

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 06-4411F

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

THE MEGA LIFE AND HEALTH
INSURANCE COMPANY, MID-WEST NATIONAL
LIFE INSURANCE COMPANY OF TENNESSEE, and
HEALTHMARKETS, INC.,

Defendants,

HEALTHMARKETS, INC., THE CHESAPEAKE LIFE
INSURANCE COMPANY, and HEALTHMARKETS
INSURANCE AGENCY, INC. f/k/a INSPHERE
INSURANCE SOLUTIONS, INC.,

Contemnor-Defendants.

COMPLAINT FOR CONTEMPT AND RELIEF PURSUANT TO G.L. C. 93A

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I. INTRODUCTION

1. Attorney General Maura Healey on behalf of the Commonwealth of Massachusetts (“Commonwealth”) brings this action for civil contempt and for relief under the Consumer Protection Act in the public interest against Contemnors-Defendants HealthMarkets, Inc. (“HealthMarkets”) and its subsidiaries, The Chesapeake Life Insurance Company (“Chesapeake”) and HealthMarkets Insurance Agency, Inc. f/k/a Insphere Insurance Solutions, Inc. (“Insphere” and collectively with HealthMarkets and Chesapeake, the “Defendants”). This action is brought pursuant to Mass. R. Civ. P. 65.3, G.L. c. 93A, § 4 and G.L. c. 12, § 10 because Defendants have repeatedly violated the Final Judgment by Consent entered in this case in 2009 (the “Judgment”) and have otherwise repeatedly violated Massachusetts law and regulation. The Attorney General further petitions in the public interest, pursuant to G.L. c. 93A, § 8, for the forfeiture of Defendants’ rights to do business in the Commonwealth because they have habitually violated the permanent injunctions in the Judgment.

2. Defendants have cheated over 15,000 Massachusetts consumers out of more than \$43.5 million¹ through a series of deceptive health insurance related sales schemes.²

a. First, Defendants acted to mislead consumers about their sales agents’ roles and incentives, asserting that the agents were impartial advisors offering free

¹ Affidavit of Anthony Crespi, dated December 1, 2020, Exhibit (“Ex.”) 6, excerpts of transcript of examination under oath of Kimberly Riley, March 20, 2019 (“K.R. Tr.”) at 11-15, 83-86, 89; Ex. 7, excerpts of transcript of examination under oath of Taryn Risucci, June 11, 2019 (“T.R. Tr.”) at 14-16; Ex. 9, excerpts of transcript of examination under oath of Taryn Risucci, Vol. III, September 5, 2019 (“T.R. III Tr.”) at 7-10; Ex. 10, excerpts of transcript of examination under oath of Taryn Risucci, Vol. IV, September 6, 2019 (“T.R. IV Tr.”) at 79; Ex. 69; Ex. 125; Ex. 130.

² See *infra* Sections A-H.

services to help consumers obtain the major medical insurance that they needed when, in fact, these agents were not impartial advisors but, rather, were highly incentivized by Defendants to sell the consumers Chesapeake's limited-value supplemental health insurance alongside (or instead of) major medical health insurance.³

b. Second, Defendants acted to mislead consumers about those limited-value supplemental health insurance policies in a host of ways, including deceptively making those policies appear to be part of a single plan with (or without) major medical health insurance, misrepresenting the coverage of those plans and exaggerating consumers' need for the coverage. Defendants targeted some of the Commonwealth's most vulnerable consumers with this misconduct.⁴

c. Third, Defendants unfairly and deceptively sold short-term health insurance in multiple deceptive ways.⁵

d. Fourth, Defendants unfairly and deceptively sold discount health plans and health care sharing ministry programs, including using insurance-related terms to refer to those programs, even though they were not insurance.⁶

3. The Attorney General brings this action to end and remedy Defendants' egregious, predatory and recidivistic deceptive conduct.

4. Defendants' misconduct is especially troubling because it violated not just G.L. c. 93A, § 4, but also the permanent injunctions in the Judgment in this case barring

³ See *infra* Sections A-B.

⁴ See *infra* Sections C-E.

⁵ See *infra* Sections F.

⁶ See *infra* Sections G-H.

HealthMarkets and its subsidiaries and agents from engaging in a range of wrongdoing relating to their business in Massachusetts.⁷

5. Following the Judgment, which required HealthMarkets and two of its subsidiaries to pay more than \$15 million, HealthMarkets should have turned over a new leaf and complied with Massachusetts law. Instead, HealthMarkets simply shifted the focus of its unfair and deceptive practices from one type of health insurance to another and from one pair of subsidiaries to another. Defendants kept much of the same Massachusetts sales force and management, even though they had been responsible for misconduct that resulted in the original action and Judgment, and Defendants continued using many of the same unlawful sales tactics.⁸

6. Based upon Defendants' habitual violation of the injunctive terms in the Judgment entered pursuant to G.L. c. 93A, § 4 and their other misconduct, the Court should hold Defendants in contempt, order the forfeiture of Defendants' rights to do business in the Commonwealth, enjoin Defendants from further unlawful conduct and require restitution for harmed persons, as well as civil penalties, the reasonable costs of investigation and litigation, and all other appropriate relief.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of this action pursuant to paragraph 14 of the Judgment, Mass R. Civ. P. 65.3, G.L. c. 93A, § 4, G.L. c. 12, § 10, and G.L. c. 214, § 1, and over Defendants pursuant to G.L. c. 223A, § 3, Mass R. Civ. P. 65.3 and the Judgment.

⁷ See *infra* Sections A-H.

⁸ See *infra* Sections A-F, I.

8. Venue in this court is proper under Mass R. Civ. P. 65.3, G.L. c. 93A, § 4, G.L. c. 214, § 5 and G.L. c. 223, § 5.

III. THE PARTIES

9. The Plaintiff is the Commonwealth of Massachusetts, represented by Attorney General Maura Healey, who brings this action in the public interest.

10. Defendant HealthMarkets is a Delaware corporation with a principal place of business at 9151 Boulevard 26, North Richland Hills, Texas. HealthMarkets has operated through wholly-owned subsidiaries, including Defendants Chesapeake and Insphere. Their ultimate parent company is UnitedHealth Group, Inc.⁹

11. Defendant Chesapeake is an Oklahoma insurance company with a principal place of business at 9151 Boulevard 26, North Richland Hills, Texas.¹⁰ Chesapeake is, and has been since at least 2010, an indirect, wholly-owned subsidiary of HealthMarkets. Chesapeake is, and has been since prior to 2011, licensed to write accident and/or sickness insurance (“health insurance”) in Massachusetts. Since 2011, it has sold its supplemental health insurance to Massachusetts residents through agencies, such as Insphere and, starting in 2014, Simpson Financial Group, Inc. (“SFG”), and individual appointed agents, such as Louis A. Simpson.¹¹

12. Defendant Insphere is a Delaware corporation that is an insurance agency with a principal place of business at 9151 Boulevard 26, North Richland Hills, Texas.¹² Insphere is,

⁹ Ex. 7 (T.R. Tr.) at 8-10, 12, 16, 25, 204-05; Ex. 97; Ex. 150; Ex. 251.

¹⁰ Ex. 7 (T.R. Tr.) at 117-19; Ex. 150; Ex. 251.

¹¹ Ex. 3, excerpts of transcript of examination under oath of Brenda Johnson, June 19, 2019 (“B.J. Tr.”) at 81-82; Ex. 7 (T.R. Tr.) at 17, 19-20, 91, 204-05; Ex. 105 at row 128. *See* G.L. c. 175, § 162S (insurer appointment of agents).

¹² Ex. 7 (T.R. Tr.) at 119; Ex. 150; Ex. 251.

and has been since 2010, an indirect, wholly-owned subsidiary of HealthMarkets. Insphere is, and has been since prior to 2011, licensed to sell accident and/or sickness insurance in Massachusetts. Through its agents, Insphere has sold insurance, including Chesapeake's supplemental health insurance, as well as non-insurance plans, to Massachusetts residents. Insphere has represented itself on the Internet as recently as September 2019 as "one of the largest independent health insurance agencies in the United States," and as having more than 3,000 agents nationally.¹³

IV. THE FACTS

A. Background

13. This Complaint involves Defendants' scheme to deceptively sell—among other things—tens of millions of dollars in supplemental health insurance policies to thousands of Massachusetts consumers.

1. Massachusetts Strictly Regulates Health Insurance.

14. Health insurance, described by statute as "accident and sickness" insurance, that is issued to any individual in Massachusetts must first be filed with the Massachusetts Commissioner of Insurance (the "Commissioner") and is subject to the Commissioner's disapproval and a host of specific statutory requirements.¹⁴

15. Health Benefit Plans, as defined in G.L. c. 176J § 1, include any individual, general, blanket or group accident and sickness insurance issued by Massachusetts licensed insurers and other similar types of coverage, such as health maintenance contracts issued by

¹³ Ex. 7 (T.R. Tr.) at 20, 119, 204-05; Ex. 9 (T.R. III Tr.) at 8-10, 152-53.

¹⁴ G.L. c. 175 § 108. *Compare id.* § 110 ("General or blanket policies").

health maintenance organizations under Massachusetts law. Such plans issued to eligible individuals or small businesses in Massachusetts are subject to approval by the Commissioner and host of statutory requirements.¹⁵

16. Major medical health insurance issued by a Massachusetts licensed insurance carrier is a Health Benefit Plan, as defined in G.L. c. 176J § 1.¹⁶

17. Since 2007, Massachusetts residents have generally been required to have health insurance deemed to be “creditable coverage.”¹⁷ Such “creditable coverage” has not included a “supplemental health insurance policy.”¹⁸

18. In Massachusetts, most people have had private health coverage, and the majority of them have obtained that coverage through their work. In Massachusetts, the private health insurer with the most members has been Blue Cross Blue Shield of Massachusetts.¹⁹

19. Still, there are hundreds of thousands in Massachusetts who are not insured through their work and do not qualify for Medicare or Medicaid. They generally must buy (major medical) health insurance that is creditable coverage as individuals. They can buy it through the state-run health insurance marketplace, the Commonwealth Health Insurance Connector, called the Health Connector (the “Connector”), through individual sellers or directly

¹⁵ G.L. c. 176J §§ 1-6.

¹⁶ *Compare* G.L. c. 176J § 1 *with* 211 CMR 42.05(2)(d) (describing “Major Medical Expense Insurance”).

¹⁷ G.L. c. 111M § 2.

¹⁸ G.L. c. 111M § 1 (definition of “Creditable coverage”). *Compare id.* (describing supplemental health insurance policies not included in definition of creditable coverage) *with* G.L. c. 176J § 1 (second sentence of definition of “Health benefit plan” describing plans not included in that term as defined).

¹⁹ Ex. 252 at 39-40, 42, 47, 97.

from insurers.²⁰

20. Broadly speaking, the medical loss ratio of health insurance is the ratio of medical expenses divided by premiums paid for the policy at issue for a given year. Massachusetts regulations have generally required the medical loss ratio for a Health Benefit Plan to be at least 88% (or 1% higher than the plan's prior year's medical loss ratio), meaning that 88 cents of every dollar collected by the insurance carrier in premium must be paid out for insureds' medical expenses.²¹

21. Massachusetts regulation has required lower minimum anticipated loss ratios for certain individual supplemental insurance policies, including 60% for specified disease insurance ("SDI"), 55% for hospital confinement insurance and 45% for disability income insurance (and accident only health insurance).²²

22. Such supplemental health insurance issued by a Massachusetts licensed insurance carrier is a Health Benefit Plan, as defined in G.L. c. 176J § 1, unless it fits within the exemptions to that definition.²³

23. The marketing and sale of health insurance is governed by multiple Massachusetts laws and regulations.²⁴

24. Massachusetts law provides that misrepresenting the benefits of any insurance

²⁰ Ex. 252 at 57, 59, 93; G.L. c. 176Q § 1.

²¹ See G.L. c. 176J § 6(d)-(e).

²² See 211 CMR 42.06(2)(b)-(c), (e), (j).

²³ See G.L. c. 176J § 1 (first two sentences of definition of "Health benefit plan").

²⁴ See, e.g., G.L. c. 175 §§ 162P, 177A, c. 176D § 3; 211 CMR 40.00 *et seq.*, 42.00 *et seq.*, 66.00 *et seq.* and 146.00 *et seq.*

policy is an unfair or deceptive act or practice in the business of insurance.²⁵

25. Massachusetts law requires an insurance producer (which includes an insurer's agent) to notify the Commissioner prior to doing business under any name other than the producer's own legal name.²⁶ It also makes punishable the use of certain titles in marketing that suggest that an individual is engaged in the business of giving advice to insurance policyholders when that individual lacks the requisite adviser's license.²⁷

26. In addition, Massachusetts law provides for the Commissioner to make rules and regulations concerning advertising of accident and sickness insurance policies that include the following principles, among other things:

- a. "Words, phrases or illustrations shall not be used in a manner which misleads or has the capacity and tendency to deceive as to the extent of any policy benefit payable, loss covered or premium payable";
- b. "When an advertisement refers to various benefits which may be contained in two or more policies, other than group master policies, the advertisement shall disclose that such benefits are provided only through a combination of such policies";
- c. "An advertisement shall not directly or indirectly make unfair or incomplete comparisons of policies or benefits or otherwise falsely disparage competitors, their policies, services or business methods"; and
- d. "The identity of the insurer shall be made clear in all of its advertisements.

²⁵ G.L. c. 176D § 3(1)(a).

²⁶ G.L. c. 175 § 162P. *See* G.L. c. 175 § 162S.

²⁷ G.L. c. 175 §§ 177A-B.

An advertisement shall not use a trade name, service mark, slogan, symbol or other device which has the capacity and tendency to mislead or deceive as to the true identity of the insurer.”²⁸

27. Pursuant to the Commissioner’s authority, the Massachusetts Division of Insurance (“DOI”) issued such regulations, prior to 2011, relating to the marketing of insured health plans, which regulations contained those prohibitions²⁹ and others.³⁰

28. Pursuant to the Commissioner’s authority, the DOI also issued regulations relating to the form and contents of individual accident and sickness insurance after 1996, which contained disclosure requirements.³¹

29. Pursuant to the Commissioner’s authority, the DOI also promulgated regulations that applied specifically to SDI offered in Massachusetts after January 1, 2003, including as to its marketing.³²

30. The Consumer Protection Act’s prohibition on unfair or deceptive acts or practices applies to sales of insurance in Massachusetts and runs concurrently with more specific insurance law, including but not limited to the provisions referenced in paragraphs 24-29.³³

31. Pursuant to her authority under G.L. c. 93A,³⁴ the Attorney General has issued general regulations³⁵ and regulations relating specifically to non-insurance discount health

²⁸ G.L. c. 175 § 110E(1), (8)-(10).

²⁹ 211 CMR 40.04(1), 40.07(1)(a), 40.11(2)-(3).

³⁰ See, e.g., 211 CMR 40.07(1)(b), (d)-(e), (g), (j), 40.10(3).

³¹ 211 CMR 42.02-03, 42.09.

³² See 211 CMR 146.02-03.

³³ See G.L. c. 93A, §§ 1(b), 2(a); *Dodd v. Commercial Union Ins. Co.*, 373 Mass. 72, 79 (1977).

³⁴ G.L. c. 93A, § 2(c).

³⁵ 940 CMR 3.00 *et seq.*

plans.³⁶

32. As detailed below, Defendants violated G.L. c. 93A, referenced insurance statutes and the referenced regulations relating to the marketing and sale of insurance (and non-insurance plans).³⁷

2. The Judgment in the Original Litigation Enjoins HealthMarkets and its Subsidiaries from Various Deceptive Practices.

33. The Commonwealth filed an amended complaint in 2007 against HealthMarkets and two of its subsidiaries, MEGA Life and Health Insurance Company (“MEGA”) and Mid-West National Life Insurance Company of Tennessee (“Mid-West,” and collectively with HealthMarkets and MEGA, the “Original Defendants”). The amended complaint alleged, among other things, that the Original Defendants had engaged in a thorough-going campaign of deception and unfair practices to mislead Massachusetts consumers into purchasing their health insurance products and association memberships.³⁸

34. That amended complaint alleged, among other things, that the Original Defendants:

a. deceived Massachusetts consumers into believing that their products were offered through not-for-profit associations that would serve the consumers' best interests;³⁹

b. generated most of their health insurance business through sales

³⁶ 940 CMR 26.00 *et seq.*

³⁷ *See infra passim.*

³⁸ First Amended Complaint (“FAC”) at 1-2, *Commonwealth of Massachusetts v. Mega Life and Health Ins. Co.*, No. 06-4411 (Suffolk Super. Ct. Aug. 22, 2007).

³⁹ *Id.* at 3-4.

presentations made at the homes or businesses of prospective purchasers by appointed sales agents who routinely deceived customers about the coverage;⁴⁰

c. treated consumer complaints and grievances as agent training opportunities and failed to process those grievances appropriately;⁴¹

d. reaped enormous profits by paying benefits that totaled less than half of the premiums they received for accident and health plans in Massachusetts;⁴²

e. claimed to be able to provide less expensive health insurance without sacrificing coverage but failed to adequately disclose the many exclusions and limitations in their coverage;⁴³ and

f. made incomplete comparisons of policy benefits, compared noncomparable aspects of policies of other carriers and disparaged competitors, their policies and/or their services.⁴⁴

35. After two years of litigation following the amended complaint and before summary judgment or trial, the Original Defendants consented to the Judgment in August 2009, which was Ordered by Justice Muse of this Court.⁴⁵

36. The Judgment required the Original Defendants to pay over \$15 million and banned HealthMarkets and its subsidiaries, among other things, from a host of unfair and

⁴⁰ FAC at 7.

⁴¹ *Id.* at 7-10.

⁴² *Id.* at 10-11.

⁴³ *Id.* at 11-14.

⁴⁴ *Id.* at 23-26.

⁴⁵ Ex. A hereto (Final Judgment by Consent, Commonwealth of Massachusetts v. Mega Life and Health Ins. Co., No. 06-4411 (Suffolk Super. Ct. Sept. 3, 2009)).

deceptive marketing practices.⁴⁶

37. The Judgment, among other things,

a. enjoined “any directly or indirectly owned or operated subsidiary of any of the [Original] Defendants acting as a licensed insurance company (‘Insurer Subsidiary’) . . . from offering for sale in Massachusetts any Health Benefit Plan as that term is defined in M.G.L.

c. 176J, § 1”⁴⁷ (Chesapeake has been such an “Insurer Subsidiary” since prior to 2011);⁴⁸

b. required any Insurer Subsidiary “seek[ing] to write new Health Benefit Plan business in Massachusetts” after at least five years following the Judgment to “provide written notice to the Attorney General at least sixty (60) days before writing new business or filing any products or policy forms with” the DOI,⁴⁹ and

c. enjoined HealthMarkets and its “subsidiaries . . . in connection with their business in the Commonwealth of Massachusetts from:”⁵⁰

i. “requiring association group membership in connection with the marketing and sale of any Health Benefit Plan under M.G.L. c. 176J for individuals or small employer groups of five (5) or fewer employees unless the association operates as an ‘intermediary’ in accordance with M.G.L. c. 176J”;⁵¹

ii. “using any advertisement in Massachusetts that contains the

⁴⁶ Ex. A.

⁴⁷ Ex. A/Ex. 45 at 2 (¶ 1(a)); Ex. 9 (T.R. III Tr.) at 112, 114-115.

⁴⁸ Ex. 7 (T.R. Tr.) at 17, 204-05; Ex. 9 (T.R. III Tr.) at 112-114.

⁴⁹ Ex. A at 2 (¶ 1(d)).

⁵⁰ *Id.* at 4 (¶ 2); Ex. 9 (T.R. III Tr.) at 114.

⁵¹ Ex. A at 5 (¶ 2(c)).

representations ‘any doctor’ or ‘choose any doctor anytime, anywhere’ or equivalent language, unless such advertisements clearly and conspicuously, and in close proximity to the representation, disclose any exceptions, restrictions and/or limitations that apply”;⁵²

- iii. “using any advertisement in Massachusetts that it knows or should know is false or deceptive, including, but not limited to, any representation offering prescription drug coverage, except where the product being offered provides insured prescription benefits”;⁵³ and
- iv. “using in Massachusetts any advertisements or proposed agent scripts that unfairly or incompletely compare any MEGA or Mid-West product to any Health Benefit Plan offered by a competitor, or otherwise make comparisons that it knows or should know are false, incomplete or unfair.”⁵⁴

3. Chesapeake and Insphere, as Subsidiaries of HealthMarkets, Violated the Judgment and G.L. c. 93A.

38. As set out in more detail below, Chesapeake, as a subsidiary of HealthMarkets, violated the injunctions in subparagraphs (a) and (b) above by offering for sale, including through Insphere, SDI in Massachusetts within (and not exempt from) the definition of Health Benefit Plan as defined in G.L. c. 176J, § 1, including selling it for purchase not as a supplement but as a substitute for a health plan.⁵⁵

⁵² Ex. A at 6 (¶ 2(h)).

⁵³ *Id.* at 6 (¶ 2(i)).

⁵⁴ *Id.* at 6 (¶ 2(j)).

⁵⁵ *See infra* Section D.

39. As set out in more detail below, Chesapeake and Insphere, as subsidiaries of HealthMarkets, violated the injunctions in subparagraphs (c)(i) and (ii) above, in the marketing and sale of short-term medical insurance underwritten by Unified Life Insurance Co.⁵⁶

40. As set out in more detail below, Chesapeake and Insphere violated the injunctions in subparagraphs (c)(iii) and (iv) above, including in the marketing and sale of supplemental health insurance issued by Chesapeake.⁵⁷

41. As set out in more detail below, Chesapeake and Insphere's misconduct violated G.L. c. 93A as well.⁵⁸

4. HealthMarkets is Liable for the Violations of the Judgment and G.L. c. 93A.

42. In addition to its own wrongdoing, HealthMarkets is also liable for these violations of the Judgment and G.L. c. 93A because, among other reasons, it (a) pervasively controlled and used Chesapeake and Insphere to engage in deceptive practices in violation of the Judgment and G.L. c. 93A; (b) confusingly intermingled corporate activity; (c) participated in, approved, ratified and/or knowingly acquiesced in Chesapeake and Insphere's misconduct; and (d) acted with Chesapeake and Insphere in an effort to frustrate the statutory scheme of G.L. c. 93A and the Judgment.⁵⁹

43. HealthMarkets exercised pervasive control over Insphere and Chesapeake, including through unitary executive control,⁶⁰ and Chesapeake and Insphere engaged in

⁵⁶ See *infra* Section F.

⁵⁷ See *infra* Sections A-H.

⁵⁸ See *infra passim*.

⁵⁹ See *infra* this Section.

⁶⁰ See *infra* this Section.

deceptive practices in violation of the Judgment and G.L. c. 93A.⁶¹

44. Kenneth Fasola was President, Chief Executive Officer and Director, of all the Defendants from 2011 into 2019.⁶²

45. Defendants have intermingled officers and directors.⁶³

46. There have been serious ambiguities about the manner and capacity in which the various corporate Defendants and their respective representatives were acting.⁶⁴

47. In June 2019, Defendants' corporate designee with respect to testimony about Defendants' officers did not know of what entity Defendants' Vice President and Chief Compliance Officer through February 1, 2019 had been an officer.⁶⁵

48. A HealthMarkets senior director was not sure which Defendant she was employed by, and a former HealthMarkets officer was not sure when she had held that position or of what entity or entities the person to whom she reported was the Executive Vice President and CFO.⁶⁶

49. Appointed agents of Chesapeake who were also Insphere agents ("Chesapeake-Insphere Agents") variously did not know what HealthMarkets (as opposed to Insphere) was, did not know whether Mr. Fasola was President of HealthMarkets and did not know of what HealthMarkets entity Mr. Fasola was President.⁶⁷

⁶¹ See *infra passim*.

⁶² Ex. 7 (T.R. Tr.) at 26.

⁶³ *Id.*

⁶⁴ See *infra* this Section.

⁶⁵ Ex. 1, excerpts of transcript of examination under oath of Kimberly Glenn, June 27, 2019 ("K.G. Tr.") at 18-19; Ex. 7 (T.R. Tr.) at 12; Ex. 97.

⁶⁶ Ex. 5, excerpts of transcript of examination under oath of Amy Rieg, Vol. II, January 7, 2020 ("A.R. II Tr.") at 12; Ex. 6 (K.R. Tr.) at 18-22.

⁶⁷ Ex. 3 (B.J. Tr.) at 80-82; Ex. 5 (A.R. II Tr.) at 12; Ex. 6 (K.R. Tr.) at 18-22; Ex. 7 (T.R. Tr.) at

50. HealthMarkets has described Chesapeake on its public website as “our supplemental business.”⁶⁸

51. HealthMarkets has posted on its website that it “serves the needs of individuals, families and small business through [its] subsidiary insurance agency and insurance companies” (with the agency being Insphere and Chesapeake being one of the insurance companies).⁶⁹

52. HealthMarkets has also written on its website: “Leading Health Insurance Marketplace. Millions of Americans have counted on HealthMarkets to protect their health and financial well-being. We are a technology-enabled health insurance marketplace delivering high-touch customized health and supplemental insurance solutions to individuals, families and small business.”⁷⁰

53. Insphere has done business under the name “HealthMarkets” since 2013, formally changing its name from Insphere Insurance Solutions, Inc. to HealthMarkets Insurance Agency, Inc. in 2017.⁷¹

54. Insphere started doing business as HealthMarkets Insurance Agency in 2013 to leverage the similarities between that name and the name of the federally labelled marketplace

108, 205-07; Ex. 23, excerpts of transcript of examination under oath of Steven Lee, March 28, 2018 (“S.L. Tr.”) at 16-17, 24; Ex. 32, excerpts of transcript of examination under oath of Alexander Schiripo, March 16, 2018 (“A.S. Tr.”) at 20, 26; Ex. 34, excerpts of transcript of examination under oath of Christopher Smith, June 1, 2018 (“C.S. Tr.”) at 25-26; Ex. 36, excerpts of transcript of examination under oath of Mark Taylor, February 8, 2018 (“M.T. Tr.”) at 18-19, 24, 31, 69; Exs. 104-05.

⁶⁸ Ex. 7 (T.R. Tr.) at 117-19.

⁶⁹ *Id.*

⁷⁰ *Id.* at 120.

⁷¹ *Id.* at 201-02.

exchange.⁷²

55. Insphere ran radio advertisements in Massachusetts in and/or after 2013 in which Mike Stahl, who was identified as “the senior vice president for HealthMarkets” (and who was an officer of HealthMarkets and Insphere), stated that “HealthMarkets offers a free service to help folks make sure they can save the most money on their health insurance under Obamacare and we can maximize your subsidies to save you money.”⁷³

56. One of those advertisements and other radio advertisements that Insphere ran in Massachusetts in and/or after 2013 that involved Mr. Stahl, identified him as “senior vice president of HealthMarkets” and stated “HealthMarkets is a free service” without disclosing which entity or entities “HealthMarkets” was.⁷⁴

57. Insphere ran a radio advertisement in Massachusetts in and/or after 2013 in which Mr. Stahl, who was identified as “the senior vice president for HealthMarkets” (and who was an officer of HealthMarkets and Insphere), stated that “And right now, that could mean a zero dollar monthly premium. Government subsidies are higher than ever and you may be able to get a health plan for free.”⁷⁵

58. In or about 2019, Defendants engaged in advertising, including via the Internet, in which Mr. Stahl (who was an officer of HealthMarkets and Insphere and director of Chesapeake and was identified as “executive vice president of HealthMarkets”) described “HealthMarkets”

⁷² Ex. 7 (T.R. Tr.) at 202.

⁷³ Ex. 10 (T.R. IV Tr.) at 84-86, 90-92; Ex. 131 (as to INSPHERE4039376, INSPHERE4039383); Ex. 247; Ex. 250.

⁷⁴ Ex. 10 (T.R. IV Tr.) at 84-86, 90-92; Ex. 131 (as to INSPHERE4039383, INSPHERE4039387, INSPHERE4039389-91); Exs. 247-48.

⁷⁵ Ex. 10 (T.R. IV Tr.) at 84-86, 90-92; Ex. 131 (as to INSPHERE4039387); Ex. 248; Ex. 250.

as offering a “free service” relating to “Obamacare,” stated that “our HealthMarkets’ service is completely free” and said that consumers can “use free, smart, unbiased help from HealthMarkets,” without disclosing which entity or entities “HealthMarkets” was.⁷⁶

59. In addition to its direct involvement, HealthMarkets approved, ratified and knowingly acquiesced in misconduct by Chesapeake and Insphere.⁷⁷

60. HealthMarkets owned the trademarks on the name “HEALTHMARKETS,” “HEALTHMARKETS INSURANCE AGENCY” and associated marks.⁷⁸

61. HealthMarkets has, including in the foregoing ways, derived publicity and good will by representing to the public and its customers that it operated Insphere as part of a single entity.

62. Consequently, HealthMarkets is responsible for the violations of Judgment and G.L. c. 93A committed by Chesapeake and Insphere, as well as its own misconduct.

5. After the Judgment, HealthMarkets Retained Much of its Subsidiaries’ Massachusetts Sales and Management Structure and Transferred its Deceptive Practices to Selling Chesapeake Supplemental Health Insurance.

63. The Judgment banned HealthMarkets’ insurance subsidiaries from offering for sale Health Benefit Plans, as defined in G.L. c. 176J, § 1, in Massachusetts until at least five years after they informed consumers that they would not renew previously sold Health Benefit

⁷⁶ Ex. 70; Ex. 253; <https://blackamericaweb.com/2019/11/01/find-the-best-health-insurance-for-you/>.

⁷⁷ See *infra passim*.

⁷⁸ Ex. 8, excerpts of transcript of examination under oath of Taryn Risucci, Vol. II, June 12, 2019 (“T.R. II Tr.”) at 12-13, 97-99; Ex. 97; Ex. 102.

Plans.⁷⁹ Because the Original Defendants gave that notice in or about 2011,⁸⁰ HealthMarkets' insurance subsidiaries were banned from offering such Health Benefit Plans until at least five years later, in 2016.

64. MEGA and Mid-West stopped selling health insurance in Massachusetts in late 2009.⁸¹

65. In late 2009, HealthMarkets changed its business model from an underwriter of major medical health insurance to both a distribution company of third-carrier products and an underwriter of supplemental health insurance.⁸²

66. Insphere was a HealthMarkets subsidiary subject to injunctions in the Judgment when it began operating in Massachusetts in or about January 2010. When it began operating, Insphere carried over much of the legacy agency structure that MEGA and Mid-West had used, including many of the sales agents and MEGA's management structure.⁸³

67. Insphere contracted with MEGA and Mid-West agents without reviewing evidence that had been gathered in the original action relating to the conduct of those agents.⁸⁴

68. Defendants used individuals, who were appointed agents of Chesapeake and

⁷⁹ Ex. A at 2 (¶ 1(a)).

⁸⁰ Ex. 9 (T.R. III Tr.) at 115-16.

⁸¹ Ex. 15, excerpts of transcript of examination under oath of Richard Castagnozzi, November 6, 2018 ("Ri.C. Tr.") at 17; Ex. 20, excerpts of transcript of examination under oath of Steven Hatem, October 31, 2018 ("S.H. Tr.") at 24-25.

⁸² Ex. 7 (T.R. Tr.) at 27-28.

⁸³ Ex. 2, excerpts of transcript of examination under oath of Kimberly Glenn, Vol. II, January 9, 2020 ("K.G. II Tr.") at 163-67; Ex. 9 (T.R. III Tr.) at 112, 114, 186; Ex. 15 (Ri.C. Tr.) at 22; Ex. 20 (S.H. TR.) at 16-17, 32-34; Ex. A/Ex. 45 at 4 (¶ 2).

⁸⁴ Ex. 9 (T.R. III Tr.) at 188.

many of whom were Chesapeake-Insphere Agents, to sell health insurance.⁸⁵

69. In addition to the Judgment's ban on HealthMarkets' insurance subsidiaries offering for sale in Massachusetts on or after October 1, 2009 Health Benefit Plans for at least several years,⁸⁶ Defendants faced a series of business obstacles and they responded with another deceptive scheme.⁸⁷

70. Insphere believed that customers would not agree to meet with its agents if the meetings were premised on talking about supplemental health insurance because most Americans have never heard of various types of such coverage. Indeed, it trained Chesapeake-Insphere Agents nationwide, including in Massachusetts in that regard.⁸⁸

71. So, Insphere used consumers' need for major medical health insurance to meet with the consumers in hopes of also selling them other products, such as supplemental health insurance.⁸⁹

72. In addition, major medical health insurance paid lower commission rates in Massachusetts than Chesapeake supplemental health insurance.⁹⁰

73. And while agents were paid high commission rates on Chesapeake supplemental health insurance policies, they were of very limited value to consumers.⁹¹

⁸⁵ See *infra* Sections A5-6.

⁸⁶ Ex. A at 2 (¶ 1(a)). Compare G.L. c. 176J § 1 with 211 CMR 42.05(2)(d) (describing "Major Medical Expense Insurance" for inpatient and outpatient services).

⁸⁷ See *infra* this Section.

⁸⁸ Ex. 37, excerpts of transcript of examination under oath of Rochelle Wertenteil, November 14, 2018 ("Ro.W. Tr.") at 13-19, 215, 220-22; Ex. 124, at 1-2, ¶¶ 4-6.

⁸⁹ Ex. 15 (Ri.C. Tr.) at 18-19, 116-20.

⁹⁰ Ex. 12, excerpts of transcript of examination under oath of Douglas Carlson, January 23, 2018 ("D.C. Tr.") at 241-42.

⁹¹ See *infra* Section A5.

74. Accordingly, Defendants relied on a host of deceptive sales tactics, as detailed throughout this complaint, to sell their supplemental health insurance to consumers.

75. One strain of these deceptive tactics hid the fact that Chesapeake supplemental health insurance was being sold to the consumer. One consumer wrote in a complaint, “[h]ad it been explained to [the consumer] that Chesapeake was a supplemental insurance, [the consumer] would have signed up only for” major medical insurance.⁹²

76. Supplemental health insurance is so described in contrast to major medical insurance and includes (a) SDI; (b) hospital confinement insurance; (c) accident only health insurance; and (d) disability income insurance, as well as dental and vision insurance.⁹³

77. Since 2011, the only health insurance Chesapeake has issued in Massachusetts has been supplemental health insurance (contrasted with major medical insurance).⁹⁴

78. From 2011 to 2018, Defendants sold over 58,000 Chesapeake health insurance policies in Massachusetts.⁹⁵

79. For certain species of supplemental health insurance, at various times, Insphere exclusively or predominantly sold such supplemental health insurance from Chesapeake. For example:

- a. From 2010 through 2015, Insphere did not sell any SDI in Massachusetts

⁹² Ex. 2 (K.G. II Tr.) at 88; Ex. 90; Ex. 139, at 2-3, ¶ 8a, b, e.

⁹³ Ex. 7 (T.R. Tr.) at 18-19. *Compare* 211 CMR 42.05(2)(d) (describing “Major Medical Expense Insurance”) *with* 211 CMR 42.05(2)(c), (f)-(h) (describing “Hospital Confinement Indemnity Insurance,” SDI, “Accident Only Health Insurance” and “Disability Income Insurance”).

