

ER

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT

STANLEY LEVENSON, DMD, and SOUTH
SHORE DENTISTRY, LLC, on behalf of
themselves and those similarly situated,

Plaintiffs,

v.

DENTAL SERVICE OF MASSACHUSETTS
INC. d/b/a Delta Dental of Massachusetts

Defendants.

Civil Action No. _____

Jury Trial Demanded

COMPLAINT

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Plaintiffs Stanley Levenson, DMD, and South Shore Dentistry, LLC, individually and on behalf of themselves and all others similarly situated, bring this class action based upon personal knowledge of their own acts and upon information and belief as to all other matters alleged, including the investigation of Plaintiffs' counsel, against Dental Service of Massachusetts Inc. d/b/a Delta Dental of Massachusetts ("DDMA," or "Defendant").

NATURE OF THE ACTION

1. This case involves DDMA's unlawful, anticompetitive, and unfair misuse of monopsony power in the Massachusetts market for dental goods and services, as defined herein. DDMA obtained and maintains this market power as a result of its coordinated unlawful conspiratorial agreement with other companies that comprise the "Delta Dental" system not to compete among the various separate Delta Dental entities throughout the United States. DDMA holds well in excess of 50% of the market for dental goods and services in the Commonwealth of Massachusetts. DDMA secured this power in Massachusetts by agreeing to the artificial territorial division of the United States among DDMA and the other Delta Dental licensees that have been assigned exclusive geographic territories throughout the U.S. (collectively, the "Delta Dental State Insurers"). DDMA has abused and is abusing its market dominance to: (1) restrict competition with the other Delta Dental State Insurers when operating under the "Delta Dental" brand (the "**Market Allocation Mechanism**"); (2) reduce the amount of reimbursement paid by DDMA to dentists and dental practices in Massachusetts who are reimbursed by Delta Dental insurance (the "**Price Fixing Mechanism**"), and (3) participate in a conspiracy to restrict competition among DDMA and the other Delta Dental State Insurers when operating under *non*-"Delta Dental" brands (the "**Output Restrictions**").

2. DDMA has secured majority market share, as measured by non-party Milliman, and it wields monopsony power in the market for dental goods and services, enabling it to produce anticompetitive effects, in the Commonwealth of Massachusetts.

3. The unlawful agreement among DDMA and the other Delta Dental entities has harmed **both** dentists and dental practices—like the named Plaintiffs here—that accept Delta Dental insurance (collectively, the “Dental Providers”) **and** consumers. DDMA has artificially suppressed its reimbursements to Dental Providers in Massachusetts, but rather than pass those savings along to consumers, DDMA has continued to raise consumer premiums. This pernicious scheme causes dentists and dental practices to receive less while consumers pay more. The difference is hundreds of millions of dollars in “operating gain”—the euphemism for profits used by DDMA, which operates as a non-profit to avoid paying federal income taxes. DDMA uses those profits to pay its executives compensation and perquisites of millions of dollars per year and to pocket hundreds of millions more in capital reserves, which it uses (among other things) to transfer and distribute those hundreds of millions of dollars to other non-profit businesses. DDMA’s hundreds of millions of dollars in supracompetitive profits are evidence of **both** DDMA’s exercise of monopsony power in Massachusetts and of Plaintiffs’ damages.

4. Defendant DDMA reimburses dentists and dental practices in Massachusetts (collectively, the “Massachusetts Dental Providers”) that accept Delta Dental insurance for dental goods and services provided to Delta Dental insureds under Delta Dental insurance contracts. DDMA and the other Delta Dental State Insurers are supported in turn by the Delta Dental Plans Association (“DDPA”) and DeltaUSA, nationwide entities that act as administrators and watchdogs for the Delta Dental insurance plans. DDPA and DeltaUSA are funded and controlled by DDMA and the other Delta Dental State Insurers, and act as vehicles for their concerted activity,

including via multiple contracts entered into by each Delta Dental State Insurer with DDPA and DeltaUSA.

5. As a result of the anticompetitive agreements and practices set out in this Complaint, Defendant DDMA has grown to become both the largest purchaser of dental goods and services and the largest provider of insurance for dental goods and services in the Commonwealth of Massachusetts—just as, collectively, the Delta Dental State Insurers are both the largest purchasers of dental goods and services and the largest providers of insurance for dental services in the U.S. The Delta Dental system is larger than the next three dental insurance carriers combined. DDMA’s networks include approximately 80% of all Massachusetts Dental Providers and, collectively, the networks of all the Delta Dental State Insurers encompass nearly a quarter-million dental practices across the U.S. Delta Dental State Insurers provide dental insurance to more than 80 million people in the United States. By carving the United States into exclusive territories in which each of the Delta Dental State Insurers is guaranteed to be free from competition from other Delta Dental State Insurers, DDMA and the other Delta Dental State Insurers have secured monopsony power over the market for dental goods and services within their assigned territories. Absent the monopsony powers and territorial protections secured to DDMA in Massachusetts as a result of the Market Allocation Mechanism, dental plan sponsors and members would have greater choice as to the dental insurance they choose to purchase in Massachusetts, and the Massachusetts Dental Providers would have greater choice in the dental insurance they choose to accept from their patients.

6. DDMA and its co-conspirators have built upon the monopsony control achieved through the Market Allocation Mechanism to further unlawfully restrict competition in the markets for dental goods and services through the Price Fixing Mechanism and the Output Restrictions.

7. DDMA and its co-conspirators' price fixing takes the form of: (i) sharing confidential price information and strategies to reduce reimbursement rates among the Delta Dental State Insurers; (ii) protocols barring all Delta Dental State Insurers from reimbursing at all for certain procedure codes (*i.e.*, fixing the price for these procedure codes at \$0), mandating that certain procedure codes be priced the same as a benchmark procedure code, and "recommending" prices for other procedure codes; (iii) sharing reimbursement rate information for all procedure codes through the National Provider File ("NPF") and the National Data Platform ("NDP"); and (iv) adopting an effective discount standard that effectively requires DDMA and every other Delta Dental State Insurer to have the lowest or among the lowest reimbursement rates of all competitor insurance companies. By conspiratorial agreement, DDMA sets its reimbursements at below-market rates, then abuses its monopsony control to force these rates onto the Massachusetts Dental Providers. The Massachusetts Dental Providers, faced with a large number of patients who have purchased Delta Dental insurance (and who naturally wish to be treated by a provider that accepts it), have little or no choice but to acquiesce to DDMA's artificially low reimbursement rates. The Massachusetts Dental Providers have few or no alternative insurance plans with meaningful patient participation to accept. Absent the Price Fixing and Market Allocation Mechanisms, the Massachusetts Dental Providers would have greater choice in the dental insurance they choose to accept, and thus greater choice in the reimbursement rates received for their services. As a result of that same conspiratorial agreement to which DDMA is a party, dental providers throughout the rest of the U.S. are likewise effectively compelled to accept Delta Dental insurance and its artificially low reimbursement rates.

8. These two mechanisms are buttressed by a third: Delta Dental's Output Restrictions, which take the form of DDMA and other Delta Dental State Insurers agreeing to

restrict the business of their “second brands” to avoid direct competition against Delta Dental State Insurers, particularly in the critical market segment for large employer commercial business that accounts for the overwhelming majority of the Delta Dental State Insurers’ revenues and profits. Other Delta Dental State Insurers have formed their own second brands, including Dentegra, Renaissance, Surency, and TruAssure. In a competitive market, other Delta Dental State Insurers’ second brands would compete with DDMA in Massachusetts, raising reimbursement to Massachusetts Dental Providers. Instead, DDMA and the other Delta Dental State Insurers have agreed not to allow second brands to compete against Delta Dental State Insurers. As a result, other Delta Dental State Insurers with second brands have overwhelmingly limited those second brands to market segments in which the Delta Dental brand does not compete (*e.g.*, individual and small group policies); and the Delta Dental system primarily uses second brands to underwrite Delta Dental-branded businesses for nationwide “groups of individuals” such as retirees (including those in Massachusetts). As a result of the Output Restrictions, DDMA and the other Delta Dental State Insurers—who, per the Market Allocation Mechanism, have already agreed not to compete with other Delta Dental State Insurers *under the Delta Dental brand*—have also limited their competition with each other *under non-Delta Dental brands*. Absent the Output Restrictions, the groups who purchase dental plans for their members (and, by extension, those members) would have greater choice in the dental insurance they could choose to purchase, and the Dental Providers would have greater choice in the dental insurance they choose to accept from patients.

9. All three mechanisms have reduced competition in the market for dental goods and services in Massachusetts, just as the co-conspirators’ implementation of these mechanisms has reduced competition throughout the remainder of the United States. This decreased competition has harmed the Massachusetts Dental Providers (in the form of lower reimbursement rates paid to

them by DDMA and reduced choice in the dental insurance plans that should be available to them), and has also harmed Massachusetts dental plan sponsors and members (in the form of higher premiums paid to DDMA, and through lower quality services offered to patients). DDMA has reaped the benefits of its anticompetitive conspiracy, as reflected in hundreds of millions of dollars used to fund lavish executive compensation well beyond that of peer companies, disproportionately large capital reserves or surpluses that far exceed any regulatory requirement, legitimate insurance purpose, or other genuine business need, and transfers to non-profit subsidiaries. The supracompetitive profits amassed by DDMA are direct evidence of DDMA's exercise of monopsony power in Massachusetts and, together with the other Delta Dental State Insurers, monopsony power throughout the United States.

