1. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 1 and therefore deny them.
2. Defendants admit the allegations in paragraph 2.

¹ Pursuant to Fed. R. Civ. P. 12(b)(6), Defendants Mr. Norcia and Mr. Blume have filed a motion to dismiss the claims asserted against them individually.

3. Defendants admit that Mr. Shapiro is the President, Allstate Personal Insurance, Esurance, Encompass, Answer Financial. Defendants deny the remaining allegations in paragraph 3.

4. Defendants admit that Mr. Blume is a Territory Sales Leader at Allstate. Defendants deny the remaining allegations in paragraph 4.

5. Defendants admit that Mr. Norcia resides on Rebecca Drive, Downingtown, Pennsylvania. Defendants deny the remaining allegations in paragraph 5.

6. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent a response is required, Defendants deny the allegations in paragraph 6.

7. This paragraph does not contain any allegations of fact, therefore no response is required.

BACKGROUND

8. Defendants deny the allegations in paragraph 8.

9. Defendants deny the allegations in paragraph 9.

10. Defendants admit that Allstate required Plaintiff to comply with Allstate's policies and procedures with respect to the writing of insurance and submission of prospective policyholders. Allstate tracked the results of Plaintiff's agency. Defendants deny the remaining allegations in paragraph 10.

11. Defendants admit Mr. Shapiro served as Executive Vice President, Claims at Allstate from April 2016 through December 2017, and as President of Allstate Personal Lines from January 2018 through January 2020. Defendants admit Mr. Shapiro has served as

President, Allstate Personal Insurance, Esurance, Encompass, Answer Financial, since January 2020. Defendants deny the remaining allegations in paragraph 11.

12. Defendants deny the allegations in paragraph 12.

13. Defendants deny the allegations in paragraph 13.

14. Defendants deny the allegations in paragraph 14.

15. Defendants admit Mr. Shapiro was the Chief Claims Officer & EVP –

Commercial Insurance at Liberty Mutual Group, Inc., headquartered in Boston, Massachusetts.

Defendants deny the remaining allegations in paragraph 15.

16. Defendants deny the allegations in paragraph 16.

17. Defendants deny the allegations in paragraph 17.

18. Defendants deny the allegations in paragraph 18.

19. Defendants lack sufficient information to admit or deny the allegations in paragraph 19 and therefore deny them.

20. Defendants admit Allstate previously marketed and sold policies through Neighborhood Office Agents. Defendants further admit that Allstate insurance policies also are bound through call centers personnel. Defendants deny the remaining allegations in paragraph 20.

21. Defendants deny the allegations in paragraph 21.

22. Defendants admit that Allstate employs representatives in call centers.

Defendants deny the remaining allegations in paragraph 22.

23. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent a response is required, the Massachusetts statute speaks for itself. Defendants deny the remaining allegations in paragraph 23.

24. Defendants deny the allegations in paragraph 24.

25. Defendants admit that Plaintiff was authorized to promote and sell Allstate insurance products and services, or products and services of other carriers approved by Allstate, but denies the remaining allegations in paragraph 25.

26. Defendants deny the allegations in paragraph 26.

27. Defendants deny the allegations in paragraph 27.

28. Defendants deny the allegations in paragraph 28.

29. Defendants deny the allegations in paragraph 29.

30. Defendants deny the allegations in paragraph 30.

31. Defendants admit that Plaintiff was an agent of Allstate and was limited to promoting and selling Allstate products and products that Allstate authorized his agency to promote and sell. Defendants deny the remaining allegations in paragraph 31.

32. Defendants admit that Plaintiff was required to comply with the terms of his written agreement with Allstate. Defendants deny the remaining allegations in paragraph 32.

33. Defendants admit that some Allstate agents begin their careers in the insurance field with Allstate. Defendants deny the remaining allegations in paragraph 33.

34. Defendants admit Plaintiff filed complaints about Allstate with the Massachusetts Department of Insurance. Defendants deny the remaining allegations in paragraph 34.

35. Defendants admit Plaintiff filed complaints about Allstate with the Massachusetts Department of Insurance. Defendants deny the remaining allegations in paragraph 35.

