

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

CARING PROFESSIONALS, INC.,)
v.)
Plaintiff,)
NEW YORK STATE DEPARTMENT OF HEALTH,)
JAMES V. MCDONALD, in his official capacity as)
Commissioner of the New York State Department of)
Health, and, MICHAEL LEWANDOWSKI, in his)
official capacity as a representative of the New York)
State Department of Health's Office of Health)
Insurance Programs, and PUBLIC PARTNERSHIPS)
LLC,)
Defendants.)
Index No.: SUMMON
Venue is
York C.P.J.
substantial
occurred in
505 where
facilities in

SUMMONS

Venue is proper pursuant to New York C.P.L.R. § 503(c) because a substantial part of the events occurred in this county, and CPLR 505 where the Defendants have facilities involved in this action.

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to serve upon the undersigned Plaintiff's attorney
am Answer to the Verified Complaint in this action within twenty (20) days after service of the
Summons, exclusive of the day of service, or within thirty (30) days after service is complete if
this Summons is not personally delivered to you within the State of New York. In case of your
failure to answer, judgment will be taken against you by default for the relief demanded in the
Complaint.

Dated: January 15, 2025
New York, New York

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Defendants.)

VERIFIED COMPLAINT

Plaintiff Caring Professionals, Inc. (“Plaintiff” or “Caring Professionals”), by and through its attorneys, Benesch, Friedlander, Coplan & Aronoff LLP, for its Verified Complaint against Defendants New York State Department of Health (“DOH”), James V. McDonald in his official capacity as Commissioner of the DOH (“McDonald”), Michael Lewandowski, in his official capacity as a representative of the DOH’s Office of Health Insurance Programs (“Lewandowski”) (DOH, McDonald, and Lewandowski, together the “DOH Defendants”) and Public Partnerships, LLC (“PPL”) (DOH Defendants and PPL, which together are “Defendants”), allege as follows:

PRELIMINARY STATEMENT

1. For the past year, DOH Defendants have engaged in a campaign to drive out of business the hundreds of Fiscal Intermediaries (“FIs”) who are the administrative backbone of the Consumer Directed Personal Assistance Program (“CDPAP”) and serve as the necessary liaison between the patients and their chosen caretakers.

2. The campaign has a singular purpose, which is to create a monopoly for FI services in an out-of-state entity called PPL, which has a history of misrepresentations and mismanagement,

and which, unlike Caring Professions and other FIs being driven out of business, has absolutely no experience providing these services within New York State.

3. So unqualified and unprepared is PPL to assume the massive undertaking of managing monopoly-control over the hundreds of millions of dollars in CDPAP and thousands of vulnerable consumers who would depend on their services that Defendants had no plan for obtaining the names of the consumers who are the recipients of the services and their caretakers who provide such home healthcare services in time for the rollout of the new CDPAP monopoly framework.

4. Instead of developing a lawful plan to obtain this information on their own, Defendants colluded to misuse and abuse DOH's rule-making authority to force the same FIs who Defendants are putting out of business to turn over to them *for free* valuable, proprietary, and sensitive information, including social security numbers and personnel files (all without even obtaining the consent of those who they belong to) that Caring Professionals and other FIs spent years and extensive time, efforts, and energy building.

5. Compounding the abuse of this power is the strong-arm tactics employed by DOH Defendants designed to force Caring Professionals and other FIs with significant other Medical business to disclose this information, wrapped up in a bow, by January 15, 2025 or risk the total annihilation of every other aspect of their business that relies on Medicaid funding outside CDPAP.

6. Specifically, in the face of the fact that the DOH Defendants' directive to turn over this information violates the U.S. Constitution and several state laws and regulations, including those pertinent to CDPAP operations, DOH Defendants has threatened that failure to comply with the DOH directive would result in the termination and expulsion of any FI from the Medicaid program.

7. This lawsuit seeks declaratory and injunctive relief under various statutes and causes of action to enjoin the enforcement of this directive and for money damages against PPL for its role in usurping all of the FIs' services in the State of New York under CDPAP by unlawful means.

THE PARTIES

8. Caring Professionals is an FI under CDPAP which operates pursuant to the regulations of the DOH, including but not limited to 18 NYCRR §505.28 and has its principal place of business in Queens, New York.

9. Respondent DOH is the division of state government responsible for protecting public health by, among other things, implementing various regulations which impact the community at large. DOH maintains its headquarters in Albany, New York. Upon information and belief, DOH also maintains offices, including Local Departments of Social Services, throughout the state, including in this county.

10. Respondent McDonald is the current Commissioner of the DOH, with an office for the conduct of business located in Albany, New York. Upon information and belief, McDonald was directly involved in the drafting, passage, and enactment of the new CDPAP regulatory scheme, and will be directly involved in its implementation.

11. Respondent Lewandowski is the representative of the DOH Office of Health Insurance Programs who is designated as the person responsible for the initial implementation of the amended CDPAP regulatory scheme, which is effective April 2025. Upon information and belief and according to DOH Request for Proposal #20524, Lewandowski is also the DOH representative for all communications relating to the submission of written bids, written questions,

pre-bid questions, and debriefings, related to DOH Request for Proposal #20524. Lewandowski maintains an office and conducts business in Albany, New York.

