

# **Exhibit E**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

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MICHAEL NOCELLA and THE NOCELLA  
INSURANCE AGENCY,

Plaintiffs,

v.

ALLSTATE INSURANCE COMPANY,

Defendant.

-----x

Index No. 604642/2018

(Garguilo, J.)

**NOTICE OF MOTION OF ALLSTATE  
INSURANCE COMPANY TO MODIFY  
THE TEMPORARY RESTRAINING  
ORDER PURSUANT TO CPLR 6314**

PLEASE TAKE NOTICE that upon the accompanying Affirmation of Michael J. Grohs, dated March 19, 2018 (with exhibits) and the Memorandum of Law in Support thereof, and all prior pleadings and proceedings in this action, defendant Allstate Insurance Company, by and through its undersigned counsel, will move this Court before the Honorable Jerry Garguilo, at the Special Term Part 48, of the Supreme Court of the State of New York, Suffolk County, located at the John P. Cohalan, Jr., Courthouse (Courtroom S-33), located at 400 Carleton Avenue, Central Islip, New York 11722, on the 21<sup>st</sup> day of March, 2018 at 9:45 a.m., or as soon thereafter as counsel can be heard, for an Order pursuant to CPLR 6314 modifying the Order to Show Cause Request for a Temporary Restraining Order entered by the Court on March 15, 2018 (NYSCEF Doc. No. 39), together with such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that in accordance with the pre-motion telephone conference with the Court and the parties' counsel on March 16, 2018, reply or responding papers, if any, shall filed with the Court and be served upon the undersigned no later than March 20, 2018.

Dated: New York, New York  
March 19, 2018

Respectfully submitted,

**SAIBER LLC**

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

-----X

MICHAEL NOCELLA and THE NOCELLA  
INSURANCE AGENCY,

Index No. 604642/2018

Plaintiffs,

(Garguilo, J.)

v.

ALLSTATE INSURANCE COMPANY,

Defendant.

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO MODIFY THE  
TEMPORARY RESTRAINING ORDER PURSUANT TO CPLR 6314**

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## PRELIMINARY STATEMENT

Pursuant to CPLR § 6314, defendant Allstate Insurance Company (“Allstate” or the “Company”) respectfully moves, pursuant to CPLR 6314, to modify certain aspects of the temporary restraining order (the “TRO”) entered four days ago at the request of plaintiff Michael Nocella (“Nocella” or “Plaintiff”).<sup>1</sup>

On March 15, 2018, this Court entered a TRO which appears to be targeted at ensuring the continuation of coverage and service to the Allstate policyholders who were formerly serviced by the Nocella Agency, pending the April 11, 2018 return date on the Order to Show Cause (“OTSC”). Although Allstate respectfully disagrees that Plaintiff satisfied the high burden required to obtain injunctive relief, Allstate is compelled to file this application to modify the TRO insofar as certain provisions:

- Direct Allstate to violate New York Insurance law by permitting Nocella to continue to service Allstate customers when Nocella’s Allstate appointments have been terminated with the New York State Department of Financial Services (“NYSDFS”).
- Allow Nocella to regain access to highly confidential and proprietary information belonging to Allstate, including the confidential names and contact information of Allstate’s customers. These are Allstate’s customers, and not customers of Nocella and/or the Nocella Agency. Permitting Nocella to access Allstate’s confidential information would, in effect, be permitting him to raid the book of business owned by Allstate.

It is of paramount importance to the Company that all of Allstate’s customers are continuously provided with the best insurance coverage and customer service as possible. This includes coverage and customer services to Allstate customers formerly serviced by the Nocella Agency (hereinafter “the Allstate Book”) pending the hearing on Plaintiff’s application for a preliminary injunction. Despite Plaintiff’s numerous incendiary accusations in the moving papers,

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<sup>1</sup> Although the Verified Complaint names both Nocella and The Nocella Agency as plaintiffs, the caption and language of the OTSC (in the form prepared by Plaintiff’s counsel) names only Michael Nocella or “Plaintiff” (singular). Moreover, one of the TRO provisions includes a non-party, Christina Guigliano, who was a Licensed Sales Producer with the Nocella Agency and whose appointments with Allstate were also terminated.



the reality is that since the time Allstate exercised its absolute and unqualified right to terminate its agency relationship with Nocella, the Allstate insureds that make up the Allstate Book have been serviced by another Allstate Exclusive Agent, Daniel Bach, whose agency office is located in nearby Hauppauge, NY. Also servicing the Allstate Book are five (5) Licensed Sales Producers (LSPs) who work for Daniel Bach's Agency, and who also worked for the Nocella Agency before Nocella's Allstate appointments were terminated.

Importantly, Allstate is not seeking to have the TRO vacated in its entirety at this time, nor is Allstate seeking to lift the temporary stay of the July 1, 2018 deadline for Nocella to sell the Allstate Book. Rather, Allstate submits that the TRO must be modified because it would require Allstate to mandatorily reinstate Nocella as an Exclusive Agent of Allstate despite: (i) the clear with or without cause termination provisions of his Agency Agreement; (ii) the clear evidence that Nocella, along with Licensed Sales Producer Christina Giugliano who worked for him, knowingly provided false information to Allstate; (iii) the fact that Nocella's and LSP Giugliano's Allstate appointments have been terminated with DFS, thus making it illegal for Allstate to allow either of them to service Allstate customers; and (iv) the complete absence of any irreparable injury.

Accordingly, Allstate respectfully submits that the provisions on pages 4-5 of the TRO requiring Allstate to reinstate Nocella's Allstate appointments, and permitting Nocella to service the Allstate Book, receive phone calls from Allstate's customers, and access Allstate's confidential information and computer systems should immediately be modified. Not only do compelling circumstances render continuation of those aspects the TRO highly inequitable to Allstate, but permitting Nocella to service Allstate's customers would cause Allstate to violate New York's Insurance Law and the regulatory requirements imposed upon insurance companies by NYSDFS. Indeed, New York imposes statutory notice requirements upon Allstate and every other insurer

doing business in New York. See N.Y. Ins. Law §2112(d). This notice requirement applies to the termination of a certificate of appointment of any insurance agent licensed in New York, including the termination of Nocella's appointments with Allstate. Id.

As set forth herein, and as will be further demonstrated in Allstate's opposition to Plaintiff's application for a preliminary injunction, Plaintiff fails in all respects to meet the extraordinarily high standards for the granting of preliminary injunctive relief. Allstate was contractually entitled to terminate its relationship with the Nocella Agency and Nocella has no legal right to force Allstate to continue that relationship. Enforcement of the TRO currently in place would cause real and irreparable harm to Allstate insofar as asks Allstate to violate New York law by permitting permit Nocella (along with non-party LSP Giugliano) to service Allstate's customers even though each of their appointments with Allstate have been terminated with DFS.

The TRO also contemplates that Nocella can again access Allstate's computer systems which contains Allstate's highly confidential and proprietary information about Allstate's customers. If Nocella is granted access to this information he could take and utilize Allstate's confidential customer information to compete with Allstate. Also highly concerning to Allstate is that Nocella continually refers to Allstate insureds as "my customers." See, e.g., Nocella Affidavit, at ¶30. This is patently false -- all of these insureds are, and always have been, Allstate's customers as expressly provided in the Agency Agreement between Allstate and the Nocella Agency. Permitting Nocella to access Allstate's confidential customer information would, in effect, be permitting him to raid the Allstate Book which is owned by Allstate.

Thus, the TRO should be modified pending the return date on Plaintiff's application for a preliminary injunction, which is scheduled for April 11, 2018.

## STATEMENT OF FACTS AND PROCEDURAL HISTORY

The Court is familiar with the allegations underlying Plaintiff's application for an OTSC and his request for a TRO. Accordingly, Allstate recites only those undisputed allegations and other facts that pertain to circumstances most relevant to a determination of Allstate's motion to modify the TRO.

### **A. Relevant Provisions of Plaintiffs' Exclusive Agency Agreement with Allstate**

Allstate entered into an R3001S Exclusive Agency Agreement with Nocella effective as of September 1, 2014 (the "Agency Agreement"). See Affidavit of Lucia Montañó, dated March 14, 2018 ("Montañó Aff."), at ¶4, Exh. A.<sup>2</sup> Pursuant to the Agency Agreement, Nocella was an *independent contractor* agent of Allstate. See Agency Agreement, Sections I.A. and I.D. Nocella was not an Allstate employee, nor did he own his book of business. Rather, Nocella was an exclusive agent (meaning he could only sell Allstate products) and as the Agency Agreement makes clear, (1) the relationship with Allstate could be terminated at any time with or without cause (see Agency Agreement, Sections XVII.B.2 and XVII.B.3); and (2) Allstate "own[s] all business produced under the terms of this Agreement" (see Agency Agreement, Section I.A.).

The Agency Agreement also expressly incorporates provisions of other documents, including the Exclusive Agency Independent Contractor Manual and the Allstate Agency Standards. Thus, as an independent contractor agent under the Agency Agreement, Nocella also agreed that he, and those working for him, would abide by and be subject to certain defined standards, duties and responsibilities to ensure that Allstate business conducted through the Nocella Agency was being carried out with integrity and consistent with Allstate's Ethical Standards in the Conduct of Business (as stated in the Exclusive Agency Independent Contractor

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<sup>2</sup> A copy of the Montañó Aff. is attached as Exhibit 2 to the Affirmation of Michael J. Grohs, Esq. ("Grohs Aff.") submitted herewith.

Manual) and Allstate's business processing requirements (as stated in the Allstate Agency Standards). Among those ethical standards are Allstate's requirement that the activities and sales practices of Nocella and the LSPs under his direction at the Nocella Agency are conducted with honesty, including that only accurate and complete information is transmitted in connection with writing new insurance business. See Agency Agreement, Section I.C. and Section II.

**B. The Investigation and Termination of the Agency Agreement**

In late 2017, Allstate initiated an investigation of the Nocella Agency which was performed by Allstate Senior Investigator Lucia Montañó. As set forth in the Montañó Affidavit, it became apparent during the investigation that Nocella and LSP Guigliano (who is a not a named plaintiff in this action), knowingly falsified information on four separate Allstate Homeowner's insurance applications in order obtain homeowner's insurance coverage that the insureds would otherwise not have been able to receive. See Montañó Aff., ¶10.

When Nocella and LSP Guigliano initially entered the accurate construction, replacement cost, square footage and other information about the homes (known as Residential Component Technology ("RCT") factors), the determinative Catastrophe Risk Management ("CRM") score for all four homes was greater than 8.5, which resulted in the rejection of those homeowner's insurance applications. One of the homes was the home of Plaintiff Nocella. Then, Nocella and LSP Guigliano made several attempts to generate acceptable CRM scores for the four homes (including Nocella's home) by submitting false information about the homes. Ultimately, Nocella and LSP Guigliano were able to generate acceptable CRM scores for Nocella's and the other three homes (using the false home characteristics), the Nocella Agency caused four Allstate Homeowner's insurance policies to be bound (using the CRM scores that Nocella and LSP

Guigliano generated using the false information that they provided to Allstate). See Montañó Aff., ¶¶10-12.