10. On November 26, 2019, a group of plaintiffs filed a consolidated class action complaint in the United States District Court for the Northern District of Illinois alleging violations of the Sherman Act arising from Delta Dental's conduct nationwide and seeking to certify a nationwide class. On September 4, 2020, the federal district court denied Delta Dental's motion to dismiss, finding that the allegations asserted by those plaintiffs—which are similar to the factual allegations at issue here—stated a claim for violation of the federal antitrust laws under both a *per se* standard and the rule of reason. *In re Delta Dental Antitrust Litig.*, 484 F. Supp. 3d 627 (N.D. Ill. 2020). On September 22, 2025, the federal district court denied certification of a nationwide class, finding that differences in the Delta Dental State Insurers' market shares in different states, and differences in the reimbursement rates paid by Delta Dental State Insurers in different states, precluded certification of a single nationwide class. *In re Delta Dental Antitrust Litig.*, 800 F. Supp. 3d 898 (N.D. Ill. 2025). On January 23, 2026, the federal district court denied the federal plaintiffs' motion to amend their complaint to allege state classes in their Sherman Act case. *In re*

Delta Dental Antitrust Litig., No. 19 CV 6734 (N.D. Ill. Jan. 23, 2026), ECF 960. The federal court did *not* address the merits of state classes in any respect but, instead, *inter alia*, declined to undertake the burden of addressing state-based classes in favor of proceeding to summary judgment on the individual claims of the 10 named plaintiffs in the federal action. *Id.* at 2, 4.

11. Accordingly, this suit has been filed by Plaintiffs to vindicate the rights of thousands of Massachusetts Dental Providers who have been systemically under-reimbursed by DDMA as a result of DDMA's participation in a monopsonistic antitrust conspiracy in violation of the Massachusetts Antitrust Act and related unfair and anticompetitive practices in violation of the Massachusetts Consumer Protection Law.

PARTIES

Plaintiffs

12. Plaintiff Stanley Levenson, DMD ("Dr. Levenson," or "Plaintiff") is a dental services provider and a citizen of the Commonwealth of Massachusetts. During the relevant time period, Dr. Levenson provided and continues to provide dental goods and services to DDMA pursuant to his in-network contract with DDMA. As a result of the anticompetitive and unfair conduct of DDMA alleged herein, Dr. Levenson was deprived and continues to be deprived of the choice of accepting dental patients under a greater number of insurance plans, which he would have in a competitive market, and was reimbursed and continues to be reimbursed less for providing dental goods and services than he would have been but for DDMA's anticompetitive and unfair conduct. Dr. Levenson has been injured and continues to be injured in his business or property as a result of DDMA's violations of the Massachusetts Antitrust Act and Consumer Protection Law.

13. Plaintiff South Shore Dentistry, LLC ("South Shore," or "Plaintiff") is a dental services provider and a citizen of the Commonwealth of Massachusetts. During the relevant time

period, South Shore provided dental goods and services to DDMA pursuant to its in-network contract with DDMA. As a result of the anticompetitive and unfair conduct of DDMA alleged herein, South Shore was deprived of the choice of accepting dental patients under a greater number of insurance plans, which it would have in a competitive market, and was reimbursed less for providing dental goods and services than it would have been but for DDMA's anticompetitive and unfair conduct. South Shore has been injured in its business or property as a result of DDMA's violations of the Massachusetts Antitrust Act and Consumer Protection Law.

Defendant

14. Defendant DDMA is a Massachusetts corporation located at 465 Medford Street, Suite 500, Boston, MA 02129, and it has Payer #04614. DDMA is the Delta Dental licensee for the Commonwealth of Massachusetts. Throughout the class period, DDMA had market power with respect to the market for dental goods and services in the Commonwealth of Massachusetts, as defined herein.

15. Through the Market Allocation Mechanism, DDMA and the other Delta Dental entities have agreed to carve up the United States into exclusive territories, each of which has been assigned to an individual Delta Dental State Insurer. As part of this agreement, the Commonwealth of Massachusetts has been assigned solely to DDMA. DDMA has conspired and continues to conspire with the other Delta Dental State Insurers as described herein.

SUBJECT MATTER JURISDICTION, VENUE, AND PERSONAL JURISDICTION

16. This Court has subject matter jurisdiction over the cause of action alleged in this Complaint pursuant to the Massachusetts Antitrust Act, G.L. c. 93 § 1 *et seq.*, and the Massachusetts Consumer Protection Law, G.L. c. 93A, and is a Court of competent jurisdiction to grant the relief requested. Plaintiffs' claims for violation of the Massachusetts Antitrust Act and the Consumer Protection Law arise under the laws of the Commonwealth of Massachusetts, are

not preempted by federal law, do not challenge conduct within any federal agency's exclusive domain, and are not statutorily assigned to any other trial court.

17. Plaintiffs and all of the members of the Classes, as defined herein, are citizens of the Commonwealth of Massachusetts.

18. This Court has personal jurisdiction over DDMA pursuant to G.L. c. 223A, § 2 because DDMA, the sole Defendant in this action, is a citizen of the Commonwealth of Massachusetts, is incorporated in the Commonwealth of Massachusetts, and has its principal place of business in the Commonwealth of Massachusetts.

19. Defendant has entered into contracts in Massachusetts with Dental Providers who are citizens of Massachusetts. Defendant has significant business in and contacts with Massachusetts, by way of its provision of dental goods, services, and facilities to Massachusetts consumers insured by DDMA. The unlawful conduct pursuant to or in furtherance of the combination or conspiracy occurred in substantial part within the Commonwealth of Massachusetts and was intended to and did substantially affect business and commerce within Massachusetts.

20. The injuries to Plaintiffs and the Classes resulting from Defendant's conduct as alleged herein were incurred in the Commonwealth of Massachusetts.

21. Venue is proper in this Court pursuant to G.L. c. 223, § 1. DDMA's usual place of business is in Suffolk County, Massachusetts.

FACTUAL BACKGROUND

A. The Delta Dental State Insurers

22. DDMA is a not-for-profit 501(c)(4) corporation that provides insurance plans for dental goods and services in Massachusetts. Through the insurance plans it offers and administers, DDMA reimburses Massachusetts Dental Providers—the dentists and dental practices who accept

patients with Delta Dental insurance—for the cost of dental goods and services provided to DDMA’s subscribers in Massachusetts.

23. The other Delta Dental State Insurers with which DDMA has conspired are predominately not-for-profit entities that provide insurance plans for dental goods and services in their respective states or multi-state territories. Through the insurance plans they offer and administer, the other Delta Dental State Insurers reimburse Dental Providers—the dentists and dental practices in their states who accept patients with Delta Dental insurance—for the cost of dental goods and services provided to Delta Dental patients in state markets across the United States.

History of DDMA and the other Delta Dental State Insurers

24. The earliest prepaid dental plans were created beginning in 1954-1955 when dental service corporations were formed in states such as California, Washington, and Oregon; the dental service corporation that is the predecessor entity to DDMA was formed in 1966. A dental service corporation is a legally constituted not-for-profit organization, incorporated on a state-by-state basis, that negotiates and administers contracts for dental care. The dental service plans offered by the dental service corporations were intended to provide full payment to dental service providers, with no additional payment required from a patient for their treatment beyond an agreed copayment or deductible.

25. The dental service corporations that became DDMA and other Delta Dental State Insurers were initially formed by dentists. Over time, however, dentists have largely been removed or sidelined from the leadership of DDMA and other Delta Dental State Insurers and have been replaced by executives motivated by the prospect of obtaining multi-million-dollar annual compensation rather than by the goal of increasing public access to quality health care.

26. Notwithstanding the early alignment between DDMA and Massachusetts dentists, in more recent times, that relationship has deteriorated badly as a result of DDMA's anticompetitive conduct and greed. For example, the Massachusetts Dentists Alliance for Quality Care ("MDAQC"), which was founded in 2017, claims credit for "preventing Delta Dental of MA from unlawfully forcing dentists into a for-profit PPO network, which would have effectively eliminated their Premier network."¹ In 2019, after DDMA undertook an 8.8% fee schedule reduction for the dentists in its Premier network, the MDAQC and the Massachusetts Dental Society strongly protested letters DDMA sent directly to patients as punitive, misleading, and likely to lead patients to change their dentists needlessly. The MDAQC's letter in response to DDMA's actions said DDMA was "acting like the giant monopoly/monopsony that they are. ... They focus on their profitability above all else, and have admitted that, and do not care about the patients who carry their benefits or the dentists who provide the actual care. ... [B]ecause DD is such a giant company and uses fear tactics, they have most dentists afraid to decide to be an out-of-network (OON) office. They act punitively to those dentists that do decide to go OON via methods such as this letter and by not honoring assignment of benefits."²

27. The ADA's relationship to DDMA and the other Delta Dental State Insurers has followed a similar negative trajectory. Although the ADA initially supported the development of those entities' pre-paid dental plans, the ADA learned over time that DDMA and the other Delta Dental State Insurers have unlawfully reduced reimbursement rates paid to dentists and degraded the quality of dental services provided to patients.

