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.** 21-L-7947 Judge Mary Colleen Roberts

Plaintiffs Response in Opposition to Allstate Insurance Company's Motion to Sever and Transfer

Plaintiffs National Association of Professional Allstate Agents, Inc. ("**NAPAA**"), Scott Verbarg, Ross Shales, Brad Rehonic, and Joseph Rehonic respectfully respond to Defendant Allstate Insurance Company's ("**Allstate**") Motion to Sever and Transfer. In opposition to the motion, Plaintiffs state as follows:

I. Background

NAPAA is a membership association, incorporated as a non-profit corporation dedicated to the success of Allstate Exclusive Agency Owners ("**EA(s)**"). NAPAA seeks declaratory and injunctive relief based upon breach of contract claims in counts I - IV. Scott Verbarg was an EA who owned two Allstate agencies in the State of Indiana. Allstate terminated Plaintiff Verbarg's agencies, and he brings Counts V, VIII, and IX based on breaches of contract and unjust termination. Plaintiff Ross Shales was an EA who owned four Allstate agencies in the State of Louisiana. Allstate terminated the contracts for his agencies, and Plaintiff Shales brings counts

VI and X for breach of contract and unjust termination. Plaintiff Brad Rehonic was an EA who owned an Allstate agency in the State of Georgia. Allstate terminated the contract for his agency and Plaintiff Brad Rehonic brings Count VII for breach of contract. Plaintiff Joseph Rehonic was an EA who owned two agencies in the State of Georgia. He had his contracts terminated by Allstate, and brings Count XI for unjust termination for cause.

The Agreement

At the heart of every claim brought by Plaintiffs is the Agreement between Allstate and the individual EAs, and Allstate's alleged breach. In order to become an EA with Allstate, all prospective EAs must enter into the R3001 Exclusive Agency Agreement and accompanying integrated documents (the "**Agreement**") with Allstate. Plaintiffs Verified Complaint ¶15. The executed Agreement between Allstate and EAs forms a valid contract under the laws of the State of Illinois. *Id.* The Agreement provides for several rights and privileges to the EAs.[1]

All of the Plaintiffs in this case allege that Allstate violated those rights and privileges by breaching the Agreement, if not in the same way, then in similar ways. *Id.* at ¶154-198.

NAPAA's Claims

All of NAPAA's claims involve breach of contract of the Agreement. The first claim is for breach of contract based on the terms of the Agreement for Allstate's blanket policy to not consider existing Allstate agents for agency sales. *Id.* at ¶154-162. The second claim is again a breach of contract claim, one based on an implied terms of the Agreement by expanding Independent Agents into EA territories. *Id.* at ¶ 163-167. The third claim is another breach of

[1]See Pls. Ver. Compl. at ¶14-25 for a full discussion of the rights and privileges of the EAs that come from the agreement.

contract based on implied terms in the Agreement by Allstate 'poaching' policies from EAs through the CCC/Internet. *Id.* at ¶ 168-172. The final claim is for breach of the express terms of the Agreement by mandating the use of Allstate phone system, AAV.. *Id.* at ¶ 173-176.

All of NAPAA's claims are on an alleged breach of contract either through the express or implied terms of the Agreement.

Plaintiff Verbarg's Claims

Plaintiff Verbarg brings separate counts of breach of contract. The first (Count V) arises from breach of contract due to Allstate's interference in the sale of Plaintiff Verbarg's agencies. *Id.* at ¶ 177-179. The second (Count VIII) arises from Allstate's a lack of good faith and fair dealing in the sale of Plaintiff Verbarg's agencies. *Id.* at ¶ 185-187. The last (Count IX) is a breach of contract claim, premised on Allstate's unjust termination for cause. *Id.* at ¶ 188-191.

Allstate interfered in the sale of Plaintiff Verbarg's agencies by 'coaching' the eventual buyer of the agencies. *Id.* at ¶ 71-76. Because of this 'coaching,' the agreed upon sale price was much lower than what the value of Plaintiff Verbarg's agencies were worth. *Id.* Allstate further engaged in bad faith dealing by denying the sale of Plaintiff Verbarg's agencies to an otherwise objectively qualified buyer in favor of their preferred candidate. *Id.* at ¶ 109-113. Allstate also unjustly terminated Plaintiff Verbarg's Agreement by coming up with an arbitrary and capricious reason of a minor level 1 event that was resolved two years prior to the termination. *Id.* 128-130.

All of Plaintiff Verbarg's claims arise out of Allstate's alleged breach of contract, following his unjust termination. *Id.* at ¶ 63-65. If Allstate did not unjustly terminate Plaintiff Verbarg's Agreement, he would not have sold his agencies. *Id.* at ¶ 132. Thus, all of Plaintiff Verbarg's claims arise out of the same series of transactions.

Plaintiff Shales' Claims

Plaintiff Shales brings two counts of breach of contract. The first (Count VI) is for breach of contract for interference in the sale of Plaintiff Shales' agencies. *Id.* at ¶ 180-181. The second (Count X) is for breach of contract premised on Allstate's unjust termination for cause. *Id.* at ¶ 192-194.

