UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SWERLING MILTON WINNICK PUBLIC INSURANCE ADJUSTERS, INC.,

Plaintiff,

v.

VELOCITY RISK UNDERWRITERS, LLC,

Defendant.

C.A. No. 1:26-cv-12095

MEMORANDUM OF LAW IN SUPPORT OF
VELOCITY RISK UNDERWRITERS, LLC'S MOTION TO DISMISS

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Defendant Velocity Risk Underwriters, LLC ("Velocity") moves to dismiss with prejudice the Complaint (Dkt. No. 1-1 at pages 6–34 of 205) filed by Plaintiff Swerling Milton Winnick Public Insurance Adjusters, Inc. ("SMW") for lack of personal jurisdiction, lack of standing, failure to join necessary parties, and failure to state a claim. This case involves an insurance policy and parties to the policy that have no connection to Massachusetts. SMW is not a party to the policy yet asks the Court to reform the policy to strike a material provision and enjoin Velocity from enforcing that provision in the policy at issue and in all other policies containing the same provision. SMW cannot plead around the Complaint's fatal deficiencies, warranting dismissing with prejudice.

FACTUAL BACKGROUND

I. A Third Party Obtained Surplus Lines Insurance from Velocity.

Velocity is an insurance underwriter that specializes in excess and surplus insurance. *See* Compl. ¶ 20. Aquidneck Country Club (the "Club") – located in Rhode Island and not a party to this case – obtained a surplus lines policy from Velocity ("Policy").[1] *Id*. ¶¶ 24, 26. Because the Club obtained a surplus lines policy, the Club necessarily was "not able to purchase insurance in the regulated, 'admitted' market because admitted carriers will not insure" it. *Id*. ¶ 29.

Under the policy, the Club's insurance is provided by five insurance carriers, none from Massachusetts. *Id*. ¶ 65; Policy (Dkt. No. 1-1) at General Property Policy Declarations (page 81 of

[1] The Policy is Exhibit 2 to SMW's Memorandum of Law in Support of its Motion for Temporary Restraining Order and Preliminary Injunction ("TRO/PI Motion"). *See* Policy (Dkt. No. 1-1) at pages 75–164 of 205. The Court may consider the Policy at the motion to dismiss stage because its terms are the bases of the claims against Velocity, it is quoted and referred to extensively in the Complaint (Compl. ¶¶ 26, 32–37, 39, 45, 65–67, 73, 77, 79–81, 83, 87–89, 93, 97, 100, 104, 107, 113, 116, 124–125, 127–131, 133–135, 143), and it is part of the record before the Court with respect to the TRO/PI Motion. *See Mavel, a.s. v. Rye Dev., LLC*, 626 F. Supp. 3d 331, 336 n.3 (D. Mass. 2022) ("On a motion to dismiss, the court may properly take into account . . . documents that are central to plaintiff's claim; and documents that are sufficiently referred to in the complaint.") (cleaned up).

205) (identifying insurers in Ohio, Tennessee, Texas, and London). The premium that the Club paid for coverage under the Policy reflects the terms of the Policy. Compl. ¶ 27 ("The cost of the coverage, including premium . . . totaled over $90,000."). An express condition of payment for a loss is that the Club must "compl[y] with all of the terms of this POLICY." Policy (Dkt. No. 1-1) at VRU Commercial Property Comprehensive Form Section IV (page 104 of 205); Compl. ¶ 36. One of those terms is the Anti-Public Adjuster Endorsement (the "Endorsement"), which states:

> It is understood and agreed that a condition of this **POLICY** is that the **NAMED INSURED** shall not hire, engage, retain, contract with, or otherwise utilize the services of a public adjuster, whether or not licensed in the state where the property is located or any other jurisdiction to inspect, evaluate, or adjust any loss covered by the **POLICY**.

Policy (Dkt. No. 1-1) at Anti-Public Adjuster Endorsement (page 162 of 205) (emphasis in original); *see also* Compl. ¶ 45.

II. There Was a Fire on the Property of the Third-Party Insured.

In March 2026, there was a fire at the Club that allegedly damaged a building and its contents. Compl. ¶¶ 24–25. SMW, a public adjuster, claims that the Club "approached" SMW "for assistance in making an insurance claim for [the] property damaged caused by [the] . . . fire." *Id.* ¶ 9; *see also id.* at ¶ 43 ("[T]he Club wants to retain SMW as its Public Adjuster."). SMW asserts, without supporting facts, that "when the Endorsement and its possible ramifications on coverage were brought to the [Club's] attention, it decided not to retain SMW to adjust the Loss because of the Endorsement." *Id.* ¶ 11. SMW also alleges that "the Club determined it would be best served by retaining a Public Adjuster to adjust the Loss" without providing any facts establishing how SMW has knowledge of a third party's supposed decision-making. *Id.* ¶ 39; *id* ¶ 43 (baldly claiming that the Club "[k]now[s] that SMW possessed the necessary licenses, qualifications, and expertise to protect its interests"). SMW further hypothesizes that unidentified insureds that have policies with the Endorsement will want to, but cannot, hire SMW. *Id.* ¶ 83.

III. SMW Makes Unsupported Allegations About Velocity's Enforcement of the Endorsement Against the Club and Other, Unidentified Third-Party Insureds.