¹ <https://www.facebook.com/AIDUnitedStates/posts/here-is-our-story-the-alliance-of-independent-dentists-is-a-grassroots-nonprofit/1115590260570443/>.

² <https://www.dentistrytoday.com/delta-dental-of-massachusetts-patient-letter-upsets-dental-community/>. In 2022, the MDAQC expanded into a national organization, and renamed itself the Alliance of Independent Dentists.

28. Initially, the dental service corporations that became DDMA and the other Delta Dental State Insurers operated independently of one another. However, in the 1960s, the number of state dental association-sponsored service corporations increased, as did the size of the groups and entities that sought dental care plans from the corporations. In response, in 1966, the National Association of Dental Service Plans (later renamed as the “Delta Dental Plans Association”) was created to bring together and coordinate the Delta Dental State Insurers.

29. In 1967, the predecessor to the Delta Dental State Insurer for Washington began providing dental insurance programs to labor unions and sold the first multi-state dental insurance program to the International Association of Machinists. Importantly, the Delta Dental State Insurers were able to and did coordinate benefits for multi-state accounts with thousands of enrollees *without* the use of a “National Provider File,” a “National Data Platform,” or other price-fixing tools. Rather, as early as the 1960s, and continuing for at least two decades, the Delta Dental State Insurers were able to and did coordinate benefits for multi-state accounts with thousands of enrollees simply by ceding administration for enrollees in other states to other Delta Dental State Insurers.

30. When they began, the Delta Dental State Insurers’ predecessors were independent entities, each posing a threat of potential entry into the territories of the other Delta Dental State Insurers. At that point, each entity could have competed with any or all of the others. Seizing the opportunity to hoard billions of dollars in supracompetitive profits and pay themselves lavish salaries and perquisites, executives at DDMA and the other Delta Dental State Insurers joined together under the Delta Dental brand, and conspired to free each of them—and the entire Delta Dental system—of the threat of competition from other Delta Dental State Insurers.

31. Until the late 1980s, insurance coverage for multi-state accounts was successfully provided through ceded administration. In 1987, Delta Dental of California won the bid to administer dental benefits for the Office of the Civilian Health and Medical Program of the Uniformed Services. DDMA and the other Delta Dental State Insurers used this very large account as an excuse to begin unlawfully sharing their provider data through DDPA. This led to the creation of the National Provider File, or NPF, which DDPA made available to each of the Delta Dental State Insurers for commercial accounts in 1990, divulging pricing and reimbursement rate information for all dental goods and services nationwide. The NPF gave DDMA access to the prices charged by Dental Providers across the country and facilitated the Delta Dental State Insurers' implementation of the Price Fixing Mechanism.

The Delta Dental State Insurers' Present Operations

32. DDMA and the other Delta Dental State Insurers have coordinated their conduct in accordance with a series of governing agreements. These agreements include the Service Mark License Agreement, the DDPA Membership Standards and Guidelines, the DeltaUSA Membership Agreement, the DeltaUSA Policies Manual (formerly known as the DeltaUSA Policy and Procedures Manual), and the DeltaUSA Processing Policy Manual (formerly known as the DeltaUSA Processing Policies Manual).

33. These agreements memorialize many, but not all, aspects of the monopsonistic conspiracy of DDMA, the other Delta Dental State Insurers, DDPA, and DeltaUSA. By way of example only, the Service Mark License Agreement assigns to DDMA and each of the other Delta Dental State Insurers their respective territories. The DDPA Membership Standards and Guidelines set forth mandatory rules applicable to DDMA's operations, including, *inter alia*, requiring it to maintain certain levels of market penetration and to satisfy effective discount

requirements that have the purpose and effect of lowering provider reimbursement rates in Massachusetts. The DeltaUSA Membership Agreement requires DDMA to agree to comply with the DDPA Membership Standards and Guidelines. The DeltaUSA Policies Manual contains rules governing resolution of territorial disputes between DDMA and other Delta Dental State Insurers. The DeltaUSA Processing Policy Manual bars DDMA and all the other Delta Dental State Insurers from reimbursing providers for certain procedure codes (*i.e.*, fixing the price for these procedure codes at \$0) and mandates that certain procedure codes be priced the same as a benchmark procedure code.

34. DDMA and every other Delta Dental State Insurer must enter into the Service Mark License Agreement, follow the DDPA Membership Standards and Guidelines, abide by the DeltaUSA Policies Manual, and comply with the DeltaUSA Processing Policy Manual.

35. DDMA offers two primary types of dental plans that, with minor variations, are also offered by the other Delta Dental State Insurers: (1) Delta Dental Premier; and (2) Delta Dental PPO:

- A. Delta Dental Premier is a traditional fee-for-service plan that allows patients to visit any licensed dentist. Delta Dental Premier dentists are required to accept discounted reimbursement rates to participate in the Premier network. Delta Dental Premier is Delta Dental's largest dentist network.
- B. Delta Dental PPO is Delta Dental's preferred provider organization plan. Under Delta Dental PPO, patients also are allowed to visit any licensed dentist. PPO dentists are required to accept reduced fees for covered procedures when treating PPO patients, and PPO reimbursement rates are typically lower than Premier reimbursement rates.

B. The Dental Providers

36. The Massachusetts Dental Providers are dentists and dental practices—including the named Plaintiffs in this proceeding—who are effectively forced to accept patients insured by DDMA, and lower-than-market reimbursement for dental goods and services provided to those patients, because of DDMA’s market dominance and anticompetitive and unfair practices as described herein.

37. Dental Providers receive reduced reimbursement for dental goods and services provided to patients with Delta Dental insurance pursuant to contracts they enter into with the Delta Dental State Insurers in their respective states (the “Delta Dental Provider Agreements”). Each Delta Dental State Insurer is limited to entering into Delta Dental Provider Agreements with dentists in its allocated territory. Thus, in Massachusetts, DDMA can only enter into Delta Dental Provider Agreements with Massachusetts dentists, and no other Delta Dental State Insurer can do so. These Provider Agreements stipulate the terms, conditions, and rates under which Massachusetts Dental Providers can seek reimbursement from Delta Dental for services a dental patient elects to receive when visiting a Massachusetts Dental Provider pursuant to a Delta Dental plan.

38. DDMA actively solicits dentists and dental practices in Massachusetts to participate in the Delta Dental plans. The terms and conditions imposed by the Delta Dental Provider Agreements require that Massachusetts Dental Providers will:

- A. Charge Delta Dental insured patients the amounts established by DDMA, such that the Dental Provider can neither increase nor decrease its fees for Delta Dental-insured patients;
- B. Accept an agreed-upon schedule of rates (and, where applicable, copayments) for dental goods and services as payment in full for any goods

and services provided to Delta Dental insureds, and not charge the insured any further amounts other than copayments or deductibles as specified under the Delta Dental Provider Agreement;

- C. Submit to audits by auditors from DDMA, who ensure that the Dental Providers are charging patients the amounts set out in the Delta Dental Provider Agreement (and ancillary manual, which is an extension of the Delta Dental Provider Agreement), and otherwise adhere to any and all conditions in the agreement (and manual);
- D. Conform their operations to a manual enforced by DDMA; and
- E. Accept and treat patients who are insured by a different Delta Dental State Insurer, without an assignment of benefits from the patient's Delta Dental State Insurer.

39. As outlined in more detail below, when they request reimbursement for the goods and services they provide to Delta Dental insureds, Massachusetts Dental Providers—including the named Plaintiffs in this proceeding—are routinely required to accept a discount imposed by DDMA of as much as 35 percent, or more, off market rates.

40. Indeed, Delta Dental boasts of achieving the industry's best effective discount. In practice, the effective discount standard agreed upon by the conspiracy requires every Delta Dental State Insurer, including DDMA, to have the lowest (or among the lowest) reimbursement rates of all competitor insurance companies, and has the purpose and effect of broadly leading to lower-than-market reimbursements. The higher the effective discount, the lower the reimbursement rate paid to dentists. As measured by third-party Milliman, Delta Dental has the highest effective discount in the country.

41. In 2019, DDMA implemented a significant reduction to its provider reimbursements, which had the effect of suppressing DDMA's rates below market. However, despite keeping provider reimbursement rates below market for years, DDMA and other Delta Dental State Insurers have contemporaneously raised premiums to consumers—belying any claim that the effective discount standard is required to keep premiums low.

42. Moreover, the “effective discount” is not the only metric showing that Delta Dental provides the lowest provider reimbursement. Milliman—an insurance consultant that collects and reports information about the dental insurance industry, and on whose reports Delta Dental routinely relies—acknowledges that system-wide Delta Dental has both the highest net effective discount *and* the highest net *contracted* discount. Net contracted discount does not take into account utilization; it measures only the magnitude of discounts imposed upon dentists in their contracts with insurance companies. Quite simply, highest net contracted discount means lowest reimbursements.

43. DDMA imposes these “take it or leave it” reimbursement rate discounts upon Massachusetts Dental Providers by way of the Delta Dental Provider Agreements, making such severe discounts an unavoidable cost of doing business with DDMA. Given DDMA's monopsony control of the Massachusetts market for dental goods and services, where DDMA holds a clear majority share of the market, Massachusetts Dental Providers are effectively forced to accept the artificially low reimbursement rates under the Delta Dental plans. The alternative would be refusing to accept Delta Dental insurance at all, and thereby losing the business of the very large number of in-network Delta Dental insureds.

