UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:24-cv-60591-DAMIAN/Valle

CONSWALLO TURNER, TIESHA FOREMAN, ANGELINA WELLS, PAULA LANGLEY, VERONICA KING, NAVAQUOTE, LLC and WINN INSURANCE AGENCY, LLC, individually and on behalf of all others similarly situated,

CLASS ACTION

(Jury Trial Demanded)

Plaintiffs,

v.

ENHANCE HEALTH, LLC, TRUECOVERAGE, LLC, SPERIDIAN TECHNOLOGIES, LLC, BENEFITALIGN, LLC, NUMBER ONE PROSPECTING, LLC d/b/a MINERVA MARKETING, BAIN CAPITAL INSURANCE FUND L.P., DIGITAL MEDIA SOLUTIONS LLC, NET HEALTH AFFILIATES, INC., MATTHEW B. HERMAN, BRANDON BOWSKY, GIRISH PANICKER, and MATTHEW GOLDFUSS,

Defendants.
_____/

RESPONSE TO DEFENDANTS' EXPEDITED JOINT MOTION TO STAY DISCOVERY PENDING RULING ON DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT

Plaintiffs respond to Defendants' Expedited Joint Motion to Stay Discovery Pending Ruling on Defendants' Motion to Dismiss Amended Complaint [D.E. 96] (the "Motion to Stay" or "Mot.").

INTRODUCTION

Defendants' Motion to Stay raises just one argument that is possibly case-dispositive: that Plaintiffs lack Article III standing. (Mot. at 1). In their stay motion, Defendants even cite a series of cases holding that Article III standing represents a threshold- and case-dispositive issue. (*See id.* at 5). But in their Motion to Dismiss filed three days later [D.E. 100] (the "Motion to Dismiss" or "MTD"), Defendants do not attack Article III standing, which allows claims that are "fairly traceable to the challenged conduct."[1] Rather, Defendants make a *statutory* standing argument attacking only Plaintiffs' RICO claims. (Mot. to Dismiss at 11-25). Thus, for the sake of argument only, and ignoring the counterarguments that Plaintiffs will submit in their forthcoming response to the Motion to Dismiss, including that any deficiencies are curable, Defendants' statutory standing argument is limited to Plaintiffs' RICO claims. And Plaintiffs' aiding and abetting and negligence claims remain untargeted by *any* standing argument.[2]

Defendants aim their remaining arguments at typically correctable alleged deficiencies like lack of "specificity" under Rule 9(b) and "fail[ure] to state valid claims" under Rule 12(b)(6). So even ignoring the rebuttals Plaintiffs intend to make in response to Defendants' "pleading deficiency" arguments, none of Defendants' arguments are "clearly meritorious and truly case

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[1] *See Havana Docks Corp. v. MSC Cruise Lines, Inc.*, 484 F. Supp. 3d 1177, 1193-94 (S.D. Fla. 2020) (Bloom, J.).

[2] Defendants do level prudential (ie., non-Article III or statutory) standing arguments at two Plaintiffs, but that argument even if successful would still leave five plaintiffs.

dispositive," and thus do not warrant a stay under the standard applied in this Circuit.[3]

Moreover, Defendants fail to articulate good cause to support a stay. Defendants claim that it would be time consuming and burdensome to respond to discovery, but fail to demonstrate any specific burden or prejudice. They attach no declaration supporting the contention that they would have to review terabytes of data, or divert the tasks of their employees, to respond to discovery such as Plaintiffs' First Request for Production. Defendants ignore the fact that the scope of production can be negotiated through search terms and custodians. Defendants have not responded with any edits or comments to the proposed protocol for electronically stored discovery ("ESI") and confidentiality agreement circulated by Plaintiffs nearly a month ago. Defendants seem intent on preserving any burden rather than reducing it, because it supports their stay request.

On the other hand, Plaintiffs would be prejudiced by a stay. This will be a long and complex case, and Plaintiffs expect Defendants will continue to challenge Plaintiffs' discovery efforts, including subpoenas to third parties who may have information proving the scheme. Defendants have already moved to quash the subpoenas of third parties who have come forward, such as Monica Reed (who has documents showing Minerva's lead sources and purchasers) and Paul Cugini (former Enhance Health employee who was the "liaison" to Enhance Health's downlines). The more time that passes, the increased possibility that information gets lost or destroyed. Indeed, as set forth in previous motions and supported by attached declarations, Plaintiffs have a legitimate concern about the preservation of evidence in this case.

