SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

CARING PROFESSIONALS, INC., and CONSUMER DIRECTED PERSONAL ASSISTANCE ASSOCIATION OF NEW YORK STATE,

Plaintiffs,

Index No: 601181/2025

-against-

NEW YORK STATE DEPARTMENT OF HEALTH, JAMES V. MCDONALD, in his 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.

DEFENDANT, PUBLIC PARTNERSHIPS LLC's MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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PRELIMINARY STATEMENT

This memorandum of law is submitted by Public Partnerships LLC ("PPL" or "statewide FI") in opposition to the request of Plaintiff, Caring Professionals, Inc. and Plaintiff Consumer Directed Personal Assistance Association of New York State's (collectively "Plaintiffs") for a preliminary injunction seeking to restrain and enjoin DOH from enforcing the directives in the December 6, 2024 Memorandum that compels Plaintiffs to convey data, records or notifications as required by the Social Services Law.

The facts and circumstances of this action have changed since the Order to Show Cause with the Temporary Restraining Order ("TRO") was granted on January 28, 2025. The TRO enjoined the outgoing fiscal intermediaries' compliance with the specific directives contained in the December 6, 2024 Memorandum issued by the New York State Department of Health ("DOH"). The December 6, 2024 DOH Memorandum required Plaintiffs to notify their associated consumers on February 14, 2025 of the upcoming transition to a single statewide FI in CDPAP. The December 6 Memorandum is now moot, however, since the CDPAP amendment itself requires the outgoing FIs to notify consumers of the upcoming transition.

As demonstrated below, Plaintiffs misconstrue the CDPAP Amendment in their First Amended Verified Complaint and Plaintiffs' Memorandum of Law in Support of Motion for a Temporary Restraining Order and Preliminary Injunction. Plaintiffs' incorrect interpretation of the CDPAP Amendment entirely thwarts Plaintiffs' ability to demonstrate a likelihood of success on the merits.

After being unsuccessful in obtaining CDPAP statewide FI contractual award, Plaintiffs now seek to bring this preliminary injunction request to further delay and frustrate the upcoming transition mandated by the CDPAP Amendment.

In addition, the Plaintiffs' underlying Verified Complaint contains eight (8) separate causes of action, none of which are likely to be successful on the merits, nor even survive a motion to dismiss. The Court should deny the request for a preliminary injunction because it is clear that the Plaintiffs cannot satisfy the three (3) prong test necessary for such a drastic remedy.

In regards to the sole cause of action alleged against PPL, PPL is an innocent actor who played no role in initiating a breach of any contract between Plaintiffs and any third party. There is absolutely no evidence that demonstrates PPL induced Managed Care Organizations ("MCOs") and/or Caring Professional consumers and/or personal assistants to break their former relationship with Plaintiffs. Plaintiffs' disappointment with not being selected for the contract award does not equate in any way to legal error that requires the Court to take such drastic action to issue a preliminary injunction.

PROCEDURAL HISTORY

On April 20, 2024, the New York State Legislature passed legislation to amend Social Services Law § 365-f and effectively transition New York's CDPAP program to single fiscal intermediary system, which Governor Hochul thereafter signed into law. The law mandated that all current FIs operating in New York must cease operations by March 31, 2025, except for the single statewide FI.

On December 6, 2024, DOH forwarded a memorandum to all outgoing FIs in New York State to provide guidance on how to proceed in anticipation of the CDPAP transition to the single statewide fiscal intermediary on April 1, 2025. This correspondence included the following instruction:

> 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.

Plaintiff, Caring Professionals, Inc. commenced this action on January 15, 2025 by filing a Summons and Verified Complaint in Nassau County Supreme Court. Dkt. No. 1.[1] On January 21, 2025, Plaintiffs filed the First Amended Verified Complaint which added Consumer Directed Personal Assistance Association of New York State as a named Plaintiff and asserted an additional cause of action against Defendant DOH. Dkt.No.21. The following day, Plaintiffs filed a "Corrected" First Amended Verified Complaint (hereinafter the "Verified Complaint"). Plaintiffs subsequently filed an Order to Show Cause which contained a request for a Temporary Restraining Order as follows:

> DOH Defendants are restrained and enjoined from taking any adverse action or issuing sanctions or penalties against Caring Professionals or any Member Financial Intermediary of CDPAANYS in connection with any failure to adhere to the January 15, 2025 deadline contained in the DOH Memorandum, including but not limited to, efforts to have Caring Professionals and or any Member Financial Intermediary of CDPAANYS expelled and/or terminated from the Medicaid Program.