44. To put it plainly, Dental Providers in Massachusetts are faced with the Hobson's choice of either (1) accepting Delta Dental patients at unreasonably discounted reimbursement

rates pursuant to a Delta Dental Provider Agreement, or (2) losing access to the majority of the market, which is comprised of in-network Delta Dental patients.

C. The Relevant Goods, Services, and Geographic Markets

45. DDMA and its co-conspirators have abused their market power to artificially restrain competition in the market for dental goods and services. The relevant product market is the commercial market for dental goods and services including, but not limited to, diagnostic routine periodic examinations, bitewings, X-rays, cleanings, fluoride treatments, sealants, space maintainers, minor emergency procedures, fillings, tooth extractions, biopsy of oral tissue, frenectomy, non-surgical periodontics, endodontics, crowns, and dentures.

46. For the claims in this lawsuit, which are asserted solely against DDMA, Plaintiffs plead that the relevant geographic market is the Commonwealth of Massachusetts.

D. DDMA's Market Dominance

47. DDMA wields market power in the commercial market for dental goods and services in Massachusetts, enabling it to produce anticompetitive effects throughout the Commonwealth of Massachusetts. In its exclusive territory, DDMA's commercial market share equals or exceeds 50% both statewide and in the overwhelming majority of regions and three-digit zip codes in Massachusetts, as measured by Milliman, and has done so consistently across the entire class period.

48. DDMA's market power makes Delta Dental insurance a "must-have" for the overwhelming majority of Massachusetts Dental Providers. The Delta Dental buyers' cartel holds monopsony power that makes it difficult for alternative buyers to compete, thereby depressing the market price for the sale of dental goods and services. That market power means that even when DDMA has reduced reimbursement rates, it is not economically feasible for any significant number or percentage of Massachusetts Dental Providers to terminate their participating provider

agreements with DDMA. As alleged herein, DDMA and other Delta Dental State Insurers have taken advantage of their market power by sharing, among themselves and across the entire Delta Dental system, sensitive information unknown to their competitors about their respective reductions in provider reimbursement and the negligible resultant loss of providers from the Delta Dental networks. DDMA and the other Delta Dental State Insurers have taken one another's sensitive price information and related attrition experience into account in deciding how much lower to drive their own provider reimbursements, secure in the knowledge that they could pay dentists less and less while still keeping those dentists in their provider networks.

FACTUAL ALLEGATIONS

I. DDMA AND ITS CO-CONSPIRATORS ENGAGE IN AN UNLAWFUL MARKET ALLOCATION MECHANISM

49. The Market Allocation Mechanism is an agreement among DDMA and the other Delta Dental entities to limit the competition for dental goods and services in the territories where the Delta Dental State Insurers are located. That agreement is part of an unlawful horizontal conspiracy to allocate the market for dental goods and services within each of those territories, including in Massachusetts, and across the United States.

50. In furtherance of their agreement not to compete, DDMA and the other Delta Dental entities have agreed that (1) the market for dental goods and services will be divided into 39 territories, each allocated to the exclusive control of a particular Delta Dental State Insurer, and (2) the Delta Dental State Insurers will not attempt to purchase dental goods and services, or to sell dental insurance to dental plan sponsors or members, outside of each Delta Dental State Insurer's allocated territory.

51. To be allowed to sell Delta Dental-branded insurance, DDMA and every other Delta Dental State Insurer have agreed to sign the Service Mark License Agreement whereby each

Delta Dental State Insurer has the exclusive right to use Delta Dental trademarks in its assigned territory, and have signed the DeltaUSA Membership Agreement, in which they have agreed to comply with the DDPA Membership Standards and Guidelines. This means, among other things, that DDMA and every other Delta Dental State Insurer have agreed not to recruit Dental Providers outside their assigned territories and have agreed not to solicit business from employer groups outside their assigned territories. DDMA and the other Delta Dental State Insurers have further agreed that once an employer's headquarters is determined, only one Delta Dental State Insurer, deemed the "Control Plan," may bid on the business; and they have agreed to be audited for compliance with the exclusive territorial restrictions, which ensures that all the co-conspirators adhere to their collusive scheme.

52. These territorial restrictions prohibit DDMA and the other Delta Dental State Insurers from contracting with any out-of-state dentist.

53. Delta Dental State Insurers, including DDMA, routinely discuss territorial disputes to determine which of them should be the Control Plan, with the purpose of appointing a single Delta Dental State Insurer to bid. In some circumstances, one Delta Dental State Insurer will affirmatively cede a business opportunity to another. In doing so, Delta Dental State Insurers follow the territorial restrictions despite the fact that doing so is contrary to their own self-interest. In certain instances, DDMA has ceded business opportunities to other Delta Dental State Insurers; in other instances, other Delta Dental State Insurers have ceded business opportunities to DDMA.

54. If DDMA and another Delta Dental State Insurer cannot agree on which one will bid on a particular opportunity, disputes are submitted to DeltaUSA for binding adjudication.

55. To dissuade defection from their collusive agreement, if DDMA or another Delta Dental State Insurer is found to have issued a proposal without proper authority, it is submitted to DDPA for a determination of what sanctions to impose.

56. Substantial monetary fines have been imposed for Delta Dental State Insurers' violations of territorial restraints.

57. The mandated territories, sometimes also referred to as "exclusive service areas" or "ESAs," do not provide pro-competitive benefits that outweigh the harms caused by Delta Dental's territorial allocation.

58. This deliberate allocation of the territories in which each Delta Dental State Insurer can conduct its business, and the corresponding agreement that the Delta Dental State Insurers will not compete with each other for Dental Providers and dental goods and services business outside their respective allocated areas, has no legitimate insurance-based need. It does not serve to transfer or spread the risk of patients insured by Delta Dental. Nor is it a necessary component of the relationship between Delta Dental and patients with Delta Dental insurance. Instead, it serves only Delta Dental, by reducing competition in the market for dental goods and services in all of the territories in which the Delta Dental State Insurers are based—thus reducing competition in Massachusetts, in every other state market, and across the United States as a whole.

59. In the absence of the Market Allocation Mechanism, the Delta Dental State Insurers would compete to purchase dental goods and services outside of and between the territories they presently have allocated exclusively among themselves. Dentists, dental plan sponsors, and members in Springfield, for example, would not be restricted to accepting the terms and conditions of the plans offered by DDMA (which makes all provider reimbursement decisions from its headquarters in Boston). Instead, they could also consider the terms and conditions of plans

offered, by way of example only, by the Delta Dental State Insurer for Rhode Island. DDMA and that entity would then compete for these dentists and dental insurance customers. This is only one example. The Market Allocation Mechanism is inherently anticompetitive, economically artificial, and provides no policy or risk allocation benefit to patients.

60. Competition between DDMA and other Delta Dental State Insurers would benefit dental plan sponsors and members by driving down the premium prices that members are required to pay for such insurance, or by increasing the scope of the coverage offered under an insurance policy for the same premium price. Such competition would also give Massachusetts Dental Providers greater choice in respect of the dental insurance plans they could accept. This choice would free the providers from the dominant control and below-market reimbursement rates imposed upon them by DDMA.

61. Due to DDMA's implementation and maintenance of the Market Allocation Mechanism, Plaintiffs and other Massachusetts dentists have received less reimbursement for the goods and services they provided to DDMA, and have been injured in their property and business as a result.

II. DDMA AND ITS CO-CONSPIRATORS ENGAGE IN UNLAWFUL PRICE FIXING

62. In addition to participating in the Market Allocation Mechanism, DDMA has used its dominant market position to lower the rates at which it reimburses Massachusetts Dental Providers for goods and services provided to Delta Dental insureds through DDMA's participation in the Price Fixing Mechanism.

63. The Price Fixing Mechanism is a collusive agreement reached among, and implemented through, the other agreements entered between DDMA, the other Delta Dental State Insurers, DDPA, and DeltaUSA. DDMA's price fixing takes the form of (i) sharing confidential

price information and strategies to reduce reimbursement rates among the Delta Dental State Insurers, including sharing specifics quantifying the amounts by which various Delta Dental State Insurers reduced their provider reimbursements and the resulting retention of dentists in their networks; (ii) DDMA's agreement to abide by policies and protocols requiring the Delta Dental State Insurers to deny or disallow reimbursement for certain procedure codes (*i.e.*, fixing the price for these procedure codes at \$0), mandating that certain procedure codes be priced the same as a benchmark procedure code, and "recommending" prices for other procedure codes; (iii) sharing reimbursement rate information for all procedure codes through the NPF and the NDP; and (iv) adopting an effective discount standard that effectively requires DDMA to have the lowest or among the lowest reimbursement rates of all competitor insurance companies in the State.

A. DDMA and Other Delta Dental State Insurers Routinely Share Strategies for Reducing Reimbursement Rates

64. DDMA and the other Delta Dental State Insurers routinely share confidential pricing and dentist retention and attrition information with each other. DDPA serves as the central hub facilitating and coordinating this information sharing.