Defendants' Motion to Stay is the latest in a series of early efforts to stonewall Plaintiffs'

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[3] *See Feldman v. Flood,* 176 F.R.D. 651, 652-53 (M.D. Fla. 1997) (denying stay after taking preliminary peek at complaint and failing to see a clearly case-dispositive issue).

discovery of facts supporting their allegations of a now widely reported[4] nationwide scheme to deceive poor Americans and steal clients from other insurance agents.[5] For example, Defendants previously objected to a Rule 26(f) conference allowing the parties to commence discovery, until compelled to do so by the Court on Plaintiffs' motion. [D.E. 55]. They have refused to provide comments or input to Plaintiffs' proposed ESI protocol or Plaintiffs' proposed confidentiality order — proposed agreements that would foster the orderly production of information and protect Defendants' concerns about confidentiality and burden — concerns Defendants have also raised in motions to block the subpoenas of third parties who have key information. TrueCoverage, for example, has failed to file *any* response to Plaintiffs' First Request for Production. Enhance Health has served objections citing this Motion to Stay, but will not participate in a meet-and-confer until the motion is ruled upon.

Continuing the pattern, Defendants now seek to stay discovery based primarily on an argument that was not even raised in their Motion to Dismiss and based on claims of burdensomeness that could be resolved by Plaintiffs' proposed ESI protocol. As set forth below, Defendants have failed to meet their burden of demonstrating a case-dispositive issue and good cause, and any claimed burden is significantly outweighed by Plaintiffs' concerns about the destruction of evidence. No further delay should be permitted. The Court should deny

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[4] *See, e.g.*, Wall Street Journal, *Americans Clicked Ads to Get Free Cash. Their Health Insurance Changed Instead* (Sept. 13, 2024), at https://www.wsj.com/health/healthcare/social-media-ads-health-insurance-scams-37d1ecfa; NPR, Rogue ACA Insurance Agents Could Face Criminal Charges Under a Proposed Law (July 25, 2024), at https://www.npr.org/sections/shots-health-news/2024/07/25/nx-s1-5050937/aca-obamacare-health-insurance-rogue-agents-wyden-bill

[5] The scheme was brought to light in large part by this lawsuit, which contributed to the bankruptcy of one defendant, Digital Media Solutions, Inc. d/b/a Protect Health, *see In re Digital Media Solutions, Inc.*, No. 24-90468 (ARP) (S.D. Tex.), and the shuttering of another defendant, Net Health Affiliates, Inc. ("NHA"), as well as other downline agencies.

Defendants' Motion to Stay.

LEGAL STANDARD

This Court has made clear that a "stay of discovery pending the determination of a motion to dismiss . . . is the **exception rather than the rule**." *Cabrera v. Progressive Behav. Sci., Inc.*, 331 F.R.D. 185, 186 (S.D. Fla. 2019) (emphasis added). "Indeed, motions to stay discovery pending ruling on a motion to dismiss are **generally disfavored** in the Southern District of Florida." *Schottenstein v. Schottenstein-Pattap*, No. 1:23-CV-20604, 2023 WL 11899125, at *3 (S.D. Fla. Sept. 14, 2023) (emphasis added); *see also JPMCC 2006-CIBC15 FPG-STIP Portfolio, LLC v. ProEquity Asset Mgmt. Corp.*, No. 23-21779, 2023 WL 11885490, at *1 (S.D. Fla. Nov. 9, 2023) ("Motions to stay discovery pending ruling on a dispositive motion are generally disfavored in this district.") (quoting *Randy Rosenberg, D.C., P.A. v. GEICO Gen. Ins. Co.*, No. 19-cv-61422, 2019 WL 6052408, at *1 (S.D. Fla. Nov. 15, 2019)).

Motions to stay discovery "are not favored because when discovery is delayed or prolonged it can create case management problems which impede the Court's responsibility to expedite discovery and cause unnecessary litigation expenses and problems." *Cuhaci v. Kouri Group, LP*, 540 F. Supp. 3d 1186 (S.D. Fla. May 14, 2021) (quoting *Feldman v. Flood*, 176 F.R.D. 651, 652 (M.D. Fla. 1997)).