Plaintiff Shales owned four agencies at the time his contract was terminated and given approximately 100 days to sell his agencies. *Id.* at ¶ 87. Allstate required him to split his largest agency into two separate agencies to sell it and presented him a limited pool of six agents who they would approve as buyers of these agencies. *Id.* at ¶ 87-88. This limited pool of six buyers for five agencies interfered with Plaintiff Shales' ability to sell his agencies. Allstate's termination of Plaintiff Shales' agencies was a breach of the Agreement because it was based upon matters wholly unrelated to the policies it had any contractual right to control. *Id.* at ¶ 138-142.

Just like with Plaintiff Verbarg, Plaintiff Shales would not have sold his agencies if not for his unjust termination. *Id.* at ¶ 86, 133-142. All of his claims arise out of the same series of transactions.

Plaintiff Brad Rehonic's Claim

Plaintiff Brad Rehonic brings one claim (Count VII) for breach of contract for Allstate's interference in the sale of his agency. *Id.* at ¶ 182-184. Plaintiff Brad Rehonic alleges that Allstate breached the contract by denying an otherwise eligible buyer on the basis of IS, while later assigning the book of business to an agent not on IS. *See id* at 92-104.

Plaintiff Joseph Rehonic's Claim

Plaintiff Joseph Rehonic brings one claim (Count XI) for breach of contract premised on

Allstate's unjust termination for cause. *Id.* at ¶ 195-198. Plaintiff Joseph Rehonic alleges that Allstate knew and accepted the practices that were occurring at his agency. Because of that, Plaintiff Joseph Rehonic had a reasonable expectation that all of these practices were acknowledged and allowed. *See id.* at ¶ 143-153.

II. Argument

A. Joinder is proper since all of Plaintiffs' claims involve a similar series of transactions and involve similar questions of fact and law.

Joinder is proper when the claims are "arising out of the same transaction or series of transactions," and where "any common question of law *or* fact would arise." 735 ILCS 5/2-404 (emphasis added). Further, "an action may be severed *as an aid to convenience*." 735 ILCS 5/2-1006 (emphasis added). Allstate argues that the claims do not involve similar series of transactions and that severing will allow for efficient resolution of the claims. Def. Mot. to Sever at 4. Allstate's argument on severance lacks merit.

"The objective of joinder is the economy of actions and trial convenience." *Prime Leasing, Inc. v. Kendig*, 332 Ill. App. 3d 300, 308 (Ill. App. Ct. 1st Dist. 2002) (quoting *Boyd v. Travelers Ins. Co*, 166 Ill. 2d 188, 199 (1995) ("The determining factors are that the claims arise out of *closely* related 'transactions' and that there is in the case a significant question of law *or* fact that is common to the parties.") *Id.* (emphasis added). Even if the claims do not arise out of the same transaction, so long as they arise from a series of transactions and there exist common questions of law and fact, joinder is proper. *Prime Leasing, Inc.*, 332 Ill. App. 3d at 308.

In *Prime Leasing*, the two joined plaintiffs were creditors that were unable to collect their debts from the defendant as a result of its bankruptcy. *Id.* at 304. One of the plaintiffs was a

provider of financial services and entered into a merchandising management information system lease with the defendant. *Id.* at 305. The other plaintiff was a stock brokerage firm that purchased several million dollars of defendant's bonds. *Id.* The Court found that joinder was proper since both plaintiffs, while not arising from the same transaction or facts, alleged fraud and had questions of law and fact in common. *Id.* at 308 (finding both claims based upon similar allegedly fraudulent practices by defendant).

Here, all of the claims are based on Allstate breaching the same Agreement in some way. Three of the four individual Plaintiffs allege that Allstate unjustly terminated their contracts. *See* Pl. Resp. to Mot. to Sev. at 3-4. The fourth individual Plaintiff alleges in common with two others that Allstate breached the agreement by interfering in the sale of the agencies. *Id.* There are questions of fact and law in common among all the Plaintiffs.

While the exact way Allstate interfered with agency sales differs among Plaintiffs, the question of fact before the court is whether Allstate is permitted to interfere at all in negotiations of agency sales under the Agreement. That question of fact is common between three of the four Plaintiffs. The question of law is the exact same between these three plaintiffs—whether Allstate interfering in the sale of an agency is a breach of the Agreement.

Plaintiffs Joseph Rehonic, Verbarg, and Shale all allege a similar breach of contract claim—breach of Contract based on the premise of unjust termination. Ver. Compl. at ¶ 188-198. Again, while the exact details of what happened with each Plaintiff is different, the question of fact and law is common among these three plaintiffs. Did Allstate unjustly terminate these three plaintiffs, and in doing so, did it breach the Agreement? Thus, they have a major question of fact and law in common.