Nocella was interviewed during Allstate's investigation and he, among other things, acknowledged that it is a violation of the Agency Agreement and Allstate's policies to knowingly submit false information to the Company. Nocella also admitted that he had provided false RCT information about his home after his first homeowner's insurance application was rejected due to the 11.54 CRM score that was generated when Nocella used the accurate RCT information for his home. See Montañó Aff., ¶¶13-15.

By letter dated March 1, 2018, Allstate exercised its right under the Agency Agreement to terminate Nocella's agency with Allstate. See Montañó Aff., ¶18, and Exh. B. See also Grohs Aff., Exh. 3. As required by the New York insurance laws, namely NY Insurance Law §2112, Allstate notified DFS of the terminations of both Nocella and LSP Giugliano. See Grohs Aff., Exh. 4 and Exh. 5. Those terminations of appointment are duly reflected on the NYSDFS's online producer/licensee database, which is publicly accessible at [www.dfs.ny.gov](http://www.dfs.ny.gov). See Grohs Aff., Exh. 6 and Exh. 7.

### **C. The Allstate Book of Business is Being Serviced**

Since Allstate terminated its independent contractor relationship with Nocella on March 1, 2018, the Allstate Book, which is comprised of Allstate customers who were formerly serviced by the Nocella Agency, has been serviced, and continues to be serviced, by Allstate. More specifically, upon Allstate's termination of the Agency Agreement, customer calls were forwarded to the office of Allstate's Exclusive Agent Daniel Bach, located in nearby Hauppauge, NY. Thus, as of March 1, 2018, the Allstate Book has been serviced by Daniel Bach, and 5 LSPs - Sharlene Basso (who submitted an Affidavit in this case), Keith Mirra, Robert Giordano, Joseph Dito and

Heather Khan. See Grohs Aff., ¶4 and Exh. 3. All of these LSPs can receive calls regarding the Allstate Book and they can access Allstate's computer system as may be necessary to service the customers. In fact, the LSPs should already be familiar with the Allstate Book given that they served as LSPs for both the Nocella Agency and Daniel Bach's Allstate Agency prior to Allstate's termination of its Agency Agreement with Nocella. *Id.* Further, all of Allstate's customers can obtain service from any authorized Allstate agency, through a toll-free number or via the internet. In short, Allstate's customers have the ability to obtain service from Allstate 24 hours per day, and 365 days per year.

**D. The Temporary Restraining Order**

The Court entered the TRO on March 15, 2018 and it was electronically filed via NYSCEF at approximately 3:00 p.m. Plaintiff's application for the TRO was initially filed with the Court almost exactly 24 hours earlier, as the OTSC was e-filed by Plaintiff's counsel on March 14 at approximately 2:54 p.m. Shortly thereafter, a copy of the OTSC papers were provided to Allstate's counsel at the Courthouse on March 14. The TRO contains certain mandatory injunctive relief that directs Allstate, *inter alia*, as follows pending a further hearing scheduled for April 11, 2018:

1. Stay the "forced sale of Michael Nocella's book of Allstate Insurance business";
2. Re-route phone calls of Allstate customers back to "the office of Michael Nocella" as to existing customers;
3. Restore all passwords required to "operate business as usual" back to "the office of Michael Nocella";
4. Permit Michael Nocella to "access all programs, information, websites, [and] databases only to the extent necessitated for daily operation";
5. Full restoration of Michael Nocella's website "for his Allstate business";
6. Allow "Michael Nocella and his employees to continue to service clients already existing"; and

7. Reinstatement of “the appointments of Michael Nocella and Christina Guigliano, an employee of the Nocella Agency.”

The TRO was entered on March 15, 2018 and is effective for at least 27 days.<sup>3</sup> No undertaking by Plaintiffs was ordered.

For the reasons set forth herein, Allstate submits that Plaintiff’s TRO application was premature and wholly unnecessary given that Allstate taken steps to ensure that the Allstate Book has been, and continues to be, serviced by Allstate. In other words, as to the Allstate Book, the Company has already taken steps to maintain the status quo pending the hearing on Plaintiff’s application for a preliminary injunction.

### LEGAL ARGUMENT

#### **THE TRO SHOULD BE MODIFIED BECAUSE IT DOES NOT MAINTAIN THE STATUS QUO AND PLAINTIFF CANNOT DEMONSTRATE IMMEDIATE AND IRREPARABLE HARM**

The purpose of a temporary restraining order is to maintain the status quo pending hearing on a preliminary injunction “where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had.” See CPLR 6301; CPLR 6313. As this Court is well aware, “the remedy of granting a preliminary injunction is a drastic one which should be used sparingly...and which will not be granted absent a showing that there is a clear right to such relief on the undisputed facts presented.” Schneider Leasing Plus v. Stallone, 172 A.D.2d 739, 740 (2d Dep’t 1994) (citations omitted); see also Popack v. Rice, 687 N.Y.S.2d 297, 297 (2d Dep’ 1999) (Courts are reluctant to grant a preliminary injunction absent

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<sup>3</sup> Pursuant the telephone conference with the Court on Friday regarding this motion, Allstate understands that the Court intends to issue a decision on Allstate’s motion by Wednesday, March 21. Any suggestion by Plaintiff that he will be further harmed due to his Allstate appointments not being reinstated (even assuming arguendo that Allstate had the unilateral power to effectuate that result) between the time the Court entered the TRO and March 21 is easily dismissed by virtue of the fact that Plaintiff waited until two weeks had passed since he received the termination letter before he filed the application for injunctive relief.

the movant establishing “a clear right to this relief under the law and the undisputed facts found in the moving papers.”); Incorporated Village of Mastic Beach v. Mastic Beach Property Owners Ass’n, Inc., 38 Misc.3d 1215(A), 967 N.Y.S.2d 867, 2013 WL 285578 \*4 (Sup. Ct. Suffolk Cty. Jan. 9, 2013) (Garguilo, J) (denying preliminary injunction).

Here, because Nocella seeks mandatory injunctive upsetting the status quo, the law imposes on the Plaintiff a “heavy burden of proving a clear right” to such relief. See Rosa Hair Stylists, Inc. v. Jaber Food Corp., 218 A.D.2d 793, 794 (2d Dep’t 1995). Matos v. City of New York, 21 A.D.3d 936, 937 (2d Dep’t 2005) (A mandatory injunction is “an extraordinary and drastic remedy which is rarely granted and then only under unusual circumstances.”). The TRO requiring the reinstatement of Nocella – an unethical and dishonest former independent contractor agent of Allstate who fraudulently submitted knowingly false information to the Company – would not only cause Allstate to violate New York insurance law, but it would also compromise the integrity of Allstate and put the Company’s confidential information and customers at risk. Similarly, permitting Nocella to regain access to Allstate’s computer systems would give him unfettered access to Allstate’s highly confidential customer information and, in effect, permit him to raid Allstate’s customers and the Allstate Book.

Pursuant to CPLR 6314, a Court is authorized to vacate or modify a temporary restraining order “at any time...[o]n motion, without notice, made by a defendant enjoined by a temporary restraining order, the judge who granted it, or in his or her absence or disability, another judge, may vacate or modify the order.”<sup>4</sup> See Wellbilt Equip. Corp. v. Red Eye Grill, L.P., 308 A.D.2d 411, 411 (1st Dep’t 2003) (“It is settled that a court has inherent power to modify its equitable directives.”). “A motion to vacate a preliminary injunction is addressed to the sound discretion of

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<sup>4</sup> This motion is being made on notice to Plaintiff’s attorney.



the court and may be granted either upon compelling or changed circumstances that render continuation of the injunction inequitable...” Thompson v. 76 Corp., 37 A.D.3d 450, 452-53 (2d Dep’t 2007) (quoting Wellbilt Equip. Corp., 308 A.D.2d at 411); see also Can West Global Communications Corp. v. Mirkaei Tikshoret Ltd., 804 N.Y.S.2d 549, 568 (Sup. Ct. N.Y. County 2005).

Thus, when determining if continued injunctive relief is warranted, courts will review not only the legal sufficiency of Plaintiff’s original application, but also any “compelling or changed circumstances that render continuation of the injunction inequitable.” Thompson, 54 A.D.3d at 452-53. See, e.g., Shapiro v. Shorenstein, 157 A.D.2d 833, 835 (2d Dep’t 1990) (vacating temporary restraining because “any breach on the part of the defendants may be fully redressed by monetary damages”); Haulage Enterprises Corp. v. Hempstead Resources Recovery Corp., 74 A.D.2d 863, 864 (2d Dep’t 1980) (“[I]t was improper to grant the preliminary injunction ... where there is no immediate and compelling need for a court to exercise its equity jurisdiction ...”).

**A. Plaintiffs Cannot Succeed on the Merits**

Plaintiffs must demonstrate a likelihood of success on the merits to obtain the drastic remedy of a preliminary injunction. See Cooper v. Bd. of White Sands Condominium, 89 A.D.3d 669, 6609 (2d Dep’t 2011). The Verified Complaint fails to state any cause of action or claim against Allstate let alone a chance of success on the merits.

There is no dispute that Nocella was an independent contractor who entered into the Agency Agreement which expressly provided, among other things, that Allstate owned all of the business and the customers belonged to Allstate. It is also undisputed that pursuant to its express terms, Allstate had the absolute right to terminate Nocella’s Agency Agreement at any time with or without cause.

New York law is clear that such a termination provision is enforceable according to its terms and confers an “absolute” right to terminate for any reason or no reason at all. A.J. Temple Marble & Tile, Inc. v. Long Island Rail Road, 256 A.D.2d 526, 527 (2d Dep’t 1998) (“A party has an absolute, unqualified right to terminate a contract on notice pursuant to an unconditional termination clause without court inquiry into whether the termination was activated by an ulterior motive”) (quotation and citation omitted). In fact, New York courts have upheld the “absolute” right of an insurance company such as Allstate to terminate its agreement with an agent such as Nocella pursuant to a termination clause such as that in the Agency Agreement between Allstate and Nocella. For example, in Shapiro v. Prudential Ins. Co. of America, the Second Department stated:

The contract was terminable at will. The plaintiff was, however, notified that the contract had been terminated ‘for cause’. Be that as it may, the defendant had an absolute right to terminate the agreement upon providing notice whether it be for cause or not.... Surely where no reason need be given under the law for exercising a termination clause, no obligation ought to be imposed upon a party to prove the validity of its reasons for ending the contractual relationship.

81 A.D.2d 661, 662 (2d Dep’t 1981). See also, e.g., Keeney v. Kemper Nat’l Ins. Cos., 960 F. Supp. 617, 624 (E.D.N.Y. 1997) (“with respect to this type of termination clause, a party has an absolute, unqualified right to terminate the contract...without court inquiry into whether the termination was activated by an ulterior motive”) aff’d, 133 F.3d 907 (2d Cir. 1998).

The foregoing authorities establish, as a matter of law, that Allstate acted entirely within its rights in issuing terminating its agency relationship with Nocella and the Nocella Agency.

