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Attorneys for Plaintiffs

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ALBERT TALONE, D.O., CRAIG WAX,
D.O., RICHARD RENZA, D.O., and ROY
STOLLER, D.O., individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

THE AMERICAN OSTEOPATHIC
ASSOCIATION,

Defendant.

Civil Action No.: 1:16-cv-04644-NLH-JS

**AMENDED CLASS ACTION
COMPLAINT**

Jury Trial Demanded

INTRODUCTION

1. Plaintiffs, on their own behalf and on behalf of the class and sub-classes defined herein, bring this antitrust action to obtain injunctive and monetary relief against Defendant American Osteopathic Association (“AOA”) with regard to an anticompetitive tying arrangement that violates Section 1 of the Sherman Act, 15 U.S.C. § 1 (“Section 1”) and Section 3 of the New Jersey Antitrust Act (“NJAA”), N.J. Stat. Ann. § 56:9-3 (“Section 3”).

2. Plaintiffs and a sub-class defined herein also assert a claim under the New Jersey Consumer Fraud Act (“NJCFA”), N.J.S.A. § 56:8-1, *et. seq.*

3. Plaintiffs are osteopathic physicians (“DOs”) who have been board certified as medical specialists by the AOA, and who have also purchased membership in the AOA. Based on AOA information, it is believed that approximately 48,000 practicing DOs are members of the AOA, and approximately 32,000 of those DOs are AOA board certified.

4. In order to obtain and maintain their board certification, Plaintiffs and AOA board certified DOs have paid millions of dollars of registration, examination, certification and processing fees to the AOA. In addition, they pay an annual board certification maintenance fee.

5. The revenues the AOA boards receive from the various fees paid by Plaintiffs and AOA board certified DOs for their board certifications are far in excess of the actual operating expenses attendant to the board certification process.

6. Nevertheless, the AOA has notified Plaintiffs and AOA board certified DOs that even though they have already paid these fees and have been qualified and recognized as board certified medical specialists, their board certification will be invalidated and cancelled unless, in addition, they also purchase annual membership in the AOA.

7. To avoid the loss of their board certification, Plaintiffs and AOA board certified DOs have been forced to purchase AOA membership even though it serves no purpose with

respect to and has no actual connection with AOA board certification, or their practice as physicians.

8. The AOA's annual regular membership dues presently are \$683 per year. It is estimated that the AOA is receiving more than \$20,000,000 per year by unlawfully forcing AOA membership on Plaintiffs and AOA board certified DOs under the threat of invalidating prior board certification.

9. Defendant's practice of forcing AOA board certified DOs to purchase annual membership in the AOA constitutes a *per se* illegal tying arrangement in violation of Section 1 and Section 3, and/or Section 1 and Section 3 violations under the "rule of reason," that has caused, and will continue to cause, damage to Plaintiffs, the Class and the sub-classes, defined herein.

10. Defendant competes with other professional physician associations for osteopathic physicians to purchase memberships.

11. Defendant's unlawful tying arrangement has reduced the number of DOs willing to purchase membership in other professional physician associations and thereby foreclosed competition in a relevant antitrust market; namely, the market for membership in professional physician associations (the "Association Membership Market").

12. The reduction in purchases by AOA board certified DOs of non-AOA professional physician association memberships has erected barriers to entry, and thus has prevented potential rivals to the AOA from entering the Association Membership Market. In addition, the AOA's unlawful tying arrangement has raised the costs faced by its existing rivals, as well as softened price competition between the AOA and its existing rivals.

13. By reducing competition in the Association Membership Market through its unlawful tying arrangement, the AOA has been able to increase the price of its annual membership dues to almost double the price that its competitors in the Association Membership Market charge for membership in their associations. There has been a corresponding reduction in competitive offerings.

14. Furthermore, there is no evidence that the AOA's tying arrangement enhances the efficiency of its product offerings, meaning there is no pro-competitive business justification for its unlawful tying arrangement.

15. As a result of the AOA's anticompetitive tying arrangement, all DOs who have purchased membership in the AOA have paid the inflated prices charged by the AOA for their AOA membership.

16. In addition, DOs who received their AOA board certification prior to 2000 were promised by the AOA that it was a "lifetime" certification that would never expire. That same promise of a "lifetime" certification was falsely renewed in 2013, when the AOA initiated its Osteopathic Continuous Certification program ("OCC"), as described below, and knowingly concealed that lifetime certification holders would also have to purchase annual membership in the AOA to avoid the invalidation and cancellation of their prior "lifetime" certifications.

17. The AOA's statements that "lifetime" certification holders would be excluded from the requirements of the OCC, while omitting the fact that they would nonetheless be required to purchase annual AOA membership in order to maintain their "lifetime" certifications, were intentional, fraudulent statements and violated the NJCFA.

PARTIES

18. Plaintiff Dr. Albert A. Talone, D.O., is an adult individual residing at 911 Sunset Road, Burlington, NJ. Dr. Talone is an osteopathic physician with a "lifetime" board

certification from the American Osteopathic Board of Family Physicians (“AOBFP”) who has purchased an AOA membership.

