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COMMONWEALTH OF MASSACHUSETTS
SUFFOLK COUNTY SUPERIOR COURT

JESSICA BOUSQUET and BRIAN GREEN, on behalf of themselves and all others similarly situated, Plaintiffs, v. HARVARD PILGRIM HEALTH CARE, INC. and POINT32HEALTH, INC., Defendants.	Civil Action No. _____ **CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiffs JESSICA BOUSQUET and BRIAN GREEN ("Plaintiffs") bring this class action for damages, equitable relief, and injunctive relief against HARVARD PILGRIM HEALTH CARE, INC. and POINT32HEALTH, INC. (together "Harvard Pilgrim" or "Defendants"). Plaintiffs allege the following based upon personal information as to allegations regarding themselves, their own investigations, and the investigation of counsel, and on information and belief as to all other allegations.

INTRODUCTION

1. There is a mental health crisis in this country and in this state. It is afflicting men and women, children and adults, and people of all income levels and backgrounds. And it is exacerbated by Defendants, which have been misleading vulnerable individuals in need of qualified mental health providers by publishing a grossly inaccurate directory of doctors and therapists. Defendants maintain what is known as a "ghost network."

2. A ghost network is a directory of supposedly available, in-network providers that contain so many incorrect or duplicative entries that the network is largely illusory.

3. When, contrary to the representations in the directory, there are very few—or no—accessible, available doctors in Defendants' network, the network does not comply with state and federal network adequacy laws. Such grossly inaccurate listings in a directory also violate Defendants' contractual obligations to Plaintiffs (which, among other things, require Defendants to comply with state and federal law), and Massachusetts consumer protection laws.

4. Harvard Pilgrim engages in unfair competition and deceptive business practices by knowingly publishing an inaccurate and misleading provider directory. It does so for several reasons: 1) a robust provider network is attractive to potential customers; 2) a seemingly robust directory of providers gives Defendants the appearance of compliance with state and federal network adequacy laws (without the costs associated with creating and maintaining an adequate network and accurate directory); and 3) when members forego care after a time-consuming and frustrating provider search, Defendants do not have to pay for the care the members would have received.

5. By publishing a provider directory in which the vast majority of providers do not exist, no longer practice, cannot be contacted through the information provided, are not actually in-network with Harvard Pilgrim, are not accepting new patients, and/or have other inaccurate information listed, Defendants actively harm their members, including Plaintiffs. When Defendants misrepresent their network, members like Plaintiffs pay inflated premiums for an insurance plan that does not actually offer an adequate provider network to meet their needs. Even when plan members pay no premium, Defendants' misrepresentations about their network lead members like Plaintiffs enroll in an insurance plan that does not actually provide an adequate network to meet their needs. Many members, like Plaintiffs, have no choice but to utilize out-of-

network providers, incurring thousands of dollars in expenses. For members who cannot afford to pay for out-of-network providers, the harms can be even more devastating.

6. Plaintiffs' insurance policies claim to cover behavioral health care with a robust network of available behavioral health providers made available by Defendants. In reality, that network is threadbare: contrary to the representations in the provider directory, there are very few behavioral health providers in Massachusetts who are actually in-network, take the insurance, and accept new patients. Thus, the promised coverage is largely non-existent. The failure by Defendants to provide an adequate network to meet members' needs is itself a violation of federal and state network adequacy laws.

7. The harms are not just financial. Defendants' lies about the accuracy of the provider directory also exacerbate members' behavioral health problems. The people using Defendants' provider directory, including Plaintiffs, are often desperate for behavioral health care for themselves or their loved ones. Members searching for care often spend countless hours calling providers that Harvard Pilgrim has represented as available, accessible, and in-network, only to find out that the providers are not (and have long not been) in Defendants' network, do not offer the services listed in Defendants' provider directory, are not qualified to provide those services, are not accepting new patients, or cannot be reached at the phone number listed by Defendants. Members, including Plaintiffs, often undertake this fruitless search while suffering from severe mental health crises.

8. Some members, like Plaintiffs, are forced to delay treatment while struggling to find a provider. Others abandon their search for care, resulting in serious, potentially life-threatening consequences. Thus, the coverage promised by Harvard Pilgrim is largely illusory.

9. This Complaint details misrepresentations, misstatements, and omissions by Defendants regarding their supposedly robust mental or behavioral health provider network and the mental or behavioral health benefits purportedly available to those, like Plaintiffs, who enrolled in Defendants' health insurance plans.[1] These misrepresentations, misstatements, and omissions are made in Defendants' provider directory, marketing materials, plan documents, and other places described in this Complaint. For ease of reading, these misrepresentations, misstatements, and omissions are often phrased in the present tense. However, all of these misrepresentations, misstatements, and omissions are not only currently being made, they were also made before and throughout Plaintiffs' enrollment in Defendants' health insurance plans.

THE PARTIES & VENUE

I. Plaintiffs

10. Plaintiff JESSICA BOUSQUET is a resident of Worcester County, Massachusetts. She has been a member of the Harvard Pilgrim ChoiceNet Best Buy HMO Plan from July 1, 2022 to the present.

11. Plaintiff BRIAN GREEN is a resident of Hampden County, Massachusetts. Mr. Green, along with his wife and minor son, have been members of the Explorer POS Plan from July 2023 to the present.

II. Defendants

12. Defendant HARVARD PILGRIM HEALTH CARE, INC. ("HPHC") is a corporation registered to do business in Massachusetts. It is a licensed Health Maintenance Organization and administers the healthcare benefits of its own plans as well as several self-insured plans. It is headquartered in Norfolk County, Massachusetts.

[1] This Complaint uses the terms "mental health" and "behavioral health" interchangeably.

13. Defendant POINT32HEALTH, INC. ("POINT32") is a nonprofit corporation registered in Massachusetts. It is the parent company of HPHC. It is headquartered in Norfolk County, Massachusetts.

14. This Court is an appropriate venue for this action because it is a class action involving multiple complex commercial claims.

BACKGROUND & CONTEXT

I. The Mental Health Crisis in America

15. There is a mental health crisis in the United States. According to the National Institute of Mental Health, an estimated 59.3 million adults in the U.S.—approximately 23.1% of adults—struggle with mental illness.[2] Mental health problems are even more prevalent in younger adults, with 36.2% of adults ages 18–25 and 29.4% of adults ages 26–49 reportedly having a mental illness. Despite this prevalence, roughly half (49.4%) of the 59.3 million adults living with mental illness have not received mental health treatment within the last year.[3]

16. In 2022, an estimated 15.4 million adults in the U.S. (6% of the adult population) had a *serious* mental illness, defined as "a mental, behavioral, or emotional disorder resulting in serious functional impairment, which substantially interferes with or limits one or more major life activities."[4]

17. According to the Centers for Disease Control and Prevention ("CDC"), among adolescents aged 12 to 17 years old, 20.9% have had a major depressive episode; among high

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[2] National Institute of Mental Health, *Mental Illness Statistics*, https://www.nimh.nih.gov/health/statistics/mental-illness.

[3] *Id.*

[4] *Id.*

school students, 36.7% have had persistent feelings of sadness or hopelessness, and 18.8% have attempted suicide.[5]

18. With the rates of pediatric self-harm and suicide rising dramatically,[6] the Surgeon General of the United States has described mental health as "the defining public health crisis of our time,"[7] and urged that "every child ha[ve] access to high-quality, affordable, and culturally competent mental health care."[8]

19. The "profound" consequences of untreated mental illness in children and adolescents are associated with "school failure, teenage pregnancy, unstable employment, substance use, violence including suicide and homicide, and poor medical outcomes."[9]

II. Federal and State Requirements for Health Insurers

A. Insurance Companies Must Ensure Accuracy of Provider Directories

20. Federal and state laws and regulations have been promulgated to protect consumers from the harms of ghost networks.

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[5] Rebecca H. Bitsko *et. al.*, *Mental Health Surveillance Among Children – United States, 2013–2019*, Ctrs. for Disease Control and Prevention (2022), https://www.cdc.gov/mmwr/volumes/71/su/su7102a1.htm.

[6] Bommersbach et al., *National Trends in Mental Health-Related Emergency Department Visits Among Youth, 2011-2020*, J. of the Am. Med. Ass'n (May 2, 2023), https://pubmed.ncbi.nlm.nih.gov/37129655/ (finding a 57% increase in suicide among young Americans from 2009 to 2019, and a staggering 329% increase in pediatric self-harm visits from 2007 to 2016).

[7] Matt Richtel, *The Surgeon General's New Mission: Adolescent Mental Health*, N.Y. TIMES, (Mar. 21, 2023), https://www.nytimes.com/2023/03/21/health/surgeon-general-adolescents-mental-health.html.

[8] Off. of the Surgeon Gen., *Protecting Youth Mental Health: The U.S. Surgeon General's Advisory*, at 12 (2021), https://www.hhs.gov/sites/default/files/surgeon-general-youth-mental-health-advisory.pdf.

[9] Am. Academy of Pediatrics, School-Based Mental Health: Pediatric Mental Health Minute Series, aap.org (last visited Mar. 24, 2026), https://www.aap.org/en/patient-care/mental-health-minute/school-based-mental-health/.

21. The No Surprises Act requires insurers to update and verify their plans' provider directories at least every 90 days.[10] Where plans are unable to verify provider data, they must establish a procedure to remove unverified providers from their directories.[11] Health plans must also update provider information within two business days of receiving an update from a provider.[12] When a member telephonically requests information about whether a provider is in-network, the plan must respond within one business day of the request.[13]

22. The Affordable Care Act likewise requires a health insurance company participating in the Affordable Care Act Marketplace to "publish an up-to-date, accurate, and complete provider directory, including information on which providers are accepting new patients, the provider's location, contact information, specialty, medical group, and any institutional affiliations, in a manner that is easily accessible" to enrollees and prospective enrollees.[14] Further, the insurance provider must "identify providers that are not accepting new patients."[15]

23. In Massachusetts, state law requires insurers to take similarly rigorous steps to ensure that their provider directories are accurate. Insurers are required to ensure the accuracy of provider information, including by updating their directories "not less often than monthly."[16] Directories must include up-to-date information on each provider's credentials, specializations, office address, phone number, age groups treated, and availability to see new patients, as well as any conditions

[10] 42 U.S.C. § 300gg-115(a)(2).

[11] *Id.*

[12] *Id.*

[13] 42 U.S.C. § 300gg-115(a)(3).

[14] 45 C.F.R. § 156.230(b)(2).

[15] 45 C.F.R. § 156.230(b)(1).

[16] 211 CMR 52.15; 211 CMR 152.08.

that the provider has for treating a patient, such as requiring that the patient be an existing patient of the provider's clinic.[17] Insurers must also investigate any report of provider directory inaccuracy and must update the directory within two days of confirming an inaccuracy.[18] When a member informs the insurer that they have been unable to schedule an appointment with a particular provider, the insurer is required to contact the provider to determine the reason that an appointment could not be scheduled, and must then update the directory accordingly.[19]

24. Massachusetts law also imposes heightened accuracy requirements with respect to mental health providers. Insurers are required to conduct quarterly audits of their directory information for their behavioral health networks, which include providers who diagnose, treat, and manage mental health, developmental, and substance use disorders.[20]

25. These federal and state laws are a recognition of the harmful consequences of inaccurate provider directories. Despite these legislative efforts to protect consumers from ghost networks, surprise bills, and inadequate in-network care, Defendants have been flagrantly violating these laws for years.

B. Insurance Companies Must Maintain an Adequate Network of Providers

26. Federal and state laws also require health plans to offer a network that includes an adequate number of available in-network providers to meet members' needs.

27. The Affordable Care Act first established this network adequacy framework, requiring that all Qualified Health Plans maintain a network that is "sufficient in number and types

[17] 211 CMR 52.15; 211 CMR 152.08.

[18] 211 CMR 52.15; 211 CMR 152.08.

[19] 211 CMR 52.15; 211 CMR 152.08.

[20] 211 CMR 52.15; 211 CMR 152.08.

of providers, including providers that specialize in mental health and substance use disorder services, to ensure that all services will be accessible without unreasonable delay."[21]

28. Massachusetts law requires health insurers to develop provider networks to maintain network adequacy, defined as "Sufficient access to Covered Benefits with a Provider Network within the Health Benefit Plan's Service Area to guarantee that all Covered Benefits are accessible to Insureds without delays detrimental to the Insureds' health."[22] Insurers are also required to educate members on their right to obtain care from an out-of-network provider at their plan's in-network cost when an in-network provider is not available.[23]

29. By inflating their provider directory with inaccurate listings, Defendants appear to meet federal and state network adequacy requirements when in reality they do not.[24]

30. Before and throughout Plaintiffs' enrollment in Defendants' health insurance plans, Harvard Pilgrim has violated and continues to violate federal and state laws requiring network adequacy.

[21] 45 C.F.R. § 156.230(a)(1)(ii).

[22] 211 CMR 152.03 .

[23] 211 CMR 52.15; 211 CMR 152.08.

