

David A. Ward
KLUGER HEALEY, LLC
521 Newman Springs Road, Suite 23
Lincroft, New Jersey 07738
732-852-7500
Attorneys for Defendant

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ALLSTATE LIFE INSURANCE COMPANY, Plaintiff, v. JAMES MOTA, Defendant.	CIV. NO. 21-908 (MKV) ANSWER AND COUNTERCLAIM
---	---

Defendant James Mota, answers the Complaint as follows:

NATURE OF ACTION

1. Defendant admits that Allstate filed the instant action, but denies that Allstate is entitled to any of the relief sought in Paragraph 1 and denies that Defendant engaged in any wrongful acts that would entitle Allstate to injunctive relief and damages.

PARTIES

2. Defendant lacks sufficient knowledge to admit or deny the allegations of this paragraph, therefore, denied.

3. Defendant admits he does business at 1270 Avenue of the Americas, New York, NY, but denies that this is his principal place of business.

4. Defendant denies the allegations of paragraph four, and specifically denies that the amount in controversy exceeds \$75,000. Defendant also denies that the Court has supplemental jurisdiction over any remaining claims.

5. Defendant denies that he has solicited business from residents of the State of New York in any manner that would support the causes of action in the Complaint, but otherwise admits that he is subject to personal jurisdiction in the State of New York.

6. Defendant denies that venue is proper in the State of New York or in the Southern District of New York.

RESPONSE TO FACTUAL BACKGROUND

7. Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph 7, therefore, denied.

8. Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph 8, therefore, denied.

9. Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph 9, therefore, denied.

10. Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph 10 as they pertain to other parties, as they pertain to Defendant, Defendant denies that any of the products or business strategies of Allstate of which Defendant was aware constitute confidential information and otherwise denies the allegations of this paragraph.

11. Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph 11, therefore, denied.

12. Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph 12, therefore, denied.

13. Defendant denies the allegations of Paragraph 13.

14. Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph 14, therefore, denied.

15. Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph 15, therefore, denied.

16. Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph 16, therefore, denied.

17. Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph 17, therefore, denied.

18. Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph 18, except to admit that he began his employment with Allstate in May 2013.

19. Defendant admits that he began employment with Allstate in May 2013 and, except as so admitted, denies the allegations of Paragraph 19.

20. Defendant admits that he worked as a Financial Specialist for Allstate from May 2013 and that he resigned from Allstate effective January 2020.

21. Defendant admits that as a Financial Specialist for Allstate he worked with Allstate agents, and except as so admitted Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph 21.

22. Defendant denies the allegations of paragraph 22 and that much of the information that Allstate alleges as confidential is, in fact, confidential.

23. Defendant denies the allegations of paragraph 23.

24. The allegations of Paragraph 24 purport to recite the terms of a document and Defendant therefore denies the allegations and refers to an original or true copy of the complete document alleged for an accurate statement of the terms thereof.

25. The allegations of Paragraph 25 purport to recite the terms of a document and Defendant therefore denies the allegations and refers to an original or true copy of the complete document alleged for an accurate statement of the terms thereof.

26. The allegations of Paragraph 26 purport to recite the terms of a document and Defendant therefore denies the allegations and refers to an original or true copy of the complete document alleged for an accurate statement of the terms thereof.

27. The allegations of Paragraph 27 purport to recite the terms of a document and Defendant therefore denies the allegations and refers to an original or true copy of the complete document alleged for an accurate statement of the terms thereof.

28. The allegations of Paragraph 28 purport to recite the terms of a document and Defendant therefore denies the allegations and refers to an original or true copy of the complete document alleged for an accurate statement of the terms thereof.

29. The allegations of Paragraph 29 purport to recite the terms of a document and Defendant therefore denies the allegations and refers to an original or true copy of the complete document alleged for an accurate statement of the terms thereof.

30. The allegations of Paragraph 30 purport to recite the terms of a document and Defendant therefore denies the allegations and refers to an original or true copy of the complete document alleged for an accurate statement of the terms thereof.

