

1 JACQUELINE T. LENMARK
Keller, Reynolds, Drake,
2 Johnson & Gillespie, P.C.
50 South Last Chance Gulch
3 P.O. Box 598
Helena, Montana 59624
4 Telephone: (406) 442-0230
Facsimile: (406) 449-2256
5 email: jtlenmark@kellerlawmt.com

6 Attorney for Respondents
National Better Living Association, Inc.; Allied Health Benefits, Inc.; George E.
7 Spalding, Jr.; Angus Morrison; Timothy Siewert; Michael Siewert; John Fabbrini;
John B. "Barry" Shaw, Jr.; and G. Dan Siewert, III
8

9 **BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE**
10 **OFFICE OF THE STATE AUDITOR**
11 **STATE OF MONTANA**

12 IN THE MATTER OF THE NATIONAL)
BETTER LIVING ASSOCIATION, INC.;)
13 SELECT BENEFITS SERVICES)
ASSOCIATION; THE LIFE INSURANCE)
14 COMPANY OF NORTH AMERICA;)
COMPANION LIFE INSURANCE)
15 COMPANY; GUARANTEE TRUST LIFE)
INSURANCE COMPANY; UNITED)
16 STATES LIFE INSURANCE COMPANY)
IN THE CITY OF NEW YORK;)
17 NATIONAL UNION FIRE INSURANCE)
COMPANY; ALBERT CORMIER)
18 SOLUTIONS, LLC, f.k.a. ACS)
HEALTHCARE, LLC; ALLIED HEALTH)
19 BENEFITS, INC.; INTERNATIONAL)
MARKETING AND ADMINISTRATION)
20 CORPORATION; PSI/HEALTH LEADS)
SYSTEMS, INC.; GEORGE E.)
21 SPAULDING, JR.; ANGUS MORRISON;)
TIMOTHY SIEWERT; MICHAEL)
22 SIEWERT; JOHN FABBRINI; BARRY)
SHAW; LANDON JORDON; OTIS)
23 CHAPMAN; JUSTIN CORMIER;)
MELANIE HALL; CRYSTAL CORRELL;)
24 SHAWN HILLS; BARBARA)
HARRINGTON; G. DAN SIEWERT, III;)
25 EDWARD KLAYMAN, JOHN or JANE)
DOES 1-10, and XYZ BUSINESS)
26 ENTITIES 1-10,)

27 Respondents.)

Case No.: INS-2009-70

**ANSWER AND REQUEST FOR
HEARING - NATIONAL BETTER
LIVING ASSOCIATION, INC.**

28 **ANSWER AND REQUEST FOR HEARING - NBLA**

1 The National Better Living Association, Inc.TM [NBLATM]¹, by and through its counsel of
2 record, Jacqueline T. Lenmark of Keller, Reynolds, Drake, Johnson and Gillespie, P.C., provides
3 this response to the Notice of Proposed Agency Disciplinary Action and Opportunity for Hearing
4 [Notice] recommended to the State of Montana Commissioner of the Securities and Insurance
5 Office of the State Auditor [CSI] by staff of the Department of Insurance [Department] as
6 follows:

7 **FIRST DEFENSE**

8 1. The Notice, and each of its allegations and conclusions of law, fails to state a violation
9 of law by NBLA for which the proposed penalties can lawfully be imposed.

10 **SECOND DEFENSE**

11 2. The Notice does not specify any time periods alleged to be relevant or “material” to
12 the agency action and therefore NBLA’s knowledge to admit or deny the truth of the allegations
13 is limited. Therefore, all admissions and denials of allegations of fact and proposed conclusions
14 of law, except as expressly admitted below, are qualified by this lack of knowledge.

15 **Allegations of Fact**

16 **The Respondents**

17 3. Responding to ¶ 1 of the Notice, NBLA admits it is a not for profit corporation
18 incorporated and domiciled in Georgia. Admits NBLA’s principal place of business is 5425
19 Peachtree Parkway, Norcross, Georgia 30092. Admits that NBLA does have a nonresident
20 business entity producer license issued by Montana. At one point in NBLA’s history, it was
21 advised that it should obtain business entity (i.e. agency) producer licenses because associations
22 are not licensed by the states. However, in 2010, after reviewing the various state statutes, it
23 became clear that NBLA did not and does not need a business entity producer license since it did
24 not and does not sell, solicit or negotiate insurance nor does it received any commissions. NBLA
25 has been in the process of allowing its business entity producer licenses to lapse as they come up

26 _____
27 ¹“National Better Living Association” and “NBLA” are trademarks of The National Better Living Association, Inc.

1 for renewal. Montana appears to be a state that issues perpetual business entity licenses; NBLA
2 is not required to have or maintain a Montana nonresident business entity producer license and
3 will agree to voluntarily surrender this license without cause. Admits the original application
4 listed NBLA's address at 6470 E. Johns Crossing, Suite 170, Duluth, Georgia and that Tim
5 Siewert was listed as the Director/Assistant Secretary, which was accurate at the time of the
6 application on December 9, 2008. Affirmatively alleges that the Department's website currently
7 reflects the address of NBLA to be 5425 Peachtree Parkway, Norcross, Georgia 30092. Admits
8 that NBLA never held *insurer* appointments but denies that it solicited or sold insurance products
9 or received commissions in Montana. Denies the remaining allegations of ¶ 1.

10 4. Denies the allegations of ¶ 2 that NBLA solicited and/or sold products in Montana and
11 affirmatively allege NBLA offers memberships through a third party marketer. Admits that
12 George E. Spalding, Jr., Angus Morrison, Michael Siewert, Timothy Siewert, John Fabbrini and
13 John B. "Barry" Shaw, Jr. were at various times officers or directors of NBLA.

14 5. Responding to the allegations of ¶ 3, admits that AHB assists in NBLA operations,
15 member program development and other administrative services. The contract between AHB
16 and NBLA was executed on or around January 1, 2007. Denies that AHB collects premiums
17 from Montana insurance consumers. The remaining allegations of ¶ 3 relate to Respondents
18 other than NBLA for which a response from NBLA is not required, or if deemed to be required,
19 NBLA denies.

20 6. Denies the allegations of ¶ 4 and affirmatively alleges Tim Siewert became licensed
21 April 18, 2007, not April 8, 2007. The licensed number on the website shows 683712, not
22 707886 (which is NBLA's license). The remaining allegations of ¶ 4 relate to Respondents other
23 than NBLA for which a response from NBLA is not required, or if deemed to be required, NBLA
24 denies.

25 7. Responding to the allegations of ¶ 5, NBLA admits that NBLA purchased group
26 insurance policies from several insurers. Denies that NBLA and Select Benefits Services
27

1 Association [SBSA] are “affiliated.” NBLA affirmatively alleges that SBSA is Guarantee Trust
2 Life Insurance Company’s [GTL] association. GTL issued a group Accident and AD&D Policy
3 # G20059 to SBSA. SBSA gave access to the policy to NBLA and its members. In most states,
4 GTL issued to NBLA its own group master policy # ACC000015A in December of 2009.
5 However, GTL continued to use Policy #G20059 for NBLA’s Montana members due to the fact
6 that GTL was not able to gain approval for the new policy number. NBLA purchased GTL’s
7 benefits through SBSA based on assertions from GTL that the arrangement was legal.

8 8. Admits the allegations of ¶ 6 that Life Insurance Company of North America [LINA]
9 issued a limited medical benefit policy to NBLA. The remaining allegations of ¶ 6 appear to be
10 directed to Respondents other than NBLA for which a response from NBLA is not required, or if
11 deemed to be required, NBLA denies.