⁹⁴ Ex. 7 (T.R. Tr.) at 18-19; Ex. 97.

⁹⁵ Ex. 6 (K.R. Tr.) at 85.

other than Chesapeake's.⁹⁶

b. From 2016 to 2018, the vast majority of the SDI policies sold by Insphere in Massachusetts were from Chesapeake.⁹⁷

80. As detailed below, Defendants deceptively sold Chesapeake supplemental health insurance, as a substitute for major medical health insurance, passed off as major medical health insurance, passed off as part of or included with major medical health insurance and/or through other deceptive means, such as deceptively disparaging major medical health insurance and exaggerating the benefits of the supplemental health insurance.⁹⁸

6. Chesapeake's Supplemental Health Insurance Has Had Very Limited Value for Consumers but Has Been a Key Revenue Source for Defendants and their Agents.

a. Chesapeake's supplemental health insurance has had very limited value for consumers.

81. Chesapeake sold six types of supplemental health insurance policies in Massachusetts through Insphere and SFG: (a) SDI (under the product name "Critical Illness" insurance); (b) hospital confinement insurance; (c) accident only health insurance (under the name "ProtectFit"); (d) disability income insurance (under the names "Income Protection" and "Accident Disability"); (e) dental insurance; and (f) vision insurance.⁹⁹

82. Chesapeake's SDI generally pays insureds a lump sum if the insured is diagnosed with one of a limited set of specified conditions or undergoes an even more limited set of

⁹⁶ Ex. 8 (T.R. II Tr.) at 86-88; Ex. 75.

⁹⁷ Ex. 8 (T.R. II Tr.) at 86-90.

⁹⁸ See *infra* Sections C-E.

⁹⁹ Ex. 2 (K.G. II Tr.) at 179-81; Ex. 6 (K.R. Tr.) at 24-28; Ex. 7 (T.R. Tr.) at 18-19; Ex. 71; Exs. 144-49.

procedures.¹⁰⁰ For example, one consumer was quoted \$44.72/month for Chesapeake SDI with a maximum single lump sum payout of \$30,000.¹⁰¹

83. Chesapeake's supplemental health insurance policies were of very limited value to Massachusetts consumers.¹⁰²

84. For the Chesapeake supplemental policies sold in Massachusetts from 2011 to 2018, the ratio of Incurred Claims to Earned Premium as reported to the DOI (the "Loss Ratio") **was less than 20%.**¹⁰³

85. The Loss Ratios in Massachusetts for 2011 to 2017 for each type of Chesapeake supplemental health insurance sold here were:

- a. for SDI, less than 27% (never exceeding 35% in any year);¹⁰⁴
- b. for hospital confinement insurance, less than 23% (never exceeding 42% in any year);¹⁰⁵
- c. for disability income insurance, less than 9% (never exceeding 22% in any year);¹⁰⁶
- d. for accident only health insurance, less than 5% (never exceeding 8% in any year);¹⁰⁷

¹⁰⁰ Ex. 7 (T.R. Tr.) at 156-57; Exs. 145-46.

¹⁰¹ Ex. 17, excerpts of transcript of examination under oath of Gerald Dorfman, February 23, 2018 ("G.D. Tr.") at 142-44; Ex. 184.

¹⁰² Ex. 6 (K.R. Tr.) at 29-39; Ex. 72.

¹⁰³ Ex. 6 (K.R. Tr.) at 23-39; Ex. 10 (T.R. IV Tr.) at 79; Ex. 72; Ex. 130.

¹⁰⁴ Ex. 6 (K.R. Tr.) at 23-39; Exs. 71-72.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

- e. for vision insurance, never exceeding 41% in any year;¹⁰⁸ and
- f. for dental insurance, never exceeding 28% in any year.¹⁰⁹

86. The actual durational loss ratio (which considers, among other things, the present value of moneys paid or collected in the past) for Chesapeake's SDI sold in Massachusetts from 2010 to 2017 was under 20%.¹¹⁰

b. Chesapeake's supplemental health insurance has been a key revenue source for Defendants and their agents.

87. The income from the sales of Chesapeake supplemental health insurance policies has been a key revenue source for Defendants and for Massachusetts agents of Insphere and Chesapeake.¹¹¹

88. As Insphere has conveyed in its recruiting materials, in the "HealthMarkets' Business Model" the "HealthMarkets Advisor" makes more money from selling (under 65) "Supplemental Policies" than comparator "Broker[s]" make (or the "HealthMarkets Advisor" him or herself makes) in selling (under 65) "Health Policies."¹¹²

89. From 2011 at least into 2019, over 90% of Chesapeake's income has been from the sale of supplemental health insurance policies and over 90% of that has been from sales to individuals.¹¹³

90. Chesapeake received over \$40 million in premium payments for its health

¹⁰⁸ Ex. 6 (K.R. Tr.) at 23-39; Exs. 71-72.

¹⁰⁹ *Id.*

¹¹⁰ Ex. 6 (K.R. Tr.) at 76-78; Ex. 73 at CHESAPEAKE0087424.

¹¹¹ Ex. 7 (T.R. Tr.) at 184.

¹¹² Ex. 12 (D.C. Tr.) at 31, 64, 70-75, 82-85; Ex. 37 (Ro.W. Tr.) at 35-36; Ex. 61 at 42; Ex. 159 at INSPHERE0568948.

¹¹³ Ex. 8 (T.R. II Tr.) at 91.

insurance policies sold in Massachusetts from 2011 to 2018 (excluding amounts it refunded).¹¹⁴

91. Of those premiums, Chesapeake received over \$29 million from sales by Insphere and over \$11 million from sales by SFG.¹¹⁵

92. Chesapeake has continued to receive premium payments for its health insurance policies sold in Massachusetts, totaling over \$43.5 million through May 2019.¹¹⁶

93. From 2011 to 2018, Chesapeake paid Insphere agents more in commission on its supplemental health insurance policies than any other single carrier paid for any other type of insurance sold through Insphere.¹¹⁷

94. Chesapeake received over \$18 million for the sale of over 16,000 of its SDI policies in Massachusetts from 2011 to 2018 (exclusive of policies that were fully refunded or to be effective starting in 2019).¹¹⁸

95. From 2010 at least into 2019, 74% of Insphere-contracted agents in Massachusetts were not licensed prior to contracting with Insphere.¹¹⁹

96. Those new to the industry were potentially more subject to being influenced by Insphere's training.¹²⁰

97. In 2014, Defendants, through Mark Smith, then Executive Vice President and Chief Agency Officer of HealthMarkets and Insphere, and a Director of Chesapeake, conveyed

¹¹⁴ Ex. 6 (K.R. Tr.) at 86-87; Ex. 10 (T.R. IV Tr.) at 79; Ex. 72; Ex. 130.

¹¹⁵ Ex. 6 (K.R. Tr.) at 87-88.

¹¹⁶ Ex. 10 (T.R. IV Tr.) at 79; Ex. 130.

¹¹⁷ Ex. 7 (T.R. Tr.) at 181; Ex. 76.

¹¹⁸ Ex. 6 (K.R. Tr.) at 89.

¹¹⁹ Ex. 9 (T.R. III Tr.) at 216.

¹²⁰ Ex. 21, excerpts of transcript of examination under oath of Ryan Herlin, November 8, 2017 ("R.H. Tr.") at 13-16, 19-20, 25.

to Chesapeake-appointed Insphere-contracted agents through a training webinar (which such agents in Massachusetts signed in to live) that if they only sold major medical health insurance they would “fail.”¹²¹

98. In 2014, Insphere trained its manager employees nationwide that “the end in mind is in a very practical sense, cross-selling supp sales and SAL,” which were references to selling supplemental health insurance, including from Chesapeake, along with major medical health insurance and to supplemental health insurance, association memberships and life insurance.¹²²

99. In 2015, Insphere trained its agents nationwide, including in Massachusetts, that selling supplemental health insurance and/or life insurance was the heart of Insphere’s business.¹²³

100. From 2011 through 2019, it was Insphere’s routine practice to appoint all its contracted agents with Chesapeake after they completed training with Chesapeake, and it did so with respect to all or almost all such agents in Massachusetts.¹²⁴

101. From at least October 2013 through at least July 2017, all Insphere agents in Massachusetts that completed training were appointed as agents with Chesapeake.¹²⁵

102. From 2011 to 2014, none of Defendants or any affiliate trained any agent of Insphere or Chesapeake about any SDI other than that underwritten by Chesapeake.¹²⁶

¹²¹ Ex. 155.

¹²² Ex. 5 (A.R. II Tr.) at 10, 144; Ex. 113; Ex. 120 at 1, 3, ¶¶ 1, 5.

¹²³ Ex. 5 (A.R. II Tr.) at 21-22 181-82; Ex. 116 at 1, ¶¶ 1-2, 4.

¹²⁴ Ex. 4, excerpts of transcript of examination under oath of Amy Rieg, September 11, 2019 (“A.R. Tr.”) at 10, 23-24.

¹²⁵ Ex. 15 (Ri.C. Tr.) at 17-20, 29-31, 65.

¹²⁶ Ex. 7 (T.R. Tr.) at 72.

103. From 2011 to 2015, Chesapeake was the only carrier selling SDI in Massachusetts to which Insphere sent appointment paperwork for its agents (with sending such paperwork to carriers being part of Insphere’s onboarding process).¹²⁷

104. Douglas Carlson, an appointed agent of Chesapeake who was also an Insphere agent and sales manager who sold Chesapeake supplemental health insurance in Massachusetts (a “Chesapeake-Insphere Sales Manager”), described meeting people about major medical health insurance as a “trojan horse,” allowing agents then to discuss other products with those consumers.¹²⁸

105. Through at least 2017, Insphere’s philosophy was that Chesapeake insurance was the number one go-to product because of Chesapeake’s ownership by HealthMarkets.¹²⁹

106. Insphere repeatedly trained its agents nationally to include Chesapeake supplemental health insurance policies in every sales presentation.¹³⁰

107. Insphere trained its agents, including in Massachusetts, to “[p]resent [a] package with health plan, Supps and Life insurance,” with “health plan” referring to major medical health insurance and “[s]upps” referring to supplemental health insurance policies.¹³¹

108. Appointed agents of Chesapeake who worked at SFG (“Chesapeake-SFG Agents”), including Matthew Marden, understood that they were not appointed with any carrier

¹²⁷ Ex. 5 (A.R. II Tr.) at 79.

¹²⁸ Ex. 3 (B.J. Tr.) at 10, 80-82; Ex. 6 (K.R. Tr.) at 98-100; Ex. 9 (T.R. III Tr.) at 134-36; Ex. 12, D.C. Tr. at 37-39, 233-34; Ex. 13, excerpts of transcript of examination under oath of Douglas Carlson, Vol. II, August 14, 2018 (“D.C. II Tr.”) at 39; Ex. 74; Ex. 126.

¹²⁹ Ex. 21 (R.H. Tr.) at 107.

¹³⁰ *Id.* at 100-02.

¹³¹ Ex. 12 (D.C. Tr.) at 276, 298-99; Ex. 13 (D.C. II Tr.) at 56-57; Ex. 15 (Ri.C. Tr.) at 140-42; Ex. 53 at 17.

issuing supplemental health insurance in Massachusetts other than Chesapeake.¹³²

109. Multiple Chesapeake-SFG Agents who sold Chesapeake supplemental health insurance policies to Massachusetts residents did not sell supplemental health insurance other than that issued by Chesapeake.¹³³

110. Insphere structured its compensation to strongly incentivize the sale of supplemental health insurance, especially SDI.

111. Insphere paid first year commission rates of between 46.25% and 65% to its agents in Massachusetts on Chesapeake's SDI, "Accident Disability" and "Income Protection" disability insurance and between 22.5% and 32.5% for Chesapeake accident only health insurance and hospital confinement insurance.¹³⁴

112. Insphere placed its agents in tiers, monthly, with each higher tier being paid higher base commission rates.¹³⁵ At least until 2018, Insphere tiered its agents based upon weighted first year commissions, giving the greatest weighting factor to supplemental insurance and certain other products (not including major medical insurance).¹³⁶

¹³² Ex. 3 (B.J. Tr.) at 81-82; Ex. 6 (K.R. Tr.) at 98-100; Ex. 25, excerpts of transcript of examination under oath of Matthew Marden, July 12, 2018 ("M.M. Tr.") at 11-12, 53; Ex. 29, excerpts of transcript of examination under oath of Joseph Pate, July 9, 2018 ("J.P. Tr.") at 10, 28-29, 75-76; Ex. 74; Ex. 105 at rows 373-89.

¹³³ Ex. 18, excerpts of transcript of examination under oath of Adam Gonyea, June 5, 2018 ("A.G. Tr.") at 11-13, 42-44; Ex. 25 (M.M. Tr.) at 46-49; Ex. 31, excerpts of transcript of examination under oath of Nicholas Roberts, June 27, 2018 ("N.R. Tr.") at 10-11, 19-21, 35; Ex. 39, excerpts of transcript of examination under oath of Michael Williams, June 14, 2018 ("M.W. Tr.") at 9, 12-15, 17-20.

¹³⁴ Ex. 2 (K.G. II Tr.) at 156-60; Ex. 17 (G.D. Tr.) at 108-09; Ex. 181.

¹³⁵ Ex. 7 (T.R. Tr.) at 186; Ex. 16, excerpts of transcript of examination under oath of Lawrence Cavanaugh, April 4, 2018 ("L.C. Tr.") at 15, 39.

¹³⁶ Ex. 12 (D.C. Tr.) at 255-56; Ex. 32 (A.S. Tr.) at 17, 58-61; Ex. 40, excerpts of transcript of examination under oath of Richard Williams, March 6, 2018 ("Ri.W. Tr.") at 16-17, 261-63.

113. For most of the time between 2011 and 2018, Insphere agents' compensation included stock in HealthMarkets.¹³⁷

114. Commissions from sales of Chesapeake's supplemental health insurance policies were more than 80% of SFG's income.¹³⁸

115. Multiple Chesapeake-SFG Agents received 100% of their commission income while working at SFG from selling Chesapeake supplemental health insurance policies.¹³⁹

116. Multiple Chesapeake-SFG Agents, including Mr. Marden, received at least 95% of their income from the sale of Chesapeake's supplemental health insurance policies.¹⁴⁰

7. Defendants Used Various Means of Targeting and Contacting Massachusetts Consumers Seeking Major Medical Health Insurance.

117. Defendants, Chesapeake-Insphere Agents and Chesapeake-SFG Agents generally targeted their sales of Chesapeake supplemental insurance to Massachusetts consumers who wanted to buy major medical health insurance.

118. Insphere purchased, and generated itself through advertising, contact information for consumers seeking insurance (known as "leads"), including such contact information for consumers seeking major medical health insurance (commonly known as "health insurance leads").¹⁴¹

119. From 2011 through 2019, Insphere purchased health insurance leads relating to

¹³⁷ Ex. 7 (T.R. Tr.) at 187.

¹³⁸ Ex. 33, excerpts of transcript of examination under oath of Louis Simpson, July 25, 2018 ("L.S. Tr.") at 15-16, 117.

¹³⁹ Ex. 18 (A.G. Tr.) at 318; Ex. 31 (N.R. Tr.) at 32.

¹⁴⁰ Ex. 25 (M.M. Tr.) at 52-54; Ex. 29 (J.P. Tr.) at 37-38; Ex. 39 (M.W. Tr.) at 197.

¹⁴¹ Ex. 7 (T.R. Tr.) at 72, 77; Ex. 15 (Ri.C. Tr.) at 180; Ex. 23 (S.L. Tr.) at 58; Ex. 97; Ex. 154 ¶ 1.

Massachusetts residents from websites that asked consumers who were interested in purchasing health insurance to enter their name and contact information.¹⁴²

120. From 2013 through 2019, Insphere generated health insurance leads through television, radio and Internet advertising disseminated in Massachusetts.¹⁴³

121. Insphere sold and/or otherwise gave health insurance leads to Chesapeake-Insphere Agents who Insphere understood would use the health insurance leads to market health insurance, including Chesapeake supplemental policies.¹⁴⁴

122. The leads that Insphere has distributed to its contracted agents in the under-65 health insurance market have been overwhelmingly for consumers understood to be seeking major medical health insurance rather than specifically supplemental health insurance.¹⁴⁵

123. Defendants, including through Chesapeake-Insphere Agents and Chesapeake-SFG Agents, used health insurance leads that were understood to be primarily from consumers seeking major medical health insurance, not supplemental health insurance.¹⁴⁶

124. Insphere trained Chesapeake-Insphere Agents nationwide, including in Massachusetts, that leads for supplemental insurance would not be anywhere nearly as effective as leads for health insurance.¹⁴⁷

¹⁴² Ex. 154 ¶ 2.

¹⁴³ *Id.* ¶ 3.

¹⁴⁴ *Id.* ¶ 4.

¹⁴⁵ Ex. 5 (A.R. II Tr.) at 170-71.

¹⁴⁶ Ex. 9 (T.R. III Tr.) at 132; Ex. 14, excerpts of transcript of examination under oath of Robert Carlucci, February 14, 2018 (“Ro.C. Tr.”) at 17, 33-34; Ex. 16 (L.C. Tr.) at 30, 55-56; Ex. 17 (G.D. Tr.) at 21, 30, 62; Ex. 22, excerpts of transcript of examination under oath of Sean Jobin, March 19, 2018 (“S.J. Tr.”) at 17-18, 45-46, 57-61; Ex. 23 (S.L. Tr.) at 47, 49, 58; Ex. 29 (J.P. Tr.) at 49; Ex. 39 (M.W. Tr.) at 19; Ex. 40 (Ri.W. Tr.) at 16-17, 22-23, 73-74.

¹⁴⁷ Ex. 37 (Ro.W. Tr.) at 62, 215, 221-22; Ex. 124, at 1-2, ¶¶ 4-6.

125. Over 90% of SFG's initial contacts with consumers came from purchased health insurance leads or "warm transfers," (that is, phone calls transferred from lead generation companies). Virtually all leads that SFG purchased were for consumers seeking major medical health insurance.¹⁴⁸

126. Defendants, including through Chesapeake-Insphere Agents and Chesapeake-SFG Agents selling Chesapeake's supplemental insurance policies, used various methods to respond to leads from consumers seeking health insurance.

a. Insphere has sent automatic emails in response to such leads.¹⁴⁹

b. Chesapeake-Insphere Agents have called consumers to whom health insurance leads related.¹⁵⁰

c. Chesapeake-SFG Agents called consumers from health insurance leads or spoke to consumers who were "warm transfers."¹⁵¹

d. Chesapeake-Insphere Agents have also emailed consumers to whom health insurance leads related.¹⁵²

127. Chesapeake-Insphere and Chesapeake-SFG Agents have met with consumers to sell them insurance, including Chesapeake supplemental health insurance, in places such as the

¹⁴⁸ Ex. 29 (J.P. Tr.) at 48-50; Ex. 33 (L.S. Tr.) at 204-05; Ex. 94.

¹⁴⁹ Ex. 14 (Ro.C. Tr.) at 51; Ex. 17 (G.D. Tr.) at 70-71; Ex. 23 (S.L. Tr.) at 78.

¹⁵⁰ Ex. 14 (Ro.C. Tr.) at 33-34; Ex. 23 (S.L. Tr.) at 28; Ex. 28, excerpts of transcript of examination under oath of Michael Pantano, March 27, 2018 ("M.P. Tr.") at 12, 15, 35-36; Ex. 32 (A.S. Tr.) at 17, 20, 23, 40-41, 87.

¹⁵¹ Ex. 29 (J.P. Tr.) at 48-50; Ex. 33 (L.S. Tr.) at 82-83, 204-05; Ex. 94.

¹⁵² Ex. 17 (G.D. Tr.) at 116; Ex. 22 (S.J. TR.) at 62-63.

consumers' homes.¹⁵³

128. Chesapeake-Insphere Agents sometimes made sales, including of Chesapeake supplemental health insurance, on the phone.¹⁵⁴

129. Starting in early 2016, Chesapeake-SFG Agents predominantly sold Chesapeake supplemental health insurance over the phone.¹⁵⁵

B. Defendants Deceptively and Contemptuously Misrepresented Their Agents' Roles and Incentives to Massachusetts Consumers.

130. Defendants, directly and through their agents, have misrepresented their agents' roles and incentives to Massachusetts consumers in multiple ways, including through:

1. false, deceptive and contemptuous claims of impartiality;
2. illegal, deceptive and contemptuous representations of agents' roles;
3. deceptively using assumed business names;
4. false, deceptive and contemptuous claims of free assistance; and
5. deceptive and contemptuous failures to disclose the true purposes of sales

meetings.

1. Defendants Deceptively Claimed Their Agents Were Impartial.

131. Insphere has represented in Internet and television advertising, as recently as 2019, on channels available in Massachusetts, that "HealthMarkets" provided "objective

¹⁵³ Ex. 14 (Ro.C. Tr.) at 53-54; Ex. 17 (G.D. Tr.) at 112; Ex. 23 (S.L. Tr.) at 248; Ex. 25 (M.M. Tr.) at 34-35; Ex. 28 (M.P. Tr.) at 35-37; Ex. 29 (J.P. Tr.) at 61-62; Ex. 30, excerpts of transcript of examination under oath of Nicolas Peterson, June 21, 2018 ("N.P. Tr.") at 13, 34-35, 60-61; Ex. 32 (A.S. Tr.) at 304-05.

¹⁵⁴ Ex. 17 (G.D. Tr.) at 112; Ex. 23 (S.L. Tr.) at 92-94, 99-100; Ex. 35, excerpts of transcript of examination under oath of Vincent Smith, February 28, 2018 ("V.S. Tr.") at 17-21, 27, 52.

¹⁵⁵ Ex. 25 (M.M. Tr.) at 34-35; Ex. 29 (J.P. Tr.) at 61-62.

solutions.”¹⁵⁶

132. This falsely suggested that Defendants’ agents were impartial.

133. That television advertising led Massachusetts consumers to contact Insphere in 2019.¹⁵⁷

134. In or about 2019, Mr. Stahl (who was an officer of HealthMarkets and Insphere and director of Chesapeake) appeared in advertising, including via the Internet, was identified as “executive vice president of HealthMarkets” and said that consumers can “use free, smart, unbiased help from HealthMarkets” without disclosing the Chesapeake-Insphere Agents’ incentives to sell Chesapeake supplemental insurance.¹⁵⁸

135. Chesapeake-Insphere Agents and Chesapeake-SFG Agents have made similar misrepresentations about being objective and impartial, including when marketing Chesapeake supplemental health insurance to Massachusetts residents. In some cases, these agents have said they have no incentive to place the consumers’ business with one insurer rather than another and made other similar statements.¹⁵⁹

136. Insphere trained its agents (including, with the approval of Defendants,

¹⁵⁶ Ex. 7 (T.R. Tr.) at 121-22, 126-31, 135, 144-47; Ex. 9 (T.R. III Tr.) at 60-61; Ex. 10 (T.R. IV Tr.) at 52-53, 56-59; Ex. 98; Ex. 129 at 1, 11-14, 67; Ex. 156; <https://www.youtube.com/watch?v=pSDNwasESq4>.

¹⁵⁷ Ex. 5 (A.R. II Tr.) at 208-11.

¹⁵⁸ Ex. 70; Ex. 253; <https://blackamericaweb.com/2019/11/01/find-the-best-health-insurance-for-you/>.

¹⁵⁹ Ex. 12 (D.C. Tr.) at 134, 141-44, 146-47; Ex. 22 (S.J. TR.) at 205-09; Ex. 25 (M.M. Tr.) at 195-196; Ex. 27, excerpts of transcript of examination under oath of Keith Nice, August 15, 2018 (“K.N. Tr.”) at 17-18, 51-52, 55-57, 83-86; Ex. 32 (A.S. Tr.) at 62-63, 105-06, 115-16, 319-20; Ex. 33 (L.S. Tr.) at 218-19; Ex. 40 (Ri.W. Tr.) at 17, 22-23, 77-83; Ex. 37 (Ro.W. Tr.) at 99-100; Exs. 88-89.

Chesapeake-Insphere Agents nationwide and in Massachusetts) to make these misrepresentations.¹⁶⁰

137. By contrast, Defendants did not train Chesapeake-Insphere Agents about the Judgment at all, including its various injunctions against deceptive conduct.¹⁶¹

138. These misrepresentations on the internet, on television and in the agents' statements violated the Judgment's permanent injunction prohibiting HealthMarkets and its subsidiaries, such as Chesapeake and Insphere, from using any advertisement in Massachusetts that it knows or should know is false or deceptive.¹⁶²

139. The Attorney General's General Regulations, 940 CMR 3.01, under G.L. c. 93A have defined "Advertisement" as "Any commercial message in any newspaper, magazine, leaflet, flyer, or catalog, on radio, television, public address system, or made in person, in direct mail literature or other printed material, or any interior or exterior sign or display, in any window display, in any point of transaction literature or price tag which is delivered or made available to a customer or prospective customer in any manner whatsoever."

140. In August 2009, HealthMarkets' draft policy and procedures for its Advertising Department in its section on "Acronyms/Definitions," contained the following "Definition" for

¹⁶⁰ Ex. 1 (K.G. Tr.) at 14-19, 55-65, 87-88; Ex. 4 (A.R. Tr.) at 30-31, 57-58; Ex. 5 (A.R. II Tr.) at 221-24; Ex. 22 (S.J. Tr.) at 207; Ex. 27 (K.N. Tr.) at 61-62, 83-84; Ex. 37 (Ro.W. Tr.) at 89-100; Ex. 89; Ex. 106; Ex. 124 at 1, ¶¶ 1-3; Ex. 132; Ex. 211.

¹⁶¹ Ex. 1 (K.G. Tr.) at 131-33; Ex. 12 (D.C. Tr.) at 294-97; Ex. 17 (G.D. Tr.) at 216-18; Ex. 21 (R.H. Tr.) at 220-24; Ex. 24, excerpts of transcript of examination under oath of Brian Lynch, May 30, 2018 ("B.L. Tr.") at 31-33; Ex. 36 (M.T. Tr.) at 207-10; Ex. 38, excerpts of transcript of examination under oath of Donna Williams, January 10, 2018 ("D.W. Tr.") at 233-34; Ex. 40 (Ri.W. Tr.) at 274-76; Ex. 45; Ex. 195.

¹⁶² See Ex. A/Ex. 45 at 6 (¶ 2(i)); Ex. 9 (T.R. III Tr.) at 114.

“Advertisement”: “As defined in the NAIC Guidelines, an advertisement is Newspaper, magazine or other.”¹⁶³

141. The NAIC’s “Advertisements of Accident and Sickness Insurance Model Regulation” dated April 1999 found under NAIC Model Laws, Regulations, Guidelines and Other Resources defines “Advertisement” to “mean”:

a. “Printed and published material, audio visual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio scripts, TV scripts, web sites and other Internet displays or communications, other forms of electronic communications, billboards and similar displays;

b. Descriptive literature and sales aids of all kinds issued by an insurer, agent, producer, broker or solicitor for presentation to members of the insurance-buying public, such as circulars, leaflets, booklets, depictions, illustrations, form letters and lead-generating devices of all kinds; and

c. Prepared sales talks, presentations and material for use by agents, brokers, producers and solicitors whether prepared by the insurer or the agent, broker, producer or solicitor;”

and states that “the definition of advertisement extends to the use of all media for communications to the general public, to the use of all media for communications to specific members of the general public, and to the use of all media for communications by agents, brokers, producers and solicitors.”¹⁶⁴

¹⁶³ Ex. 246 at HMI0037486 § 4.4.

¹⁶⁴ Ex. 254.

142. Since in or before 2013, Insphere has repeatedly included the following in its training materials for agents:

a. “The definition of ‘advertisement’ is very broad; do not think that information you distribute to generate interest in purchasing insurance is not advertising because it does not mention a specific carrier to a specific product” and

b. “All methods of communication – either written or oral – with the general public in connection with an insurance carrier or insurance products, or to generate interest in purchasing insurance, is considered advertising. This includes (but is not limited to): . . . Radio . . . Television . . . Websites . . . Social Media — Facebook . . . Sales Illustrations . . . Email Communications.”¹⁶⁵

143. In addition to the express misrepresentations, Chesapeake-Insphere Agents and Chesapeake-SFG Agents have *implicitly* represented themselves (and been represented by Insphere) as impartial, including calling themselves advisors, consultants and specialists, being referred to as consumers’ agents and stating that they represent all carriers.¹⁶⁶

144. These representations of objectivity and impartiality, both explicit and implicit, were false, misleading and deceptive and known by Defendants to be so.

145. In truth, as discussed above, each of these sales agents had significant financial incentives from Defendants to sell Chesapeake’s supplemental health insurance policies instead of or along with major medical insurance.

146. Chesapeake-SFG and Chesapeake-Insphere Agents selling Chesapeake’s SDI

¹⁶⁵ Ex. 244 at 15450-51; Ex. 245 at 16225-26; Ex. 249 at PowerPoint at 15-16.

¹⁶⁶ See *infra* Section B2.

routinely failed to disclose that they were compensated for that sale.¹⁶⁷

147. These failures to disclose the agents' compensation and partiality are material non-disclosures in direct violation of G.L. c. 93A. These failures to disclose and the failure to train agents that they must disclose the fact of their being compensated for selling SDI also violated G.L. c. 93A through 940 CMR 3.16(3) as violations of 211 CMR 146.00 *et seq.*, regulations meant for the protection of the public's health welfare promulgated by the Commonwealth intended to provide the consumers of this Commonwealth protection.

148. The DOI promulgated 211 CMR 146.00: SPECIFIED DISEASE INSURANCE and pursuant to 211 CMR 146.02 made it applicable to SDI policies offered in Massachusetts after January 1, 2003.

149. 211 CMR 146.09(5) has provided, in part, "All agents marketing a carrier's specified disease insurance policy must disclose the fact that the agent receives compensation in connection with the sale or replacement of all specified disease insurance."

150. Defendants did not train any Insphere-contracted and/or Chesapeake appointed agent who was licensed to sell in Massachusetts that they were required to make this disclosure relating to their compensation for the sale of SDI.¹⁶⁸

151. 211 CMR 146.09(1) has provided in part, "Each carrier shall provide appropriate

¹⁶⁷ Ex. 12 (D.C. Tr.) at 277; Ex. 16 (L.C. Tr.) at 81-84; Ex. 18 (A.G. Tr.) at 51; Ex. 19, excerpts of transcript of examination under oath of Robert Gregory, May 10, 2018 ("R.G. Tr.") at 13-15, 161; Ex. 23 (S.L. Tr.) at 211; Ex. 24 (B.L. Tr.) at 16-17, 23-26, 210-13; Ex. 25 (M.M. Tr.) at 69; Ex. 27 (K.N. Tr.) at 111; Ex. 29 (J.P. Tr.) at 82-83; Ex. 30 (N.P. Tr.) at 83-84; Ex. 34 (C.S. Tr.) at 17-19, 103, 108-10; Ex. 38 (D.W. Tr.) at 20, 35-36, 51; Ex. 33 (L.S. Tr.) at 220-21, 224; Ex. 39 (M.W. Tr.) at 195-96; Ex. 40 (Ri.W. Tr.) at 88-92.

¹⁶⁸ Ex. 4 (A.R. Tr.) at 137, 159-67; Ex. 5 (A.R. II Tr.) at 160-61.

training to agents about its specified disease insurance . . .”

152. 211 CMR 146.09(7) has provided, “A carrier whose agent fails to comply with any provisions of 211 CMR 146.00, including but not limited to 211 CMR 146.09, will be deemed to have committed an unfair and deceptive act in the business of insurance subject to M.G.L. c. 176D.”

2. Defendants Misrepresented Their Agents’ Roles.

153. Defendants misrepresented their agents’ role in a number of ways, including:

- (a) through their agents using the term “advisor” and related titles without the required license;
- (b) falsely referring to those agents as consumers’ agents; (c) their agents falsely referring to themselves as “the” local broker or agent; and (d) their agents falsely claiming that they represented all insurance carriers.¹⁶⁹

154. Chesapeake-Inspire Agents who sold Chesapeake supplemental health insurance have described themselves on the Internet in Massachusetts on LinkedIn or Facebook as an “insurance advisor,” an “insurance specialist,” and a “licensed benefits consultant.” They have also described themselves in Massachusetts using other titles, words and phrases indicating that they gave, or were engaged in the business of giving, advice, counsel, recommendation or information to holders of policies of insurance.¹⁷⁰

¹⁶⁹ See *infra* this Section.

¹⁷⁰ Ex. 9 (T.R. III Tr.) at 126, 131-32, 134-36; Ex. 12 (D.C. Tr.) at 104-07, 113-15, 119, 123-24, 127, 233-34; Ex. 13 (D.C. II Tr.) at 21-24; Ex. 14 (Ro.C. Tr.) at 37-41, 49-51, 73-75, 91; Ex. 17 (G.D. Tr.) at 58, 71-72, 79-81, 83-90, 92-95, 125-26; Ex. 21 (R.H. Tr.) at 118-22, 127-29, 185-86; Ex. 22 (S.J. TR.) at 54-55, 90-91, 188; Ex. 24 (B.L. Tr.) at 33-34, 80-81, 110-11, 126-29, 158-59; Ex. 32 (A.S. Tr.) at 65-68, 96-98; Ex. 34 (C.S. Tr.) at 99-100; Ex. 36 (M.T. Tr.) at 46-52; Ex. 38 (D.W. Tr.) at 104-05; Ex. 40 (Ri.W. Tr.) at 62-65, 71; Exs. 160-61; Exs. 164-65; Exs. 179-80; Exs. 182-83; Ex. 186; Exs. 192-93; Ex. 200; Ex. 215; Ex. 220; Ex. 228; Ex. 231.

155. None of the referenced agents had an insurance adviser's license from the DOI pursuant to G.L. c. 175, § 177B. This law subjects to punishment whoever, without such a license, acts as an insurance adviser, as defined by G.L. c. 175, § 177A.¹⁷¹

156. G.L. c. 175, § 177A defines an insurance adviser to include anyone who by advertisement or other manner of public announcement uses the title "insurance adviser," "insurance specialist," "or any other similar title, or any title, word or combination of words indicating that he gives, or is engaged in the business of giving, advice, counsel, recommendation or information to holders of policies of insurance"

157. The Chesapeake-Insphere Agents' use of such titles, words and combinations of words were, thus, illegal, false and deceptive, including specifically in violation of G.L. c. 175, § 177B.

158. Chesapeake-Insphere Agents used such titles to engender trust in consumers.¹⁷²

159. Insphere, including through Chesapeake-Insphere Sales Managers in Massachusetts, trained their agents to use such terms, including "advisor[]," "benefits advisor[]," "trusted advisor," "local advisor," "licensed benefits consultant," "Massachusetts licensed broker/consultant" and "health insurance specialist." Defendants were aware of their Massachusetts agents' use of such terms.¹⁷³

¹⁷¹ Ex. 12 (D.C. Tr.) at 34-37, 233; Ex. 14 (Ro.C. Tr.) at 22; Ex. 17 (G.D. Tr.) at 25; Ex. 19 (R.G. Tr.) at 15-17; Ex. 21 (R.H. Tr.) at 26-27; Ex. 22 (S.J. TR.) at 21-22; Ex. 24 (B.L. Tr.) at 22-23; Ex. 32 (A.S. Tr.) at 21-22; Ex. 34 (C.S. Tr.) at 21-23; Ex. 36 (M.T. Tr.) at 29; Ex. 38 (D.W. Tr.) at 33; Ex. 40 (Ri.W. Tr.) at 21-22.