65. DDMA and other Delta Dental State Insurers rely on one another's information to evaluate whether and when to implement reductions in their own reimbursement.

66. DDMA and the other Delta Dental State Insurers also share reimbursement rate information via direct communications between and among themselves about particular CDT codes.³ DDMA and other Delta Dental State Insurers even share much broader sets of fee information, including entire fee schedules.

³ The ADA publishes the Code on Dental Procedures and Nomenclature, listing a standardized set of Current Dental Terminology, or CDT, codes to assure consistency in documenting dental treatment. <https://www.ada.org/publications/cdt>.

67. Although DDMA and other Delta Dental State Insurers claim that possessing one another's pricing information would be of no use to them, that assertion is belied by the fact that they persist in both sharing the information and relying on it when making their own pricing decisions regarding provider reimbursement.

68. In addition to sharing information about fee reductions and CDT codes, DDMA and the other Delta Dental State Insurers have shared with one another strategies and practices for moving dentists from the Premier network (with comparatively higher reimbursement amounts) to the lower-paying PPO network to satisfy the effective discount standards they have agreed to meet.

69. Information sharing between DDMA and the other Delta Dental State Insurers also occurs at Delta Dental system-wide conferences and over e-mail, where information is shared on the changes in their fee methodologies and how those changes impact dentist attrition in their provider networks.

70. DDMA and other Delta Dental State Insurers often convey to one another details of forthcoming fee reductions weeks or even months in advance, for which there is no legitimate business purpose; and the recipients of such information, including DDMA, commonly consider it when formulating their own pricing decisions. There is no justification for DDMA's and other Delta Dental State Insurers' concerted sharing of both historical and planned reimbursement changes and resulting provider attrition. Likewise, there is no justification for their systemic sharing of other confidential pricing information and strategies described in the preceding paragraphs.

B. DDMA Follows Directives Regarding Reimbursement Rates

71. DDMA's Chief Clinical Officer, Dr. Linda Vidone, is a member of the DeltaUSA Dental Policy Committee organized by DDPA. The meetings of the Dental Policy Committee

serve as yet another forum where DDMA and other Delta Dental State Insurers share information about fee reductions.

72. Additionally, the Dental Policy Committee promulgates DeltaUSA's Processing Policy Manual. DDMA's unlawful practices follow the Processing Policy Manual's three pricing requirements, which are enforced through audits and sanctions.

73. First, DDMA has agreed to follow the Processing Policy Manual's requirement that reimbursement for many procedure codes be disallowed or denied. This policy effectively fixes the price for these procedures at \$0.

74. Second, DDMA has agreed to follow the Processing Policy Manual's requirement that reimbursement for certain procedure codes be fixed at the same amount as the reimbursement for a different code.

75. Third, each year, new procedure codes are promulgated by the ADA, and DDMA follows Delta Dental's nationwide "recommendations" of specific prices for reimbursement for those codes.

C. DDMA and the Other Delta Dental State Insurers Share Reimbursement Rate Information for All Procedure Codes through the NPF and NDP

76. DDMA and the other Delta Dental State Insurers further facilitate their price fixing by agreeing to share reimbursement rates in two databases, the NPF and the NDP. DDMA and all other Delta Dental State Insurers upload their reimbursement rates and other information to the NPF and NDP, and all have access to the NPF and the NDP.

77. DDMA and the other Delta Dental State Insurers share all their provider reimbursement data on the NPF, including reimbursement rates, dentist information (*e.g.*, name, address, specialty), and dentist network affiliation. The NDP contains all the information from the NPF, plus additional data such as practicing provider counts, industry discount studies performed

annually by the Milliman consulting firm, and routing files, which contain subscriber data such as employer and group information.

78. Employees of DDMA and other Delta Dental State Insurers have broad access to the NPF and the NDP.

79. DDMA and other Delta Dental entities have asserted that the NPF and the NDP are necessary for claims processing on multi-state accounts, *i.e.*, so Delta Dental State Insurers can service national clients. Yet, for decades, DDMA and other Delta Dental State Insurers serviced multi-state and national accounts without the NPF or the NDP.

D. DDMA and the Other Delta Dental State Insurers Lower Reimbursement Rates to Satisfy an Effective Discount Standard

80. DDMA and the other Delta Dental State Insurers have conspired to agree upon an effective discount standard that requires the effective discount of DDMA and every other Delta Dental State Insurer to be in the top quartile of competitors, and requires DDMA and the other Delta Dental State Insurers to pay claims at the average of competitors in the top quartile of effective discounts. As a practical matter, the higher the effective discount, the lower the reimbursement rate paid to dentists.

81. The effective discount is calculated as the average savings across all claims paid. As described above, DDMA and the other Delta Dental State Insurers have shared strategies both for lowering the reimbursements paid to PPO and Premier dentists and for shifting dentists from the higher-paying Premier network to the lower-paying PPO network. After communicating

with one another, DDMA and the other Delta Dental State Insurers have agreed unlawfully to lower the reimbursements paid to providers, which in turn increases their effective discount rates.

82. In doing so, DDMA has affirmatively lowered its reimbursement rates below market and then maintained those artificially low levels for years.

E. DDMA and the Other Delta Dental State Insurers' Price Fixing Has Harmed Dental Providers

83. Because of DDMA's monopsony control of the market for dental goods and services in Massachusetts, Massachusetts dentists are effectively forced to enter into the Delta Dental Provider Agreement with DDMA, just as Dental Providers in other states are effectively forced to enter into the Delta Dental Provider Agreement with their respective Delta Dental State Insurers. The result is that Massachusetts Dental Providers, like Dental Providers elsewhere, must accept the artificially low reimbursement rates dictated in that agreement. As shown above, DDMA dominates the commercial dental insurance market in Massachusetts, with market share above 50%. A Massachusetts dentist or dental practice is faced with a majority of patients who have subscribed to one of the Delta Dental insurance plans and who wish to be treated by a dentist or dental practice willing to accept that plan; that dentist or practice must accept Delta Dental's artificially low reimbursement rates.

84. With no realistic alternative, Massachusetts Dental Providers—like the Plaintiffs in this Complaint—are effectively required to accept the Delta Dental Provider Agreement and its below-market rates in order to access the majority of dental patients in Massachusetts, and thereby to maintain a viable dentistry business. Indeed, DDMA recognizes that Massachusetts Dental Providers overwhelmingly have no choice but to accept the artificially low reimbursement rates that DDMA offers. As a result, DDMA has been able to deny fee increases and keep reimbursement rates to dental providers constant or even reduce them (in the face of year-over-

year inflation). At the same time, DDMA continued (and continues) to increase premiums to consumers.

85. DDMA also affirmatively forces Massachusetts Dental Providers to provide lesser care than what their professional judgment indicates is warranted, or even to forgo providing medically necessary care. Because DDMA's price-fixing conspiracy results in the denial or disallowance of reimbursement for procedures necessary for optimal care, DDMA leaves Massachusetts dentists no alternative but to provide more limited procedures, or no procedures at all. For example, Massachusetts Dental Providers may be forced to perform a light cleaning (*i.e.*, supra-gingival) rather than a deep cleaning (*i.e.*, sub-gingival), or a tooth extraction rather than endodontic therapy and/or a crown, disadvantaging both dentists and patients as a result.

86. The Price Fixing Mechanism and the Market Allocation Mechanism give Massachusetts Dental Providers no choice but to accept below-competitive reimbursement rates as determined by DDMA via the Price Fixing Mechanism. Absent the Price Fixing Mechanism and the Market Allocation Mechanism, Massachusetts Dental Providers would have greater choice among the dental insurance plans they could accept from their patients. Massachusetts Dental Providers would then be better positioned to negotiate with DDMA for higher reimbursement rates for the goods and services they provide to insureds under Delta Dental insurance plans. As a result, DDMA's monopsonistic conspiracy has not only harmed Massachusetts Dental Providers and Massachusetts consumers, it has harmed competition itself.

87. Due to DDMA's implementation and maintenance of the Price Fixing Mechanism, Plaintiffs and the Dental Providers in Massachusetts have received less reimbursement for the goods and services they provided to Delta Dental insureds and have been injured in their property and business as a result.

III. DDMA AND ITS CO-CONSPIRATORS ENGAGE IN UNLAWFUL OUTPUT RESTRICTIONS

88. In addition to the Market Allocation Mechanism and the Price Fixing Mechanism, DDMA and the other Delta Dental entities have engaged in a mechanism that restricts the nature and amount of business that DDMA and the other Delta Dental State Insurers are allowed to do outside of the “Delta Dental” brand.

89. Through their longstanding business practices, DDMA and the other Delta Dental State Insurers have the skills and knowledge required to compete with other Delta Dental plans. Although the agreements that dictate the Market Allocation Mechanism prohibit one Delta Dental State Insurer from contracting with Dental Providers and selling Delta Dental-branded dental insurance in the exclusive territory of any other Delta Dental State Insurer, those express prohibitions do not extend to non-Delta Dental-branded insurance.