The Complaint is devoid of any facts describing communications between the Club and Velocity about the Endorsement or the Club's supposed interest in retaining SMW. Instead, the Complaint draws bare conclusions that "Velocity is aware that the Club wishes to hire SMW," but, "per Velocity's Endorsement and publicly known business practices, the Club has been threatened with cancellation of its coverage if it contracts with SMW." *Id*. ¶¶ 123–24. SMW provides no facts about how Velocity is aware of the Club's "wishes" or when and how the Club was "threatened." Indeed, the Complaint does not describe any effort made by Velocity to enforce its contractual rights under the Policy, including under the Endorsement.

The Complaint relies on unsupported supposition concerning Velocity's enforcement of the Endorsement on unspecified third-party insureds. *See id*. ¶¶ 44, 59–61, 63, 74–76. For example, SMW alleges that "Velocity has publicly taken the position that it requires insureds to accept the Anti-Public Adjuster Endorsement" without describing any such publicity. *Id*. ¶ 61.

IV. SMW Seeks to Reform the Policy, Velocity's Other Surplus Lines Policies, and Obtain Money Damages from Velocity.

SMW, which is not a party to the Policy, filed the Complaint and the TRO/PI Motion seeking to reform the Policy to exclude the Endorsement, to reform all of Velocity's other policies containing the Endorsement by excluding it, and to obtain money damages against Velocity, including both compensatory and punitive damages, plus attorneys' fees. SMW alleges that the Endorsement is unfair and deceptive and amounts to a "boycott" of public adjusters.

The Complaint asserts six causes of action: Count 1 - Violation of G.L. c. 93A, § 11; Count 2 - Violation of G.L. c. 93A, § 11 and G.L. c. 176D, § 3(9); Count 3 - Unlawful Restraint of Trade under G.L. c. 93A, § 11 and G.L. c. 176D, § 3(4); Count 4 - Tortious Interference with Advantageous Business Relationship; Count 5 - Civil Conspiracy (Coercive Power); and Count 6

- Declaratory Judgment under G.L. c. 231A, § 1. In the Prayer for Relief, SMW requests: (1) a preliminary and permanent injunction against Velocity excising the Endorsement from the Policy and prohibiting Velocity from enforcing it (*see also* Compl. ¶¶ 93, 100); (2) a declaratory judgment to excise the Endorsement from all Velocity's policies and prohibit Velocity from enforcing it against all insureds; (3) "actual damages"; (4) multiple damages and attorneys' fees under G.L. c. 93A; and (5) a waiver of the security required under Mass. R. Civ. P. 65(c) for entry of a restraining order or preliminary injunction.

PROCEDURAL BACKGROUND

On April 21, 2026, SMW filed the Complaint in Norfolk County Superior Court and the TRO/PI Motion on April 23. Dkt. No. 1-1 at pages 1–199 of 205. On May 7, 2026, Velocity removed the case to this Court on the basis of diversity jurisdiction. Dkt. No. 1. At the time of removal, Velocity had not responded to the Complaint or the TRO/PI Motion. Dkt. No. 1-2 (State Court Docket). After removal, the parties filed a joint motion to set a briefing schedule on the TRO/PI Motion, and SMW filed an unopposed motion for the Court to schedule a hearing on the TRO/PI Motion. Dkt. Nos. 9, 10. The Court granted those motions, set Velocity's deadline to oppose the TRO/PI Motion as May 22, 2026 and SMW's deadline to file a reply as June 1, 2026, and scheduled a hearing on the TRO/PI Motion for June 4, 2026. Dkt. No. 11.

LEGAL STANDARDS

A plaintiff, who seeks to invoke the Court's jurisdiction, must "proffer[] facts that, if credited, would support all findings 'essential to personal jurisdiction.'" *Chen v. U.S. Sports Acad., Inc.*, 956 F.3d 45, 51 (1st Cir. 2020) (citation omitted). A complaint must be dismissed if it fails to establish that the court has general or specific personal jurisdiction over the defendant. *See* Fed. R. Civ. P. 12(b)(2); *United States v. Swiss Am. Bank, Ltd.*, 274 F.3d 610, 617 (1st Cir. 2001).

Under Fed. R. Civ. P. 12(b)(6), "a complaint must contain sufficient factual matter,

accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. Instead, the plaintiff must "plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief." *Id*. (quoting *Twombly*, 550 U.S. at 557). A complaint must be dismissed when plaintiffs fail to "nudge[] their claims across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570.

When a plaintiff lacks standing to assert a claim, that claim must be dismissed for lack of subject matter jurisdiction. *See Wiener v. MIB Grp., Inc.*, 86 F.4th 76, 82 n.8 (1st Cir. 2023) ("[W]e consider [a] motion to dismiss for lack of standing as made under Rule 12(b)(1), which permits motions to dismiss for lack of subject matter jurisdiction.") (citations omitted); *Hochendoner v. Genzyme Corp.*, 823 F.3d 724, 730 (1st Cir. 2016) ("[S]tanding is a prerequisite to a federal court's subject matter jurisdiction.") (citation omitted).

ARGUMENT

I. The Court Lacks Personal Jurisdiction Over Velocity.

The Complaint must be dismissed because the Court lacks general or specific personal jurisdiction over Velocity. *See Swiss Am. Bank, Ltd.*, 274 F.3d at 617.