Dkt. No. 10.

This Court granted and signed the Order to Show Cause which included Plaintiffs' TRO request on January 27, 2024 and scheduled a return date on the preliminary injunction request for March 4, 2025. Dkt. No. 54.

On January 29, 2025, the DOH sent out formal Notification to the outgoing FIs. The DOH January 29, 2025 Notification Memorandum stated:

> Social Services Law section 365-f(4-d)(a)(i) requires all current FIs ceasing operations to **deliver a written notice of least 45 calendar days** before discontinuing FI services to the affected consumers (or the consumers designated representatives), the consumers' personal assistants, the Local District of Social Services (LDSS) and Managed Care Organizations (MCOs) with the which the current FI contracts and the Department of Health (the Department**). FIs that are**

[1] "Dkt. No." refers to the corresponding docket entry on the NYSCEF system for Index Number 601182/2025 in the Nassau County Supreme Court.

ceasing operations on March 31, 2025 must deliver the statutory required notice no later than Friday, February 14, 2025.

Perrin Affm. Exhibit "C".

This deadline for providing written notice to consumers is plainly mandated by Social Services Law § 365-f(4-d)(a)(i), and this date had not yet occurred when the Court initially granted the TRO on behalf of Plaintiffs on January 27, 2025. The TRO which was granted was also strictly limited to preventing any adverse action being taken, or the issuance of sanctions by DOH against Plaintiffs based on failure to abide by the January 15, 2025 deadline for turning over data to DOH. Plaintiff now seeks a preliminary injunction as follows:

(1) Preliminarily restraining and enjoining DOH Defendants from enforcing the directives of that certain DOH Memorandum, dated December 6 2024 (the "DOH Memorandum"), and seeking compel Plaintiff Caring Professionals, Inc. ("Caring Professionals") and the Member Financial Intermediaries of Plaintiff Consumer Directed Personal Assistants Association of New York ("CDAANY") to convey any data, records, or notifications as required by the DOH Memorandum, during the pendency of this lawsuit;

(2) Alternatively, staying any deadline in the DOH Memorandum until and unless such time as all Defendants can demonstrate procedural safeguards in place to protect the confidential, proprietary data and alleviate any concerns of violation of the Health Insurance Portability and Accountability Act ("HIPAA"), NY GBL §399-ddd, and any other applicable statute or regulation;

(3) Preliminarily restraining and enjoining DOH Defendants from seeking to terminate or exclude Caring Professionals or any Member Financial Intermediary of CDPAANYS from the Medicaid Program or taking any other adverse action against Caring Professionals or any Member Financial Intermediary of CDPAANYS as a consequence of failing to abide by the DOH Memorandum, including any action described in that certain DOH Update, dated December 23, 2024 ("DOH Update).

STATEMENT OF THE FACTS

It is no secret that CDPAP has increasingly been a ballooning cost on the New York State budget and in dire need of reform. *See*, McCardle Affm. Exhibit "A" at ¶12. New York's outgoing FI model is much different than what is seen in states across the rest of the nation. *Id.* at ¶8.

Multiple other jurisdictions and comparable states that offer CDPAP have less than three (3) total FIs statewide, and many states have just one (1) single statewide FI. *Id*. at ¶8.

With more FIs operating in New York State than the rest of the country combined, New York has suffered from excessively high administrative rates, which has resulted in CDPAP becoming prohibitively expensive and a swelling portion of the state budget and Medicaid expenses. *Id*. at ¶12. According to the testimony of the Medicaid Director for New York State, New York State's administrative rate is more than double the average rate paid by other state Medicaid agencies in states with similar programs and costs of living, such as Massachusetts. *Id*. at ¶12. The estimated $500 million in Medicaid savings can be utilized by other program areas that actually provide medical benefit to needy Medicaid recipients and not used to enrich a profit center.[2]

In the current CDPAP model, in which hundreds of FIs provide fiscal services to consumers, FIs contract directly with MCOs, PACE plans, and local departments of social services ("LDSS") to act as administrative agents. *Id*. at ¶13. It is significant to note that the Verified Complaint states “Caring Professionals has contracts with both LDSS and private MMCOs” (Dkt. No. 43 at ¶42). However, Plaintiff fails to provide copies of the actual contracts. This is likely because those contracts contain specific post termination provisions that are not favorable to Plaintiff so they attempt to sweep this issue aside. *See*, Perrin Affm. Exhibit “A” at ¶¶13-15.