¹⁷² Ex. 14 (Ro.C. Tr.) at 55-58; Ex. 17 (G.D. Tr.) at 238.

¹⁷³ Ex. 5 (A.R. II Tr.) at 19-21; Ex. 9 (T.R. III Tr.) at 124-37; Ex. 12 (D.C. Tr.) at 109; Ex. 13 (D.C. II Tr.) at 21-25; Ex. 14 (Ro.C. Tr.) at 63-67; Ex. 15 (Ri.C. Tr.) at 151-53, 182-83, 214-17,

160. Insphere described Chesapeake-Insphere Agents to Massachusetts consumers as “your local agent” in more than 100,000 emails sent by Insphere from 2013 through August 2019.¹⁷⁴

161. Insphere trained its agents to describe themselves as representing consumers and small businesses in a “Best Practices” video made available to their agents nationwide through Insphere’s website from about 2016 to 2019.¹⁷⁵

162. In fact, Chesapeake-Insphere Agents represented Insphere and the carriers with whom they were appointed, such as Chesapeake.¹⁷⁶

163. Insphere represented a Chesapeake-Insphere Agent to Massachusetts residents as “the local broker here in MA” without reference to what other local brokers there were.¹⁷⁷

164. Chesapeake-Insphere Agents have routinely represented themselves to Massachusetts residents seeking health insurance as “the local” broker or agent without reference to there being other local agents.¹⁷⁸

165. Insphere trained its agents, including those who sold Chesapeake supplemental health insurance in Massachusetts, to make such representations.¹⁷⁹

228-29, 267; Ex. 17 (G.D. Tr.) at 41, 75, 79-81, 83-84; Ex. 21 (R.H. Tr.) at 50-51, 186; Ex. 24 (B.L. Tr.) at 33-34, 37-38, 77-78; Ex. 37 (Ro.W. Tr.) at 124-25, 134-35, 161, 194-96; Ex. 40 (Ri.W. Tr.) at 62-65, 70-71; Ex. 58; Ex. 62 at 3, 9; Ex. 63 at 3, 9; Ex. 115 at 1-3 ¶1a.iii.1/iv.1; Ex. 127; Ex. 179; Ex. 199 at INSPHERE0326753.

¹⁷⁴ Ex. 9 (T.R. III Tr.) at 220-21; Ex. 17 (G.D. Tr.) at 88, 92-95; Ex. 128; Ex. 180.

¹⁷⁵ Ex. 4 (A.R. Tr.) at 105-08.

¹⁷⁶ *Id.* at 108.

¹⁷⁷ Ex. 17 (G.D. Tr.) at 84-90.

¹⁷⁸ Ex. 17 (G.D. Tr.) at 79; Ex. 22 (S.J. TR.) at 45-46, 63-66, 182-83; Ex. 32 (A.S. Tr.) at 87, 89.

¹⁷⁹ Ex. 4 (A.R. Tr.) at 57-59; Ex. 5 (A.R. II Tr.) at 14-15, 31-34; Ex. 27 (K.N. Tr.) at 58-64, 66-67, 70-71; Ex. 37 (Ro.W. Tr.) at 196-97; Ex. 67; Ex. 93; Ex. 114; Ex. 132; Exs. 210-11.

166. All Chesapeake-SFG Agents selling Chesapeake’s supplemental health insurance in Massachusetts represented themselves as “the one who works with all the carriers in Massachusetts.” This misrepresentation was written in telephone sales scripts that Mr. Simpson created and SFG provided to its agents.¹⁸⁰

167. Mr. Simpson had received a phone script from another Chesapeake-Insphere Agent that contained the statement: “I’m the agent in the office that works with all the carriers in the state” in 2013 when he was a Chesapeake-Insphere Agent, prior to creating SFG.¹⁸¹

168. Chesapeake-Insphere Agents represented themselves to Massachusetts consumers as working with, representing, offering policies from and/or being licensed by all carriers or health insurance carriers in Massachusetts.¹⁸²

169. Insphere trained its agents to make these representations.¹⁸³ In one example, in a “Best Practices” video that Insphere made available to its agents nationwide in 2018-19, with approval from the other Defendants, Insphere trained its agents to state, “[w]e literally have all

¹⁸⁰ Ex. 18 (A.G. Tr.) at 18, 27-28, 30, 192-94; Ex. 25 (M.M. Tr.) at 24-25, 27, 46-49, 61; Ex. 29 (J.P. Tr.) at 32, 107; Ex. 30 (N.P. Tr.) at 17-18, 21-24, 58-60, 72-73; Ex. 31 (N.R. Tr.) at 22-23, 27, 43-44, 120-21; Ex. 33 (L.S. Tr.) at 84, 119-25; Ex. 39 (M.W. Tr.) at 12-14, 21-23; Ex. 77; Ex. 91; Ex. 212.

¹⁸¹ Ex. 3 (B.J. Tr.) at 81-82; Ex. 33 (L.S. Tr.) at 85-86; Ex. 92; Ex. 105 at row 134.

¹⁸² Ex. 12 (D.C. Tr.) at 131-32; Ex. 14 (R.O.C. Tr.) at 49-50, 68-76, 82, 92-94; Ex. 16 (L.C. Tr.) at 72, 76-77; Ex. 17 (G.D. Tr.) at 71-72, 88, 92-99; Ex. 21 (R.H. Tr.) at 120-21; 137-38; Ex. 22 (S.J. Tr.) at 54-55, 63-66, 95-98; Ex. 27 (K.N. Tr.) at 59-61, 85-86; Ex. 32 (A.S. Tr.) at 68-69; Ex. 33 (L.S. Tr.) at 63, 84; Ex. 36 (M.T. Tr.) at 39-41, 54-55, 133; Ex. 38 (D.W. Tr.) at 44-45, 50-51; Ex. 40 (Ri.W. Tr.) at 60-61; Exs. 169-70; Exs. 179-80; Ex. 191; Exs. 196-97; Ex. 219; Ex. 223.

¹⁸³ Ex. 1 (K.G. Tr.) at 55-65, 87-88; Ex. 4 (A.R. Tr.) at 57-62; Ex. 5 (A.R. II Tr.) at 169, 171-73; Ex. 21 (R.H. Tr.) at 52; Ex. 22 (S.J. Tr.) at 27, 205-07; Ex. 27 (K.N. Tr.) at 66-67; Ex. 40 (Ri.W. Tr.) at 62; Ex. 93; Ex. 122 at 1-2, ¶¶ 1.c, 2; Ex. 132.

the different options.”¹⁸⁴

170. These statements were deceptive because the Chesapeake-Insphere and Chesapeake-SFG Agents were not appointed by all health insurers licensed in Massachusetts. They were not even appointed by all insurers that issued supplemental health insurance, such as SDI, in Massachusetts and/or sold SDI only from Chesapeake.¹⁸⁵

171. Defendants are not aware of any Chesapeake-Insphere Agents licensed to sell health insurance in Massachusetts who offered (a) all different options for SDI in Massachusetts or (b) most of the different options for SDI in Massachusetts.¹⁸⁶

172. Chesapeake-Insphere Agents made other, similar misrepresentations about their carrier affiliations in contradiction or reckless disregard as to their accuracy.¹⁸⁷

173. In a “Best Practices” video made available to its agents nationwide including in Massachusetts from 2016 to 2019 and repeatedly approved by all Defendants, Insphere trained its agents to describe “HealthMarkets” as “partnering with the large national carriers” in multiple markets including the market for “supplemental benefits,” which was a reference to supplemental health insurance policies.¹⁸⁸

174. In fact, Insphere did not partner with at least one of the national carriers with

¹⁸⁴ Ex. 5 (A.R. II Tr.) at 169, 171-73; Ex. 122 at 1-2, ¶¶ 1.c, 2.

¹⁸⁵ Ex. 12 (D.C. Tr.) at 44-49; Ex. 14 (Ro.C. Tr.) at 67-68, 92-94; Ex. 16 (L.C. Tr.) at 31-34; Ex. 17 (G.D. Tr.) at 42-43; Ex. 21 (R.H. Tr.) at 125-27; Ex. 22 (S.J. TR.) at 46-47; Ex. 24 (B.L. Tr.) at 23-25; Ex. 27 (K.N. Tr.) at 56-57; Ex. 32 (A.S. Tr.) at 41-42, 68-69; Ex. 33 (L.S. Tr.) at 37-38; Ex. 36 (M.T. Tr.) at 30-32; Ex. 38 (D.W. Tr.) at 98-99; Ex. 40 (Ri.W. Tr.) at 25.

¹⁸⁶ Ex. 122 at 3, ¶¶ 5-6.

¹⁸⁷ Ex. 24 (B.L. Tr.) at 23-25, 126-27, 129-38; Ex. 38 (D.W. Tr.) at 98-103; Ex. 200; Ex. 201 at LYNCH027514; Ex. 202 at LYNCH355252, LYNCH355257, LYNCH355260; Ex. 227.

¹⁸⁸ Ex. 5 (A.R. II Tr.) at 148-50; Ex. 121, at 1-3, ¶¶ 1.b.iii, 2-3.

respect to supplemental health insurance: American Family Life Assurance Company of Columbus (“AFLAC”).¹⁸⁹

175. Chesapeake-SFG Agents described themselves as certified with the Connector and MassHealth in most customer sales conversations, as SFG trained them to do.¹⁹⁰

176. MassHealth is a Commonwealth program providing medical benefits to Massachusetts residents, including through Medicaid.¹⁹¹

177. The Connector is the Commonwealth’s health insurance exchange, through which Massachusetts residents may obtain subsidized major medical health insurance.¹⁹²

178. Agents contracted with the Connector to enroll individuals into subsidized health insurance were prohibited by that contract from enrolling individuals into MassHealth.¹⁹³

179. The statement that Chesapeake-SFG Agents were certified with both the Connector “and MassHealth” was, therefore, false and misleading.

180. All this deceptive conduct violated the Judgment’s permanent injunction prohibiting HealthMarkets and its subsidiaries, such as Chesapeake and Insphere, from using any advertisement in Massachusetts that it knows or should know is false or deceptive.¹⁹⁴

3. Defendants’ Sales Agents Deceptively Used Assumed Business Names.

181. Chesapeake-Insphere Agents, including Sales Managers, have marketed insurance

¹⁸⁹ Ex. 5 (A.R. II Tr.) at 150.

¹⁹⁰ Ex. 18 (A.G. Tr.) at 19, 37, 58; Ex. 25 (M.M. Tr.) at 56; Ex. 29 (J.P. Tr.) at 108-09; Ex. 39 (M.W. Tr.) at 24-27.

¹⁹¹ G.L. c. 118E, §8A; 130 CMR 501.002; Ex. 7 (T.R. Tr.) at 76; Ex. 14 (Ro.C. Tr.) at 210; Ex. 21 (R.H. Tr.) at 158-63.

¹⁹² G.L. c. 176Q; Ex. 7 (T.R. Tr.) at 76; Ex. 23 (S.L. Tr.) at 145.

¹⁹³ Ex. 38 (D.W. Tr.) at 120; Ex. 42 at 2, ¶ 10.

¹⁹⁴ See Ex. A/Ex. 45 at 6 (¶ 2(i)); Ex. 9 (T.R. III Tr.) at 114.

in Massachusetts using business names other than their legal name without notifying the DOI prior to doing so.¹⁹⁵

182. As examples, one Chesapeake-Insphere Sales Manager used the assumed business name “Baystate Health” (and never communicated to any Massachusetts resident that he was an agent of Chesapeake) and another Chesapeake-Insphere Agent used the assumed name “Cornerstone Affiliates.”¹⁹⁶

183. The use of assumed names seemed better than the use of the HealthMarkets or Chesapeake names, which had negative on-line reviews or ratings associated with them.¹⁹⁷

184. Insphere sent emails to Massachusetts consumers in which an agent used an assumed name.¹⁹⁸

185. The use of these assumed names, kept hidden from the DOI, was unlawful and deceptive, including specifically in violation of G.L. c. 175, § 162P, which requires that “An insurance producer doing business under any name other than the producer's legal name is required to notify the commissioner [of insurance] prior to using the assumed name.”

186. Defendants were aware and on notice of Massachusetts Chesapeake-Insphere Agents, including Chesapeake-Insphere Sales Managers, doing insurance-related business in

¹⁹⁵ Ex. 9 (T.R. III Tr.) at 134-36; Ex. 14 (Ro.C. Tr.) at 71-72; Ex. 17 (G.D. Tr.) at 56-59, 71-72, 79-81, 92-93, 125-17; Ex. 19 (R.G. Tr.) at 157-60; Ex. 21 (R.H. Tr.) at 27-28; Ex. 24 (B.L. Tr.) at 33-34, 132-34, 161-62; Ex. 26, excerpts of transcript of examination under oath of Steven Moulton, April 6, 2018 (“S.M. Tr.”) at 16-17, 21, 65-67; Ex. 34 (C.S. Tr.) at 99-102; Ex. 38 (D.W. Tr.) at 96-97; Ex. 40 (Ri.W. Tr.) at 53-56; Exs. 179-180; Ex. 183; Ex. 186; Ex. 201.

¹⁹⁶ Ex. 17 (G.D. Tr.) at 56-59, 71-72, 79-81, 92-93, 125-17; Ex. 19 (R.G. Tr.) at 157-160; Exs. 179-80; Ex. 183; Ex. 186.

¹⁹⁷ Ex. 21 (R.H. Tr.) at 28-29.

¹⁹⁸ Ex. 17 (G.D. Tr.) at 56-57, 92-95; Ex. 180.

Massachusetts under names other than their legal names.¹⁹⁹

4. Defendants Deceptively Claimed to Provide Consumers with Free Assistance.

187. Defendants deceptively represented that its agents offered free services.²⁰⁰

188. Defendants did so directly, including through Insphere’s healthmarkets.com website, on the radio, on television as recently as 2019, on YouTube (since January 2014 and as recently as 2019), and through Chesapeake-Insphere Agents in Massachusetts.²⁰¹

189. Insphere, including on television as recently as 2019, on YouTube (since October 2014) and on the radio, has advertised in Massachusetts that “our service is completely free.”²⁰²

190. In and/or after 2013 Insphere radio advertisements stated repeatedly, “HealthMarkets is a free service that helps individuals and families find affordable health insurance under Obamacare.”²⁰³

191. In and/or after 2013 Insphere ran radio advertisements in Massachusetts in which Mr. Stahl, who was identified as “the senior vice president for HealthMarkets” (and who was an

¹⁹⁹ Ex. 15 (Ri.C. Tr.) at 154-56; Ex. 17 (G.D. Tr.) at 59-60; Ex. 19 (R.G. Tr.) at 157-60; Ex. 21 (R.H. Tr.) at 27-28; Ex. 186.

²⁰⁰ See *infra* this Section.

²⁰¹ Ex. 7 (T.R. Tr.) at 121-22, 126-31, 139, 144-47; Ex. 9 (T.R. III Tr.) at 60-61; Ex. 10 (T.R. IV Tr.) at 52-53, 56-59, 84-86, 90-91; Ex. 12 (D.C. Tr.) at 132, 200-03; Ex. 14 (Ro.C. Tr.) at 49-51, 73-79, 82-84, 86-88; Ex. 17 (G.D. Tr.) at 68, 88, 92-93, 95-99; Ex. 21 (R.H. Tr.) at 127-28, 132-33, 135-36; Ex. 22 (S.J. TR.) at 63-66, 95-97; Ex. 32 (A.S. Tr.) at 100; Ex. 34 (C.S. Tr.) at 105-06; Ex. 36 (M.T. Tr.) at 46-47; Ex. 70; Ex. 98; Ex. 129 at 1, 11-14, 67; Ex. 131 (as to INSPHERE4039383, INSPHERE403987, INSPHERE403991); Ex. 157; Ex. 162; Ex. 180; Ex. 189; Ex. 197; Exs. 247-48; Ex. 253; <https://www.youtube.com/watch?v=pSDNwasESq4>; <https://blackamericaweb.com/2019/11/01/find-the-best-health-insurance-for-you/>.

²⁰² Ex. 7 (T.R. Tr.) at 126-28, 130-31, 139, 144-47; Ex. 9 (T.R. III Tr.) at 60-61; Ex. 10 (T.R. IV Tr.) at 52-53, 56-59, 84-86, 90-92; Ex. 98; Ex. 129 at 1, 11-14, 67; Ex. 131 (as to INSPHERE4039383, INSPHERE403987, INSPHERE403989-91); Exs. 247-48; <https://www.youtube.com/watch?v=pSDNwasESq4>.

²⁰³ Ex. 10 (T.R. IV Tr.) at 84-86, 90-91; Ex. 131 (as to INSPHERE4039387 and INSPHERE4039391) and (as to INSPHERE4039383); Exs. 247-48.

officer of HealthMarkets and Insphere), stated that “HealthMarkets offers a free service to help folks make sure they can save the most money on their health insurance under Obamacare and we can maximize your subsidies to save you money.”²⁰⁴

192. In or about 2019, Defendants engaged in advertising, including via the Internet, in which Mr. Stahl (who was an officer of HealthMarkets and Insphere and director of Chesapeake and was identified as “executive vice president of HealthMarkets”) described “HealthMarkets” as offering a “free service” relating to “Obamacare” and stated that “our HealthMarkets’ service is completely free.”²⁰⁵

193. From 2011 to 2020, Defendants trained Chesapeake-Insphere Agents nationwide, including in Massachusetts, to tell consumers that their services were completely free.²⁰⁶

194. Under the Affordable Care Act, there have been “navigators” who were paid by the government, rather than insurance carriers, to help consumers who wanted to enroll in ACA-compliant major medical insurance. Navigators did not sell any insurance.²⁰⁷ As described on healthcare.gov, navigators “are required to be unbiased” and “[t]heir services are free to consumers.”²⁰⁸

195. Insphere’s advertising made it and its agents sound like navigators when they, in contrast to navigators, were not unbiased.²⁰⁹

²⁰⁴ Ex. 10 (T.R. IV Tr.) at 84-86, 90-92; Ex. 131 (as to INSPHERE4039376, INSPHERE4039383); Ex. 247; Ex. 250.

²⁰⁵ Ex. 70; Ex. 253; <https://blackamericaweb.com/2019/11/01/find-the-best-health-insurance-for-you/>.

²⁰⁶ Ex. 5 (A.R. II Tr.) at 9, 167-68; Ex. 122 at 1-2, ¶¶ 1.a, 2.

²⁰⁷ Ex. 37 (Ro.W. Tr.) at 126-27.

²⁰⁸ Ex. 255. *See* 42 U.S.C. § 18031(i)(3)-(5) (2010).

²⁰⁹ *See supra* Section B1.

196. Indeed, Insphere trained its agents in Massachusetts, including in 2015, to be an “advisor” rather than an “un-confuser (navigator).”²¹⁰

197. This deceptive advertising violated the Judgment’s permanent injunction prohibiting HealthMarkets and its subsidiaries, such as Chesapeake and Insphere, from using any advertisement in Massachusetts that it knows or should know is false or deceptive.²¹¹

198. In addition, several Chesapeake-Insphere Agents, in fact, actually charged Massachusetts residents fees. Some agents charged consumers dozens of times for their health insurance related services, while Insphere’s healthmarkets.com website represented that they offered “No-Cost Assistance.”²¹²

199. All Defendants received information that Chesapeake-Insphere Agents had charged Massachusetts consumers fees while the agents were advertised by Insphere as providing no-cost assistance.”²¹³

200. Yet, Defendants did not investigate the issue, did not require the agents to repay the fees (or do so themselves) and did not discipline the agents involved. Rather, Defendants only issued a reminder to agents not to charge such fees.²¹⁴

5. Defendants Deceptively Failed to Disclose the True Purposes of Sales Meetings.

201. Defendants, directly through Insphere and through Chesapeake-Insphere Agents,

²¹⁰ Ex. 37 (Ro.W. Tr.) at 194-96.

²¹¹ See Ex. A/Ex. 45 at 6 (¶ 2(i)); Ex. 9 (T.R. III Tr.) at 114.

²¹² Ex. 8 (T.R. II Tr.) at 168-69; Ex. 9 (T.R. III Tr.) at 155-56; Ex. 12 (D.C. Tr.) at 132, 200-03, 233-34; Ex. 14 (Ro.C. Tr.) at 49-51, 73-79, 82-84, 86-88; Ex. 23 (S.L. Tr.) at 146-47; Ex. 24 (B.L. Tr.) at 143; Ex. 26 (S.M. Tr.) at 234, 237; Ex. 34 (C.S. Tr.) at 105-07; Ex. 162; Ex. 209.

²¹³ Ex. 37 (Ro.W. Tr.) at 261; Ex. 68.

²¹⁴ Ex. 1 (K.G. Tr.) at 135-38, 141-45.

deceptively obscured their agents' true purpose in meeting with consumers.²¹⁵

202. They represented that Chesapeake-Insphere Agents offered health insurance, including major medical health insurance, and, at times, other forms of insurance, without mentioning the supplemental health insurance they were selling.²¹⁶

203. This was a bait and switch, as the Chesapeake-Insphere Agents would try to switch the consumers, who Defendants had baited with representations relating to major medical health insurance, to a package combining major medical health insurance and supplemental health insurance.

204. In and/or after 2013, an Insphere radio advertisement ran in Massachusetts and stated, "HealthMarkets is a free service that helps individuals and families find affordable health insurance under Obamacare."²¹⁷

205. Insphere, in training its agents, discouraged them in their initial phone calls with consumers from getting into the details of the coverage that was available to the consumers.²¹⁸

206. Insphere knew that most of the consumers whose names it obtained were interested in purchasing major medical health insurance. Still, Insphere trained Chesapeake-Insphere Agents nationwide, including in Massachusetts, that during the initial appointment-setting phone calls, the agents should not disclose to consumers if the consumers were not

²¹⁵ See *infra* this Section.

²¹⁶ Ex. 7 (T.R. Tr.) at 121-22, 126-29, 130-49; Ex. 10 (T.R. IV Tr.) at 84-86, 90-91; Ex. 70; Ex. 131 (as to INSPHERE4039376, INSPHERE4039378, INSPHERE403983, INSPHERE403987, INSPHERE403989-91); Exs. 247-48; Ex. 253; <https://blackamericaweb.com/2019/11/01/find-the-best-health-insurance-for-you/>.

²¹⁷ Ex. 10 (T.R. IV Tr.) at 84-86, 90-92; Ex. 131 (as to INSPHERE4039391).

²¹⁸ Ex. 1 (K.G. Tr.) at 45; Ex. 4 (A.R. Tr.) at 56-57.

eligible for Affordable Care Act (“ACA”) compliant plans, because that disclosure would likely cause consumers not to meet with the sales agents.²¹⁹

207. Insphere trained Chesapeake-Insphere Agents nationwide including in Massachusetts, to tell consumers outside of open enrollment “no problem – it’s not too late! There are other low cost options outside of the open enrollment period.”²²⁰

208. This was misleading, because, as the training itself previously noted if the individuals were not eligible for a special enrollment period allowing them to obtain ACA-compliant major medical insurance, the “[a]vailable option may not be what customer originally had in mind.”²²¹

209. Insphere trained its agents, including in a 2015 nationwide training, that it was acceptable for the consumer to understand that the agent was meeting with the consumer to sell the consumer an ACA plan even if no ACA plan was available to the consumer.²²²

210. Insphere, in advertisements available on the Internet as late as 2019 and also broadcast in Massachusetts on television in 2017-2019, stated “They even have new alternative options most people don’t know about that can save you thousands” (while the text “New Options Include” followed by “Free Plans” appeared on the screen). While “Free Plans” was a reference only to Medicare plans, the advertisement nowhere mentioned Medicare or otherwise

²¹⁹ Ex. 5 (A.R. II Tr.) at 182-86; Ex. 37 (Ro.W. Tr.) at 204, 207-08; Ex. 116 at 2-3, ¶¶ 6-7.

²²⁰ Ex. 116 at 3-6, ¶¶ 8, 9.a, 10.a, 11.c. *See also* Ex. 12 (D.C. Tr.) at 270-73; Ex. 13 (D.C. II Tr.) at 28-33; Ex. 48; Ex. 50.

²²¹ Ex. 116 at 2-3, ¶¶ 7-8.

²²² Ex. 37 (Ro.W. Tr.) at 59, 209, 212.

disclosed that the reference to “Free Plans” was only to Medicare plans.²²³

211. This advertisement was likely to deceive consumers (who were not Medicare or Medicaid eligible) into thinking that Insphere offered “Free Plans” to them when, in fact, Insphere was not offering any such plans to them.

212. Insphere ran a radio advertisement in Massachusetts in and/or after 2013 in which Mr. Stahl, who was identified as “the senior vice president for HealthMarkets” (and who was an officer of HealthMarkets and Insphere), stated that “And right now, that could mean a zero dollar monthly premium. Government subsidies are higher than ever and you may be able to get a health plan for free.” The advertisement did not mention Medicare (or Medicaid) by name, did not otherwise disclose that the reference was to Medicare (and/or Medicaid) and did not specify what \$0 monthly premium or free health plan he was referring to.²²⁴

213. In or about 2019, Mr. Stahl (who was an officer of HealthMarkets and Insphere and director of Chesapeake and was identified as “executive vice president of HealthMarkets”), stated in advertising available, including on the Internet, in Massachusetts that “using our free service at HealthMarkets.com, folks can obtain subsidies that can substantially lower their costs, some people can even find plans with \$0 monthly premium.” The advertisement did not mention Medicare (or Medicaid) by name, did not otherwise disclose that the reference was to Medicare (and/or Medicaid) and did not specify what \$0 monthly premium plans he was referring to.²²⁵

²²³ Ex. 7 (T.R. Tr.) at 126-49; Ex. 8 (T.R. II Tr.) at 169; Ex. 9 (T.R. III Tr.) at 60-61; Ex. 10 (T.R. IV Tr.) at 52-53, 56-59; Ex. 98; Ex. 129 at 1, 11-14, 67; <https://www.youtube.com/watch?v=pSDNwasESq4>.

²²⁴ Ex. 10 (T.R. IV Tr.) at 84-6, 90-92; Ex. 131 (as to INSPHERE4039387); Ex. 248; Ex. 250.

²²⁵ Ex. 70; Ex. 253; <https://blackamericaweb.com/2019/11/01/find-the-best-health-insurance-for-you/>.

214. All this deceptive conduct violated the Judgment's permanent injunction prohibiting HealthMarkets and its subsidiaries, such as Chesapeake and Insphere, from using any advertisement in Massachusetts that it knows or should know is false or deceptive.²²⁶

C. Defendants Have Deceptively and Contemptuously Misrepresented Chesapeake's Supplemental Health Insurance.

215. Defendants have misrepresented Chesapeake's supplemental health insurance by:

1. falsely, deceptively and contemptuously passing off Chesapeake supplemental health insurance as part of or included with major medical insurance by

a. deceptively hiding Chesapeake supplemental health insurance in a bundle with major medical insurance;

b. deceptively describing Chesapeake supplemental insurance as a "benefit" of or included with major medical insurance or a health plan; and

c. deceptively failing to use Chesapeake's name in marketing materials relating to its supplemental health insurance and providing a single combined premium for major medical health insurance and Chesapeake supplemental health insurance; and

2. falsely, deceptively and contemptuously passing off Chesapeake supplemental health insurance as major medical insurance.

1. Defendants Deceptively Passed Off Chesapeake Supplemental Health Insurance as Part of or Included with Major Medical Health Insurance.

216. Defendants, including through Chesapeake-Insphere Agents and Chesapeake-SFG Agents, have falsely and deceptively passed off Chesapeake supplemental health insurance in Massachusetts as part of or included with major medical health insurance.

²²⁶ See Ex. A/Ex. 45 at 6 (¶ 2(i)); Ex. 9 (T.R. III Tr.) at 114.

217. Defendants knew that their sales practices were misleading because hundreds of Massachusetts consumers complained that they had apparently been sold Chesapeake supplemental health insurance without knowing they had purchased it. The consumers complained that they were unaware the Chesapeake insurance had been sold to them, had not agreed to purchase it and/or they thought it was part of their health coverage.²²⁷

218. As detailed below, Defendants did this with three different and overlapping deceptive schemes. First, Defendants bundled the Chesapeake supplemental insurance in a package or plan with major medical insurance, hiding from consumers that they were even buying separate supplemental plans.²²⁸ Second, Defendants sold the Chesapeake supplemental insurance as a “benefit” of major medical insurance, hiding that the supplemental insurance was a different insurance product that could be refused.²²⁹ Third, Defendants combined the Chesapeake supplemental insurance with major medical insurance, giving a single combined monthly premium, and often omitting the name “Chesapeake,” falsely suggesting to consumers that Defendants were selling a single insurance product.²³⁰

a. Defendants deceptively hid Chesapeake supplemental health insurance in a bundle with major medical insurance.

219. Chesapeake-SFG Agents and at least one Chesapeake-Insphere Agent marketed Chesapeake supplemental health insurance along with major medical health insurance, including health insurance subsidized through the Connector, using marketing materials that referenced the

²²⁷ Ex. 2 (K.G. II Tr.) at 46-47, 87-88, 162-63; Ex. 137 at 1, ¶¶ 1, 2a, Ex. 138 at 1, ¶¶ 1-4, Ex. 139 at 1, ¶¶ 1-3, Ex. 141 at 1-5, ¶¶ 1a-b, 2a-b, 3a-b, 4a-b, 5a-b, 6a-b, 7a-b, 8a-b, 9a-b.

²²⁸ See *infra* Section C1a.

²²⁹ See *infra* Section C1b.

²³⁰ See *infra* Section C1c.

major medical insurance only.²³¹

220. SFG trained its agents to do so.²³²

221. As trained by SFG, Chesapeake-SFG Agents, as part of their initial phone calls with and sales presentations to Massachusetts consumers, routinely gave single premium totals to Massachusetts residents that included major medical insurance and Chesapeake supplemental health insurance policies without disclosing the separate monthly premium for the supplemental insurance and the major medical. The agents combined the premium even when the major medical insurance was MassHealth and, thus, had zero premium. This gave the misleading impression that consumers would have had to pay for MassHealth.²³³

222. Chesapeake-Insphere Agents have described major medical insurance to Massachusetts consumers as including or coming with Chesapeake supplemental health insurance, including doing so without using Chesapeake's name.²³⁴

223. This was deceptive. For example, one Massachusetts resident wrote to a Chesapeake-Insphere Agent that his communicating that the general health plan came with coverages that were actually Chesapeake policies was "very misleading," that he was

²³¹ Ex. 18 (A.G. Tr.) at 101-40; Ex. 25 (M.M. Tr.) at 73-76; Ex. 29 (J.P. Tr.) at 97-100; Ex. 30 (N.P. Tr.) at 32-38, 49-50; Ex. 33 (L.S. Tr.) at 209-210; Ex. 39 (M.W. Tr.) at 101-02, 174-80; Ex. 40 (Ri.W. Tr.) at 102-07; Ex. 77; Ex. 84; Ex. 95 at 16-18; Ex. 232.

²³² Ex. 25 (M.M. Tr.) at 69-70, 73-75; Ex. 29 (J.P. Tr.) at 59, 99; Ex. 39 (M.W. Tr.) at 36-37; Ex. 84.

²³³ Ex. 18 (A.G. Tr.) at 37, 115, 138-39, 156-57; Ex. 25 (M.M. Tr.) at 26-27, 29-34, 40, 42, 48-50, 72-73; Ex. 29 (J.P. Tr.) at 29-31, 33-34, 63, 112-13, 124-26, 152-54; Ex. 30 (N.P. Tr.) at 58-61, 72-74, 86-87; Ex. 33 (L.S. Tr.) at 43-44, 71-73, 167, 209-10, 169-72, 181-82; Ex. 39 (M.W. Tr.) at 29-30; Ex. 77; Ex. 90, 12, 16; Ex. 212.

²³⁴ Ex. 16 (L.C. Tr.) at 61-63, 96-98, 106, 108-10, 137-40, 142-45; Ex. 35 (V.S. Tr.) at 72, 118-19; Ex. 40 (Ri.W. Tr.) at 102-14; Ex. 168; Ex. 173; Exs. 175-76; Exs. 232-33.

“misleading, dishonest and took advantage of [her] situation and trust in [him]” and that if she were not “that kind of person that does [her] own research and double checks things, [she] would [have] be[en] spending extra money of [her] already low income on supplemental insurance [she] d[id] not need.” The Chesapeake-Insphere Agent, who had understood the person to have been temporarily “between full-time jobs, [to be] only making a small amount each month and [to] need[] the cheapest health care option possible that satisfied the legal requirements,” did not even write back in response.²³⁵

224. Chesapeake-Insphere and Chesapeake-SFG Agents engaged in these deceptive practices even when the major medical health insurance was state-subsidized coverage for Massachusetts consumers based upon their lower income.²³⁶

225. Chesapeake-Insphere and Chesapeake-SFG Agents routinely told Massachusetts consumers when selling a combination of major medical health insurance and Chesapeake supplemental health insurance policies that there was a \$20 fee without specifying that, in fact, the fee was only for the Chesapeake insurance.²³⁷

226. SFG trained its agents to describe the \$20 fee without specifying that Chesapeake (not the major medical insurance carrier) charged the fee and to use documents that described the

²³⁵ Ex. 40 (Ri.W. Tr.) at 102-13; Exs. 232-33.

²³⁶ Ex. 16 (L.C. Tr.) at 96-98, 105-06, 108-10 137-40, 148-53, 165-69; Ex. 18 (A.G. Tr.) at 101-40; Ex. 25 (M.M. Tr.) at 73-76; Ex. 29 (J.P. Tr.) at 97-100; Ex. 30 (N.P. Tr.) at 32-38, 49-50; Ex. 33 (L.S. Tr.) at 209-210; Ex. 39 (M.W. Tr.) at 101-02, 174-80; Ex. 40 (Ri.W. Tr.) at 102-17; Ex. 77; Ex. 84; Ex. 95 at 16-18, 24; Ex. 173; Exs. 175-76; Ex. 178; Exs. 232-33.

²³⁷ Ex. 16 (L.C. Tr.) at 96-98, 137-40, 142-43, 148-51; Ex. 18 (A.G. Tr.) at 167-68; Ex. 25 (M.M. Tr.) at 99-100; Ex. 30 (N.P. Tr.) at 86-87; Ex. 32 (A.S. Tr.) at 129, 132; Ex. 33 (L.S. Tr.) at 209-210; Ex. 35 (V.S. Tr.) at 72, 113-17; Ex. 39 (M.W. Tr.) at 127-29; Ex. 40 (Ri.W. Tr.) at 108-10, 142-43, 169-73; Ex. 79-81; Ex. 95 at 24; Ex. 173; Exs. 175-76; Ex. 178; Ex. 236; Ex. 240.

fee without specifying what carrier charged the fee.²³⁸

b. Defendants deceptively described Chesapeake supplemental insurance as a “benefit” of or included with major medical insurance or a health plan.