First, general jurisdiction allows the court to "hear any claim against that defendant." *Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.*, 582 U.S. 255, 262 (2017). For an LLC like Velocity, general personal jurisdiction exists when its "affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home" there. *HC&D, LLC v. Precision NDT & Consulting, LLC*, 698 F. Supp. 3d 180, 193 (D. Mass. 2023) (quoting *Daimler*

AG v. Bauman, 571 U.S. 117, 138 (2014)). Velocity is a Delaware LLC with no members in Massachusetts. *See* Dkt. No. 1 (Notice of Removal) at 4–6. The Complaint does not allege that Velocity is otherwise "at home" in Massachusetts. *See Daimler*, 571 U.S. at 137–39 (defendant not "at home" in California because it neither was incorporated nor had its principal place of business there). The Complaint merely asserts that Velocity is "registered to do business in Massachusetts" and has a "registered agent for service of process in the Commonwealth." Compl. ¶ 19. Neither confers general jurisdiction. *See Fiske v. Sandvik Mining*, 540 F. Supp. 2d 250, 256 (1st Cir. 2008) ("[R]egister[ing] as a foreign corporation to do business in Massachusetts and ha[ving] named a registered agent for service of process in Massachusetts . . . standing alone, are not enough to confer general personal jurisdiction . . . "); *D.S. Brown Co. v. White-Schiavone, JV*, 537 F. Supp. 3d 36, 43 (D. Mass. 2021) (no general jurisdiction where defendant "registered to do business" and had a P.O. box in Massachusetts).

Second, the Court also lacks specific jurisdiction over Velocity. Specific jurisdiction exists only if "the ***suit*** . . . arise[s] out of or relate[s] to the defendant's contacts with the ***forum***." *Bristol-Myers*, 582 U.S. at 262 (cleaned up) (emphasis added). The plaintiff must show the relationship "arise[s] out of contacts that the '*defendant* himself' creates with the forum State," based on "defendant's contacts with the forum State itself, ***not the defendant's contacts with persons who reside there***." *Walden v. Fiore*, 571 U.S. 277, 284–85 (2014) (emphasis added) (citations omitted). The defendant's "suit-related conduct must create a substantial connection with the forum [s]tate." *Id*. at 284. As such, the Supreme Court has "consistently rejected attempts to satisfy the defendant-focused 'minimum contacts' inquiry by demonstrating contacts between the ***plaintiff (or third parties)*** and the forum State." *Id.* (emphasis added); *see also Asahi Metal Indus. Co. v. Superior Court of Cal., Solano Cty.*, 480 U.S. 102, 112 (1987) ("The 'substantial connection' . . . between

the defendant and the forum [] necessary for a finding of minimum contacts must come about by ***an action of the defendant purposefully directed toward the forum State***.") (emphasis added) (citation omitted). Here, SMW fails to identify an "activity or an occurrence" conducted by Velocity in Massachusetts that gave rise to their claims. *Bristol-Myers*, 582 U.S. at 262 (quotations and citation omitted). The Policy is unrelated to Massachusetts, and neither the Club nor any Insurer is in Massachusetts. Indeed, this case's sole connection to Massachusetts is that Plaintiff is here, which cannot confer specific jurisdiction over Velocity. *See Walden*, 571 U.S. at 284–85.

Because the Court does not have either general or specific personal jurisdiction over Velocity, the Complaint must be dismissed.

II. The Complaint Fails to State a Claim.

A. The c. 93A and c. 176D Claims in Counts 1–3 Must be Dismissed Because Velocity's Conduct Did Not Occur in Massachusetts.

1. The c. 93A Claims Fail.

A plaintiff cannot prevail under c. 93A, § 11 "unless the actions and transactions constituting the alleged unfair method of competition or the unfair or deceptive act or practice occurred primarily and substantially within the commonwealth." G.L. c. 93A, § 11, eighth para. This geographical requirement is met if "the center of gravity of the circumstances that give rise to the claim is primarily and substantially within the Commonwealth." *Kuwaiti Danish Computer Co. v. Digital Equip. Corp*., 438 Mass. 459, 473 (2003). A c. 93A, § 11 claim cannot survive if there is "no connection alleged to link the events at issue, or the harm allegedly suffered by Plaintiff, to the state of Massachusetts." *Weber v. Sanborn*, 502 F. Supp. 2d 197, 199–200 (D. Mass. 2007) (granting motion for judgment on the pleadings because "[t]he events that gave rise to this lawsuit are centered around the planning and development of property in New Hampshire, by New Hampshire and New Jersey residents and/or business entities, to bring Minor League

Baseball to the City of Manchester, New Hampshire") (quotation marks omitted); *see also Ascend Capital LLC v. Moolex*, No. 21-10972-FDS, 2023 WL 5153767, at *7 (D. Mass. Aug. 10, 2023) (dismissing c. 93A claim that did "not allege any facts suggesting that the relevant acts occurred 'primarily and substantially' within Massachusetts, beyond the unsupported assertion that Ascend Capital did business with Chaturvedi, who apparently lives in Massachusetts") (citation omitted); *Evergreen Partnering Grp, v. Pactiv Corp.*, No. 11-10807-RGS, 2014 WL 304070, at *4 (D. Mass. Jan. 28, 2014) (granting motion to dismiss where the plaintiff "fail[ed] to identify a single deceptive act or practice or 'dominant event' that is alleged to have occurred in Massachusetts").