31. Denied.

32. Defendant admits that he began working for Prudential after resigning from Allstate and that Prudential and Allstate offer some competing products and/or services and, except as so admitted, denied.

33. Denied on the basis that Defendant does not know what is meant by “months before”, except as so denied Defendant admits that he advised his superiors at Allstate that he was considering leaving for Prudential at least as early as November 2019.

34. Defendant admits that while employed by Allstate, he accessed customer information that contains confidential information of that customer, and, except as so admitted, denied.

35. Denied.

36. Denied.

37. Denied.

38. Defendant lacks knowledge or information sufficient to admit or deny what Allstate agents purportedly discussed with Allstate customers and otherwise denies the allegations of Paragraph 38.

39. The allegations of Paragraph 39 purport to recite the terms of a document and Defendant therefore denies the allegations and refers to an original or true copy of the complete document alleged for an accurate statement of the terms thereof as well as all documents referenced therein and responded thereto, otherwise denied.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

46. Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph 46, therefore, denied.

47. Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph 47, therefore, denied.

48. Denied.

49. Denied.

**RESPONSE TO COUNT I OF THE COMPLAINT
ALLEGED BREACH OF CONTRACT**

50. Defendant repeats his responses to the preceding allegations of the Complaint as though set forth in full here.

51. Defendant admits that he began employment with Allstate in May 2013 and, except as so admitted, denies the allegations of Paragraph 51.

52. Denied.

53. Denied.

54. The allegations of Paragraph 54 purport to recite the terms of a document and Defendant therefore denies the allegations and refers to an original or true copy of the complete document alleged for an accurate statement of the terms thereof as well as all documents referenced therein, otherwise denied.

55. The allegations of Paragraph 55 purport to recite the terms of a document and Defendant therefore denies the allegations and refers to an original or true copy of the complete

document alleged for an accurate statement of the terms thereof as well as all documents referenced therein, otherwise denied.

56. The allegations of Paragraph 56 purport to recite the terms of a document and Defendant therefore denies the allegations and refers to an original or true copy of the complete document alleged for an accurate statement of the terms thereof as well as all documents referenced therein, otherwise denied.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

65. Denied that Allstate is entitled to any of the relief requested.

66. Denied that Allstate is entitled to any of the relief requested.

**RESPONSE TO COUNT II OF THE COMPLAINT
ALLEGED VIOLATION OF 18 USC SEC. 1836**

67. Defendant repeats his responses to the preceding allegations of the Complaint as though set forth in full here.

68. Defendant admits that while employed by Allstate, he had access to customer information that contains confidential information of that customer, and, except as so admitted, denied.

69. Defendant admits that while employed by Allstate, he had access to customer information that contains confidential information of that customer, and, except as so admitted, denied.

70. Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph 70, therefore, denied.

71. Denied.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Denied that Allstate is entitled to any of the relief requested.

78. Denied.

79. Denied.

**RESPONSE TO COUNT III OF THE COMPLAINT
ALLEGED MISAPPROPRIATION OF TRADE SECRETS
UNDER NEW YORK LAW**

80. Defendant repeats his responses to the preceding allegations of the Complaint as though set forth in full here.

81. Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph 81, therefore, denied.

82. Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph 82, therefore, denied.

83. Denied.

84. Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph 84, therefore, denied.

85. Denied.

86. Denied.

87. Denied.

88. Denied.

89. Denied that Allstate is entitled to any of the relief requested.

90. Denied.

91. Denied.

WHEREFORE, Defendant demands judgment dismissing the Complaint, with costs, attorneys' fees, sanctions and such other relief as the Court deems proper.

AFFIRMATIVE DEFENSES

Further responding to the Complaint, Defendant James Mota asserts the following defenses to Plaintiff's claims, without admitting any allegations of the Complaint not otherwise admitted and without assuming any burden where such burden would otherwise be on Plaintiff:

First Affirmative Defense

The Complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense

Allstate's claims against Mota are barred because the restrictive covenants that Plaintiff seeks to enforce are invalid and/or unenforceable as a matter of law and/or fact.

