

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

PAUL WASGATT,
Plaintiff,

v.

ALLSTATE INSURANCE COMPANY, and
GLENN T. SHAPIRO,
Defendants.

Civil Action No. 4:20-cv-40118

ALLSTATE INSURANCE COMPANY,
Counterclaimant,

v.

PAUL WASGATT,
Counterclaim Defendant.

**ANSWER OF PAUL WASGATT TO
ALLSTATE' INSURANCE COMPANY'S COUNTERCLAIMS**

Plaintiff/counterclaim defendant Paul Wasgatt ("Wasgatt") respectfully submits his answer to defendant/counterclaimant Allstate Insurance Company's ("Allstate") counterclaim.

PARTIES

1. Wasgatt admits the allegations as set forth in paragraph 1 of the Counterclaim.
2. Wasgatt admits the allegations as set forth in paragraph 2 of the Counterclaim.

JURISDICTION AND VENUE

3. Wasgatt denies the allegations and inferences as set forth in paragraph 3 of the Counterclaim.
4. Wasgatt admits the allegations as set forth in paragraph 4 of the Counterclaim.
5. Wasgatt denies the allegations and inferences as set forth in paragraph 5 of the Counterclaim.

FACTUAL BACKGROUND

6. Wasgatt admits the allegations as set forth in paragraph 6 of the Counterclaim.
7. Wasgatt admits the allegations as set forth in paragraph 7 of the Counterclaim.
8. Wasgatt admits the allegations as set forth in paragraph 8 of the Counterclaim.
9. Wasgatt admits the allegations as set forth in paragraph 9 of the Counterclaim.
10. Wasgatt denies the allegations set forth in paragraph 10 of the Counterclaim.
11. Wasgatt admits the allegations as set forth in paragraph 11 of the Counterclaim.
12. Wasgatt denies that he was an independent agent. Wasgatt further denies all other the allegations and inferences set forth in paragraph 12 of the Counterclaim.
13. Wasgatt admits the allegations set forth in paragraph 13 of the Counterclaim, except the last sentence to the extent Safeside was for the sale of MAIP business.
14. Wasgatt denies the allegations and inferences set forth in paragraph 14 of the Counterclaim.
15. Wasgatt denies the allegations and inferences set forth in paragraph 15 of the Counterclaim.

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

16. Wasgatt denies the allegations and inferences set forth in paragraph 16 of the Counterclaim.
17. Wasgatt denies the allegations and inferences set forth in paragraph 17 of the Counterclaim.
18. Wasgatt denies the allegations and inferences set forth in paragraph 18 of the Counterclaim.
19. Wasgatt denies the allegations and inferences set forth in paragraph 19 of the Counterclaim.
20. Wasgatt denies the allegations and inferences set forth in paragraph 20 of the Counterclaim.
21. Wasgatt denies the allegations and inferences set forth in paragraph 21 of the Counterclaim.

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

22. Wasgatt denies the allegations and inferences set forth in paragraph 22 of the Counterclaim.
23. Wasgatt denies the allegations and inferences set forth in paragraph 23 of the Counterclaim.
24. Wasgatt denies the allegations and inferences set forth in paragraph 24 of the Counterclaim.

- 25. Wasgatt denies the allegations and inferences set forth in paragraph 25 of the Counterclaim.
- 26. Wasgatt admits to the allegations set forth in paragraph 26 of the Counterclaim.
- 27. Wasgatt admits to the allegations set forth in paragraph 27 of the Counterclaim.
- 28. Wasgatt denies the allegations and inferences set forth in paragraph 28 of the Counterclaim.

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

- 29. Wasgatt denies the allegations and inferences set forth in paragraph 29 of the Counterclaim.
- 30. Wasgatt denies the allegations and inferences set forth in paragraph 30 of the Counterclaim.
- 31. Wasgatt denies the allegations and inferences set forth in paragraph 31 of the Counterclaim.

COUNTERCLAIMS
FIRST COUNTERCLAIM

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

- 32. Wasgatt denies and admits this incorporating allegation in accordance with his other responses.
- 33. Wasgatt denies the allegations and inferences set forth in paragraph 33 of the Counterclaim.
- 34. Wasgatt denies the allegations and inferences set forth in paragraph 34 of the Counterclaim.
- 35. Wasgatt denies the allegations and inferences set forth in paragraph 35 of the Counterclaim.
- 36. Wasgatt denies the allegations and inferences set forth in paragraph 36 of the Counterclaim.
- 37. Wasgatt denies the allegations and inferences set forth in paragraph 37 of the Counterclaim.
- 38. Wasgatt denies the allegations and inferences set forth in paragraph 38 of the Counterclaim.
- 39. Wasgatt denies the allegations and inferences set forth in paragraph 39 of the Counterclaim.
- 40. Wasgatt denies the allegations and inferences set forth in paragraph 40 of the Counterclaim.