12. Respondent PPL is a Georgia limited liability company which has a principal place of business in Alpharetta, Georgia. Based on information and belief, PPL also maintains offices and performs work throughout New York, including in this county.

JURISDICTION AND VENUE

13. This Court has authority to grant declaratory and injunctive relief pursuant to CPLR §§ 6301, 6313, and this Court's inherent equitable powers.

STATEMENT OF FACTS

A. IMPACTFUL HISTORY OF CARING PROFESSIONALS, INC.

14. Caring Professionals serves as an FI overseeing home health care services for countless diverse communities in New York—ranging from various ethnic and racial groups, seniors, people with disabilities, LGBTQ+ individuals, veterans, Holocaust survivors, and more.

15. FIs are organizations that assist with the financial and administrative aspects of CDPAP services, such as managing payroll and taxes, overseeing benefit administration, processing payments, managing personnel records. *See* New York Social Services Law § 365-f(4).

16. Since FIs are responsible for managing personnel records for residents participating in CDPAP, it is crucial that they remain faithful to their confidentiality obligations and trustworthy when guarding proprietary information.

17. The company is the brainchild of an immigrant nurse from Moscow, Russia who saw a void in care for various vulnerable groups aging around her.

18. Caring Professionals is also a licensed home care services agency which has operated in the State of New York since 1994. Caring Professionals offers services to its clients in over ten languages.

19. Importantly, Caring Professionals takes a unique approach to care provided in the home by prioritizing individual needs and cultural values.

20. Caring Professionals is undoubtedly an impactful and well-respected homecare provider and FI in the New York caregiving industry.

21. Because it is one of the most trusted services operating across New York State, Caring Professionals has entered into twenty-three (23) contracts with approximately twenty-one (21) Medicaid managed long term care plans in a majority of lower Hudson Valley counties and south in New York, and services over 5,000 New York residents.

22. One of the most impactful programs implemented by the DOH, along with McDonald and Lewandowski by virtue of their roles, is New York's longstanding CDPAP.

B. HISTORY AND PURPOSE OF THE CDPAP

23. CDPAP was established pursuant to Title XIX of the Social Security Act, 42 U.S.C. Ch. 7 (the "Medicaid Act"). The Medicaid Act is a joint state-federal program which provides comprehensive healthcare coverage to vulnerable populations.

24. Accordingly, states are authorized to develop personal care services as an optional state Medicaid plan pursuant to Section 1905(a)(24) of the Social Security Act and subject to various federal and statutory requirements. Such federal requirements are necessary to protect the interests of Medicaid recipients.

25. Moreover, The Centers for Medicare & Medicaid Services (“CMS”) operates with a purpose of guarding against fraud, waste, abuse, arbitrary state action, and ensures a competitive procurement process as it relates to Medicaid.

26. New York first adopted its Medicaid program in 1987. While the general framework previously existed, the New York legislature passed Social Services Law § 365-f, and implemented the State’s first CDPAP for its residents in 1995.

27. The purpose of the program is to allow chronically ill and/or physically disabled individuals receiving home care under the medical assistance program “greater flexibility and freedom of choice” when obtaining such services from various home health care aides—including Personal Assistants (“PAs”—and selecting FIs. *See* New York Social Services Law § 365-f (3).

28. The scope of services that are authorized under CDPAP include most tasks that can be provided by a personal care aide, home health aide, Licensed Practical Nurse, or Registered Professional Nurse. As a result, Medicaid recipients participating in CDPAP, also known as “Consumers,” (*see* 18 NYCRR § 505.28) are empowered to recruit, hire, and direct their own home care workers—including eligible family members and friends.

29. The Consumer Directed Personal Assistance Association of New York State (“CDPAANYS”) estimates that approximately 250,000 Medicaid beneficiaries are currently enrolled in New York’s CDPAP and that they are served by approximately 300,000 PAs working for over 600 different FIs.

C. THE ROLE OF FIs UNDER EXISTING FRAMEWORK OF CDPAP

30. When a local department of social services (“LDSS”) receives a request from a Consumer applying to participate in CDPAP, the DOH or a Medicaid Managed Care Organization

(“MMCO”) must assess the Consumer’s eligibility and determine a plan of care based on the type of care needed and the number of hours of assistance required. *See* 18 NYCRR §§ 505.28(d)-(e).

31. Once a plan of care is developed, FIs provide support services to the Consumers as set forth in the DOH regulations. *Id.* at § 505.28(j). These services include:

- (i) processing each consumer directed personal assistant’s wages and benefits including establishing the amount of each assistant’s wages; processing all income tax and other required wage withholdings; and complying with worker’s compensation, disability, and unemployment insurance requirements;
- (ii) ensuring that the health status of each consumer directed personal assistant is assessed prior to service delivery pursuant to 10 NYCRR § 766.11(c) and (d) or any successor regulation;
- (iii) maintaining personnel records for each consumer directed personal assistant, including time sheets and other documentation needed for wages and benefit processing and a copy of the medical documentation required pursuant to 10 NYCRR § 766.11(c) and (d) or any successor regulation;
- (iv) maintaining records for each consumer including copies of the social services district’s authorization or reauthorization;
- (v) monitoring the consumer’s or, if applicable, the consumer’s designated representative’s continuing ability to fulfill the consumer’s responsibilities under the program and promptly notifying the social services district of any circumstance that may affect the consumer’s or, if applicable, the consumer’s designated representative’s ability to fulfill such responsibilities;
- (vi) complying with the department’s regulations at 18 NYCRR § 504.3, or any successor regulation, that specify the responsibilities of providers enrolled in the medical assistance program;
- (vii) entering into a contract with the social services district for the provision of fiscal intermediary services; and
- (viii) entering into a department approved memorandum of understanding with the consumer that describes the parties’ responsibilities under the consumer directed personal assistance program.