12 9. Responding to the allegations of ¶ 7, admits Companion Life Insurance Company
13 [CLIC] issued a group policy to NBLA; and admits the policy states “employee,” but
14 affirmatively alleges association members are covered under this definition pursuant to contract.
15 Denies that association members were not eligible for coverage and that claims were not paid.
16 NBLA affirmatively alleges that it is understood by NBLA and CLIC that for NBLA, the term
17 “employee” would include “member.” CLIC continues to pay all NBLA members’ claims
18 submitted properly under this group master policy. Denies that NBLA utilized unappointed
19 producers. Denies NBLA solicited and sold products. The remaining allegations of ¶ 7 appear to
20 be directed to Respondents other than NBLA for which no response from NBLA is required or if
21 deemed to be required NBLA denies.

22 10. Responding to the allegations of ¶ 8, admits National Union Fire Insurance company
23 issued a group policy to NBLA; cannot admit or deny “similar case” allegations because NBLA
24 is without knowledge of the facts and does not understand the relevance of the allegation and
25 therefore denies; denies the remaining allegations directed to NBLA. The remaining allegations
26 appear to be directed to Respondents other than NBLA for which no answer from NBLA is
27

1 required, or if deemed to be required, NBLA denies.

2 11. Responding to the allegations of ¶ 9, admits US Life did issue a group master limited
3 benefit insurance policy to NBLA for a period on or about March 1, 2007 to December 1, 2009.
4 Denies there was a three-party contract between NBLA, AHB and USLIC, and affirmatively
5 alleges there was a contract between NBLA and USLIC based on the group insurance master
6 policy, which expired on or around December 1, 2009. The remaining allegations appear to be
7 directed to Respondents other than NBLA for which no response is required, or if deemed to be
8 required NBLA denies.

9 12. Responding to the allegations of ¶ 10, denies that Montana NBLA members were
10 provided purported health coverage through an association with SBSA and affirmatively allege
11 that (i) NBLA received AD&D and accidental medical insurance through SBSA (a captive
12 association), which had been issued by GTL to SBSA and which did not include “general health
13 insurance”; and (ii) NBLA’s group health insurance policy (via USLIC and LINA, not
14 GTL/SBSA) offered health coverage to its members. Cannot admit or deny “similar case”
15 allegations because NBLA is without knowledge of the facts and does not understand the
16 relevance of the allegation and therefore denies. The remaining allegations appear to be directed
17 to Respondents other than NBLA for which no response is required, or if deemed to be required
18 NBLA denies.

19 13. Admits the allegations of ¶ 11 that Delta Dental Insurance Company issued a group
20 dental master insurance policy to NBLA in September 2009. NBLA is without knowledge to
21 admit or deny allegations regarding policy approval, and therefore denies.

22 14. Admits the allegation of ¶ 12 that ACS enrolled memberships in NBLA. NBLA
23 understands ACS has ceased doing so. Denies the allegations of ¶ 12 that NBLA offers
24 “products” for sale but admits that NBLA offers memberships in the association. NBLA is
25 without knowledge to admit or deny the truth of the remaining allegations of ¶ 12 and therefore
26 denies.

1 15. Denies the allegations of ¶ 13 that NBLA solicits or sells insurance or “products” and
2 affirmatively alleges that NBLA offers memberships through a third party marketer; admits that
3 Landon Jordan worked for PSI. NBLA is without knowledge to admit or deny allegations
4 regarding Landon Jordan’s or Otis Chapman’s licensure or appointment status or the remaining
5 allegations of ¶ 13 regarding PSI and therefore denies.

6 **Multiple Respondents Acted in Concert to Violate the Montana Insurance Code**

7 16. Denies the allegations of ¶ 14 as vague and overbroad and lacking notice to
8 Respondents of the affiliations, transactions, concert, acts or omissions alleged. Denies there are
9 161 Montana insurance consumers since 2006 and that there are 51 memberships currently
10 active. Affirmatively alleges that on June 30, 2011, NBLA had 53 active Montana members and
11 the best numbers available to NBLA indicate a total of 76 members since January 1, 2006. To
12 the extent the allegations of ¶ 14 relate to other Respondents, a response from NBLA is not
13 required, or if deemed to be required, NBLA denies.

14 17. Denies the allegations of ¶ 15 that NBLA was in a “legal relationship” to other
15 Respondents as vague and overbroad, lacking sufficient specificity or definition of terms to
16 notice Respondents of the acts, omissions, or “legal relationship[s]” alleged. The allegation of ¶
17 15 that legal liability may be imputed to NBLA from another party or from one party to another
18 calls for a legal conclusion to which no response is required or if deemed to be required, NBLA
19 denies. To the extent the allegations of ¶ 15 relate to other Respondents, a response from NBLA
20 is not required, or if deemed to be required, NBLA denies.

21 18. Denies the allegations of ¶ 16 as vague, overbroad, lacking in definition of the legal
22 terminology used, failing to establish that all Respondents or which Respondents are agents,
23 servants, or employees. To the extent the allegations of ¶ 16 relate to other Respondents, a
24 response from NBLA is not required, or if deemed to be required, NBLA denies.

25 19. Denies the allegations of ¶ 17. To the extent that the allegations of ¶ 17 are directed
26 to Respondents other than NBLA, a response from NBLA is not required or if deemed to be
27

1 required, NBLA denies.

2 20. Admits that the paraphrased and excerpted allegation of NBLA's corporate purpose
3 in ¶ 18 is substantially correct. Affirmatively allege that the corporate purposes are: (a) to
4 educate members about better balancing work, family and personal demands and activities; (b) to
5 provide, collect and disseminate information to its members about effectively accessing and
6 taking advantage of quality health and medical care and services; and (c) to attempt to influence
7 government, corporate and public opinions, policies, regulations and laws to promote more
8 balanced and healthier lifestyles and broader access to quality health and medical care and
9 services.

10 21. Denies the allegations of ¶ 19 of what NBLA "appears to have been" as speculation
11 and not allegations of fact. Denies that NBLA was or is maintained for the purpose of soliciting
12 and selling insurance nationally and affirmatively allege that its purpose is to promote wellness.
13 Affirmatively allege that NBLA meets the definition of a permissible association under Montana
14 law; Montana does not have jurisdiction over national issues; and NBLA has been approved as a
15 legitimate association in other states with similar laws.

16 22. Denies the allegations of ¶ 20 of what NBLA "insurance products appear to be" or
17 "apparent" motives as speculation and not allegations of fact. Affirmatively allege that NBLA is
18 eligible to buy group insurance policies since it is a permissible association. Denies that NBLA
19 is engaged in obfuscation.

20 23. Admits the allegation of ¶ 21 that alleges NBLA's first formal annual meeting
21 occurred in 2010 and affirmatively alleges that membership meetings have been postponed from
22 the time of NBLA's initial inception while the association worked to properly generate
23 memberships, build its infrastructure, and perform an audit of its books and records. NBLA has
24 had regular Board meetings. After growing, NBLA now has separate office space, employees,
25 bank accounts, etc. Further, NBLA is in constant communication with its members via its
26 member services call center, website, written materials, etc. Denies the allegations of ¶ 21 of
27

1 what NBLA's observance of corporate formalities "appear to be" as speculation and not an
2 allegation of fact. NBLA does not understand how an annual meeting can "present a veneer of
3 group eligibility," and therefore denies the allegation.

4 24. Denies the allegations of ¶ 22 that allege NBLA was offering but not providing
5 access to comprehensive health or major medical and affirmatively alleges that NBLA clearly
6 discloses the type of insurance (as demonstrated by NBLA's website, scripts, IVRs, and
7 membership packets) available to its membership. Denies the characterization of NBLA's
8 membership in Montana as speculation and not an allegation of fact and affirmatively alleges that
9 neither NBLA nor CSI can control the rationale behind consumers' decisions to become an
10 NBLA member.

11 25. Denies the allegations of ¶ 23 and affirmatively alleges that NBLA does not offer
12 "products" nor does the purchase of a "product" cause enrollment in the association. NBLA
13 offers memberships. The nature of the membership controls the services and products that the
14 member is then entitled to access.