90. Delta Dental State Insurers are permitted to own and operate so-called “second brands” and, ostensibly, to use those second brands to offer non-Delta Dental-branded insurance products. Since 2022, at least six other Delta Dental State Insurers had for-profit affiliated second brands: California (Dentegra), Illinois (TruAssure), Kansas (Surency), Michigan (Renaissance), Missouri (Advantica), and Rhode Island (Altus).⁴ In general, each of the other second brands paid higher reimbursement to Dental Providers than the corresponding Delta Dental State Insurers. Accordingly, Massachusetts Dental Providers would benefit from increased competition if the second brands belonging to the other Delta Dental State Insurers competed against DDMA in Massachusetts.

⁴ DDMA had a second-brand called DentaQuest that was sold in 2022 for \$2.475 billion.

91. When other, similar entities—like Blue Cross Blue Shield—have imposed express restrictions on second brands, they have attracted scrutiny under the antitrust laws. In an effort to avoid such scrutiny, Delta Dental has not imposed written restrictions on second brands. Nonetheless, DDMA and the other Delta Dental State Insurers have formed an unwritten agreement to restrict the business of the second brands to avoid direct competition against the Delta Dental brand—particularly in the market segment for large employer commercial business that accounts for the overwhelming majority of DDMA and the other Delta Dental State Insurers’ revenues and profits.

92. In practice, the second brands of DDMA and the other Delta Dental State Insurers identified above have studiously avoided actual competition with the Delta Dental brand. Thus, the second brands owned by the Delta Dental State Insurers have focused their operations on underwriting Delta Dental-branded business and insuring smaller employers and individuals (for example, on insurance exchanges) where Delta Dental State Insurers generally do not compete. Overwhelmingly, these second brands have not competed for the large employer commercial business that provides the great majority of Delta Dental revenues. Pursuant to this unwritten agreement, the second brands belonging to other Delta Dental State Insurers have not competed in Massachusetts.

93. Although DDMA and the other Delta Dental entities deny that they agreed to restrict second brands in these ways, the concerted action described above can only be the result of collusion with the intention to avoid competition between second brands and Delta Dental State Insurers.

94. In an attempt to mask the agreement to foreclose second brands from competing with Delta Dental State Insurers, DDMA and others within the Delta Dental system attribute the

second brands' abstention from competition for large group business to lack of resources, network, and brand recognition. However, those insufficiencies exist because the Delta Dental State Insurers have purposely starved the second brands of those things, disabling them from competing in ways that would not serve the Delta Dental brand.

95. Additional facts demonstrate the existence of the unwritten agreement concerning second brands. DDMA and the other Delta Dental State Insurers have common motives to conspire to restrict the second brands' output: to maintain the profits from existing Delta Dental-branded business, and to sustain their market power by preventing potential competitors from entering and winning away from Delta Dental both insurance business and Dental Providers. DDMA and the other Delta Dental State Insurers have acted against their own interest in agreeing to restrict the second brands' output, choosing to forsake potentially profitable business that would be available to them if they expanded into territories otherwise prohibited by the Market Allocation Mechanism.

96. The output restrictions described above amount to a significant restraint on trade in the Massachusetts market for dental goods and services because they directly limit the amount of competition and the number of competitors in the market in which DDMA should be required to compete for customers. Absent these output restrictions, there would be greater competition for dental insurance and other dental services in Massachusetts, which would result in greater insurance choice and lower premiums for Massachusetts dental plan sponsors and members, and greater insurance choice and higher rates of reimbursement for dental goods and services provided by Massachusetts dentists and dental practices.

IV. THE SUPRACOMPETITIVE PROFITS OF DDMA AND ITS CO-CONSPIRATORS—FUNNELED INTO EXCESSIVE EXECUTIVE COMPENSATION AND CAPITAL RESERVES—ARE DIRECT EVIDENCE OF THE EXERCISE OF MONOPSONY POWER IN MASSACHUSETTS AND THROUGHOUT THE UNITED STATES

97. Regardless of the historical motives of its predecessor when that dental service corporation was formed 60 years ago, today, DDMA (like the other Delta Dental State Insurers) is driven by corporate greed. Its excessive spending on executive compensation packages and its amassment of ever-inflating capital reserves with no legitimate business purpose to justify their magnitude contradict its proffered pro-competitive justification, *i.e.*, that supposedly it has suppressed provider reimbursements to keep its clients' and insureds' premiums low.

98. As reflected in public tax forms, from 2014-2022, DDMA and the other Delta Dental State Insurers have collected billions of dollars in operating gain—*i.e.*, profit—by increasing premiums to consumers while suppressing Dental Provider reimbursement, which fell by approximately 11% on an inflation-adjusted basis during the same period.

99. In turn, DDMA and the other Delta Dental State Insurers have used their supracompetitive profits to pay lavish salaries and perquisites and to hoard billions of dollars in capital reserves. While DDMA and most of the Delta Dental entities are nominally not-for-profit entities, their directors and executives have received lavish executive compensation as a reward for implementing and maintaining the highly profitable conspiracy described above. DDMA has routinely paid its executives seven-figure compensation packages. As examples, DDMA paid its CEO over \$1 million in 2020, which is higher than 75% of non-profit health peer CEOs, and its COO over \$1.2 million in 2020, which is higher than 90% of non-profit health peer COOs.⁵ In

⁵ For the purposes of executive compensation, peers are defined as non-profit entities with NTEE code E (Health Care) operating in the U.S. with revenue of 1/10 to 10 times the revenue of the corresponding Delta Dental entity.

2022, DDMA paid its CEO over \$1.1 million. DDMA 2022 Form 990, Schedule J Part II. Then for just 66 days in 2023, it paid that CEO over \$400,000, for an annualized total of over \$2.2 million. DDMA 2023 Form 990, Schedule J Part II. Similarly, based on public tax filings, between 2014 and 2021, nearly one third of Delta Dental CEOs received compensation higher than 90% of their non-profit health peers and over half received compensation that was higher than 75% of those peers.

100. DDMA and the other Delta Dental State Insurers have also used their illicit revenue to build excessive capital reserves that are multiples higher than both any regulatory requirement and those of other insurers in the health industry. Risk-based capital (“RBC”) ratios measure surplus level relative to risk to ensure a company’s solvency, and the National Association of Insurance Commissioners (“NAIC”) requires that ratio to be at least 2.0; if an insurance company’s RBC falls below 2.0, regulatory intervention is deemed necessary. The capital reserves that DDMA and the other Delta Dental State Insurers have amassed far exceed the statutory requirements. Based upon public information submitted to the NAIC, from 2014 through 2021, the Delta Dental State Insurers’ median RBC ratio ranged between 11.4 and 15.3, while the median range for more than 900 health insurers that report to NAIC was between 5.9 and 7.1. Similarly, during the same period, the Delta Dental State Insurers’ average RBC ratio was 12.3 compared to their peers’ (*i.e.*, other dental insurers’)⁶ average of 7.9.

101. Between 2014 and 2018, DDMA used its supracompetitive profits to increase its capital reserves from about \$510 million to about \$695 million. DDMA 2014-2018 Form 990 filings. In 2018, DDMA transferred about \$334.5 million from its capital reserves to its non-

⁶ For the purposes of calculating reserves, the Delta Dental State Insurers’ peers are defined as dental insurance companies whose main operations are dental and do not generally contain other insurance services as a major component of their business.

insurance subsidiary Catalyst Institute, Inc., the predecessor to CareQuest Institute for Oral Health, Inc. (“CareQuest”), which subsequently distributed the proceeds. 2018 DDMA Form 990 Part III. In total, DDMA transferred \$741.7 million from its capital to subsidiaries between 2018 and 2022. DDMA has continued to use its supracompetitive profits needlessly to inflate its capital reserves, increasing them by nearly 20% from 2020 to 2022 alone. In its 2023 Form 990, CareQuest disclosed its annual revenue less expenses as over \$1.1 billion, with net assets or fund balances of almost \$2.1 billion. These excessive capital reserves serve no legitimate insurance purpose or other genuine business need.

102. Together, the exorbitant salaries, transfers of capital, and bulging reserves demonstrate that DDMA (like its co-conspirators) is in fact motivated to, and does, derive significant supracompetitive profits from its anticompetitive practices.

V. DDMA’S ANTICOMPETITIVE CONDUCT VIOLATES THE ANTITRUST ACT UNDER THE *PER SE*, QUICK LOOK, AND RULE OF REASON STANDARDS, AND ITS AGREEMENTS SHOULD BE ENJOINED

103. DDMA’s conduct in engaging in the Market Allocation Mechanism, the Price Fixing Mechanism, and the Output Restrictions is *per se* anticompetitive.

104. DDMA possesses market power in Massachusetts; the unlawful contract, combination, or conspiracy has significant anticompetitive effects in respect of non-substitutable products within the relevant product and geographic markets; and the conspiracy has no or insufficient pro-competitive justifications when measured against the anticompetitive conduct alleged. Thus, DDMA is liable for each mechanism of the alleged conspiracy even under a quick-look or rule-of-reason analysis.

105. As alleged herein, DDMA has exercised its market power to achieve significantly anticompetitive purposes with few or no compensatory features in respect of each aspect of the alleged conspiracy.

106. Absent the Market Allocation Mechanism, the Price Fixing Mechanism, and the Output Restrictions, DDMA would compete with the other Delta Dental State Insurers in the market for dental goods and services in Massachusetts and in a way that would naturally produce higher reimbursement rates for Massachusetts Dental Providers and/or lower premiums for dental insurance plan sponsors and members in Massachusetts.