While Velocity has the burden of proving that the "transactions and actions did not occur primarily and substantially within the commonwealth," G.L. c. 93A, § 11, eighth para., the Complaint makes clear that there is no nexus between Velocity's conduct and Massachusetts. Velocity is a Delaware LLC with a principal place of business in Tennessee. Compl. ¶ 19. The Policy covers property in Rhode Island (*id*. ¶¶ 24–26), the insured is in Rhode Island (*id*.), and the Insurers are in Ohio, Tennessee, Texas, and England (Policy (Dkt. No. 1-1) at General Property Policy Declarations (page 81 of 205)). As discussed in Argument § I, there is no allegation that any of Velocity's conduct occurred in Massachusetts, targeted Massachusetts, or had anything to do with Massachusetts. The only connection this case has to Massachusetts is that SMW is a Massachusetts corporation, but that is not enough to satisfy c. 93A's geographical requirement. *See American Mgmt. Servs., Inc. v. George S. May Int'l Co.*, 933 F. Supp. 64, 68 (D. Mass. 1996) ("[Plaintiff] contends it is entitled to the benefit of Chapter 93A solely because it is a Massachusetts domiciliary. . . . [T]his reasoning would denude the 'primarily and substantially' language of all meaning. Something more than a Massachusetts plaintiff is required to invoke the provisions of Chapter 93A, and that 'something' is absent here.") (citations omitted); *Ascend*

Capital, 2023 WL 5153767 at *7 (same); *accord Paradigm BioDevices, Inc. v. Viscogliosi Bros., LLC*, 842 F. Supp. 2d 661, 670 n.5 (S.D.N.Y. 2012) ("[P]laintiff cannot invoke the protection of Chapter 93A on the *sole* basis that Massachusetts, by being plaintiff's state of domicile, is the place of injury.") (emphasis in original) (citing *Yankee Candle Co. v. Bridgewater Candle Co.*, 107 F. Supp. 2d 82, 89 (D. Mass. 2000) ("When the place of injury, however, is the only factor weighing in favor of a claimant, the admonition of Massachusetts courts that liability under chapter 93A is not to be imposed lightly is particularly relevant.") (quotation marks and citation omitted)).

The center of gravity of this case is not in Massachusetts. Therefore, c. 93A, § 11 does not apply and SMW's c. 93A, § 11 claims must be dismissed.

2. The c. 176D Claims Fail.

Chapter 176D regulates "unfair methods of competition and unfair or deceptive acts or practices in the business of insurance." G.L. c. 176D, § 3. The statute does not contain a private right of action and may be enforced on a limited basis only through G.L. c. 93A. *See* G.L. c. 93A, § 9(1); *Silva v. Steadfast Ins. Co.*, 87 Mass. App. Ct. 800, 803 (2015). As an entity engaged in "trade or commerce" that may invoke c. 93A only through § 11, SMW's c. 176D claims are viable only if they comport with the geographical limitation set forth in c. 93A, § 11. *See Iantosca v. Benistar Admin Servs., Inc.*, 738 F. Supp. 2d 212, 220–21 (D. Mass. 2010) (dismissing c. 93A/c. 176D counterclaim because the alleged wrongdoing did not substantially occur in Massachusetts); *Amtrol, Inc. v. Tudor Ins. Co.*, No. 01–10461–DPW, 2002 WL 31194863, at *12 (D. Mass. Sept. 10, 2002) (conduct underlying c. 93A/c. 176D claim was not primarily and substantially in Massachusetts because "[t]he insurance contracts were neither negotiated, signed, nor performed in Massachusetts," "[n]one of the parties [was] incorporated or reside[d] in Massachusetts," and "[t]he alleged unfair statements were made outside of Massachusetts"). Like SMW's c. 93A claim, SMW's c. 176D claim fails because the "transactions and actions did not

occur primarily and substantially within the commonwealth," G.L. c. 93A, § 11, eighth para.

B. Count 4 Does Not Plausibly Allege Tortious Interference.

SMW's tortious interference claim fails because SMW did not allege Velocity engaged in any tortious conduct. A claim for tortious interference with an advantageous business relationship survives dismissal only if the plaintiff plausibly alleges "that (1) [it] had an advantageous relationship with a third party (e.g., a present or prospective contract or employment relationship); (2) the defendant knowingly induced a breaking of the relationship; (3) the defendant's interference with the relationship, in addition to being intentional, was improper in motive or means; and (4) the plaintiff was harmed by the defendant's actions." *Blackstone v. Cashman*, 448 Mass. 255, 260 (2007). The "interference resulting in injury to another" must be "wrongful by some measure beyond the fact of interference itself." *United Truck Leasing Corp. v. Geltman*, 406 Mass. 811, 816 (1990) (quotation marks and citation omitted). Courts have repeatedly held that the enforcement of a pre-existing contractual right does not constitute improper means or motive. *See Pembroke Country Club, Inc. v. Regency Sav. Bank, F.S.B.*, 62 Mass. App. Ct. 34, 40 (2004) ("The assertion by a party of its legal rights is not 'improper means' for purposes of a tortious interference claim."); *see also Skyhook Wireless, Inc. v. Google Inc.*, 86 Mass. App. Ct. 611, 622 (2014) (exercise of "contractual right[s]. . . did not constitute improper means.").