15 26. Denies the allegations of ¶ 24 as speculation and not an allegation of fact. Denies
16 that NBLA offers "products" and affirmatively alleges that NBLA offers memberships. The
17 nature of the membership controls the services and products that the member is then entitled to
18 access.

19 27. Responding to the allegations of ¶ 25:

20 (a) denies the allegations for lack of specificity as to which Respondents are alleged to
21 have engaged in the recited conduct, as speculative and lacking in allegations of fact that provide
22 notice to Respondents. To the extent that the allegations of ¶ 25 are directed to Respondents
23 other than NBLA, no response from NBLA is required, or if deemed to be required, NBLA
24 denies.

25 (b) To the extent that ¶ 25 is directed at NBLA, NBLA is without knowledge to admit or
26 deny the allegations and affirmatively alleges that consumers are contacted only after consumer
27

1 has inquired about NBLA. Consumers must fill out an inquiry form (via various websites, but
2 not via NBLA's website) and consent to be contacted. Third party markets purchase "leads"
3 from outside parties. Leads are not owned nor controlled by NBLA.

4 (c) Denies the allegations that there are "boiler room" solicitations and affirmatively
5 alleges that NBLA contracts with AHB and requires AHB to follow laws. AHB, in turn, requires
6 the call centers to follow applicable law, *e.g.*, that call centers are legitimate and licensed. AHB
7 also uses a script that is reviewed and approved by the insurance companies, independent voice
8 recording [IVR] verifications, fulfillment kits, 30 day "free look," etc., to allow the consumer to
9 make an informed decision about the membership offered.

10 28. Denies the allegations of ¶ 26 that are "upon information and belief" as speculation,
11 lacking in specific allegations of fact that provide notice to Respondents, and lacking in
12 specificity as to which Respondents are alleged to have engaged in the recited conduct. To the
13 extent that the allegations of ¶ 26 are directed to Respondents other than NBLA, no response
14 from NBLA is required, or if deemed to be required, NBLA denies. To the extent that ¶ 26 is
15 directed at NBLA, is without any knowledge to admit and therefore denies.

16 29. Denies the allegations of ¶ 27 and affirmatively alleges that all insurance carriers that
17 issued limited medical benefit policies to NBLA members knew and approved of call center
18 procedures, including licensing and appointment structures.

19 30. Admits the allegations of ¶ 28 that AHB was a contracted vendor with NBLA; admits
20 that AHB is not licensed as administrator or medical care discount card provider; denies that
21 AHB is required to have either license and affirmatively alleges that Montana does not regulate
22 medical care discount card "providers"; denies that NBLA offers "products" and affirmatively
23 alleges that NBLA offers memberships; denies the remaining allegations of ¶ 28.

24 **Complainants**

25 31. For each of the following Complainants, the Notice only provides Respondents with
26 the initials of the complaining individuals. NBLA has made its best efforts to match initials to
27

1 members names to prepare the following responses, and has relied upon the Department's verbal
2 confirmation through counsel, but nevertheless qualifies its responses accordingly.

3 32. Responding to the allegations of ¶ 29 which relate to NBLA member J.M., NBLA:

4 (a) is without knowledge to admit or deny the date of conception, but understood that
5 J.M. was pregnant at the time she became an NBLA member and therefore denies; and
6 affirmatively alleges that J.M. acknowledged in an interview recorded at the time of purchasing
7 her NBLA membership that she understood that there was a preexisting exclusion in the limited
8 medical benefit coverage available to her through her membership;

9 (b) is without information to admit or deny the alleged conversation with NBLA's
10 representative that "NBLA would reduce her hospital bills by 70 percent through negotiations
11 with the hospital," and therefore denies; and affirmatively alleges that representatives describing
12 NBLA membership are required to read and not deviate from a written script approved by the
13 insurance companies offering insurance through the NBLA membership which through an IVR
14 confirms the members' understanding of the terms and limitations of the membership and
15 insurance coverages accessed through the membership. Additionally new members receive a
16 fulfillment kit shortly after joining NBLA and have a 30-day "free look" during which the
17 member can review all materials and cancel the membership if the member so desires.

18 (c) denies that J.M. paid "premiums" to NBLA and affirmatively alleges that she paid
19 \$1490 in NBLA membership fees and \$100 for her enrollment fee all of which were refunded to
20 her;

21 (d) denies that NBLA never contacted the hospital or attempted to lower J.M.'s medical
22 bills; and affirmatively allege that NBLA had numerous conversations regarding hospital
23 negotiations; NBLA verified member had all of the information for filing claims and had case
24 opened with hospital negotiations service. Regrettably J.M. refused to cooperate with NBLA or
25 the hospital bill negotiating company any further;

26 (e) is without knowledge to admit or deny that J.M.'s claims were denied and that she
27

1 was left with \$20,000 in medical bills and therefore denies; and affirmatively alleges that to the
2 best of NBLA's knowledge, J.M. did not file a claim with the insurance carrier, US Life
3 Insurance Company;

4 (f) is without knowledge to admit or deny that J.M.'s credit was adversely affected and
5 therefore denies.

6 33. Responding to the allegations of ¶ 30 which relate to NBLA member F.C., NBLA:

7 (a) denies that NBLA solicited F.C. via the internet; and affirmatively allege that NBLA
8 only uses telephone calls responsive to prospective member inquiries. F.C. had to and did
9 consent to be contacted;

10 (b) admits that F.C. was enrolled by Otis Chapman;

11 (c) is without information to admit or deny the allegation that "F.C. asked that he not be
12 enrolled until he could review a fulfillment package and sign an application for insurance" and
13 therefore denies; and affirmatively allege that all members are offered a 30-day "free look"
14 during which they may reconsider their decision to become an NBLA member;

15 (d) denies that F.C. did not give authorization to charge his account; and affirmatively
16 alleges that NBLA has voice verification of F.C.'s consent and notice of when withdrawals
17 would begin;

18 (e) is without knowledge to admit or deny whether checks were "bounced" from F.C.'s
19 account or that it was necessarily closed and therefore denies.

20 34. Responding to the allegations of ¶ 31 which relate to NBLA member C.C., NBLA:

21 (a) admits that C.C. was an NBLA member from October 1 through December 30, 2008;

22 (b) is without information to admit or deny the circumstances surrounding C.C.'s
23 membership calls and therefore denies; and affirmatively alleges that C.C. would have had to
24 request being contacted by NBLA, and NBLA representatives are required to follow a specific
25 script approved by the insurance company which does not encourage people to drop existing
26 coverage nor are sales people allowed to "bully" people into joining NBLA memberships;

1 (c) admits that C.C. suffered a fracture on November 7, 2008, and submitted claims for
2 insurance benefits. C.C. received payments from US Life under the limited benefit medical
3 insurance of \$3,438.14 for accident claims submitted in January 2010. C.C. also utilized the
4 pharmacy benefit on 4 different occasions saving her \$134.18. GTL denied C.C.'s accident
5 claim for failure to timely file a claim, which was required within 60 days of the accident and
6 was not filed until January 18, 2010. An appeal filed with GTL February 16, 2010, and it again
7 denied in March or April 2010;

8 (d) denies or is without knowledge to admit or deny the remaining allegations of ¶ 31 and
9 therefore denies.

10 35. Responding to the allegations of ¶ 32 which relate to NBLA member B.Q., NBLA:

11 (a) is without information to admit or deny what B.Q. may recall from his telephone
12 conversations with NBLA's representative and therefore denies;

13 (b) denies that B.Q. did not get his fulfillment package until about 3 months after
14 beginning to pay premiums; and affirmatively allege that NBLA records show it sent out his
15 fulfillment package the day after he enrolled, November 10, 2010;

16 (c) denies that the NBLA plan in which B.Q. was enrolled pays or adjudicates claims; and
17 affirmatively alleges that B.Q. was eligible for the limited medical insurance benefits in his
18 membership plan, underwritten by LINA. The policy states that it will pay \$50 for an annual
19 physical exam. NBLA has verified that B.Q. filed no claims with his insurer, LINA. Records
20 also show that B.Q. utilized the Delta Dental insurance included in his membership on January 5,
21 2011.