Third Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by laches and estoppel.

Fourth Affirmative Defense

Plaintiff's claims are barred because Plaintiff lacks standing to assert the claims alleged herein.

Fifth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by its unclean hands.

Sixth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by its failure to mitigate damages.

Seventh Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by failure of condition precedent and/or subsequent.

Eighth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by rescission and/or novation.

Additional Defenses Reserved

Defendant reserves all defenses under Rule 8 of the Federal Rules of Civil Procedure, the Defend Trade Secrets Act, and any other defenses at law or in equity that may exist now or that may be available in the future.

COUNTERCLAIMS

Pursuant to Rule 13 of the Federal Rules of Civil Procedure, Counterclaimant James Mota (“Mota”), hereby alleges:

INTRODUCTION

1. This action arises out of the tortious interference and unfair competition towards Mota by Plaintiff Allstate Insurance Company (“Allstate”).

2. This Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367 over Mota’s claims arising under state law.

3. This Court has personal jurisdiction over Allstate because it engages in business activities in this state, and has asserted affirmative claims in this Court.

4. Venue is proper in this District pursuant to 28 U.S.C. 1391 because Allstate is subject to personal jurisdiction in this District, and by bringing this action has consented to venue in this District.

FACTUAL BACKGROUND

5. Mota’s principal place of business is in Westwood, New Jersey.

6. Allstate is, upon information and belief, incorporated in Delaware and Allstate’s principal place of business is, upon information and belief, in Illinois.

7. Mota has been in the financial services industry for over 10 years.

8. Prior to joining Allstate in May 2013, Mota worked as a broker for New York Life Insurance Company.

9. Mota has a valued reputation in the industry because he conducts himself with the highest integrity. For that reason, when Mota joined Allstate, he refused Allstate's request that he target former clients at New York Life in order to bring them to Allstate.

10. Mota has established good will with the clients and agents he has engaged with over the years.

11. The good will established by Mota has substantial economic value.

12. In the summer of 2019, Mota had discussions with Allstate representatives regarding the possibility of becoming an Allstate agent.

13. Allstate's policies do not permit an Allstate financial specialists to also act as an "Allstate Agent," as Allstate defines that term.

14. In anticipation of becoming an Allstate agent, Mota therefore began to look for his replacement as an Allstate financial specialist to ensure that there would be a smooth transition of his clients.

15. Allstate representatives and management were aware of Mota's decision to terminate his financial specialist relationship with Allstate as early as the summer of 2019.

16. As Mota's discussions with Allstate regarding his purchase of an Allstate agency proceeded to the fall of 2019, the Allstate representative dealing with Mota, Ankur Charturvedi, reneged on many of the promises and assurances that he had provided to Mota.

17. Mota therefore decided against becoming an Allstate agent and to instead continue his work as an Allstate financial specialist.

18. At the time Mota decided against becoming an Allstate agent, he had already procured his replacement as an Allstate financial specialist.

19. Allstate representatives and management were aware, as early as the fall of 2019, that Alan Weinstein would take over Mota's clients and Allstate customers and would service the Allstate agents that Mota had worked with.

20. Mota notified his Allstate superiors of his decision to leave Allstate in November 2019 and again in December 2019.

21. On December 1, 2019, Alan Weinstein was approved an Allstate Financial Specialist to take over Mota's accounts.

22. On December 3, 2019, Mota sent a message to his Allstate supervisor, David Hull, requesting that Mr. Hull send a letter of reference to Prudential Insurance Company because Mota was interested in procuring a position at Prudential.

23. Mr. Hull sent the letter of reference as requested.

24. Throughout December 2019, Mota actively worked with Alan Weinstein to ensure the smooth transition of accounts.

25. As part of his efforts to assist Mr. Weinstein, in December 2019, Mota downloaded and shared with Mr. Weinstein two lists containing customer information necessary for Mr. Weinstein to continue to service and renew accounts for Allstate.

