

Michigan



Department of Energy, Labor and Economic Growth
 Office of General Counsel
 I certify that this is a true and complete copy of the
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amt mllw 2/18/10

STATE OF MICHIGAN
 DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH
 OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of the Office of Financial and Insurance Regulation

In the matter of:

American Trade Association, and
 Serve America Assurance Ltd.,

Enforcement Case No. 09-7518

Respondents.

ORDER TO CEASE AND DESIST

* The Office of Financial and Insurance Regulation ("OFIR") pursuant to the Michigan Administrative Procedures Act of 1969, MCL 24.201 et seq., ("APA") and the Michigan Insurance Code ("Code"), as amended, MCL 500.100 et seq., and the rules promulgated thereunder, allege that the following facts are true and correct as they relate to Respondent American Trade Association ("ATA") and Respondent Serve America Assurance Limited ("SAA").

FINDINGS OF FACT

1. ATA is an alleged non-profit association located at 400 Memorial Boulevard, Springfield, Tennessee 37172.
2. SAA is an alleged insurance company located at 412 Muhammadi House, 4th Floor, I.I. Chundrigar Road, PO Box 5626, Karachi, Pakistan.
3. In early March 2009, [REDACTED] a Michigan resident, received a facsimile flyer soliciting the sale of health insurance through ATA and SAA.

4. On March 20, 2009, [REDACTED] applied for health insurance and prescription drug coverage from ATA and SAA by calling the advertised toll-free phone number listed on the facsimile flyer.
5. Shortly thereafter, [REDACTED] was granted health insurance and prescription drug coverage from ATA and SAA in exchange for a \$323 monthly premium payment.
6. On March 20, 2009, [REDACTED] checking account was debited \$323 as premium payment to ATA.
7. Between March 20, 2009 and September 20, 2009, ATA continued to debit [REDACTED] checking account a \$323 monthly premium payment.
8. In April 2009, [REDACTED] incurred health care expenses and submitted claims for coverage of those expenses to ATA.
9. ATA and/or SAA failed to reimburse [REDACTED] for her health care expenses according to the terms of the policy.
10. To date, ATA and/or SAA have only paid \$50 toward the \$240 in health care expenses incurred by [REDACTED].
11. On or about September 20, 2009, [REDACTED] cancelled her health insurance and prescription drug coverage with ATA and SAA.
12. ATA performed acts in violation of the Code when it:
 - a. Operated in Michigan as an unlicensed insurance agency.
 - b. Marketed with an unlicensed insurance company, SAA, to offer Michigan residents Accident and Healthcare benefits.
 - c. Solicited and sold healthcare benefits to Michigan residents through the use of facsimile marketing, and its www.myatabenefits.com website.

- d. Issued and delivered contracts of insurance and certificates of insurance indicating insurance coverage by ATA.
 - e. Provided residents with false and misleading statements regarding its benefits and cancellation terms.
 - f. Unlawfully collected a minimum of \$2,261.00 in premium.
13. SAA performed acts in violation of the Code when it:
- a. Operated in Michigan as an unlicensed insurer.
 - b. Marketed with an unlicensed insurance agent, ATA, to offer Michigan residents Accident and Healthcare benefits.
 - c. Solicited and sold healthcare benefits to Michigan residents through the use of ATA's facsimile marketing, ATA's website, www.myatabenefits.com, and through its website, www.serveamericalltd.com.
 - d. Issued and delivered contracts of insurance and certificates of insurance indicating insurance coverage by ATA and/or SAA.
 - e. Provided residents with false and misleading statements regarding its benefits and cancellation terms.
 - f. Unlawfully collected a minimum of \$2,261.00 in premium monies from Michigan residents, through its unlicensed agent, ATA.

CONCLUSIONS OF LAW

WHEREAS, Section 402 of the Code, MCL 500.402, states that "no person shall act as an insurer and no insurer shall issue any policy or otherwise transact insurance in this state

except as authorized by a subsisting certificate of authority granted to it by the commissioner pursuant to this code.”

WHEREAS, Section 1201a of the Code, MCL 500.1201(a), states that “[a] person shall not sell, solicit or negotiate insurance in this state for any line of insurance unless the person is licensed for the qualification in accordance with this chapter.”

WHEREAS, Section 251 of the Code, MCL 500.251, states that in the reasonable exercise of discretion, the Commissioner may issue an Order to Cease and Desist if the Commissioner finds any of the following:

- (a) A person is conducting transactions of insurance for which a certificate of authority is required by this act without having obtained a certificate of authority.
- (b) A person is acting as an insurance agent, solicitor, adjuster, or counselor without a license as required by this act.
- (c) A person is engaged in an act or practice in the business or insurance for which authority from or notification to the commissioner is required by this act and the person has not received authority or given notification.

WHEREAS, Respondent SAA sold, solicited, and conducted transactions of insurance for which a certificate of authority is required by this act without having obtained a certificate of authority in violation of MCL 500.251 and MCL 500.402.

WHEREAS, Respondent ATA acted as an insurance agent, solicitor, adjuster, or counselor without a license in violation of MCL 500.251.

WHEREAS, Respondent ATA sold, solicited or negotiated insurance in this state for any line of insurance without licensure for the qualification required under the Code in violation of MCL 500.1201(a).

WHEREAS, based upon the above-cited conduct, the Commissioner finds that protection of the public requires emergency action in the form of a Cease and Desist Order being entered against Respondents ATA and SAA.

ORDER

IT IS THEREFORE ORDERED, pursuant to Section 251 of the Code, MCL 500.251, that:

1. Respondents ATA and SAA and their officers, directors, agents and employees shall immediately Cease and Desist from soliciting or transacting any insurance business in the State of Michigan, including their insurance sales operations through www.myatabenefits.com and www.serveamericalltd.com.
2. A certified copy of this Order to Cease and Desist shall be served upon the Respondents forthwith.
3. An administrative hearing on this Order to Cease and Desist shall be promptly afforded to Respondents, if requested in writing, not later than 30 days after the effective date of this Order, unless the Respondents request a later date. Any request for a hearing should be addressed to OFIR, Attention: Hearings Coordinator, Dawn Kobus, P.O. Box 30220, Lansing, Michigan 48909.

4. At the hearing, the Commissioner shall determine if the Order to Cease and Desist should be continued or withdrawn. The Commissioner shall announce his decision within 30 days after conclusion of the hearing.
5. Pursuant to MCL 500.251, ATA and/or SAA's failure to comply with this Order to Cease and Desist may subject each and their corporate officers to "a civil fine of not more than \$25,000.00 for each violation not to exceed an aggregate civil fine of \$250,000.00."
6. The Commissioner specifically retains jurisdiction of the matters contained herein to issue such further orders as he may deem just, necessary or appropriate so as to assure compliance with the law and protect the public interest.

Date:

December 14, 2009

OFFICE OF FINANCIAL AND
INSURANCE REGULATION



Catherine Kirby
Special Deputy Commissioner

North Carolina

CERTIFICATION OF AUTHENTICITY

I, Mary Faulkner, as custodian of records, do hereby swear and certify that the attached Emergency Cease and Desist Order, Notice of Hearing, and Order to Produce Documents and Information and the Amended Emergency Cease and Desist Order, Notice of Hearing, and Order to Produce Documents and Information in the matter of Affinity Group Benefits Association, Inc., Smart Data Solutions, LLC, National Trade Business Alliance of American d/b/a National Alliance of Associations, Professional Benefits Consultants, Inc., a.k.a. PBC Direct, Richard H. Bachman, Bart Posey, Obed Kilpatrick, Thomas Sullivan, James M. Doyle, Christopher Ashiotes, Association of Franchise and Independent Distributors, LLC, Paul Olzeski, Spencer and Associates, LLC, Bruce E. Spencer, Marc Morrow, Real Benefits Association, Dave Clark, American Trade Association, and Americans for Affordable Healthcare, Stephen-Matthews Marketing, Inc., and Larry Matthews, Docket Number 1417, is a true and accurate copy of records maintained by the North Carolina Department of Insurance in the course of its official regulatory activities.

Mary Faulkner
Mary Faulkner, Paralegal
North Carolina Department of Insurance

STATE OF NORTH CAROLINA

COUNTY OF WAKE

Sworn to and subscribed before me this the 14th day of January, 2009.

Ellen Louise Spuehl
Notary Public

My commission expires: 8-6-2012.

NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE COMMISSIONER
OF INSURANCE

IN THE MATTER OF)
AFFINITY GROUP BENEFITS ASSOCIATION,)
INC., SMART DATA SOLUTIONS, LLC,)
NATIONAL TRADE BUSINESS ALLIANCE OF)
AMERICA d/b/a NATIONAL ALLIANCE OF)
ASSOCIATIONS, PROFESSIONAL BENEFITS)
CONSULTANTS, INC., a.k.a. PBC DIRECT,)
RICHARD H. BACHMAN, BART POSEY, OBED)
KIRKPATRICK, THOMAS SULLIVAN, JAMES)
M. DOYLE, CHRISTOPHER ASHIOTES,)
ASSOCIATION OF FRANCHISE AND)
INDEPENDENT DISTRIBUTORS, LLC, PAUL)
OLZESKI, SPENCER AND ASSOCIATES, LLC,)
BRUCE E. SPENCER, MARC MORROW,)
REAL BENEFITS ASSOCIATION, DAVID L.)
CLARK, AMERICAN TRADE ASSOCIATION,)
STEPHENS-MATTHEWS MARKETING, INC.,)
AND LARRY MATTHEWS)

DOCKET NUMBER 1417

AMENDED EMERGENCY
CEASE AND DESIST
ORDER, NOTICE OF
HEARING, AND ORDER
TO PRODUCE DOCUMENTS
AND INFORMATION

TO: Ernest B. Beall, President and Registered Agent
Affinity Group Benefits Association, Inc.
537 Devereux Place
Concord, NC 28025

Bart Posey, President
Smart Data Solutions, LLC
4676 Highway 41 North
Springfield, Tennessee 37172

Thomas J. Sullivan, President
National Trade Business Alliance of America, d/b/a National Alliance of Associations
141 Ganttown Rd., Suite E
Turnersville, NJ 08012

Christopher Ashiotes
Professional Benefits Consultants, Inc., a.k.a. PBC Direct
141 Ganttown Rd., Suite D
Turnersville, NJ 08012

Thomas Sullivan
98 Oak Street #205
Lindenwood, NJ 08021

James M. Doyle
28 Sirius Court
Sewell, NJ 08080

Christopher Ashiotes
2302 Fernwood Avenue
Atco, NJ 08004

Richard H. Bachman
1600 Magpie Cove
Austin, Texas 78746

Bart Posey
3448 Forest Park Road
Springfield, Tennessee 37172

Obed Kirkpatrick
1705 Rocking Chair Place
Franklin, Tennessee 37067

Thomas Sullivan
98 Oak Street #205
Lindenwood, NJ 08021

James M. Doyle
28 Sirius Court
Sewell, NJ 08080

Christopher Ashiotes
2302 Fernwood Avenue
Atco, NJ 08004

Paul Olzeski, President
Association of Franchise and Independent Distributors, LLC
One South Limestone Street, Suite 301
Springfield, Ohio 45502

Paul Olzeski
701 Lakewood Drive
Taylor Mill, KY 41015

Bruce E. Spencer
Spencer & Associates, LLC
One South Limestone Street, Suite 301
Springfield, Ohio 45502

Marc Morrow
800 West Sam Houston, Pkwy., Suite 215
Houston, Texas 77042

David L. Clark, Chairman
Real Benefits Association
75 Hardscrabble Road, Suite 202
P.O. Box 74
Basking Ridge, NJ 07920

American Trade Association
c/o Incomp. Services, Inc.
455 W Maurice
Hot Springs, AR 71901

Larry Matthews, President
Dave Stephens, President
Stephens-Matthews Marketing, Inc.
P.O. Box 1208
Beverly, Ohio 45715

Larry Matthews
Route 1, Box 154j
Beverly, Ohio 45715

AMENDED ORDER TO CEASE AND DESIST

Pursuant to N. C. Gen. Stat. § 58-28-20(d) and other applicable statutes and rules, the undersigned Hearing Officer hereby orders Affinity Group Benefits Association, Inc. [hereinafter, "AGBAI"], Smart Data Solutions, LLC [hereinafter, "SDS"], National Trade Business Alliance of America [hereinafter, "NTBAA"], a.k.a. National Alliance of Associations [hereinafter, "NAA"], Obed Kirkpatrick, Bart Posey, Richard H. Bachman, Thomas Sullivan, James M. Doyle, Christopher Ashiotes, Association of Franchise and Independent Distributors, LLC [hereinafter, "AFID"], Paul Olzeski, Spencer & Associates, LLC, Bruce E. Spencer, Real Benefits Association [hereinafter, "RBA"], David L. Clark, Marc Morrow, American Trade Association [hereinafter, "ATA"], Stephens-Matthews Marketing, Inc., [hereinafter, "SMM"], Larry Matthews, and any other agent of AGBAI, SDS, NTBAA, a.k.a. NAA, PBC Direct, AFID, Spencer & Associates, RBA, ATA, and SMM to immediately cease and desist from transacting insurance business in violation of N.C. Gen. Stat. § 58-28-5.

The undersigned Hearing Officer finds, from the sworn affidavits of Terry Dorman presented to the Hearing Officer in this matter that the interests of the public may be irreparably harmed if the above-named Respondents are not ordered to immediately cease and desist from transacting insurance business in violation of N.C. Gen. Stat. § 58-28-5 as a result of the following:

1. Respondents have performed acts in violation of N.C. Gen. Stat. §§ 58-28-5 and 58-28-13, including, but not limited to, the following:

(a) Respondents SDS, ATA, Posey, Bachman, Kirkpatrick, NAA, PBC Direct, Doyle, Sullivan, and Ashiotes have operated their unauthorized insurance businesses through a North Carolina corporation.

(b) Respondents have effected by mail or otherwise the issuance or delivery of contracts of insurance to residents of this State and other states by means of a master group health insurance policy issued in North Carolina by an alien, unauthorized insurance company to a North Carolina Corporation known as AGBAI.

(c) Respondents have solicited applications for contracts of insurance to residents of this State and other states by means of a master group health insurance policy issued in North Carolina by an alien, unauthorized insurance company to a North Carolina corporation known as AGBAI and have collected premiums, membership fees, assessments, or other consideration for such contracts.

(d) Respondents AFID, Olzeski, Spencer, Spencer and Associates, Morrow, RBA, Clark, and SMM have marketed and sold bogus health and other insurance benefits to North Carolina residents through licensed North Carolina insurance agents.

2. The National Trade Business Alliance of America ["NTBAA"] is registered as a non-profit New Jersey corporation and is located at 141 Ganttown Road, Turnersville, NJ 08012. The NTBAA is supposedly a membership association that purportedly provides health insurance, health-related discounts, and accidental death benefits to its "members."

3. At various times, NTBAA has done business under various names and currently does business using the name National Alliance of Associations ["NAA"] [hereinafter, the NTBAA and NAA will be merely referred to as the NAA].

4. Professional Benefits Consultants, Inc., a.k.a. PBC Direct [hereinafter, "PBC Direct"], is supposedly an insurance producer also located at 141 Ganttown Road, Turnersville, NJ 08012. PBC Direct and NAA are operated by the same individuals from the same address, and are essentially each other's alter ego.

5. Thomas Sullivan is the President of the NAA and was the incorporator agent of PBC Direct. James M. Doyle is the Secretary and Treasurer of the NAA and Vice President of Operations for PBC. Sullivan and Doyle are the only members of the Board of Trustees for the NAA. Christopher Ashiotes is a Vice President, Marketing Director, and insurance producer of PBC.

6. Smart Data Solutions, LLC [hereinafter, "SDS"] is a Tennessee corporation located at 4676 Highway 41 North in Springfield, Tennessee 37172. Bart Posey is the President of SDS and Richard H. Bachman is the Vice President of SDS. [hereinafter, Posey and Bachman shall be collectively referred to as the "principals" of SDS] Posey is a resident of Tennessee. Bachman has a nonresident Life and Health agent license issued by the Department on February 23, 2006.
7. Obed Kirkpatrick is a Tennessee resident and business associate of SDS who works out of the SDS office in Tennessee.
8. AGBAI is a North Carolina nonprofit corporation with an office in Concord, North Carolina. Ernest B. Beall is the President, owner, and registered agent of AGBAI.
9. In late July 2007, Posey and Kirkpatrick told Beall that they had a large number of individuals who were ready to enroll in an association for insurance benefits and persuaded Beall to "loan" them the use of AGBAI so that they could offer insurance to these individuals.
10. In August 2007, AGBAI entered into a marketing service agreement with SDS. Pursuant to the marketing service agreement, SDS is responsible for "market[ing] the day to day operations of the AGBAI. This [] include[s] developing marketing plans to procure new members, hiring marketing organizations to approach new potential members and administration once the new member becomes an active member."
11. SDS is also responsible under the marketing service agreement to: (a) negotiate for services and products on AGBAI's behalf, (b) make health insurance benefits available to AGBAI members, (c) bill and collect monthly dues and insurance premiums for all members, (d) handle and send fulfillment packages (including insurance cards and explanations of benefits) to new members, and (e) provide live customer support operators and licensed representatives at its offices in Tennessee to answer any members who have questions about insurance benefits and to enroll new members in AGBAI's insurance plans.
12. SDS established and maintained a Web site [www.agbai.com) through which it promoted AGBAI's health insurance to the general public.
13. On September 4, 2007, Bachman submitted an application for a TransChoice policy to Transamerica Life Insurance Company ["Transamerica"] to be issued to AGBAI. Transamerica is a licensed insurance company. On September 4, 2007, AGBAI and SDS executed a Premium Collection Agreement that authorized SDS to serve as AGBAI's Premium Collection Administrator. In that capacity, SDS's duties include the handling of all insurance premium billing and collection matters on AGBAI's behalf.
14. On or about September 4, 2007, Transamerica issued a TransChoice Plus group policy to AGBAI with an effective date of September 1, 2007. The TransChoice policy was issued in North Carolina and provides limited health insurance benefits rather than comprehensive health insurance.