19. Plaintiff Dr. Craig M. Wax, D.O., is an adult individual residing at 155 N. Main Street, Mullica Hill, NJ. Dr. Wax is an osteopathic physician certified by the AOBFP who has purchased an AOA membership.

20. Plaintiff Richard Renza, D.O., is an adult individual residing at 6410 New Jersey Ave., Wildwood Crest, NJ. Dr. Renza is an osteopathic physician with a “lifetime” board certification from the AOBFP who has purchased an AOA membership.

21. Plaintiff Dr. Roy Stoller, D.O., is an adult individual residing at 222 Sykes Lane, Wallingford, PA. Dr. Stoller is an osteopathic physician certified by the American Osteopathic Board of Facial Plastic Surgery who has purchased an AOA membership.

22. The AOA is a non-profit corporation incorporated under the laws of Illinois, and is headquartered at 142 East Ontario Street, Chicago, IL.

JURISDICTION AND VENUE

23. The claims set forth in this Complaint arise under Section 1 of the Sherman Act, 15 U.S.C. § 1, Section 3 of the NJAA, N.J. Stat. Ann. § 56:9-3, and seek injunctive relief and damages under Sections 4 and 16 of the Clayton Act, 15. U.S.C. §§ 15, 26, and Sections 10-12 of the NJAA for the injuries that Plaintiffs and all others similarly situated have sustained and continue to sustain as a result of the AOA’s unlawful tying arrangement.

24. In addition, the claims set forth in this complaint arise under the NJCFA, N.J.S.A. § 56:8-1, *et seq.*, for the injuries that Plaintiffs and all others similarly situated have sustained and continue to sustain as a result of the AOA’s conditioning AOA board certification on AOA membership.

25. The Court has subject matter jurisdiction over the federal antitrust claims under 28 U.S.C. §§ 1331 and 1337, and the Court has supplemental jurisdiction over the state antitrust and consumer fraud claims under 28 U.S.C. § 1367.

26. Venue is proper in this judicial district under 15 U.S.C. § 22 and 28 U.S.C. § 1391 because the AOA transacts business within this judicial district and can be found here, and a substantial part of the events giving rise to the claims arose within the bounds of this judicial district.

FACTUAL ALLEGATIONS

A. The AOA

27. In the United States, physicians who practice medicine either hold a Doctor of Medicine degree (“MD”) or a Doctor of Osteopathic Medicine degree (“DO”). MDs are trained in the principles and approaches of allopathic medicine, while DOs are trained in the principles and approaches of osteopathic medicine.

28. The AOA is a professional physician association for DOs and for medical students enrolled in one of the AOA’s 33 colleges of osteopathic medicine (“COM”).

29. According to the AOA’s website, there are approximately 96,000 DOs practicing in the U.S. and approximately 26,000 osteopathic medical students in the U.S. *See* www.osteopathic.org.

30. According to the AOA, in 2013, approximately 45,000 or 60.% of all active DO’s maintained membership in the AOA, and it is believed that approximately 48,000, active DOs are current members of the AOA.

31. The AOA is headquartered in Chicago, Illinois, and it is managed by its executive office and Board of Trustees, both of which are comprised of practicing DOs residing throughout the United States.

32. For example, of the 28 members on the 2016-2017 AOA Board of Trustees, 27 members reside outside of Illinois and 11 members reside in states on the East Coast, including one member in New Jersey, three members in Pennsylvania, three members in North Carolina, and four members in Florida.

33. Of the three executive leaders who currently are not on the Board of Trustees, two reside on the East Coast, in Virginia and New York.

34. The AOA’s current Chair of the Bureau of Membership, who is also a Board member, resides in North Carolina.

35. The AOA has a House of Delegates, its rule-making body, which is comprised of delegations from all 50 states, including a New Jersey Delegation to the AOA.

36. The AOA House of Delegates meets annually at a different location throughout the United States.

37. Like other professional trade associations, such as the American Bar Association for lawyers, the AOA offers its members certain benefits, such as continuing medical education courses, networking opportunities, information about advances in medicine, billing resources, and volume discount arrangements on things like auto insurance, car rentals, personal credit cards, and certain physician related services.

38. As provided on the AOA website, the rates for annual membership in the AOA for physicians for the year beginning June 1, 2016, are as follows:

<p>Annual Regular Membership Note: This rate only applies for new member DOs in practice four or more years.</p>	<p>\$683</p>
<p>Young Physician Membership For osteopathic physicians in the first three years of practice. See rates below.</p>	

First year in practice	\$171
Second year in practice	\$341
Third year in practice	\$513
Military Physicians For regular members active in the U.S. military and those who work full-time for the U.S. Public Health Service or the U.S. Department of Veterans Affairs.	\$513

39. As is the case with many other professional trade associations, membership in the AOA is not essential to the actual practice of osteopathic medicine.

40. Moreover, the benefits of membership in the AOA are not unique. In fact, as the AOA website states, like the AOA, “state osteopathic medical associations serve their membership with local resources, legislative advocacy, continuing medical education and much more.”