36. Defendants deny the allegations in paragraph 36.

37. Defendants admit that Plaintiff made complaints to representatives of Allstate. Defendants deny the remaining allegations in paragraph 37.

38. Defendants deny the allegations in paragraph 38.

39. Defendants deny the allegations in paragraph 39.

40. Defendants admit Plaintiff made complaints to representatives of Allstate and the Department of Insurance. Defendants deny the remaining allegations in paragraph 40.

41. Defendants admit Plaintiff filed complaints about Allstate with the Massachusetts Department of Insurance. Defendants deny the remaining allegations in paragraph 41.

42. Defendants deny the allegations in paragraph 42.

43. Defendants deny the allegations in paragraph 43.

44. Defendants admit that Plaintiff was eligible for a termination payment under the terms and conditions specified in the written agreement Plaintiff entered into with Allstate. Defendants deny all other allegations in paragraph 44.

45. Defendants admit the termination payment was referenced in Plaintiff's termination letter. Defendants deny the remaining allegations in paragraph 45.

46. Defendants admit Plaintiff was sent a spreadsheet with the calculations of a potential termination payment, as specified in the terms and conditions of Plaintiff's written agreement with Allstate. Defendants deny the remaining allegations in paragraph 46.

47. Defendants deny the allegations in paragraph 47.

CAUSES OF ACTION

FIRST CAUSE OF ACTION: **MISCLASSIFICATION AS AN INDEPENDENT CONTRACTOR**

48. Defendants re-allege their answers to paragraphs 1 through 47, inclusive.

49. To the extent that paragraph 49 contains an allegation of law and not of fact, Defendants are under no obligation to respond to such allegations. If a response is required,

Defendants lack knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 49 and therefore deny them.

50. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 50 and therefore deny them.

51. To the extent that paragraph 51 contains an allegation of law and not of fact, Defendants are under no obligation to respond to such allegations. If a response is required, Defendants deny any and all allegations in paragraph 51 that suggest or imply that Defendants have violated M.G.L. c. 149 § 148B or that such provision applies to them.

52. To the extent that paragraph 52 contains an allegation of law and not of fact, Defendants are under no obligation to respond to such allegations. If a response is required, Defendants deny any and all allegation in paragraph 52 that suggest or imply that Defendants have violated M.G.L. c. 149 § 148B or that such provision applies to them.

53. To the extent that paragraph 53 contains an allegation of law and not of fact, Defendants are under no obligation to respond to such allegations. If a response is required, Defendants deny the allegations in paragraph 53.

54. Defendants admit that Allstate maintains representatives in call centers. Defendants deny the remaining allegations in paragraph 54.

55. Defendants deny the allegations in paragraph 55.

56. Defendants admit that Allstate maintains representatives in call centers. Allstate denies the remaining allegations in paragraph 56.

57. Defendants deny the allegations in paragraph 57.

58. Defendants admit Plaintiff acted as an agent for the purpose of soliciting, selling, and servicing insurance and other company business in accordance with the provisions of

Plaintiff's written agreement with Allstate. Defendants deny the remaining allegations in paragraph 58.

59. Defendants deny the allegations in paragraph 59.

60. Defendants admit that most of Allstate insurance products in the Commonwealth of Massachusetts are sold through Exclusive Agencies, and that some are sold through call center representatives. Defendants deny the remaining allegations in paragraph 60.

61. Defendants deny the allegations in paragraph 61.

62. Defendants deny the allegations in paragraph 62.

63. Defendants deny the allegations in paragraph 63.

64. Defendants admit that Plaintiff was required to maintain insurance, meet certain business objectives, and comply with the terms of his written agreement with Allstate.

Defendants deny the remaining allegations in paragraph 64.

65. Defendants admit that Plaintiff was permitted to market and sell products approved by Allstate. Defendants deny the remaining allegations in paragraph 65.

66. Defendants admit that Plaintiff was permitted to market and sell products approved by Allstate. Defendants deny the remaining allegations in paragraph 66.

