IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

	§	
ASSOCIATION MEMBER BENEFITS ADVISORS, LTD.,	§	
Plaintiff / Counter-Defendant,	§	
v.	§	
	§	
TEXAS RETIRED TEACHERS ASSOCIATION,	§	
Defendant/Counter-Plaintiff,	§	
and	§	**Civil Action No. 1:21-cv-688**
TRIDENT BENEFITS & CONSULTING, LLC, MARCOS JOSE VELA, CAS M. SHARPE, ENTRUST, LLC d/b/a 90 DEGREE BENEFITS	§	
Defendants,	§	
v.	§	
	§	
AMERICAN SENIOR BENEFITS ASSOCIATION,	§	
Counter-Defendant.	§	

NOTICE OF REMOVAL

Counter-Defendant American Senior Benefits Association ("ASBA") hereby files this Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1446, and in support states as follows:

STATE COURT ACTION

1. On June 22, 2021, Plaintiff/Counter-Defendant Association Member Benefits Advisors, Ltd. ("AMBA") filed an Original Petition in the 459th Judicial District Court of Travis County, Texas, Cause No. D-1-GN-21-002956.

2. On July 9, 2021, Defendant/Counter-Plaintiff Texas Retired Teacher Association ("TRTA") filed an Original Counterclaim Petition, asserting counterclaims against AMBA for breach of fiduciary duty, tortious interference, and declaratory and injunctive relief.

3. The Original Counterclaim Petition also added ASBA to this action, alleging ASBA aided and abetted and/or conspired with AMBA, and additionally asserting claims for common law unfair competition and false advertising under 15 U.S.C. § 1125(a).

TIMELINESS AND CONSENT

4. On July 20, 2021, ASBA was served with citation and a copy of the Original Counterclaim Petition. This Notice of Removal is therefore timely, having been filed within thirty days after ASBA's receipt, through service or otherwise, of a copy TRTA's pleadings asserting claims against it. 28 U.S.C. § 1446(b).

5. This Notice of Removal also complies with the unanimity requirement of 28 U.S.C. § 1446(b)(2)(A), as all named Counter-Defendants, i.e. AMBA, expressly consents to and joins in the removal of this action.

GROUNDS FOR REMOVAL

6. This Court has federal question jurisdiction under 28 U.S.C. § 1331 because TRTA asserts a claim of false advertising under the Lanham Act, 15 U.S.C. § 1125(a). *See McCarrell v. Offers.com LLC,* No. 1:19-CV-00112-LY, 2019 WL 3220009 at * 2 (W.D. Tex. July 16, 2019); *see also* Original Counterclaim Petition ¶¶ 69-73. In addition, the Court has jurisdiction under 15 U.S.C. § 1121(a), which confers original jurisdiction upon this Court for all actions arising under the Lanham Act. *See* 15 U.S.C. § 1121(a).

7. The Court has supplemental jurisdiction over TRTA's and AMBA's state law claims. 28 U.S.C. § 1367.

VENUE

8. Pursuant to 28 U.S.C. § 1441(a), venue is proper in this Court because the Court is part of the district and division embracing the place where this action is currently pending.

NOTICE

9. ASBA will give notice of the filing of this Notice of Removal to all parties of record pursuant to 28 U.S.C. § 1446(d). ASBA will also file with the clerk of the state court and will serve upon all counsel of record a notice of the filing of this Notice of Removal.

EXHIBITS TO NOTICE OF REMOVAL

10. Attached hereto as **Exhibit A** is a true and correct copy of the docket sheet, and all documents on file in this matter in the 459th District Court, Travis County, Texas, including all pleadings and process served upon ASBA. No other pleadings, process, or orders have been served on ASBA or filed in the state court litigation at the time this Notice of Removal was filed.

PRAYER

Third-Party Defendant ASBA, pursuant to the statutes cited herein and in conformity with the requirements set forth in 28 U.S.C. § 1446, hereby removes this action from the 459th District Court of Travis County, Texas to this Court.

Respectfully submitted,

By: *_/s/ James G. Ruiz_*

James G. Ruiz
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(512) 370-2818
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jruiz@winstead.com

ATTORNEY FOR COUNTER-DEFENDANT AMERICAN SENIOR BENEFITS ASSOCIATION

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2021, a true and correct copy of the foregoing was electronically served on all attorneys of record.

/s/James G. Ruiz
James G. Ruiz

Civil Action No. 1:21-cv-688

EXHIBIT A

(https://www.traviscountytx.gov)

District Clerk - AARO - Attorney Access to Records Online

Details

Updated : Friday, August 6, 2021 4:35:19 AM

Cause Number
D-1-GN-21-002956
Style
ASSOCIATION V. TEXAS RETIRED
Filed Date
6/24/2021
Court
459
Type
INJUNCTION/PROTECTIVE ORD CIVI (GEN LIT)
Case Status
PENDING
Action/Offense
Hearing Date
26/8/2021 09:00 AM

Attorney	Type	Party - Full/Business	Party - Person
	DEFENDANT	AMERICAN SENIOR BENEFITS ASSOCIATION	
KLAFF HARRY MILES	DEFENDANT	ENTRUST LLC	
O'BRIEN SHELBY LEIGH	DEFENDANT		SHARP , CAS M
O'BRIEN SHELBY LEIGH	DEFENDANT		VELA , MARCOS JOSE
O'BRIEN SHELBY LEIGH	DEFENDANT	TRIDENT BENEFITS AND CONSULTING LLC	
WEBER CLARENCE ANDREW	DEFENDANT	TEXAS RETIRED TEACHERS ASSOCIATION	
TAYLOR DONALD R.	PLAINTIFF	ASSOCIATION MEMBER BENEFITS ADVISORS LTD	

Date	Court	Party	Description	Category	Pages
8/5/2021	459	DF	ANSWER/RESPONSE	ANS-RESP	5
7/30/2021	459		MTN:MOTION	MOTION	4
7/30/2021	459		MTN:MOTION	MOTION	8
7/30/2021	459	DF	ANSWER/RESPONSE	ANS-RESP	6
7/19/2021	459	DF	EXECUTED SERVICE	SRVPROCESS	2
7/16/2021	459	DF	ISS:CITATION	ISSUANCE	0
7/16/2021	459	DF	MSF:BILL OF COST CRT COST/FINE	FINANCIAL FORMS	0
7/15/2021	459	DF	OTHER FILING	OTHER	2
7/9/2021	459	DF	PLEADING	PET-PL	90
7/9/2021	459	DF	ANSWER/RESPONSE	ANS-RESP	5
7/9/2021	459	DF	ISS:CITATION	ISSUANCE	1
7/9/2021	459	DF	ISS:CITATION	ISSUANCE	1
7/9/2021	459	DF	ISS:CITATION	ISSUANCE	1
7/9/2021	459	DF	ISS:CITATION	ISSUANCE	1
7/9/2021	459	DF	ISS:CITATION	ISSUANCE	1
6/24/2021	459	PL	ORIGINAL PETITION/APPLICATION	PET-PL	29
6/22/2021	459	PL	ORIGINAL PETITION/APPLICATION	PET-PL	29

CAUSE NO. D-1-GN-21-002956

ASSOCIATION MEMBER BENEFITS ADVISORS, LTD.	§	**IN THE DISTRICT COURT OF**
	§	
	§	
	§	
Plaintiff,	§	
	§	
v.	§	**TRAVIS COUNTY, TEXAS**
	§	
TEXAS RETIRED TEACHERS ASSOCIATION, TRIDENT BENEFITS & CONSULTING, LLC, MARCOS JOSE VELA, CAS M. SHARP, ENTRUST, LLC d/b/a 90 DEGREE BENEFITS	§	
	§	
Defendants.	§	459TH **JUDICIAL DISTRICT COURT**

Filed in The District Court
of Travis County, Texas
JUN 22 2021 RT
At 5:00 P M.
Velva L. Price, District Clerk

PLAINTIFF'S VERIFIED ORIGINAL PETITION, APPLICATION FOR TEMPORARY RESTRAINING ORDER, APPLICATION FOR TEMPORARY INJUNCTION AND PERMANENT INJUNCTION

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW Plaintiff Association Member Benefits Advisors, Ltd. ("Plaintiff" or "AMBA") and files this, its Original Petition, Application for Temporary Restraining Order, and Application for Temporary Injunction and Permanent Injunction against Defendants Texas Retired Teachers Association ("TRTA"), Trident Benefits & Consulting, LLC ("Trident" or the "Agency"), Marcos Jose Vela ("Vela"), Cas M. Sharp ("Sharp"), and Entrust, LLC d/b/a 90 Degree Benefits ("Entrust") (collectively, "Defendants"). In support thereof, Plaintiff would respectfully show the Court as follows:

I. INTRODUCTION

This is a suit for breach of contract, temporary restraining order and preliminary and permanent injunctive relief to restrain and enjoin Defendants from engaging in actions that violate the Association Dental Insurance Marketing and Administration Agreement (amended to include Vision benefits) dated May 14, 2004, the "Agreement," between AMBA and TRTA, which continues in force. **Exhibit 1**. The Agreement designates AMBA as the exclusive agent of record and third party administrator for the dental and vision plan products AMBA developed for TRTA. By the terms of the Agreement, this designation continues for as long as the TRTA dental and vision plans are in existence. AMBA has reason to believe that Defendants have been, and are currently, working in concert to breach AMBA's exclusive agent of record and third party administrator status for the dental and vision plan products that AMBA has developed for TRTA, which are insured by Ameritas and VSP Vision Care, respectively, in direct violation of the Agreement. Defendants' conduct also constitutes a serious and material interference with AMBA's business relationships, including contracts entirely unrelated to this matter. For the foregoing reasons, AMBA seeks a temporary restraining order and temporary injunctive relief from this Court in accordance with the Agreement between AMBA and TRTA and Tex. Civ. Prac. & Rem. Code § 65.011.

II. DISCOVERY CONTROL PLAN

1. Plaintiff intends discovery to be conducted under Level 3 of the Texas Rules of Civil Procedure. Tex. R. Civ. P. 190.4.

III. PARTIES AND PROCESS OF SERVICE

2. Plaintiff Association Member Benefits Advisors, Ltd. is a Texas limited liability company with its principal place of business in Travis County, Texas.

3. Defendant Texas Retired Teachers Association is a Texas nonprofit corporation with its principal place of business in Travis County, Texas. It can be served by serving its registered agent, Timothy R. Lee, at 313 East 12th Street, Suite #200, Austin, Texas 78701.

4. Defendant Trident Benefits and Consulting, LLC is a Texas limited liability company with its principal place of business in Harris County, Texas. It is located at 17000 Katy Frwy; Suite 200, Houston, TX 77094, and can be served by serving its registered agent, Marcos Vela, at 11102 Savannah Woods Lane, Houston, Texas 77043-1000.

5. Defendant Marcos Jose Vela is an individual who may be served at his residence, 11102 Savannah Woods Lane, Houston, Texas 77043-1000.

6. Defendant Cas M. Sharp is an individual who may be served at his residence, 28510 Wild Mustang Lane, Fulshear, Texas 77441.

7. Defendant Entrust, LLC d/b/a 90 Degree Benefits is a Texas limited liability company with its principal place of business in Katy, Fort Bend County, Texas. It can be served by serving its registered agent, C T Corporation System, 1999 Bryan St., Ste. 900, Dallas, Texas 75201.

IV. JURISDICTION AND VENUE

8. This suit arises out of Defendant TRTA's breach of its contractual obligations under its Agreement with Plaintiff, and Defendants Trident Benefits Consulting, LLC, Marcus Jose Villa and Cas M. Sharp, and Entrust, LLC's tortious interference with a contractual relationship and material interference with AMBA's business relationships. This Court has subject matter jurisdiction over this controversy because Plaintiff seeks injunctive relief and because the damages sought are within the jurisdictional limits of this Court.

9. This Court is the proper venue pursuant to Texas Civil Practices & Remedies Code § 15.002(a)(1). Travis County is the county in which all or a substantial part of the events or omissions giving rise to the claims occurred, and venue is proper here.

10. Plaintiff seeks injunctive relief and monetary relief over $1,000,000.00. Tex. R.

Civ. P. 47(c)(4).

V. FACTS

11. Plaintiff AMBA and Defendant TRTA entered into a binding contract on May 14, 2004, being the Association Dental Insurance Marketing and Administration Agreement (amended to include Vision benefits), the "Agreement," which continues in force to the present day.

12. The Agreement designates AMBA as the exclusive agent of record and third party administrator for the dental and vision plan products AMBA developed for TRTA. By the terms of the Agreement, this designation continues for as long as the plans are in existence.

13. Exhibit B of the Agreement contains a clause dictating the duration of the Contract:

> 5. Designate AMBA as the exclusive agent of record and third party administrator for any and all dental insurance programs developed for TRTA by AMBA. In the absence of a material breach of fiduciary duty or failure to adhere to the principals of the Insurance Marketplace Standards Association, AMBA shall remain the agent of record and third party administrator for the TRTA dental insurance plan, developed by AMBA, for the duration of its existence.

See **Exhibit 1** (Agreement) at Exhibit B, Paragraph 5.

14. In executing and performing its duties under the Agreement, AMBA has not committed any material breaches of fiduciary duty or failed to adhere to the principles of the Insurance Marketplace Standards Association.

15. Defendant TRTA has not notified AMBA or otherwise asserted that Plaintiff has committed a material breach of fiduciary duty or failed to adhere to the aforementioned principles while administering the contract.

16. Despite the clear language of Paragraph 5 of the Agreement, TRTA has unilaterally decided to terminate its longstanding, contractual relationship with AMBA and replace Plaintiff with a different agent and third party administrator.

17. In addition, TRTA has demanded that AMBA immediately provide its proprietary

and confidential information comprised of its business information and the individual insureds for which AMBA acts as agent, the disclosure of which would also potentially violate HIPAA and render AMBA potentially liable for the release of its insureds' private insurance information.

18. Contrary to TRTA's demands, AMBA has no contractual or other obligation to provide any data related to the dental and vision group policies that AMBA has marketed and sold to TRTA's members.

19. TRTA's attempt at a one-sided termination of the Agreement and to confiscate this block of insurance business constitutes a clear breach of its Agreement with AMBA and a violation of AMBA's contractual rights despite its earlier written admission that it was bound by the Agreement.

20. Furthermore, Defendants Trident, Vela, Sharp and Entrust are knowingly assisting TRTA in this breach and they have tortiously interfered with the Agreement by conducting negotiations with TRTA and participating in concrete steps to replace AMBA as the exclusive agent of record and third party administrator for TRTA's members, disregarding the terms of the Agreement that require AMBA to remain in that role for the dental and vision products AMBA designed to be available to TRTA members.

21. In addition, Defendants have tortiously interfered with Plaintiff's prospective business relationships. If Defendants successfully execute their plan to interfere with AMBA's contractual rights and "book of business" in the instant case, this action will also negatively impact AMBA's ability to offer competitive insurance rates to its other associations and/or members and irreparably damage AMBA's reputation. In fact, Trident is already advertising for new agents to raid this block of AMBA's business (its "already established client base") and "roll over" the AMBA clients to a new company or plan. *See* **Exhibit 4**.

22. AMBA has administered dental, vision and other insurance products offered to TRTA members for the past 14 years. During that time, AMBA has expended significant resources in the design, development, and marketing of these insurance products to TRTA members. There are thousands of TRTA members currently insured under these plans. Allowing TRTA and the other Defendants to disrupt this arrangement would be a huge change of the status quo and cause irreparable injury to AMBA. It is likely to have the effect of destabilizing a very stable block of business that has been managed by AMBA with a very high degree of insured satisfaction. Few if any complaints have been received by AMBA regarding this block of business from TRTA member insureds. TRTA and Defendant Trident clearly intend to confiscate the block of insured and change the insureds to another company or plan. *See* **Exhibit 2** (the "rolling of business" notice received from counsel for TRTA); **Exhibit 3** (June 15, 2021 TRTA letter to Ameritas).

23. If TRTA is allowed to proceed it will have a devastating impact on AMBA's relationship to these insureds that cannot be measured in dollars. However, if TRTA is denied the right to change the agent of record and third party administrator with regard to the books of business that are the subject of the Agreement, there is no harm to TRTA. Moreover, TRTA is a non-profit association and likely could not pay a significant award of damages.

24. Thus in weighing the relative harm between AMBA and TRTA, AMBA would suffer a massive loss of goodwill as well as commissions, and the insureds' disruption caused by this change. AMBA's irreparable harm vastly exceeds that complete lack of damage to TRTA or any other Defendant. TRTA and the other Defendants can fully afford to wait for a trial on the merits, without damage.

VI. PRECEDENT

25. All conditions precedent have been performed or have occurred, entitling AMBA

to the relief requested herein.

VII. CAUSES OF ACTION

26. The preceding paragraphs are hereby incorporated by reference into each Count below.

COUNT 1 — Breach of Contract

27. Plaintiff AMBA and Defendant TRTA have a valid and enforceable contract that designates AMBA as the exclusive agent of record and third party administrator for any and all dental (and vision, as amended) insurance programs developed for TRTA by AMBA. The Agreement is binding on the parties, still in effect and cannot be unilaterally terminated without cause, as delineated in Exhibit B, Paragraph 5 of the Agreement, where the limited scope of termination for cause is also delineated. *See* **Exhibit 1** (the Agreement).

28. Plaintiff AMBA is a proper party to sue for breach of contract, as AMBA is a party to the Agreement underlying this suit.

29. Plaintiff has performed, and continues to perform, all of its obligations under the Agreement.

30. Defendant TRTA has breached the Agreement by its blatant solicitation of other Defendants to "take over" AMBA's position under the Agreement. TRTA has not hidden its motives or plans and has verbally and in writing expressed its intention to immediately repudiate the Agreement with AMBA.

31. TRTA's breach of the Agreement has caused, and will continue to cause, AMBA great injury. AMBA stands to lose tens of thousands of insurance subscribers and an incalculable amount of profits. AMBA's long-term relationships with its insurance providers (Ameritas and VSP Vision Care "VSP") are in jeopardy as well. In addition, favorable rates that AMBA has

negotiated with its insurance providers stand to be lost, which will foreclose possibilities of AMBA obtaining replacement associations or memberships as insurance clients. The potential damage to AMBA's reputation and coffers if TRTA repudiates the Agreement is massive.

32. AMBA is likely to succeed on the merits of its claims. As a result of Defendant TRTA's actions, Plaintiff has suffered and continues to suffer irreparable harm for which there is no adequate remedy at law. The value of Plaintiff's TRTA members' business subject to the Agreement and lost to AMBA, the value of AMBA's reputation and AMBA's lost future business opportunities harmed by Defendant's actions cannot be restored by money damages. Unless Defendant TRTA is restrained from breaching the Agreement, Plaintiff will suffer irreparable harm in the loss of customers and revenue for which it cannot be adequately compensated in damages.

COUNT 2 — Tortious Interference with Existing Contract

33. Plaintiff AMBA has a valid contract with Defendant TRTA that has been in effect since 2004. *See* **Exhibit 1** (the Agreement).

34. Defendants Trident, Vela, Sharp and Entrust have willfully and intentionally interfered with the Agreement by engaging in discussions and negotiations with TRTA in order to replace AMBA as the exclusive agent of record and third party administrator for the vision and dental plans offered to TRTA's members. Furthermore, these Defendants have sought out confidential and proprietary information on Plaintiffs' products, accounts and insureds, information to which Defendants are not entitled.

35. The interference by Defendants directed toward the Agreement between AMBA and TRTA has proximately caused the Plaintiff's injury, as Plaintiff stands to lose all of TRTA's members' business, as well as future business based on the inevitable damage AMBA will suffer to its reputation and its ability to continue to offer competitive insurance rates. In addition, TRTA

and Trident have tortiously interfered with Plaintiff's contracts with the dental and vision insurers that underwrite the subject business.

36. AMBA has incurred actual damage or loss, as TRTA has made clear that it is repudiating the Agreement and taking a huge portion of AMBA's business to reassign to the other Defendants. AMBA will sustain massive economic loss, loss of reputation and loss of future business opportunities as a result of Defendants' interference with the Agreement.

37. As a result of Defendants' actions, Plaintiff has suffered and continues to suffer irreparable harm for which there is no adequate remedy at law. The value of Plaintiff's TRTA members' business, reputation and lost future business opportunities harmed by Defendants' actions cannot be restored by monetary damages. Unless Defendants are restrained from tortiously interfering with the Agreement, Plaintiff will suffer irreparable harm in the loss of present and future customers and revenue for which it cannot be adequately compensated in damages.

COUNT 3 — Tortious Interference with Prospective Relations

38. Defendants are also liable for tortiously interfering with future and prospective relationships with AMBA's insurers and insureds.

39. Based on AMBA's history and reputation, there was a reasonable probability before the tortious interference that Plaintiff would have entered into business relationships with additional associations, insureds and/or insurance companies.

40. Defendants have intentionally interfered with AMBA's ability to develop new business, maintain competitive insurance rates and its stellar reputation.

41. Defendants' conduct was independently tortious, and there has been no improper or illegal conduct on the part of AMBA in executing its duties under the Agreement.

42. The interference by Defendants with AMBA's business and insured relationships

and Agreement have proximately caused the Plaintiff injury.

43. AMBA has sustained actual damage or loss, as they are on the cusp of losing an entire group of insureds, as well as future business opportunities, unless Defendants are enjoined as requested below.

VIII. DAMAGES

44. As a direct and proximate result of Defendant TRTA's breach of contract and all Defendants' tortious interference as set forth above, AMBA has suffered actual damages which are difficult, if not impossible, to determine. AMBA seeks recovery of all actual damages suffered as a result of Defendants' breaches and/or tortious conduct.

45. Because Defendants' tortious interference has been willful and malicious, AMBA is entitled to recover exemplary damages.

IX. ATTORNEYS' FEES

46. AMBA seeks recovery of its attorneys' fees from Defendant TRTA for breach of contract, as provided by Chapter 38 of the Texas Civil Practice and Remedies Code.

X. APPLICATION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF

47. Plaintiff has no adequate remedy at law or otherwise for the harm or damage it will incur as a result of Defendants' breach of the Agreement, and this activity, along with Defendants' tortious interference with the Agreement and other prospective relationships, cannot later be retracted, and the resulting pecuniary damage cannot be quantified. Accordingly, Plaintiff is entitled to injunctive relief under Tex. Civ. Prac. & Rem. Code § 65.011(1), (2), (3) and (5). To warrant injunctive relief, the applicant need only show a probable right to permanent relief and a probable injury while the action is pending unless the injunction is issued. *See Rugen v. Interactive Business Systems,* 864 S.W. 2d 548, 551 (Tex. App.-Dallas 1993, no writ) (*citing Sun Oil Co. v.*

Whitaker, 424 S.W. 2d 216, 218 (Tex. 1968)).

48. Irreparable injury is an injury that cannot be compensated in damages or an injury that results in damages that cannot be measured by any pecuniary standard. *See Assoc. Gen. Contract v. City of El Paso,* 932 S.W. 2d 124, 126 (Tex. App.-El Paso 1996, no writ); *Canteen Corp. v. Republic of Texas Properties, Inc.,* 113 S.W. 2d 398, 401 (Tex. App.-Dallas 1989, no writ); *Liberty Mutual Tractor & Equip. Co.,* 812 S.W. 2d 663, 666 (Tex. App.-Houston [14th Dist.] 1991, no writ) (disruption of business can be irreparable harm); *Cho v. Itco, Inc.*, 782 F. Supp. 1183, 1185 (E.D. Tex. 1991) (finding threat of losing customer goodwill may constitute irreparable harm); A remedy at law is not adequate unless it gives the injured party complete, final, and equal relief. *See Henderson v. KRTS, Inc.,* 822 S.W. 2d 769, 772 (Tex. App.-Houston [1st Dist.] 1992, no writ). If damages cannot be calculated for the harm complained of, or if the defendant will be unable to pay damages, there is no adequate remedy at law. *See Texas Indus. Gas v. Phoenix Metallurgical Corp.,* 828 S.W. 2d 529, 533 (Tex. App.-Houston [1st Dist.] 1992, no writ).