**B. Plaintiff Has No Irreparable Harm**

Contrary to Plaintiff’s unsupported contention, New York law is well established that money damages fail to constitute “irreparable injury” for purposes of seeking a preliminary injunction. In re Rice, 105 A.D.3d 962, 963 (2d Dep’t 2013) (economic loss compensable by

money damages does not constitute irreparable harm); see also Family-Friendly Media, Inc. v. Recorder Television Network, 74 A.D.3d 738, 739 (2d Dep't 2010) (same).

Here, even if Plaintiff ultimately establishes liability against Allstate any on any of the causes of action he asserts against the Company, (which he cannot, and will not, establish), Plaintiff would be entitled to no more than a remedy at law for damages. Similarly, Nocella's alleged concern about unanswered calls or emails from Allstate customers, or Nocella's speculation that "it will [be] nearly impossible for me to find a qualified purchaser for what the value of my book is" or that "[t]here is no possible way to find a buyer" (Nocella Affidavit, at ¶¶34-35), does not raise a ripe and justiciable claim as a matter of law. See, e.g., New York State Inspection, Sec. & Law Enforcement Employees, Dist. Council 82 v. Cuomo, 64 N.Y.2d 233, 240 (1984) ("Where the harm sought to be enjoined is contingent upon events which may not come to pass, the claim ... is nonjusticiable as wholly speculative and abstract").

Indeed, it is Nocella himself who has the ability to moot his own alleged concern about the sale of his Allstate book of business by focusing his efforts on finding a qualified buyer instead of litigating with Allstate. Involving the Court on an emergent basis was premature and wholly inappropriate.

**C. The Balance of Equities Decidedly Favors Allstate**

Plaintiff has, in effect, asked this Court to alter Allstate's absolute and unqualified contractual rights without any legal or factual basis to do so. Plaintiff's pursuit to undo the termination of his agency relationship with Allstate is a meritless basis to interfere with Allstate's business, and enjoining Allstate's exercise of its contract rights is a harm without any countervailing irreparable harm to Plaintiff. See Nassau Roofing & Sheet Metal Co., Inc. v.

Facilities Development Corp., 70 A.D.2d 1021, 1022 (3d Dep't 1979) (balancing of the equities requires consideration of the competing harms).

Moreover, a party, like Nocella, who comes to Court with unclean hands should not, in any event, be entitled to any equitable relief by this Court. "Where a litigant has himself been guilty of inequitable conduct with reference to the subject matter of the transaction in suit, a court of equity will refuse him affirmative aid." Tepfer v Berger, 119 A.D.2d 668, 669 (2d Dep't 1986) (citing Levy v Braverman, 24 A.D.2d 430 (1st Dep't 1965)). When equitable relief is sought, moral considerations of fundamental importance require that the litigant come into court with "clean hands." See Thompson, 37 A.D.3d at 453 (citations omitted).

The real potential for harm in this matter is the harm to Allstate and to Allstate's insureds that would inevitably flow if Nocella was permitted to continue to service Allstate customers without the authority to do so and given that Nocella's Allstate appointments have been terminated with NYSDFS. There can be no dispute that such conduct would harm both Allstate's business reputation and important public interests. Moreover, despite his protestations to the contrary, the relief Nocella requests would not serve to protect the Allstate Book. Quite the opposite, permitting Nocella to again service the Allstate Book and, further, to allow Nocella to regain access Allstate's highly confidential and proprietary information would open the door to Nocella raiding the book stealing Allstate's confidential customer information. There is no countervailing equity that favors Plaintiff. Accordingly, the TRO in its current form is inequitable and should be modified.

**CONCLUSION**

For the foregoing reasons, defendant Allstate Insurance Company respectfully requests that the TRO contained in the OTSC dated March 16, 2018 be modified as reflected in the proposed Order submitted herewith, and that the Court award Allstate such other and further relief as deemed just and proper.

Respectfully submitted,

**SAIBER LLC**  
Attorneys for Defendant  
Allstate Insurance Company

By: /s Michael J. Grohs  
Michael J. Grohs

Dated: March 19, 2018

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

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MICHAEL NOCELLA and THE NOCELLA  
INSURANCE AGENCY,

Index No. 604642/2018

Plaintiffs,

(Garguilo, J.)

v.

ALLSTATE INSURANCE COMPANY,

Defendant.

-----X

**AFFIRMATION OF MICHAEL J. GROHS IN SUPPORT OF  
ALLSTATE INSURANCE COMPANY’S MOTION TO MODIFY THE  
TEMPORARY RESTRAINING ORDER PURSUANT TO CPLR 6314**

MICHAEL J. GROHS, an attorney at law duly admitted to practice before the Courts of the State of New York, hereby affirms the following under penalty of perjury:

1. I am a member of the law firm of Saiber LLC, attorneys for defendant Allstate Insurance Company (“Allstate”) in this action. I am familiar with the facts set forth herein based on my personal knowledge, my review of the case file and my involvement with the proceedings and Court filings in this action. I submit this affirmation in support of Allstate’s motion to modify the Temporary Restraining Order pursuant to CPLR 6314.

2. Attached as Exhibit 1 is a copy of the Order to Show Cause Request for a Temporary Restraining Order that was entered by the Court and filed via the New York State Courts Electronic Filing system (NYSCEF), on March 15, 2018.

3. Attached as Exhibit 2 is a copy of the Affidavit of Lucia Montañó, sworn to on March 14, 2018, with Exhibit A (the Exclusive Agency Agreement) and Exhibit B (the Termination Letter to Nocella, dated March 1, 2018).

4. Attached as Exhibit 3 is a copy of an email, dated March 1, 2018, that was sent by Allstate Territorial Sales Leader Ankur Chaturvedi. In that email, Mr. Chaturvedi, among other things, attaches a copy of the Termination Letter that he administered to Nocella and confirms that the calls of Allstate customers formerly serviced by the Nocella Agency were being forwarded to Allstate Exclusive Agent Daniel Bach. Allstate has confirmed that there are five (5) active Licensed Sales Producers (LSPs) who work for Daniel Bach's Agency - Sharlene Basso, Keith Mirra, Robert Giordano, Joseph Dito and Heather Khan. Allstate further confirmed that each of these LSPs also worked for the Nocella Agency.

5. Attached as Exhibit 4 is a copy of Allstate's March 1, 2018 letter to the New York Department of Insurance providing notice of Allstate's termination of Michael Nocella's appointments with the Company. A copy of this letter was attached as Exhibit N to the Affidavit of Michael Nocella, dated March 13, 2018.

6. Attached as Exhibit 5 is a copy of Allstate's March 1, 2018 letter to the New York Department of Insurance providing notice of Allstate's termination of Christina Giugliano's appointments with the Company. A copy of this letter was attached as Exhibit T to the Affidavit of Michael Nocella, dated March 13, 2018.

7. Attached as Exhibit 6 is a copy of a printout of the Licensee Detail for Michael Nocella's License No. 1214604 that I obtained from the New York Department of Financial Services' publicly accessible online producer/licensee database.

8. Attached as Exhibit 7 is a copy of a printout of the Licensee Detail for Christina Giugliano's License No. 1404835, which I obtained from the New York Department of Financial Services' publicly accessible online producer/licensee database.

Dated: New York, New York  
March 19, 2018

By: /s Michael J. Grohs  
MICHAEL J. GROHS



# Exhibit 1

FILED: SUFFOLK COUNTY CLERK 03/15/2018 03:00 PM

RECEIVED NYSCEF: 03/19/2018  
INDEX NO. 604642/2018

NYSCEF DOC. NO. 39

RECEIVED NYSCEF: 03/15/2018

# E-FILE

At a Special Term Part 48 of the Supreme Court of the State of New York, held in and for the County of Suffolk, at the Courthouse thereof, located at 1 Court Street, Riverhead, New York 11901, on the 15th day of March 2018.

**HON. JERRY GARGUILO**  
Justice of the Supreme Court  
PRESENT: HON. \_\_\_\_\_X  
MICHAEL NOCELLA,

MOTION SEQUENCE # 001  
ORIGINAL RET. DATE 4-11-18  
RELIEF PI

Central Islip

Index No.: 604642/2018

**ORDER TO SHOW CAUSE  
REQUEST FOR A TEMPORARY  
RESTRAINING ORDER**

Plaintiff,  
-against-

ALLSTATE INSURANCE COMPANY  
Defendant(s),  
\_\_\_\_\_X

Upon the reading and filing of the annexed affidavit of the Plaintiff, **MICHAEL NOCELLA**, sworn to on March 9, 2018, upon on the supporting Affidavit of **Sharlene Basso**, sworn to on March 9, 2018, upon the Affirmation of **Anthony P. DellUniversita**, dated March 9, 2018, and upon all the pleadings and proceedings filed and/or had in this action,

LET the Defendant, **ALLSTATE INSURNCE COMPANY**, and/or their attorney, Show Cause before this Court, at a Special Term Part of the Supreme Court, Suffolk County, to be held at the Courthouse located at 1 Court Street, Riverhead, New York 11901, on April 11, 2018, at 9:30 AM/PM, or as soon as thereafter as counsel may be heard:

WHY an Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a preliminary injunction, Pursuant to CPLR § § 6301 and 6311, enjoining the defendant from continuing in any manner, with terminating Exclusive Agent Agreement with plaintiffs;

WHY and Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a preliminary injunction, Pursuant to CPLR § § 6301 and 6311, enjoining the defendant from continuing with their process to force Michael Nocella to find a purchaser for his book of business by June 1, 2018 and to sell his book of insurance business by July 1, 2018 at a reduced price;

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**WHY** an Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a preliminary injunction, Pursuant to CPLR § § 6301 and 6311, enjoining the defendant from interfering, in any manner, including but not limited to, forwarding phone calls to Michael Nocella's business phone line elsewhere, cutting Michael Nocella's access to company information off, changing passwords associated with his Allstate business, and removing or making his website unavailable;

**WHY** an Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a preliminary injunction, Pursuant to CPLR § § 6301 and 6311, enjoining the defendant from withholding Michael Nocella's full compensation for paid renewals of which he earned , for any reason;

**WHY** an Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a preliminary injunction, Pursuant to CPLR § § 6301 and 6311, enjoining the defendant from withholding Michael Nocella's full compensation for new business commission of which he earned , for any reason;

**WHY** an Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a preliminary injunction, Pursuant to CPLR § § 6301 and 6311, enjoining the defendant from terminating Michael Nocella's appointments pursuant to their letter dated March 8, 2018;

**WHY** an Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a preliminary injunction, Pursuant to CPLR § § 6301 and 6311, enjoining the defendant from notifying the Department of Insurance pursuant to their letter and withdrawing any notification to the Department of Insurance Prior to this Order;

**WHY** an Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a preliminary injunction, Pursuant to CPLR § § 6301 and 6311, enjoining the defendant from terminating the appointments of Christina Guigliano, an employee of the Nocella Agency, and notifying the Department of Insurance;

**WHY** an Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a **TEMPORARY RESTRAINING ORDER**, Pursuant to CPLR § § 6301 and 6313, hereby stayed and restraining the defendant from continuing in any manner, with the termination process of the Exclusive Agent Agreement with plaintiff pending a determination of this motion;

**WHY** an Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a **TEMPORARY RESTRAINING ORDER**, Pursuant to CPLR § § 6301 and 6313, hereby staying and restraining the defendant from continuing with their process to force Michael Nocella to find a purchaser for his book of business by June 1, 2018 and sell his book of insurance business by July 1, 2018 at a reduced price pending a determination of this motion;

**WHY** an Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a **TEMPORARY RESTRAINING ORDER**, Pursuant to CPLR § § 6301 and 6313, hereby staying and restraining the defendant from continuing with the following actions, and Ordering each of the following to be restored immediately, so that Michael Nocella can operate business as normal, this includes but is not limited to:

- a. Business and customer telephones calls no longer being forwarded to and serviced by a different office, pending a determination of this motion;
- b. Permitting Michael Nocella access to all programs, information, websites, databases as he was normally permitted access to pending a determination of this motion;
- c. Restoring all changed passwords by Allstate, pending a determination of this motion;
- d. Restoring Michael Nocella company website, pending a determination of this motion;
- e. Permitting Michael Nocella and his employees to continue to service clients already existing, seek and procure new business, bind policies as they deem fit, pending a determination of this motion.
- f. Restoring any employees working for Michael Nocella at the Nocella Insurance Agency that were terminated as part of this underlying action, pending a determination of this motion.