67. Defendants deny the first sentence in paragraph 67. Defendants lack sufficient information to admit or deny the second sentence of paragraph 67 and therefore deny it.

68. Defendants deny the allegations in paragraph 68.

69. Defendants deny the allegations in paragraph 69.

70. Defendants admit that Allstate determined which risks it would insure and what the terms and conditions of such policies were. Defendants further admit that Plaintiff did not

have authority to change the terms of Allstate insurance policies. Defendants deny the remaining allegations in paragraph 70.

71. Defendants deny the allegations in paragraph 71.

72. Defendants deny the allegations in paragraph 72.

73. Defendants deny the allegations in paragraph 73.

74. Defendants deny the allegations in paragraph 74.

75. Defendants deny the allegations in paragraph 75.

76. Defendants deny the allegations in paragraph 76.

77. Defendants admit that the Plaintiff contracted with Allstate to sell and service insurance policies to Allstate customers. Defendants deny the remaining allegations in paragraph 77.

78. Defendants admit that Allstate previously distributed insurance through Neighborhood Office Agents. Defendants further admit that Allstate insurance policies also are distributed through call center personnel. Defendants deny the remaining allegations in paragraph 78.

79. Defendants admit that Plaintiff was required to comply with the terms of his written agreement with Allstate. Defendants deny the remaining allegations in paragraph 79.

80. Defendants deny the allegations in paragraph 80.

81. Defendants admit that Plaintiff was required to comply with the terms of his written agreement with Allstate and that he could not hold himself out as an independent insurance agent capable of selling the insurance products of multiple carriers. Defendants deny the remaining allegations in paragraph 81.

82. Defendants deny the allegations in paragraph 82.

83. Defendants admit that Plaintiff agreed in his written agreement that Allstate owned the telephone number Plaintiff used in his agency and the files of Allstate customers that Plaintiff serviced. Defendants deny the remaining allegations in paragraph 83.

84. Defendants deny that Plaintiff is entitled to the relief sought in paragraph 84 and deny any other allegations in paragraph 84.

85. Defendants deny that Plaintiff is entitled to damages.

SECOND CAUSE OF ACTION:
TERMINATION OF PLAINTIFF IN VIOLATION OF PUBLIC POLICY

86. Defendants re-allege their answers to paragraphs 1 through 85, inclusive.

87. Defendants deny the allegations in paragraph 87.

88. Defendants deny the allegations in paragraph 88.

89. Defendants deny the allegations in paragraph 89.

90. Defendants admit Plaintiff made complaints to Allstate representatives.

Defendants deny all remaining allegations in paragraph 90.

91. Defendants deny the allegations in paragraph 91.

92. Defendants admit Plaintiff filed complaints about Allstate with the Massachusetts Department of Insurance. Defendants deny the remaining allegations in paragraph 92.

93. Defendants deny the allegations in paragraph 93.

94. Defendants deny the allegations in paragraph 94.

THIRD CAUSE OF ACTION:
BREACH OF CONTRACT FOR FAILURE TO PAY PLAINTIFF HIS TERMINATION
PAYMENT

95. Defendants re-allege their answers for paragraphs 1 through 94, inclusive.

96. Defendants admit Plaintiff was eligible for a termination payment under the terms and conditions specified in the written agreement Plaintiff entered into with Allstate. Defendants deny the remaining allegations in paragraph 96.

97. Defendants deny the allegations in paragraph 97.

98. Defendants deny the allegations in paragraph 98.

99. Defendants deny the allegations in paragraph 99.

100. Defendants deny the allegations in paragraph 100.

101. Defendants deny the allegations in paragraph 101.

102. Defendants deny the allegations in paragraph 102.

PLAINTIFF'S PRAYER FOR RELIEF

Defendants admit that Plaintiff seeks the damages and relief requested in this section, but deny Plaintiff is entitled to such relief.