Similar to *Prime Leasing*, joinder is proper in this present case. Whether the claims arise out of the exact same facts or transactions is not the determining factor. Rather, the critical factor is whether the "claims arise out of closely related transactions with questions of law or fact common to the parties." *Prime Leasing, Inc.*, 332 Ill. App. 3d at 308. Each of the individual Plaintiffs bring either a breach of contract claim for interfering in the sale of agencies or for unjust termination. (with Verbarg and Shale bringing both). Each individual Plaintiff alleges that Allstate interfered by coaching buyers, Ver. Compl. at ¶74-76, limiting buyers, *id* at ¶ 88-89, or imposing requirements not required by the Agreement. *Id.* at 98-103. Each individual Plaintiff alleges that Allstate unjustly terminated their contracts for arbitrary and capricious reasons, *id* at ¶ 129-130, reasons outside of its contractual right to control, *id* at ¶ 137-141, or for reasons that Allstate knew and accepted, *Id.* at ¶ 145-152.

The individual Plaintiffs' claims are all closely related transactions where Allstate either interfered in the sale of agencies or unjustly terminated the contracts of the individual Plaintiffs. Further, there are common questions of law and fact—whether this alleged interference and unjust termination breached the Agreement—which is common among all individual Plaintiffs.

Allstate argues that severing the claims will "allow for efficient resolution of the claims." Def. Mot. to Sev. at 4. Stating that "[i]f the cases remain consolidated, they will necessarily involve separate discovery and timelines for discovery, separate docket entries, and separate verdicts and judgments." *Id.* However, Allstate seems to forget that severing the cases does not dispose of them but rather transfers them to four separate judges, with four separate discovery timelines, four separate docket entries, and four separate verdicts and judgments. Allstate's solution for efficiency is no solution at all—it is a recipe for increasing the complexity and

decreasing the consistency of the adjudication of these claims.

Keeping these cases joined provides for the most efficient use of judicial resources. It keeps the entire case before one judge, with one set of discovery and timelines, with one docket entry and one judgment on the law and facts in the case. There is only one Agreement that is used between Allstate and EAs, common among all the Plaintiffs here. Plaintiffs did not ask for a jury trial, so issues relevant to jury confusion are not applicable here. Further, by keeping the case all before one judge there will be no danger of separate rulings on the language of the Agreement.

Since the individual Plaintiffs' claims arise from closely related transactions of Allstate either interfering in the sale of agencies or unjustly terminating the contracts of individual plaintiffs, there are common questions of law and fact, and judicial resources will be preserved by keeping all of the claims together. Allstate's motion to sever should be denied.

B. NAPAA's claims should be kept before the law division.

General Order 1.3 provides that an action "assigned to a judge that is determined by that judge . . . to have been filed or to be pending in the wrong department, division, district or section of the Circuit Court of Cook County, shall be transferred to the Presiding Judge of the division or district in which it is pending for the purpose of transferring the action to the Presiding Judge of the proper division or district." Further, General Order 1.2, 2.1 provides that "[t]he General Chancery Section hears actions and proceedings . . . concerning injunctions, temporary restraining orders . . . declaratory judgments, . . . specific performance, rescission and reformation of contracts, . . . and all other actions or proceedings formerly cognizable in courts of Chancery not otherwise provided for." However, the statements in the General orders are not a "jurisdictional limit." *Hass v. Pick Galleries, Inc.*, 12 Ill. App. 3d 865, 868 (Ill. App. Ct. 1st Dist.

1973).

"Circuit Courts shall have original jurisdiction of all justiciable matters." Ill. Const. Art. VI, § 9. The Illinois appellate court noted this constitutional provision meant that "the present Circuit Court of Cook County has original and unlimited jurisdiction." *Haas*, 12 Ill. App. 3d at 868. "Although the circuit court of Cook County is comprised of several divisions, including a [chancery court], those divisions are for the administrative convenience of the court and are not jurisdictional in nature," *Nemeth v. Banhalmi*, 125 Ill. App. 3d 938, 955 (Ill. App. Ct. 1st Dist. 1984) (citing *Haas*, 12 Ill. App. 3d 865). This jurisdictional provision is contemplated by the General Orders as well, "[f]or the convenience of parties and witnesses and for the more efficient disposition of litigation, a judge, upon motion of any party may transfer any action pending before that judge to the Presiding Judge of the division or district for the purpose of transferring the action to any other department, division or district." General Order 1.3(d).

As such, the transfer of an action between divisions of the circuit court is done entirely for the "convenience of the court," not because it is a jurisdictional requirement.

Judicial resources are best conserved in keeping NAPAA's claims in the law division with the individual Plaintiffs. It is the same agreement that governs all the claims in this case. Further, by keeping NAPAA's claims with the individual Plaintiffs, all the claims will be subject to the same timeline and schedule, whereas transferring it will create separate timelines and schedules for the various claims. By keeping all the claims before one judge, judicial resources are used in the most efficient manner possible.

Since the separate divisions are not jurisdictional but rather for convenience, and judicial resources are best conserved by keeping NAPAA's claims in the law division with the individual

Plaintiffs, Allstate's motion to transfer NAPAA's claims should be denied.

III. Conclusion

Since there are common questions of law and fact, the claims arise out of closely related transactions, and judicial resources are best preserved in keeping all of the individual Plaintiffs' and NAPAA's claims together, Allstate's motion to sever and transfer should be denied.