107. In order to remedy its anticompetitive practices, Defendant DDMA should be enjoined from conforming to and implementing the Market Allocation Mechanism.

108. Likewise, the Price Fixing Mechanism is anticompetitive because it results in DDMA and the other Delta Dental State Insurers sharing price information and agreeing among themselves to rates at which they will reimburse Dental Providers, allowing DDMA to abuse its monopsony control to artificially impose lower rates on Massachusetts Dental Providers. Defendant DDMA should be enjoined from colluding to set the reimbursement rates offered to Dental Providers.

109. The Output Restrictions are also anticompetitive because they limit the amount of business DDMA and other Delta Dental State Insurers can generate under their non-Delta Dental insurance plans, *i.e.*, their second brands. These restrictions prevent Delta Dental State Insurers from developing and offering dental insurance plans under their second brands that would compete with Delta Dental plan offerings. DDMA should be enjoined from agreeing to prevent second brands from competing with it in Massachusetts. Such an injunction will give dental plan sponsors, providers, and members greater choice in dental insurance.

VI. PLAINTIFFS HAVE SUFFERED ANTITRUST INJURY

110. Plaintiffs have suffered antitrust injury in respect of each of the three mechanisms of the Delta Dental conspiracy described herein.

111. The Market Allocation Mechanism is an illegal horizontal market allocation agreement and has caused antitrust injury to Plaintiffs. By allocating the markets in which the Delta Dental State Insurers can offer dental insurance, DDMA has restrained competition in a way that has reduced the number of insurance plans available to dental patients served by Massachusetts Dental Providers, and thus restrained competition among dental insurance providers for the reimbursement rates offered to Massachusetts Dental Providers. Massachusetts Dental Providers—faced with DDMA’s market dominance in its allocated territory, and with the other Delta Dental State Insurers’ refusal to conduct business and compete in Massachusetts—are faced with a “take it or leave it” scenario for the reimbursement rates they are offered by DDMA in Massachusetts.

112. Absent the Market Allocation Mechanism, there would be more competition among dental insurers for the dental goods and services business of dentists and dental practices, and for the insurance premium business of dental plan sponsors and members. This competition would increase the reimbursement rates available to Massachusetts Dental Providers. This competition also would decrease the premiums (or increase the coverage) available to dental plan sponsors and members.

113. The Price Fixing Mechanism has caused antitrust injury to Plaintiffs. By colluding to reduce the reimbursement rates paid by DDMA to Massachusetts Dental Providers, rather than allowing those rates to be set by competition among DDMA and the other Delta Dental State Insurers, DDMA has reduced competition and set artificially low the amounts that Massachusetts Dental Providers receive as reimbursement for goods and services provided to Delta Dental insureds. Absent the conspiracy, competition among DDMA and the other Delta Dental State Insurers would naturally lead to higher reimbursement rates for Massachusetts Dental Providers.

114. The Output Restrictions have caused antitrust injury to Plaintiffs. By colluding to prevent second brands from competing with Delta Dental State Insurers' Delta Dental-branded business, DDMA (like the other Delta Dental State Insurers) has directly reduced the amount of competition in the market for dental goods and services. Absent the restrictions, the other Delta Dental State Insurers would conduct more dental insurance business in Massachusetts in competition with DDMA. This increased competition would again result in increased reimbursement rates to Massachusetts Dental Providers, who would have the choice of accepting patients (and thus reimbursement rates) under more insurance plans, and not just the Delta Dental plans from DDMA.

115. The Dental Providers in Massachusetts have suffered direct harm as a result of DDMA's and the other Delta Dental entities' anticompetitive and unfair acts and conspiracy. DDMA has market power in Massachusetts. While a Massachusetts dentist may decline to become a member of DDMA's network, or decide not to accept Delta Dental insurance, to do so means being denied access to the largest group of potential dental patients because there are significant disincentives for patients to seek treatment by an "out-of-network" dentist; this is particularly acute because, in Massachusetts, DDMA holds a dominant share of the market.

116. Given its market power, DDMA can and does (a) charge Massachusetts consumers insurance premiums in excess of what they would otherwise be in a competitive market, (b) pay Massachusetts Dental Providers below-market rates for services rendered to Delta Dental insureds pursuant to the Delta Dental Provider Agreement, and (c) retain the difference as a supracompetitive profit without being taxed upon it due to DDMA's "non-profit" status.

117. DDMA has exerted its monopsony power to pay lower reimbursements to Massachusetts Dental Providers. Since 2011, GDP per capita, mean U.S. household income, and

the average salary for a physician have been slowly and steadily growing. By contrast, however, dentists on average have seen regular and consistent *declines* in their earnings, despite the broader healthcare trend.

118. Moreover, the negative trends in the incomes of dentists and dental practices do *not* exist in those segments of the dental market where DDMA is not present and exercising its monopsony powers. For example, dental insurance does not typically cover cosmetic procedures. As a result, patients do not select the dentists from whom they receive cosmetic dental services based on the insurance plans accepted by those dentists. Instead, dentists who provide cosmetic dental procedures are free to do so at the prices they set, and are not subject to the reimbursement rates provided by dental insurers like DDMA. Rates and revenues in the cosmetic dentistry market are thus free from significant interference by DDMA. Unsurprisingly, and in stark contrast to the markets for dental services in which Delta Dental State Insurers do operate, the market for cosmetic dentistry has grown and is projected to continue growing in the near future.⁷

119. This example makes clear the impact of DDMA's control over Massachusetts Dental Providers. In Massachusetts, the members of the Classes (defined below) have lost and will continue to lose earnings because DDMA has used its monopsony power to depress reimbursement rates for dental goods and services, as compared to a competitive market environment—just as, in their respective assigned territories, the other Delta Dental State Insurers have used their monopsony power to depress reimbursement rates for dental goods and services, as compared to a competitive market environment.

⁷ Grand View Research, U.S. Cosmetic Dentistry Market Size & Outlook, 2022-2030 (2022).

CLASS ACTION ALLEGATIONS

120. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class action pursuant to Civil Procedure Rule 23.

121. Plaintiffs seek injunctive relief on behalf of the following class (the “Injunction Class”):

All Dental Providers, not owned, employed by, or involved in the management or directorship of DDMA or any of the other Delta Dental entities identified herein, who are citizens of the Commonwealth of Massachusetts, and who provide dental goods or services within the Commonwealth of Massachusetts and were reimbursed by DDMA.

122. Plaintiffs seek monetary damages on behalf of the following class (the “Damages Class”):

All Dental Providers, not owned, employed by, or involved in the management or directorship of DDMA or of any of the other Delta Dental entities identified herein, who are citizens of the Commonwealth of Massachusetts, provided dental goods or services to a Delta Dental insured in the Commonwealth of Massachusetts, and were reimbursed directly by DDMA, and were subject to a Delta Dental participating provider agreement (excluding HMO and public entitlement plans) from April 30, 2022 through the present (the “Class Period”).

123. Plaintiffs reserve the right to amend or modify the Class descriptions with greater specificity, or further subdivision into subclasses or limitation as to particular issues.

124. Plaintiffs may sue on behalf of the Classes because:

- A. The Classes are so numerous that joinder of all members is impracticable. The Classes number in the thousands, the exact number and their identities being known by DDMA.

B. Questions of law and fact are common to the Classes, including but not limited to the following:

- i. Whether DDMA possesses monopsony power over the Classes;
- ii. Whether DDMA conspired with co-conspirators to allocate markets horizontally;
- iii. Whether DDMA conspired with co-conspirators to share price information;
- iv. Whether DDMA conspired with co-conspirators to fix, stabilize, or reduce the amounts of reimbursements to Dental Providers;
- v. Whether DDMA conspired with co-conspirators to restrict output by placing artificial and anticompetitive limitations on the use of second brands;
- vi. Whether the Classes suffered antitrust injury;
- vii. Whether DDMA's conduct in respect of the Market Allocation Mechanism as alleged in this Complaint caused damages to the Damages Class and the method of calculating the amount and extent of those damages;
- viii. Whether DDMA's conduct in respect of the Price Fixing Mechanism as alleged in this Complaint caused damages to the Damages Class and the method of calculating the amount and extent of those damages;
- ix. Whether DDMA's conduct in respect of the Output Restrictions Mechanism as alleged in this Complaint caused damages to the

Damages Class and the method of calculating the amount and extent of those damages;

- x. Whether DDMA's conduct in respect of the three above-described mechanisms combined in full, or in part, caused damages to Plaintiffs and other members of the Damages Class and the method of calculating the amount and extent of those damages; and
- xi. Whether DDMA's conduct as alleged in this Complaint should be enjoined.

C. Plaintiffs are members of the Classes, have claims that are typical of the claims of the members of the Classes because all members of the Classes were injured, and may continue to be injured, in the same manner by DDMA and its co-conspirators' unlawful, anticompetitive, and inequitable methods, acts, and practices. Plaintiffs have interests coincident with and not antagonistic to those of the other members of the Classes, and will fairly and adequately protect the interests of the members of the Classes.

D. Plaintiffs are represented by counsel who are competent and experienced in the prosecution of antitrust and class action litigation and who will fully and adequately protect the interests of all members of the Classes.