AFFIRMATIVE AND OTHER DEFENSES

As for separate defenses to the Complaint, and without conceding that Defendants have the burden of proof or persuasion as to any of them except as required by applicable law, Defendants state as follows:

FIRST DEFENSE

Plaintiff cannot establish that he was an employee of Allstate. Plaintiff was properly classified as an independent contractor, as Plaintiff was free from control and direction in connection with the performance of his service, both under the Agreement and the service in fact; Plaintiff performed service outside the usual course of Allstate's business; and Plaintiff was customarily engaged in an independently established trade, occupation, profession or business of the same nature that involved the service performed.

SECOND DEFENSE

Plaintiff has failed to exhaust administrative remedies pursuant to Chapter 149, section 150 of the Massachusetts General Laws.

THIRD DEFENSE

Plaintiff's claim under Chapter 149, section 148B of the Massachusetts General Laws is barred, in part, by the applicable statute of limitations.

FOURTH DEFENSE

Chapter 149, section 148B of the Massachusetts General Laws do not apply to insurance agency relationships governed by insurance regulations.

FIFTH DEFENSE

Plaintiff's claims are preempted in whole or in part by the insurance regulations of Massachusetts.

SIXTH DEFENSE

Neither Mr. Shapiro, Mr. Norcia, nor Mr. Blume are proper parties under Chapter 149, section 148B of the Massachusetts General Laws.

SEVENTH DEFENSE

Plaintiff's Exclusive Agency Agreement was terminated for legitimate, non-retaliatory reasons.

EIGHTH DEFENSE

Plaintiff engaged in a material breach of the Allstate Exclusive Agency Agreement on which he bases his breach of contract claim, thereby excusing any non-performance by Allstate.

NINTH DEFENSE

Any damages awarded to Plaintiff should be reduced and/or set off against any amounts owed by Plaintiff to Defendant Allstate due to Plaintiff's breaches of the Allstate Exclusive Agency Agreement.

TENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, as he has failed to state a claim upon which relief can be granted.

RESERVATION OF RIGHTS

Defendants reserve the right to assert additional affirmative defenses or defenses of which it becomes knowledgeable during the course of discovery.

WHEREFORE, Defendants pray for judgment as follows:

1. That Plaintiff takes nothing by reason of the Complaint and that the same be dismissed with prejudice on the merits;
2. That judgment be entered for the Defendants;
3. That Defendants recover its costs of suits herein; and
4. That Defendants be granted such further relief as the Court deems just and proper.

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**COUNTERCLAIMS OF DEFENDANT/COUNTERCLAIM PLAINTIFF ALLSTATE
INSURANCE COMPANY, INC.**

Defendant/Counterclaim Plaintiff Allstate Insurance Company, Inc. (“Allstate”) brings these Counterclaims against Plaintiff/Counterclaim Defendant Paul Wasgatt (“Wasgatt”) (together, the “Parties”) and alleges as follows:

PARTIES

1. Allstate is an Illinois insurance company with its principal place of business in Northbrook, Illinois.
2. Upon information and belief, Wasgatt is an individual residing at 23 Fiske Street, Worcester, Massachusetts.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs, and there is complete diversity of citizenship between the Parties.
4. On the basis of the foregoing allegations and by virtue of Wasgatt’s commencement of this action in Massachusetts, this Court has personal jurisdiction over Wasgatt and this counterclaim.
5. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and by virtue of Wasgatt’s commencement of this action in Massachusetts.

FACTUAL BACKGROUND

Wasgatt’s Operation of an Independent Agency in Violation of Promises to Allstate

6. Prior to August 2013, Wasgatt ran an independent insurance agency called “Safeside Insurance” in Worcester, Massachusetts. In that capacity, he sold insurance as a representative of a number of different insurance providers.

7. Effective August 1, 2013, Wasgatt entered into an R3001S Exclusive Agency Agreement (“R3001S Agreement”) with Allstate. The R3001S Agreement is attached to this Counterclaim as Exhibit A.

8. In entering in to the R3001S Agreement, Wasgatt agreed to become an Exclusive Agent of Allstate, operating an exclusive Allstate agency. The R3001S Agreement “authorized [Wasgatt] to sell products specified by the Company and through the companies specified in the Supplement to the R3001S Agreement.”