December 8, 2021

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Certificate of Service

I certify that the foregoing document was filed on December 8, 2021, using the court's electronic filing system, which will send notice of filing to all counsel of record.

/s/ James Bopp Jr.
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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,

Defendant.

Case No. 21-L-7947

ALLSTATE INSURANCE COMPANY'S REPLY IN SUPPORT OF ITS MOTION TO SEVER PLAINTIFFS' CLAIMS AND TRANSFER NAPAA'S CLAIMS TO THE CHANCERY DIVISION

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The Opposition to Allstate Insurance Company's Motion to Sever and Transfer fails to set forth any factual or legal basis for why the Court should not grant Allstate's motion. To the contrary, the Opposition confirms that severance and transfer are proper in this case. Thus, this Court should sever the plaintiffs' claims pursuant to 735 ILCS 5/2-1006 and transfer the National Association of Professional Allstate Agents, Inc.'s ("NAPAA") claims from the Law Division to the Chancery Division pursuant to General Order 1.3.

I. NAPAA's equitable and injunctive claims should be severed from the individual plaintiffs' monetary claims.

NAPAA does not address Allstate's motion to sever its claims.[1] Thus, for the reasons set forth in Allstate's Motion, NAPAA's claims should be severed.

II. The individual plaintiffs' claims should be severed.

While NAPAA is silent, the four individual plaintiffs argue that severance is improper because "all of [their] claims are based on Allstate breaching the same Agreement in *some* way." (Opposition, p. 6.) This unadorned assertion vastly understates the distinction between the individual claims, which allegedly involve four individual agents, four separate contracts with Allstate, three unrelated terminations, and several unrelated, proposed transfers of agents' economic interests. It also ignores the fact that the alleged underlying occurrences do not even have a

[1] The Opposition's joinder argument is limited to the "four individual Plaintiffs" without mention of the fifth plaintiff: NAPAA. (*See* Opposition pp. 5-8.)

temporal or geographic connection. They took place months and sometimes years apart in three different states. (*See* Motion, pp. 2-3.)

The single case cited by the individual plaintiffs in their joinder argument, *Prime Leasing, Inc. v. Kendig*, 332 Ill. App. 3d 300 (1st Dist. 2002), does not support their position. In that fraud case, the court found that joinder of an investor as a plaintiff in an action brought by the corporation's creditors was appropriate where both the creditors and the investor alleged damages arising from a unified series of fraudulent transactions.

Unlike *Prime Leasing,* there is no unified set of transactions at issue in this case. As set forth more fully in Allstate's motion, the facts and circumstances surrounding each plaintiff's claims are separate and distinct (*See* Motion, pp. 2-3.) For example:

- Verbarg alleges that Allstate improperly terminated his agency agreement for cause after Allstate determined that Verbarg's conduct caused an insurance policy to be issued without appropriate endorsements. (*See* Compl. at ¶¶ 121-132.)
- Shales alleges Allstate improperly terminated his agency agreement for cause after he transferred a third-party policy to his wife's independent agency. (*See id.* at ¶¶ 133-142.)
- Joseph Rehonic alleges Allstate improperly terminated his agency agreement for cause after it learned of issues with his agency employment practices. (*See id.* at ¶¶ 143-153 and Count XI.)
- Brad Rehonic does not appear to claim his agency agreement was improperly terminated but asserts that Allstate breached its agreement with him in other ways. (*See id.* at¶¶ 92-105 and Count VII.)

Indeed, there is no real dispute on this point—even the plaintiffs admit that the "details of what happened with each Plaintiff is different." (Opposition, p. 6.)[2]

Under Plaintiffs' reasoning, any agent who ever brought a breach of contract claim against Allstate—regardless of the allegations—could be a plaintiff in this lawsuit if they alleged Allstate breached their agency agreement in "some way." Such reasoning is not practicable, equitable, nor envisioned by the rules governing joinder and severance. Thus, because the individual plaintiffs' claims do not arise from the "same transaction or series of transactions" necessary for joinder under 735 ILCS 5/2-404, their claims should be severed from each other.

III. NAPAA's claims should be transferred to the Chancery Division.

NAPAA devotes most of its argument regarding transfer to the proposition that General Order 1.3(d) is not "a jurisdictional requirement." (Opposition, p. 8.) That is not a controversial position—but it also misses the point.

Allstate has not claimed that the transfer of NAPAA's claims to the proper division of the Circuit Court of Cook County is a jurisdictional issue. Rather, Allstate seeks compliance with the instruction in General Order 1.3 that when claims are filed in the wrong division, they "*shall* be transferred to the Presiding Judge of the division

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[2] Despite this admission, the individual plaintiffs attempt to craft common questions of fact by stating that that the "coaching," "limiting buyers," and "imposing requirements" allegations in the Complaint are brought by "each individual Plaintiff." (Opposition, p. 7.) The "coaching" allegations, however, are specific to plaintiff Verbarg, the "limiting buyers" allegations are specific to Shales, and the "imposing requirements" allegations cited are specific to Brad Rehonic. (*See* Compl. ¶¶ 74-76, 88-89, 129-130.)

or district in which it is pending for the purpose of transferring the action to the Presiding Judge of the proper division or district." General Order 1.3(c) (emphasis added).