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WHY an Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a TEMPORARY RESTRAINING ORDER, Pursuant to CPLR § § 6301 and 6313, hereby staying and restraining the defendant from withholding compensation for paid renewals and new business commissions due and owed to Michael Nocella of which he earned, pending a determination of this motion.

WHY an Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a TEMPORARY RESTRAINING ORDER, Pursuant to CPLR § § 6301 and 6313, hereby staying and restraining the defendant from terminating the appointments of Michael Nocella and Christian Guigliano and staying and restraining defendant from notifying the Department of Insurance of said termination, pending a determination of this motion.

WHY an Order awarding costs, disbursements and reasonable attorney's fees; and

WHY an Order granting Plaintiff such other and further relief as this Court may deem just and proper together with costs and disbursements of this action.

Pending the hearing of this motion:

~~ORDERED that upon service to the defendant or the defendant's attorney, the termination of Michael Nocella's Exclusive Agency Agreement is hereby ceased and the Exclusive Agency Agreement is in full force and effect allowing Michael Nocella to operate business as normal;~~

*JL*  
*JSC*

ORDERED that upon service to the defendant or the defendant's attorney, the forced sale of Michael Nocella's book of Allstate Insurance business is stayed and ceased;

*JL*  
*JSC*

ORDERED that upon service to the defendant or the defendant's attorney, phone calls of customers and for the business will be rerouted back to the office of Michael Nocella; *only as to existing business*

*JL*  
*JSC*

ORDERED that upon service to the defendant or the defendant's attorney, all passwords required to operate business as usual will be restored back to the office of Michael Nocella;

ORDERED that upon service to the defendant or the defendant's attorney, Michael Nocella will be permitted access to all programs, information, websites, databases; *only to the extent necessitated for daily operation*

ORDERED that upon service to the defendant or the defendant's attorney, Michael Nocella's website for his Allstate business is fully restored;

ORDERED that upon service to the defendant or the defendant's attorney, Michael Nocella and his employees to continue to service clients already existing, ~~seek and procure new business, bind policies as they deem fit;~~

*JL*  
*JSC*

*JL*  
*JSC*

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*[Handwritten signature]* **ORDERED** that upon service to the defendant or the defendant's attorney, defendant will ~~continue to compensate Michael Nocella in full for new business commissions and paid renewals;~~

*[Handwritten signature]* **ORDERED** that upon service to the defendant or the defendant's attorney, the appointments of Michael Nocella and Christina Guigliano, an employee of the Nocella Agency, are reinstated ~~and any notification to the Department of Insurance be withdrawn.~~

**SUFFICIENT CAUSE APPEARING THEROF**, it is hereby

**SUFFICIENT CAUSE THEREFORE APPEARING**, let service of a copy of this order, together with the papers upon which it was granted, upon the defendant's attorney, Emily Renfro, Staff Attorney, Insurance Operations Law, 2775 Sanders Road A2E Northbrook, IL on or before the 3 day of ~~March~~ <sup>April</sup>, 2018, by Federal Express overnight delivery to be deemed good and sufficient service, or any service this court may deem proper. An affidavit or other proof of service shall be presented to this court on the return date directed in the second paragraph of this Order.

Signed this 15 day of March, 2018, Mineola, New York

Dated: ~~March 6, 2018~~ **MAR 15 2018**  
Commack, NY

ENTER  
*[Handwritten signature: Jerry Garguilo]*  
J.S.C.  
**HON. JERRY GARGUILO**

To the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the within document(s) and contentions contained herein are not frivolous as defined in 22 NYCRR Section 130-1.1-a.

*[Handwritten signature: Anthony P. Dell'Ursita]*  
Anthony P. Dell'Ursita

**GRANTED**  
**MAR 15 2018**  
Judith A. Pascale  
**CLERK OF SUFFOLK COUNTY**

## Exhibit 2

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

-----x  
MICHAEL NOCELLA and THE NOCELLA  
INSURANCE AGENCY,

Index No.

Plaintiffs,

v.

**AFFIDAVIT OF  
LUCIA MONTAÑO**

ALLSTATE INSURANCE COMPANY,

Defendant.

-----x

STATE OF ILLINOIS        )  
                                  ) ss.:  
COUNTY OF COOK         )

**LUCIA MONTAÑO**, being duly sworn, deposes and says:

1. I am employed by Allstate Insurance Company (“Allstate” or the “Company”) as a Senior Investigator, Investigative Services, Enterprise Business Conduct, in Allstate’s Law & Regulation Department. I submit this Affidavit in opposition to the Order to Show Cause and application for a Temporary Restraining Order that I understand Michael Nocella and the Nocella Insurance Agency (collectively, the “Nocella Agency”) have filed or intend to file today.

2. Allstate terminated its R3001S Exclusive Agency Agreement (the “Agency Agreement”) with the Nocella Agency, effective March 1, 2018, “for cause” under Section XVII.B.3 of the Agency Agreement. A copy of the Agency Agreement is attached as Exhibit A, and a copy of Allstate’s letter, dated March 1, 2018, and addressed to Mr. Nocella (the “Termination Letter”) is attached as Exhibit B.

3. As discussed below, the termination of the Agency Agreement was based on an investigation conducted by Allstate and in which I was involved that revealed that the Nocella Agency provided false information to Allstate in connection with four separate Allstate



Homeowner's insurance policies that were sold by the Nocella Agency. This conduct violates Allstate's Agency Agreement and the Company's written policies and procedures.

**The Nocella Agency's Relationship with Allstate**

4. The Nocella Agency became an agent of Allstate pursuant to the Agency Agreement that Nocella signed and that was made effective as of September 1, 2014. Among other things, the Agency Agreement makes clear that the Nocella Agency was "an independent contractor for all purposes and not an employee of [Allstate]", and that Allstate "own[s] all business produced under the terms of this Agreement." See Agency Agreement, Sections I.A. and I.D.

5. Under the Agency Agreement, the Nocella Agency, as an agent of Allstate, agreed to abide by certain duties and conditions. See Agency Agreement, Section II. The Agency Agreement further provided that the Nocella Agency was subject to the Supplement for the R3001 Agreement, the Exclusive Agency Independent Contractor Manual (the "EA Manual"), and the Allstate Agency Standards (the "Agency Standards"), which were expressly incorporated in their entirety as part of the Agency Agreement and further defined the Nocella Agency's duties and responsibilities to Allstate. See Agency Agreement, Section I.C.

6. For example, the Agency Standards expressly state that "Allstate is committed to operating its business in an ethical manner" and with respect to "Application/Endorsement Completion" provide that:

When writing new business or servicing existing business, agencies must:

Accurately and consistently apply the Risk Management Policies (RMPs) and other regional requirements. Obtain and transmit accurate and complete information to develop an accurate quote....

7. Moreover, the EA Manual provides, in part, as follows:

Agent Responsibilities

You are the person ultimately responsible for all sales and services of your LSP [Licensed Sales Producer] since he is acting under your direction or control.

...

You must ensure that certain responsibilities are met, including:

- Compliance with Company policies and procedures, including the Allstate Agency Standards, and all applicable laws and regulations relating to the conduct of business under the R3001 [Agency] Agreement.
- Compliance with the standards described under Ethical Standards in the conduct of business
- Obtaining accurate and truthful information on all applications

8. The EA Manual also contains a section entitled "Ethical Standards in the Conduct of Business" which provides, among other things, that "[a]ll agency activities must be consistent with Allstate's ethical standards. Activities inconsistent with the standards may result in termination of your agency relationship with the Company."

9. The EA Manual also sets forth a non-inclusive list of standards of conduct that applied to, and were to be followed by, the Nocella Agency and its members as representatives of Allstate. Those ethical standards include:

Integrity

As a Company representative, you are expected to act honestly and fairly in all of the Company's business relationships.

Second, you may never falsify any state insurance department or Company documents, including applications, and you may never forge signatures.

Unacceptable Sales Practices

There are certain sales practices that are unacceptable for representatives of the Company, including, but not limited to, the following:

Misclassifying and Misrating: You may not knowingly misrate or misclassify in

order to provide a more attractive premium to make a sale.

**Allstate's Termination of its Relationship with the Nocella Agency**

10. Allstate terminated its Agency Agreement with the Nocella Agency after its investigation revealed that Mr. Nocella and a Licensed Sales Producer with the Nocella Agency had falsified information on four Allstate Homeowner's insurance applications (including an application for Mr. Nocella's home) in order to obtain homeowner's insurance coverage that the insureds (including Mr. Nocella) would otherwise have been unable to receive.

11. In New York, whether to provide homeowner's insurance coverage with respect to a particular home is determined by that home's Catastrophe Risk Management ("CRM") score. The application is rejected if the CRM score is above 8.5 and accepted if the CRM score falls below 8.5. The CRM score is impacted by Residential Component Technology ("RCT") factors, which are certain characteristics of a home such as the year in which the home was built, the type of construction and materials used, the square footage, and the replacement cost value.

12. During its investigation, Allstate learned that, for four Allstate Homeowner's insurance policies sold by the Nocella Agency, the initial CRM scores were above 8.5 and, therefore, the applications for homeowner's insurance were rejected by Allstate. However, for each rejected application, the Nocella Agency then changed the RCT factors several times by inputting false information about, for example, the home's replacement cost or square footage until an acceptable CRM score (i.e., a score below 8.5) was generated. Ultimately, each of those four Allstate homeowner's insurance policies were bound using a CRM score that was based on false RCT information provided by the Nocella Agency.

13. Mr. Nocella was among the persons interviewed in Allstate's investigation and during the interview he acknowledged that it is a violation of Allstate's policy to knowingly submit

false information to the Company, and acknowledged that he had provided false RCT information about a home in order obtain an acceptable RCM score. Significantly, during his interview Mr. Nocella also disclosed that he provided Allstate with false RCT information for his home after his first homeowner's insurance application had been rejected.