49. Plaintiff will suffer irreparable harm, damage, and injury unless the acts and conduct of Defendants complained of above are enjoined because the ongoing activities of Defendant TRTA in violation of its contractual obligations, along with TRTA's and the other Defendants' potential interference with AMBA's prospective business relationships, will lead to the immediate loss of massive revenue, a staggering loss of AMBA's current and future customer base, and immeasurable damage to AMBA's stellar business reputation. If not enjoined, the dollar value impact defendants' misconduct will have on AMBA and its business operations is difficult, if not impossible, to ascertain. AMBA has suffered and will continue to suffer injuries to its operations and goodwill that cannot be calculated in monetary damages or measured by pecuniary

standards. AMBA has no adequate remedy at law for the damage already caused, and threatened to be caused, by Defendants' unlawful conduct. There is no remedy at law that would give AMBA complete relief from Defendants' past actions and threatened future action. The damages Defendants have caused and threatened to cause to AMBA's business base, reputation and client and insurer relations is extremely difficult to calculate, making damages as a sole remedy inadequate. Furthermore, the losses are also likely to exceed Defendants' net worth so as to prevent any adequate compensation to AMBA, even if money damages were a sufficient remedy.

50. It is essential that Defendants be restrained from doing and performing the acts described above, immediately and without notice hereof and hearing, because Defendants are actively taking steps to gravely jeopardize AMBA's contractual rights by replacing AMBA with different agents and a different third party administrator in clear violation of the Agreement's termination provision. Issuing a Temporary Restraining Order and Temporary Injunction is the only way to maintain the status quo between the parties and the thousands of insureds that depend on this insurance coverage.

XI. NOTICE

51. Pursuant to Texas Rule of Civil Procedure 193.7, Plaintiff hereby gives notice to Defendants that any and all documents produced may be used against the Defendants producing the documents at any pre-trial proceeding and/or trial of this matter without the necessity of authenticating the documents.

XII. PRAYER

Pursuant to Tex. Civ. Prac. & Rem. Code § 65.001 and general principles of equity, AMBA requests a temporary restraining order, and temporary and permanent injunctive relief to restrain acts prejudicial to AMBA, irrespective of any remedy at law. WHEREFORE, PREMISES

CONSIDERED, AMBA respectfully prays that:

a. a temporary restraining order be issued, to continue in force until a day is set for hearing on application for temporary injunction, or until further order of this Court, restraining Defendant TRTA from terminating its Agreement with AMBA;

b. Defendant TRTA be ordered to cease all efforts to replace AMBA as the exclusive agent of record and third party administrator for the AMBA-developed dental and vision plan products for the benefit and use of TRTA;

c. Defendants Trident, Vela, Sharp and Entrust be ordered to cease all communications with TRTA and efforts with regard to replacing AMBA as the exclusive agent of record and third party administrator for the dental and vision plan products;

d. Defendants be ordered to cease any and all interference with the Agreement and other business relationships of AMBA;

e. on this hearing, a temporary injunction be granted and a writ of injunction issued commanding Defendants to cease and desist and refrain from breaching or facilitating the breach of the agreement between AMBA and TRTA and upon trial, that a permanent injunction be granted in those particulars;

f. for specific performance of the Agreement;

g. for actual damages;

h. for exemplary and punitive damages;

i. attorneys' fees and costs of suit; and

j. all such other and further relief, whether at law or in equity, to which Plaintiff may show itself justly entitled.

Respectfully submitted,

TAYLOR THUSS PLLC
603 West 9th Street
Austin, Texas 78701
512.368.9186 (Telephone)
512.368.9014 (Fax)

By: <u>*/s/ Donald R. Taylor*</u>
Donald R. Taylor
State Bar No. 19688800

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Natalie Taylor
State Bar No. 24056412
natalie@taylorthuss.com
ATTORNEYS FOR PLAINTIFF

CAUSE NO. ________________

ASSOCIATION MEMBER BENEFITS ADVISORS, LTD.	§	**IN THE DISTRICT COURT OF**
	§	
	§	
	§	
Plaintiff,	§	
	§	
v.	§	**TRAVIS COUNTY, TEXAS**
	§	
TEXAS RETIRED TEACHERS ASSOCIATION, TRIDENT BENEFITS & CONSULTING, LLC, MARCOS JOSE VELA, CAS M. SHARP, ENTRUST, LLC d/b/a 90 DEGREE BENEFITS	§ § § § § §	
	§	
Defendants.	§	**_____JUDICIAL DISTRICT COURT**

DECLARATION OF BILLY B. HILL JR.

COUNTY OF	§
STATE OF TRAVIS	§

1. My name is Billy B. Hill Jr., I am over twenty-one (21) years of age, of sound mind, and am competent to make this declaration.

2. I am on the Board of Directors of Association Member Benefits Advisors, Ltd., the Plaintiff in the above-captioned lawsuit. By virtue of my position on the Board, I have actual knowledge of the facts and circumstances of TRTA attempting to remove AMBA as agent of record and administrator of the dental and vision blocks of business that are the subject of this lawsuit.

3. The statements and information contained in Plaintiff's Verified Original Petition, Application for Temporary Restraining Order, Application for Temporary Injunction and Permanent Injunction are within my personal knowledge and are true and correct to the best of my knowledge.

My name is Billy B. Hill Jr., my date of birth is August 19, 1951 and my address is 4117 Canoas, Austin, Texas 78730. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Travis County, State of Texas, on the 22 day of June, 2021.

Billy Hill

Billy B. Hill Jr.
Member of the AMBA Board of Directors

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Tamara Boston on behalf of Donald Taylor
Bar No. 19688800
tamara@taylorthuss.com
Envelope ID: 54733849
Status as of 6/28/2021 9:01 AM CST

Associated Case Party: Association Member Benefits Advisors, Ltd.

Name	BarNumber	Email	TimestampSubmitted	Status
Donald Taylor		don@taylorthuss.com	6/24/2021 9:53:38 AM	SENT
Natalie Taylor		natalie@taylorthuss.com	6/24/2021 9:53:38 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Tamara Boston		tamara@taylorthuss.com	6/24/2021 9:53:38 AM	SENT

EXHIBIT 1

ASSOCIATION DENTAL INSURANCE MARKETING AND ADMINISTRATION AGREEMENT

THIS AGREEMENT made and entered into this 14th day of May, 2004, by and between the Texas Retired Teachers Association, hereinafter referred to as the **"TRTA"**, acting for the benefit of its membership, and **Association Member Benefits Advisors, LTD.** hereinafter referred to as **"AMBA."**

WITNESSETH:

IN CONSIDERATION OF the appointment of **AMBA** by **TRTA** as its agent of record and third party administrator for dental insurance programs, developed by **AMBA,** to be offered to members of **TRTA**, **AMBA** hereby agrees to furnish individual members of **TRTA** the items and/or services listed in Exhibit A attached hereto and made a part hereof and on the terms and conditions included therein. **TRTA** agrees to the provisions therein and both parties agree to the terms included in Exhibit B attached hereto and made a part hereof.

It is expressly understood by both parties hereto that the terms of this Agreement shall be on an exclusive basis.

1. **AMBA** acknowledges that **TRTA** is not licensed as, and therefore cannot act as, an insurance agent or third party administrator in the state of Texas. Consequently, **AMBA** acknowledges that **TRTA** shall not be involved in any insurance agent-type activity including, but not limited to, the following: processing of applications; providing proposals or quotations of rates; countersigning or delivering policies; examining or inspecting risks; receiving, collecting or transmitting premiums; or soliciting insurance. AMBA agrees to indemnify and hold harmless all TRTA officers and staff for any of its actions under this Agreement, including but not limited to ALL lawsuits under state or federal laws or arbitrations regarding its omissions, negligence, failure to act in good faith and fair dealing. Should a lawsuit be filed against TRTA as a result of this agreement, AMBA shall be responsible for any and all attorney fees and any/all other costs associated with said action.

Acknowledged and agreed to this 14th day of May, 2004.

TEXAS RETIRED TEACHERS ASSOCIATION

Linda de los Santos

Linda de los Santos, Interim Executive Director

ASSOCIATION MEMBER BENEFITS ADVISORS, Ltd.

Jerry Morgan, President

EXHIBIT A

AMBA AGREES TO:

1. Market and administer a TRTA "Members Only" Dental insurance policy to TRTA members and potential members.
2. Conduct an initial open enrollment for all TRTA members. Also, AMBA will conduct subsequent annual open enrollments for TRTA members who are not participating in the dental insurance program.
3. Provide individual dental insurance to all TRTA employees at an annual cost of $5.00 per TRTA employee.
4. Periodically, and not less often than every 36 months, AMBA will request proposals from other dental insurance carriers to insure that TRTA members are receiving the most benefit rich plans available.
5. Create custom materials and distribute to all school business officials state-wide in an effort to brand TRTA with the benefits staff at Texas school districts.
6. AMBA shall not mail any materials/communications associated with this plan/program without first receiving written approval from TRTA and will coordinate its enrollment activities with TRTA.
7. Promote TRTA memberships by marketing the "Members Only" dental plan. Memberships will be forwarded to TRTA within 10 days of receipt.
8. Resolve any member complaints within 72 hours and provide a written response to TRTA. Establish an arbitration committee to handle any non-resolved complaints.

Acknowledged and agreed to this 14th day of May, 2004.

TEXAS RETIRED TEACHERS ASSOC.	**ASSOC. MEMBER BENEFITS ADVISORS, Ltd**
Linda de los Santos	
Linda de los Santos, Interim Exec. Director	Jerry Morgan, President

EXHIBIT B

TRTA AGREES TO:

1. Provide AMBA with annual endorsement letters signed by the President and/or Executive Director.

2. Provide AMBA with a double exhibit booth space at the TRTA Annual Convention at no charge.

3. Provide AMBA with the TRTA membership list and any potential member list for the mailings of announcements and promotion of the endorsed policies allowing TRTA reasonable time to prepare such list(s).

4. Include information regarding the endorsement in each TRTA Newsletter.

5. Designate AMBA as the exclusive agent of record and third party administrator for any and all dental insurance programs developed for TRTA by AMBA. In the absence of a material breach of fiduciary duty or failure to adhere to the principals of the Insurance Marketplace Standards Association, AMBA shall remain the agent of record and third party administrator for the TRTA dental insurance plan, developed by AMBA, for the duration of its existence.

6. Upon AMBA's request, furnish notifications to carriers of AMBA's designation as TRTA's permanent agent of record and/or third party administrator for dental insurance programs developed by AMBA for members of TRTA.

Acknowledged and agreed to this 14th day of May, 2004.

TEXAS RETIRED TEACHERS ASSOCIATION

Linda de los Santos

Linda de los Santos, Interim Executive Director

ASSOCIATION MEMBER BENEFITS ADVISORS, Ltd.

Jerry Morgan, President

AMENDMENT NUMBER 1 to the Association Dental Insurance Marketing and Administration Agreement dated May 14th, 2004, by and between the Texas Retired Teachers Association and Association Member Benefits Advisors, Ltd

This Amendment Number 1 to the Agreement dated May 14th, 2004, by and between the Texas Retired Teachers Association (TRTA) and Association Member Benefits Advisors, Ltd (AMBA) is to be effective 19 of April 2005.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, and with the intent to be legally bound hereby, the parties agree as follows:

This agreement is amended to read as follows:

A. TRTA agrees to appoint AMBA as the third party administrator and agent of record for the TRTA Group Vision Plan.

Except as modified by this Amendment Number 1, the Agreement dated May 14th, 2004 shall continue in full force and effect according to its terms and conditions.

This Amendment Number 1 may be executed in multiple counterparts, each of which shall constitute the original. Executed on the 14 day of April 2005, to be effective on 4-1 2005.

Texas Retired Teachers Association	**Association Member Benefits Advisors**
Timothy Lee, Executive Director	Jerry Morgan, President

EXHIBIT 2

KELLY HART

ANDREW WEBER
andrew.weber@kellyhart.com

TELEPHONE: (512) 495-6451
FAX: (512) 495-6401

June 18, 2021

<u>VIA EMAIL AND CERTIFIED, RRR</u>
Email: steve.cardinal@amba.info
Steve Cardinal
Chief Executive Officer
Association Member Benefits Advisors, LLC
6034 West Courtyard Drive, Suite 300
Austin, TX 78730

RE: Member data

Dear Mr. Cardinal:

I or my client (Texas Retired Teachers Association (TRTA)) have requested repeatedly, over a three-month period, certain data related to the dental and vision group policies that AMBA has marketed and sold to TRTA's members. AMBA has either not responded or has denied those requests.

The data includes all covered members on the TRTA sponsored Ameritas dental policy and the VSP vision policy. At a minimum this data file should include members' name, type of coverage, certificate number, address, DOB, social security number and issue date of coverage. All covered dependent information should also be included on this file.

Initially, you refused to provide data based on alleged HIPAA concerns. More recently, I informed you on April 22, 2021, that Ameritas, the dental policy carrier, had 1) refused to provide the data to TRTA directly, and 2) informed TRTA that Ameritas had provided the data to you. I also requested that data from you. Importantly, Ameritas informed TRTA that it was unable to provide the requested data to TRTA because a contract with AMBA prevented that transmission.

You have not responded to that data request--despite repeated requests from TRTA that you provide the data or release Ameritas from that preclusion (which is arguably voidable as unconscionable or against public policy).

I now demand you provide this data to me on or before 5 p.m. central time, Tuesday, June 22, 2021. I also demand that you provide any contact between AMBA (or any AMBA predecessor) and Ameritas by that same deadline.

AMBA's delay in providing the data to date, and its contact with TRTA's insurance carrier precluding the carrier from providing that data, has already caused tangible and intangible harm to TRTA's members. Every day TRTA is denied the information, the harm, and risk to TRTA's members escalates. Particularly, it is critically important that the transition from AMBA to TRTA's new agent of record and benefits administrator be as seamless as possible, especially avoiding all risk of a group policy lapsing. The data we have been seeking is essential in that effort. Your ongoing refusal to provide the data is increasingly harmful to TRTA and its members.

If we do not receive the information as and when requested, we will seek all due regulatory and judicial recourse.

Sincerely,

<u>/s/ Andrew Weber</u>
Andrew Weber, Partner

EXHIBIT 3

Texas Retired Teachers Association
313 E. 12th Street, Suite 200 | Austin, TX 78701-1957
800.880.1650 | 512.476.1622 | fax 512.476.1003
The Voice For All Public Education Retirees *www.trta.org*

June 15, 2021

Ameritas

5900 O Street, Lincoln, NE 68510

Policy # 010-350489

RE: Texas Retired Teachers Association

Dear Craig Miller:

This letter is to Transfer Broker Of Record (BOR) 100% to **Trident Benefits & Consulting, LLC**, July 1, 2021. Trident Benefits & Consulting will be the exclusive insurance agent for all lines of coverage listed above. Trident benefits will **Not** be taking over payment collections or commissions for the month of June, but merely facilitating the transition to bind coverage with a new carrier effective July 1, 2021 if necessary. The appointment of Trident Benefits and Consulting, LLC rescinds and supersedes all previous agent appointments and shall remain in force until cancelled in writing. This appointment allows Trident Benefits and Consulting, LLC to act as our representative in negotiations with Ameritas for possible new plan options and to receive all information to transfer and bind coverage with new carrier if needed for our benefits program. This includes but is not limited to a copy of the signed **TRTA master Policy, TRTA members Certificates of Coverage and an eligibility file of all active TRTA members and Dependent covered under the current program**. I represent that I am authorized to appoint an agent for the lines of coverage that are included in this letter.

Also, this correspondence is to inform you that effective July 1, 2021, **Entrust, LLC dba 90 Degree Benefits** will be providing administrative services for Texas Retired Teachers Association's dental and vision benefits offered to its members.

We anticipate that this will be a smooth transition, and we expect all parties to provide all information reasonably requested in order to facilitate this transition. This letter authorizes the release of any information or documentation as requested by **Trident Benefits & Consulting, LLC & Entrust, LLC dba 90 Degree Benefits** to **Trident Benefits & Consulting, LLC**.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Timothy Lee
Executive Director
Texas Retired Teachers Association

EXHIBIT 4

Inside Sales

Trident Benefits & Consulting, LLC Barker, TX

- Job Type: Full-time Pay: $30,000.00 - $55,000.00 per year Benefits: Dental insurance Health insurance Vision insurance Schedule: Monday to Friday Supplemental Pay: Bonus pay Experience: Sales: 1 year (Preferred) License/Certification: Group 1 Insurance License (Preferred) Work Location: One location Work Remotely: No
- Prefer Group 1 insurance license but will pay for first round of classes and test.
- There are no cold calls, already established client base to roll over individuals to new insurance plans.
- Base salary plus lucrative bonus schedule.
- Highly recommend communication skills and not intimidated by the phone.
- Expected to make 40 calls a day and data

CITATION

THE STATE OF TEXAS

CAUSE NO. D-1-GN-21-002956

ASSOCIATION MEMBER BENEFITS ADVISORS, LTD
, Plaintiff

vs.

TEXAS RETIRED TEACHERS ASSOCIATION; TRIDENT BENEFITS & CONSULTING LLC; MARCOS JOSE VELA; CAS M. SHARP; ENTRUST LLC D/B/A 90 DEGREE BENEFITS
, Defendant

TO: CAS M. SHARP
28510 WILD MUSTANG LANE
FULSHEAR, TEXAS 77441

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org."

Attached is a copy of the PLAINTIFF'S VERIFIED ORIGINAL PETITION, APPLICATION FOR TEMPORARY RESTRAINING ORDER, APPLICATION FOR TEMPORARY INJUNCTION AND PERMANENT INJUNCTION of the PLAINTIFF in the above styled and numbered cause, which was filed on JUNE 22, 2021 in the 459TH JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, July 09, 2021.

REQUESTED BY:
DONALD R. TAYLOR
603 W 9TH ST
AUSTIN, TX 78701
BUSINESS PHONE:(512)368-9186 FAX:(512)368-9014

Velva L. Price
Travis County District Clerk
Travis County Courthouse
1000 Guadalupe, P.O. Box 679003 (78767)
Austin, TX 78701

PREPARED BY: RUBEN TAMEZ

-- - - -- - -- - -- - -- - -- **RETURN** -- - -- - -- - -- - -- - --

Came to hand on the _____ day of ________________, ________ at ________ o'clock ____M., and executed at ____ within the County of _____________________ on the _____ day of ________________, ________, at ________ o'clock ____M.,

by delivering to the within named ____, each in person, a true copy of this citation together with the PLAINTIFF'S VERIFIED ORIGINAL PETITION, APPLICATION FOR TEMPORARY RESTRAINING ORDER, APPLICATION FOR TEMPORARY INJUNCTION AND PERMANENT INJUNCTION , LAWYER REFERRAL accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Service Fee: $ ________

____
Sheriff / Constable / Authorized Person

Sworn to and subscribed before me this the

By:____

_____ day of ________________, ________.

____
Printed Name of Server

_____________________________ County, Texas

____
Notary Public, THE STATE OF TEXAS

D-1-GN-21-002956 SERVICE FEE NOT PAID **P01 - 000108499**

CITATION

THE STATE OF TEXAS

CAUSE NO. D-1-GN-21-002956

ASSOCIATION MEMBER BENEFITS ADVISORS, LTD , Plaintiff

vs.

TEXAS RETIRED TEACHERS ASSOCIATION; TRIDENT BENEFITS & CONSULTING LLC; MARCOS JOSE VELA; CAS M. SHARP; ENTRUST LLC D/B/A 90 DEGREE BENEFITS , Defendant

TO: ENTRUST, LLC D/B/A 90 DEGREE BENEFITS
BY SERVING ITS REGISTERED AGENT CT CORPORATION SYSTEM
1999 BRYAN STREET #900
DALLAS, TEXAS 75201

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org."

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Travis County Courthouse
1000 Guadalupe, P.O. Box 679003 (78767)
Austin, TX 78701

PREPARED BY: RUBEN TAMEZ

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Notary Public, THE STATE OF TEXAS

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Sheriff / Constable / Authorized Person

By:____

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Printed Name of Server

______________________________ County, Texas

CITATION

THE STATE OF TEXAS

CAUSE NO. D-1-GN-21-002956

ASSOCIATION MEMBER BENEFITS ADVISORS, LTD

, Plaintiff

vs.

TEXAS RETIRED TEACHERS ASSOCIATION; TRIDENT BENEFITS & CONSULTING LLC; MARCOS JOSE VELA; CAS M. SHARP; ENTRUST LLC D/B/A 90 DEGREE BENEFITS , Defendant

TO: MARCOS JOSE VELA
11102 SAVANNAH WOODS LANE
HOUSTON, TEXAS 77043-1000

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org."

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AUSTIN, TX 78701
BUSINESS PHONE:(512)368-9186 FAX:(512)368-9014

Velva L. Price
Travis County District Clerk
Travis County Courthouse
1000 Guadalupe, P.O. Box 679003 (78767)
Austin, TX 78701

PREPARED BY: RUBEN TAMEZ

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Notary Public, THE STATE OF TEXAS

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Printed Name of Server

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CITATION

THE STATE OF TEXAS

CAUSE NO. D-1-GN-21-002956

ASSOCIATION MEMBER BENEFITS ADVISORS, LTD

, Plaintiff

vs.

TEXAS RETIRED TEACHERS ASSOCIATION; TRIDENT BENEFITS & CONSULTING LLC; MARCOS JOSE VELA; CAS M. SHARP; ENTRUST LLC D/B/A 90 DEGREE BENEFITS , Defendant

TO: TEXAS RETIRED TEACHERS ASSOCIATION
BY SERVING ITS REGISTERED AGENT TIMOTHY R. LEE
313 EAST 12TH STREET #200
AUSTIN, TEXAS 78701

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org."

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PREPARED BY: RUBEN TAMEZ

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Notary Public, THE STATE OF TEXAS

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Sheriff / Constable / Authorized Person

By:____

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Printed Name of Server

_____________________________ County, Texas

CITATION

THE STATE OF TEXAS

CAUSE NO. D-1-GN-21-002956

ASSOCIATION MEMBER BENEFITS ADVISORS, LTD

, Plaintiff

vs.

TEXAS RETIRED TEACHERS ASSOCIATION; TRIDENT BENEFITS & CONSULTING LLC; MARCOS JOSE VELA; CAS M. SHARP; ENTRUST LLC D/B/A 90 DEGREE BENEFITS , Defendant

TO: TRIDENT BENEFITS AND CONSULTING, LLC
BY SERVING ITS REGISTERED AGENT MARCOS VELA
11102 SAVANNAH LANE
HOUSTON, TEXAS 77043-1000

Defendant, in the above styled and numbered cause:

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BUSINESS PHONE:(512)368-9186 FAX:(512)368-9014

Velva L. Price
Travis County District Clerk
Travis County Courthouse
1000 Guadalupe, P.O. Box 679003 (78767)
Austin, TX 78701

PREPARED BY: RUBEN TAMEZ

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Sworn to and subscribed before me this the

By:____

_____ day of ________________, ________.

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Printed Name of Server

_____________________________ County, Texas

____
Notary Public, THE STATE OF TEXAS

D-1-GN-21-002956 SERVICE FEE NOT PAID **P01 - 000108497**

7/9/2021 4:29 PM
Velva L. Price
District Clerk
Travis County
D-1-GN-21-002956
Chloe Jimenez

CAUSE NO. D-1-GN-002956

ASSOCIATION MEMBER BENEFITS ADVISORS, LTD. **Plaintiff,** **v.** **TEXAS RETIRED TEACHERS ASSOCIATION, TRIDENT BENEFITS & CONSULTING, LLC, MARCOS JOSE VELA, CAS M. SHARP, ENTRUST, LLC d/b/a 90 DEGREE BENEFITS** **Defendants.**	§ § § § § § § § § § § § § § §	**IN THE DISTRICT COURT** **TRAVIS COUNTY, TEXAS** **459TH JUDICIAL DISTRICT**

DEFENDANT TEXAS RETIRED TEACHERS ASSOCIATION'S ORIGINAL ANSWER WITH AFFIRMATIVE DEFENSES

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Texas Retired Teachers Association ("TRTA") hereby makes and files this its Original Answer with Affirmative Defenses and, in support thereof, respectfully shows the Court:

I. GENERAL DENIAL

1. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant TRTA generally denies each and every allegation in Plaintiff's Verified Original Petition, Application for Temporary Restraining Order, Application for Temporary Injunction and Permanent Injunction and demands strict proof of Plaintiff's claims by the applicable burden of proof.

