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

National Association of Professional Allstate Agents, Inc., et al.

Plaintiffs,

v.

Allstate Insurance Company, et al.

Defendant.

Case No. 21-L-7947

# ALLSTATE INSURANCE COMPANY'S 2-619.1 MOTION TO DISMISS

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## MOTION

Pursuant to Section 2-619.1 of the Code of Civil Procedure, Allstate Insurance Company ("Allstate") respectfully requests that this Court enter an order dismissing Plaintiffs' Complaint with prejudice because (1) under 735 ILCS 5/2-619(a)(9) NAPAA does not have associational standing to pursue its claims against Allstate and (2) under 735 ILCS 5/2-615 each of the plaintiffs fails to state a claim against Allstate on which relief may be granted. In support of this motion, Allstate states as follows:

## MEMORANDUM OF LAW

In this lawsuit, the National Association of Professional Allstate Agents ("NAPAA"), an organization that purports to represent some number of Allstate Exclusive Agents ("EAs"), seeks declaratory and injunctive relief over four alleged Allstate business practices. NAPAA is joined by four former EAs—Scott Verbarg, Ross Shales, Joseph Rehonic, and Bradley Rehonic—who seek money damages for what they claim was wrongful termination of their agencies and the alleged denial of their requests to transfer their economic interests in their agencies to particular buyers.

As discussed more fully below, NAPAA's claims must be dismissed because it cannot satisfy the requirements for associational standing, because it has failed to allege an essential element of its breach of contract claims, and because its claims run afoul of the plain language of the contract between Allstate and its EAs. The individual plaintiffs' claims are equally deficient and should also be dismissed.

## BACKGROUND

Allstate is a property and casualty insurance company based in Northbrook, Illinois. (Compl. ¶ 13.) Allstate develops insurance products for individuals, families, and businesses to protect against loss. (Compl. Ex. 3, Supplement § 5.0.0.) Allstate distributes these products in a variety of ways, including through EAs, independent agents, the Internet, and call centers. (*Id.*) Allstate EAs are independent contractor agents who operate throughout the country and are authorized by Allstate to market, offer, and bind insurance policies on its behalf. (Compl. ¶ 14.)

The relationship between Allstate and its EAs is governed by the "EA Agreement."[1] (Compl. ¶ 15) It contains an integration clause that states:

> This Agreement may not be modified except by a written agreement between the Company and the Agency which expressly states that it modifies this Agreement. No other written statements, representations, or agreements and no oral statements, representations, or agreements will be effective to modify this Agreement. No representative of the Company will have authority to modify this Agreement, except as provided in this Section XXI.

(Compl. Ex. 1, R3001 § XXI.C.)

EAs are exclusive agents of Allstate: they sell only Allstate products (or products Allstate authorizes them to sell) to Allstate's customers and prospects. (Compl. Ex. 1, R3001 §§ I.A., V.A.; Compl. Ex. 2, EA Manual at 6 ("As an R3001 Agent, you are an exclusive writer for Allstate …").) Although an EA "may select its sales location,

[1] The EA Agreement comprises several documents, including the R3001 Exclusive Agency Agreement (Compl., Ex. 1); the Exclusive Agency Independent Contractor Manual (Compl., Ex. 2); and the Supplement for the R3001 Agreement (Compl., Ex. 3).

within a geographical area specified by the Company," the EA Agreement specifically states that EAs "have no exclusive territorial rights in connection with [their] sales location" and all sales locations are "subject to Company approval." (Compl. Ex. 1, R3001 § V.A.) But each EA may sell Allstate products throughout the state of "its sales location and other states in which [it] has been authorized to act as a Company agent." (*Id.* § V.C.)

Allstate "own[s] all business produced under the terms of th[e EA] Agreement." (*Id.* § I.A.) Thus, after the agency relationship ends, Allstate "retains ownership of each item of business and of the entire book of business, including . . . expirations, renewals," and "any information about the customers to whom [EAs] have sold Company." (Compl. Ex 2, EA Manual at 30.) In exchange, the EA Agreement gives EAs an "economic interest in the book of business" of their agencies that includes the option "of receiving a termination payment" or "the ability to transfer" to a buyer approved by Allstate. (Compl. Ex. 2, EA Manual at 30; Compl. Ex. 1, R3001 § XVI.B.) Allstate retains the "right in its exclusive judgment to approve or disapprove . . . a transfer." (Compl. Ex. 1, R3001 § XVI.B.)