14. More specifically, in connection with the homeowner's insurance policy for Mr. Nocella's home, Allstate's investigation discovered that seven CRM scores had been generated (all using Mr. Nocella's Agent ID number) before the insurance application was accepted. The first CRM score generated for Mr. Nocella's homeowner's insurance application was 11.54 (and, therefore, rejected by Allstate). For that 11.54 CRM score, Mr. Nocella acknowledged during his interview that it was generated using accurate RCT information that Mr. Nocella provided for his home, namely, that it is a two-story, frame construction home that is over 2,000 square feet with a replacement cost of \$592,145.

15. The seventh and final CRM score for Mr. Nocella's insurance application was 7.09 (and, therefore, accepted by Allstate). However, as Mr. Nocella acknowledged during his interview, this CRM score was generated using false RCT information that Mr. Nocella provided about the same home in order to obtain an acceptable CRM score. To obtain the 7.09 CRM score, Mr. Nocella acknowledged that he intentionally provided the following inaccurate RCT information: the home is a 789 square foot (not 2,000+) one-story (not two) home with brick (not frame) construction.

16. This conduct is in direct violation of the Agency Agreement and Allstate's EA Independent Contractor Manual.

17. Under the Agency Agreement, Mr. Nocella was an independent contractor who could be terminated by Allstate with cause or without cause. See Agency Agreement, Sections

XVII.B.2 and XVII.B.3.

18. Based on the evidence uncovered and findings made, Allstate made the decision to terminate its Agency Agreement with Mr. Nocella and the Nocella Agency.

**Any Request for Temporary Injunctive Relief Should be Rejected**

19. Mr. Nocella, in an email sent to me by his attorney, Anthony P. DellUniversita, Esq., has suggested that he “owns his book of business” and threatened to “take immediate legal action in the form [sic] a declaratory judgment action, an injunction to enjoin [Allstate] from proceeding in any manner to reclaim ownership of his property....”

20. This is not an accurate statement because, under the Agency Agreement, neither Mr. Nocella nor the Nocella Agency owns that book of business. Conversely, as the Agency Agreement expressly states, Allstate “will own all business produced under the terms of this Agreement.” See Agency Agreement, Section I.A. Agents, on the other hand, “have an economic interest...in...Allstate customer accounts developed under this Agreement.” See Agency Agreement, Section XVI.B.

21. Moreover, as explained in Allstate’s letter providing notice of the termination of the Agency Agreement, Mr. Nocella (provided there is compliance with certain post-employment restrictive covenants set forth in the Agency Agreement) may be entitled to receive compensation for his economic interest in the book of business, if it is determined that he is eligible for such compensation. See Termination Letter, pp. 1-2.

*Lucia Montano*  
LUCIA MONTAÑO

STATE OF ILLINOIS            )  
  ) ss.:  
COUNTY OF COOK            )

On the 14th day of March, 2018, before me, the undersigned, personally appeared Lucia Montano, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



*Paulomi Shukla*  
Signature of Notary Public – State of Illinois

(NOTARY SEAL)

PAULOMI SHUKLA  
Name of Notary Typed, Printed or Stamped

# Exhibit A

**ALLSTATE R3001S EXCLUSIVE AGENCY AGREEMENT**

This Agreement is between ALLSTATE INSURANCE COMPANY and such affiliates and subsidiaries as are named in the Supplement for the R3001 Agreement (referred to in this Agreement as "the Company") and Michael Nocella (referred to in this Agreement as "you").

The Company and you agree as follows:

**I. AUTHORITY:**

- A. Effective 9/1, 2014, the Company appoints you as its agent to represent the Company in the Exclusive Agency Program. You are authorized on behalf of the Company, during the term of this Agreement, to receive and accept, subject to such restrictions on binding authority as may be established by the Company, applications for insurance covering such classes of risks located in the state(s) of NEW YORK as the Company may from time to time authorize to be written. You are also authorized to sell products specified by the Company and through the companies specified in the Supplement for the R3001 Agreement (referred to in this Agreement as "Company Business"). The Company will own all business produced under the terms of this Agreement. You will not represent yourself as having any authority other than that specifically granted to you by the Company. You will not alter any contract or incur any expense or obligation for the Company without prior written approval from the Company.
- B. This Agreement is the sole and entire agency agreement between the Company and you, and it supersedes and replaces any prior employment, agency, or other agreement between the Company and you. This Agreement also supersedes any prior oral statements and representations by the Company to you and any prior written statements and representations by the Company to you in letters, manuals, booklets, memoranda, or any other format.
- C. The Supplement for the R3001 Agreement ("Supplement") and the Exclusive Agency Independent Contractor Manual ("EA Manual"), and the Allstate Agency Standards ("Agency Standards") as they may be amended from time to time, are expressly incorporated in their entirety as part of this Agreement. The Company reserves the right to amend the Supplement, EA Manual, and Agency Standards at any time without prior notice to you, except that notice regarding changes to commission amounts will be given as indicated in Section XV.
- D. You are an independent contractor for all purposes and not an employee of the Company. You will have full control of your time and the right to exercise independent judgment as to the time, place, and manner of performing your duties, which are defined in this Agreement and the incorporated Supplement, EA Manual, and Agency Standards. You will not represent that you have authority to act on behalf of the Company or enter into any contract on behalf of the Company, except for contracts of insurance or other contracts as expressly authorized by this Agreement.
- E. You will not, either directly or indirectly, solicit, sell, or service insurance of any kind for any other company, agent, or broker, or refer a prospect to another company, agent, or broker, without the prior written approval of the Company. You may, however, write applications for insurance under an assigned risk, cooperative industry, or government established residual market plan or facility in accordance with the Company's rules and procedures.



- F. The Company will determine in its sole discretion all matters relating to its business and the operation of the Company including, but not limited to, the following:
1. The determination of contract forms and provisions, premiums, fees, and charges for insurance and other Company Business;
  2. The acceptance or rejection of any application;
  3. The termination or modification of any contract or the refusal to renew any contract;
  4. The limitation, restriction, or discontinuance of the writing or selling of any policies, coverages, lines, or kinds of insurance or other Company Business;
  5. The obtaining of any licenses of the Company or the Company's withdrawal from any state, jurisdiction, or territory; and
  6. The type and quality of customer service received by Company policyholders.

II. DUTIES AND CONDITIONS:

- A. You will act as an agent of the Company for the purpose of soliciting, selling, and servicing insurance and other Company Business in accordance with the provisions of this Agreement. As an agent of the Company, you will provide customer service, including the collection of payments, for any and all Company policyholders and you will assist in claims administration in accordance with the Company's rules and procedures.
- B. You will meet certain business objectives established by the Company in the areas of profitability, growth, retention, customer satisfaction and customer service. You will build and maintain a profitable book of business, assist the Company in its efforts to achieve market penetration for all forms of insurance offered by the Company and other Company Business, and service the Company's customers in a manner consistent with the Company's goodwill, reputation, and overall business strategy.
- C. You will record, transmit, and process insurance and Company Business in the manner prescribed in the then current provisions of the Supplement.
- D. You agree to maintain any required agent license in the state or states in which you are appointed to represent the Company and to comply with any and all applicable federal, state, or local laws, rules, regulations and ordinances affecting your operation.
- E. The Company recognizes that you may, in your sole discretion, arrange to have business conducted at your sales location in your absence by your own employees or other persons and that the time during which you are physically present at your sales location is entirely in your sole discretion. You must, however, remain actively involved in the conduct of business at your sales location.
- F. You agree that the Company will have the authority to use your name and signature, or facsimile thereof, on policy documents and customer communication materials.
- G. You agree to maintain a professional business relationship with the Company, and, when requested, to meet with Company representatives at mutually convenient times to discuss various business topics. You also agree that, because you are conducting business with the public under the Allstate name, Company representatives shall be permitted access to your agency to review compliance with this Agreement during agency business hours.

H. You agree that, as requested by the Company, you will demonstrate your knowledge of the Company products you are authorized to sell, as well as of federal, state, or local laws, rules, regulations and ordinances affecting your operation. If you are unable to demonstrate your knowledge of any product, the Company reserves the right to deny you the authority, or withdraw your existing authority, to sell that product until you demonstrate such knowledge.

III. YOUR EMPLOYEES:

- A. You have no authority to employ persons on behalf of the Company, and no employee of yours will be deemed to be an employee or agent of the Company, such employees at all times remaining your employees. You have sole and exclusive control over your labor and employee relations policies, and your policies relating to wages, hours, and working conditions of your employees. You have the sole and exclusive right to hire, transfer, suspend, lay off, recall, promote, assign, discipline, and discharge your employees.
- B. You are solely responsible for all salaries and other compensation of all your employees and will make all necessary salary deductions and withholdings from your employees' salaries and other compensation. You are solely responsible for the payment of any and all contributions, taxes, and assessments, and all other requirements of the federal Social Security, federal and state unemployment compensation, and federal, state, and local withholding of income tax laws on all salary and other compensation of your employees.
- C. You will comply with all other contracts, federal, state or local laws, ordinances, rules, or regulations regarding your employees, including federal or state laws or regulations regarding minimum compensation, overtime, and equal opportunities for employment. This includes, but is not limited to, your warranty and agreement to comply with the terms of the federal and state civil rights acts, Age Discrimination in Employment Act, Americans With Disabilities Act, Occupational Safety and Health Act, Immigration Reform and Control Act, and the Fair Labor Standards Act.
- D. You agree and warrant that your employees, while working in connection with this Agreement, will comply with any and all applicable federal, state, or local laws, rules, regulations, and ordinances.

IV. COMPANY PROPERTY, CONFIDENTIALITY:

- A. The Company will furnish you such signs, forms, manuals, records, and other materials and supplies as the Company deems advisable to assist you. All such property and information furnished by the Company will remain the property of the Company. In addition, the Company will offer, at your expense, such additional materials and supplies as the Company feels may be helpful to you.
- B. You agree that you will not at any time or in any manner, directly or indirectly, disclose to any third party or permit any third party to access any confidential information or any information containing trade secrets concerning any matters affecting or relating to the pursuits of the Company, except upon direct written authority of the Company. Furthermore, upon termination of this Agreement, you agree to treat as confidential and not to disclose, either directly or indirectly, to any third party any confidential information or trade secrets of the Company.
- C. You agree that you will not disclose or grant access to any confidential information or trade secrets to any of your employees or other persons providing services for you in connection with this Agreement, unless such employee or other person has signed a copy of the Confidentiality and Non-Competition Agreement attached as Appendix A. Appendix A is a sample copy of the electronic version of the document that must be transmitted to the Company.

- D. Confidential information includes, but is not limited to: business plans of the Company; information regarding the names, addresses, and ages of policyholders of the Company; types of policies; amounts of insurance; premium amounts; the description and location of insured property; the expiration or renewal dates of policies; policyholder listings and any policyholder information subject to any privacy law; claim information; certain information and material identified by the Company as confidential or information considered a trade secret as provided herein or by law; and any information concerning any matters affecting or relating to the pursuits of the Company that is not otherwise lawfully available to the public. All such confidential information is wholly owned by the Company. Such confidential information may be used by you only for the purposes of carrying out the provisions of this Agreement.
- E. Any confidential information or trade secrets recorded on paper, electronic data file, or any other medium, whether provided by the Company or by you, is the exclusive property of the Company, as is any such medium and any copy of such medium.
- F. You recognize that a breach of the foregoing provisions will cause irreparable damage to the Company's business and that such damage is difficult or impossible to measure. You agree that in the event of such breach, the Company, in addition to such other rights and remedies it may have, will be immediately entitled to an order granting injunctive relief from any court of competent jurisdiction against any act which would violate any such provision, without the necessity of posting a bond, and you waive any defense to an application for such order, except that the violation did not occur. You agree that the Company will be entitled to an award of reasonable attorneys' fees in the event that it is successful in an application for injunctive relief or in an action based upon breach of the foregoing provisions.