2. Answering further, TRTA incorporates by reference its *Verified Original Counterclaim Petition and Application for Injunctive Relief* (the "Counterclaim Petition"). TRTA's Counterclaim Petition establishes TRTA's probable right to recover on its declaratory

relief, breach of fiduciary duty and tortious interference counterclaims asserted against Plaintiff. To that end, TRTA's Counterclaim Petition likewise demonstrates that Plaintiff's requested relief in this action should be summarily denied.

II. AFFIRMATIVE DEFENSES

TRTA asserts the following affirmative defenses without admitting or conceding that it carries the burden of proof in establishing same at trial:

3. Plaintiff's claims are barred in whole or in part by the fact that the contract forming the basis of Plaintiff's claims was superseded.

4. Plaintiff's claims are barred in whole or in part by the fact that the contract forming the basis of Plaintiff's claims was terminable at will and has, in fact, terminated.

5. Plaintiff's claims are barred in whole or in part by the fact that the contract forming the basis of Plaintiff's claims has terminated on account of Plaintiff's material breaches of fiduciary and other duties.

6. Plaintiff's claims are barred in whole or in part by the legal defense of privilege and justification.

7. Plaintiff's claims are barred in whole or in part by the defense of unclean hands.

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

9. Plaintiff's claims are barred in whole or in part by a failure of consideration.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant TRTA prays that upon trial of the merits, Plaintiff takes nothing by its suit and that TRTA be awarded such relief to which it is entitled under the law or at equity.

Respectfully submitted,

/s/ C. Andrew Weber
C. Andrew Weber
State Bar No. 00797641
andrew.weber@kellyhart.com
J. Stephen Ravel
State Bar No. 16584975
steve.ravel@kellyhart.com
KELLY HART & HALLMAN LLP
303 Colorado Street, Suite 2000
Austin, Texas 78701
Telephone: (512) 495-6400
Telecopier: (512) 495-6401

Michael D. Anderson
State Bar No. 24031699
michael.anderson@kellyhart.com
Jason C. Nash
State Bar No. 24032894
jason.nash@kellyhart.com
Jeff Whitfield
State Bar No. 24060825
jeff.whitfield@kellyhart.com
KELLY HART & HALLMAN LLP
201 Main Street, Suite 2500
Fort Worth, Texas 76102
Telephone: (817) 332-2500
Telecopier: (817) 878-9280

ATTORNEYS FOR DEFENDANT/ COUNTER-PLAINTIFF TEXAS RETIRED TEACHERS ASSOCIATION

CERTIFICATE OF SERVICE

This is to certify that on the 9th day of July, 2021, a true and correct copy of the foregoing document was served on all counsel of record via the Court's electronic case filing system pursuant to Tex. R. Civ. P. 21a (and also sent via electronic mail on this day to counsel for all other parties not yet having entered an appearance).

/s/ *Jason C. Nash*

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CAUSE NO. D-1-GN-002956

TEXAS RETIRED TEACHERS ASSOCIATION,	§	**IN THE DISTRICT COURT**
Defendant / Counter-Plaintiff,	§	
v.	§	
ASSOCIATION MEMBER BENEFITS ADVISORS, LTD. and AMERICAN SENIOR BENEFITS ASSOCIATION,	§	
Plaintiff / Counter-Defendant and Third-Party Defendant, respectively	§	**TRAVIS COUNTY, TEXAS**
v.	§	
TRIDENT BENEFITS & CONSULTING, LLC, MARCOS JOSE VELA, CAS M. SHARPE, ENTRUST, LLC d/b/a 90 DEGREE BENEFITS,	§	
Defendants.	§	**459TH JUDICIAL DISTRICT**

DEFENDANT/COUNTER-PLAINTIFF TEXAS RETIRED TEACHERS ASSOCIATION'S VERIFIED ORIGINAL COUNTERCLAIM PETITION AND APPLICATION FOR INJUNCTIVE RELIEF

TO THE HONORABLE JUDGE OF SAID COURT:

Acting pursuant to TEX. R. CIV. P. 97, Defendant/Counter-Plaintiff Texas Retired Teachers Association ("TRTA" or "Counter-Plaintiff") files this *Verified Original Counterclaim Petition and Application for Injunctive Relief*, complaining of Plaintiff/Counter-Defendant Association Member Benefits Advisors, Ltd. ("AMBA" or "Counter-Defendant") and American Senior Benefits Association ("ASBA" or "Third-Party Defendant"). In support thereof, Counter-Plaintiff respectfully shows the Court the following:

I. DISCOVERY CONTROL-PLAN

1. Counter-Plaintiff intends discovery to be conducted under Level 3 of Rule 190.4 of the Texas Rules of Civil Procedure.

II. RULE 47 STATEMENT

2. In compliance with Texas Rule of Civil Procedure 47, Counter-Plaintiff states that it seeks injunctive relief and monetary relief over $1,000,000.00.

III. PARTIES

3. Counter-Plaintiff TRTA is a Texas non-profit corporation with its principal office and place of business in Travis County, Texas.

4. Counter-Defendant AMBA is a Texas limited liability company with its principal office and place of business located in Travis County, Texas. Counter-Defendant AMBA has appeared in this lawsuit. Service of this document may be had in accordance with Rule 21a, Texas Rules of Civil Procedure, by serving Counter-Defendant's attorney of record, Donald R. Taylor, TAYLOR THUSS PLLC, 603 West 9th Street, Austin, Texas 78701.

5. Third-Party Defendant ASBA is a non-profit corporation doing business in and organized under the laws of Texas but with its principal office located at 8770 W Bryn Mawr Ave., Ste. 1300, Chicago, IL 60631. Third-Party Defendant ASBA can be served by serving its registered agent in Texas, Corporate Creations Network, Inc., 5444 Westheimer #1000, Houston, TX 77056.

6. Defendant Trident Benefits and Consulting, LLC is a Texas limited liability company with its principal place of business in Harris County, Texas. It is located at 17000 Katy Frwy; Suite 200, Houston, TX 77094, and can be served by serving its registered agent, Marcos Vela, at 11102 Savannah Woods Lane, Houston, Texas 77043-1000.

7. Defendant Marcos Jose Vela is an individual who may be served at his residence, 11102 Savannah Woods Lane, Houston, Texas 77043-1000.

8. Defendant Cas M. Sharp is an individual who may be served at his residence, 28510 Wild Mustang Lane, Fulshear, Texas 77441.

9. Defendant Entrust, LLC d/b/a 90 Degree Benefits is a Texas limited liability company with its principal place of business in Katy, Fort Bend County, Texas. It can be served by serving its registered agent, C T Corporation System, 1999 Bryan St., Ste. 900, Dallas, Texas 75201.

IV. Jurisdiction & Venue

10. Counter-Defendant AMBA has invoked the jurisdiction of this Court and thereby consents to the personal jurisdiction of this Court and cannot be heard to complain of jurisdiction at any time herein. Furthermore, this Court has personal jurisdiction over all defendants because they are all residents and citizens of the State of Texas. This Court has subject matter jurisdiction over this cause because Counter-Plaintiff seeks injunctive relief and because the damages sought are within the jurisdictional limits of this Court.

11. Counter-Defendant AMBA has further consented to venue being proper in Travis County and cannot be heard to complain about venue. Pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a)(1), venue is proper in Travis County, Texas, because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in Travis County, Texas.

V. Factual Background & Summary of Argument

A. TRTA's History and its Relationship with AMBA.

12. Founded in 1953, the Texas Retired Teachers Association (TRTA) is the largest association in the nation for retired teachers, with over 96,000 members who consist of Texas residents and residents of other states. Among other purposes, TRTA exists to promote and

advocate at the state and federal level for improved retirement benefits for all public school and higher education retirees. To this end, TRTA has, for decades, provided its members with insurance and other benefits at discounted rates.

13. TRTA has for many years contracted with AMBA in providing its retired educator members quality insurance products at competitive rates. Throughout this arrangement, TRTA has served as the plan sponsor of various endorsed insurance products and benefits underwritten by insurance carriers, while AMBA has served as TRTA's agent of record and third-party administrator in developing, marketing and administering these products and benefits for TRTA members.

B. TRTA's Contractual Relationship with AMBA.

14. Effective July 1, 2011, TRTA's relationship with AMBA was governed by a written agreement dated July 8, 2011, titled: "Agreement Between Association Member Benefits Advisors, Ltd. and The Texas Retired Teachers Association". ("<u>2011 Agreement</u>", attached as Exhibit A).[1] While the parties' relationship involved other prior written agreements, the 2011 Agreement makes expressly clear that it serves as "the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes any prior written or oral understanding between the parties . . ." (Ex. A [2011 Agreement], at Art. V, K.).

15. The 2011 Agreement had a 10-year term—taking effect July 1, 2011 and remaining in effect through June 30, 2021. (*Id.*, at Art. IV, A.). By its terms, if either party gives 180-days written notice of its intention not to extend the contract, then the 2011 Agreement would not automatically be extended for a like 10-year period. (*Id.*).

[1] The 2011 Agreement contains a confidentiality clause. In respect of that clause, TRTA is not attaching the agreement in full, but rather is attaching only a redacted version to preserve confidentiality of business terms. The full un-redacted agreement will be submitted either *in camera* or filed under an appropriate sealing order.

C. TRTA's Notice Not to Extend the 2011 Agreement.

16. Over approximately the last year, TRTA's trust in AMBA had deteriorated on account of AMBA pushing insurance products on TRTA members that TRTA leadership believed were not in the best interests of TRTA members and for which TRTA never provided an endorsement (the agreements between TRTA and AMBA over the years have involved TRTA endorsing certain insurance products developed by AMBA and allowing AMBA to contact TRTA members to market those TRTA-endorsed and AMBA-developed products). TRTA's loss of trust in AMBA coincided with the end of the ten-year term on the 2011 Agreement under which AMBA and TRTA were working together on the development, marketing, and administering of insurance products to TRTA members.

17. By letter dated October 28, 2020—*i.e.*, more than 180-days prior to the June 30, 2021 expiration date of the 2011 Agreement—TRTA gave AMBA written notice of its intention not to extend the 2011 Agreement beyond June 30, 2021. ("<u>Notice</u>", attached as Exhibit B). In that same Notice, TRTA "invite[d] AMBA to put forth a proposal for services beginning July 1, 2021" should it wish to do so. (Ex. B [Notice]).

18. On February 26, 2021, AMBA responded with a new proposal. In its February 26th letter, AMBA referenced the 2011 Agreement as "[t]he agreement that governed the past 10 years." ("<u>AMBA Proposal</u>", attached as Exhibit C). AMBA noted that it was "present[ing] a formal term sheet to formalize a foundation for the future of the TRTA and AMBA relationship," with a stated goal being to "[e]nsure continuity of the 40-year relationship." (Ex. C [AMBA Proposal]).

19. AMBA followed this communication with an April 26, 2021 email from its Board Member, Billy Hill. ("<u>Hill Email</u>", attached as Exhibit D). In that email, Mr. Hill acknowledged

AMBA's receipt of TRTA's prior notice not-to-extend, and that, short of any renewal, the parties were "now about sixty days out from the end of our current relationship:"

> Although you told Steve and me that we would receive a response to this proposal by mid-April and although we had a positive meeting in March to discuss this, to date, we have received no formal response to our proposal. **We are now about sixty days out from the end of our current relationship (based on your communication earlier that TRTA would not renew the current agreement).**

(Ex. D [Hill Email]).

20. Thus, AMBA's February and April 2021 communications make clear the fact that AMBA was well aware of "[t]he agreement that governed the past 10 years" and that, "based on [TRTA's] communication earlier that TRTA would not renew the current agreement," the parties were "sixty days out from the end of [their] current relationship." (*Id*.).

21. A new agreement was never executed between TRTA and AMBA. Accordingly, TRTA's October 28, 2020 notice not-to-extend remained in effect, meaning the 2011 Agreement was (and is) set to terminate on June 30, 2021.

D. To Transition to a New Agent of Record, TRTA Requests Certain Data from AMBA Related to its Group Policies; AMBA Refuses the Requests and Sues TRTA.

22. Following its October 28, 2020 notice not-to-extend, TRTA began requesting certain data from AMBA regarding the group policies sponsored by TRTA. These group policies were to remain in place notwithstanding the decision not to extend with AMBA as agent and administrator. To that end, TRTA's data requests were necessary to ensure a seamless transition from AMBA to a new agent of record and benefits administrator, and most importantly to avoid any risk of a group policy lapsing. The data TRTA requested from AMBA was essential in that effort. Regrettably, every request was either not responded to, or was denied.

23. TRTA's counsel wrote AMBA a final time, on June 18, 2021, detailing the prior requests and emphasizing the dire circumstance that AMBA's delay was putting TRTA and its

members in. ("Weber Letter", attached as Exhibit E). AMBA again provided no policy data. Worse yet, AMBA responded by suing TRTA to enforce what AMBA considers a *perpetual* agency and administrator relationship with respect to the TRTA group plans. Remarkably, AMBA contends in its suit that TRTA—the plan sponsor and policy holder—has no standing to terminate the relationship, and no standing to be afforded any of the group policy data it requests. (AMBA's Pet. at 4-5). This borders on the absurd. As shown below, AMBA's suit is factually and legally incorrect for a number of reasons.

E. AMBA Interferes with the Contractual Obligations of Others to Provide TRTA with the Data that TRTA Needs and AMBA Does not Want TRTA to Obtain.

24. Not only has AMBA refused to provide TRTA the data regarding group policies sponsored by TRTA, AMBA has also interfered with the contractual obligations of others to provide TRTA with this data.

25. TRTA members enjoy the benefits of a group dental insurance policy issued by Ameritas Life Insurance Corporation ("Ameritas"). ("Ameritas Policy", excerpts of which are attached as Exhibit F). TRTA is the policyholder and plan sponsor for the Ameritas group dental insurance policy. (*Id*., at pp. 1,6,8[2]). Pursuant to the Ameritas policy, Ameritas is to issue certificates to TRTA showing the coverage under the policy, provide information to TRTA regarding which TRTA members are enrolled in the policy, and provide a certificate for each TRTA member enrolled in the policy. (*Id*., at p. 4)[3].

26. In response to TRTA's efforts to obtain information about which TRTA members are covered under the TRTA-sponsored dental and vision plans, TRTA has learned that AMBA

[2] Page numbers have been added to the right footer of the policy excerpts for ease of reference.

[3] TRTA believes that the TRTA-sponsored vision plan places a similar obligation on the plan issuer to provide information to TRTA.

is interfering with the dental and vision insurance provider's ability to provide such information. (Ex. D [Hill Email]; "Vision Service Plan Letter", attached as Exhibit G).

27. Despite AMBA's claims to the contrary, the information sought by TRTA regarding the TRTA-sponsored insurance plans, is expressly permitted to be provided to TRTA pursuant to 45 C.F.R. § 164.504(f)(ii-iii) as information that an insurance issuer may provide to a plan sponsor[4].

F. Immediate Declaratory and Injunctive Relief are Necessary to Protect and Preserve TRTA's and Its Members' Group Policy Interests.

28. TRTA brings this counter-suit for (i) a declaration of the true and accurate contractual relationship between the parties, and (ii) immediate injunctive relief such that TRTA can rightfully obtain data and information to properly transition from AMBA to a new agent/administrator, and most importantly to avoid risk of member insurance coverage lapsing.

29. TRTA's counter-suit for declaratory relief is necessary to correct two fundamental flaws in AMBA's suit. First, AMBA misrepresents the contractual status among the parties. Never does AMBA's petition even reference the 2011 Agreement. Rather, AMBA points to a May 14, 2004 agreement titled "Association Dental Insurance Marketing and Administration Agreement" (the "2004 Agreement", attached as Exhibit H)[5], which, as AMBA contends, is the "binding contract" that "continues in force to the present day." (AMBA's Pet. at 4). This 2004 Agreement was superseded by the 2011 Agreement. As noted, the 2011 Agreement makes clear that it "supersedes any prior written or oral understanding between the parties . . ." (Ex. A [2011 Agreement], at Art. V, K.). AMBA knew exactly that, and operated precisely in that manner.

[4] The relevant provisions of the regulation allow summary health information to be provided to the plan sponsor, as well as information on which individuals are participating in the plan and which individuals have enrolled or have disenrolled from the plan.

[5] The 2004 Agreement was amended in April 2005 solely to add a provision appointing AMBA as the third party administrator and agent of record for the TRTA Group Vision Plan. All references to the 2004 Agreement by TRTA in this matter are to both the May 2004 Agreement *and* its April 2005 Amendment.

For example, after TRTA issued its October 2020 written notice not-to-extend the 2011 Agreement, AMBA's Billy Hill wrote TRTA a lengthy correspondence attempting to "extend[] our 40 years plus relationship with TRTA." (Ex. D[Hill Email]). He noted that "[i]n February, AMBA offered TRTA a comprehensive renewal proposal," and that "[w]e are now about sixty days out from the end of our current relationship (based on your communication earlier that TRTA would not renew the current agreement)." (*Id.*). Mr. Hill never referenced the 2004 Agreement *(there was no need to, because it was superseded 10 years prior)*. Rather, Mr. Hill simply noted that, with TRTA's prior notice not-to-extend the 2011 Agreement, the parties' relationship was soon coming to an end. (*Id.*). Mr. Hill of course is the same individual who has verified AMBA's pending Application for TRO, and thus who now attests that the parties' relationship has in fact *not* ended because the 2004 Agreement "continues in force to the present day." (AMBA's Pet. at 4). Mr. Hill and AMBA alike are speaking out of both sides of their mouths.

30. The reason for AMBA's 180° shift is becoming clear. The 2004 Agreement, unlike the 2011 Agreement, is indefinite in duration. Seizing on that, AMBA ignores the contractual history over the last 10 years and contends that, per the (superseded) 2004 Agreement, AMBA is the "exclusive agent of record" for TRTA plan products and that "this designation continues for as long as the plans are in existence." (AMBA's Pet. at 4). AMBA is in effect asserting a perpetual contract, which brings about a second reason for TRTA's declaratory judgment suit. Even if AMBA were correct in asserting the 2004 Agreement as the (still) binding agreement between the parties, as shown below Texas law does not favor perpetual contracts. Rather, as a pure matter of law, a contract such as the 2004 Agreement—which is indisputably "indefinite in duration" on its face—is terminable at will. As a result,

AMBA is flatly wrong to contend that it can continue indefinitely as TRTA's exclusive agent of record.

31. Importantly, AMBA admits in its lawsuit that it occupies a *fiduciary* role with respect to TRTA. (AMBA's Pet. at 4). Such a role, of course, means the agent (AMBA) must place the welfare of the principal (TRTA) above that of the agent. Yet, by withholding policy performance data—data that AMBA knows TRTA must have to protect its members and get for them the best coverage and value—AMBA is doing the opposite: it is seeking to preserve its profits at the expense of the principal's interest and contrary to the principal's requests. Thus, AMBA is acting in complete indifference to the self-proclaimed fiduciary role it occupies here. AMBA cannot continue to withhold pertinent policy data to the detriment of the policy holder and plan sponsor, yet this is exactly the conduct AMBA is asking this Court to sanction.

G. AMBA and its Affiliate ASBA Begin Marketing to TRTA Members Using a Confusingly Similar Name and Logo to TRTA's.

32. TRTA recently learned that its members are receiving marketing material about insurance products from an entity identified as "Texas Retired Educators Alliance (TREA)" (hereafter, "<u>TREA</u>"). (Exhibit I). Texas Secretary of State records show that TREA is an assumed name for American Senior Benefits Association ("<u>ASBA</u>"), an entity controlled by Billy B. Hill. (Exhibits J and K). This is the same Billy Hill that is a board member of, and represents, AMBA. As reflected in the recent TREA marketing materials, ASBA is apparently now working with AMBA to offer the insurance products that TRTA has been concerned about over the past year -- the same insurance products that caused TRTA to lose trust in AMBA. (Exhibit I).

33. The timing of ASBA's assumed name certificate for TREA (filed in April 2021), and ASBA's application for trademark protection of the name TREA (filed last month), speak

volumes. (Exhibits J and L). Apparently, when TRTA notified AMBA that it was not extending its agreement, AMBA and its sister company ASBA devised a plan to bypass TRTA and market products directly to its members -- members they never would have known of *but for* AMBA's fiduciary agency relationship with TRTA. Making matters worse, this ill-conceived marketing campaign uses a name and logo confusingly similar to TRTA's.

34. In its marketing materials, Texas Retired Educators Alliance uses the acronym/abbreviation "TREA." This of course is strikingly close and confusingly similar to "TRTA," the acronym/abbreviation that has long been used by the Texas Retired Teachers Association. The two acronyms are a mere one letter off. And the full names themselves are confusingly similar, both beginning with "Texas Retired," and both referencing teachers or educators associations. Moreover, TREA, in its correspondence to TRTA members, links itself to the same agent (AMBA) that TRTA members for years associated with certain TRTA endorsed products:

> Members of Texas Retired Educators Alliance (TREA) may be entitled to a home care and recovery care plan underwritten by Continental Life Insurance Company of Brentwood, Tennessee, an Aetna company. Designed as an affordable solution, these plans may give you the flexibility you need to determine what type of care is right for you and where you will receive it.
>
> We care deeply about our members, so we want to refer you to our trusted partner, Association Member Benefits Advisors (AMBA). Their licensed agents can review these coverage options with you.

Even TREA's logo, with its use of the shape of the State of Texas centered within a circle border design, is confusingly similar to TRTA's logo:

35. TREA sent these mailings to, apparently, all known TRTA members, inducing them to join TREA and apply for the insurance products offered by AMBA and TREA (ASBA). TRTA members have been confused by the similarities of names (TRTA and TREA) and the fact that for years they have been familiar with TRTA's connections to AMBA. TRTA has been flooded with questions from confused TRTA members. Even a simple Google search for Texas Retired Educators Alliance returns results for TRTA, another sign of the confusion likely to ensue.

36. TREA (ASBA) could only have learned the identities of TRTA members through its affiliate AMBA. AMBA held that information as a fiduciary to TRTA. Yet AMBA has now apparently fed this information to its affiliate ASBA, who itself is trying to compete with TRTA by using a confusingly similar acronym and logo, and tying itself to the same agent (AMBA) that TRTA members have long been accustomed to. This is a blatant form of unfair competition designed to confuse, mislead and, ultimately, steal away members and their business from TRTA.

VI. COUNTERCLAIMS / CAUSES OF ACTION

37. Acting pursuant to TEX. R. CIV. P. 97, Counter-Plaintiff TRTA asserts the following counterclaims against Counter-Defendant AMBA and Third-Party Defendant ASBA:

A. Count One -- Request for Declaratory Judgment that the 2011 Agreement Between AMBA and TRTA Superseded the 2004 Agreement

38. TRTA incorporates by reference all prior paragraphs.

39. Section 37.004(a) of the Texas Civil Practice & Remedies Code provides that a party "whose rights, status or other legal relations are affected by a . . . contract . . . may have determined any question of construction or validity arising under the . . . contract . . . and obtain a declaration of rights, status or other legal relation thereunder."

40. An actual, justiciable controversy exists between TRTA and AMBA as to the status and validity of the 2004 Agreement between TRTA and AMBA after they entered the 2011 Agreement. The 2011 Agreement contains an "Entire Agreement" provision which reads, "This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes any prior written or oral understanding between the parties with respect to the subject matter hereof." (Ex. A [2011 Agreement], at Art. V, K). Since all three agreements pertain to the subject matter of marketing of insurance products to TRTA members, the 2011 agreement superseded the 2004 Agreement between TRTA and AMBA.