15. AGBAI entered into an affiliation agreement with the NAA that purportedly authorizes AGBAI to provide NAA members the same insurance benefits that AGBAI offers its members and requires the NAA to collect AGBAI affiliated member dues from NAA members and remit these dues to AGBAI.

16. Transamerica was unaware of the affiliation agreement and did not approve the NAA to market the TransChoice product as a sub-association of AGBAI. Nevertheless, the NAA, PBC Direct, SDS, their principals, and other marketing companies under contract with or connected with these companies marketed and sold the TransChoice product to the general public via illegal and unauthorized fax blast solicitations. The NAA, PBC Direct, SDS, and their principals also prepared to rollover existing NAA enrollees into the TransChoice policy issued to AGBAI.

17. Although the United States Fire Insurance Company ["US Fire"] has never issued any policies to AGBAI and has never been affiliated with AGBAI in any way, the NAA, PBC Direct, SDS, and their principals also marketed and sold accident and medical insurance purportedly provided under a policy or policies issued to AGBAI by US Fire.

18. For an effective date of February 1, 2008, SDS submitted two blocks of applications for a total of 1055 members for enrollment in the TransChoice policy to Key Benefits Administrators, Inc. ["KBA"], Transamerica's third party administrator. One of the blocks was submitted through a New Jersey insurance agent who had not been appointed as an insurance producer with Transamerica Worksite Marketing ["TWM"], an operating division of Transamerica. Transamerica directed KBA to reject all 1,055 applications and on February 13, 2008, Transamerica, through TWM, terminated Bachman's appointment as a Transamerica producer and informed SDS and Bachman that it would not accept any new enrollments in connection with the AGBAI account. By this time, approximately 5000 plus individuals from 49 states, including residents of North Carolina, had been enrolled in the AGBAI group policy issued by Transamerica.

19. Since at least February 1, 2008, Kirkpatrick, SDS, Posey, Bachman, AGBAI, NAA, and PBC Direct have been enrolling individuals in a group health insurance policy issued in North Carolina to AGBAI by Beema Insurance Company ["Beema"], an unauthorized, alien insurer located in Pakistan for which SDS provides third party administrator services. The NAA, PBC Direct, SDS, AGBAI, and their principals have also been marketing and selling the bogus Beema product.

20. In June 2008, Transamerica terminated its relationship with SDS. In July 2008, Transamerica sent letters to all AGBAI enrollees that notified them that Transamerica had terminated its relationship with SDS and that enrollees in the TransChoice Plus policy must begin paying all premiums for that policy to Transamerica instead of SDS in order to maintain coverage under that policy. SDS also sent letters to AGBAI enrollees that notified them that Transamerica had terminated its relationship with SDS and offered them health insurance coverage through the ATA.

21. The ATA markets and sells health insurance through the Internet and other means. SDS acts as the third party administrator for the ATA. The insurance benefits marketed by the ATA

are purportedly provided to ATA members through an affiliation between the ATA and the RBA.

22. RBA is an association located in Basking Ridge, New Jersey. David L. Clark is the Chairman of the RBA.

23. AFID is a limited liability company that is co-owned, managed, and operated by Paul Olzeski and Bruce E. Spencer. Mr. Olzeski holds nonresident Life Producer and Accident & Health or Sickness Producer agent licenses issued by the Department.

24. Since at least 2005, AFID has been marketing and selling health, vision, dental, life, disability, and other insurance benefits in all 50 states through several hundred independent insurance agents with which AFID has brokerage agreements. AFID has also used a Web site [www.afidllc.com] to promote its insurance programs.

25. AFID's health insurance programs are currently marketed under the name "the One Advantage Plan" or "One Advantage Program" and have previously been marketed under the names Privilege Care, "Per4mance Health Plan," "Per4mance Plan," "Per4mance Plan Plus" and similar names. The One Advantage Plan is jointly offered by AFID and the RBA. Pursuant to an agreement with the RBA, AFID has marketed and sold the One Advantage Plan for the RBA.

26. The insurance programs marketed and sold by AFID and RBA include a choice of major medical insurance or limited medical indemnity insurance, vision, dental, life, and disability insurance. The major medical insurance benefits, which are referred to as the Part B benefits of the One Advantage Plan, are purportedly made available to AFID members pursuant to an affiliation agreement between AGBAI and the RBA that allows RBA members to have access to insurance benefits under an insurance policy issued by Beema to AGBAI.

27. All other insurance benefits offered under the One Advantage Plan, which are referred to as Part A benefits of the One Advantage Plan, are purportedly provided by AFID to AFID and RBA members through contracts issued by multiple insurance carriers. RBA's Web site [www.rbausa.com] states that the Part A benefits are "composed of several indemnity contracts that are fully insured by American International Group [AIG], Guarantee Trust Life [GTL], and American Insurance Company [ACE]."

28. Marc Morrow is a resident of Texas who works as the National Sales Director of AFID from the office of The Morrow Group in Houston, Texas. As National Sales Director, Mr. Morrow is responsible for all sales operations of AFID, including the recruitment and training of insurance agents to market and sell insurance programs for AFID.

29. Spencer & Associates, LLC, is a third party administrative company that provides third party administrative services for AFID. Spencer & Associates is owned and operated by Mr. Spencer. AFID and Spencer & Associates share an office in Springfield, Ohio. Spencer & Associates bills and collects all premiums for the AFID insurance programs. Spencer & Associates also administers and pays insurance claims made by AFID members. Spencer & Associates is not licensed as a third party administrator in North Carolina.

30. SMM is an insurance agency located in Beverly, Ohio and is co-owned, managed, and operated by Larry Matthews and Dave Stephens. SMM holds a nonresident business entity licensed issued by the Department. Larry Matthews holds a nonresident Life Producer and Accident & Health or Sickness Producer agent licenses issued by the Department.

31. SMM acts as a General Agent for AFID. In that capacity, SMM has made the insurance products offered by AFID available to its subagents, including a number of agents who are licensed in North Carolina. SMM posted marketing materials and other information regarding AFID's insurance programs on its Web site to assist agents who were interested in enrolling their clients in AFID's insurance programs. SMM assisted agents in entering into brokerage agreements with AFID and Spencer & Associates, helped agents to enroll individuals in AFID's insurance plans, and distributed marketing and other materials relating to AFID to agents.

32. Through SMM and other North Carolina insurance agents, AFID and the RBA have enrolled at least 24 North Carolina residents in their insurance programs from November 2007 to present.

33. The Department has requested Respondents AFID, Mr. Olzeski, SMM, Mr. Matthews, Mr. Morrow, David L. Clark, and the RBA to provide information and documents necessary to substantiate that the insurance benefits provided to the 24 North Carolina residents through AFID and RBA are covered by licensed insurance companies. In response to the Department's requests, Mr. Olzeski identified several carriers as providing the insurance benefits for which the North Carolina residents enrolled. The Department has contacted those insurance companies and determined that with one exception, those companies did not issue coverage to AFID, RBA, or any of the twenty four North Carolina AFID/RBA members. The one exception is in the case of Continental American Insurance Company, which apparently provides limited group accidental coverage to several North Carolina residents through a policy issued to an association named the Americans For Affordable Healthcare ["AFAH"].

34. The Department also contacted the three insurance companies identified on RBA's Website as providing the Part A benefits (AIG, GTL, and ACE) to confirm whether these companies have ever issued any coverage to AFID or the RBA. ACE and GTL informed the Department that they never issued coverage to AFID or the RBA. The Department has been unable to confirm that either AIG has issued coverage to AFID or the RBA. In July 2008, Marc Morrow told Dave Stephens of SMM that Central United Life Insurance Company ["Central United"] provided the dental insurance benefits to AFID members. Subsequently, Central United informed the Department that it did not provide dental insurance benefits to AFID and RBA members.

35. The Department has had contact with two North Carolina AFID members who enrolled in March 2008. Neither of these members has received any insurance certificates or policies from AFID since their enrollment.

36. For the foregoing reasons, Respondents Obed Kirkpatrick, SDS, Bart Posey, Richard Bachman, AGBAI, NAA, PBC Direct, Thomas Sullivan, James Doyle, Christopher Ashiotes,

AFID, Paul Olzeski, Spencer & Associates, LLC; Bruce E. Spencer, RBA, David L. Clark, Marc Morrow, ATA, and any other agent of AGBAI, SDS, NTBAA, a.k.a. NAA, PBC Direct, AFID, Spencer & Associates, RBA, and ATA shall immediately CEASE AND DESIST from:

- a. Contracting to provide insurance in this state for risks located in this State, whether as an insurer, agent, or by any other method;
- b. Offering, selling, and marketing insurance in this State for risks located in this State, whether as an insurer, agent, or by any other method;
- c. Taking or receiving an application for insurance offered by Beema or any other entity;
- d. Issuing or delivering contracts of insurance and certificates of insurance or other evidence of insurance coverage issued by Beema or any other entity;
- e. Transferring or moving AGBAI enrollees into new insurance coverage;
- f. Soliciting, negotiating, procuring or effectuating insurance coverage, or renewals thereof, disseminating information as to coverage or rates, forwarding applications, delivering policies or contracts, or in any other manner representing or assisting Beema or any other insurer;
- g. Directly or indirectly acting as an agent for, or otherwise representing or aiding in the solicitation, negotiation, procurement or effectuation of insurance coverage issued by Beema or by any other entity;
- h. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement for or regarding any insurance issued by Beema or any other entity;
- i. Conducting insurance business within the meaning of the North Carolina General Statutes relating to insurance, or otherwise acting as an insurer in this State; and
- j. Receiving or collecting any premiums, commissions, or other consideration for insurance issued by Beema or any other entity.

37. For the foregoing reasons, Respondents SMM and Larry Matthews are prohibited from directly or indirectly acting as an agent for, or otherwise representing or aiding in the solicitation, procurement, or effectuation of insurance coverage issued by any insurer that is not authorized to transact insurance business in this State.

AMENDED NOTICE OF HEARING

Pursuant to North Carolina General Statute §§ 58-2-50, 58-2-55, 58-2-70, 58-3-125, 58-3-5, 58-28-13, 58-28-20, 58-28-45, 58-33-46, 58-33-95, 58-63-25, 58-63-32, 58-63-40, 150B-38, 150B-40, and other applicable statutes and rules, notice is given that the administrative hearing previously scheduled in this matter for September 26, 27, and 28 will instead be convened before the Commissioner of Insurance, or before a Hearing Officer duly designated by him, on October 28, 29, and 30, 2008, at 10:00 a.m., Room # 3099 of the Dobbs Building, located at 430 North Salisbury Street, Raleigh, Wake County, North Carolina. The hearing may subsequently be moved to a more suitable room in the building. The purpose of this hearing is to determine:

- (1) Whether Respondents are in violation of N.C. Gen. Stat. § 58-28-5 by having entered into a contract or contracts of insurance as an insurer in this State or by transacting insurance business in this State as set forth in N.C. Gen. Stat. §§ 58-28-12 and 58-28-13 without first being issued a certificate of authority or license to act as an insurance company;
- (2) Whether Respondents are in violation of N.C. Gen. Stat. §§ 58-28-12 and 58-28-13 by performing any of the acts or transactions set forth therein while not authorized to do business in this State;
- (3) Whether Respondents have violated N.C. Gen. Stat. § 58-28-45(a) by acting as an agent for an insurer not authorized to transact business in this State or by negotiating for or placing or aiding in placing insurance coverage in this State for another with any such insurer;
- (4) Whether Respondents have violated N.C. Gen. Stat. § 58-33-95 by soliciting, negotiating, or selling insurance in this State for an unauthorized insurer;
- (5) Whether Respondents NAA, PBC Direct, Thomas Sullivan, James Doyle, and Christopher Ashiotes have willfully violated a Cease and Desist Order of the Commissioner entered against them pursuant to N.C. Gen. Stat. § 58-28-20;
- (6) Whether Respondents have engaged in any acts, methods, or practices in the business of insurance that are defined as or determined pursuant to Article 63 of Chapter 58 to be unfair and deceptive and whether a cease and desist order should be entered against them pursuant to N.C. Gen. Stat. § 58-63-32(a);
- (7) Whether Respondent Richard H. Bachman should have his agent licenses revoked or suspended pursuant to N.C. Gen. Stat. §§ 58-33-46(a) and 58-33-95;
- (8) Whether Respondent Larry Matthews should have his agent licenses revoked or suspended pursuant to N.C. Gen. Stat. §§ 58-33-46(a) and 58-33-95;
- (9) Whether Respondent Paul Olzeski should have his agent licenses revoked or suspended pursuant to N.C. Gen. Stat. §§ 58-33-46(a) and 58-33-95;

(10) Whether Respondent SMM should have its business entity license revoked or suspended pursuant to N.C. Gen. Stat. §§ 58-33-46(a) and 58-33-95;

(11) Whether Respondents should be fined pursuant to N.C. Gen. Stat. §§ 58-28-5, 58-28-13, 58-28-45(h), and 58-2-70 for their violations of the insurance laws;

(12) Whether Respondents NAA, PBC Direct, Thomas Sullivan, James Doyle, and Christopher Ashiotes should be fined pursuant to N.C. Gen. Stat. § 58-28-30 for willful violation of a Cease and Desist Order of the Commissioner; and

(13) Whether Respondent Kirkpatrick should be fined pursuant to N.C. Gen. Stat. § 58-28-30 for willful violation of a Cease and Desist Order of the Commissioner;

(14) Whether the Commissioner should issue an order to Respondents pursuant to N.C. Gen. Stat. § 58-28-20 to cease and desist from violating N.C. Gen. Stat. § 58-28-5.

I. ALLEGATIONS AND CHARGES

At this hearing, the following allegations and charges shall be considered:

A. General Allegations

1. The National Trade Business Alliance of America ["NTBAA"] is registered as a non-profit New Jersey corporation and is located at 141 Ganttown Road, Turnersville, NJ 08012. The NTBAA is supposedly a membership association that purportedly provides health insurance, health-related discounts, and accidental death benefits to its "members."

2. At various times, NTBAA has done business under various names and currently does business using the name National Alliance of Associations ["NAA"]. Hereinafter, the NTBAA and NAA will be merely referred to as the NAA.

3. Professional Benefits Consultants, Inc., a.k.a. PBC Direct [hereinafter, "PBC Direct"], is supposedly an insurance producer also located at 141 Ganttown Road, Turnersville, NJ 08012. PBC Direct and NAA are operated by the same individuals from the same address, and are essentially each other's alter ego.

4. Thomas Sullivan is the President of the NAA and was the incorporator agent of PBC Direct. James M. Doyle is the Secretary and Treasurer of the NAA and Vice President of Operations for PBC. Sullivan and Doyle are the only members of the Board of Trustees for the NAA. Christopher Ashiotes is a Vice President, Marketing Director, and insurance producer of PBC.

5. The NAA, PBC Direct, Sullivan, Ashiotes, and Doyle contract with marketing companies to market and sell bogus health insurance plans to residents of North Carolina and numerous other states via illegal and unauthorized blast fax solicitations. Hereinafter, Sullivan, Ashiotes, and Doyle shall be referred to as "principals" of NAA and PBC Direct.

6. The NAA and PBC Direct require individuals who apply for health insurance advertised via NAA's fax solicitations to pay a \$125.00 one time enrollment fee to become NAA members and thereby obtain health insurance benefits purportedly provided through a group policy issued to the NAA. Individuals are not aware that they are becoming "members" of the NAA when they enroll in the NAA's health insurance plans. Since April 2006, the NAA, PBC, and their principals enrolled at least one hundred twenty-three North Carolina residents in the NAA's bogus insurance plans and collected premiums and enrollment fees from these residents. As of June 2007, thirty-two of the NAA's existing members were North Carolina residents.

