

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<p>GENE R. ROMERO, et. al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>ALLSTATE INSURANCE COMPANY, et. al.,</p> <p style="text-align: center;">Defendants.</p>	<p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p>	<p>No. 01-CV-3894</p>
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**ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS ALLSTATE  
INSURANCE COMPANY AND THE ALLSTATE CORPORATION  
TO PLAINTIFFS' SECOND AMENDED COMPLAINT**

Defendants Allstate Insurance Company (“Allstate”) and The Allstate Corporation (hereinafter referred to collectively as “defendants”) hereby answer plaintiffs’ Second Amended Complaint in the above-referenced action with the following responses numbered to correspond with the numbered paragraphs of the Second Amended Complaint. Defendants deny each and every allegation not expressly admitted below.

**GENERAL DENIAL**

Defendants deny all allegations contained in the headings or titles of the Second Amended Complaint.

**ANSWER TO SPECIFIC ALLEGATIONS CONTAINED IN COMPLAINT**

1. Defendants deny the allegations contained in paragraph 1.
2. Defendants deny the allegations contained in paragraph 2.

3. Defendants admit that Allstate announced in November 1999 that it would institute a group reorganization program under which it would terminate the employment of agents operating under certain contracts in various states (the “group reorganization program”). Defendants deny all other allegations contained in paragraph 3.

4. Defendants deny the allegations contained in paragraph 4.

5. Defendants deny the allegations contained in paragraph 5.

6. Defendants deny the allegations contained in paragraph 6.

7. Defendants deny the allegations contained in paragraph 7.

8. Defendants deny the allegations contained in paragraph 8.

9. Defendants deny the allegations contained in paragraph 9.

10. Defendants deny the allegations contained in paragraph 10.

11. Defendants admit that agents whose employment contracts were terminated under Allstate’s group reorganization program were given the option of receiving certain enhanced benefits in exchange for entering into a release and waiver agreement. Defendants deny all other allegations contained in paragraph 11.

12. Defendants admit that the U.S. Equal Employment Opportunity Commission (“EEOC”) has issued a determination with respect to the release and waiver agreement connected to Allstate’s group reorganization program. Defendants deny all other allegations contained in paragraph 12.

13. Defendants admit that the named plaintiffs purport to bring an action on behalf of themselves and other persons similarly situated under the ADEA, the Employee Retirement

Income Security Act of 1974 (“ERISA”), and common law. Defendants deny all other allegations contained in paragraph 13.

14. Defendants admit that subject matter jurisdiction is proper under 28 U.S.C. §§ 1331 and 1343(a) and 29 U.S.C. §§ 1132(e)(1) and (f) as to defendants Allstate Insurance Company and The Allstate Corporation. Defendants deny all other allegations contained in paragraph 14.

15. Defendants deny the allegations contained in paragraph 15.

16. Defendants admit that venue is proper in the United States District Court for the Eastern District of Pennsylvania as to defendants Allstate Insurance Company and The Allstate Corporation. Defendants deny all other allegations contained in paragraph 16.

17. Defendants admit that plaintiffs were agents as of November 10, 1999 under versions of either the R830 Allstate Agent Compensation Agreement, as amended (“R830 contract”), or the R1500 Agent Employment Agreement, as amended (“R1500 contract”), and that plaintiffs’ employment was terminated as part of the group reorganization program. Defendants further admit that named plaintiffs had attained the age of forty prior to the termination of their R830 or R1500 contracts. Defendants deny all other allegations contained in paragraph 17.

18. Defendants deny the allegations contained in paragraph 18.

19. Defendants admit that plaintiffs whose employment was terminated as part of Allstate’s group reorganization program who elected to sign a release and waiver agreement were permitted to either: (1) enter into the R3001S Allstate Exclusive Agents Agreement or R3001C Allstate Exclusive Agency Agreement; or (2) enter into an R3001S or R3001C contract

and sell an interest in their book of business; or (3) receive an enhanced severance payment.

Defendants deny all other allegations contained in paragraph 19.

20. Defendants deny the allegations contained in paragraph 20.

21. Defendants deny the allegations contained in paragraph 21.

22. Defendants admit that plaintiff Gene R. Romero was employed by Allstate pursuant to a R1500 contract prior to the group reorganization program. Defendants further admit plaintiff Romero signed a release and waiver. Defendants deny all other allegations contained in paragraph 22.

23. Defendants admit that plaintiff Joseph L. Benoit was employed by Allstate pursuant to a R830 contract prior to the group reorganization program. Defendants further admit plaintiff Benoit did not sign a release and waiver. Defendants deny all other allegations contained in paragraph 23.

24. Defendants admit that plaintiff James T. Bever was employed by Allstate pursuant to a R830 contract prior to the group reorganization program. Defendants further admit plaintiff Bever signed a release and waiver. Defendants deny all other allegations contained in paragraph 24.