[2] https://www.justice.gov/usao-edny/pr/eight-individuals-charged-68-million-social-adult-day-care-and-home-health-care-scheme

A. THE CDPAP AMENDMENT

On April 20, 2024, the New York State Legislature passed the "CDPAP Amendment", SSL § 365-f, to address the above concerns, amongst others. *Id*. at ¶16; *See*, L2024, Ch. 57, Part HH.

B. THE DOH PROCUREMENT

On June 17, 2024, in accordance with the CDPAP Amendment, DOH publicly issued the RFP seeking competitive proposals from qualified bidders to serve as the Statewide FI. *See,* McCardle Affm. Exhibit "B" at ¶32. It should be noted that DOH determined that PPL's technical and cost proposals were deemed to be best value for New York State. *See,* McCardle Affm. Exhibit "C" at ¶18. In Section 4.9 of the RFP, DOH required that "…The awarded Statewide Fl will implement and maintain plans, procedures, policies, internal controls, and appropriate administrative, technical, and physical safeguards, consistent with applicable laws and rules to ensure the security, confidentiality, integrity, and availability of personal identifiable information and protected health information (collectively referred to herein as "Protected Information") created, collected, used, transferred, and/or disclosed by the awarded Statewide Fl…".

Plaintiffs' request for the preliminary injunction selectively ignores that the RFP provided specific minimum qualifications for bidders to abide by in order to achieve a tentative contract award for statewide FI services. The Affirmation of Maria Perrin demonstrates PPL's procedural safeguards as a national leading fiscal intermediary and service provider across approximately two dozen other states. *See*, Perrin Affm. at ¶¶46-68.

C. EXISTING FISCAL INTERMEDIARIES' NEGATIVE PUBLIC RELATIONS CAMPAIGN.

The existing FIs that must cease operations on April 1, 2025, have launched a highly aggressive public relations campaign against PPL. *See,* Perrin Affm. The recent newspaper article

from NYS Focus dated February 4, 2025 titled "*Mystery Donor Funds $10 Million Campaign Against Hochul Home Care Plan -- The money is being routed through a nonprofit — possibly running afoul of state lobbying rules*" demonstrates the depths of which outgoing fiscal intermediaries are willing to sink to keep earning profits moving in its own favorable direction.[3] *See*, article attached to McCardle Affirmation as Exhibit "D". The aforementioned article states:

> The Alliance to Protect Home Care, a social welfare nonprofit, has blitzed the airwaves with TV ads alleging that Hochul's plan, which charges a single company with running the multibillion-dollar program, puts "lives at risk." The group spent $10.6 million last year on a public relations campaign criticizing the move — the second-highest-spending lobbying campaign in Albany that year…
>
> ***The tactic could run afoul of state lobbying rules, which are meant to curb the use of pass-through entities that obscure lobbying funders*** **(emphasis added).**

Id.

The Alliance to Protect Home Care website further states that PPL is "disastrous," and citing a "failing track record," "labor disputes," "poor oversight" and "repeated failures."[4] All of these statements are false. The campaign has used inflammatory rhetoric to stoke fear and distrust against PPL, by specifically:

(i) Making unfounded claims that the transition to PPL will cause "Elderly & disabled NYers [to] lose access to trusted, affordable home care workers who speak their language, leaving them no other option than being forced into costly hospitals or nursing homes."

(ii) Utilizing a digital display truck with a billboard to circle courthouses and the State Capitol with a large and illuminated sign that states "Save my life. Stop PPL".

(iii) Hiring an expensive airplane to fly over Albany, courthouses and the State Capitol with a banner that reads: "SOS: Save CDPAP. Stop PPL." [5]

[3] *See*, https://nysfocus.com/2025/02/04/hochul-alliance-protect-home-care-spending

[4] *See*, www.protecthomecare.org.

[5] *See*, https://www.crainsnewyork.com/health-pulse/alliance-protect-home-care-protests-cdpap-cuts-airplane-ad

Another facet of former FIs' ongoing crusade to disrupt the CDPAP transition is the filing of over a dozen lawsuits all across New York State against DOH, and now, increasingly, against PPL. *See,* McCardle Affm. At ¶6.

STANDARD OF REVIEW

Preliminary injunctions are drastic remedies that "should be issued cautiously" because they "prevent the litigants from taking actions that they are otherwise legally entitled to take in advance of an adjudication on the merits." *Uniformed Firefighters Assn. of Greater N.Y. v. City of New York*, 79 N.Y.2d 236, 241 (1992). Thus, "the party seeking such relief must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor." *Rural Community Coalition, Inc. v. Village of Bloomingburg*, 118 A.D.3d 1092, 1095 (3d Dep't 2014); *See, W.T. Grant Co. v. Srogi*, 52 N.Y.2d 496, 517 (1981); *Schulz v. State Executive*, 108 A.D.3d 856, 856 (3d Dep't 2013).