41. For example, the New Jersey Association of Osteopathic Physicians and Surgeons (“NJAOPS”) describes the benefits of membership in its organization in terms virtually identical to those the AOA uses to describe the benefits of membership in the AOA, such as continuing medical education courses, networking opportunities, information about advances in medicine, billing resources, and volume discount arrangements on things like auto insurance, car rentals, personal credit cards, and certain physician related services. *See* <http://www.njosteo.com/>.

42. Likewise, membership in the American Medical Association (“AMA”), American Association of Physician Specialists (“AAPSUS”) or the Association of American Physicians and Surgeons (“AAPS”) offers continuing medical education courses, networking opportunities, information about advances in medicine, billing resources, and volume discount arrangements on

things like auto insurance, car rentals, personal credit cards, and certain physician related services. See <http://www.ama-assn.org/ama/pub/membership/membership-benefits/for-physicians.page?>; http://www.aapsonline.org/index.php/articles/category/member_benefits/.

43. The annual dues for membership in a state professional physician association or one of the other national professional physician associations are likely to be significantly less than the AOA's annual dues for physicians. For example, the annual dues for membership in the NJAOPS, AMA, AAPSUS, and AAPS are, respectively, \$525, \$420, \$450 and \$350.

44. The leadership of competing professional physician associations is as geographically-diverse as the AOA's leadership. For example, the AMA has a 20 member Board of Trustees, of which nine reside on the East Coast, and the current President of the AMA resides in Pennsylvania.

B. The AOA's Control Over Osteopathic Medical Education and Residency Programs

45. The AOA has established and controls an expansive system of accreditation for osteopathic medical schools that award a DO degree and for the residency programs at which medical school graduates complete their medical training.

46. In 2015, there were approximately 26,000 enrolled COM students.

47. All COM students are automatically deemed members of the AOA upon enrollment in a COM.

48. According to the AOA's website, the AOA's Commission on Osteopathic College Accreditation ("COCA") currently accredits all 33 osteopathic medical schools, which offer instruction at 48 teaching locations in 30 states. COMs are the only medical schools that offer the osteopathic curriculum and award DO degrees.

49. For example, in New Jersey, the Rowan School of Osteopathic Medicine (“RowanSOM”) is accredited by the AOA, and it is the only medical school in New Jersey that offers osteopathic training and a DO degree.

50. In 2015, RowanSOM had approximately 650 enrolled students.

51. As part of its initial and renewal COM accreditation process, the COCA travels to COM campuses to conduct on-site visits and evaluate the school’s compliance with AOA accreditation requirements.

52. It is believed the COCA has traveled to New Jersey several times to conduct these on-site visits as part of RowanSOM’s continuing AOA accreditation.

53. In addition to the AOA’s accreditation of undergraduate medical schools, the AOA is also the only accrediting agency for osteopathic graduate medical education. The AOA’s Division of Postdoctoral Training has developed and facilitates the implementation of basic standards for AOA accredited postdoctoral osteopathic residency programs.

54. After graduating from medical school and obtaining a medical degree, and in order to practice medicine and obtain a medical license in the U.S., a physician is required to complete an accredited residency training program.

55. The AOA has a Postdoctoral Training accreditation committee that also travels on-site to inspect hospital facilities as part of the COM residency accreditation process, sometimes as frequently as one on-site visit per year.

56. For example, RowanSOM offers residency programs at over 20 New Jersey hospitals accredited by the AOA’s Division of Postdoctoral Training, including Kennedy University Hospital, Our Lady of Lourdes Medical Center, and Inspira Health Network.

57. It is believed the AOA's Postdoctoral Training accreditation committee has traveled to each of these 20 hospitals in New Jersey to evaluate and renew each hospital's COM residency program.

58. The American College of Graduate Medical Education ("ACGME") also accredits certain medical residency programs. ACGME accredited residency programs are traditionally filled by MD postgraduates, but ACGME residency programs have reserved certain positions for DO postgraduates.

C. *The AOA's Market Power Over Medical Board Certification*

59. One antitrust product market relevant to Plaintiffs' claims is the market for medical board certification for DOs who completed their residencies in AOA accredited programs (the "DO Board Certification Market"). There are no reasonable substitutes for DO board certification for those DOs. Furthermore, within the DO Board Certification Market, the AOA faces no meaningful competition.

60. Board certification is the process by which a MD or DO demonstrates a mastery of basic knowledge and skills in a particular specialty.

61. In order to obtain board certification, physicians must meet certain requirements and successfully pass a series of examinations that demonstrate their mastery of their skills in a particular medical specialty.

62. Board certification is very important to many physicians in developing and maintaining their medical practices.

63. Patients commonly look to and rely upon board certification as a means of identifying and selecting the most competent and highly-skilled physicians.

64. Most hospitals require that physicians be board certified in order to obtain and maintain their privileges.

65. Insurance companies also frequently require that physicians be board certified in order to participate in their networks and/or offer incentives to hiring board certified physicians.

66. Once a physician goes through the time-intensive and costly process of obtaining board certification it is extremely important that he or she maintain that certification.