25. Defendants admit that plaintiff Roger T. Boyd was employed by Allstate pursuant to a R1500 contract prior to the group reorganization program. Defendants further admit plaintiff Boyd signed a release and waiver. Defendants deny all other allegations contained in paragraph 25.

26. Defendants admit that plaintiff Richard A. Carrier was employed by Allstate pursuant to a R830 contract prior to the group reorganization program. Defendants further admit

plaintiff Carrier signed a release and waiver. Defendants deny all other allegations contained in paragraph 26.

27. Defendants admit that plaintiff Paul R. Cobb was employed by Allstate pursuant to a R1500 contract prior to the group reorganization program. Defendants further admit plaintiff Cobb signed a release and waiver. Defendants deny all other allegations contained in paragraph 27.

28. Defendants admit that plaintiff Craig K. Crease was employed by Allstate pursuant to a R830 contract prior to the group reorganization program. Defendants further admit plaintiff Crease signed a release and waiver. Defendants deny all other allegations contained in paragraph 28.

29. Defendants admit that plaintiff Sylvia Crews-Kelly was employed by Allstate pursuant to a R830 contract prior to the group reorganization program. Defendants further admit plaintiff Crews-Kelly signed a release and waiver. Defendants deny all other allegations contained in paragraph 29.

30. Defendants admit that plaintiff Dwight F. English was employed by Allstate pursuant to a R1500 contract prior to the group reorganization program. Defendants further admit plaintiff English signed a release and waiver. Defendants deny all other allegations contained in paragraph 30.

31. Defendants admit that plaintiff Ronald W. Harper was employed by Allstate pursuant to a R1500 contract prior to the group reorganization program. Defendants further admit plaintiff Harper signed a release and waiver. Defendants deny all other allegations contained in paragraph 31.

32. Defendants admit that plaintiff Michael P. Kearney (“M. Kearney”) was employed by Allstate pursuant to a R830 contract prior to the group reorganization program. Defendants further admit plaintiff M. Kearney signed a release and waiver. Defendants deny all other allegations contained in paragraph 32.

33. Defendants admit that plaintiff Thomas A. Kearney (“T. Kearney”) was employed by Allstate pursuant to a R830 contract prior to the group reorganization program. Defendants further admit plaintiff T. Kearney signed a release and waiver. Defendants deny all other allegations contained in paragraph 33.

34. Defendants admit that plaintiff Larry H. Lankford, Sr. was employed by Allstate pursuant to a R830 contract prior to the group reorganization program. Defendants further admit plaintiff Lankford signed a release and waiver. Defendants deny all other allegations contained in paragraph 34.

35. Defendants admit that plaintiff David C. Lawson was employed by Allstate pursuant to a R1500 contract prior to the group reorganization program. Defendants further admit plaintiff Lawson signed a release and waiver. Defendants deny all other allegations contained in paragraph 35.

36. Defendants admit that plaintiff Nathan R. Littlejohn, II was employed by Allstate pursuant to a R1500 contract prior to the group reorganization program. Defendants further admit plaintiff Littlejohn signed a release and waiver. Defendants deny all other allegations contained in paragraph 36.

37. Defendants admit that plaintiff Rebecca R. Maslowski was employed by Allstate pursuant to a R830 contract prior to the group reorganization program. Defendants further admit

plaintiff Maslowski signed a release and waiver. Defendants deny all other allegations contained in paragraph 37.

38. Defendants admit that plaintiff Craig A. Millison was employed by Allstate pursuant to a R1500 contract prior to the group reorganization program. Defendants further admit plaintiff Millison signed a release and waiver. Defendants deny all other allegations contained in paragraph 38.

39. Defendants admit that plaintiff James E. Moorehead was employed by Allstate pursuant to a R830 contract prior to the group reorganization program. Defendants further admit plaintiff Moorehead signed a release and waiver. Defendants deny all other allegations contained in paragraph 39.

40. Defendants admit that plaintiff Christopher L. Perkins was employed by Allstate pursuant to a R830 contract prior to the group reorganization program. Defendants further admit plaintiff Perkins signed a release and waiver. Defendants deny all other allegations contained in paragraph 40.

41. Defendants admit that plaintiff Richard E. Peterson was employed by Allstate pursuant to a R830 contract prior to the group reorganization program. Defendants further admit plaintiff Peterson signed a release and waiver. Defendants deny all other allegations contained in paragraph 41.

42. Defendants admit that plaintiff James P. Pilchak was employed by Allstate pursuant to a R830 contract prior to the group reorganization program. Defendants further admit plaintiff Pilchak signed a release and waiver. Defendants deny all other allegations contained in paragraph 42.