41. Accordingly, TRTA respectfully invokes the authority of this Court under section 37.004 of the Texas Civil Practice & Remedies Code to provide TRTA with relief under the statute by declaring that:

> (i) the 2004 and 2011 Agreements between TRTA and AMBA pertain to the subject matter of marketing insurance products to TRTA members;
>
> (ii) pursuant to the "Entire Agreement" provision of the 2011 Agreement between TRTA and AMBA, the 2004 Agreement between TRTA and AMBA was superseded by the 2011 Agreement; and
>
> (iii) as a result of the fact that the 2011 Agreement superseded the 2004 Agreement between TRTA and AMBA, the 2004 Agreement is of no further force or effect.

B. Count Two -- Request for Declaratory Judgment that, in the Alternative, the 2004 Agreement between AMBA and TRTA is an Agreement of Indefinite Duration and Terminable at Will

42. TRTA incorporates by reference all prior paragraphs.

43. An actual, justiciable controversy exists between TRTA and AMBA as to the duration and status of the 2004 Agreement.

44. In light of the foregoing, TRTA respectfully invokes the authority of this Court under Section 37 of the Texas Civil Practice and Remedies Code to declare that the 2004 Agreement is indefinite in duration and therefore terminable at the will of either party.

45. Under Texas law, when a contract "contemplate[s] continuing performance (or successive performances) and ... [is] indefinite in duration," it may be terminated at the will of either party. *Trient Partners I, Ltd. v. Blockbuster Entm't Corp.*, 83 F.3d 704, 708 (5th Cir. 1996) (citations omitted). Moreover, courts "do[] not favor perpetual contracts" and "presume[] that [any such] contract is terminable at will." *Id*.

46. The 2004 Agreement specifies that, "[i]n the absence of a material breach of fiduciary duty or failure to adhere to the principals of the Insurance Marketplace Standards Association, AMBA shall remain the agent of record and third party administrator for the TRTA dental insurance plan, developed by AMBA, for the duration of its existence." (AMBA Pet., Ex. 1 at 2). The conditions provided for in this agreement are precisely the type that "are not the kind of determinable events that transform a contract of indefinite duration into one of definite duration." *Trient Partners*, 83 F.3d at 709. "Under foundational principles of contract law, the term of any contract is terminable by one party upon a total or material breach by another party." *Id*. "Accordingly, an agreement which is otherwise indefinite in duration and terminable at will cannot be converted into an agreement of definite duration by the mere transcription of such universals within the text of the contract." *Id*.

47. Taken as a whole, the conditions contained in the 2004 Agreement's "termination provisions" do not limit the duration of the 2004 Agreement or make its duration determinable in any real or concrete way. To hold otherwise, TRTA could very well be forced by AMBA to stay in business and operate exclusively with AMBA in perpetuity. This "is precisely the antithetical result that courts seek to avoid by holding indefinite duration contracts to be terminable at will." *Trient Partners*, 83 F.3d at 709. For these principal reasons, to the extent, if any, that the 2004 Agreement was not superseded by the 2011 Agreement, TRTA seeks a declaration that (i) the 2004 Agreement is indefinite in duration and therefore terminable at the will of either party and (ii) TRTA's notice to AMBA in October 2020 constituted TRTA's at-will election of termination.[6]

48. TRTA will further show that "[t]he Texas Supreme Court has recognized that courts often imply a term of reasonable duration during which franchise agreements that 'contemplate the expenditure of substantial sums of money ... by one of the parties' will not be terminable at will." *Id*. at 711. However, for the same reasons as present in *Trient Partners*, this Court need not engage in an exercise to ascertain what would be a "term of reasonable duration." *Id*. This is because, for the 2004 Agreement, whatever such a duration might be, it has long since been met and passed. Indeed, as evidence of what a reasonable period of duration might be, the Court need look no further than the 2011 Agreement and its 10-year term provision. There is no reason why that 10-year period should not exemplify a "term of reasonable duration" for the 2004 Agreement. Consequently, to the extent, if any, that the 2004 Agreement was not superseded by the 2011 Agreement, the record is clear that a reasonably implied 10-year duration period would have already long since been met and passed. Accordingly, TRTA seeks a

[6] On each of TRTA's terminable-at-will declaratory judgment claims herein, TRTA requests declarations that its October 2020 notice to AMBA constitutes TRTA's at-will election of termination.

declaration that the 2004 Agreement is of no further force or effect beyond such already expired term.[7]

C. Count Three -- Request for Declaratory Judgment that, in the Alternative, AMBA's Breach of Fiduciary Duty Extinguished the 2004 Agreement between AMBA and TRTA

49. TRTA incorporates by reference all prior paragraphs.

50. In the unlikely event that the 2004 Agreement is not already found to have been extinguished on the grounds discussed with regard to other causes of action, it is extinguished due to AMBA's breach of fiduciary duty. A justiciable controversy exists between TRTA and AMBA as to the status and validity of the 2004 Agreement between TRTA and AMBA after AMBA breached its fiduciary duty to TRTA. The 2004 Agreement contains a provision which provides that, when AMBA has breached its fiduciary duty, AMBA's role as agent of record and third party administrator is extinguished (thereby in effect terminating the 2004 Agreement). As shown herein, AMBA has materially breached its fiduciary duties by, among other things refusing to provide data about which TRTA members are covered under the TRTA-sponsored plans and summary health information about those plans, interfering with other parties' obligations to provide such information, attempting to force TRTA members to lose coverage rather than AMBA lose the money it makes off TRTA members being enrolled in TRTA-sponsored plans, and supplying TRTA group plan/member information to an AMBA affiliate (ASBA) for purposes of competing with TRTA. Consequently, AMBA's role as agent of record and third party administrator under the 2004 Agreement is extinguished and the 2004 Agreement is of no further force or effect.

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[7] Because the April 2005 Agreement (which was an amendment modification to the May 2004 Agreement to add one specified provision) incorporates the same indefinite duration as the May 2004 Agreement, the requested declaration and arguments in support concerning the May 2004 Agreement are equally applicable to the April 2005 Amendment.

51. Accordingly, TRTA respectfully invokes the authority of this Court under section 37.004 of the Texas Civil Practice & Remedies Code to provide TRTA with relief under the statute by declaring that:

(i) AMBA has materially breached its fiduciary duty to TRTA; and,

(ii) as a result of the fact that AMBA has materially breached its fiduciary duty to TRTA, AMBA's role as agent of record and third party administrator is extinguished and the 2004 Agreement is of no further force or effect.

D. Count Four -- Request for Declaratory Judgment that the 2011 Agreement's "Agent of Record" provision at Article IV, B. is Terminable at Will

52. TRTA incorporates by reference all prior paragraphs.

53. An actual, justiciable controversy exists between TRTA and AMBA as to the duration and status of the 2011 Agreement's "Agent of Record" provision at Article IV, B.

54. In light of the foregoing, TRTA respectfully invokes the authority of this Court under Section 37 of the Texas Civil Practice and Remedies Code to declare that the 2011 Agreement's "Agent of Record" provision at Article IV, B. is indefinite in duration and therefore terminable at the will of either party.

55. Article IV, B. of the 2011 Agreement specifies that, "[i]t is understood and agreed that AMBA shall remain the agent of record for all policies or certificates of insurance issued to TRTA or its members. This provision shall survive the termination of this Agreement." This provision is not limited in duration, nor do its terms make its duration determinable in any real or concrete way. Consequently, for the same principal reasons outlined above with respect to the 2004 Agreement and its "termination provisions," this provision too is indefinite in duration and should therefore be declared terminable at the will of either party.

E. Count Five -- Breach of Fiduciary Duty; Aiding and Abetting; Conspiracy

56. TRTA incorporates by reference all prior paragraphs.

57. At all relevant times, AMBA served as the agent and third-party administrator for insurance products offered to TRTA. AMBA recognizes itself as a fiduciary to TRTA in this role. (AMBA's Pet. at 4). As such, AMBA owed fiduciary duties to TRTA.

58. AMBA's actions of, among other things, refusing to provide data about which TRTA members are covered under the TRTA-sponsored plans and summary health information about those plans, interfering with other parties' obligations to provide such information, attempting to force TRTA members to lose coverage rather than AMBA lose the money it makes off TRTA members being enrolled in TRTA-sponsored plans, and supplying TRTA group plan/member information to an AMBA affiliate (ASBA) for purposes of competing with TRTA constitute a breach of one or more of the following fiduciary duties, among others, owed to TRTA:

a. Duty of loyalty and utmost good faith;

b. Duty of candor;

c. Duty to refrain from self-dealing;

d. Duty to act with integrity of the strictest kind;

e. Duty of fair, honest dealing; and

f. Duty of full disclosure.

59. AMBA's breaches resulted in injury to TRTA and benefit to AMBA. Third-Party Defendant ASBA caused or aided and abetted in these breaches or, alternatively, conspired together with AMBA to commit them, which thereby resulted in injury and damage to TRTA for which TRTA seeks recovery.

60. As a result, TRTA sues for all actual damages allowed by law, and TRTA seeks recovery of exemplary damages upon a showing by clear and convincing evidence that the injury

resulted from AMBA's fraud, malice, or gross negligence. TRTA further seeks all equitable relief accorded by law.

61. All conditions precedent to TRTA's right to recover have been performed, have occurred, or have been excused.

F. Count Six -- Tortious Interference with Existing Contract

62. TRTA incorporates by reference all prior paragraphs.

63. TRTA had a valid and existing contract with Ameritas through which Ameritas was to provide information regarding dental insurance coverage for each insured TRTA member to TRTA along with a certificate showing coverage under the policy for each insured TRTA member. TRTA believes AMBA has and continues to willfully and intentionally interfere with the contract between Ameritas and TRTA by, among things, preventing Ameritas, through agreement or threat, from providing data about which TRTA members are covered under the TRTA-sponsored plans and summary health information about those plans contrary to Ameritas's obligation to provide such information.[8]

64. As a proximate and foreseeable result of AMBA's actions, TRTA has been damaged, for which sums TRTA sues, in an amount within the jurisdiction of this Court. TRTA seeks to recover its actual, special, exemplary, and consequential damages, along with court costs and pre- and post-judgment interest at the highest lawful rate.

G. Count Seven -- Common Law Unfair Competition

65. TRTA incorporates by reference all prior paragraphs.

66. ASBA's actions, as described above, constitute common law unfair competition.

[8] TRTA believes that AMBA has engaged in this same pattern of tortious interference with the contract between TRTA and the TRTA-sponsored vision plan from Vision Service Plan.

67. As a result of ASBA's conduct, TRTA has suffered and will continue to suffer damage to its reputation, goodwill and relationships with its members because of consumer (member) confusion as to the origin or sponsorship of the products and services advertised through ASBA's marketing materials.

68. ASBA's acts of unfair competition have caused and will continue to cause irreparable harm to TRTA, for which TRTA has no adequate remedy at law. ASBA's unlawful acts will continue unless enjoined. Accordingly, TRTA seeks monetary damages, as well as temporary and permanent injunctive relief.

H. Count Eight -- False Advertising

69. TRTA incorporates by reference all prior paragraphs.

70. ASBA's marketing materials, which were used in interstate commerce to promote ASBA's products and services, contain false and/or misleading descriptions and/or representations of fact that misrepresent the nature, characteristics, and qualities of TRTA and its endorsed products and services. Such conduct constitutes false advertising under 15 U.S.C. § 1125(a).

71. ASBA's false advertising has damaged and continues to damage TRTA.

72. On information and belief, ASBA's false advertising was willful and deliberate, designed specifically to disparage TRTA and its endorsed products and services.

73. ASBA's unlawful acts have caused and will continue to cause irreparable harm to TRTA, for which TRTA has no adequate remedy at law. In particular, ASBA's conduct has and continues to irreparably harm TRTA's reputation, goodwill, and relationships with its customers (members). ASBA's unlawful acts will continue unless enjoined. Accordingly, TRTA seeks monetary damages and permanent injunctive relief.

VII. DAMAGES

74. As a direct and proximate result of Counter-Defendant AMBA's breach of fiduciary duties and other tortious conduct as set forth above, TRTA has suffered actual damages which are difficult, if not impossible, to determine. TRTA seeks recovery of all actual damages suffered as a result of Counter-Defendant's breaches and/or tortious conduct.

75. Because Counter-Defendant's breaches and tortious conduct has been willful and malicious, TRTA is entitled to recover exemplary damages.

VIII. ATTORNEYS' FEES

76. Counter-Plaintiff TRTA requests that it be awarded its reasonable and necessary attorneys' fees and costs pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code.

IX. APPLICATION FOR TEMPORARY INJUNCTIVE RELIEF

77. TRTA incorporates by reference all prior paragraphs.

A. Texas Law Allows the Grant of a Temporary Injunction in Circumstances Such as That Presented Here.

<u>Texas Law Generally Provides for Temporary Injunctive Relief.</u>

78. To gain a temporary injunction, a movant must show a probable right of recovery, and that without extraordinary relief, the plaintiff will be subject to a probable, imminent harm for which there is no adequate remedy at law. *Sun Oil Co. v. Whitaker*, 424 S.W.2d 216, 218 (Tex. 1968). Courts issue mandatory relief when preservation of the status quo can only be maintained by requiring action. *Kjellander v. Smith*, 652 S.W.2d 595, 598 (Tex. App.—Tyler 1983, no writ).

TRTA Has Established a Probable Right of Recovery on its Requests for Declaratory Judgment and Arising from AMBA's Breach of Fiduciary Duty and Other Tortious Conduct.

79. A probable right of recovery is established "by simply alleging a cause of action and presenting evidence which tends to sustain it." *Miller Paper Co. v. Roberts Paper Co.*, 901 S.W.2d 593, 597 (Tex. App.—Amarillo 1995, no writ). In order to obtain injunctive relief, an applicant must first show that it has a probable right to recover the relief it seeks upon a final hearing. *Id.* at 218. In this context, the term "probable right to recover" is a "term of art" and does not require the Court to make a determination of the facts based upon "probabilities." *183/620 Grp. Joint Venture v. SPF Joint Venture*, 765 S.W.2d 901, 904 (Tex. App.—Austin 1999, writ dism'd w.o.j.). Rather, it merely means that the applicant must "adduce evidence that tends to support his right to recover on the merits." *Id.* (citing *Camp v. Shannon*, 348 S.W.2d 517, 519 (Tex. 1961)). Within this context, a party seeking a temporary injunction does not need to show a probable right to recover on each cause of action it pled; instead, it only needs to show a probable right to recover on one of its claims. *Argyle Indep. Sch. Dist. ex rel. Bd. of Trs. v. Wolf*, 234 S.W.3d 229, 237-38 (Tex. App.—Fort Worth 2007, no pet.).

80. Here, TRTA has requested declaratory judgment on the status of the 2004 and 2011 Agreements on several alternative grounds (*e.g.*, that the 2004 Agreement was superseded by the 2011 Agreement, that the 2004 Agreement is terminated because it was indefinite in duration, that the 2004 Agreement was terminated because of AMBA's breach of fiduciary duty, and that the 2011 Agreement was terminated according to its own terms notwithstanding a provision within it of indefinite duration which was terminated at will). In support of each of these grounds for declaratory judgment, TRTA has provided facts and argument that would allow the Court to grant TRTA its requested relief.

81. TRTA has also alleged breach of fiduciary duty and tortious interference with contract by AMBA. The facts and argument presented on these claims would allow the Court to grant TRTA its requested relief because AMBA has, among other things, refused to provide data about which TRTA members are covered under the TRTA-sponsored plans and summary health information about those plans, interfered with other parties' obligations to provide such information, attempted to force TRTA members to lose coverage rather than AMBA lose the money it makes off TRTA members being enrolled in TRTA-sponsored plans, and supplied TRTA group plan/member information to an AMBA affiliate (ASBA) for purposes of competing with TRTA. Considering that TRTA must merely "adduce evidence that tends to support [its] right to recover on the merits", TRTA has established a probable right to recover on its claims. *183/620 Grp. Joint Venture*, 765 S.W.2d at 904.

Without Extraordinary Relief, TRTA Will be Subjected to Imminent and Irreparable Injury.

82. For injunctive relief to issue, the applicant must also show that it will be subjected to imminent harm and irreparable injury. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2004). "An injury is irreparable if the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any pecuniary standard." *Id.* Indeed, "[d]isruption to a business can be irreparable harm" as a pure matter of law. *Lavigne v. Holder*, 186 S.W.3d 625 (Tex. App.—Fort Worth 2006, no pet.); *Frequent Flyer Depot, Inc. v. American Airlines, Inc.*, 281 S.W.3d 215 (Tex. App.—Fort Worth 2009, pet. denied). "A company's loss of goodwill, clientele, marketing techniques, office stability and the like are not easily assigned a dollar value, but they qualify as 'probable injury' for purposes of injunctive relief." *Graham v. Mary Kay, Inc.*, 25 S.W.3d 749, 753 (Tex. App.—Houston [14th Dist.] 2000, pet. denied).

83. In fact, in precisely the context at issue here, the issuance of a temporary injunction was issued (and affirmed) requiring a defendant to turn over a plaintiff's customer and member data being held by that defendant pursuant to a contract. *See, e.g., Lifeguard Benefit Servs., Inc. v. Direct Med. Network Solutions, Inc.*, 308 S.W.3d 102, 112-13 (Tex. App.—Fort Worth 2010, no pet.) (evidence supported conclusion that health provider access organization would suffer irreparable harm in absence of temporary injunction requiring administrator of health benefit services, which provided back-office services to organization, to turn over to organization its customer and member data being held by administrator).

84. Here, absent the requested temporary injunction, TRTA cannot obtain necessary group policy data and information to ensure a seamless transition to a new agent/administrator, and most importantly TRTA cannot avoid the risk of coverage lapse to its members. Without immediate access to the data it has sought, TRTA cannot ensure that its members' coverages/benefits are being properly serviced, *i.e.*, to ensure proper premium collections and remittances to carriers to prevent any lapse, and to protect its members and get for them the best coverage and value. These are services AMBA is failing to provide, and worse yet, services that AMBA is blocking TRTA from ensuring to its members. Yet, tens of thousands of TRTA members rely on TRTA to ensure exactly that. Consequently, TRTA stands to lose an immeasurable amount of goodwill *but for* the issuance of the requested injunction. The imminent threat of injury here is precisely the type that Texas courts conclude to be irreparable. *Lifeguard*, 308 S.W.3d at 112-13. Moreover, the imminent threat as presented here to TRTA's goodwill is truly incalculable, and can therefore properly form the basis of a request for injunctive relief. *See, e.g., Frequent Flyer Depot*, 281 S.W.3d at 228 ("Disruption to a business can be irreparable harm. Moreover, assigning a dollar amount to such intangibles as a company's loss of clientele, goodwill, marketing techniques, and office stability, among others,

is not easy.") (internal citations omitted); *T–N–T Motorsports, Inc. v. Hennessey Motorsports, Inc.*, 965 S.W.2d 18, 24 (Tex. App.—Houston [1st Dist.] 1998, pet. dism'd) (affirming temporary injunction based on testimony that lost goodwill would be "immeasurable"); *RenewData Corp. v. Strickler*, No. 03–05–00273–CV, 2006 WL 504998, at *15–16 (Tex. App.—Austin Mar. 3, 2006, no pet.) (mem. op.) ("Because it is difficult to assign a dollar value to loss of customer goodwill and clientele, it constitutes an irreparable injury.") (citing *Graham*, 25 S.W.3d at 753; *David v. Bache Halsey Stuart Shields, Inc.*, 630 S.W.2d 754, 757 (Tex. App.—Houston [1st Dist.] 1982, no writ)).

85. Moreover, the damages that TRTA would suffer if ASBA continues to unfairly compete and falsely advertise would be difficult or impossible to fully measure and account for, and would include damage to TRTA's goodwill among its customers/members and the loss of existing and potential customers/members that would be impossible to gauge. Any act by ASBA to continue its course of unfair business practice and illegal conduct cannot effectively be undone because it would be impossible to determine the number of members lost and/or the volume of TRTA endorsed products lost or cancelled, either temporarily or permanently, due to ASBA's actions. As such, without extraordinary relief in the form of temporary and permanent injunctive relief, TRTA will be subjected to imminent and irreparable injury.

TRTA Does Not Have an Adequate Remedy at Law.

86. A temporary injunction is proper when a probable injury exists for which there is no adequate remedy at law. An adequate legal remedy is one that is as complete, practical and efficient to the prompt administration of justice as is equitable relief. *Khaledi v. H.K. Global Trading, Ltd.*, 126 S.W.3d 273, 284 (Tex. App.—San Antonio 2003, no pet.). Thus, a legal remedy is inadequate if, among other things, damages are difficult to calculate or their award may come too late. *Cardinal Health Staffing, Inc. v. Bowen*, 106 S.W.3d 230, 235-36 (Tex.

App.—Houston [1st Dist.] 2003, no pet.); *TCBA Bldg. Co. v. Nw. Res. Co.*, 890 S.W.2d 175, 179 (Tex. App.—Waco 1994, no writ).

87. The damages that TRTA would suffer in this lawsuit are difficult to quantify and would undoubtedly come too late. If AMBA's actions continue, TRTA member benefits and coverages are in immediate jeopardy. Thus, even if TRTA prevailed on the merits in this lawsuit, it is difficult to know when (or if) it could ever re-establish its membership base and the goodwill associated with its existing continuity of membership. All of which makes the damages TRTA seeks difficult to compute, and undoubtedly fulfills the "no adequate remedy at law" requirement for injunctive relief. *Cardinal Health Staffing*, 106 S.W.3d at 235-36 (a legal remedy is inadequate if damages are difficult to calculate). Accordingly, it is proper for the Court to issue a temporary injunction.

B. A Prohibitive and Mandatory Temporary Injunction is Necessary Here to Maintain the Status Quo.

88. The purpose of injunctive relief is to maintain the status quo. *Walling v. Metcalfe,* 863 S.W.2d 56, 58 (Tex. 1993). The status quo is the "last, actual, peaceable, noncontested status which preceded the pending controversy." *Crestview, Ltd. v. Foremost Ins. Co.*, 621 S.W.2d 816, 827-28 (Tex. App.—Austin 1981, writ ref. n.r.e.). While maintaining the status quo may be generally accomplished through a prohibitive injunction, "it sometimes happens that the status quo is a condition not of rest, but of action . . . In such a case, courts of equity issue mandatory writs before the case is heard on the merits." *RP&R, Inc. v. Territo*, 32 S.W.3d 396, 400 n.3 (Tex. App.—Houston [14th Dist.] 2000, no pet.). Such writs are known as "mandatory injunctions." *Id.,* citing *LeFaucher v. Williams,* 807 S.W.2d 20, 22 (Tex. App.—Austin 1991, no writ). Mandatory injunctions are appropriate when such an order is necessary "to prevent

irreparable injury or extreme hardship." *RP&R, Inc.,* 32 S.W.3d at 400, citing *LeFaucher,* 807 S.W.2d at 22.

89. Counter-Plaintiff TRTA seeks an order of both a prohibitive and mandatory nature, as specifically outlined below. Indeed, the circumstances here establish the need for both a prohibitive and mandatory injunction to maintain the "last, actual, peaceable, noncontested status which preceded the pending controversy." *Crestview,* 621 S.W.2d at 827-28.

90. Counter-Plaintiff TRTA is willing to post a reasonable bond to secure the temporary injunction.

91. Accordingly, and due to the foregoing, TRTA seeks a hearing on its application for temporary injunction, and, after hearing, that the Court issue a temporary injunction that:

a. Requires AMBA to provide TRTA (and enjoins AMBA from refusing to provide TRTA) with information from which it can identity every TRTA member who is enrolled and has been enrolled in the TRTA-sponsored dental and vision plans;

b. Requires AMBA to provide TRTA (and enjoins AMBA from refusing to provide TRTA) with information, from which personally-identifying information about TRTA members has been deleted, that summarizes the claims history, claims expenses, and types of claims experienced by TRTA members who are and have been enrolled in TRTA-sponsored dental and vision plans;

c. Enjoins AMBA from interfering with Ameritas, Visions Service Plan, and any other issuer of a TRTA-sponsored insurance plan in their efforts to provide information to TRTA about TRTA members enrolled in those TRTA-sponsored plans and information that summarizes the claims history, claims expenses, and types of claims experienced by TRTA members;

d. Enjoins AMBA from interfering with any development, marketing and administration of TRTA-sponsored insurance plans, including but not limited to TRTA's efforts to work with the other Defendants in this case and any other person or entity to ensure TRTA members are properly serviced in existing plans and/or have the option to sign up for other TRTA-sponsored insurance plans; and

e. Enjoins ASBA from communicating in writing and/or by telephone with TRTA members to market to them insurance products or benefits endorsed under the name "TREA."