67. The AOA has established 18 Specialty Certifying Boards (“AOA Board”) and the AOA’s Department of Certifying Board Services (“ADCBS”) to administer the process of board certification for DOs based on the principles of allopathic medicine.

68. AOA board certification is overseen by the AOA’s Bureau of Osteopathic Specialists, which is comprised of one representative from each AOA Board.

69. Like the AOA’s Board of Trustees, the members of the Bureau of Osteopathic Specialists reside throughout the country; 16 of the 18 members reside outside of Illinois and five members reside on the East Coast, in Florida, Pennsylvania and New York.

70. DOs who have completed AOA accredited residency programs are eligible to apply for board certification from these AOA Boards in a number of specialties and sub-specialties, such as anesthesiology, dermatology, and obstetrics.

71. The AOA charges examination, processing and administrative fees to physicians who apply for board certification. These fees are typically in excess of \$1,000.

72. In addition, the AOA charges an annual board certification maintenance fee.

73. Prior to about 2000, most DOs who earned board certification from an AOA Board were promised by the AOA that it was a “lifetime” board certification, and it was not in

any manner conditioned or contingent on ongoing membership in the AOA or on future payment of the AOA's annual membership dues.

74. Since about 2000, most, if not all, AOA board certifications have had six, eight, or 10 year terms.

75. According to the AOA, as of May 31, 2015, approximately 32,000 DOs held an AOA board certification.

76. The American Board of Medical Specialties ("ABMS") also offers board certification to physicians in various specialties and sub-specialties. DO's who complete their residencies at an AOA accredited program are currently not eligible for ABMS board certification. Only MDs and DOs who complete an ACGME residency are eligible to seek board certification from one of the ABMS' 24 Member Boards.

77. Because completion of an ACGME accredited residency program is one of the prerequisites for ABMS Member Board certification eligibility, ABMS board certification is not a viable alternative for the majority of DOs who complete their residencies in an AOA certified program and thus ABMS board certification is not interchangeable with AOA board certification.

78. In order for a DO who has completed an AOA residency program to obtain ABMS Board Certification instead of, or in addition to, AOA board certification, he or she would need to apply for, be selected for, and then complete a second residency at an ACGME accredited residency program.

79. Completing a second residency is not an economically viable or reasonable alternative for an osteopathic physician who has already completed an AOA accredited residency program and is in active practice.

80. In addition to the AOA Boards and ABMS Board Certification, the American Board of Physician Specialties (“ABPS”), which is affiliated with the AAPSUS, offers its own form of a “board certification” program for physicians, and has 18 specialty boards.

81. However, ABPS board certification is not recognized by every state, which means a physician in states where it is not recognized cannot hold himself or herself out as ABPS board certified, and ABPS is not as widely recognized by hospitals and insurance carriers as AOA and ABMS board certification.

82. In fact, having issued approximately 6,000 board certifications, approximately one-third to DOs, the ABPS has issued far fewer board certifications than the AOA and ABMS.

83. Thus, like ABMS board certification, for DOs who completed an AOA residency program, ABPS board certification is not interchangeable with AOA board certification.

84. Consequently, the AOA has market power in the “DO Board Certification Market.”

D. The 2020 Single-Accreditation System

85. In February 2014, the ACGME and the AOA reached an agreement to establish a single-accreditation system that will allow both DO and MD postgraduates to complete their residency and/or fellowship education in ACGME-accredited programs.

86. Beginning in 2015, AOA accredited residency programs could apply for recognition by the ACGME, with full implementation of the single-accreditation system to begin on June 1, 2020.

87. Upon implementation of the single-accreditation system in 2020, DOs who complete their residency in an ACGME recognized AOA residency program may be eligible for board certification with the ABMS.

88. However, for the period prior to 2020, a DO who completes his or her residency in an AOA accredited residency program has no viable alternative but to become board certified through an AOA Board.

89. The announcement of the plan for a single accreditation system in 2020 demonstrates the present lack of interchangeability between AOA board certification and ABMS board certification.

E. The AOA's Unlawful Tying Arrangement

90. Knowing that DOs who have obtained AOA board certification need to maintain their board certification and have no alternative to AOA board certification, the AOA has leveraged its market power in the DO Board Certification Market by conditioning the maintenance of AOA board certification (the “tying product”) on membership in the AOA (the “tied product”). As a result, the AOA has been able to inflate the price it charges for membership in the AOA, and has thereby earned, without any offsetting pro-competitive benefits, inflated revenues from membership dues that the AOA would not otherwise have earned.

91. Since at least August 1, 2012, the AOA has required all AOA board certified DOs to purchase and maintain annual membership in the AOA and pay the AOA's annual membership dues in order to avoid the AOA's deactivation of their AOA board certification.

92. That requirement is now reflected in the AOA's Osteopathic Continuous Certification (“OCC”) program, which became effective January 1, 2013, and which the AOA describes as being developed to ensure that “board-certified DOs maintain currency and demonstrate competency in their specialty area.”