227. As trained by SFG, Chesapeake-SFG Agents routinely described a package with major medical health insurance as having a “benefit” or “benefits,” which were references (without using Chesapeake’s name) to Chesapeake’s supplemental health insurance, including SDI.²³⁹

228. Chesapeake-Insphere agents sometimes referred to Chesapeake supplemental health insurance as “supplemental benefits” or “gap benefits.”²⁴⁰

229. From 2011 to 2020, Defendants trained Chesapeake-Insphere Agents to refer to supplemental health insurance, including from Chesapeake, as “supplemental benefits.”²⁴¹

230. Chesapeake-Insphere Agents explicitly described benefits from Chesapeake supplemental health insurance as “include[d]” in a plan or program that they described with a single premium and only with reference to a source of major medical insurance (a carrier or the Connector) but without naming Chesapeake.²⁴²

c. Defendants deceptively failed to use Chesapeake’s name in marketing materials relating to its supplemental health insurance and provided a single combined premium for major medical health insurance and Chesapeake supplemental health insurance.

231. Chesapeake-Insphere Agents and Chesapeake-SFG Agents used marketing

²³⁸ Ex. 18 (A.G. Tr.) at 167-68; Ex. 25 (M.M. Tr.) at 46-49, 93-94, 99-100; Ex. 30 (N.P. Tr.) at 86-87; Ex. 39 (M.W. Tr.) at 44-46, 128-29; Ex. 79-81.

²³⁹ Ex. 25 (M.M. Tr.) at 75-76; Ex. 30 (N.P. Tr.) at 108-09; Ex. 39 (M.W. Tr.) at 37-38, 106-07.

²⁴⁰ Ex. 17 (G.D. Tr.) at 31-32, 125-27, 146; Ex. 32 (A.S. Tr.) at 103-05; Ex. 183.

²⁴¹ Ex. 5 (A.R. II Tr.) at 48; Ex. 12 (D.C. Tr.) at 270-72; Ex. 48.

²⁴² Ex. 16 (L.C. Tr.) at 91-94; Ex. 17 (G.D. Tr.) at 121-23; Ex. 172; Ex. 182.

materials with Massachusetts consumers that showed a single premium total for a combination of major medical health insurance and Chesapeake supplemental health insurance policies, including SDI, but did not show the premiums for the different policies. Chesapeake-Insphere Agents used such materials that also did not use Chesapeake's name. In some instances, the materials referred to Chesapeake supplemental health insurance policy as a "benefit" or "protection."²⁴³

232. Insphere and SFG trained Chesapeake-Insphere and Chesapeake-SFG Agents, respectively, to use such marketing materials.²⁴⁴

233. Insphere created a document for training its contracted agents including in Massachusetts which stated:

To be successful at selling these value added products [referencing products such as supplemental health insurance] we suggest that you group them as one total price for all products (health, supplemental insurance and association membership). If you quote them the health insurance only [referring to major medical health insurance in contradistinction to supplemental health insurance], that is the price they remember and the chances of you selling additional products is dramatically decreased.

²⁴³ Ex. 14 (Ro.C. Tr.) at 111-13, 125-26, 143-45, 149-52, 157-62, 170-72; Ex. 16 (L.C. Tr.) at 106, 108-10, 112-16, 118-22, 125-26, 142-43; Ex. 17 (G.D. Tr.) at 161; Ex. 18 (A.G. Tr.) at 169-72, 266-71; Ex. 21 (R.H. Tr.) at 68-69; Ex. 24 (B.L. Tr.) at 175-84; Ex. 25 (M.M. Tr.) at 93-97; Ex. 29 (J.P. Tr.) at 89-94; Ex. 30 (N.P. Tr.) at 39-41; Ex. 31 (N.R. Tr.) at 53-58; Ex. 32 (A.S. Tr.) at 186-88; Ex. 33 (L.S. Tr.) at 41-42, 76-77, 181, 209-10; Ex. 35 (V.S. Tr.) at 72, 113-17; Ex. 36 (M.T. Tr.) at 59, 83-87, 90-94; Ex. 38 (D.W. Tr.) at 140-42, 148-49, 152-53; Ex. 39 (M.W. Tr.) at 40-46; Ex. 40 (Ri.W. Tr.) at 114-17, 124-31, 142-46, 162-69, 172-73; Ex. 49; Ex. 52; Ex. 79-81; Ex. 90; Ex. 95 at 24; Ex. 166; Ex. 174; Exs. 177-78; Ex. 182; Ex. 188; Exs. 205-06; Exs. 221-22; Ex. 234; Ex. 236; Exs. 238-39.

²⁴⁴ Ex. 4 (A.R. Tr.) at 127-31; Ex. 5 (A.R. II Tr.) at 19-20, 127-32; Ex. 9 (T.R. III Tr.) at 160-62; Ex. 14 (Ro.C. Tr.) at 32, 62-63, 133-35; Ex. 15 (Ri.C. Tr.) at 143-44, 258-60; Ex. 17 (G.D. Tr.) at 120; Ex. 21 (R.H. Tr.) at 21-22, 60-64, 68-74, 140-42; Ex. 24 (B.L. Tr.) at 168-69, 181-84; Ex. 25 (M.M. Tr.) at 35-37, 41-42, 106-07, 170-71; Ex. 33 (L.S. Tr.) at 60-62, 66, 71-72, 96-97, 139-40, 142-51, 181-82; Ex. 36 (M.T. Tr.) at 67-68; Ex. 52; Ex. 54; Ex. 59; Ex. 63 at PowerPoint at 17; Ex. 86; Ex. 90; Ex. 115 at 1, ¶1.a.ii; Ex. 117; Exs. 187-88; Ex. 206.

Once the total price is given, if budget becomes an issue you can always review the coverage you offered to find out what they are willing to give up.

From those agents using this technique they find the customer will typically increase their health insurance deductible before eliminating supplemental or association products.²⁴⁵

234. HealthMarkets knew, however, that its agents should not be using marketing materials that included supplemental health insurance in a total monthly cost with “no reference to Chesapeake or these plans being optional.”²⁴⁶

235. A HealthMarkets manager indicated that an illustration that “buil[ds] in the Supp[lemental insurance] and include[s] them in the Total Monthly Cost with no reference to Chesapeake or these plans being optional” should not be used.²⁴⁷

236. Insphere created and made available to its agents, including in Massachusetts, a template for marketing materials that generated a customer quote that showed a single total amount to pay for health insurance, supplemental health insurance and other products. While the copy of the quote available to the agent broke down the amount due by policy, the customer-facing copy did not. This hid how much the consumer paid for the supplemental insurance separate from the major medical.²⁴⁸

237. This template in electronic form gave “Surebridge” as an option for the supplemental health insurance carrier’s name but not Chesapeake.²⁴⁹

238. Insphere trained its agents to refer to Chesapeake’s insurance, including its SDI,

²⁴⁵ Ex. 4 (A.R. Tr.) at 127-29; Ex. 134.

²⁴⁶ Ex. 10 (T.R. IV Tr.) at 42-43; Ex. 90.

²⁴⁷ Ex. 10 (T.R. IV Tr.) at 43-44.

²⁴⁸ Ex. 8 (T.R. II Tr.) at 63-71; Ex. 9 (T.R. III Tr.) at 156-62; Ex. 52; Ex. 60.

²⁴⁹ Ex. 9 (T.R. III Tr.) at 161-62.

as coming from Surebridge (the “brand name”).²⁵⁰

239. Chesapeake-SFG Agents told Massachusetts consumers that the price they quoted was the same as on the Connector, even though most of the time the quoted price included premiums for the bundle of major medical insurance (that could be purchased on the Connector) and Chesapeake supplemental insurance (that was not offered through the Connector).²⁵¹

240. SFG trained Chesapeake-SFG Agents to state that the price they quoted was the same as on the Connector, even though the price they were quoting included the premium for Chesapeake health insurance policies that would not have been part of price on the Connector.²⁵²

241. Insphere, with approval by the other Defendants, trained Chesapeake-Insphere Agents nationwide, including in Massachusetts, to tell consumers “It does not matter if [the consumers] buy directly from the carrier, marketplace or [the agent]. Ok. The plans are the plans.”²⁵³

242. Insphere engaged in this training, even though, as trained by Insphere, Chesapeake-Insphere Agents presented a combination of major medical insurance and supplemental health insurance and/or life insurance to consumers. This combination was not what the consumer would have been offered through the Connector because (a) the consumer would not have been offered a combination including supplemental health insurance, such as specified disease insurance, and/or life insurance and (b) the consumer would have received

²⁵⁰ Ex. 5 (A.R. II Tr.) at 39, 68-69, 161-63; Ex. 16 (L.C. Tr.) at 22-23.

²⁵¹ Ex. 25 (M.M. Tr.) at 60-61; Ex. 30 (N.P. Tr.) at 80-83.

²⁵² Ex. 25 (M.M. Tr.) at 60; Ex. 30 (N.P. Tr.) at 80-82.

²⁵³ Ex. 122 at 1-2, ¶¶ 1.b, 2.

price information only for major medical health insurance.²⁵⁴

243. Chesapeake-SFG Agents told Massachusetts residents who posed questions about the premium quoted, in words or substance, that “the price is the price,” including when the Massachusetts resident qualified for MassHealth or health insurance subsidized through the Connector. Chesapeake-SFG Agents told Massachusetts residents that the price they had been quoted would be the same as it would on the Connector.²⁵⁵

244. This practice was deceptive. The premium for MassHealth was zero, and the quoted price was over \$100 and was actually for Chesapeake supplemental health insurance. Similarly, the price quoted by the Chesapeake-SFG Agents for insurance on the Connector was not the same as would have been found on the Connector because the price quoted included premium for Chesapeake supplemental health insurance, which would not have been part of the price on the Connector.²⁵⁶

245. A Chesapeake-SFG Agent, for example, quoted a premium in excess of \$100 per month to a Massachusetts consumer who was losing health insurance because he needed to stop working work due to a serious mental illness. The quote actually combined MassHealth, which offered free coverage, and Chesapeake supplemental health insurance policies, which were over \$100 per month. When the consumer made multiple inquiries about a lower priced plan, the agent repeatedly conveyed falsely to the Massachusetts consumer that the lowest price was over \$100, instead of truthfully informing the consumer that he could enroll in MassHealth at no

²⁵⁴ Ex. 122 at 2-3, ¶ 3.

²⁵⁵ Ex. 25 (M.M. Tr.) at 58-61; Ex. 33 (L.S. Tr.) at 139-40, 142-43, 145-51; Ex. 30 (N.P. Tr.) at 80-81, 83; Ex. 39 (M.W. Tr.) at 211-12; Ex. 86.

²⁵⁶ Ex. 25 (M.M. Tr.) at 29-30, 59-61.

cost.²⁵⁷

246. SFG trained its agents to respond “the price is the price” when asked about the price they quoted, even when part of what was being described was MassHealth or health insurance available through the Connector, and to say that the quoted price would be the same on the Connector, even though it would not have been because the quoted price included premium for Chesapeake supplemental health insurance.²⁵⁸

247. From 2011 into 2020 Defendants have trained Chesapeake-Insphere Agents nationwide, including in Massachusetts to respond to consumers’ concern or objection about price by saying, “The prices are the price” or “The price is the price.”²⁵⁹

248. That training, on and off, referenced the DOI regulating plans and pricing.²⁶⁰

249. When, as trained by Insphere, Chesapeake-Insphere Agents licensed to sell health insurance in Massachusetts presented a premium total for a combination of major medical insurance and supplemental health insurance and/or life insurance, the total premium for that combination (and the combination itself) had not been submitted to or approved by the DOI.²⁶¹

250. The standard application forms Chesapeake used, starting in or before August 2015, contains a single premium for multiple Chesapeake health insurance policies.²⁶²

²⁵⁷ Ex. 29 (J.P. Tr.) at 152-58, 188-90.

²⁵⁸ Ex. 25 (M.M. Tr.) at 58-60, 106-07, 170-71; Ex. 30 (N.P. Tr.) at 80-81; Ex. 39 (M.W. Tr.) at 211-12.

²⁵⁹ Ex. 5 (A.R. II Tr.) at 169-70.

²⁶⁰ *Id.* at 170.

²⁶¹ Ex. 122 at 3, ¶ 4.

²⁶² Ex. 2 (K.G. II Tr.) at 175-79; Ex. 8 (T.R. II Tr.) at 139; Exs. 142-43.

251. Chesapeake has issued its SDI to Massachusetts residents based on applications using these forms.²⁶³

252. The DOI promulgated 211 CMR 40.00: Marketing of Insured Health Plans prior to 2011.

253. 211 CMR 40.01(2) has provided:

In general, it shall be deemed misleading to solicit an offer to contract for health plans without a clear and conspicuous disclosure of the following: (a) The extent and nature of the coverage offered. (b) The extent to which the coverage meets the potential risk. (c) The cost of the coverage. It is, therefore, a misrepresentation to solicit an offer to contract for an insured health plan without disclosing the above data.

254. 211 CMR 40.13(4) has provided, “The application must disclose the premium rate for the policy being solicited.”

255. Defendants knew that Massachusetts had “specific requirements regarding recording the premium amounts on the application,” since prior to 2011 and had no reason to believe that the requirements changed since 2011.²⁶⁴

256. 211 CMR 146.09(2) has provided in part, “All specified disease insurance marketing and advertising shall conform to the provisions of 211 CMR 40.00.”

257. Insphere’s software generated other marketing materials for Chesapeake supplemental health insurance, including SDI, that used Surebridge’s name instead of Chesapeake’s without having Chesapeake’s name on that page of the marketing material.²⁶⁵

258. Chesapeake-Insphere Agents disseminated these marketing materials to Massachusetts residents referencing Chesapeake supplemental health insurance, including SDI,

²⁶³ Ex. 2 (K.G. II Tr.) at 177-79; Ex. 143.

²⁶⁴ Ex. 10 (T.R. IV Tr.) at 103-04.

²⁶⁵ Ex. 8 (T.R. II Tr.) at 76-79.

without using Chesapeake's name.²⁶⁶

259. Prior to April 2018, neither Defendants nor anyone on their behalf trained any Insphere-contracted or Chesapeake-appointed agent licensed in Massachusetts that in marketing Chesapeake supplemental health insurance in Massachusetts, they were required to use Chesapeake's name, and that using a trade name like "SureBridge" was not sufficient.²⁶⁷

260. Insphere software also generated quotes that its agents sent and/or showed to Massachusetts residents that used Surebridge as the name for the supplemental health insurance proposed — not Chesapeake.²⁶⁸

261. Insphere made available to its contracted agents, including in Massachusetts from 2011 into at least early 2014 a presentation script that directed agents to say, “For everything we discussed — the association benefits, the [critical care/cancer/income protection, etc.], [and the health insurance plan], your premium will be \$____ per month” and which nowhere directed the agent to tell consumers the price for any of the individual insurance plans, including the supplemental insurance.²⁶⁹

262. Insphere trained its agents to describe that as part of the application process there would be a “premium for both the health insurance and the things that [the agents] use to fill the gaps,” with the latter reference being to supplemental health insurance,²⁷⁰ even though there were separate premiums for each insurance policy.

²⁶⁶ Ex. 17 (G.D. Tr.) at 147-48; Ex. 38 (D.W. Tr.) at 188-94; Ex. 185; Ex. 229.

²⁶⁷ Ex. 4 (A.R. Tr.) at 147-52; Ex. 5 (A.R. II Tr.) at 167.

²⁶⁸ Ex. 17 (G.D. Tr.) at 148-49; Ex. 40 (Ri.W. Tr.) at 162, 169-70; Ex. 185; Ex. 240.

²⁶⁹ Ex. 4 (A.R. Tr.) at 70; Ex. 133 (brackets in original).

²⁷⁰ Ex. 1 (K.G. Tr.) at 55-57, 85-88.

263. From 2011 into 2020, Defendants trained Chesapeake-Inspire Agents nationwide, including in Massachusetts, to tell consumers that supplemental health insurance, including from Chesapeake, would “fill the gaps.”²⁷¹

264. As trained by SFG, Chesapeake-SFG Agents routinely showed a “Policy Summary” document to Massachusetts consumers with a single premium total for a combination of major medical insurance (whether MassHealth, subsidized or unsubsidized) and no premium breakdown.²⁷²

265. Consistent with their training, Chesapeake-SFG Agents only wrote a breakdown of the premium total between major medical insurance and Chesapeake insurance on the Policy Summary documents after the sales call was completed, other than on the rare occasion where consumers specifically asked.²⁷³

266. All this deceptive conduct violated the Judgment’s permanent injunction prohibiting HealthMarkets and its subsidiaries, such as Chesapeake and Inspire, from using any advertisement in Massachusetts that it knows or should know is false or deceptive.²⁷⁴

267. Defendants’ conduct described above has violated 211 CMR 40.00 *et seq.* in multiple ways.

268. Since prior to 2011, 211 CMR 40.02(2) has provided in part, “All marketing methods shall be the responsibility of the carrier whose insured health plans are so marketed.”

²⁷¹ Ex. 5 (A.R. II Tr.) at 56-57, 168.

²⁷² Ex. 18 (A.G. Tr.) at 169-72, 265-67; Ex. 25 (M.M. Tr.) at 36-39, 93-96; Ex. 31 (N.R. Tr.) at 53-58; Ex. 33 (L.S. Tr.) at 209-10; Ex. 39 (M.W. Tr.) at 45-46; Ex. 79-81; Ex. 95 at 24.

²⁷³ Ex. 18 (A.G. Tr.) at 267-71; Ex. 25 (M.M. Tr.) at 46-49, 93-97; Ex. 29 (J.P. Tr.) at 95-96; Ex. 39 (M.W. Tr.) at 42-43; Ex. 79-81.

²⁷⁴ See Ex. A/Ex. 45 at 6 (¶ 2(i)); Ex. 9 (T.R. III Tr.) at 114.

269. Since prior to 2011, 211 CMR 40.07(b) has provided, “It shall be considered misleading, and therefore prohibited, to solicit an offer to contract for a health insurance policy without a clear and conspicuous disclosure of the premium rate for such policy.”

270. Since prior to 2011, 211 CMR 40.11(2) has provided in part:

When a marketing method refers to various benefits which may be contained in two or more policies (other than group master policies), it shall be considered misleading, and therefore prohibited, unless it discloses that such benefits are provided only through a combination of such policies.

271. Since prior to 2011, 211 CMR 40.04(1) has provided:

Failure to clearly identify the name of the carrier and, where practicable, the form number on all marketing materials will be considered misleading and is therefore prohibited. A marketing method shall not use a trade name, or insurance group designation, name of the parent company or the insurer, name of a particular division of the insurer, service mark, slogan, symbol or other device which without disclosing the name of the actual insurer would have the capacity and tendency to mislead or deceive as to the true identity of the insurer and therefore be prohibited.

272. 211 CMR 146.09(4) has provided in part:

The carrier's name must be disclosed on any and all printed sales or appropriate materials provided, distributed or shown to potential applicants and/or during presentations made to potential applicants in association with a sale, whether part of a presentation or not.

273. 211 CMR 146.09(1) has provided in part “carriers shall establish auditable marketing procedures [and] methods for ensuring compliance by agents. . . .”

274. Defendants’ conduct described above (and below) has violated these (and other) regulations in multiple ways.

2. Defendants Deceptively Passed Off Chesapeake Supplemental Health Insurance as Major Medical Health Insurance.

275. In addition to passing off its supplemental insurance as *part of* major medical insurance policies, Defendants, including through Chesapeake-Insphere and Chesapeake-SFG

Agents, have falsely and deceptively passed off Chesapeake’s supplemental insurance policies to Massachusetts residents as itself major medical insurance.

276. As trained by SFG, Chesapeake-SFG Agents, including Mr. Marden, referred to packages of different Chesapeake supplemental health insurance policies, including its SDI, as covering or helping cover “the major things.”²⁷⁵

277. At least one Chesapeake-Insphere Agent routinely referred to packages of Chesapeake supplemental health insurance policies, including its SDI, as “major medical” in communications with Massachusetts residents.²⁷⁶

278. This deceptive conduct violated the Judgment’s permanent injunction prohibiting HealthMarkets and its subsidiaries, including Chesapeake and Insphere, from using any advertisement in Massachusetts that it knows or should know is false or deceptive.²⁷⁷

279. Since prior to 2011, 211 CMR 42.05(2) has defined each of “Hospital Confinement Indemnity Insurance,” “Major Medical Expense Insurance,” “Specified Disease or Specified Accident Insurance,” “Accident Only Health Insurance” and “Disability Income Insurance” separately as “Specific Types of Policies.” 211 CMR 42.09(2)(d) has provided: “Major Medical Expense Insurance provides coverage for inpatient and outpatient health care services.” 211 CMR 42.05(2)(d). 211 CMR 42.09(1)(a) has provided in part, “No misleading policy names may be used . . . nor may a name be used which conflicts with the prescribed category name or which is similar to the prescribed name of a different category.”

²⁷⁵ Ex. 25 (M.M. Tr.) at 115-17; Ex. 30 (N.P. Tr.) at 115; Ex. 85; Ex. 87.

²⁷⁶ Ex. 36 (M.T. Tr.) at 131-39; Ex. 223.

²⁷⁷ See Ex. A/Ex. 45 at 6 (¶ 2(i)); Ex. 9 (T.R. III Tr.) at 114.

280. Defendants' conduct violated 211 CMR 42.09(1)(a) because Defendants misleadingly described supplemental insurance policies using names and terms associated with major medical insurance.

D. Defendants Contemptuously Sold Chesapeake's Supplemental Health Insurance as a Health Benefit Plan, including as a Substitute rather than a Supplement to Major Medical Health Insurance.

281. In addition to the misrepresentation of Chesapeake supplemental health insurance as major medical insurance, Chesapeake has also committed contempt by selling SDI for purchase not as supplement (but as a substitute) for a health plan. Chesapeake had its SDI along with other Chesapeake supplemental health insurance policies purchased as a substitute, rather than a supplement, for a health plan.²⁷⁸

282. Chesapeake has committed these violations habitually.²⁷⁹

283. In addition, Chesapeake committed contempt habitually by marketing and selling its SDI violation of DOI regulations, including 211 CMR 40.00 *et seq.* and 146.00 *et seq.*²⁸⁰

284. All this misconduct violated the Judgment because the Judgment expressly enjoined any HealthMarkets insurance company subsidiary from offering for sale in

²⁷⁸ Ex. 12 (D.C. Tr.) at 233-36; Ex. 19 (R.G. Tr.) at 96-101; Ex. 22 (S.J. TR.) at 165-72; Ex. 25 (M.M. Tr.) at 117-18; Ex. 28 (M.P. Tr.) at 150-52, 158-59; Ex. 29 (J.P. Tr.) at 33-34, 74-77; Ex. 30 (N.P. Tr.) at 88-91; Ex. 33 (L.S. Tr.) at 202-03; Ex. 34 (C.S. Tr.) at 116-17; Ex. 36 (M.T. Tr.) at 53, 113-19, 146-49; Ex. 38 (D.W. Tr.) at 131-34; Ex. 39 (M.W. Tr.) at 227; Ex. 40 (Ri.W. Tr.) at 184; Ex. 163.

²⁷⁹ Ex. 11, excerpts of transcript of examination under oath of Ron Brown, June 24, 2018 at 10-13, 185-86, 197-202, 233-37; Ex. 15 (Ri.C. Tr.) at 176, 228-30; Ex. 20 (S.H. TR.) at 89, 106-11; Ex. 22 (S.J. TR.) at 121-22; Ex. 25 (M.M. Tr.) at 114-15, 119-20; Ex. 28 (M.P. Tr.) at 150-53, 158-59; Ex. 29 (J.P. Tr.) at 100-01; Ex. 32 (A.S. Tr.) at 218, 221-24, 234-35; Ex. 33 (L.S. Tr.) at 192-93, 251-55; Ex. 34 (C.S. Tr.) at 48-49, 118-21; Ex. 36 (M.T. Tr.) at 55-56, 142-45, 149-50, 191, 193, 195-96; Ex. 37 (Ro.W. Tr.) at 170-71, 215, 223-26; Ex. 40 (Ri.W. Tr.) at 25, 188-90; Ex. 66 at 6; Ex. 85; Exs. 224-25.

²⁸⁰ See *supra* Section C; *infra* Section E1-4.

Massachusetts any Health Benefit Plan, as defined in G.L. c. 176J, § 1,²⁸¹ and Chesapeake is, and has been, an insurance company subsidiary of HealthMarkets.²⁸²

285. Under the Judgment, if any insurer subsidiary of any Original Defendant, including of HealthMarkets, sought to write new Health Benefit Plan business in Massachusetts, the issuer would have to wait five years after certain notices were given to consumers who were insured by the MEGA or Mid-West, and then provide written notice to the Attorney General at least sixty (60) days before writing new business.²⁸³ Neither Chesapeake (nor any of the other Defendants) has given such notice to the Attorney General.²⁸⁴

286. G.L. c. 176J, § 1 broadly defines a “Health benefit plan” to include “any individual . . . policy of health, accident and sickness insurance issued by an insurer licensed under chapter 175,” which the Chesapeake supplemental health insurance is. The statute excludes from the definition, as relevant here, “specified disease insurance *that is purchased as a supplement and not as a substitute for a health plan and meets any requirements the commissioner by regulation may set.*”²⁸⁵

287. Chesapeake’s SDI was a Health Benefit Plan, which the Judgment enjoined Chesapeake from offering for sale in Massachusetts both: (a) when Chesapeake’s SDI was purchased not as a supplement and/or as a substitute for a health plan; and (b) when it otherwise

²⁸¹ Ex. A at 2 (¶ 1(a)).

²⁸² *Id.*; Ex. 9 (T.R. III Tr.) at 114.

²⁸³ Ex. A at 2 (¶ 1(d)).

²⁸⁴ Ex. 9 (T.R. III Tr.) at 110-11.

²⁸⁵ G.L. c. 176J, § 1 (emphasis added); Ex. 2 (K.G. II Tr.) at 179-80; Ex. 7 (T.R. Tr.) at 17; Exs. 145-46.

did not meet DOI requirements for specified disease insurance.²⁸⁶

288. From at least November 2016 through June of 2018, Defendants permitted their agents to sell Chesapeake supplemental health insurance, including SDI, in Massachusetts to consumers without minimum essential coverage (the type of coverage then generally required by the ACA) in place.²⁸⁷

289. Chesapeake had filed with the DOI an application for its supplemental insurance policies that included a question that asked whether the applicant had underlying coverage.²⁸⁸

290. Starting in November 2016, Chesapeake informed its appointed agents in Massachusetts that Chesapeake was ignoring this question on the application.²⁸⁹

291. In November 2016, Defendants were specifically aware of “a requirement in MA (211 CMR 146.10(5)) to have medical coverage in order to purchase a specified disease policy.”²⁹⁰

292. That regulation, 211 CMR 146.10(5) in subparagraph (a) specifically required application forms to include questions designed elicit “[w]hether, as of the date of the application, the applicant and all dependents being considered for the specified disease policy are covered by a Health Plan” and provided that “[i]f the applicant does not respond affirmatively to such question, the policy shall not be issued.”

293. Still, Chesapeake issued SDI to Massachusetts residents based upon an

²⁸⁶ Ex. A at 2 (¶ 1(a)); G.L. c. 176J, § 1.

²⁸⁷ Ex. 1 (K.G. Tr.) at 146-53; Ex. 8 (T.R. II Tr.) at 81; Ex. 9 (T.R. III Tr.) at 37; Ex. 15 (Ri.C. Tr.) at 228-30; Ex. 58; Ex. 108; 26 U.S.C. §5000A.

²⁸⁸ Ex. 10 (T.R. IV Tr.) at 7.

²⁸⁹ Ex. 1 (K.G. Tr.) at 148-51, 155; Ex. 10 (T.R. IV Tr.) at 7.

²⁹⁰ Ex. 1 (K.G. Tr.) at 153; Ex. 109.

application form that did not require an affirmative response that the applicant was covered by a Health Plan.²⁹¹

E. Defendants Engaged in Other Deceptive and Contemptuous Practices in Marketing and Selling Chesapeake's Supplemental Health Insurance.

294. Defendants, including through their agents, have engaged in a host of other unfair and deceptive acts and practices in selling Chesapeake's supplemental health insurance policies in Massachusetts, including:

1. unfair, false, incomplete, deceptive and contemptuous comparisons relating to health insurance;
2. deceptive and contemptuous use of statistics;
3. deceptive and contemptuous manipulation of consumers' emotions to sell Chesapeake supplemental health insurance;
4. other deceptive and contemptuous practices in marketing and selling Chesapeake's SDI;
5. other deceptive and contemptuous practices in marketing and selling Chesapeake's hospital confinement insurance and accident only health insurance;
6. other deceptive and contemptuous practices in marketing and selling Chesapeake's disability insurance; and
7. further deceptive and contemptuous practices in marketing and selling Chesapeake's supplemental health insurance to consumers eligible for MassHealth or major medical health insurance subsidized through the Connector.

²⁹¹ Ex. 2 (K.G. II Tr.) at 178-79; Ex. 143.

1. Defendants Made Deceptive Comparisons Relating to Health Insurance.

295. Defendants, including through Chesapeake-Insphere and Chesapeake-SFG Agents, have made deceptive, incomplete and unfair comparisons relating to health insurance to Massachusetts residents.²⁹²

296. They have done so habitually.²⁹³

297. These unlawful comparisons violated the Judgment's permanent injunction against HealthMarkets and its subsidiaries, which have included Chesapeake and Insphere, using advertisements or proposed agent scripts that make comparisons that it knows or should know are false, incomplete or unfair.²⁹⁴

298. At least one Chesapeake-Insphere Agent routinely told Massachusetts residents that having a major medical plan with a higher deductible, along with Chesapeake hospital confinement insurance and accident only health insurance, was better coverage than a major medical plan with a lower deductible.²⁹⁵

299. Insphere made available to its contracted agents, including in Massachusetts from 2011 into at least early 2014, a presentation script that directed agents to say, "*of all the medically-related bankruptcies, 78% of them had health insurance but had gaps in their coverage like co-payments, deductibles and uncovered services,*" "[t]he benefit package I am [proposing/offering] is designed to fill those gaps, reduce your risk and provide you far more protection than **just** health insurance." Later, if the customer had health insurance, the agent was

²⁹² See *infra* this Section.

²⁹³ See *infra* this Section.

²⁹⁴ Ex. A/Ex. 45 at 6 (¶ 2(j)); Ex. 9 (T.R. III Tr.) at 112, 114.

²⁹⁵ Ex. 38 (D.W. Tr.) at 188.

directed to say, “if we can put together a package at a comparable rate to what you are paying today but include more coverage, then by definition, wouldn’t you agree that that would be a better value proposition for you (and your family)?”²⁹⁶

300. Mr. Carlson, a Chesapeake-Insphere Sales Manager, described to Massachusetts residents a major medical plan with a higher deductible along with supplemental insurance (compared to a major medical plan with a lower deductible) as “the best protection for the best price” as recently as 2018 and as “the best risk” for consumers’ money.²⁹⁷

301. Another Chesapeake-Insphere Sales Manager, Mr. Smith, directed at least twenty Insphere Agents in the Insphere Norwood, Massachusetts Office (the “Norwood Office”) in November 2015 that if consumers were on “a really good [major medical health insurance] plan and don’t have as much in the way of supps, we try and get them to go to the cheaper plan with the higher deductible and add some supp[lemental health insurance from Chesapeake].” Mr. Smith made those statements at a training run by Insphere Officer and Senior Vice President Rochelle Wertenteil.²⁹⁸

302. In fact, the combination of Chesapeake supplemental insurance and major medical insurance would leave insureds at risk of paying the increased deductible, with no payment from Chesapeake, for any treatment of any illness that did not result in hospital confinement and was not one of the specified diseases covered by SDI. The SDI would not pay anything, for example, for diagnoses of multiple sclerosis (“MS”), diabetes, meningitis, influenza

²⁹⁶ Ex. 4 (A.R. Tr.) at 70-72; Ex. 133.

²⁹⁷ Ex. 12 (D.C. Tr.) at 163-64, 233-34; Ex. 13 (D.C. II Tr.) at 86-90.

²⁹⁸ Ex. 15 (Ri.C. Tr.) at 231-37; Ex. 37 (Ro.W. Tr.) 14-16.

or behavioral health conditions.²⁹⁹

303. Health insurance policies can be compared using their loss ratios to determine which are more and less “valuable” actuarially to the purchaser.

304. When Massachusetts consumers purchased Chesapeake supplemental health insurance rather than paying the same additional amount each month for major medical health insurance, the consumers received less coverage actuarially for the money spent because that supplemental health insurance had significantly worse loss ratios than major medical health insurance.³⁰⁰

305. Messrs. Carlson, Lynch and Smith (who were Chesapeake-Insphere Sales Managers) did not know the medical loss ratios for Chesapeake supplemental health insurance. As a result, they were unable to tell consumers, or train Chesapeake-Insphere agents about, such information. Mr. Simpson and Mr. Marden, likewise, did not know the medical loss ratios and could not inform consumers or Chesapeake-SFG Agents that they trained of that information.³⁰¹

306. Insphere’s sales strategy was reflected in a PowerPoint slide Ms. Wertenteil used at national trainings in February and December 2014. The training showed decision trees for “healthy” consumers with and without subsidies for major medical insurance. In either case, she trained agents to sell “Bronze plan to maximize healthcare dollar” and “All Supps — Fill Gaps [;] Life.” “Bronze plan to maximize health care dollar” was Insphere’s “philosophy.” Insphere agents were trained to ask consumers if it would make more sense to save money by going with a

²⁹⁹ Ex. 2 (K.G. II Tr.) at 179-80; Exs. 144-46.

³⁰⁰ *See supra* Section A5.

³⁰¹ Ex. 12 (D.C. Tr.) at 246; Ex. 24 (B.L. Tr.) at 173-74, Ex. 25 (M.M. Tr.) at 11-12, 17-19, 22, 43, 46-47, 50, 165-66, Ex. 33 (L.S. Tr.) at 43-44, 71-73, 222-23, Ex. 34 (C.S. Tr.) at 113.

bronze plan and then “filling some of those gaps” with, for example, SDI. Bronze plans are ACA-complaint major medical plans with the lowest premiums but also the lowest actuarial value, only covering approximately 60% of expected costs.³⁰²

307. Insphere trained its agents nationwide, including through Ms. Wertenteil in 2016, that “as a whole, we should always think Bronze first. . .”³⁰³

308. From 2016 into September 2019, in a “Best Practices” video made available to agents nationwide, Insphere trained its agents to say that most consumers get Bronze plans with supplemental plans, explaining that using that line reassures consumers about buying those policies.³⁰⁴

309. In fact, Defendants’ Chief Marketing Officer Mr. Stahl wrote in May 2017 that, only “26% of the plans we sold last year were bronze plans”³⁰⁵

310. Chesapeake-Insphere Agents have disparaged major medical health insurance to Massachusetts residents as “fundamentally flawed.”³⁰⁶

311. Insphere, in a training series supported by Defendants, trained its agents nationally, including those in Massachusetts, to do so.³⁰⁷

312. As described by a Chesapeake-Insphere Agent at a training run by Ms. Wertenteil at the Insphere Norwood Office in November 2015 in front of at least twenty other agents in that

³⁰² Ex. 24 (B.L. Tr.) at 151; Ex. 37 (Ro.W. Tr.) at 15, 124-25, 134-35, 141-46; Ex. 62 at 23; Ex. 63 at 23; Ex. 121 at 3 ¶ 4; Ex. 203 at LYNCH020131; *see also* Ex. 37 (Ro.W. Tr.) at 161.