26. Mota officially resigned his position with Allstate on January 4, 2020. In his letter of resignation, Mota stated:

With all of this being taken into account, I formally submit this as a notice of my resignation as a Personal Financial Specialist with the Allstate Corporation effective January 10th 2020. In anticipation of this change and through communication with my last known chain of command, I have referred, trained and introduced a new financial professional to continue in my stead. This was a vital piece to my transition and not causing a disruption in my agency partner's financial business. We have already transitioned the business relationship and I am confident he can support the agency's needs.

27. In his letter of resignation, Mota advised Allstate that he had completed the transition of his accounts to Alan Weinstein. In fact, from the time of Alan Weinstein's approval as an Allstate Financial Specialist on December 1, 2019, Mota continued to work with Mr. Weinstein to provide him with leads, to transition accounts, and to introduce Mr. Weinstein with the agency partners he would be working with after Mota left Allstate.

28. Mota used the information that he downloaded in December 2019 for purposes of assisting Mr. Weinstein as alleged above, and for no other purpose.

29. In concluding his letter of resignation to Allstate, Mota provided his personal cell number and his personal email address in the event Allstate needed to contact Mota.

30. Despite being aware of Mota's departure from Allstate for months, and despite being aware that Mota intended to join Prudential upon his resignation from Allstate, Allstate failed to conduct an exit interview with Mota.

31. After his departure from Allstate, Mota continued to assist Allstate financial specialists and Allstate agents in servicing Allstate clients and maintaining or acquiring new accounts.

32. After Mota's departure from Allstate, Allstate sent numerous email messages to current and former Allstate clients, wherein Allstate misappropriated Mota's name and likeness and falsely represented that Mota was affiliated with Allstate.

33. Upon information and belief, Allstate sent hundreds, if not thousands, of such emails.

34. Allstate's sending of such emails was part of a larger anti-competitive practice, whereby Allstate sought to restrain any fair competition from Financial Specialists and others who had left Allstate.

35. In furtherance of its anti-competitive practices, Allstate sent Mota a letter dated July 9, 2020, wherein Allstate falsely claimed that Mota had induced Allstate customers to cancel their coverage with Allstate and had misappropriated Allstate information.

36. The July 9 Allstate letter was written by Allstate counsel, and demanded that Mota cease and desist from the falsely alleged misconduct and that Mota return Allstate property.

37. Allstate's sudden request for the return of property, six months after Mota's resignation, and its claims of wrongful solicitation and misappropriation, were a sham, designed to chill Mota and other former Allstate Financial Specialists from continuing their legitimate work in the industry.

38. Mota responded to the Allstate July 9 letter on or about July 11, 2020. In his response, Mota rejected every claim of alleged wrongdoing in the Allstate July 9 letter and demanded that Allstate provide evidence of Mota performing any of the actions alleged by Allstate.

39. Allstate failed to provide any evidence of Mota's alleged wrongdoing and, to date, has failed to identify a single instance where Mota solicited any Allstate customer to terminate Allstate coverage.

40. Mota also advised Allstate that it was continuing to send to Allstate clients correspondence that falsely represented that Mota was affiliated with Allstate.

41. With regard to Allstate's sham claim that Mota had not returned Allstate property, Mota advised Allstate that he had returned all materials provided to him by Allstate and that he had left all client folders in his office.

42. Allstate has never even acknowledged Mota's response to the Allstate July 9 letter. Indeed, Allstate continued to send to Allstate clients correspondence that falsely represented that

Mota was affiliated with Allstate, and ignored Mota's demand that Allstate specify the alleged wrongful solicitations.

43. After Mota left Allstate, he requested that Allstate remove the software that it had installed on Mota's computer, as this software was interfering with Mota's computer operations.

44. Mota contacted Allstate technical support on several occasions, but Allstate ignored these requests.

45. Throughout this time, Mota continued to receive calls and communications from Allstate clients. For any client that Mota knew was an existing Allstate customer, Mota would assist that client in connecting with the appropriate Allstate representative to service that client's needs.