A motion to stay discovery "is **rarely appropriate** unless resolution of the motion will dispose of the **entire case**." *HNA LH OD, LLC v. Local House Int'l, Inc.*, No. 21-CV-21022, 2021 WL 2767080, at *1 (S.D. Fla. July 2, 2021) (quoting *Bocciolone v. Solowsky*, No. 08-20200, 2008 WL 2906719, at *2 (S.D. Fla. July 24, 2008)) (emphasis added). Indeed, a stay pending a motion to dismiss may be granted only if the Court's preliminary review of the pleadings show that the "case will **certainly** be dismissed." *Cabrera*, 331 F.R.D. at 187 (emphasis added) (denying motion

to stay); *see also MSP Recovery Claims, Series LLC v. Amerisure Ins. Co*., No. 17-23961, 2021 WL 4992560, at *1 (S.D. Fla. Mar. 8, 2021) (denying motion to stay because "the Court [could] not say dismissal of the claims against Defendants is a foregone conclusion"). Such relief is thus reserved for claims that are "especially dubious" on their face. *Cuhaci*, 540 F. Supp. 3d at 1187. Absent such a showing, a stay of discovery pending a motion to dismiss is inappropriate.

Further, "discovery stay motions are generally denied except where a **specific showing** of prejudice or burdensomeness is made or where a statute dictates that a stay is appropriate or mandatory." *HNA LH OD, LLC*, 2021 WL 2767080, at *1 (emphasis added) (quoting *Montoya v. PNC Bank, N.A.*, No. 14-20474, 2014 WL 2807617, at *2 (S.D. Fla. June 20, 2014)). "The party seeking a stay also 'bears the burden of showing good cause and reasonableness.'" *Id.* (quoting *McCabe v. Foley*, 233 F.R.D. 683, 685 (M.D. Fla. 2006)). "Thus, a defendant who requests a blanket stay of discovery must do more than simply point to the pendency of a dispositive motion; it must also make a 'specific showing of prejudice or burdensomeness.'" *JPMCC*, 2023 WL 11885490, at *1.

In addition to finding whether the proponent of a stay has made the requisite showing of a case-dispositive issue and specific burden and prejudice absent a stay, and evaluating whether dismissal with prejudice is sufficiently certain to warrant a discovery stay, the court "must also weigh 'the harm produced by a delay in discovery' against 'the likely costs and burdens of proceeding with discovery.'" *Cabrera*, 331 F.R.D. at 186 (quoting *Feldman*, 176 F.R.D. at 652-53.

THE MOTION SHOULD BE DENIED

A. The Motion to Dismiss Does Not Raise Case-Dispositive Issues

1. Defendants' Motion to Dismiss Does Not Raise Article III Standing

In their Motion to Stay, Defendants claim that their motion to dismiss would raise case-dispositive arguments regarding constitutional Article III standing. (Mot. at 1, 5-6). Indeed, it is Defendants' leading argument for a stay: "The motion will demonstrate that Plaintiffs fail to plead injury-in-fact and traceability, and therefore do not have Article III standing . . . ." (Mot. at 1) Defendants' Motion to Stay cites a series of cases finding Article III standing to be a threshold case-dispositive issue, and claim the same is true with regard to the arguments they will raise in their motion to dismiss. (Mot. at 5).

But Defendants do not raise Article III standing in their Motion to Dismiss. Rather, they argue that all Plaintiffs lack ***statutory*** standing to assert ***RICO*** claims and that ***two*** of the Plaintiffs lack prudential standing for the state law claims. (Mot. to Dismiss at 12-25, 45). Those arguments cannot be case-dispositive because even if successful, they only apply to the RICO claims, and to the state law claims against two Plaintiffs. *See*, *e.g.*, *Renuen Corp. v. Lameira*, No. 6:14-CV-1754, 2015 WL 1138462, at *2 (M.D. Fla. Mar. 13, 2015) ("If the RICO claim is dismissed, that will not dispose of the other claims against Lerman."). Defendants' only potentially case-dispositive argument is not contained within their Motion to Dismiss.

In addition to not being a basis for a stay, Defendants' standing arguments also lack merit for various reasons, as will be set forth in Plaintiffs' response to the Motion to Dismiss. And Defendants fail to demonstrate that any purported pleading deficiencies with respect to standing could not be cured by amendment. Thus, they fail to show any case-dispositive standing issue.