Here, SMW's claim that the Endorsement interferes with SMW's potential business relationship with the Club does not satisfy the second or third elements of tortious interference. The existence of the Endorsement in the Policy does not and cannot constitute tortious interference with a potential relationship between an insured and an unknown third-party claims adjuster. The Endorsement is a bargained-for provision in the Policy and, even though the Complaint does not allege that Velocity attempted to enforce the Endorsement with respect to the Club, Velocity has the right to enforce the Endorsement. The Complaint contains only unsupported supposition about

Velocity's potential enforcement of the Endorsement, including allusions to unidentified and hypothetical insureds other than the Club. *See, e.g.*, Compl. ¶ 44 ("Velocity will not adjust the claim if SMW is representing the Club due to the Anti-Public Adjuster Endorsement and it has an established practice of threatening cancellation of coverage if its insureds retains a Public Adjuster."), ¶ 63 ("Velocity would prefer to negotiate directly with insureds rather than with Public Adjusters."), ¶ 74 ("Velocity's adjusters are instructed to refuse any contact from insureds' Public Adjusters."); *see also id*. ¶¶ 59–61, 73, 75–76 (all making allegations, without any supporting detail, about Velocity's alleged policy of enforcing the Endorsement, none of which is tied to the Club or SMW). Even if Velocity enforced the Endorsement against the Club (including a threat of litigation), that is not enough to make out a tortious interference claim. *See Pembroke*, 62 Mass. App. Ct. at 40 (rejecting plaintiff's argument that the implied threat in a cease and desist letter "to comply voluntarily" or face litigation constitutes tortious interference because "such litigation would be in the service of that party's legal rights").

The Southern District of New York recently arrived at a similar conclusion. In *Barbato v. Interstate Fire & Cas. Co.*, a public adjuster and a public adjuster association sued insurers for tortious interference based on an anti-public adjuster endorsement in their policies. No. 25-cv-5312 (JGK), 2025 WL 3632840 (S.D.N.Y. Dec. 15, 2025). The court dismissed the tortious interference claim, concluding that the endorsement cannot constitute "wrongful conduct" because it was not prohibited by applicable law. *Id*. at *4–5 ("Because the plaintiffs do not allege plausibly that the APA clause violates any law, and because the defendants' enforcement amounts to no more than the exercise of their contractual rights, the complaint fails to allege wrongful conduct sufficient to support a tortious interference with contract claim."). The court further explained that, because the endorsement was a legal exercise of the insurers' economic self-interest, the public

adjusters could not state a tortious interference with economic advantage claim, which required the insurers to use "dishonest, unfair, or improper means." *Id.* at *5. The same principle applies here. Because there is no law prohibiting the Endorsement, the Endorsement and Velocity's alleged enforcement of it constitute nothing more than Velocity's lawful exercise of its right to freedom of contract and enforcement of its contractual rights.

C. Count 5 Fails to State a Claim for Coercive Civil Conspiracy.

SMW's coercive civil conspiracy claim in Count 5, which is based on an alleged restraint of trade, must be dismissed because it is preempted by the Massachusetts Antitrust Act (the "Antitrust Act"). SMW is barred from bringing a claim under the Antitrust Act because Velocity's conduct did not "occur" in or have an "impact primarily and predominantly within the commonwealth." G.L. c. 93, § 3. Even if the claim were not preempted, no facts were pled to plausibly allege that Velocity had coercive power over SMW or acted in unison with the Insurers.

1. The Civil Conspiracy Claim Is Preempted by Statute.

The Antitrust Act, G.L. c. 93, §§ 1–14A, preempts "a common law claim of civil conspiracy in restraint of trade." *Ciardi v. Hoffman-LaRoche, LTD*, No. 993244, 2000 WL 33162197, at *3–4 (Mass. Super. Ct. Sept. 29, 2000); *see also Boos v. Abbott Labs.*, 925 F. Supp. 49, 54 (D. Mass. 1996) ("[T]he [Massachusetts] legislature intended, by its passage of comprehensive antitrust legislation, to replace the common law regime and to specify fully, by statute, the remedies available for acts which would have violated the common law."). Under the Antitrust Act, "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce in the commonwealth shall be unlawful." G.L. c. 93, § 4.

SMW's conspiracy claim is based on a restraint of trade theory. Indeed, SMW alleges that the supposed conspiracy among Velocity and the Insurers to include the Endorsement in the Policy prevented the Club from retaining SMW. *See* Compl. ¶¶ 130, 136–38. This is a classic example of

an alleged conspiracy to "restrain[] trade and commerce," which "fall[s] squarely within the scope of th[e] statutory language." *Ciardi*, 2000 WL 33162197 at *3 (dismissing conspiracy claim as preempted by the Antitrust Act). Therefore, Count 5 is preempted by the Antitrust Act.

Notably, SMW cannot assert a claim under the Antitrust Act because the Act does not "apply to any course of conduct, pattern of activity, or activities unless they occur and have their competitive impact primarily and predominantly within the commonwealth." G.L. c. 93, § 3. As explained above in Argument §§ I and II.A.1, Velocity's conduct did not occur in Massachusetts and had no connection to Massachusetts.