9. Wasgatt’s R3001S Agreement further provided that he would “not, either directly or indirectly, solicit, sell, or service insurance of any kind for any other company, agent, or broker, or refer a prospect to another company, agent, or broker, without the prior written approval of the Company.”

10. To enable Wasgatt to close down his independent agency, Wasgatt and Allstate entered into an Agency Transition Addendum (“Transition Agreement”). The Transition Agreement was designed to allow Wasgatt to “wind[] down [his] Independent Agency operations in a customer focused manner while at the same time fulfilling all of [his] obligations under the R3001 Exclusive Agency Program.” The Transition Agreement is attached to this Counterclaim as Exhibit B.

11. From August 1, 2013 to October 31, 2014 (the “Transition Period”), Plaintiff was permitted to service business written for other insurance companies prior to August 1, 2013 in order to effectuate the winding down of his independent agency.

12. As part of the Transition Agreement, Wasgatt agreed to maintain separate and distinct operations between his independent agency and his Allstate agency during the Transition

Period in order to avoid customer confusion and to protect the privacy of all data involving current and prospective Allstate customer information.

13. At the end of the Transition Period on October 31, 2014, Wasgatt promised that he would operate exclusively as an Allstate agent, and promote and sell only products authorized by Allstate. Wasgatt agreed he would not operate any other insurance agency.

14. Upon information and belief, in addition to operating his Allstate agency, Wasgatt continued to operate an independent agency after October 31, 2014. Despite his promises to Allstate in the Transition Agreement and the R3001S Agreement, Wasgatt continued to operate an independent agency during the time he was a party to the R3001S Agreement with Allstate.

15. In operating an independent agency after October 31, 2014, Wasgatt sold and serviced insurance policies on behalf of insurance carriers other than Allstate, and not authorized by Allstate, all in violation of the Transition Agreement and the R3001S Agreement.

Wasgatt's Operation of an Allstate Agency as an Independent Contractor

16. During the time that Wasgatt operated an Allstate agency, Wasgatt was an independent contractor. In the R3001S Agreement, Wasgatt agreed that he was an independent contractor for all purposes and that he would act as an agent for Allstate for purposes of soliciting, selling, and servicing insurance and other business as defined within the provisions of the R3001S Agreement.

17. Wasgatt conducted business as an independent contractor while he operated as an Allstate agent under the R3001S Agreement.

18. In doing so, save for measures required principally by insurance regulation, Wasgatt operated free from direction or control over the work he performed. In particular, Wasgatt was free to hire staff. He determined whom he would hire, what compensation he

would pay to them, and what duties and responsibilities he would assign to them. Wasgatt remained free to decide when, how, and in what capacity he would work, and whether he would perform particular tasks or have others do so. Among other things, and within the confines of insurance regulatory requirements, Wasgatt had the right to decide whether, when, and how he would market and promote his agency and the products he elected to sell.

19. The work Wasgatt's agency performed was distinct and separate from, and outside of, Allstate's usual course of business. Allstate is in the business of providing insurance and other financial products and services to individuals and businesses. Wasgatt, like other Exclusive Agents of Allstate, was in the business of promoting and selling insurance policies of Allstate and other carriers Allstate authorized him to handle, as well as financial services products. Wasgatt operated an independent agency selling insurance policies not authorized by Allstate, in violation of his contractual promises to Allstate.

20. Wasgatt was an insurance agent licensed under Massachusetts regulation. During much of the period relevant to this case, Wasgatt also held a Series 6 and Series 7 license under the Financial Industry Regulatory Authority ("FINRA"). As such, Wasgatt was engaged in an independently established trade and profession in which he performed his work.

21. To the extent that Allstate exercised or applied any measures that could ostensibly constitute "control" over Wasgatt's work activities, such measures were the result of Allstate's compliance obligations under applicable insurance regulations or FINRA rules.