32. There are two courses of reimbursement for FIs participating in CDPAP. If the Consumer being serviced is enrolled in a Fee-For-Service Medicaid program (“FFS”) through

his/her county LDSS, FIs receive Medicaid reimbursement based on (1) the number of direct care hours of consumer directed personal assistance services authorized for that consumer in a particular month and (2) the different levels in FI administrative costs associated with each tier of authorization. *Id.* at § 505.28(j)(3).

33. In contrast, FI compensation for Consumers enrolled in the CDPAP through a Medicaid Managed Care (“MMC”) program is governed by the terms of an underlying contract between the MMCO and FI.

34. Under the current CDPAP, Caring Professionals has contracts with both LDSS and private MMCOs.

D. CORRUPT CHANGES TO THE CDPAP

35. Caring Professionals has served as an FI since 2015.

36. In April 2024, the State Fiscal Year 2024-25 Enacted Budget planned an undisclosed and surprise amendment to Social Services Law Section 365-f(4-a) purporting to overhaul CDPAP to save the State \$500 million.

37. In June 2024 DOH Defendants began efforts to eliminate the current system of highly competitive and localized FIs into a single company monopoly by issuing Request for Proposals #20524: New York State Fiscal Intermediary Services (the “RFP”). A copy of the RFP is attached hereto as **Exhibit A**.

38. The amended terms effectively nullified all of the private contracts FIs have with both MMCOs and LDSSs, demanded that all existing FIs stop providing CDPAP services effective April 1, 2025, and required the Commissioner of Health to contract with a single statewide fiscal intermediary (“SFI”) to provide FI services to CDPAP Consumers—ultimately replacing approximately 600 FIs located throughout the state.

39. The RFP allegedly sought “competitive proposals from qualified bidders to provide Statewide Fiscal Intermediary services.” Ex. A.

40. The bidding criteria outlined in the RFP strategically disqualified nearly all New York State FIs from even bidding by requiring eligible FIs to be providing services on a statewide basis in at least one other state. *See id.* at § 3.1(a).

41. DOH Defendants tactfully issued the RFP to favor their ideal SFI, intentionally excluded mention of a transparent scoring system, and failed to provide any meaningful information on how offers would be scored despite being asked by concerned, existing FIs. A copy of NYSDOH RFP # 20524, Questions and Answers, August 7, 2024, Questions 390-447 is attached hereto as **Exhibit B**.

42. Indeed, Caring Professionals served a Freedom of Information Law (“FOIL”) request to learn more about the bidding process, which has been pending since August 2024, and has now been instructed that an answer will come no earlier than April 2025.

43. Despite these hurdles, countless existing New York FIs submitted proposals to serve as the SFI, including Caring Professionals.

44. For months, the public anticipated the contract would be awarded to PPL prior to the issuance of the RFP.

45. PPL is a Georgia based company that allegedly worked closely with New York State Public Employees’ Union SEIU 1199.

46. Union SEIU 1199 has a longstanding history with Governor Hochul. In fact, SEIU 1199 has for many decades regularly endorsed (through money and campaign labor efforts) candidates for the New York State Legislature and for Governor, including Governor Hochul.

47. SEIU 1199 also strongly supported the statutory amendments and the selection of PPL.

48. DOH Defendants made little effort to disguise that the criteria of the RFP were tailored for PPL, and PPL was aware of its pre-selection well before the SFI was announced.

49. On June 20, 2024, one day before the RFP was issued and three months before the award was announced, SEIU 1199 invited FIs with which SEIU 1199 had relationships to a meeting to discuss PPL as the SFI.

50. Shortly thereafter, as noted in an article written by Amanda D'Ambrosio, titled “Georgia-Based Company Makes Moves to Administer New York’s Multibillion-Dollar Home Care Program,” dated August 22, 2024, PPL “started to proactively reach out to existing fiscal intermediaries in New York, offering them a potential subcontract” and “[was] hiring [for] a director to oversee financial management services in New York.”¹

51. PPL also posted a job listing for a New York “Director, Market Implementation” position on or before August 26, 2024 seeking a “Director [who] will oversee the New York market and consumer implementation function and ensure the Customer Experience Operations department’s goals and responsibilities are met in New York.” A copy of PPL’s job posting on the website of ADP: Workforce Now is attached hereto as **Exhibit C**.

52. Unsurprisingly, on September 30, 2024, the Governor of New York awarded the five year, \$9 Billion (per year) contract to PPL as the SFI vendor.

¹ “Georgia-Based Company Makes Moves to Administer New York’s Multibillion-Dollar Home Care Program,” dated August 22, 2024, <https://www.crainsnewyork.com/health-pulse/public-partnerships-makes-moves-nab-large-state-home-care-contract>.