Because SMW's conspiracy claim is preempted by the Antitrust Act, Count 5 must be dismissed. If SMW seeks leave to amend the complaint to assert an Antitrust Act claim, that request should be denied because SMW does not have a viable claim under the Act.

2. The Complaint Does Not Plausibly Allege an Agreement or Coercion.

Even if Count 5 is not preempted, the Complaint does not allege facts establishing the necessary elements of a coercive conspiracy. Massachusetts has "a 'very limited cause of action for a coercive type of civil conspiracy. To state a claim for civil conspiracy by coercion, a 'plaintiff must allege that defendants, acting in unison, had some peculiar power of coercion over plaintiff that they would not have had if they had been acting independently.'" *McLaughlin v. J-Pac, LLC*, No. 10–2594–BLS1, 2011 WL 1758945, at *2 (Mass. Super. Ct. Apr. 14, 2011) (quoting *Aetna Cas. Sur. Co. v. P & B Autobody*, 43 F.3d 1546, 1563 (1st Cir. 1994), *abrogated in part on other grounds as recognized by United States v. Velazquez-Fontanez*, 6 F.4th 205, 213 n.2 (1st Cir. 2021)); *see also Kurker v. Hill*, 44 Mass. App. Ct. 184, 188 (1998) ("The element of coercion" exists "where the wrong was in the particular combination of the defendants . . . ") (citation omitted). A claim for conspiracy by coercion must be dismissed where the plaintiff does "not allege[] that the defendants held unique coercive power over [it]." *McLaughlin*, 2011 WL 1758945

at *2 (dismissing complaint on that ground).

Starting with coercion, the Complaint does not contain ***any*** allegation that Velocity coerced SMW to do anything. The Complaint does not even allege that SMW and Velocity had any interaction, coercive or not. Instead, the Complaint alleges that "Velocity and the Insurers are able to place undue economic pressure on ***its insured*** to accede to Velocity's demands to cut ties with its chosen Public Adjuster." Compl. ¶ 132. This is an allegation that the Club was somehow coerced, which, as set forth below in Argument § III, SMW does not have standing to assert.

The Complaint also fails to allege facts showing that Velocity acted in unison with the Insurers. The Complaint contains only a circular and conclusory assertion that because the Insurers entered into the Policy, Velocity and the Insurers must have had an "an agreement . . . to add the Endorsement to the Policy." Compl. ¶¶ 66–67; *see also id*. ¶¶ 130–31 (repeating those allegations). This is not sufficient to allege that Velocity and the Insurers acted in unison.

III. SMW Lacks Standing to Assert Count 5.

Count 5 for "Civil Conspiracy (Coercive Power)" must be dismissed for the additional reason that SMW improperly asserts a claim on behalf of the Club. "[A] plaintiff has standing to assert only his own rights, not those of third parties." *Washington Legal Found. v. Mass. Bar Found.*, 993 F.2d 962, 972 n.6 (1st Cir. 1993); *Playboy Enters., Inc. v. Pub. Serv.Comm'n of P.R.*, 906 F.2d 25, 36 (1st Cir. 1990) ("A plaintiff generally must assert its own legal rights, without resting its claim for relief on the rights of third parties.") (citing *Secretary of State of Md. v. J.H. Munson Co.*, 467 U.S. 947, 955 (1984)). This "rule against *jus tertii* standing" is based on "the prudential, discretionary limit federal courts have imposed on their exercise of Article III powers." *Playboy Enters.*, 906 F.2d at 36.[2]

[2] The exceptions to the prohibition against third-party standing do not apply. *See Secretary of State of Md.*, 467 U.S. at 956 (recognizing exception when "practical obstacles prevent a party from asserting rights on

The allegations in Complaint ¶¶ 130 and 132–137 establish that SMW seeks to assert third parties' rights. These paragraphs address alleged harms to the Club or "insureds" generally. For example, SMW alleges that "Velocity and the Insurers are able to place ***undue economic pressure on its insured*** to accede to Velocity's demands . . . " *Id*. ¶ 132 (emphasis added). SMW also contends that "***[w]ere the insured*** to decide to fight the Endorsement and demand arbitration, ***it would be facing*** the possibility of fighting multiple insurers in an arbitral setting," and "[a]ny ***attempt by the insured*** to mount a legal challenge to the Endorsement would result in huge legal expense, uncertainty, and likely years long delays in making repairs to the damaged property and receiving compensation for the Loss." *Id*. ¶¶ 134–135 (emphasis added). These allegations about an ***insured's*** potential costs and delays cements that SMW is improperly challenging the Endorsement on behalf of the Club and unidentified insureds. Count 5 must be dismissed.