NAPAA's claims for injunctive and declaratory relief were incorrectly filed in the Law Division in the first place. Thus, they should be transferred to the Chancery Division pursuant to General Order 1.3(c).

CONCLUSION

For the reasons set forth above and in its motion, Allstate respectfully requests that this Court grant its motion and sever NAPAA's claims from the individual plaintiffs' claims, transfer NAPAA's claims from the Law Division to the Chancery Division, and sever the individual plaintiffs' claims into three separate cases (plaintiff Shales's claims, plaintiff Verbarg's claims, and plaintiffs Brad Rehonic and Joseph Rehonic's claims). Allstate further requests any other relief this Court deems just and appropriate.

Dated: December 23, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing document was filed on December 23, 2021, using the court's electronic filing system, which will send notice of the filing to all counsel of record.

/s/ Joshua D. Lee

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

NATIONAL ASSOCIATION OF PROFESSIONAL ALLSTATE AGENTS, INC., et al.,	)	No. 21 L 7947
Plaintiffs,	)	Commercial Calendar N
v.	)	Honorable Mary Colleen Roberts
ALLSTATE INSURANCE COMPANY.	)	
Defendants.	)	

ORDER

This matter coming before the Court on Defendant Allstate Insurance Company's Motion to Dismiss Plaintiffs' Complaint pursuant to 735 ILCS 5/2619(a)(9) and 735 ILCS 5/2-615, Allstate's Motion to Sever Plaintiffs' Claims and Transfer NAPAA's Claims to the Chancery Division pursuant to 735 ILCS 5/2-1006 and General Order 1.3, and Plaintiff National Association of Professional Allstate Agents' Motion for Entry of Preliminary Injunction pursuant to 735 ILCS 5/11-102; the Court having considered the written submissions and being advised of the premises, finds:

STATEMENT OF THE FACTS

Plaintiffs Scott Verbarg ("Verbarg"), Ross Shales ("Shales"), Brad Rehonic ("Brad"), and Joseph Rehonic ("Joseph") (collectively the "Individual Plaintiffs") were employed as Allstate Exclusive Agents ("EAs") for Defendant Allstate Insurance Company's ("Allstate"). The EAs executed Exclusive Agency Agreements and accompanying integrated documents (the "EA Agreement") with Allstate. Plaintiffs allege that Allstate breached these contracts by instituting policies to prevent the sale of EA agencies to other EA agents, introducing Independent Agents ("IAs") into areas serviced by EAs, compelling the Individual Plaintiffs to implement and use Allstate Agency Voice ("AAV"), and interfering in the sale of EAs agencies. The Individual Plaintiffs and Plaintiff National Association of Professional Allstate Agents ("NAPAA") (collectively the "Plaintiffs") have now failed suit based on those breaches.

ARGUMENTS OF THE PARTIES

Motion to Dismiss

Allstate argues that Counts I-IV for breach of contract must be dismissed because NAPAA lacks associational standing to bring the claims as the participation of its members is required. Counts I -IV should also be dismissed because Plaintiffs have failed to plead that the members substantially performed their obligations under the EA Agreement. Allstate argues that due to this failure, Plaintiffs are not entitled to receive declaratory/injunctive relief. Next, Allstate argues that Count I must be dismissed because it is inconsistent with the EA Agreements and contradicted by the allegations contained in Plaintiffs' Complaint. Allstate argues that under the EA Agreement, Allstate has the sole ability to approve or disprove the sale of an EA's economic interest and has approved the sale of those interests to other existing EAs. Count II must likewise be dismissed because the EA Agreement is clear that EAs do not have exclusive territories. As to Count III, Allstate argues that Plaintiffs are attempting to create an implied right to payment which does not exist under the contract. The Court should decline to do so. As to Count IV, Allstate argues that the EA Agreement grants Allstate the exclusive ability to control the technology used by EAs and only require the EAs to pay the expenses of maintaining the technology. The EA does not confer any control rights onto the EAs themselves. Allstate goes on to argue that Counts V, VI, and VII for tortious interference should be dismissed because the allegations are pled on information and belief and as such are insufficient. Finally, Count VIII for breach of the implied covenant of good faith fails because it is inconsistent with the language of the EA Agreement.

In response Plaintiffs argue that NAPAA has established its associational standing to sue on behalf of its members. Plaintiffs argue that because NAPAA is seeking declaratory judgment as to Counts I-IV, not money damages, little member participation is required which is sufficient to satisfy the third element. Plaintiffs argue that Counts I-IV have been properly plead and need not be dismissed. However, if the Court disagrees, the proper course of action is amendment, not dismissal. Regarding the arguments germane to each Count, Plaintiffs argue that Count I adequately plead a claim for breach of contract as to Allstate's blanket denial policy. Plaintiffs argue that the few instances cited by Allstate in which a sale was approved does not undercut Plaintiffs' argument. Next, Plaintiffs argue that the expansion of IAs into markets served by EAs is a breach of the EA Agreement. Although the EA Agreement allows Allstate to determine the number of agencies and EAs in an area, the EA Agreement does not include terms for IAs. Allstate's course of dealings and statements made by Allstate representatives show that there was an implied term within the EA Agreement that IAs will only be authorized in areas unserved by EAs. Plaintiffs argue the allegations contained in Counts III and IV also support a claim for breach of the EA. Plaintiff argue that Allstate's poaching of policies through its CCC/Internet and Allstate's attempts to force EAs to use its telephone system is improper under the EA Agreement. Plaintiffs further argue that NAPAA is entitled to injunctive relief for all of its breach of contract claims. As to Counts V, VI, and V, Plaintiffs argue that