E. FIs, CONSUMERS, POLITICIANS, AND ADVOCATES REACT WITH OUTRAGE AND LITIGATION

53. As a result of the award of the SFI contract to PPL, various FIs, Consumers, providers, and others have filed lawsuits seeking to enjoin the implementation of the new CDPAP framework due to concerns of unlawful bid rigging and violations of constitutional rights.²

54. The public understands DOH Defendants' selection of PPL to patently violate state bid rigging, anticorruption, and procurement laws.

55. In a report published by The Center for Disability Rights, Inc., the organization expressed that it is "deeply concerned about the quality of services that will be provided by PPL under this state-sanctioned monopoly, which eliminates any incentive to provide good customer service. Such concerns are consistent with the experience of Disabled individuals who have been forced to use PPL in other states." A copy of this report is attached hereto as **Exhibit D**.

56. Similarly, in December 2024, United States Representative Ritchie Torres (NY 15th Dist.) directly requested an "investigat[ion of] alleged attempts by the Hochul Administration to put the \$9 billion CDPAP program in the hands of a single out of-state vendor with a questionable track record and to do so under false pretenses." A copy of Representative Torres' letter to the Inspector General of New York and Inspector General of the United States Department of Health and Human Services is attached hereto as **Exhibit E**.

57. Representative Torres also expressed his dissatisfaction with DOH Defendants' decision to "exempt the award of a 9-billion dollar contract from review by the Office of the New

² See g.n., *Freedom Care LLC v. NYS Dep't of Health et al.*, Index No. 161036/2024 (NY Cnty.); *Empire Center for Public Policy v. NYS Dep. 't of Health*, Index No. 912159-24 (Albany Cnty.); *Marks Homecare CDPAP, LLC d/b/a Pella Care CDPAS v. NYS Dept. of Health, et al.*, Index No. (912081-24, Albany Cnty.); *Glidedowan, LLC d/b/a All-American Homecare Agency, Inc. v. NYS DOH et al.*, Index No. 6:24-cv-06731 (W.D.N.Y.).

York State Comptroller—an unprecedented assault on the independence of the Comptroller and the integrity of New York government writ large.” *Id.*

58. Skeptical of the lawfulness of the bidding process, Representative Torres requested that Governor Hochul “release all communications with PPL, release all the bids for the single statewide FI, and otherwise show the world that [Governor Hochul has] nothing to hide.” A copy of Representative Torres’ letter to Governor Hochul is attached hereto as **Exhibit F**.

59. Representative Torres’ sentiments do not exist in a vacuum. As noted in **Exhibit G**, several other members of Congress, namely Michael Lawler (NY 17th Dist.), Marcus Molinaro (NY 19th Dist.), Nicholas Langworthy (NY 23rd Dist.), Claudia Tenney (NY 24th Dist.), Nick LaLota (NY 1st Dist.), Nicole Malliotakis (NY 11th Dist.), Andrew Garbarino (NY 2nd Dist.), and Anthony D’Esposito (NY 4th Dist.) stated, “with PPL’s track record [of fraudulent activity in other states] coupled with the out-of-state company’s lack of experience in New York, some have raised questions about how PPL was awarded the contract in the first place.”

60. These members of Congress “agree that this plan has not been properly vetted by the federal government, and to implement such a significant change in New York would be unprecedented, irresponsible, and dishonest.” *Id.*

F. DOH DEMANDS UNLAWFUL DIRECTIVE TO EXISTING FIs

61. In a blatant eleventh-hour effort to jam their corrupt and unlawful CDPAP overhaul through on the shortest possible notice, on December 6, 2024, DOH Defendants issued a memorandum to current FIs in New York State to “provide transition guidance for current fiscal intermediaries that were not selected as the Statewide Fiscal Intermediary (SFI) pursuant to Request for Proposals (RFP) #20524: New York State Fiscal Intermediary Services” (the “Memorandum”). A copy of the Memorandum is attached hereto as **Exhibit H**.

62. Without citing any legal authority, the Memorandum makes certain demands of existing FIs.

63. The language of the Memorandum appears to mirror language in Social Services Law § 365-f. However, the Memorandum deviates in an important way from the statutory language.

64. Specifically, Social Services Law § 365-f (4-d) states:

(a) Where a fiscal intermediary is ceasing operation or will no longer serve the consumer's area, the fiscal intermediary shall:

(i) deliver written notice forty-five calendar days in advance to the affected consumers, consumer representatives, personal assistants, the department, and any local social services districts or managed care plans with which the fiscal intermediary contracts. Within five business days of receipt of the notice, the local social services district or managed care plan shall acknowledge the notice and provide the affected consumers with a list of other fiscal intermediaries operating in the same county or managed care plan network as appropriate[.]

65. But importantly, the law does not require current FIs to provide such notifications when a FI has failed to submit an offer for a contract or has been denied a contract, as is requested under the Memorandum. Rather, the law directs the DOH to make such announcements.

66. Specifically, § 365-f (4-d)(c) states:

(b) Where a fiscal intermediary is suspending or ceasing operation pursuant to an order under subdivision four-b of this section, or has failed to submit an offer for a contract, or has been denied a contract under this section, all the provisions of this subdivision shall apply except subparagraph (i) of paragraph (a) of this subdivision, notice of which to all parties shall be provided by the department as appropriate.

