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**IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

National Association of Professional Allstate Agents, Inc., an association, *et al.*, *Plaintiffs*, *v.* **Allstate Insurance Company**, *Defendant.*	**Civil Case No.** 2021L007947 Judge

Plaintiff's Memorandum of Law in Support of Its Amended Motion for Entry of Preliminary Injunction

Plaintiff National Association of Professional Allstate Agents (**"NAPAA"**), by James Bopp, Jr., its undersigned counsel of record, submits this Memorandum of Law in support of its Amended Motion for Entry of Preliminary Injunction, asking the Court to enjoin Defendant Allstate Insurance Company (**"Allstate"**) from requiring Allstate Exclusive Agency Owners (**"EA(s)"**) to use Allstate Agency Voice (**"AAV"**) as the sole means of telephonic communication in each EA's agency.

Summary of Argument and Grounds for Relief

This Court should enjoin Allstate from requiring EAs to implement and use AAV into their agencies, pursuant to Illinois Code of Civil Procedure (735 ILCS 5/11-102), because Plaintiff NAPPA meets all of the requirements for a preliminary injunction, and because the balance of hardships supports an injunction. Allstate's AAV mandate constitutes a breach of its Agreement with individual EAs, which states that EAs are responsible for their own equipment

(including telephonic systems). *See* Complaint, Ex. Nos. 1-4, (collectively, "**EA Agreement**," which are incorporated by express reference herein). This breach harms EAs because it increases their cost of doing business and puts them at risk of losing their agency if they fail to implement AAV. EAs have also been harmed by Allstate's implementation of AAV—which has been marred by system outages and failures.

Statement of Facts

The facts of this case are detailed in the Complaint, filed on August 6, 2021, but are summarized here for the Court's convenience. In 2020, Allstate announced its implementation of Allstate Agency Voice, a centralized telephone system. AAV is a Voice Over Internet Protocol ("**VOIP**") system to be used by all EAs for all telephone communications in each EA's agency. Allstate currently mandates all EAs to implement and use AAV, with the system rolling out over the course of 2021, and full implementation achieved by 2022. *See* Allstate Q&A, Price Decl., Ex. 2. While Allstate's stated goal in implementing AAV is to protect data and security, only the approximately 8,000 EAs are required to use AAV. Upon information and belief, Allstate also has approximately 58,000 agents who are not EAs (independent agents, agents aligned with National General, and other cluster/aggregator groups). None of these other types of agents are required to use AAV, but all of them can access Allstate's quoting system. Upon information and belief, much of the data is Allstate claims to want to protect through AAV could be accessed by other agents who are not subject to its requirements.

Allstate requires all EAs to pay Allstate for the costs of running AAV in their agency. This amounts to system implementation costs as well as ongoing monthly charges of $23 per line, which Allstate deducts directly from the EA's commissions. *See* AAV Payment Deduction

Form, Price Decl., Ex. 3. Upon information and belief, Allstate has stated that there is no separate contract regarding implementation of the AAV system, leaving the terms of the EA Agreement to govern the relationship between Allstate and EAs. The express terms of the EA Agreement include a section on "Operating Procedures for Agency Technology." Supplement for the R3001 Agreement, Complaint, Ex. 3, p. 32.. This section applies to "agencies using technology supplied by the agency to conduct Allstate Business," but also *requires* EAs to "supply and maintain" their own telephone systems:

> "With Agency Technology[1], agencies will be required to supply and maintain at their own expense, the necessary desktop/notebook workstation equipment, desktop/notebook workstation software, broadband internet connectivity and networking, and *telephone systems.*"

Id. Allstate specifies that Agency Technology must comply with Allstate's technology and security specifications. *Id.* The EA Agreement does not contain a provision giving EAs an option to use Allstate-provided telephone systems. So, while the Agency Technology system applies to agency-supplied systems, the EA Agreement does not address an option for a company-provided system. The language of requirement in the EA Agreement is not ambiguous. EAs are required to supply and maintain a variety of systems, including telephone systems.