V. SALES LOCATION:

- A. You may select your sales location, within a geographical area specified by the Company, subject to Company approval. Initially, you have selected the location at 4250 Vets Men and such sales location has been approved by the Company. You agree that you will not establish any additional sales location without the prior written approval of the Company. You understand that you have no exclusive territorial rights in connection with your sales location.
- B. You agree to keep your sales location open for business as appropriate in the market to provide a proper level of customer service. As a minimum, you agree to operate your sales location consistently with the Agency Standards.
- C. You are authorized to sell insurance offered by the Company and Company Business only in the state containing your sales location and other states in which you are properly licensed and appointed as an agent by the Company.

*Handwritten:* Bohemia 24 117 118

VI. ADVERTISING:

- A. The Company will advertise its products and provide promotional material in accordance with its advertising policies. You may also advertise in your sole discretion, subject to the requirements in paragraph B. below.
- B. You will submit all signs and advertising copy, including, but not limited to, sales brochures, display advertisements in telephone directories, newspaper advertisements, radio and television commercials, electronic media displays, all sales promotional plans and devices, and all other materials to the Company for approval, if they use or contain any reference to any service mark or trade name of the Company. You will not use any such advertising material or sales promotional plan or device without obtaining prior written approval from the Company. The Company has the right to disapprove any or all of the aforesaid advertising forms and other materials insofar as they, in the exclusive judgment of the Company, do not conform to Company policy regarding use of Company service marks or trade names; may subject the Company to liability or loss of goodwill; may damage the reputation of the Company or Company customer relations; may fail to adhere to the requirements of any federal, state, or local governmental rules, regulations, or laws; may fail to

conform to community or Company standards of good taste and honest dealing; or may be detrimental to the business interests of the Company.

**VII. SERVICE MARK AND TRADE NAME PROTECTION:**

- A. You agree to cooperate fully in the quality control program conducted by the Company relating to the use of its service marks and trade names and the nature and quality of services rendered and goods distributed under its service marks and trade names. The Company will have the right to specify, delineate, or limit the services or goods in connection with which you may use any of its service marks or trade names. In the event that the nature or the quality of the services or goods in connection with which you use any of the service marks or trade names of the Company is not acceptable to the Company, then the Company will have the right to require you to institute appropriate procedures to correct any deficiencies noted by the Company.
- B. You agree, at the request and expense of the Company, to assist the Company in protecting and enforcing the rights of the Company in and to any and all of its service marks and trade names which you may then be using.
- C. You will not in any manner encumber, alienate, license, or transfer to any other entity any right whatsoever concerning the service marks or trade names the Company authorizes you to use in the performance of this Agreement, except as permitted in Section XVI.
- D. You recognize that a breach of the foregoing provisions will cause irreparable damage to the Company's business and that such damage is difficult or impossible to measure. You agree that in the event of such breach, the Company, in addition to such other rights and remedies it may have, will be immediately entitled to an order granting injunctive relief from any court of competent jurisdiction against any act which would violate any such provision, without the necessity of posting a bond, and you waive any defense to an application for such order, except that the violation did not occur. You agree that the Company will be entitled to an award of reasonable attorneys' fees in the event that it is successful in an application for injunctive relief or in an action based upon breach of the foregoing provisions.

**VIII. EXPENSES:**

You will be responsible for the payment of all expenses that you incur in the performance of this Agreement including, but not limited to: expenses for your sales location, supplies not furnished by the Company, compensation of your employees or other assisting persons whom you engage, telephone, postage, and advertising expenses incurred at your direction, and all other charges and expenses.

**IX. TELEPHONE:**

All telephone numbers used in connection with business conducted pursuant to this Agreement are the property of the Company.

**X. INDEMNIFICATION:**

- A. The Company will defend and indemnify you against liability, including the cost of defense and settlements, imposed on you by law for damages sustained by policyholders and caused by acts or omissions of the Company, provided that you have not caused or contributed to cause such liability by your acts or omissions. You agree, as a condition to such indemnification, to notify the Company promptly of any claim or suit against you and to allow the Company to make such investigation, settlement, or defense as the Company deems prudent. The Company reserves the right to select counsel to represent you in connection with any such claim or suit. You also agree to cooperate fully with the Company in any such investigation, settlement, or defense.

B. You will indemnify the Company against liability, including the cost of defense and settlements, imposed on the Company by law for damages sustained by any person and caused by your acts or omission, or those of any employee or other person working in connection with this Agreement, provided that the Company has not caused or contributed to cause such liability by its acts or omissions. The Company agrees, as a condition to such indemnification, to notify you promptly of any such claim or suit against the Company. The Company reserves the right to select counsel to represent it in connection with any such claim or suit and to make such investigation or settlement as the Company deems prudent.

**XI. INSURANCE:**

- A. You agree that you will, at your sole expense, obtain and maintain during the term of this Agreement policies of insurance as described in the EA Manual, as may be amended from time to time. Such policies must be obtained from companies satisfactory to the Company and must be adequate to protect against all expenses, claims, actions, liabilities, and losses related to the subjects covered by the required policies.
- B. Where specified, each policy must name the Company as an additional insured and must contain a severability of interest/cross liability endorsement. Each policy must also expressly provide that it will not be subject to material change or cancellation without at least thirty (30) days prior written notice to the Company.
- C. You must furnish the Company with proof of insurance upon request by the Company. If, in the Company's opinion, such policies do not afford adequate protection for the Company, the Company will so advise you, and if you do not furnish evidence of acceptable coverage within fifteen (15) days after being requested to do so by the Company, the Company will have the right to obtain additional insurance at your expense and deduct the cost of such insurance plus a processing fee from monies owed you by the Company.

**XII. FINANCIAL INFORMATION:**

You shall maintain all books and records relating to the business under this Agreement including, but not limited to, all checkbooks, check registers, deposit receipts, and general ledgers for a period of not less than five years after the close of the fiscal year to which they relate. All of the foregoing records shall be open and available for inspection or audit at any time during normal agency hours without notice by the Company or its designated auditors and you shall have the duty to cooperate fully with the party(ies) making such inspection or audit.

**XIII. POLICIES IN YOUR ACCOUNT:**

Policies which are credited to your account are described in the Supplement. While this Agreement is in effect, the Company will leave in your account all policies credited to your account so long as the policyholder resides within a state in which you are licensed and appointed by the Company, except that the Company may remove any policy from your account at the request of a policyholder.

**XIV. MONEY COLLECTED BY YOU:**

All payments collected or received by you in the performance of this Agreement are the property of the Company, will be treated as trust funds, and will be promptly transmitted to the Company without deduction for any purpose in the manner specified by the Company. You must maintain accurate records and current remittance reports which may be inspected by the Company at any time without notice and which shall be submitted to the Company in accordance with its rules and procedures.

**XV. COMPENSATION:**

- A. The sole compensation to which you will be entitled for services rendered pursuant to this Agreement will be the commissions set forth in the Supplement, as may be amended from time to time. The Company will pay you your commissions at the time and in the manner set forth in the Supplement. However, due to the inherent uncertainty of business conditions, the Company reserves the right to increase or decrease any commission amounts and to change the commission rules. If the Company changes commission amounts, it will provide you with written notice of the changes at least ninety (90) days prior to the date on which they are to become effective.
- B. The Company may provide you with such bonuses, awards, prizes, and other remuneration based on performance, if any, as it may prescribe in its sole discretion.
- C. If any application for insurance is rejected, or any policy is surrendered or canceled, in whole or in part, for any reason, before the expiration of the policy period, or if any premium is reduced or any overpayment made to you, or if any premium paid is not earned by the Company, the commissions paid to you on the amount returned or credited to the policyholder, or the amount overpaid to you, will constitute an indebtedness of yours to the Company and will be charged to you or recovered from you by reducing any future commissions, awards, or bonuses due you.

**XVI. TRANSFER OF INTEREST:**

- A. This Agreement is personal to you and is being entered into in reliance upon and in consideration of your skills, qualifications, and representations. Accordingly, you may not execute a transfer of your interest in this Agreement or any interest in the business under this Agreement including, but not limited to, any sale, assignment, conveyance or the granting of any lien, security interest, pledge, or mortgage thereof, without the prior written approval of the Company. A transfer of interest in this Agreement is described in the Supplement and EA Manual and includes, but is not limited to, any sale, merger, or assignment, in whole or in part, directly, indirectly, or contingently, of this Agreement or any rights or obligations under it. You have the obligation to notify the Company of a proposed transfer and to request Company approval.
- B. You have an economic interest, as defined in this Agreement and the incorporated Supplement and EA Manual, in your Allstate customer accounts developed under this Agreement. Subject to the terms and conditions set forth in this Agreement and the incorporated Supplement and EA Manual, you may transfer your entire economic interest in the business written under this Agreement upon termination of this Agreement by selling the economic interest in the business to an approved buyer. The Company retains the right in its exclusive judgment to approve or disapprove such a transfer. Any failure to disclose and obtain the prior written approval of the Company for any transfer of your interest in this Agreement or any interest in the business under this Agreement shall constitute a breach of this Agreement and cause for termination of this Agreement.
- C. Approval of a proposed transfer of your entire interest in this Agreement will be conditioned upon the termination of this Agreement and the execution of a then current agency agreement by the proposed transferee.
- D. Policies in your account (Section XIII. above) will be transferred to an approved transferee.

**XVII. TERMINATION OF AGREEMENT:**

- A. This Agreement will be terminated automatically:
  - 1. On the effective date of any transfer of your entire interest in this Agreement, whether approved or not, as described in Section XVI. above;
  - 2. Upon your death or permanent incapacity;
  - 3. Upon your loss of any required agent license; or
  - 4. Upon the surrender of, or the election not to renew, the Company's license to sell insurance in all lines in the state in which your sales location is located or the discontinuation of the sale of insurance in the state.
  
- B. This Agreement may be terminated:
  - 1. At any time by mutual agreement of the parties in writing;
  - 2. 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 is required by law. Once written notice of termination has been given by either party, you will, immediately upon request of the Company, cease to act or to represent yourself in any way as an agent or representative of the Company, but you will receive compensation pursuant to Section XV. from the Company for the period up to and including the specified termination date; or
  - 3. Alternatively, by the Company, with cause, immediately upon providing written notice to you. Cause may include, but is not limited to, breach of this Agreement, fraud, forgery, misrepresentation or conviction of a crime. The list of examples of cause just stated shall not be construed to exclude any other possible ground as cause for termination.