³⁰³ Ex. 37 (Ro.W. Tr.) at 215-19.

³⁰⁴ Ex. 4 (A.R. Tr.) at 105-06, 123.

³⁰⁵ Ex. 1 (K.G. Tr.) at 105-06; Ex. 107 at HMI130926.

³⁰⁶ Ex. 12 (D.C. Tr.) at 163-64, 166-70; Ex. 17 (G.D. Tr.) at 235-36; Ex. 22 (S.J. TR.) at 209-10; Ex. 26 (S.M. Tr.) at 136.

³⁰⁷ Ex. 5 (A.R. II Tr.) at 19-20, 63-67; Ex. 115 at 1, 3, ¶ 1.b; Ex. 155 at 2, ¶ 3.

office, “if you explain that health insurance doesn't give you protection when you need it if that's all you have, they're going to open their wallet for you.”³⁰⁸

313. Chesapeake-Insphere Agents have described major medical insurance to Massachusetts residents as fundamentally flawed, while positioning supplemental insurance as a way to “fill” in “the gaps” of the major medical insurance.³⁰⁹

314. From 2011 to 2020, Defendants trained Chesapeake-Insphere Agents to tell consumers that supplemental health insurance, including from Chesapeake, would “fill the gaps” with the deductible being one of those gaps.³¹⁰

315. From 2016 through 2019 in a “Best Practices” video made available to its agents nationwide, including in Massachusetts, and approved by Defendants, Insphere trained its agents to suggest that the agents could use supplemental health insurance, including from Chesapeake, to fill a \$5,000 or \$10,000 deductible and that they could provide something that “fills the gaps for the catastrophic” (which was a reference to SDI, such as Chesapeake’s).³¹¹

316. From 2011 into 2019 Insphere contracted agents had no product to sell in Massachusetts that would ensure payment of a \$5,000 or \$10,000 deductible in major medical insurance.³¹²

317. Chesapeake’s specified disease insurance sold in Massachusetts paid only lump-sum amounts based on the diagnosis or occurrence of eleven specified conditions (advanced

³⁰⁸ Ex. 15 (Ri.C. Tr.) at 231-34, 245-47.

³⁰⁹ Ex. 26 (S.M. Tr.) at 136; Ex. 40 (Ri.W. Tr.) at 174-75.

³¹⁰ Ex. 1 (K.G. Tr.) at 54-57, 68-81, 87-89; Ex. 4 (A.R. Tr.) at 105-06, 118-21; Ex. 5 (A.R. II Tr.) at 56-57, 92-94; Ex. 26 (S.M. Tr.) at 25, 137.

³¹¹ Ex. 151 ¶¶ 1-4.

³¹² *Id.* ¶ 5.

Alzheimer’s disease, ALS cancer, ill-induced coma, heart attack, major organ transplant, stroke, end-stage renal failure, benign brain tumor, cancer in situ and coronary artery bypass) and did not cover or pay anything for the diagnosis of any other potentially life-threatening illnesses such as Type A influenza, diabetic ketoacidosis, multiple sclerosis, meningitis and pneumonia.³¹³

318. Insphere also trained its agents in a “Best Practices” training video from 2016 to 2019 to describe offering policies that “put money in [the consumer’s] pocket” for “really anything that can happen to you.”³¹⁴

319. The claim to be offering policies that “put money in [the consumer’s] pocket” for “really anything that can happen to you” was false.³¹⁵

320. From 2016 into 2019, Insphere-contracted agents had no supplemental product to sell in Massachusetts that would pay anything for an emergency room visit for an illness such as pneumonia, diabetes, behavioral health conditions or asthma.³¹⁶

321. Mr. Lynch (a Chesapeake-Insphere Sales Manager) wrote on a public Facebook page in June 2015, “If you need help with proper plan design and the use of supplemental benefits to take you from underinsured to fully insured, please let me know.”³¹⁷

322. A Chesapeake-SFG Agent routinely described, in his sales presentations to Massachusetts residents, combinations of major medical health insurance and Chesapeake supplemental insurance plans as “full coverage” and as creating a situation where the consumer

³¹³ Ex. 151 ¶ 7.

³¹⁴ Ex. 4 (A.R. Tr.) at 105-06, 115-18; Ex. 151 ¶ 6.

³¹⁵ Ex. 4 (A.R. Tr.) at 117-18.

³¹⁶ Ex. 151 ¶ 6.

³¹⁷ Ex. 24 (B.L. Tr.) at 114-15.

had “no exposure.”³¹⁸

323. Another Chesapeake-Insphere Agent sold Chesapeake supplemental health insurance policies, including SDI, to a Massachusetts resident with a different deceptive comparison. This one was between Chesapeake supplemental health insurance standing alone and major medical insurance. In a sales pitch to that resident, the Chesapeake-Insphere Agent wrote, referring to the combination of Chesapeake supplemental health insurance, “The other option you have is a supplemental/catastrophic program. It helps pay for any out-of-pocket expenses associated with an accident, illness, hospitalization, broken bones, major diagnosis, disability and even death” and saying “The only drawback is that it wont [*sic*] pay for doctor visits or medications. But, your [*sic*] saving around \$200/month in premium alone.” The Chesapeake policies at issue were SDI, hospital confinement insurance, accident only medical expense insurance and accident disability insurance.³¹⁹

324. This was a false comparison. The Chesapeake supplemental policies compared to major medical insurance had more drawbacks than not paying for doctor visits or medications. They also did not help pay for “any out-of-pocket expenses associated with an accident, illness, hospitalization, broken bones [or] major diagnosis.” As one example, they would not pay anything for an emergency room visit for meningitis that did not result in hospital confinement.³²⁰ Indeed, in contrast to major medical insurance, they would not pay anything for even hospitalization confinement for psychosis (or any other Mental or Nervous Disorder) or

³¹⁸ Ex. 18 (A.G. Tr.) at 134-35.

³¹⁹ Ex. 22 (S.J. TR.) at 112-15, 127, 134; Ex. 198.

³²⁰ Ex. 22 (S.J. TR.) at 116.

normal pregnancy.³²¹ They also would not pay anything for “major diagnoses” of illness not within the eleven specified diseases and conditions in the SDI that did not result in hospital confinement and would only pay for the first ten days (in an intensive care/cardiac care unit — five days otherwise) at most \$500 per day (and less thereafter) even if hospital confinement did occur for such other “major diagnoses” of illness.³²²

325. Insphere, in Internet and television advertising, as recently as 2019, on channels available in Massachusetts, stated “Don’t get stuck using the Government exchange either.” This advertising did not discuss supplemental insurance. It also did not disclose the Chesapeake-Insphere Agents’ specific incentives for selling that insurance.³²³

326. The advertising, thus, made unfair, incomplete and deceptive comparisons to (and made deceptive disparagement of) health insurance exchanges.

327. Insphere also ran advertising in Massachusetts on YouTube beginning in October 2014 that purported to “take a look at the differences” between Insphere and state exchanges. The advertising did not, however, disclose the economic incentives of Chesapeake-Insphere Agents to sell Chesapeake supplemental insurance.³²⁴

328. Defendants’ conduct described above violated 211 CMR 40.00.

³²¹ Ex. 2 (K.G. II Tr.) at 179-81; Ex. 144 at 5-6, 9 (exclusion and limitation #6), 10 (#21), Exs. 145-49; G.L. c. 175 §§ 47B, 47F (mandates for non-discriminatory coverage of mental health and pregnancy applicable to major medical coverage).

³²² Ex. 2 (K.G. II Tr.) at 179-81; Exs. 144-49; Ex. 151 ¶ 7.

³²³ Ex. 7 (T.R. Tr.) at 121-22, 126-47; Ex. 9 (T.R. III Tr.) at 60-61; Ex. 10 (T.R. IV Tr.) at 52-53, 56-59; Ex. 98; Ex. 129 at 1, 11-14, 67; <https://www.youtube.com/watch?v=pSDNwasESq4>.

³²⁴ Ex. 158.

329. Since prior to 2011, 211 CMR 40.11(3) has provided:

When a marketing method makes comparisons between insured health plans, it shall be considered to be misleading, and therefore prohibited, if it makes unfair or incomplete comparisons of policy benefits, compares noncomparable aspects of policies of other carriers, or disparages competitors, their policies, their services, or their business methods of marketing insured health plans.

330. Since prior to 2011, 211 CMR 40.07(1)(d) has provided in part:

It shall be considered misleading, and therefore prohibited, for a marketing method to contain or use words or phrases such as . . . “full” . . . “this policy will help fill some of the gaps that Medicare and your present insurance leaves out” . . . or similar words and phrases, in a manner which exaggerates any benefits beyond the terms of the policy.

2. Defendants Deceptively Used Statistics.

331. Defendants, including through Chesapeake-Insphere and Chesapeake-SFG Agents, have deceptively used statistics, in marketing Chesapeake supplemental health insurance to Massachusetts residents, including without citing the source for the statistic as specifically required by DOI regulation.³²⁵

332. For example, a Chesapeake-Insphere Agent stated on his public LinkedIn page as recently as September 2019, “Did you know that 62% of bankruptcies last year were due to medical bill [*sic*] from illnesses? Out of the 62% of bankruptcies 75% had medical insurance” without citing a source for those statistics.³²⁶

333. As another example, a Chesapeake-Insphere Agent for years routinely used a similar bankruptcy statistic in marketing Chesapeake supplemental health insurance to Massachusetts residents without citing a source for the statistic.³²⁷

³²⁵ See *infra* this Section.

³²⁶ Ex. 9 (T.R. III Tr.) at 132-34; Ex. 14 (Ro.C. Tr.) at 37-39, 99; Ex. 164.

³²⁷ Ex. 21 (R.H. Tr.) at 140-48; Ex. 193.

334. 211 CMR 40.10(3) has provided: “The source of any statistics used in a marketing method shall be identified in such advertisement or marketing method or it shall be considered misleading, and therefore prohibited.”

335. Insphere (with Defendants’ repeated approval) trained its agents to use similar statistics in their oral presentations to consumers without citing a source for the statistic. For example, Insphere trained its agents nationally, including in Massachusetts, to tell consumers, “Well, here's an alarming statistic. 62% of bankruptcies filed are the result of a critical illness or accident, and the resulting crippling financial costs. The surprise is that nearly 80% of those people HAD health insurance!! What's wrong with that picture?” without stating a source for the statistics.³²⁸

336. At least one Chesapeake-Insphere Agent deceptively used statistics in Massachusetts, provided in a Chesapeake training, related to the average cost of a heart attack without citing the source thereof.³²⁹

337. Defendants’ conduct described above violated 211 CMR 40.10(3).

338. One or more Chesapeake-Insphere Agents have deceptively used statistics related to bankruptcies due to illness and medical bills in their sales to Massachusetts consumers even where they have cited a source.³³⁰

339. Insphere trained its agents to do so.³³¹

³²⁸ Ex. 4 (A.R. Tr.) at 78-80, 94-104; Ex. 12 (D.C. Tr.) at 266-68; Ex. 46; Ex. 51; Ex. 115 at 3-6, 1.c.i.1.c, 1.c.ii; Exs. 152-53.

³²⁹ Ex. 33 (L.S. Tr.) at 196-97.

³³⁰ Ex. 24 (B.L. Tr.) at 99-102; Ex. 99.

³³¹ Ex. 4 (A.R. Tr.) at 86-93; Ex. 9 (T.R. III Tr.) at 208-11; Ex. 100.

340. For example, Mr. Lynch, a Chesapeake-Insphere Sales Manager, included in his sales pitches to Massachusetts residents that “62% of bankruptcies filed are the result of a critical illness or accident, and the resulting crippling financial costs,” citing a study on “Medical Bankruptcy in the United States, 2007.”³³²

341. The cited study does not, in fact, use the term “critical illness.” The top two (and three of the top five) conditions in terms of highest out-of-pocket expenditures found by the study were either not covered by Chesapeake’s SDI or covered with respect to only one condition within a broad category of conditions.³³³

342. Further, the study was a national one from before the ACA, when major medical insurance could be much more limited.³³⁴ Prior to the ACA, even in Massachusetts, the Original Defendants were selling major medical insurance that, in some instances, for example, did not cover outpatient chemotherapy and radiation, unlike ACA-compliant plans.³³⁵

343. By May 2017, Defendants were aware of a study indicating that bankruptcies dropped about 50% after the ACA.³³⁶

344. The deceptive use of the bankruptcy statistics acted to disparage major medical health insurance and to mislead consumers about the need for supplemental insurance.

345. Insphere, in a training series supported by Defendants, trained its agents nationally, including in Massachusetts, to tell consumers that the agent would “incorporate

³³² Ex. 24 (B.L. Tr.) at 99-102.

³³³ Ex. 7 (T.R. Tr.) at 155-59; Ex. 99.

³³⁴ Ex. 7 (T.R. Tr.) at 155; Ex. 99.

³³⁵ Ex. 1 (K.G. Tr.) at 104-05; Ex. 12 (D.C. Tr.) at 215-17.

³³⁶ Ex. 1 (K.G. Tr.) at 105-06.

benefits that assure that you're not that next bankruptcy statistic” (which Insphere understood and Defendants understand to refer to supplemental health insurance policies, including those issued by Chesapeake, which were separate from major medical insurance).³³⁷

346. An Insphere training video from 2014 stated (a) health insurance leaves the consumer with “huge gaps” with potential “devastating out-of-pocket expense” if something serious were to happen; (b) of all bankruptcies ever filed due to medical bills almost 80% of those individuals had health insurance (without citing a source and a potential reference only related to data from 2007); and (c) the agent “actually work[s] with companies that have products that are literally designed to fill those gaps.”³³⁸

347. All this deceptive conduct violated the Judgment’s permanent injunction prohibiting HealthMarkets and its subsidiaries, such as Chesapeake and Insphere, from using any advertisement in Massachusetts that it knows or should know is false or deceptive.³³⁹

348. In an Insphere agent recruiting video Mr. Smith (the Chesapeake-Insphere Sales Manager) made the deceptive claim explicit: “people with health insurance still go bankrupt, because they don't have the supplemental products to cover those gaps.” Insphere employee Richard Castagnozzi (who was an Insphere Agency Manager in Massachusetts and then an Insphere Territory Vice President for a territory including all of Massachusetts) used this video almost every time he was recruiting agents for Insphere.³⁴⁰

³³⁷ Ex. 5 (A.R. II Tr.) at 19-20, 46, 48-54; Ex. 114; Ex. 115 at 1, 3, 6, 12-13, ¶¶ 1.c.iii.1, 2, 4.a; Ex. 155 at 2, ¶ 3.

³³⁸ Ex. 1 (K.G. Tr.) at 55-57, 72-81.

³³⁹ See Ex. 9 (T.R. III Tr.) at 114; Ex. 45 at 6 (¶ 2(i)).

³⁴⁰ Ex. 15 (Ri.C. Tr.) at 17-20, 28-31, 197-202; Ex. 55.

3. Defendants Deceptively Manipulated Consumers' Emotions.

349. Defendants, including directly and through Chesapeake-Insphere and Chesapeake-SFG Agents, have deceptively used exceptional and fictional stories to appeal to customers' emotions to sell Chesapeake supplemental health insurance in Massachusetts.³⁴¹ Not only were these marketing tactics deceptive on their face, but they have been specifically prohibited by Massachusetts insurance regulation.

350. Insphere and SFG trained their agents to do so.³⁴²

351. An advertisement on the "HealthMarkets" YouTube page from 2015 into 2020 has used a fictional account of an individual incurring hundreds of thousands of dollars in medical bills for the treatment of pancreatic cancer, resulting in out-of-pocket expenses so large that they would be impossible to pay without Chesapeake's SDI.³⁴³

352. The out-of-pocket maximum for an ACA-compliant plan for a family has been at most \$16,000 per year.³⁴⁴

353. As another example, a Chesapeake-Insphere Agent frequently used a story of a Chesapeake SDI payment saving an insured's marriage. The story was so emotionally powerful that the agent became emotional while recounting it at his examination under oath.³⁴⁵

354. Mr. Castagnozzi (who was responsible for training all or almost all Insphere agents selling in Massachusetts from late 2013 to summer 2017) routinely told Chesapeake-

³⁴¹ See *infra* this Section.

³⁴² See *infra* this Section.

³⁴³ Ex. 1 (K.G. Tr.) at 181-82; Ex. 5 (A.R. II Tr.) at 188-93; <https://www.youtube.com/watch?v=nQretKpiKXE>.

³⁴⁴ Ex. 2 (K.G. II Tr.) at 155.

³⁴⁵ Ex. 22 (S.J. TR.) at 230-33.

Insphere Agents that if they did not have their own story about a consumer developing a condition covered by a supplemental health insurance policy to use when marketing Chesapeake supplemental health insurance, they could use someone else's story. These stories were shared at weekly meetings at the Insphere Norwood Office, including stories of consumers who had not purchased Chesapeake supplemental health insurance.³⁴⁶

355. Mr. Lynch, a Chesapeake-Insphere Sales Manager, told another Massachusetts Chesapeake-Insphere Agent that it was a "good idea" to send to other clients, "to stress the importance of critical illness" and other supplemental health insurance policies," the story of a consumer in her mid-twenties who did not purchase SDI and had to cancel her major medical insurance and look for free coverage after she was diagnosed with cancer while pregnant. Mr. Lynch agreed that the agent "should use this story to push both supps and life insurance."³⁴⁷

356. From 2011 to 2020, Defendants trained Chesapeake-Insphere Agents to use emotional stories to sell Chesapeake supplemental health insurance.³⁴⁸

357. Insphere always trained its agents to use emotion as part of the sales process and trained them that creating an emotional connection between the client's needs and the supplemental health insurance products is absolutely vital to setting the stage to sell those products.³⁴⁹

358. From 2011 through 2018, Insphere trained its agents that people are motivated to buy by emotion or logic, that emotion is the stronger motivator and that agents should use that

³⁴⁶ Ex. 15 (Ri.C. Tr.) at 19-20, 28-31, 166-67; Ex. 22 (S.J. TR.) at 236-37.

³⁴⁷ Ex. 24 (B.L. Tr.) at 33-34, 162-66; Ex. 204.

³⁴⁸ Ex. 5 (A.R. II Tr.) at 41, 70-83.

³⁴⁹ Ex. 4 (A.R. Tr.) at 125-26.

fact when selling health insurance, including training them to that effect multiple times as part of required initial and on-going training from 2014 to 2018.³⁵⁰

359. Insphere, including through Ms. Wertenteil, trained its agents nationwide (a) to learn consumers' fears and (b) about exacerbating consumers' "pain" as well as "creating the pain."³⁵¹

360. At Insphere's 2011 annual meeting, at an event meant to offer Insphere agents tricks of the trade, one panelist described to agents how to ask potential consumers a series of questions, including about their family history of heart attack, cancer and stroke, "because that's gonna create the need for the products and services that we have." At another panel, an agent said, "some of the best cross sellers tell the best stories, and whether you're new, whether you're, whether you have the stories personally, you gotta get those in their back pocket and that will definitely create the need."³⁵²

361. From at least 2014 through 2018, Insphere trained its agents to uncover "hidden needs" in connection with supplemental health insurance and life insurance.³⁵³

362. Mr. Castagnozzi trained Chesapeake-Insphere Agents in Massachusetts (a) that the use of consumers' emotion was an important factor in selling them Chesapeake supplemental health insurance and (b) using Insphere training materials, as directed by Insphere, that emotion, in particular avoiding pain, was a more powerful motivator than logic and that getting consumers

³⁵⁰ Ex. 4 (A.R. Tr.) at 24-25, 84-85, 134-36; Ex. 5 (A.R. II Tr.) at 95-100.

³⁵¹ Ex. 37 (Ro.W. Tr.) at 85-86, 89, 130-34, 259-60.

³⁵² Ex. 5 (A.R. II Tr.) at 14-15, 46, 57-58, 70-71; Ex. 114.

³⁵³ Ex. 4 (A.R. Tr.) at 126-27.

to identify their pain would create great urgency, which was “key to the one-call close.”³⁵⁴

363. Insphere trained its agents in Massachusetts, including in October 2015, that “You can’t go back for supps” — that is, it is not typically successful to try to sell supplemental health insurance after the consumer has already purchased major medical health insurance.³⁵⁵

364. Mr. Marden, a Chesapeake-SFG Agent in Massachusetts, used a story as part of marketing Chesapeake’s SDI to Massachusetts residents that described an insured with MS who had been denied an electric wheelchair by her major medical carrier and whose arms became so tired by midday that she had difficulty getting to the bathroom.³⁵⁶

365. SFG, through Mr. Simpson, trained Mr. Marden and Mr. Marden trained other Chesapeake-SFG Agents to use the same story about a woman with MS to sell Chesapeake supplemental insurance.³⁵⁷ Chesapeake’s SDI did not, in fact, pay anything for MS.³⁵⁸

366. All this deceptive conduct violated the Judgment’s permanent injunction prohibiting HealthMarkets and its subsidiaries, such as Chesapeake and Insphere, from using any advertisement in Massachusetts that it knows or should know is false or deceptive.³⁵⁹

367. Defendants’ conduct described above also violated 211 CMR 40.00 *et seq.*

368. Since prior to 2011, 211 CMR 40.07(1)(j) has provided in part:

It shall be considered misleading, and therefore prohibited, for a marketing method to

³⁵⁴ Ex. 15 (Ri.C. Tr.) at 122-23, 127-28; Ex. 216 at CSMITH000488.

³⁵⁵ Ex. 37 (Ro.W. Tr.) at 187-90.

³⁵⁶ Ex. 25 (M.M. Tr.) at 90-91.

³⁵⁷ *Id.* at 46-47, 90-91.

³⁵⁸ Ex. 7 (T.R. Tr.) at 159.

³⁵⁹ *See* Ex. A/Ex. 45 at 6 (¶ 2(i)); Ex. 9 (T.R. III Tr.) at 112, 114.

to use depictions or fictionalized accounts of illness or illness related subjects, or overemphasis of exceptional or catastrophic risk, or exaggeration of potential out-of-pocket costs of health care, any other marketing method in such a way as to invite the purchase of an insured health plan for emotional rather than functional reasons.

4. Defendants Used Other Deceptive Practices in Marketing and Selling Chesapeake's Specified Disease Insurance.

369. Defendants, including through Chesapeake-SFG and Chesapeake-Insphere Agents, stated explicitly or implied that Chesapeake's SDI covered illnesses beyond its terms, including implying that it covered diseases it did not actually cover.³⁶⁰

370. As trained by Mr. Simpson, Mr. Marden routinely described Chesapeake's SDI as being a "critical illness benefit" that would help pay for critical illnesses, including MS.³⁶¹ As trained by Mr. Simpson and Mr. Marden, another Chesapeake-SFG Agent routinely described Chesapeake's SDI to Massachusetts residents with reference to illnesses including MS.³⁶² As trained by SFG, at least one other Chesapeake-SFG Agent described Chesapeake's SDI to Massachusetts residents as "a critical illness benefit" and as "eliminating any exposure under the plan," including for durable medical equipment for "God forbid scenarios" including MS.³⁶³

371. Chesapeake's SDI does not pay anything for MS.³⁶⁴

372. At least one Chesapeake-Insphere Agent has used stories of individuals with dementia to sell Chesapeake's SDI.³⁶⁵

³⁶⁰ See *infra* this Section.

³⁶¹ Ex. 25 (M.M. Tr.) at 86-87.

³⁶² Ex. 30 (N.P. Tr.) at 99-100; Ex. 33 (L.S. Tr.) at 209-10; Ex. 95 at 17.

³⁶³ Ex. 39 (M.W. Tr.) at 183, 187-90.

³⁶⁴ Ex. 2 (K.G. II Tr.) at 179-80; Ex. 7 (T.R. Tr.) at 159; Exs. 145-46.

³⁶⁵ Ex. 14 (Ro.C. Tr.) at 200, 202.

373. Chesapeake's SDI does not cover and has never covered dementia.³⁶⁶

374. At least one Chesapeake-Insphere Agent routinely wrote that Chesapeake's SDI covered "life-threatening illnesses."³⁶⁷

375. Insphere trained its agents to describe Chesapeake's SDI as covering "any gaps in the event of a major illness" from in or about 2016 into September 2019 through a "Best Practices" video made available to agents nationwide.³⁶⁸

376. Chesapeake's SDI has never covered meningitis, influenza or other life-threatening illnesses outside the limited list of diseases for which it paid a lump sum upon diagnosis.³⁶⁹

377. All this deceptive conduct violated the Judgment's permanent injunction prohibiting HealthMarkets and its subsidiaries, including Chesapeake and Insphere, from using any advertisement in Massachusetts that it knows or should know is false or deceptive.³⁷⁰

378. 211 CMR 40.07(1)(g) has provided, in part "It shall be considered misleading, and therefore prohibited, for a marketing method of a policy covering a list of specified diseases to imply coverage beyond the terms of the policy."

379. Defendants' conduct violated this regulation.

380. Chesapeake-Insphere and Chesapeake-SFG Agents failed to deliver to Massachusetts residents the Policy Disclosure Form set forth in 211 CMR 146.100 and the

³⁶⁶ Ex. 2 (K.G. II Tr.) at 179-80; Ex. 8 (T.R. II Tr.) at 85; Ex. 10 (T.R. IV Tr.) at 103; Exs. 145-46.

³⁶⁷ Ex. 17 (G.D. Tr.) at 184-87, 190.

³⁶⁸ Ex. 4 (A.R. Tr.) at 168-72.

³⁶⁹ Ex. 2 (K.G. II Tr.) at 179-80; Exs. 145-46; Ex. 151 ¶ 7.

³⁷⁰ See Ex. A/Ex. 45 at 6 (¶ 2(i)); Ex. 9 (T.R. III Tr.) at 112, 114.

Outline of Coverage set forth in 211 CMR 146.101 prior to presentation of the application or enrollment form in face-to-face meetings.³⁷¹

381. Defendants did not direct Chesapeake-Insphere agents that the agents had to give consumers an outline of coverage and a disclosure form prior to presenting the application to the consumer in face-to-face meetings.³⁷²

382. The Policy Disclosure Form contains the expected benefit ratio for the policy.³⁷³

383. Chesapeake-Insphere and Chesapeake-SFG Agents were unaware of the expected benefit ratio Chesapeake's SDI, and some were even unfamiliar with the term "expected benefit ratio."³⁷⁴

384. 211 CMR 146.10(3) has provided in part:

No specified disease insurance policy may be delivered or issued for delivery in Massachusetts unless the applicant receives a disclosure as set forth in 211 CMR 146.100, if communications occur with potential applicants prior to meeting with a company's agent. In the case of face-to-face meetings between an agent and potential insured, the carrier or its agent must deliver the disclosure prior to the presentation of the application or enrollment form.

385. 211 CMR 146.10(4) has provided in part:

No specified disease insurance policy may be delivered or issued for delivery in Massachusetts unless the applicant receives an outline of coverage as set forth in 211 CMR 146.101. The carrier or its agent must deliver the outline of coverage prior to the presentation of the application or enrollment form.

³⁷¹ Ex. 29 (J.P. Tr.) at 159-61, 164-65; Ex. 30 (N.P. Tr.) at 60, 127-29; Ex. 31 (N.R. Tr.) at 35-36, 67-71; Ex. 32 (A.S. Tr.) at 149-51; Ex. 38 (D.W. Tr.) at 122-24, 138-39; Ex. 44; Exs. 82-83.

³⁷² Ex. 5 (A.R. II Tr.) at 161, 164-66.

³⁷³ 211 CMR 146.100.

³⁷⁴ Ex. 12 (D.C. Tr.) at 246; Ex. 16 (L.C. Tr.) at 154; Ex. 17 (G.D. Tr.) at 114; Ex. 18 (A.G. Tr.) at 311; Ex. 22 (S.J. TR.) at 211-12; Ex. 23 (S.L. Tr.) at 90-91; Ex. 24 (B.L. Tr.) at 173; Ex. 25 (M.M. Tr.) at 125; Ex. 27 (K.N. Tr.) at 111-12; Ex. 32 (A.S. Tr.) at 150-51; Ex. 33 (L.S. Tr.) at 222; Ex. 34 (C.S. Tr.) at 110-11; Ex. 35 (V.S. Tr.) at 83; Ex. 39 (M.W. Tr.) at 196-97; Ex. 40 (Ri.W. Tr.) at 190-91.

386. Defendants' conduct violated these regulations.

387. 211 CMR 146.09(1) has provided:

Each carrier shall provide appropriate training to agents about its specified disease insurance products, maintain records regarding agents who have satisfactorily completed such training and file at least annually with the commissioner lists identifying those agents who have completed the carrier's specified disease insurance training program. No agent may offer for sale a company's product unless the agent is identified on the list filed with the Commissioner.

388. Chesapeake has submitted to the DOI lists of agents representing that those agents have been trained with respect to Chesapeake's SDI.³⁷⁵

389. Chesapeake included names of Chesapeake-SFG Agents on some of those lists, but there is no evidence that Chesapeake actually provided the necessary training to the named agents.³⁷⁶

390. This conduct by Chesapeake violated 211 CMR 146.09(1).

391. Chesapeake's inclusion of the names of any agents of Insphere and/or Chesapeake on the lists submitted to the DOI pursuant to 211 CMR 146.09(1) violated that regulation because Defendants have no record of any training of those agents to disclose their compensation for the sale of SDI, as required by 211 CMR 146.09(5).³⁷⁷

392. Defendants acknowledge that the Chesapeake SDI training prior to April 2018 did not cover certain of the specific Massachusetts requirements for marketing that insurance, such as the agent disclosing compensation information.³⁷⁸

393. Chesapeake's inclusion of the names of Chesapeake-Insphere Agents on lists

³⁷⁵ Ex. 5 (A.R. II Tr.) at 159.

³⁷⁶ *Id.* at 156-60.

³⁷⁷ *Id.* at 159-61, 164-66.

³⁷⁸ Ex. 2 (K.G. II Tr.) at 195-201.

submitted to the DOI pursuant to 211 CMR 146.09(1) based on a July 2011 training (and all training prior to April 2018) also violated that regulation because Defendants have no record or recollection of any training that agents were required to use Chesapeake's name rather than a trade name, such as "Surebridge" in marketing materials related to Chesapeake supplemental health insurance marketed in Massachusetts, as required by 211 CMR 40.04(1), which is specifically applied to SDI through 211 CMR 146.09(2) and echoed in substance by 211 CMR 146.09(3).³⁷⁹

5. Defendants Used Other Deceptive Practices in Marketing and Selling Chesapeake's Hospital Confinement Insurance and Accident Only Health Insurance.

394. Defendants, including through Chesapeake-Insphere Agents and Chesapeake-SFG Agents, have committed other deceptive acts and practices relating to Chesapeake's hospital confinement and accident only health insurance.³⁸⁰

395. Chesapeake-Insphere Agents have described Chesapeake's hospital confinement insurance as paying for "any hospitalization" or "any out-of-pocket expenses associated with . . . hospitalization." In fact, the insurance paid only a lump sum per day when the patient is confined in the hospital and excluded certain conditions, including normal pregnancies and mental or nervous disorders.³⁸¹

396. Chesapeake-Insphere Agents and Chesapeake-SFG Agents have represented that Chesapeake's accident only health insurance covers emergency room visits, without specifying

³⁷⁹ Ex. 5 (A.R. II Tr.) at 161-65, 167.

³⁸⁰ See *infra* this Section.

³⁸¹ Ex. 22 (S.J. TR.) at 112-15; Ex. 36 (M.T. Tr.) at 152-54; Ex. 144 at 1, 5, 9-10.

that it paid in connection with such visits only if they were due to accidents but not illness.³⁸²

397. An advertisement on the “HealthMarkets” YouTube page from 2015 into 2020 promoted Chesapeake’s accident only health insurance, without disclosing that the policy does not cover illness.³⁸³

398. All this deceptive conduct violated the Judgment’s permanent injunction prohibiting HealthMarkets and its subsidiaries, such as Chesapeake and Insphere, from using any advertisement in Massachusetts that it knows or should know is false or deceptive.³⁸⁴

6. Defendants Used Other Deceptive Practices in Marketing and Selling Chesapeake’s Disability Insurance.

399. Defendants, including through Chesapeake-Insphere and Chesapeake-SFG Agents, have committed other unfair and deceptive acts and practices in selling Chesapeake’s disability insurance to Massachusetts residents.³⁸⁵

400. Chesapeake-Insphere Agents sold Chesapeake disability insurance to Massachusetts residents who had no income, even though those consumers would receive no payout from that insurance if they still had no income when they became disabled. Because that insurance required the insured to be working in order to be able to qualify for benefits, it was of no benefit to those Massachusetts residents when sold to them.³⁸⁶

401. When he sold Chesapeake disability insurance with major medical insurance, Mr.

³⁸² Ex. 18 (A.G. Tr.) at 110-14; Ex. 25 (M.M. Tr.) at 116-17; Ex. 30 (N.P. Tr.) at 109; Ex. 32 (A.S. Tr.) at 191-93; Ex. 38 (D.W. Tr.) at 182-183.

³⁸³ Ex. 2 (K.G. II Tr.) at 180-84; Ex. 5 (A.R. II Tr.) at 187-88; Ex. 123; Ex. 147.

³⁸⁴ See Ex. A/Ex. 45 at 6 (¶ 2(i)); Ex. 9 (T.R. III Tr.) at 112, 114.

³⁸⁵ See *infra* this Section.

³⁸⁶ Ex. 2 (K.G. II Tr.) at 180-81; Ex. 23 (S.L. Tr.) at 176-78; Ex. 35 (V.S. Tr.) at 219-20; Ex. 148 at 5, 7; Ex. 149 at 5, 8.

Marden, a Chesapeake-SFG Agent, routinely said that if the insured were disabled “the plan pays for itself.”³⁸⁷

402. This was likely to deceive consumers into believing that the major medical insurance and separate disability insurance were all part of one plan.

403. All this deceptive conduct violated the Judgment’s permanent injunction prohibiting HealthMarkets and its subsidiaries, such as Chesapeake and Insphere, from using any advertisement in Massachusetts that it knows or should know is false or deceptive.³⁸⁸

7. Defendants Deceptively Marketed and Sold Supplemental Health Insurance to Low-Income Consumers Eligible for MassHealth or Health Insurance Subsidized through the Connector.