Wasgatt's Access to and Misappropriation of Allstate Confidential Information and Property

22. As an Allstate agent, Wasgatt was privy to confidential information relating to Allstate's business. Such confidential information included: business plans of Allstate; information regarding names, addresses, and ages of policyholders of Allstate; types of policies; amounts of insurance; premium amounts; the description and location of insured property; the

expiration or renewal dates of policies; policyholder listings and any policyholder information subject to any privacy law; claim information; information and material identified by Allstate as confidential or information considered a trade secret provided in the R3001S Agreement or by law; and any information concerning any matters affecting or relating to the pursuits of Allstate that are not otherwise lawfully available to the public.

23. Wasgatt acknowledged in the R3001S Agreement that Allstate had a legitimate business interest in protecting such confidential and proprietary information.

24. In Section IV of the R3001S Agreement, Wasgatt agreed that all confidential information was wholly owned by Allstate, and Wasgatt could only use such information for the purposes of carrying out the provisions of the R3001S Agreement.

25. In Section XVIII of the R3001S Agreement, Wasgatt agreed that, upon termination, he would immediately return all property belonging to Allstate, including but not limited to, customer files and other confidential information belonging to Allstate.

26. Wasgatt further agreed that, upon termination, he would not act or represent himself in any way as an agent of Allstate.

27. In Section IX of the R3001S Agreement, Wasgatt agreed that all telephone numbers used in connection with Allstate business are property of Allstate. As provided in Section XVIII of the R3001S Agreement, Wasgatt agreed that, upon termination of the R3001S Agreement, he would cease to use such phone numbers and execute an Order of Transfer of Responsibility to Allstate.

28. Following the termination of his R3001S Agreement, Wasgatt retained, failed to return, and has repeatedly used Allstate's confidential information and property.

Wasgatt's Promise Not to Solicit Allstate Customers
Following the Termination of his R3001S Agreement

29. In Section XVIII.D of the R3001S Agreement, Wasgatt agreed that, for a period of one year following the termination of the R3001S Agreement, he would not solicit the purchase of products or services in competition with those sold by Allstate:

- With respect to any person, company or organization to whom Wasgatt or anyone acting on his behalf sold insurance or other products or services on behalf of Allstate and who was a customer of Allstate when the R3001S Agreement was terminated;
- With respect to any person, company or organization who was a customer of Allstate when the R3001S Agreement was terminated and whose identity was discovered as a result of his status as an Exclusive Agent or as a result of having access to Allstate confidential information; or
- From any office or business located within one (1) mile of any agency sales location Wasgatt maintained while an Exclusive Agent.

30. Wasgatt agreed that a breach of any of his obligations upon termination would cause irreparable damage to Allstate, and that such obligations were necessary to protect the legitimate business interests of Allstate.

31. Following the termination of his R3001S Agreement, in violation of the terms of the solicitation restrictions in that Agreement, Wasgatt repeatedly solicited Allstate customers.

COUNTERCLAIMS

FIRST COUNTERCLAIM

(Breach of Contract for Violation of Transition Agreement and R3001S Agreement in Operation of Independent Agency)

32. Allstate hereby repeats and realleges the allegations set forth in the preceding paragraphs as if set forth fully here.

33. After the Transition Period, Wasgatt continued to operate his independent agency, in violation of the Transition Agreement and the R3001S Agreement.

34. Aside from what was permitted in the Transition Agreement, Wasgatt never requested, and he never received, approval from Allstate to operate another insurance agency while he served as an Exclusive Agent for Allstate.

35. By operating two insurance agencies simultaneously, Wasgatt's independent agency was a direct competitor of his Allstate agency, operating out of the same location with the same phone number. Wasgatt was privy to information he could use to undercut Allstate. Such information included contact information, information about the customer's insurance needs, and the price customers were paying or being quoted for insurance coverage.

36. Operating two insurance agencies simultaneously violated both Wasgatt's 3001S Agreement and the Transition Agreement. In fact, the Transition Agreement explicitly required Wasgatt to maintain separate and distinct operations during the Transition Period in order to avoid customer confusion and protect the privacy of all data involving Allstate customer and prospect information.

37. As a result, Wasgatt was able to use his Allstate agency to attract customers and generate business for his independent agency, while failing to protect the privacy of Allstate customer information.