To obtain "a stay of the enforcement of a determination pending its review pursuant to CPLR 7805 … the movant 'must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor.'" *Matter of Albany Basketball & Sports Corp. v. City of Albany*, 39 Misc.3d 1204(A) (2013) (quoting *Emerald Green Prop. Owners Assn., Inc. v. Jada Developers, LLC*, 63 A.D.3d 1396, 1397 (3d Dep't 2009)); *See also, Matter of Jarrett v. Westchester County Dept. of Health*, 166 Misc.2d 777, 778 (1995).

ARGUMENT

POINT I

PLAINTIFFS SHOULD NOT BE GRANTED ANY PRELMINARY INJUNCTION IN THIS MATTER AS THEY ARE UNLIKELY TO SUCCEED ON THE MERITS.

In this case, Plaintiffs do not satisfy any of the three (3) prongs they are required to prove to satisfy the burden to be awarded with a preliminary injunction. Notwithstanding the previous favorable court decisions denying preliminary injunctions in related CDPAP matters, Plaintiffs also rely on mischaracterizations of Social Services Law §365-f(4-d) to erroneously suggest that HIPAA protected information can only be transferred to DOH "upon request and consent of the Consumer". Dkt. No. 43 at ¶101.

Plaintiffs also make the incorrect argument that DOH directives relating to the data transfer and notices to Consumers and PAs "violate the disclosure restrictions in HIPAA". Dkt. No. 43 at ¶150; Dkt. No. 10. As demonstrated by the Affirmations of Amir Bassiri attached as Exhibit "A" and Exhibit "B" to the McCardle Affirmation, along with the Maria Perrin Affirmation, DOH is a covered entity under HIPAA and has entered into a Business Associate Agreement with PPL as part of the statewide FI contract. Perrin Affm. at ¶36-45; *See*, McCardle Affm. Exhibit "A"-"B". These basic facts eliminate the basis of Plaintiffs' allegations of HIPAA violations, which are raised as nothing more than a red herring to confuse the issues before the Court.

A. PLAINTIFFS ARE NOT LIKELY TO PREVAIL ON THE MERITS ALLEGING VIOLATIONS OF SOCIAL SERVICES LAW § 365-f.

Plaintiffs argue in their supporting Memorandum of Law ("MOL") that "the DOH Memorandum requiring Caring Professionals and the Member FIs to notify their Consumer and PAs of the transition to PPL and to transfer all the data of the Consumers and PAs without consent is a ***blatant*** violation of the CDPAP Amendment. Dkt. No. 38 at p.37 of 50. By taking this

position, Plaintiffs demonstrate a lack of understanding of Social Services Law §365-f (4-d). Plaintiffs' analysis in their Memorandum of Law is supported by a single sentence arguing that the critical lynchpin to their preliminary injunction request is that "*…in this situation, the DOH, not the FI, must make any required notification*" due to Social Services Law §365-f (4-d)(c). This statutory provision states:

> 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.

Id.

Plaintiffs fail to recognize that the statutory language in Social Services Law §365-f (4-d)(c) was in existence and good law prior to the CDPAP Amendment in Chapter 57, Part HH of the Laws of 2024. This is significant because it strongly implies that any reference to a contract in Social Services Law §365-f (4-d)(c) is not referencing the statewide FI contract, **but instead is a reference to the contract between the outgoing FI and the MMCO and PACE plans and/or LDSS (emphasis added).** Under Plaintiffs' theory, §365-f (4-d)(c) was a forward looking statute that somehow contemplated the statewide FI being passed at a future date. In reality, however, the statewide FI was not contemplated and the statutory reference was to the existing contractual obligations between outgoing FIs and MMCO and PACE plans, or outgoing FI's and LDSS.

This is also supported by the fact that §365-f (4-d)(e) specifically references "local social services districts and managed care plan", who "as appropriate, shall supervise the transition of services and transfer of records and maintain provision of services by the personal assistant(s) chosen by the individual". *Id.* SSL §365-f (4-d)(e) provides additional strong support that Plaintiffs' interpretation is **blatantly** wrong and completely off base.