[24] *Barriers to Mental Health Care: Improving Provider Directory Accuracy to Reduce the Prevalence of Ghost Networks*, U.S. Senate Fin. Comm. (May 3, 2023), https://www.finance.senate.gov/hearings/barriers-to-mental-health-care-improving-provider-directory-accuracy-to-reduce-the-prevalence-of-ghost-networks (hereinafter "Senate Hearings on Mental Health Care").

III. Ghost Networks

31. The harms of a behavioral health ghost network have been investigated and confirmed, including by *The New York Times*,[25] *The Washington Post*,[26] academics,[27] the American Medical Association,[28] the Government Accountability Office,[29] and more.[30]

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[25] Jay Hancock, *Insurers' Flawed Directories Leave Patients Scrambling for In-Network Doctors*, N.Y. TIMES (Dec. 3, 2016), https://www.nytimes.com/2016/12/03/us/inaccurate-doctor-directories-insurance-enrollment.html.

[26] Katherine Ellison, *73 doctors and none available: How ghost networks hamper mental health care*, WASH. POST (Feb. 19, 2022), https://www.washingtonpost.com/health/2022/02/19/mental-health-ghost-network/.

[27] *See, e.g.*, Abigail Burman, *Laying Ghost Networks to Rest: Combatting Deceptive Health Plan Provider Directories*, 40 YALE L. & POL'Y REV. 78 (2021).

[28] *Improving Health Plan Provider Directories*, CAQH & AM. MED. ASS'N., 3, https://www.caqh.org/sites/default/files/other/CAQH-AMA_Improving%20Health%20Plan%20Provider%20Directories%20Whitepaper.pdf (finding that "more than half of patients use [the provider directory] to select a physician.") (hereinafter "Improving Health Plan Provider Directories").

[29] *Mental Health Care Access Challenges for Covered Consumers and Relevant Federal Efforts*, U.S. Gov't Accountability Office, Report to the Chairman, Comm. on Fin., U.S. Senate, 2, (Mar. 2022), https://www.gao.gov/assets/gao-22-104597.pdf.

[30] *See, e.g.*, Ellison, *supra* n. 26; Jack Turban, *Ghost networks of psychiatrists make money for insurance companies but hinder patients' access to care*, Stat News (June 17, 2019), https://www.statnews.com/2019/06/17/ghost-networks-psychiatrists-hinder-patient-care/; *Online Provider Directory Review Report*, Ctrs. for Medicare & Medicaid Servs., 1, https://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/Downloads/Provider_Directory_Review_Industry_Report_Round_3_11-28-2018.pdf; Cama et al., *Availability of Outpatient Mental Health Care by Pediatricians and Child Psychiatrists in Five U.S. Cities*, INT'L J. HEALTH SERV. 47(4) (2017), https://pubmed.ncbi.nlm.nih.gov/28474997/; Malowney et al., *Availability of Outpatient Care From Psychiatrists: A Simulated-Patient Study in Three U.S. Cities*, Psychiatry Online (2015), https://ps.psychiatryonline.org/doi/full/10.1176/appi.ps.201400051; Zhu et al., Phantom Networks: Discrepancies Between Reported And Realized Mental Health Care Access in Oregon Medicaid, Health Affairs 41(7) (2022), https://www.healthaffairs.org/doi/10.1377/hlthaff.2022.00052; Susan H. Busch & Kelly A. Kyanko, *Incorrect Provider Directories Associated With Out-Of-Network Mental Health Care And Outpatient Surprise Bills*, Health Affairs 39(6) (June 2020), https://www.healthaffairs.org/doi/10.1377/hlthaff.2019.01501.

32. As explained by a Yale Law & Policy Review article, the effects of Defendants' ghost network are far-reaching and damage the very structure of our health care system:

> Directory errors cost consumers money and erode regulatory consumer safeguards. They deceive consumers about the value of the coverage they are purchasing by concealing plans' actual provider networks, subjecting consumers to predatory billing practices, and breaking the link between consumer choices and plan practices that undergirds much of the American health insurance regulatory structure.[31]

A. United States Senate Finance Committee Hearings

33. In May 2023, the United States Senate Finance Committee held a hearing on ghost networks. One testifying witness summarized her Sisyphean experience trying to find a mental health provider through her insurance plan's directory:

> Calling psychiatrists within D.C. and Maryland, selected out of what was like a digital white-pages phone book, turned into one rejection after another…. I spent countless days and hours scouring the network, despite working long hours in a high-level management position. When was there time to find a psychiatrist? I had to make the time, though, as my job, and more importantly my life, depended on it.[32]

34. People seeking a mental health provider on a ghost network spend countless, difficult hours searching for care, which is extremely burdensome for a person who may be experiencing a mental health emergency. As Dr. Robert Trestman, representing the American Psychiatric Association, testified:

> For those who are healthy and well educated, going through an inaccurate provider list and being told repeatedly that "we are not taking new patients," "this provider has retired," "we no longer accept your insurance," or leaving a message with no one returning the call is at best frustrating. For people who are experiencing

[31] Burman, *supra* n. 27, at 85.

[32] Senate Hearings on Mental Health Care (Testimony of Keris Jän Myrick at 4–6), available at https://www.finance.senate.gov/imo/media/doc/barriers_to_mental_health_care_improving_provider_directory_accuracy_to_reduce_the_prevalence_of_ghost_networks.pdf.

> significant mental illness or substance use disorders, the process ... is at best demoralizing and at worst set up to precipitate clinical deterioration and a preventable crisis. Many are already experiencing profound feelings of worthlessness, fear, grief from loss and trauma, and/or the impact of substance use; some are in crisis and suicidal.... Even when they make the effort to reach out to find help, something that can be very difficult anyway, their efforts to cull through an inaccurate provider list results in more rejection and failure, exacerbating these feelings. Some give up looking for care. Others delay care.[33]

35. When people in need are unable to find an in-network mental health provider, urgent mental health treatment is often delayed and, at worst, abandoned completely. Others seeking care rely on the directory to find a provider, only to face significant, unexpected costs when it becomes clear that the provider is not actually covered by their plan. And, in other cases, people urgently seeking care knowingly settle for seeing an out-of-network provider at great expense because they desperately need help and it is their only option.

36. Though the effects of a ghost network are far-reaching and complex, the wrongful conduct at issue is simple: a ghost network misleads consumers. As Senator Ron Wyden stated in his opening remarks:

> [W]hen insurance companies host ghost networks, they are selling health coverage under false pretenses, because the mental health providers advertised in their plan directories aren't picking up the phone or taking new patients. In any other business, if a product or service doesn't meet expectations, consumers can ask for a refund....
>
> It's not hard to imagine how many Americans simply give up and go on struggling without the help they need....
>
> If a student were writing an essay and 80 percent of their citations were incorrect or made up, they'd receive an "F." If a business gave the SEC false or incorrect information, it would face extremely severe

[33] *Id.* (Statement of Robert L. Trestman, PhD, MD at 2–3).

> consequences. So in my view insurance companies should face strict consequences if their products don't live up to the billing.[34]

37. When asked whether plans made their directories "inaccurate by design," testifying witness Mary Giliberti, the Chief Public Policy Officer of Mental Health America, responded:

> MS. GILIBERTI: [A]bout 60 percent of the plans [being discussed] don't have out of network coverage, so if you get really frustrated and you pay on your own then they're not paying anything.
>
> SENATOR WARREN: So the more the … plan can frustrate you ... the more you'll just go somewhere else. And that means it's not money out of their pockets.... So, look, what we are really saying here is that it is in the financial interests of these ... plans to discourage beneficiaries from accessing care .... Because here's the key that underlines this. Whatever insurers don't spend on care as a result of tactics like outdated provider directories or overly restrictive networks or inaccurate information, whatever they don't spend on care, they get to keep.[35]

FACTUAL ALLEGATIONS

I. Point32Health, Inc. Owns and Controls Harvard Pilgrim Health Care, Inc.

38. Point32 is the sole owner of HPHC.

39. In January 2021, HPHC merged with Tufts Health Plan ("Tufts") to form a new entity, Point32, which now operates as the "parent organization" of both HPHC and Tufts.

40. Point32 uses HPHC to administer Harvard Pilgrim branded health insurance products and interface with healthcare consumers and providers about those insurance products.

41. Upon information and belief, the more consumers enroll in HPHC's health insurance, pay premiums and other costs for that health insurance, and do not use or receive the

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[34] *Wyden Calls for Action to Get Rid of Ghost Networks, Releases Secret Shopper Study*, U.S. Senate Fin. Comm., Chairman Ron Wyden (May 3, 2023), https://www.finance.senate.gov/imo/media/doc/Wyden%20Ghost%20Networks%20Hearing%20Remarks%205.3.23.pdf.

[35] Senate Hearings on Mental Health Care, *supra* n. 32 (Testimony of Senator Elizabeth Warren) at 41.

full health insurance benefits they are owed, the higher Point32's profits. Upon information and belief, HPHC passes on a portion of its profits to Point32; thus, the more HPHC profits, the more Point32 profits. Accordingly, both Defendants benefit financially when consumers, including Plaintiffs, enroll in HPHC's health insurance plans, pay premiums and other costs for that health insurance, and do not use or receive the full health insurance benefits they are owed.

42. Upon information and belief, Point32 sets key policies, oversees, and controls the operations of HPHC, as HPHC is not, in reality, a distinct corporate entity. Because of this overlap of control and identity, and because all relevant Point32 actions have been taken under the Harvard Pilgrim brand name, Plaintiffs refer to Defendants together as "Harvard Pilgrim."

II. Plaintiffs' Needs for Behavioral Health Care

A. Jessica Bousquet

43. Plaintiff Jessica Bousquet is a resident of Worcester County, Massachusetts.

44. Ms. Bousquet has been enrolled in the Harvard Pilgrim ChoiceNet Best Buy HMO plan since July 2022.

45. Ms. Bousquet is enrolled in her plan through her employer. As part of her employer's enrollment process, she received a brochure from Harvard Pilgrim explaining the key features of their available plans.

46. When deciding between the insurance plans offered by her employer, including several plans administered by other insurance companies, she opted for the ChoiceNet Best Buy HMO plan because the Harvard Pilgrim brochure represented that Harvard Pilgrim had a broad network of providers and would give her access to the "best" care. She was led to believe that Harvard Pilgrim offered robust, consistent coverage that would meet her needs. Although cheaper options were available, Ms. Bousquet believed that paying a higher price for the Harvard Pilgrim plan would ensure that she would have easy access to treatment when she needed it.

47. Ms. Bousquet had struggled with and received treatment for anxiety in the past, and previously benefited from seeing a therapist. In the past, she would seek treatment from a therapist when her symptoms were more severe and would see the therapist regularly until her symptoms became more manageable. This arrangement worked well for Ms. Bousquet, but when her provider stopped practicing during the pandemic, she stopped receiving treatment.

48. As a result, at the time she enrolled in coverage with Harvard Pilgrim in early 2022, Ms. Bousquet anticipated that she would need to receive mental health care while on the Harvard Pilgrim plan and intended to find an in-network provider. She relied on Harvard Pilgrim's misrepresentations about the breadth of the provider network, including for mental health care, when she decided to enroll in this plan.

49. Ms. Bousquet relied on Defendants' representations regarding the provider network made in Defendants' marketing materials, website, provider directory, and plan documents when deciding to enroll in Harvard Pilgrim's plan and, once enrolled, to understand her benefits. In other words, she enrolled in the Harvard Pilgrim plan because of Defendants' representations regarding the provider network—representations that were incorrect.

50. When deciding to enroll in her plan, Ms. Bousquet relied on implicit and explicit representations by Defendants that the provider network was robust and the directory was accurate, especially with respect to mental health providers. Ms. Bousquet believed that she would be able to access the purportedly robust network of mental health care providers listed in the directory as being available to provide in-network mental health care. Having a wide choice of accessible mental health care providers is, and was, critically important to Ms. Bousquet.

51. Ms. Bousquet pays a premium of approximately $510 per month for her insurance.

52. Immediately after her Harvard Pilgrim coverage began, Ms. Bousquet searched for a therapist using Harvard Pilgrim's directory. In early July 2022, she visited the Harvard Pilgrim website and used the provider directory to generate a list of providers who were supposedly in-network and available to see new patients. She began calling providers from this list. However, contrary to Harvard Pilgrim's representations, most did not accept Harvard Pilgrim or were otherwise unavailable to treat her.

53. Ms. Bousquet was originally searching for an in-person appointment with a licensed psychologist or mental health counselor to provide cognitive behavioral therapy geared toward post-partum disorders, ideally within 30 minutes of her home. Her initial targeted searches turned up very few results, and after struggling to locate an in-network provider using Harvard Pilgrim's directory, she repeatedly expanded her search, compromising on all of these criteria in an attempt to find care. Even after expanding her search to include virtual visits, other types of providers, other types of treatments, and a broader geographic radius, she was unable to locate an available in-network provider.

54. Although a few providers offered her the option of joining a waitlist, Ms. Bousquet never heard from these providers again and presumably remains on these waitlists more than three years later.