This contractual provision confers several benefits to each EA. Firstly, EAs enjoy privacy in using their own phone system for their offices, which are used to conduct all agency business not only in selling Allstate policies, but in other communications with third parties essential to conducting business and operating an office. Upon information and belief, Allstate can monitor all calls to and from EAs via AAV, effectively destroying this privacy. Secondly, EAs enjoy the

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[1]The Supplement defines "Agency Technology" as "any technology utilized by agencies to transmit and process insurance and Company business." Supplement, pg. 32.

ability to use the telephone provider of their choosing (and to choose between applicable rates), as well as the ability to set up equipment in the manner preferred by the agency. Currently, EAs cannot choose their own telephone provider with each provider's applicable rates because Allstate mandates AAV's use.

Allstate threatens to terminate the EA's ability to bind business, or to terminate the EA's agency altogether, if the EA does not implement AAV. *See* Letter of Understanding, Price Decl., Ex. 1. Although Allstate threatens termination, Allstate does not provide a functioning method to answer EA's questions about how to implement AAV. Upon information and belief, EAs who have tried to connect with Allstate to ask questions about AAV implementation have been unable to obtain timely, satisfactory assistance. Allstate has admitted agents have experienced "outages involving impaired system functionality and call quality" and issues with "server infrastructure. *See* AAV: VOIP System Experience, Ross Decl., Ex. 1.

The Trial Court's Discretionary Power

"A trial court has broad discretionary power to grant or deny a request for injunction." *County of Du Page v. Gavrilos*, 359 Ill. App. 3d 629, 637 (2005). "A trial court abuses its discretion only when its ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would adopt the court's view." *People ex rel. Madigan v. Petco Petroleum Corp.*, 363 Ill. App. 3d 613, 634 (4th Dist. 2006).

Argument

The purpose of a preliminary injunction is to preserve the status quo, which is "the last actual, peaceable, uncontested status which preceded the controversy." *Wolf & Co. v. Waldron*, 51 Ill. App. 3d 239, 243 (1977). To obtain a preliminary injunction, Plaintiff must establish that

it: (1) has a clearly ascertained right in need of protection; (2) will suffer irreparable harm without a preliminary injunction; (3) has no adequate remedy at law for the injury; and (4) has a likelihood of success on the merits of the case. *Callis, Papa, Jackstadt & Halloran, P.C. v. Norfolk & W. Ry. Co.*, 195 Ill. 2d 356, 366 (2001). For each element, "the plaintiff must raise a fair question that each of the elements is satisfied." *Makindu v. Illinois High School Ass'n*, 40 N.E.3d 182, 190 (Ill. App. Ct. 2015) (internal citations omitted) (finding purpose of preliminary injunctive relief is not to determine controverted rights or decide the merits of the case, but to "prevent a threatened wrong or continuing injury and preserve the status quo with the least injury to the parties concerned."). The motion for preliminary injunction then must demonstrate that the balance of hardships to the parties supports the grant of a preliminary injunction. *Keefe–Shea Joint Venture v. City of Evanston*, 332 Ill.App.3d 163, 169 (2002). It should be noted that such a "fair question" does not mean that the plaintiff has to make out a case that will entitle him to the "ultimate relief he seeks." *Cameron v. Bartels*, 214 Ill. App. 3d 69, 73 (1991). Rather, the plaintiff need only make it "appear advisable that the positions of the parties should remain the same until the court has an opportunity to consider the case on its merits." *Id.* For the reasons argued below, Plaintiff NAPAA satisfies each of these requirements.

I. Under the EA Agreement, EAs Have a Clearly Ascertained Right to Establish Their Own Telephone Systems.

A clearly ascertained legal right can plainly be stated as a "substantive interest recognized by statute or common law." *Kilhafner v. Harshbarger*, 245 Ill. App. 3d 227, 229 (1993). The terms of an agreement, if unambiguous, should generally be enforced as they appear, and those terms will control the rights of the parties. *Coghlan v. Beck*, 984 N.E.2d 132, 143 (Ill. App. Ct.

2013).

The Agreement that Allstate and the various EAs signed, allowing EAs to form agencies selling Allstate insurance, contained very clear language regarding the EAs responsibility toward the day-to-day running of their agency. In particular, the Agreement contains a clause which states that "agencies will be required to supply and maintain at their own expense . . . telephone systems. Supplement for the R3001 Agreement, Complaint Ex. 3, p. 32. There is no ambiguity in this provision of the Agreement, agreed to and signed by both Allstate and the EAs.