43. Defendants admit that plaintiff Paula Reiniero was employed by Allstate pursuant to a R1500 contract prior to the group reorganization program. Defendants further admit plaintiff Reiniero signed a release and waiver. Defendants deny all other allegations contained in paragraph 43.

44. Defendants admit that plaintiff Paul L. Shirley was employed by Allstate pursuant to a R1500 contract prior to the group reorganization program. Defendants further admit plaintiff Shirley signed a release and waiver. Defendants deny all other allegations contained in paragraph 44.

45. Defendants admit that plaintiff Donald L. Trgovich was employed by Allstate pursuant to a R830 contract prior to the group reorganization program. Defendants further admit plaintiff Trgovich signed a release and waiver. Defendants deny all other allegations contained in paragraph 45.

46. Defendants admit that plaintiff Richard S. Wandner was employed by Allstate pursuant to a R830 contract prior to the group reorganization program. Defendants further admit plaintiff Wandner signed a release and waiver. Defendants deny all other allegations contained in paragraph 46.

47. Defendants admit that plaintiff Timothy Weisman was employed by Allstate pursuant to a R1500 contract prior to the group reorganization program. Defendants further admit plaintiff Weisman signed a release and waiver. Defendants deny all other allegations contained in paragraph 47.

48. Defendants admit that plaintiff Anthony T. Wiktor was employed by Allstate pursuant to a R830 contract prior to the group reorganization program. Defendants further admit

plaintiff Wiktors signed a release and waiver. Defendants deny all other allegations contained in paragraph 48.

49. Defendants admit that plaintiff John W. Wittman was employed by Allstate pursuant to a R830 contract prior to the group reorganization program. Defendants further admit plaintiff Wittman signed a release and waiver. Defendants deny all other allegations contained in paragraph 49.

50. Defendants admit that plaintiff Ralph J. Wolverton was employed by Allstate pursuant to a R830 contract prior to the group reorganization program. Defendants further admit plaintiff Wolverton signed a release and waiver. Defendants deny all other allegations contained in paragraph 50.

51. Defendants admit that Edward M. Liddy was Allstate's Chief Operating Officer from August 1994 to January 1999, Chief Executive Officer from January 1999 to May 2005, and Chairman of the Board of Directors from January 1999 to April 2008. The remaining allegations in paragraph 51 are legal conclusions to which no response is required. To the extent a response is deemed required, defendants deny all other allegations contained in paragraph 51.

52. Defendants admit that The Allstate Corporation is a publicly-traded Delaware Corporation with a principal place of business in Northbrook, Illinois. The remaining allegations in paragraph 52 are legal conclusions to which no response is required. To the extent a response is deemed required, defendants deny all other allegations contained in paragraph 52.

53. Defendants admit that Allstate Insurance Company is an Illinois corporation with its principal place of business in Northbrook, Illinois, and that Allstate Insurance Company conducts business throughout the United States and abroad. The remaining

allegations in paragraph 53 are legal conclusions to which no response is required. To the extent a response is deemed required, defendants deny all other allegations contained in paragraph 53.

54. Defendants admit that Allstate Insurance Company is identified as the plan sponsor of the Agents Pension Plan and that The Allstate Corporation is identified as the plan sponsor of The Savings and Profit Sharing Fund of Allstate Employees. The remaining allegations in paragraph 54 are legal conclusions to which no response is required. To the extent a response is deemed required, defendants deny all other allegations contained in paragraph 54.

55. Defendants admit that almost all of Allstate's agents were employed pursuant to a version of the R830 contract prior to 1984, and that the R830 contract purported to be an employment agreement, stated that the agent was required to devote his or her full business time to the solicitation of insurance for Allstate, and stated that the agent was prohibited from soliciting insurance for any other company unless approved by Allstate. Defendants further admit that R830 agents' compensation included commissions and a "production allowance" for vacation, personal holidays, family and other illnesses, attending company meetings and other time away from an agency. Defendants further admit that R830 agents were provided office locations prior to 1984. Defendants deny all other allegations contained in paragraph 55.

56. Defendants deny the allegations contained in paragraph 56.

57. Defendants deny the allegations contained in paragraph 57.

58. Defendants admit that agents employed pursuant to a version of the R830 contract were eligible for benefits, including retirement benefits, participation in a profit sharing plan, medical insurance, dental insurance, long-term disability insurance, and life insurance. Defendants deny all other allegations contained in paragraph 58.

59. Defendants admit that Allstate sold products through insurance agents located in booths at Sears stores and Allstate-owned or leased sales offices by 1984. Defendants further admit that Allstate introduced the Neighborhood Office Agent (“NOA”) program in 1984. Defendants deny all other allegations contained in paragraph 59.

