NOTICE

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
No. 0684CV04411-BLS1

COMMONWEALTH

vs.

THE MEGA LIFE AND HEALTH INSURANCE COMPANY & others[1]

FINDINGS OF FACT, RULINGS OF LAW, AND ORDER FOR JUDGMENT

In 2006, the Commonwealth filed this action against defendants The MEGA Life and Health Insurance Company, Mid-West National Life Insurance Company of Tennessee, and HealthMarkets, Inc. ("HealthMarkets") (collectively, "Original Defendants"), asserting that they had engaged in unfair acts and practices in the sale of health insurance policies in violation of G.L. c. 93A. In 2009, the parties entered into a Consent Judgment, which, among other things, prohibited the Original Defendants and any of their subsidiaries from selling health insurance products in Massachusetts for five years, and permanently prohibited them from using false or deceptive advertising in Massachusetts. *See* Docket No. 46.

In 2009, The MEGA Life and Health Insurance Company and Mid-West National Life Insurance Company of Tennessee stopped selling insurance in Massachusetts. In 2011, a subsidiary of HealthMarkets, defendant The Chesapeake Life Insurance Company ("Chesapeake"), began selling health insurance products in Massachusetts, including through its agent, defendant HealthMarkets Insurance Agency, Inc., f/k/a Insphere Insurance Solutions, Inc. ("Insphere").

[1] Mid-West National Life Insurance Company of Tennessee; HealthMarkets, Inc.; The Chesapeake Life Insurance Company; HealthMarkets Insurance Agency, Inc., f/k/a Insphere Insurance Solutions, Inc.

In 2020, the Commonwealth filed the present three-count Complaint for Contempt and Relief Pursuant to G.L. c. 93A ("Complaint"), alleging that HealthMarkets, Chesapeake, and Insphere (collectively, "Present Defendants") should be held in contempt for violating the Consent Judgment (Count 1) and assessed various penalties for these same violations under G.L. c. 93A, §§ 4 and 8 (Count 2). The Complaint also alleges direct violations of G.L. c. 93A for the Present Defendants' continuing unfair and deceptive acts and practices (Count 3).

In 2021, the parties cross-moved for summary judgment. In its motion, the Commonwealth specifically sought summary judgment as to liability and a permanent injunction. In April 2022, the court (Davis, J.) ("Motion Judge") allowed the Commonwealth's motion in part ("SJ Decision"). *See* Docket No. 139. In December 2022, this court denied the Present Defendants' motion for partial summary judgment and denied the Commonwealth's motion for summary judgment on damages. *See* endorsement to Docket No. 169, Docket No. 183. In November 2023, the case proceeded to a bench trial on damages only. The trial was held over sixteen days in November and December 2023. After closing arguments on March 21, 2024, and consideration of the parties' submissions, the court now enters its findings of fact and conclusions of law on the issue of damages.

BACKGROUND AND PROCEDURAL HISTORY

I. Consent Judgment

The 2009 Consent Judgment, *see* Docket No. 46, prohibited the Original Defendants from selling Health Benefit Plans in Massachusetts for five years, defined the business that they could undertake, and enjoined them from engaging in several other defined business activities. As relevant here, the Consent Judgment contains the following provisions:

> 1. (d) In the event that [the Original] Defendants, including any Insurer Subsidiary, or any one of them, after the expiration of the five-year [prohibition],

seek to write new Health Benefit Plan business in Massachusetts, [they shall provide notice to the Attorney General.] Nothing herein shall prevent the [Original] 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 [Original] Defendants may continue to offer the following types of health insurance plans that are excepted from the definition of Health Benefit Plan: . . . specified disease insurance that is purchased as a supplement and not as a substitute for a health plan . . .

2. Effective October 1, 2009, the [Original] 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 corporations, trust or other devise, are permanently restrained and enjoined in connection with their business in the Commonwealth of Massachusetts from: . . .

> (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, . . .

II. Summary Judgment Decision

Citing the undisputed evidence in the record, and examples in each instance, the Motion Judge determined that the Present Defendants were liable on five of the Commonwealth's allegations, as enumerated below.[2] ("Five Findings").[3] SJ Decision at 12-21. The Motion Judge also determined that all Present Defendants participated "to varying degrees" in the deceptive conduct. SJ Decision at 9-10.

---

[2] The court does not agree with the Commonwealth's position at trial that the five violations outlined in the SJ Decision were merely illustrative. The Motion Judge entered summary judgment on five of the numerous alleged violations. Having not sought a trial on liability for the other violations alleged in the Complaint for which summary judgment did not enter, but instead proceeding to a trial on damages based on the SJ Decision as it stands, the Commonwealth is limited to receiving damages for these five violations. The scope of the violations set forth in the SJ Decision nevertheless remains disputed. The court will resolve those disputes in this decision.

[3] Following the SJ Decision, the parties have referred to the SJ Decision's five liability determinations as the "Five Findings." Although perhaps confusing given this court's sole role as the fact-finder after trial, for the sake of continuity and convenience, the court nevertheless shall refer to the SJ Decision's liability determinations as the "Five Findings."

A. Violations of the Consent Judgment (Count 1)

The Motion Judge concluded that the Present Defendants violated the Consent Judgment in three ways.

1. False and Deceptive Advertising (First Finding)

The Motion Judge ruled that "the Present Defendants violated the [Consent Judgment, § 2(i)], after 2009, by engaging in advertising in the Commonwealth of Massachusetts that they knew, or should have known, was false and/or deceptive." The SJ Decision describes a broad scope of conduct by which the Present Defendants committed such violations.

To begin, the SJ Decision discussion section lists two types of false and deceptive advertising established in the record. First, it notes the Present Defendants' television, radio, and Internet advertisements representing that their services, i.e. agents assisting customers in enrolling in health insurance, were "free" when they were not free. Second, it states that Insphere and HealthMarkets, in both their television and Internet advertisements, inaccurately described Chesapeake's agents as "impartial," "objective," and "unbiased," when in actuality they sought to sell only Chesapeake supplemental health insurance.

The SJ Decision background section describes the following additional false and deceptive advertising conduct. Chesapeake's agents, in their direct communications with prospective consumers, made the same misrepresentations about being impartial as appeared in the marketing campaign about agent impartiality. The SJ Decision notes that Massachusetts law considers in-person commercial messages, such as the Chesapeake agents' statements, to be "advertising." SJ Decision at 15, n.8 (citing 940 Code Mass. Regs. § 3.01).

The background section also discusses the Present Defendants' unlawful advertising of non-insurance programs and their practice of deceptively "bundling" supplemental health

insurance with a sale of major medical insurance ("bundling") in their sales and marketing efforts. As concerns the non-insurance programs, the record established that:

> Chesapeake agents also marketed discount health plans, including dental plans, to Massachusetts residents as "coverage," and using insurance-related terms like "premium," "co-pays," and "carriers," even though the plans are not insurance . . . They also marketed Health Care Sharing Ministry Programs, which again are not insurance and do not guarantee the payment of health insurance costs, to Massachusetts residents as "insurance," and provided quotes for these programs to consumers that inaccurately referred to the "premium" due on these plans.

SJ Decision at 9.

With regard to bundling, the SJ Decision states:

> [T]he Present Defendants admit that various Chesapeake agents were trained to sell Chesapeake supplemental health insurance using marketing materials that referenced only major medical insurance. . . . Chesapeake agents also were trained to falsely refer to Chesapeake's supplemental health insurance as a "benefit" of major medical coverage, and to provide health insurance quotes to prospective customers in Massachusetts that hid the fact that the quotes included Chesapeake supplemental health insurance by including a single premium price for major medical insurance and supplemental health insurance.

SJ Decision at 8. The undisputed evidence in the summary judgment record established that this practice involved deceptive sales materials and false direct consumer sales pitches. *See id.*

Despite the undisputed evidence of these advertising practices described in the SJ Decision, the Present Defendants urge this court to limit their liability. Specifically, they argue that they are liable only as to the conduct listed in the SJ Decision discussion section — television, radio, and Internet advertisements regarding free services and unbiased agents. Limiting the reading of the SJ Decision in this manner would accordingly limit the possible damages awarded.

The court disagrees with the Present Defendants' argument that the background section of the SJ Decision is superfluous. The Commonwealth's allegations of false and deceptive advertising were fairly litigated at summary judgment, and the facts set forth in the SJ Decision

are clear, supported by undisputed evidence, and as explained below, logically encompassed within the discussion concerning false advertising in violation of the Consent Judgment.

In the discussion section on false and deceptive advertising, the Motion Judge also prefaces his liability discussion about radio, television and Internet advertisements with the word "[c]ertainly," which suggests that these examples, while maybe the clearest, are not the only examples of the Present Defendants' false and deceptive advertising. The Motion Judge further states that "each time the present Defendants ran an advertisement in Massachusetts after 2009 making these *or other comparable false or deceptive statements previously described*, they violated the Consent Decree." SJ Decision at 13 (emphasis added). Finally, the Motion Judge concludes this section of the SJ Decision by stating more broadly that "the Commonwealth is entitled to the entry of summary judgment in its favor on so much of Count I as alleges the Present Defendants have violated the Consent Judgment by engaging in false or deceptive advertising since 2009."[4]

Accordingly, fairly read, the court's entry of summary judgment on false and deceptive advertising incorporates the practices described earlier in the SJ Decision, *see* SJ Decision at 6-8, as well as those specifically referred to in the discussion section. Specifically, under this court's reading of the SJ Decision, the Present Defendants are liable for their: (1) television, radio and Internet advertisements misrepresenting their services as free and their agents as unbiased; (2) their direct consumer statements misrepresenting that agents were impartial and represented "most every option that's available"; (3) their marketing of other health programs; and (4) their

[4] Although the discussion section heading for false and deceptive advertising states: "Falsely and Deceptively Advertising the Present Defendants' Insurance Services as "Free" to Consumers, and Misrepresenting Their Agents as "Objective," "Unbiased," and "Impartial," *see* SJ Decision p. 12, in light of the other more expansive language used in the body of the text, the court declines to limit the Present Defendants' liability to these two areas alone.

practice of deceptively "bundling" supplemental health insurance with major medical insurance through their marketing materials and direct sales pitches.