Under the EA Agreement, EAs agree to "act as an agent of the Company for the purpose of soliciting, selling, and servicing" Allstate's insurance products and business. (Compl. Ex. 1, R3001 § II.A.) EAs thus must also "provide customer service, including the collection of payments, for any and all Company policyholders," and "assist in claims administration in accordance with the Company's rules and procedures." (*Id.*)

Allstate compensates EAs in "commissions set forth in the Supplement"—the "sole compensation to which [EAs] are entitled." (*Id.* § XV.A.) The Supplement provides commissions for two types of business production: new and renewal. (Compl. Ex. 3, Supplement § 3.1.0.) Under the Supplement, EAs "receive the new business component of their commission for a particular month based on the prior month's recorded net written new premium." (*Id.* § 3.1.2.) Commission for renewal business is "based on net written renewal premium recorded in the agent's account in the prior month." (*Id.* § 3.1.3.)

Finally, the EA Agreement delineates rules about the use of equipment, which is generally provided by EAs, as independent contractors. The telephone system used to contact and transact business with Allstate customers is treated differently. While Allstate has agreed to furnish EAs with "materials and supplies" as it "deems advisable," those materials "remain the property of the Company," including telephone numbers. (Compl. Ex. 1, R3001 § IV.A, IX.) The EA Agreement further provides that "all telephone numbers used in connection with conducting [Allstate business] are the property of [Allstate]." (Compl. Ex. 1, R3001 § IX.)

## ARGUMENT

### I. NAPAA's claims (Counts I-IV) should be dismissed because it lacks standing to sue on behalf of its members. 735 ILCS 5/2–619(a)(9).

An association, like NAPAA, only has standing to "bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) *neither the claim asserted nor the relief requested requires the participation of*

*individual members in the lawsuit*." *International Union of Operating Engineers, Local 148 v. Illinois Department of Employment Security*, 215 Ill. 2d 37, 51 (2005) (quoting *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1997)). NAPAA cannot not satisfy the third element of this test.

To state a cause of action for breach of contract under Illinois law, a plaintiff must allege: (1) the existence of a valid and enforceable contract; (2) *performance by the plaintiff*; (3) a breach by the defendant; and (4) resultant damages. *Gonzales v. American Express Credit Corp.*, 315 Ill. App. 3d 199, 206 (1st Dist. 2000). Failure to allege the plaintiff's substantial performance is thus fatal to a breach of contract claim.

Here, the relief NAPAA requests requires the individual participation of each of NAPAA's members because, before this Court could grant the broad relief requested by NAPAA, each of them must demonstrate that they substantially performed under the contract. Because the complaint does not allege (nor without a member-by-member investigation could it allege) that each member performed under the contract, NAPAA cannot meet the requirements of associational standing and its claims should be dismissed. 735 ILCS 5/2–619(a)(9); *International Union*, 215 Ill. 2d at 45, 51.

## II. NAPAA's claims (Counts I-IV) should be dismissed because it has failed to state a claim on which relief may be granted. 735 ILCS 5/2–615.

A section 2-615 motion to dismiss tests the legal sufficiency of a claim. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). The question for the Court is

whether, taking all well pleaded facts as true, the allegations in the complaint, construed in a light most favorable to plaintiff, state a cause of action on which relief may be granted. *Doe-3 v. McLean County Unit District No. 5 Bd. of Directors*, 2012 IL 112479, ¶ 16. And "while the plaintiff is not required to set forth evidence in the complaint, the plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action, not simply conclusions." *Marshall*, 222 Ill. 2d at 429-430 (cleaned up).

Even if NAPAA had standing to pursue these claims, the fact that NAPAA has not alleged that its members substantially performed their obligations under the EA Agreement means it has not stated a claim for breach of contract. *Gonzales*, 315 Ill. App. 3d at 206. Moreover, as set forth below, NAPAA's claims are inconsistent with the plain language of the EA Agreement and its own allegations and should be dismissed because there are no set of facts upon which it can prevail. 735 ILCS 5/2-615.