2. Any Purported Pleading Deficiencies Under Rules 9(b) and 12(b)(6) Are Not Case-Dispositive

Defendants fail to raise any purported pleading deficiencies that could not be cured.[6] *See*, *e.g.*, *HNA LH OD, LLC*, 2021 WL 2767080, at *3 ("Defendants also seek dismissal based in part on the sufficiency of the allegations in the Complaint. As such, and should the Motion to Dismiss be granted based on the failure to plead certain claims with specificity, Plaintiff may be granted leave to amend. Thus, Defendants have failed to demonstrate that the resolution of the Motion to Dismiss will be truly case dispositive here."); *Rubinstein v. Keshet Inter Vivos Tr.*, No. 17-61019, 2018 WL 3730868, at *3 (S.D. Fla. Apr. 27, 2018); ("[W]e are unconvinced that Plaintiffs' entire complaint will be dismissed, and even more doubtful that the pleading will be dismissed with prejudice. . . even if most of the Defendants prevailed on their motion to dismiss, there is a strong possibility that (1) some of the claims will survive, and (2) that the others can be cured with leave to amend"); *Renuen Corp.*, 2015 WL 1138462, at *2 ("Even if the Court assumes Lerman's motion to dismiss the RICO count will be granted the likelihood that Plaintiffs will not be given leave to amend is slim and none. Therefore, regardless of their merit, the motions to dismiss are not truly case dispositive."); *Wiand v. ATC Brokers Ltd.*, No. 8:21-cv-01317, 2022 WL 1239373, at *2 (M.D. Fla. Apr. 27, 2022) (denying stay of discovery based on motions to dismiss which argued lack of standing, stating "the court cannot conclude at this time that the motions to dismiss will be granted and, even if so, whether such dismissal would be of the entire amended complaint, against each defendant, and with prejudice"); *Al-Rayes v. Willingham*, No. 3:15-CV-107, 2016 WL 9527957, at *4 (M.D. Fla. June 22, 2016) ("Upon review of the SAC, the Court cannot say that Defendant's argument based on Rule 9(b) is clearly meritorious. The SAC is lengthy, complex,

[6] Plaintiffs do not agree that there are pleading deficiencies and will address the specific arguments raised in Defendants' Motion to Dismiss in their response to the Motion to Dismiss.

and may well suffer from pleading deficiencies. However, it is unclear whether any such deficiencies might be cured. Thus, this is not a sufficient ground to stay discovery.").[7] Even if one claim survives, discovery must proceed on the same facts and occurrences.

Once again, Defendants' stay motion relies on cases where the primary basis for the stay involved legitimate issues raised as to Article III standing — the same argument Defendants claimed they would make, but did not. (Mot. at 6-7) (citing *In re Mednax Servs., Inc., Customer Data Sec. Breach Litig.*, 21-MD-02994, 2021 WL 10428229 (S.D. Fla. Oct. 9, 2021) (finding "legitimate jurisdictional and [Article III] standing challenges") and *Taylor v. Serv. Corp. Int'l*, No. 20-CIV-60709, 2020 WL 6118779 (S.D. Fla. Oct. 16, 2020) (explaining that the defendants raised issues of Article III standing and thus the motion to dismiss did "have the potential to resolve the entire case")).[8]

In addition, as will be set forth in Plaintiffs' response to the Motion to Dismiss, many of Defendants' arguments mischaracterize Plaintiffs' allegations, factual denials or disputes, or construe allegations in ***Defendants'*** favor. Thus, instead of demonstrating a clear basis for

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[7] *See also Thomas v. It's A New 10, LLC*, No. 1:22-CV-22149, 2023 WL 418859, at *3 (S.D. Fla. Jan. 6, 2023) ("[T]he Court is not prepared to say that her remaining claims cannot be cured with leave to amend."); *Datto v. Fla. Int'l Univ. Bd. of Trustees*, No. 20-cv-20360, 2020 WL 3576195, at *2 (S.D. Fla. July 1, 2020) ("Here, the Court cannot conclude at this juncture that Defendant's motion to dismiss will be granted and, even if so, whether such dismissal would be of the Complaint its entirety and with prejudice."); *U.S. ex rel. Sedona Partners LLC v. Able Moving & Storage, Inc.*, No. 20-CV-23242, 2021 WL 4749803, at *3 (S.D. Fla. Oct. 12, 2021) ("In this case, each of the Motions to Dismiss raise insufficiencies in Sedona's pleadings, which do not suggest that the Motions to Dismiss are clearly meritorious and truly case dispositive."); *Cabrera*, 331 F.R.D. at 186 ("Having taken a preliminary peak of the motion to dismiss, '[d]ismissal of the case with prejudice is not a foregone conclusion'") (citation omitted).