7. Although no licensed insurer has ever issued a group insurance policy to the NAA, the NAA, PBC Direct, SDS, their principals, and the marketing companies acting under contract with these companies have misrepresented to consumers that the NAA provides comprehensive health insurance benefits through a policy issued by various licensed insurers, including Stanford Life, Assurity Life, Bankers Fidelity, and AIG. Once enrolled, members are repeatedly moved by the NAA and PBC Direct from one bogus insurance policy to another without the members' knowledge and consent.

8. The NAA, PBC Direct, and their principals have also fraudulently prepared insurance cards and fulfillment packages bearing the names of licensed insurers and distributed these cards and packages to NAA enrollees.

9. After learning about these unauthorized activities by the NAA, PBC Direct, and their principals, several insurance companies have issued cease and desist orders to the NAA and PBC Direct and have posted consumer alerts on their Web sites.

10. Although the NAA does not meet the underwriting guidelines for a group policy because it is not a bona fide association, the NAA, PBC Direct, and their principals have attempted to procure a group health insurance policy for the NAA from licensed insurance companies. The NAA, PBC Direct, and their principals have also purported to provide health insurance benefits to NAA members through group policies issued by licensed insurers to other associations with which the NAA is allegedly affiliated.

11. In August 2007, a hearing was held in the Department against the NAA, PBC Direct, their principals and other named respondents in Docket Number 1375 for alleged violations of North Carolina's unauthorized insurance laws. By order entered on January 31, 2008, the Department found and concluded that NAA, PBC Direct, their principals, and other named respondents therein had violated N.C. Gen. Stat. §§ 58-28-5 and 58-28-10 and ordered that all named respondents in that case cease and desist these violations.

12. Smart Data Solutions, LLC [hereinafter, "SDS"] is a Tennessee corporation located at 4676 Highway 41 North in Springfield, Tennessee 37172. Bart Posey is the President of SDS and Richard H. Bachman is the Vice President of SDS. Hereinafter, Posey and Bachman shall be collectively referred to as the "principals" of SDS. Posey is a resident of Tennessee. Bachman has a nonresident Life and Health agent license issued by the Department on February 23, 2006.

13. Obed Kirkpatrick is a Tennessee resident and business associate of SDS who works out of the SDS office in Tennessee. On January 22, 2004, the Department entered an order in Docket Number 1102 that concluded that Kirkpatrick and other named respondents therein had transacted insurance business in violation of N.C. Gen. Stat. §§ 58-28-5 and 58-33-95 and ordered Kirkpatrick and other named respondents to cease and desist transacting insurance business in this State and to pay unpaid claims.

14. SDS and its principals own and operate or provide third party administrator services for one or more membership associations, including Transportation Service Association ["TSA"], Fleetwood Group, Real Benefits Association, and American Trade Association ["ATA"]. SDS and its principals have marketed and sold bogus health insurance benefits to the general public, including residents of North Carolina, through these associations. SDS and its principals have prepared and distributed insurance cards and fulfillment packages for these bogus insurance benefits to enrollees, including residents of North Carolina.

15. In October 2006, the NAA executed an affiliation agreement with one of SDS's associations, TSA. That agreement purportedly enables the NAA to provide health insurance benefits under group health insurance policies allegedly issued to the TSA and other associations owned by or affiliated with SDS.

16. Pursuant to an affiliation agreement between the NAA and SDS, the NAA purportedly provided NAA members with health insurance benefits through a group policy issued by Stanford Life to Transportation Workers Benefits Association ["TWBA"], another association with which SDS was allegedly affiliated. However, the Stanford Life policy was a bogus policy and there was no actual affiliation between SDS and TWBA. Between November 2006 and March 2007, the NAA and SDS enrolled at least 32 North Carolina residents in the bogus Stanford Life policy.

17. SDS served as the administrator for the NAA's bogus health insurance plans from November 2006 through March 2007. In the second half of 2007, SDS resumed acting as an administrator for the NAA's insurance plans and continues to act as an administrator for the NAA's insurance plans.

18. In the fall of 2006, the NAA, PBC Direct, SDS, the principals of these entities, and Obed Kirkpatrick conspired to obtain an existing association for the purpose of procuring a group health insurance policy to cover existing and future enrollees in the NAA and other associations that SDS owns and operates or for which SDS performs third party administrator services. The NAA, PBC Direct, SDS, and the principals of these entities had been withdrawing monies from the bank accounts of individuals enrolled in their associations for bogus insurance coverage.

19. In furtherance of the conspiracy to obtain insurance benefits for existing and future enrollees of the NAA and these other associations, Posey and Kirkpatrick initiated discussions with Ernest B. Beall about purchasing Affinity Group Benefits Association, Inc. [hereinafter, "AGBAI"] AGBAI is a North Carolina nonprofit corporation with an office in Concord, North Carolina. Beall is the President, owner, and registered agent of AGBAI.

20. Posey and Kirkpatrick led Beall to believe that Posey was looking to buy an association for the purposes of providing insurance benefits to clients in the trucking industry. SDS would market the association benefits for AGBAI. At the time Posey and Kirkpatrick offered to purchase AGBAI, it was a dormant association with no members.

21. Beall initially expressed interest in selling AGBAI to Posey and Kirkpatrick. However, on June 19, 2007, Beall informed Kirkpatrick and Posey that he decided not to sell AGBAI. In late July 2007, Posey and Kirkpatrick called Beall and urged him to allow them to "use" AGBAI temporarily until they could form a new association of their own. Posey and Kirkpatrick told Beall that they had a large group of individuals who were ready to enroll in an association that offered insurance benefits as of August 1, 2007, and that they would lose the group if they could not use AGBAI. Beall then agreed to allow Kirkpatrick and Posey to operate their business through AGBAI until they could form a new association. Posey and Kirkpatrick paid Beall \$5,000.00 up front and a monthly administrative fee of \$0.50 per member enrolled for the use of AGBAI.

22. Beall named Kirkpatrick as AGBAI's secretary. As AGBAI's secretary, Kirkpatrick has been responsible for the day to day operations of the association. Kirkpatrick also performs certain services, such as developing and producing brochures and newsletters for AGBAI, which assist Posey in marketing the association's insurance and other insurance related benefits. Although Beall has received a monthly administrative fee, Beall contends that he has had no involvement in the business activities that Kirkpatrick, Posey, and SDS conducted through AGBAI.

23. On August 24, 2007, AGBAI entered into a marketing service agreement with SDS. Pursuant to the marketing service agreement, SDS is responsible for "market[ing] the day to day operations of the AGBAI. This [] include[s] developing marketing plans to procure new members, hiring marketing organizations to approach new potential members and administration once the new member becomes an active member."

24. SDS is also responsible under the marketing service agreement to: (a) negotiate for services and products on AGBAI's behalf, (b) make health insurance benefits available to AGBAI members, (c) bill and collect monthly dues and insurance premiums for all members, (d) handle and send fulfillment packages (including insurance cards and explanations of benefits) to new members, and (e) provide live customer support operators and licensed representatives at its offices in Tennessee to answer any members who have questions about insurance benefits and to enroll new members in AGBAI's insurance plans.

25. SDS established and maintains a Web site [www.agbai.com] through which it promotes AGBAI's health insurance to the general public.

26. In furtherance of the conspiracy to obtain insurance benefits for existing and future enrollees of the various associations owned and operated by NAA, PBC Direct, SDS, and their principals, Bachman and SDS became appointed in July 2007 as agents to represent Transamerica Life Insurance Company["Transamerica"]through its Transamerica Worksite Marketing ["TWM"] division in the marketing and sale of TransChoice, a group voluntary

limited-benefit medical indemnity insurance policy issued by Transamerica. Transamerica is a licensed insurance company.

27. On or about August 2007, Bachman approached TWM about obtaining a TransChoice Plus policy for AGBAI. On September 4, 2007, Bachman submitted an application for a TransChoice policy to TWM to be issued to AGBAI. In the application, which was executed by Bachman as broker of record and Kirkpatrick as Secretary of AGBAI, Kirkpatrick and Bachman falsely stated that AGBAI had 1400 existing members.

28. On September 4, 2007, AGBAI and SDS executed a Premium Collection Agreement that authorized SDS to serve as AGBAI's Premium Collection Administrator ["administrator"]. As administrator, SDS's duties include the handling of all insurance premium billing and collection matters on AGBAI's behalf.

29. On or about September 4, 2007, Transamerica issued a TransChoice Plus group policy to AGBAI with an effective date of September 1, 2007. The TransChoice policy was issued in North Carolina and provides limited health insurance benefits rather than comprehensive health insurance.

30. Some time after the TransChoice Plus group policy was issued to AGBAI, AGBAI entered into an affiliation agreement with the NAA. The affiliation agreement purportedly authorizes AGBAI to provide NAA members the same insurance benefits that AGBAI offers its members and requires the NAA to collect AGBAI affiliated member dues from NAA members and remit these dues to AGBAI.

31. Transamerica was unaware of the affiliation agreement and did not approve the NAA to market the TransChoice product as a sub-association of AGBAI. Nevertheless, the NAA, PBC Direct, SDS, their principals, and other marketing companies under contract with these companies marketed and sold the TransChoice product to the general public via illegal and unauthorized fax blast solicitations. The NAA, PBC Direct, SDS, and their principals also prepared to transfer existing NAA enrollees into the TransChoice policy issued to AGBAI.

32. Although the United States Fire Insurance Company ["US Fire"] has never issued any policies to AGBAI and has never been affiliated with AGBAI in any way, the NAA, PBC Direct, SDS, and their principals also marketed and sold accident and medical insurance purportedly provided under a policy or policies issued to AGBAI by US Fire.

33. In late September, 2007, the General Counsel of TWM's third party administrator, Key Benefit Administrators, Inc. ["KBA"], received information indicating that the NAA or marketing companies acting under contract with the NAA had been sending fax blast solicitations to the general public in violation of TWM's marketing guidelines and were purporting to enroll individuals in the TransChoice policy.

34. KBA's General Counsel contacted Bachman of SDS, who informed KBA's General Counsel about AGBAI's affiliation agreement with NAA. Subsequently, on September 27, 2007, Transamerica and TWM, in cooperation with and through KBA's General Counsel, issued

a notice to SDS, NAA, and all producers and entities connected therewith requiring that they cease and desist marketing Transamerica's TransChoice Plus policy through AGBAI, NAA, or any other entity.

35. On October 6, 2007, Transamerica and TWM, through KBA's General Counsel, lifted the cease and desist notice as to SDS and Bachman, but kept the cease and desist notice in effect as to the NAA.

36. NAA, PBC Direct, and their principals ignored Transamerica's notice to cease and desist marketing the TransChoice product. SDS also ignored Transamerica's directive not to submit NAA members for enrollment in the TransChoice product. For a January 1, 2008 effective date, SDS submitted a block of 1,812 member applications for the AGBAI TransChoice Plus policy to KBA. In January and February 2008, TWM and KBA received many complaints from individuals in this block who were enrolled in the TransChoice Plus policy and had either received the policy fulfillment packages not knowing that their health coverage had been transferred to Transamerica, or who had premiums withdrawn from their bank accounts without their knowledge and consent. In many instances, these individuals had not heard of Transamerica, TWM, or SDS before this time but had enrolled in an insurance plan marketed by the NAA and PBC Direct or other marketing companies under contract with or connected with these entities.

37. The NAA, PBC Direct, SDS, their principals, and marketing companies with which they were contracted or connected with made misrepresentations to many of these individuals that led them to believe that they were purchasing comprehensive health insurance when in fact the coverage was a limited-benefit medical indemnity insurance policy.

38. The NAA and their principals prepared and distributed association fulfillment packages to NAA enrollees that included a flyer for the TransChoice Plus policy without authorization from TWM.

39. The NAA, PBC Direct, SDS, AGBAI, and their principals charged enrollees enrollment fees, monthly dues, and monthly insurance premiums that were significantly higher than the actual insurance premiums charged by Transamerica. The association monthly dues and insurance premium amounts were not separately disclosed to the members. Rather, only a single combined premium amount was disclosed to enrollees.

40. A payment collection firm acting on behalf of NAA, PBC Direct, SDS, or other marketing firms connected with the principals of NAA, PBC Direct, and SDS took payments by credit card or directly from the members' bank accounts. Portions of the amounts that were collected on behalf of the NAA and PBC Direct were transferred to SDS. In January 2008, SDS began using a different payment collection firm and had that firm withdraw moneys from members' accounts for the enrollment fees, monthly dues, and monthly premiums, and submit those collections directly to SDS. In either case, SDS remitted only Transamerica insurance premium monies to KBA.

41. For an effective date of February 1, 2008, SDS submitted two blocks of applications for a total of 1,055 members for enrollment in the TransChoice policy to KBA. One of the blocks was submitted through a New Jersey insurance agent who had not been appointed as an insurance producer with TWM. Transamerica directed KBA to reject all 1,055 applications. On February 13, 2008, Transamerica, through TWM, terminated Bachman's appointment as a Transamerica producer and informed SDS and Bachman that it would not accept any new enrollments in connection with the AGBAI account. By this time, approximately 5,000 plus individuals from forty-nine states, including residents of North Carolina, had been enrolled in the AGBAI group policy issued by Transamerica.

42. On February 18, 2008, Transamerica appointed Bart Posey, the owner of SDS, as a producer and entered into a new contract with SDS. Since that time, SDS has continued to collect premiums from existing AGBAI enrollees for the TransChoice policy.

43. Since Transamerica stopped accepting new enrollments in February 2008, the NAA, PBC Direct, SDS, AGBAI, and their principals have been placing new enrollees in a group policy allegedly issued to AGBAI by Beema.

44. On February 19, 2008, Mr. Terry Dorman, Chief Examiner in the Unlicensed Plan Investigations section of the Department's Consumer Services Division, wrote Posey and Bachman separate letters requesting documents and information pertaining to AGBAI's insurance activities, including the names of all insurers providing insurance benefits to AGBAI members and a list of all AGBAI enrollees. Bachman failed to respond to Mr. Dorman's letter. Although Posey responded to Mr. Dorman's letter, the only information he provided in response to Mr. Dorman's requests was a copy of the Transamerica policy issued to AGBAI.

45. On April 18, 2008, the Department sent a letter to Beall that informed him of alleged violations of the unauthorized insurance laws and unfair and deceptive acts and practices in violation of N.C. Gen. Stat. § 58-63-10 by AGBAI, SDS, and the NAA, and requested his attendance at an informal conference with the Department. On April 20, 2008, Beall faxed a letter to Kirkpatrick requesting that Kirkpatrick and all of his associates immediately cease and desist using AGBAI and terminating any and all business relationships between him and Kirkpatrick. Since that time, Kirkpatrick, SDS, and their principals continue to collect premiums, fees, and dues from existing AGBAI members and continue to market their bogus insurance through AGBAI.

46. On May 16, 2008, the Department issued an Emergency Cease and Desist Order, Notice of Hearing, and Order to Produce Documents and Information against Respondents SDS, Bachman, Posey, NAA, PBC Direct, Sullivan, Doyle, Ashiotes, Kirkpatrick and AGBAI. The Order to Produce Documents and Information required these Respondents to produce certain documents and information by June 20, 2008. As of the date of the issuance of this Notice of Hearing, none of the Respondents, except for AGBAI, has provided any documents or information in response to the Department's Order to Produce Documents and Information.

47. In June 2008, Transamerica terminated its relationship with SDS. In July 2008, Transamerica also notified all AGBAI enrollees in writing that Transamerica had terminated its

relationship with SDS and that AGBAI enrollees would have to begin making premium payments for the TransChoice Plus coverage to Transamerica instead of SDS in order to maintain this coverage. Around the same time that Transamerica sent this written notice, SDS sent letters to AGBAI enrollees that solicited their enrollment in health insurance offered through the ATA and enclosed insurance cards for the ATA in those letters. SDS debited amounts for premium in July 2008 from the bank account of at least one AGBAI enrollee for the ATA coverage without the consent of that AGBAI enrollee. This was in apparent violation of the Department's May 16, 2008 Order that expressly prohibits all Respondents from transferring or moving AGBAI enrollees into new insurance coverage.

48. The ATA markets and sells health insurance through the Internet and other means. The ATA maintains a Web site [www.atafirst.com], which contains information on all health insurance plans offered by the ATA and enrollment forms for ATA membership and insurance benefits. The insurance benefits marketed by the ATA are purportedly provided to ATA members through an affiliation between the ATA and the RBA. The ATA insurance enrollment forms require individuals to also elect membership in the RBA and state that the ATA is a "bridge association" of the RBA. SDS acts as the third party administrator for the ATA.

49. RBA is an association located in Basking Ridge, New Jersey. David L. Clark is the Chairman of RBA.

50. AFID is a limited liability company that is co-owned, managed, and operated by Paul Olzeski and Bruce E. Spencer. Mr. Olzeski holds nonresident Life Producer and Accident & Health or Sickness Producer agent licenses issued by the Department.