2. Agents' Marketing and Sale of Specified Disease Insurance (Second Finding)

Second, the Motion Judge ruled that the Present Defendants violated the Consent Judgment, ¶ 1(d), by permitting Chesapeake's agents to offer and sell Specified Disease Insurance ("SDI") plans to Massachusetts consumers as an effective substitute for a major medical health insurance plan on multiple occasions from 2012 to 2018. SJ Decision at 13-14. The facts established that these sales were not "accidental," as the Massachusetts Division of Insurance ("DOI") requires insurers to determine, through the application paperwork process, that such purchasers are covered by a health plan. *Id.* The application forms at issue, however, "conveniently omitted this question." *Id.* The Present Defendants also declined to discipline or terminate the agent or agents involved in such sales. *Id.*

3. Agents' Marketing of Short-Term Health Insurance (Third Finding)

Third, the Present Defendants violated the Consent Judgment ¶ 2(h) by permitting Chesapeake agents to market, through direct consumer contact, and sell, short-term major medical health insurance policies issued by Unified Life Insurance Company (the "Unified Plan") to Massachusetts residents as covering "any doctor," without disclosing all exceptions and limitations of the policies, on multiple occasions after 2009. SJ Decision at 14-15. The violations were not accidental, as Chesapeake's agents were specifically trained to market, and did market, the policies to Massachusetts consumers as covering "any doctor," even though the policies did not cover all behavioral health services. Specifically, "the record shows that, from August 2015 to May 2016, Chesapeake agents advertised and sold 267 short-term health insurance policies to Massachusetts residents issued by Unified Life Insurance Company . . .

Chesapeake agents were trained to market the Unified Plan as covering "any doctor," even though the Unified Plan excluded mental health services." SD Decision at 9.

B. Violations of G.L. c. 93A (Count 3)

The Motion Judge determined that the above established conduct, in addition to violating the Consent Judgment, also violated G.L. c. 93A's prohibition against unfair and deceptive practices in trade or commerce, as alleged in Count 3. The SJ Decision also determined that the Present Defendants violated G.L. c. 93A in two additional ways:

1. Chesapeake Agents Holding Themselves Out as Duly Licensed "Insurance Advisors" (Fourth Finding)

Under Massachusetts law, a person holding himself out as an "insurance advisor" is required to be licensed by the DOI. *See* G.L. c. 175, §§ 177A and 177B. Various employees and agents of the Present Defendants who sold Chesapeake supplemental health insurance to Massachusetts residents repeatedly violated these statutes by falsely holding themselves out to the public as "insurance advisors," "licensed benefits consultants," or the like without actually being licensed by the Commonwealth. SJ Decision at 15-17. The violations were not accidental, as the Present Defendants admitted that Insphere representatives affirmatively trained agents to so describe themselves to Massachusetts consumers in violation of § 177B.

2. Agents' Statements that they Represent All Insurance Carriers in Massachusetts (Fifth Finding)

The Present Defendants trained and permitted Chesapeake agents to tell Massachusetts consumers that they represent "all" insurance carriers in Massachusetts, which was false. SJ Decision at 18-19. The representations were deceptive and accordingly violated G.L. c. 93A as a matter of law.

III. Bench Trial on Damages

As noted, a bench trial was held over several days in November and December 2023 on the issue of damages. In an order issued prior to trial on the standard of proof for the Commonwealth's claims for restitution ("Restitution Decision"), *see* Docket No. 217, the court indicated that it intended to use the assumed reliance approach to restitution awarded as a result of false and deceptive advertising. It requires proof that: (1) the Present Defendants made material misrepresentations; (2) the misrepresentations were widely disseminated; and (3) consumers purchased the Present Defendants' product. *Id.* The court also stated that the "[SJ] Decision, and the facts underlying it, support the conclusion that each of these prongs has been proven or is undisputed." Nevertheless, the court stated that it would "hear further argument and evidence on this issue if necessary." *Id.* Accordingly, at trial, the parties introduced evidence relevant to the second and third factors, in addition to any other evidence relevant to the calculation of damages, upon which the court makes findings below.

FINDINGS OF FACT

These Findings of Fact are based on the testimony and exhibits introduced at trial, deposition designations admitted by the Court, Civil Investigative Demand ("CID") testimony where admissible,[5] the Agreed Facts contained in the Joint Pre-Trial Memorandum (Ex. 1), and the parties' Proposed Findings of Fact and responses thereto that were filed prior to trial.[6] The

[5] In this court's view, testimony given pursuant to a CID during the investigation that preceded the Complaint are not the equivalent of depositions for purposes of Mass. R. Civ. P. 32. For such testimony to be admissible, it must satisfy the Massachusetts law regarding the admissibility of out-of-court statements. *See* Mass. Guide to Evid. §§ 613, 801, et seq. If the court cites to CID testimony, it has made the determination that the testimony is admissible under the Massachusetts laws of evidence.

[6] The court considered all post-trial submissions, but the parties did not respond to opposing parties' proposed findings of fact.

court accepts all facts established in the SJ Decision as true for purposes of determining damages and refers to portions of the SJ Decision where appropriate.

I. The Agents

Chesapeake appointed, and Insphere contracted with, the following individuals who sold, among other things, Chesapeake supplemental health insurance in Massachusetts at times between 2011 and the present ("Chesapeake-Insphere Agents"): Douglas Carlson, Robert Carlucci, Lawrence Cavanaugh, Gerald Dorfman, Robert Gregory, Ryan Herlin, Sean Jobin, Steven Lee, Brian Lynch, Steven Moulton, Samuel Newland, Keith Nice, Alexander Schiripo, Louis Simpson, Christopher Smith, Vincent Smith, Mark Taylor, Donna Williams, and Richard Williams, Jr. Ex. 1 ¶ 19, 61.

In 2014, Chesapeake contracted with agents who were affiliated with Louis Simpson's entity, Simpson Financial Group ("SFG"). Those agents were Adam Gonyea, Matthew Marden, Joseph Pate, Nicholas Peterson, Nicholas Roberts, and Michael Williams ("Chesapeake-SFG Agents"). They sold Chesapeake supplemental health insurance in Massachusetts within the timeframe 2014-2017. Ex. 1, ¶ 25, 150.

II. False and Deceptive Advertising (First Finding)

A. Television and Radio

An Insphere television advertisement featuring Bill Engvall, which described HealthMarkets as offering "objective solutions," and stated that HealthMarkets' services were "free," ran over 3,200 times between 2017 and 2019 on national stations that were available in Massachusetts ("Engvall Ad"). Ex. 183; Ex. 12; Commonwealth's Proposed Findings of Fact ¶ 68; Defendants' Post-Trial Proposed Findings of Fact and Rulings of Law, ¶ 30.[7]

[7] Paragraph 68 of the Commonwealth's Proposed Findings of Fact, filed prior to trial, states: "Between 2017 and 2019, Insphere ran more than 3,200 times on television on channels or networks available in Massachusetts

Part of HealthMarkets' advertising strategy beginning in or about 2013, and lasting at least through 2020, which included the Engvall Ad, was to offer "objective solutions." Tr. Day 12, 2296. The Engvall Ad was intended to run nationally and was not made exclusively for Massachusetts. Tr. Day 12, 2245:18-24. The Engvall Ad was created to advertise major medical health insurance during the annual major medical health insurance open enrollment period and did not mention supplemental insurance. Ex. 183; Tr. Day 12, 2236:22-2237:12; 2245:8-13.

No evidence was introduced at trial establishing how many times the Engvall Ad ran in Massachusetts, or whether any Massachusetts residents actually viewed it. Neither was evidence introduced of any television advertisements the Present Defendants ran after 2019.

As for radio, no evidence was introduced at trial of any radio advertisement the Present Defendants ran in Massachusetts other than an agreed fact that "Insphere radio advertisements [were] available to be heard by a listener in Massachusetts who chose to stream by internet[.]" Ex. 1, ¶ 38. However, no evidence was introduced that any Massachusetts resident actually streamed any of the Present Defendants' radio advertisements. The only radio advertisement in evidence was one that ran in local markets in Texas. Ex. 24; Tr. Day 6, 1164:12-16.[8]

B. Agents' Webpages

As recently as August 2023, publicly available agent webpages on the HealthMarkets.com website have described Chesapeake-Insphere Agents Carlson, Dorfman, Jobin, Taylor, and Williams, Jr. as providing "objective guidance and solutions." Ex. 1, ¶ 26.

---

advertisements featuring Bill Engvall that included statements that 'HealthMarkets' offers 'objective solutions.'" The Present Defendants did not address that paragraph in their response. *See* Docket No. 218. Accordingly, the court will treat those facts as admitted. Moreover, the Present Defendants concede in their post-trial Proposed Findings of Fact and Rulings of Law that the spreadsheet, admitted as Exhibit 12, shows that "this ad aired nationally on a wide variety of cable TV channels for brief periods [over the course of] three years: Nov. 1, 2017-December 16, 2017, Nov. 1, 2018-December 14, 2018, and March 11, 2019-Apr. 22, 2019."

[8] The Motion Judge determined that radio advertisements ran in Massachusetts but did not state how many times they ran.

Specifically, Jobin testified that his webpage included that statement from about 2011 until at least 2021. Tr. Day 10, 1746:10-1748:14; Ex. 33. The parties agree that Williams Jr.'s webpage included the same statement from at least 2012 until August 2023. Ex. 1, ¶ 29.

Insphere provided to its agents an "Agent Website Profile Quick Guide" "to assist with their marketing and lead generation efforts," which included content guidelines and suggested examples. Ex. 31. The language "I . . . provide objective guidance and solutions" was an example suggested for inclusion in the agent's "My Background" section. Ex. 1, ¶ 28; Ex. 31.

Between January 1, 2011, and March 1, 2012, the publicly available agent webpages on the HealthMarkets.com website for Chesapeake-Insphere Agents Carlson, Cavanaugh, Dorfman, Jobin, Taylor, and Williams, Jr. received more than 13,000 pageviews nationally, including more than 5,000 for Carlson's page and more than 1,500 for Williams, Jr.'s page. Ex. 1, ¶ 30. Jobin's webpage received 3,000 pageviews in the same timeframe. Ex. 27, A at 3; Commonwealth's Proposed Findings ¶ 79.[9]

Approximately ninety-five to ninety-eight percent of Jobin's sales of Chesapeake supplemental health insurance from 2011 to 2020 were in Massachusetts. Tr. Day 10, 1743: 19-23. Approximately ninety percent of Williams, Jr.'s sales from 2015 until 2019 were to Massachusetts customers. Richard Williams, Jr. Dep. Desig. 14:19-23; 15:20-23. Approximately fifty percent of the people Carlson sold Chesapeake supplemental health insurance to between 2011 and 2020 were Massachusetts residents. Tr. Day 8, 1295:9-24.