22 36. Denies the allegations of ¶ 33 which relate to NBLA member R.J., NBLA;
23 affirmatively allege that representatives describing NBLA membership are required to read and
24 not deviate from a written script approved by the insurance companies offering insurance through
25 the NBLA membership. Additionally new members receive a fulfillment kit shortly after joining
26 NBLA and have a 30-day "free look" during which the member can review all materials and
27

1 cancel the membership if the member so desires.

2 37. Responding to the allegations of ¶ 34 which relate to NBLA member K.M., NBLA:

3 (a) is without information to admit or deny what K.M. may recall from his telephone
4 conversations with NBLA's representatives and therefore denies;

5 (b) affirmatively alleges that NBLA has no record of a "John" associated with K.M. from
6 the Dallas call center; representatives describing NBLA membership are required to read and not
7 deviate from a written script approved by the insurance companies offering insurance through the
8 NBLA membership; additionally new members receive a fulfillment kit shortly after joining
9 NBLA and have a 30-day "free look" during which the member can review all materials and
10 cancel the membership if the member so desires; NBLA utilizes a voice verification which
11 discloses important limitations and exclusions of the member's selected plan; K.M.'s voice
12 verification supports these disclosures were made, acknowledged and confirmed.

13 **Conclusions of Law**

14 38. Answering the proposed conclusions of law ¶¶ 1-40, NBLA affirmatively alleges that
15 no response from it is required, or if deemed to be required, NBLA denies. NBLA further
16 specifically responds to the proposed Conclusions in the paragraphs that follow.

17 39. Answering the proposed conclusion of law in ¶ 1, admits the State Auditor is the *ex*
18 *officio* Montana Commissioner of Insurance [Commissioner] and denies any other conclusion of
19 law express or implied.

20 40. Admits Conclusions of Law as stated in ¶ 2.

21 41. Answering the proposed conclusion of law in ¶ 3, admits 33-1-311, MCA, states the
22 Commissioner's general statutory powers and duties and denies any other conclusion of law
23 express or implied.

24 42. Proposed Conclusion of Law ¶ 4 is a paraphrased statement of statutory law to which
25 no response is required, or if deemed to be required, NBLA denies. NBLA further affirmatively
26 alleges that 33-1-311(3), MCA must be read, construed, and applied in conjunction with the
27

1 other subsections of 33-1-311, MCA, and is not to be given priority or emphasis over other
2 subsections of 33-1-311, MCA.

3 43. Proposed Conclusion of Law ¶ 5 is a paraphrased statement of statutory law of which
4 NBLA denies any conclusion express or implied.

5 44. NBLA is without knowledge to admit or deny the conclusion in the first sentence of
6 proposed Conclusion of Law ¶ 6 as it relates to NBLA as the Department fails to allege any
7 specific facts that would tend to support the proposed conclusion as it relates to NBLA or a
8 definition of the times material to the agency action. The second sentence of proposed
9 Conclusion of Law ¶ 6 is a paraphrased statement of statutory law of which NBLA denies any
10 conclusion express or implied.

11 45. Denies proposed Conclusion of Law ¶ 7 as to NBLA. To the extent the proposed
12 conclusion ¶ 7 is directed to Respondents other than NBLA, a response from NBLA is not
13 required, or if deemed to be required, NBLA denies.

14 46. Proposed Conclusion of Law ¶ 8 appears to be directed to Respondents other than
15 NBLA for which a response from NBLA is not required, or if deemed to be required, NBLA
16 denies.

17 47. Responding to proposed Conclusion of Law ¶ 9:

18 (a) denies ¶ a. correctly states the holding in *Peschel Family Trust v. Colonna*, 2003
19 MT 216 ¶ 24, 317 Mont. 127, 75 P.3d 793;

20 (b) responding to ¶ b., denies that any of the named individuals were the alter ego,
21 instrumentality, or agent of NBLA; denies that NBLA's officers and directors were the alter ego
22 or instrumentality of NBLA; and denies that NBLA's officers and directors were agents of
23 NBLA except as authorized under the business corporation laws of Montana and its state of
24 domicile;

25 (c) responding to ¶ c., denies that NBLA has been used as a subterfuge by its officers and
26 directors, any of the individuals named in ¶ 9, or individuals who have been named as

1 Respondents in the agency action;

2 (d) asserts that the Department has failed to offer any specific facts that tend to support
3 the proposed conclusion as it relates to NBLA; and

4 (e) as proposed Conclusion ¶ 9 may relate to Respondents other than NBLA, a response
5 from NBLA is not required, or if required, NBLA denies.

6 48. Responding to proposed Conclusion of Law ¶ 10 denies that NBLA was engaged in
7 the business of insurance or transacted the business of insurance and therefore proposed
8 conclusion of law is inapplicable to NBLA. NBLA further responds to the subparagraphs of
9 Conclusion ¶ 10 as follows:

10 (a) denies the introduction to ¶ 10 is an accurate quotation of 33-1-102(1), MCA, and
11 any other conclusion of law express or implied;

12 (b) admits ¶ a. is an accurate quotation of 33-1-201(5)(a), MCA, and denies any other
13 conclusion of law express or implied;

14 (c) because NBLA sold no products, subparagraph ¶ b. appears to be directed to
15 Respondents other than NBLA for which a response from NBLA is not required, or if deemed to
16 be required, NBLA denies;

17 (d) admits ¶ c. is an accurate quotation of 33-1-202(3), MCA, and denies any other
18 conclusion of law express or implied;

19 (e) admits proposed Conclusion of ¶ d. that NBLA is a “person” under 33-1-202(3) and
20 denies any other conclusion express or implied; is without knowledge to admit or deny the
21 conclusion as it may relate to the remaining Respondents and therefore denies;

22 (f) denies ¶ e. correctly quotes the definition of “transact” and denies any other
23 conclusion of law express or implied derived from the quote; denies NBLA was engaged in the
24 transaction of insurance; denies any other conclusion express or implied derived from ¶ e;

25 (g) denies ¶ f. as it relates to NBLA; is without knowledge to admit or deny the
26 conclusion as it may relate to the remaining Respondents and therefore denies;

1 (h) asserts that the Department has failed to offer any specific facts that tend to support
2 the proposed conclusion as it relates to NBLA; and

3 (i) as proposed Conclusion ¶ 10 may relate to Respondents other than NBLA, a
4 response from NBLA is not required, or if required, NBLA denies.

5 49. Admits proposed Conclusion of Law ¶ 11 correctly quotes 33-1-1202(4) and denies
6 any other conclusion of law express or implied.

7 50. Denies proposed Conclusion of Law ¶ 12 as it relates to NBLA. NBLA denies that it
8 accepted premium money and affirmatively alleges that it did properly and fully disclose the
9 nature of NBLA memberships and the insurance coverage accessible to NBLA members. The
10 limited medical benefit policies that were available to and purchased by members provided the
11 coverage represented in the policy. The CLIC policy that was available to and purchased by
12 members provided the coverage represented in the policy. As proposed Conclusion ¶ 12 is
13 directed to Respondents other than NBLA, a response from NBLA is not required, or if deemed
14 to be required, NBLA denies.

15 51. Admits proposed Conclusion of Law ¶ 13 is a substantially accurate quotation of 33-
16 1-1302(1)(a) and denies any other conclusion of law express or implied.