60. Defendants admit that the NOA program included agents employed pursuant to the R1500 contract or an amendment to the R830 contract. Defendants further admit that the R1500 contract purported to be an employment agreement, stated that the agent was required to devote his or her full business time to the performance of the agreement, stated that the agent was prohibited from soliciting insurance for any other company unless approved by Allstate, permitted agents to be eligible to receive benefits, and included commission in an agent’s compensation. Defendants deny all other allegations contained in paragraph 60.

61. Defendants admit that agents employed pursuant to the R1500 contract and NOA amendment to the R830 contract received an Office Expense Allowance (“OEA”). Defendants further admit that the R1500 contract states that Allstate “reserves the right to increase or decrease any compensation amounts and change the compensation rules at any time” and that Allstate reserves the right to change the terms and conditions of employment subject to the terms of the contract. Defendants deny all other allegations contained in paragraph 61.

62. Defendants deny the allegations contained in paragraph 62.

63. Defendants deny the allegations contained in paragraph 63.

64. Defendants deny the allegations contained in paragraph 64.

65. Defendants deny the allegations contained in paragraph 65.

66. Defendants admit that Allstate introduced the Exclusive Agency (“EA”) program in 1990, and that agents hired into this program executed an R3000 agreement for an initial eighteen-month period and may have executed an R3001 Exclusive Agency Agreement following their R3000 agreement. Defendants further admit that agents employed pursuant to the R3001 Exclusive Agency Agreement agreed not to solicit, sell or service insurance for any other company, agent or broker, or refer a prospect to another company, agent or broker without the prior written approval of Allstate. Defendants deny all other allegations contained in paragraph 66.

67. Defendants admit that Allstate offered agents employed pursuant to the R830 and R1500 contracts the opportunity to execute the R3001 Exclusive Agency Agreement under certain conditions. Defendants deny all other allegations contained in paragraph 67.

68. Defendants deny the allegations contained in paragraph 68.

69. Defendants deny the allegations contained in paragraph 69.

70. Defendants deny the allegations contained in paragraph 70.

71. Defendants admit that it compiled and announced a set of “Agency Standards” with various effective dates. Defendants deny the other allegations contained in paragraph 71.

72. Defendants admit that by 1999, there were approximately 6,400 Allstate agents employed pursuant to R830 or R1500 contracts. Defendants deny the other allegations contained in paragraph 72.

73. Defendants deny the allegations contained in paragraph 73.

74. Defendants admit that Allstate announced the group reorganization program on November 10, 1999. Defendants deny the other allegations contained in paragraph 74.

75. Defendants admit that Allstate announced that it was terminating the employment of virtually all agents employed pursuant to R830 and R1500 contracts. Defendants deny all other allegations contained in paragraph 75.

76. Defendants deny the allegations contained in paragraph 76.

77. Defendants deny the allegations contained in paragraph 77.

78. Defendants deny the allegations contained in paragraph 78.

79. Defendants deny the allegations contained in paragraph 79.

80. Defendants deny the allegations contained in paragraph 80.

81. Defendants deny the allegations contained in paragraph 81.

82. Defendants deny the allegations contained in paragraph 82.

83. Defendants deny the allegations contained in paragraph 83.

84. Defendants deny the allegations contained in paragraph 84.

85. Defendants deny the allegations contained in paragraph 85.

86. Defendants admit that after announcing the group reorganization program, Allstate communicated details of the group reorganization program, including providing affected agents with an information booklet and a copy of the release and waiver agreement, among other information, all of which are in writing and speak for themselves. Defendants deny the other allegations contained in paragraph 86.

87. Defendants admit that paragraph 87 accurately restates portions of the release and waiver agreement connected to the group reorganization program, a document which is in writing and speaks for itself. Defendants deny all other allegations contained in paragraph 87.

88. Defendants admit that agents whose employment was terminated under Allstate's group reorganization program were given the option of signing a release and waiver agreement and receiving certain enhanced benefits, or declining to sign the release and waiver agreement and receiving a base severance package. Defendants deny all other allegations contained in paragraph 88.

89. Defendants admit that 19 agents whose employment was terminated under the group reorganization program did not sign the release and waiver agreement. Defendants deny all other allegations contained in paragraph 89.

90. Defendants deny the allegations contained in paragraph 90.

91. Defendants deny the allegations contained in paragraph 91.

92. Defendants deny the allegations contained in paragraph 92.

93. Defendants deny the allegations contained in paragraph 93.

94. Defendants deny the allegations contained in paragraph 94.

95. Defendants deny the allegations contained in paragraph 95.

96. Defendants deny the allegations contained in paragraph 96.

97. Defendants admit that certain agents executed an Acknowledgement of Understanding which was effective January 1, 1999. Defendants deny all other allegations contained in paragraph 97.