67. Thus, not only does the Memorandum require that current FIs cease operations, but it also improperly shifts the burden of issuing notices to Consumers and providers onto the FI.

68. The Memorandum also calls for adherence to certain data transfer policies concerning the disclosure of confidential, proprietary information.

69. The proposed data transfer policy is as follows:

Data Transfer and Procedures

No later than January 15, 2025, Current FIs must transfer data related to the CDPAP consumers they serve and their PAs to the Managed Care Plans for managed care enrollees and the Department for fee-for-service members. Data transfer to the Department will be through HCS [Health Commerce System]. Data must include:

- *Full names of CDPAP consumer
- *Consumer CIN
- *Designated Representative and Contact Information (if applicable)
- *Consumer Contact Information (phone number email address)
- *Consumer preferred language
- *PA(s) for each Consumer
- *PA contact information (phone number email address)
- *PA wage information

70. In a template accompanying the Memorandum, attached hereto as **Exhibit I**, DOH directs FIs to follow when transferring data, and also requests Social Security Numbers, dates of birth, and physical addresses of Consumers and PAs.

71. Yet, Social Services Law § 365-f(4-d), governing fiscal intermediaries ceasing operation, states:

(a) Where a fiscal intermediary is ceasing operation or will no longer serve the consumer's area, the fiscal intermediary shall:

(iii) upon request and consent, promptly transfer all records relating to the individual's health and care authorizations, and personnel documents to the fiscal intermediary or personal care or home health care provider chosen by the consumer and assume all liability for omissions or errors in such records.

72. This provision of law suggests that health and personnel records may be transferred in accordance with federal and state law only upon request and consent *of the Consumer*.

73. Unsurprisingly, a large number of FIs believe the DOH directive regarding data transfer and notices to Consumers and PAs are both unlawful and beyond the authority of DOH Defendants, as well as may force FIs to violate the disclosure restrictions in the Health Insurance Portability and Accountability Act ("HIPAA").

**G. STRONG ARM TACTICS FROM THE STATE TO FORCE COMPLIANCE
WITH THE ILLEGAL DIRECTIVES BY JANUARY 15, 2025**

74. On December 23, 2024, having experienced an influx of litigation related to its unlawful actions and various privacy concerns, the DOH issued an “Update: Notification to Current Fiscal Intermediaries Regarding Data Transfers,” (the “Update”) which is attached hereto as **Exhibit J**.

75. The Update was another effort to coerce FIs into complying with improper disclosure policies.

76. Indeed, the Update claims that “HIPAA allows the sharing of protected health information between ‘covered entities’ for purposes of healthcare operations without individual consent” and that current FIs, the DOH, and MMC [programs] are covered under this rule making disclosure appropriate. *Id.*

77. Such explanation does not account for the incoming SFI, which is not a “covered entity,” and which would use and disclose of provided information at its discretion, once provided by the DOH.

78. Knowing that its conduct violates HIPAA, PPL, through DOH Defendants, is using LDSSs and MMCOs to harvest confidential health information on its behalf.

79. For example, the Cayuga County Department of Social Services issued correspondence to CDPAP Consumers advising, in part, that “Public Partnerships LLC (PPL) has been provided your name, address phone number; however, they will be asking for additional information regarding your current caregivers. PPL will then contact the caregivers to have them register with PPL.” A copy of this correspondence is attached hereto as **Exhibit K**.

80. These types of collection efforts fall squarely within the definition of prohibited marketing communications under HIPAA. *See §§ 45 CFR 164.501, 164.508(a)(3).*

81. As a qualifying marketing communication, FIs (and others implicated by CDPAP's guidelines) are barred from disclosing such protected information without first obtaining the individual's consent. *Id.*

82. Despite such an obvious concern, the DOH chose instead to compel compliance by threatening current FIs with "penalties and other sanctions, including exclusion from the Medicaid program" if it does not comply with the DOH directives regarding data transfer and notices required by the Memorandum. *See Ex. J.*

83. Certainly, such a threat is something that many FIs (including Caring Professionals), particularly those that provide services beyond CDPAP, find deeply troubling.

84. Furthermore, at least 45% of Caring Professionals' revenue is generated through its work as a FI in the CDPAP, and the utmost important thing in the homecare industry is the list of customers and the individuals who serve them.

85. CDPAP Consumers will not—and should not—accept any FI; they want and need someone they can trust.

86. Thus, the data that Caring Professionals, and all FIs, hold regarding their lists of PAs and Consumers is immensely valuable; indeed it is confidential and proprietary and, in many cases, has taken years to compile.

87. While DOH Defendants presume the legality of the process, the reality is that the award of the SFI contract to PPL is far from over, and it remains entirely likely that such a decision will not stand.

88. Should things change for PPL, and Caring Professionals remains an FI, it will have handed over one of its most valuable assets—its customer lists—to its competitor, ultimately torpedoing Caring Professionals' business.

89. Thus, forcing Caring Professionals to transfer all of its PA and Consumer data *before* the legality of the process and award of the SFI contract to PPL can be fully litigated would irreparably harm Caring Professionals.