C. Emails

In an email dated June 18, 2016, Chesapeake-Insphere agent Donna Williams stated to a consumer, Kathryn Kelley, that she was a "local agent" and could offer "a wide-varicty of

[9] The Present Defendants did not respond to ¶ 79. It is therefore deemed admitted.

options from several highly rated companies for Life, Health, Supplemental, Retirement, Medicare and more." Ex. 66. An identically worded email to a different consumer, dated May 18, 2023, from Chesapeake-Insphere Agent Douglas Carlson, was proffered by the Commonwealth post-trial as Proposed Exhibit B. The court heard argument on this exhibit and rules that it is admissible, and therefore marks it as Ex. 232.

The Commonwealth alleges that Chesapeake-Insphere Agents sent over 114,000 of these identical form emails to Massachusetts residents from 2013-2019, deceptively representing to consumers that the Insphere agents (who were also agents of Chesapeake) could offer: "a wide variety of options from several highly rated companies for Life, Health and Supplemental" insurance. In support of that number, it cites the CID interview of Taryn Risucci, a HealthMarkets officer. She testified that an email she was being shown with the subject line "Request received by your local agent" was a form email Insphere sent over 114,000 times to Massachusetts residents from 2013 through approximately August 2019. The Donna Williams and Carlson emails both have the same subject line as the email Taryn Risucci viewed in conjunction with her cited testimony.[10] Based on this evidence, the court finds that the Commonwealth has proved that the "Request received by your local agent" form email was sent over 114,000 times to Massachusetts residents.[11]

[10] The email chain in Exhibit 140 also contains the same email. In his trial testimony, Chesapeake-Insphere Agent Sean Jobin testified that such emails, with the subject line, "Request received by your local agent," were "automated." Tr. Day 10, 1717:13-18.

[11] To prove this fact, it would have been preferable for the Commonwealth to have introduced evidence confirming that the text body of the email Taryn Riscucci viewed was the same as the form emails admitted into evidence.

D. Bundling[12]

The SJ Decision established that Chesapeake-Insphere Agents sold Chesapeake supplemental health insurance using marketing materials that hid the fact that the single premium price included both major medical and supplemental health insurance. The summary judgment record also included undisputed evidence that they were trained to do so.

The Agreed Facts describe both the Insphere agents' practice of referring to Chesapeake supplemental health insurance as a benefit of major medical insurance, and their practice of providing a single quote for both products. As to the former, required training for Insphere agents directed Chesapeake-Insphere Agents to refer to supplemental health insurance as "supplemental benefits." Ex. 1, ¶ 75. In a 2014 training presentation, viewed by a Massachusetts agent, the presenter likewise referred to supplemental health insurance as "supplemental benefits." Ex. 1, ¶ 77. "*On occasion*, Chesapeake-Insphere Agents described benefits from Chesapeake supplemental health insurance as 'include[d]' in a plan or program they described with a single premium and only with reference to a source of major medical insurance (a carrier or the Connector), but not naming Chesapeake." Ex. 1, ¶ 78 (emphasis added). "Certain Chesapeake-Insphere Agents used materials *for a period of time* that did not use Chesapeake's name, and *in some instances*, agents used materials that referred to the Chesapeake supplemental health insurance policy as a 'benefit' or 'protection.'" Ex. 1, ¶ 80 (emphasis added).

[12] In its Post-trial Proposed Findings of Fact and Rulings of Law, the Commonwealth fails to include any discussion about the Present Defendants' bundling practice, but rather puts numerous cites in a single-spaced footnote. *See id.* at n.14 This practice is wholly inconsistent with the Commonwealth's obligation to submit findings of fact from the trial evidence. Nevertheless, the court will make findings pertaining to this issue.

Concerning the practice of providing a single quote, "[c]ertain Chesapeake-Insphere Agents and Chesapeake-SFG Agents used marketing materials with Massachusetts consumers *for a period of time* that showed a single premium for a combination of major medical insurance and Chesapeake supplemental health insurance policies . . . but did not show premiums for the different policies." Ex. 1, ¶ 79 (emphasis added). They were trained to give a single price for all the products they were attempting to sell. Ex. 1, ¶ 82; Ex. 180 at 17; Ex. 1 ¶120-123. "Insphere created and made available to its agents, including in Massachusetts, a template for marketing materials that generated a customer quote with a single total amount to pay for health insurance, supplemental health insurance, and other products. The copy of the quote available to the agent broke down the amount due by policy, but the customer-facing copy did not." Ex. 1, ¶ 83.

The trial evidence about bundling was as follows. Dallas Richin, a HealthMarkets officer, testified that in 2013 he worked with others to create this template, which was known as the three-option close sheet ("close sheet"). Tr. Day 11, 1992:7-9, 2014:14-15, 2018:1-2019:22. The template was in the form of a graphics-enhanced Excel spreadsheet that had a customer tab indicating total price for each of three insurance packages offered (i.e., the total price for each package of bundled health, supplemental, life, and additional protection options), and a separate "agent use only" tab that had price information for each policy offered. Ex. 91; Tr. Day 11, 2018:16-2019:5, 2028:7-21. The electronic template form gave "SureBridge" as an option for the name of the supplemental health insurance carrier but did not mention Chesapeake. Ex. 1, ¶ 84. SureBridge was a trade name for Chesapeake or a branding name for Chesapeake's supplemental health insurance products. Ex. 1, ¶ 85.

Ryan Herlin, who was affiliated with Insphere for approximately ten years starting in 2008, testified about the close sheet and bundling practice. Tr. Day 4, 501:22-502:19, 507:11-13,

598:16-18. In 2011, Herlin started selling Chesapeake products for HealthMarkets. Tr. Day 4, 507:5-10. He was trained to use a three-option method, such as that provided on the close sheet, when selling policies to consumers. Ex. 91; Tr. Day 4, 598:16-22. Herlin also was trained to include Chesapeake supplemental policies in each of the three options offered. Tr. Day 4, 598:23–599:23. Herlin confirmed that with this sales method "the price of the major medical insurance and the supplemental insurance and potentially other products were all bundled into one." Tr. Day 4, 599:10-14. Herlin testified that "somewhere in [the] timeframe of" 2012 and 2014, "when it was first introduced," he routinely used the close sheet (Ex. 91) and provided consumers with a single price for each option as required by the close sheet. Tr. Day 4, 600:5-13. He also observed other agents use either the close sheet or a similar four-option single-price close sheet when he went with them on sales calls. Tr. Day 4, 606:7-23, Ex. 92.

Herlin raised concerns over the years about the bundling sales practices of several agents between about 2011 and 2014. Tr. Day 4, 525:1-24, 528:14-529:4-531:20, 533:15-534:7. Specifically, he informed Insphere Vice President Richard Castagnozzi about the sales practices of Louis Simpson, Andrea Stewart, Richard Williams, Donna Williams, and Vincent Smith around their practice of bundling insurance products, that is, including the price for supplemental insurance in the price for major medical insurance. Tr. Day 4, 533:15-534:7, 557:15-558:1, 558: 21-561:3. He also witnessed others raise these concerns between 2010 and 2014. Tr. Day 4, 534:8-535:1.

Similarly, SFG provided its agents with policy summaries, which were shown to Massachusetts consumers, that quoted a combined single "monthly premium" price for both a major medical policy and Chesapeake supplemental policies. Ex. 75; Tr. Day 3, 428: 4-13, 429:4-430:5, 430:10-15. Chesapeake-SFG Agents were trained to give a single premium total

for the policies they were trying to sell, and were provided with a tool that they used in order to give the single premium total to consumers. Tr. Day 16, 2818:6-11, 2829:15; Ex. 74; CID Testimony of Joseph Pate, 12/8/21, 100:1-25; CID Testimony of Michael Williams, 8/30/21, 72:7-74:25, 78:3-17. These agents included quotes for supplemental policies even when customers were entitled to free major medical policies through MassHealth. *Id.*

Nicholas Peterson worked as an agent for SFG selling Chesapeake Life supplemental insurance plans.[13] He testified that he used the SFG policy summaries and was trained to quote a single premium, which was his sales practice with his Massachusetts customers. Ex. 75; Tr. Day 3, 430:16-23. Peterson confirmed that he was trained to refer to certain types of supplemental policies as "benefits" and that he did so when speaking with consumers. Tr. Day 3, 362:4-23; 365:10-19. Peterson also was trained to give a single premium total for consumers which included the cost, if any, for the major medical insurance and the Chesapeake supplemental health insurance policies he was selling. Tr. Day 3, 380:8-12, 393:1-394:16.

In November 2014, HealthMarkets issued a "Compliance Reminder and Recommendation" sheet to its agents cautioning them about bundling as follows:

> Bundling or Packaging - It is important to take caution when using the term "bundle" or "package."
>
> - Applicants must understand that while a "package or bundle" may suit their particular needs, **one plan is not required to be purchased in conjunction with another.** ***(State guidelines should be reviewed for any exceptions, such as the requirement in some states that an applicant must have health coverage in order to purchase certain types of supplemental plans.)***
>
> - Ex: An applicant should never be told they must purchase supplemental coverage (i.e. life, accident, vision insurance etc.) in order to obtained health insurance. The applicant must understand

[13] The testimony was unclear as to when Peterson worked at SFG. He estimated that he was there for two to three years and that he was working there in 2015. Tr. Day 3, 323:17-22, 324:19-23.

> the package can be separated to fit their specific financial and or health needs.

Ex. 96 (emphasis in original, formatting altered).

Kathryn Kelley, a Massachusetts resident, testified at trial that she thought Chesapeake-Insphere agent Donna Williams was a local agent, offering to help her find what she needed to purchase to fulfill the Massachusetts requirement to have health insurance. Tr. Day 2, 227:10-231:3, 235:12-236:10, 280:13-281:4. The court credits her testimony, and that of consumers Maria Murber and Maureen Clare, that in the 2015-2016 time period, Chesapeake-Insphere Agents Donna Williams and Alexander Shiripo, and Chesapeake-SFG Agent Jospeh Pate, deceived them into paying for Chesapeake supplemental health insurance when they were only seeking to purchase major medical insurance to comply with Massachusetts requirements. Tr. Day 2, 230:7-14, 236:11-2, 239:8-240:3-5, 288:20-289:21, 298:4-24; Day 7, 1214:10-16, 1215:8-1217:24, 1219:1-24; Ex. 69, 111, 114.

The court also credits the testimony of consumer Linda Mara, that in 2016, she unknowingly purchased Chesapeake supplemental health insurance from Nicholas Peterson, who led her to believe that she was purchasing a health plan through the Massachusetts Health Connector. Tr. Day 1, 59:21-60:24, 61:1-6, 64:3-10, 68:16-19.