55. Ms. Bousquet continued to search for providers every month using Harvard Pilgrim's directory, calling roughly 60 providers in total in the hopes of finding new options that she had not already exhausted. Contrary to Defendants' representations, all the providers she contacted were out of network, were unavailable to treat her, or did not offer the services she required.

56. This cycle of consulting the directory, calling providers, and repeatedly being turned away was extremely discouraging for Ms. Bousquet. It was challenging to find spare time to call

providers while juggling her work and raising two young children. In total, she spent 10-20 hours fruitlessly trying to make an appointment providers listed as in-network and available in the Harvard Pilgrim directory.

57. Although Ms. Bousquet eventually found an in-network provider, she went without care for 16 months before she was able to locate a single in-network provider (despite representations in Defendants' directory that there were available providers near her).

58. During this time, Ms. Bousquet struggled with anxiety and post-partum mental health challenges. At times, her symptoms became so severe that she required emergency treatment. Without access to proper ongoing care, her anxiety became significantly worse and began to impact her physical health. As a result of her untreated anxiety, Ms. Bousquet developed heart palpitations, and an existing gastrointestinal condition became debilitating. These physical manifestations limited her ability to enjoy daily activities and required treatment from multiple specialists. One of these specialists, a gastroenterologist, informed Ms. Bousquet that the most effective treatment she could receive for her symptoms would be from a mental health provider who could help her address her anxiety.

59. Even now that she has begun treatment with an in-network therapist, Ms. Bousquet continues to feel the effects of her months-long wait to receive treatment. Her mental health—and consequently her physical health—suffered to such an extent while trying to find care that her recovery has been slow and effortful. Her time without treatment also greatly impacted her child, who has developed severe anxiety as well.

60. Ms. Bousquet needed to re-enroll in her Harvard Pilgrim plan because, among other reasons, she developed critical relationships with in-network, non-mental-health-care providers who understood her medical needs. That was the intended, or at least foreseeable, effect of

Defendants' bait-and-switch scheme: lure people into their health insurance plan with false promises of mental health benefits, and by the time the next enrollment period comes around, they will be trapped by their (or their family members') dependence on their existing medical providers and the difficulty of switching plans.

B. Brian Green

61. Plaintiff Brian Green is a resident of Hampden County, Massachusetts.

62. Mr. Green, his wife, and their minor son have been enrolled in the Harvard Pilgrim Explorer POS plan since July 2023.

63. Mr. Green pays a premium of approximately $580 per month for his insurance.

64. Ms. Green is enrolled in his plan through his employer. Before Harvard Pilgrim merged with Tufts, Mr. Green had been enrolled in coverage with Tufts through his employer. After the merger took effect, Mr. Green was informed that his previous Tufts plan would no longer be available. Instead, he could select a new plan from another insurance company or he could elect coverage with Harvard Pilgrim, which was marketed to him as a continuation of his previous coverage.

65. At the time, executives for both companies publicly discussed the merger as enabling Tufts Health Plan and Harvard Pilgrim Health Care to offer greater value to their members, "improving quality and access to care."[36]

66. Before making his enrollment decision, Mr. Green reached out to Harvard Pilgrim to understand the benefits offered under their plan. Harvard Pilgrim told him that they were able to see the details of his previous plan and that coverage with Harvard Pilgrim would "mirror" his

[36] See, e.g., Hollis Brookline News, Tufts and Harvard Pilgrim Complete Merger, Creating Big New Health Insurer (Jan. 05, 2021), https://hollisbrooklinenewsonline.com/tufts-and-harvard-pilgrim-complete-merger-creating-big-new-health-insurer-p1286-187.htm.

coverage with Tufts. Mr. Green specifically asked if the provider network would be the same, and Harvard Pilgrim informed him that this too would be "identical" to his previous coverage with Tufts. At the end of the call, Harvard Pilgrim directed Mr. Green to consult their website to explore the network on his own. Mr. Green relied on these statements from Harvard Pilgrim when selecting his plan.

67. Mr. Green had previously used the mental health benefits available under his Tufts plan and anticipated that he would use the mental health benefits under whatever plan he chose next. The marketing materials provided by Harvard Pilgrim and his conversation with Harvard Pilgrim representatives led Mr. Green to believe that Harvard Pilgrim's coverage would offer him easy access to quality care with low out-of-pocket costs. Finding coverage that was comparable in these ways to his previous coverage, particularly with respect to mental health care, was foremost in his mind when selecting a new plan.

68. Mr. Green considered all of the plan options that were available to him at the time of his enrollment decision. He selected Harvard Pilgrim in part because they placed more emphasis on the availability of mental health care under their plan than the other insurance providers did. Mr. Green relied on Harvard Pilgrim's representations that mental health care was easy to access under their plan when opting to enroll in their coverage.

69. When deciding to enroll in his plan, Mr. Green relied on implicit and explicit representations by Defendants that the provider directory was robust and accurate, especially with respect to mental health providers. Mr. Green believed that he and his family would be able to access the purportedly robust network of mental health care providers listed in the directory as being available to provide in-network mental health care. Having a wide choice of accessible mental health care providers is, and was, critically important to Mr. Green.

70. Around July 2023, Mr. Green began searching for a therapist for himself. He was willing to travel up to 30 miles from his home for in-person care.

71. At first, he attempted to use Harvard Pilgrim's online directory to locate a provider but found it difficult to use.

72. After struggling with the online directory, Mr. Green reached out to Harvard Pilgrim by phone for assistance locating an in-network provider. The representative that he spoke said that they were aware of technical issues with the online directory and offered to send him a list of providers.

73. Harvard Pilgrim provided him, by email, with a list of supposedly available, in-network providers in his area. However, when Mr. Green attempted to contact these providers, he met dead end after dead end. Contrary to the representations made by Harvard Pilgrim, many of the providers did not accept Harvard Pilgrim, were not accepting new patients, or were otherwise unavailable to treat Mr. Green.

74. When Mr. Green was unable to make an appointment with a provider from the first list that Harvard Pilgrim sent him, he called Harvard Pilgrim again to request additional assistance. They sent him an additional list of providers to contact, but these providers were also out-of-network or unavailable.

75. Fed up with the Harvard Pilgrim directory, he resorted to calling random providers in his area to see if they were in-network with his plan. After over a year of searching, and solely through his own independent outreach, he finally found a provider who happened to be in-network with Harvard Pilgrim.

76. Around January 2024, Mr. Green began looking for a therapist for his minor son. He reached out to Harvard Pilgrim by phone for a list of providers in his area that were available to

treat children. Harvard Pilgrim provided him with a list, and even though Mr. Green contacted several providers from the list, he was unable to schedule an appointment with any of them. He received the same responses from these providers that he had when searching for care for himself: of the providers that he was able to reach, none were both accepting new patients and in-network with Harvard Pilgrim. Contrary to Harvard Pilgrim's representations, many also told him that they did not treat children.

77. Many of the providers on the list that Harvard Pilgrim provided were from a small number of practices. Mr. Green did not realize that he was calling the same practice multiple times, and reception staff grew annoyed with him for calling with the same questions multiple times.

78. Over the course of several months, Mr. Green contacted roughly 20-30 providers from the lists that Harvard Pilgrim gave him.

79. On one occasion, Mr. Green was able to schedule an initial appointment with a provider from the directory. But after taking his son through the entire intake process, he was told that the provider was not actually in-network.

80. Desperate to find care for his son and unable to locate a provider through Harvard Pilgrim's online directory or the lists Harvard Pilgrim provided via email, Mr. Green turned to an out-of-network provider.

81. Although Mr. Green's son is now receiving care, it is at significantly greater expense that it would be if the provider was in-network with Harvard Pilgrim. Mr. Green pays a total of approximately $120 per visit to his son's provider. In order to receive a partial reimbursement of these costs, Mr. Green must submit several pages of paperwork, including his credit card statements, by mail to Harvard Pilgrim several times per year. After submitting all of this

information to Harvard Pilgrim, Mr. Green must then wait an average of four to six weeks to receive his partial reimbursement.

82. Sometimes, Harvard Pilgrim refuses reimbursement of these out-of-network visits, which requires Mr. Green to spend additional time and energy appealing the denial. When his requests for coverage are approved, he receives an 80% reimbursement, resulting in a total charge to him of approximately $24 per session. If an in-network option were available, Mr. Green would pay only $10 per session.

83. When Mr. Green called Harvard Pilgrim to report that he was unable to find in-network care for himself or his son, Harvard Pilgrim did not inform him of his right to receive treatment from an out-of-network provider at an in-network rate.

84. Mr. Green received no follow-up communication from Defendants regarding his inability to find care for himself or his son.

85. Mr. Green has had to re-enroll in his Harvard Pilgrim plan because of, among other reasons, the importance of continuity of care. He, his wife, and his son have developed critical relationships with in-network, non-mental-health-care providers who understood their medical needs. That was the intended, or at least foreseeable, effect of Defendants' bait-and-switch scheme: lure people into their health insurance plan with false promises of mental health benefits, and by the time the next enrollment period comes around, they will be trapped by their (or their family members') dependence on their existing medical providers and the difficulty of switching plans.

III. Defendants' Ghost Network

A. Harvard Pilgrim's Plan Documents and Behavioral Health Coverage

86. For both its insurance plans and plans for which Harvard Pilgrim acts as an administrator for a self-insured organization, Harvard Pilgrim contracts directly with individual enrollees.

87. For example, Ms. Bousquet's Benefit Handbook and Schedule of Benefits form her contract with Harvard Pilgrim for enrollment in the ChoiceNet Best Buy HMO plan. This plan is offered by Harvard Pilgrim on a self-insured basis to certain public employees in Massachusetts.

88. According to the Schedule of Benefits, the plan features a $500 deductible and out-of-pocket maximum of $5,000 per member per year.

89. The plan utilizes three pricing tiers for in-network providers, but in-network mental health care is subject to a flat $20 copayment per visit for outpatient appointments. The plan provides no coverage for out-of-network mental health care. Therefore, if a member sees an out-of-network provider for mental health care, they are fully responsible for the cost of the visit.

90. Ms. Bousquet's plan documents are replete with promises regarding the completeness, adequacy, and reliability of Defendants' provider directory. Both the Schedule of Benefits and Benefit Handbook repeatedly advise insureds like Ms. Bousquet that they can find an in-network provider using the online directory.

91. According to the Schedule of Benefits, members should "consult the HPHC ChoiceNet Provider Directory or visit the provider search tool at www.harvardpilgrim.org to determine the tier of Providers in the ChoiceNet Network." The Schedule of Benefits also refers members to the Benefit Handbook for details on their coverage and plan details.

92. The Benefit Handbook explains that the "online ChoiceNet Provider Directory enables you to search for providers by name, gender, specialty, hospital affiliations, languages

spoken and office locations. You can also obtain information about whether a provider is accepting new patients." It also states that the provider directory "will list only those Plan Providers that participate in your Network" and directs members to www.harvardpilgrim.org to view the directory online.

93. The Benefit Handbook promises that the online provider directory "is updated in accordance with state and Federal laws."

94. The Benefit Handbook also promises that "HPHC has quality controls in place . . . to ensure consistently excellent health plan services" including verification of provider credentials.

95. Mr. Green's plan, the Explorer POS Plan, is a non-ERISA plan offered by Harvard Pilgrim on a self-insured basis to the Group Insurance Commission, which provides benefits to public employees in Massachusetts.

96. The Schedule of Benefits and Benefits Handbook form Mr. Green's contract with Harvard Pilgrim.

97. According to the Schedule of Benefits, the plan offers two levels of coverage: in-network coverage and out-of-network coverage. The plan features a $500 deductible for each member of the plan, which must be met each year before any in-network services as covered. A separate $500 deductible applies for out-of-network care.

98. For in-network coverage, most providers fall into one of three tiers, which require copayments of $10, $20, and $40 per visit. However, outpatient mental health care from an in-network provider is subject to a flat $10 copay per visit.

99. Out-of-network mental health care is reimbursed at a rate of 80% after the out-of-network deductible is satisfied.

100. Plaintiffs' plan documents are replete with promises regarding the completeness and adequacy of Defendants' provider directory. For example, the Benefits Handbook states that "You can find Plan Providers by using the Harvard Pilgrim Explorer POS Plan Provider Directory" and "The Explorer POS Plan Provider Directory lists the Plan Providers you must use to obtain In-Network coverage." The Benefits Handbook also states that the directory can be used to sort providers by specialty and location, among other things, and determine whether a provider is accepting new patients.

101. The Benefit Handbook promises that the online provider directory "is updated in accordance with state and Federal laws."

102. The Benefit Handbook also promises that "HPHC has quality controls in place . . . to ensure consistently excellent health plan services" including verification of provider credentials.

103. The Benefits Handbook also informs members that they may access the directory by phone "by calling Member Services at 1-844-442-7324." Throughout the Benefits Handbook, members are told that they can call Member Services "to check a Provider's status."

104. In total, the Benefits Handbook refers members to the directory no less than 14 times, each time listing both the online and telephone options.

105. On information and belief, the contracts for all of Defendants' plans contain the provisions quoted above from Ms. Bousquet and Mr. Green's plan contracts or substantially similar provisions.