Next, Plaintiffs build upon their erroneous statutory interpretations to argue that SSL §365-f (4-d)(a)(iii) places the burden on DOH to provide notification and that consumers must "request and consent" to all data transfer requests. This argument does not hold up. SSL §365-f (4-d)(a) provides:

> Fiscal intermediaries ceasing operation. (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;
>
> (ii) not take any action that would prevent a personal assistant from moving to a new fiscal intermediary of the consumer's choice, nor require the consumer or the personal assistant to switch to a personal care or home health care program not under this section; and
>
> (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.

Plaintiffs build a bridge too far. To support their PI request, Plaintiffs argue "this provision of law require that health and personnel records may be transferred in accordance with federal and state law only upon request and consent of the consumer". Dkt. No. 38 at p. 22 of 50. Once again the timing of the legislative changes undercuts Plaintiffs' arguments. Social Services Law 365-f(4-d)(a)(iii) is not applicable because that statute is relevant in the scenario where an existing FI is transferring HIPAA protected information directly to another FI. That is not occurring in this situation. Here, the outgoing FIs are transferring the HIPAA protected information to DOH, a covered entity and healthcare oversight agency, not directly to PPL or any other entity.

Of course HIPAA-protected information can be disclosed to a healthcare oversight agency, such as DOH, who is authorized by law to oversee the health care system or government programs in which individuals' personal health information is necessary to determine eligibility or compliance. 45 CFR 164.501; 45 CFR 164.512(d). DOH is also a covered entity pursuant to the definition provided for in 45 CFR 160.103. As such, HIPAA protected information can therefore be released by the outgoing FIs to DOH both as a covered entity and as a health oversight agency.

PPL and DOH have also entered into a contract for PPL to provide the statewide FI services which contains Appendix H titled "Federal Health Insurance Portability and Accountability Act Business Associate Agreement". Exhibit "H" makes clear that PPL is a "Business Associate" of DOH as defined by HIPAA, while DOH is considered a covered entity under HIPAA. *See,* Perrin Affm. at Exhibit "D". Therefore, HIPAA compliance is maintained at all times and Plaintiffs' arguments fail.

Even prior to the passage of the recent statute mandating the single statewide FI, FIs who will cease to operate, except in limited circumstances which do not apply, have always been required to deliver written notice forty-five (45) days in advance to any affected consumers, personal assistants ("PAs"), and consumer representatives. SSL § 365-f(4-d)(a)(i) (2022). Not only have the Plaintiffs failed to comply with the statutory mandated forty-five (45) day notice requirements, they are also not in compliance with SSL § 365-f(4-d)(a)(ii) which states outgoing FIs can "not take any action that would prevent a personal assistant from moving to a new fiscal intermediary of the consumer's choice…". *Id.*

As demonstrated by the McCardle Affirmation and Perrin Affirmation, the outgoing FIs have taken every step possible in an attempt to prevent PAs from smoothly transitioning to PPL which must occur by operation of law for them to continue working as a PA after April 1, 2025.

The outgoing FIs appear to be intentionally trying to create the very thing they are warning the public against, which is a failed transition. PPL is fully committed to becoming the statewide fiscal intermediary on April 1, 2025, and has all necessary resources in place to meet the deadline.

B. PLAINTIFFS HAVE NOT DEMONSTRATED A LIKELIHOOD OF SUCCESS ON THE MERITS THAT DOH OR PPL VIOLATED ANY STATE PRIVACY OR HIPAA LAWS.

PPL has executed a contract with DOH which includes a Business Associate Agreement, as required by HIPAA. *Id.* This Business Associate Agreement includes appropriate safeguards to ensure protection of client confidentiality. HIPAA does allow Plaintiffs to ignore its disclosure obligations which are mandated by state law to withhold consumer lists and their corresponding personal assistants. Federal regulations dictate that "[a] covered entity may use or disclose [personal health information] to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law." CFR § 164.512(a)(1).

DOH is a covered entity and a healthcare oversight agency. DOH has every right to require the transfer of data for consumers and PAs. Instead of rendering Plaintiffs exempt from complying with its clear disclosure obligation under New York State law, HIPAA expressly provides for it.

These facts demonstrate that Plaintiffs will not be successful of the Verified Complaint's First Cause of Action which allege HIPAA violations. Plaintiffs' Second Cause of Action alleges DOH has violated General Business Law § 399-ddd. General Business Law § 399-ddd provides that entities in possession of individuals' social security numbers must "safeguards necessary or appropriate to preclude unauthorized access to the social security account number and to protect the confidentiality of such number." GBL § 399-ddd. The Affirmation of Maria Perrin provides strong evidence that Plaintiffs will not be successful on their Second Cause of Action.