The court further credits the testimony of consumers Brendan Hyde and Jerrie Lyn Paniri, who each testified that they unknowingly purchased Chesapeake supplemental policies when they were only seeking to purchase major medical insurance. Tr. Day 1, 94:24-98:24, 129:16-136:23, 169:12-18, 172:4-10; 173:4-175:6. Hyde purchased a supplemental policy from Chesapeake-SFG agent Adam Gonyea in May 2017 when he thought he was getting a major medical policy. Tr. Day 1, 95:13-24-96:1, 98:8-19. Paniri purchased supplemental policies from Chesapeake-SFG agent Mathew Marden in 2015 when she thought she was purchasing

"MassHealth" only. Tr. Day 1, 129:13-139:17. Finally, the court credits the testimony of Karen Smyers. In 2014, Smyers purchased a Chesapeake supplemental policy from Chesapeake-Insphere agent Larry Cavanaugh along with a major medical plan because she was led to believe it was required as part of a bundle in order to get the better price for the major medical. Tr. Day 1, 169:12-18, 172:4-10, 173:4-175:6.

Each of these consumers were either quoted a single price that they believed was only for major medical coverage but in fact included payment for supplemental Chesapeake policies, or were sold a supplemental policy when they thought they were purchasing major medical.

The Present Defendants intentionally targeted vulnerable consumers in this regard. For example, as part of a March 2014 Insphere training that was made available to territory vice presidents and agency managers, and in a December 2014 Insphere training that was made available to all agents, Insphere employee Rochelle Wertenteil communicated that for selling supplemental health insurance, "the sweet spot" was "the poor" and individuals eligible for Medicaid and "[n]o one is too poor or too sick." Ex. 1 ¶ 113.

E. Other Health Programs[14]

Chesapeake agents marketed discount health plans, including dental plans, to Massachusetts residents as "coverage," and using insurance-related terms like "premium," "co-pays," and "carriers," even though the plans are not insurance. SJ Decision at 9. They also marketed healthcare sharing ministry programs, which likewise are not insurance and do not guarantee the payment of health insurance costs, to Massachusetts residents as "insurance," and

[14] The Present Defendants inaccurately claim that the court already ruled that the evidence relating to other health programs, such as the healthcare sharing ministry programs, is not a part of the Five Findings. It is true that when the objection to evidence relating to the other health programs was made, the court's first reaction was that this was not within the Five Findings. Tr. Day 13, 2386:21-23. However, the court heard further argument on the issue immediately after making that statement, and then said that it was NOT finding that this evidence did not fall within the Five Findings, but would allow the evidence in, and then would make that determination later. Tr. Day 13, 2388:11-19. The court now makes its findings of fact on this issue.

provided quotes for these programs to consumers that inaccurately referred to the "premium" due on these plans. *Id.*

The trial evidence reflected these practices as to the discount health programs. Insphere software for the non-insurance "SureBridge GetWell Discount Health Services" plans Insphere sold in Massachusetts described the amounts owed as "premiums." CID Testimony, Taryn Risucci, 6/12/19, 81:1-18; Ex. 28. The GetWell products offered discounts for various items, such as dental and chiropractic services. *Id.* at 80:24-81:4. Insphere received $414,887.80 for discount health programs from 2013 through 2020. Ex. 28. The Commonwealth also alleges that Insphere received $403,579 for its agents' sale of health care sharing ministry programs. However, because the court could not find this figure anywhere in the evidence admitted at trial, it has no choice but to find that the Commonwealth has not proven that asserted fact.[15]

III. Marketing and Selling Specified Disease Insurance as a Substitute for Major Medical Health Insurance (Second Finding)

According to Cheseapeake-Insphere Agent Ryan Herlin, the vast majority of Massachusetts consumers he interacted with had major medical insurance. Tr. Day 4, 676:4-7. However, the evidence reflects that, on occasion between 2012-2018, Chesapeake's agents offered and sold supplemental SDI policies, named "critical illness" plans, to Massachusetts consumers as a substitute for a major medical health insurance plan. SJ Decision at 8, 14; Ex. 1, ¶¶ 95, 126; Tr. Day 4, 583:10-21, 584:4-585:4; Day 5, 846:2-4; Day 10, 1670:7-1671:24, 1773:4-1776:5.

Chesapeake-Insphere Agent Jobin testified that if he sold a set of supplemental plans, it would have included "critical illness," and that he sold supplemental-only plans to Massachusetts

[15] In its Post-Trial Proposed Findings of Fact and Rulings of Law, the Commonwealth asserts that this number is located at "Ex. 184, Rows 1, 2, 15 and 27, columns AR and BG." Exhibit 184 contains no numbered rows or columns AR or BG, and it does not refer to healthcare sharing ministry programs.

customers ten to fifteen times. Tr. Day 10, 1781:24-1783:20. Chesapeake-Insphere Agent Carlson testified that he sold supplemental policies to a customer who did not have major medical insurance two to three times. Tr. Day 9, 1458:5-17. Chesapeake-Insphere Agent Smith stated in CID testimony that he sold SDI to Massachusetts customers who did not have major medical insurance between five and ten times. CID Testimony Chris Smith, 116:24-117. Another agent, Michael Pantano, stated in his CID interview that he sold supplemental plans without major medical "maybe" more than twenty times, but not more than fifty times. CID Testimony Michael Pantano, 150:15-24. Chesapeake-Insphere Agent Gregory sold Chesapeake supplemental policies, including SDI, to individuals who did not have the means to purchase major medical insurance more than ten times but less than fifty. CID Testimony Robert Gregory, 96-101. Chesapeake-Insphere Agent Taylor similarly testified that he would offer supplemental plans that included SDI to people who had no qualifying event that would allow them to enroll in major medical insurance. CID Testimony Mark Taylor, 10/22/21, 114:2-116:7.

Chesapeake was aware that this practice violated regulations issued by the DOI, 211 Code Mass. Regs. 146.00 *et seq.* (the "Regulations"), which require applicants for SDI to have minimum health coverage in place. Ex. 1, ¶ 228 (quoting from a 2011 internal memo citing to the Regulations). Indeed, the application forms Chesapeake's agents used omitted a required question under the Regulations that confirms that the applicant is covered by a "Health Plan." 211 Code Mass. Regs. § 146.10(5)(a); SJ Decision at 14. Moreover, from at least November 16, 2016, through July 3, 2018, despite its knowledge of the Regulations, Chesapeake expressly informed its agents that this practice was allowed in Massachusetts. SJ Decision at 8; Ex. 62, 64, 95, 144. On July 3, 2018, HealthMarkets informed agents that Massachusetts "DOES REQUIRE" SDI applicants to have major medical insurance. Ex. 144.

Chesapeake-Insphere Agent Keith Nice testified at his CID interview that "people didn't want to have nothing . . . what I was doing and what we were doing and what we were taught is, this is another option that if you're square with the client and you say this is not a health insurance plan, but if something happens to you, it will give you some coverage." CID Testimony Keith Nice, 250:17-251:4. Ronald Brown, an Insphere Territory Vice President, testified that he never trained agents "to push specified disease insurance on consumers instead of major medical." Tr. Day 13, 2425:24-2426:1, 2487:5-9. However, he admitted that while their primary focus was to get consumers covered under a "base health insurance plan," if the customer refused, they would help them look at other types of policies. Tr. Day 13, 2487:16-2488:10.

Regardless of Brown's testimony, as noted, Chesapeake-SFG agents were trained to engage in this sales practice. Chesapeake-SFG agents were provided a written "supps-only" script to assist them in the sale of supplement-only plans, which included SDI. Ex. 72; Tr. Day 3, 371:19-373:21. Chesapeake-SFG agent Matthew Marden testified that he and other agents routinely followed this script in their sales. Tr. Day 3, 372:3-23; Tr. Day 16, 2857:6-14. He further testified that in over ninety percent of his sales presentations of unsubsidized plans to consumers, he presented the option of an "interim plan," i.e., a supplemental insurance-only plan with an SDI component, and he trained other agents to do the same. Ex. 199; Tr. Day 16, 2834:9-2835:18, 2856:11-2857:14.

Similarly, Chesapeake-Insphere agent Sean Jobin sent emails to consumers in 2014 and 2016 offering them the option of only purchasing SDI. Ex. 137-140; Tr. Day 10, 1710:7-21. He also admitted that he discussed the option of SDI with consumers in Massachusetts during this

time, but could not say how often. Tr. Day 10, 1697:10-1699:3, 1702:1-13, 1710:22-1711:4; 1717:7-1719:17.

Kym Glenn, HealthMarkets Vice President and Chief Compliance Officer, testified at her CID interview that she was aware of two complaints based on the sale of supplemental health insurance to a consumer without major medical insurance. One was a sale by Louis Simpson in 2013, and the other by Mark Taylor in 2014. CID Testimony Kimberly Glenn, 1/9/20, 93:17-94:3, 104:2-105:1. When improper sales of specified disease insurance were brought to the Present Defendants' attention, they took no disciplinary action against the offending agents. SJ Decision at 14; Ex. 1, ¶¶ 95-96.

During the time period when this improper practice took place, 2012 until July 3, 2018,[16] Chesapeake collected $17,161,330.94 in premiums for the SDI, or "critical illness direct," policies Insphere and SFG agents sold to Massachusetts consumers during that time. Ex. 110 The named agents above testified about the approximate number of times they engaged in this practice. Added together, those numbers totaled 47 times on the low end and 88 times on the high end, which is 67.5 times averaged. The total number of SDI policies this group of agents sold during the relevant period is 1,457. Thus, on average, 4.6 percent of their SDI sales were to Massachusetts consumers who did not have major medical insurance.[17] Because the evidence reflects that agents were trained to engage in this sales practice, and routinely did so, the court shall apply this percentage to the total amount of premiums collected, noted *supra*, for a figure of $789,559.22. This number is a reasonable estimate of the amount of premiums Chesapeake collected as a result of agents engaging in the improper sale of SDI in Massachusetts.

[16] No evidence was admitted that the improper sale of SDI took place after the July 3, 2018, communication to agents that SDI applicants must have major medical insurance.
[17] This number is also roughly in line with the percentage of uninsured individuals in Massachusetts. The parties agree that in 2019, less than three percent of the Massachusetts population was uninsured. Ex. 1 ¶ 97.

IV. Marketing and Selling Short Term Health Insurance: Unified Plan (Third Finding)

Chesapeake agents also marketed and sold a short-term health insurance plan that offered limited coverage for between six to twelve months. SJ Decision at 14-15; Tr. Day 12, 2258:4-2259:19. Short-terms plans are not major medical insurance. Tr. Day 12, 2258:22-24. The plan they sold was underwritten by Unified Life Insurance Company ("Unified Life"), and administered by Health Insurance Innovation, a separate entity that contracted with HealthMarkets. Tr. Day 12, 2258:3-2262:19. The short-term plan was sold between August 2015 and May 2016. SJ Decision at 9; Tr. Day 12, 2267:8-11, 2268:7:13, 2271:2:11; Ex. 105.