B. Defendants' Provider Directory

106. Before Plaintiffs' enrollment in Defendants' health insurance (when Plaintiffs were deciding whether to enroll in this insurance) and throughout Plaintiffs' enrollment in Defendants' health insurance, Defendants have published—both online and in hard-copy—an inaccurate directory of behavioral health providers who are supposedly in-network with Harvard Pilgrim,

available to see new patients, and qualified to provide specified behavioral health services. Defendants' provider directory is the definitive resource to identify which providers are in Defendants' network and are thereby covered at the plan's in-network rate. This directory is publicly available to members and non-members of Harvard Pilgrim's plans.[37]

107. Although Harvard Pilgrim acts as an insurer for some plans and a third-party administrator for other self-insured plans, the directory and interface are the same across all plans.

108. The directory contains various information about supposedly in-network providers, including their location, contact information, education, qualifications, credentials, hospital affiliations, specialties, services offered, languages spoken, whether they are accepting new patients, and whether they offer virtual or in-person appointments.

109. Defendants' directory allows the user to input their location and search radius, and can be filtered based on, among other things, whether the provider is accepting new patients, the provider's location, qualifications, services offered, specialty, office hours, patient age, provider gender, and availability for virtual visits and in-person care.

110. Harvard Pilgrim uses the provider directory—which is prominently displayed on its website—to attract potential customers under false pretenses. Knowing that customers, like Plaintiffs, place great weight on the breadth of a mental health provider network when selecting their health insurance, Defendants artificially inflate the breadth of their mental health provider network through their online and print directory. By publishing a directory that falsely portrays a robust mental health provider network, Defendants attempt to lure customers into enrolling in their health insurance, which enriches Defendants.

[37] Harvard Pilgrim Health Care, Find a Provider, https://www.harvardpilgrim.org/public/find-a-provider (last visited April 24, 2026).

111. Defendants' provider directory affirmatively misrepresents to current and prospective members that the behavioral health providers listed are in fact in-network and will be accessible and available to provide care. In reality, the vast majority of providers listed in the directory have ceased practicing or are not in-network, not available, not reachable, or not qualified to provide the services listed. Defendants' misrepresentations regarding the breadth of their network occurred continuously before and throughout Plaintiffs' enrollment in Defendants' health insurance plans. Indeed, every additional customer who enrolls in Defendants' insurance increases Defendants' revenue.

112. Moreover, Defendants' provider directory is replete with all kinds or other inaccuracies, including incorrect addresses and phone numbers, as well as repeated entries of the same provider. These inaccuracies may appear at first glance to be a minor oversight, but such errors are far from trivial for a person who needs urgent behavioral health care for themself or a loved one. The inclusion of incorrect listings artificially inflates the perceived size and adequacy of Defendants' network and forces members to invest more time and energy trying to find a behavioral health provider—only to be repeatedly led to a dead end. Although this is devastating to plan enrollees like Plaintiffs, it enriches Defendants by reducing the amount of insurance claims they need to cover.

113. Contrary to their statutory, contractual, and common law duties, Defendants failed to verify provider information within the statutorily mandated timeframes, failed to remove providers who could not be verified, and failed to update the directory within the statutorily required period after learning of changes.

114. In its marketing materials, plan documents, and member contracts, Harvard Pilgrim cites and incorporates by reference this grossly inaccurate directory.

115. The directory makes it appear as if Defendants' network is far more robust than it actually is and falsely represents that plan members have access to vastly more mental health providers than they actually do. Accordingly, Defendants' provider directory, and representations about their comprehensive mental health coverage, are inaccurate, deceptive, and misleading.

116. Defendants' misrepresentations about their provider network are not limited to mental health providers. On information and belief, Defendants' directory also inaccurately lists (now as well as before and during Plaintiffs' enrollment in Defendants' health insurance) other types of providers as being in-network, available to see new patients, and qualified to provide the services listed. In other words, Defendants exaggerate their provider network in general, not just their mental health provider network.

C. Plaintiffs' "Secret Shopper" Studies

117. In April 2026, Plaintiffs' counsel oversaw a series of secret shopper studies to replicate Plaintiffs' experiences trying to locate a provider. Counsel utilized research consultants to conduct this study using a methodology developed in conjunction with a prominent health policy academic. The consultants searched for the same type of care that Plaintiffs sought when searching for mental health care, whether a psychiatrist, a psychologist, or other type of provider.

118. Using the online provider directory, the research consultants generated a list of supposedly in-network providers accepting new patients within a 20-mile radius of each Plaintiff's residence.

119. The consultants then called a randomized sample of the listed providers. If a call was not answered, the consultants would make a second and third attempt over multiple days and would leave a voicemail asking for a return call after each attempt. For every completed call, the consultants recorded the provider's response: whether they were indeed the type of provider listed

in the directory; whether they accepted Defendants' plan; whether the provider was accepting new patients; and how long the wait was for an appointment.

120. For the study replicating Plaintiff Jessica Bousquet's experience, the provider search yielded 300 providers. Overall, only 10 of the 50 sampled providers were in-network, provided the listed services, and were available to schedule an initial appointment. One of these 10 provider listings was a duplicate of another listing, meaning that only 9 unique provider listings yielded a successful result.

121. It was not possible to make an appointment with 40 of the total 50 directory listings called. In total, 21 providers were unreachable—they never returned the calls or the phone number was incorrect or out of service. Of the remaining providers that were reachable, 19 did not accept the insurance plan, were not accepting new patients, did not provide the necessary services, or required patients to have a primary care provider in-clinic.

122. That is an 81.6% ghost rate for Harvard Pilgrim's ChoiceNet Tiered HMO network.

123. The researchers repeated the study steps to replicate Plaintiff Brian Green's search for a mental health provider for himself. This search yielded 472 results, but information for only 300 of these provider listings was accessible.

124. It was not possible to make an appointment with 28 of the 50 directory listings called. In total, 15 providers were unreachable—they never returned the calls or the phone number was incorrect or out of service. Of the remaining providers that were reachable, 13 did not accept the insurance plan, were not accepting new patients, did not provide the necessary services, or were no longer practicing. The research consultants were able to reach an additional 2 providers but were unable to confirm those providers' network status and availability by phone.

125. That is a 54% ghost rate for Defendants' network.

126. The researchers repeated the study steps to replicate Plaintiff Brian Green's search for a mental health provider for his son. This search yielded 195 providers supposedly treating minors.

127. It was not possible to make an appointment with 39 of the total 50 directory listings called. In total, 20 providers were unreachable—they never returned the calls or the phone number was incorrect or out of service. Of the remaining providers that were reachable, 13 did not accept the insurance plan, were not accepting new patients, did not provide the necessary services, or only accepted patients from within the clinic. The research consultants were able to reach an additional 6 providers but were unable to confirm those providers' network status and availability by phone.

128. That is a 75% ghost rate for Defendants' network.

IV. Defendants' Deceptive and Misleading Activity

A. Defendants' Misrepresentations and Omissions

129. For ease of reading, the misrepresentations and omissions outlined in this complaint are generally phrased in the present tense. However, all of these misrepresentations and omissions are not only currently being made, they were also made before and throughout Plaintiffs' enrollment in Defendants' plans.

130. Harvard Pilgrim holds itself out to consumers—through the provider directory, plan documents, and marketing materials—as having a robust network of available providers to meet members' behavioral health care needs. These representations are deceptive, as the directory misrepresents the breadth of the network and the ease of utilizing the benefits available under Harvard Pilgrim's insurance.

131. In addition to publishing and maintaining an inaccurate provider directory, Harvard Pilgrim provides consumers with deceptive and materially misleading marketing and plan materials about the benefits offered under its health insurance. These materials promise behavioral

health benefits, easy access to care, and a robust network of high-quality providers who have availability to see new patients. For example, the Harvard Pilgrim homepage reads "Why Harvard Pilgrim: We offer flexible health plans with robust provider networks, preventive health programs and self-service tools to guide members toward better health."[38] The website also represents that new members will be able to "take advantage of behavioral health benefits when you need them."[39]

132. Plaintiffs decided to enroll in their insurance plans based on Harvard Pilgrim's representations that they would have access to a robust network of both physical and mental health providers adequate to meet their healthcare needs.

133. When deciding to enroll in coverage, Plaintiffs relied on implicit and explicit representations that the provider network was robust and accurately reflected in the directory.

134. The Harvard Pilgrim website also boasts an "expansive national network" and "seamless access to our provider network in Massachusetts," which includes "more than 1.2M providers."[40] This representation is grossly misleading because an estimated 81% of those listings are "ghosts."

135. Harvard Pilgrim also claims to have a "large and growing network of behavioral health providers offer[ing] expertise across dozens of behavioral health care specialties."[41]

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[38] Harvard Pilgrim Health Care, https://www.harvardpilgrim.org/public/home (last visited April 27, 2026).

[39] Harvard Pilgrim Health Care, Are you a new member?, https://www.harvardpilgrim.org/public/are-you-a-new-member (last visited April 27, 2026).

[40] Harvard Pilgrim Health Care,, Know your care options, https://www.harvardpilgrim.org/public/know-your-care-options (last visited April 27, 2026).

[41] Harvard Pilgrim Health Care, Behavioral health, https://www.harvardpilgrim.org/public/behavioral-health (last visited April 27, 2026).

Defendants' network of behavioral health providers available to take new patients is grossly inadequate and far smaller than advertised.

136. Defendants' directory is intentionally and grossly inaccurate, and consumers are often left struggling and wasting time searching for treatment long after they started searching for a behavioral health professional. Consumers often have to seek help from costly out-of-network providers because Defendants' network lacks adequate available providers.

137. Plaintiffs' contracts with Harvard Pilgrim are replete with promises regarding the provider directory.

138. Plaintiffs' contracts with Harvard Pilgrim repeatedly direct members to consult Defendants' website and their directory to find in-network care.

139. Plaintiffs' contracts instruct them to use the online directory or call Harvard Pilgrim's customer service team to locate an in-network provider.

140. The repeated references to the website, directory, and Member Services in the plan contracts incorporate the online provider directory and other representations on the Harvard Pilgrim website into the contracts.

141. Harvard Pilgrim encourages members and prospective members to rely on the contract documents, such as by stating that "This Benefit Handbook and the Schedule of Benefits make up the agreement stating the terms of the Plan. . . . It explains what you must do to obtain coverage for services and what you can expect under the Plan."

142. Harvard Pilgrim misleads consumers by making them believe that they will have access to a sufficiently broad network of available, geographically accessible providers to meet their care needs and make use of the coverage provided by Defendants. In reality, Defendants' directory is inaccurate and their network of available providers is sparse.

143. Consumers, including Plaintiffs, rely on an insurer's directory to find providers in their health plan. As stated by the American Medical Association and the Council for Affordable Quality Healthcare:

> Health plans are expected by their members and their contracted practices to display a provider directory to the public that represents an accurate reflection of their networks. It is the most public-facing data that health plans provide, and patients are dependent on accurate directories to access care.[42]

144. Harvard Pilgrim encourages members and prospective members to use its online directory to find in-network care. For example, its website instructs members to "Visit our provider lookup tool to check your medical coverage and see which care options are in your network. By getting care from providers and facilities that are in your network, you'll save money and avoid unexpected bills."[43] Defendants' repeated focus on the importance of using an in-network provider, and repeated direction of members to use the provider directory to find an in-network provider, further confirms that members can rely on the directory to accurately reflect the pool of available, in-network providers. For example, on its Behavioral Health page, Harvard Pilgrim prompts members and prospective members to "Explore our network: Our large and growing network of behavioral health providers offers expertise across dozens of behavioral health care specialties. Search our online directory to find a provider near you."[44]

145. Harvard Pilgrim represents that it regularly monitors and updates its network for accuracy. In Ms. Bousquet's Benefits Handbook, which is available to both members and

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[42] Improving Health Plan Provider Directories, *supra* n. 28, at 7.

[43] Harvard Pilgrim Health Care,, Know your care options, https://www.harvardpilgrim.org/public/know-your-care-options (last visited April 27, 2026).

[44] Harvard Pilgrim Health Care, Behavioral health, https://www.harvardpilgrim.org/public/behavioral-health (last visited April 27, 2026).

prospective members, Harvard Pilgrim states that "The online ChoiceNet Provider Directory enables you to search for providers by name, gender, specialty, hospital affiliations, languages spoken and office locations. You can also obtain information about whether a provider is accepting new patients. Because it is updated in accordance with state and Federal laws, the information in the online directory will be more current than the paper directory." In truth, its directory reflects an 81% ghost rate.

146. Any argument by Defendants that the members should have themselves verified that the providers were in fact in network does not absolve Defendants of their obligation to accurately represent the mental health providers available in their network.

147. Any boilerplate disclaimers Harvard Pilgrim might provide would be woefully insufficient. Put another way, no reasonable consumer viewing a boilerplate disclaimer would understand that more than 81% of behavioral health providers listed in Defendants' directory are not, as promised, available to treat members of Defendants' plan. Indeed, there is no disclaimer broad enough to absolve that level of deception.