[8] Defendants also rely on *James v. Hunt*, 761 Fed. App'x 975 (11th Cir. 2018), where the court reviewed the trial court's decision for abuse of discretion and found that the fraud-based claims were "unpersuasive" and that the plaintiffs "had filed a substantial amount of motions and other rulings, many of which were frivolous, within three months of the commencement of the lawsuit." *Id.* at 981. The *Infante v. Bank of Am. Corp.*, 468 F. App'x 918, 920 (11th Cir. 2012) case cited by Defendants does not involve a motion to stay.

dismissal of the entire case with prejudice, the Motion to Dismiss highlights the factual issues into which discovery must proceed.

B. Defendants Fail to Show Good Cause

In addition to failing to show the Motion to Dismiss will be — or even could be — case-dispositive, Defendants fail to meet their burden of making a specific showing of good cause and reasonableness. "A motion to stay discovery is the functional equivalent of a motion for a protective order prohibiting or limiting discovery." *CE-1709 Midland Trail Shelbyville KY, LLC v. Redstone, LLC*, 22-22213-CIV, 2022 WL 22839794, at *6 (S.D. Fla. Nov. 18, 2022). Thus, Defendants must make a ***specific*** showing of prejudice or burdensomeness." *JPMCC*, 2023 WL 11885490, at *1 (emphasis added) (citation omitted). Defendants have not done so.

Defendants cannot carry that burden by simply arguing that stays are generally warranted in class actions. *See*, *e.g.*, *Joens v. Nationstar Mortgage, LLC*, 8:23-CV-2717, 2024 WL 865879, at *2 (M.D. Fla. Feb. 29, 2024) ("The general proposition that discovery in a putative class action can be time-consuming and expensive does not constitute sufficiently unusual circumstances here."). Indeed, this Circuit is replete with examples of courts denying motions to stay discovery in the class action context. *See*, *e.g.*, *Keegan v. Minahan,* No. 23-61148, 2023 WL 4546253, at *2 (S.D. Fla. July 14, 2023) (denying motion to stay discovery in putative class action); *Hamad v. Frontier Airlines, Inc.*, No. 6:23-CV-1209, 2024 WL 22031, at *2 (M.D. Fla. Jan. 2, 2024) (finding no special circumstances warranted stay of discovery in putative class action); *Torres v. Wendy's Int'l, LLC*, No. 6:16-cv-210, 2016 WL 7104870, at *3 (M.D. Fla. Nov. 29, 2016) ("The burden argued by Defendant is that of most any large company saddled with a class action complaint, and there are no specific facts or allegations in the Motion [for stay of discovery] that would establish an undue burden upon Defendant."); *Ray v. Spirit Airlines, Inc.*, No. 12-61528, 2012 WL 5471793,

at *2 (S.D. Fla. Nov. 9, 2012) (denying defendants' motion to stay discovery in putative class action lawsuit involving RICO claims); *Montoya v. PNC Bank, N.A.*, No. 14-20474, 2014 WL 2807617 (S.D. Fla. June 20, 2014); *Koock v. Sugar & Felsenthal, LLP*, No. 8:09-CV-609, 2009 WL 2579307 (M.D. Fla. Aug. 19, 2009).

Indeed, in each of the three cases Defendants rely upon in support of their argument that "courts regularly grant discovery stays in class actions," that was not the basis for the decision to stay. (Mot. at 5, 9). Instead — unlike Defendants' Motion to Dismiss here — each of the three cases Defendants cite involved challenges to Article III standing. *See In re Mednax Servs.*, 2021 WL 10428229, at *3 (finding "legitimate jurisdictional and [Article III] standing challenges" and concluding that "discovery should not commence until such challenges are resolved"); *Skuraskis v. NationsBenefits Holdings, LLC*, No. 23-CV-60830, 2023 WL 8698324, at *3 (S.D. Fla. Dec. 15, 2023) ("A 'preliminary peek' at the pending Motion to Dismiss reveals that Defendants have raised colorable challenges to Plaintiffs' Article III standing, as well as the pleading sufficiency of Plaintiffs' claims."); *Taylor*, 2020 WL 6118779, at *2 (explaining that the defendants raised issues of Article III standing and thus the motion to dismiss did "have the potential to resolve the entire case").[9]

Nor is the fact that this case involves RICO claims dispositive. *See Ray*, 2012 WL 5471793, at *2 ("Spirit also insinuates that discovery should be stayed simply because this a complex RICO case, as cases of this kind always involve burdensome and costly discovery . . . These arguments won't do."); *CE-1709 Midland*, 2022 WL 22839794, at *7 (explaining in a RICO case that "[i]t does not counsel an automatic stay of discovery upon the filing of a motion to compel

[9] Further, in that case, unlike Defendants here, the defendants in *Taylor* supported their assertions of unreasonable discovery burdens in the absence of a stay with declarations. *Id.* at *4

arbitration or to dismiss a complaint, even if the complaint alleges various complex claims against multiple defendants"); *see also Renuen Corp.*, 2015 WL 1138462, at *2 ("Even if the Court assumes Lerman's motion to dismiss the RICO count will be granted the likelihood that Plaintiffs will not be given leave to amend is slim and none. Therefore, regardless of their merit, the motions to dismiss are not truly case dispositive.").