98. Defendants deny the allegations contained in paragraph 98.

99. Defendants admit that agents who entered into the R830 and R1500 contracts agreed to devote their full business time to the solicitation of insurance for Allstate or the

performance of the contract, and agreed that they were prohibited from soliciting insurance for any other company unless approved by Allstate. Defendants deny all other allegations contained in paragraph 99.

100. Defendants admit that agents who entered into the R830 contract agreed that they would not solicit or sell insurance of any kind with respect to any person, company, or organization to whom the agent previously sold an Allstate policy or within one mile from any Allstate location from which the agent solicited or sold insurance during the year preceding his termination for a period of two years. Defendants further admit that as part of the Agent Transition Severance Plan, agents who received enhanced severance benefits pursuant to the group reorganization program agreed that they would not solicit the purchase of products or services in competition with those sold by Allstate with respect to certain individuals for a period of two years following the termination of their employment, and within one mile from any Allstate location from which the agent sold insurance prior to the termination of employment for a period of one year following the termination. Defendants deny all other allegations contained in paragraph 100.

101. Defendants deny the allegations contained in paragraph 101.

102. Defendants deny the allegations contained in paragraph 102.

103. Defendants deny the allegations contained in paragraph 103.

104. Defendants admit that some agents filed charges of age discrimination and retaliation with the EEOC. Defendants further admit that the EEOC corresponded with Edward M. Liddy by letter dated May 2, 2000. Defendants deny all other allegations contained in paragraph 104.

105. Defendants admit that Allstate corresponded with the EEOC by letters dated May 15, 2000 and May 30, 2000. Defendants deny all other allegations contained in paragraph 105.

106. Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in the first two sentences of paragraph 106, and therefore deny them. Defendants deny all other allegations contained in paragraph 106.

107. Defendants admit the EEOC issued a determination on September 19, 2000. Defendants deny all other allegations contained in paragraph 107.

108. Defendants deny the allegations contained in paragraph 108.

109. Defendants deny the allegations contained in paragraph 109.

110. Defendants deny the allegations contained in paragraph 110.

111. Defendants deny the allegations contained in paragraph 111.

112. Defendants deny the allegations contained in paragraph 112.

113. Defendants deny the allegations contained in paragraph 113.

114. Defendants admit that on September 26, 2000, Allstate implemented a policy temporarily restricting the hiring of former employee agents whose employment had been terminated during the group reorganization program. Defendants deny all other allegations contained in paragraph 114.

115. Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in the second sentence of paragraph 115. Defendants deny all other allegations contained in paragraph 115.

116. Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in the first sentence of paragraph 116. Defendants deny all other allegations contained in paragraph 116.

117. Defendants deny the allegations contained in paragraph 117.

118. Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in paragraph 118, and therefore deny them.

119. Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in paragraph 119, and therefore deny them.

120. Defendants deny the allegations contained in paragraph 120.

121. Defendants admit that plaintiffs purport to bring the claims they state in Count 1, Count II and Count VII of their Second Amended Complaint on behalf of themselves and a class of persons operating as insurance agents pursuant to a R830 or R1500 contract whose contracts were terminated by Allstate between November 10, 1999 and December 31, 2000 as a result of the group reorganization program, and that plaintiffs seek to invoke Rule 23 of the Federal Rules of Civil Procedure. Defendants deny all other allegations contained in paragraph 121, and deny that facts exist that would entitle plaintiffs to maintain the claims so advanced.

122. Defendants deny the allegations contained in paragraph 122.

123. Defendants deny the allegations contained in paragraph 123.

124. Defendants deny the allegations contained in paragraph 124.

125. Defendants deny the allegations contained in paragraph 125.

126. Defendants deny the allegations contained in paragraph 126.

127. Defendants deny the allegations contained in paragraph 127.

128. Defendants deny the allegations contained in paragraph 128.

129. Defendants admit that plaintiffs seek to invoke Rule 23 of the Federal Rules of Civil Procedure and 29 U.S.C. § 216(b). Defendants deny all other allegations contained in paragraph 129, and deny that facts exist that would entitle plaintiffs to maintain the claims so advanced.

130. Defendants admit that certain plaintiffs purport to bring the claims they state in Counts V and VI of the Second Amended Complaint on behalf of themselves and a class of persons operating as insurance agents pursuant to R830 contracts whose contracts were terminated by Allstate between November 10, 1999 and December 31, 2000 as a result of the group reorganization program, and that plaintiffs seek to invoke Rule 23 of the Federal Rules of Civil Procedure. Defendants deny that Douglas F. Gafner is a named plaintiff in the Second Amended Complaint. Defendants deny all other allegations contained in paragraph 130, and deny that facts exist that would entitle plaintiffs to maintain the claims so advanced.