**XVIII. OBLIGATIONS UPON TERMINATION OF AGREEMENT:**

- Except as otherwise provided in a subsequent agreement between you and the Company, upon termination of this Agreement, you agree that:
- A. You will not act or represent yourself in any way as an agent or representative of the Company.
  - B. You will immediately return all property belonging to the Company, or dispose of it in such manner as the Company specifies.
  - C. You will immediately cease to use such telephone numbers referenced in Section IX. above and execute an Order of Transfer of Responsibility for such numbers in your name to the Company or to any party the Company designates, and you will immediately notify the telephone company of any such transfer. You will be responsible for all charges incurred up to the date of execution of the transfer.
  - D. For a period of one year following termination, you will not solicit the purchase of products or services in competition with those sold by the Company:
    - 1. With respect to any person, company, or organization to whom you or anyone acting on your behalf sold insurance or other products or services on behalf of the Company and who is a customer of the Company at the time of termination of the Agreement;
    - 2. With respect to any person, company, or organization who is a customer of the Company at the time of termination of this Agreement and whose identity was discovered by you as a result of your status as a Company agent or as a result of your access to confidential information of the Company; or

3. From any office or business site located within one mile of the agency sales location maintained pursuant to Section V. of this Agreement at the time this Agreement is terminated.

In the event that such one year period or one mile distance exceeds the time or distance permitted by any applicable law, such period or distance will be automatically adjusted to the maximum period or distance permitted by such law. If any other provision in this paragraph D. conflicts with any existing law, it will be applied to the extent permitted by such law.

- E. You will immediately cease and desist from any and all use of Company service marks and trade names. You will immediately return to the Company all property in your possession or under your control bearing any Company service mark or trade name, or dispose of it in such manner as the Company specifies.
- F. You recognize that a breach of any of the foregoing provisions will cause irreparable damage to the Company's business and that such damage will be difficult or impossible to measure. You agree that in the event of any such breach, the Company, in addition to such other rights and remedies as it may have, will be immediately entitled to an order granting injunctive relief from any court of competent jurisdiction against any act which would violate any such provision, without the necessity of posting a bond, and you waive any defense to an application for such order, except that the violation did not occur. You agree that the Company will be entitled to an award of reasonable attorneys' fees in the event that it is successful in an application for injunctive relief or in an action based upon breach of the foregoing provisions.
- G. You recognize and acknowledge that each of the foregoing provisions of this Section XVIII. is reasonable and necessary to protect and preserve the legitimate business interests of the Company, its present and potential business activities, and the economic benefits derived therefrom. You recognize and acknowledge that the foregoing provisions will not prevent you from earning a livelihood and are not an undue restraint on you.

XIX. NOTICE:

All notices will be deemed to have been given if personally delivered, sent by facsimile transmission, or mailed as follows:

if to the Company:

Allstate Insurance Company  
878 Veterans Memorial Hwy Suite 400  
Hauppauge, NY 11788

Attention: HR

if to you:

Michael Nocella  
4250 Vets Mem Hwy  
Bohemia NY 11716

or to such other person or address as any party may furnish or designate to the other in writing.

XX. GENERAL PROVISIONS:

- A. This Agreement may not be modified except by a written agreement between the Company and you 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 XX. Nothing in this Section will affect the Company's right to amend the Supplement, EA Manual, and Agency Standards, as provided in Section I.C.



FILED: SUFFOLK COUNTY CLERK 03/14/2018 02:51 PM

NYSCEF DOC. NO. 34

RECEIVED NYSCEF: 03/14/2018

- B. You acknowledge that you have reviewed the Supplement, EA Manual, and Agency Standards and that you have an ongoing responsibility to review all changes to the Supplement, EA Manual and Agency Standards issued by the Company and agree to be bound by them.
- C. References in this Agreement to the Supplement, EA Manual, and Agency Standards are references to the Supplement, EA Manual, and Agency Standards, including any changes which may be made from time to time and distributed to you by the Company.
- D. You acknowledge that you have read this Allstate R3001S Exclusive Agency Agreement, understand it, and agree to be bound by its terms.
- E. The authority granted to you under this Agreement is nonexclusive. The term "Exclusive" as used in the title of this Agreement refers to the obligations assumed by you under Section I.E.
- F. The descriptive headings of this Agreement are intended for reference only and will not affect the construction or interpretation of this Agreement.
- G. If any provision or part of this Agreement is held invalid for any reason, such invalidity will not affect any other provision or part of this Agreement not held invalid, and such remaining provisions and parts will remain in full force and effect.
- H. The failure of either party to insist upon the performance of any of the terms of this Agreement in any one or more instances will not be construed as a waiver or relinquishment of the future performance of any such term. The obligation of the parties with respect to any such future performance will continue in full force and effect.
- I. Nothing in this Agreement shall be construed to confer upon any person or entity other than the Company and you any rights under this Agreement.
- J. This Agreement, and the obligations or rights hereunder, shall not be assignable by you, except as provided by Section XVI. The rights and obligations of the parties to this Agreement shall be binding upon and inure to the benefit of the Company and its successors and assigns.
- K. This Agreement may be executed in counterparts, each of which will be deemed an original.

IN WITNESS WHEREOF, the Company and Agency have caused this Agreement to be executed by their authorized representatives and the parties hereby accept the terms of this Agreement.

ALLSTATE INSURANCE COMPANY

Douglas J. Elsh  
(authorized representative)

9/15/14  
(date)

YOU

Michael J. [Signature]  
(name)

8/15/14  
(date)

## Exhibit B



**Allstate.**  
You're in good hands.

**Ankur Chaturvedi**  
Territorial Sales Leader

March 1, 2018

Michael Nocella  
50 Park Avenue  
Bay Shore, NY 11706

Dear Michael,

This letter is notice that Allstate Insurance Company is terminating your Allstate **R3001S** Exclusive Agency Agreement ("Agreement") effective immediately. The termination is pursuant to Section XVII.B.3 of the Agreement. Allstate is taking this action for reasons that include providing false information to the Company.

If you have any questions in regard to this termination, please contact this company's representative, HR Sr. Consultant Nancy Feustel at 631-233-6182, Allstate Insurance Company, 878 Veterans Memorial Highway, Suite 400, Hauppauge, New York 11788

**The New York Insurance Law prohibits insurers from engaging in redlining practices based upon geographic location of the risk or the producer. If you have reason to believe that we have acted in violation of such law, you may file your complaint with the Department either on its website at <http://www.dfs.ny.gov/consumer/fileacomplaint.htm> or by writing to the State of New York Department of Financial Services, Consumer Assistance Unit, Financial Frauds and Consumer Protection Division, at either One State Street Plaza, 22<sup>nd</sup> Fl., New York, NY 10004 or One Commerce Plaza, Albany, NY 12257.**

Upon termination of the agreement, your obligations to Allstate are stated in the Agreement. The Agreement requires that you must, among other things:

- Immediately return all property belonging to Allstate including all manuals, equipment, and any materials bearing any Allstate service mark or trade name;
- Immediately cease to use any telephone numbers used to conduct Allstate business from the former sales location; and
- Immediately cease and desist from any and all use of Allstate service marks and trade names.

You may have the option of accepting a termination payment from Allstate or selling the economic interest to an approved buyer as outlined in the Independent Contractor Manual and the Supplement for the R3001S Agreement. If you are eligible for and elect the termination payment option, you will receive such payment calculated and paid in accordance with the Supplement for the R3001S Agreement. Please note the termination payment is conditioned upon, for example, compliance with the confidentiality and non-solicitation provisions that survive the termination of the Agreement and the immediate return of all Allstate property.

If you elect to sell the economic interest in the book of business, Allstate has the absolute right of approval of the buyer. The buyer must meet Allstate's eligibility requirements. If Allstate approves a proposed buyer, the sale must be completed on or before **July 1, 2018** and must be effective on the first day of that or any earlier month. If you do not present a buyer or the buyer that you present is not approved, we will process the termination payment as described above.

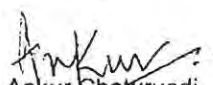
NYSCEF DOC. NO. 35

RECEIVED NYSCEF: 03/14/2018

If you elect, you may sell your interest in any assigned risk policies you may own. After the Agreement terminates, you will continue to receive commissions on existing assigned risk policies processed by Allstate that you retain, if any. Also, if you elect, you may seek to transfer any flood policies you may have produced subject to such rules and policies that are applicable to flood business.

Please contact me with any questions you have regarding the termination process.

Sincerely,

  
Ankur Chaturvedi  
Territorial Sales Leader

Cc: D. Rubbo, RSL  
P. Cochrane, HRM  
G. Damadeo, FSL-G

## **Exhibit 3**

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**From:** Chaturvedi, Ankur <achbd@allstate.com>  
**Sent:** Thursday, March 1, 2018 4:52 PM  
**To:** Feustel, Nancy  
**Cc:** Rubbo, Don; Cochrane, Patrick; Damadeo, Greg; Angerman, Kathleen  
**Subject:** Nocella termination Letter-  
**Attachments:** Signed MNocella Term Letter - Feb 2018.pdf

Hi Nancy,

This letter of termination was administered by me to Mike Nocella on March 1, 2018.

The calls were forwarded to EA Daniel Bach to service Mike's book of business. The phone number it was forwarded to is: 531.524.5729. I will forward you the last remit report in the next email.

I covered termination of binding authority for LSP Christina Giugliano with Mike and informed him that she will no longer have binding authority. I provided Mike with his TPP and business metrics report along with non-compete letter from Allstate signed by me.

Please take this forward and shut down all access to Mike and his office. I have all the audits required on this termination.

Mike did mention he will pursue this with his attorney as he feels this is a wrongful termination and plans to approach Suffolk county court on this. I did inform Mike about the immediate shutdown and that there will be no commission payment after February 28, 2018 to him. I also covered with Mike that he has till July 1 to sell his book of business and can elect to collect his vested TPP payments any time during the process.

Regards,

Ankur Chaturvedi  
Territorial Sales Leader  
Territory 2 New York



**Allstate.**  
You're in good hands.

**Ankur Chaturvedi**  
Territorial Sales Leader

March 1, 2018

Michael Nocella  
50 Park Avenue  
Bay Shore, NY 11706

Dear Michael,

This letter is notice that Allstate Insurance Company is terminating your Allstate R3001S Exclusive Agency Agreement ("Agreement") effective immediately. The termination is pursuant to Section XVII.B.3 of the Agreement. Allstate is taking this action for reasons that include providing false information to the Company.

If you have any questions in regard to this termination, please contact this company's representative, HR Sr. Consultant Nancy Feustel at 631-233-6182, Allstate Insurance Company, 878 Veterans Memorial Highway, Suite 400, Hauppauge, New York 11788

**The New York Insurance Law prohibits insurers from engaging in redlining practices based upon geographic location of the risk or the producer. If you have reason to believe that we have acted in violation of such law, you may file your complaint with the Department either on its website at <http://www.dfs.ny.gov/consumer/fileacomplaint.htm> or by writing to the State of New York Department of Financial Services, Consumer Assistance Unit, Financial Frauds and Consumer Protection Division, at either One State Street Plaza, 22<sup>nd</sup> Fl., New York, NY 10004 or One Commerce Plaza, Albany, NY 12257.**

Upon termination of the agreement, your obligations to Allstate are stated in the Agreement. The Agreement requires that you must, among other things:

- Immediately return all property belonging to Allstate including all manuals, equipment, and any materials bearing any Allstate service mark or trade name;
- Immediately cease to use any telephone numbers used to conduct Allstate business from the former sales location; and
- Immediately cease and desist from any and all use of Allstate service marks and trade names.