93. The OCC is comprised of five components:

- A valid, unrestricted license to practice medicine and adherence the AOA's Code of Ethics;
- Completion of 120 hours of continuing medical education every three years;
- Completion of a proctored examination;
- Completion of a practice assessment against national standards; and
- **Maintaining continuous membership in the AOA.**

94. That all AOA board certified DOs have no choice but to buy the AOA's annual dues in order to remain AOA board certified is made clear by the AOA's pronouncement that, *"if at any time an osteopathic physician does not meet the requirements of OCC, certification is inactivated."*

95. In fact, the AOA sends a letter to all AOA board certified DOs who do not purchase their annual AOA membership, including those residing in New Jersey, uniformly informing them that their board certification will be suspended and potentially deactivated as a result of the failure to make such purchase:

Being an AOA member in good standing is a requirement of AOA board certification, and the Bureau of Membership, under the authority granted to it by the Bureau of Osteopathic Specialties, will meet on [date] to consider taking action on suspended members that could result in the inactivation of your board certification. To ensure that your certification is not affected, we urge you to remit payment of both AOA membership dues and board certification fees before [date].

96. There is no legitimate procompetitive justification, no medical justification, and no other justification for the AOA's requirement that AOA board certified DOs purchase membership in the AOA annually in order to maintain their board certification. Indeed, ABMS board certification is not conditioned on membership in the AMA or any other professional

physician association, demonstrating the lack of any justification for tying board certification to membership in a professional physician association.

97. The costs of annual membership dues incurred by Plaintiffs and AOA board certified DOs in order to maintain their board certifications are in addition to the examination, processing and administrative fees that each DO already pays to the AOA as part of the initial board certification process.

98. The costs of AOA membership are also in addition to the annual registration and certification fee that each AOA board certified DO already pays to the AOA in order to maintain his or her board certification.

99. The AOA's requirement that DOs purchase AOA membership annually, and pay the corresponding annual membership fee, has no bearing on, and has no relationship to, a physician's competency to practice medicine in a specialty area.

100. The AOA's membership fee requirement has no legitimate purpose and does nothing but produce additional revenue for the AOA of more than \$20 million dollars in annual membership dues. In addition, it only serves to inflate prices in the Association Membership Market without any offsetting pro-competitive benefits, thereby necessarily reducing consumer welfare.

101. As demonstrated by a recent AOA Board of Trustees resolution, where the board resolved for the AOA to "take necessary steps to secure direct control over the AOA funds held in bank and investment accounts controlled by the certifying boards," the AOA's reserves are "far in excess of the requirements for certifying board operations."

102. In addition to the cost of the AOA membership fee, the AOA requires that all AOA board certified DOs complete 120 hours of continuing medical education over a three-year

period, 30 hours of which must be purchased from an AOA-sponsored provider to satisfy what is known as the “Category 1-A” credit requirement.

103. Failure to meet the Category 1-A credit requirement can result in the loss of AOA membership and potentially result in the loss of board certification.

104. AOA continuing medical education courses can cost between \$100 and \$400 per course and some courses require DOs travel to AOA sponsored destination conferences.

105. Thus, by virtue of the unlawful tying arrangement reducing choice, Plaintiffs and AOA board certified DOs have been forced to purchase and maintain AOA membership, which, in turn, caused them to have to pay for AOA Category 1-A credit courses.

F. ***The AOA’s Unlawful Tying Arrangement Has Foreclosed Competition, Raised Prices and Reduced Consumer Welfare in the Association Membership Market***

106. No other professional physician association conditions board certification on membership. For example, membership in the NJAOPS, AMA, AAPSUS and AAPS is not conditioned upon board certification.

107. AOA board certified DOs interested in joining another professional physician association are nonetheless required to continue to purchase AOA membership and incur the additional costs of doing so in order to maintain their AOA board certification, as well as pay the dues of any such other associations. Consequently, due to these costs, many AOA board certified DOs forego purchasing memberships in other professional physician associations.

108. By requiring membership as a condition for board certification, the AOA has reduced the number of individuals considering purchasing membership in other professional physician associations. This has erected market-wide barriers to entry in the Association Membership Market, as potential competitors of the AOA are dissuaded from entering the market because they cannot be guaranteed a share of the market sufficient to viably compete.

109. The AOA's conduct has increased costs borne by the AOA's rivals and potential rivals, who do not benefit from the economies of scale that larger competitors like the AOA enjoy.

110. As a result of the tying arrangement, the AOA has been able to raise the price of membership in the AOA above competitive levels and forced all DOs who join the AOA to pay annual membership fees that are almost double what other professional physician associations charge.

111. The AOA's tying arrangement has reduced competition in the Association Membership Market, as other rival associations have lost potential members and the pricing and output of market participants is not reflective of a competitive market.

112. The diminished competition in the Association Membership Market and the exercise of market power by the AOA have harmed consumers and decreased consumer welfare. Indeed, by deterring entry and raising its rivals' costs, the actions of the AOA have resulted in the AOA's increased prices and increased prices in the Association Membership Market as a whole. This increased pricing, without any offsetting pro-competitive benefit, has reduced consumer welfare in a manner in which the antitrust laws are intended to protect.

G. The AOA's Fraud on Lifetime Certification Holders

113. When originally issued by the AOA, "lifetime" board certifications were not conditioned on the purchase of annual membership in the AOA or payment of the AOA's annual membership dues.