Chesapeake agents marketed the Unified Plan to Massachusetts residents and represented, consistent with their corporate training, that the plan covered "any doctor" without disclosing exceptions and limitations, in violation of the Consent Judgment. SJ Decision at 14-15; Ex. 104, at 5; Tr. Day 4, 582:15-583:9; Tr. Day 5, 882:3-10. The agents trained to sell the Unified Plan were not trained that the Consent Judgment restricted the use of the terms "any doctor" in advertising. Ex. 1, ¶ 138. In total, Chesapeake agents advertised and sold 267 United Life short-term health insurance policies to Massachusetts residents for which Insphere received $112,780. SJ Decision at 9; Ex. 1, ¶ 145.

Health Insurance Innovation represented to HealthMarkets that the Unified Plan was eligible for sale in certain states, including Massachusetts, and provided the agent training on that product. Tr. Day 12, 2268:7-23. On May 26, 2016, Health Insurance Innovation informed HealthMarkets that the product was not approved for sale in Massachusetts. Tr. Day 5, 884:21-887:12; Tr. Day 12, 2271:2-2272:19; Ex. 105. The product was not sold again in Massachusetts. Tr. Day 5, 887:1-4. In October 2021, the Massachusetts Attorney General's Office settled an action against Health Insurance Innovation related to the sale and marketing of the Unified Plan.

Ex. 1, ¶ 142. Unified Life Insurance Company and Health Insurance Innovation are bound by separate consent judgments requiring that both companies repay certain amounts to consumers, including the purchasers of the 267 Unified Plan policies the Present Defendants sold. Ex. 1, ¶ 144.

V. Training and Permitting Chesapeake Agents to Falsely Hold themselves Out to Massachusetts Consumers as Duly-Licensed "Insurance Advisors" (Fourth Finding)

Between 2012 and 2022, the publicly available LinkedIn pages for Chesapeake-Insphere Agents Carlson, Gregory, Lynch, C. Smith, Carlucci, Schiripo, Taylor, D. Williams, and R. Williams included the descriptors: "insurance advisor," "licensed benefits consultant," "insurance specialist at HealthMarkets, Inc.," and/or "Health Insurance Specialist." Ex. 1, ¶ 52. In 2013, Chesapeake-Insphere agent Carlucci used the title "Benefits Advisor" in the signature line of at least two emails, one of which was sent to a consumer. Ex. 222, 223. In April 2020, he used the title "Licensed Insurance Producer MA, RI" in the signature line of at least one email sent to a consumer. Ex. 224. Chesapeake-Insphere Agent Herlin testified that consistent with the training he received, he represented himself as a "licensed insurance consultant" for two to four years. Tr. Day 4, 568:23-571:16; Ex. 1, ¶ 59. None of these named agents had an insurance adviser's license from the Massachusetts DOI. Ex. 1, ¶ 53.[18]

Chesapeake-Insphere agents were trained to use these titles, and were provided a telephone script with language identifying the agent to the consumer as a "licensed benefits consultant here in Massachusetts." SJ Decision 17; Ex. 1, ¶ 59; Ex. 21. The Present Defendants knew, no later than 2018, that agents selling Chesapeake supplemental health insurance were

[18] The email signature line of two other agents, Ron Hamilton and Greg Ryerson, also included the phrase "Licensed Benefits Advisor" in 2017 and 2018 emails to Ronald Brown, then an Insphere Agency Manager. Ex. 188, 189. The evidence does not reflect whether these individuals had an insurance adviser's license from the Massachusetts Division of Insurance.

misrepresenting their credentials to Massachusetts consumers but took no disciplinary action against the known offenders. SJ Decision at 17; Ex. 1 ¶ 218.

VI. Training and Permitting Chesapeake Agents to Falsely Tell Massachusetts Consumers that they Represent All Insurance Carriers in Massachusetts (Fifth Finding)

HealthMarkets "train[ed] and permit[ed] Chesapeake agents to falsely tell Massachusetts consumers that they represent 'all' insurance carriers in Massachusetts." SJ Decision at 18; Tr. Day 4, 567:24-568:12. For example, Insphere created a training video urging agents to tell consumers that they "represent most every option that's available to you, and that allows us to impartially shop for the plan that best fits your needs and situation." SJ Decision at 18. Between 2012 and 2018, many Chesapeake agents misrepresented themselves to Massachusetts consumers as working with, representing, offering policies from, and/or being licensed by all carriers or all health insurance carriers in Massachusetts. SJ Decision at 18.

The trial evidence reflected this practice. Chesapeake-Insphere agent Doug Carlson, a sales manager affiliated with HealthMarkets for eighteen to twenty years, testified that he represented himself to consumers as selling policies from all carriers in Massachusetts. Tr. Day 8, 1274:22-1278:3, 1318:8-1319:9. Throughout the time he managed other agents in Massachusetts, he likely trained them to do the same. Tr. Day 8, 1319:10-1320:1. Chesapeake-Insphere agent Sean Jobin, who was affiliated with HealthMarkets for about thirteen years, testified that he was trained to describe HealthMarkets as a "nationwide company that is a middleman between all of the insurance carriers and the general public and small businesses." Tr. Day 9, 1598:5-14, 1610:7-15.

Likewise, SFG management trained Chesapeake-SFG Agents, including Dan Gonyea, Matthew Marden, Joseph Pate, Nicholas Peterson, Nicholas Roberts, and Michael Williams, to

recite verbatim a telephone script with the phrase: "I'm the one that works with all the carriers in Massachusetts." Ex. 1, ¶¶ 64, 70 (emphasis in original). Chesapeake-SFG Agent Marden was affiliated with SFG from approximately August 2014 to July 2017. Tr. Day 16, 2802: 6-21. Louis Simpson trained Marden on the script; Marden was then responsible for training other SFG agents in this practice. Tr. Day 16, 2803:10-13; 2804:2-3, 2809:4-2810:21. Marden and the other agents followed the script "close to 100 percent of the time" when making calls to Massachusetts residents. Tr. Day 16: 2810:22–2811:10. Indeed, Chesapeake-SFG Agent Peterson testified that he was required to memorize this script, and he used it when selling insurance. Tr. Day 3, 329:8-330:20. Chesapeake-SFG Agent Joseph Pate testified to the same at his CID interview. Joseph Pate CID Testimony, 12/8/2, 96:10-21, 97:18-25.

VII. Additional Evidence

A. "Protection for Life" Sales Method

Defense witness Dallas Richins has worked for HealthMarkets for fourteen years as a Vice President of Life Sales. Tr. Day 11, 1864:1-6, 1869:14-20. "Protection for Life" is a sales process that Richins developed in 2014 to give agents a uniform method or approach to selling insurance products. Tr. Day 11, 1884:20-1885:22. The Protection for Life sales process has three primary components: a comprehensive medical plan, supplemental insurance, and life insurance. Tr. Day 11, 1887:5-11. HealthMarkets provided agents with associated Protection for Life training and tools to help them work with consumers and identify appropriate policies through fact-finding and risk assessment. Ex. 149-152; Tr. Day 11, 1884-1971. An electronic quoting tool would display to consumers, in real time, the estimated premium for each supplemental product displayed. Ex. 152, Tr. Day 11, 1958:21-1961:13. Richins testified that, as "a required practice," insurance carriers such as Chesapeake would complete the Protection

for Life sales process by sending a confirmation of the products selected to the consumer. Tr. Day 11, 1967:1-13, 1969:1- 19710:2. The example email admitted into evidence displayed each of the policies the consumer had purchased and the individual prices for those policies, along with a link to a brochure for each policy. Ex. 69; Tr. Day 11, 1969:14-1970:12. No evidence was introduced, however, about the extent to which: 1) agents actually used the electronic quoting tool Ritchins described; and 2) emails in this form actually were sent to consumers.

B. Policies Sold and Amounts Received

The parties agree that between 2011 and through part of 2022, Chesapeake sold over 60,000 supplemental health insurance policies to over 20,000 Massachusetts residents. Ex. 1, ¶¶ 15-16. More specifically, after compiling the raw data submitted in evidence, between 2011 and when the Complaint was filed in December 2020, Chesapeake, through the Insphere and SFG agencies, sold 61,768 supplemental policies to 23,295 Massachusetts residents. Ex. 110. From these policies, Chesapeake received $55,482,782.07 in premiums, net of refunds. Ex. 110. During this same period, Chesapeake also received $465,900 in application fees for those policies. Ex. 110.[19]

C. Present Defendants' Awareness of Improper Practices

Chesapeake was aware that the practices of some of its agents were deceptive to consumers. Between 2013 and 2020, over 500 Massachusetts consumers who purchased Chesapeake supplemental health insurance complained to Chesapeake that they did so without

[19] The court has calculated these numbers to the best of its ability by applying relevant filters to Exhibit 110, an exceedingly large Excel worksheet file (the worksheet contains over 60,000 rows and 40 columns). The court is not an expert at Excel or data analysis, does not have limitless time and resources to become such an expert, and is frustrated that the Commonwealth did not present this data in an easy-to-navigate format or through the testimony of a data analyst. Moreover, the Commonwealth, in its Post-Trial Proposed Findings of Fact and Rulings of Law, suggests that the court further manipulate the Excel data to extrapolate future premiums received into 2023. *See* n.32. The suggestion that the court could perform the suggested computations and data analysis without expert assistance is astonishing.

knowing or fully understanding that they had purchased it, without having agreed to purchase it, and/or having thought it was part of a major medical insurance plan. Ex. 1, ¶ 69.

Chesapeake received its first consumer complaint about Louis Simpson in July 2013 (the same complaint noted *supra*), a few months after he was appointed as an agent. Ex. 1, ¶ 147. In response to the complaint, Simpson admitted that he had sold Chesapeake specified disease insurance to a Massachusetts consumer instead of major medical insurance. Ex. 1, ¶ 148. Thereafter, Chesapeake received additional complaints from Massachusetts consumers about their unknowing purchase of supplemental insurance from Simpson. Ex. 1, ¶¶ 150, 151, 154. The Present Defendants never disciplined Simpson in response to these consumer complaints. Ex. 1, ¶ 157. In January 2018, Simpson's appointment at Chesapeake was terminated without cause and he continued to receive commissions from past sales. Ex. 1, ¶ 158. *See also* Ex. 15, 52, 121, 194.