17 52. Denies proposed Conclusion of Law ¶ 14 as it relate to NBLA. NBLA denies that it
18 accepted premium money and affirmatively alleges that it did properly and fully disclose the
19 nature of NBLA memberships and the insurance coverage accessible to NBLA members. The
20 limited medical benefit policies that were available to and purchased by members provided the
21 coverage represented in the policy. As proposed Conclusion ¶ 14 is directed to Respondents other
22 than NBLA, a response from NBLA is not required, or if deemed to be required, NBLA denies.

23 53. Admits proposed Conclusion of Law ¶ 15 is a substantially accurate quotation of 33-
24 18-201(1) and denies any other conclusion of law express or implied.

25 54. Denies proposed Conclusion of Law ¶ 16 as it relates to NBLA: NBLA is not
26 engaged in the business of insurance as required by 33-18-102 (1), MCA; the Department fails to
27

1 allege specific facts as to NBLA that support the proposed conclusion; and the proposed
2 Conclusion ¶ 16 proposes as a conclusion of law assertions of irrelevant and unsupported
3 speculations. As proposed Conclusion ¶ 16 is directed to Respondents other than NBLA, a
4 response from NBLA is not required, or if deemed to be required, NBLA denies.

5 55. Denies proposed Conclusion of Law ¶ 17 is an accurate quotation of 33-18-203,
6 MCA, and any other conclusion of law express or implied.

7 56. Denies proposed Conclusion of Law ¶ 18: NBLA is not engaged in the business of
8 insurance as required by 33-18-102 (1), MCA; the Department fails to allege specific facts as to
9 NBLA that support the proposed conclusion. As proposed Conclusion ¶ 18 is directed to
10 Respondents other than NBLA, a response from NBLA is not required, or if deemed to be
11 required, NBLA denies.

12 57. Admits proposed Conclusion of Law ¶ 19 is a substantially accurate quotation of 33-
13 18-204, MCA, and denies any other conclusion of law express or implied.

14 58. Denies proposed Conclusions of Law ¶ 20 as it relates to NBLA. NBLA disclosures
15 to members state that the member should not cancel existing insurance until materials have been
16 read. As proposed Conclusion ¶ 20 is directed to Respondents other than NBLA, a response
17 from NBLA is not required, or if deemed to be required, NBLA denies.

18 59. Denies proposed Conclusion of Law ¶ 21.

19 60. Proposed Conclusions of Law ¶¶ 22-24 appear to be directed to Respondents other
20 than NBLA and a response from NBLA is not required. If a response from NBLA is deemed to
21 be required NBLA denies and further asserts that if proposed Conclusions ¶¶ 22-24 are adopted,
22 NBLA was without any knowledge that Respondent insurers issued policies to NBLA members
23 in violation of any insurance law.

24 61. Admits the first two sentences of proposed Conclusion of Law ¶ 25 are a
25 substantially accurate quotation of 33-1-501(10), MCA and denies any other conclusion of law
26 express or implied derived from the quotation; is without knowledge to admit or deny the truth of
27

1 the final sentence of ¶ 25 and therefore denies.

2 62. Proposed Conclusion of Law ¶ 26 appears to be directed to Respondents other than
3 NBLA for which a response from NBLA is not required. If deemed to be required, NBLA denies
4 and further asserts that if proposed Conclusions ¶ 26 is adopted, NBLA was not responsible for,
5 had no knowledge of, nor had a responsibility to know of Respondents' form approval status.

6 63. Denies proposed Conclusion of Law ¶ 27 correctly quotes 33-17-603, MCA; asserts
7 that 33-17-603, MCA, must be read with and incorporate the definitions stated in 33-17-102,
8 MCA, and the chapter's scope as set forth in 33-17-101, MCA; and denies any conclusion
9 express or implied derived from the statute quoted as proposed.

10 64. Denies proposed Conclusion of Law ¶ 28 as it relates to AHB; denies that NBLA or
11 AHB is an insurer or administrator under the applicable statutes; is without information to admit
12 or deny the conclusion as it relates to IMAC and therefore denies.

13 65. Denies proposed Conclusion of Law ¶ 29 correctly quotes 33-17-201, MCA, and any
14 conclusion express or implied derived from it as quoted.

15 66. Responding to proposed Conclusion of Law ¶ 30, NBLA: denies that it was engaged
16 in the business of transacting insurance; denies that it had "products" to market; denies that it or
17 its officers and directors, utilized unlicensed producers to market insurance products; therefore
18 denies that it had instituted a business practice to market insurance products in violation of
19 Montana law; asserts that the Department has failed to allege specific facts to support the
20 proposed conclusion of law and is without information to admit or deny the proposed conclusion
21 as it relates to other named Respondents and therefore denies.

22 67. Proposed Conclusion of Law ¶ 31 appears to be directed to Respondents other than
23 NBLA for which a response from NBLA is not required, or if deemed to be required, NBLA
24 denies.

25 68. Admits proposed Conclusions of Law ¶¶ 32-33 are accurate but incomplete quotes of
26 33-17-231 (1), and - 236(1), MCA, and denies any other conclusion of law express or implied.

1 69. Proposed Conclusion of Law ¶ 34 appears to be directed to Respondents other than
2 NBLA for which a response from NBLA is not required. If a response from NBLA is deemed to
3 be required, NBLA denies that it sold insurance and asserts the conclusion that it was the
4 policyholder of the subject policies; therefore licensure and appointment from Respondent
5 insurers was necessary or required. NBLA denies any other conclusion of law express or
6 implied.

7 70. Denies proposed Conclusion of Law ¶ 35. NBLA denies that it sold insurance and
8 asserts the conclusion that it was the policyholder of the subject policies; therefore licensure and
9 appointment from Respondent insurers was not necessary or required. NBLA denies any other
10 conclusion of law express or implied.

11 71. Denies proposed Conclusions of Law ¶¶ 36-37. Denies that NBLA sold insurance
12 and asserts the conclusion that NBLA was the policyholder of the subject policies; therefore
13 licensure and appointment from Respondent insurers was not necessary or required. Denies that
14 NBLA is an insurer and therefore appointment of Respondent producers by NBLA was not
15 necessary or permissible. NBLA denies any other conclusion of law express or implied.

16 72. Proposed Conclusion of Law ¶ 38 appears to be directed to Respondents other than
17 NBLA for which a response from NBLA is not required, or if deemed to be required, NBLA
18 denies.

19 73. Denies proposed Conclusion of Law ¶ 39 correctly quotes from 33-17-1001, MCA,
20 and denies any conclusion express or implied derived from it.

21 74. Denies proposed Conclusion of Law ¶ 40 is supported by facts related to NBLA and
22 Tim Siewert as neither NBLA nor Tim Siewert sold or transacted or received commissions for
23 the sale or transaction of insurance in Montana. The remaining allegations of proposed
24 Conclusion ¶ 40 are directed to Respondents other than NBLA for which a response from NBLA
25 is not required, or if deemed to be required, NBLA denies.

26 75. Except as specifically admitted, NBLA denies each and every other fact allegation or
27

1 proposed conclusion of law.

2 **THIRD AND AFFIRMATIVE DEFENSES**

3 76. The Notice fails to allege facts with sufficient specificity to support the proposed
4 conclusions of law.

5 77. The Notice fails to identify the times material to the Agency Action.

6 78. The Notice fails to state a violation of law by Respondent NBLA for which the
7 proposed penalties can be imposed.

8 79. NBLA has not offered and does not offer "products." NBLA offers memberships
9 which then provide the member eligibility to access certain services and products through their
10 membership.

11 80. NBLA has not transacted and does not transact the business of insurance in Montana
12 or any state. NBLA has not received and does not receive commissions or compensation of any
13 kind from the transaction of insurance in Montana or any state.

14 81. NBLA's producer licenses in Montana, and in other states, are unnecessary and are
15 being allowed to lapse in all states as they expire.