148. In its provider directory, Harvard Pilgrim misrepresents the network status of providers as well as other crucial information such as their availability to accept new patients, their contact information, the services they provide, and their locations. Members and prospective members rely on these representations to understand the availability of care within the Harvard Pilgrim network.

149. Defendants actively mislead members into thinking that if an in-network provider is not available, they have no option but to forego mental health care when, in reality as discussed above, Defendants are required to cover an out-of-network provider at an in-network rate when there are no timely available and geographically accessible providers in Defendants' network.

150. In addition, Harvard Pilgrim fails to make clear to members that if an in-network provider is not available, then members may be able to use an out-of-network provider but still pay the in-network cost. This information is not included in either the Summary of Benefits or the SBC and is buried in the 78-page Benefits Handbook. Even when a member calls Harvard Pilgrim to report difficulties locating an in-network provider, Harvard Pilgrim does not inform members of this right.

151. Of course, just getting care from *some* provider is the bare minimum (which Defendants still failed to provide). Defendants promised, and Plaintiffs contracted for the right to receive, access to a *robust selection* of providers. Even if Defendants had provided Plaintiffs access to a single provider or small number of providers, Defendants promised, and were obligated to provide, access to the full panoply of providers listed in their directory. Indeed, the value of an insurance plan is largely its provider network – consumers pay for access to a selection of providers in the event that they later need to see such providers. The larger the network, the more valuable the plan and the more consumers are willing to pay for that plan. Likewise, the larger the network, the higher the cost to the insurer.

152. Separately and together, Defendants' representations mislead consumers to believe that members will have access to the robust network of available providers reflected in their provider directory, that the network is broad enough to allow members to easily utilize their comprehensive coverage with Harvard Pilgrim, and that members only need to look to and rely on the provider network to find the care they need. In reality, Defendants' failure to maintain an accurate directory makes it nearly impossible to obtain in-network behavioral health care.

153. The incorporation of Defendants' inaccurate directory into the plans' marketing materials through references to providers, services, and the provider network constitutes a knowing

untrue, unfair, deceptive, and misleading statement and representation of fact in connection with the marketing and sale of the plan.

154. In addition to the affirmative misrepresentations made by Harvard Pilgrim about the breadth of its provider network and comprehensiveness of Defendants' behavioral health care coverage, Defendants also make material omissions, including but not limited to their failure to disclose:

a) the inadequacy of Defendants' behavioral health provider network to meet members' needs;

b) the extent of provider directory inaccuracies;

c) that the vast majority of in-network behavioral health providers are not accessible because they are not actually taking new patients;

d) the likelihood that members will be unable to find an in-network behavioral health provider through the directory;

e) the likelihood that members will need to delay or forgo care, or resort to using an out-of-network provider; and

f) the likelihood that members will be unable to use the coverage that their plan provides for in-network behavioral health care.

155. There is complete information asymmetry between Defendants and consumers: Harvard Pilgrim has an obligation under the law to access all the relevant information, including its own contracts with in-network providers, to determine whether providers are accurately listed, and to make regular updates to ensure accuracy. On the other hand, members can only become aware of the extent of the directory inaccuracies after enrolling and expending significant time and energy through trial and error, hours of calls, and extensive research, in many cases while suffering

from mental health crises. The information is not readily available to Plaintiffs and other consumers.

B. Defendants' Misrepresentations and Omissions Are Material

156. Plaintiffs relied on Defendants' provider directory and misrepresentations regarding their provider network when choosing their health plans. Consumers in general regularly rely on a health plan's provider directory when selecting their health plan.[45] Consumers, including Plaintiffs, identify provider choice as one of the most important considerations they make when selecting a health plan.[46] Indeed, in a Kaiser Family Foundation survey, 60% of non-group health insurance enrollees reported that having a choice of providers was either "very important" or "extremely important" to them.[47] Studies show that individuals are willing to pay higher premiums for the ability to continue seeing their existing provider(s) and for a plan with a broader provider network.[48] Studies also show that insurance companies charge higher premiums for plans with broader provider networks—in other words, consumers are willing to pay more, and are charged more, for access to a larger network of mental health providers. Indeed, a dollar value can be assigned to each percentage increase in a plan's provider network. By furnishing a provider

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[45] *See* Statista, *Most Important Considerations for Americans in Choosing a Plan from a Health Insurance Company as of 2016*, https://www.statista.com/statistics/654828/most-important-considerations-for-choosing-health-insurance-plan/.

[46] *See* Blumberg et al., *Factors Influencing Health Plan Choice among the Marketplace Target Population on the Eve of the Health Reform*, Urban Inst., 2 (Feb. 6, 2014), https://www.urban.org/sites/default/files/2024-05/hrms_decision_factors.pdf.

[47] Hamel et al., *Survey of Non-Group Health Insurance Enrollees, Wave 2*, Kaiser Family Foundation (May 2015), https://www.kff.org/health-reform/poll-finding/survey-of-non-group-health-insurance-enrollees-wave-2/ (finding a combined 60% of respondents consider choice of providers to be "extremely important" or "very important").

[48] *See, e.g.*, Eline M. van den Broek-Altenburg & Adam J. Atherly, *Patient Preferences for Provider Choice: A Discrete Choice Experiment*, Am. J. of Managed Care 26(7) (July 2020), https://www.ajmc.com/view/patient-preferences-for-provider-choice-a-discrete-choice-experiment.

network that was drastically smaller than what they promised, Defendants overcharged Plaintiffs for their health insurance coverage.

157. Given the importance of the provider network to prospective members, Defendants' misrepresentations and omissions in their directory would influence the decision of a reasonable consumer—and did influence Plaintiffs' decision—to enroll in Defendants' health insurance for access to Defendants' advertised provider network. The provider directory and network information are disseminated by Harvard Pilgrim, which Plaintiffs and other consumers logically view as the authoritative source of information about its in-network providers, scope of coverage, and other plan policies.

158. As a result of Defendants' misrepresentations and omissions, a reasonable consumer would understandably believe—and Plaintiffs did believe—that the providers listed in the directory as being in-network and available to see new patients actually were in-network with Harvard Pilgrim and accepting new patients. If a reasonable consumer were aware of the extent of the inaccuracies of Defendants' directory, the sparse nature of Defendants' provider network, and the consequent difficulties that members face in accessing in-network care, they would not enroll in Defendants' health insurance. If Plaintiffs had been so aware, they would not have enrolled in Defendants' health insurance.

159. Accordingly, Harvard Pilgrim's misrepresentations about its behavioral health provider network and coverage are materially misleading to consumers.

C. Members' Reliance on Defendants' Misrepresentations and Omissions

160. Plaintiffs had a range of choices when selecting health insurance plans. For example, public employees like Ms. Bousquet and Mr. Green are able to select from a wide range of plans from multiple insurers during their employers' open enrollment period. All Massachusetts

residents also have access to a wide range of health plans from different insurers through the state marketplace.

161. In the absence of a qualifying event like a marriage, change in employment, or birth of a child, most consumers are not eligible to change insurance plans mid-year. As a result, consumers are locked into their selected plan for a full year and do not have an opportunity to switch to a different plan if they discover mid-year that their insurance company has not accurately represented its coverage.

162. Each year, when members have the ability to switch to a new plan or insurance provider, Defendants issue new marketing materials and plan documents featuring statements about updates they have made to the provider network and directory. For a member who has previously struggled to find an in-network provider as a result of Defendants' ghost network, these renewed misrepresentations create the false impression that they will be able to find care more easily if they re-enroll and search again using Defendants' "updated" directory. As a result, Defendants keep members trapped in a cycle of thinking that if they just stick with the plan, try searching again, and make a few more calls, they will be able to find the care that they need.

163. Even when consumers realize the extent of Defendants' lies regarding the availability of in-network mental health care, consumers frequently develop critical relationships with in-network, non-mental-health-care providers who understand their medical needs, causing consumers to re-enroll in the plans. Continuity of care is critically important to many people, including Plaintiffs. That was the intended, or at least foreseeable, effect of Defendants' bait-and-switch scheme: lure people into their health insurance plan with false promises of mental health benefits, and by the time the next enrollment period comes around, they will be trapped by their

(or their family members') dependence on their existing medical providers and the difficulty of switching plans. That is what happened with Plaintiffs.

164. When selecting a plan, Plaintiffs relied on Defendants' representations that Harvard Pilgrim would maintain a robust network of providers, provide easy access to in-network mental health care, and supply an accurate, regularly updated, and provider directory that is accessible online, by phone, and in hard copy and that will enable them to identify available, in-network providers.

165. Plaintiffs selected Harvard Pilgrim's plans because of the representations that Defendants made about Harvard Pilgrim's robust provider network, the ease of accessing care, and the availability of coverage for mental health care.

166. These misrepresentations about the size and breadth of the provider network, the ease of finding behavioral health treatment by using the provider directory, the freedom to choose any listed in-network provider listed as taking new patients, the ability to control costs by seeing an in-network provider, and the comprehensive coverage of behavioral health care would induce a reasonable consumer—and did induce Plaintiffs—to choose the Harvard Pilgrim plans in which they enrolled.

167. Upon information and belief, competitors of Harvard Pilgrim offer health insurance plans that furnish access to robust mental health provider networks and directories that accurately represent their provider networks.

D. Harvard Pilgrim Knew That Its Provider Directory Was Inaccurate and That Its Representations Regarding Its Network Were Deceptive

168. At all relevant times (*i.e.*, before and throughout Plaintiffs' enrollment in Defendants' health insurance), Defendants have willfully and knowingly maintained an inaccurate

and inflated provider directory to induce consumers to enroll in their health insurance and to conceal their non-compliance with network adequacy standards.

169. As discussed above, there are numerous studies and congressional inquiries regarding ghost networks, especially with respect to mental health providers.

170. As one state senator put it, insurance companies have "known about this for a long time and they haven't done anything about it. It's difficult not to assume that this kind of barrier is intentional."[49] Insurance companies have been successfully sued over the issue.[50]

171. The sheer magnitude of the inaccuracies in Defendants' directory—as many as 81% of the behavioral health providers listed—can only be the product of knowing misconduct or willful blindness, particularly in light of Defendants' legal obligation to update and maintain the directory.

172. As demonstrated by the secret shopper studies discussed above, as recently as April 2026, Defendants have continued to publish false lists of providers in Massachusetts. Harvard Pilgrim falsely listed non-existent, unavailable, out-of-network, and irrelevant providers (*i.e.*, providers who do not provide the services specified in the directory).

173. Defendants knew that members were having significant problems accessing in-network care. Members like Plaintiff Brian Green have repeatedly contacted Harvard Pilgrim to report these difficulties.

174. Defendants cannot claim ignorance as to whether providers are in-network. They know at all times exactly which providers are in network and which are out of network. Indeed,

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[49] Turban, *supra* n. 30.

[50] *See, e.g.*, *Anthem Resolves Calif. Provider Directory Error Case*, Bloomberg Law (Aug. 17, 2016), https://news.bloomberglaw.com/health-law-and-business/anthem-resolves-calif-provider-directory-error-case.

they maintain contracts with providers, and their claims department always denies claims from out-of-network providers.

175. Defendants were incentivized to maintain, generate, and continue to publish an inaccurate directory to attract new enrollees, maintain current enrollees, and profit from enrollees' premiums while not actually providing the coverage that Harvard Pilgrim falsely represented that it provided.

176. On information and belief, at all relevant times (*i.e.*, before and throughout Plaintiffs' enrollment in Defendants' health insurance), Harvard Pilgrim fraudulently and intentionally maintained and published a materially false directory of behavioral health providers in Massachusetts to deceive current and prospective enrollees about the extent of their provider network. These intentional and fraudulent misrepresentations were made for the enrichment of Defendants. Even if Defendants could somehow show that such misconduct was unintentional, it was at least knowing, reckless, and negligent.

V. Harvard Pilgrim Has Been Enriched and Members Have Been Injured by Defendants' Misrepresentations and Omissions

177. Defendants' knowing misrepresentations about the breadth of their provider network confer significant financial benefits on Defendants and, conversely, deprive plan members of the benefit of their bargain.

178. Prospective plan members are more likely to enroll if they see one of their existing providers listed as in-network or if the list of available in-network providers is robust. Masking their inadequate network with an inaccurate provider directory therefore allows Defendants to attract more customers and charge higher premiums—all unjustly boosting Defendants' profits. Indeed, the more customers who enroll in Harvard Pilgrim's health insurance, and the more they (or their employers) pay in premiums, the more Harvard Pilgrim profits. Likewise, every time a

member delays or forgoes care after failing to locate an available in-network provider, Harvard Pilgrim evades its obligation to pay for that member's care, reducing costs (and thereby increasing profits).[51] Defendants also reduce costs by not having to expend resources creating and maintaining a robust provider network and an accurate provider directory, as they are statutorily and contractually required to do.

179. Although Harvard Pilgrim acts as an insurer for some plans and a third-party administrator for others, the more consumers enroll in either type of plan, the more Harvard Pilgrim's profits increase. Accordingly, Harvard Pilgrim was unjustly enriched through its lies and the resulting increase in enrollment in the plans that it insures and those that it administers.