131. Defendants admit that certain plaintiffs purport to bring the claims they state in Counts V and VI of the Second Amended Complaint on behalf of themselves and a class of persons operating as insurance agents pursuant to R1500 contracts whose contracts were terminated by Allstate between November 10, 1999 and December 31, 2000 as a result of the group reorganization, and that plaintiffs seek to invoke Rule 23 of the Federal Rules of Civil Procedure. Defendants deny all other allegations contained in paragraph 131, and deny that facts exist that would entitle plaintiffs to maintain the claims so advanced.

132. Defendants deny the allegations contained in paragraph 132.

133. Defendants deny the allegations contained in paragraph 133.

134. Defendants deny the allegations contained in paragraph 134.

135. Defendants deny the allegations contained in paragraph 135.

136. Defendants deny the allegations contained in paragraph 136.

137. Defendants admit that plaintiff Benoit purports to bring the claims stated in Count III of the Second Amended Complaint on behalf of himself and a class of persons operating as insurance agents pursuant to R830 or R1500 contracts who declined an option that required entering into a release and waiver agreement upon termination of their contracts in connection with the group reorganization program between November 10, 1999 and December 31, 2000. Defendants deny all other allegations contained in paragraph 137, and deny that facts exist that would entitle plaintiffs to maintain the claims so advanced.

138. Defendants deny the allegations contained in paragraph 138.

139. Defendants deny the allegations contained in paragraph 139.

140. Defendants deny the allegations contained in paragraph 140.

141. Defendants deny the allegations contained in paragraph 141.

142. Defendants deny the allegations contained in paragraph 142.

143. Defendants deny the allegations contained in paragraph 143.

144. Defendants deny the allegations contained in paragraph 144.

145. Defendants admit that plaintiffs purport to bring the claims they state in Count IV of the Second Amended Complaint on behalf of themselves and a class of persons operating as insurance agents pursuant to R830 or R1500 contracts whose contracts were terminated by

Allstate between November 10, 1999 and December 31, 2000 as a result of the group reorganization program, were over the age of forty, and filed consents to join this action with the Court, and that plaintiffs seek to invoke 29 U.S.C. § 216(b). Defendants deny all other allegations contained in paragraph 145, and deny that facts exist that would entitle plaintiffs to maintain the claims so advanced.

146. Defendants deny the allegations contained in paragraph 146.

147. Defendants incorporate by reference herein each of their responses to paragraphs 1-146 as their response to paragraph 147.

148. Defendants deny the allegations contained in paragraph 148.

149. Defendants deny the allegations contained in paragraph 149.

150. Defendants admit that Allstate informed plaintiffs that their R830 and R1500 contracts would be terminated. Defendants further admit that Allstate offered plaintiffs the opportunity to execute a release and waiver agreement and enter Allstate's R3001 independent contractor contract or be provided with certain other enhanced payments or benefits. Defendants further admit that Allstate offered a base severance payment to plaintiffs who did not execute a release and waiver agreement. Defendants deny all other allegations contained in paragraph 150.

151. Defendants lack knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 151 about whether and/or what the EEOC informed putative class members, and therefore deny them. Defendants deny all other allegations contained in paragraph 151.

152. Defendants admit that all but 19 agents whose contracts were terminated by the group reorganization program signed a release and waiver agreement in connection with the program. Defendants deny all other allegations contained in paragraph 152.

153. Defendants deny the allegations contained in paragraph 153.

154. Defendants deny the allegations contained in paragraph 154.

155. Defendants deny the allegations contained in paragraph 155.

156. Defendants deny the allegations contained in paragraph 156.

157. Defendants deny the allegations contained in paragraph 157.

158. Defendants deny the allegations contained in paragraph 158.

159. Defendants deny the allegations contained in paragraph 159.

160. Defendants incorporate by reference herein each of their responses to paragraphs 1-159 as their response to paragraph 160.

161. Defendants deny the allegations contained in paragraph 161.

162. Defendants admit that approximately 6,400 agents employed pursuant to the R830 and R1500 contracts were subject to Allstate's group reorganization program. Defendants deny all other allegations contained in paragraph 162.

163. Defendants deny the allegations contained in paragraph 163.

164. Defendants deny the allegations contained in paragraph 164.

165. Defendants deny the allegations contained in paragraph 165.

166. Defendants deny the allegations contained in paragraph 166.

167. Defendants deny the allegations contained in paragraph 167.

168. Defendants incorporate by reference herein each of their responses to paragraphs 1-167 as their response to paragraph 168.

169. Defendants deny the allegations contained in paragraph 169.

170. Defendants admit that approximately 6,400 agents employed pursuant to the R830 and R1500 contracts were subject to Allstate's group reorganization program. Defendants further admit that agents whose employment was terminated under Allstate's group reorganization program were given the option of receiving certain enhanced benefits in exchange for entering into a release and waiver agreement. Defendants deny all other allegations contained in paragraph 170.