92. TRTA seeks the foregoing injunctive relief as to AMBA and ASBA, respectively, as requested, as well as to any person or entity acting in concert or participation with them.

93. For the reasons set forth above, TRTA respectfully prays that the Court grant the requested temporary injunction, providing the relief set forth in paragraph 91 above, through the pendency of this case.

X.
CONDITIONS PRECEDENT

94. All conditions precedent to Counter-Plaintiff's claims for relief have been performed or have occurred.

XI.
JURY DEMAND

95. Counter-Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Counter-Plaintiff TRTA respectfully prays that the Court:

a. set a date for a temporary injunction hearing and at such time, issue a temporary injunction order that provides the relief set forth in paragraph 91, above, through the pendency of this case;

b. issue citation that Counter-Defendant AMBA and Third-Party Defendant ASBA be required to appear and answer herein;

c. upon final trial of this matter, find AMBA and ASBA liable to TRTA for all actual, consequential and incidental damages;

d. award Counter-Plaintiff TRTA all remedies as pled for herein, all equitable relief pled for herein, and all reasonable attorneys' fees and costs pled for herein;

e. award Counter-Plaintiff TRTA pre-judgment and post-judgment interest at the highest rate allowed for by applicable law; and

f. award Counter-Plaintiff TRTA such other and further relief, both general and special, at law or in equity, to which Counter-Plaintiff may be justly entitled.

Respectfully submitted,

<u>/s/ C. Andrew Weber</u>
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ATTORNEYS FOR DEFENDANT/ COUNTER-PLAINTIFF TEXAS RETIRED TEACHERS ASSOCIATION

DECLARATION OF TIMOTHY R. LEE

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

1. My name is Timothy R. Lee, I am over twenty-one (21) years of age, of sound mind, and am competent to make this declaration.

2. I am the Executive Director of Texas Retired Teachers Association, the Counter-Plaintiff in the above-captioned lawsuit. I have held such position at all times relevant to the foregoing pleading.

3. I have reviewed the above and foregoing Counter-Plaintiff's Verified Original Counterclaim Petition and Application for Injunctive Relief. The factual statements contained in Paragraphs 12 - 36, above, are within my personal knowledge and are true and correct. Furthermore, all factual statements contained in Section IX., Application for Temporary Injunctive Relief, are also within my personal knowledge and are true and correct. I further state that this Counterclaim Petition is not groundless or brought in bad faith or for purposes of harassment.

My name is Timothy R. Lee, my date of birth is Ø2-15-1975 and my address is 152 Dakota Mt Dripping Springs, TX 78620. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Travis County, State of Texas, on the 9 day of July, 2021.

Timothy R. Lee
Executive Director, Texas Retired
Teachers Association

CERTIFICATE OF SERVICE

This is to certify that on the 9th day of July, 2021, a true and correct copy of the foregoing document was served on all counsel of record via the Court's electronic case filing system pursuant to Tex. R. Civ. P. 21a (and also sent via electronic mail on this day to counsel for all other parties not yet having entered an appearance).

/s/ *Jason C. Nash*

Exhibit A

Agreement Between
Association Member Benefits Advisors, Ltd. and
The Texas Retired Teachers Association

This Agreement is entered on this 8th day of July, 2011, by and between Association Member Benefits Advisors, Ltd.("AMBA") and the Texas Retired Teachers Association ("TRTA") and is effective as of July 1, 2011.

[redacted]

ARTICLE I
Definitions

In this agreement, the following terms mean:

[redacted]

ARTICLE II
Endorsement and Provision of Services

A. Contracted Services. AMBA shall make available to Members the Endorsed Products which meet the requirements stated in this Agreement, the Texas Insurance Code, and other applicable federal and Texas laws, rules, regulations and standards.

B. Endorsement.

1. During the term of this Agreement, TRTA agrees that the endorsement by TRTA of an Endorsed Product developed by AMBA under Section II(A) of this Agreement shall be an exclusive endorsement and TRTA agrees to allow AMBA to market the Endorsed Products developed under Section II(A) of this Agreement using the TRTA endorsement of the Endorsed Products to the Members of TRTA. TRTA agrees that it will not endorse products issued or marketed by another company or provider which are the same or similar to the Endorsed Products during the term of this Agreement. Only AMBA and its legally authorized representatives may use the TRTA endorsement for the purposes stated in this Agreement.

2. TRTA agrees to grant AMBA the right of first refusal for any other insurance or related products to be offered to TRTA members.

3. AMBA acknowledges that TRTA is not a licensed insurer, third-party administrator, or insurance agent under the laws of the State of Texas and, therefore, cannot act in any such capacity under the laws of the State of Texas. Also, AMBA agrees and acknowledges that TRTA shall not be involved in or required to be involved in any activity relations to the Endorsed Products either through its endorsement or promotion which would require a license for TRTA to act as an insurer, third-party administrator, or insurance agent in this state, including, but not limited to, processing applications for insurance, providing proposals or quotations of rates, counter-signing or delivering policies, examining or evaluating risks, receiving, collecting or transmitting premiums, soliciting or advertising any Endorsed Product or accepting and resolving complaints relating to the Endorsed Products.

[redacted]

[redacted]

[redacted]

ARTICLE III
Obligations of TRTA

[redacted]

[redacted]

ARTICLE IV
Term and Termination

A. Term of Agreement. This Agreement takes effect on July 1, 2011 ("Effective Date") and shall remain in effect through June 30, 2021. It is understood that unless either party gives written notice of its intention not to extend this contract, at one-hundred and eighty (180) days prior to the expiration date, that the contract will automatically be extended for a like period.

B. Agent of Record. It is understood and agreed that AMBA shall remain the agent of record for all policies or certificates of insurance issued to TRTA or its members. This provision shall survive the termination of this Agreement.

C. Insolvency. This Agreement may be terminated immediately by either party by giving written notice of termination to the other party if the other party is adjudicated bankrupt or insolvent, becomes insolvent, has a receiver of its, his or her assets or property appointed, or makes a general assignment for the benefit of creditors, or institutes or causes to be instituted any insolvency or bankruptcy.

ARTICLE V
Miscellaneous

[redacted]

[redacted]

[redacted]

K. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes any prior written or oral understanding between the parties with respect to the subject matter hereof.

L. Confidentiality. TRTA and AMBA agree that the terms and conditions of this Agreement are confidential and shall be kept in the strictest confidence and shall not be disclosed or disseminated to any third parties, except as expressly authorized.

The parties acknowledge that they have entered into this Agreement on the 8th day of July, 2011.

ASSOCIATION MEMBER BENEFITS ADVISORS, LTD.

By: ______________________

Jerry Morgan
Printed Name

Title: President

TEXAS RETIRED TEACHERS ASSOCIATION

By: ______________________

Timothy R Lee
Printed Name

Title: Executive Director

[redacted]

Exhibit B

Texas Retired Teachers Association
313 E. 12th Street, Suite 200 | Austin, TX 78701-1957
800.880.1650 | 512.476.1622 | fax 512.476.1003

The Voice For All Public Education Retirees *www.trta.org*

October 28, 2020

Mr. Cardinal
President
Association Member Benefits Advisors
6034 W. Courtyard Drive, Suite 300
Austin, Texas 78730

Re: Agreement Between Association Member Benefits Advisors, Ltd. and Texas Retired Teachers Association

Dear Mr. Cardinal,

I write to inform you that pursuant to Article IV, Section A of the above-referenced agreement, Texas Retired Teachers Association (TRTA) hereby provides to Association Member Benefits Advisors, Ltd. (AMBA) timely notice that the agreement (contract) will not be automatically extended beyond June 30, 2021.

That said, TRTA invites AMBA to put forth a proposal for services beginning July 1, 2021. Finally, as you know, I have spoken with you, Billy Hill, and others at AMBA over the recent past about TRTA's concerns regarding short term care policies sold to TRTA members/putative members. This notice is not and should not be read or construed to resolve or allay any of those concerns. Those issues remain outstanding.

Sincerely,

Tim Lee
Executive Director
Texas Retired Teachers Association

Exhibit C

February 26, 2021

To: Texas Retired Teacher Association
Attention: Tim Lee, Executive Director
Regarding: AMBA and TRTA Relationship and new proposal

We are proud to present a formal term sheet to formalize a foundation for the future of the TRTA and AMBA relationship. Our goal with the proposal is designed to ensure the future success and growth of TRTA while addressing several points of discussion we have had over the past several months.

The goals with our proposal are threefold:

- Ensure continuity of the 40-year relationship
- Establish a new framework for how the organizations work together
- Guarantee success for TRTA through growth of membership
- Directly address programs to build on success

AMBA and TRTA have a 40-year long and storied relationship. We have created great synergies through our partnership to benefit the retired school employees in Texas. The agreement that governed the past 10 years generated significant growth of membership for TRTA, provided many members with valuable benefits, and helped ensure that TRTA remains relevant, even during these years where the annual convention was cancelled, local unit meetings migrated to virtual, and the walk on the capital could not take place. Over the past 10 years, alongside the growth of members, TRTA has benefited by a significant rise of revenues from the growth of membership dues, royalty payments, and services from AMBA. the Royalty Payments. Even given the success over the prior 10 years, we aim to improve the partnership by addressing key areas we have discussed over the past 18 months. We wish to address those in this proposal.

Goals

- Financial consideration
- Membership guarantee
- Access to services
- Defining new governance protocols

The core tenets of this amendment proposal include a continuation of some programs that were in the prior program, access to additional services from AMBA, additional governance and partnership programs, and, for the first time, a guarantee from AMBA that TRTA will grow membership to record heights. Our goal is to accelerate the growth of membership at TRTA in order to continue the great work you do advocating for the retired school employees in Texas.

As we have discussed over the past several months, the storied relationship between TRTA and AMBA has endured over decades and has been a mutually beneficial relationship. The timing is right for us to rethink our relationship, embrace more aggressive goals, and align our teams in new and exciting ways in order to support TRTA and the retired school employees of Texas.

AMBA Today

AMBA has a 40-year history of working with Retired Teacher Associations (RTAs) and associations representing other retired public employees. Over the past few years, AMBA has evolved to support retired school employees and their partner associations in new ways. AMBA is the largest national membership and benefits partner for RTAs across the country. We provide benefits and discounts to retired school employees, and support our association partners through membership growth, recruiting new members, membership retention, technology and database modernization support, and are a premier support for many associations similar in mission (though not in size!) to TRTA.

From a national standpoint, we are proud of working with over 70 various associations and are the single largest recruiter of association members for retired school employees in the country. We are proud of the 180k+ members we have recruited for our partner associations since we started measuring membership referrals in 2003. AMBA is an integral part of the RTA groups as we support a national network of associations and host a highly popular RoundUp event every other year. We are one of the largest benefit providers to retired school employees in the country. In the past 3 years, our national membership recruits have doubled, and we are recruiting over 20k members annually for our associations. Our expertise in reaching out to non-members to tell the great story of retired teacher associations, including TRTA, is unrivaled.

TRTA and AMBA Relationship

As for TRTA, we are honored to have a relationship with TRTA that has lasted for almost 40 years. AMBA is excited to partner with TRTA because we both have a mission is to support retired teachers and school employees. TRTA is the largest such RTA in the country, and AMBA is proud to be a direct contributor to that growth, having recruited over 60k members for TRTA since 2005.

The reason why AMBA has been so successful in recruiting members is because of the passion our associates take in telling the TRTA story. TRTA utilizes some advanced communication techniques compared to other RTAs with your online presence on Facebook and the Inside Line, print media with the VOICE, and face-to-face (absent COVID!) meetings at local units, annual convention, and the state capital meeting with senators.

To support the efforts, AMBA has unmatched techniques in reaching prospective members to tell the TRTA story. AMBA today uses our direct mail, digital outreach, and our field representatives who meet with prospective members via phone, zoom, and historically, by inviting members to local meetings. AMBA also employs a proud team in our call center that speak with 1000s of prospective members every year to tell the TRTA story and encourage them to join. For TRTA, AMBA has recruited an average of over 6600 members per year over the past 4 years. Across the country, AMBA has learned new methods to successfully reach prospective members across the country in new ways. These include new digital marketing techniques via online, web, and social media communications. These are programs that TRTA has not participated in yet but will be clearly made available in the new agreement.

On our membership recruitment in Texas, TRTA made a request a few years ago to help enroll some younger prospective members – such as school employees who recently retired to join TRTA. AMBA has been successful in supporting this goal as the age of AMBA newly recruited members skews about 10 years younger than the TRTA membership on average.

AMBA today has improved our capabilities to better serve TRTA and directly engage with more retired school employees that have not yet joined. This provides AMBA with a unique opportunity to support TRTA by dramatically increasing the awareness of TRTA to non-members. AMBA programs include a direct marketing team that has expanded from only direct mail outreach to communicating with prospective members over the phone. In other markets, AMBA has become the single largest online and eCommerce player in the RTA membership space. In addition, AMBA has a proprietary system called RAMP that has proven to be super effective for many RTAs across the country. Access to the RAMP system will be included in the new proposal. AMBA has helped many RTAs increase the retention of members though this proprietary program and is confident we can help TRTA increase retention of members as well.

In addition, AMBA has worked with a subsidiary, Vilocity, over the past several years to improve our capabilities in digital marketing, website design, website hosting, email communication, content management, and dues payment systems for dozens of RTAs across the country. These programs are available to support TRTA in the proposal.

The AMBA field team, led by Art Dunham and Zach Sanches, have done an amazing job partnering with local units to help build TRTA membership and encourage member engagement with their local units. They are a great resource that provide valuable benefits and have actively recruited 1000s of members over the past few years. The field representatives have strong reach and are some of the greatest promotors of TRTA anywhere!

From a benefit standpoint, we are also proud of the participation in the benefit programs from the TRTA members. Over the years, a meaningful percentage of members of TRTA have participated in the benefit programs. The programs have a high acceptance rate, high retention rate, and minimal complaints. We are proud of AMBAs ability to connect members with these benefits as it is another way to create value for members to join TRTA. The benefits are designed to address gaps in the benefit programs available to retired school employees. Our research suggests that the 2nd most common reason someone joins associations is because of the benefits offering. We are capable of bringing any number of additional benefits to the TRTA members as TRTA desires.

The Proposal

We have developed an amendment proposal to the existing agreement that we believe will create greater synergies and value than any agreement of its kind. There are a few components that are built into the attached term sheet:

- Royalty Payment for Endorsed Products
- Membership Guarantee
- AMBA Services
- Terms and conditions additions/updates

For the financial component, the proposal is designed to increase the amount of financial consideration in the Royalty Payment for Endorsed Products. The current agreement contains a royalty payment that grows by 3% per year, which is offset by members recruited by AMBA that fit certain criteria. That recruitment provision in the current agreement specifically states there is not a guarantee of recruiting a certain number of members. Given the strength of our model, we are including guarantee to TRTA to increase membership.

The new proposal will contain a Royalty Payment for Endorsed products that increases annually but does not include the offset provision. Instead, the new proposal includes something new: A Membership Guarantee. AMBA will guarantee that TRTA will increase membership to 150,000 members over the 10-year period or will step in and provide a payment to TRTA to ensure that TRTA revenues increase by approximately the amount that membership dues would increase between the combination of the Royalty Payment and the Membership Guarantee Payment. The financial commitment from AMBA to TRTA through this program is a significant growth over any of our previous agreements.

The goal with this provision is to ensure alignment of the growth goals for TRTA, while pushing to accelerate the growth of membership for TRTA. While AMBA do not know for certain how to achieve these goals, we are confident that by aligning our resources, trying new programs, and making significant new outreach programs that AMBA can help accelerate the growth of TRTA membership. This program will ensure that TRTA has growing revenues, but, more importantly, will have a new level of support, services, and focus from AMBA to accelerate the growth to new levels.

Additional AMBA services available to TRTA are described in the proposal. For instance, this proposal will include services of the marketing arm of AMBA, Vilocity, as well as our proprietary billing system called RAMP.

Also, you will notice some terms and conditions changes. These changes include language to address some programs that we have discussed as well as define the terms of the agreement. We have included language to spell out that we will work together to build a data management system for have stronger membership activity reporting, a defined benefit approval process to define how new endorsed benefits can be approved and will spell out that we would expect that the AETNA HHC product would be approved to avoid any confusion as we move forward. There is some language about TRTA continuing to focus on growing membership in order to help achieve the lofty membership goals, and the use of RAMP (or some alternative recurring payment system) in order to help us help TRTA achieve 150,000 members.

As we discussed last week, we included a response timeframe to try to keep us all on track from a timing perspective. However, feel free to reach out if you want to discuss any component of the proposal. I look forward to the next steps.

Best,

Stephen Cardinal

Steve Cardinal
CEO
Association Member Benefit Advisors

CONFIDENTIAL DRAFT
February 26, 2021

Association Member Benefits Advisors LLC
Texas Retired Teachers Association
TERM SHEET FOR AMENDMENT TO ORIGINAL AGREEMENT

The Parties	Association Member Benefits Advisors LLC ("***AMBA***") and Texas Retired Teachers Association ("***TRTA***") to amend the existing agreement between the parties effective as of July 1, 2011 (the "***Original Agreement***"). AMBA and TRTA are referred to herein individually as a "***Party***" and collectively as the "***Parties***". Unless otherwise specifically referenced in this term sheet as being modified, it is the intent of the Parties that the terms of the Original Agreement will continue in full force and effect.
Term	Initial term to remain in effect through June 30, 2031 with automatic renewals for successive ten-year terms unless either party provides written notice of its intention not to renew within 180 days prior to the expiration date.
TRTA Endorsement	TRTA to exclusively endorse AMBA as its benefits provider, including with respect to the products that have been endorsed historically and are listed in the definition of "Endorsed Products" in Article I of the Original Agreement. In addition to the products TRTA has endorsed historically, in order to avoid doubt, TRTA shall allow AMBA to offer the Aetna HHC product to members. A new subsection 4 will be added to Article II(B) of the Original Agreement to establish an approval process for launching new products and benefits to the members of TRTA. AMBA shall continue to hold a right of first refusal with respect to any other insurance or related products offered to TRTA members, consistent with the Original Agreement.
Royalty Payment for Endorsed Products	Article II (C) of the Original Agreement will be amended to provide for an annual royalty payment of $300,000, commencing July 1, 2021. The annual royalty payment will still increase by 3% each year beginning July 1, 2022 and payments will be due at the end of each quarter consistent with the Original Agreement. Similar to the Original Agreement, the payment will be allocated as follows: 1. For the Long-Term Care policy endorsement, AMBA will pay TRTA a royalty of $1.00 per member per year based upon the 2020 membership of 95,000. 2. The balance of the royalty payment will be for the additional

Endorsed Products.

Membership Growth Guarantee

Article II (D) of the Original Agreement will be amended to provide that AMBA will guarantee the following membership goals for TRTA by the dates indicated below provided that TRTA continues to provide its support as provided in sections entitled 'TRTA Support' and 'Membership Payment'. Any shortfall will result in AMBA remitting $35 per shortfall member to TRTA ("**Membership Growth Payment" or "MGP**"); though the following calculation*:* the MGP minus Royalty Payment made in such referenced year. Underthis July 2021 – June 2031 agreement, presuming TRTA is at 95,000 members at YE 2020, the target membership levels for TRTA will be guaranteed as follows:

June 30, 2022: 105,000 members
June 30, 2023: 110,000 members
June 30, 2024: 115,000 members
June 30, 2025: 120,000 members
June 30, 2026: 125,000 members
June 30, 2027: 130,000 members
June 30, 2028: 135,000 members
June 30, 2029: 140,000 members
June 30, 2030: 145,000 members
June 30, 2031: 150,000 members

TRTA Support

Article III of the Original Agreement will be supplemented to provide that TRTA shall use its own commercially reasonable efforts to help achieve the membership goals and shall provide such reasonable assistance and support as needed for AMBA to perform its services, including promoting its partnership with AMBA in TRTA communications.

Data Management

A new Section G of Article II will be added to the Original Agreement to state that the Parties shall work together in good faith to implement a mutually beneficial and legally compliant reporting and data management paradigm with respect to benefits and membership activity reporting.

Marketing

A new Section H of Article II will be added to the Original Agreement to state that AMBA shall make the services of its wholly owned subsidiary and marketing arm, Vilocity Interactive Inc. ("***Vilocity***"), available to TRTA to, among other matters mutually agreed between the Parties, redesign the website and logo of TRTA and undertake digital and publicity initiatives. AMBA and Vilocity to also establish and execute on an overall marketing plan that includes field agents, call

	centers and outreach.
Membership Payment	Article III of the Original Agreement will be supplemented to state that TRTA will plan to utilize AMBA's RAMP dues payment system (or upon mutual agreement of the Parties, an alternative credit card recurring payment option).
Confidentiality	AMBA's making of this term sheet and the terms of this term sheet are provided to TRTA on the condition that TRTA not disclose to any person the existence or terms of this term sheet or that AMBA has entered into discussions with TRTA regarding a possible extension of their relationship.
Expenses	Each Party shall bear its own costs and expenses in connection with evaluating, negotiating and consummating the transactions contemplated hereby.
Termination	This Term Sheet shall terminate on the earlier to occur of: (1) the date of the execution and delivery of the definitive amendment described herein; or (2) 5:00pm C.S.T., March 10th, 2021.
Governing Law	This Term Sheet shall be governed by and construed in accordance with the internal laws of the State of Texas, without giving effect to conflicts of laws rules or principles that would require the application of the laws or rules of any other jurisdiction.

This Term Sheet is intended to establish a basis for the ultimate negotiation of the proposed amendment. This Term Sheet does not constitute any formal agreement of the Parties relative to the proposed amendment or otherwise. This Term Sheet should not be construed as a formal offer to enter into the proposed amendment or any other or similar transaction; it being the Parties' intention that any such formal commitment does not and will not exist unless and until the definitive amendment has been negotiated, executed, and mutually delivered, the applicable approvals have been obtained, and any other contingencies or conditions have been fulfilled. In consideration of the time and expense devoted and to be devoted by the Parties with respect to the transactions contemplated hereby, the following provisions are fully binding on the Parties and shall survive a termination of this Term Sheet: "Confidentiality," "Exclusivity," "Expenses," "Termination" and "Governing Law." No other legally binding obligations will be created until a definitive amendment is executed and delivered by all parties.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Parties have executed this Letter of Intent as of the date first above written.

Association Member Benefits Advisors, LLC

By: Stephen Cardinal

Name: Stephen Cardinal

Title: CEO

Date: 2.26.2021

Acknowledged, Accepted and Agreed:

Texas Retired Teachers Association

By: ______________________________

Name:

Title:

Date:

Exhibit D

[redacted]

From: Billy Hill <billyhill@gmail.com>
Sent: Monday, April 26, 2021 11:38 AM
To: Tim Lee
Cc: Steve Cardinal; Andrew Weber

Tim, I am in receipt of your emails sent last week pertaining to the information regarding some of the benefit programs and requesting a meeting to go over some information. I am further aware that you contacted both Ameritas and VSP directly and were told by both that you should be working directly with AMBA.

Since AMBA is committed to extending our 40 years plus relationship with TRTA, I thought it essential to put some of this in perspective as someone who wants the best outcome for both TRTA and AMBA.

For many months, Steve Cardinal, AMBA CEO, has taken a lead role in achieving a win-win renewal of the AMBA/TRTA agreements. In February, AMBA offered TRTA a comprehensive renewal proposal that committed to increasing TRTA membership by over 50% during the term of our next renewal. This proposal contemplates significant investment by AMBA of money and resources in this effort and further provides substantial financial penalties to AMBA if membership goals are not met.

