

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

DO NO HARM, v. VITUITY, also known as, CEP AMERICA LLC, <i>Plaintiff,</i> <i>Defendant.</i>	Case No.
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VERIFIED COMPLAINT

1. “Racial discrimination is invidious in all contexts.” *Students for Fair Admissions, Inc. v. Harvard*, 143 S. Ct. 2141, 2166 (2023) (cleaned up).

2. Racial discrimination has been unlawful in private contracting since at least 1866, when Congress enacted 42 U.S.C. §1981. Section 1981 “protects the equal rights of all persons ... to make and enforce contracts without respect to race.” *Domino’s Pizza, Inc. v. McDonald*, 546 U.S. 470, 474 (2006) (cleaned up).

3. Congress also banned racial discrimination in medicine. Section 1557 of the Affordable Care Act prohibits racial discrimination in “any health program or activity, any part of which is receiving federal assistance.” 42 U.S.C. §18116(a).

4. Defendant Vituity, a physician partnership, is operating a racially discriminatory program that blatantly violates the promise of race neutrality in both section

1981 and the ACA. Its Bridge to Brilliance Incentive Program offers a “leadership incentive for Black physicians, with a sign-on bonus of up to \$100,000.” Ex. A. Non-black applicants are categorically excluded from forming this contract with Vituity.

5. Vituity’s explicit racial exclusion flouts both section 1981 and the ACA. Plaintiff, Do No Harm, has at least one member who is being excluded from the program because he is the wrong race. And time is of the essence. The application period for Vituity’s racially discriminatory incentive program closes **December 17, 2023**. Absent immediate relief, physicians of Vituity’s disfavored races will be irreparably harmed. *See Gresham v. Windrush Partners, Ltd.*, 730 F.2d 1417, 1423 (11th Cir. 1984) (“[I]rreparable injury may be presumed from the fact of discrimination.”). Do No Harm is entitled to relief.

PARTIES

6. Plaintiff, Do No Harm, is a nationwide membership organization consisting of a diverse group of physicians, healthcare professionals, students, patients, and policymakers who want to protect healthcare from radical, divisive, and discriminatory ideologies and policies.

7. Do No Harm accomplishes its mission through education and advocacy about the divisive and discriminatory ideas being embedded within medical education, training, research, practice, and policy. It has, among other things, sued the Biden administration for introducing discriminatory “equity” criteria into Medicare, sued private

medical organizations for creating racially exclusive fellowships, and filed OCR complaints against medical schools that create fellowships and scholarships that exclude students based on race.

8. Do No Harm has at least one member who is ready and able to apply for the incentive program if Vituity stops discriminating against non-black applicants, including Doctor A.

9. Defendant Vituity, also known as CEP America LLC, is a 100% physician-owned partnership. It has more than 450 onsite locations around the country, including in Pensacola. Vituity's incentive program is available to physicians at "any" of those locations. Ex. A.

JURISDICTION AND VENUE

10. This Court has subject-matter jurisdiction under 28 U.S.C. §1331.

11. Venue is proper under 28 U.S.C. §1391 because Vituity resides and has locations in Pensacola, and a substantial part of the events and omissions giving rise to the claims occurred there.

12. Vituity has onsite locations across Florida, including Pensacola, Miramar Beach, Middleburg, Jacksonville, and St. John's. Vituity also contracts to do business at those Florida locations. The challenged program is available at Vituity's Florida locations, and Vituity intends to contract with physicians to join Vituity and work at those locations. Ex. A. Vituity is also currently offering jobs in Florida, including Pensacola. Ex. E.

13. Vituity’s advertisement for the incentive program is published on its website. Ex. A. Vituity’s advertisement reaches, and is intended by Vituity to reach, Florida and physicians in Florida interested in applying to work for Vituity there.

14. By operating a racially discriminatory program operated in and targeted at Florida, Vituity injures Florida physicians who would otherwise apply to contract with Vituity, including Doctor A. Accordingly, Vituity has committed the alleged illegal conduct in Florida, and otherwise has contacts sufficient to make the exercise of personal jurisdiction comport with due process.

FACTUAL ALLEGATIONS

A. Vituity provides health services throughout the United States.

15. Vituity’s activities are principally in health care.

16. Vituity is 100% owned by physicians. *See 100% Physician Ownership Matters*, perma.cc/U79S-6XRR. Its doctors have “a shared passion for providing the very best patient care.” *Id.* Vituity states that a “patient-first focus drives everything we do, from continually seeking improvements in care delivery to developing and implementing innovations in health care.” Ex. A.

17. To that end, it has more than 450 locations where its partner physicians provide healthcare services to patients. Ex. A.