SECOND COUNTERCLAIM
(Breach of Contract)

41. Wasgatt denies and admits this incorporating allegation in accordance with his other responses.
42. Wasgatt denies the allegations and inferences set forth in paragraph 42 of the Counterclaim. Wasgatt he was terminated as an employee on May 22, 2019 and Allstate changed its reasoning for the termination on June 6, 2019.
43. Wasgatt denies the allegations and inferences set forth in paragraph 43 of the Counterclaim.
44. Wasgatt denies the allegations and inferences set forth in paragraph 44 of the Counterclaim.
45. Wasgatt denies the allegations and inferences set forth in paragraph 45 of the Counterclaim.
46. Wasgatt denies the allegations and inferences set forth in paragraph 46 of the Counterclaim.
47. Wasgatt denies the allegations and inferences set forth in paragraph 47 of the Counterclaim.
48. Wasgatt denies the allegations and inferences set forth in paragraph 48 of the Counterclaim.
49. Wasgatt denies the allegations and inferences set forth in paragraph 49 of the Counterclaim.
50. Wasgatt denies the allegations and inferences set forth in paragraph 50 of the Counterclaim.
51. Wasgatt denies the allegations and inferences set forth in paragraph 51 of the Counterclaim.
52. Wasgatt denies the allegations and inferences set forth in paragraph 52 of the Counterclaim.
53. Wasgatt denies the allegations and inferences set forth in paragraph 53 of the Counterclaim.
54. Wasgatt denies the allegations and inferences set forth in paragraph 54 of the Counterclaim.
55. Wasgatt denies the allegations and inferences set forth in paragraph 55 of the Counterclaim.
56. Wasgatt denies the allegations and inferences set forth in paragraph 56 of the Counterclaim.

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. Wasgatt denies and admits this incorporating allegation in accordance with his other responses.
58. Wasgatt denies the allegations and inferences set forth in paragraph 58 of the Counterclaim.

59. Wasgatt denies the allegations and inferences set forth in paragraph 59 of the Counterclaim.
60. Wasgatt denies the allegations and inferences set forth in paragraph 60 of the Counterclaim.
61. Wasgatt denies the allegations and inferences set forth in paragraph 61 of the Counterclaim.
62. Wasgatt denies the allegations and inferences set forth in paragraph 62 of the Counterclaim.
63. To extent this contains an allegation of purported fact, denied.
64. Wasgatt admits the allegations set forth in paragraph 64 of the Counterclaim.
65. Wasgatt denies the allegations and inferences set forth in paragraph 65 of the Counterclaim
66. Wasgatt admits the allegations set forth in paragraph 66 of the Counterclaim.
67. Wasgatt denies the allegations and inferences set forth in paragraph 67 of the Counterclaim
68. Wasgatt denies the allegations and inferences set forth in paragraph 68 of the Counterclaim.

AFFIRMATIVE DEFENSES

First Affirmative Defense **Illegal Contract**

Counterclaimant's claims are barred from enforcing the purported contract on the grounds that to do so would result in the enforcement of an illegal contract, as well as being in violation of public policy.

Second Affirmative Defense **Waiver**

Counterclaimant's claims are barred by the doctrine of waiver in that Counterclaimant waived any purported breach of contract by Counterclaim Defendant.

Third Affirmative Defense **Unclean hands**

Counterclaimant's claims are barred by the doctrine of unclean hands in that Counterclaimant is barred from enforcing its claims because it has acted with unclean hands with respect to the matters alleged in the Counterclaim.

Fourth Affirmative Defense
Breach of Contract

Counterclaimant's claims are barred because Counterclaimant is in breach of the parties' contract.

Fifth Affirmative Defense
Violation of Public Policy

Counterclaimant's claims are barred because they are in violation of public policy and laws of the Commonwealth of Massachusetts.

Sixth Affirmative Defense
Promissory Estoppel

Counterclaimant's claims are barred by the doctrine of promissory estoppel in that Counterclaimant made promises upon which Counterclaim Defendant relied on to the detriment of Counterclaim Defendant, promises and reliance which now bars Counterclaimant's breach of contract claims.

Seventh Affirmative Defense
Novation

Counterclaimant's claims are barred by doctrine of novation in that the parties entered into a subsequent agreement novating and replacing the existing agreement or parts thereto.

Eighth Affirmative Defense
Fraud

Counterclaimant's claims are barred the fact that Counterclaimant made false and misleading representations regarding the parties' agreements and Counterclaim Defendant relied on Counterclaimant's misrepresentations to the determinant of Counterclaim Defendant.

DATED: November 9, 2020

PLAINTIFF/COUNTERCLAIM DEFENDANT,
Paul Wasgatt,
By His Attorney,

/s/ Timothy K. Cutler
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CERTIFICATE OF SERVICE

I hereby certify that this document was filed through the ECF system and 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 November 9, 2020.

/s/ Timothy K. Cutler
Timothy K. Cutler