### A. Count I must be dismissed because it is inconsistent with the EA Agreement and belied by the Plaintiffs' own allegations.

In Count I, NAPAA alleges that Allstate has a "blanket policy" of refusing to approve transfers of an EA's economic interest to another existing EA. (Compl., ¶¶ 154-162.) The Complaint itself shows that this contention is not true. But even if this contention were true, it would be insufficient to state a claim for breach of contract because the EA Agreement expressly gives Allstate the right to approve or disapprove of any potential buyer of an EA's economic interest.

### 1. NAPAA admits that Allstate has approved sales of EAs' economic interests to other EAs.

NAPAA's verified allegations in this case refute its claim that Allstate has a blanket policy of denying sales of EAs' economic interest to other EAs. In fact, the verified complaint gives two examples where Allstate approved sales by one EA to another: Shales's sale to Caro (Compl. ¶¶ 82, 84) and Rehonic's sale to "an existing EA" (Compl. ¶¶ 97-98). These admissions show that Allstate does not have a blanket policy to reject sales between existing EAs and this claim should be dismissed.

### 2. The EA Agreement expressly submits the determination whether to approve the sale of an EA's economic interest to Allstate's "exclusive judgment."

Even if this claim weren't patently false, the contract makes clear that Allstate has the right to determine whether to approve proposed buyers of an EA's economic interest. When they enter into the contact, EAs expressly agree that Allstate "retains the right in its exclusive judgment to approve or disapprove" the sale of an EA's economic interest. (Compl. Ex. 1, R3001 § XVI.B.) Exercising that right cannot constitute a breach of the very agreement that grants it. *See* 735 ILCS 5/2-606 (exhibits attached to a complaint are considered part of the pleading); *Bajwa v. Metropolitan Life Ins. Co.*, 208 Ill. 2d 414, 431-32 (2004) (where the allegations in a complaint conflict with an exhibit attached to the complaint, the exhibit controls); *Stephenson v. Allstate Ins. Co.*, 141 F. Supp. 2d 784, 794 (E.D. Mich. 2001) ("Given that [Allstate] had the right to approve or deny such requests, [Allstate's] exercise of that right cannot, as a matter of law, constitute a per se wrongful act, or interference

with Plaintiff's business relationship.") Thus, Count I fails to state a claim against Allstate and should be dismissed.

### B. Count II must be dismissed because the contract is clear that EAs do not have exclusive territories.

In Count II, NAPAA contends that Allstate breaches the EA Agreement when it allows independent agencies to sell Allstate products in areas served by EAs. Relying on an alleged "course of conduct," NAPAA in essence alleges that EAs have exclusive territorial jurisdiction.

This contention runs contrary to the plain terms of the EA Agreement, which provides that agencies have "no exclusive territorial rights" and that "the Authority granted to the agency under [the EA Agreement] is non-exclusive." (Compl. Ex. 1, R3001 §§ V.A, XXI.G.) What's more, the EA Agreement gives Allstate "sole discretion" to determine "the number of agencies, Satellite Agencies, Enhanced Satellite Agencies, and local agency extensions in a market based upon the local market conditions." (Compl. Ex. 2, EA Manual at 19.)

Where, as here, an agreement is "reduced to writing, [it] must be presumed to speak the intention of the parties who signed it. It speaks for itself, and the intention with which it was executed must be determined from the language used. It is not to be changed by extrinsic evidence." *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill. 2d. 457, 462 (1999). And "where parties formally include an integration clause in their contract, they are explicitly manifesting their intention to protect themselves against

misinterpretations which might arise from extrinsic evidence." *Id.* at 464.[2] Thus, because the contract is clear that EAs do not have an exclusive territory, and because the integration clause makes doubly clear that it would be improper to imply additional terms through extrinsic evidence, Count II fails to state a claim against Allstate and should be dismissed.