The provision itself is rather meaningful to EAs, and is not simply a means for Allstate to assign certain costs to the agents. By having control over the equipment in their agency, from computers to telephone systems, agents can ensure that the agency runs as intended when they signed the Agreement. As well as this, the provision in the Agreement on telephone systems imbues the agents with the ability to pick and choose between different services and service rates, and find the service and price point that they are comfortable with and feel will serve their business best.

This provision of the Agreement which gives EAs authority and control over their telephone systems is not ambiguous, and in no uncertain terms it endows EAs with authority to dictate and control what telephone systems will be used in their agencies. While the provision may indeed be controverted, with Allstate arguing that EAs have no such right to control their telephone systems, a grant of preliminary injunction does not require that the right in question be uncontroverted. Where all the elements for a preliminary injunction have been met it is the role of the courts to protect the clearly ascertainable right, most often because the right is in fact controverted. Plaintiff NAPAA is simply asking this Court to preserve the status quo while both

parties try this case on the merits.

II. EAs Will Suffer Irreparable Harm Without a Preliminary Injunction Due to the Risk of Losing an Agency If Aav Is Not Implemented.

A plaintiff properly alleges an "irreparable injury" when the injury "is of such nature that the injured party cannot be adequately compensated therefor in damages or when damages cannot be measured by any certain pecuniary standard." *Traiteur v. Commonfields of Cahokia Pub. Water Dist.*, No. 5-10-0417, 2011 WL 10501264, at *5 (Ill. App. Ct. June 3, 2011) (quoting *Cross Wood Products, Inc. v. Suter,* 97 Ill.App.3d 282, 286 (1981)). Protracted interruptions in the continuity of business relationships can be the cause of irreparable damages for which no compensation would be adequate. *Stenstrom Petroleum Services Group, Inc. v. Mesch,* 375 Ill.App.3d 1077, 1096 (2007).

This second element of a preliminary injunction can be differentiated from the third element (which requires that there be no adequate remedy at law for the injury) in that a plaintiff satisfies the second element, not when damages are incalculable, but primarily where the harm at issue is ongoing. "To show irreparable injury, the plaintiff is not required to show that the injury is beyond repair or compensation in damages, but need show only transgressions of a continuing nature." *Id.* at 1096 (citing *Cont'l Cablevision of Cook Cty., Inc. v. Miller*, 238 Ill. App. 3d 774, 788 (1992)). Indeed, this element is still satisfied where the contract has already been breached, when the breaching party continues to act in accordance with that breach; there is no requirement that the harm not have already occurred for the preliminary injunction elements to be satisfied. *See Empire Indus. Inc. v. Winslyn Indus., LLC*, 327 F. Supp. 3d 1101, 1109 (N.D. Ill. 2018) (plaintiff can suffer irreparable harm from defendant's interference with plaintiff's contract

where the injurious behavior is ongoing but does not actually constitute new and separate breaches).

Here, EAs face losing their agencies altogether if they do not comply with Allstate's mandate to implement AAV, although such a mandate is a breach of the EA Agreement. Still, some EAs have attempted implementation. Even then, Allstate's failure to provide any manner of effective and adequate support for the EAs still puts them at risk of losing their agency. Allstate has offered very little guidance to EAs in making this substantial change to their agencies, and yet still threatens to take their agencies away if they fail to properly implement AAV. Upon information and belief, EAs have attempted to contact Allstate and ask questions about how to implement AAV, but Allstate has failed to give timely or satisfactory assistance. Finally, after all that, Allstate still threatens to take agencies away from EAs who fail to properly implement AAV.

Allstate's threats constitutes a breach of the EA Agreement, and the only solution, pending a trial on the merits, is a preliminary injunction. A preliminary injunction will preserve the status quo and protect EAs rights to control the equipment in their agencies. A preliminary injunction will prevent Allstate from taking away agencies from EAs who fail to acquiesce to Allstate's breach of their Agreement. Allstate's breach of the Agreement, its AAV mandate, is a continuous and ongoing breach. Allstate will continue to force AAV implementation pending trial and during trial, and by the end it may simply be too late for some of the EAs who were stripped of their agencies by Allstate. All because Allstate is knowingly making the choice to breach the EA Agreement, and in the process throwing the lives of its agents into a tumult.

Taking away an EAs agency, upending people's lives and forcing them to find alternative

means of making a living, is not a breach that can be cured with money damages. The fact is it is impossible to calculate the amount of money damages in this situation. Every agency is different; every EA is different; and in all it is simply not possible to determine how long an agency will be in business, how long one particular EA will own it, and how having an agency may enable an EA to make further gains in the future. This is a business that builds on itself, and to take away an EAs agency for some will be akin to taking away their future and replacing it with another, far more ambiguous one.