180. Plaintiffs and others similarly situated have been grievously injured by Defendants' illegal conduct and the resulting inability to access necessary behavioral health treatment for themselves and their families.

181. Each percent increase in the size of an insurance plan's network equates to a measurable increase in the cost of that plan's premium.[52] In other words, insurance premiums increase concomitantly with network size. Consumers pay more for a larger network, since it means a greater number of providers to choose from. By offering a network that was significantly

[51] *See* Alicia Atwood & Anthony T. Lo Sasso, *The Effect of Narrow Provider Networks on Health Care Use*, J. of Health Econ. (Dec. 2016), https://doi.org/10.1016/j.jhealeco.2016.09.007.

[52] Numerous academic studies on healthcare premiums and the size of provider networks support this principle. S*ee, e.g.*, Daniel Polsky, Bingxiao Wu, *Provider Networks and Health Plan Premium Variation*, Health Serv. Res. (Aug. 13, 2020), https://doi.org/10.1111/1475-6773.13447; Coleman Drake, *What Are Consumers Willing to Pay For a Broad Network Health Plan?: Evidence from Covered California*, J. of Health Economics (Dec. 18, 2021), https://doi.org/10.1016/j.jhealeco.2018.12.003; Keith Marzilli Ericson, Amanda Starc, *Measuring Consumer Valuation of Limited Provider Networks*, Am. Econ. Rev. (May 2015), https://doi.org/10.1257/aer.p20151082.

smaller than what was promised, Plaintiffs paid for important benefits that Defendants never delivered.

182. As a result of Defendants' illegal conduct, Plaintiffs and other class members have suffered grievous injury, including facing significant, years-long delays in receiving critical behavioral health care; having to pay inflated premiums for illusory benefits; having to pay exorbitant fees for out-of-network care for themselves and their dependents; and being unable to find appropriate treatment or, alarmingly, any treatment at all.

183. Defendants' misrepresentations and omissions are the direct and proximate causes of the harms Plaintiffs have endured. Had Harvard Pilgrim accurately represented its behavioral health care coverage, Plaintiffs—and countless other consumers—would not have enrolled in coverage with Defendants. By enrolling in one of the other health insurance plans available to them, Plaintiffs would have had access to the care they were promised, paid lower premiums, and/or saved thousands of dollars in out-of-pocket expenses—not to mention the countless hours and emotional expense they would have been saved.

184. Moreover, Defendants' misrepresentations artificially inflated the market price of their product, causing Plaintiffs to pay higher premiums than they should have and otherwise would have. As a direct and proximate result of Defendants' unfair and deceptive acts and practices, Plaintiffs suffered injury by paying insurance premiums for promised benefits they did not receive.

CLASS ACTION ALLEGATIONS

185. This action is brought by Plaintiffs individually and on behalf of a class (the "Class") pursuant to Massachusetts Rule of Civil Procedure 23. The Class includes all those who have purchased or enrolled in Harvard Pilgrim's plans in Massachusetts at any point on or after May 6, 2020.

186. Plaintiffs seek certification of the following Class and Sub-Classes:

> Class: All individuals who have purchased or enrolled in any of Defendants' Plans at any point on or after May 6, 2020.
>
> Sub-Classes:
>
> All Class members who, during the class period, paid for out-of-network care when there was no available in-network provider with similar qualifications within a reasonable distance.
>
> All Class members who, during the class period, paid for out-of-network care from a provider that was incorrectly listed on Defendants' provider directory.
>
> All Class members who, during the class period, tried to make an appointment with a provider that was incorrectly listed on Defendants' provider directory.

187. Excluded from the Class are Defendants' officers, directors, employees, co-conspirators, and legal representatives, and any judge, justice, or judicial officer to whom the litigation is assigned.

188. Plaintiffs reserve the right to amend or modify the Class and Sub-Class definitions.

189. **Numerosity.** The Class as a whole and the Sub-Classes consist of thousands of individuals, and is thus so numerous that joinder of all members is impracticable. The exact number and identity of Class members is unknown to Plaintiffs at this time but can be ascertained through appropriate discovery.

190. **Commonality and predominance.** This action is appropriate as a class action because common questions of law and fact affecting the Class predominate over those questions affecting only individual members. Those common questions include, but are not limited to, the following:

a) whether Harvard Pilgrim breached its contractual obligations by failing to provide the promised network of providers and/or by failing to comply laws regarding network adequacy and directory accuracy;

b) whether Defendants' representations and/or omissions with respect to the plan were false or misleading;

c) whether Defendants' violations of law were willful and knowing;

d) whether Defendants' provider directory was inaccurate and/or inadequate;

e) whether Harvard Pilgrim failed to disclose to members and prospective members that the provider directory was inaccurate and/or inadequate;

f) whether a reasonable consumer would be misled by Defendants' acts and practices;

g) whether Plaintiffs and Class members are entitled to receive specific types of relief such as actual damages, and the methodology for calculating those damages;

h) whether Plaintiffs and Class members conferred a benefit on Defendants through enrollment in Defendants' plans, payment of premiums which were passed on in part to Defendants, and not utilizing in-network providers or otherwise not obtaining behavioral health care; and

i) whether equity and good conscience require restitution to Plaintiffs and Class members and/or the establishment of a constructive trust, and the amount of such restitution or constructive trust.

191. **Superiority.** A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons:

a) given the complexity of issues involved in this action, the expense of litigating the claims, and the money at stake for any individual Class member, few, if any, Class

members could afford to seek legal redress individually for the wrongs that Harvard Pilgrim has committed against them;

b) the prosecution of thousands of separate actions by individual members would risk inconsistency in adjudication and outcomes that would establish incompatible standards of conduct for Defendants and burden the courts;

c) when Defendants' liability has been adjudicated, claims of all Class members can be determined by the Court;

d) this action will cause an orderly and expeditious administration of the Class claims and foster economies of time, effort, and expense, and ensure uniformity of decisions;

e) without a class action, many Class members would continue to suffer injury while Defendants retain the substantial proceeds of their wrongful conduct; and

f) this action does not present any undue difficulties that would impede its management by the Court as a class action.

192. **Typicality.** The claims asserted by Plaintiffs are typical of the claims of the Class. At all relevant times, Defendants' provider network was inadequate and their directory inaccurate, and all Class members' claims arise out of this common source of misrepresentations and omissions. Plaintiffs, like all Class members, were subject to false and misleading representations and omissions found in Defendants' provider directory and other marketing and plan documents regarding the comprehensiveness of behavioral health coverage and the provider network. Plaintiffs' interests coincide with, and are not antagonistic to, those of the other Class members, and Plaintiffs and other Class members have been damaged by the same wrongdoing set forth in this Complaint.

193. **Adequacy of representation.** Plaintiffs will fairly and adequately protect the interests of the Class and do not have any interests antagonistic to those of the Class members. Plaintiffs have retained counsel competent and experienced in class actions and health insurance and consumer protection litigation, who are competent to serve as Class counsel. Plaintiffs and their counsel will fairly and adequately protect the interests of the Class members.

194. **Ascertainability.** The identities and addresses of Class members can be readily ascertained from business records maintained by Defendant, and/or self-authentication. The precise number of Class members, and their addresses, can be ascertained from Defendants' records. Plaintiff anticipates providing appropriate notice to the Class to be approved by the Court after class certification, or pursuant to court order.

195. Plaintiffs request that the Court afford Class members with notice and the right to opt out of any Class certified in this action.

FIRST CAUSE OF ACTION

Breach of Contract

196. Plaintiffs incorporate by reference all allegations in this Complaint and restate them as if fully set forth herein.

197. Harvard Pilgrim and Plaintiffs have a direct contractual relationship. The terms of that direct contractual relationship are governed by the insurance materials provided by Defendants.

198. Harvard Pilgrim has breached its contractual obligations to Plaintiffs by failing to contract with a sufficient number of mental health providers to allow members to access timely in-network mental health services and by failing to consistently provide an accurate and regularly updated provider directory.

199. In its contract with each enrollee, Harvard Pilgrim agrees to supply a provider directory that will enable members to identify available, in-network providers that is accessible online and by phone, update its provider directory in compliance with federal and state laws, utilize quality controls to verify provider credentials, and provide access to in-network mental health care.

200. The contract's repeated references to the Harvard Pilgrim website and provider directory incorporate these materials and their representations into the contract.

201. Harvard Pilgrim breached its contracts with Plaintiffs by failing to provide meaningful coverage for behavioral health services and by failing to update and convey accurate information about the providers listed in its directory. A large percentage of the providers listed in the directory as being in-network and available to see new patients are not in fact in-network and available to see new patients, and many of the providers do not possess the qualifications listed for them. Because Harvard Pilgrim does not maintain an accurate provider directory and does not contract with an adequate network of behavioral health providers, it has been impossible for Plaintiffs to locate in-network care and therefore make use of the coverage to which they were contractually entitled.

202. On information and belief, each of Harvard Pilgrim's member contracts contains the provisions quoted earlier in this complaint or substantially similar provisions.

203. These breaches have directly and proximately caused Plaintiffs and Class members significant harm, including monetary and non-monetary losses. Among other injuries, Defendants' breaches have caused millions of dollars in damages; denied Plaintiffs the benefits to which they were entitled under their health plans and for which they paid premiums (most notably, coverage for in-network behavioral health care and access to the promised broad network of available providers); forced Plaintiffs and Class members to delay and/or forgo crucial and

necessary behavioral health care; caused Plaintiffs and Class members to pay inflated premiums for illusory benefits; caused Plaintiffs and Class members to incur significant out-of-pocket expenses for out-of-network provider payments, which greatly exceed the costs Plaintiffs would have incurred for the same services from in-network providers; caused Plaintiffs and Class members to reduce spending on necessities and other life costs; induced Plaintiffs and Class members to enroll in Defendants' health insurance plans instead of better and/or cheaper plans; prevented Plaintiffs and Class members from making informed financial and health care decisions; and caused Plaintiffs and Class members to suffer severe emotional and psychological distress due to the unsuccessful provider search and their inability to receive treatment for themselves and their loved ones.

SECOND CAUSE OF ACTION

Breach of the Implied Covenant of Good Faith and Fair Dealing

204. Plaintiffs incorporate by reference all allegations in this Complaint and restate them as if fully set forth herein.

205. Plaintiffs and Harvard Pilgrim have a direct contractual relationship.

206. The contract includes an implied covenant that Defendants will act in good faith and deal fairly with Plaintiffs.

207. Plaintiffs satisfied their contractual obligations. All conditions required for Defendants' full performance of their contractual obligations were met.

208. Harvard Pilgrim materially breached the implied covenant in several respects, including but not limited to the following:

a) Defendants have failed to make a good-faith effort to maintain an accurate and updated provider directory;

b) Defendants have failed to maintain, and failed to make a good-faith effort to maintain, an adequate network of providers;

c) Defendants have presented providers as being in-network and available to see new patients that were not, in fact, in-network and available to see new patients;

d) Defendants have failed to support Plaintiffs in locating accessible, in-network care, including by

i. purposefully making the Member Services line difficult to access, such as by limiting the hours during which the line is staffed, despite Plaintiffs' contracts explicitly directing them to call Member Services for assistance locating an in-network provider;

ii. intentionally failing to train and supervise customer service representatives to provide meaningful assistance to members who are looking for in-network providers; and

iii. intentionally obscuring the recourse that Plaintiffs have when no in-network provider is available by failing to include this provision in Plaintiffs' Summary of Benefits or Benefits Handbook.

e) Defendants have required Plaintiffs to pay out-of-network rates for care that was required to be covered at in-network rates due to deficiencies in Defendants' network.

209. By engaging in the above-listed activities, Harvard Pilgrim did not act fairly or in good faith. Its breaches were unfair and unjustified.

210. Defendants' breaches were conscious and deliberate acts designed to frustrate the agreed common purposes of their contracts with Plaintiffs and deprive Plaintiffs and Class members of the benefits of their contracts.

211. Harvard Pilgrim purposefully undertook such acts to deny Plaintiffs the benefits of the contracts, thus enriching Defendants and permitting Defendants to conceal that they were violating applicable federal and state laws.

212. These breaches have directly and proximately caused Plaintiffs and Class members significant harm, including monetary and non-monetary losses. Among other injuries, Defendants' breaches have caused millions of dollars in damages; denied Plaintiffs the benefits to which they were entitled under their health plans and for which they paid premiums (most notably, coverage for in-network behavioral health care and access to the promised broad networks of available providers); forced Plaintiffs and Class members to delay and/or forgo crucial and necessary behavioral health care; caused Plaintiffs and Class members to pay inflated premiums for illusory benefits; caused Plaintiffs and Class members to incur significant out-of-pocket expenses for out-of-network provider payments, which greatly exceed the costs Plaintiffs would have incurred for the same services from in-network providers; caused Plaintiffs and Class members to reduce spending on necessities and other life costs; induced Plaintiffs and Class members to enroll in Defendants' health insurance plans instead of better and/or cheaper plans; prevented Plaintiffs and Class members from making informed financial and health care decisions; and caused Plaintiffs and Class members to suffer severe emotional and psychological distress due to the unsuccessful provider search and their inability to receive treatment for themselves and their loved ones.