Although you told Steve and me that we would receive a response to this proposal by mid-April and although we had a positive meeting in March to discuss this, to date, we have received no formal response to our proposal. We are now about sixty days out from the end of our current relationship (based on your communication earlier that TRTA would not renew the current agreement).

On April 14th, we received a copy of an RFP that TRTA has sent to a number of parties seeking a proposal to replace AMBA with respect to many aspects of our relationship. We assume that this transmittal was, in fact, a response to our proposal that had long been on the table and that you have decided to move in a different direction.

Given the nature and tone of the RFP, including a prohibition of discussing the matter with TRTA Board members, and given the agreements already in place, we are still contemplating a response to your letter and the RFP process in general.

We remain willing to discuss your response to our February renewal proposal and a possible path forward to continue our long and mutually beneficial relationship. It would also be helpful to know whether or not the TRTA Board has received and reviewed our proposal.

As you know, I have been involved in these discussions really as a friend of both parties, and I remain hopeful that we can quickly come to a satisfactory agreement to renew our relationship. At this point, however, we must have input from you and the TRTA Board concerning our proposal for renewal before deeper discussions on different topics.

I apologize for the length of this email, but I wanted to address all pertinent facts and issues. Of course, both Steve Cardinal and I remain available to have a productive discussion about moving toward renewal.

Best to you as the legislative session heads towards its final month.

Billy

--
Billy Hill
4117 Canoas
Austin TX 78730
(512) 791-5792

Exhibit E

KELLY HART

ANDREW WEBER
andrew.weber@kellyhart.com

TELEPHONE: (512) 495-6451
FAX: (512) 495-6401

June 18, 2021

VIA EMAIL AND CERTIFIED, RRR
Email: steve.cardinal@amba.info
Steve Cardinal
Chief Executive Officer
Association Member Benefits Advisors, LLC
6034 West Courtyard Drive, Suite 300
Austin, TX 78730

RE: Member data

Dear Mr. Cardinal:

I or my client (Texas Retired Teachers Association (TRTA)) have requested repeatedly, over a three-month period, certain data related to the dental and vision group policies that AMBA has marketed and sold to TRTA's members. AMBA has either not responded or has denied those requests.

The data includes all covered members on the TRTA sponsored Ameritas dental policy and the VSP vision policy. At a minimum this data file should include members' name, type of coverage, certificate number, address, DOB, social security number and issue date of coverage. All covered dependent information should also be included on this file.

Initially, you refused to provide data based on alleged HIPAA concerns. More recently, I informed you on April 22, 2021, that Ameritas, the dental policy carrier, had 1) refused to provide the data to TRTA directly, and 2) informed TRTA that Ameritas had provided the data to you. I also requested that data from you. Importantly, Ameritas informed TRTA that it was unable to provide the requested data to TRTA because a contract with AMBA prevented that transmission.

You have not responded to that data request--despite repeated requests from TRTA that you provide the data or release Ameritas from that preclusion (which is arguably voidable as unconscionable or against public policy).

I now demand you provide this data to me on or before 5 p.m. central time, Tuesday, June 22, 2021. I also demand that you provide any contact between AMBA (or any AMBA predecessor) and Ameritas by that same deadline.

AMBA's delay in providing the data to date, and its contact with TRTA's insurance carrier precluding the carrier from providing that data, has already caused tangible and intangible harm to TRTA's members. Every day TRTA is denied the information, the harm, and risk to TRTA's members escalates. Particularly, it is critically important that the transition from AMBA to TRTA's new agent of record and benefits administrator be as seamless as possible, especially avoiding all risk of a group policy lapsing. The data we have been seeking is essential in that effort. Your ongoing refusal to provide the data is increasingly harmful to TRTA and its members.

If we do not receive the information as and when requested, we will seek all due regulatory and judicial recourse.

Sincerely,

Andrew Weber, Partner

Exhibit F

Ameritas Life Insurance Corp.

A STOCK COMPANY
LINCOLN, NEBRASKA

800-487-5553
ameritas.com

GROUP DENTAL INSURANCE POLICY

The Policyholder	**TEXAS RETIRED TEACHERS ASSOCIATION**		
		Policy Number	**10-350489**
State of Delivery	**Texas**	**Plan Effective Date**	**August 1, 2006**
		Plan Change Effective Date	**October 1, 2018**
Premium Due Date 1st of each month.		**Renewal Date**	**August 1**

Ameritas Life Insurance Corp. agrees to pay, with respect to each Insured Person, the group insurance benefits provided in this policy.

This policy is issued to the Policyholder in consideration of the Policyholder's application and the payment of premiums, as provided herein.

This policy is delivered in and governed by the laws of the state of delivery.

This is not a policy of workers' compensation insurance. The employer does not become a subscriber to the workers' compensation system by purchasing this policy, and if the employer is a non-subscriber, the employer loses those benefits, which would otherwise accrue under the workers' compensation laws. The employer must comply with the workers' compensation law as it pertains to non-subscribers and the required notification that must be filed and posted.

AMERITAS LIFE INSURANCE CORP.

Corporate Secretary

President

GENERAL PROVISIONS

NOTICE OF CLAIM. Written notice of a claim must be given to us within 90 days after the incurred date of the services provided for which benefits are payable.

Notice must be given to us at our Home Office, or to one of our agents. Notice should include the Policyholder's name, Insured's name, and policy number. If it was not reasonably possible to give written notice within the 90 day period stated above, we will not reduce or deny a claim for this reason if notice is filed as soon as is reasonably possible.

CLAIM FORMS. When we receive the notice of a claim, we will send the claimant forms for filing proof of loss. If these forms are not furnished within 15 days after the giving of such notice, the claimant will meet our proof of loss requirements by giving us a written statement of the nature and extent of loss within the time limit for filing proofs of loss.

PROOF OF LOSS. Written proof of loss must be given to us within 90 days after the incurred date of the services provided for which benefits are payable. If it is impossible to give written proof within the 90 day period, we will not reduce or deny a claim for this reason if the proof is filed as soon as is reasonably possible, and unless the claimant does not have the legal capacity to provide proof of loss, proof of loss is provided not later than the first anniversary of the date proof of loss is otherwise required.

TIME OF PAYMENT. We will pay all benefits no later than the 60th day after the date the Proof of Loss is received. Any balance remaining unpaid at the end of any period for which we are liable will be paid at that time.

PAYMENT OF BENEFITS. Contracting Providers have agreed to accept assignment of benefits for services and supplies performed or furnished by them. When a Non-Contracting Provider performs services, all benefits will be paid to the Insured unless otherwise indicated by the Insured's authorization to pay the Non-Contracting Provider directly.

Direct Payment of the Texas Department of Human Services

Other provisions of the policy notwithstanding, whenever we are notified that the Texas Department of Human Services has incurred expenses in connection with dental treatment for a person who is insured under this policy, benefits which would otherwise be payable to the Insured, if any, will be paid to the Texas Department of Human Services, but only to the extent of the actual costs incurred by such Department.

Benefit Payment to Parent of a Dependent Child

Regardless of any policy provision to the contrary, if:

1. a minor child is a dependent under this policy; and

2. such dependent child incurs expenses;

we will pay benefits to the parent of the dependent child who is not a Member of the group. Such parent must be legally designated the managing conservator of the child. We must receive evidence of this before we will pay benefits.

We will <u>not</u> pay benefits to the managing conservator in the following situations:

1. If the parent who is a Member of the group has legally assigned benefits to a provider, we will pay benefits to the provider.

2. If the parent who is a Member of the group has paid any portion of the expenses and those expenses are covered under the terms of the policy, we will pay benefits to the Member.

FACILITY OF PAYMENT. If an Insured or beneficiary is not capable of giving us a valid receipt for any payment or if benefits are payable to the estate of the Insured, then we may pay the benefit in an amount not to exceed $5,000 to the insured or the insured's assignee.

Any equitable payment made in good faith will release us from liability to the extent of payment.

PROVIDER-PATIENT RELATIONSHIP. The Insured may choose any Provider who is licensed by the law of the state in which treatment is provided within the scope of their license. We will in no way disturb the provider-patient relationship.

LEGAL PROCEEDINGS. No legal action can be brought against us until 60 days after the Insured sends us the required proof of loss. No legal action against us can start more than three years after proof of loss is required.

INCONTESTABILITY. Any statement made by the Policyholder to obtain the Policy is a representation and not a warranty. No misrepresentation by the Policyholder will be used to deny a claim or to deny the validity of the Policy unless:

1. The Policy would not have been issued if we had known the truth; and

2. We have given the Policyholder a copy of a written instrument signed by the Policyholder that contains the misrepresentation.

The validity of the Policy will not be contested after it has been in force for one year, except for nonpayment of premiums or fraudulent misrepresentations.

MISSTATEMENT OF AGE. If the age of an Insured has been misstated, the amounts payable under this policy are the amounts the premium paid would have purchased at the correct age.

CONFORMITY WITH LAW. Any policy provision that conflicts with the laws of the state in which the policy is issued, when the policy is issued, is automatically changed to meet the minimum requirements of those laws.

ENTIRE CONTRACT. The policy and the application of the Policyholder constitute the entire contract between the parties. A copy of the Policyholder's application is attached to the policy when issued. All statements made by the Policyholder or an Insured will, in the absence of fraud, be considered representations and not warranties. No statement made to obtain insurance will be used to void the insurance or reduce the benefits of this policy unless it is in a written application signed by the Policyholder or Insured. A copy of this must have been given to the Policyholder or Insured.

No change in this policy will be valid unless approved in writing by one of our officers and given to the Policyholder for attachment to the policy. No agent has the authority to change this policy or waive any of its provisions. Any change in this policy will be valid even though an Insured may not have agreed to it.

INSURANCE DATA. The Policyholder will furnish, data necessary to administer this policy. The data will include, but not be limited to data:

i. necessary to calculate premiums;

ii. necessary to determine a person's effective date or termination date of insurance;

iii. necessary to determine the proper coverage level of insurance.

We shall have the right to inspect any of the Policyholder's records we find necessary to properly administer this policy. Any inspections will be at a time and place convenient to the Policyholder.

We will not refuse to insure a person who is eligible to be insured just because the Policyholder fails or errs in giving us the data necessary to include that person for coverage. An Insured's insurance will not stay in force nor an amount of insurance be continued after the termination date, according to the Conditions for Insurance, because the Policyholder fails or errors in giving us the necessary data concerning an Insured's termination.

CERTIFICATES. We will issue certificates to the Policyholder showing the coverage under the policy. The Policyholder will distribute a certificate to each insured Member. If the terms of the certificate differ from the policy, the terms stated in the policy will govern.

PARTICIPATION REQUIREMENTS. There are two requirements that must be met in order for the policy to be placed in force, and to remain in force:

a. a certain percentage of all Members qualified for insurance must be insured at all times; and

b. a certain number of Members must be insured at all times.

The Participation Requirements are as follows:

Percentage of Members-	20%
Number of Members-	5279

TERMINATION OF THE POLICY. The Policyholder may terminate this policy as of any Premium Due Date by giving us written notice before that date.

We may terminate this policy on the earlier of:

1. any Premium Due Date if the participation of Insureds and/or Dependents does not meet the requirements in "Conditions For Insurance." Written notice of termination of insurance must be given to the Policyholder at least 45 days before the date of termination.

2. any Premium Due Date on or after the first policy year, for reasons other than lack of participation. Written notice of termination of insurance must be given to the Policyholder at least 60 days before the date of termination.

If any premium is not paid when due, this policy will automatically be terminated as of the Premium Due Date, except as stated below.

GRACE PERIOD. This policy has a 60 day grace period. This means that if a renewal premium is not paid on or before the date it is due, it may be paid during the following 60 days. During the grace period, the policy will stay in force. If the Policyholder has not sent us a written request to terminate the policy and a premium is not paid by the end of the grace period, the policy will terminate at the end of the grace period. If the Policyholder gives us written notice of termination before the Premium Due Date, the policy will be terminated as of the date requested. The Policyholder will be liable for any unpaid premium for the time this policy was in force, including the grace period.

CONSIDERATION. This policy is issued to the Policyholder in consideration of the application and the payment of premiums specified in this policy.

TERMS AND CONDITIONS. Payment of any benefit under this policy is subject to the definitions and all other terms of this policy pertinent to the benefit.

CLAIMS REVIEW PROCEDURES
APPLICABLE TO THE GROUP Dental INSURANCE PLAN
SPONSORED BY TEXAS RETIRED TEACHERS ASSOCIATION

The following provides information regarding the claims review process and your rights to request a review of any part of a claim that is denied. Please note that certain state laws may also require specified claims payment procedures as well as internal appeal procedures and/or independent external review processes. Therefore, in addition to the review procedures defined below, you may also have additional rights provided to you under state law. If your state has specific grievance procedures, an additional notice specific to your state will also be included within the group policy and your certificate.

CLAIMS FOR BENEFITS

Claims may be submitted by mailing the completed claim form along with any requested information to:

Ameritas Life Insurance Corp.
PO Box 82520
Lincoln, NE 68501

NOTICE OF DECISION OF CLAIM

We will evaluate your claim promptly after we receive it.

Dental Utilization Review Program. Generally, utilization review means a set of criteria designed to monitor the use of, or evaluate the medical necessity, appropriateness, or efficiency of health care services. We have established a utilization review program to ensure that any guidelines and criteria used to evaluate the medical necessity of a health care service are clearly documented and include procedures for applying such criteria based on the needs of the individual patients. The program was developed in conjunction with licensed dentists and is reviewed at least annually to ensure that criteria are applied consistently and are current with dental technology, evidence-based research and any dental trends.

We will provide you written notice regarding the payment under the claim within 30 calendar days following receipt of the claim. This period may be extended for an additional 15 days, provided that we have determined that an extension is necessary due to matters beyond our control, and notify you, prior to the expiration of the initial 30-day period, of the circumstances requiring the extension of time and the date by which we expect to render a decision. If the extension is due to your failure to provide information necessary to decide the claim, the notice of extension shall specifically describe the required information we need to decide the claim.

If we request additional information, you will have 45 days to provide the information. If you do not provide the requested information within 45 days, we may decide your claim based on the information we have received.

If we deny any part of your claim, you will receive a written notice of denial containing:

a. The reasons for our decision.
b. Reference to the parts of the Group Policy on which our decision is based.
c. Reference to any internal rule or guideline relied upon in making our decision, along with your right to receive a copy of these guidelines, free of charge, upon request.
d. A statement that you may request an explanation of the scientific or clinical judgment we relied upon to exclude expenses that are experimental or investigational, or are not necessary or accepted according to generally accepted standards of Dental practice.
e. A description of any additional information needed to support your claim and why such information is necessary.
f. Information concerning your right to a review of our decision.

APPEAL PROCEDURE

If all or part of a claim is denied, you may request a review in writing within 180 days after receiving notice of the benefit denial.

You may send us written comments or other items to support your claim. You may review and receive copies of any non-privileged information that is relevant to your appeal. There will be no charge for such copies. You may request the names of the experts we consulted who provided advice to us about your claim.

We will conduct the appeal review provided the person conducting the review will be someone other than the person who denied the initial claim and will not be subordinate to that person. The person conducting the review will not give deference to the initial denial decision. If the denial was based in whole or in part on a medical judgment, including determinations with regard to whether a service was considered experimental, investigational, and/or not medically necessary, the person conducting the review will consult with a qualified health care professional. This health care professional will be someone other than the person who made the original judgment and will not be subordinate to that person. Our review will include any written comments or other items you submit to support your claim.

We will review your claim promptly after we receive your request.

If your appeal is about urgent care, you may call Toll Free at 877-897-4328, and an Expedited Review will be conducted. Verbal notification of our decision will be made within 72 hours, followed by written notice within 3 calendar days after that.

If your appeal is about benefit decisions related to clinical or medical necessity, a Standard Consultant Review will be conducted. A written decision will be provided within 30 calendar days of the receipt of the request for appeal.

If your appeal is about benefit decisions related to coverage, a Standard Administrative Review will be conducted. A written decision will be provided within 60 calendar days of the receipt of the request for appeal.

If we deny any part of your claim on review, you will receive a written notice of denial containing:

a. The reasons for our decision.
b. Reference to the parts of the Group Policy on which our decision is based.
c. Reference to any internal rule or guideline relied upon in making our decision along with your right to receive a copy of these guidelines, free of charge, upon request.
d. Information concerning your right to receive, free of charge, copies of non-privileged documents and records relevant to your claim.
e. A statement that you may request an explanation of the scientific or clinical judgment we relied upon to exclude expenses that are experimental or investigational, or are not necessary or accepted according to generally accepted standards of Dental practice.

Certain state laws also require specified internal appeal procedures and/or external review processes. In addition to the review procedures defined above, you may also have additional rights provided to you under state law. Please review your certificate for such information, call us, or contact your state insurance regulatory agency for assistance.

Any request for appeal should be directed to:

Quality Control, P.O. Box 82657, Lincoln, NE 68501-2657.

Application is Hereby Made to

AMERITAS LIFE INSURANCE CORP.

by: TEXAS RETIRED TEACHERS ASSOCIATION

whose main office address is: %ASSOCIATION MEMBER BENEFITS ADVISORS
6034 W COURTYARD DR STE 300
AUSTIN, TX 78730-5035

for Group Policy No. 10-350489

This group policy is hereby approved. Its terms are hereby accepted.

This Acceptance Application is made in duplicate. One is attached to the policy. The other part has been returned to the Company.

It is agreed that this application supersedes any previous application for the group policy.

TEXAS RETIRED TEACHERS ASSOCIATION

(Full or Corporate Name of Applicant)

Dated at________________________ By ____
(Signature and Title)

On _____________________, 20___ Witness____
(To be signed by Resident Agent where required by law)

This copy is to remain Attached to the Policy

Exhibit G

VSP Vision Care

June 21, 2021

Andrew Weber
Kelly, Hart & Hallman
303 COLORADO STREET, SUITE 2000
AUSTIN, TEXAS 78701
TELEPHONE (512) 495-6411
FAX (512) 495-6401
andrew.weber@kellyhart.com

Dear Mr. Weber,

This letter is in response to your request for information from Vision Service Plan ("VSP") regarding the Associated Member Benefits Association ("AMBA") Plan, specifically the data regarding members of the Texas Retired Teachers Association ("TRTA").

I regret to inform you that VSP cannot provide the information that has been requested. While TRTA members do receive VSP benefits, AMBA has entered into contract with VSP for the provision of these benefits. As part of its contractual obligations, VSP has agreed to keep confidential all information concerning the medical, personal, financial or business affairs of Covered Persons acquired by VSP in the course of providing Plan Benefits. The request in your letter of June 18 for data regarding members coverage, social security numbers, dependent information, etc., clearly falls under this category of protected information. Disclosure of this information is expressly prohibited under our agreement with AMBA.

Furthermore, the data requested in your letter is information that relates to the provision of healthcare and the payment for that healthcare and is considered Protected Health Information ("PHI") under HIPAA. As a Covered Entity under HIPAA, VSP bears the responsibility and liability for protection of the PHI that it receives from its clients. Disclosing the PHI transmitted to VSP by AMBA to a third party would not be permissible under the HIPAA privacy rule..

For the reasons herein, VSP declines to provide the data requested in your letter of June 18.

Thank you,
Jennie Johnson
Corporate Counsel
Vision Service Plan
3333 Quality Drive
Rancho Cordova, CA 95670
jennjo@vsp.com

Exhibit H

ASSOCIATION DENTAL INSURANCE MARKETING AND ADMINISTRATION AGREEMENT

THIS AGREEMENT made and entered into this 14th day of May, 2004, by and between the Texas Retired Teachers Association, hereinafter referred to as the **"TRTA"**, acting for the benefit of its membership, and **Association Member Benefits Advisors, LTD.** hereinafter referred to as **"AMBA."**

WITNESSETH:

IN CONSIDERATION OF the appointment of **AMBA** by **TRTA** as its agent of record and third party administrator for dental insurance programs, developed by **AMBA,** to be offered to members of **TRTA**, **AMBA** hereby agrees to furnish individual members of **TRTA** the items and/or services listed in Exhibit A attached hereto and made a part hereof and on the terms and conditions included therein. **TRTA** agrees to the provisions therein and both parties agree to the terms included in Exhibit B attached hereto and made a part hereof.

It is expressly understood by both parties hereto that the terms of this Agreement shall be on an exclusive basis.

1. **AMBA** acknowledges that **TRTA** is not licensed as, and therefore cannot act as, an insurance agent or third party administrator in the state of Texas. Consequently, **AMBA** acknowledges that **TRTA** shall not be involved in any insurance agent-type activity including, but not limited to, the following: processing of applications; providing proposals or quotations of rates; countersigning or delivering policies; examining or inspecting risks; receiving, collecting or transmitting premiums; or soliciting insurance. AMBA agrees to indemnify and hold harmless all TRTA officers and staff for any of its actions under this Agreement, including but not limited to ALL lawsuits under state or federal laws or arbitrations regarding its omissions, negligence, failure to act in good faith and fair dealing. Should a lawsuit be filed against TRTA as a result of this agreement, AMBA shall be responsible for any and all attorney fees and any/all other costs associated with said action.

Acknowledged and agreed to this 14th day of May, 2004.

TEXAS RETIRED TEACHERS ASSOCIATION

Linda de los Santos

Linda de los Santos, Interim Executive Director

ASSOCIATION MEMBER BENEFITS ADVISORS, Ltd.

Jerry Morgan, President

EXHIBIT A

AMBA AGREES TO:

1. Market and administer a TRTA "Members Only" Dental insurance policy to TRTA members and potential members.

2. Conduct an initial open enrollment for all TRTA members. Also, AMBA will conduct subsequent annual open enrollments for TRTA members who are not participating in the dental insurance program.

3. Provide individual dental insurance to all TRTA employees at an annual cost of $5.00 per TRTA employee.

4. Periodically, and not less often than every 36 months, AMBA will request proposals from other dental insurance carriers to insure that TRTA members are receiving the most benefit rich plans available.

5. Create custom materials and distribute to all school business officials state-wide in an effort to brand TRTA with the benefits staff at Texas school districts.

6. AMBA shall not mail any materials/communications associated with this plan/program without first receiving written approval from TRTA and will coordinate its enrollment activities with TRTA.

7. Promote TRTA memberships by marketing the "Members Only" dental plan. Memberships will be forwarded to TRTA within 10 days of receipt.

8. Resolve any member complaints within 72 hours and provide a written response to TRTA. Establish an arbitration committee to handle any non-resolved complaints.

Acknowledged and agreed to this 14th day of May, 2004.

TEXAS RETIRED TEACHERS ASSOC.

Linda de los Santos

Linda de los Santos, Interim Exec. Director

ASSOC. MEMBER BENEFITS ADVISORS, Ltd

Jerry Morgan, President

EXHIBIT B

TRTA AGREES TO:

1. Provide AMBA with annual endorsement letters signed by the President and/or Executive Director.

2. Provide AMBA with a double exhibit booth space at the TRTA Annual Convention at no charge.

3. Provide AMBA with the TRTA membership list and any potential member list for the mailings of announcements and promotion of the endorsed policies allowing TRTA reasonable time to prepare such list(s).

4. Include information regarding the endorsement in each TRTA Newsletter.

5. Designate AMBA as the exclusive agent of record and third party administrator for any and all dental insurance programs developed for TRTA by AMBA. In the absence of a material breach of fiduciary duty or failure to adhere to the principals of the Insurance Marketplace Standards Association, AMBA shall remain the agent of record and third party administrator for the TRTA dental insurance plan, developed by AMBA, for the duration of its existence.

6. Upon AMBA's request, furnish notifications to carriers of AMBA's designation as TRTA's permanent agent of record and/or third party administrator for dental insurance programs developed by AMBA for members of TRTA.

Acknowledged and agreed to this 14th day of May, 2004.

TEXAS RETIRED TEACHERS ASSOCIATION

Linda de los Santos

Linda de los Santos, Interim Executive Director

ASSOCIATION MEMBER BENEFITS ADVISORS, Ltd.