51. Since at least 2001, AFID has been marketing and selling health and other insurance benefits in all fifty states through several hundred independent insurance agents with which AFID has brokerage agreements. AFID has also promoted its insurance programs on a Web site [www.afidllc.com]. AFID's health insurance programs are currently marketed under the name "the One Advantage Plan" or "One Advantage Program" and have previously been marketed under the names Privilege Care, "Per4mance Health Plan," "Per4mance Plan," "Per4mance Plan Plus" and similar names. The One Advantage Plan is jointly offered by AFID and the RBA. Since at least 2005, AFID has marketed and sold the One Advantage Plan for the RBA pursuant to an agreement with the RBA.

52. The insurance programs marketed and sold by AFID and RBA include a choice of major medical insurance or limited medical indemnity insurance, vision, dental, life, and disability insurance. The major medical insurance benefits, which are referred to as the Part B benefits of the One Advantage Plan, are purportedly made available to AFID members pursuant to an affiliation agreement between AGBAI and the RBA that allows RBA members to have access to insurance benefits under an insurance policy issued by Beema to AGBAI.

53. All other insurance benefits offered under the One Advantage Plan, which are referred to as Part A benefits of the One Advantage Plan, are purportedly provided by AFID to AFID and RBA members through contracts issued by multiple insurance carriers. RBA's Web site (www.rbausa.com) states that the Part A benefits are "composed of several indemnity contracts

which are fully insured by American International Group (AIG), Guarantee Trust Life (GTL), and American Insurance Company (ACE).”

54. The RBA and AFID have contended that the RBA is a union that provides insurance benefits to union members and that they are thus exempt from state insurance laws. However, RBA’s Chairman, David L. Clark, failed to provide documentation necessary to establish that RBA is subject to the exclusive jurisdiction of a federal agency in response to the Department’s requests for such documentation.

55. The RBA does not appear to be a legitimate union in part because: (a) AFID and the RBA provide insurance benefits to self employed individuals and independent contractors, (b) the RBA was formed for the sole purpose of enabling the RBA to market and sell health insurance without having to comply with state insurance laws, (c) employer participants are not parties to any collective bargaining agreements with the RBA, (d) the RBA does not perform any of the traditional functions of a union, including collective bargaining on behalf of its members, and (e) most RBA members are not even aware that they are in a union.

56. Marc Morrow is a resident of Texas who works as the National Sales Director of AFID from the office of The Morrow Group in Houston, Texas. As National Sales Director, Mr. Morrow is responsible for all sales operations of AFID, including the recruitment and training of insurance agents to market and sell insurance programs for AFID.

57. Spencer & Associates, LLC, is a third party administrative company that provides third party administrative services for AFID. Spencer & Associates is owned and operated by Bruce E. Spencer. AFID and Spencer & Associates share an office in Springfield, Ohio. Spencer & Associates bills and collects all premiums for the AFID insurance programs. Spencer & Associates also administers and pays insurance claims made by AFID members.

58. SMM is an insurance agency located in Beverly, Ohio and is co-owned, managed, and operated by Larry Matthews and Dave Stephens. SMM holds a nonresident business entity licensed issued by the Department. Larry Matthews holds nonresident Life Producer and Accident & Health or Sickness Producer agent licenses issued by the Department.

59. SMM acts as a General Agent for AFID. In that capacity, SMM has made the insurance products offered by AFID available to its subagents, including a number of agents who are licensed in North Carolina. SMM posted marketing materials and other information regarding AFID’s insurance programs on its Web site to assist agents who are interested in enrolling their clients in AFID’s insurance programs. SMM assisted agents in entering into brokerage agreements with AFID and Spencer & Associates, helped agents to enroll individuals in AFID’s insurance plans, and distributed marketing and other materials relating to AFID to agents.

60. Through SMM and other North Carolina agents, AFID and the RBA have enrolled at least twenty-four North Carolina residents in their insurance programs since November 2007.

61. The Department has requested AFID, Mr. Olzeski, SMM, Mr. Matthews, Mr. Morrow, the RBA, and David L. Clark to provide information and documents necessary to substantiate

that the insurance benefits provided to the twenty-four North Carolina residents through AFID and RBA are covered by licensed insurance companies. In response to the Department's requests, Mr. Olzeski identified several carriers as providing the insurance benefits for which the North Carolina residents enrolled. The Department has contacted those insurance companies and determined that with one exception, those companies did not issue coverage to AFID, RBA, or any of the twenty-four North Carolina AFID/RBA members. The one exception is in the case of Continental American Insurance Company, which apparently provides limited group accidental coverage to several North Carolina residents through a policy issued to an association named the Americans for Affordable Healthcare ["AFAH"].

62. The Department also contacted the three insurance companies identified on RBA's Web site as providing the Part A benefits [AIG, GTL, and ACE] in order to confirm whether these companies have ever issued any coverage to AFID or the RBA. ACE and GTL informed the Department that they never issued coverage to AFID or the RBA. The Department has been unable to confirm that AIG has issued coverage to AFID or the RBA. In July 2008, Marc Morrow informed Dave Stephens of SMM that Central United provided the dental insurance benefits to AFID members. Subsequently, Central United informed the Department that it did not provide the dental insurance benefits to AFID and RBA members.

63. The Department has contacted two North Carolina AFID members who enrolled in March 2008. Neither of these members has received any insurance certificates or policies from AFID since enrollment.

B. Violation of the Unauthorized Insurance Laws

64. Respondents have performed the acts in violation of N.C. Gen. Stat. §§ 58-28-5, 58-28-12, and 58-28-13. These acts include, but are not limited to, the following:

(a) Respondents SDS, ATA, Posey, Bachman, Kirkpatrick, NAA, PBC Direct, Doyle, Sullivan, and Ashiotes have operated their unauthorized insurance businesses through a North Carolina corporation.

(b) Respondents have effected by mail or otherwise the issuance or delivery of contracts of insurance to residents of this State and other states by means of a master group health insurance policy issued by an alien, unauthorized insurance company in North Carolina to a North Carolina Corporation known as AGBAI.

(c) Respondents have solicited applications for contracts of insurance to residents of this State and other states by means of a master group health insurance policy issued by an alien, unauthorized insurance company in North Carolina to a North Carolina corporation known as AGBAI and have collected premiums, membership fees, assessments, or other consideration for such contracts.

(d) Respondents AFID, Olzeski, Spencer, Spencer and Associates, Morrow, RBA, Clark, Matthews, and SMM have marketed and sold bogus health and other insurance benefits to North Carolina residents through licensed North Carolina insurance agents.

65. Respondents have violated N.C. Gen. Stat. § 58-28-45(a) by acting as agents for insurers not authorized to transact business in this State and by negotiating for or placing or aiding in the placement of insurance coverage in this State for another with insurers not authorized to transact business in this State.

66. Respondents NAA, PBC Direct, Sullivan, Doyle, Ashiotes, SDS, ATA, Posey, Bachman, Kirkpatrick, AFID, Olzeski, Spencer & Associates, Spencer, Morrow, Clark, RBA, SMM, and Matthews have violated N.C. Gen. Stat. § 58-33-95(a)(3) by knowingly soliciting, negotiating, or selling insurance in this State for an unauthorized insurer.

C. Unfair or Deceptive Acts or Practices in Violation of N.C. Gen. Stat. § 58-63-10

67. Respondents have engaged in unfair and deceptive methods, acts, or practices in the business of insurance in violation of N.C. Gen. Stat. § 58-63-10 by making, issuing, circulating, or causing to be made, issued, or circulated illustrations, circulars, or statements misrepresenting the terms of and benefits provided under policies of insurance.

68. Respondents have engaged in other methods, acts, or practices that constitute unfair and deceptive acts or practices in the business of insurance in violation of N.C. Gen. Stat. § 58-63-10 but that are not defined as unfair and deceptive acts or practices in the business of insurance under N.C. Gen. Stat. § 58-63-15. These allegations are based on all of the allegations previously set out in this Notice and that are hereby re-alleged and incorporated by reference as if fully set out herein. They are also based on the following allegations:

(a) Respondents NAA, PBC Direct, Sullivan, Ashiotes, Doyle, SDS, Bachman, and Posey have repeatedly sent fax blasts or caused numerous fax blasts to be sent to North Carolina residents advertising health benefits. The sending of these faxed advertisements is unfair and deceptive because these advertisements, among other things: (1) Do not identify the company offering the health benefits advertised and the insurance company providing these benefits; (2) Do not disclose that individuals are required to join an association and pay an enrollment fee and monthly association dues in order to obtain the insurance benefits; (3) Set forth an amount of monthly payment due for various levels of insurance coverage that includes monthly dues and fees, but fail to disclose that the monthly payment includes amounts for monthly dues and fees and the amount of the payment that constitutes monthly dues and fees; (4) Are unsolicited and attempt to induce the recipients to enroll quickly by stating that the offer expires within a few days; and (5) Do not accurately describe the insurance benefits being made available.

(b) Respondents NAA, PBC Direct, Sullivan, Ashiotes, Doyle, SDS, Bachman, and Posey have repeatedly moved numerous individuals enrolled in their insurance plans from one bogus insurance policy to another without their knowledge and consent.

(c) Respondents NAA, PBC Direct, Sullivan, Ashiotes, Doyle, SDS, Bachman, and Posey have often refused to refund enrollment fees, monthly dues, and premiums or unreasonably delayed making such refunds to individuals enrolled in their health insurance plans when enrollees request to cancel.

(d) Respondents NAA, PBC Direct, Sullivan, Ashiotes, Doyle, SDS, Bachman, and Posey have perpetuated their fraudulent sale of bogus insurance by producing and distributing flyers to enrollees that include summaries of insurance benefits under insurance policies that are issued or purportedly issued by licensed insurers and that purportedly cover their enrollees.

(e) Respondents RBA, Clark, Morrow, AFID, Olzeski, Spencer, Spencer & Associates, SMM, Matthews, SDS, Bachman, and Posey have used an illegitimate sham union or association known as the RBA and other associations such as AFID and the ATA for the purpose of selling, soliciting, and negotiating insurance that is not provided through contracts with licensed insurance companies.

D. Grounds for Revocation or Suspension of Richard Bachman's agents licenses

69. Pursuant to N.C. Gen. Stat. § 58-33-95(b), the Commissioner may revoke Bachman's licenses for knowingly soliciting, negotiating, or selling insurance in this State for an unauthorized insurer in violation of N.C. Gen. Stat. § 58-33-95(a)(3).

70. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(2) the Commissioner may revoke, suspend or refuse to renew Bachman's licenses on the grounds that Bachman violated North Carolina's insurance laws and regulations and that Bachman failed to comply with the Department's May 16, 2008 Cease and Desist Order and Order to Produce Documents and Information. This allegation is based on all of the allegations previously set out in this Notice and that are hereby re-alleged and incorporated by reference as if fully set out herein.

71. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(7), the Commissioner may revoke Bachman's licenses for committing unfair and deceptive methods, acts, or practices in the business of insurance. This allegation is based on the allegations previously set out in Section C of this Notice and that are hereby re-alleged and incorporated by reference as if fully set out herein.

72. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(8), the Commissioner may revoke, suspend or refuse to renew Bachman's license on the grounds that in the conduct of his affairs under his license, Bachman has used fraudulent, coercive, or dishonest practices or has shown himself to be incompetent, untrustworthy and financially irresponsible in the conduct of business. This allegation is based on all of the allegations previously set out in this Notice and that are hereby re-alleged and incorporated by reference as if fully set out herein.

73. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(12a), the Commissioner may revoke Bachman's licenses for soliciting, negotiating, or selling insurance in this State for an unauthorized insurer.

E. Respondents' NAA, PBC Direct, Sullivan, Doyle, and Ashiotes Willful Violation of the Commissioner's Cease and Desist Order

74. Respondents NAA, PBC Direct, Sullivan, Doyle, and Ashiotes should be fined pursuant to N.C. Gen. Stat. §§ 58-28-30 and 58-2-70 for willful violation of the Commissioner's January

31, 2008 Cease and Desist Order. This allegation is based on all of the allegations previously set out in this Notice and that are hereby re-alleged and incorporated by reference as if fully set out herein.

F. Respondent Obed Kirkpatrick's Willful Violation of the Commissioner's Cease and Desist Order

75. Respondent Kirkpatrick should be fined pursuant to N.C. Gen. Stat. §§ 58-28-30 and 58-2-70 for willful violation of the Commissioner's January 22, 2004 Cease and Desist Order. This allegation is based on all of the allegations previously set out in this Notice and that are hereby re-alleged and incorporated by reference as if fully set out herein.

G. Grounds for Revocation or Suspension of Paul Olzeski's agents licenses

76. Pursuant to N.C. Gen. Stat. § 58-33-95(b), the Commissioner may revoke Olzeski's licenses for knowingly soliciting, negotiating, or selling insurance in this State for an unauthorized insurer in violation of N.C. Gen. Stat. § 58-33-95(a)(3).

77. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(2) the Commissioner may revoke, suspend or refuse to renew Olzeski's licenses on the grounds that Olzeski violated North Carolina's insurance laws and regulations. This allegation is based on all of the allegations previously set out in this Notice and that are hereby re-alleged and incorporated by reference as if fully set out herein.

78. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(7), the Commissioner may revoke Olzeski's licenses for committing unfair and deceptive methods, acts, or practices in the business of insurance. This allegation is based on the allegations previously set out in Section C of this Notice and that are hereby re-alleged and incorporated by reference as if fully set out herein.

79. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(8), the Commissioner may revoke, suspend or refuse to renew Olzeski's licenses on the grounds that in the conduct of his affairs under his license, Olzeski has used fraudulent, coercive, or dishonest practices or has shown himself to be incompetent, untrustworthy and financially irresponsible in the conduct of business. This allegation is based on all of the allegations previously set out in this Notice and that are hereby re-alleged and incorporated by reference as if fully set out herein. This allegation is also based on the other conduct of Olzeski and AFID, including, but not limited to, the following:

(a) Olzeski has given false, misleading, and inaccurate responses to written inquiries made by the Department's Chief Examiner of Unlicensed Plan Investigations regarding AFID's marketing of insurance in North Carolina. For example, Olzeski falsely stated that: (1) the health insurance benefits offered by AFID were provided through a policy issued by Protective Life, (2) AFID had not enrolled any North Carolina residents in its insurance programs and had not collected any premiums from any North Carolina residents, and (3) AFID had ceased all marketing of its insurance programs to residents of North Carolina.

(b) Olzeski failed to fully cooperate with the Department during the course of its investigation into his and AFID's insurance activities. For example, Olzeski: (1) failed to provide certain information and documents pertinent to determining whether the insurance benefits offered by AFID and RBA are provided through contracts issued by licensed insurance companies and (2) provided false information in response to the Department's request for the names and addresses of the insurance companies providing insurance benefits to North Carolina AFID enrollees.

(c) Olzeski signed all life and disability insurance applications for AFID enrollees even though the applications were actually taken and written by other agents with which AFID had brokerage agreements.

H. Grounds for Revocation or Suspension of Larry Matthews' Agent Licenses and Stephens-Matthews Marketing, Inc.'s Business Entity License

80. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(12a), the Commissioner may revoke Matthews' and SMM's licenses for soliciting, negotiating, or selling insurance in this State for an unauthorized insurer.

81. Pursuant to N.C. Gen. Stat. § 58-33-95(b), the Commissioner may revoke Matthews' and SMM's licenses for knowingly soliciting, negotiating, or selling insurance in this State for an unauthorized insurer in violation of N.C. Gen. Stat. § 58-33-95(a)(3).

82. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(2) the Commissioner may revoke, suspend or refuse to renew Matthews' and SMM's licenses on the grounds that Matthews and SMM violated North Carolina's insurance laws and regulations. This allegation is based on all of the allegations previously set out in this Notice and that are hereby re-alleged and incorporated by reference as if fully set out herein.

83. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(7), the Commissioner may revoke Matthews' and SMM's licenses for committing unfair and deceptive methods, acts, or practices in the business of insurance. This allegation is based on the allegations previously set out in Section C of this Notice and that are hereby re-alleged and incorporated by reference as if fully set out herein.

84. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(8), the Commissioner may revoke, suspend or refuse to renew Matthews' and SMM's licenses on the grounds that in the conduct of their affairs under their licenses, Matthews and SMM have used fraudulent, coercive, or dishonest practices or have demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business. This allegation is based on all of the allegations previously set out in this Notice and that are hereby re-alleged and incorporated by reference as if fully set out herein. This allegation is also based on other conduct of Matthews and SMM with respect to AFID and the RBA, including the following:

(a) Matthews and SMM failed to exercise any due diligence in order to verify whether the insurance benefits offered by AFID actually existed and had been issued by licensed insurance companies before entering into a brokerage agreement with AFID and Spencer & Associates.

(b) Matthews and SMM failed to investigate the legitimacy of AFID's arrangement to provide major medical insurance benefits through an affiliation with RBA before entering into a brokerage agreement.