404. Defendants committed deceptive acts and practices in marketing Chesapeake’s supplemental health insurance to Massachusetts residents eligible for subsidized major medical insurance, targeting and preying upon lower income Massachusetts consumers.³⁸⁹

405. Defendants, including through Chesapeake-Insphere and Chesapeake-SFG Agents, have quoted to Massachusetts residents a premium that was for MassHealth and Chesapeake supplemental health insurance without disclosing that MassHealth was, in fact, free and that the premium was for Chesapeake supplemental health insurance.³⁹⁰

406. SFG trained its agents to hide consumers’ eligibility for MassHealth.³⁹¹

407. Chesapeake-Insphere Agents disparaged MassHealth and major medical health insurance subsidized through the Connector to sell Massachusetts residents Chesapeake

³⁸⁷ Ex. 25 (M.M. Tr.) at 76-77; Ex. 30 (N.P. Tr.) at 110-11; Ex. 39 (M.W. Tr.) at 38-39.

³⁸⁸ See Ex. A/Ex. 45 at 6 (¶ 2(i)); Ex. 9 (T.R. III Tr.) at 112, 114.

³⁸⁹ See *infra* this Section.

³⁹⁰ Ex. 25 (M.M. Tr.) at 28-30; Ex. 29 (J.P. Tr.) at 126; Ex. 32 (A.S. Tr.) at 169-72.

³⁹¹ Ex. 25 (M.M. Tr.) at 46-49, 57-58; Ex. 39 (M.W. Tr.) at 135-36.

supplemental health insurance or dissuade them from cancelling it.³⁹²

408. In 2014 national trainings for managers and agents, including in Massachusetts, Insphere told them that for selling supplemental health insurance, “the sweet spot” was “the poor” and individuals eligible for Medicaid and that “[n]o one is too poor or too sick.”³⁹³

409. Also, in 2014, Insphere trained its agents nationally that selling supplemental health insurance and life insurance would allow the agent to “leverage the lower income consumer for profitability.”³⁹⁴

410. Under the ACA, low-income consumers are eligible to have their monthly premiums for ACA-compliant health insurance subsidized based on their income.³⁹⁵

411. Insphere trained Chesapeake-Insphere Agents nationwide, including in Massachusetts, to ask consumers how much they were willing to spend each month on health insurance before disclosing the subsidy for which the consumer was eligible for ACA-compliant health insurance. Insphere did this, because if the agents disclosed at first the amount of the subsidy that the consumers were eligible, the consumers would likely give a lower monthly budget, leaving less or no money for supplemental health insurance.³⁹⁶

412. Insphere hid from the consumers the subsidized monthly premium of major medical insurance in this way “strictly because people don’t like spending money on things they

³⁹² Ex. 14 (Ro.C. Tr.) at 203-06; Ex. 22 (S.J. TR.) at 212-17, 226-30, 237-38; Ex. 38 (D.W. Tr.) at 140-42, 148-53, 222-24; Ex. 40 (Ri.W. Tr.) at 200-01, 213-14.

³⁹³ Ex. 1 (K.G. Tr.) at 163; Ex. 4 (A.R. Tr.) at 155; Ex. 5 (A.R. II Tr.) at 108-09; Ex. 37 (Ro.W. Tr.) at 124-25, 134-35, 146; Ex. 62 at PowerPoint at 22-25; Ex. 63 at PowerPoint at 22-25; Ex. 118 at 2, ¶ 8.a; Ex. 119 at 5 ¶¶ 1, 15-16.

³⁹⁴ Ex. 5 (A.R. II Tr.) at 119-21; Ex. 119 at 1, ¶ 4.

³⁹⁵ 26 U.S.C. § 36B; 42 U.S.C. § 18082.

³⁹⁶ Ex. 5 (A.R. II Tr.) at 221-24; Ex. 37 (Ro.W. Tr.) at 182-85; Ex. 124 at 1, ¶¶ 1-3.

can't use. They would rather pay for Starbucks. They would rather go to the movies than have the important coverages that are ready[/recommended] for them. So we are helping them make decisions that are in their best interest.”³⁹⁷

413. Insphere trained its agents nationwide, including in Massachusetts, that when they asked Medicaid-eligible consumers their budget, the consumers would “not know[] yet that they are Medicaid-eligible, hopefully if” the agent did the sales process “right.”³⁹⁸

414. Insphere trained its agents nationwide, including in Massachusetts, that if agents first told consumers that they were eligible for Medicaid (and therefore no-cost major medical insurance), the consumer would likely not give the agents “\$50 to spend” as a budget.³⁹⁹

415. In some instances, Insphere, in a training series supported by Defendants, trained its agents not to tell consumers the amount of their subsidy for major medical health insurance at all, with an Insphere employee stating the following about one part of one of those trainings:

The golden nugget that I got was the last piece where you said you do [*sic*], you don't even mention what the subsidy is. . . . what I learned from this call is, is that you take that budget and you get the package without even telling them what the subsidy is. Naturally, you're going to sell more.⁴⁰⁰

416. In May 2015, Insphere officials prepared a draft communication to agents that stated:

Medicaid eligible individuals should not be purchasing supplemental products. Such purchases are problematic because those customers are required to pass any benefits received back to the Medicaid program. As a result, it does not make sense for these

³⁹⁷ Ex. 37 (Ro.W. Tr.) at 185-86 and errata.

³⁹⁸ Ex. 5 (A.R. II Tr.) at 111-13, 168-69; Ex. 119 at 1, 6-7, ¶¶ 1-2, 19.

³⁹⁹ Ex. 5 (A.R. II Tr.) at 142, 146, 168-69; Ex. 120 at 1, 3, ¶¶ 1, 7.

⁴⁰⁰ Ex. 5 (A.R. II Tr.) at 19-20, 108-09; Ex. 115 at 1, 3, 10-12, ¶¶ 1b, 1.c.ix.c., 1.d.1; Ex. 119 at 1, 5-6, ¶¶ 1-2, 17.a-b; Ex. 155 at 2, ¶ 3.

customers to be paying premium for benefits that they may not lawfully retain.⁴⁰¹

417. As the draft communication noted, under federal Medicaid rules, State Medicaid agencies require Medicaid beneficiaries to assign to the State Medicaid agencies, such as MassHealth, the beneficiaries' rights to payments for medical care from any third party.⁴⁰²

418. The draft would have directed sales agents to "Immediately cease selling supplemental products to Medicaid-eligible customers."⁴⁰³

419. Defendants acknowledge that they probably could have directed their "urgent[] request[]" of their agents to "[i]mmediately cease affirmatively marketing supplemental products to Medicaid-eligible customers, although if they ask to apply, you must allow them to apply."⁴⁰⁴

420. The notice was not sent as it had been drafted. The communication that Insphere actually sent to its entire sales force instead stated, "Medicaid eligible individuals may purchase private supplemental insurance as long as they meet the payment and underwriting requirements of the applicable insurance company," even though the communication acknowledges "it may not make sense for these customers to be paying premium for benefits that they may not be able to personally retain."⁴⁰⁵

421. Chesapeake did not require its appointed agents to disclose to MassHealth-eligible consumers in Massachusetts the potential for amounts paid to them under Chesapeake supplemental health insurance, such as SDI, to be recouped if it were paid to those consumers

⁴⁰¹ Ex. 5 (A.R. II Tr.) at 155-57; Ex. 65.

⁴⁰² 42 CFR §433.145(a)(1); 130 CMR 503.004(A).

⁴⁰³ Ex. 5 (A.R. II Tr.) at 155-57; Ex. 65.

⁴⁰⁴ Ex. 9 (T.R. III Tr.) at 31-32.

⁴⁰⁵ Ex. 37 (Ro.W. Tr.) at 153-54, 166-68; Ex. 64.

relating to a diagnosis for which MassHealth paid for services.⁴⁰⁶

422. Information about Medicaid programs being able to recoup payments under supplemental health insurance was not added to training.⁴⁰⁷

423. At least one Chesapeake-Insphere Agent who sold Chesapeake supplemental health insurance to consumers who were MassHealth eligible did not know the possibility of recoupment by the Commonwealth and at least one other did not convey that possibility to any such consumers.⁴⁰⁸

424. In June 2015, Mr. Fasola asked, with respect to the May 2015 communication relating to Medicaid-eligible individuals, if there were “[a]ny way to know how much exposure we have here,” and was told that:

We don’t capture income on Surebridge apps so we don’t really know exposure. The fact that benefits may be due to state government completely depends on state pursuing the money. We do not report to state if benefits are paid (no regulatory requirement to do so) so I’m not sure what the risk really is to the member.

to which he responded “[t]hanks that is helpful.”⁴⁰⁹

425. In August 2015, Mr. Fasola told Insphere-contracted and Chesapeake-appointed agents nationwide, including in Massachusetts:

These largely lower income policyholders did not respond as enthusiastically to our supplemental product offerings. It has been argued that most just simply can't afford the additional coverage. As we study this however a different theory is emerging. Many of our agents have taken to selling over the phone, abandoning a key source of differentiation many believe is the key to high cross sell rates and a more informed consumer. One could argue that these same individuals are the exact consumers who need

⁴⁰⁶ Ex. 9 (T.R. III Tr.) at 23-27.

⁴⁰⁷ Ex. 5 (A.R. II Tr.) at 116-17.

⁴⁰⁸ Ex. 23 (S.L. Tr.) at 164-65; Ex. 35 (V.S. Tr.) at 55, 229-31.

⁴⁰⁹ Ex. 9 (T.R. III Tr.) at 32-34; Ex. 111.

the financial protection our supplemental products provide.⁴¹⁰

426. A November 2015 Insphere training continued to emphasize, in a presentation slide referencing “Supps,” that “[n]o one is too poor or too sick.”⁴¹¹

427. In a November 2015 training in the Insphere Norwood Office led by Ms. Wertenteil, a Chesapeake-Insphere Agent described selling Chesapeake supplemental health insurance to Massachusetts residents who paid \$0 in health insurance premium because they cannot afford to pay more. The agent said some consumers with highly subsidized health insurance were some of his biggest money-making clients, that “they all need to be on something” and that telling experiences of how the products have affected other consumers was how he would “upsell the product.”⁴¹²

428. As trained by SFG, Chesapeake-SFG Agents disparaged MassHealth and subsidized major medical health insurance from the Connector when marketing Chesapeake supplemental health insurance to Massachusetts residents.⁴¹³

429. All this deceptive conduct violated the Judgment’s permanent injunction prohibiting HealthMarkets and its subsidiaries, such as Chesapeake and Insphere, from using any advertisement in Massachusetts that it knows or should know is false or deceptive.⁴¹⁴

430. Insphere, through Mr. Castagnozzi and Mr. Lynch, encouraged its agents to

⁴¹⁰ Ex. 9 (T.R. III Tr.) at 34-36.

⁴¹¹ Ex. 4 (A.R. Tr.) at 158; Ex. 15 (Ri.C. Tr.) at 225-28, 234; Ex. 37 (Ro.W. Tr.) at 194; Ex. 70 at PowerPoint at 70. *Compare* Ex. 63 at PowerPoint at 23.

⁴¹² Ex. 15 (Ri.C. Tr.) at 231-34, 238-44.

⁴¹³ Ex. 18 (A.G. Tr.) at 279; Ex. 25 (M.M. Tr.) at 81-82; Ex. 39 (M.W. Tr.) at 36, 91-96, 101; Ex. 84.

⁴¹⁴ *See* Ex. A/Ex. 45 at 6 (¶ 2(i)); Ex. 9 (T.R. III Tr.) at 112, 114.

become broker enrollment assisters with the Connector (“BEAs”).⁴¹⁵

431. Chesapeake-Insphere agents signed agreements with the Connector as part of their becoming BEAs (“BEA Contract”).⁴¹⁶

432. Chesapeake-Insphere Agents and all Chesapeake-SFG Agents became BEAs.⁴¹⁷

433. Chesapeake-Insphere and Chesapeake-SFG Agents sold to Massachusetts residents major medical health insurance subsidized through the Connector without using disclosure forms required by their BEA Contract.⁴¹⁸

434. Mr. Simpson directed Chesapeake-SFG Agents that they no longer needed to use the Connector’s disclosure form.⁴¹⁹

435. Chesapeake-Insphere and Chesapeake-SFG Agents have assisted Massachusetts residents with enrolling in MassHealth. This violated their contracts with the Connector.⁴²⁰

F. Defendants Deceptively and Contemptuously Marketed and Sold Short-Term Health Insurance.

436. Defendants unlawfully and deceptively sold Massachusetts residents short-term major medical health insurance issued by Unified Life Insurance Company (the “Unified Plan”). Consumers, including in Massachusetts, who were required to obtain membership in an

⁴¹⁵ Ex. 15 (Ri.C. Tr.) at 133; Ex. 22 (S.J. Tr.) at 219-20; Ex. 24 (B.L. Tr.) at 19-20, 33-34, 196; Ex. 38 (D.W. Tr.) at 117-21; Ex. 41; Ex. 43.

⁴¹⁶ Ex. 16 (L.C. Tr.) at 87-88; Ex. 24 (B.L. Tr.) at 197-98; Ex. 38 (D.W. Tr.) at 116-21; Ex. 40 (Ri.W. Tr.) at 195-98; Exs. 41-43; Ex. 171; Ex. 207.

⁴¹⁷ Ex. 18 (A.G. Tr.) at 56; Ex. 21 (R.H. Tr.) at 48; Ex. 25 (M.M. Tr.) at 108; Ex. 33 (L.S. Tr.) at 176-77; Ex. 38 (D.W. Tr.) at 116-17; Ex. 40 (Ri.W. Tr.) at 196.

⁴¹⁸ Ex. 24 (B.L. Tr.) at 197-99, 201-04; Ex. 25 (M.M. Tr.) at 112-14; Ex. 30 (N.P. Tr.) at 62, 130; Ex. 31 (N.R. Tr.) at 64-67; Ex. 33 (L.S. Tr.) at 209-10; Ex. 40 (Ri.W. Tr.) at 210-11; Ex. 47; Ex. 78; Ex. 95; Ex. 207; Ex. 214.

⁴¹⁹ Ex. 29 (J.P. Tr.) at 169-70.

⁴²⁰ Ex. 30 (N.P. Tr.) at 68-69, 126; Ex. 33 (L.S. Tr.) at 176; Ex. 36 (M.T. Tr.) at 156-57, 162-63; Ex. 38 (D.W. Tr.) at 120, 154-55; Ex. 39 (M.W. Tr.) at 27; Ex. 42; Ex. 213; Ex. 226.

association, the National Congress of Employers (“NCE”), to purchase the Unified Plan.⁴²¹

437. Chesapeake-Insphere Agents sold the Unified Plan to Massachusetts residents more than 250 times.⁴²²

438. These sales violated the Judgment’s permanent injunction against HealthMarkets and its subsidiaries, including Insphere and Chesapeake, from requiring association group membership in connection with the marketing and sale of any Health Benefit Plan under G.L. c. 176J for individuals unless the association operates as an “intermediary” in accordance with G.L. c. 176J. The Unified Plan was a Health Benefit Plan under G.L. c. 176J. The NCE was not an “intermediary” in accordance with G.L. c. 176J.⁴²³

439. The HealthMarkets Entities, thus, violated the Judgment’s permanent injunction in this way more than 250 times.

440. Short-term, limited duration health insurance (currently, that which expires in under 12 months, if not renewed) is not subject to federal requirements generally applicable to otherwise identical health insurance offered to individuals.⁴²⁴ However, short-term limited duration health insurance is not similarly exempt from Massachusetts law.⁴²⁵

⁴²¹ Ex. 7 (T.R. Tr.) at 162-67; Ex. 21 (R.H. Tr.) at 206-07; Ex. 34 (C.S. Tr.) at 160; Ex. 194; Ex. 217.

⁴²² Ex. 7 (T.R. Tr.) at 162-67; Ex. 101.

⁴²³ Ex. A/Ex. 45 at 5 (¶ 2(c)); Ex. 9 (T.R. III Tr.) at 112, 114; Ex. 34 (C.S. Tr.) at 160; Ex. 217; Ex. 256. 211 CMR 66.12(3).

⁴²⁴ 42 U.S.C. § 300gg-91 (definition of “individual health insurance coverage” . . . does not include short-term limited duration insurance”); 42 CFR § 144.103 (definition of “short-term limited duration insurance”). *See, e.g.*, 42 U.S.C. § 300gg-41 (guaranteed availability of individual health insurance coverage to certain individuals with prior group coverage).

⁴²⁵ *See* G.L. c. 176J § 1 (no exemption for short-term health insurance from definition of “Health benefit plan”).

441. Accordingly, as a Health Benefit Plan under G.L. c. 176J, the Unified Plan needed to be filed with the Commissioner of Insurance and was subject to his approval.⁴²⁶

442. It was neither filed nor approved.⁴²⁷

443. Its sale in Massachusetts was, thus, unauthorized and unlawful.

444. In addition, Insphere and Chesapeake, including through Chesapeake-Insphere agents, marketed the Unified Plan to Massachusetts residents as covering “any doctor.” They did so without disclosing all material exceptions, reductions and limitations on coverage for doctor services in that insurance. Among other things, the Unified Plan excluded coverage for behavioral health services (and, thus, effectively, all psychiatrists).⁴²⁸

445. This misconduct violated the Judgment’s permanent injunction against HealthMarkets and its subsidiaries, including Insphere and Chesapeake, using any advertisement in Massachusetts that contains the representations “any doctor” or equivalent language, unless such advertisements clearly and conspicuously, and in close proximity to the representation, disclose any exceptions, restrictions and/or limitations that apply.⁴²⁹

446. Insphere and Chesapeake committed these contemptuous acts habitually.⁴³⁰

447. Chesapeake-Insphere Agents in Massachusetts were trained to market this insurance as covering “any doctor” without being trained that it excluded mental health

⁴²⁶ G.L. c 176J, § 6; 211 CMR 66.01, 66.08 and 66.12(1).

⁴²⁷ Ex. 257.

⁴²⁸ Ex. 14 (Ro.C. Tr.) at 217-21; Ex. 36 (M.T. Tr.) at 172, 176-79.

⁴²⁹ Ex. A/Ex. 45 at 6 (¶ 2(h)); Ex. 9 (T.R. III Tr.) at 112, 114.

⁴³⁰ Ex. 21 (R.H. Tr.) at 136-37, 139; Ex. 38 (D.W. Tr.) at 41-42, 200-01; Ex. 40 (Ri.W. Tr.) at 220, 222; Ex. 190.

services.⁴³¹

448. One or more Massachusetts consumers were injured by the HealthMarkets Entities' unfair and deceptive advertising and marketing that the Unified Plan provided coverage for any doctor.⁴³²

449. At least one Chesapeake-Insphere Agent advertised Unified's medical insurance to Massachusetts residents as having prescriptions "covered," when the Unified Plan did not provide consumers insured prescription benefits.⁴³³

450. This misconduct violated the Judgment's permanent injunction against HealthMarkets and its subsidiaries, including Chesapeake and Insphere, using any advertisement in Massachusetts that it knows or should know is false or deceptive, including, but not limited to, any representation offering prescription drug coverage, except where the product being offered provides insured prescription benefits.⁴³⁴

451. At least one Chesapeake-Insphere Agent routinely represented the Unified Plan to Massachusetts residents as having Agile Copay Rx that was described as being "underwritten" with a "disclaimer" referencing an "Outpatient Prescription Drug Plan." Insphere did not disclose that this plan did not insure consumers.⁴³⁵

452. At least one Chesapeake-Insphere Agent represented to Massachusetts residents

⁴³¹ Ex. 21 (R.H. Tr.) at 106-07; Ex. 36 (M.T. Tr.) at 171, 178-79; Ex. 38 (D.W. Tr.) at 41; Ex. 40 (Ri.W. Tr.) at 220.

⁴³² Ex. 36 (M.T. Tr.) at 179.

⁴³³ Ex. 36 (M.T. Tr.) at 183-85.

⁴³⁴ Ex. A/Ex. 45 at 6 (¶ 2(i)); Ex. 9 (T.R. III Tr.) at 112, 114.

⁴³⁵ Ex. 38 (D.W. Tr.) at 201-02; Ex. 40 (Ri.W. Tr.) at 217-20; Ex. 241.

that the Unified Plan was approved by the DOI or the State of Massachusetts.⁴³⁶

453. Insphere told its Massachusetts manager Mr. Castagnozzi, who then told Insphere agents in Massachusetts, that the Unified Plan had been approved by the Commonwealth of Massachusetts.⁴³⁷

454. Insphere software created marketing materials, and Chesapeake-Insphere Agents marketed the Unified Plan in Massachusetts using those marketing materials, that did not have Unified Life Insurance Company's name in them.⁴³⁸

455. Chesapeake-Insphere Agents described the Unified Plan (a) to a Massachusetts resident as having "[e]ach member covered up to \$1 million per year," and (b) as a "\$1 million annual policy" in an email to a consumer that referenced a Massachusetts free look period. In fact, the Unified Plan had an annual limit of \$1 million per year, unlike health insurance that was then compliant with the ACA and Massachusetts requirements, which did not allow annual benefit limit.⁴³⁹

456. Since prior to 2011, 211 CMR 40.07(1)(e) has provided:

It shall be considered misleading, and therefore prohibited, for a marketing method to present descriptions of a policy limitation, exception, or reduction, worded in a positive manner to imply that it is a benefit Words and phrases used in a marketing method to describe such policy limitations, exceptions and reductions shall fairly and accurately describe the negative features of such limitations, exceptions and reductions of the policy offered.

457. The descriptions of the Unified Life's \$1 million policy limit as a benefit violated

⁴³⁶ Ex. 14 (Ro.C. Tr.) at 223-24; Ex. 36 (M.T. Tr.) at 176.

⁴³⁷ Ex. 15 (Ri.C. Tr.) at 179-80; Ex. 38 (D.W. Tr.) at 38, 40; Ex. 40 (Ri.W. Tr.) at 221.

⁴³⁸ Ex. 8 (T.R. II Tr.) at 79-80; Ex. 38 (D.W. Tr.) at 201-02; Ex. 40 (Ri.W. Tr.) at 224-25; Ex. 230; Ex. 242.

⁴³⁹ Ex. 14 (Ro.C. Tr.) at 217-20; Ex. 21 (R.H. Tr.) at 204-05; Ex. 34 (C.S. Tr.) at 160; Ex. 217 at CSMITH053225. See 42 U.S.C. § 300gg-11(a)(1)(B); 956 CMR 5.03(1)(c).

211 CMR 40.07(1)(e).

G. Defendants Deceptively and Contemptuously Marketed and Sold Discount Health Plans.

458. Defendants, including through Chesapeake-Insphere Agents, marketed and sold discount health plans to Massachusetts residents, deceptively using insurance-related terms about such non-insurance plans and making incomplete, unfair and deceptive comparisons between discount plans and insurance.⁴⁴⁰

459. Discount health plans are arrangements that provide members discounts on health care services but are not insurance and do not reimburse providers for any health care services.⁴⁴¹

460. Chesapeake-Insphere Agents described discount health plans to Massachusetts residents as “coverage,” as having “covered” prescriptions, as having “co-pays,” as having a “carrier,” and as involving a “policy.”⁴⁴²

461. Insphere and Chesapeake-Insphere Agents described amounts to be paid for a discount health plan as “premium.”⁴⁴³

462. All this deceptive conduct violated the Judgment’s permanent injunction prohibiting HealthMarkets and its subsidiaries, including Insphere, from using any advertisement in Massachusetts that it knows or should know is false or deceptive.⁴⁴⁴

463. It also violated 940 CMR 26.05.

⁴⁴⁰ See *infra* this Section.

⁴⁴¹ 940 CMR 26.03; 26.04(1)(a) and (c).

⁴⁴² Ex. 14 (Ro.C. Tr.) at 196-98; Ex. 22 (S.J. Tr.) at 82-83; Ex. 23 (S.L. Tr.) at 186-89; Ex. 32 (A.S. Tr.) at 144, 226, 231; Ex. 36 (M.T. Tr.) at 179-80.

⁴⁴³ Ex. 8 (T.R. II Tr.) at 80-81; Ex. 14 (Ro.C. Tr.) at 170-74; Ex. 24 (B.L. Tr.) at 175-81; Ex. 38 (D.W. Tr.) at 196-99, 201-02; Ex. 40 (Ri.W. Tr.) at 225-27; Ex. 205; Ex. 230; Ex. 243.

⁴⁴⁴ See Ex. A/Ex. 45 at 6 (¶ 2(i)); Ex. 9 (T.R. III Tr.) at 112, 114.

464. Since prior to 2011, 940 CMR 26.05 has provided in part:

It is an unfair and deceptive act in violation of M.G.L. c. 93A, §2(a) for a Discount Health Plan or Discount Health Plan Organization to

(2) use or cause to be used in advertisements, marketing material, brochures and discount health plan cards, the following terms: “health plan” without the term “discount” used before the words “health plan,” “coverage,” “copay,” “copayments,” “deductible,” “preexisting conditions,” “guaranteed issue,” “premium,” “PPO,” “preferred provider organization,” “open enrollment” or other terms in a manner that has the capacity to mislead a person into believing that the plan is a type of health insurance.

465. In marketing discount dental plans to Massachusetts residents, at least one Chesapeake-Insphere agent routinely compared discount dental plans to dental insurance deceptively, unfairly and incompletely. He described the discount dental plan as having no maximum and/or having no restrictions while describing dental insurance as having a plan maximum. The agent understood that dental insurance also gave insureds’ access to lower contracted rates with dentists.⁴⁴⁵

466. Another Chesapeake-Insphere Agent described discount health plans as “a rate and fee plan with none of the negatives associated with dental insurance” to at least one Massachusetts resident.⁴⁴⁶

467. This deceptive conduct violated the Judgment’s permanent injunction prohibiting HealthMarkets and its subsidiaries, including Insphere, from using in Massachusetts any advertisements or proposed agent scripts that make comparisons that it knows or should know are false, incomplete or unfair and from using any advertisement in Massachusetts that it knows or should know is false or deceptive.⁴⁴⁷

⁴⁴⁵ Ex. 40 (Ri.W. Tr.) at 129-32, 143-51, 153-57, 228-29; Exs. 235-37.

⁴⁴⁶ Ex. 32 (A.S. Tr.) at 264-65.

⁴⁴⁷ See Ex. A/Ex. 45 at 6 (¶ 2(i)-(j)); Ex. 9 (T.R. III Tr.) at 112, 114.

468. In marketing discount dental plans to Massachusetts residents, Chesapeake-Insphere Agents presented Massachusetts residents with documents that referenced discount health plans without disclosing that those plans were not insurance.⁴⁴⁸

469. This deceptive conduct violated the Judgment’s permanent injunction prohibiting HealthMarkets and its subsidiaries, such as Insphere, from using any advertisement in Massachusetts that it knows or should know is false or deceptive.⁴⁴⁹

470. It also violated 940 CMR 26.04.

471. Since prior to 2011, 940 CMR 26.04 has provided in part:

It is an unfair or deceptive act in violation of M.G.L. c. 93A, §2(a) for a Discount Health Plan or Discount Health Plan Organization to fail to disclose at the time of initial contact to a prospective member and in all advertisements, brochures or marketing material, the following material information: (a) that the plan is not insurance coverage and does not meet the minimum creditable coverage requirements under M.G.L. c. 111M and 956 CMR 5.00

H. Defendants Deceptively and Contemptuously Marketed and Sold Health Care Sharing Ministry Programs.

472. Defendants, including through Chesapeake-Insphere Agents, marketed and sold health care sharing ministry programs (“HCSMs”) to Massachusetts residents, through deceptive acts and practices, including using insurance-related terms to describe aspects of such non-insurance plans that do not guarantee payment.⁴⁵⁰

473. HCSMs are not insurance. Instead, they are a faith-based arrangement among a group of individuals to pool financial resources that *may* be shared with others in the group if and when someone incurs medical bills. Members of HCSMs make regular contributions to the

⁴⁴⁸ Ex. 14 (Ro.C. Tr.) at 170-73; Ex. 40 (Ri.W. Tr.) at 129-31; Ex. 167; Ex. 235.

⁴⁴⁹ See Ex. A/Ex. 45 at 6 (¶ 2(i)); Ex. 9 (T.R. III Tr.) at 112, 114.

⁴⁵⁰ See *infra* this Section.

organizer and can make requests for their bills to be shared with others to pay for needed health care expenses, but there is no right or guarantee that any particular request for sharing will be paid.⁴⁵¹

474. Insphere, in an advertisement available on the Internet and on television as recently as 2019, stated, “[t]hey even have new alternative options most don’t even know about that can save you thousands.” The text “New Options Include” followed by several items including references to health sharing plans and then the text “Save You \$1,000s” appeared on the screen without disclosing that HCSMs (referenced as health sharing plans) are not insurance.⁴⁵²

475. Chesapeake-Insphere Agents referred to an HCSM as “insurance” to Massachusetts residents on multiple occasions.⁴⁵³

476. Insphere’s software created quotes for HCSMs that referred to “premium” due for the plans.⁴⁵⁴

477. This deceptive conduct violated the Judgment’s permanent injunction prohibiting HealthMarkets and its subsidiaries, such as Insphere, from using in Massachusetts any advertisements or proposed agent scripts that make comparisons that it knows or should know are false, incomplete or unfair and from using any advertisement in Massachusetts that it knows

⁴⁵¹ Ex. 34 (C.S. Tr.) at 54; Ex. 36 (M.T. Tr.) at 185-87.

⁴⁵² Ex. 7 (T.R. Tr.) at 126-31, 137-38, 144-47; Ex. 9 (T.R. III Tr.) at 60-61; Ex. 10 (T.R. IV Tr.) at 52-53, 56-59; Ex. 98; Ex. 129 at 1, 11-14, 67;
<https://www.youtube.com/watch?v=pSDNwasESq4>.

⁴⁵³ Ex. 22 (S.J. TR.) at 69-74; Ex. 23 (S.L. Tr.) at 204-06.

⁴⁵⁴ Ex. 8 (T.R. II Tr.) at 74-76.

or should know is false or deceptive.⁴⁵⁵

I. Defendants Had a Sham Discipline Policy for Sales Agents Who Used Deceptive Sales Tactics.

1. Defendants Failed to Discipline Agents Who Used Deceptive Sales Tactics.

478. Defendants have failed to address consumer complaints appropriately.

479. They have, thus, ratified their agents' deceptive conduct, including through knowing acquiescence and retention of ill-gotten gains.

480. Defendants have had a disciplinary policy that is essentially a sham, allowing their agents to rack up complaint after complaint without any financial consequences, even when the complaints allege that the agents made misrepresentations.⁴⁵⁶

481. Defendants generally have treated consumer complaints and grievances from Massachusetts as occasions for, at most, coaching, retraining, monitoring or warning.⁴⁵⁷

482. Ms. Wertenteil (who was an Insphere Officer and Senior Vice President for Sales) was aware of an industry standard complaint ratio of 1%.⁴⁵⁸

483. Defendants have known there were Chesapeake-Insphere Agents operating in Massachusetts with complaint ratios well in excess of 1%.⁴⁵⁹

484. Insphere's disciplinary policy has imposed no monetary consequences upon its sales agents unless they are suspended or terminated. Even then, the agents have been allowed to

⁴⁵⁵ See Ex. A/Ex. 45 at 6 (¶ 2(i)-(j)); Ex. 9 (T.R. III Tr.) at 112, 114.

⁴⁵⁶ See *infra* this Section.

⁴⁵⁷ See *infra* this Section.

⁴⁵⁸ Ex. 37 (Ro.W. Tr.) at 14-15, 278.

⁴⁵⁹ *Id.* at 278-80.

collect ongoing commissions from prior sales unless the agent was terminated for cause.⁴⁶⁰

485. HealthMarkets last submitted its agent discipline policy to the DOI in 2009. That policy provided progressive discipline up to suspension for those who received a total of five unconfirmed complaints after having received a warning letter and agent development conference and/or retraining in response to a trend of three unconfirmed complaints. Agents whose additional complaints increased their total to seven unconfirmed complaints were to be terminated following due process.⁴⁶¹

486. Defendants updated their discipline policy in 2010. That Agent Disciplinary Policy, in effect until 2016, provided for discipline, among other things, based on a trend of unconfirmed complaints.⁴⁶² However, Defendants at least through 2014 did not define what would constitute such a trend, and Defendants are unaware of having identified such a trend as to any agent in Massachusetts through 2015.⁴⁶³

487. For example, by May 2015, Defendants knew that Chesapeake had received a total of thirteen consumer complaints relating to Chesapeake-SFG Agent Mr. Marden's sale of Chesapeake supplemental health insurance to Massachusetts residents. More than 65% of those complaints claimed that consumers were unaware Mr. Marden had sold them that coverage and/or they had not agreed to purchase that coverage. Mr. Marden did not respond to the complaints, as requested. Because Mr. Marden did not respond to the complaints, they should have been deemed confirmed under Defendants' own policy. Inexplicably, Defendants did not

⁴⁶⁰ Ex. 7 (T.R. Tr.) at 199-200; Ex. 37 (Ro.W. Tr.) at 283-84.

⁴⁶¹ Ex. 1 (K.G. Tr.) at 178, 183-86; Ex. 112 at 6.

⁴⁶² Ex. 2 (K.G. II Tr.) at 12, 15-16, 51-52; Ex. 135; Ex. 136 at 3.

⁴⁶³ Ex. 2 (K.G. II Tr.) at 49-58.

discipline Mr. Marden prior to April 2016.⁴⁶⁴

488. In 2013 and 2014, Chesapeake-Insphere Agents, including Mr. Simpson, admitted conduct that violated Massachusetts law and the Judgment, including by selling Chesapeake's SDI to Massachusetts residents as a substitute rather than a supplement to major medical health insurance. Defendants' Agent Disciplinary Policy at that time called for the termination of agents that violated state law, yet they did not discipline, let alone, terminate those agents for that conduct. The agents' termination would also have been called for under the discipline policy HealthMarkets had sent to the DOI in 2009.⁴⁶⁵

489. Defendants' agent discipline policy was thereafter weakened even further.⁴⁶⁶

490. This policy allowed Chesapeake-Insphere Agents to continue to accumulate consumer complaint after consumer complaint without any Defendant suspending, terminating or imposing discipline with a monetary cost to the agent.

491. For example, one Chesapeake-Insphere Agent accumulated nearly forty consumer complaints – including numerous complaints that consumers were unaware that the agent had sold them that coverage or that they had not agreed to purchase it—from 2011 through 2020. Still, no Defendant suspended him, terminated him or imposed any discipline with a monetary cost to him at least through January 8, 2020.⁴⁶⁷ Through 2018, Chesapeake received and had not refunded more than \$1 million in supplemental health insurance premiums from Massachusetts

⁴⁶⁴ Ex. 2 (K.G. II Tr.) at 47, 58-62; Ex. 137 at 1-3, ¶¶ 1-8.

⁴⁶⁵ Ex. A/Ex. 45 at 1, ¶ 1(a); Ex. 2 (K.G. II Tr.) at 93-95, 100-09, 132-34; Ex. 9 (T.R. III Tr.) at 191-92, 195-97; Ex. 10 (T.R. IV Tr.) at 10-12; Ex. 112 at 6; Ex. 136 at 4; Ex. 139 at 2, ¶ 6.

⁴⁶⁶ Ex. 1 (K.G. Tr.) at 187; Ex. 2 (K.G. II Tr.) at 124-26.