114. When the AOA initiated the OCC in 2013, it informed all "lifetime" board certification holders, in an AOA brochure entitled "Introduction to the AOA Osteopathic Continuous Certification Process," that they would not be required to participate in the OCC:

If you have a lifetime certification, you will not be required to participate in OCC at this time. We do strongly encourage your participation, particularly as more states begin to require a maintenance of certification process in order to maintain licensure

<https://www.osteopathic.org/inside-aoa/development/aoa-board-certification/Documents/OCC-brochure.pdf>.

115. When it made this statement, the AOA knew, and intentionally omitted, that the AOA was nonetheless going to require “lifetime” board certification holders to purchase membership in the AOA in order to avoid the deactivation of their “lifetime” board certifications.

116. By issuing the “lifetime” board certifications without identifying any additional conditions, and specifically, without instruction that these “lifetime” certificate holders had to purchase AOA membership, the AOA knowingly intended for the “lifetime” certificate holders to rely on the fact that there were no additional conditions.

117. Nevertheless, the AOA has since informed “lifetime” certificate holders that they would be required to purchase AOA membership to maintain active board certification.

118. While the AOA explicitly stated that lifetime certification holders would be excluded from the OCC requirements, it intentionally omitted from this statement the fact that the AOA would nonetheless purport to deactivate the lifetime certification of any DO who did not purchase annual AOA membership.

119. The AOA’s knowing concealment that “lifetime” certificate holders would have to purchase AOA membership has resulted in financial injury to the Plaintiffs and the Lifetime Sub-Class, defined below, as DOs with lifetime certifications have nonetheless been forced to purchase AOA membership annually in order to maintain their lifetime board certifications (and to then also purchase AOA Category 1-A credits annually to maintain their AOA membership).

CLASS ACTION ALLEGATIONS

120. Plaintiffs bring this action on behalf of a class (the “Class”) defined as follows:

All DOs in the United States who have purchased membership in the AOA since August 1, 2012.

121. **Numerosity. Fed. R. Civ. P. 23(a)(1).** The Class members are so numerous that joinder of all is impractical. Upon information and belief, between approximately 45,000 and 48,000 DOs have purchased membership in the AOA since August 1, 2012, and those DOs’ names and addresses are identifiable through documents maintained by the AOA. Approximately 32,000 members of the Class have held active AOA board certifications since August 1, 2012 (the “AOA Board Certified Sub-Class”), thousands of the Class members reside in, practice in, and/or were AOA board certified in New Jersey (the “NJ Sub-Class”), and thousands of the Class members were falsely promised by the AOA their AOA board certifications were “lifetime” (the “Lifetime Sub-Class”) (the “AOA Board Certified Sub-Class, NJ Sub-Class, and Lifetime Sub-Class are each referred to as a “sub-class,” and are collectively referred to as the “sub-classes”).

122. **Existence and Predominance of Common Questions of Law and Fact. Fed. R. Civ. P. 23(a)(2).** Common questions of law and fact exist as to all members of the Class and as to each of the sub-classes, and predominate over the questions affecting only individual members of those classes. The common legal and factual questions include, among others:

- (a) Whether the DO Board Certification Market and the Association Membership Market are separate product markets;
- (b) Whether, during the relevant period, the AOA had market power in the DO Board Certification Market;

(c) Whether, during the relevant period, the AOA exploited its market power in the DO Board Certification Market by conditioning AOA board certification on the purchase of annual membership in the AOA.

(d) Whether the AOA's tying arrangement affected a substantial amount of interstate commerce and/or commerce in New Jersey;

(e) Whether the AOA's tying arrangement caused anticompetitive effects nationally and/or in New Jersey;

(f) Whether there were any procompetitive justifications for the AOA's tying arrangement;

(g) Whether the AOA misrepresented the "lifetime" nature of the AOA board certifications originally granted as such; and

(h) Whether the AOA's conduct violated Section 1, Section 3 and the NJFCA.

123. **Typicality. Fed. R. Civ. P. 23(a)(3).** Plaintiffs' claims are typical of the claims of each Class member and each member of each sub-class. Plaintiffs have the same claims for damages that they seek for absent class members.

124. **Adequacy. Fed. R. Civ. P. 23(a)(4).** Plaintiffs are adequate representatives of the Class and sub-classes. Their interests are aligned with, and are not antagonistic to, the interests of the members of the Class and the sub-classes they seek to represent, they have retained counsel competent and experienced in such litigation, and they intend to prosecute this action vigorously. Plaintiffs and their Counsel will fairly and adequately protect the interests of members of the Class and sub-classes.

125. **Injunctive Relief Appropriate. Fed. R. Civ. P. 23(b)(2).** Defendants' unlawful conduct applies generally to the members of the Class and the sub-classes, so that final injunctive relief is appropriate with respect to each such class.