(c) Matthews and SMM allowed agents acting through SMM to continue marketing and selling AFID's insurance programs despite growing concerns as to whether AFID even had an insurance carrier to provide the major medical insurance benefits.

(d) Matthews and SMM allowed agents acting through SMM to continue marketing and selling AFID's insurance programs after being informed by AFID that the insurance carrier that AFID previously identified as providing the major medical insurance benefits had never issued a policy to AFID or the RBA and that AFID had instead obtained coverage for AFID members through an insurance policy issued by an alien, unlicensed insurance company named Beema to an association named AGBAI.

85. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(12a), the Commissioner may revoke Matthews' and SMM's licenses for soliciting, negotiating, or selling insurance in this State for an unauthorized insurer.

II. POSSIBLE ADVERSE ADMINISTRATIVE ACTION

Based upon the foregoing, it is alleged that all Respondents should be ordered to:

(1) Cease and desist from transacting insurance business in violation of N.C. Gen. Stat. § 58-28-5;

(2) Pay fines for violating N.C. Gen. Stat. §§ 58-28-5 and 58-28-45(a) pursuant to N.C. Gen. Stat. §§ 58-28-13 and 58-28-45(h); and

(3) Cease and desist from engaging in the acts alleged herein to be unfair and deceptive methods, acts, or practices in the business of insurance.

It is further alleged that Respondents NAA, PBC Direct, Sullivan, Doyle, and Ashiotes should be fined pursuant to N.C. Gen. Stat. §§ 58-28-30 and 58-2-70 for willful violation of the Commissioner's January 31, 2008 Cease and Desist Order.

It is further alleged that Respondent Kirkpatrick should be fined pursuant to N.C. Gen. Stat. §§ 58-28-30 and 58-2-70 for willful violation of the Commissioner's January 22, 2004 Cease and Desist Order.

It is further alleged that the licenses of Respondents Bachman, Olzeski, Matthews, and SMM should be revoked pursuant to N.C. Gen. Stat. §§ 58-33-46(a)(2), (7), (8), and (12a) and 58-33-95(b) and that they should pay fines pursuant to N.C. Gen. Stat. § 58-2-70.

III. PROCEDURES FOR THE HEARING

A. At this hearing, Respondents will be given the opportunity directly or through counsel to present evidence on issues of fact, examine documents and cross examine witnesses, submit rebuttal evidence and make arguments as to issues of law.

B. Be advised that N.C. Gen. Stat. § 58-33-95 makes any person representing an insurer personally and strictly liable on all contracts of insurance unlawfully made by or through him, directly or indirectly, for any company not authorized to do business in the State. Also be advised that under N.C. Gen. Stat. § 58-33-46(a)(2), any person currently licensed as an agent by the Commissioner may be subjected to license suspension, revocation, or nonrenewal for violating any insurance law.

C. As a result of this hearing, the Commissioner may reduce his findings to writing and issue and cause to be served upon such person or persons an order to cease and desist from violating the provisions of N.C. Gen. Stat. § 58-28-5, which make it unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this State without first obtaining a certificate of authority or license. N.C. Gen. Stat. § 58-28-30 makes any person who willfully violates a cease and desist order of the Commissioner, after it has become final, and while the order is in effect, subject to the provisions of N.C. Gen. Stat. § 58-2-70. N.C. Gen. Stat. § 58-2-70 authorizes the Commissioner to impose upon such person a penalty of not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000.00) per violation. Furthermore, N.C. Gen. Stat. § 58-2-70(c) provides that each day during which a violation occurs constitutes a separate offense.

D. Be advised that N.C. Gen. Stat. § 58-28-13 subjects any person who is found guilty of violating any of the provisions of such section while not authorized to do business within this State to a penalty of not more than five thousand dollars (\$5,000) for the first offense and not more than ten thousand dollars (\$10,000) for each subsequent offense, provided that each day in which a violation occurs shall constitute a separate offense.

E. Your failure to appear at the hearing will not prevent the Commissioner or Hearing Officer from hearing the evidence and entering any appropriate Order as authorized by law.

ORDER TO PRODUCE DOCUMENTS AND INFORMATION

Pursuant to N.C. Gen. Stat. § 58-2-50 and other applicable statutes, Respondents AFID, RBA, Spencer & Associates, SMM, Paul Olzeski, Bruce Spencer, Marc Morrow, Larry Matthews, and David L. Clark are ORDERED to produce the following documents and to provide the following information:

1. A list of the names, addresses, and phone numbers of all persons or entities that market or in any way represent or that have marketed or in any way represented the RBA, AFID, and any other associations that RBA, AFID, Olzeski, Spencer & Associates, Spencer, Morrow, and Clark have owned, operated, or provided marketing services to from January 2005 to the present.
2. Copies of all flyers, brochures, advertisements, and other materials used by AFID, the RBA, or third parties contracted with AFID and the RBA to market insurance or insurance related products and benefit plans offered through AFID and the RBA from January 2005 to the present.
3. Copies of all flyers, brochures, advertisements, and other materials used by the RBA, AFID, and third parties contracted with AFID and the RBA to market insurance or insurance related products and benefit plans offered through AFID and the RBA from January 2005 to the present.
4. The full name and addresses of all insurance carriers that underwrite or have underwritten insurance or insurance related products and benefit plans offered through AFID and the RBA and any other associations that AFID, RBA, Clark, Olzeski, Spencer, and Spencer & Associates have owned, operated, or provided marketing services to from January 2005 to the present.
5. Copies of all group insurance policies issued to AFID, the RBA, or any other associations that AFID, RBA, Clark, Olzeski, Spencer, and Spencer & Associates have owned, operated, or provided marketing services to from January 2005 to the present.
6. Copies of all group insurance policies issued to any association through which members of AFID and the RBA are provided insurance benefits.
7. Copies of all applications for group insurance policies submitted for AFID, the RBA, or any other associations that AFID, RBA, Clark, Olzeski, Spencer, and Spencer & Associates have owned, operated, or provided marketing services to from January 2005 to present.
8. Copies of all contracts between AFID, RBA, Clark, Olzeski, Spencer, Spencer and Associates, Morrow, SMM, and Matthews and insurance companies that have issued a group insurance policy or policies to AFID, the RBA, or any other associations that AFID, RBA, Clark, Olzeski, Spencer, and Spencer & Associates have owned, operated, or provided marketing services to from January 2005 to present.
9. Identify and produce copies of all agreements to which AFID is a party, including all agreements between AFID and: (a) Morrow, (b) Spencer & Associates, and (c) the RBA.
10. Identify and produce copies of all agreements to which Spencer & Associates is a party, including all agreements between Spencer & Associates and: (a) Morrow and (b) the RBA.
11. Identify and produce copies of all agreements to which the RBA is a party, including all agreements between the RBA and: (a) AFID, (b) SDS, (c) AGBAI, and (d) the ATA.

12. Copies of all contracts between Morrow and any officers of AFID and Spencer & Associates.
13. Copies of all contracts between AFID, Spencer & Associates, the RBA, and any other associations that the AFID, Spencer & Associates, the RBA, Olzeski, Spencer, and Clark have owned, operated, or provided marketing services to and third parties to market insurance plans and other benefits made available through AFID and the RBA from January 2005 to the present.
14. A list of the names and addresses of all associations whose members are provided insurance benefits through a group policy or policies issued to AFID.
15. A list of the names and addresses of all associations whose members are provided insurance benefits through a group policy or policies issued to RBA.
16. A list of the names, addresses, and phone numbers of all North Carolina residents enrolled in AFID from January 2005 to the present. For each individual enrolled, state: (a) the date of the individual's enrollment into AFID, (c) the date of cancellation, if applicable, (d) the full names and addresses of all insurance companies that provide or has provided insurance benefits to the individual, (e) separately state the amount of money collected from the individual for enrollment fees, monthly dues, and premiums, and (f) the amount of premiums remitted to each insurance carrier on behalf of the enrollee.
17. A list of the names, addresses, and phone numbers of all North Carolina residents enrolled in the RBA between January 2005 to present. For each individual enrolled, state: (a) the date of the individual's enrollment into RBA, (c) the date of cancellation, if applicable, (d) the full names and addresses of all insurance companies that provides or have provided insurance benefits to the individual, (e) separately state the amount of money collected from the individual for enrollment fees, monthly dues, and premiums, and (f) the amount of premiums remitted to each insurance carrier on behalf of the enrollee.
18. Copies of all AFID and RBA applications taken by AFID and the RBA from North Carolina residents from January 2005 to the present.
19. Copies of all records, including bank statements, that show the enrollment fees, monthly dues, and premiums collected by or for AFID or Spencer & Associates from North Carolina residents enrolled in AFID's insurance programs from January 2005 to the present.
20. Copies of all records, including bank statements, that show the enrollment fees, monthly dues, and premiums collected by or for RBA from North Carolina residents enrolled in the RBA's insurance programs from January 2005 to the present.
21. Copies of all records, including bank statements, that show the premiums remitted to insurance companies on behalf of North Carolina AFID members from January 2005 to the present.

22. Copies of all records, including bank statements, that show the premiums remitted to insurance companies on behalf of North Carolina RBA members from January 2005 to present.
23. Copies of all records, including bank statements, which show monies received by AFID from the RBA from January 2005 to the present.
24. Copies of all records, including bank statements, which show monies received by the RBA from AFID from January 2005 to the present.
25. Copies of all records, including bank statements, which show monies paid by AFID or Spencer & Associates to Morrow.
26. Copies of all records, including bank statements, which show monies paid by the RBA to Morrow.
27. Copies of AFID's bank accounts statements from January 2006 to the present.
28. Copies of RBA's bank accounts statements from January 2006 to the present.
29. Copies of records of all complaints, verbal and written, that Spencer & Associates, AFID, the RBA, SMM, and any other third parties that provide or have provided marketing services to these entities have received from North Carolina residents who were enrolled in AFID or the RBA or who were solicited to enroll in AFID or the RBA from January 2005 to the present.
30. Copies of all written requests to cancel enrollment and for refunds that AFID, Spencer & Associates, the RBA, SMM, and any other third parties that provided marketing services to these entities have received from North Carolina residents who were enrolled in AFID or the RBA.
31. Records of all refunds made by Spencer & Associates, AFID, the RBA, or third parties that provided marketing services to these entities to North Carolina residents who enrolled in AFID or the RBA.
32. Copies of all e-mails, letters, faxes, and other correspondence regarding RBA business between any officer or employee of AFID and any officer or employee of the RBA from January 2005 to the present.
33. Copies of all e-mails, letters, faxes, and other correspondence regarding RBA business between any officer or employee of Spencer & Associates and any officer or employee of the RBA from January 2005 to the present.
34. Copies of all e-mails, letters, faxes, and other correspondence between Marc Morrow and any officer or employee of AFID and Spencer & Associates.
35. Copies of all e-mails, letters, faxes, and other correspondence between Paul Olzeski and Bruce Spencer regarding AFID, Spencer & Associates, and the RBA from January 2005 to the present.

36. A list of the names and addresses of all North Carolina licensed insurance agents that have marketed and sold insurance programs offered by AFID and the RBA.

37. Copies of all brokerage agreements between North Carolina licensed insurance agents and AFID.

38. Copies of all brokerage agreements between North Carolina licensed insurance agents and the RBA.

39. Copies of all insurance policies through which AFID, the RBA, and any other associations that AFID, Spencer & Associates, Olzeski, Spencer, RBA, and Clark have owned, operated, or provided marketing services to, have provided insurance benefits to North Carolina residents from January 2005 to present.

40. Copies of any and all contracts, policies, brochures, literature, application forms, enrollment documents, disclosure forms and other documents that are being used or have been used in connection with insurance benefits offered through AFID, the RBA, and any other associations that AFID, the RBA, Spencer & Associates, Olzeski, Spencer, or Clark have owned, operated, or provided marketing services to from January 2005 to present.

41. Copies of all corporate records of AFID, including AFID's Articles of Incorporation.

42. Copies of the bylaws of AFID.

43. A list of all states in which each of the following Respondents have been issued insurance agent licenses and produce copies of each license: (a) Marc Morrow, (b) Larry Matthews, (c) Paul Olzeski, (d) Bruce Spencer, and (e) David L. Clark.

44. A list of all states in which each of the following Respondents have been issued insurance business entity licenses and produce copies of each license: (a) AFID, (b) RBA, (c) Spencer and Associates, and (d) SMM.

45. A list of all states in which Spencer and Associates has been issued a third party administrator's license and produce a copy of each license.

Respondent RBA and David L. Clark are further ordered to provide the following information and documents:

47. A list of the full names and addresses of all officers of the RBA.

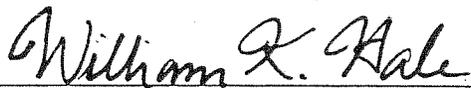
48. Copies of all corporate records of the RBA, including RBA's Articles of Incorporation.

49. Copies of the bylaws of the RBA.

50. A list of the full names and addresses of all individuals or entities that have an ownership interest in the RBA.
51. Copies of the United States Department of Labor M-1 filings from 2004 to date.
52. Copies of any other filings to the United States Department of Labor or other federal agency related to the RBA or the plan.
53. Copies of all collective bargaining agreements to which the RBA is a party.
54. Copies of all enrollment forms for all North Carolina residents enrolled in the RBA.
55. Copies of any and all agreements that RBA has with contributing employers.
56. Copies of bills to North Carolina residents for membership dues enrolled in the RBA.
57. A copy of the RBA Agreement and Declaration of Trust
58. A copy of the RBA Employee Welfare Benefit Plan
59. A copy of the RBA Summary Plan Description

Respondents shall produce originals or legible copies of the documents ordered to be produced to Terry Dorman, Chief Examiner, Unlicensed Plan Investigations, at his address of North Carolina Department of Insurance, 1201 Mail Service Center, Raleigh, North Carolina 27699-1201 on or before the day of September 20, 2008. All answers must be signed and verified.

This 15th day of August, 2008.



William K. Hale
Hearing Officer and Special Counsel
N.C. Department of Insurance
1201 Mail Service Center
Raleigh, NC 27699-1201
(919) 715-8967

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day I have served the foregoing **AMENDED ORDER TO CEASE AND DESIST, NOTICE OF HEARING, AND ORDER TO PRODUCE DOCUMENTS** by mailing a copy thereof by federal express addressed as follows:

Ernest B. Beall, President and Registered Agent
Affinity Group Benefits Association, Inc.
537 Devereux Place
Concord, NC 28025

Bart Posey, President
Smart Data Solutions, LLC
4 676 Highway 41 North
Springfield, Tennessee 37172

Thomas J. Sullivan, President
National Trade Business Alliance of America, d/b/a National Alliance of Associations
141 Ganttown Rd., Suite E
Turnersville, NJ 08012

Christopher Ashiotes
Professional Benefits Consultants, Inc., a.k.a. PBC Direct
141 Ganttown Rd., Suite D
Turnersville, NJ 08012

Richard H. Bachman
1600 Magpie Cove
Austin, Texas 78746

Bart Posey
3448 Forest Park Road
Springfield, Tennessee 37172

Obed Kirkpatrick
1705 Rocking Chair Place
Franklin, Tennessee 37067

Thomas Sullivan
98 Oak Street #205
Lindenwood, NJ 08021

James M. Doyle
28 Sirius Court
Sewell, NJ 08080

Christopher Ashiotes
2302 Fernwood Avenue
Atco, NJ 08004

Richard H. Bachman
1600 Magpie Cove
Austin, Texas 78746

Bart Posey
3448 Forest Park Road
Springfield, Tennessee 37172

Obed Kirkpatrick
1705 Rocking Chair Place
Franklin, Tennessee 37067

Paul Olzeski, President
Association of Franchise and Independent Distributors, LLC
One South Limestone Street, Suite 301
Springfield, Ohio 45502

Paul Olzeski
701 Lakewood Drive
Taylor Mill, KY 41015

Bruce E. Spencer
Spencer & Associates, LLC
One South Limestone Street, Suite 301
Springfield, Ohio 45502

Marc Morrow
800 West Sam Houston, Pkwy., Suite 215
Houston, Texas 77042

Marc Morrow
951 Bowler Rd
Waller, Texas 77484

Marc Morrow
14027 Memorial Dr., Ste 226
Houston, Texas 77079

David L. Clark, Chairman
Real Benefits Association
75 Hardscrabble Road, Suite 202
P.O. Box 74
Basking Ridge, NJ 07920

American Trade Association
c/o Incomp. Services, Inc.
455 W Maurice
Hot Springs, AR 71901

Larry Matthews
Route 1, Box 154j
Beverly, Ohio 45715

I HEREBY CERTIFY that on this day I have served the foregoing **AMENDED ORDER TO CEASE AND DESIST, NOTICE OF HEARING, AND ORDER TO PRODUCE DOCUMENTS** by mailing a copy thereof by certified mail, return receipt requested, addressed as follows:

Larry Matthews, President
Dave Stephens, President
Stephens-Matthews Marketing, Inc.
P.O. Box 1208
Beverly, Ohio 45715

This the 15th day of August, 2008.