⁴⁶⁷ Ex. 2 (K.G. II Tr.) at 87, 119-26, 152; Ex. 138 at 1, 5, ¶¶ 1-4, 21, 24.

policyholders who purchased policies from this agent.⁴⁶⁸

492. From 2011 through January 9, 2020, no Defendant terminated an Insphere-contracted agent licensed in Massachusetts based on Massachusetts consumer complaints.⁴⁶⁹

493. The one time from 2011 into 2020 that Insphere did terminate a Massachusetts agent for cause, it was based upon suspicion that the agent had defrauded Insphere and Chesapeake, not consumers.⁴⁷⁰

2. Defendants Knew of Mr. Simpson's and Chesapeake-SFG Agents' Misconduct for Years.

494. Defendants were aware of deceptive conduct by Mr. Simpson and Chesapeake-SFG Agents in the sale of Chesapeake supplemental health insurance in Massachusetts for several years.⁴⁷¹

495. Chesapeake received its first consumer complaint about Mr. Simpson in July 2013, only four months after he became an Insphere agent.⁴⁷²

496. In response, Mr. Simpson admitted selling Chesapeake SDI to a Massachusetts consumer instead of major medical health insurance, which conduct Defendants knew was unlawful.⁴⁷³

497. Inexplicably, Defendants did not terminate Mr. Simpson for his illegal conduct, even though Defendants' disciplinary policy at the time called for the termination of agents that

⁴⁶⁸ Ex. 6 (K.R. Tr.) at 98-100; Ex. 74.

⁴⁶⁹ Ex. 2 (K.G. II Tr.) at 153.

⁴⁷⁰ Ex. 9 (T.R. III Tr.) at 180-81.

⁴⁷¹ See *infra* this Section.

⁴⁷² Ex. 1 (K.G. Tr.) at 197-98.

⁴⁷³ Ex. 2 (K.G. II Tr.) at 93-94, 134; Ex. 9 (T.R. III Tr.) at 191-92, 195-97; Ex. 10 (T.R. IV Tr.) at 10-12; Ex. 139 at 2, ¶ 6.

violated state law.⁴⁷⁴

498. Mr. Castagnozzi and Chesapeake-Insphere Sales Managers in the Insphere Norwood Office were aware of concerns about Mr. Simpson's sales practices in 2013.⁴⁷⁵

499. Before Chesapeake contracted with Simpson as to his entity, SFG, in 2014, it received other consumer complaints about Mr. Simpson from Massachusetts residents, that they did not know about the Chesapeake coverage he had sold them or that he was only supposed to have signed up the consumer for major medical health insurance.⁴⁷⁶

500. There is no evidence that Defendants considered that information before contracting with SFG but, in any event, Mr. Simpson's violation of state law would have been insufficient, in Defendants' view, to prevent Chesapeake from contracting with him to set up an agency where he would then be instructing others on how to sell Chesapeake's insurance.⁴⁷⁷

501. In January 2015, a Massachusetts consumer complained to Defendants that (a) Mr. Simpson had sold the consumer Chesapeake supplemental health insurance using a marketing material, which (i) did not have Chesapeake's name and (ii) provided a "Total Monthly Cost for major medical health insurance and Chesapeake supplemental health insurance and (b) "[it] was **never** presented to [the consumer] and never explained to [the consumer] that Chesapeake was a supplemental insurance to" the major medical insurance. The consumer made clear that "[h]ad it been explained to [the consumer] that Chesapeake was a supplemental

⁴⁷⁴ Ex. 2 (K.G. II Tr.) at 15-16, 94-96; Ex. 136 at 4.

⁴⁷⁵ Ex. 21 (R.H. Tr.) at 33-34.

⁴⁷⁶ Ex. 7 (T.R. Tr.) at 93-99; Ex. 8 (T.R. II Tr.) at 134-35; Ex. 9 (T.R. III Tr.) at 201-02; Ex. 103.

⁴⁷⁷ Ex. 9 (T.R. III Tr.) at 190-91; 197-99.

insurance, [the consumer] would have signed up only for” major medical insurance.⁴⁷⁸

502. Chesapeake did not refund the premiums, and Insphere did not refund its commissions, to this consumer. They also did not do so for others who complained about Mr. Simpson.⁴⁷⁹

503. Defendants did not investigate Mr. Simpson’s use of these marketing materials.⁴⁸⁰

504. While he was a Chesapeake-Insphere Agent, Chesapeake received twenty complaints on 363 applications for health insurance policies from Massachusetts residents for which he was the agent. Sixteen of those complainants claimed that they were unaware Mr. Simpson had sold them the Chesapeake supplemental health insurance policies and/or that they had not agreed to purchase them.⁴⁸¹

505. Defendants never disciplined Mr. Simpson in response to a consumer complaint against him. In January 2018, his appointment at Chesapeake was terminated without cause, which allowed him to continue to receive commission on his past sales.⁴⁸²

506. Through 2018, Chesapeake received and had not refunded \$864,949.75 in supplemental health insurance premiums from Massachusetts policyholders who purchased policies from Mr. Simpson. That was the tenth highest amongst Chesapeake-Insphere Agents and the sixteenth highest total overall relating to Massachusetts Chesapeake premiums.

507. Chesapeake-SFG agents accrued several hundred Massachusetts consumer

⁴⁷⁸ Ex. 2 (K.G. II Tr.) at 88; Ex. 90; Ex. 139 at 2-3, ¶ 8a, b, e.

⁴⁷⁹ Ex. 2 (K.G. II Tr.) at 92-93; Ex. 139 at 1, 3, ¶¶ 4, 9.

⁴⁸⁰ Ex. 2 (K.G. II Tr.) at 131.

⁴⁸¹ Ex. 2 (K.G. II Tr.) at 88-89; Ex. 139 at 1, ¶¶ 2-3, 5.

⁴⁸² Ex. 2 (K.G. II Tr.) at 132-33; Ex. 139 at 1, 3, ¶¶ 5, 8f.

complaints.⁴⁸³

508. In his first six months as a Chesapeake-SFG Agent, Chesapeake received five complaints against Mr. Marden from consumers who purchased Chesapeake supplemental health insurance policies but claimed they were unaware Mr. Marden had sold them that coverage and/or that they had not agreed to purchase that coverage (“Unaware of Coverage” complaints), even though he had sold only 163 policies.⁴⁸⁴

509. By May 2015, a HealthMarkets manager observed that Mr. Marden had only been with “us a fairly short amount of time” but had “already racked up 13 complaints.”⁴⁸⁵

510. Over 65% of those Massachusetts complaints relating to the sale of Chesapeake supplemental health insurance were Unaware of Coverage complaints.⁴⁸⁶

511. While the HealthMarkets manager suggested that “[w]e should probably reach out to Mr. Marden and nip this one in the bud,” Chesapeake did not take any disciplinary action towards Mr. Marden until April 2016 and then it was only coaching and retraining.⁴⁸⁷

512. By July 2015, Chesapeake knew that through June 2015 SFG’s first year persistency for Chesapeake policies was only 38.5% (where Chesapeake’s target was 70%) and SFG’s complaint rate was 1.4% (when the target was 1%); the persistency data was troubling to Chesapeake.⁴⁸⁸

513. By April 28, 2016, Defendants were aware that Chesapeake had received thirty-

⁴⁸³ See *infra* this Section.

⁴⁸⁴ Ex. 137 at 1-2, ¶¶ 1, 2a, 4a-5a.

⁴⁸⁵ Ex. 9 (T.R. III Tr.) at 200-01.

⁴⁸⁶ Ex. 137 at 2-3, ¶ 8b.

⁴⁸⁷ Ex. 9 (T.R. III Tr.) at 200-01.

⁴⁸⁸ Ex. 10 (T.R. IV Tr.) at 64.

seven Massachusetts consumer complaints against Mr. Marden relating to Chesapeake supplemental health insurance. Over 60% of the thirty-seven complaints were specifically that the consumer was unaware of or had not agreed to the purchase of the Chesapeake supplemental health insurance. Mr. Marden's complaint ratio (of complaints divided by applications for Chesapeake supplemental health insurance) was 3.7% for the period up to April 28, 2016.⁴⁸⁹

514. Defendants' only record of coaching or training for Mr. Marden is a training course in August 2016 that took him less than fourteen minutes to complete.⁴⁹⁰

515. By the time Chesapeake suspended Mr. Marden in October 2016, Chesapeake had received fifty-one Massachusetts consumer complaints against him relating to Chesapeake supplemental health insurance. Over 88% of those were Unaware of Coverage complaints and his complaint ratio was 4.52%, more than four times the industry standard known to Insphere.⁴⁹¹

516. Chesapeake did not terminate Mr. Marden's appointment until February 2017 and, like with Mr. Simpson, did so without cause, allowing it to continue to pay commissions to SFG based on his sales.⁴⁹²

517. After terminating Mr. Marden, Chesapeake did not investigate his conduct, even though it was still collecting premiums from consumers on the policies that he had sold.⁴⁹³

518. In the context of considering Chesapeake-SFG agent complaints, Chesapeake requested recorded sales calls from SFG multiple times, including in July and December 2016,

⁴⁸⁹ Ex. 2 (K.G. II Tr.) at 63; Ex. 137, at 4, ¶ 11a-d.

⁴⁹⁰ Ex. 2 (K.G. II Tr.) at 68-72, 152; Ex. 7 (T.R. Tr.) at 107-09; Ex. 137 at 4, ¶ 13.

⁴⁹¹ Ex. 2 (K.G. II Tr.) at 75; Ex. 37 (Ro.W. Tr.) at 278; Ex. 137 at 5, ¶¶ 14a, b, d, 15.

⁴⁹² Ex. 2 (K.G. II Tr.) at 73-74, 136; Ex. 137 at 5, ¶¶ 15, 16.

⁴⁹³ Ex. 2 (K.G. II Tr.) at 72-73, 77.

but SFG did not provide them. However, Chesapeake took no action against SFG in 2016.⁴⁹⁴

519. Mr. Smith, the Chesapeake-Insphere Sales Manager, wrote to Chesapeake's Vice President of Operations, Taryn Risucci in March 2017, raising concerns about SFG's sales of Chesapeake supplemental health insurance in Massachusetts, indicating that "There have been a number of disturbing accusations by clients over the last 12 months and they seem to be getting more frequent."⁴⁹⁵

520. Later in March 2017, Mr. Smith followed up with Ms. Risucci (and Ms. Wertenteil), raising concerns about an SFG agent selling Massachusetts residents but the residents being "completely unaware of the \$450 supplemental premiums as they were tricked into thinking it was a health insurance package." Mr. Smith noted, "This is happening all the time and is a big problem. As mentioned before, MA is very strict and too many complaints WILL result in us losing the products. If you would like I am sure I can get some more examples."⁴⁹⁶

521. Mr. Carlson, another Chesapeake-Insphere Sales Manager, added, "I also want to stress how often my team and I run into the mess this SFG is causing."⁴⁹⁷

522. The agents at SFG eventually racked up hundreds of consumer complaints, with two agents racking up over one hundred consumer complaints and multiple other agents racking up scores of consumer complaints. The vast majority of the complaints involved consumers who

⁴⁹⁴ Ex. 2 (K.G. II Tr.) at 82; Ex. 7 (T.R. Tr.) at 107-09, 114-15; Ex. 9 (T.R. III Tr.) at 70; Ex. 10 (T.R. IV Tr.) at 96, 99-100.

⁴⁹⁵ Ex. 34 (C.S. Tr.) at 195-200; Ex. 218.

⁴⁹⁶ Ex. 34 (C.S. Tr.) at 201-03; Ex. 56.

⁴⁹⁷ Ex. 34 (C.S. Tr.) at 203-04.

claimed that they were unaware that they had been sold Chesapeake supplemental health insurance, that they had not agreed to purchase the coverage and/or that they thought the coverage was part of their health coverage.⁴⁹⁸

523. Chesapeake finally suspended SFG in August 2017 and terminated SFG in January 2018; however, it did not terminate SFG for cause, which allowed SFG to continue to receive commissions on its past sales.⁴⁹⁹

524. In September 2017, Chesapeake promoted the executive who was responsible for the non-Insphere sales of Chesapeake, which included over \$6 million in annualized sales by SFG, making it the second biggest seller of that insurance for that year (outside of Insphere).⁵⁰⁰

525. Chesapeake has received 135 complaints from Massachusetts residents relating to sales of Chesapeake supplemental health insurance to them by Mr. Marden, and over 80% (114) of those complaints were Unaware of coverage complaints; the ratio of total Massachusetts consumer complaints to Chesapeake about his sale of its supplemental health insurance to the total Massachusetts Chesapeake supplemental health insurance application for which he was the agent (“Massachusetts Chesapeake Complaint Ratio”) was over 5%.⁵⁰¹

526. Chesapeake retained some or all the premiums paid by 58 of the 135 Massachusetts residents who complained about Mr. Marden’s sales of Chesapeake’s supplemental health insurance.⁵⁰²

⁴⁹⁸ Ex. 9 (T.R. III Tr.) at 199-200; Ex. 137 at 1, ¶ 2a, Ex. 141 at 2-4, ¶ 4a-b, 5a-b, 6a-b, 7a-b.

⁴⁹⁹ Ex. 2 (K.G. II Tr.) at 132; Ex. 8 (T.R. II Tr.) at 129-130, 132; Ex. 33 (L.S. Tr.) at 245-47; Ex. 96.

⁵⁰⁰ Ex. 8 (T.R. II Tr.) at 130-31, 159-60.

⁵⁰¹ Ex. 2 (K.G. II Tr.) at 47-48; Ex. 137 at 1, ¶ 2a.

⁵⁰² Ex. 2 (K.G. II Tr.) at 86; Ex. 137 at 6, ¶ 17a.

527. For example, Chesapeake retained the premium from a Massachusetts consumer who had been sold disability insurance by Mr. Marden while the consumer was unemployed and, therefore, ineligible for payment under the policy. This was the second complaint Chesapeake received from a Massachusetts resident indicating Mr. Marden had sold to them when they were not employed Chesapeake’s disability insurance that only paid insureds that were working.⁵⁰³

528. Through 2018, Chesapeake received and had not refunded more than \$3.2 million in supplemental health insurance premiums from Massachusetts policyholders who purchased policies from Mr. Marden, more than it collected from the sales of any other agent.⁵⁰⁴

529. Chesapeake received and had not refunded large amounts from Massachusetts sales by other Chesapeake-SFG Agents about whom it received large numbers of complaints, including from consumers claiming that they were unaware the agents had sold them that coverage, that they had not agreed to purchase that coverage and/or that they thought the supplemental coverage was part of their health coverage (“UOC/M” complaints):

Chesapeake-SFG Agent	Chesapeake unrefunded Massachusetts health premiums through 2018 (“prem.”)	Overall agent rank by prem.	Total Mass. consumer complaints (“cplts.”)	UOC/M cplts.	Overall complaint ratio (total complaints/applications)
Pate	\$2,536,456.92	2	126	96	>9%
Peterson	\$1,673,776.88	3	85	69	>9%
M. Williams	\$1,216,252.45	7	68	53	>8%
Roberts	\$1,075,155.19	10	58	45	>7%
Gonyea	\$938,192.27	14	73	66	>12%

Indeed, Chesapeake has retained amounts paid by Massachusetts consumers who made

⁵⁰³ Ex. 2 (K.G. II Tr.) at 160-62, 180-81; Ex. 140 at 1-2, ¶¶ 1-3; Ex. 148 at 5, 7; Ex. 149 at 5, 8.

⁵⁰⁴ Ex. 2 (K.G. II Tr.) at 48-49, 84-86; Ex. 6 (K.R. Tr.) at 98-100; Ex. 74; Ex. 137 at 5, ¶ 17.

complaints against all of these agents claiming that they were unaware he had sold them Chesapeake supplemental health insurance and/or they had not agreed to purchase that coverage.⁵⁰⁵

3. Defendants Knew of Chesapeake-Insphere Agents' Misconduct for Years but Failed to Effectively Discipline Those Agents.

530. As with Mr. Simpson and the Chesapeake-SFG Agents, there has been a trend in complaints against other Chesapeake-Insphere Agents where numerous consumers have reported (a) being unaware of the supplemental health insurance policies from Chesapeake that they had been sold, (b) being unaware that it was separate from major medical insurance, and at an additional premium and/or (c) that they did not authorize the purchase of that coverage ("UOC" complaints). Defendants were aware of this trend since 2013.⁵⁰⁶

531. Defendants have tracked that trend of UOC complaints.⁵⁰⁷

532. Insphere has tracked complaints by consumers who were unaware that the supplemental insurance they were sold was separate from major medical insurance. In May 2017, for example, 60% of Insphere's consumer complaints were in that subcategory.⁵⁰⁸

533. Chesapeake has received close to a thousand Massachusetts consumer complaints,⁵⁰⁹ the majority of which from 2011 to 2019 have been UOC complaints.⁵¹⁰

534. Chesapeake received and had not refunded large amounts from Massachusetts

⁵⁰⁵ Ex. 2 (K.G. II Tr.) at 99; Ex. 6 (K.R. Tr.) at 98-100; Ex. 74; Ex. 141 at 2-3, ¶¶ 4a-c, 5a-c, 6a-c, 7a-c, 8a-c.

⁵⁰⁶ Ex. 1 (K.G. Tr.) at 23-24, 53-54.

⁵⁰⁷ Ex. 1 (K.G. Tr.) at 24.

⁵⁰⁸ Ex. 24 (B.L. Tr.) at 240-43, 259; Ex. 208.

⁵⁰⁹ Ex. 1 (K.G. Tr.) at 208-09.

⁵¹⁰ Ex. 1 (K.G. Tr.) at 24.

sales by Chesapeake-Insphere Agents about whom it received large numbers of complaints, including UOC/M complaints:

Chesapeake-Insphere Agent	Chesapeake unrefunded Massachusetts health premiums through 2018 (“prem.”)	Overall agent rank by prem.	Insphere agent rank by prem.	Total Mass. consumer complaints (“cplts.”)	UOC/M cplts.	Overall complaint ratio (total complaints/applications)
Herlin	\$1,394,691.28	5	2	28	10	>4%
D. Williams	\$1,196,901.14	8	4	34	13	>5%
Lee	\$1,071,247.57	11	6	26	20	>3%
R. Williams	\$1,062,621.56	12	7	40	22 ⁵¹¹	
V. Smith	\$547,905.06	23	17	25	15	>6%

Indeed, Chesapeake has retained amounts paid by Massachusetts consumers who made complaints against each of these agents claiming that they were unaware the agent had sold them Chesapeake supplemental health insurance and/or they had not agreed to purchase that coverage.⁵¹²

535. Mr. Fasola, Defendants’ CEO, received information that Chesapeake-Insphere Agents had charged Massachusetts consumers fees while the agents were advertised by Insphere as providing no-cost assistance.⁵¹³ Still, Defendants did not investigate, require the agents repay the fees, or discipline the agents at all.⁵¹⁴

⁵¹¹ In particular, there were 22 complaints from Massachusetts consumers who purchased Chesapeake supplemental health insurance policies but claimed they were unaware Mr. Williams had sold them that coverage, and/or they had not agreed to purchase that coverage. Ex. 138 at 1, ¶ 4.

⁵¹² Ex. 2 (K.G. II Tr.) at 162-63; Ex. 6 (K.R. Tr.) at 98-100; Ex. 74; Ex. 138 at 1, 5, ¶¶ 1-3, 23-24; Ex. 141 at 1-2, 4-5, ¶¶ 1-3, 9a-c.

⁵¹³ Ex. 37 (Ro.W. Tr.) at 261; Ex. 68.

⁵¹⁴ Ex. 1 (K.G. Tr.) at 135-38, 141-45.

536. This was typical of Defendants' responses to concerns about agent misconduct.⁵¹⁵

537. Defendants did not audit Massachusetts Chesapeake-Insphere Agents or managers.⁵¹⁶

538. Defendants have turned a wholly blind eye to misconduct by their agents through their LinkedIn pages – it is Defendants' practice to impose no discipline upon Chesapeake-Insphere Agents based upon their LinkedIn pages, believing that this practice “was in the best interest of our company.”⁵¹⁷

539. In keeping with this practice, Defendants have imposed no discipline on Chesapeake-Insphere agents in Massachusetts based upon Defendants' knowledge of the agents' LinkedIn pages that (a) advertised one agent as a licensed benefits consultant (when he lacked an adviser's license from the DOI), (b) advertised another agent as an “Insurance Specialist at HealthMarkets, Inc.” (while she had no actual position at HealthMarkets, Inc. and to Defendant's knowledge no adviser's license from the DOI) and (c) used statistics relating to bankruptcies due to medical bills and the percentage of those where the bankrupt party had health insurance, without citing a source for those statistics.⁵¹⁸

540. Chesapeake retained amounts paid by a Massachusetts resident who complained that a Chesapeake-Insphere Sale Manager sold the consumer disability insurance (which paid insureds who became disabled in a timeframe that they were working) when the consumer was

⁵¹⁵ Ex. 1 (K.G. Tr.) at 145.

⁵¹⁶ Ex. 3 (B.J. Tr.) at 59-60.

⁵¹⁷ Ex. 9 (T.R. III Tr.) at 129.

⁵¹⁸ Ex. 7 (T.R. Tr.) at 179-80; Ex. 9 (T.R. III Tr.) at 125-27, 129, 133-34, 136-37.

unemployed.⁵¹⁹

541. Insphere from 2013 to 2019 had minimum production requirements; at a certain point, failure to meet that requirement was subject to automatic termination, and agents in Massachusetts were terminated for failure to meet such requirements, including, for example, Mr. Simpson.⁵²⁰

542. While not terminating any Insphere-contracted agent licensed in Massachusetts based on Massachusetts consumer complaints, Insphere terminated Chesapeake-Insphere Agent Ryan Herlin because he “was actively recruiting agents inside of the organization to market for another carrier...of which he was going to earn commissions outside of the company and overrides, kind of setting up a little side shadow business.” That agent had sold for carriers outside of Insphere for years, which Insphere had been aware of, but it was only after Insphere learned that he had contracted outside of Insphere with a carrier that issued SDI that Insphere terminated him.⁵²¹

543. Defendants were aware of the opinion of their own Director of Sales Compliance in May 2011, prior to the commencement of sale of Chesapeake’s SDI in Massachusetts, that “the risk is very high if we do not thoroughly plan out our processes, training and state reporting prior to release of the supplemental products including the specified disease plan ‘Critical Illness Direct’ . . .”⁵²²

544. Defendants were also aware of her statement that “there is a measure of

⁵¹⁹ Ex. 1 (K.G. Tr.) at 181; Ex. 140 at 1, ¶ 1; Ex. 149 at 5, 8.

⁵²⁰ Ex. 9 (T.R. III Tr.) at 171-72; Ex. 37 (Ro.W. Tr.) at 253; Ex. 139 at 1, ¶ 5.

⁵²¹ Ex. 2 (K.G. II Tr.) at 153; Ex. 21 (R.H. Tr.) at 16-19, 199-201; Ex. 37 (Ro.W. Tr.) at 254.

⁵²² Ex. 1 (K.G. Tr.) at 156-58; Ex. 110.

accountability that field management must assume in this marketing oversight process because the regulation further states under 211 CMR 146.09 (7) that the carrier whose agents fail to comply with any provision of these regulations will be deemed to have committed an unfair and deceptive act in the business of insurance.”⁵²³

545. In fact, that field management in Massachusetts – territory vice presidents, agency managers and sales managers – were not accountable for misconduct of agents under them in the agent hierarchy.⁵²⁴

546. Multiple times in or after 2009, including as late as 2020, one or more Defendant considered adopting a policy that would have held field management accountable for the acts of agents under them in the agent hierarchy, but no Defendant had adopted such a policy at least as of January 9, 2020.⁵²⁵

V. NOTICE TO DEFENDANTS

547. The Office of the Attorney General provided notice to Defendants at least twenty (20) days prior to the filing of this Complaint regarding Defendants’ suspected violations of the Judgment and within that time frame made good faith efforts to meet and confer with Defendants regarding the suspected violations, pursuant to paragraph 11 of the Judgment.⁵²⁶

548. The Attorney General provided notice to Defendants at least five (5) days prior to the filing of this Complaint regarding the Attorney General’s intention to file suit against Defendants and conferred with Defendants regarding the proposed action, pursuant to G.L.

⁵²³ Ex. 1 (K.G. Tr.) at 156, 159-60, Ex. 110.

⁵²⁴ Ex. 9 (T.R. III Tr.) at 178-79, Ex. 10 (T.R. IV Tr.) at 59-61.

⁵²⁵ Ex. 2 (K.G. II Tr.) at 16-22.

⁵²⁶ *See* Ex. 258.

c. 93A, § 4.⁵²⁷

VI. TOLLING

549. Statutes of limitations have been tolled, including pursuant to Supreme Judicial Court orders in 2020, tolling agreements between the Attorney General’s Office and Chesapeake and Insphere and equitable tolling.⁵²⁸

VII. CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Contempt – Violation of the Judgment)
(Against all Defendants)

550. The Commonwealth realleges and incorporates into this cause of action all of the facts alleged above.

551. HealthMarkets is, and has been, bound by the Judgment, including as an Original Defendant and by the plain language of the Judgment.

552. Chesapeake is, and has been, bound by the Judgment, including by its plain language, as a subsidiary and specifically as an “Insurer Subsidiary” of HealthMarkets.

553. Insphere is, and has been, bound by the Judgment, including by its plain language, as a subsidiary of HealthMarkets.

554. Defendants violated injunctive terms in the Judgment all of which were issued pursuant to G.L. c. 93A, § 4, by

- a. offering for sale in Massachusetts Health Benefit Plans as that term is defined in G.L. c. 176J, § 1 within five years of the Judgment, within five years of

⁵²⁷ See Ex. 259.

⁵²⁸ See Ex. 260.

giving notice to consumers as referenced in paragraph 1 of the Judgment, and thereafter without having given written notice to the Attorney General of their intent to do so, including, specified disease insurance not purchased as a supplement but as a substitute for a health plan and otherwise sold in violation of DOI regulation, in violation of paragraph 1 of the Judgment,⁵²⁹

- b. requiring association group membership in connection with the marketing and sale of Health Benefit Plans under G.L. c. 176J for individuals where the association did not operate as an "intermediary" in accordance with G.L. c. 176J, including, specifically, in 2015-2016, short-term medical insurance underwritten by Unified Life Insurance Company as to which membership in the National Congress of Employer was required, in violation of paragraph 2(c) of the Judgment,⁵³⁰
- c. using advertisements in Massachusetts that contained the representation “any doctor” without clearly and conspicuously, and in close proximity to the representation, disclosing any exceptions, restrictions and/or limitations that apply including, specifically, in emails and other communications as to short-term medical insurance underwritten by Unified Life Insurance Company without disclosing the myriad exceptions, such as for doctors treating mental illnesses, in violation of paragraph 2(h) of the Judgment,⁵³¹

⁵²⁹ *See supra* Section D.

⁵³⁰ *See supra* Section F.

⁵³¹ *See supra* Section F.

- d. using advertisements in Massachusetts that they knew or should have known were false or deceptive, in violation of paragraph 2(i) of the Judgment, including, specifically representations of offering prescription drug coverage, where the product being offered did not provide consumers insured prescription benefits, and including, but not limited to,
- i. advertising Insphere as offering “objective solutions” or words to similar effect or as offering health insurance without any reference to supplemental health insurance when its agents were heavily incentivized to sell supplemental health insurance,⁵³²
 - ii. agents of Chesapeake and/or Insphere, in advertising, making other false and/or deceptive claims, explicit or implicit, of impartiality,⁵³³
 - iii. agents of Chesapeake and Insphere advertising themselves as though they held adviser licenses from the Massachusetts Division of Insurance when they did not,⁵³⁴
 - iv. advertising agents of Insphere and Chesapeake as agents of consumers,⁵³⁵
 - v. agents of Chesapeake and/or Insphere advertising themselves

⁵³² *See supra* Section B.

⁵³³ *See supra* Section B1.

⁵³⁴ *See supra* Section B2.

⁵³⁵ *See supra* Section B2.

as representing or offering insurance or health insurance from all or substantially all carriers in Massachusetts, or words to similar effect, when they only sold specified disease insurance issued by Chesapeake or Chesapeake and a few other carriers,⁵³⁶

- vi. advertising agents of Insphere and Chesapeake as offering free assistance when they charged Massachusetts consumers fees,⁵³⁷
- vii. agents of Chesapeake and Insphere failing to disclose, in advertising, the true purposes of sales meetings,⁵³⁸
- viii. advertising “free plans” or words to similar effect, including in an advertisement for health insurance that did not mention Medicare when the “free plans” mentioned were only Medicare-related plans,⁵³⁹
- ix. agents of Chesapeake and/or Insphere, in advertising, passing off Chesapeake supplemental health insurance as major medical health insurance or as part of or included with major medical health insurance,⁵⁴⁰
- x. agents of Chesapeake and /or Insphere using marketing

⁵³⁶ *See supra* Section B2.

⁵³⁷ *See supra* Section B4.

⁵³⁸ *See supra* Section B5.

⁵³⁹ *See supra* Section B5.

⁵⁴⁰ *See supra* Section C1.

materials, in advertising for insured health plans, that did not contain the carrier's name,⁵⁴¹

- xi. agents of Chesapeake and/or Insphere advertising health insurance through the use of statistics without citing a source therefor or otherwise deceptively,⁵⁴²
- xii. agents of Chesapeake and /or Insphere using advertising to sell Chesapeake supplemental health insurance through deceptive manipulation of consumers' emotions,⁵⁴³
- xiii. advertising Chesapeake specified disease insurance with misrepresentations and/or material omissions, including without making required disclosures;⁵⁴⁴
- xiv. advertising Chesapeake accident-only insurance without disclosing that it only covered accidents,⁵⁴⁵
- xv. agents of Chesapeake and /or Insphere using advertising to sell Chesapeake hospital confinement insurance without disclosing the limitations thereon,⁵⁴⁶
- xvi. agents of Chesapeake and /or Insphere using advertising to sell disability insurance to consumers to whom it was then

⁵⁴¹ See *supra* Sections C1, F.

⁵⁴² See *supra* Section E2.

⁵⁴³ See *supra* Section E3.

⁵⁴⁴ See *supra* Section E4.

⁵⁴⁵ See *supra* Section E5.

⁵⁴⁶ See *supra* Section E5.

worthless,⁵⁴⁷

- xvii. agents of Chesapeake and /or Insphere using advertising to deceptively sell Chesapeake’s supplemental health insurance to consumers eligible for MassHealth or major medical health insurance subsidized through the Connector,⁵⁴⁸
- xviii. agents of Chesapeake and Insphere advertising health insurance as having prescriptions “covered” or equivalent language when what was referenced did not provide consumers with insured prescription benefits,⁵⁴⁹
- xix. agents of Chesapeake and Insphere advertising a Unified Life Insurance Company (“Unified”) insured health plan coverage maximum as a benefit,⁵⁵⁰
- xx. agents of Chesapeake and Insphere falsely advertising an insured health plan issued by Unified as approved by the Massachusetts Division of Insurance,⁵⁵¹ and
- xxi. agents of Chesapeake and Insphere using deceptive advertising of non-insurance plans, such as discount health plans and health care sharing ministry programs, that used insurance-

⁵⁴⁷ See *supra* Section E6.

⁵⁴⁸ See *supra* Section E7.

⁵⁴⁹ See *supra* Section F.

⁵⁵⁰ See *supra* Section F.

⁵⁵¹ See *supra* Section F.

related terms or otherwise suggested or implied those plans were insurance, its equivalent or its superior⁵⁵² and

- e. using in Massachusetts advertisements and proposed agent scripts that made comparisons that they knew or should have known were false, incomplete and/or unfair, in violation of paragraph 2(j) of the Judgment, including, but not limited to,
 - i. advertising by agents of Chesapeake and/or Insphere and proposed agent scripts comparing major medical health insurance standing alone with major medical health insurance combined with supplemental health insurance, with or without claiming superiority of the latter combination, including, without disclosing that the supplemental health insurance had a substantially lower loss ratio than the major medical health insurance,⁵⁵³
 - ii. falsely advertising by agents of Chesapeake and/or Insphere that the supplemental health insurance filled the gaps in major medical health insurance when it left such gaps unfilled;⁵⁵⁴
 - iii. advertising by agents of Chesapeake and/or Insphere making false, incomplete and/or unfair comparisons between major

⁵⁵² *See supra* Sections G-H.

⁵⁵³ *See supra* Section E1.

⁵⁵⁴ *See supra* Section E1.

medical health insurance and supplemental health insurance;⁵⁵⁵

- iv. advertising making comparisons to health insurance exchanges, such as the Commonwealth Health Insurance Connector Authority, that failed to disclose the financial incentives of Insphere and Chesapeake agents;⁵⁵⁶ and
- v. advertising making false, incomplete and/or unfair comparisons between insurance and non-insurance plans, such as discount health plans and health care sharing ministry programs, including advertising discussing health insurance that deceptively described health care sharing ministry programs as allowing consumers to save money without disclosing that those plans are not insurance.⁵⁵⁷

555. Defendants harmed Massachusetts consumers through their acts and practices in violation of the permanent injunction in the Judgment.

SECOND CAUSE OF ACTION

(Chapter 93A – Petition under §§ 4 and 8 for Civil Penalties and Forfeiture of Rights to Do Business in the Commonwealth for Habitual Violation of Injunctions Issued under G.L. c. 93A, § 4)
(Against all Defendants)

556. The Commonwealth realleges and incorporates into this cause of action all of the facts alleged above.

⁵⁵⁵ See Section E1.

⁵⁵⁶ See Section E1.

⁵⁵⁷ See *supra* Sections G-H.

557. Each violation of an aspect of the Judgment set forth in the First Cause of Action was a violation of an injunction issued under G.L. c. 93A, § 4.

558. Accordingly, Defendants should forfeit and pay to the Commonwealth a civil penalty of up to \$10,000 per violation pursuant to G.L. c. 93A, § 4.

559. Defendants committed these violations habitually.

560. Accordingly, the Court should order forfeiture (or suspension) of Defendants' rights to do business in the Commonwealth pursuant to G.L. c. 93A, § 8.

THIRD CAUSE OF ACTION

(Chapter 93A -- Unfair & Deceptive Sale of Insurance and Non-Insurance Products)
(Against all Defendants)

561. The Commonwealth realleges and incorporates into this cause of action all of the facts alleged above.

562. Defendants violated the Consumer Protection Act, G.L. c. 93A, § 2, and regulations promulgated thereunder, including, but not limited to, 940 CMR 3.09, 3.16 and 26.00 *et seq.*, by engaging in the following unfair and/or deceptive practices in trade or commerce in Massachusetts:

- (a) misrepresenting their agents' roles and incentives in multiple ways, explicitly and implicitly, by act and omission, including through
 - i. false and deceptive claims of impartiality;⁵⁵⁸
 - ii. illegal and deceptive representations of agents' roles;⁵⁵⁹

⁵⁵⁸ See *supra* Section B1.

⁵⁵⁹ See *supra* Section B2.