46. After Mota's departure from Allstate, Allstate agents and representatives contacted Mota for assistance in servicing Allstate clients.

47. Mota readily provided the assistance to his former colleagues because he had no intention of soliciting any of these clients for himself and he valued the good will and reputation he had in the industry and wanted to continue to grow those relationships.

48. Allstate continued to ignore Mota's communications and requests that Allstate remove the Allstate software from his personal laptop computer.

49. By October 2020, Allstate had still never acknowledged any of Mota's communications. Accordingly, Mota arranged, at his own expense, to obtain the technical assistance to reinstall his Windows operating system so that his computer could function properly. This finally removed the Allstate software, however, Allstate continued to ignore Mota's

communications and continued to send to Allstate clients correspondence that falsely represented that Mota was affiliated with Allstate.

50. Allstate subsequently sent to Mota a cease and desist letter dated October 19, 2020, which repeated Allstate's prior sham claims alleging Mota's wrongful solicitation and which failed to respond to Mota's July 10, 2020 response to Allstate.

51. Allstate's October 19 cease and desist letter again failed to specify a single Allstate client that had been wrongfully solicited by Mota.

52. Mota once again provided a detailed response to Allstate's cease and desist, via his October 22, 2020 letter.

53. In his October 22 letter, Mota noted Allstate's failure to not only respond to his July 10, 2020 letter that addressed Allstate's concerns, but also to Allstate's continuing failure to respond to Mota's complaint that Allstate had continued to use Mota's name and, as part of Allstate's wrongful efforts to solicit business in Mota's name, continued to falsely represent that Mota was affiliated with Allstate after he had left the company.

54. As to Allstate's allegation that Mota wrongfully download information, Mota explained the reason for the download of information prior to his departure in January 2020.

55. As stated above, and as Mota advised Allstate in his response, Mota downloaded the information solely for the purpose of sharing that information with his successor, Alan Weinstein, to assist Weinstein in taking over Mota's accounts.

56. Allstate never engaged in a good faith investigation of the facts alleged in its October 20th cease and desist or in the Complaint herein before filing this lawsuit, as evidenced by the fact

that Allstate never contacted its employee, Weinstein, to confirm the accuracy of the assurances provided by Mota.

57. In fact, Allstate has pursued its claims here despite having been provided with a statement from Weinstein attesting to Mota's efforts to assist Weinstein in retaining Allstate clients and servicing Allstate agents.

58. In his response to Allstate's October 20, 2020 cease and desist letter, Mota also confirmed and reasserted that he has not solicited Allstate clients and that he has not used any confidential Allstate information.

59. Mota also again advised Allstate that it was continuing to falsely represent that Mota was affiliated with Allstate.

60. As of October 20, 2020, Allstate continued to use Mota's name and image in its campaign to harm Mota and to wrongfully benefit by its misappropriation.

61. Mota also advised Allstate that clients who had contacted him for new business or services were immediately referred to his replacement or to the area's financial services manager.

62. Again, Allstate could have readily verified this information, on its own, by simply speaking to its own agents before filing suit. However, Allstate failed to do so in violation of its obligations under Rule 11 of the Federal Rules of Civil Procedure.

63. Mota also disputed Allstate's contention that Mota suddenly resigned from Allstate. As Allstate is aware, before and after his departure, Allstate knew where Mota was working and in what capacity.

64. In his response to Allstate's October 20, 2020 cease and desist letter, Mota specifically advised Allstate that if "there is any specific issue or client that remains a concern please let me know, because I am certain I can satisfy that concern."

65. Allstate has never responded to that request by Mota. Instead, Allstate has continued its sham tactics of attempting to chill legitimate competition by sending the cease and desist letters and then filing this suit, without any legitimate factual basis.