126. **Predominance and Superiority. Fed. R. Civ. P. 23(b)(3).** Questions of law and fact common to the Class and sub-class members predominate over questions affecting only individual members, and a class action is superior to other available methods for fair and efficient adjudication of the controversy. The damages sought by each member are such that individual prosecution would prove burdensome and expensive given the complex and extensive litigation necessitated by the AOA's conduct. It would be virtually impossible for the members of the Class and sub-classes individually to redress effectively the wrongs done to them. Even if the members of the Class and sub-classes themselves could afford such individual litigation, it would be an unnecessary burden on the courts. Furthermore, individualized litigation presents a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system presented by the complex legal and factual issues raised by the AOA's conduct. By contrast, the class action device will result in substantial benefits to the litigants and the Court by allowing the Court to resolve numerous individual claims based upon a single set of proof in a unified proceeding.

CAUSES OF ACTION

COUNT I

PER SE VIOLATION OF 15 U.S.C. § 1

127. Plaintiffs reallege and incorporate by reference all preceding allegations.

128. Plaintiffs and the Class are DOs who purchased membership in the AOA since August 1, 2012.

129. The DO Board Certification Market is separate from the Association Membership Market.

130. At all times during the relevant period, the AOA has had market power in the DO Board Certification Market, as there are no reasonable substitutes for AOA board certification available to DOs who have completed AOA accredited residency programs.

131. Plaintiffs and the AOA board certified DOs have been forced to purchase annual membership in the AOA and incur the AOA's annual membership dues in order to avoid having their AOA board certification be invalidated and canceled.

132. Because more than 32,000 AOA board certified DOs have been forced to purchase annual AOA membership in order to maintain their board certification, the AOA's tying arrangement has had a substantial effect on interstate commerce.

133. The AOA's tying arrangement has foreclosed competition in the Association Membership Market, resulting in market-wide pricing and product offerings that are not reflective of a competitive market.

134. By conditioning AOA board certification on continuous membership in the AOA and the cost of the AOA's annual membership dues, the AOA has therefore established an unreasonable restraint of trade that constitutes a *per se* violation of 15 U.S.C. § 1.

135. As a result of the AOA's violation of 15 U.S.C. § 1, Plaintiffs, the Class, and the AOA Board Certified Sub-Class have paid the AOA supra-competitive prices for membership in the AOA, and, in addition to paying those inflated prices, the members of the AOA Board Certified Sub-Class have also had to paid the AOA for the Category 1-A credits to maintain their AOA membership.

COUNT II
VIOLATION OF 15 U.S.C. § 1 UNDER THE RULE OF REASON

136. Plaintiffs reallege and incorporate by reference all preceding allegations.

137. Plaintiffs and the Class are DOs who purchased membership in the AOA since August 1, 2012.

138. The DO Board Certification Market is separate and distinct from the Association Membership Market.

139. At all times during the relevant period, the AOA has had market power in the DO Board Certification Market, as there are no reasonable substitutes for board certification available to DOs who have completed AOA accredited residency programs.

140. Plaintiffs and AOA board certified DOs have been forced to purchase annual membership in the AOA in order to avoid having their AOA board certification be invalidated and canceled.

141. Because more than 32,000 AOA board certified DOs have bought annual membership in the AOA in order to avoid deactivation of their AOA board certification, the AOA's tying arrangement has had a substantial effect on interstate commerce.

142. The AOA's tying arrangement has foreclosed competition in the Association Membership Market, resulting in market-wide pricing and product offerings that are not reflective of a competitive market.

143. There are no procompetitive justifications, medical justifications or other justifications for the AOA's requirement that DOs buy annual membership in the AOA in order to maintain their board certification.

144. By conditioning AOA board certification on continuous membership in the AOA and the cost of the AOA's annual membership dues, the AOA has established an unreasonable restraint of trade that constitutes a violation of 15 U.S.C. § 1 under the rule of reason.

145. As a result of the AOA's violation of 15 U.S.C. § 1, Plaintiffs, the Class, and the AOA Board Certified Sub-Class have paid the AOA supra-competitive prices for membership in the AOA, and, in addition to paying those inflated prices, the members of the AOA Board Certified Sub-Class have also paid the AOA for the Category 1-A credits to maintain their AOA membership.

COUNT III
PER SE VIOLATION OF N.J. STAT. ANN § 56:9-3

146. Plaintiffs reallege and incorporate by reference all preceding allegations.

147. Plaintiffs and the NJ Sub-Class are DOs who purchased membership in the AOA since August 1, 2012, and who reside in, practice in, and/or were AOA board certified in New Jersey.

148. The DO Board Certification Market is separate from the Association Membership Market.

149. At all times during the relevant period, the AOA has had market power in the DO Board Certification Market, as there are no reasonable substitutes for AOA board certification available to DOs who have completed AOA accredited residency programs.

150. Plaintiffs and AOA board certified members in the NJ Sub-Class have been forced to purchase annual membership in the AOA in order to avoid having their AOA board certification be invalidated and canceled.

151. Because the Class and the NJ Sub-Class include thousands of AOA board certified DOs who have bought annual AOA membership in order to maintain their board certification the AOA's tying arrangement has had a substantial effect on New Jersey commerce.

152. The AOA's tying arrangement has foreclosed competition in the Association Membership Market, resulting in market-wide pricing and product offerings that are not reflective of a competitive market.