IV. Count 6's Claim for Declaratory Judgment Fails for Multiple Reasons.

A. SMW Lacks Standing to Obtain a Declaratory Judgment.

Count 6 seeks a declaratory judgment reforming the Policy by nullifying the Endorsement. SMW lacks standing to obtain such a declaration. Under 28 U.S.C. § 2201, this Court "may declare the rights and other legal relations of any interested party seeking such declaration." The purpose of declaratory relief is two-fold: first, to "serve a useful purpose in clarifying and settling the legal relations in issue," and second, to "terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding." *Boston's Child. First v. Bos. Sch. Comm.*, 183 F. Supp. 2d 382, 396 (D. Mass. 2002) (quotation marks and citation omitted). SMW lacks standing to seek

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behalf of itself. In such a situation, the Court considers whether the third party has sufficient injury-in-fact to satisfy the Art. III case-or-controversy requirement, and whether, as a prudential matter, the third party can reasonably be expected properly to frame the issues and present them with the necessary adversarial zeal.") (citation omitted); *Playboy Enters.*, 906 F.2d at 37 (recognizing exception when there is "a special relationship . . . between the plaintiff and the third party whose rights are allegedly infringed, so that the infringement of the third parties' rights restricts the plaintiff's own rights.") (citations omitted).

this relief because it is not a party or third-party beneficiary under the Endorsement with any powers, privileges, or rights to be adjudicated.

A New Jersey appellate court recently addressed a nearly identical issue and affirmed dismissal of a complaint by public adjusters seeking a declaration that an insurer's anti-public adjuster endorsement was invalid. *See Barbato v. Interstate Fire & Cas. Co.*, No. A-0881-24, 2025 WL 3064287, at *1, *3–4 (N.J. App. Nov. 3, 2025) [hereinafter, "*Barbato NJ*"]. The court questioned whether public adjusters have standing to seek declaratory relief relating to the Endorsement because they are not parties to the insurance policy at issue and have no right to enforce it. *Id*. at *4 ("In their complaint, plaintiffs seek a determination that the APA Endorsement is void as against public policy . . . Having determined that plaintiffs have not pled a ripe claim, we need not reach the issue of whether, under the Act, a non-party to a contract may seek [declaratory] relief. This issue must await an actual controversy.").

Only "***intended*** beneficiaries" of an agreement may enforce it. *Miller v. Mooney*, 431 Mass. 57, 62 (2000) (emphasis in original) (citations omitted); *see also Pollak v. Federal Ins. Co.*, No. 13–12114–FDS, 2013 WL 6152335, at *5 (D. Mass. Nov. 21, 2013) (dismissing a c. 93, § 11 claim asserting that an insurer's "refusal to settle his insurance claim constitute[d] an unfair and deceptive insurance practice prohibited by Mass. Gen. Laws ch. 176D § 3(9)" because the "plaintiff [wa]s not an intended beneficiary" under the policy). As in *Barbato NJ*, though Plaintiff claims to be affected by the Endorsement, it is neither a party to nor a third-party beneficiary of the Policy. 2025 WL 3064287 at *4. Instead of enforcing its own rights, Plaintiff seeks a determination involving the rights of the Club and all other insureds who have executed policies with Velocity that include the Endorsement. *See* Compl. ¶¶ 140, 143. If the Court allows Count 6 to survive, it will permit a stranger to a contract to invalidate its provisions without the Club (as

the insured) or the Insurers being named in the case. There is no jurisdictional basis for Plaintiff to seek or be granted a declaratory judgment under such circumstances.

B. SMW Failed to Join Necessary Parties.

Because SMW's requested declaratory judgment would reform all Velocity policies with the Endorsement, every insured and insurer under those policies are necessary parties. It is well-settled "that a 'party to a contract which is the subject of the litigation is a necessary party.'" *Downing v. Globe Direct LLC*, 806 F. Supp. 2d 461, 466 (D. Mass.) (citations omitted); *accord E.E.O.C. v. Peabody W. Coal Co*., 610 F.3d 1070, 1082 (9th Cir. 2010) ("[N]o procedural principle is more deeply imbedded in the common law than that, in an action to set aside a lease or a contract, all parties who may be affected by the determination of the action are indispensable.") (internal citations and quotation marks omitted)).

Accordingly, the insureds and insurers are indispensable parties under both prongs of Fed. R. Civ. P. 19(a)(1). *First*, under Rule 19(a)(1)(A), without the insureds and insurers, "the court cannot accord relief among [the] existing parties" because excising the Endorsement will materially alter every policy. *Second*, under Rule 19(a)(1)(B), SMW seeks to adjudicate the insureds' and insurers' rights, which will be "impair[ed] or impede[d]" without their participation. Those third parties have no notice that their rights are implicated here. Further, any insured can bring claims against Velocity where the insureds are located challenging the Endorsement, which exposes Velocity to the risk of inconsistent judgments.

SMW cannot reform ***any*** policy containing the Endorsement because none of the insureds or insurers that are parties to those policies is a party to this lawsuit. *See E.E.O.C.*, 610 F.3d at 1082; *CAB Realty, LLC. v. Early*, No. 13 MISC. 477418 (JCC), 2018 WL 19165972, at *5 (Mass. Land. Ct. Apr. 23, 2018) ("Plaintiff cannot prevail on its" claim to reform deeds where plaintiff failed to name the grantor "as a party to this lawsuit" or join the grantor under Mass. R. Civ. P. 19).

Velocity has not found a case where a Massachusetts court has reformed a contract where the contracting parties are not also parties to the case. Without including all insureds and insurers with policies that include the Endorsement, Count 6 cannot survive.