THIRD CAUSE OF ACTION

Deceptive acts and practices in violation of Massachusetts General Laws Chapter 93A

213. Plaintiffs incorporate by reference all allegations in this Complaint and restates them as if fully set forth herein.

214. Plaintiffs bring this claim individually and on behalf of the members of the proposed Class, who are other similarly injured and situated persons, against Defendants for violations of Massachusetts General Laws Chapter 93A ("Chapter 93A").

215. Chapter 93A imposes liability on anyone who engages in "unfair or deceptive acts or practices in the conduct of any trade or commerce" affecting the people of Massachusetts.

216. Plaintiffs are "persons" as defined in Chapter 93A, Section 1, and are not entitled to bring a claim against Harvard Pilgrim under Chapter 93A, Section 11.

217. Defendants' actions as set forth herein occurred in the conduct of trade or commerce under Chapter 93A.

218. In the conduct of trade or commerce, Defendants made deceptive affirmative misrepresentations and omissions to Plaintiffs and the Class by publishing and disseminating misleading informational and marketing materials prior to and during the open enrollment periods. The provider directory itself, on which members and prospective members are directed to rely, inflates and misleads consumers regarding the breadth of Harvard Pilgrim's provider network and the availability of behavioral health providers.

219. False representations include, *inter alia*, that Harvard Pilgrim has an adequate network of providers; that providers listed on the provider directory as being in-network and available are in-network and available; that providers listed as accepting new patients actually accept new patients; that Harvard Pilgrim regularly updates the directory; that there are sufficient and available behavioral health care providers in Harvard Pilgrim's provider network; that members can rely on the directory to find and contact providers with the listed qualifications offering the listed services; and that behavioral health care coverage is comprehensive and easily accessible.

220. Omitted and concealed from Defendants' representations were material and relevant facts that Plaintiffs and Class members would have used in selecting their health insurance plan, including, *inter alia*, the extent of inaccuracies in the provider directory; the true breadth of the provider network; the likelihood that a member seeking behavioral health care would have to obtain out-of-network treatment, and the costs of such services; and the number of hours and expenditures that would be needed to be made to find appropriate behavioral health care.

221. These representations and omissions, when considered as a whole from the perspective of a reasonable consumer, conveyed that Defendants' provider directory was accurate and regularly updated, that Defendants' provider network was adequate and robust, and that behavioral health care would be covered and easily accessible. A reasonable consumer would attach importance to such representations and would be induced to enroll in such a plan.

222. The misrepresentations and omissions alleged herein were materially misleading.

223. Defendants' conduct employs practices declared to be unlawful, including Massachusetts General Law Chapter 93A, Section 2; Chapter 176D, Section 3(1) (prohibiting misrepresentations and false advertising of insurance policies, including statements that misrepresent the benefits of a policy); Chapter 176D, Section 3(2) (prohibiting the making or circulation of untrue, deceptive, or misleading statements in the business of insurance); Chapter 176D, Section 3(9) (prohibiting misrepresentation of pertinent facts or insurance policy provisions relating to coverage); 211 CMR 40.06 (requiring marketing for health insurance plans to be "truthful and not misleading in fact or in implication"); and federal statutes (such as the No Surprises Act and the Affordable Care Act) and regulations mandating network adequacy and directory accuracy. Plaintiffs' rights were affected by each of these violations.

224. The acts and practices alleged herein are deceptive acts and practices covered under Chapter 93A and have caused Plaintiffs and Class members significant ascertainable monetary and non-monetary injuries, separate and distinct from the unfair and deceptive acts and practices themselves. Among other injuries, Defendants' deceptive acts and practices have caused millions of dollars in damages; forced Plaintiffs and Class members to delay and forgo crucial and necessary behavioral health care; caused Plaintiffs and Class members to pay inflated premiums for illusory benefits; caused Plaintiffs and Class members significant out-of-pocket expenses for out-of-network provider payments; caused Plaintiffs and Class members to reduce spending on necessities and other life costs; prevented Plaintiffs and Class members from making informed financial and health care decisions; caused Plaintiffs and Class members to waste time and resources using an inaccurate and unreliable provider directory; and caused Plaintiffs and Class members to suffer severe emotional and psychological distress.

225. Defendants' unfair and deceptive practices have caused similar injury to numerous persons similarly situated to Plaintiffs. Plaintiffs will adequately and fairly represent these other persons.

226. Defendants' unfair and deceptive conduct is a violation of Chapter 93A, Sections 2 and 9.

227. Defendants willfully and knowingly violated Chapter 93A. Their effort to include affirmative misrepresentations and omissions in their marketing materials and provider directory was in their financial interest to market their plan as comprehensive, including with respect to mental health coverage, to induce individuals to choose Defendants' health insurance over other health insurance and to create the appearance of network adequacy and compliance with state and federal law.

228. On or about April 6, 2026, counsel for Plaintiffs delivered a written demand for relief to Defendants by courier, which is attached as Exhibit A. The written demand identified Plaintiff Jessica Bousquet and Defendants, described Defendants' unfair or deceptive conduct, and requested that Defendants make a reasonable offer to settle Ms. Bousquet's claim and make whole all similarly situated consumers.

229. As of the time of filing on May 6, 2026, Defendants have not responded to the written demand.

230. Defendants' refusal to tender a reasonable resolution was made in bad faith and with knowledge or reason to know that Defendants' unfair and deceptive conduct violated Chapter 93A.

FOURTH CAUSE OF ACTION

Fraudulent Misrepresentation
(On behalf of all Plaintiffs and Class members)

231. Plaintiffs incorporate by reference all allegations in this Complaint and restate them as if fully set forth herein.

232. Insurance companies have statutory and common law obligations to provide accurate and complete information about their health insurance plans.

233. Defendants made deceptive affirmative misrepresentations and omissions to Plaintiffs and Class members by publishing and disseminating misleading informational and marketing materials prior to and during the open enrollment periods. Defendants' misrepresentations were conveyed in Defendants' provider directory and other marketing and publicly available materials. The provider directory itself, on which Plaintiffs, as well as other members and prospective members, were directed to rely and did rely, intentionally inflated and misled them regarding the breadth and adequacy of the provider network and the availability of behavioral health providers who were taking new patients.

234. The omissions from these same materials include, *inter alia*, any reference to the limited number of behavioral health providers who are actually in-network with Defendants, accepted Defendants' insurance, and were available to see new patients, and to the fact that members and prospective members are forced to utilize out-of-network providers—and incur substantial costs—when they need behavioral health services.

235. False representations include, *inter alia*, that Defendants have an adequate networks of providers; that providers listed on the provider directory as being in-network and available are in-network and available; that providers listed as accepting new patients actually accept new patients; that there are sufficient and available behavioral health care providers in that network; that members can rely on the directory to find and contact providers with the listed qualifications offering the listed services; that Defendants regularly update the directory; and that behavioral health care coverage is comprehensive and easily accessible.

236. Omitted and concealed from the representations were material and relevant facts that Plaintiffs and Class members would have used in selecting their health insurance plans including, *inter alia*, the extent of inaccuracies in the provider directory; the true breadth of the provider network; the likelihood that a member seeking behavioral health care would have to obtain out-of-network treatment, and the costs of such services; and the number of hours and expenditures that would be needed to find appropriate behavioral health care.

237. These misrepresentations and omissions were intended to, and did, induce reliance by Plaintiffs and Class members as to the services and benefits that would be delivered to them as a result of choosing Defendants' plan. Plaintiffs and Class members chose to enroll in Defendants' health insurance (instead of better, cheaper options) based on the lies Defendants told about their provider network and behavioral health benefits. And Plaintiffs and Class members detrimentally

relied on Defendants' inaccurate directory when searching for in-network providers. That detrimental reliance caused them to waste countless frustrating hours searching in vain for available, in-network providers.

238. Plaintiffs and Class members reasonably relied on Defendants' representations and omissions, as Defendants had unique knowledge of the facts underlying their representations.

239. Plaintiffs and Class members acted upon Defendants' representations and omissions, relying on them as the truth.

240. These fraudulent misrepresentations and omissions, when considered as a whole from the perspective of a reasonable consumer, conveyed that Defendants' provider directory was, as federal and state law require, accurate and broad, and that behavioral health care would be covered to the full extent that Defendants had represented. A reasonable consumer would—and Plaintiffs and Class members did—attach importance to such representations and were induced to enroll in Defendants' health insurance as a result. These misrepresentations and omissions related to material facts that would influence a prospective member's decision to enroll in coverage through Harvard Pilgrim.

241. These fraudulent misrepresentations and omissions alleged herein were intentional and materially misleading. Defendants intentionally led Plaintiffs and Class members to believe that their network of available providers was adequate and robust in order to induce them to enroll in, and remain enrolled in, their health insurance plans. In reality, however, these misrepresentations and omissions prevented Plaintiffs and Class members from receiving promised care. Such deception was designed to, and did, allow Defendants to reap enormous financial gain through increased income (by way of premiums paid), and reduced costs (by way of

delayed, forgone, and unreimbursed care and avoidance of the expenses that would be incurred by creating and maintaining robust a provider network and an accurate provider directory).

242. Defendants willfully and knowingly made the fraudulent misrepresentations and omissions alleged herein. Alternatively, Defendants made these intentional misrepresentations recklessly and without regard for their truth. Defendants, as parties to the contracts with in-network providers and as administrators of the provider networks, had access to all the information necessary to maintain an accurate provider directory. Likewise, Defendants continued to make the fraudulent misrepresentations and omissions even after Plaintiffs, other Class members, and other consumers notified Defendants of the inaccuracies in the directory and the difficulties members face when trying to locate in-network behavioral health care.

243. Defendants' efforts to include affirmative misrepresentations and omissions in their marketing materials and provider directory were undertaken intentionally to create the appearance of network adequacy and compliance with federal and state law and to induce individuals to choose Defendants' health insurance over competitors' health insurance and to prevent individuals from obtaining covered care, thus increasing Defendants' profits.

244. Upon information and belief, Defendants' competitors offer health insurance plans that are cheaper and furnish access to more robust mental health provider networks and directories that more accurately represent their provider networks.

245. These misrepresentations have directly and proximately caused Plaintiffs and Class members significant harm, including monetary and non-monetary losses. Among other injuries, Defendants' misrepresentations have caused millions of dollars in damages; denied Plaintiffs the benefits to which they were entitled under their health plans and for which they paid premiums (most notably, coverage for in-network behavioral health care and access to the supposedly broad

networks of available providers); forced Plaintiffs and Class members to delay and/or forgo crucial and necessary behavioral health care; caused Plaintiffs and Class members to pay inflated premiums for illusory benefits; caused Plaintiffs and Class members to incur significant out-of-pocket expenses for out-of-network provider payments, which greatly exceed the costs Plaintiffs would have incurred for the same services from in-network providers; caused Plaintiffs and Class members to reduce spending on necessities and other life costs; induced Plaintiffs and Class members to enroll in Defendants' health insurance plans instead of better and/or cheaper plans; prevented Plaintiffs and Class members from making informed financial and health care decisions; and caused Plaintiffs and Class members to suffer severe emotional and psychological distress due to the unsuccessful provider search and their inability to receive treatment for themselves and their loved ones. Plaintiffs' reliance on Defendants' misrepresentations was a substantial factor in causing this harm.

FIFTH CAUSE OF ACTION

Negligent Misrepresentation
(On behalf of all Plaintiffs and Class members)

1. Plaintiffs incorporate by reference all allegations in this Complaint and restate them as if fully set forth herein. Plaintiffs plead negligent misrepresentation in the alternative to their claim of fraudulent misrepresentation in the event that Defendants' misrepresentations are found to be unintentional.

2. Insurance companies have statutory and common law obligations to provide accurate and complete information about their health insurance plans.

3. In the course of their business, Defendants made false statements and omissions of material facts to Plaintiffs and Class members by publishing and disseminating misleading informational and marketing materials prior to and during the open enrollment periods.

Defendants' misrepresentations were conveyed in Defendants' provider directory and other marketing and publicly available materials. The provider directory itself, on which Plaintiffs, as well as other members and prospective members, were directed to rely and did rely, intentionally inflated and misled them regarding the breadth and adequacy of the provider network and the availability of behavioral health providers who were taking new patients.

4. The omissions from these same materials include, *inter alia*, any reference to the limited number of behavioral health providers who are actually in-network with Defendants, accepted Defendants' insurance, and were available to see new patients, and to the fact that members and prospective members are forced to utilize out-of-network providers—and incur substantial costs—when they need behavioral health services.

5. False representations include, *inter alia*, that Defendants have an adequate network of providers; that providers listed on the provider directory as being in-network and available are in-network and available; that providers listed as accepting new patients actually accept new patients; that there are sufficient and available behavioral health care providers in that network; that members can rely on the directory to find and contact providers with the listed qualifications offering the listed services; that Defendants regularly update the directory; and that behavioral health care coverage is comprehensive and easily accessible.