Anne Goco Kirby
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602-0629
Telephone: (919) 716-6610
North Carolina State Bar No. 13613
E-mail: akirby@ncdoj.gov

**NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA**

STATE OF NORTH CAROLINA

**BEFORE THE COMMISSIONER
OF INSURANCE**

COUNTY OF WAKE

**IN THE MATTER OF)
AFFINITY GROUP BENEFITS ASSOCIATION,)
INC., SMART DATA SOLUTIONS, LLC,)
NATIONAL TRADE BUSINESS ALLIANCE OF)
AMERICA d/b/a NATIONAL ALLIANCE OF)
ASSOCIATIONS, PROFESSIONAL BENEFITS)
CONSULTANTS, INC., a.k.a. PBC DIRECT,)
RICHARD H. BACHMAN, BART)
POSEY, OBED KIRKPATRICK, THOMAS)
SULLIVAN, JAMES M. DOYLE, AND)
CHRISTOPHER ASHIOTES)**

Docket No. D-1417

**EMERGENCY CEASE
AND DESIST ORDER,
NOTICE OF HEARING,
AND ORDER TO
PRODUCE DOCUMENTS
AND INFORMATION**

**TO: Ernest B. Beall, President and Registered Agent
Affinity Group Benefits Association, Inc.
537 Devereux Place
Concord, NC 28025**

**Bart Posey, President
Smart Data Solutions, LLC
4676 Highway 41 North
Springfield, Tennessee 37172**

**Thomas J. Sullivan, President
National Trade Business Alliance of America, d/b/a National Alliance of
Associations
141 Ganttown Rd., Suite E
Turnersville, NJ 08012**

**Christopher Ashiotes
Professional Benefits Consultants, Inc., a.k.a. PBC Direct
141 Ganttown Rd., Suite D
Turnersville, NJ 08012**

**Richard H. Bachman
1600 Magpie Cove
Austin, Texas 78746**

Bart Posey
3448 Forest Park Road
Springfield, Tennessee 37172

Obed Kirkpatrick
1705 Rocking Chair Place
Franklin, Tennessee 37067

Thomas Sullivan
98 Oak Street #205
Lindenwood, NJ 08021

James M. Doyle
28 Sirius Court
Sewell, NJ 08080

Christopher Ashiotes
2302 Fernwood Avenue
Atco, NJ 08004

ORDER TO CEASE AND DESIST

Pursuant to N. C. Gen. Stat. § 58-28-20(d) and any other applicable statutes and rules, the undersigned Hearing Officer hereby orders Affinity Group Benefits Association, Inc. [hereinafter, "AGBAI"], Smart Data Solutions, LLC [hereinafter, "SDS"], National Trade Business Alliance of America [hereinafter, "NTBAA"], a.k.a. National Alliance of Associations [hereinafter, "NAA"], Obed Kirkpatrick, Bart Posey, Richard H. Bachman, Thomas Sullivan, James M. Doyle, Christopher Ashiotes and any other agent of AGBAI, SDS, and NTBAA, a.k.a. NAA, to immediately cease and desist from transacting insurance business in violation of N.C.G.S. § 58-28-5.

The undersigned Hearing Officer finds, from the sworn affidavit of Terry Dorman presented to him in this matter that the interests of the public may be irreparably harmed if the

above-named Respondents are not ordered to immediately cease and desist from transacting insurance business in violation of N.C.G.S. § 58-28-5 as a result of the following:

1. Respondents have performed the following acts in violation of N.C.G.S. §§ 58-28-5 and 58-28-10:
 - a) Respondents have operated their insurance businesses through a North Carolina corporation.
 - b) Respondents have effected by mail or otherwise the issuance or delivery of contracts of insurance to residents of this State and other states by means of a master group health insurance policy issued in North Carolina to a North Carolina Corporation known as AGBAI.
 - c) Respondents have solicited applications for contracts of insurance to residents of this State and other states by means of a master group health insurance policy issued in North Carolina to a North Carolina corporation known as AGBAI and have collected premiums, membership fees, assessments, or other consideration for such contracts.
2. The National Trade Business Alliance of America ["NTBAA"] is registered as a non-profit New Jersey corporation and is located at 141 Ganttown Road, Turnersville, NJ 08012. The NTBAA is supposedly a membership association which purportedly provides health insurance, health-related discounts, and accidental death benefits to its "members."
3. At various times, NTBAA has done business under various names and currently does business using the name National Alliance of Associations ["NAA"] [hereinafter, the NTBAA and NAA will be merely referred to as the NAA].
4. Professional Benefits Consultants, Inc., a.k.a. PBC Direct [hereinafter, "PBC Direct"], is supposedly an insurance producer also located at 141 Ganttown Road, Turnersville, NJ 08012. PBC Direct and NAA are operated by the same individuals from the same address, and are essentially each other's alter ego.

5. Thomas Sullivan is the President of the NAA and was the incorporator agent of PBC Direct. James M. Doyle is the Secretary and Treasurer of the NAA and Vice President of Operations for PBC. Sullivan and Doyle are the only members of the Board of Trustees for the NAA. Christopher Ashiotes is a Vice President, Marketing Director, and insurance producer of PBC.

6. Smart Data Solutions, LLC [hereinafter, "SDS"] is a Tennessee corporation located at 4676 Highway 41 North in Springfield, Tennessee 37172. Bart Posey is the President of SDS and Richard H. Bachman is the Vice President of SDS. [hereinafter, Posey and Bachman shall be collectively referred to as the "principals" of SDS] Posey is a resident of Tennessee. Bachman has a nonresident Life and Health agent license issued by the Department on February 23, 2006.

7. Obed Kirkpatrick is a Tennessee resident and business associate of SDS who works out of the SDS office in Tennessee.

8. AGBAI is a North Carolina nonprofit corporation with an office in Concord, North Carolina. Ernest B. Beall is the President, owner, and registered agent of AGBAI.

9. In late July 2007, Posey and Kirkpatrick told Beall that they had a large number of individuals who were ready to enroll in an association for insurance benefits and persuaded Beall to "loan" them the use of AGBAI so that they could offer insurance to these individuals.

10. In August 2007, AGBAI entered into a marketing service agreement with SDS. Pursuant to the marketing service agreement, SDS is responsible for "market[ing] the day to day operations of the AGBAI. This [] include[s] developing marketing plans to procure new members, hiring marketing organizations to approach new potential members and administration once the new member becomes an active member."

11. SDS is also responsible under the marketing service agreement to: (a) negotiate for services and products on AGBAI's behalf, (b) make health insurance benefits available to AGBAI members, (c) bill and collect monthly dues and insurance premiums for all members, (d) handle and send fulfillment packages (including insurance cards and explanations of benefits) to new members, and (e) provide live customer support operators and licensed representatives at its offices in Tennessee to answer any members who have questions about insurance benefits and to enroll new members in AGBAI's insurance plans.

12. SDS established and maintains a web site www.agbai.com through which it promotes AGBAI's health insurance to the general public.

13. On September 4, 2007, Bachman submitted an application for a TransChoice policy to Transamerica Life Insurance Company ["Transamerica"] to be issued to AGBAI. Transamerica is a licensed insurance company. On September 4, 2007, AGBAI and SDS executed a Premium Collection Agreement which authorized SDS to serve as AGBAI's Premium Collection Administrator ["administrator"]. As administrator, SDS's duties include the handling of all insurance premium billing and collection matters on AGBAI's behalf.

14. On or about September 4, 2007, Transamerica issued a TransChoice Plus group policy to AGBAI with an effective date of September 1, 2007. The TransChoice policy was issued in North Carolina and provides limited health insurance benefits rather than comprehensive health insurance.

15. AGBAI entered into an affiliation agreement with the NAA which purportedly authorizes AGBAI to provide NAA members the same insurance benefits that AGBAI offers its members and requires the NAA to collect AGBAI affiliated member dues from NAA members and remit these dues to AGBAI.

16. Transamerica was unaware of the affiliation agreement and did not approve the NAA to market the TransChoice product as a sub-association of AGBAI. Nevertheless, the NAA, PBC Direct, SDS, their principals, and other marketing companies under contract with or connected with these companies marketed and sold the TransChoice product to the general public via illegal and unauthorized fax blast solicitations. The NAA, PBC Direct, SDS, and their principals also prepared to rollover existing NAA enrollees into the TransChoice policy issued to AGBAI.

17. Although the United States Fire Insurance Company ["US Fire"] has never issued any policies to AGBAI and has never been affiliated with AGBAI in any way, the NAA, PBC Direct, SDS, and their principals also marketed and sold accident and medical insurance purportedly provided under a policy or policies issued to AGBAI by US Fire.

18. For an effective date of February 1, 2008, SDS submitted two blocks of applications for a total of 1055 members for enrollment in the TransChoice policy to Key Benefits Administrators, Inc. ["KBA"], Transamerica's third party administrator. One of the blocks was submitted through a New Jersey insurance agent who had not been appointed as an insurance producer with Transamerica Worksite Marketing ["TWM"], an operating division of Transamerica. Transamerica directed KBA to reject all 1,055 applications and on February 13, 2008, Transamerica, through TWM, terminated Bachman's appointment as a Transamerica producer and informed SDS and Bachman that it would not accept any new enrollments in connection with the AGBAI account. By this time, approximately 5000 plus individuals from 49 states, including residents of North Carolina, had been enrolled in the AGBAI group policy issued by Transamerica.

19. Since at least February 1, 2008, Kirkpatrick, SDS, Posey, Bachman, AGBAI,

NAA, and PBC Direct have been enrolling individuals in a group health insurance policy issued in North Carolina to AGBAI by Beema Insurance Company ["Beema"], an unauthorized, alien insurer located in Pakistan for which SDS provides third party administrator services. The NAA, PBC Direct, SDS, AGBAI, and their principals have also been marketing and selling the Beema product.

20. For the foregoing reasons, Respondents Kirkpatrick, SDS, Posey, Bachman, AGBAI, NAA, PBC Direct, Sullivan, Doyle, Ashiotes, and any other agent of SDS, AGBAI, NAA, and PBC Direct shall immediately **CEASE AND DESIST** from:

- a. Contracting to provide insurance in this state for risks located in this state, whether as an insurer, agent, or by any other method;
- b. Offering, selling, and marketing insurance in this state for risks located in this state, whether as an insurer, agent, or by any other method;
- c. Taking or receiving an application for insurance offered by Beema or any other entity;
- d. Issuing or delivering contracts of insurance and certificates of insurance or other evidence of insurance coverage issued by Beema or any other entity;
- e. Transferring or moving AGBAI enrollees into new insurance coverage;
- f. Soliciting, negotiating, procuring or effectuating insurance coverage, or renewals thereof, disseminating information as to coverage or rates, forwarding applications, delivering policies or contracts, or in any other manner representing or assisting Beema or any other insurer;
- g. Directly or indirectly acting as an agent for, or otherwise representing or aiding in the solicitation, negotiation, procurement or effectuation of insurance coverage issued by Beema or by any other entity;
- h. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement for or regarding any insurance issued by Beema or any other entity;

- i. Conducting insurance business within the meaning of the North Carolina statutes relating to insurance, or otherwise acting as an insurer in this State; and
- j. Receiving or collecting any premiums, commissions, or other consideration for insurance issued by Beema or any other entity.

NOTICE OF HEARING

Pursuant to North Carolina General Statutes, Chapter 58, Article 28, North Carolina General Statutes, Chapter 150B, Article 3A, North Carolina General Statutes §§ 58-2-50, 58-2-55, 58-2-70, 58-3-125, 58-3-5, 58-28-10, 58-28-20, 58-28-45, 58-33-46, 58-33-95, 58-63-25, 58-63-32, 58-63-40, 150B-38, 150B-40, and other applicable statutes and rules, notice is given that an administrative hearing will be convened before the Commissioner of Insurance, or before a hearing officer duly designated by him, on August 26, 27, and 28, 2008, at 10:00 a.m., Room # 3099 of the Dobbs Building, located at 430 North Salisbury Street, Raleigh, Wake County, North Carolina. The hearing may subsequently be moved to a more suitable room in the building. The purpose of this hearing is to determine:

- (1) Whether Respondents are in violation of N.C.G.S. § 58-28-5 by having entered into a contract or contracts of insurance as an insurer in this State or by transacting insurance business in this State as set forth in N.C.G.S. § 58-28-10 without first being issued a certificate of authority or license to act as an insurance company;
- (2) Whether Respondents are in violation of N.C.G.S. 58-28-10 by performing any of the acts or transactions set forth therein while not authorized to do business in this State;
- (3) Whether Respondents have violated N.C.G.S. § 58-28-45(a) by acting as an agent for an insurer not authorized to transact business in this State or by negotiating for or placing or aiding in placing insurance coverage in this State for another with any such insurer;
- (4) Whether Respondents have violated N.C.G.S. § 58-33-95 by soliciting, negotiating, or selling insurance in this State for an unauthorized insurer;
- (5) Whether Respondents NAA, Thomas Sullivan, James Doyle, and Christopher Ashiotes

have willfully violated a Cease and Desist Order of the Commissioner entered against them pursuant to N.C.G.S. § 58-28-20;

- (6) Whether Respondents have engaged in any acts, methods, or practices in the business of insurance which are defined as or determined pursuant to Article 63 of Chapter 58 to be unfair and deceptive and whether a cease and desist order should be entered against them pursuant to N.C.G.S. § 58-63-32(a);
- (7) Whether Respondent Richard H. Bachman should have his agent licenses revoked or suspended pursuant to N.C.G.S. §§ 58-33-46(a) and 58-33-95;
- (8) Whether Respondents should be fined pursuant to N.C.G.S. §§ 58-28-5, 58-28-10, 58-28-45(h), and 58-2-70 for their violations of the insurance laws;
- (9) Whether Respondents NAA, PBC Direct, Thomas Sullivan, James Doyle, and Christopher Ashiotes should be fined pursuant to N.C.G.S. § 58-28-30 for willful violation of a Cease and Desist Order of the Commissioner; and
- (10) Whether Respondent Kirkpatrick should be fined pursuant to N.C.G.S. § 58-28-30 for willful violation of a Cease and Desist Order of the Commissioner;
- (11) Whether the Commissioner should issue an order to Respondents pursuant to N.C.G.S. § 58-28-20 to cease and desist from violating N.C.G.S. § 58-28-5.

I. ALLEGATIONS AND CHARGES

At this hearing, the following allegations and charges shall be considered:

A. General Allegations

1. The National Trade Business Alliance of America ["NTBAA"] is registered as a non-profit New Jersey corporation and is located at 141 Ganttown Road, Turnersville, NJ 08012.

The NTBAA is supposedly a membership association which purportedly provides health insurance, health-related discounts, and accidental death benefits to its "members."

2. At various times, NTBAA has done business under various names and currently does business using the name National Alliance of Associations ["NAA"] [hereinafter, the NTBAA and NAA will be merely referred to as the NAA].

3. Professional Benefits Consultants, Inc., a.k.a. PBC Direct [hereinafter, "PBC

Direct"], is supposedly an insurance producer also located at 141 Ganttown Road, Turnersville, NJ 08012. PBC Direct and NAA are operated by the same individuals from the same address, and are essentially each other's alter ego.

4. Thomas Sullivan is the President of the NAA and was the incorporator agent of PBC Direct. James M. Doyle is the Secretary and Treasurer of the NAA and Vice President of Operations for PBC. Sullivan and Doyle are the only members of the Board of Trustees for the NAA. Christopher Ashiotes is a Vice President, Marketing Director, and insurance producer of PBC.

5. The NAA, PBC Direct, Sullivan, Ashiotes, and Doyle [hereinafter Sullivan, Ashiotes, and Doyle shall be referred to as "principals" of NAA and PBC Direct] contract with marketing companies to market and sell bogus health insurance plans to residents of North Carolina and numerous other states via illegal and unauthorized blast fax solicitations.

6. The NAA and PBC Direct require individuals who apply for health insurance advertised via NAA's fax solicitations to pay a \$125.00 one time enrollment fee to become NAA members and thereby obtain health insurance benefits purportedly provided through a group policy issued to the NAA. Individuals are not aware that they are becoming "members" of the NAA when they enroll in the NAA's health insurance plans. Since April 2006, the NAA, PBC, and their principals enrolled at least one hundred twenty-three (123) North Carolina residents in the NAA's bogus insurance plans and collected premiums and enrollment fees from these residents. As of June 2007, 32 of the NAA's existing members were North Carolina residents.

7. Although no licensed insurer has ever issued a group insurance policy to the NAA, the NAA, PBC Direct, SDS, their principals, and the marketing companies acting under contract with these companies have misrepresented to consumers that the NAA provides

comprehensive health insurance benefits through a policy issued by various licensed insurers, including Stanford Life, Assurity Life, Bankers Fidelity, and AIG. Once enrolled, members are repeatedly moved by the NAA and PBC Direct from one bogus insurance policy to another without the members' knowledge and consent.