the Individual Plaintiffs have all stated claims upon which relief can be granted. Finally, as to Count VIII, Plaintiffs argue that Allstate breached the implied duty of good faith by arbitrarily choosing to refuse the sale of Verbarg's agency after a qualified buyer was found.

In reply, Allstate argues that Plaintiffs' positions as active and former Allstate agents is insufficient to establish performance under the EA Agreements. Simply accepting the EA Agreements is insufficient. NAPAA has likewise failed to establish any claim for breach of contract or entitlement to injunctive relief for the reasons stated in Allstate's Motion. Additionally, Allstate argues that the implementation of the AAV platform does not violate the EA Agreement because Allstate has the right to establish technology requirements for ensuring compliance with the Telephone Consumer Protection Act and safeguarding its customers. Allstate argues that Plaintiffs have also failed to allege performance of their obligations as to the Individual Plaintiffs' claims for tortious interference and have failed to meaningfully respond to the arguments for breach of the implied duty of good faith.

Motion to Sever

Allstate seeks to sever the Plaintiffs claims into four separate claims arguing that the claims are legally and factually distinct. Allstate argues that NAPAA's association claims are not based on the same facts and circumstances of the Individual Plaintiffs and merely refer generally to its members. Allstate argues that NAPAA's claims should be transferred to Chancery as NAPAA only seeks declaratory judgment and injunctive relief. The Individual Plaintiffs' claims should also be severed although Allstate concedes that Joseph and Brad Rehonic's claims need not be severed as they involve the same facts and witnesses.

In response Plaintiffs argue the joinder of their claims is proper as all the claims involve similar transactions, and questions of law and fact. All the claims stem from Allstate's breach of the EA Agreement. Plaintiffs argue that severing the claims will not promote judicial efficiency or the preservation of resources. NAPAA's claims should be kept before the law division. Nothing contained in the General Orders is meant to be a jurisdictional bar to the claims, but as a means of convenience to the Court.

In reply Allstate argues that NAPAA's equitable claims should be severed and transferred to Chancery under General Order 1.3. The Individual Plaintiffs' claims should also be severed as the claims involve distinct individuals, contracts, and facts.

Motion to for Preliminary Injunction

NAPAA seeks a preliminary injunction enjoining Allstate from requiring the implementation and use of Allstate's AAV system arguing that the EA Agreement contained a contractual guarantee of autonomy as to the telephone systems used within the agencies. Allstate's is attempting to usurp that autonomy by terminating the contracts of EAs who refuse to implement the AAV system.

In response Allstate argues that NAPAA cannot meet the high burden necessary to obtain a preliminary injunction. Allstate argues that the ability to supply and maintain a telephone system is only granted when Allstate does not supply the telephone system. NAPAA cannot show that it possess a clearly ascertainable right that is being infringed upon, that EAs will suffer irreparable injury, lack an adequate remedy at law, or that the EAs will suffer greater harm without that injunction than Allstate will suffer if the injunction is issued. Allstate argues that although the EAs agreed to indemnify Allstate, this indemnity is insufficient to shield Allstate from harm.

In reply NAPAA argues that the EA Agreement clearly gives EA the right to supply and maintain their own telephone systems. The right does not merely pertain to the use of agency owned technology. NAPAA's member are entitled to injunctive relief for breach of the EA Agreement due to Allstate's breach. NAPAA's members have no adequate remedy at law. Monetary damages would be inadequate as EA employees who implemented the AAV system have had their personal information uploaded to Allstate, and any EAs that refuse face termination. The balance of hardship weighs in NAPAA's favor as theory have multiple avenues to reduce their exposure through indemnity.