H. LITIGATION COMMENCES IN LIVINGSTON COUNTY RESULTING IN A TEMPORARY RESTRAINING ORDER AND AN OVERT DOH AND GOVERNMENTAL REACTION ANNOUNCING THEY HAVE NO INTENTION OF COMPLYING WITH THE COURT'S LAWFUL ORDER

90. Among those who objected to the DOH directives regarding data transfer and notices was Glidedowan, LLC d/b/a All American Homecare Agency, Inc. ("AAHC").

91. After filing litigation against DOH Defendants in the Western District of New York in connection with the invalidity and unconstitutionality of the award of the SFI to PPL, and the related bidding process, AAHC filed a separate litigation on January 6, 2025, to deal specifically with the legality of the DOH directives regarding data transfer and notices ordered by the Memorandum. *See Glidedowan, LLC v. New York State Department of Health et al.*, Index No. 000009-2025 (Livingston Cnty.) (hereafter, "Glidedowan") (Dkt. Nos. 1, 46).³

92. In *Glidedowan*, AAHC claims that the DOH tactfully ignored its concerns in order to run the clock until the eve of the Christmas holiday to increase the pressure to comply within the mere three weeks before the deadline and over the holiday season. *See Glidedowan*, Dkt. No. 28.

93. Attached as **Exhibit L** is a copy of a letter sent by CDPAANYS to the DOH, dated December 13, 2024, seeking clarification on the directives in the Memorandum.

94. The only response AAHC received to its concerns was the Update (discussed above). *See Glidedowan*, Dkt. No. 28.

³ All references to the NYSCEF case filings in *Glidedowan* are styled herein as "Dkt. No. ____."

95. Still concerned about the lawfulness of the DOH directives regarding data transfer and notices on January 6, 2025, AAHC filed a lawsuit in the Supreme Court of the State of New York, Livingston County against DOH Defendants seeking to enjoin DOH Defendants from enforcing the January 15, 2025 deadline and the DOH directives regarding data transfer and notices. *See Glidedowan*, Dkt. Nos. 1-17.

96. In response to the immediate and dire concerns of irreparable harm to AAHC, on January 8, 2025, Judge Kevin Van Allen in the Livingston County Supreme Court issued a temporary restraining order enjoining DOH Defendants from enforcing the January 15, 2025 deadline for the DOH directives regarding data transfer and notices in the interim, while the Court considers a preliminary injunction, on an expedited briefing schedule. *See id.*, Dkt. No. 18.

97. In the days since the issuance of the temporary restraining order, Caring Professionals learned that DOH has *already* provided confidential information to PPL which has made PA names and Social Security numbers available to its entire network of subcontractors, without regard to the need for those subcontractors to access the information, making the situation all that much more dire and the TRO even more critical. Attached as **Exhibit M** is a copy of a letter sent by CDPAANY to the DOH, dated January 10, 2025, and the correspondence from PPL discussed therein.

98. On January 13, 2025, the *Glidedowan* court lifted the temporary restraining order, but the parties are still litigating whether the Livingston County Court should grant a preliminary or permanent injunction preventing DOH Defendants from implementing the Memorandum and data and notice requirements.

I. IMMIMENT NEED FOR INJUNCTIVE RELIEF

99. DOH Defendants' Memorandum and Update are unlawfully demanding that Caring Professionals disclose private Consumer information in violation of HIPAA.

100. But despite various lawsuits concerning the award of the SFI contract to PPL and the directives regarding data transfer and notice to Consumers and PAs, DOH Defendants stated, through a Governor's office press statement that it will not pause its illegal directives in response to this Court Order. A copy of the statement is attached hereto as **Exhibit N**.

101. DOH Defendants have made it abundantly clear that they have no intentions of pausing the unlawful collection and dissemination of personal Consumer and PA data which disclose, among other things, home addresses, telephone numbers, and social security numbers.

102. Furthermore, DOH Defendants intend to force compliance with the January 15, 2025 disclosure deadline or punish current FIs with "penalties and other sanctions, including exclusion from the Medicaid program" if it does not comply with the DOH directives regarding data transfer and notices. *See Ex. J.*

103. Caring Professionals therefore seeks a permanent injunction enjoining the enforcement of all deadlines and provisions of the Memorandum, Update, and all attachments and templates attached thereto, regarding the directed data transfer and notice to Consumers and PAs, including DOH Defendants' threat of taking adverse actions against non-complying FIs, such as Caring Professionals, including expulsion from the Medicaid Program, as a result of non-compliance with the Memorandum.

104. Alternatively, and in the event that this Court is unable to provide the relief above, Caring Professionals seeks a permanent injunction enjoining the enforcement of all the deadlines and provisions of the Memorandum, the Update, and all attachments and templates attached

thereto, and all threatened consequences, pending resolution of this litigation and until Defendants develop adequate safeguards to protect Consumer and PA data in accordance with HIPAA and other state and federal laws.

FIRST CAUSE OF ACTION

(Declaratory Judgment - HIPAA Violations Against DOH Defendants)

105. Caring Professionals realleges and reasserts the foregoing paragraphs as if fully rewritten herein.

106. DOH Defendants' Memorandum, Update, and all attachments and templates attached thereto (Exs. H, I, and J) violate the requirements of HIPAA's prohibition on disclosure of Protected Health Information ("PHI") by covered entities without a valid basis in law.