8. The NAA, PBC Direct, and their principals have also fraudulently prepared insurance cards and fulfillment packages bearing the names of licensed insurers and distributed these cards and packages to NAA enrollees.

9. After learning about these unauthorized activities by the NAA, PBC Direct, and their principals, several insurance companies have issued cease and desist orders to the NAA and PBC Direct and have posted consumer alerts on their websites.

10. Although the NAA does not meet the underwriting guidelines for a group policy because it is not a bona fide association, the NAA, PBC Direct, and their principals have attempted to procure a group health insurance policy for the NAA from licensed insurance companies. The NAA, PBC Direct, and their principals have also purported to provide health insurance benefits to NAA members through group policies issued by licensed insurers to other associations with which the NAA is allegedly affiliated.

11. In August 2007, a hearing was held in the Department against the NAA, PBC Direct, their principals and other named respondents in Docket number 1375 for alleged violations of North Carolina's unauthorized insurance laws. By order entered on January 31, 2008, the Department found and concluded that NAA, PBC Direct, their principals, and other named respondents therein had violated N.C.G.S. §§ 58-28-5 and 58-28-10 and ordered that all named respondents in that case cease and desist these violations.

12. Smart Data Solutions, LLC [hereinafter, "SDS"] is a Tennessee corporation

located at 4676 Highway 41 North in Springfield, Tennessee 37172. Bart Posey is the President of SDS and Richard H. Bachman is the Vice President of SDS. [hereinafter, Posey and Bachman shall be collectively referred to as the "principals" of SDS] Posey is a resident of Tennessee. Bachman has a nonresident Life and Health agent license issued by the Department on February 23, 2006.

13. Obed Kirkpatrick is a Tennessee resident and business associate of SDS who works out of the SDS office in Tennessee. On January 22, 2004, the Department entered an order in Docket number 1102 which concluded that Kirkpatrick and other named respondents therein had transacted insurance business in violation of N.C.G.S. §§ 58-28-5 and 58-33-95 and ordered Kirkpatrick and other named respondents to cease and desist transacting insurance business in this State and to pay unpaid claims.

14. SDS and its principals own and operate or provide third party administrator services for one or more membership associations, including Transportation Service Association ["TSA"], Fleetwood Group, Real Benefits Association, and American Trade Association ["ATA"]. SDS and its principals have marketed and sold bogus health insurance benefits to the general public, including residents of North Carolina, through these associations. SDS and its principals have prepared and distributed insurance cards and fulfillment packages for these bogus insurance benefits to enrollees, including residents of North Carolina.

15. In October 2006, the NAA executed an affiliation agreement with one of SDS's associations, TSA. That agreement purportedly enables the NAA to provide health insurance benefits under group health insurance policies allegedly issued to the TSA and other associations owned by or affiliated with SDS.

16. Pursuant to an affiliation agreement between the NAA and SDS, the NAA

purportedly provided NAA members health insurance benefits through a group policy issued by Stanford Life to Transportation Workers Benefits Association ["TWBA"], another association with which SDS was allegedly affiliated. However, the Stanford Life policy was a bogus policy and there was no actual affiliation between SDS and TWBA. Between November 2006 and March 2007, the NAA and SDS enrolled at least 32 North Carolina residents in the bogus Stanford Life policy.

17. SDS served as the administrator for the NAA's bogus health insurance plans from November 2006 through March 2007. In the second half of 2007, SDS resumed acting as an administrator for the NAA's insurance plans and continues to act as an administrator for the NAA's insurance plans.

18. In the fall of 2006, the NAA, PBC Direct, SDS, the principals of these entities, and Obed Kirkpatrick conspired to obtain an existing association for the purpose of procuring a group health insurance policy to cover existing and future enrollees in the NAA and other associations which SDS owns and operates or for which SDS performs third party administrator services. The NAA, PBC Direct, SDS, and the principals of these entities had been withdrawing monies from the bank accounts of individuals enrolled in their associations for bogus insurance coverage.

19. In furtherance of the conspiracy to obtain insurance benefits for existing and future enrollees of the NAA and these other associations, Posey and Kirkpatrick initiated discussions with Ernest B. Beall about purchasing Affinity Group Benefits Association, Inc. [hereinafter, "AGBAI"] AGBAI is a North Carolina nonprofit corporation with an office in Concord, North Carolina. Beall is the President, owner, and registered agent of AGBAI.

20. Posey and Kirkpatrick led Beall to believe that Posey was looking to buy an

association for the purposes of providing insurance benefits to clients in the trucking industry. SDS would market the association benefits for AGBAI. At the time Posey and Kirkpatrick offered to purchase AGBAI, it was a dormant association with no members.

21. Beall initially expressed interest in selling AGBAI to Posey and Kirkpatrick. However, on June 19, 2007, Beall informed Kirkpatrick and Posey that he decided not to sell AGBAI. In late July 2007, Posey and Kirkpatrick called Beall and urged him to allow them to "use" AGBAI temporarily until they could form a new association of their own. Posey and Kirkpatrick told Beall that they had a large group of individuals who were ready to enroll in an association which offered insurance benefits as of August 1, 2007, and that they would lose the group if they could not use AGBAI. Beall then agreed to allow Kirkpatrick and Posey to operate their business through AGBAI until they could form a new association. Posey and Kirkpatrick paid Beall \$5,000.00 up front and a monthly administrative fee of \$.50 per member enrolled for the use of AGBAI.

22. Beall named Kirkpatrick as AGBAI's secretary. As AGBAI's secretary, Kirkpatrick has been responsible for the day to day operations of the association. Kirkpatrick also performs certain services, such as developing and producing brochures and newsletters for AGBAI, which assist Posey in marketing the association's insurance and other insurance related benefits. Although Beall has received a monthly administrative fee, Beall contends that he has had no involvement in the business activities which Kirkpatrick, Posey, and SDS conducted through AGBAI.

23. On August 24, 2007, AGBAI entered into a marketing service agreement with SDS. Pursuant to the marketing service agreement, SDS is responsible for "market[ing] the day to day operations of the AGBAI. This [] include[s] developing marketing plans to procure new

members, hiring marketing organizations to approach new potential members and administration once the new member becomes an active member.”

24. SDS is also responsible under the marketing service agreement to: (a) negotiate for services and products on AGBAI’s behalf, (b) make health insurance benefits available to AGBAI members, (c) bill and collect monthly dues and insurance premiums for all members, (d) handle and send fulfillment packages (including insurance cards and explanations of benefits) to new members, and (e) provide live customer support operators and licensed representatives at its offices in Tennessee to answer any members who have questions about insurance benefits and to enroll new members in AGBAI’s insurance plans.

25. SDS established and maintains a web site www.agbai.com through which it promotes AGBAI’s health insurance to the general public.

26. In furtherance of the conspiracy to obtain insurance benefits for existing and future enrollees of the various associations owned and operated by NAA, PBC Direct, SDS, and their principals, Bachman and SDS became appointed in July 2007 as agents to represent Transamerica Life Insurance Company (“Transamerica”) through its Transamerica Worksite Marketing [“TWM”] division in the marketing and sale of TransChoice, a group voluntary limited-benefit medical indemnity insurance policy issued by Transamerica. Transamerica is a licensed insurance company.

27. On or about August 2007, Bachman approached TWM about obtaining a TransChoice Plus policy for AGBAI. On September 4, 2007, Bachman submitted an application for a TransChoice policy to TWM to be issued to AGBAI. In the application, which was executed by Bachman as broker of record and Kirkpatrick as Secretary of AGBAI, Kirkpatrick and Bachman falsely stated that AGBAI had 1400 existing members.

28. On September 4, 2007, AGBAI and SDS executed a Premium Collection Agreement which authorized SDS to serve as AGBAI's Premium Collection Administrator ["administrator"]. As administrator, SDS's duties include the handling of all insurance premium billing and collection matters on AGBAI's behalf.

29. On or about September 4, 2007, Transamerica issued a TransChoice Plus group policy to AGBAI with an effective date of September 1, 2007. The TransChoice policy was issued in North Carolina and provides limited health insurance benefits rather than comprehensive health insurance.

30. Some time after the TransChoice Plus group policy was issued to AGBAI, AGBAI entered into an affiliation agreement with the NAA. The affiliation agreement purportedly authorizes AGBAI to provide NAA members the same insurance benefits that AGBAI offers its members and requires the NAA to collect AGBAI affiliated member dues from NAA members and remit these dues to AGBAI.

31. Transamerica was unaware of the affiliation agreement and did not approve the NAA to market the TransChoice product as a sub-association of AGBAI. Nevertheless, the NAA, PBC Direct, SDS, their principals, and other marketing companies under contract with these companies marketed and sold the TransChoice product to the general public via illegal and unauthorized fax blast solicitations. The NAA, PBC Direct, SDS, and their principals also prepared to transfer existing NAA enrollees into the TransChoice policy issued to AGBAI.

32. Although the United States Fire Insurance Company ["US Fire"] has never issued any policies to AGBAI and has never been affiliated with AGBAI in any way, the NAA, PBC Direct, SDS, and their principals also marketed and sold accident and medical insurance purportedly provided under a policy or policies issued to AGBAI by US Fire.

33. In late September, 2007, the General Counsel of TWM's third party administrator, Key Benefit Administrators, Inc. ["KBA"], received information indicating that the NAA or marketing companies acting under contract with the NAA had been sending fax blast solicitations to the general public in violation of TWM's marketing guidelines and were purporting to enroll individuals in the TransChoice policy.

34. KBA's General Counsel contacted Bachman of SDS, who informed KBA's General Counsel about AGBAI's affiliation agreement with NAA. Subsequently, on September 27, 2007, Transamerica and TWM, in cooperation with and through KBA's General Counsel, issued a notice to SDS, NAA, and all producers and entities connected therewith requiring that they cease and desist marketing Transamerica's TransChoice Plus policy through AGBAI, NAA, or any other entity.

35. On October 6, 2007, Transamerica and TWM, through KBA's General Counsel, lifted the cease and desist notice as to SDS and Bachman, but kept the cease and desist notice in effect as to the NAA.

36. NAA, PBC Direct, and their principals ignored Transamerica's notice to cease and desist marketing the TransChoice product. SDS also ignored Transamerica's directive not to submit NAA members for enrollment in the TransChoice product. For a January 1, 2008 effective date, SDS submitted a block of 1,812 member applications for the AGBAI TransChoice Plus policy to KBA. In January and February 2008, TWM and KBA received many complaints from individuals in this block who were enrolled in the TransChoice Plus policy and had either received the policy fulfillment packages not knowing that their health coverage had been transferred to Transamerica, or who had premiums withdrawn from their bank accounts without their knowledge and consent. In many instances, these individuals had

not heard of Transamerica, TWM, or SDS before this time but had enrolled in an insurance plan marketed by the NAA and PBC Direct or other marketing companies under contract with or connected with these entities.

37. The NAA, PBC Direct, SDS, their principals, and marketing companies with which they were contracted or connected with made misrepresentations to many of these individuals which led them to believe that they were purchasing comprehensive health insurance when in fact the coverage was a limited-benefit medical indemnity insurance policy.

38. The NAA and their principals prepared and distributed association fulfillment packages to NAA enrollees which included a flyer for the TransChoice Plus policy without authorization from TWM.

39. The NAA, PBC Direct, SDS, AGBAI, and their principals charged enrollees an enrollment fee, monthly dues, and monthly insurance premiums which were significantly higher than the actual insurance premium charged by Transamerica. The association monthly dues and insurance premium amounts were not separately disclosed to the members. Rather, only a single combined premium amount was disclosed to enrollees.

40. A payment collection firm acting on behalf of NAA, PBC Direct, SDS, or other marketing firms connected with the principals of NAA, PBC Direct, and SDS took payments by credit card or directly from the member's bank account. Portions of the amounts that were collected on behalf of the NAA and PBC Direct were transferred to SDS. In January 2008, SDS began using a different payment collection firm and had that firm withdraw moneys from member accounts for the enrollment fee, monthly dues, and monthly premiums and submit those collections directly to SDS. In either case, SDS remitted only Transamerica insurance premium monies to KBA.

41. For an effective date of February 1, 2008, SDS submitted two blocks of applications for a total of 1055 members for enrollment in the TransChoice policy to KBA. One of the blocks was submitted through a New Jersey insurance agent who had not been appointed as an insurance producer with TWM. Transamerica directed KBA to reject all 1,055 applications and on February 13, 2008, Transamerica, through TWM, terminated Bachman's appointment as a Transamerica producer and informed SDS and Bachman that it would not accept any new enrollments in connection with the AGBAI account. By this time, approximately 5000 plus individuals from 49 states, including residents of North Carolina, had been enrolled in the AGBAI group policy issued by Transamerica.

42. On February 18, 2008, Transamerica appointed Bart Posey, the owner of SDS, as a producer and entered into a new contract with SDS. Since that time, SDS has continued to collect premiums from existing AGBAI enrollees for the TransChoice policy.

43. Since Transamerica stopped accepting new enrollments in February 2008, the NAA, PBC Direct, SDS, AGBAI, and their principals have been placing new enrollees in a group policy allegedly issued to AGBAI by Beema Insurance Company ["Beema"]. Beema is an unauthorized, alien insurance company located in Pakistan for which SDS purportedly provides third party administrator services. The NAA, PBC Direct, SDS, AGBAI and their principals have also been marketing and selling the bogus Beema product.

44. On February 19, 2008, Terry Dorman, Chief Examiner in the Unlicensed Plan Investigations section of the Department's Consumer Services Division, wrote Posey and Bachman separate letters requesting documents and information pertaining to AGBAI's insurance activities, including the names of all insurers providing insurance benefits to AGBAI members and a list of all AGBAI enrollees. Bachman failed to respond to Dorman's letter.

Although Posey responded to Dorman's letter, the only information he provided in response to Dorman's requests was a copy of the Transamerica policy issued to AGBAI.

45. On April 18, 2008, the Department sent a letter to Beall which informed him of alleged violations of the unauthorized insurance laws and unfair and deceptive acts and practices in violation of N.C.G.S. § 58-63-10 by AGBAI, SDS, and the NAA and requested his attendance at an informal conference with the Department. On April 20, 2008, Beall faxed a letter to Kirkpatrick requesting that Kirkpatrick and all of his associates immediately cease and desist using AGBAI and terminating any and all business relationships between he and Kirkpatrick. Since that time, Kirkpatrick, SDS, and their principals continue to collect premiums, fees, and dues from existing AGBAI members and to market their bogus insurance through AGBAI.

B. Violation of the Unauthorized Insurance Laws

46. Respondents have performed the following acts in violation of N.C.G.S. §§ 58-28-5 and 58-28-10:

- a) Respondents have operated their insurance businesses through a North Carolina corporation.
- b) Respondents have effected by mail or otherwise the issuance or delivery of contracts of insurance to residents of this State and other states by means of a master group health insurance policy issued in North Carolina to a North Carolina Corporation known as AGBAI.
- c) Respondents have solicited applications for contracts of insurance to residents of this State and other states by means of a master group health insurance policy issued in North Carolina to a North Carolina corporation known as AGBAI and have collected premiums, membership fees, assessments, or other consideration for such contracts.

47. Respondents have violated N.C.G.S. § 58-28-45(a) by acting as an agent for insurers not authorized to transact business in this State and by negotiating for or placing or aiding in the placement of insurance coverage in this State for another with insurers not

authorized to transact business in this State.

48. Respondents NAA, PBC Direct, Sullivan, Doyle, Ashiotes, SDS, Posey, Bachman, and Kirkpatrick have violated N.C.G.S. § 58-33-95(a) (3) by knowingly soliciting, negotiating, or selling insurance in this State for an unauthorized insurer.

C. Unfair or Deceptive Acts or Practices in Violation of N.C.G.S. § 58-63-10

49. Respondents have engaged in unfair and deceptive methods, acts or practices in the business of insurance in violation of N.C.G.S. § 58-63-10 by making, issuing, circulating, or causing to be made, issued or circulated illustrations, circulars, or statements misrepresenting the terms of and benefits provided under policies of insurance.

50. Respondents have engaged in other methods, acts, or practices which constitute unfair and deceptive acts or practices in the business of insurance in violation of N.C.G.S. § 58-63-10 but which are not defined as unfair and deceptive acts or practices in the business of insurance under N.C.G.S. § 58-63-15. These allegations are based on all of the allegations previously set out in this Notice and which are hereby realleged and incorporated by reference as if fully set out herein. They are also based on the following allegations:

- (a) Respondents have repeatedly sent fax blasts or caused numerous fax blasts to be sent to North Carolina residents advertising health benefits. The sending of these faxed advertisements is unfair and deceptive because these advertisements, among other things: (1) Do not identify the company offering the health benefits advertised and the insurance company providing these benefits; (2) Do not disclose that individuals are required to join an association and pay an enrollment fee and monthly association dues in order to obtain the insurance benefits; (3) Set forth an amount of monthly payment due for various levels of insurance coverage which includes monthly dues and fees, but fails to disclose that the monthly payment includes amounts for monthly dues and fees and the amount of the payment which constitutes monthly dues and fees; (4) Are unsolicited and attempt to induce the recipients to enroll quickly by stating that the offer expires within a few days; and (5) Do not accurately describe the insurance benefits being made available.