III. NAPAA and its Constituent EAs Have No Adequate Remedy at Law.

Typically, Illinois courts hold that money damages are an appropriate remedy where the plaintiff alleges breach of contract. *Illinois Beta Chapter of Sigma Phi Epsilon Fraternity Alumni Bd. v. Illinois Inst. of Tech.*, 409 Ill. App. 3d 228, 232 (2011) (quoting *Lake in the Hills Aviation Group, Inc.,* 298 Ill.App.3d 175,185 (1998)). However, whether the alleged injury lies in breach of contract is not dispositive of whether a grant of preliminary injunction is appropriate. This third element does not merely require that there be a remedy at law, but that the remedy at law be *adequate*. "The existence of a remedy at law does not deprive a court of its equitable power to grant injunctive relief unless the remedy is adequate. *K.F.K. Corp. v. American Continental Homes, Inc.*, 31 Ill. App. 3d 1017, 1021 (1975).

For a remedy at law to be adequate, it "must be clear, complete, and as practical and efficient to the ends of justice and its prompt administration as the equitable remedy." Id. As the Fifth District Appellate Court put it in 2019: "The mere existence of a remedy at law or the fact that a money judgment may be the ultimate relief will not deprive a circuit court of its power to grant injunctive relief if the remedy is inadequate." *Weis v. E. & G. Weis Farms, Inc.*, No. 5-18-

0503, 2019 WL 4677408, *10 (Ill. App. Ct. Sept. 20, 2019). Injunctive relief is necessary "when money is insufficient to compensate the injury or when the injury cannot be properly quantified in terms of money." *Lumbermen's Mut. Cas. Co. v. Sykes,* 384 Ill. App. 3d 207, 231 (2008).

Here, the only adequate relief is an injunction against Allstate's continued breach of the EA Agreement. Where EAs are at risk of losing their agencies (for many agents their primary means of making money) by not complying with Allstate's breach, there is simply no way to accurately apply a monetary figure to the situation and make EAs whole. The solution cannot be for EAs to simply go along with Allstate whenever Allstate finds it convenient to breach the EA Agreement. Even in those situations where an EA attempts to comply with the AAV mandate they face losing their agency because Allstate does not offer any meaningful guidance on AAV implementation. The most just, (and, in fact, the easiest) way for this situation to be resolved is to force Allstate to adhere to the Agreement it signed.

IV. NAPAA Has a Likelihood of Success on the Merits of the Case Because Allstate Has Clearly Breached its Agreement with NAPAA's Constituent EAs.

For a plaintiff to properly plead a common law cause of action for breach of contract, it must allege the four essential elements of breach: (1) the existence of a valid and enforceable contract; (2) performance by the plaintiff; (3) breach of the contract by the defendant; and (4) resultant injury to the plaintiff. *Coghlan v. Beck,* 984 N.E.2d 132, 143 (Ill. App. Ct. 2013).

The terms of an agreement, if unambiguous, should generally be enforced as they appear, and those terms will control the rights of the parties. *Id.* In addition, any ambiguity in the terms of a contract must be resolved against the drafter of the disputed *provision. Dowd & Dowd, Ltd. v. Gleason,* 181 Ill. 2d 460, 479 (1998). To establish a likelihood of success, Plaintiff "need only raise a fair question regarding the existence of a claimed right and a fair question that [it] will be

entitled to the relief prayed for if the proof sustains the allegations." *Kalbfleisch v. Columbia Community Unit School District Unit No. 4,* 396 Ill.App.3d 1105, 1114 (2009).

Clearly there is an agreement between Allstate and the individual EAs associated with NAPAA. In that Agreement is a clause which vests the EAs with the power to dictate what equipment will be used in their agency, including telephone systems, and how much they choose to pay for various services from outside providers. NAPAA certainly has a case for breach of contract: the Agreement is valid and enforceable; NAPAA's constituent EAs have performed under the contract by selling Allstate insurance out of agencies; Allstate has breached the provision of the Agreement which endows EAs with the power to control their own agency systems; and the EAs are injured by this breach because it equates to unanticipated and increased costs of doing business, as well as the very real threat of Allstate stripping them of their agencies if they fail to implement AAV.