**FIRST COUNT OF THE COUNTERCLAIM
TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS**

66. Mota repeats and realleges each of the allegations in the preceding paragraphs as though set forth in full here.

67. Mota had and has a prospective business relationship with all current and former Allstate's clients as a result of the fact that Mota is not subject to any covenant not to compete.

68. As alleged above and as specified below, Allstate has undertaken wrongful actions to interfere with these relationships.

69. Allstate has implemented a plan to avoid legitimate future competition from its employees by deterring them from accepting employment at a competitor, including Mota.

70. Upon information and belief, Allstate maintains a practice where, after certain employees who are allegedly subject to restrictive covenant agreements leave Allstate, Allstate sends threatening letters to such employees, in an effort to chill competition.

71. The letters sent to Allstate employees, including Mota, are sent without a good faith investigation of the facts.

72. Allstate continues to send these “cease and desist” letters to employees, including Mota, despite its indisputable receipt of adequate assurances from the employees that they are not in violation of any restrictive covenant.

73. Allstate’s campaign of intimidating its former employees is done with full knowledge of and participation by its senior management.

74. In many cases, upon information and belief, Allstate has threatened former employees, including Mota, without a sufficient basis for claiming that the former employee is in violation of any agreement.

75. Allstate is aware that the “covenant not to compete” that it cites to in the Financial Specialist employment agreement is in fact not a covenant not to compete, but instead, a limited restriction on Financial Specialists inducing Allstate policy holders from terminating coverage.

76. Allstate nevertheless intentionally misstates the nature of the restrictive covenant as part of its campaign to intimidate former Allstate Financial Specialists from fairly competing.

77. For example, Allstate has threatened to sue Mota, and in fact filed this action against Mota, based upon Mota’s communication with Allstate customers, despite the fact that Allstate cannot identify a single customer whom Mota has induced to cancel coverage.

78. By making such overbroad and threatening statements, Allstate is seeking to unlawfully restrain its former employees from seeking employment at competitors and from working as Financial Specialists in competition with Allstate.

79. As part of its campaign, as alleged above, after an Allstate Financial Specialist’s departure, Allstate has continued to falsely represent that the Financial Specialist (such as Mota)

remained affiliated with Allstate, wrongfully using that individuals name and image to unfairly compete with the former Allstate employee and to profit from that employee's name and likeness.

80. As another part of Allstate's wrongful campaign against former employees, including Mota, Allstate deliberately fails to identify the specific customers, clients, or contacts that Allstate contends have been wrongfully solicited in order to create uncertainty among its former employees regarding permissible and impermissible business activities once they leave Allstate.

81. As a result of Allstate's conduct, the former Allstate employees do not contact customers, clients, business partners, or vendors that they are otherwise entitled to solicit and limit their marketing activity.

82. The restrictive covenants at issue in the Financial Specialist employment agreement are for one year after termination of employment with Allstate.

83. On information and belief, Allstate sends the demand letters and waits until the end of one-year term of the restrictive covenant to file suit against its former employees, thereby deliberately delaying filing suit in order to create a cloud upon the former employees in their future employment.

84. As a result of this conduct, Mota has been harmed.

85. Mota has a reasonable expectation that he would have been able to sell products to certain former, current and prospective Allstate customers, but for Allstate's misrepresentations, intimidation, and sham campaign to interfere with competition.

86. Allstate has, by improper means, interfered with Mota's pursuit of prospective customers and customers with whom Mota had no contact while at Allstate.

87. Allstate's conduct, practices and activities have intentionally and unjustifiably interfered with Mota's current and prospective business opportunities and with Mota's reasonable expectation to conduct his marketing without interference.

88. Allstate has acted with a willful intent to harm Mota.

89. But for Allstate's conduct described in these Counterclaims, Mota would have received the benefit of additional customers, sales and relationships with potential clients and business partners.

90. Mota has been injured by Allstate's tortious interference, and has suffered damages thereby.

**SECOND COUNT OF THE COUNTERCLAIM
UNFAIR COMPETITION**

91. Mota incorporates by reference and realleges the foregoing paragraphs as if set forth herein.

92. Because of Allstate's conduct towards Mota and other former employees as described in these Counterclaims, including for example, its practice of threatening or suing former employees without a proper basis, Allstate is chilling legitimate competition.