Defendants have not otherwise made the "***specific*** showing of prejudice or burdensomeness" required for the issuance of a stay. *See Ray*, 2012 WL 5471793, at *3 (emphasis added). They have not pointed to a tangible expense or identified any category of document or information that would cause it harm if subject to discovery. Instead, Defendants merely complain that discovery may be time consuming (Mot. at 9-11), which is not sufficient. *See Hamad*, 2024 WL 22031, at *2 ("Generally referencing that discovery is time-consuming and expensive is insufficient."). The only attempt at providing specifics relates to Defendant Enhance Health, and those assertions are insufficient and not supported by any affidavit or declaration. (Mot. at 10-11). No other Defendants have even attempted to identify a specific burden.

With respect to the unsubstantiated concerns raised by Enhance Health that it would have to review "at least 1.1 terabytes of data shared between approximately 1,400 accounts" and "data from over 2,000 individuals covered by Plaintiffs' requests from June 2022 to the present," (Mot. at 11), those concerns fail to justify a stay. Importantly, nearly a month ago Plaintiffs proposed an ESI protocol to all Defendants. **Exhibit A** (Plaintiffs' Proposed ESI Protocol). That proposed ESI protocol gives the producing parties the option to employ search terms and requires the parties to meet and confer in good faith regarding the search terms and search processes. *Id.* at 2. Like any other electronic-document-intensive case, the parties are expected to employ an ESI protocol and to meet and confer in an effort to craft a reasonable production using time- and cost-saving search

terms and custodian-based searches. Plaintiffs have no interest in receiving and reviewing 1.1 terabytes of data, for example. To date, however, Defendants have not substantively responded regarding the proposed ESI protocol, despite Plaintiffs' repeated efforts to follow up.

As to the arguments regarding subpoenas purportedly seeking confidential information, Defendants also have proposed a confidentiality order to all Defendants. **Exhibit B** (Plaintiffs' Proposed Confidentiality Order). Again, despite Plaintiffs' repeated efforts to follow up with Defendants on those proposals, Defendants have not provided any substantive response or comments.

Defendants remain "free to seek relief from overbroad or prejudicial discovery through means short of a total stay. They may raise appropriate objections to unduly burdensome discovery requests." *CE-1709 Midland*, 2022 WL 22839794, at *7; *see also Keegan*, 2023 WL 4546253, at *2 (denying motion to stay and stating, "[i]f Minahan has legitimate concerns that Keegan's discovery requests are overly broad, burdensome, or unnecessary, Minahan can raise the issue in the appropriate manner before Magistrate Judge Jonathan Goodman, as set forth in his discovery procedures order"); *Cafe, Gelato & Panini LLC v. Simon Prop. Group, Inc*., 20-60981, 2021 WL 2037798, at *5 (S.D. Fla. May 21, 2021) ("[T]he Court is unpersuaded by Defendants' argument that an order granting a stay of discovery is warranted due to the burden that will be incurred in responding to Plaintiffs' discovery requests. Defendants may present such arguments, as appropriate, to Magistrate Judge Hunt for resolution according to his discovery procedures and the Federal Rules of Civil Procedure.").

Without any factual showing of a burden Defendants are facing, the Court need not even consider the "balance of interests" and the Motion to Stay should be denied. But as set forth next, any purported burden is outweighed by the prejudice to Plaintiffs.