Allstate's AAV mandate breaches the express terms of the EA Agreement–EAs no longer "supply and maintain" their own telephone systems at their own expense. Under Allstate's current mandate, EAs don't supply their telephone system and they don't maintain the telephone system. Indeed, the only provision of the EA Agreement as it relates to telephone systems that Allstate still enforces is that AAV is still at the EAs "own expense." There is no ambiguity in this clause of the Agreement, and any ambiguity that does exists must be decided *against* the drafter, which in this case would be Allstate. Plaintiff NAPAA has certainly raised a fair question that EAs have the right to control the telephone systems in their agencies, and were this Court to rule in its favor on the breach of contract claim then the EAs will be entitled to enjoy the benefit of their contract.

V. A Preliminary Injunction Would Benefit Plaintiff NAPAA and the EAs it Represents Far More than it Would Harm Defendant Allstate.

Once all four of the elements for preliminary injunction have been met, then the Court "must balance the hardships and consider the public interests involved." *Makindu*, 40 N.E.3d at 190; *see also People ex rel. Edgar v. Miller*, 110 Ill. App. 3d 264, 269 (1982) ("[A] plaintiff must show that [it] will suffer greater harm without the injunction than a defendant will suffer if it is issued."); *Minetz v. Bd. of Educ. of Paxton-Buckley-Loda Cmty. Unit Sch. Dist. No. 10*, No. 4-19-0771, 2019 WL 6048576, at *3 (Ill. App. Ct. Nov. 14, 2019).

When balancing the hardships faced by both parties, the Court "must weigh the benefits of granting the injunction against the possible injury to the opposing party from the injunction. *Schweickart v. Powers*, 245 Ill.App.3d 281, 291 (1993). In some cases, even when the non-moving party faces the greater hardship from the injunction, courts will still grant the injunction. For instance, the doctrine of balancing the equities has been found inapplicable "where defendant's actions were done with full knowledge of the plaintiff's rights and with an understanding of the consequences which might ensue." *Blue Cross Ass'n v. 666 N. Lake Shore Drive Assocs.*, 100 Ill. App. 3d 647, 651 (1981) (citing *ABC Trans Nat. Transp., Inc. v. Aeronautics Forwarders, Inc.*, 62 Ill. App. 3d 671, 682 (1978)).

Any harm Allstate has sustained, via the costs of the AAV system, was solely due to Allstate's decision to breach the EA Agreement in the first place. That kind of self-inflicted harm can hardly justify denying a preliminary injunction when the contractual obligation is so unambiguous. The provision in question is nothing more than an unequivocal grant of authority to EAs, allowing them to choose what telephone systems they use in their agencies and what

prices they are comfortable paying for those systems. The EAs have not done anything to warrant Allstate's breach. Business has by all accounts been running well with the individual systems that EAs choose to use in their agencies.

While Allstate's harm was brought about by its breach of contract, the EAs face great and lasting harm without a preliminary injunction. Even now, and presumably throughout the trial, Allstate will be threatening EAs with the removal of their agencies if they do not comply with the AAV mandate, even where EAS only fail to implement because Allstate offers to effective guidance or assistance on the matter. Were NAPAA to be successful at trial, this will do nothing for those EAs who have lost their agencies and large sources of present and indefinite future income. Indeed, it would seem that a balancing of the hardships is not even necessary here, where Allstate has knowingly and rather blatantly breached its EA Agreement. Allstate certainly understood the rights of the EAs in this particular area; it was clearly spelled out in the Agreement. Yet, knowing that, it still chose to breach and threaten EAs who failed to comply with the breach. Such action should not be tolerated. More importantly, the non-breaching EAs should be protected pending a verdict at trial.

Conclusion

The Court should grant Plaintiff's Motion for Entry of Preliminary Injunction and order Defendant Allstate Insurance Company to stop mandating that EAs use AAV as the sole means of telephonic communication in each EA's agency, because Plaintiff meets all of the criteria for a preliminary injunction, and a preliminary injunction would benefit Plaintiff farm more than it would harm Defendant.

September 27, 2021

Respectfully Submitted,
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Certificate of Service

I certify that the foregoing document and all attachments thereto were filed on September 27, 2021, using the court's electronic filing system, which will send notice of the filing to all counsel of record.

/s/ James Bopp, Jr.
Lead counsel for Plaintiff