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**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.

**CLASS ACTION COMPLAINT**

**Jury Trial Demanded**

## INTRODUCTION

1. Plaintiffs, on their own behalf and on behalf of the class 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. § 56:8-2.

3. Plaintiffs and the Class are osteopathic physicians who have been board certified as medical specialists by the AOA. According to the AOA’s website, there are more than 32,000 AOA board certified osteopathic physicians.

4. In order to obtain and maintain their board certification, Plaintiffs and the Class 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 the Class 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 the Class 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 the Class 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.

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 the Class under the threat of invalidating prior board certification.

9. Defendant's practice of forcing AOA board certified osteopathic physicians to purchase annual membership in the AOA dues 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 and the Class.

10. Likewise, DOs who received their AOA board certification prior to 2000 were promised by the AOA 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 failed to state 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.

11. 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 fraudulent statements and violated the NJCFA.

### **PARTIES**

12. Plaintiff Dr. Albert A. Talone, D.O., is an adult individual residing at 911 Sunset Road, Burlington, NJ. Dr. Talone is an osteopathic physician certified by the American Osteopathic Board of Family Physicians ("AOBFP").

13. 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.

14. Plaintiff Richard Renza, D.O., is an adult individual residing at 6410 New Jersey Ave., Wildwood Crest, NJ. Dr. Renza is an osteopathic physician certified by the AOBFP.

15. 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.

16. 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**

17. 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.

18. In addition the claims set forth in this complaint arise under the New Jersey Consumer Fraud Act ("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.

19. 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.

20. 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***

21. 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.

22. 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”).

23. According to the AOA’s website, there are approximately 96,000 DOs practicing in the U.S. and approximately 25,000 osteopathic medical students in the U.S. *See* [www.osteopathic.org](http://www.osteopathic.org).

24. According to the AOA, in 2013, 62.1% of all active DO’s maintained membership in the AOA.

25. 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 from around the U.S.

26. 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. *Id.*

27. 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:

<b>Annual Regular Membership</b> Note: This rate only applies for new member DOs in practice four or more years.	<b>\$683</b>
<b>Young Physician Membership</b> For osteopathic physicians in the first three years of practice. See rates below.	
<b>First year in practice</b>	<b>\$171</b>
<b>Second year in practice</b>	<b>\$341</b>
<b>Third year in practice</b>	<b>\$513</b>
<b>Military Physicians</b> 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.	<b>\$513</b>

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

29. 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.”

30. 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/>

31. 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/](http://www.aapsonline.org/index.php/articles/category/member_benefits/)

32. The annual dues for membership in a state physician association or one of the other national 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.

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

33. 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.

34. 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. COMs are the only medical schools that offer the osteopathic curriculum and award DO degrees.

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

36. 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.

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

38. For example, RowanSOM offers residency programs accredited by the AOA’s Division of Postdoctoral Training through Kennedy University Hospital, Our Lady of Lourdes Medical Center, Inspira Health Network, among others.

39. 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**

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

41. 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.

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

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

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

45. 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.

46. 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.

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

48. 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.

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

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

51. 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.

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

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

54. The American Board of Medical Specialities (“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.

55. 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.

56. 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.

57. 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.

58. 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.

59. 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.

60. 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.

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

62. Consequently, the AOA has market power in the market for medical board certification for DOs who completed their residencies in AOA accredited programs (the “ DO Board Certification Market”).

***C. The 2020 Single-Accreditation System***

63. 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.

64. 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.

65. 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.

66. 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 the an AOA Board.

67. 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.

***D. The AOA's Unlawful Tying Arrangement***

68. 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”), and the AOA has thereby earned revenues from membership dues the AOA would not otherwise have earned, and with no procompetitive basis.

69. Since at least July 1, 2012, the AOA has required all 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.

70. 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.”

71. 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.**

72. 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."*

73. There is no legitimate procompetitive justification, no medical justification, and no other justification for the AOA's requirement that board certified DOs purchase membership in the AOA annually in order to maintain their board certification.

74. The costs of annual membership dues incurred by Plaintiffs and the Class 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.