18. As part of its so-called patients-first approach, Vituity offers many health-care services throughout the United States. These include anesthesiology, critical care,

emergency medicine, hospital medicine, neurology, outpatient medicine, psychiatry, and telehealth. *See Healthcare Services That Improve Lives*, perma.cc/2VGX-7TC4.

19. Vituity seeks physicians who will help to make improvements “in care delivery” and who will help implement “innovations in healthcare.” Ex. A.

20. Vituity “serv[es] 8 million patients a year.” Ex. A.

21. Vituity receives federal financial assistance, directly and indirectly, including Medicare reimbursements. Vituity is a Medicare provider. *See Centers for Medicare & Medicaid Services, Medicare Revalidation List*, perma.cc/SVF7-B282.

22. Vituity is therefore a health program or activity receiving federal financial assistance.

B. Vituity launches the racially discriminatory Bridge to Brilliance Incentive Program.

23. Vituity recently launched the Bridge to Brilliance Incentive Program. Ex. A. The program seeks physicians “in HM, EM, UC, Anesthesiology, CC, Family Medicine, Neurology, IM [Internal Medicine], Primary Care, Psychiatry, Skilled Nursing, Correctional Medicine, and Wound Care.” Ex. A. But only if they’re black. Ex. A.

24. The program “offer[s] a leadership incentive for Black physicians, with a sign-on bonus of up to \$100,000.” Ex. A.

25. Vituity, in other words, excludes non-black applicants from this program. Ex. A.

26. The incentive program operates in all of Vituity's 450+ locations. "Vituity has opportunities at 450 practice locations across the country," Ex. A, including in Pensacola, Ex. E.

27. In exchange for the \$100,000 bonus and a partnership at Vituity, physicians must agree to take their practice to Vituity and work for Vituity at one of its onsite locations. Ex. A. "To qualify, physicians must join [its] Partnership at any of [its] 450+ onsite locations across the US." Ex. A. Vituity adds that applicants "[m]ust be willing to work onsite at any of our locations nationwide." Ex. A. These locations include many locations in North Florida generally, and Pensacola specifically. Ex. C.

28. Vituity describes "The Opportunity" as restricted to "Board Eligible/Certified Black physicians" for an up to "\$100k sign-on bonus." Ex. A. That figure is much higher than Vituity's normal signing bonuses. Vituity also offers other "Benefits & Beyond" in exchange for physicians joining the partnership, including insurance, a partnership model that "allows a K-1 status pay structure [with] high tax deductions," and an "[e]xtraordinary 401K Plan with high tax reduction and faster balance growth." Ex. A.

29. The application for Vituity's program has a "diversity statement," which requires applicants to state their race and ethnicity. Ex. B. This feature ensures that Vituity can exclude non-black physicians from the Bridge to Brilliance Incentive Program.

C. Do No Harm's non-black members are ineligible to apply to Vituity's Bridge to Brilliance Incentive Program solely on account of race.

30. Do No Harm has at least one physician member, Doctor A, who is being harmed by Vituity's racially discriminatory program. Do No Harm's President, Kristina Rasmussen, knows Doctor A, has spoken to him about his intentions, and has personal knowledge of the relevant facts.

31. Doctor A is a physician. He works in internal medicine and is a hospitalist.

32. Doctor A is a U.S. citizen.

33. Doctor A is a resident of, and practices medicine in, Florida.

34. Doctor A is not black. He does not meet Vituity's racial requirement.

35. Vituity's application actively discriminates against Doctor A. That application requires him to answer a diversity form that asks about his race. Ex. B. Screenshots of the application form are attached. Ex. B.

36. Doctor A is ready and able to apply to Vituity's Bridge to Brilliance Incentive Program, if a court ordered Vituity to stop discriminating against non-black applicants. Vituity is currently advertising open positions in his field in Pensacola. Ex. E.

37. Doctor A is interested in working for Vituity, including in Pensacola, and is drawn to the program due to its unusually high signing bonus. Doctor A believes the program would provide him with a lucrative opportunity to provide patient care through an established partnership.

38. Doctor A satisfies all nonracial criteria for the program.

39. Vituity advertises the program on third-party websites. Ex. D; *Black Leadership Physician Incentive – All Specialties – Remote – Nationwide*, perma.cc/9AX5-7444. In one third-party advertisement, Vituity represents that the application window closes on December 17, 2023. Ex D. Vituity does not disclose this deadline on its website. Ex. A. Neither Do No Harm nor Doctor A thus knew of the deadline until it discovered this third-party advertisement on December 6.

CLAIMS FOR RELIEF

COUNT I

Violation of the Civil Rights Act of 1866 (42 U.S.C. §1981)

40. Do No Harm repeats and realleges each of the prior allegations.

41. Section 1981 guarantees “[a]ll persons ... the same right ... to make and enforce contracts ... as is enjoyed by white citizens.” 42 U.S.C. §1981(a).