93. Upon information and belief, Allstate also is aware of the chilling effect that such "cease and desist" letters have on the ability of Allstate former employees to compete with Allstate.

94. Allstate has also unfairly competed against Mota and other former employees by its continued misappropriation of their name and likeness and false representations that Mota, and other former Financial Specialists, are affiliated with Allstate after their termination of employment.

95. Allstate has unfairly competed against Mota by threatening litigation for violating a “covenant not to compete” when Allstate is well-aware of the fact that Mota is not subject to any such covenant.

96. Allstate has acted in bad faith, and seeks to punish its former employees, such as Mota, for leaving Allstate and seeks to restrain competition unlawfully.

97. Allstate’s unfair competition has harmed Mota and continues to cause and will continue to cause Mota injury.

98. Mota is entitled to a disgorgement of Allstate’s profits as a result of Allstate’s conduct, plus all other compensatory, consequential and punitive damages, in an amount to be determined at trial.

**THIRD COUNT OF THE COUNTERCLAIM
MISAPPROPRIATION OF MOTA’S NAME AND IMAGE**

99. Mota incorporates by reference and realleges the foregoing paragraphs as if set forth herein.

100. As alleged above, Allstate has misappropriated Mota’s name and image as part of its false representations to Allstate customers that Mota remained affiliated with Allstate after January 10, 2020.

101. Allstate continued its wrongful conduct even after Mota, on multiple occasions, notified Allstate of its actions.

102. Allstate used Mota’s name and image for commercial purposes and without authorization to do so.

103. Allstate's actions have caused Mota damages, and have unjustly enriched Allstate who has marketed and obtained business based upon its wrongful misappropriation of Mota's name and image.

104. Allstate has acted willfully and maliciously and with a disregard for Mota's rights.

**FOURTH COUNT OF THE COUNTERCLAIM
BAD FAITH CLAIM UNDER THE DEFEND TRADE SECRETS ACT**

105. Mota incorporates by reference and realleges the foregoing paragraphs as if set forth herein.

106. As alleged above, Allstate has brought its claim under the Defend Trade Secrets Act in bad faith.

107. As a result of Allstate's conduct, Mota had been damaged.

108. Mota is therefore entitled to his attorneys' fees, costs, and such other relief as the Court deems proper.

PRAYER FOR RELIEF

WHEREFORE, Mota respectfully requests that this Court enter judgement against Allstate:

- A. On the First Count of the Counterclaim, awarding Mota all actual damages, consequential damages, and punitive damages as a result of Allstate's conduct, together with costs, interest and attorneys' fees;
- B. On the Second Count of the Counterclaim, awarding Mota all actual damages, consequential damages, and punitive damages as a result of Allstate's conduct, including disgorgement of all profits Allstate obtained by its unfair competition, together with costs, interest and attorneys' fees;

- C. On the Third Count of the Counterclaim, awarding Mota all actual damages, consequential damages, and punitive damages as a result of Allstate's conduct, including disgorgement of all profits Allstate obtained by its misappropriation of Mota's name and image, together with costs, interest and attorneys' fees;
- D. On Fourth Count of the Counterclaim, awarding Mota all actual damages, consequential damages, and attorneys' fees as a result of Allstate's bad faith under the Defend Trade Secrets Act;
- E. Awarding Mota such other relief as this court deems just and proper.

DEMAND FOR A JURY TRIAL

Mota hereby demands a trial by jury on all issues so triable.

Dated: March 23, 2021

KLUGER HEALEY, LLC

By: /s/ David A. Ward

David A. Ward, Esq.
521 Newman Springs Road, Suite 23
Lincroft, New Jersey 07738
Tinton Falls, NJ 07724
(732) 852-7500 [Tel]
(888) 635-1653 [Fax]
Email: dward@klugerhealy.com