As the turnover of the requested data to DOH is not a violation of HIPAA for the reasons outlined above, the Court should ***not*** issue any preliminary injunction which permits Plaintiffs to further avoid turning over this data as validly requested in the December 6, 2024 and December 23, 2024 memoranda issued by DOH. Perrin Affm. at Exhibits "B" and "C".

C. PLAINTIFFS ARE NOT LIKELY TO SUCCEED ON TORTIOUS INTERFERENCE OF BUSINESS RELATIONS AGAINST PPL.

With regards to the allegations, Plaintiffs assert against PPL in the Plaintiffs' Eighth Cause of Action, "[t]he elements of tortious interference with contractual relations are (1) the existence of a contract between the plaintiff and a third party, (2) the defendant's knowledge of the contract, (3) the defendant's intentional inducement of the third party to breach or otherwise render performance impossible, and (4) damages to the plaintiff". *Anesthesia Assoc. of Mount Kisco, LLP v N. Westchester Hosp. Ctr.*, 59 AD3d 473, 476 (2d Dep't 2009); *Bayside Carting v. Chic Cleaners*, 240 A.D.2d 687, 688, 660 N.Y.S.2d 23 (N.Y. App. Div. 1997).

In this instance there is no cognizable argument that Defendant, PPL intentionally induced a third party to breach its contract with Plaintiffs. Dkt No. 43 at ¶197-205. There is also no evidence to support any allegation by Plaintiffs that PPL lacked justification or acted improperly for contracting with any applicable MMCO and PACE plan and/or consumer and/or PA. As such, Plaintiffs are not likely to be successful on the merits of a tortious interference claim against PPL.

Plaintiffs' entire Verified Complaint contains nothing more than conclusory statements and vague allegations against PPL. The Verified Complaint therefore gives no notice to the Court or to PPL of the transactions, occurrences, or series of transactions or occurrences intended to be proved in support of a cause of action.

D. PLAINTIFFS HAVE NOT DEMONSTRATED A LIKELIHOOD OF SUCCESS ON THE MERITS THAT THE DATA TRANSFER REQUEST VIOLATES THE FIFTH AMENDMENT OF U.S. CONSTITUTION.

Plaintiffs in the Sixth Cause of Action assert that the "required data transfer is an unconstitutional takings under the Fifth Amendment." Dkt. No. 43 at ¶180-188. To state a constitutional takings claim, a plaintiff must show that: (1) they have a property interest protected by the Fifth Amendment; (2) they were deprived of that interest by the government for public use; and (3) they were not afforded just compensation. *Ganci v. N.Y.C. Transit Auth.*, 420 F. Supp. 2d 190, 195 (S.D.N.Y.), *aff'd*, 163 F. App'x 7 (2d Cir. 2005); *See also Knick v. Twp. of Scott, Penn.*, 588 U.S. 180, 184 (2019).

Contact information for consumers and PAs is not proprietary in nature since CDPAP is a government-funded public program, over which DOH has complete oversight. Plaintiffs' own contracts are subject to approval by the DOH which may direct the termination of such contracts and demand access to Petitioner's books "at no charge" after termination. *See*, McCardle Affm. Exhibit "A" at ¶ 12, 18.

Plaintiffs state their Fifth Cause of Action as seeking "to enjoin DOH Defendants from compelling the transfer of the PA and Consumer data, and for PPL to be enjoined from using any such data, until and unless such time as Defendants prove that sufficient safeguards are in place to protect and secure this private and sensitive information." Dkt. No. 43 at ¶174-179.

PPL has worked diligently to develop these exact procedural safeguards for data containing personal information which would prevent any harm to those consumers and personal assistants. A list of the specifications of these safeguards are demonstrated in the Maria Perrin Affirmation and negate any potential for misuse of this data or violation of HIPAA. Perrin Aff. at ¶¶47-66. Furthermore, PPL and DOH have entered into a Business Associate Agreement which ensures

stringent protection of consumers' and personal assistants' personal data. *See,* McCardle Affm. Exhibit "A" at ¶57.

E. PLAINTIFFS HAVE NOT DEMONSTRATED A LIKELIHOOD OF SUCCESS ON THE MERITS ON A PERMANENT INJUNCTION SEEKING TO PRECLUDE DOH FROM ISSUING SANCTIONS FOR FAILURE TO COMPLY WITH SOCIAL SERVICES LAW 365-f.