### C. Count III fails to state a claim because EAs do not have a right to bind to any policy.

In Count III, NAPAA relies on an alleged "course of conduct" to suggest there is an "implicit contract term" that gives EAs the right to "bind the business" and earn a commission whenever they "have substantive discussions with potential customers." (Compl. ¶¶ 168-172.) But even NAPAA admits this is not the case. "Until 'bound,' no policy exists, and therefore no contract or relevant commission is triggered." (Compl. ¶ 35.) The right NAPAA asks the Court to find here – to receive commissions when an agent has had "substantive discussions" with a prospective customer but has not actually sold a policy – is found nowhere in the EA Agreement and would require the Court both to create contract terms that do not exist and to disregard ones that do, including the provision stating that the EA Agreement "may not be modified except by a written agreement between the Company and the Agency . . [and that n]o other written statements, representations, or agreements and no oral statements,

[2] Evidence "regarding the position of the parties, the surrounding circumstances at the time of the execution, and the parties' subsequent conduct" are all examples of extrinsic evidence. *Gillespie Community Unit School District No. 7, Macoupin County Illinois v. Union Pacific R.R. Co.*, 2015 IL App (4th) 140877, ¶ 9 (citing *Harris Trust & Savings Bank v. LaSalle National Bank*, 208 Ill. App. 3d 447, 453 (1st Dist. 1990)).

representations, or agreements will be effective to modify this Agreement. (Compl. Ex. 1, R3001 § XXI.C.). Thus, Count III fails to state a claim because NAPAA cannot establish either a duty arising from the contract or any supposed breach of that duty.

### D. Count IV fails to state a claim because Allstate is entitled to implement AAV and to terminate its contracts with EAs that choose not to adopt it.

In Count IV, NAPAA contends that Allstate breached its agreement when it required EAs to implement the AAV technology. This claim fails for two reasons: (1) no contractual term gives EAs the right to exclusive control of technology in furtherance of Allstate business; and (2) ultimately, termination of the relationship for an EA's failure to implement the AAV technology is not a breach because the contract is terminable at will.

The EA contract and manual does not confer any rights to EAs to refuse to use Allstate provided technology. NAPAA contends that the "EA Agreement expressly provides that EAs are to supply and maintain their own telephone system at the EAs expense." (Compl. ¶ 174.) This is incorrect. The section that NAPAA cites "applies to agencies [EAs] using technology *supplied by the agency* [the EAs] to conduct Allstate business. (Compl. Ex. 3, R3001 Supplement, 32 (emphasis added).) The contract then goes on to state that when EAs use technology that they themselves provide, they are required to maintain and supply that technology at their own expense. (*Id.* ("With Agency Technology, 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 network, and telephone

systems.").) A plain reading of this provision does not confer any right to EAs to have exclusive control over the technology that they use to conduct Allstate business; rather, the provision simply requires that when the EAs provide technology, they are required to supply and maintain that technology at their expense. Here, Allstate supplies the technology to the EAs, and the section of the contract that governs when EAs supply the technology is inapplicable.

In contrast, the contract gives Allstate the right to require use of AAV. Allstate—not its EAs—owns the phone numbers through which EAs conduct Allstate business. (Compl. Ex. 1, R3001 § IX.) And EAs are responsible for the costs associated with the telephone system. (*Id.* at § VIII.) Furthermore, Allstate has the contractual right to establish technology requirements for ensuring legal compliance (such as with the Telephone Consumer Protection Act), safeguarding its customer's data, protecting its reputation, and ensuring a consistent experience for its customers. (Compl. Ex. 3, R3001 Supplement, 32.)

Accordingly, not only does Count IV fail to state a claim for breach of contract, but the contract provisions that plaintiffs cite specifically authorize Allstate to implement AAV.

### E. NAPAA cannot obtain injunctive relief for any purported breach of the EA Agreement.

Even if NAPAA were able to establish a purported breach of the EA Agreement, it cannot obtain the ultimate relief it seeks from this Court. The EA Agreement states that the agreement "may be terminated" by "either party, with or without cause, upon providing ninety (90) days prior written notice to the other, or such greater number

of days as required by law." (Compl. Ex. 1, § XVII.B.2.)[3] And because the EA Agreement is terminable at will, this Court cannot compel Allstate to perform under the agreement. *Gage v. Village of Wilmette*, 315 Ill. 328 (1924); *S.& F. Corp. v. American Express Co.*, 60 Ill. App. 3d 824, 829-30 (1st Dist. 1978) ("[A]n injunction will not be granted to restrain a party from discontinuing performance under an executory contract which is terminable at will."); *Alderman Drugs v. Metropolitan Life Ins. Co.*, 161 Ill. App. 3d 783, 790-791 (1st Dist. 1987). Thus, NAPAA is not entitled to the relief it seeks and its claims should be dismissed.