E. The prosecution of separate actions by individual members of the Classes would create a risk of inconsistent or varying adjudications.

F. DDMA has acted on grounds that apply generally to the Classes, so that final injunctive relief is appropriate respecting the Classes as a whole.

- G. The questions of law and fact common to the members of the Classes predominate over any questions affecting only individual members, including legal and factual issues relating to market power, liability, and damages.
- H. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Treatment as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. The Classes are readily definable, records for the Classes should exist in the files of DDMA, and a class action will eliminate the possibility of repetitious litigation.
- I. Class treatment will also permit the adjudication of relatively small claims by many members of the Classes who otherwise could not afford to litigate claims such as those asserted in this Complaint.
- J. This class action presents no difficulties of management that would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION

For Violation of Mass. Ch. 93, § 4 (The Massachusetts Antitrust Act)

125. Plaintiffs, on behalf of themselves and all others similarly situated, reallege and incorporate herein by reference each of the allegations contained in the preceding paragraphs of this Complaint, and further allege against Defendant DDMA as follows:

126. Beginning at a date unknown to Plaintiffs, and continuing thereafter up until the present, Defendant and its co-conspirators entered into and engaged in a continuing unlawful contract, combination, or conspiracy for the purpose of unreasonably restraining trade in violation of G.L. c. 93, § 4.

127. The unlawful contract, combination, or conspiracy entered into by Defendant and its co-conspirators has included concerted action and undertakings with the purpose and effect of (a) allocating markets for dental goods and services horizontally, (b) sharing price information and fixing, stabilizing, or reducing prices (*i.e.*, the amounts of reimbursements to Dental Providers), and (c) restricting output by placing artificial and anticompetitive limitations on the use of second brands.

128. The unlawful contract, combination, or conspiracy among Defendant and its co-conspirators has had the following effects, among others:

- A. Competition between Defendant and other Delta Dental State Insurers in Massachusetts has been suppressed, restrained, and eliminated;
- B. Defendant and the other Delta Dental State Insurers have fixed prices in Massachusetts, specifically fixing the amounts that can be charged and reimbursed for dental goods and services in Massachusetts;
- C. Competition between Defendant and second brands of other Delta Dental State Insurers in Massachusetts has been suppressed, restrained, and eliminated; and
- D. Plaintiffs and the members of the Classes have received lower reimbursement from Defendant than they otherwise would have received in the absence of Defendant's unlawful combinations and contracts with its co-conspirators, and, as a direct and proximate result, Plaintiffs and the members of the Classes have been deprived of the benefits of free and fair competition on the merits.

129. Plaintiffs and members of the Classes are "persons" within the meaning of G.L. c. 93, § 2.

130. The acts done by Defendant as part of, and in furtherance of, its contracts, combinations, or conspiracies were authorized, ordered, or done by its officers, directors, agents, employees, or representatives while actively engaged in the management of Defendant's affairs.

131. Defendant's contracts, combinations, and/or conspiracies constitute *per se* violations of G.L. c. 93, § 4, and, in any event, would also violate G.L. c. 93, § 4 under a quick look or rule of reason analysis.

132. As a direct and proximate result of Defendant's unlawful conduct, Plaintiffs have suffered injury in their business and property, having been paid less, having been forced to accept far less favorable rates and other contract terms, and/or having access to far fewer patients than they would have but for the illegal contract, combination, or conspiracy between Defendant and its co-conspirators, incurring damages in an amount according to proof at trial. As a result of Defendant's violation of G.L. c. 93, § 4, Plaintiffs bring this claim pursuant to G.L. c. 93, § 12 and seek treble damages and the costs of suit, including reasonable attorneys' fees.

133. In addition, Defendant's unlawful conduct threatens to continue to injure Plaintiffs. Therefore, Plaintiffs on behalf of themselves and the members of the Injunctive Class seek a permanent injunction prohibiting Defendant from continuing its illegal contract, combination or conspiracy and ordering it to take appropriate remedial action to correct and eliminate any remaining effects of any of the conspiracy.

134. Plaintiffs reserve the right to seek preliminary injunctions as appropriate.

SECOND CAUSE OF ACTION

For Violation of G.L. c. 93A §§ 2(a), 11

135. Plaintiffs, on behalf of themselves and all others similarly situated, reallege and incorporate herein by reference each of the allegations contained in the preceding paragraphs of this Complaint, and further allege against Defendant DDMA as follows:

136. Beginning at a date unknown to Plaintiffs, and continuing thereafter up until the present, Defendant DDMA committed acts of unfair competition, as defined by G.L. 93A § 2.

137. The acts and practices of Defendant DDMA, as alleged herein, constituted a common and continuing course of conduct of unfair competition by means of unfair, unlawful, and/or deceptive business acts or practices within the meaning of G.L. 93A § 2.

138. DDMA's violations of G.L. 93 § 4, as set forth above, constitute unfair competition and unlawful, unfair, and deceptive business acts and practices within the meaning, and in violation, of G.L. 93A § 2.

139. DDMA's acts and practices, as set forth above, whether or not in violation of G.L. 93 § 4, and whether or not concerted or independent acts, are otherwise unfair, unconscionable, unlawful, or deceptive.

140. DDMA's actions to restrain trade, allocate markets, fix prices, and restrict output constitute unfair competition and unlawful, unfair, and deceptive business acts and practices within the meaning, and in violation, of G.L. 93A c. § 2(a).

141. The conduct of DDMA in engaging in combinations with others with the intent, purpose, and effect of creating and carrying out restrictions in trade and commerce, eliminating competition among them, and fixing the reimbursement of Massachusetts Dental Providers at artificially low levels, constitutes and was intended to constitute unfair competition and unlawful, unfair, and deceptive business acts and practices within the meaning, and in violation, of G.L.c. 93A § 2(a), 11.

142. As a result of its violations of G.L. 93A, § 2(a), DDMA has unjustly enriched itself at the expense of Plaintiffs and the Classes. The unjust enrichment continues to accrue as the unlawful, unfair, and deceptive business acts and practices continue.

143. To prevent its unjust enrichment, DDMA should be required, pursuant to G.L. c. 93A, § 11, to disgorge its illegal gains for the purpose of making full restitution to all injured members of the Damages Class as described hereinabove.

144. DDMA should also be permanently enjoined from continuing its violations of G.L. c. 93A, §§ 2(a), 11.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the proposed Classes of similarly situated persons and entities, pray that this Court enter judgment on their behalf and that of the Classes by adjudging and decreeing that:

- A. This action may be maintained as a class action under Massachusetts Rule of Civil Procedure 23 certifying Plaintiffs as representatives of the Classes, and designating Plaintiffs' counsel as counsel for the Classes;
- B. Defendant has engaged in a contract, combination, or conspiracy in violation of G.L. c. 93, § 4, and Plaintiffs and the members of the Classes have been damaged and injured in their business and property as a result of this violation.
- C. The alleged contract, combination, or conspiracy be adjudged and decreed to be a violation of G.L. c. 93, § 4;
- D. Defendant is permanently enjoined from entering into, or from honoring or enforcing, any agreements that restrict the territories or geographic areas in which it or any other Delta Dental State Insurers may compete;
- E. Defendant is permanently enjoined from continuing with its Market Allocation, Price Fixing, and Output Restrictions, and is ordered to remedy all effects and vestiges of that conduct;

- F. Defendant is permanently enjoined from continuing with any other conduct determined to violate G.L. c. 93, § 4;
- G. Defendant is permanently enjoined from retaliating against any Plaintiff or member of the Classes for participation in the litigation or enforcement of any remedy;
- H. Defendant must provide ongoing periodic reporting on compliance, must submit to monitoring by the Court, and must establish a process through which members of the Classes will be represented regarding any compliance issue at Defendant's cost, all of which should continue until Defendant shows that it has corrected the effects of its illegal conduct;
- I. Plaintiffs and the Damages Class are awarded threefold the damages determined to have been sustained by them as a result of the conduct of Defendant complained of herein, as provided in G.L. c. 93A, § 11, and judgment shall be entered against Defendant for the amount so determined;
- J. The alleged contract, combination, or conspiracy be adjudged and decreed to be a violation of the Consumer Protection Law;
- K. The conduct of Defendant constitutes unlawful, unfair, and/or deceptive business practices within the meaning of the Massachusetts Consumer Protection Law, G.L. c. 93A, §§ 2(a), 11;
- L. Defendant be required to provide restitution and disgorgement of all of Defendant's ill-gotten gains as allowed by law and equity as determined to have been sustained by Plaintiffs and the Classes, together with the costs of suit, including reasonable attorneys' fees;

- M. Plaintiffs and the Damages Class are awarded pre- and post-judgment interest at the highest legal rate from and after the date of service of the initial Complaint in this action;
- N. Defendant is financially responsible for the costs and expenses of a Court-approved notice program by mail, broadcast media, and publication designed to give immediate notification to members of the Classes; and
- O. Plaintiffs and the Classes are awarded any such other and further relief as the Court may deem just and proper, including such additional relief as the Court may deem just and proper to restore competition and to redress, dissipate the anticompetitive effects of, and prevent recurrence of Defendant's violations.

JURY DEMAND

Plaintiffs hereby demand a jury trial for all issues so triable.

Dated: April 30, 2026

/s/ Harvey J. Wolkoff

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