In addition to the complaints about Simpson, Chesapeake received numerous complaints from Massachusetts consumers about the agents at his entity, SFG. Ex. 16. The complaints likewise concerned the unknowing purchase of supplemental insurance. Ex. 1, ¶ 160; Ex. 16. After complaints were received about Chesapeake-SFG Agent Marden, he was directed to complete coaching and retraining on April 28, 2016, was suspended in October 2016, and terminated in February 2017. Ex. 1, ¶¶ 160, 161, 166, 167, 168, 169, 170, 172, 173. Marden continued to have a management role at SFG thereafter. Ex. 1, ¶ 171. Complaints also were received about Chesapeake-SFG Agents Joseph Pate, Nicholas Peterson, Michael Williams, Nicholas Roberts, and Adam Gonyea. Ex. 16, 52.

In October 2016, Douglas Carlson and Christopher Smith, Chesapeake-Insphere Sales Managers, shared reported concerns about SFG's sales practices with Insphere Vice President

Richard Castagnozzi, who shared these concerns with HealthMarkets officer Taryn Risucci. Ex. 1, ¶¶ 20, 178. In March 2017, Christopher Smith expressed to Risucci additional concerns about the magnitude of the problem. Ex. 1, ¶¶ 179, 180. Ultimately, in January 2018, Chesapeake terminated its affiliation with SFG. Ex. 1, ¶ 158.

Chesapeake-Insphere Agents Steven Lee, Donna Williams, Richard Williams, Vincent Smith, and Ryan Herlin also were the subject of similar complaints. Ex. 1, ¶ 211, Ex. 14, 16 ("unaware of coverage / misrepresentation complaints"). Vincent Smith was ordered to undergo coaching in 2017 and 2020, issued a warning in 2021, and ultimately terminated in 2022. Ex. 1, ¶¶ 206, 210. Richard Williams was subject to coaching in 2013, coaching and retraining in 2016, and received a monitoring alert in November 2016. Ex. 1, ¶¶ 211; Ex. 14, 85. After more complaints, in 2018, Richard Williams was given a warning and two correction plans. Ex. 14 Defendants provided Steven Lee coaching and retraining in connection with consumer complaints they received about him. Ex. 1, ¶¶ 214-216.

In a 2015 communication, Ronnie Rahe, identified therein as a manager at HealthMarkets, stated that documents that included supplemental health insurance in a total monthly cost, but had "no reference to Chesapeake or these plans being optional" should not be used. Ex. 1, ¶ 71. However, documents that made no reference to Chesapeake continued to be used into 2018. Ex. 1, ¶ 73.

VIII. Evidence of Offsets

A. Value of Supplement Health Insurance

In their trial testimony, Ryan Herlin, Douglas Carlson, and Dallas Richins described their view that supplemental policies have value because they mitigate risk for the consumer. Tr. Day

4, 683:17-685:13; Tr. Day 9, 1492:14-19; Tr. Day 11, 1886:11-1887:4, 1903:4-18, 1911:20-1917:11, 1918:14-1920:12, 1927:7-17.

Dr. Adam E. Block, a health economist and expert witness for the defense, credibly testified to essentially the same thing. According to his testimony, tens of millions of supplemental health plans are purchased every year, which compensate the policy holder if a triggering event occurs. Tr. Day 15, 2704:14-18-2706:11. Dr. Block opined that such policies have value in the market, in addition to any claims benefits received, because consumers derive peace of mind from knowing that they will be financially covered if a triggering event occurs. Tr. Day 15, 2704:14-18-2706:11. As with the example of term life insurance, the value for that peace of mind remains even if the consumer never makes a claim under the policy. Tr. Day 15, 2705:4-13, 2712: 13-2716:7. According to Dr. Block, the value for a supplemental policy can be calculated as equal to the price the consumer is willing to pay for it. Tr. Day 15, 2717:7-12, 2750:6-13.

Dr. Block offered further testimony about the concept of "medical loss ratio" in the health insurance field. It is calculated by dividing a policy's claim expenditures by its premiums, and, for major medical plans, the ratio must be reported to federal regulators under the Affordable Care Act ("ACA"). Tr. Day 15, 2745:2-8, 2745:19-1946:5. Major medical health insurers' ACA plans must comply with set minimum medical loss ratios, otherwise the insurer must refund a certain amount to policy holders to bring the plan within compliance. Tr. Day 15, 2763:5-19. Between 2011 and 2020, neither the ACA nor Massachusetts law required supplemental health plans to report or comply with minimum medical loss ratios. Tr. Day 15, 2746:6-14. Due to the different cost structures and claims bases of major medical and supplemental plans, Dr. Block testified that medical loss ratio is not an appropriate tool to regulate supplemental health

insurance products. Tr. Day 15, 2746:15-24, 2765:2-11. Dr. Block did clarify on cross-examination, however, that specified disease insurance plans in Massachusetts are subject to regulations based on different ratio calculations that can affect *prospective* premium prices or benefits received.[20] Tr. Day 15, 2765:12-2766:23. Dr. Block stated that a plan's medical loss ratio has nothing to do with its value to an individual customer. Tr. Day 15, 2745:21-24.

In summation, Dr. Block reiterated that supplemental health insurance products "provide useful risk mitigation" with their value being "related to the price of the product, and if an individual believes that there is value [to] the product, they will pay the purchase price, and if they believe that the product does not have value, they will elect not to pay the purchase price." Tr. Day 15, 2750:7-24. Dr. Block conceded on cross-examination, however, that a consumer is not likely to receive peace of mind from a product that they unknowingly purchased. Tr. Day 15, 2777:1-5. The Commonwealth did not present its own expert on valuation.

The Court does not credit the Present Defendants' evidence of value received, in the context of this case. Although consumers may be willing to pay for an insurance policy, in part, for the peace of mind it offers, any such value does not apply to the unknowing purchase of products that were deceptively marketed and sold. Indeed, Dr. Block conceded this point on cross-examination. Furthermore, even if some of the Present Defendants' products were knowingly and voluntarily purchased despite the misrepresentations made, based on the evidence presented, the court has no way of knowing from the evidence offered at trial, how many policies fall into that category.

[20] This testimony concerned the difference between a specified disease insurance plan's "actual durational loss ratio" and its "anticipated loss ratio." Tr. Day 15, 2765:12-2766:23. When asked, Dr. Block did not know if Chesapeake's SDI plan premiums in Massachusetts had been affected by such regulations. Tr. Day 15, 2766:24-2767:4.

B. Claims Paid

Chesapeake paid claims on its supplemental plans totaling more than $5,500,000 to over 500 Massachusetts consumers. Ex. 1, ¶ 17; Ex. 230.

CONCLUSIONS OF LAW

I. Statute of Limitations on G.L. c. 93A Claims

It is undisputed that the Commonwealth was engaged in an investigation of the Present Defendants between 2016 and 2020, during which it issued multiple CIDs. The parties executed tolling agreements, effective July 1, 2017. The Complaint was filed on December 8, 2020, and alleges conduct in violation of c. 93A dating from 2011. The statute of limitations for c. 93A claim is four years. G.L. c. 260, § 5A. The Present Defendants argue that post-Complaint conduct, and any c. 93A claims derived from pre-2013 conduct, i.e. more than four years before the tolling agreements became effective, are accordingly barred from the court's consideration of damages.[21] The Commonwealth seeks to include conduct dating from 2011 to the present, citing the discovery rule.

To begin, due to the undisputed tolling agreements, any claim arising from conduct on or after July 1, 2013, four years prior to their effective date, is timely. However, since post-December 8, 2020, conduct is not encompassed within the SJ Decision's Five Findings, and the Commonwealth chose to proceed with a damages-only trial, post-Complaint conduct is *not* a basis for a damages award.

---

[21] HealthMarkets separately argues that any claims against it based on conduct predating December 8, 2016, four years before the Complaint was filed, are barred because it did not sign the tolling agreements. The court rejects this argument. The tolling agreements provided that they were binding upon Chesapeake's "parents, subsidiaries, affiliates, predecessors and successors." Ex. 25, ¶5. Further, as the Motion Judge determined in the SJ Decision, HealthMarkets, Chesapeake, and Insphere "maintain their principal places of business at the same address in North Richland Hills, Texas, and their identities and personnel often have overlapped or been intermingled." SJ Decision at 3-4. He further noted that "certain individuals have simultaneously held positions as officers and/or directors of more than one Defendant at certain times." SJ Decision at n.4.

Turning to the discovery rule, the court disagrees with the Commonwealth that it prevailed on this issue because the court denied the Present Defendants' motion for partial summary judgment on statute of limitations. *See* Endorsement to Docket No. 169 (denying motion "[f]or the reasons argued by the Commonwealth in its opposition"). Denial of a motion for summary judgment merely means that disputed issues of fact remain that must be resolved at trial.[22] Thus, only now, post-trial, is the court in a position to resolve the fact-based discovery rule issues the Commonwealth raised in its opposition. *See Riley v. Presnell*, 409 Mass 239, 245-47 (1991) (reversing allowance of summary judgment on discovery rule/statute of limitations issue because disputed issues of fact remained).

Under the discovery rule, the statute of limitations for a c. 93A claim begins to run when a plaintiff discovers, or with reasonable diligence should have discovered, that it was harmed by the defendant's conduct. *Harrington v. Costello,* 467 Mass. 720, 727 (2014); *Anawan Ins. Agency, Inc. v. Division of Ins.*, 459 Mass. 592, 600 (2011). The Commonwealth had the burden of proof at trial on this issue, and the opportunity to admit any relevant evidence that would have established when it discovered the alleged conduct. *Brauner v. Valley*, 101 Mass. App. Ct. 61, 70-71 (2022).

Here, without any citation to the record, the Commonwealth asserts that it first received consumer complaints in conjunction with this case in 2015. At the time the first CID issued on June 30, 2016, the Attorney General's Office was aware of "facts" regarding violations of the

[22] While the court indicated that it was denying the Present Defendants' motion for the reasons argued by the Commonwealth, that does not mean that the court adopted all of the Commonwealth's factual and legal assertions. The court was merely agreeing with the Commonwealth to the extent it was arguing that the Present Defendants' motion should be denied. Indeed, nowhere in its endorsement did the court indicate summary judgment was entered for the Commonwealth. This is not the first time that the Commonwealth's attorneys have demonstrated a shocking misunderstanding of the implications of the court's ruling on summary judgment. Earlier in the case, the Commonwealth incorrectly argued that the court's (Davis, J) grant of partial summary judgment meant that the court had accepted all the allegations in the Complaint.