38. Wasgatt's breach of his R3001S Agreement damaged Allstate's goodwill, reputation and legitimate business interests.

39. Allstate is entitled to recover compensatory damages and interest, in an amount to be proven at trial, for Wasgatt's breach of his R3001S Agreement.

40. Allstate is also entitled to recover the attorneys' fees and expenses it incurs as a result of Wasgatt's breach of the R3001S Agreement.

SECOND COUNTERCLAIM
(Breach of Contract)

41. Allstate hereby repeats and realleges the allegations set forth in the preceding paragraphs as if set forth fully here.

42. On May 22, 2019, Allstate terminated the R3001S Agreement with Wasgatt. On June 6, 2019, Allstate advised Wasgatt that the termination was "for cause" due to Wasgatt's violation of the R3001S Agreement.

43. Following termination, Wasgatt failed to comply with the material provisions of the R3001S Agreement. Specifically, Wasgatt violated the R3001S Agreement by retaining and misappropriating Allstate's confidential and proprietary information, by operating an insurance business within one mile from where he previously serviced former Allstate customers, and by failing to transfer his business phone number back to Allstate.

44. Wasgatt was aware and agreed in Section IV of the R3001S Agreement that all confidential information, including customer files, belonged to Allstate and he was only permitted to use such information for purposes of carrying out the provisions of the R3001S Agreement. In direct violation of the R3001S Agreement, Wasgatt refused to return Allstate confidential and proprietary information following termination of the R3001S Agreement.

45. The return of customer files is material to the R3001S Agreement and to Allstate's business. Indeed, it is well recognized in the insurance industry that customer files, which include expiration and policy renewal information, have financial value; expirations are vital to the renewal of business to an insurance company.

46. Despite his promise in Section XVIII of the R3001S Agreement that he would not act or represent himself in any way as an agent of Allstate following termination, Wasgatt continued to use confidential information belonging to Allstate, such as customer information, to solicit and sell insurance to Allstate customers, both online and at the same location of his agency in which he conducted business pursuant to the R3001S Agreement. Wasgatt affirmatively contacted customers by sending letters in Allstate envelopes, written on Allstate letterhead, long after the R3001S Agreement had been terminated.

47. Furthermore, Wasgatt's actions were in violation of Section XVIII of the R3001S Agreement, in which Wasgatt agreed that, for a period of one year following the termination of the R3001S Agreement, he would not solicit the purchase of products or services in competition with those sold by Allstate.

48. By maintaining an independent agency at 59 Green Street, Worcester, Massachusetts, the same location of his Allstate agency, Wasgatt was in violation of Section XVIII of the R3001S Agreement. Not only was the independent agency within one mile of the agency sales location maintained by Wasgatt as an Allstate agent, his independent agency used the same phone number, was in the same exact location, and was controlled by Wasgatt.

49. In violation of Section IX of the R3001S Agreement, despite multiple requests from Allstate, Wasgatt failed to return the phone number he used to operate his agency pursuant

to his R3001S Agreement, and continues to use the phone number to operate his independent agency.

50. Wasgatt recognized and agreed that breach of any of his obligations upon termination were material and would cause irreparable damage to Allstate.

51. Wasgatt's violation of his R3001S Agreement has caused Allstate to suffer losses, including, but not limited to, the loss of insurance policies and customers, and the costs of defending this lawsuit.

52. Payment of the Termination Payment ("TPP") is contingent upon, among other things, Wasgatt complying with the confidentiality obligations contained in the R3001S Agreement. Following termination of the R3001S Agreement, Wasgatt was mistakenly paid a TPP of \$37,281.03, when he was entitled to nothing.

53. Due to Wasgatt's breaches of the R3001S Agreement, Allstate is entitled to recover the \$37,281.93 TPP payment.

54. Allstate is further entitled to the entry of a declaratory judgment that Wasgatt is owed no TPP payment and that he must return the \$37,281.93 that he was paid in error

55. Allstate is also entitled to recover compensatory damages and interest, in an amount to be proven at trial, for Wasgatt's retention and use of Allstate confidential information.