16 82. NBLA's "actual" corporate purposes are: (a) to educate members about better
17 balancing work, family and personal demands and activities; (b) to provide, collect and
18 disseminate information to its members about effectively accessing and taking advantage of
19 quality health and medical care and services; and (c) to attempt to influence government,
20 corporate and public opinions, policies, regulations and laws to promote more balanced and
21 healthier lifestyles and broader access to quality health and medical care and services. The good
22 faith corporate purposes do not include an impermissible representation of eligibility for the
23 issuance of group of blanket insurance policies under Montana insurance law.

24 83. NBLA meets the standard for a permissible association under Montana law.
25 Montana does not have jurisdiction over national issues; regardless, NBLA has been approved as
26 a legitimate association in other states with similar laws. The Department has offered no facts
27

1 tending to prove NBLA engaged in conduct to or with its members or is organized for purposes
2 other than its stated purposes. NBLA's menu of benefits to members, scripts, recordings,
3 fulfillment materials, pre-approval by carriers, other state approvals (including its domiciled
4 state, which is supposed to be given deference) are proof to the contrary.

5 84. National programs a part of NBLA membership benefits have saved members
6 millions of dollars.

7 From December 1, 2009 to February 28, 2011, NBLA benefits included a limited medical
8 insurance, access to Multiplan, a national PPO offering negotiated discounts if preferred
9 providers are used and the Karis plan, which will contact hospitals on case specific basis to
10 negotiate hospital bills not covered by limited medical or Multiplan. During the time period of
11 March 2007 through February 2011 approximately \$4,000,000 in medical insurance claims have
12 been paid and/or incurred on behalf of NBLA members. For the time period of July 2010 through
13 July 2011, \$3,285,537 in hospital expense savings have been negotiated for NBLA members.
14 Additional for the time period of January through June 2011, NBLA members have received
15 \$5,437,973 in PPO savings. This is impressive for a "no good program."

16 Some examples of NBLA's National Non-Insurance Programs² for its members are the
17 following:

- 18 • A Wellness Assessment that provides NBLA members a formal roadmap to
19 wellness with a 5-page report that makes specific wellness and lifestyle
20 recommendations. In the near future, this program will be replaced with a new
21 benefit.
- 22 • NBLA includes in all its memberships access to a complete Wellness Assessment,
23 access to My E Wellness, a well respected wellness resource.
- 24 • NBLA gives members access to a complete set of Wellness and Lifestyle Programs
25 including but not limited to the following: 24-Hour Nurse Hotline, Travel

26
27 ² All Programs are not available in all states.

1 Assistance, Vitamins / Nutritional Supplements, Prescription Assistance,
2 Alternative Medicine, Chiropractic Savings, Vision Savings, Lasik Vision
3 Correction, Diagnostic Imaging Savings, Laboratory Service Savings, Diabetic
4 Supplies Savings, Legal Services, Tax-line Financial Services, Stolen Identity
5 Coverage, Meineke Auto Repair, Travel Discounts, National Hotel Discounts,
6 Roadside Assistance, Interstate Moving, Auto Financing

7 85. Limited benefits medical insurance is permitted under Montana law.

8 86. NBLA members have benefitted from access to Limited Medical Benefit Group
9 Insurance.

10 Nationally from December 1, 2009, to February 28, 2011, NBLA members had 89,482
11 claims processed under Life Insurance Company of North America (LINA), Limited Medical
12 Benefit Insurance Master Policy # AGL-119000 (AGL-119116, FL). All of these claims were
13 processed by PCI and were eligible to be reviewed for payment under the Limited Medical
14 Benefit Insurance and for prenegotiated contract prices through the Multi-Plan network.

15 Of the claims presented under the Limited Medical Benefit Insurance, \$2,459,153 were
16 paid on behalf of NBLA members (12,883 paid claims).

17 87. NBLA members must first be members of the association before they are eligible to
18 use the expanded programs that contain group insurance benefits. Members are free (with some
19 restrictions) to change their membership programs.

20 88. NBLA, AHB, their officers and directors, and the authorized Respondent insurance
21 companies did not violate 33-17-201, MCA, by instituting a business practice of utilizing
22 unlicensed producers to market their products. NBLA delegated compliance to AHB. AHB
23 delegated that to actual license holders (i.e. call centers). Call centers were reviewed and
24 approved by insurers who have the ultimate responsibility for licensing and appointment. To the
25 best of NBLA's knowledge, the call centers followed and complied with licensing requirements
26 and procedures prepared by and received from the insurance companies.

1 89. NBLA is not “engaged in the business of insurance” as required by 33-18-102, MCA,
2 and therefore the provisions of Title 33, chapter 18, MCA, do not apply to NBLA.

3 90. If it is concluded that Title 33, chapter 18, MCA, applies to NBLA, which NBLA
4 denies, 33-18-201 (1), MCA, prohibits “frequent” misrepresentation of “coverages at issue”
5 that “indicates a general business practice.” NBLA does not settle claims. The Department has
6 offered no facts tending to prove NBLA engaged in conduct to or with its members satisfying the
7 required legal elements of prohibited misrepresentation under the Unfair Claims Settlement
8 Practices Act.

9 91. Insurance fraud under 33-1-1202 (4), MCA, requires the “accept[ance] of premium
10 money knowing that coverage will not be provided.” The legal standard does not include an
11 implied “reasonable expectations of the consumer” doctrine. The Department has offered no facts
12 tending to prove NBLA engaged in conduct to or with its members satisfying the required legal
13 elements. NBLA has not offered and does not offer insurance, has not accepted and does not
14 accept premium money, and, upon information and belief, understands that insurance coverages
15 offered by Respondent insurers was and are provided.

16 92. Insurance fraud under 33-1-1302, MCA, requires misrepresentation of “a material
17 fact, known to the person to be untrue or made with reckless indifference as to whether it is true,
18 with the intention of causing another person to rely upon the misrepresentation to that relying
19 person’s detriment.” The legal standard does not include an implied “reasonable expectations of
20 the consumer” doctrine. The Department has offered no facts tending to prove NBLA engaged in
21 conduct to or with its members satisfying the required legal elements of misrepresentation.
22 NBLA’s scripts, recordings, fulfillment materials, preapproval by carriers, other state approvals
23 (including its domiciled state, which is supposed to be given deference) are proof to the contrary.

24 93. NBLA is not “engaged in the business of insurance,” as required by 33-18-102,
25 MCA, to come within the scope of the Unfair Trade Practices Act, and therefore the provisions
26 33-18-203, MCA, do not apply to NBLA. If it is concluded that 33-18-203, MCA, applies to
27

1 NBLA, which NBLA denies, NBLA clearly discloses to prospective members and members the
2 nature of the benefits available to the member, including insurance benefits. The Department has
3 offered no facts tending to prove NBLA engaged in advertising or conduct to or with its members
4 that untrue, deceptive, or misleading disclosures were made to prospective or active members.
5 NBLA's scripts, recordings, fulfillment materials, pre-approval by carriers, other state approvals
6 (including its domiciled state, which is supposed to be given deference) are proof to the contrary.

7 94. As a policyholder, NBLA has no responsibility to insure that the insurer issuing an
8 insurance policy has complied with the forms approval requirements under the Montana
9 Insurance Code.

10 95. AHB was a contracted vendor with NBLA. Neither NBLA nor AHB is licensed as
11 an administrator or medical care discount card "provider" in Montana. NBLA and AHB are
12 excluded from the applicable definitions of "administrator" and "medical care discount card
13 supplier" of the Montana Insurance Code and therefore registration as either is not required.

14 **Affirmative Defenses Related to Complainant Allegations**

15 96. NBLA is a Georgia not for profit association that offers access to health, wellness,
16 and other lifestyle programs along with access, through group association policies, to certain
17 limited medical benefits and other insurance coverages. NBLA does not adjudicate claims, act as
18 a third party administrator, pay benefits, collect premiums, or receive commissions on any
19 insurance products.