Plaintiffs' Seventh Cause of Action seeks a permanent injunction precluding DOH from issuing sanctions for failure to comply with CDPAP transition directives. A permanent injunction is a substantially more drastic and severe remedy than a preliminary injunction. A permanent injunction should be awarded only where "the right to such relief clear and where the plaintiff has made out a strong case for such relief; injunctive relief should be denied in doubtful cases." *A & G Research, Inc. v. GC Metrics, Inc.*, 19 Misc. 3d 1136(A) (Sup Ct 2008).

Plaintiffs have not demonstrated any likelihood of success on any claim against DOH and/or PPL. Plaintiffs' arguments which underlay their request for a preliminary injunction, let alone a permanent injunction, are insufficient to meet their burden and thus their request should be denied by this Court.

F. PLAINTIFFS' CLAIMS LACK MERIT AND THUS ARE UNLIKELY TO SUCCEED.

In evaluating likelihood of success on the merits, it is useful to evaluate how similar courts statewide have ruled thus far in the litany of actions which disgruntled FIs have initiated across New York State. The Albany County Supreme Court has already upheld the requirements of the relevant RFP, in a decision denying a preliminary injunction where petitioning FIs claimed that the RFP was irrational, arbitrary or capricious, and contrary to law. *See, Corning Council for Assistance & Info. for the Disabled, Inc. v. McDonald*, Index No. 908147-24 (Sup. Ct. Albany Cnty., filed Sept. 30, 2024).

The Court in *Save Our Consumer Directed Home Care Program v. DOH* (Index No. 907872-24 at Dkt. No. 67). This is the second decision in Albany Supreme Court that denied a preliminary injunction in a CDPAP related litigation. In addressing, the likelihood of success on the merits of the Petition, Judge Ferreira held "petitioner has failed to establish a likelihood of success on the merits with respect to its argument that the RFP violates the New York State Constitution [and] failed to establish a likelihood of success on the merits with respect to its argument that the statutory amendments violated the New York State Constitution…the equal protection [clause] of the United States and New York State Constitution." *Save Our Consumer Directed Home Care Program v. DOH* (Index No. 907872-24 at Dkt. No. 67 (page 22, 24 of 29 of Decision and Order)).

In summary, this Court should not issue a preliminary injunction requested by Plaintiffs as it is unlikely to succeed on the merits on any of its claims alleged in the eight (8) asserted causes of action.

POINT II

PLAINTIFFS WILL NOT SUFFER IRREPERABLE HARM SHOULD THE PRELIMINARY INJUNCTION REQUEST BE DENIED.

Plaintiffs have also not demonstrated irreparable injury. The movant must show that the irreparable harm is "imminent, not remote or speculative". *Family-Friendly Media, Inc. v. Recorder Tel. Network*, 74 AD3d 738, 739 (2d Dep't 2010); *Golden v. Steam Heat*, 216 A.D.2d 440, 442 (1995). "Irreparable injury, for purposes of equity, has been held to mean any injury for which money damages are insufficient". *DiFabio v. Omnipoint Communications, Inc.*, 66 A.D.3d 635, 636-37 (2d Dep't 2009); *Matter of Walsh v. Design Concepts*, 221 A.D.2d 454, 455 (1995); S*ee, McLaughlin, Piven, Vogel v. Nolan & Co.*, 114 A.D.2d 165, 174 (1986).

Conversely, "[e]conomic loss, which is compensable by money damages, does not constitute irreparable harm". *Id., EdCia Corp. v. McCormack*, 44 A.D.3d 991, 994 (2007). When Plaintiffs fail to allege damages of a noneconomic nature, they thereby inherently fail to demonstrate irreparable harm in the absence of a preliminary injunction. Accordingly, Plaintiffs' request for a distinct preliminary injunction should each be denied.

Money damages can easily satisfy each of the items that Plaintiffs make claims that they are wronged by, such as loss of confidential and proprietary data from those on their former customer list. Plaintiffs fail to admit that money damages would cure all of their alleged injuries, yet seemingly acknowledge that this is the case when they state "***unless Caring Professionals and the Member FIs are duly compensated***, the taking of such data constitutes irreparable harm." Dkt. No. 38 at ¶39 (emphasis added). Clearly, Plaintiffs acknowledge that monetary compensation could cure all of their alleged damages without suffering irreparable harm.

PPL has demonstrated that it has established, robust and specific procedural safeguards already in place which will ensure that any personal data they receive is stringently protected and remains confidential. *See*, Maria Perrin Affm. ¶45-66. PPL is contractually and statutorily obligated to protect all consumer and PA personal data, and has taken all necessary steps to ensure that it is. These safeguards patently demonstrate that such data will be protected and that Plaintiffs have been assured that such safeguards are in place.