OPINION OF THE COURT

Motion to Dismiss

A Section 2-615 motion attacks the legal sufficiency of a complaint. *Beahringer* v. *Page*, 204 Ill.2d 363, 369 (2003); *Weatherman* v. *Gary Wheaton Bank of Fox Valley*, N.A., 186 111.2d 472, 491 (1999). The motion does not raise affirmative factual defenses, but rather alleges only defects on the face of the complaint. *Beahringer*, 204 Ill. 2d at 369. When considering a Section 2-615 motion to dismiss, pleadings are to be liberally construed to do justice between the opposing parties. *Abbott* v. *Amoco Oil Co.*,249 Ill. App. 3d 774, 778 (2d Dist. 1993). All well pleaded facts within the four corners of the complaint are regarded as admitted and true, together with all reasonable inferences drawn in the light most favorable to the plaintiffs. *Id.* Illinois is a fact-pleading jurisdiction. *See, e.g., Marshall* v. *Burger King Corp.*, 222 Ill. 2d 422, 429 (2006); *Weiss* v. *Waterhouse Securities, Inc.*, 208 Ill.2d 439, 45a1 (2004). 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 *City of Chicago* v. *Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 368-69 (2004); *Chandler* v. *Illinois Central R.R. Co.*, 207 Ill.2d 331, 348 (2003); *Vernon* v. *Schuster*, 179 Ill.2d 338, 344 (1997). Because Illinois is a fact-pleading jurisdiction, the plaintiffs must allege facts, not mere conclusions, to establish their claim as a viable cause of action. See *Napleton* v. *Vill. of Hinsdale*, 229 Ill. 2d 296, 305 (2008); *Iseberg* v. *Gross*, 227 Ill. 2d 78, 86 (2007).

When proceeding under a 2-619 motion, the movant concedes all well-pleaded facts set forth in the complaint but does not admit conclusions of law. *Piser* v. *State Farm Mut. Auto. Ins. Co.*, 405 Ill. App. 3d 341, 346 (1st Dist. 2010). In reviewing the sufficiency of the complaint, the Court accepts as true all well-pleaded facts and all reasonable inferences

that may be drawn from those facts. *Porter v. Decatur Mem. Hosp.*, 227 Ill. 2d 343, 352 (2008). A Section 2-619 motion to dismiss should be granted only when it raises affirmative matter which negates the plaintiff's cause of action completely, or refutes critical conclusions of law, or conclusions of material but unsupported fact. *Ferguson v. City of Chicago*, 213 Ill. 2d 94, 96-97 (2004). Upon ruling on a 2-619 motion, the court must deny the motion if there is a material and genuine question of fact. 735 ILCS § 5/2-619(c); see also, *Semansky v. Rush-Presbyterian-St. Luke's Medical Ctr.*, 208 Ill. App. 3d 377, 384 (1st Dist. 1990).

I. Standing

"Associational standing refers to the ability of an association to sue as a representative body on behalf of its members. The doctrine is firmly established in federal law. The Illinois Supreme Court expressly adopted the test for associational standing from the United States Supreme Court." *Ill. Rd. & Transp. Builders Ass'n v. Cty. of Cook*, 2021 IL App (1st) 190396 ¶ 19. "An association has standing to sue 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." *Id.* at ¶ 20. "Economic harm is considered a sufficient injury to confer standing." *Id.* at ¶ 36.

Allstate has argued that NAPAA cannot seek declaratory judgment as to the EA Agreement because the participation of the individual members would be required. NAPAA has argued that little participation of the individual members would be necessary as NAPAA's claim involves questions of law to be resolved by the Court. Upon consideration the Court finds that NAPAA has stated a valid basis for associational standing. Allstate's Motion to Dismiss pursuant to 735 ILCS 5/2-619 is DENIED.

II. Breach of Contract

In order to state a claim for breach of contract, a plaintiff must show: (1) the existence of a valid and enforceable contract; (2) performance by the plaintiff; (3) a breach of the subject contract by the defendant; and (4) that the defendant's breach resulted in damages. *Unterschuetz v. City of Chicago*, 346 Ill. App. 3d 65, 69 (1st Dist. 2004); *International Supply Co. v. Campbell*, 391 Ill. App. 3d 439, 450 (2009). Additionally, in alleging a breach of contract, a plaintiff's pleadings must allege facts sufficient to indicate the terms of the contract claimed to have been breached. See *id.*

The Court finds that Count I of Plaintiffs' Complaint is insufficiently pled. Although Plaintiff's claim that Allstate violated the terms of the EA Policy, Plaintiffs' have failed to point to a specific provision on which their claim is based. As pled by Plaintiffs', Allstate has the discretion to choose to approve or deny the sale of agency. Plaintiffs' have not sufficiently alleged that Allstate breached the EA Agreement by making determinations that were not beneficial to the Plaintiffs. As such, Allstate's Motion to Dismiss Count I of Plaintiffs' Complaint is GRANTED.

The Court finds that a question of fact exists as to whether Plaintiffs' have sufficiently pled a claim for breach of the EA Agreement based on the introduction of IA's into the EA territories. Allstate's Motion to Dismiss Count II of Plaintiffs' Complaint is DENIED.

As to Count III, the Court finds that Plaintiffs' have failed to allege sufficient facts to plead a claim for breach of contract. As such, Allstate's Motion to Dismiss Count III of Plaintiffs' Complaint is GRANTED.

The Court finds that a question of fact exists as to whether Plaintiffs have stated a claim for breach of contract as to Count IV. Dismissal is therefore improper and Allstate's Motion to Dismiss Count IV of Plaintiffs' Complaint is DENIED.