153. By conditioning AOA board certification members on continuous membership in the AOA and the costs of the AOA's annual membership dues, the AOA has established an unreasonable restraint of trade that constitutes a *per se* violation of N.J. Stat. Ann. § 56:9-3.

154. As a result of the AOA's violation of N.J. Stat. Ann. § 56:9-3, Plaintiffs and the NJ Sub-Class have paid the AOA supra-competitive prices for membership in the AOA, and, in addition to paying those inflated prices, the board certified members of the NJ Sub-Class have also paid the AOA for the Category 1-A credits to maintain their AOA membership.

COUNT IV
VIOLATION OF N.J. STAT. ANN § 56:9-3 UNDER THE RULE OF REASON

155. Plaintiffs reallege and incorporate by reference all preceding allegations.

156. Plaintiffs and the NJ Sub-Class are DOs who purchased membership in the AOA since August 1, 2012, and who reside in, practice in, and/or were AOA board certified in New Jersey.

157. The DO Board Certification Market is separate and distinct from the Association Membership Market.

158. At all times during the relevant period, the AOA has had market power in the DO Board Certification Market, as there are no reasonable substitutes for board certification available to DOs who have completed AOA accredited residency programs.

159. Plaintiffs and AOA board certified members in the NJ Sub-Class have been forced to purchase annual membership in the AOA to avoid having their AOA board certification be invalidated and canceled.

160. Because the Class and NJ Sub-Class includes thousands of AOA board certified DOs who have bought annual AOA membership in order to maintain their AOA board certification, the AOA's tying arrangement has had a substantial effect on New Jersey commerce.

161. The AOA's tying arrangement has foreclosed competition in the Association Membership Market, resulting in market-wide pricing and product offerings that are not reflective of a competitive market.

162. There are no procompetitive justifications, medical justifications or other justifications for the AOA's requirement that DOs buy annual membership in the AOA in order to maintain their board certification.

163. By conditioning AOA board certification on continuous membership in the AOA and the cost of the AOA's annual membership dues, the AOA has established an unreasonable restraint of trade that constitutes a violation of N.J. Stat. Ann. § 56:9-3 under the rule of reason.

164. As a result of the AOA's violation of N.J. Stat. Ann. § 56:9-3, Plaintiffs and the NJ Sub-Class have paid the AOA supra-competitive prices for membership in the AOA, and, in addition to paying those inflated prices, the board certified members of the NJ Sub-Class have also paid the AOA for the Category 1-A credits to maintain their AOA membership.

COUNT V
VIOLATION OF N.J. STAT. ANN. § 56:8-1, et seq.

165. Plaintiffs reallege and incorporate by reference all preceding allegations.

166. Plaintiffs and the Lifetime Sub-Class are AOA board certified DOs who were promised by the AOA their board certification was a “lifetime” board certification.

167. When issued, those “lifetime” board certifications were not conditioned on the purchase of annual membership in the AOA or payment of the AOA’s annual membership dues.

168. By issuing the “lifetime” board certifications without identifying any additional conditions, and specifically, without instruction that these “lifetime” certificate holders had to maintain AOA membership, the AOA intended for the “lifetime” certificate holders to rely on the fact that there were no additional conditions.

169. In 2013, the AOA represented that if a DO held a “lifetime” certification, he or she would not be required to participate in OCC.

170. The AOA knowingly omitted from this statement and concealed from “lifetime” certificate holders the fact that the AOA would require “lifetime” certificate holders to purchase membership in the AOA to maintain their so-called “lifetime” certificates.

171. The AOA has since informed “lifetime” certificate holders that they would be required to purchase AOA membership to maintain active board certification.

172. The AOA’s knowing and intentional omission from its 2013 statements about the OCC that “lifetime” board certification holders would also be required to purchase annual AOA membership in order to avoid having their AOA board certification be invalidated and canceled violated N.J. Stat. Ann § 56:8-2.

173. The AOA’s intentional omissions caused Plaintiffs and the Lifetime Sub-Class ascertainable losses, including the cost of annual AOA membership every year after receiving the “lifetime” certificate and the cost of purchasing Category 1-A credits to maintain their annual AOA membership.

WHEREFORE, Plaintiffs and the Class pray for relief as follows:

- A. An order certifying the proposed Class and sub-classes under Rule 23 and appointing Plaintiffs and the undersigned counsel of record to represent same;
- B. An award of treble damages, pre-judgment and post-judgment interest, attorneys' fees and costs, and injunctive relief under the Clayton Act, 15 U.S.C. §§ 15, 26 and under N.J. Stat. Ann. §§ 56:10-12; and
- C. An award of damages and exemplary damages, pre-judgment and post-judgment interest, and attorneys' fees and costs, as provided for under N.J. Stat. Ann § 56:8-1, *et. seq.*
- D. Such other relief as the Court deems just and proper.

TRIAL BY JURY IS DEMANDED.

Respectfully submitted,

DUANE MORRIS LLP
A DELAWARE LIMITED LIABILITY
PARTNERSHIP

Dated: October 21, 2016

/s/ Seth A. Goldberg
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