171. Defendants deny the allegations contained in paragraph 171.

172. Defendants deny the allegations contained in paragraph 172.

173. Defendants deny the allegations contained in paragraph 173.

174. Defendants incorporate by reference herein each of their responses to paragraphs 1-173 as their response to paragraph 174.

175. Defendants admit that Allstate terminated the employment of certain agents as part of its group reorganization program. Defendants deny all other allegations contained in paragraph 175.

176. Defendants deny the allegations contained in paragraph 176.

177. Defendants admit that Allstate terminated the employment of certain agents as part of its group reorganization program. Defendants deny all other allegations contained in paragraph 177.

178. Defendants deny the allegations contained in paragraph 178.

179. Defendants deny the allegations contained in paragraph 179.

180. Defendants deny the allegations contained in paragraph 180.

181. Defendants deny the allegations contained in paragraph 181.

182. Defendants deny the allegations contained in paragraph 182.

183. Defendants incorporate by reference herein each of their responses to paragraphs 1-182 as their response to paragraph 183.

184. Defendants admit that plaintiffs employed pursuant to the R830 contract as amended entered into the R830 contract prior to September 30, 1984. Defendants deny all other allegations contained in paragraph 184.

185. Defendants deny the allegations contained in paragraph 185.

186. Defendants deny the allegations contained in paragraph 186.

187. Defendants deny the allegations contained in paragraph 187.

188. Defendants deny the allegations contained in paragraph 188.

189. Defendants deny the allegations contained in paragraph 189.

190. Defendants deny the allegations contained in paragraph 190.

191. Defendants incorporate by reference herein each of their responses to paragraphs 1-190 as their response to paragraph 191.

192. Defendants admit that plaintiffs employed pursuant to the R1500 contract as amended entered into the R1500 contract between approximately October 1, 1984 and September 1990. Defendants deny all other allegations contained in paragraph 192.

193. Defendants deny the allegations contained in paragraph 193.

194. Defendants deny the allegations contained in paragraph 194.

195. Defendants deny the allegations contained in paragraph 195.

196. Defendants deny the allegations contained in paragraph 196.

197. Defendants deny the allegations contained in paragraph 197.

198. Defendants deny the allegations contained in paragraph 198.

199. Defendants incorporate by reference herein each of their responses to paragraphs 1-198 as their response to paragraph 199.

200. Defendants deny the allegations contained in paragraph 200.

201. Defendants deny the allegations contained in paragraph 201.

202. Defendants deny the allegations contained in paragraph 202.

203. Defendants deny the allegations contained in paragraph 203.

204. Defendants deny the allegations contained in paragraph 204.

WHEREFORE, defendants deny that plaintiffs are entitled to the relief sought in paragraphs A-K of plaintiffs' prayer for relief and in any other prayer for judgment set forth in

the complaint. Defendants respectfully request that the Court dismiss the complaint in its entirety, enter judgment in favor of the defendants, and award such other relief, including costs and attorneys' fees, as the Court deems appropriate.

### **ADDITIONAL DEFENSES**

Defendants Allstate Insurance Company and The Allstate Corporation, by their attorneys, hereby submit the following defenses to plaintiffs' Second Amended Complaint:

#### **First Defense**

The Second Amended Complaint, or portions thereof, fails to state a claim upon which relief can be granted.

#### **Second Defense**

The Second Amended Complaint fails to state a claim upon which relief can be granted with respect to defendant The Allstate Corporation because The Allstate Corporation is not an "employer" of plaintiffs within the meaning of relevant state or federal law.

#### **Third Defense**

The claims of plaintiffs Romero, Bever, Boyd, Carrier, Cobb, Crease, Crews-Kelly, English, Harper, M. Kearney, T. Kearney, Lankford, Lawson, Littlejohn, Maslowski, Millison, Moorehead, Perkins, Peterson, Pilchak, Reiniero, Shirley, Trgovich, Wandner, Weisman, Wiktor, Wittman, and Wolverton are barred because each executed a release and waiver of all claims against Allstate, including the claims asserted herein.

#### **Fourth Defense**

Plaintiffs' claims are barred in whole or part by the applicable statute of limitations.

**Fifth Defense**

Plaintiffs' claims under the ADEA, Title VII, and the ADA are barred to the extent the Second Amended Complaint alleges discriminatory conduct that was not previously alleged in a timely administrative charge filed with the Equal Employment Opportunity Commission or that otherwise exceed the scope of the charge of discrimination filed with the Equal Employment Opportunity Commission.