## III. The individual plaintiffs' claims should be dismissed because they each have failed to state claims against Allstate. 735 ILCS 5/2–615.

As a threshold matter, none of the individual plaintiffs has alleged that he performed under the EA Agreement. By itself, this omission is fatal to their claims. *Gonzales*, 315 Ill. App. 3d at 206. But even if the individual plaintiffs were to remedy this deficiency, their claims still would be lacking.

[3] A contract is considered "terminable at will" when either party can terminate it with or without case. The fact that a contract, like the one at issue here, requires notice before termination does not alter the fact that it is terminable at will. *See S.& F. Corp. v. American Express Co.*, 60 Ill. App. 3d 824, 829-30 (1st Dist. 1978) (holding that a contract with a six-month termination notice period was terminable at will); *Alderman Drugs v. Metropolitan Life Ins. Co.*, 161 Ill. App. 3d 783, 790-791 (1987) (holding that a contract with a 30-day termination notice period was terminable at will).

### A. Verbarg, Shales, and Brad Rehonic's "interference" claims (Counts V, VI, and VII) fail to state a claim against Allstate.

Verbarg, Shales, and Brad Rehonic each allege that Allstate breached the EA Agreement by "interfering" in the transfer of their economic interests. For at least several reasons, these claims fail.

#### 1. Plaintiffs' contentions based on "information and belief" cannot sustain a claim against Allstate

Verbarg, Shales, and Rehonic's interference claims are asserted on "information and belief." (Compl. ¶¶ 75 (Verbarg), 82 (Shales), 100 (Rehonic), and 102 (Rehonic).) Such allegations are insufficient to sustain their claims. *See Karimi v. 401 N. Wabash Venture, LLC*, 2011 IL App (1st) 102670, ¶ 13; *In re Estate of DiMatteo,* 2013 IL App (1st) 122948, ¶ 83 (allegations made "on information and belief" are not equivalent to allegations of fact).

#### 2. Plaintiffs have not identified any portion of the EA agreement that Allstate breached.

Moreover, Verbarg, Shales, and Rehonic have not identified any portion of the contract that prohibits Allstate from advising potential buyers in their negotiations with EAs. Their failure to do so is fatal to their breach of contract claims.

#### 3. Allstate's approval or disapproval of a specific transfer of an EA's economic interest is not a breach of the contract.

In the end, Verbarg, Shales, and Rehonic complain that Allstate is exercising its express right under the EA agreement to approve or disapprove any transfer of an EA's economic interest. This does not constitute a breach of the contract. *See* Section II.A.2 above.

### B. Verbarg's "good faith" claim (Count VIII) fails because it is inconsistent with plain language of the EA Agreement.

In Count VIII of the Complaint, Verbarg tries to avoid the plain language of the contract by claiming that Allstate breached an "implied covenant of good faith and fair dealing" by denying a transfer of his economic interest. This claim is not supported by the allegations in the complaint. There is no allegation that Allstate denied any sale. At most, Mr. Verbarg inquired about a potential transfer, was told it was unlikely to be approved, and then chose to pursue another opportunity. (Compl. ¶¶ 68-72.)[4]

## CONCLUSION

For the foregoing reasons, Allstate respectfully requests that this Court grant its motion and dismiss all of Plaintiffs' claims with prejudice. Allstate further requests such other relief as this court deems just and appropriate.

[4] Mr. Verbarg may argue that his claims are analogous to those asserted by the Plaintiff in *Slay v. Allstate Corp.* 2018 IL App (1st) 180133. In that case, however, it was alleged that Allstate had wrongfully denied the transfer to another agent. That is not the case here.

Dated: October 7, 2021

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that the foregoing document was filed on October 7, 2021, using the court's electronic filing system, which will send notice of the filing to all counsel of record.

/s/ Joshua D. Lee