C. Plaintiffs Would Be Prejudiced by a Stay of Discovery

Even if Defendants had met their burden of showing a "clearly meritorious" case-dispositive argument for dismissal and a specific showing of good cause, the prejudice to Plaintiffs warrants a denial of Defendants' Motion to Stay. A delay in discovery would only unfairly hold up the prosecution of this case. *See*, *e.g.*, *Ray*, 2012 WL 5471793, at *1 ("[T[he delay and prolongation of discovery can also create case management and scheduling problems and unfairly hold up the prosecution of the case."). Plaintiffs agree that this may be a long and complex case, which is even more reason to commence what will be a long discovery process. Defendants have and will continue to challenge Plaintiffs' third-party subpoenas directed at witnesses who have come forward to corroborate Plaintiffs' allegations and who have documents that Defendants do not want Plaintiffs to get. This includes outstanding subpoenas of Monica Reed, who has documents showing Minerva's network of suppliers and customers, and Paul Cugini, who communicated with Enhance Health's downlines via text.[10]

Even more significantly here, a delay in discovery could lead to the destruction or alteration of evidence. For example, Plaintiffs have obtained evidence showing that Defendants TrueCoverage LLC and its downline agency, the now-bankrupt Digital Media Solutions LLC ("DMS"), destroyed and/or altered evidence after it was reasonably foreseeable that this litigation and/or regulatory action(s) would commence. Four witnesses, Bayla Smith, Albert Mabry, Isaac Cruz, and Daren Davis provided sworn testimony that TrueCoverage and DMS destroyed and/or altered evidence to conceal their participation in the alleged fraud before and after Plaintiffs filed the original Complaint on April 12, 2024. *See* **Exhibit C** (Declaration of Bayla Smith); **Exhibit**

[10] A stay would also affect the subpoenas directed to former TrueCoverage marketing director Paul Montgomery and TrueCoverage downlines Ensure Health Group Corp., Instant Health USA Insurance Agency, Inc. and Prince Health Group, LLC.

D (Declaration of Albert Mabry); **Exhibit E** (Declaration of Isaac Cruz); **Exhibit F** (Declaration of Daren Davis).

Moreover, Defendants' key communications were made on *personal* cell phones, which heightens the potential for loss or spoliation. *See* **Exhibit G** (Declaration of Elizabeth Novotny); **Exhibit H** (Declaration of Heather Cattaneo); **Exhibit D** (Declaration of Albert Mabry); **Exhibit I** (Declaration of Nazario de Melo). For example, one witness whose texts are included in the Amended Complaint, former Minerva employee Drake Lerma, has told the undersigned that he has deleted his texts.

Plaintiffs have additional concerns that the TrueCoverage Defendants have failed to preserve critical evidence that is being held overseas in India, Pakistan and perhaps other locations.[11] On August 8, 2024, CMS suspended TrueCoverage and Benefitalign's ability to transact information with the ACA Marketplace, citing to "anomalous activity."[12] The suspension resulted in TrueCoverage and Benefitalign filing suit against CMS in federal court in the District of Columbia.[13] TrueCoverage and Benefitalign filed a motion seeking a temporary restraining order and preliminary injunction to enjoin CMS from enforcing the suspension. CMS issued a letter to TrueCoverage and Benefitalign providing the agency's rationale for an immediate suspension. A copy of the letter is attached hereto as **Exhibit J**. CMS states that it suspended the Speridian Companies' "ability to transact information with the Marketplace on August 8, 2024,

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[11] TrueCoverage Defendants consist of TrueCoverage, LLC, Speridian Technologies, LLC, Benefitalign, LLC, Girish Panicker, and Matthew Goldfuss.

[12] *See* KFF Health News, *Biden Administration Blocks Two Private Sector Enrollment Sites From ACA Marketplace* (Aug. 22, 2024), at https://kffhealthnews.org/news/article/aca-obamacare-plan-switching-fraud-lawsuit-benefitalign-inshura-blocked-access/

[13] *Benefitalign, LLC v. Ctrs. for Medicaid and Medicare Servs.,* No. 1:24-cv-02494-JEB (D.D.C.).

after a CMS analysis identified a serious lapse in the security posture of the Speridian Companies' platforms; namely, that the Speridian Companies' platforms could be accessed by non-CMS-approved systems outside of the United States." *Id.* at 5. The letter went on to state that CMS' initial risk assessment "concluded that there existed critical risk to CMS infrastructure and consumers" because "multiple domains tied to the Speridian Companies are based in India, where they operate a large, dedicated data center, and CMS reasonably believes that CMS data, including consumer PII, is processed and/or stored in this location." On September 30, 2024, the court denied TrueCoverage and Benefitalign's Motion for TRO. See **Exhibit K.** On October 1, 2024, TrueCoverage and Benefitalign voluntarily dismissed their case against CMS.