Jerry Morgan, President

AMENDMENT NUMBER 1 to the Association Dental Insurance Marketing and Administration Agreement dated May 14th, 2004, by and between the Texas Retired Teachers Association and Association Member Benefits Advisors, Ltd

This Amendment Number 1 to the Agreement dated May 14th, 2004, by and between the Texas Retired Teachers Association (TRTA) and Association Member Benefits Advisors, Ltd (AMBA) is to be effective 19 of April 2005.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, and with the intent to be legally bound hereby, the parties agree as follows:

This agreement is amended to read as follows:

A. TRTA agrees to appoint AMBA as the third party administrator and agent of record for the TRTA Group Vision Plan.

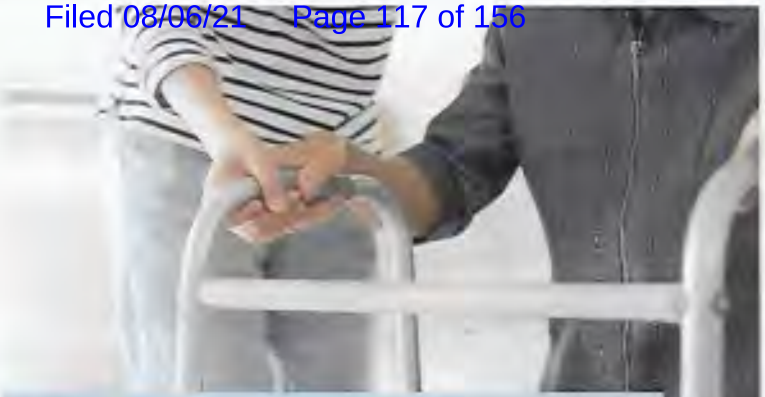
Except as modified by this Amendment Number 1, the Agreement dated May 14th, 2004 shall continue in full force and effect according to its terms and conditions.

This Amendment Number 1 may be executed in multiple counterparts, each of which shall constitute the original. Executed on the 19 day of April 2005, to be effective on 4-1 2005.

Texas Retired Teachers Association	**Association Member Benefits Advisors**
Timothy Lee, Executive Director	Jerry Morgan, President

Exhibit I

TEXAS RETIRED EDUCATORS ALLIANCE



3038***************AUTO**5-DIGIT 76504
Shirley Boyd
3714 Iroquois Trl
Temple TX 76504-5032

GET THE CARE YOU'VE SPENT YOUR WHOLE LIFE EARNING.

Dear Shirley,

We know how important it is to be able to decide where you'd like to receive care while in recovery. Whether you would rather recover at home, in an assisted living facility, or in a nursing home, you deserve the right to choose.

Members of Texas Retired Educators Alliance (TREA) may be entitled to a home care and recovery care plan underwritten by Continental Life Insurance Company of Brentwood, Tennessee, an Aetna company. Designed as an affordable solution, these plans may give you the flexibility you need to determine what type of care is right for you and where you will receive it.

Health care costs associated with hospital stays and at-home or nursing facility recovery can be steep, which is why you should consider all your options. This plan can:

- ✓ **Help manage your everyday expenses**
- ✓ **Pay benefits directly to you (or your designated medical provider)**
- ✓ **Pay in addition to any other health care coverage you may have**

We care deeply about our members, so we want to refer you to our trusted partner, Association Member Benefits Advisors (AMBA). Their licensed agents can review these coverage options with you.

Call AMBA today at (877)-698-2782 to see how affordable coverage can be!

Sincerely,

Eileen Philbin
TREA Executive Director

CLIAMBALTC202102

Continental Life Insurance Company of Brentwood, Tennessee is not affiliated with or endorsed by the U.S. Government, the Federal Medicare Program, or the Centers for Medicare and Medicaid Services. This is a solicitation insurance and an insurance agent or insurance company may contact you. Short-Term Care Nursing Facility Confinement Insurance is not Medicare Supplement insurance nor is it a substitute for Medicare Supplement insurance. If you are eligible for Medicare, please read the Guide to Health Insurance for People with Medicare available from the Company.

This is not a contract of insurance. For complete details of all provisions or benefits, please read the policy carefully. Policy Plans are underwritten by Continental Life Insurance Company of Brentwood, Tennessee. Limitations and Exclusions do apply; actual policy provisions will control. Rates are subject to change on a class basis and the information provided by you. Submission of an application to determine eligibility is required. Product availability, benefits, and rates may vary by state. An Outline of Coverage is available upon request. These supplemental policies do not provide comprehensive health (major medical) insurance. THIS IS A LIMITED BENEFIT POLICY.

Continental Life Insurance Company of Brentwood, Tennessee * 1021 Reams Fleming Boulevard, Franklin, TN 37064 * (800) 264-4000

NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES

BUSINESS REPLY MAIL
FIRST-CLASS MAIL PERMIT NO. 5435 AUSTIN TX

POSTAGE WILL BE PAID BY ADDRESSEE

ASSOCIATION MEMBER BENEFITS ADVISORS
6034 W COURTYARD DR STE 300
AUSTIN TX 78730-9905

I WANT TO RECEIVE HOME HEALTH CARE INFORMATION

I would like to receive information on the following benefits:

- ☐ Review My Benefits
- ☐ Home Health Care
- ☐ Cancer, Heart & Stroke Policy
- ☐ Medicare Solutions
- ☐ Long-Term Care
- ☐ Tax Deferred Annuity
- ☐ MASA (Air & Ground Ambulance Plan)
- ☐ Dental & Vision Insurance
- ☐ Life Insurance

Name ______ Phone ( )______

Address ______ City ______

State ______ Zip ______ County ______

Email ______

*You may be contacted by a licensed insurance representative. Limitations and exclusions apply. Please refer to policy details upon further inquiry. Some benefits are not available in every state or to every association.

AMBA
ASSOCIATION MEMBER BENEFITS ADVISORS

Exhibit J

Office of the Secretary of State
Corporations Section
P.O. Box 13697
Austin, Texas 78711-3697
(Form 503)

Filed in the Office of the Secretary of State of Texas
Filing #: 101960301 4/22/2021
Document #: 1045166020002
Image Generated Electronically for Web Filing

ASSUMED NAME CERTIFICATE
FOR FILING WITH THE SECRETARY OF STATE

1. The assumed name under which the business or professional service is or is to be conducted or rendered is:

Texas Retired Educators Alliance

2. The name of the entity as stated in its certificate of formation, application for registration, or comparable document is:

American Senior Benefits Association

3. The state, country, or other jurisdiction under the laws of which it was incorporated, organized or associated is **TEXAS**

4. The period, not to exceed 10 years, during which the assumed name will be used is : **04/22/2031**

5. The entity is a : **Domestic Nonprofit Corporation**

6. The entity's principal office address is:

8770 W Bryn Mawr Suite 1300, Chicago, IL, USA 60631

7. The county or counties where business or professional services are being or are to be conducted or rendered under such assumed name are:

ALL COUNTIES

8. The undersigned, if acting in the capacity of an attorney-in-fact of the entity, certifies that the entity has duly authorized the attorney-in-fact in writing to execute this document. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

American Senior Benefits Association
Name of the entity

By: **Eileen Philbin**

Signature of officer, general partner, manager, representative or attorney-in-fact of the entity

FILING OFFICE COPY

Exhibit K

Form 802 (Revised 08/12)	Periodic Report of a Nonprofit Corporation	
Submit in duplicate to: Secretary of State Reports Unit P.O. Box 12028 Austin, TX 78711-2028 Phone: (512) 475-2705 FAX: (512) 463-1423 *Dial: 7-1-1 for Relay Services* **Filing Fee: See Instructions**		Th

FILED
In the Office of the
Secretary of State of Texas
MAR 0 2 2015
Corporations Section

File Number: 101960301

1. The name of the corporation is: *(A name change requires an amendment; see Instructions)*

American Senior Benefits Association

2. It is incorporated under the laws of: (Set forth state or foreign country) Texas

3. The name of the registered agent is:

☐ A. The registered agent is a corporation (cannot be entity named above) by the name of:

OR

☑ B. The registered agent is an individual resident of the state whose name is:

Ernest		Giambra	
First Name	*M.I.*	*Last Name*	*Suffix*

4. The registered office address, which is identical to the business address of the registered agent in Texas, is:
(Only use street or building address; see Instructions)

10812 Enclave Vista Cove	Austin	TX	78730
Street Address	*City*	*State*	*Zip Code*

5. If the corporation is a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated is:

Street or Mailing Address	*City*	*State*	*Zip Code*	*Country*

6. The names and addresses of all directors of the corporation are: (A minimum of three directors is required.)
(If additional space is needed, include the information as an attachment to this form for item 6.)

Bill	B	Hill		Sr
First Name	*MI*	*Last Name*		*Suffix*
8770 W Bryn Mawr Suite 1300	Chicago	IL	60631	
Street or Mailing Address	*City*	*State*	*Zip Code*	*Country*
Olga		Benegas		
First Name	*MI*	*Last Name*		*Suffix*
8770 W Bryn Mawr Suite 1300	Chicago	IL	60631	
Street or Mailing Address	*City*	*State*	*Zip Code*	*Country*
Eileen		Philbin		
First Name	*MI*	*Last Name*		*Suffix*
8770 W Bryn Mawr Suite 1300	Chicago	IL	60631	
Street or Mailing Address	*City*	*State*	*Zip Code*	*Country*

7. The names, addresses, and titles of all officers of the corporation are: (The offices of president and secretary must be filled, but both may not be held by the same officer.)

(If additional space is needed, include the information as an attachment to this form for item 7.)

First Name	MI	Last Name	Suffix	Officer Title
Bill	B	Hill	Sr	President
Eileen		Philbin		Secretary

Street or Mailing Address	City	State	Zip Code	Country
8770 W Bryn Mawr	Chicago	IL	60631	USA
8770 W Bryn Mawr	Chicago	IL	60631	USA

Execution:

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: February 24, 2015

Eileen Mahoney Philbin

Signature of authorized officer

Exhibit L

TEXAS RETIRED EDUCATORS ALLIANCE

American Senior Benefits Association

USPTO Trademarks (https://uspto.report/TM/) ›
/ American Senior Benefits Association (https://uspto.report/company/American-Senior-Benefits-Association)
› / Texas Retired Educators Alliance Application #90758278 (https://uspto.report/TM/90758278/)

Application Filed: 2021-06-07 (2021-06-07)

Trademark Application Details

The mark consists of a circle with the words Texas Retired Educators Alliance written in it, and two dots at the left and right mid-points. Inside the circle is a map of the state of Texas, shaded with diagonal lines, and a star located in the left-half of the state.

Mark For: TEXAS RETIRED EDUCATORS ALLIANCE™ trademark registration is intended to cover the categories of administration of a discount program for enabling members of an association to obtain discounts on merchandise and air travel; Administration of a program for enabling participants to obtain discounts on products and services;

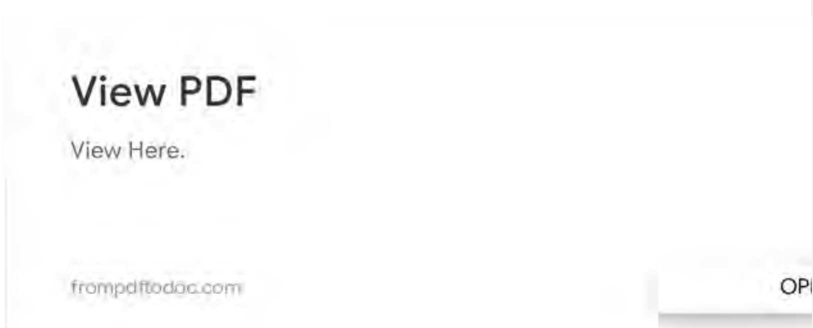
Show All

Status

2021-06-10 UTC

⟳ Refresh (/TM/90758278/refresh)

LIVE APPLICATION Awaiting Examination



The trademark application has been accepted by the Office (has met the minimum filing requirements) and has not yet been assigned to an examiner.

Research	(https://en.wikipedia.org/w/index.php?search=%22TEXAS+RETIRED+EDUCATORS+ALLIANCE%22) (https://twitter.com/search?q=%22TEXAS+RETIRED+EDUCATORS+ALLIANCE%22) (https://nitter.domain.glass/search?f=tweets&q=%22TEXAS+RETIRED+EDUCATORS+ALLIANCE%22) (https://translate.google.com/#view=home&op=translate&sl=auto&tl=en&text=TEXAS+RETIRED+EDUCATORS+ALLIANCE) (https://www.wolframalpha.com/input/?i=TEXAS+RETIRED+EDUCATORS+ALLIANCE) OneLook (https://www.onelook.com/?w=TEXAS+RETIRED+EDUCATORS+ALLIANCE) Acronym Finder (https://www.acronymfinder.com/~/search/af.aspx?Acronym=TEXAS+RETIRED+EDUCATORS+ALLIANCE&string=exact)
Serial Number	90758278
Mark Literal Elements	TEXAS RETIRED EDUCATORS ALLIANCE
Mark Drawing Type	-
Mark Type	Service Mark
Standard Character Claim	No
Current Location	NEW APPLICATION PROCESSING 2021-06-10
Basis	1(b)
Class Status	ACTIVE
Primary US Classes	100: Miscellaneous 101: Advertising and Business 102: Insurance and Financial
Primary International Class	035 - Primary Class (Advertising and business) Advertising; business management; business administration; office functions.
Filed Use	No
Current Use	No
Intent To Use	Yes
Filed ITU	Yes
44D Filed	No
44E Current	No
66A Current	No
Current Basis	No

No Basis	No
Attorney Name	Eric Adler

Timeline

2021-06-07	Application Filed
2021-06-10	Location: NEW APPLICATION PROCESSING
2021-06-10	Status: Live/Pending
2021-06-10	Status: New application will be assigned to an examining attorney approximately 3 months after filing date.
2021-06-10	Transaction Date

Trademark Parties (Applicants & Owners)

Party:	American Senior Benefits Association (/company/American-Senior-Benefits-Association)
Address	8770 W Bryn Mawr, Suite 1300 Chicago, ILLINOIS UNITED STATES 60631
Legal Entity Type	Non-profit Corporation
Legal Entity State	TEXAS

Documents

Application (/TM/90758278 /APP20210610095305/)	MULTI	2021-06-07
Drawing (/TM/90758278 /DRW20210610095305/)	JPEG	2021-06-07

(/TM/90758278/APP20210610095305#2)

(/TM/90758278/DRW20210610095305#1)

Attorney of Record

ERIC ADLER
EGAN NELSON LLP
221 W 6TH ST. STE 900
AUSTIN, TX 78701

Good, Services, and Codes

International Codes:	35
U.S. Codes:	100,101,102
International Codes:	36
U.S. Codes:	100,101,102
International Codes:	41
U.S. Codes:	100,101,107

Type Code	Type

DM0000	The mark consists of a circle with the words Texas Retired Educators Alliance written in it, and two dots at the left and right mid-points. Inside the circle is a map of the state of Texas, shaded with diagonal lines, and a star located in the left-half of the state.

Trademark Filing History

Description	Date	Proceeding Number
NEW APPLICATION ENTERED IN TRAM	2021-06-10	

Similar Marks

Mark Image Registration | Serial	Company	Trademark Application Date
90758278 not registered Live/Pending (/TM/90758278)	American Senior Benefits Association (/TM/90758278)	2021-06-07
Texas Retired Educators Alliance (/TM/90758267) 90758267 not registered Live/Pending	American Senior Benefits Association (/TM/90758267)	2021-06-07

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Andrew Weber
Bar No. 797641
andrew.weber@kellyhart.com
Envelope ID: 55216028
Status as of 7/12/2021 1:33 PM CST

Associated Case Party: Association Member Benefits Advisors, Ltd.

Name	BarNumber	Email	TimestampSubmitted	Status
Donald Taylor		don@taylorthuss.com	7/9/2021 4:37:25 PM	SENT
Natalie Taylor		natalie@taylorthuss.com	7/9/2021 4:37:25 PM	SENT

Associated Case Party: Texas Retired Teachers Association

Name	BarNumber	Email	TimestampSubmitted	Status
Ofelia Williamson		ofelia.williamson@kellyhart.com	7/9/2021 4:37:25 PM	SENT
Jason Nash		jason.nash@kellyhart.com	7/9/2021 4:37:25 PM	SENT
Jeff Whitfield		jeff.whitfield@kellyhart.com	7/9/2021 4:37:25 PM	SENT
Michael D.Anderson		michael.anderson@kellyhart.com	7/9/2021 4:37:25 PM	SENT
J. StephenRavel		steve.ravel@kellyhart.com	7/9/2021 4:37:25 PM	SENT
Janet Atwood		janet.atwood@kellyhart.com	7/9/2021 4:37:25 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Tamara Boston		tamara@taylorthuss.com	7/9/2021 4:37:25 PM	SENT

7/15/2021 2:34 PM
Velva L. Price
District Clerk
Travis County
D-1-GN-21-002956
Chloe Jimenez

KELLY HART

ANDREW WEBER
andrew.weber@kellyhart.com

TELEPHONE: (512) 495-6451
FAX: (512) 495-6400

July 15, 2021

VIA EFILE TEXAS
Velva L. Price
Travis County District Court Clerk
1000 Guadalupe St.
Austin, TX 78701

Re: *Association Member Benefits Advisors, Ltd. v. Texas Retired Teachers Association, Trident Benefits & Consulting, LLC, Marcos Jose Vela, Cas M. Sharp, Entrust, LLC d/b/a 90 Degree Benefits*; Cause No. D-1-GN-21-002956, 459th Judicial District

Request for Issuance of Citation

Dear Ms. Price:

Defendant/Counter-Plaintiff Texas Retired Teachers Association's Verified Original Counterclaim Petition and Application for Injunctive Relief was filed on July 9, 2021, which we wish to serve on American Senior Benefits Association ("ASBA") .

As such, please allow this letter to serve as a formal request that a citation be issued in this matter to Third-Party Defendant American Senior Benefits Association (ASBA), c/o registered agent Corporate Creations Network, Inc., 5444 Westheimer, #1000, Houston, Texas 77056, for the Defendant/Counter-Plaintiff Texas Retired Teachers Association's Verified Original Counterclaim Petition and Application for Injunctive Relief.

Once the citation has been issued, please email same to my paralegal, Janet Atwood, via email at janet.atwood@kellyhart.com, as the citation will be served via private process server.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me at the number listed above.

Sincerely,

/s/ Andrew Weber

Andrew Weber

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Andrew Weber
Bar No. 797641
andrew.weber@kellyhart.com
Envelope ID: 55387837
Status as of 7/16/2021 4:06 PM CST

Associated Case Party: Association Member Benefits Advisors, Ltd.

Name	BarNumber	Email	TimestampSubmitted	Status
Donald Taylor		don@taylorthuss.com	7/15/2021 2:34:33 PM	SENT
Natalie Taylor		natalie@taylorthuss.com	7/15/2021 2:34:33 PM	SENT

Associated Case Party: Texas Retired Teachers Association

Name	BarNumber	Email	TimestampSubmitted	Status
Ofelia Williamson		ofelia.williamson@kellyhart.com	7/15/2021 2:34:33 PM	SENT
Jason Nash		jason.nash@kellyhart.com	7/15/2021 2:34:33 PM	SENT
Jeff Whitfield		jeff.whitfield@kellyhart.com	7/15/2021 2:34:33 PM	SENT
Michael D.Anderson		michael.anderson@kellyhart.com	7/15/2021 2:34:33 PM	SENT
J. StephenRavel		steve.ravel@kellyhart.com	7/15/2021 2:34:33 PM	SENT
Janet Atwood		janet.atwood@kellyhart.com	7/15/2021 2:34:33 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Tamara Boston		tamara@taylorthuss.com	7/15/2021 2:34:33 PM	SENT

CAUSE NO. D-1-GN-21-002956

ASSOCIATION MEMBER BENEFITS ADVISORS, LTD.,	§	**IN THE DISTRICT COURT**
Plaintiff,	§	
v.	§	
TEXAS RETIRED TEACHERS ASSOCIATION, TRIDENT BENEFITS & CONSULTING, LLC, MARCOS JOSE VELA, CAS M. SHARP, ENTRUST, LLC d/b/a 90 DEFREE BENEFITS,	§	**TRAVIS COUNTY, TEXAS**
Defendants.	§	**459TH JUDICIAL CIRCUIT**

DEFENDANTS TRIDENT BENEFITS & CONSULTING, LLC, MARCOS JOSE VELA, AND CAS M. SHARP'S ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES

Defendants Trident Benefits & Consulting, LLC, Marcos Jose Vela, and Cas M. Sharp (collectively, "Defendants") file this Original Answer and Affirmative Defenses to the Verified Original Petition, Application for Temporary Restraining Order, Application for Temporary Injunction and Permanent Injunction (the "Original Petition") filed by Plaintiff Association Member Benefits Advisors, Ltd., and state as follows:

GENERAL DENIAL

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendants generally deny each and every allegation and claim set forth in Plaintiff's Original Petition, and demand strict proof thereof.

AFFIRMATIVE DEFENSES

Without assuming the burden of proof where it otherwise rests with Plaintiff, Defendants plead the following defenses to Plaintiff's Original Petition. Defendants reserve the right to plead additional defenses at such time and to such extent as warranted by discovery and the factual developments in this case.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims fail or otherwise are barred, in whole or in part, or limited by the legal defense of justification, excuse, or privilege.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims fail or otherwise are barred, in whole or in part, or limited by the doctrine of unclean hands.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims fail or otherwise are barred, in whole or in part, or limited by the doctrines of estoppel, waiver, and/or laches.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims fail or otherwise are barred, in whole or in part, or limited as a result that the contract forming the basis of Plaintiff's claims was, upon information and belief, terminable at will, and, upon information and belief, was terminated prior to the occurrence, if any, of any alleged actions of Defendants set forth in the Original Petition.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims fail or otherwise are barred, in whole or in part, or limited by the applicable statute of limitations period.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims fail or otherwise are barred, in whole or in part, or limited because Defendants engaged in good faith conduct in the occurrence, if any, of any alleged actions of Defendants set forth in the Original Petition.

WHEREFORE, Defendants Trident Benefits & Consulting, LLC, Marcos Jose Vela, and Cas M. Sharp respectfully request the Court to enter judgment that Plaintiff takes nothing by way of the claims asserted in its Original Petition against Defendants, and to enter an order awarding Defendants' their attorneys' fees and costs of suit to the greatest extent permitted by applicable law and such other and further relief as the Courts deems just and proper.

Dated: July 30, 2021

Respectfully submitted,

/s/ Shelby O'Brien
Shelby O'Brien
ENOCH KEVER PLLC
7600 N. Capital of Texas Hwy, Bldg. B, Ste.200
Austin, Texas 78731
Tel: (512) 615-1225
Fax: (512) 615-1198
sobrien@enochkever.com

Lawren A. Zann
(*pro hac vice* admission pending)
GREENSPOON MARDER LLP
200 E. Broward Blvd., Suite 1800
Fort Lauderdale, FL 33301
Tel: (954) 333-4345
Fax: (954) 848-3974
lawren.zann@gmlaw.com
Counsel for Defendants Trident Benefits & Consulting, LLC, Marcos Jose Vela, and Cas M. Sharp

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of July, 2021, a true and correct copy of the foregoing Answer and Affirmative Defenses was served on all counsel of record via the Court's electronic case filing system pursuant to Tex. R. Civ. P. 21(a).