- (b) Respondents have repeatedly moved numerous individuals enrolled in their insurance plans from one bogus insurance policy to another without their knowledge and consent.
- (c) Respondents have often refused to refund enrollment fees, monthly dues, and premiums or unreasonably delayed making such refunds to individuals enrolled in their health insurance plans when enrollees request to cancel.
- (d) Respondents have perpetuated their fraudulent sale of bogus health insurance by producing and distributing flyers to enrollees which include summaries of insurance benefits under insurance policies which are issued or purportedly issued by licensed insurers and which purportedly cover their enrollees.

D. Grounds for Revocation or Suspension of Bachman's agents licenses

51. Pursuant to N.C. Gen. Stat. § 58-33-95(b), the Commissioner may revoke Bachman's licenses for knowingly soliciting, negotiating, or selling insurance in this State for an unauthorized insurer in violation of N.C. Gen. Stat. § 58-33-95(a)(3).

52. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(2) the Commissioner may revoke, suspend or refuse to renew Bachman's licenses on the grounds that Bachman violated North Carolina's insurance laws and regulations. This allegation is based on all of the allegations previously set out in this Notice and which are hereby realleged and incorporated by reference as if fully set out herein.

53. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(7), the Commissioner may revoke Bachman's licenses for committing unfair and deceptive methods, acts, or practices in the business of insurance. This allegation is based on the allegations previously set out in Section C of this Notice and which are hereby realleged and incorporated by reference as if fully set out herein.

54. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(8), the Commissioner may revoke, suspend or refuse to renew Bachman's license on the grounds that in the conduct of his

affairs under his license, Bachman has used fraudulent, coercive, or dishonest practices or has shown himself to be incompetent, untrustworthy and financially irresponsible in the conduct of business. This allegation is based on all of the allegations previously set out in this Notice and which are hereby realleged and incorporated by reference as if fully set out herein.

55. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(12a), the Commissioner may revoke Bachman's licenses for soliciting, negotiating, or selling insurance in this State for an unauthorized insurer.

E. Respondents' NAA, PBC Direct, Sullivan, Doyle, and Ashiotes Willful Violation of the Commissioner's Cease and Desist Order

56. Respondents NAA, PBC Direct, Sullivan, Doyle, and Ashiotes should be fined pursuant to N.C.G.S. §§ 58-28-30 and 58-2-70 for willful violation of the Commissioner's January 31, 2008 Cease and Desist Order. This allegation is based on all of the allegations previously set out in this Notice and which are hereby realleged and incorporated by reference as if fully set out herein.

F. Respondent Kirkpatrick's Willful Violation of the Commissioner's Cease and Desist Order

57. Respondent Kirkpatrick should be fined pursuant to N.C.G.S. §§ 58-28-30 and 58-2-70 for willful violation of the Commissioner's January 22, 2004 Cease and Desist Order. This allegation is based on all of the allegations previously set out in this Notice and which are hereby realleged and incorporated by reference as if fully set out herein.

II. POSSIBLE ADVERSE ADMINISTRATIVE ACTION

Based upon the foregoing, it is alleged that Respondents should be ordered to:

(1) Cease and desist from transacting insurance business in violation of N.C.G.S. § 58-28-5,

(2) Pay fines for violating N.C.G.S. §§ 58-28-5 and 58-28-45(a) pursuant to N.C.G.S. §§ 58-28-10 and 58-28-45(h), and (3) Cease and desist from engaging in the acts alleged herein to be unfair and deceptive methods, acts, or practices in the business of insurance.

It is further alleged that Respondents NAA, PBC Direct, Sullivan, Doyle, and Ashiotes should be fined pursuant to N.C.G.S. §§ 58-28-30 and 58-2-70 for willful violation of the Commissioner's January 31, 2008 Cease and Desist Order.

It is further alleged that Respondent Kirkpatrick should be fined pursuant to N.C.G.S. §§ 58-28-30 and 58-2-70 for willful violation of the Commissioner's January 22, 2004 Cease and Desist Order.

It is further alleged that Respondent Bachman's licenses should be revoked pursuant to N.C.G.S. §§ 58-33-46(a)(2), (7), (8), and (12a) and 58-33-95(b).

III. PROCEDURES FOR THE HEARING

- A. At this hearing, Respondents will be given the opportunity directly or through counsel to present evidence on issues of fact, examine documents and cross examine witnesses, submit rebuttal evidence and make arguments as to issues of law.
- B. Please be advised that N.C.G.S. § 58-33-95 makes any person representing an insurer personally liable on all contracts of insurance unlawfully made by or through him, directly or indirectly, for any company not authorized to do business in the State. Also be advised that pursuant to the provisions of N.C.G.S. § 58-33-46(a)(2), any person currently licensed as an agent by the Commissioner may be subjected to license suspension, revocation or nonrenewal for violating any insurance law.
- C. As a result of this hearing, the Commissioner may reduce his findings to writing and issue and cause to be served upon such person or persons an order to cease and desist from violating the provisions of N.C.G.S. § 58-28-5, which make it unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this State without first obtaining a certificate of authority or a license. N.C.G.S. § 58-28-30 makes any person who willfully violates a cease and desist order of the Commissioner, after it has become final, and while such order is in effect, subject to the provisions of N.C.G.S. § 58-2-70.

N.C.G.S. § 58-2-70 authorizes the Commissioner to impose upon such person a penalty of not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000.00) per violation. Furthermore, subsection (c) thereof provides that each day during which a violation occurs constitutes a separate offense.

- D. Please be advised that N.C.G.S. § 58-28-10 subjects any person who is found guilty of violating any of the provisions of such section while not authorized to do business within this State to a penalty of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each offense, provided that each day in which a violation occurs shall constitute a separate offense.
- E. Your failure to appear at the hearing will not prevent the Commissioner or Hearing Officer from hearing the evidence and entering any appropriate Order as authorized by law.

ORDER TO PRODUCE DOCUMENTS AND INFORMATION

Pursuant to N.C.G.S. § 58-2-50 and other applicable statutes, each Respondent is ORDERED to produce the following documents and to provide the following information:

1. A list of the names, addresses, and phone numbers of all persons or entities which market or in any way represent or which have marketed or in any way represented the NAA, PBC Direct, SDS, AGBAI, and any other associations which the NAA, PBC Direct, SDS, Richard H. Bachman, and Bart Posey have owned, operated, or provided marketing services to from August 2007 to present.
2. Copies of all flyers, brochures, advertisements, and other materials used by SDS or third parties contracted with SDS to market insurance or insurance related products and benefit plans offered through AGBAI from August 2007 to present.
3. Copies of all flyers, brochures, advertisements, and other materials used by the NAA, PBC Direct, or third parties contracted with NAA or PBC Direct to market insurance or insurance related products and benefit plans offered through AGBAI from August 2007 to present.
4. The full name and addresses of all insurance carriers that underwrite or have underwritten insurance or insurance related products and benefit plans offered through AGBAI by the NAA, PBC Direct, SDS, AGBAI, and any other associations which the NAA, PBC Direct, SDS, Richard H. Bachman, and Bart Posey have owned, operated, or provided marketing services to from October 2006 to February 2008.

5. The full name and addresses of all insurance carriers that underwrite or have underwritten insurance or insurance related products and benefit plans offered through AGBAI by the NAA, PBC Direct, SDS, AGBAI, and any other associations which the NAA, PBC Direct, SDS, Richard H. Bachman, and Bart Posey have owned, operated, or provided marketing services to from February 2008 to present.
6. Copies of all group insurance policies issued to AGBAI from August 2007 to present.
7. Copies of all group insurance policies issued to any association through which members of AGBAI are provided insurance benefits.
8. Copies of all applications for group insurance policies submitted for AGBAI from August 2007 to present.
9. Copies of all contracts between SDS, Bart Posey, or Richard H. Bachman and insurance companies which have issued a group insurance policy or policies to AGBAI from August 2007 to present.
10. Identify and produce copies of all agreements to which AGBAI is a party.
11. Copies of all contracts between Obed Kirkpatrick and SDS or any officers of SDS.
12. Copies of all agreements between SDS and the NAA or PBC Direct from October 2006 to present.
13. Copies of all contracts between the NAA, PBC Direct, SDS, AGBAI, and any other associations which the NAA, PBC Direct, SDS, Bart Posey, or Richard H. Bachman have owned, operated, or provided marketing services to and third parties to market insurance plans and other benefits made available through AGBAI from August 2007 to present.
14. List the names and addresses of all associations whose members are provided insurance benefits through a group policy or policies issued to AGBAI.
15. Copies of all individual applications submitted by SDS to Transamerica or its third party administrator, Key Benefits Administrators, Inc. for an effective date of January 1, 2008.
16. Copies of all individual applications submitted by SDS to Transamerica or its third party administrator, Key Benefits Administrators, Inc. for an effective date of February 1, 2008.
17. List the names, addresses, and phone numbers of all individuals enrolled in AGBAI between September 2007 to present. For each individual enrolled, state: (a) whether the

individual was ever enrolled as a member in the NAA and, if so, the name of the insurance company through which the NAA provided insurance benefits to the individual before the individual was enrolled in AGBAI; (b) the date of the individual's enrollment into AGBAI, (c) the date of cancellation, if applicable, (d) the names of each insurance company which provides or has provided insurance benefits to the individual through a group policy issued to AGBAI, (e) separately state the amount of money collected from the individual for enrollment fees, monthly dues, and premiums, and (f) the amount of premiums remitted to an insurance carrier on behalf of the enrollee.

18. List the names, addresses, and phone numbers of all North Carolina residents which are or have been enrolled in any insurance plans offered through any other associations which SDS, Bart Posey, or Richard H. Bachman have owned, operated, or provided marketing services to from January 2006 to present. For each North Carolina resident identified, state: (a) the name and address of the association through which the individual was insured, (b) the name and address of the insurance company which provided the insurance benefits offered through that association, (c) the date the individual was enrolled in the insurance plan, (d) the date of cancellation, if applicable, (e) separately state the amount of money collected from the individual for enrollment fees, monthly dues, and premiums, and (f) the amount of premiums remitted to an insurance carrier on behalf of the enrollee.

19. Copies of all records, including bank statements, which show the enrollment fees, monthly dues, and premiums collected by or for SDS from individuals enrolled in AGBAI from August 2007 to present.

20. Copies of all records, including bank statements, which show the premiums remitted to insurance companies on behalf of AGBAI from August 2007 to present.

21. Copies of all records, including bank statements, which show monies received by SDS from the NAA and PBC Direct from October 2006 to present.

22. Copies of all records, including bank statements, which show monies paid by SDS to the NAA and PBC Direct from November 2006 to present.

23. Copies of all records, including bank statements, which show monies paid by SDS to Obed Kirkpatrick and AGBAI.

24. Copies of AGBAI's bank accounts statements from August 2007 to present.

25. Copies of records of all complaints, verbal and written, which SDS, the NAA, PBC Direct, AGBAI, or third parties which provide or have provided marketing services to these entities have received from individuals who were enrolled in AGBAI or who were solicited to enroll in AGBAI.

26. Copies of all written requests to cancel enrollment and for refunds which SDS, the NAA, PBC Direct, AGBAI, or third parties which provided marketing services to these

entities have received from individuals who were enrolled in AGBAI.

27. Records of all refunds made by SDS, the NAA, PBC Direct, AGBAI, or third parties which provided marketing services to these entities to individuals who enrolled in AGBAI.

28. Copies of all e-mails, letters, faxes, and other correspondence between Obed Kirkpatrick, Bart Posey, Richard H. Bachman, or any other officer or employee of SDS and Thomas Sullivan, James Doyle, Christopher Ashiotes, or any other officer or employee of the NAA and PBC Direct regarding NAA business administered by SDS from November 2006 to present.

29. Copies of all e-mails, letters, faxes, and other correspondence between Obed Kirkpatrick and Bart Posey regarding AGBAI from November 2006 to present.

30. Copies of all e-mails, letters, faxes, and other correspondence between Obed Kirkpatrick and Richard H. Bachman regarding AGBAI from November 2006 to present.

31. Copies of all e-mails, letters, faxes, and other correspondence between Bart Posey and Richard H. Bachman regarding AGBAI from November 2006 to present.

32. Copies of all correspondence between Christopher Ashiotes, James, Doyle, and Thomas Sullivan regarding AGBAI.

33. The names and addresses of all insurance carriers which have provided coverage to North Carolina residents currently or previously enrolled in the NAA, AGBAI, and any other associations which the NAA, PBC Direct, SDS, Bart Posey, or Richard H. Bachman have owned, operated, or provided marketing services to from January 2006 to present.

34. Copies of all insurance policies through which the NAA, AGBAI, and any other associations which the NAA, PBC Direct, SDS, Bart Posey, or Richard H. Bachman have owned, operated, or provided marketing services to, have provided insurance benefits to North Carolina residents from January 2006 to present.

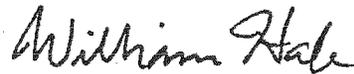
35. Copies of any and all contracts, policies, brochures, literature, application forms, enrollment documents, disclosure forms and other documents that are being used or have been used in connection with insurance benefits offered through AGBAI from August 2007 to date by NAA, PBC Direct, SDS, AGBAI, and any other associations which the NAA, PBC Direct, SDS, Bart Posey, or Richard H. Bachman have owned, operated, or provided marketing services to.

36. Copies of any and all contracts, policies, brochures, literature, application forms, enrollment documents, disclosure forms and other documents that are being used or have been used by SDS in North Carolina in connection with insurance benefits offered through any other associations which the NAA, PBC Direct, AGBAI, SDS, Bart Posey, or Richard H. Bachman have owned, operated, or provided marketing services to from August 2007 to present.

37. A list of the full names and addresses of all officers of SDS.
38. All corporate records of SDS filed with the state of Tennessee, including SDS's Articles of Incorporation.
39. A list of the full names and addresses of all individuals or entities which have an ownership interest in SDS.
40. Copies of all third party administrator's licenses issued to SDS.
41. Copies of all contracts which SDS has entered into to provide third party administrator services from January 2006 to present.
42. Copies of all contracts between SDS and any associations in force at any time between January 2006 to present.
42. List all states in which each of the following Respondents have been issued insurance agent licenses and produce copies of each license: (a) Bart Posey, (b) Obed Kirkpatrick, (c) Richard H. Bachman, (d) Thomas Sullivan, (e) James Doyle, and (f) Christopher Ashiotes.
43. Identify all websites established and or used by SDS, NAA, PBC Direct, and AGBAI to market insurance plans from August 2007 to present.
44. NAA "Compliance Manual" distributed to NAA marketing representatives.

Respondents shall produce originals or legible copies of the documents ordered to be produced to Terry Dorman, Chief Examiner, Unlicensed Plan Investigations, at his address of North Carolina Department of Insurance, 1201 Mail Service Center, Raleigh, North Carolina 27699-1201 on or before the day of June 20, 2008.

This 16th day of May, 2008.



William Hale
Hearing Officer
N.C. Department of Insurance
Post Office Box 26387
Raleigh, NC 27611
(919) 715-0011

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day I have served the foregoing **ORDER TO CEASE AND DESIST, NOTICE OF HEARING, AND ORDER TO PRODUCE DOCUMENTS** by mailing a copy thereof by federal express addressed as follows:

Ernest B. Beall, President and Registered Agent
Affinity Group Benefits Association, Inc.
537 Devereux Place
Concord, NC 28025

Bart Posey, President
Smart Data Solutions, LLC
4 676 Highway 41 North
Springfield, Tennessee 37172

Thomas J. Sullivan, President
National Trade Business Alliance of America, d/b/a National Alliance of Associations
141 Ganttown Rd., Suite E
Turnersville, NJ 08012

Christopher Ashiotes
Professional Benefits Consultants, Inc., a.k.a. PBC Direct
141 Ganttown Rd., Suite D
Turnersville, NJ 08012

Richard H. Bachman
1600 Magpie Cove
Austin, Texas 78746

Bart Posey
3448 Forest Park Road
Springfield, Tennessee 37172

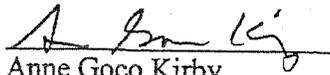
Obed Kirkpatrick
1705 Rocking Chair Place
Franklin, Tennessee 37067

Thomas Sullivan
98 Oak Street #205
Lindenwood, NJ 08021

James M. Doyle
28 Sirius Court
Sewell, NJ 08080

Christopher Ashiotes
2302 Fernwood Avenue
Atco, NJ 08004

This the 16th day of May, 2008.



Anne Goco Kirby
Assistant Attorney General
North Carolina Department of Justice
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Raleigh, North Carolina 27602-0629
Telephone: (919) 716-6610
North Carolina State Bar No. 13613
E-mail: akirby@ncdoj.gov