56. Allstate is also is entitled to recover its attorneys' fees and costs for defending this lawsuit.

THIRD COUNTERCLAIM

(Declaratory Judgment that Wasgatt was an independent contractor under Chapter 149, section 148B of the Massachusetts General Laws ("Massachusetts Independent Contractor Law") or, in the alternative, that the Massachusetts Independent Contractor Law is preempted.)

57. Allstate hereby repeats and realleges the allegations set forth in the preceding paragraphs as if set forth fully herein.

58. Wasgatt was free from the control and direction in connection with the performance of his and his agency's work under the R3001S Agreement.

59. Wasgatt's work under the R3001S Agreement was outside of Allstate's usual course of business.

60. The work Wasgatt and his agency performed was distinct and separate from, and outside of, Allstate's usual course of business of providing insurance and other financial products and services to individuals and businesses..

61. As a licensed insurance agent and the holder of a Series 6 and Series 7 license, Wasgatt was engaged in an independently established trade and profession in which he performed his work.

62. Accordingly, Allstate is entitled to the entry of a declaratory judgment that, at all relevant times, Wasgatt was an independent contractor under Chapter 149, section 148B of the Massachusetts General Laws.

63. In the alternative, there exists an irreconcilable conflict between the requirements of Chapter 149, section 148B of the Massachusetts General Laws, on the one hand, and the Massachusetts insurance law and regulations and the FINRA regulatory requirements on the other hand.

64. The Commonwealth of Massachusetts requires insurance companies, such as Allstate, to be licensed and approved before their products can be sold in the Commonwealth.

65. Insurance agents, including Wasgatt, may not sell, solicit or negotiate insurance in the Commonwealth for any class or classes of insurance unless the agent is licensed for that line of authority. In addition, the insurance agent must become an appointed agent of an insurer before the agent can sell the insurer's products or services.

66. Accordingly, Allstate must ensure it operates in compliance with the applicable laws, including specific provisions relating to coverage, cancellation, and renewal of insurance policies.

67. To the extent it were to be found that Allstate is unable to establish that Wasgatt was free from control or direction in connection with the work he and his agency performed, Allstate is entitled to the entry of a declaratory judgment finding that Chapter 149, section 148B of the Massachusetts General Laws is preempted and inapplicable to Wasgatt's relationship with Allstate.

68. As a result, Allstate is entitled to a declaration precluding Wasgatt from recovery under the Massachusetts Independent Contractor Law.

JURY DEMAND

Allstate hereby requests a trial by jury on all claims triable by jury.

PRAYER FOR RELIEF

WHEREFORE, Allstate prays for judgment as follows:

1. That Wasgatt takes nothing by reason of the Complaint and that the same be dismissed with prejudice on the merits;
2. That judgment be entered for Allstate on all claims herein;
3. That Allstate recovers its costs of suits herein, including attorney's fees; and
4. That Allstate be granted such further relief as the Court deems just and necessary.

Respectfully submitted,

/s/ Brian M. Casaceli

Richard C. Van Nostrand, BBO #507900

Brian M. Casaceli, BBO #690580

Mirick, O'Connell, DeMallie & Lougee, LLP

1800 West Park Drive | Suite 400 |

Westborough, MA 01581-3926

rvannostrand@mirickoconnell.com

bcasaceli@mirickoconnell.com

Telephone: (508) 860-1453

Facsimile: (508) 207-9347

Robert G. Lian, Jr. (*pro hac vice*)

Katherine I. Heise (*pro hac vice*)

Akin Gump Strauss Hauer & Feld LLP

2001 K Street N.W.

Washington, DC 20006

blian@akingump.com

Telephone: (202) 887-4000

Facsimile: (202) 887-4288

ATTORNEYS FOR DEFENDANTS
ALLSTATE INSURANCE COMPANY,
GLENN T. SHAPIRO, SCOTT BLUME,
AND EDWARD NORCIA.

Dated: October 20, 2020

CERTIFICATE OF SERVICE

I, Brian M. Casaceli, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on October 20, 2020.

Dated: October 20, 2020

/s/ Brian M. Casaceli
Brian M. Casaceli