107. DOH Defendants failed to articulate the basis for the directed transfer of PHI to entities and individuals not covered under the law, the permitted use for such PHI, or that the PHI will be disclosed only the minimum necessary to accomplish the permitted use.

108. DOH Defendants' utter disregard towards HIPAA and complete refusal to adhere to HIPAA requirements renders the Memorandum and Update null and void, and without effect.

109. DOH Defendants must be enjoined from implementing the Memorandum, the Update, and all attachments and templates attached thereto.

110. Caring Professionals is entitled to a declaratory judgment invalidating the Memorandum, the Update, and all attachments and templates attached thereto.

SECOND CAUSE OF ACTION

(Permanent Injunction - Violations of General Business Law § 399-ddd Against DOH Defendants)

111. Caring Professionals realleges and reasserts the foregoing paragraphs as if fully rewritten herein.

112. The Memorandum, the Update, and all attachments and templates attached thereto unlawfully direct FIs, like Caring Professionals, to transmit Consumer and PA social security numbers and violate Caring Professionals' obligations under General Business Law § 399-ddd, which requires it to protect the confidentiality of such information.

113. DOH Defendants' failure to adhere to General Business Law § 399-ddd renders the Memorandum, the Update, and all attachments and templates attached thereto null and void, and without effect.

114. DOH Defendants must be enjoined from implementing the Memorandum, the Update, and all attachments and templates attached thereto.

115. Caring Professionals is therefore entitled to an order invalidating the Memorandum, the Update, and all attachments and templates attached thereto.

THIRD CAUSE OF ACTION

(Permanent Injunction -Violations of First Amendment of U.S. Constitution Against DOH Defendants)

116. Caring Professionals realleges and reasserts the foregoing paragraphs as if fully rewritten herein.

117. The Memorandum, the Update, and all attachments and templates attached thereto direct Caring Professionals to make statements on behalf of DOH and violate the First Amendment of the U.S. Constitution's prohibition on compelled speech.

118. DOH Defendants' failure to adhere to the First Amendment prohibition on compelled speech renders the Memorandum, the Update, and all attachments and templates attached thereto null and void, and without effect.

119. DOH Defendants must be enjoined from implementing the Memorandum, the Update, and all attachments and templates attached thereto.

120. Caring Professionals is entitled to an order invalidating the Memorandum, the Update, and all attachments and templates attached thereto.

FOURTH CAUSE OF ACTION

(Permanent Injunction -Violations of Social Services Law § 365-f Against DOH Defendants)

121. Caring Professionals realleges and reasserts the foregoing paragraphs as if fully rewritten herein.

122. The Memorandum, the Update, and all attachments and templates attached thereto violate Social Services Law § 365-f.

123. Social Services Law § 365-f (4-d) (c) provides that where an FI “has failed to submit an offer for a contract or has been denied a contract,” DOH, not the FI, must make any required notifications.

124. In contravention of this provision of the Social Services Law, the Memorandum and Update require Caring Professionals, not DOH, to make these notifications.

125. Social Services Law § 365-f (4-d) (iii) requires that an FI transfer all records relating to the Consumer’s health and care authorizations, and personnel documents to the FI or personal care or home health care provider chosen by the Consumer “upon request and consent” of the Consumer.

126. In contravention of this provision of the Social Services Law, the Memorandum and Update require Caring Professionals to transfer this data without the request and consent of the Consumer.

127. DOH Defendants’ failure to adhere to Social Services Law § 365-f renders the Memorandum and the Update null and void, and without effect.

128. DOH Defendants must be enjoined from implementing the Memorandum, the Update, and all attachments and templates attached thereto.

129. Caring Professionals is entitled to an order invalidating the Memorandum and Update, and all attachments and templates attached thereto.

FIFTH CAUSE OF ACTION

(Permanent Injunction – Violations of the Fifth Amendment of the U.S. Constitution
Against DOH Defendant)

130. Caring Professionals realleges and reasserts the foregoing paragraphs as if fully rewritten herein.

131. Caring Professionals' list of its Consumers and PAs, is private, proprietary property belonging to Caring Professionals and is extraordinarily valuable.

132. The Consumers and PAs who serve them generate a majority of revenue realized by Caring Professionals annually.

133. Complete health assessment, immunization records, and other personnel file information enable the PAs to serve the Consumer and generate the referenced revenue.

134. Caring Professionals' Consumer list, PA list, and personnel records comprise the vast majority of Caring Professionals' value. Any entity looking to purchase these assets through a business acquisition would pay significantly such information.

135. The Takings Clause of the Fifth Amendment to the United States protects Caring Professionals from being deprived of its property without due process of law, and from government property seizures for public use without just compensation.

136. By ordering Caring Professionals to convey its proprietary property to third parties, including a potential competitor like PPL, Defendants are taking Caring Professionals' property.

137. By doing so via a unilateral directive of a department of the executive branch that lacks any authority to order the property taking, Defendants are depriving Caring Professionals of

due process. Accordingly, Defendants must be enjoined from enforcing the Memorandum and the Update, and all attachments and templates attached thereto.

138. Because Caring Professionals' property would be conveyed from one private FI to another, for exclusive use by and profit for the private transferee, the taking is not one for public use. Accordingly, Defendants must be enjoined from enforcing the Memorandum, the Update, and all attachments and templates attached thereto.