42. This provision “protects the equal right of all persons ... to make and enforce contracts without respect to race.” *Domino’s*, 546 U.S. at 474. Section 1981 “prohibits intentional race discrimination in the making and enforcement of public and private contracts.” *Jenkins v. Nell*, 26 F.4th 1243, 1249 (11th Cir. 2022).

43. These rights “are protected against impairment by nongovernmental discrimination.” 42 U.S.C. §1981(c).

44. Section 1981 “protects the would-be contractor along with those who have already made contracts.” *Domino’s*, 546 U.S. at 475. The statute thus “offers relief when racial discrimination blocks the creation of a contractual relationship.” *Id.*

45. Section 1981 authorizes equitable and legal relief, including compensatory and punitive damages. *Johnson v. Ry. Express Agency, Inc.*, 421 U.S. 454, 459-60 (1975).

46. Vituity is violating section 1981 by expressly excluding all non-black applicants from the program.

47. The program implicates a right protected by section 1981—the right to “make ... contracts.” 42 U.S.C. §1981(a).

48. Entry in the program forms a contractual relationship between Vituity and the applicant. Vituity offers the would-be partner a job, compensation, benefits, and a \$100,000 signing bonus. Ex A. In exchange, an applicant agrees to become a partner at Vituity and work at one of its onsite locations. Ex A.

49. The formation of this contractual relationship is explicitly limited based on race. The program is only open to black physicians. Ex. A. An applicant must certify his race on the application’s Diversity Form. Ex. C.

50. Accordingly, non-black physicians like Doctor A are ineligible to apply to, and are excluded from, Vituity’s program. They cannot compete for the higher bonuses and other benefits on equal footing because of their race.

51. Vituity’s express and intentional racial discrimination in the making of contracts violates section 1981.

COUNT II
Violation of Section 1557 of the Affordable Care Act
(42 U.S.C. §18116(a))

52. Do No Harm repeats and realleges each of its prior allegations.

53. Section 1557 of the Affordable Care Act states that “[a]n individual shall not, on the ground prohibited under title VI ... be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance.” 42 U.S.C. §18116(a).

54. “The phrase ‘health program or activity’ in section 1557 plainly includes all the operations of a business principally engaged in providing healthcare.” *T.S. v. Heart of CarDon LLC*, 43 F.4th 737, 743 (7th Cir. 2022).

55. Private entities and individuals can sue to enforce section 1557 and obtain both injunctive relief and damages. §18116(a).

56. Vituity holds itself out as being, and is, principally engaged in the business of providing healthcare.

57. Vituity also receives federal financial assistance, directly and indirectly, including Medicare reimbursements.

58. Vituity’s entire operations—including the program—are covered by section 1557.

59. Non-black physicians, like Doctor A, are intentionally “excluded from participation in,” and “denied the benefits of,” and are “subjected to discrimination under” Vituity’s incentive program based on their race. §18116(a); Ex. A.

60. Vituity’s intentional racial discrimination in the program violates section 1557.

PRAYER FOR RELIEF

Do No Harm respectfully requests that this Court enter judgment in its favor and against Vituity and provide the following relief:

- A. A declaratory judgment that Vituity’s Bridge to Brilliance Incentive Program violates section 1981 and the ACA;
- B. A temporary restraining order and preliminary injunction barring Vituity from closing the application period on December 17, 2023, or at any time before the merits of this action are resolved, selecting or offering applicants positions within the program, or enforcing the racially discriminatory eligibility criteria.
- C. A permanent injunction barring Vituity from enforcing its racially discriminatory eligibility criteria for the program.
- D. Nominal damages in the amount of \$1.
- E. Reasonable costs and expenses of this action, including attorneys’ fees, under 42 U.S.C. §1988 and any other applicable laws.
- F. All other relief that Do No Harm is entitled to, including any relief necessary to undo Vituity’s closure of the application window or selection of a physician.

Dated: December 8, 2023

Respectfully submitted,

/s/ Taylor A.R. Meehan

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VERIFICATION

I, Kristina Rasmussen, declare as follows:

1. I am over the age of 18, of sound mind, and otherwise competent to sign this verification.

2. I am the Executive Director of Do No Harm.

3. I have reviewed this verified complaint.

4. For the allegations within my personal knowledge, I believe them all to be true.

5. For the allegations not within my personal knowledge, I believe them to be all true based on my review of the cited materials and based on my conversations with Do No Harm's Doctor A. I know Doctor A and his background.

6. Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 8, 2023



Kristina Rasmussen
Executive Director of Do No Harm