20 97. No individual is contacted regarding NBLA membership without the individual's
21 consent. NBLA uses only telephone calls responsive to prospective member inquiries. At the
22 point of member enrollment, NBLA representatives use an IVR verification system to record the
23 member's acknowledgment and confirmation of their understanding of the terms and conditions
24 as well as the exclusions and limitations of the group insurance benefits available to them
25 through specific to their selected membership. All IVR's are audited by NBLA representatives
26 for compliance.

1 98. No automatic withdrawals for membership dues from a NBLA member's account are
2 made without the member's consent. NBLA obtains IVR confirmation of the member's
3 understanding of the automatic withdrawal if used.

4 99. All members are offered a 30-day "free look" period in which to examine their
5 fulfillment package, membership benefits, other membership information and discuss issues with
6 an NBLA representative or NBLA's Member Services.

7 100. Responding to the allegations of ¶ 29 which relate to NBLA member J.M., NBLA:

8 **J.M.**

9 NBLA 300 Premier individual membership
10 Enrollment date 8/28/2008
11 Fulfillment packet sent 8/29/2008
12 Active from 9/15/2008-7/14/2009

13 (a) NBLA understood that J.M. was pregnant at the time she became an NBLA member;
14 J.M. acknowledged in an interview recorded at the time of purchasing her NBLA membership
15 that she understood that there was a preexisting exclusion in the limited medical benefit coverage
16 available to her through her membership;

17 (b) NBLA representatives are required to follow a specific script approved by the
18 insurance company which does not misrepresent the coverages available under the specified
19 policy;

20 (c) J.M. paid \$1490 in NBLA membership fees and \$100 for her enrollment fee all of
21 which were refunded to her plus an extra month to try and satisfy her dissatisfaction with her
22 membership. J.M. paid no premiums to NBLA;

23 (d) NBLA assisted J.M. in seeking the program benefits of PPO rates and hospital
24 negotiations to try and reduce bills, having numerous conversations regarding hospital
25 negotiations. The process was delayed by provider(s) failing to provide medical records. NBLA
26 verified J.M. had all of the information for filing claims and had case opened with hospital
27 negotiations service. Regrettably J.M. refused to cooperate with NBLA or the hospital bill
28 negotiating company any further and terminated her membership. NBLA also offered, even

1 though J.M. was no longer a member, to continue pursuing a negotiated discount for her, but she
2 refused to cooperate or seek a negotiated discount;

3 (e) J.M. did not file a claim with the insurance carrier, US Life Insurance Company;

4 (f) some or all of the claims related to J.M. are barred by applicable statutes of limitation.

5 101. Responding to the allegations of ¶ 30 which relate to NBLA member F.C., NBLA:

6 **F.C.**

7 NBLA 500 individual membership
8 Enrollment date 7/23/2009
9 Fulfillment packet sent 7/31/2009
10 Membership Program Active – never active

11 (a) F.C. was not contacted regarding NBLA membership without his consent. NBLA
12 uses only telephone contacts responsive to prospective member inquiries. F.C. had to and did
13 consent to be contacted;

14 (c) F.C. was provided a fulfillment package to review and a 30-day “free look” period;

15 (d) F.C. authorized withdrawals from his bank account as verified in the recorded voice
16 verification of F.C.’s consent and notice of when withdrawals would begin. As a matter of
17 banking procedures, the withdrawal may have been made the same day, or within a few days, but
18 it was made with F.C.’s authorization, which was belatedly withdrawn;

19 (e) F.C. never contacted NBLA regarding his bank account or “bounced” checks, so
20 NBLA was unaware of F.C.’s concern, nor could it take any action;

21 (f) F.C. filed no claims for insurance coverage;

22 (g) F.C. has received a full refund of his membership and enrollment fees.

23 102. Responding to the allegations of ¶ 31 which relate to NBLA member C.C., NBLA:

24 **C. C.**

25 NBLA 500 individual membership
26 Enrollment date 9/19/2008
27 Fulfillment packet sent 9/22/2008
28 Membership Program Active dates – 10/1/2008 – 12/30/2008

(a) C.C. was an NBLA member for three months from October 1 through December 30,

1 2008, and was terminated for failing to make payment;

2 (b) C.C. would have had to request being contacted by NBLA, NBLA representatives are
3 required to follow a specific script approved by the insurance company which does not encourage
4 people to drop existing coverage nor are sales people allowed to “bully” people into joining
5 NBLA memberships;

6 (c) C.C. suffered a fracture on November 7, 2008, and submitted claims for insurance
7 benefits. NBLA records note on February 6, 2009, that C.C. did not know she had to file a claim
8 to receive benefits and requested that claim forms be sent to her. The were sent the same day of
9 the request;

10 (d) NBLA records show that C.C. received payments from US Life under the limited
11 benefit medical insurance of \$3,438.14 for accident claims submitted in January 2010. C.C. also
12 utilized the pharmacy benefit on 4 different occasions saving her \$134.18. GTL denied C.C.’s
13 accident claim for failure to timely file a claim, which was required within 60 days of the
14 accident and was not filed until January 18, 2010. An appeal filed with GTL February 16, 2010,
15 and it again denied in March or April 2010;

16 (e) NBLA made continuing efforts to assist C.C. It called her seven times and made
17 several calls to the insurance companies to check status. NBLA also advised C.C. of the Karis
18 hospital negotiation service that was a part of her benefits. C.C. said she understood. A hospital
19 negotiation case was open with Karis, but C.C. stopped providing information to Karis stating
20 she had hired an attorney;

21 (f) some or all of the claims related to C.C. are barred by applicable statutes of limitation.

22 103. Responding to the allegations of ¶ 32 which relate to NBLA member B.Q., NBLA:

23 **B.Q.**

24 NBLA 100 family membership
25 Enrollment date 11/09/2010
26 Fulfillment packet sent 11/10/2010
27 Membership Program Active dates from 12/1/2010 -2/28/2011

28 (a) NBLA records show that NBLA sent B.Q.’s fulfillment package the day after he

1 enrolled (or November 10, 2010);

2 (b) the NBLA plan in which B.Q. was enrolled allowed him access to LINA and Delta
3 Dental insurance. B.Q. was eligible for the limited medical insurance benefits in his membership
4 plan, underwritten by LINA. The LINA policy states that it will pay \$50 for an annual physical
5 exam. NBLA has verified that B.Q. filed no claims with his insurer, LINA. Records also show
6 that B.Q. utilized the Delta Dental insurance included in his membership on January 5, 2011;

7 (c) NBLA has no record of B.Q. calling with any issues or questions other than to
8 terminate his membership on March 7, 2011. As a result NBLA could take no action, nor answer
9 any questions.

10 104. Responding to the allegations of ¶ 33, which relate to NBLA member R.J., NBLA:

11 **R.J.**

12 NBLA premier 250 2009-individual
13 Enrollment date:9/1/2009
14 Term date: 12/31/2009
15 Fulfillment Date:8/19/2009

16 (a) Representatives describing NBLA membership are required to read and not deviate
17 from a written script approved by the insurance companies offering insurance through the NBLA
18 membership. Additionally new members receive a fulfillment kit shortly after joining NBLA and
19 have a 30-day "free look" during which the member can review all materials and cancel the
20 membership if the member so desires;

21 (b) R.J.'s recorded telephone conversation with an NBLA representative confirmed her
22 understanding of the membership and advice that she not cancel her existing insurance coverage
23 until she had reviewed the fulfillment kit;

24 (c) NBLA has no record of claims for medical benefits submitted by R.J.;

25 (d) R.J. terminated her membership with NBLA and asked for a refund of one month's
26 dues, which NBLA refunded in the interest of customer satisfaction, even though her termination
27 was outside of her 30-day "free look" period.