SIXTH CAUSE OF ACTION

(Tortious Interference With Respect to Prospective Business Relations Against PPL)

139. Caring Professionals realleges and reasserts the foregoing paragraphs as if fully rewritten herein.

140. As an FI, Caring Professional's business model requires that it avidly build relationships with Consumers and PAs providing care services under the CDPAP.

141. Caring Professionals then contracts with such individuals to handle various administrative aspects of CPDAP on their behalf, including managing payroll and taxes, overseeing benefit administration, processing payments, managing personnel records, and more.

142. With over 600 FIs operating in State of New York, Caring Professionals' reputation of being a trustworthy FI in the industry is a direct result of its longstanding, positive relationships with PAs.

143. Yet, without Caring Professionals' consent, PPL seeks to contact, retain data related to, and ultimately enter into relationships with Consumers and PAs with which Caring Professionals already has relationships.

144. The Memorandum, the Update, and all attachments and templates attached thereto unlawfully demand that Defendants obtain critical information valuable to the success of Caring Professionals' business.

145. Caring Professionals had a tangible expectancy that the contracts it currently has with various Consumers and PAs would be theirs because among other things, before DOH and PPL colluded in a rigged bidding process to award PPL, an entity with a history of misrepresentation and mismanagement utterly unqualified to serve as an FI for the entire CDPAP, Caring Professionals had already been awarded a contract to continue serving as an FI in CDPAP.

146. PPL's manipulation of the bid selection process constitutes wrongful means and illegal and tortious conduct as set forth herein, including participating in a rigged, predetermined, sham bidding process that resulted in a contract award to PPL despite PPL being less qualified and its response to the RFP being higher than the lowest qualified bid.

147. As a result of the foregoing Plaintiff has been damaged in an amount to be determined at trial, and in no event less than \$50 Million.

SEVENTH CAUSE OF ACTION
(Permanent Injunction Against Defendants
Pled in the Alternative to the First Cause of Action)

148. Caring Professionals realleges and reasserts the foregoing paragraphs as if fully rewritten herein.

149. Regardless of whether the Court determines that the Memorandum and Update do not on their face violate the various cited herein including, HIPAA and the United States and New York State Constitutions, a permanent injunction must still be entered enjoining enforcement of the Memorandum, and Update until such time as the DOH and PPL, which is the sole intended recipient of the information that DOH demands that Caring Professionals convey, implements safeguards to protect the private, proprietary and personal sensitive information belonging to Caring Professionals, Consumers, and PAs.

150. This includes, but is not limited to, safeguards that protect against the dissemination of personnel files, social security numbers, and other similar information outside of PPL and to individuals within PPL who do not have any need to have access to this sensitive information.

151. Upon information and belief, including from submissions by similarly situated FIs who have sued DOH in other jurisdictions, DOH has given PPL unfettered access to all of the information it receives, and PPL has disseminated that information with no restriction throughout its organization for the purpose of marketing its business services, and for other purposes not permitted or authorized by Consumers and PAs.

152. Caring Professionals has no adequate remedy at law to protect against being a participant of the unlawful dissemination of this information to unauthorized persons absent an injunction.

153. Accordingly, Caring Professionals is entitled to a permanent injunction against being compelled to transfer any information under the Memorandum and the Update until DOH and PPL prove that sufficient safeguards are in place to protect and secure this private and sensitive information.

WHEREFORE, Caring Professionals demands judgment as follows:

- (1) On the First Cause of Action a declaring the provisions of the Memorandum, the Update, and all attachments and templates attached thereto null and void, and without legal effect, or alternatively, and in the event that the aforementioned relief is not granted, declaring that the provisions of the Memorandum, the Update, and all attachments and templates attached thereto are stayed pending resolution of this litigation and until DOH Defendants develop adequate safeguards to protect Consumer and PA data in accordance with HIPAA and other state and federal laws;
- (2) On the Second Cause of Action an injunction permanently enjoining DOH Defendants from requiring Caring Professionals to provide lists of Consumers, PAs, and their contact information to any third party;
- (3) On the Third Cause of Action an injunction permanently enjoining DOH Defendants from requiring Caring Professionals to provide information from PA personnel files, including

but not limited to health assessment records, immunization records, and social security numbers;

- (4) On the Fourth Cause of Action an injunction permanently enjoining DOH Defendants from directing Caring Professionals to notify Consumers and PAs of Defendants' planned transition to PPL;
- (5) On the Fifth Cause of Action an injunction permanently enjoining DOH Defendants from conveying Caring Professionals' Consumer list, PA list, and personnel records to another private FI;
- (6) On the Sixth Cause of Action a money judgment against PPL in an amount to be determined at trial, and in no event less than \$50 Million;
- (7) On the Seventh Cause of Action an injunction permanently enjoining Defendants from compelling Caring Professionals to transfer any information under the Memorandum and the Update until DOH and PPL prove that sufficient safeguards are in place to protect and secure this private and sensitive information; and

(8) Such other and further relief as the Court may deem just and proper, together with the costs and disbursements of this proceeding, pre and post judgment interest, and attorneys' fees to the fullest extent permitted by law.

Dated: January 15, 2025
New York, New York

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