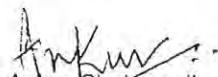
You may have the option of accepting a termination payment from Allstate or selling the economic interest to an approved buyer as outlined in the Independent Contractor Manual and the Supplement for the R3001S Agreement. If you are eligible for and elect the termination payment option, you will receive such payment calculated and paid in accordance with the Supplement for the R3001S Agreement. Please note the termination payment is conditioned upon, for example, compliance with the confidentiality and non-solicitation provisions that survive the termination of the Agreement and the immediate return of all Allstate property.

If you elect to sell the economic interest in the book of business, Allstate has the absolute right of approval of the buyer. The buyer must meet Allstate's eligibility requirements. If Allstate approves a proposed buyer, the sale must be completed on or before **July 1, 2018** and must be effective on the first day of that or any earlier month. If you do not present a buyer or the buyer that you present is not approved, we will process the termination payment as described above.

If you elect, you may sell your interest in any assigned risk policies you may own. After the Agreement terminates, you will continue to receive commissions on existing assigned risk policies processed by Allstate that you retain, if any. Also, if you elect, you may seek to transfer any flood policies you may have produced subject to such rules and policies that are applicable to flood business.

Please contact me with any questions you have regarding the termination process.

Sincerely,



Ankur Chaturvedi  
Territorial Sales Leader

Cc: D. Rubbo, RSL  
P. Cochrane, HRM  
G. Damadeo, FSL-G



**Exhibit 4**



**Allstate**  
You're in good hands.

March 8, 2018

New York Department of Insurance  
1 Commerce Plaza  
99 Washington Ave 20th FL  
Albany, NY 12257

Re: **For Cause Termination: Michael Nocella**  
**License Number:** PC-1214604 and LA-1214604  
**NPN:** 16511567

To Whom It May Concern:

The producer referenced above has been terminated for-cause from the following companies:

- Allstate Insurance Company
- Allstate Indemnity Company
- Allstate Fire and Casualty Insurance Company
- Allstate Property and Casualty Insurance Company
- Allstate Vehicle and Property Insurance Company
- Allstate Life Insurance Company of New York

The for-cause termination reason is due to falsification of documents. Please use the following contact information for any questions or supporting documentation needed:

Nancy Feustel  
878 Veterans Memorial Highway STE 400  
Hauppauge, NY 11788  
Phone: (631) 233-6182  
Email: [mtdmp@allstate.com](mailto:mtdmp@allstate.com)

Sincerely,

Chris Reetz  
Manager

cc: Nancy Feustel  
Michael Nocella

## Exhibit 5

**Allstate.**

You're in good hands.

March 5, 2018

New York Department of Insurance  
1 Commerce Plaza  
99 Washington Ave 20th FL  
Albany, NY 12257

Re: **For Cause Termination: Christina Giugliano**  
**License Number: PC-1404835**  
**NPN: 17785358**

To Whom It May Concern:

The producer referenced above has been terminated for-cause from the following companies:

- Allstate Insurance Company
- Allstate Indemnity Company
- Allstate Fire and Casualty Insurance Company
- Allstate Property and Casualty Insurance Company
- Allstate Vehicle and Property Insurance Company

The for-cause termination reason is due to falsification of company documents. Please use the following contact information for any questions or supporting documentation needed:

Nancy Feustel  
878 Veterans Memorial Highway STE 400  
Hauppauge, NY 11788  
Phone: (631) 233-6182  
Email: [mtdmp@allstate.com](mailto:mtdmp@allstate.com)

Sincerely,

Chris Reetz  
Manager


cc: Nancy Feustel  
Christina Giugliano

## Exhibit 6

3/16/2018

Licensee Detail

New York State State Agencies



**DEPARTMENT of FINANCIAL SERVICES**

Home | Help | Producer Search

Licensee Detail

<b>Name</b> NOCELLA, MICHAEL PAUL	<b>Business Type</b> Individual	<b>License No.</b> 1214604	<b>E-Mail</b> mnocella@allstate.com	<b>Home State</b> New York (Resident)
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Class	Status	Status Date	Eff. Date	Exp. Date	Licensed Since
PROPERTY/CASUALTY BROKER	Active	01/30/2012	01/30/2018	01/29/2020	01/30/2012
LIFE AND/OR ACCIDENT/HEALTH AGENT	Active	07/29/2015	01/30/2018	01/29/2020	02/17/2012
LIFE BROKER	Expired	01/29/2018	01/30/2016	01/29/2018	

PROPERTY & CASUALTY AGENT - Address

ADDRESS TYPE	ADDRESS	CITY	STATE	ZIP	PHONE#
Business Add	4250 Veterans Memorial Hwy,225e	Holbrook	New York	11741	(631)240-0833
Mailing Add	60 WEXFORD DRIVE	OAKDALE	New York	11769	

PROPERTY & CASUALTY AGENT - LOA

LINE

Property  
Casualty  
Personal Lines  
Baggage

PROPERTY & CASUALTY AGENT - Active Company Appointment Section

NAIC#	NAME	APP. DATE	TERM. DATE
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3/16/2018

Licensee Detail

**PROPERTY & CASUALTY AGENT - Terminated Company Appointment Section**

<u>NAIC#</u>	<u>NAME</u>	<u>APP. DATE</u>	<u>TERM. DATE</u>
29688	Allstate Fire and Casualty Insurance Company	01/19/2013	03/08/2018
	Allstate Vehicle and Property Insurance Company		
37907		11/28/2012	03/08/2018
19232	Allstate Insurance Company	04/26/2012	03/08/2018
19240	Allstate Indemnity Company	04/26/2012	03/08/2018
	Allstate Property and Casualty Insurance Company		
17230		04/26/2012	03/08/2018

**PROPERTY & CASUALTY AGENT - Current Sublicensee Section**

<u>NAME</u>	<u>TITLE</u>	<u>APPT. DATE</u>
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## Exhibit 7



3/16/2018

Licensee Detail

New York State State Agencies



**DEPARTMENT of FINANCIAL SERVICES**

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Licensee Detail

<b>Name</b> GIUGLIANO, CHRISTINA JAMIE	<b>Business Type</b> Individual	<b>License No.</b> 1404835	<b>E-Mail</b> giuglc01@gmail.com	<b>Home State</b> New York (Resident)
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Class	Status	Status Date	Eff. Date	Exp. Date	Licensed Since
PROPERTY & CASUALTY AGENT	Inactive	12/12/2015	02/09/2018	02/08/2020	11/23/2015

PROPERTY & CASUALTY AGENT - Address

ADDRESS TYPE	ADDRESS	CITY	STATE	ZIP	PHONE#
Business Add	4250 Veterans Memorial Highway,Suite 225E	Holbrook	New York	11741	(631)240-0833
Mailing Add	54 Timber Ridge Drive	Holbrook	New York	11741	(631)312-7930

PROPERTY & CASUALTY AGENT - LOA

LINE

Personal Lines

PROPERTY & CASUALTY AGENT - Active Company Appointment Section

NAIC#	NAME	APP. DATE	TERM. DATE
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3/16/2018

Licensee Detail

PROPERTY & CASUALTY AGENT - Terminated Company Appointment Section

NAIC#	NAME	APP. DATE	TERM. DATE
37907	Allstate Vehicle and Property Insurance Company	12/10/2015	03/05/2018
19232	Allstate Insurance Company	12/10/2015	03/05/2018
17230	Allstate Property and Casualty Insurance Company	12/10/2015	03/05/2018
19240	Allstate Indemnity Company	12/10/2015	03/05/2018
29688	Allstate Fire and Casualty Insurance Company	12/10/2015	03/05/2018

PROPERTY & CASUALTY AGENT - Current Sublicensee Section

NAME	TITLE	APPT. DATE
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At a Special Term Part 48 of the Supreme Court of the State of New York, Commercial Division, held in and for the County of Suffolk, at the Courthouse, 400 Carleton Avenue, Central Islip, New York 11722, on the \_\_\_\_ day of March, 2018

Present: Hon. Jerry Garguilo, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

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MICHAEL NOCELLA and THE NOCELLA  
INSURANCE AGENCY,

Plaintiffs,

v.

ALLSTATE INSURANCE COMPANY,

Defendant.

-----x

Index No. 604642/2018

(Garguilo, J.)

**ORDER MODIFYING THE  
TEMPORARY RESTRAINING ORDER  
ENTERED ON MARCH 15, 2018**

THIS MATTER having been brought before the Court by defendant Allstate Insurance Company (“Allstate”), by and through its attorneys Saiber LLC, for an Order pursuant to CPLR 6314 (the “Motion”) modifying the Order to Show Cause Request for a Temporary Restraining Order that was entered and filed on March 15, 2018 (NYSCEF Doc. No. 39); and upon consideration of the moving papers submitted by Allstate; and opposition and reply papers, if any; and oral argument, if any; and all prior pleadings and proceedings in this action; and for good cause shown;

IT IS on this \_\_\_\_ day of March, 2018, ORDERED that:

1. Allstate’s Motion shall be, and hereby is, GRANTED.

2. The “Ordered” provisions of the temporary restraining order set forth on page 4 and 5 of the Order to Show Cause Request for a Temporary Restraining Order, dated March 15,

2018, (NYSCEF Doc. No. 39) shall immediately be modified pending the return date on the Order Show Cause presently scheduled for April 11, 2018 at 9:30 a.m., to provide for the following temporary restraints:

A. The July 1, 2018 deadline for plaintiff Michael Nocella to complete the sale of the Allstate book of business shall be stayed;

B. Allstate Exclusive Agent Daniel Bach and Allstate Licensed Sales Producers Sharlene Basso, Keith Mirra, Robert Giordano, Joseph Dito and Heather Khan (collectively “Authorized Agent and LSPs”) shall be permitted to service and access information relating to existing Allstate customers who were formerly serviced by the Nocella Agency;

C. Access required to service existing Allstate customers who were formerly serviced by the Nocella Agency shall be restored to the Nocella Agency location at 4250 Veterans Memorial Hwy, Holbrook, NY (the “Nocella Agency Location”), and the Authorized Agent and LSPs shall be permitted to access the policies and other information for such Allstate customers at the Nocella Agency Location; and

D. Phone calls from existing Allstate customers shall be redirected back to the Nocella Agency Location, and the Authorized Agent and LSPs shall be permitted to receive such phone calls at the Nocella Agency Location;

E. Michael Nocella and Christina Giugliano shall continue to be prohibited from servicing Allstate customers and prohibiting from accessing Allstate confidential and proprietary information, including confidential information about Allstate’s customers.

F. The agent locator function on Allstate’s website shall be manually reactivated such that the Nocella Agency Location is listed on the agent locator.

3. Service of a copy of this Order Modifying the Temporary Restraining Order dated March 15, 2018 shall be made upon counsel for the plaintiffs, Anthony P. DellUniversita, Esq., and service be and hereby is deemed equivalent in all respects to service of same directly upon plaintiffs.

ENTER:

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HON. JERRY GARGUILO, J.S.C.