/s/ Shelby O'Brien
Shelby O'Brien

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Brenda Mann on behalf of Shelby O'Brien
Bar No. 24037203
bmann@enochkever.com
Envelope ID: 55867093
Status as of 8/2/2021 3:56 PM CST

Associated Case Party: Trident Benefits & Consulting, LLC

Name	**BarNumber**	**Email**	**TimestampSubmitted**	**Status**
Shelby L.O'Brien		sobrien@enochkever.com	7/30/2021 12:32:56 PM	SENT
Laci Lindsey		llindsey@enochkever.com	7/30/2021 12:32:56 PM	SENT
Lawren A.Zann		lawren.zann@gmlaw.com	7/30/2021 12:32:56 PM	SENT

Associated Case Party: Texas Retired Teachers Association

Name	**BarNumber**	**Email**	**TimestampSubmitted**	**Status**
Jason Nash		jason.nash@kellyhart.com	7/30/2021 12:32:56 PM	SENT
Jeff Whitfield		jeff.whitfield@kellyhart.com	7/30/2021 12:32:56 PM	SENT
Michael D.Anderson		michael.anderson@kellyhart.com	7/30/2021 12:32:56 PM	SENT
Ofelia Williamson		ofelia.williamson@kellyhart.com	7/30/2021 12:32:56 PM	SENT
Janet Atwood		janet.atwood@kellyhart.com	7/30/2021 12:32:56 PM	SENT
J. StephenRavel		steve.ravel@kellyhart.com	7/30/2021 12:32:56 PM	SENT

Case Contacts

Name	**BarNumber**	**Email**	**TimestampSubmitted**	**Status**
Tamara Boston		tamara@taylorthuss.com	7/30/2021 12:32:56 PM	SENT

Associated Case Party: Association Member Benefits Advisors, Ltd.

Name
Donald Taylor
Natalie Taylor
Natalie Taylor

Automated Certificate of eService

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Brenda Mann on behalf of Shelby O'Brien
Bar No. 24037203
bmann@enochkever.com
Envelope ID: 55867093
Status as of 8/2/2021 3:56 PM CST

Associated Case Party: Association Member Benefits Advisors, Ltd.

Donald Taylor		don@taylorthuss.com	7/30/2021 12:32:56 PM	SENT

CAUSE NO. D-1-GN-21-0002956

ASSOCIATION MEMBER BENEFITS ADVISORS, LTD.,	§	**IN THE DISTRICT COURT**
Plaintiff,	§	
v.	§	
TEXAS RETIRED TEACHERS ASSOCIATION, TRIDENT BENEFITS & CONSULTING, LLC, MARCOS JOSE VELA, CAS M. SHARP, ENTRUST, LLC d/b/a 90 DEFREE BENEFITS,	§	**TRAVIS COUNTY, TEXAS**
Defendants.	§	**459TH JUDICIAL CIRCUIT**

SWORN UNOPPOSED MOTION FOR *PRO HAC VICE* ADMISSION OF ATTORNEY LAWREN A. ZANN

Pursuant to Rule 19 of the Texas Rules Governing Admission to the Bar, Lawren A. Zann respectfully submits this unopposed motion for admission to practice *pro hac vice* as counsel for Defendants Trident Benefits & Consulting, LLC, Marcos Jose Vela, and Cas M. Sharpe in the foregoing matter, and in support thereof states as follows:

1. Mr. Zann is a partner at Greenspoon Marder LLP and an active member in good standing of the bar of the state of Florida who is licensed by the Supreme Court of Florida to practice law in the state of Florida under Florida Bar No. 42997. Mr. Zann is also admitted to practice in the U.S. District Courts for the Southern District of Florida, the Middle District of Florida, and the District of Colorado. A copy of Mr. Zann's certificate of good standing in the state of Florida is attached hereto as **Exhibit A**.

2. Mr. Zann maintains an office in the state of Florida for the practice of law at 200 East Broward Boulevard, Suite 1800, Fort Lauderdale, FL 33301. His telephone number is (954)

333-4345, his facsimile number is (954) 848-3974, and his email address is lawren.zann@gmlaw.com.

3. Mr. Zann has not appeared or sought leave to appear or participate in any cases or causes in Texas courts within the past two (2) years.

4. Mr. Zann has not been the subject of disciplinary action by any Bar or courts of any jurisdiction in which Mr. Zann is licensed within the preceding five (5) years.

5. Mr. Zann has not been denied admission to the courts of any State or to any federal court during the preceding five (5) years.

6. In accordance with Rule 19, Mr. Zann designates Shelby O'Brien of the law firm Enoch Kever PLLC to serve as co-counsel in this matter and to whom the Court and opposing counsel may readily communicate regarding the conduct of the case. Ms. O'Brien is an active member in good standing of the bar of the state of Texas who is licensed by the Supreme Court of Texas to practice law in the state of Texas under Texas Bar No. 24037203. Pursuant to Rule 19(b), Ms. O'Brien's motion in support of this Sworn Motion for Admission is being filed contemporaneously with this Sworn Motion for Admission.

7. Ms. O'Brien maintains an office in the state of Texas for the practice of law at 7600 N. Capital of Texas Hwy, Building B, Suite 200. Her telephone number is (512) 615-1225, her facsimile number is (512) 615-1198, and her email address is sobrien@enochkever.com.

8. Mr. Zann is familiar with, and will abide by, the State Bar Act, the State Bar Rules, and the Texas Disciplinary Rules of Professional Conduct.

9. Mr. Zann submitted and paid his $250 non-resident attorney fee to appear in this matter, and received an Acknowledgement Letter from the Board of Law Examiners dated July

15, 2021, reflecting the Boards receipt of the $250 in connection with this matter. A copy of the Acknowledgement Letter is attached hereto as **Exhibit B**.

WHEREFORE, Lawren A. Zann respectfully requests this Honorable Court to permit him to appear *pro hac vice* in the above styled and numbered case on behalf of Defendants Trident Benefits & Consulting, LLC, Marcos Jose Vela, and Cas M. Sharpe.

Dated: July 30, 2021

Respectfully submitted,

/s/ Lawren A. Zann
Lawren A. Zann
Fla. Bar No. 42997
GREENSPOON MARDER LLP
200 E. Broward Blvd., Suite 1800
Fort Lauderdale, FL 33301
Tel: (954) 333-4345
Fax: (954) 848-3974
lawren.zann@gmlaw.com
Counsel for Defendants Trident Benefits & Consulting, LLC, Marcos Jose Vela, and Cas M. Sharp

VERFICATION

STATE OF FLORIDA §
§
COUNTY OF BROWARD §

Before me, the undersigned notary, on this date personally appeared Lawren A. Zann, a person whose identity is known to me. After I administered an oath to him, upon his oath, he stated that the facts stated in the attached Motion for Admission *Pro Hac Vice* are true and correct and within his personal knowledge.

SUBSCRIBED AND SWORN TO BEFORE ME this 30 day of July, 2021.

GABRIELLE OLIVIA MANGAR
Notary Public - State of Florida
Commission # HH 142092
My Comm. Expires Jun 14, 2025
Bonded through National Notary Assn.

Notary Public, State of Florida

CERTIFICATE OF CONFERENCE

I, the undersigned attorney, hereby certify to the Court that I conferred with counsel for all other parties in this case, and they do not oppose the relief sought by this motion.

/s/ Lawren A. Zann
Lawren A. Zann

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30 day of July, 2021, a true and correct copy of the foregoing Motion for Admission Pro Hac Vice was served on all counsel of record via the Court's electronic case filing system pursuant to Tex. R. Civ. P. 21(a).

/s/ Lawren A. Zann
Lawren A. Zann

EXHIBIT A

Supreme Court of Florida

Certificate of Good Standing

I, JOHN A. TOMASINO, Clerk of the Supreme Court of the State of Florida, do hereby certify that

LAWREN ADRIAN ZANN

was admitted as an attorney and counselor entitled to practice law in all the Courts of the State of Florida on **SEPTEMBER 21, 2007**, *is presently in good standing, and that the private and professional character of the attorney appear to be good.*

WITNESS my hand and the Seal of the Supreme Court of Florida at Tallahassee, the Capital, this JULY 12, 2021.

Clerk of the Supreme Court of Florida

EXHIBIT B

Board of Law Examiners

Appointed by the Supreme Court of Texas

July 15, 2021

Lawren A. Zann
Via: E-Mail

Acknowledgment Letter

Non-Resident Attorney Fee

According to Texas Government Code §82.0361, "a nonresident attorney requesting permission to participate in proceedings in a court in this state shall pay a fee of $250 for each case in which the attorney is requesting to participate."

This Acknowledgement Letter serves as proof that the Board of Law Examiners has received $250 in connection with the following matter:

Non-resident attorney: Lawren A. Zann

Case: D-1-GN-002956

Texas court or body: In the District Court in and for Travis County, Texas, 459th Judicial District

After satisfying the fee requirement, a non-resident attorney shall file a motion in the Texas court or body in which the non-resident attorney is requesting permission to appear. The motion shall contain the information and statements required by Rule 19(a) of the Rules Governing Admission to the Bar of Texas. The motion must be accompanied by this Acknowledgment Letter and by a motion from a resident practicing Texas attorney that contains the statements required by Rule 19(b).

The decision to grant or deny a non-resident attorney's motion for permission to participate in the proceedings in a particular cause is made by the Texas court or body in which it is filed.

For more information, please see Rule 19 of the Rules Governing Admission to the Bar of Texas and §82.0361, of the Texas Government Code, which can be found on the Board's website.

Cordially,

Nahdiah Hoang

Nahdiah Hoang
Executive Director

MAILING ADDRESS
Post Office Box 13486
Austin,Texas 78711-3486

TELEPHONE: 512- 463-1621 - FACSIMILE: 512- 463-5300
WEBSITE: www.ble.texas.gov

STREET ADDRESS
205 West 14th Street, Ste.500
Austin, Texas 78701

CAUSE NO. D-1-GN-21-002956

ASSOCIATION MEMBER BENEFITS ADVISORS, LTD.,	§	IN THE DISTRICT COURT
	§	
	§	
Plaintiff,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
TEXAS RETIRED TEACHERS ASSOCIATION, TRIDENT BENEFITS & CONSULTING, LLC, MARCOS JOSE VELA, CAS M. SHARP, ENTRUST, LLC d/b/a 90 DEFREE BENEFITS,	§	
	§	
	§	
	§	
	§	
Defendant.	§	459TH JUDICIAL DISTRICT

MOTION OF RESIDENT PRACTICING TEXAS ATTORNEY IN SUPPORT OF SWORN UNOPPOSED MOTION FOR *PRO HAC VICE* ADMISSION OF ATTORNEY LAWREN A. ZANN

Under Rule 19(b) of the Texas Rules Governing Admission to the Bar, Shelby O'Brien, as a resident practicing Texas attorney, respectfully submits this motion in support of the contemporaneously filed Sworn Unopposed Motion for *ro ac Vice* Admission of Attorney Lawren A. Zann, and further states as follows:

1. Ms. O'Brien is a partner at Enoch Kever PLLC and an active member in good standing of the bar of the state of Texas. She is licensed by the Supreme Court of Texas to practice law in the state of Texas under Texas Bar No. 24037203.

2. Ms. O'Brien maintains an office in the state of Texas for the practice of law at 7600 N. Capital of Texas Hwy, Building B, Suite 200, Austin, Texas 78731. Her telephone number is (512) 615-1225, her facsimile number is (512) 615-1198, and her email address is sobrien@enochkever.com. Accordingly, Mr. O'Brien is a resident practicing Texas attorney.

3. Ms. O'Brien finds Lawren A. Zann to be a reputable attorney and recommends that he be granted permission to participate in the above-styled action before the Court as counsel for Defendants Trident Benefits & Consulting, LLC, Marcos Jose Vela, and Cas M. Sharp.

4. Ms. O'Brien will serve as co-counsel with Mr. Zann in the above-styled action before the Court as counsel for Defendants Trident Benefits & Consulting, LLC, Marcos Jose Vela, and Cas M. Sharp. Accordingly, Ms. O'Brien will be associated with Mr. Zann in the above-styled action before the Court as counsel for Defendants Trident Benefits & Consulting, LLC, Marcos Jose Vela, and Cas M. Sharp.

WHEREFORE, Shelby O'Brien respectfully requests that the Court permit Lawren A. Zann to appear *pro hac vice* in the above-styled and numbered case on behalf of Defendants Trident Benefits & Consulting, LLC, Marcos Jose Vela, and Cas. M. Sharp.

Respectfully submitted,

/s/ Shelby O'Brien

Shelby O'Brien
ENOCH KEVER PLLC
7600 N. Capital of Texas Hwy
Bldg. B, Ste.200
Austin, Texas 78731
Tel: (512) 615-1225
Fax: (512) 615-1198
sobrien@enochkever.com

Counsel for Defendants Trident Benefits & Consulting, LLC, Marcos Jose Vela, and Cas M. Sharp

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 30, 2021, a true and correct copy of the foregoing Motion was served on all counsel of record via the Court's electronic case filing system under Tex. R. Civ. P. 21(a).

/s/ Shelby O'Brien
Shelby O'Brien

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Brenda Mann on behalf of Shelby O'Brien
Bar No. 24037203
bmann@enochkever.com
Envelope ID: 55866782
Status as of 8/4/2021 3:45 PM CST

Associated Case Party: Texas Retired Teachers Association

Name	BarNumber	Email	TimestampSubmitted	Status
Jason Nash		jason.nash@kellyhart.com	7/30/2021 12:26:23 PM	SENT
Jeff Whitfield		jeff.whitfield@kellyhart.com	7/30/2021 12:26:23 PM	SENT
Michael D.Anderson		michael.anderson@kellyhart.com	7/30/2021 12:26:23 PM	SENT
Ofelia Williamson		ofelia.williamson@kellyhart.com	7/30/2021 12:26:23 PM	SENT
J. StephenRavel		steve.ravel@kellyhart.com	7/30/2021 12:26:23 PM	SENT
Janet Atwood		janet.atwood@kellyhart.com	7/30/2021 12:26:23 PM	SENT

Associated Case Party: Association Member Benefits Advisors, Ltd.

Name	BarNumber	Email	TimestampSubmitted	Status
Donald Taylor		don@taylorthuss.com	7/30/2021 12:26:23 PM	SENT
Natalie Taylor		natalie@taylorthuss.com	7/30/2021 12:26:23 PM	SENT
Natalie Taylor		natalie@taylorthuss.com	7/30/2021 12:26:23 PM	SENT
Donald Taylor		don@taylorthuss.com	7/30/2021 12:26:23 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Tamara Boston		tamara@taylorthuss.com	7/30/2021 12:26:23 PM	SENT

Associated Case Party: Trident Benefits & Consulting, LLC

Name
Lawren A.Zann
Shelby L.O'Brien

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Brenda Mann on behalf of Shelby O'Brien
Bar No. 24037203
bmann@enochkever.com
Envelope ID: 55866782
Status as of 8/4/2021 3:45 PM CST

Associated Case Party: Trident Benefits & Consulting, LLC

Laci Lindsey		llindsey@enochkever.com	7/30/2021 12:26:23 PM	SENT

CAUSE NO. D-1-GN-21-002956

ASSOCIATION MEMBER BENEFITS ADVISORS, LTD. *Plaintiffs,*	§	IN THE DISTRICT COURT OF
v.	§	459TH JUDICIAL DISTRICT
TEXAS RETIRED TEACHERS ASSOCATION, TRIDENT BENEFITS & CONSULTING, LLC, MARCOS JOSE VELA, CAS M. SHARP, ENTRUST, LLC d/b/a 90 DEGREE BENEFITS *Defendants*	§	TRAVIS COUNTY, TEXAS

Defendant Entrust, LLC d/b/a 90 Degree Benefits' Original Answer

---

To the Honorable Judge Gamble:

Entrust, LLC d/b/a 90 Degree Benefits (hereinafter "Defendant") files its Original Answer to Plaintiff's Original Petition and in support thereof would show the following:

I. General Denial

As authorized by Rule 92 of the Texas Rules of Civil Procedure, Defendant denies generally the allegations contained in Plaintiff's pleading and demands strict proof of each of the allegations therein.

II. Notice of Intent to Use Unfiled Discovery

Pursuant to Texas Rule of Civil Procedure 193.7, Defendant files its notice of intent to use in any pretrial proceeding and/or at trial of this case any and all documents produced by any party in response to any written discovery.

III.
Notice of Rule 194 Required Disclosures

Pursuant to Amended Rule 194.2 of the Texas Rules of Civil Procedure, Plaintiff is requested to timely provide its required disclosures.

IV.
Prayer

Defendant Entrust, LLC d/b/a 90 Degree Benefits respectfully requests that Plaintiff takes nothing by way of its pleading and such further relief, whether at law or in equity, to which Defendant may show itself justly entitled.

Respectfully submitted,

BROWN SIMS

BY: */s/ H. Miles Klaff*

H. Miles Klaff
Texas Bar No. 24036916
mklaff@brownsims.com
Casey A. Armstrong
Texas Bar No. 24067491
carmstrong@brownsims.com
Robert C. Giasson
Texas Bar No. 24123759
rgiasson@brownsims.com
1177 West Loop South, 10th Floor
Houston, Texas 77027-9007
Telephone: (713) 629-1580
Facsimile: (713) 629-5027

Counsel for Defendant Entrust, LLC d/b/a 90 Degree Benefits

Certificate of Service

I hereby certify that a true and correct copy of the following instrument has been served on all counsel in accordance with Rules 21 and 21a of the Texas Rules of Civil Procedure, on August 5, 2021.

Via E-Service and Email
Donald R. Taylor
Natalie Taylor
TAYLOR THUSS, PLLC
603 West 9th Street,
Austin, Texas 78701
don@taylorthuss.com
natalie@taylorthuss.com

C. Andrew Weber
J. Steven Ravel
KELLY HART & HALLMAN, LLP
303 Colorado Street, Suite 2000
Austin, Texas 78701
andrew.weber@kellyhart.com
steve.ravel@kellyhart.com

Michael D. Anderson
Jason C. Nash
Jeff Whitfield
KELLY HART & HALLMAN, LLP
201 Main Street, Suite 2500
Fort Worth, Texas 76102
michael.anderson@kellyhart.com
jason.nash@kellyhart.com
jeff.whitlock@kellyhart.com

/s/ H. Miles Klaff
H. Miles Klaff

Automated Certificate of eService

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Tamika Francis on behalf of Harry Klaff
Bar No. 24036916
tfrancis@brownsims.com
Envelope ID: 56030652
Status as of 8/5/2021 1:45 PM CST

Associated Case Party: Trident Benefits & Consulting, LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Shelby L.O'Brien		sobrien@enochkever.com	8/5/2021 11:12:08 AM	SENT
Laci Lindsey		llindsey@enochkever.com	8/5/2021 11:12:08 AM	SENT
Lawren A.Zann		lawren.zann@gmlaw.com	8/5/2021 11:12:08 AM	SENT

Associated Case Party: Texas Retired Teachers Association

Name	BarNumber	Email	TimestampSubmitted	Status
Jason Nash		jason.nash@kellyhart.com	8/5/2021 11:12:08 AM	SENT
Jeff Whitfield		jeff.whitfield@kellyhart.com	8/5/2021 11:12:08 AM	SENT
Ofelia Williamson		ofelia.williamson@kellyhart.com	8/5/2021 11:12:08 AM	SENT
Michael D.Anderson		michael.anderson@kellyhart.com	8/5/2021 11:12:08 AM	SENT
Janet Atwood		janet.atwood@kellyhart.com	8/5/2021 11:12:08 AM	SENT
J. StephenRavel		steve.ravel@kellyhart.com	8/5/2021 11:12:08 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Tamara Boston		tamara@taylorthuss.com	8/5/2021 11:12:08 AM	SENT

Associated Case Party: Association Member Benefits Advisors, Ltd.

Name
Donald Taylor
Natalie Taylor
Natalie Taylor

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Tamika Francis on behalf of Harry Klaff
Bar No. 24036916
tfrancis@brownsims.com
Envelope ID: 56030652
Status as of 8/5/2021 1:45 PM CST

Associated Case Party: Association Member Benefits Advisors, Ltd.

Donald Taylor		don@taylorthuss.com	8/5/2021 11:12:08 AM	SENT

JS 44 (Rev. 10/20)

CIVIL COVER SHEET

Civil Action No. 1-21-cv-688

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Association Member Benefits Advisors, Ltd. and American Senior Benefits Association (Counter-Defendant)

DEFENDANTS

Texas Retired Teachers Association, Trident Benefits & Consulting, LLC, Marcos Jose Vela, Cas M. Sharpe, Entrust, LLC d/b/a 90 Degree Benefits

(b) County of Residence of First Listed Plaintiff ____________
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant ____________
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
James G. Ruiz Winstead PC
401 Congress Ave., Ste. 2100
Austin, Texas 78701 512-370-2818

Attorneys *(If Known)*
C. Andrew Weber Kelly Hart & Hallman LLP
303 Colorado St., Ste. 2000
Austin, Texas 78701 512-495-6400

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☒ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
15 U.S.C. § 1125

Brief description of cause:
Plaintiff alleges causes of action under the Lanham Act, breach of contract, and tortious interference claims.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):
JUDGE ____________ DOCKET NUMBER ____________

DATE
08/06/2021

SIGNATURE OF ATTORNEY OF RECORD
/s/ James G. Ruiz

FOR OFFICE USE ONLY

RECEIPT # ________ AMOUNT ________ APPLYING IFP ________ JUDGE ________ MAG. JUDGE ________

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. **Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Civil Action No. 1-21-cv-688

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
Austin DIVISION

Supplement to JS 44 Civil Cover Sheet
Cases Removed from State District Court

This form must be filed with the Clerk's Office no later than the **first business day** following the filing of the Notice of Removal. Additional sheets may be used as necessary.

The attorney of record for the removing party **MUST** sign this form.

STATE COURT INFORMATION:

1. Please identify the court from which the case is being removed; the case number; and the complete style of the case.

459th Judicial District Court, Travis County, Texas; Cause No. D-1-GN-21-002956
Association Member Benefits Advisors, Ltd. , Plaintiff/Counter-Defendant
Texas Retired Teachers Association, Trident Benefits & Consulting, LLC, Marcos Jose Vela, Cas M. Sharp, Entrust, LLC d/b/a 90 Degree Benefits, Defendants
v.
American Senior Benefits Association, Counter-Defendant

2. Was jury demand made in State Court? [x] Yes [ ] No

If yes, by which party and on what date?

Texas Retired Teachers Association	July 9, 2021
Party Name	Date

STATE COURT INFORMATION:

1. List all plaintiffs, defendants, and intervenors still remaining in the case. Also, please list the attorney(s) of record for each party named and include the attorney's firm name, correct mailing address, telephone number, and fax number (including area codes).

PLEASE SEE ATTACHED COUNSEL OF RECORD

2. List all parties that have not been served at the time of the removal, and the reason(s) for non-service.

N/A

3. List all parties that have been non-suited, dismissed, or terminated, and the reason(s) for their removal from the case.

N/A

COUNTERCLAIMS, CROSS-CLAIMS, and/or THIRD-PARTY CLAIMS:

1. List separately each counterclaim, cross-claim, or third-party claim still remaining in the case and designate the nature of each such claim. For each counterclaim, cross-claim, or third-party claim, include all plaintiffs, defendants, and intervenors still remaining in the case. Also, please list the attorney(s) of record for each party named and include the attorney's firm name, correct mailing address, telephone number, and fax number (including area codes).

1. False advertising under 15 USC § 1125a
2. Tortious interference with existing contract
3. Declaratory judgment relief regarding 2011 Agreement between Association Member Benefits Advisors, Ltd. and Texas Retired Teachers Association

   Counter/Plaintiff - Texas Retired Teachers Association

   Counter/Defendants - Association Member Benefits Advisors, Ltd. and Texas Retired Teachers Association

   PLEASE SEE ATTACHED COUNSEL OF RECORD

VERIFICATION:

/s/ James G. Ruiz — August 6, 2021

Attorney for Removing Party — Date

Third-Party Defendant American Senior Benefits Association

Party/Parties

(NOTE: Additional comment space is available on page 3)

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TEXAS RETIRED TEACHERS ASSOCIATION, *Defendant / Counter-Plaintiff,* **v.** **ASSOCIATION MEMBER BENEFITS ADVISORS, LTD., and AMERICAN SENIOR BENEFITS ASSOCIATION,** *Plaintiff / Counter-Defendant and Third-Party Defendant, respectively,* **v.** **TRIDENT BENEFITS & CONSULTING, LLC, MARCOS JOSE VELA, CAS M. SHARPE, ENTRUST, LLC d/b/a 90 DEGREE BENEFITS** *Defendants.*	§ §	**Civil Action No. 1:21-cv-688**

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