Consent Judgment. Commonwealth's Response to Request for Admissions No. 7. The earliest CID testimony in the trial record dates from 2018, with such testimony continuing until 2023. No evidence was admitted, however, further explaining the state of the Commonwealth's knowledge on June 30, 2016, its knowledge about specific violations at that time, or why it filed the Complaint a little more than four years and six months later.[23] Thus, the question is whether a civil investigation, such as the one at issue here, that extends about six months beyond the limitations period of four years, allows the application of the discovery rule when the record is devoid of information about what the Commonwealth knew or should have known during that investigation.

In *Anawan*, a DOI administrative enforcement action following an investigation, the Supreme Judicial Court upheld a hearing officer's determination that certain G.L. c. 93A violations alleged were timely due to the application of the discovery rule. 459 Mass. at 600. In that case, the DOI received anonymous letters in 1999 alerting it to certain improprieties, which prompted an investigation. *Id.* at 594. "The investigation took a very long time, for reasons not explained in the record." *Id.* On October 25, 2004, the DOI filed its enforcement action. *Id.* at 595. In applying the discovery rule, the hearing officer determined that the DOI could not have known about the relevant conduct until "sometime long after" the statutory period began to run on October 25, 2000, but the decision does not explain the hearing officer's reasoning further. *Id.* at 595 & n.6.[24]

[23] The Commonwealth cites to an assertion in its Opposition to the Defendant's Motion for Partial Summary Judgment on G.L. c. 93A Statute of Limitations, that in or after 2017, the Office of the Attorney General began receiving related documents from the Defendants as part of the Office of the Attorney General's investigation. However, this fact is not in the record and, therefore, cannot be considered by the court.

[24] The court knows of no other cases that address the application of the discovery rule to a Commonwealth enforcement action, or explain the length of a reasonable investigation for statute of limitations purposes.

Where application of the discovery rule was upheld under the circumstances in *Anawan*, which involved an investigation extending from sometime in 1999 to October 2004, beyond the four-year limitations period with no explanation in the record, the court may likewise apply the discovery rule on a similarly sparse record here. Although more evidence on the issue certainly would have been preferable, the court can fairly conclude that the length of time the Commonwealth spent in this case to investigate and uncover the various and several harms alleged, to a degree sufficient for it to file the Complaint, was reasonable. The timing of the CID testimony, the complex nature of this case, and the scope of the violations alleged support this result. The court accordingly concludes that the conduct alleged prior to when the statute began to run on December 8, 2016, i.e., all conduct alleged from 2011 to the date the Complaint was filed, is timely and will be considered for damages purposes.[25]

II. Legal Framework

The Complaint asserts a claim for civil contempt for the Present Defendants' violation of the Consent Judgment, but specifies no damages sought under that claim. Under G.L. c. 93A, § 4 ("§ 4"), it seeks an award of restitution, civil penalties, and costs for that same conduct, and the Present Defendants' separate G.L. c. 93A violations.[26] Because the Commonwealth does not seek civil contempt damages, the court addresses its legal authority only with respect to damage awards under § 4.[27]

---

[25] The court need not address the other arguments raised by the Commonwealth.

[26] Although, as noted, the Complaint is pleaded in three counts, Count 2 appears to seek only statutory G.L. c. 93A remedies, without alleging a separate cause of action. As clarified below, contempt damages and § 4 penalties apply to the Consent Judgment violations alleged in Count 1, while § 4 penalties alone apply to the Count 3 c. 93A violations.

[27] The Complaint also seeks further injunctive relief under § 4. Because injunctive relief was not addressed at the trial or in the parties' briefs, as the trial was limited to the issue of damages, the court will not address it here. Rather, as ordered below, it will be addressed at a future hearing.

As set forth in the Restitution Decision, General Laws c. 93A, § 4 provides, in relevant part:

> Whenever the attorney general has reason to believe that any person is using or is about to use any method, act, or practice declared by section two to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the commonwealth against such person to restrain by temporary restraining order or preliminary or permanent injunction the use of such method, act or practice. . . .
>
> [The Superior Court] may issue temporary restraining orders or preliminary or permanent injunctions and make such other orders or judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use or employment of such unlawful method, act or practice any moneys or property, real or personal, which may have been acquired by means of such method, act, or practice. If the court finds that a person has employed any method, act or practice which he knew or should have known to be in violation of said section two, the court may require such person to pay to the commonwealth a civil penalty of not more than five thousand dollars for each such violation and also may require the said person to pay the reasonable costs of investigation and litigation of such violation, including reasonable attorneys' fees.
>
> * * *
>
> Any person who violates the terms of an injunction or other order issued under this section shall forfeit and pay to the commonwealth a civil penalty of not more than ten thousand dollars for each violation. For the purposes of this section, the court issuing such an injunction or order shall retain jurisdiction, and the cause shall be continued, and in such case the attorney general acting in the name of the commonwealth may petition for recovery of such civil penalty.

Thus, as relevant here, § 4 allows the court to order: (1) injunctive relief; (2) the payment of civil penalties both for violations of G.L. c. 93A, § 2 ("§ 2"), and violations of a prior injunction or order; (3) the payment of restitution; and (4) the cost of investigation and attorney's fees.

As concerns civil penalties, within the statutory maximum set, "a judge possesses discretion to determine the amount of the penalty." *Commonwealth v. Fall River Motor Sales,*

Inc., 409 Mass. 302, 310 (1991). Factors to consider in determining the size of a penalty to assess against parties who violate an injunction include: "(1) the good or bad faith of the defendants; (2) the injury to the public; (3) the defendant's ability to pay; (4) the desire to eliminate the benefits derived by a violation; and (5) the necessity of vindicating the authority of the [government agency]." *Id.* (citing *United States v. Reader's Digest Ass'n, Inc.*, 662 F.2d 955, 967 (3d Cir.1981)). Violations of a consent judgment by definition, cause injury to the public, and the judge need not have, or consider, proof of any actual or specific injury to award a civil penalty. *Fall River Motor Sales*, 409 Mass. at 312. *See id.* ("The principal purpose of a cease and desist order [in a consumer protection case] is to prevent material having a capacity to confuse or deceive from reaching the public . . . . Thus, whenever such promotional items reach the public, that in and of itself causes harm and injury" [citation omitted]).

The above factors are neither exclusive nor binding, *Fall River Motor Sales*, 409 Mass. at 311, and the court also may consider any "other matters as justice may require." *Commonwealth v. AmCan Enters., Inc.*, 47 Mass. App. Ct. 330, 339 (1999) (citation omitted). The same factors apply to the assessment of civil fines in the absence of contempt. *AmCan Enters., Inc.*, 47 Mass. App. Ct. at 339.

As discussed, under § 4, the court may award civil penalties both for violations of the Consent Judgment and for violations of § 2. In the event that some conduct constitutes both a violation of § 2 and the Consent Judgment, and the court determines that civil penalties are warranted, the court will award a single civil penalty for that conduct. Civil penalties of up to $10,000 are authorized per violation of the Consent Judgment, and up to $5,000 per violation of § 2. G. L. c. 93A, § 4.

Turning to restitution, the "permissive language [of § 4] allows the courts to use their traditional equity power to tailor appropriate remedies to the facts of each case." *Crowther*, 2018 WL 3520805, at *3. *See Commonwealth v. DeCotis*, 366 Mass. 234, 245 (1974). As for the calculation of restitution, as stated, the court adopts the reasoning set forth in its Restitution Decision — specifically that "the court will exercise its discretion in applying the approach of assumed reliance, and a baseline award of gross receipts, offset by any proof of value Defendants credibly offer at trial." *Id.* at 5-7. A presumption of actual reliance requires proof that: (1) the Present Defendants made material misrepresentations; (2) the misrepresentations were widely disseminated, and (3) consumers purchased the Present Defendants' product. *McGregor v. Chierico*, 206 F.3d 1378, 1388 (11th Cir. 2000) (quoting *FTC v. Figgie Int'l, Inc.*, 994 F.2d 595, 605-06 (9th Cir. 1993)).

Accordingly, if the Commonwealth has met its burden of proving each prong required to establish assumed reliance, the court will find a presumption of actual reliance and calculate the total gross receipt amount from the evidence presented and facts found. *See* Restitution Decision at 6-7. The court will then consider Defendants' evidence of offsets related to the value consumers received from their insurance products to arrive at a fair restitution award. *Id.* On the other hand, if the court finds that the Commonwealth has failed to prove assumed reliance, it will assess whether there is evidence of actual individualized harm that warrants a restitution award.

III. Application of Legal Framework

The above standards require the court to make multiple distinct determinations based on its findings of fact. The civil penalty standard requires the court to determine, as to each type of misrepresentation, whether the Present Defendants acted in good or bad faith. Injury to the public is also a relevant factor, although the violations of the Consent Judgment already

determined (First through Third Findings), by definition, injured the public. The remaining nonexhaustive civil penalty factors — the defendant's ability to pay; the desire to eliminate the benefits derived by a violation; and the necessity of vindicating the agency's authority — will be collectively addressed later in the award of damages section, *infra*. Finally, the first and third factors of the assumed reliance test already have been established – the Present Defendants engaged in misrepresentations and consumers purchased the supplemental health insurance products they sold. Therefore, the court now determines the final prong of that test, whether wide dissemination existed as to each practice on which the Present Defendants are liable. If no wide dissemination is found, proof of individualized harm likewise can be applied to award restitution.

A. False and Deceptive Advertising (First Finding)

1. Television and Radio Advertisements

The Commonwealth failed to prove that the Engvall Ad was shown in Massachusetts, much less widely disseminated here. The only evidence before the court was that it ran nationally from 2013 to 2020. There was no evidence before the court that "running nationally" meant that it ran specifically in Massachusetts or that the number of times it ran nationally equates with the number of times it ran in Massachusetts. The court is not prepared to make that leap. Presumably it would have been easy for the Commonwealth to have called a witness to explain whether a nationally run ad necessarily ran in Massachusetts. They chose not to do so.

The Motion Judge determined that HealthMarkets and Insphere radio advertisements that ran in Massachusetts in and/or after September 2013 included statements 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." SJ

Decision at 7. However, the Motion Judge did not determine the number of times any such radio advertisement ran in Massachusetts, nor was there any such evidence introduced at trial. Accordingly, no restitution damages are warranted based on the assumed reliance approach for the dissemination of these advertisements.

The Commonwealth also failed to introduce evidence of individualized harm resulting from either television or radio advertisements since they did not introduce evidence that any consumer in Massachusetts saw the Engvall Ad or heard any radio advertisements, or purchased HealthMarket-affiliated products as a result thereof.