Plaintiffs would not be liable for any alleged violations of law for turning over the required information to DOH or to PPL when such assurances have been made and further demonstrated that state and federal laws on privacy and confidentiality of such data will be adhered to by all Defendants at all times. Accordingly, Plaintiffs' arguments on demonstrating irreparable harm fail on their face.

POINT III

THE BALANCE OF THE EQUITIES TIPS IN FAVOR DENYING PLAINTIFFS' PRELIMINARY INJUNCTION REQUEST.

Finally, Plaintiffs cannot obtain a preliminary injunction unless they can show that the balance of the equities weighs in their favor. *See, Doe v. Axelrod*, 73 N.Y.2d 748, 750 (1988). "The balancing of the equities requires the court to determine the relative prejudice to each party accruing from a grant or denial of the requested relief." *Sau Thi Ma v. Xuan T. Lien*, 198 A.D.2d 186, 604 N.Y.S.2d 84 (1st Dep't 1993). Courts must also consider the interests of the general public in their analysis. *Eastview Mall, LLC v. Grace Holmes*, Inc., 182 A.D.3d 1057 (4th Dep't 2020); *Seitzman v. Hudson River Assocs*., 126 A.D.2d 211, 214 (1st Dep't 1987).

The New York State Legislature's creation of a single statewide FI was intended to result in significant cost savings for New York taxpayers and to realize administrative efficiencies not achievable within the current system of over 600+ FIs. New York State will incur a devastating financial impact if the preliminary injunction is granted. The state will need to "achieve $500 million in state savings for the Medicaid program" to make up for the resulting shortfall in the event changes in the FI structure are not implemented as called for by law. *See,* McCardle Affm. Exhibit "B" at ¶ 22, 120, 122, 123. This substantial financial harm will be incurred at the expense of New York State taxpayers should Plaintiffs' current request for a preliminary injunction be granted. PPL acted in good faith and was awarded the statewide FI contract. PPL has since continued to act in good faith in diligent effort to implement the transition by April 1, 2025, despite the ongoing smear campaign and scorched earth litigation tactics employed by outgoing FIs.

The balance of the equities also must weigh the significant harm that PPL would suffer should the Court issue a preliminary injunction. The statewide FI transition is occurring precisely as the legislature and Governor Hochul envisioned. PPL has invested massive resources into being

prepared to operate by the tight April 1, 2025 deadline, as called for by statute. The scale of this FI program is enormous and has required PPL to invest unprecedented time and resources into meeting the deadline for operation as the sole statewide fiscal intermediary.

The Court must also consider the irreparable harm to consumers and personal assistants should this preliminary injunction be issued. Disturbing the transition at this stage, which enabling FIs to withhold necessary data would undoubtedly do, would cause chaos to CDPAP consumers who could lose access to critical healthcare needs. The proposed injunction would also cause substantial harm to the personal assistants who rely on their earnings under CDPAP to pay their bills. Plaintiffs seek to disrupt prompt payment to these PAs to further their self-interested crusade against PPL and DOH at great costs to consumers and personal assistants alike.

This havoc should not be allowed to transpire and thus Plaintiffs' request for a preliminary injunction should be denied. Defendant PPL fairly won the contract award to serve as the statewide fiscal intermediary in New York.

CONCLUSION

For the foregoing reasons, Defendant PPL respectfully requests that this Court (1) deny the Plaintiffs' requested relief and application for a preliminary injunction in full; and (2) order that allows the statewide fiscal intermediary tentative contract award to proceed forward and PPL's implementation time be permitted to continue uninterrupted; and (3) grant such other and further relief as the Court deems just and proper.

Dated: Albany, New York
February 18, 2025

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To: All Counsel of record via *NYSCEF*

ATTORNEY CERTIFICATION PURSAUNT TO UNIFORM RULE 202.8-b

I, Jonathan S. McCardle, an attorney duly admitted to practice law before the courts of the State of New York, hereby certify that this Memorandum of Law complies with the word count limit set forth in Rule 202.8-b of the Uniform Civil Rules for the Supreme Court and the County Court because it contains 6,077 words, excluding the parts of the Memorandum of Law exempted by Rule 202.8-b. In preparing this certification, I have relied on the word count of the word processing system used to prepare this Memorandum of Law.

Dated: Albany, New York
February 18, 2025

s/ Jonathan S. McCardle
Jonathan S. McCardle