28 105. Responding to the allegations of ¶ 34 which relate to NBLA member K.M., NBLA:

1 **K.M.**

2 NBLA Supplemental Plan
3 Enrollment date 10/15/2010
4 Fulfillment sent date 10/18/2010
5 Membership Program Activation date – 11/1/2010 - **active**

6 (a) NBLA has no record of a “John” associated with K.M. from the Dallas call center;
7 representatives describing NBLA membership are required to read and not deviate from a written
8 script approved by the insurance companies offering insurance through the NBLA membership;
9 additionally new members receive a fulfillment kit shortly after joining NBLA and have a 30-day
10 “free look” during which the member can review all materials and cancel the membership if the
11 member so desires; NBLA utilizes a voice verification which discloses important limitations and
12 exclusions of the member’s selected plan; K.M.’s voice verification supports these disclosures were
13 made, acknowledged and confirmed;

14 (b) The description and discussion of NBLA’s benefits and K.M.’s acceptance of them was
15 recorded. K.M. did confirm in that conversation his understanding that there was a preexisting
16 limitation. Additionally K.M. received a fulfillment kit describing each program in detail and was
17 given a 30 day free look during which he could terminate his membership and receive the return of
18 the membership fee paid. Instead K.M. decided to keep his membership to this day;

19 (c) K.M. is an active member who sends a check in every month to pay for his membership.
20 K.M. was converted to a supplemental plan in February when LINA stopped offering its limited
21 medical benefits insurance policy. K.M. was given notice of this change February 11, 2011, which
22 detailed the plan changes including price reduction and offer of a 30 day refund if not satisfied with
23 the new plan. K.M. continues to send in his payments to maintain an active membership;

24 (d) NBLA contacted K.M. on May 4, 2011, after NBLA received a Department complaint
25 dated April 27, 2011 to see how NBLA could assist him. At that time K.M. indicated that he
26 contacted the Commissioner of his state who advised him that NBLA needed to contact them and
27 not K.M., and he was due all his money back. NBLA responded to the Department on June 9, 2011.
28 NBLA heard nothing more until receipt of the Notice.

1 (e) K.M. has used the pharmacy benefit on multiple occasions. NBLA has no record of other
2 claims filed by K.M.

3 106. No Montana citizens were damaged by NBLA. Damages to Montana citizens, if any,
4 were caused by entities or persons other than NBLA and not controlled by NBLA.

5 107. Some claimed allegations and conclusions of law of the Notice against NBLA, or all
6 of them, are barred by applicable statutes of limitation.

7 108. NBLA affirmatively alleges the following defenses: lack of subject matter jurisdiction,
8 lack of personal jurisdiction over NBLA, accord and satisfaction, arbitration and award, estoppel,
9 failure of consideration, fraud, illegality, laches, license, payment, release, res judicata, statute of
10 frauds, and waiver. NBLA alleges these defenses not to make or raise issues where none exist, but
11 merely to preserve these defenses should discovery and prehearing preparation reveal they are
12 applicable. Should discovery and prehearing preparation reveal that any of these affirmative
13 defenses are not applicable, NBLA will eliminate those affirmative defenses from its contentions in
14 the final prehearing order or otherwise.

15 109. NBLA reserves the right to assert additional affirmative defenses as may be appropriate
16 upon completion of its investigation and discovery.

17 **RELIEF REQUESTED**

18 Respondent NBLA prays for relief as follows:

- 19 1. That NBLA be afforded a hearing on the Department's Notice;
20 2. That the Department's Notice against NBLA be dismissed with prejudice;
21 3. That NBLA be awarded its costs and attorneys fees associated with defending this agency
22 action;
23 4. That NBLA be awarded any other relief as the Hearing Examiner deems just and proper.

24 ///

25 ///

26 ///

27

1 DATED this 9th day of September, 2011.

2
3 KELLER, REYNOLDS, DRAKE,
4 JOHNSON & GILLESPIE, P.C.

5 BY: Jacqueline J. Lenmark
6 Jacqueline J. Lenmark
7 50 South East Chance Gulch
8 P.O. Box 598
9 Helena, Montana 59624
10 Attorney for Respondents National Better
11 Living Association, Inc. *et al*
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1 CERTIFICATE OF SERVICE

2 I, Jacqueline T. Lenmark, attorney for Respondents National Better Living Association, Inc.,
3 Allied Health Benefits, Inc., George E. Spalding, Jr., Angus Morrison, Timothy Siewert, Michael
4 Siewert, John Fabbrini, John B. "Barry" Shaw, Jr., and G. Dan Siewert, III, certify that on September
5 9, 2011, I served a true and correct copy of the foregoing **ANSWER AND REQUEST FOR**
6 **HEARING - NATIONAL BETTER LIVING ASSOCIATION, INC.**, by mailing it first class
7 postage prepaid to:

8 Mike Winsor
9 Office of the Commissioner of
10 Securities and Insurance
11 State Auditor's Office
12 840 Helena Avenue
13 Helena, MT 59601

Richard See Holson, III, Chairman,
President and CEO
Guarantee Trust Life Insurance Company
1275 Milwaukee Avenue
Glenview, IL 60025

12 Susan Paulson-Davis
13 Records Clerk
14 Office of the Commissioner of
15 Securities and Insurance
16 State Auditor's Office
17 840 Helena Avenue
18 Helena, MT 59601

Justin E. Cormier
Albert Cormier Solutions, LLC
7633 Luscombe Drive
Knoxville, TN 37919

16 Chrys D. Lemon, Esq.
17 McIntyre & Lemon, PLLC
18 Madison Building
19 1155 15th Street, N.W., Suite 1101
20 Washington, D.C. 20005

Landon Jordon
PSI/Health Leads Systems
7996 Kennedale Parkway
Kennedale, TX 76060

19 Marc J. Herling, Esq.
20 American General Life Companies
21 3600 Route 66, MSN 3-GG
22 Neptune, NJ 07753

Landon Jordon
PSI/Health Leads Systems
8200 Brookriver Drive, Suite N603
Dallas, TX 75247

21 Susan E. Martin, Esq.
22 Accident & Health Legal Department
23 Rockwood Plaza
24 503 Carr Road, 3rd Floor
25 Wilmington, DE 19809

Landon Jordon
1210 Crown Drive
Mansfield, TX 76063

24 Select Benefit Services Association
25 c/o C T Corporation System, Registered
26 Agent
27 129 South Central Avenue
28 Clayton, MO 63105

Otis Chapman
PSI/Health Leads Systems
7996 Kennedale Parkway
Kennedale, TX 76060

Otis Chapman
PSI/Health Leads System
8200 Brookriver Drive, Suite N603
Dallas, TX 75247

1 Matthew Glenn Manders, President
2 The Life Insurance Company of North
3 America
4 Two Liberty Place, 1501 Chestnut Street,
5 TL14A
6 Philadelphia, PA 19192-2362

7 Trescott Newton Hinton, Jr.,
8 President and CEO
9 Companion Life Insurance Company
10 P.O. Box 100102
11 Columbia, SC 29223-5666

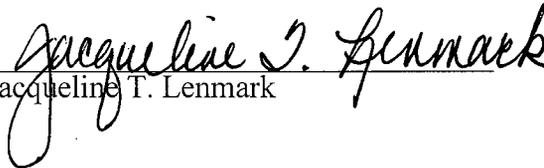
Crystal Correll
Albert Cormier Solutions, LLC
7633 Luscombe Drive
Knoxville, TN 37919

Melanie Hall
9525 Southern Hills Drive
Plano, TX 75025

Shawn Hills
1211 Lake Piedmont Circle
Apopka, FL 32703

Barbara Harrington
19432 Popano Lane #108
Huntington Beach, CA 92648

12 DATED this 9th day of September, 2011.

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Jacqueline T. Lenmark