III. Tortious Interference

"To state a cause of action for intentional interference with prospective economic advantage, a plaintiff must allege (1) a reasonable expectancy of entering into a valid business relationship, (2) the defendant's knowledge of the expectancy, (3) an intentional and unjustified interference by the defendant that induced or caused a breach or termination of the expectancy, and (4) damage to the plaintiff resulting from the defendant's interference." *Anderson v. Vanden Dorpel*, 172 Ill. 2d 399, 406-07 (1996). To prevail on a claim for tortious interference plaintiffs, must identify specifically which parties were expected to enter into a business relationship. *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Ltd. USA*, 384 Ill. App. 3d 849, 862 (1st Dist. 2008).

Upon consideration of the submissions, the Court finds that Plaintiffs' have sufficiently stated a claim for tortious interference. Plaintiffs have alleged that they had a reasonable expectancy of selling their businesses, Allstate knew of this expectancy, Allstate interfered in the sale of their businesses, and caused damage to the Plaintiffs. Allstate's Motion to Dismiss Counts V, VI, and VII of Plaintiffs' Complaint is DENIED.

IV. Breach of Implied Duty of Good Faith and Fair Dealing

"A plaintiff sustains a cause of action for breach of contract for abuse of discretion based on a violation of the implied covenant of good faith and fair dealing by alleging that the defendant exercised its discretion in a manner contrary to the reasonable expectations of the parties." *Slay v. Allstate Corp.*, 2018 IL App (1st) 180133 ¶ 32. "The duty of good faith and fair dealing requires a party vested with discretion under the contract to exercise that discretion reasonably and with proper motive and not arbitrarily, capriciously, or in a manner inconsistent with the reasonable expectations of the parties." *Id.* at ¶ 33.

Upon consideration of the submissions the Court finds that Plaintiffs have sufficiently stated a cause of action for implied duty of good faith and fair dealing. Plaintiffs have alleged that Allstate "arbitrarily, capriciously, or in a manner inconsistent with the reasonable expectations of the parties" exercised their discretion to reject the proposed buyer for Verbarg's agencies. Allstate's Motion to Dismiss Count VIII of Plaintiffs' Complaint is DENIED.

Motion to Sever and Transfer

The presence of NAPAA's claim for declaratory relief does not in and of itself require that the claim be severed and transferred to the Chancery Division. It is within the discretion of the Court to determine whether transfer under these circumstances is warranted. The Court finds that it is not. Allstate's Motion is therefore DENIED.

Motion for Preliminary Injunction

"Plaintiffs have the burden of proving that they are entitled to injunctive relief. To meet this burden of proof, plaintiffs must establish by a preponderance of the evidence that (1) they possess a certain and clearly ascertained right which needs protection; (2) they will suffer irreparable injury without the protection of the injunction; (3) there is no adequate remedy at law for the injury; and (4) they are likely to be successful on the merits." *Baal v. McDonald's Corp.*, 97 Ill. App. 3d 495, 499 (1981).

Upon consideration of the submissions the Court finds that Plaintiffs have failed to meet their burden of proof entitling them to injunctive relief. Specifically, the Court finds that Plaintiffs have not established that they will suffer irreparable harm without the protection of the injunction, nor have they established that there is no adequate remedy at law for their injuries, which the Court believed is compensable through money damages. For these reasons, Plaintiffs' Motion for Preliminary Injunction is DENIED.

Wherefore, it is hereby ORDERED:

1. Defendant Allstate's Motion to Dismiss pursuant to 735 ILCS 5/2-619(a)(9) is DENIED.
2. Defendant Allstate's Motion to Dismiss pursuant to 735 ILCS 5/2-615 is GRANTED in part and DENIED in part.
    a. Defendant Allstate's Motion to Dismiss Count I and III pursuant to 735 ILCS 5/2-615 is GRANTED.
    b. Defendant Allstate's Motion to Dismiss Counts II and VI-VIII pursuant to 735 ILCS 5/2-615 is DENIED.
3. Defendant Allstate's Motion Sever and Transfer is DENIED.
4. Plaintiffs' Motion for Preliminary Injunction is DENIED.

ENTERED
Judge Mary Colleen Roberts-1937
JAN 17 2022
IRIS Y. MARTINEZ
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

Entered:
Judge Mary Colleen Roberts
1937

Judge Mary Colleen Roberts 1937

Circuit Court of Cook County, Illinois
County Department, Law Division

The Honorable Iris Martinez
Clerk of the Circuit Court of Cook County, IL
County Division
Daley Center
50 West Washington Street, Room 1202

Payor
NATIONAL ASSOCIATION OF P
STREET NOT PROVIDED
CITY NOT PROVIDED., IL 99999

Receipt No
2022-08927-L1

Transaction Date
03/09/2022

Description	Amount Paid
NATIONAL ASSOCIATION OF P	
2021L007947	
NATIONAL ASSOCIATION OF P,BRAD REHONIC,JOSEPH REHONIC,ROSS SHALES,SCOTT VERBARG-vs-ALLSTATE INSURANCE COMPAN	
Records Search	
Record Search	**6.00**
SUBTOTAL	6.00
Remaining Balance Due: $0.00	**6.00**

PAYMENT TOTAL **6.00**

Check (Ref #220) Tendered	6.00
Total Tendered	**6.00**
Change	0.00

03/09/2022
11:48 AM

Cashier
Station LAW1014

Audit
23066643

OFFICIAL RECEIPT