6. Omitted and concealed from the representations were material and relevant facts that Plaintiffs and Class members would have used in selecting their health insurance plans including, *inter alia*, the extent of inaccuracies in the provider directory; the true breadth of the provider network; the likelihood that a member seeking behavioral health care would have to obtain out-of-network treatment, and the costs of such services; and the number of hours and expenditures that would be needed to find appropriate behavioral health care.

7. Defendants supplied this false information for the guidance of members and potential members in their business transactions.

8. Plaintiffs and Class members detrimentally relied on these false statements and omissions regarding the services and benefits that would be delivered to them as a result of choosing Defendants' plan. Plaintiffs and Class members chose to enroll in Defendants' plan (instead of better, cheaper options) based on the misinformation Defendants provided about their provider networks.

9. Plaintiffs and Class members reasonably and justifiably relied on Defendants' representations and omissions, as Defendants had unique knowledge of the facts underlying their representations.

10. Plaintiffs and Class members acted upon Defendants' representations and omissions, relying on them as the truth.

11. These false statements and omissions, when considered as a whole from the perspective of a reasonable consumer, conveyed that Defendants' provider directory was, as federal law and state law require, accurate and broad, and that behavioral health care would be covered to the full extent that Defendants had represented. A reasonable consumer would—and Plaintiffs and Class members did—attach importance to such representations and were induced to enroll in Defendants' health insurance as a result. These misrepresentations and omissions related to material facts that would influence a prospective member's decision to enroll in coverage through Harvard Pilgrim.

12. These false statements and omissions alleged herein materially misleading. Defendants led Plaintiffs and Class members to believe that their network of available providers was adequate and robust in order to induce them to enroll in, and remain enrolled in, their health

insurance plans. In reality, however, these misrepresentations and omissions prevented Plaintiffs and Class members from receiving promised care. These misrepresentations allow Defendants to reap enormous financial gain through increased income (by way of premiums paid), and reduced costs (by way of delayed, forgone, and unreimbursed care and avoidance of the expenses that would be incurred by creating and maintaining robust a provider network and an accurate provider directory).

13. Defendants failed to exercise reasonable care in making these false statements and omissions. Defendants, as parties to the contracts with in-network providers and as administrators of the provider networks, had access to all the information necessary to maintain an accurate provider directory. Likewise, Defendants continued to make the false statements and omissions even after Plaintiffs, other Class members, and other consumers notified Defendants of the inaccuracies in the directory and the difficulties members face when trying to locate in-network behavioral health care.

14. Upon information and belief, Defendants' competitors offer health insurance plans that are cheaper and furnish access to more robust mental health provider networks and directories that more accurately represent their provider networks.

15. These misrepresentations have directly and proximately caused Plaintiffs and Class members significant harm, including pecuniary losses. Among other injuries, Defendants' misrepresentations have caused millions of dollars in damages; denied Plaintiffs the benefits to which they were entitled under their health plans and for which they paid premiums (most notably, coverage for in-network behavioral health care and access to the supposedly broad networks of available providers); forced Plaintiffs and Class members to delay and/or forgo crucial and necessary behavioral health care; caused Plaintiffs and Class members to pay inflated

premiums for illusory benefits; caused Plaintiffs and Class members to incur significant out-of-pocket expenses for out-of-network provider payments, which greatly exceed the costs Plaintiffs would have incurred for the same services from in-network providers; caused Plaintiffs and Class members to reduce spending on necessities and other life costs; induced Plaintiffs and Class members to enroll in Defendants' health insurance plans instead of better and/or cheaper plans; prevented Plaintiffs and Class members from making informed financial and health care decisions; and caused Plaintiffs and Class members to suffer severe emotional and psychological distress due to the unsuccessful provider search and their inability to receive treatment for themselves and their loved ones. Plaintiffs' reliance on Defendants' misrepresentations was a substantial factor in causing this harm.

SIXTH CAUSE OF ACTION

Unjust Enrichment

(On behalf of all Plaintiffs and Class members)

16. Plaintiffs incorporate by reference all allegations in this Complaint and restate them as if fully set forth herein, except those allegations regarding the existence of enforceable contracts requiring Defendants to provide Plaintiffs with an accurate provider directory and adequate mental health provider network. Plaintiffs assert this cause of action for unjust enrichment in the alternative to their breach of contract claims.

17. Harvard Pilgrim has been and continues to be significantly and unjustly enriched as a result of its inaccurate provider directory and inadequate behavioral health provider network. Because it portrayed its provider network as robust and behavioral health coverage as comprehensive and easily accessible, Plaintiffs and countless other individuals selected Defendants' coverage over other (better and/or cheaper) plans, paid premiums commensurate with

the purportedly robust provider network, and did not receive the coverage or care to which they were entitled. As a result, Defendants' market share and profits increased and their costs decreased, thus unjustly enriching it at Plaintiffs' and Class members' expense. Defendants' lies artificially inflated the price of, and induced Plaintiffs to enroll in, Defendants' health insurance plans, which increased the premiums paid to Defendants.

18. Plaintiffs and Class members have conferred a benefit on Harvard Pilgrim by enrolling in its health insurance plans and thereby directing some or all of their insurance premiums to Defendants.

19. In exchange for the benefits conferred on Harvard Pilgrim, Plaintiffs and Class members reasonably expected to receive access to care through a network of providers that was as robust as Harvard Pilgrim advertised.

20. Plaintiffs and Class members have further conferred a benefit on Defendants because Defendants' inaccurate and inadequate network forces Plaintiffs and Class members to pay a portion of the behavioral health care expenses that Defendants represented would be covered. Effectively, Harvard Pilgrim represents that its insurance broadly covers behavioral health care, including care from providers listed in its directory, yet its bait-and-switch tactics ensure that it does not pay the full costs of actually covering behavioral health care services.

21. Defendants had an appreciation and knowledge of the benefits conferred on them by Plaintiffs and Class members.

22. Defendants have thus enriched themselves by reaping the benefits of increased membership, while reducing or eliminating their own coverage, reimbursement, and other financial duties. These and other benefits were obtained at the expense of Plaintiffs and Class members, who did not receive the full value of what Defendants promised.

23. In addition, Defendants' inflated behavioral health provider network makes it appear that Harvard Pilgrim complies with federal and state statutory and regulatory requirements that their provider network be sufficient, adequate, and accurately reflected in the directory, thereby saving Defendants the costs of actual compliance with these requirements and shielding them from government investigation, and the associated costs, at the expense of their members.

24. It is inequitable and unjust for Defendants to retain the benefits from falsely portraying their provider network in a way that increases enrollment while decreasing Defendants' obligations to do exactly what they say they will with respect to providing coverage for behavioral health treatment.

25. These expenses and inconveniences should have been borne by Defendants. The costs saved and profits earned by Defendants as a result of their misconduct should be disgorged.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that judgment be entered as follows:

a. declaring that the instant action may be maintained as a class action under Massachusetts Rule of Civil Procedure 23, certifying the Class and Sub-Classes as requested herein, designating Plaintiffs as the Class Representatives, and appointing the undersigned counsel as Class Counsel;

b. awarding all injunctive relief permitted by law or equity;

c. awarding compensatory damages, restitution, disgorgement, and any other relief permitted by law or equity;

d. awarding statutory damages and penalties in addition to actual damages;

e. awarding treble damages;

f. awarding punitive damages in an amount deemed appropriate by the Court;

g. awarding Plaintiffs and the Class pre-judgment and post-judgment interest;

h. awarding Plaintiffs reasonable attorneys' fees and costs; and

i. awarding Plaintiffs and the Class such other relief as this Court may deem just and proper under the circumstances.

* * *

DEMAND FOR JURY TRIAL

Plaintiffs hereby demands a trial by jury.

Dated: May 6, 2026

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April 4, 2026

Patrick Gilligan
President

Point32 Health, Inc.
1 Wellness Way
Canton, MA 02021

HPHC Insurance Company, Inc.
1 Wellness Way
Canton, MA 02021

Dear Mr. Gilligan,

This is a formal demand letter sent to you pursuant to Massachusetts General Laws Chapter 93A, Section 9. We represent Jessica Bousquet, a policy holder of Harvard Pilgrim Health Care ("HPHC"), a wholly owned subsidiary of Point32 Health in Canton, Massachusetts.

HPHC aggressively markets, advertises, and sells health insurance policies to the public in Massachusetts. To attract and retain customers, HPHC publishes directories of mental health providers who purportedly accepted Harvard Pilgrim insurance. Those providers are listed as "in-network"; that is, HPHC represents that the providers would offer services to HPHC policyholders and receive payment from the insurance company directly, not the customer. Patients would therefore pay either nothing, or a minimal co-pay for mental health services.

But those directories are grossly inaccurate. Many providers are listed with phone numbers that do not work, making it impossible to reach anyone, let alone schedule an appointment. Many other providers are listed as "in-network" mental health providers, but do not actually accept HPHC insurance. And for many other listed providers, even if they accept the HPHC insurance, most are not accepting new patients. As a consequence, HPHC policy holders cannot get the mental health services that HPHC promises would be available. The mental health providers list is, in practice, a "ghost network."

In May of 2022, Jessica Bousquet chose to enroll in a Harvard Pilgrim Health Care plan because HPHC promised robust in-network coverage for mental health services. Ms. Bousquet suffered from anxiety and needed consistent mental health treatment and affordable care. Her central criteria for selecting a plan was access to adequate in-network mental health services. She paid approximately $200 a month for her premium and a $20 co-pay for in-network care.

Her coverage began on July 1, 2022. Right away, she started to call mental health providers listed as "in-network" on the HPHC directory. Most providers did not return her phone calls. Other numbers turned out to be disconnected. When providers answered, they told Ms. Bousquet

that the practice either could not accept new patients or did not, in fact, take "in-network" HPHC insurance. Ms. Bousquet repeated this exercise monthly for almost 18 months, seeking a provider with increasing desperation. She would check HPHC's public directory of in-network mental health providers. She would call at least two dozen of those providers. All would either never return her call or indicate that they could not accept her as an in-network patient. Ms. Bousquet was only able to secure an in-network mental health provider in November 2023.

Ms. Bousquet suffered substantial harm because of HPHC's misrepresentations. She paid significant premiums for health insurance that did not cover the essential services she was promised. For a time, she forewent therapy and her condition worsened.

Recently, on behalf of Ms. Bousquet, her counsel conducted a "secret shopper" study to determine if the ghost network conditions persist. It does. Replicating Ms. Bousquet's search for care, researchers found that an 85% ghost rate persists today; that is, HPHC still publishes a mental health provider directory in which 85% of listed "in-network" providers are not, in practice, offering in-network services.

HPHC knows, or should have known, that its ghost network of mental health providers is inaccurate. It willfully maintains databases that misrepresent to new consumers considering its plans, and to current customers seeking care, that policies offer robust in-network mental health coverage. HPHC fails to disclose a true and accurate list of in-network providers. It does so to win new paying customers, and to induce existing account holders to renew their policies. A class of similarly situated policy shoppers and holders suffered harm similar to Ms. Bousquet in reliance on similar misrepresentations form HPHC.

HPHC has violated G.L. c. 93A in the following respects, among others:

- By affirmatively misrepresenting to new customers that a policy included an adequate and robust number of in-network mental healthcare providers, HPHC committed unfair and deceptive acts and practices, and thereby violated state and federal law, including but not limited to, 15 U.S.C., §45A, G.L. c. 93A, § 2, G.L. c. 176D § 3, 940 CMR 3.02, 940 CMR 3.05, and 940 CMR 3.16.

- By knowingly failing to update its in-network databases and ensure their accuracy, HPHC violated G.L. c. 93A, § 2 and 15 U.S.C., §45A, G.L. c. 93A, § 2, G.L. c. 176D § 3, 940 CMR 3.02, 940 CMR 3.05, and 940 CMR 3.16, and thereby committed unfair and deceptive acts and practices.

HPHC made, and continues to make, these misrepresentations recklessly, willfully, and knowingly. As a party to the contracts with in-network providers and as administrators of the provider networks, HPHC has access to all the information necessary to maintain accurate network directories, and continues to misrepresent the directory even after being notified of the inaccuracies therein and the difficulties members face when trying to locate in-network behavioral health care.

In light of the foregoing, Ms. Bousquet demands that HPHC make her whole, including providing all compensation and remedies available under G.L. c. 93A, § 9, including returning the cost of her premium and any other out-of-pocket costs. She also demands that HPHC make whole members of a similarly situated class of policy holders and shoppers.

Under Chapter 93A, you have thirty (30) days from your receipt of this letter to respond with a reasonable offer of settlement. If you fail to do so, that statute provides that you will be liable for multiple damages and the reasonable attorney fees incurred by Ms. Bousquet for the prosecution of this action.

Sincerely,

Ana Muñoz
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cc.

Steve Cohen, Anna Menkova, Andrea Nishi, Julia Levi, Pollock Cohen LLP

Jake Gardener, Walden Macht Haran & Williams LLP