**Sixth Defense**

Plaintiffs' claims under the ADEA, Title VII, and the ADA are barred to the extent the Second Amended Complaint is based on any conduct alleged to have occurred more than 180 or 300 days prior to the proper filing of a charge of discrimination with the Equal Employment Opportunity Commission raising such a claim or claims.

**Seventh Defense**

Plaintiffs' claims under ERISA are barred by plaintiffs' failure to exhaust administrative remedies prior to asserting the claims asserted in the Second Amended Complaint.

**Eighth Defense**

Plaintiffs have failed to mitigate damages in whole or in part.

**Ninth Defense**

Plaintiffs' claims are barred, in whole or in part, by the equitable doctrines of waiver, estoppel, laches, or unclean hands.

**Tenth Defense**

Plaintiffs' damages under Title VII and the ADA, if any, are capped by the Civil Rights Act of 1991 amendments to Title VII and the ADA.

**Eleventh Defense**

Plaintiffs are not entitled to recover liquidated damages under the ADEA because defendants at all times acted in good faith and with reasonable grounds to believe they had not violated the ADEA.

**Twelfth Defense**

Plaintiffs are not entitled to recover compensatory or punitive damages for retaliation claims under the ADA.

**Thirteenth Defense**

Plaintiffs are not entitled to recover monetary damages for the claims asserted under ERISA.

**Fourteenth Defense**

Any practice or policies challenged by plaintiffs are job-related and consistent with business necessity.

**Fifteenth Defense**

Opt-in plaintiffs are barred from asserting a cause of action under the ADEA with respect to claims alleged or fairly encompassed within the complaint of the Equal Employment Opportunity Commission filed on December 28, 2001.

**Sixteenth Defense**

Plaintiffs' Second Amended Complaint fails to comply with Rule 8(a) and (e) of the Federal Rules of Civil Procedure

**Seventeenth Defense**

If the Court determines that plaintiffs' claims are not barred by the general release and waiver agreement, any monetary recovery must be set off against any debts, sums, or amounts they owe to Allstate, including all monetary and non-monetary payments or benefits given to or received by plaintiffs, in consideration for, or as a direct or indirect result of, their entering into the general release and waiver agreement.

**Eighteenth Defense**

If the Court determines that plaintiffs' claims are not barred by the general release and waiver agreement, Allstate is entitled to recoupment and restitution of any and all amounts, sums, or monies, including all monetary and non-monetary payments or benefits given to or received by plaintiffs, in consideration for, or as a direct or indirect result of, their entering into the general release and waiver agreement.

**Nineteenth Defense**

The claims of plaintiffs Romero, Bever, Boyd, Carrier, Cobb, Crease, Crews-Kelly, English, Harper, M. Kearney, T. Kearney, Lankford, Lawson, Littlejohn, Maslowski, Millison, Moorehead, Perkins, Peterson, Pilchak, Reiniero, Shirley, Trgovich, Wandner, Weisman,

Wiktor, Wittman, and Wolverton under the Employee Retirement Income Security Act of 1974 and state common law are barred because each has ratified a release and waiver of these claims against Allstate by failing to return the consideration plaintiffs received in exchange for a release and waiver of these claims.

**Twentieth Defense**

Plaintiffs' claims are barred in whole or in part because plaintiffs have failed to allege any misrepresentations allegedly made by Allstate to any plaintiff.

**Twenty-First Defense**

Plaintiffs' challenge to the general release and waiver on the grounds that it is void as "part and parcel" of an illegal scheme is barred because that is not a legally valid basis upon which to attack the release.

**Twenty-Second Defense**

If the Court determines that plaintiffs' claims are not barred by the general release and waiver agreement, any monetary payments awarded to plaintiffs and putative class members shall be reduced by the sum provided to the plaintiff or putative class member in accordance with the terms of the Agreement and Release entered into in connection with settlement of the claims asserted in *United States Equal Employment Opportunity Commission v. Allstate Insurance Company*, Civil Action No. 4:04CV01359 ERW, Eastern District of Missouri, St. Louis Division.

**Twenty-Third Defense**

Plaintiffs' claims are barred in whole or in part by res judicata, judgment, or settlement.

WHEREFORE, having fully answered the Second Amended Complaint, defendants request that plaintiffs' Second Amended Complaint be dismissed in its entirety and for entry of judgment in defendants' favor with an award of court costs and attorneys' fees.

Respectfully submitted,

/s/ Katherine M. Katchen

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*Attorneys for Allstate Insurance Company and  
The Allstate Corporation*

DATED: August 27, 2010

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing Answer and Affirmative Defenses of Defendants Allstate Insurance Company and The Allstate Corporation was served on August 27, 2010, by court's Electronic Case Filing system and by electronic mail on all counsel of record.

/s/ Katherine M. Katchen\_\_\_\_\_

Katherine M. Katchen