- iii. deceptively using assumed business names;⁵⁶⁰
 - iv. false and deceptive claims of free assistance;⁵⁶¹ and
 - v. deceptively failing to disclose the true purposes of sales meetings;⁵⁶²
- (b) misrepresenting Chesapeake's supplemental health insurance policies in multiple ways, explicitly and implicitly, by act and omission, including through
- i. false and deceptive passing off Chesapeake's supplemental health insurance as part of or included with major medical health insurance;⁵⁶³
 - ii. false and deceptive passing of Chesapeake's supplemental health insurance off as major medical health insurance;⁵⁶⁴
 - iii. unlawful, unfair and deceptive sale of Chesapeake's specified disease insurance to Massachusetts residents without major medical health insurance;⁵⁶⁵
 - iv. unfair, false, incomplete and deceptive comparisons;⁵⁶⁶
 - v. unfair and deceptive use of statistics;⁵⁶⁷
 - vi. unfair and deceptive manipulation of consumers' emotions to sell

⁵⁶⁰ *See supra* Section B3.

⁵⁶¹ *See supra* Section B4.

⁵⁶² *See supra* Section B5.

⁵⁶³ *See supra* Section C1.

⁵⁶⁴ *See supra* Section C2.

⁵⁶⁵ *See supra* Section D.

⁵⁶⁶ *See supra* Section E1.

⁵⁶⁷ *See supra* Section E2.

- Chesapeake supplemental health insurance;⁵⁶⁸
- vii. other unfair and deceptive practices in marketing and selling
Chesapeake's SDI, including
1. by representing it as providing more coverage than it did and
 2. by failing to make required disclosures;⁵⁶⁹
- viii. other unfair and deceptive practices in marketing and selling
Chesapeake's hospital confinement insurance and accident only health insurance, including by representing the accident only health insurance as covering emergency room visits without disclosing clearly and conspicuously that it did not do so for illness;⁵⁷⁰
- ix. other unfair and deceptive practices in marketing and selling
Chesapeake's disability insurance, including by selling it to Massachusetts residents who could not benefit from it;⁵⁷¹ and
- x. further unfair and deceptive practices in marketing and selling
Chesapeake's supplemental health insurance to consumers eligible for MassHealth or major medical health insurance subsidized through the Massachusetts Health Insurance Connector, including by disparaging MassHealth coverage;⁵⁷²

⁵⁶⁸ See *supra* Section E3.

⁵⁶⁹ See *supra* Section E4.

⁵⁷⁰ See *supra* Section E5.

⁵⁷¹ See *supra* Section E6.

⁵⁷² See *supra* Section E7.

- (c) Falsely and deceptively advertising “free plans” in advertisements for health insurance, including advertising that did not mention Medicare when the “free plans” mentioned were only Medicare-related plans;⁵⁷³
- (d) misrepresenting health insurance issued by Unified Life Insurance Company in multiple ways, explicitly and implicitly, by act and omission, including through
- i. illegally selling it even though it unlawfully required association membership for purchase,
 - ii. deceptively representing it as covering “any doctor” when, for example, it excluded mental health coverage,
 - iii. deceptively representing it as covering prescriptions when it did not have prescription drug coverage or come with insurance that gave consumers coverage for prescription drugs,
 - iv. illegally selling it when it was not approved for sale,
 - v. falsely marketing it as approved by the Massachusetts Division of Insurance,
 - vi. unfairly and deceptively describing its coverage maximum as a benefit and
 - vii. unfairly and deceptively using marketing materials that did not contain the name of Unified Life Insurance Company;⁵⁷⁴

⁵⁷³ *See supra* Section B5.

⁵⁷⁴ *See supra* Section F.

(e) unfairly and deceptively marketing and selling discount health plans to Massachusetts residents,

- i. by deceptively using insurance-related terms about such non-insurance plans and
- ii. by making incomplete, unfair and deceptive comparisons between discount plans and insurance;⁵⁷⁵ and

(f) unfairly and deceptively marketing and selling health care sharing ministry programs to Massachusetts residents,

- i. by deceptively using insurance-related terms about such non-insurance plans that did not guarantee payment and
- ii. by making incomplete, unfair and deceptive comparisons between such plans and insurance.⁵⁷⁶

563. Defendants, in the course of their marketing and sale of health insurance to consumers in Massachusetts, violated G.L. c. 175 §§ 162P, 177A, G.L. c. 176D, § 3 and 211 C.M.R. 40.00, 42.00 and 146.00 *et seq.* and the violation of these laws and regulations, which are intended to protect the public's health, safety and welfare, were violations of G.L. c. 93A, § 2, directly and by operation of 940 C.M.R. 3.16(3).

564. Defendants knew or should have known their actions were unfair and deceptive acts and practices that violated G.L. c. 93A, § 2.

565. Defendants harmed Massachusetts consumers through their unfair and deceptive

⁵⁷⁵ See *supra* Section G.

⁵⁷⁶ See *supra* Section H.

acts and practices.

VIII. PRAYER FOR RELIEF

WHEREFORE, the Commonwealth respectfully requests that this Court grant the following relief:

1. Issue an ex parte Summons and Order of Notice to the Defendants instructing them to appear before the Court within ten days from the date of that Order at a hearing considering whether the filing of an answer verified or supported by affidavits complying with the provisions of Mass. R. Civ. Proc. 11(e) is appropriate;
2. Enter judgment:
 - a) Adjudging the Defendants to be in contempt of the Judgment;
 - b) Adjudging forfeited (or suspended) the Defendants' rights to do business in the Commonwealth for habitual violation of the permanent injunction in the Judgment;
 - c) Declaring that the Defendants have engaged in unfair and deceptive acts and practices in violation of G.L. c. 93A, § 2, and the regulations promulgated thereunder;
 - d) Declaring that the Defendants have engaged in unfair or deceptive marketing of insured health plans in violation of G.L. c. 176D and the regulations promulgated thereunder (211 C.M.R. 40.00 *et seq.*, 211 C.M.R. 42.00 *et seq.* and 211 CMR 146.00 *et seq.*);
 - e) Imposing a permanent injunction enjoining Defendants and their

subsidiaries, divisions, affiliates, agents, employees, servants, successors, attorneys, assigns and all other persons and entities, corporate or otherwise, in active concert or participation with them, whether acting individually or through any corporation, trust or other device, from marketing, selling or issuing of any form of health, accident and/or sickness insurance or any form of non-insurance health program in Massachusetts; enjoining Defendants from further violating Massachusetts state laws and regulations governing the marketing, selling or issuing of any form health, accident and/or sickness insurance or any form of non-insurance health program; and prohibiting Defendants from engaging in unfair or deceptive acts or practices in connection with marketing, selling or issuing of any form health, accident and/or sickness insurance or any form of non-insurance health program in Massachusetts;

- f) Ordering the Defendants to make full and complete restitution to each and every person injured by its illegal, unfair and deceptive acts or practices;
- g) Ordering the Defendants to pay a penalty of ten thousand dollars for each act or practice in violation of the permanent injunctions in the Judgment;
- h) Ordering the Defendants to pay a penalty of five thousand dollars for each act or practice that Defendants knew or should have known to be unfair, deceptive or otherwise in violation of G.L. c. 93A;
- i) Ordering the Defendants to pay the Commonwealth attorneys' fees and costs; and

- j) Ordering such other relief as the Court may deem just and proper.

COMMONWEALTH OF MASSACHUSETTS

MAURA HEALEY
ATTORNEY GENERAL



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Dated: December 8, 2020

A

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 06-4411-F

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

THE MEGA LIFE AND HEALTH INSURANCE
COMPANY, MID-WEST NATIONAL LIFE
INSURANCE COMPANY OF TENNESSEE
and HEALTHMARKETS, INC.,

Defendants.

RECEIVED
SEP 11 2007

FINAL JUDGMENT BY CONSENT

The Court has reviewed the First Amended Complaint ("Complaint") filed in this case by the Commonwealth of Massachusetts and the joint Motion for Entry of Final Judgment by Consent. The Court finds that it properly has subject matter jurisdiction of this Complaint and that the entry of this Final Judgment by Consent is in the interests of justice.

WHEREAS, the Attorney General has concluded an investigation into the practices of The MEGA Life and Health Insurance Company ("MEGA"), Mid-West National Life Insurance Company of Tennessee ("Mid-West"), and HealthMarkets, Inc. ("HealthMarkets") (collectively, "Defendants") regarding the content and sale of health insurance policies issued or delivered in Massachusetts;

WHEREAS, as a consequence of its investigation, the Attorney General filed its First Amended Complaint in this matter on or about August 22, 2007;

WHEREAS, each of the Defendants deny all the allegations set forth in the First Amended Complaint;

JUDGMENT ENTERED ON DOCKET Sept. 3 2007
PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 58(a)
AND NOTICE SENT TO PARTIES PURSUANT TO THE PRO-
VISIONS OF MASS. R. CIV. P. 77(d) AS FOLLOWS -

TRUE COPY OF JUDGMENT DULY ENTERED ON

9/13/07

Notice
sent
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TMO
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WHEREAS, the Attorney General and the Defendants (the "Parties") believe that this Final Judgment by Consent set forth herein is an appropriate means by which to address all allegations and requests for relief raised, or that could have been raised, in Plaintiff's First Amended Complaint. In particular, this Final Judgment of Consent will avoid the uncertainty, time and expense related to the conduct of motion practice, discovery and trial; and

WHEREAS, the Parties have filed a Joint Motion for Entry of Final Judgment by Consent;

Accordingly, good cause being shown, IT IS ORDERED THAT:

1. (a) Effective on October 1, 2009, the Defendants MEGA and Mid-West, and any directly or indirectly owned or operated subsidiary of any of the Defendants acting as a licensed insurance company ("Insurer Subsidiary"), are enjoined from offering for sale in Massachusetts any Health Benefit Plan as that term is defined in M.G.L. c. 176J, § 1. The Defendants shall be prohibited from writing or issuing Health Benefit Plans in Massachusetts for a period of five (5) years from the date of written notice to eligible individuals and eligible small businesses pursuant to the process set forth in Section 1(b) immediately below, concerning the restricted opportunity for renewing existing Health Benefit Plans.

(b) Subject to the approval of the Division of Insurance of the Commonwealth of Massachusetts ("DOI") and the provisions of 211 CMR 66.06(6), the Defendants, and any Insurer Subsidiary, shall, on or before June 30, 2011, provide written notice to all eligible individuals and eligible small businesses in Massachusetts insured by any of them under a Health Benefit Plan at the time of the notice that (i) coverage may only be renewed during the time period of 180 days following the date of the written notice and (ii) after such 180 day period

Defendants, including any directly or indirectly owned or operated subsidiary of any of the Defendants acting as a licensed insurance company, shall not renew any Health Benefit Plans.

(c) The Defendants MEGA and Mid-West shall send a written notice to each of its respective Health Benefit Plan policyholders in Massachusetts (i) informing them of its respective Medical Loss Ratio (i.e., the ratio of incurred medical or hospital claims to the premium earned for that same calendar year) for its Health Benefit Plans in Massachusetts for the calendar years 2008, 2009 and 2010 only, and (ii) reminding policyholders if their coverage does not qualify as "Creditable Coverage" as that term is defined in M.G.L. c. 111M, § 1. For Medical Loss Ratio information for the calendar year 2008, the notice shall be sent on or before December 31, 2009; for such information for the calendar year 2009, the notice shall be sent on or before October 1, 2010; and for such information for the calendar year 2010, the notice shall be sent on or before October 1, 2011. The notice required by this Section 1 (c) shall be in the form attached hereto as Exhibit A, and may be sent by electronic mail so long as the Defendants MEGA and Mid-West can demonstrate receipt or by United States Mail either separately or combined with other policyholder notifications sent in accordance with the terms of this Final Judgment by Consent or policyholder notifications (that do not include any form of marketing materials) sent in the ordinary course of business. The notice required by this Section 1 (c) is expressly not subject to Section 7 of this Final Judgment by Consent.

(d) In the event that Defendants, including any Insurer Subsidiary, or any one of them, after the expiration of the five year period required by Section 1(a), seek to write new Health Benefit Plan business in Massachusetts, said Defendant or Defendants shall provide written notice to the Attorney General at least sixty (60) days before writing new business or filing any products or policy forms with DOI. Nothing herein shall prevent the Defendants or any of their

respective subsidiaries from continuing to offer and issue any insurance products that are not Health Benefit Plans in Massachusetts and the Defendants may continue to offer the following types of health insurance plans that are excepted from the definition of Health Benefit Plan: accident only; limited scope vision or dental benefits if offered separately; hospital indemnity insurance policies if offered as independent, non-coordinated benefits which shall mean policies issued under M.G.L. c. 175 which provide a benefit not to exceed \$500 per day, as adjusted on an annual basis by the amount of increase in the average weekly wages in the Commonwealth as defined in section 1 of M.G.L. c.152, to be paid to an insured or a dependent, including the spouse of an insured, on the basis of a hospitalization of the insured or a dependent; disability income insurance; specified disease insurance that is purchased as a supplement and not as a substitute for a health plan and meets any requirements the Commissioner of Insurance by regulation may set; and any other health insurance plan that may be now or later excepted from the definition of Health Benefit Plan under G.L. c. 176J. Nothing herein shall prevent the Defendants or any of their respective subsidiaries from offering Health Benefit Plans of a third-party carrier or carriers neither owned nor operated by the Defendants.

2. Effective October 1, 2009, the Defendants and their subsidiaries, divisions, agents, employees, servants, successors, and assigns, whether acting individually, or in active concert or participation with them, or through any corporation, trust or other device, are permanently restrained and enjoined in connection with their business in the Commonwealth of Massachusetts from:

- (a) representing as a Health Benefit Plan benefit that prospective purchasers cannot be singled out for a rate increase or cancellation;

- (b) representing that Defendants' products provide prescription drug coverage if they do not;
- (c) requiring association group membership in connection with the marketing and sale of any Health Benefit Plan under M.G.L. c. 176J for individuals or small employer groups of five (5) or fewer employees unless the association operates as an "intermediary" in accordance with M.G.L. c. 176J;
- (d) requiring association group membership in connection with their sale of any Health Benefit Plan under M.G.L. c. 176J to small employer groups of six (6) or more employees;
- (e) declining to pay claims that are valid and outstanding (for purposes of Sections 2 (e) and (g), the Attorney General and the Defendants agree and acknowledge that claims are "outstanding" so long as they are open or subject to grievances or external appeals on or after entry of this Final Judgment by Consent) for coverages and benefits mandated by M. G. L. c. 175, § 47C (newborn wellness); M. G. L. c. 175, § 47F (maternity care); M. G. L. c. 175, § 47G (cytologic screening and mammographic examinations); M. G. L. c. 175, § 47H (infertility treatment); and M. G. L. c. 175, § 47W (contraceptive services) when it knows or should know that such denial(s) violate these mandated benefit laws in Massachusetts;
- (f) disclosing protected health information, as that term is defined by 45 C.F.R. § 164.501, to any third party in any manner that MEGA or Mid-West know or should know violates the privacy provisions of HIPAA (45 C.F.R. Parts 160 and

164) and M. G. L. c. 175I and c. 214, § 1B in connection with their conduct of health insurance business operations in Massachusetts;

- (g) declining to pay claims that are valid and outstanding in violation of the provisions of M. G. L. c. 176J, §§ 1, 2 and 5, and c. 176N, § 2, when it knows or should know that such denial(s) violate these laws in Massachusetts;
- (h) using any advertisement in Massachusetts that contains the representations "any doctor" or "choose any doctor anytime, anywhere" or equivalent language, unless such advertisements clearly and conspicuously, and in close proximity to the representation, disclose any exceptions, restrictions and/or limitations that apply;
- (i) using any advertisement in Massachusetts that it knows or should know is false or deceptive, including, but not limited to, any representation offering prescription drug coverage, except where the product being offered provides insured prescription benefits;
- (j) using in Massachusetts any advertisements or proposed agent scripts that unfairly or incompletely compare any MEGA or Mid-West product to any Health Benefit Plan offered by a competitor, or otherwise make comparisons that it knows or should know are false, incomplete or unfair;
- (k) offering and issuing health insurance policies to Medicare-eligible residents that fail to comply with M. G. L. c. 176K or 42 USC § 1396, et seq.

3. Within thirty (30) days of entry of this Consent Judgment, Defendants shall cause a true and correct copy of injunctive terms contained herein to be served on every person who, since January 1, 2009, has acted or has been appointed to act as an insurance producer for one or more of Defendants in Massachusetts.

4. On or before December 31, 2009, the Defendants shall:
 - (a) Implement the revised training materials for their agents licensed to sell insurance Health Benefit Plans in Massachusetts that incorporate Section 1, entitled "Health Insurance Agent Training," of the performance standards contained in the MultiState Regulatory Settlement Agreement entered into by the Defendants MEGA and Mid-West as of May 29, 2008 (the "MultiState RSA");
 - (b) Implement the revised agent oversight procedures that incorporate Section 2, entitled "Agent Oversight," of the performance standards contained in the MultiState RSA;
 - (c) Submit to the Commonwealth, on or before February 14, 2010, a copy of the report required by Section G.3. of the MultiState RSA and concerning the status of and compliance with MultiState RSA performance standards;
 - (d) Notwithstanding the foregoing, the Defendants shall be subject to the requirements of this Section 4 only if they, jointly or severally, are acting as a sales agency and selling the Health Benefit Plans of a third party carrier.

5. Within thirty (30) days after the entry of this Final Judgment by Consent, each of the Defendants shall pay separately the sum of five million dollars (\$5,000,000) to the Commonwealth for a collective total payment of fifteen million dollars (\$15,000,000), subject to Section 5(d) below. Said payments due under this Final Judgment by Consent shall be made by electronic fund transfer to the Office of the Massachusetts Attorney General to an account identified by the Commonwealth. The five million dollars due from each Defendant shall be comprised of: (i) one million dollars (\$1,000,000) to be paid as civil penalties pursuant to G.L. c. 93A, § 4; (ii) two hundred and fifty thousand dollars (\$250,000) to be paid as attorneys' fees and

costs, and (iii) three million seven hundred and fifty thousand dollars (\$3,750,000) for consumer compensatory damages or other consumer relief ("Consumer Relief"). With respect to the three million seven hundred and fifty thousand dollars (\$3,750,000) payments for Consumer Relief from each Defendant, and the collective total payments of eleven million two hundred and fifty thousand dollars (\$11,250,000) from the Defendants for Consumer Relief, the Attorney General shall expend and distribute those funds, in her sole discretion and in amounts she deems appropriate, to provide restitution or other relief to individuals who at any time since January 1, 2003 were Massachusetts residents insured under a health, accident or sickness policy issued by one of the Defendants and who the Attorney General in her sole discretion determines suffered an otherwise unremediated ascertainable loss or other cognizable harm as a result of the conduct of Defendant(s) ("Affected Consumers"). The Attorney General's distribution of Consumer Relief to Affected Consumers ("Consumer Relief Program") shall conform to the following:

- (a) Consumer Relief funds will be distributed to Affected Consumers who:
 - i) file a claim after the entry of this Judgment through a claims reassessment process as may be required by a regulatory Settlement Agreement between the Defendants and the DOI;
 - ii) filed a consumer complaint with the Commonwealth prior to August 1, 2009; or
 - iii) file a claim through a claims reassessment or complaint review process as may defined by the Attorney General, at her sole discretion, to provide relief for otherwise unremediated losses to Massachusetts consumers who: (1) before or during the period of coverage reached the age of Medicare eligibility, (2) had claims denied because of policy maximums on benefits or

the number of services within a period of time, (3) had claims denied because of coverage limits on prescription drugs, doctor's office visits, simultaneous surgeries, or procedures related to pregnancy, (4) terminated coverage citing a miscommunication at presentation or similar complaint of agent misconduct; or (5) the Office of the Attorney General determines suffered ascertainable loss or other cognizable harm as a result of Defendants' conduct.

- (b) The Attorney General, in the exercise of reasonable discretion, will endeavor to retain a qualified, independent, professional third-party administrator to administer, and process payments resulting from, the Consumer Relief Program described in this Section 5 ("Settlement Administrator"). The Defendants shall cooperate with the Attorney General and the Settlement Administrator, if any, to efficiently and effectively complete the Consumer Relief Program. The Defendants shall, at their own cost and expense (separate and apart from any payment made to the Commonwealth under this Judgment), provide information within a reasonable period of time in response to any reasonable requests from the Attorney General or Settlement Administrator for information or data to be used to establish and complete the Consumer Relief Program, which information or data may include, without limit, claims and premium payment data by consumer. The Attorney General and the Defendants agree and acknowledge that any requests for information or data under this Section shall be reasonable so long as they can be addressed by the Defendants in the ordinary course of business, during ordinary business hours, employing existing systems and resources and using existing staff. The Attorney General further agrees and acknowledges that

any information or data produced by the Defendants under this Section 5 may contain highly sensitive and commercially valuable confidential information as well as highly sensitive and private health information. The Attorney General therefore agrees that to the extent permissible under law, she will maintain the confidentiality of any information or data produced by the Defendants pursuant to this Section 5; she will notify the Defendants in writing within seven (7) days of any request or court order seeking the production of such information or data; and upon the conclusion of the Consumer Relief Program, she will either return all such information or data to the Defendants or certify in writing that she has destroyed the same. The Attorney General further agrees that if she retains a Settlement Administrator, she will obtain the Settlement Administrator's agreement to abide by the terms and conditions for maintaining the confidentiality of Defendants' information or data described in this Section 5 (b). The direct costs of the Attorney General's Office and any Settlement Administrator in administering, and making payments to consumers resulting from, the Consumer Relief Program shall be paid or reimbursed from the Consumer Relief fund. If the Attorney General is unable to secure the services of a Settlement Administrator upon terms and conditions that the Attorney General determines to be reasonable and acceptable in her sole discretion, the Defendants shall provide any administrative services determined by the Attorney General to be reasonably necessary to implement and complete the Consumer Relief Program, and the direct costs of the Defendants, including such costs as may be reasonably necessary to expand the Defendants' capacity and/or capabilities, in

administering, and making payments to consumers resulting from, the Consumer Relief Program shall be paid or reimbursed exclusively from the Consumer Relief fund, provided, however, that such direct costs must be previously approved by the Attorney General.

- (c) The Attorney General shall report to the Defendants the names of the consumers who receive Consumer Relief funds and the amounts each received on a semiannual basis beginning on March 1, 2010. The Attorney General shall also notify the Defendants in writing thirty (30) days after the completion of the Consumer Relief Program, said notice to include the amount of the funds, if any, that remain unexpended. If, after the Attorney General completes the Consumer Relief Program described in this Consent Judgment, Consumer Relief funds remain unexpended, under this Consent Judgment the Attorney General shall direct any residue to the Local Consumer Aid Fund, established pursuant to M.G.L. c. 12, § 11G.
- (d) The Attorney General acknowledges that the Defendants MEGA and Mid-West have agreed to make certain payments pursuant to a certain Regulatory Settlement Agreement dated August 26, 2009, including the sum of two million dollars (\$2,000,000) to the DOI and an as yet undetermined sum pursuant to a claims reassessment process ("DOI Process"). Relative to these payments, the Parties agree as follows: (i) The Attorney General shall credit the two million dollars (\$2,000,000) payment to the penalty payments due from the Defendants MEGA and Mid-West under this Section 5. Upon written certification by the Defendants MEGA and Mid-West that the two million dollars (\$2,000,000) payment due the

DOI has been made, the Attorney General shall deem the penalty payment due under this Section 5 from Defendants MEGA and Mid-West (but not Defendant HealthMarkets) to be fully satisfied. (ii) The Parties agree that the amount to be paid to consumers under the DOI Process is presently unknowable and uncertain. As a result, the Attorney General shall preliminarily credit the Consumer Relief payment due from each of the Defendants MEGA and Mid-West by two hundred thousand dollars (\$200,000) (for a total credit of four hundred thousand dollars (\$400,000)) on account of the sum due each for the DOI Process. Within thirty (30) days of the completion of the DOI Process as determined by the DOI, the Defendants MEGA and Mid-West shall submit to the Office of the Attorney General a written statement signed by an authorized representative attesting to the total amount of payments to consumers made pursuant to the DOI Process ("Claims Reassessment Statement"). From the date of entry of this Final Judgment by Consent until such time as the Defendants deliver the Claims Reassessment Statement, the Defendants shall submit to the Office of the Attorney General every ninety (90) days a quarterly statement signed by an authorized representative describing (i) the total amount of payments to consumers made during that period through the DOI Process, and (ii) the then current estimate on the amount of time and additional payments needed to complete the DOI Process. The Attorney General and the Defendants agree and acknowledge that said quarterly statement is not intended and shall not constitute a statement of material fact; and such statement is not intended to and shall not constitute a representation or warranty by the Defendants of the information

contained therein. If the total amount of such claim reassessment payments is less than four hundred thousand dollars (\$400,000), the Defendants MEGA and Mid-West shall, concurrent with the submission of the Claims Reassessment Statement, deliver to the Office of the Attorney General a check or checks for the difference between the total credit amount of four hundred thousand dollars (\$400,000) and the amount paid. If the total amount of such claim reassessment payments is more than the total credit amount of four hundred thousand dollars (\$400,000), the Office of the Attorney General shall, within thirty (30) days of receipt of the Claims Reassessment Statement, deliver to each of the Defendants MEGA and Mid-West a check for one-half of the total amount by which such payments exceeded the total credit amount of four hundred thousand dollars (\$400,000), but not to exceed a maximum reimbursement to MEGA and Mid-West of six hundred thousand dollars (\$600,000) (collectively, or three hundred thousand dollars (\$300,000) to each of MEGA and Mid-West) regardless of the amount by which claims reassessment payments exceed the total credit amount of four hundred thousand dollars (\$400,000). To provide for this potential payment following the claims reassessment process, the Office of the Attorney General may maintain six hundred thousand dollars (\$600,000) of the Consumer Relief Funds in a separate escrow account until the claims reassessment process is complete. Nothing in this Judgment prohibits the Attorney General, the DOI and the Defendants from agreeing to administer the DOI Process as part of the Consumer Relief Program required by this Section.

6. Within one-hundred and fifty (150) days of entering this Final Judgment by Consent, the Defendants shall submit to the Office of the Attorney General a written statement signed by an authorized representative under the penalties of perjury attesting and detailing:

(a) the steps that Defendants have performed since February 1, 2007, to reassess and remediate categories of claims originally denied, in whole or in part, that should have been paid as valid claims in accordance with:

1. benefits mandated by M. G. L. c. 175, § 47C (newborn wellness); M. G. L. c. 175, § 47F (maternity care); M. G. L. c. 175, § 47G (cytologic screening and mammographic examinations); M. G. L. c. 175, § 47H (infertility treatment); and M. G. L. c. 175, § 47W (contraceptive services) (collectively "Mandated Benefits");
2. policy exclusion limitations mandated by M. G. L. c. 176J, §§ 1, 2 and 5, and c. 176N, § 2 ("Exclusion Limitations"); or
3. the claims reassessment process required by a certain Regulatory Settlement Agreement, as amended, between the DOI and the Defendants MEGA and Mid-West and dated December 6, 2006.

(b) the total number of consumers who have had claims paid through said claims reassessment processes, and the total amount of payments made by Defendants since February 1, 2007 up to and including the date of entry of this Final Judgment by Consent to remediate claims described in Subsection (a) of this Section 6. If the total amount of such claim remediation payments, plus interest, made by the Defendants since February 1, 2007 up to and including the date of

entry of this Final Judgment by Consent is less than two million one hundred and seventy five thousand six hundred and sixty two dollars (\$2,175,662), the Defendants shall collectively, and separate and apart from the payments required by Section 5 above, deliver to the Commonwealth within one-hundred and eighty (180) days of entry of this Final Judgment by Consent a check for the difference between two million one hundred and seventy five thousand six hundred and sixty two dollars (\$2,175,662) and the amount of such claim remediation payments. Any such payment shall be made to the Local Consumer Aid Fund, as established by M.G.L. c. 12, § 11G, and shall be made by check made payable to "The Commonwealth of Massachusetts, Local Consumer Aid Fund" delivered to Thomas O'Brien, Assistant Attorney General, at the Office of the Attorney General, Health Care Division, One Ashburton Place, Boston, Massachusetts 02108.

- (c) The Attorney General agrees that to the extent permissible under law, she will maintain the confidentiality of any individually identifiable health information that may be contained in the written statement or any portion of its contents produced by the Defendants pursuant to this Section 6; she will notify the Defendants in writing within seven (7) days of any request or court order seeking the production of individually identifiable health information that may be contained in the written statement.
- (d) Nothing in this Section 6 is intended to create nor does it create any obligation on the part of the Defendants to reassess or remediate any claim.

7. Any notices to current or former insureds, or to current or former insurance producers, of the Defendants that are made in accordance with this Final Judgment by Consent shall reference this Judgment and shall be subject to prior approval by the Attorney General, which approval shall not be unreasonably withheld and which shall be provided within a reasonable period.

8. This Final Judgment by Consent resolves the allegations and requests for relief raised, or that could have been raised, in the First Amended Complaint filed against MEGA, Mid-West and HealthMarkets, and their respective successors, assigns and subsidiaries, including their respective present and former officers, agents including licensed insurance producers, directors and employees (collectively, "Defendants" for the purposes of Sections 8 and 9 hereof), in the above-captioned matter, provided that nothing in this paragraph shall prevent the Attorney General from taking appropriate action to enjoin, or seek other relief concerning, any conduct by any current or former insurance producers whom the Attorney General believes to be in violation of Massachusetts laws or the terms of his or her agent's license and whom the Attorney General has identified in writing to the Defendants concurrent with the execution by the Parties of the Joint Motion for Entry of Final Judgment by Consent. This Final Judgment by Consent does not resolve any claims by any party other than the Commonwealth, does not resolve any claims that may be brought by the DOI, and does not resolve any claims that may be brought by the Commonwealth against any other person or party other than the Defendants as defined in this Section.

9. Except for purposes of its enforcement, no part of this Final Judgment by Consent, including without limit any statements or notices required by this judgment, shall be construed or admitted into evidence as an admission of liability by Defendants, as defined in the

preceding Section 8, or any of them, in any other proceeding, and any such liability is expressly denied by Defendants, as defined in the preceding Section 8, collectively and individually. By entering into this Final Judgment by Consent, Defendants, as defined by the preceding Section 8, collectively and individually do not admit to any violation of law.

10. Defendants have waived all rights of appeal. Defendants have also waived the requirements of Rule 52 of the Massachusetts Rules of Civil Procedure.

11. This Final Judgment by Consent shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts. Any violation of this Final Judgment by Consent shall be punishable by civil or criminal contempt proceedings, or as otherwise provided by law. The Attorney General agrees that, prior to any action against the Defendants to enforce this Final Judgment by Consent, the Office of the Attorney General will provide Defendants written notice of any suspected violations of this Final Judgment by Consent and a twenty (20) day period to address any such violations within which period the parties will make good faith efforts to meet and confer regarding the suspected violations. Any efforts by the Defendants during the twenty (20) day period to address any such violations shall not bar or limit the Office of the Attorney General from taking actions that she deems in the public interest. Nothing in this section shall affect or apply to any action that might be brought by the Attorney General except actions to enforce this Judgment.

12. This Final Judgment by Consent and related Joint Motion represent the entire agreement between the Commonwealth and the Defendants about the matters addressed herein. It supersedes any prior agreements, understandings or stipulations between the parties regarding the subject matter hereof and may not be modified except by further order of the Court.

13. Any notices or communications required to be transmitted between the Defendants and the Commonwealth pursuant to this Final Judgment by Consent shall be provided in writing by first class mail, postage prepaid, and by electronic mail or facsimile transmission, to the parties or successors as follows, unless otherwise agreed:

<i>Commonwealth of Massachusetts</i>	<i>Defendants</i>
Thomas M. O'Brien, Esq. Assistant Attorney General Office of the Attorney General One Ashburton Place Boston, MA 02108 Thomas.M.O'Brien@state.ma.us	Curt Westen, Esq. General Counsel HealthMarkets, Inc. 9151 Boulevard 26 North Richland Hills, TX 76180 Curt.Westen@healthmarkets.com
	With a copy to: Dean Richlin, Esq. Foley Hoag LLP 155 Seaport Boulevard Boston, MA 02210 drichlin@foleyhoag.com

14. The Court shall retain jurisdiction of this case for the purpose of ensuring compliance with the terms of this Judgment.


SO ORDERED, this 2 day of Sept, 2009.



Justice of the Superior Court

Approved by:

COMMONWEALTH OF
MASSACHUSETTS
Martha Coakley, Attorney General

THE MEGA LIFE AND HEALTH
INSURANCE COMPANY, MID-WEST
NATIONAL LIFE INSURANCE COMPANY
OF TENNESSEE, and HEALTHMARKETS,
INC.
By their attorneys,


Thomas M. O'Brien, BBO # 561863
Emiliano Mazlen BBO # 600912
Assistant Attorneys General
Health Care Division
One Ashburton Place
Boston, MA 02108
(617) 727-2200


Dean Richlin, Esq., BBO # 419200
Colin J. Zick, Esq. BBO # 556538

Foley Hoag LLP
155 Seaport Blvd.
Boston, MA 02210-2600
(617) 832-1000

Dated: August 31, 2009

Exhibit A

COMPANY LETTERHEAD

[Company name]
9151 Boulevard 26
North Richland Hills, TX 76180-5605

{Date}

{Primary Name}
{Address 1}
{Address 2}
{Address 3}

Reference No.:

Dear {Primary Name}:

We are providing this notice to you as required by a consent judgment voluntarily entered into to resolve a lawsuit brought by the Massachusetts Attorney General.

As you are probably aware, with limited exceptions, every resident of the Commonwealth of Massachusetts over the age of 18 is required to have health insurance coverage that meets the standard of Minimum Creditable Coverage in order to avoid certain state tax penalties. At present, [no Mid-West policy constitutes Minimum Creditable Coverage] [only the MEGA CareChoice Plus Health Savings Account (HSA) Qualified Plan constitutes Minimum Creditable Coverage, and all other MEGA plans, including the Signature Benefit plan, do not qualify]. Please review your policy and most recent renewal notices, which may bear a notice regarding Minimum Creditable Coverage under the current standard.

We are also writing to inform you that the Medical Loss Ratio for the Massachusetts health plans of [the MEGA Life and Health Insurance Company ("MEGA")] [Mid-West National Life Insurance Company of Tennessee ("Mid-West")] for [2008] [2009] [2010], was: *[insert 2008 figure and future figures here]* This Medical Loss Ratio shows that on average we paid *[insert 2008 figure and future figures here]* cents in medical claims for every dollar we received in health plan premiums in Massachusetts.

You may seek additional information about the status of your coverage or request a copy of your current insurance certificate by contacting our Customer Care Center at the number listed below or by accessing [MEGA's websites at www.megainsurance.com] [Mid-West's website at www.midwestlife.com]. Our Customer Care Associates are available to answer any additional questions you may have regarding this notice or your current coverage. Our Customer Care Center can be reached at {x-xxx-xxx-xxxx} Monday through Friday, x:00 a.m. to x:00 p.m. Eastern time. We are committed to helping you understand your responsibilities under the new law as they relate to your coverage with [MEGA] [Mid-West].

To learn about other available health plan options, you also may contact the Division of Insurance by calling (617) 521-7794 or visiting its website at www.mass.gov/doi, or contact the Commonwealth Health Insurance Connector at 1-877-MA-ENROLL or by visiting its website at www.mahealthconnector.org.

Sincerely,
{Company Name}