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

76. 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.

77. 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.

78. 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."

79. The ABMS does not condition board certification for physicians who complete an allopathic residency program upon the payment of membership dues.

80. In fact, 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.

81. 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 be maintain their AOA board certification, as well as pay the dues of any such other associations.

**E. *The AOA's Fraud on Lifetime Certification Holders***

82. 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.

83. When the AOA initiated the OCC in 2013, it made the following statement in an AOA brochure entitled “Introduction to the AOA Osteopathic Continuous Certification Process:

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>

84. 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.

85. The AOA’s actions have 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.

### **CLASS ACTION ALLEGATIONS**

86. Plaintiffs bring this action on behalf of a class defined as follows:

All DOs in the United States whose have obtained board certification from the AOA and who have been required to pay membership dues to the AOA in order to maintain their board certification.

87. **Numerosity. Fed. R. Civ. P. 23(a)(1).** The Class members are so numerous that joinder of all is impractical. Upon information and belief, more than 32,000 DOs have held active AOA board certifications and paid membership dues to the AOA since the Class Period began, and those DOs’ names and addresses are identifiable through documents maintained by the AOA. Thousands of those DOs 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”).

88. **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 all members of the NJ Sub-Class and Lifetime Sub-Class, and predominate over the questions affecting only individual members of those classes. The common legal and factual questions include, among others:

- (a) Whether the AOA board certification market and the professional physician association market are separate product markets;
- (b) Whether, during the relevant period, the AOA had market power in the market for AOA board certification;
- (c) Whether, during the relevant period, the AOA exploited its market power in the AOA 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.

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

90. **Adequacy. Fed. R. Civ. P. 23(a)(4).** Plaintiffs are adequate representatives of the Class, NJ Sub-Class and Lifetime Sub-Class. Their interests are aligned with, and are not antagonistic to, the interests of the members of the Class, NJ Sub-Class and Lifetime Sub-Class 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, NJ Sub-Class and Lifetime Sub-Class.

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

92. **Predominance and Superiority. Fed. R. Civ. P. 23(b)(3).** Questions of law and fact common to the Class, NJ Sub-Class and Lifetime 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, NJ Sub-Class and Lifetime Sub-Class individually to redress effectively the wrongs done to them. Even if the members of the Class, NJ Sub-Class and Lifetime Sub-Class 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**

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

94. Plaintiffs and the Class are AOA board certified DOs.

95. The DO Board Certification Market is separate from the market for memberships in professional physician associations.

96. 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.

97. Plaintiffs and the Class 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.

98. Because the Class is comprised of more than 32,000 AOA board certified DOs who 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.

99. 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 *per se* violation of 15 U.S.C. § 1.

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

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

101. Plaintiffs and the Class are AOA board certified DOs.

102. The DO Board Certification Market is separate and distinct from the market for membership in professional physician associations..

103. 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.

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

105. Because the Class is comprised of more than 32,000 AOA board certified DOs who 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.

106. 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.

107. 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.

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

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

109. Plaintiffs and the NJ Sub-Class are AOA board certified DOs.

110. The DO Board Certification Market is separate from the market for memberships in professional physician associations.

111. 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.

112. Plaintiffs and 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.

113. Because the NJ Sub-Class is comprised of 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.

114. By conditioning AOA board certification of the NJ Sub-Class 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.

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

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

116. Plaintiffs and the NJ Sub-Class are AOA board certified DOs.

117. The DO Board Certification Market is separate and distinct from the market for membership in professional physician associations..

118. 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.

119. Plaintiffs and 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.

120. Because the NJ Sub-Class is comprised of more than 32,000 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.

121. 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.

122. By conditioning AOA board certification of the NJ Sub-Class members 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.

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

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

124. 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.

125. 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. The AOA's omission from its statements about the OCC in 2013 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.

126. As a result of the AOA's fraudulent representations and omissions Plaintiffs and the Lifetime Sub-Class have suffered ascertainable losses.

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

A. An order certifying the proposed Class 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. §§ 56:0-10-12; 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: August 1, 2016

/s/ James Greenberg  
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