2. Agent Webpages

There was evidence that as of August 2023, certain agents, namely Carlson, Dorfman, Jobin, Taylor, and Williams, Jr., maintained publicly available agent webpages stating that they offered "objective guidance and solutions." However, the applicable damages period is between 2011 and December 8, 2020, and no evidence was admitted establishing that all of these agents had the statement on their webpages during that time.

Although Agent Jobin had this information on his webpage from about 2011 until at least 2021, and Agent Williams Jr. from at least 2012 until August 2023, no evidence was admitted about the annual number of pageviews each received. Rather, evidence established that national pageviews between January 1, 2011, and March 1, 2012, were 3000 for Jobin and 1,500 for Williams, Jr. Multiplying these numbers by Jobin's and Williams, Jr.'s Massachusetts customer base (95 to 98 percent for Jobin and 90 for Williams, Jr.) provides a fair estimate of the Massachusetts customers who viewed Jobin's and Williams, Jr.'s webpages as 2,850 and 2,700. The court concludes that this practice was intended to deceive consumers. The agents' goal was

to sell Chesapeake supplemental policies and there was no evidence that they provided objective guidance to consumers.

However, given this limited data, the Commonwealth has not established that this practice was widespread for the purposes of assumed reliance, nor have they established any actual individualized harm as a result of this conduct.

3. Emails

The evidence established that Insphere sent an automated form reply email over 114,000 times to Massachusetts residents misrepresenting its agents' impartiality. The email stated that its agents could offer: "a wide variety of options from several highly rated companies for Life, Health and Supplemental" insurance. This suffices to show that the misrepresentation was widely disseminated, such that all prongs of the assumed reliance test have been met as to this practice. Similar to the webpage representations, this particular email was intended to deceive consumers by falsely leading them to believe that the agents were selling products offered by different companies. There was no good faith basis to make these statements.

4. Bundling

With regard to bundling, as described *supra*, the court finds that the Commonwealth has established that it was a widely disseminated practice beginning in at least 2012. The evidence established that Chesapeake-Insphere agents and Chesapeake-SFG agents used marketing materials that showed consumers a single premium for a combination of major medical and supplemental policies, hid the name Chesapeake from consumers, and viewed trainings that encouraged this practice. Moreover, it was a widespread practice of HealthMarkets agents to use a close sheet that bundled policies together with a single quote. Agents were trained to hide the costs for the individual polices so customers did not understand what they were purchasing.

HealthMarkets provided agents with marketing materials and on-line tools to accomplish this deception. The evidence is less clear as to when this widespread practice ended, if ever. Conservatively, the evidence supports a finding that it continued into 2016.

The evidence further established, through complaints received and consumer testimony, that these misrepresentations caused numerous consumers to unknowingly purchase supplemental health insurance policies. The court finds that the Present Defendants intentionally engaged in this practice to deceive consumers into unknowingly buying supplemental policies. Given the evidence that the Present Defendants targeted vulnerable consumers who could least afford their products with this practice, the finds this deceptive conduct to be particularly egregious.

5. Other Health Programs

No evidence was admitted establishing that the Present Defendants' improper marketing of discount health programs and healthcare sharing ministry programs as insurance or using insurance-related terms were widespread practices, or that consumers relied on these marketing techniques to buy such products so as to establish individualized harm.

B. Specified Disease Insurance (Second Finding)

The Present Defendants admit that their agents sold SDI as a substitute for major medical insurance from 2016 until 2018 in violation of the Regulations. While the evidence does not support a finding that this practice was widespread, the Commonwealth did establish that Chesapeake received $789,559.22 in premiums as a result of this practice. The Present Defendants claim this practice happened because they had a good faith misunderstanding of a case out of the Federal DC Circuit Court that verification was no longer require in Massachusetts. For the reasons described above, the court disagrees. *See supra* at 20-23.

C. Short-Term Insurance: Unified Plan (Third Finding)

From August 2015 until May 2016, Chesapeake advertised and sold 267 short-term health insurance policies to Massachusetts residents issued by United Life. Although the Present Defendants received no premiums from this product, they did receive commissions in the amount of $112,780. The Present Defendants admit that they violated the Consent Judgment in advertising these plans as covering "any doctor," but argue that they relied on representations and training from their contracted administrator of this product, Health Insurance Innovations, and therefore, were acting in good faith. While the court agrees with the Motion Judge that these sales were not accidental, the court is persuaded that the Present Defendants reasonably relied on representations made by the contract administrator.

D. Agents Falsely Representing Themselves as Insurance Advisors (Fourth Finding)

Named Chesapeake-Insphere Agents' publicly available LinkedIn pages contained this misrepresentation, as well as a few emails, one of which was sent to a consumer. The Present Defendants also provided agents a telephone script instructing them to identify to the consumer as a licensed benefit consultant, even if they were not licensed. No evidence was admitted, however, about any consumers that saw or heard these misrepresentations, apart from the one email. This evidence is insufficient to establish wide dissemination, and the Commonwealth did not prove any individualized harm.

E. Agents' Statements that they Represent All Insurance Carriers (Fifth Finding)

Chesapeake agents falsely told consumers they represented all insurance carriers in Massachusetts. Based on the fact established in the Summary Judgment Decision and the trial evidence, the court finds that this practice was widespread between 2012 and 2018. Agents were trained to make these misrepresentations through training videos and in-person training sessions,

and they were provided with phone scripts that included theses misrepresentations. Agents confirmed that they followed the scripts in their interactions with consumers. The court finds that the Present Defendants intentionally engaged in this practice to deceive consumers into believing that their agents could provide them impartial guidance in selecting insurance products.

IV. Award of Restitution and Civil Penalties

A. Restitution

As set-forth above, the court concludes that the deception related to the Present Defendants' bundling practice, the form email, and the statements that the agents represented all insurance carriers, were all unquestionably widespread practices. With respect to the other practices, while the evidence does not support a finding in and of themselves, of widespread dissemination, these practices pervaded the sales of supplemental policies throughout the relevant period of time.

Accordingly, the court will award restitution based on Chesapeake's receipts for its supplemental health policies sold between 2011 and November 2020, offset by refunds and claims paid to consumers under the policies. For the reasons discussed at pages 32-33, no offsets will be applied based on the Present Defendants' evidence on Dr. Block's testimony. Applying appropriate filters to the data in Exhibit 110, this figure is $49,982,782.07 ($55,482,782.07 net premiums received after refunds minus $5,500,000 in claims paid).[28] Restitution amounts for improper SDI policies sold are included in this amount. Although the Present Defendants' sale of SDI was not a widespread practice, the Commonwealth has proven harm with respect to the sale of those policies due to their admitted violation of the Regulations.

[28] Exhibit 110 does not include gross receipts, only "net collected premiums" after refunds paid. The net receipts above include premiums received in 2021 for the policies purchased during the relevant pre-Complaint period.

The court also imposes a restitution award of $112,780 for the commissions Chesapeake received for the improper sale of short-term Unified Life insurance policies. Although again, this practice was not widespread, the parties agree that restitution of that amount is warranted based on the harm proven in the Attorney General's Office litigation against Health Insurance Innovation.

The court awards a total restitution amount of $50,095,562.07.

B. Civil Penalties

Due to the lack of evidence as described above, the court will not impose any civil penalties relating to the Engvall Ad or HealthMarkets radio advertisements. No evidence was admitted as to how many times these advertisements were played in Massachusetts or whether any Massachusetts consumers saw them or were swayed by the misstatements contained in the advertisements.

Similarly, the court will not impose any civil penalties for the representations agents made that they were insurance advisors, since there was no evidence that this practice caused any harm or misled any consumers. The same is true for the improper marketing of other health programs. As discussed, the evidence presented on this subject was incomplete and limited.

The court will not impose any civil penalties for the sale of short-term Unified Life Insurance policies since the court finds that the company largely acted in good faith with respect to these sales.

Civil penalties are warranted for certain false and deceptive advertising practices, including the bundling practices, as well as the webpages that contained false representations that agents provided "objective guidance and solutions," and the automated form email that stated that agents could offer "a wide variety of options from several highly rated companies." Civil

penalties are also warranted for agents claiming that they represented all insurance carriers in Massachusetts.

The court can impose civil penalties up to $10,000 per violation of the Consent Judgment, and up to $5,000 per violation of § 2. With the exception of the Present Defendants' ability to pay, which unfortunately was not the subject of any evidence presented, the court has considered the *Fall River* factors as outlined above. *See supra* at 38-39. "Where a corporation wilfully violates a [consent judgment] . . . there is every reason to impose a penalty at or near the maximum." *Fall River Motor Sales*, 409 Mass. at 312. In making its penalty determinations, the court has applied a multiplier that is reflective of the egregiousness of the respective violations.

The bundling practice pervaded the Present Defendants' supplemental insurance sales from 2012 to 2016. During that time, 43,974 of their supplemental policies were sold in Massachusetts. Misstatements by agents to consumers that they represented all carriers were widespread between 2012 and 2018, during which time 56,993 supplemental polices were sold in Massachusetts. These two practices were the most egregious of the conduct proven by the Commonwealth. Because these practices were proven by assumed reliance, the court has applied a multiplier that is less than it would have applied if it had a number that reflected proof of individualized harm. The court will impose a civil penalty for these practices as follows:

- For the period of time that both deceptive practices were occurring (2012-2016), the court will impose a penalty of $2000 per policy sold during that period, for a civil penalty of $87,948,000.
- For the period of time that only one practice was occurring (2017-2018), the court will impose a penalty of $1,000 per policy sold during that period, for a civil penalty of $13,019,000.

The deceptive automated form email was sent 114,000 times. An appropriate multiplier is $100 per violation, for a civil penalty of $11,400,000.

The deceptive webpages were viewed 5,550 times. An appropriate multiplier is $500 per website view, for a civil penalty of $2,775,000.

The court awards a total civil penalty of $115,142,000.

ORDER

For all of the above reasons, the court makes the following award of damages: restitution in the total amount of $50,095,562.07, and civil penalties in the total amount of $115,142,000.

The Commonwealth is also entitled to its reasonable costs of investigation and attorney's fees. The Commonwealth shall file a fee petition within forty-five days of this Order, and the Present Defendants shall file an opposition within 30 days of receiving the Commonwealth's petition.

Also within forty-five days of this Order, the parties shall submit separate briefing, not to exceed ten pages, on the issue of injunctive relief.

After receipt of all briefing on these matters, the clerk shall schedule a hearing on the issues of reasonable costs of investigation and attorney's fees, and injunctive relief.

Hélène Kazanjian
Justice of the Superior Court

DATE: December 31, 2024