C. SMW Is Not Entitled to Declaratory Relief Because Counts 1–5 Fail.

A claim for declaratory judgment must be dismissed when the underlying claims on which it is based are dismissed. *See LIMO GmbH v. VulcanForms Inc.*, No. 24-cv-12838-DJC, 2025 WL 2146335, at *7 (D. Mass. July 28, 2025) ("[W]here LIMO's claims for breach of contract, breach of implied covenant of good faith and fair dealing and unjust enrichment claims fail, the Court cannot grant the declaratory judgment that LIMO seeks."); *Tyler v. Michaels Stores, Inc.*, 840 F. Supp. 2d 438, 452 (D. Mass. 2012) ("Tyler has failed here to plead sufficient facts to sustain either her chapter 93A claim or her unjust enrichment claim. The Declaratory Judgment Act is not an independent grant of federal jurisdiction, so dismissal of the underlying claims requires dismissal of the claim for declaratory relief as well.") (citations omitted). SMW seeks a declaratory judgment that the Endorsement is unenforceable because, among other reasons, it is an unfair method of competition, an unfair or deceptive act or practice, an unlawful restraint of trade, and against public policy. Compl. ¶ 143. It is predicated on the success of Counts 1–5, all of which must be dismissed as set forth in Argument §§ I–III. Therefore, Count 6 must be dismissed.

V. SMW Is Not Entitled to Injunctive Relief.[3]

SMW requests nationwide preliminary and permanent injunctions barring Velocity from enforcing the Endorsement with respect to all insureds. *See* Compl. at Prayer for Relief ¶ 2; *see also id*. ¶¶ 93, 100. Like with the declaratory judgment claim, SMW is not entitled to injunctive relief because all underlying claims fail. *See Power v. Connectweb Techs., Inc.*, No. 22-10030-

[3] Velocity's forthcoming opposition to the TRO/PI Motion will address these arguments in further detail.

JGD, 2023 WL 4019042, at *17 (D. Mass. Feb. 13, 2023) (plaintiff not entitled to an injunction because "plaintiff has failed to state a plausible claim . . . and cannot maintain a separate cause of action for injunctive relief in any event").

Moreover, SMW cannot establish any of the elements necessary to obtain a preliminary injunction because it cannot show that (1) it is "likely to succeed on the merits," (2) it "is likely to suffer irreparable harm in the absence of preliminary relief," (3) "the balance of equities tips in [its] favor," and (4) "an injunction is in the public interest." *Voice of the Arab World, Inc. v. MDTV Med. News Now, Inc.*, 645 F.3d 26, 32 (1st Cir. 2011) (quotation marks and citation omitted). "The movant's likelihood of success on the merits weighs most heavily in the preliminary injunction calculus." *Ryan v. U.S. Immigr. & Customs Enf't*, 974 F.3d 9, 18 (1st Cir. 2020).

Here, each element weighs against an injunction. *First*, for the reasons set forth in Argument §§ I–IV, SMW has not shown that it is likely to succeed on the merits.

Second, a plaintiff cannot satisfy the irreparable harm prong when money damages are sufficient to compensate the plaintiff. *See Together Emps. v. Mass Gen. Brigham Inc.*, 19 F.4th 1, 7 (1st Cir. 2021). SMW's only alleged injuries are that the Club did not retain it (Compl. ¶¶ 91, 98, 129, 136, 138) and unknown, hypothetical insureds may not retain it in the future (*id*. ¶ 83). These are potential business opportunities that SMW claims it lost, which, by definition, can be remedied by a money judgment. *See Nat'l Ass'n of Gov't Emps., Inc. v. Nat'l Emergency Med. Servs. Ass'n, Inc.*, 969 F. Supp. 2d 59, 73 (D. Mass. 2013). Indeed, SMW specifically alleges that public adjusters like itself are typically compensated "based on a percentage of the insurance claim settlement payment, generally about ten to twenty percent of the settlement amount." Compl. ¶ 57. The Complaint also expressly seeks an award of SMW's "actual damages," which further cements that money damages would be sufficient. *Id*. at Prayer for Relief ¶ 4. There are no allegations

establishing any irreparable harm that SMW may face absent injunctive relief.

Third, the equities weigh against an injunction because SMW's requested injunctive relief would reform the Policy and policies with untold other insureds. SMW is not a party to any of those policies, and the parties to those policies are not parties to this case. SMW seeks a broad injunction that would upend policies across the country that have no relationship to SMW, the Club, or Massachusetts. This harm to Velocity and potentially hundreds, if not thousands, of third parties greatly outweighs any indirect and theoretical harm to SMW.

Fourth, the Constitution enshrines the United States' policy of protecting the freedom of contract. *See* U.S. Const., Art. I, § 10, Cl. 1 ("No State shall . . . pass any . . . Law impairing the Obligation of Contracts."); *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 245 (1978) ("Contracts enable individuals to order their personal and business affairs according to their particular needs and interests. Once arranged, those rights and obligations are binding under the law, and the parties are entitled to rely on them."). Velocity's, insurers', and insureds' freedom of contract trumps any potential policy concerning the work of public adjusters.

CONCLUSION

The Complaint should be dismissed in its entirety with prejudice for lack of personal jurisdiction, failure to state a claim, lack of standing, and failure to join necessary parties.

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Respectfully submitted,

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