Thus, Plaintiffs remain concerned about the security of the information they seek from Defendants, and the potential for the destruction of evidence outweighs any purported burden on Defendants. *See*, *e.g.*, *Colceriu v. Barbary*, No. 8:20-CV-1425, 2021 WL 848155, at *2 (M.D. Fla. Mar. 5, 2021) (holding that "a delay in discovery may lead to the destruction of evidence" and the "possible burden imposed on the defendants in responding to discovery is outweighed by the potentially prejudice to the plaintiff if evidence is destroyed").

CONCLUSION

For the reasons stated above, Defendants have failed to meet their burden and this Court should deny the Motion to Stay.

Dated: October 8, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 8, 2024, a true and correct copy of the foregoing was filed via CM/ECF and served upon parties registered with CM/ECF in this case.

By: /s/*Victoria J. Wilson*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:24-cv-60591-DAMIAN/Valle

CONSWALLO TURNER, TIESHA FOREMAN, ANGELINA WELLS, PAULA LANGLEY, VERONICA KING, NAVAQUOTE, LLC and WINN INSURANCE AGENCY, LLC, individually and on behalf of all others similarly situated,

CLASS ACTION

(Jury Trial Demanded)

Plaintiffs,

v.

ENHANCE HEALTH, LLC, TRUECOVERAGE, LLC, SPERIDIAN TECHNOLOGIES, LLC, NUMBER ONE PROSPECTING, LLC d/b/a MINERVA MARKETING, BAIN CAPITAL INSURANCE FUND L.P., DIGITAL MEDIA SOLUTIONS LLC, NET HEALTH AFFILIATES, INC., BENEFITALIGN, LLC, MATTHEW B. HERMAN, BRANDON BOWSKY, GIRISH PANICKER, and MATTHEW GOLDFUSS,

Defendants.
_____/

[PROPOSED] ESI AND DOCUMENT PRODUCTION PROTOCOL

The following ESI Stipulation and [Proposed] Order ("ESI Protocol), is entered into between (1) Plaintiffs, Conswallo Turner, Tiesha Foreman, Angelina Wells, Paula Langley, Veronica King, NavaQuote, LLC, and Winn Insurance Agency, LLC (collectively, "Plaintiffs"), and (2) Defendants, Enhance Health, LLC, TrueCoverage, LLC, Speridian Technologies, LLC, Number One Prospecting, LLC d/b/a Minerva Marketing, Bain Capital Insurance Fund L.P., Digital Media Solutions LLC, Net Health Affiliates, Inc., Benefitalign, LLC, Matthew B. Herman, Brandon

Bowsky, Girish Panicker, and Matthew Goldfuss (collectively, "Defendants") in the above-captioned case (the "Lawsuit").

To expedite discovery in the Lawsuit, pursuant to this Court's authority and with the consent of the Parties, it is agreed:

1. PURPOSE

This Order shall govern discovery of electronically stored information ("ESI") in this Lawsuit as a Supplement to the Federal Rules of Civil Procedure and any other applicable orders and rules.

2. COOPERATION

a. **Proportionality**. The proportionality standard set forth in Federal Rule of Civil Procedure 26(b)(2)(C) must be applied in this Lawsuit.

3. SEARCH & COLLECTION PROCEDURES

Should the producing party employ a search term process to identify and/or compile responsive ESI, the producing party shall, prior to implementing search terms and within 14 days of serving written responses and objections to Requests for Production, inform the requesting party of the proposed search terms and scope of the search, including the custodial and non-custodial sources to be searched. The parties shall meet and confer in good faith regarding the search terms and search processes and reserve the right seek appropriate relief from the Court. If the producing party elects to identify responsive documents through the use of technology-assisted review or the like, the producing party shall disclose such intent to the requesting party, and the parties shall thereafter confer regarding the scope and use of such methods. Nothing herein precludes a requesting party from seeking additional searches or subsequent modifications of the search terms and process for good cause or based on the discovery of previously unknown facts.

4. PRODUCTION MEDIA & PROTOCOL

The production media for document productions shall be secure FTP link provided via email at the time a production letter is emailed, unless the parties agree otherwise. If the parties agree, production media may be a CD-ROM, DVD, external hard drive (with standard PC compatible interface), or USB drive, so long as such production media is sent no slower than overnight delivery via FedEx, UPS, or USPS. Each item of production media (or in the case of FTP productions, each production transmittal letter) shall include: (1) text referencing that it was produced in the *Turner v. Enhance Health LLC* lawsuit, (2) the production date, and (3) the Bates number range of the materials contained on such production media item.

5. PRODUCTION FORMATS

a. Production Format. Unless the parties agree to a different format, documents should be produced in .tiff or searchable .pdf format and named according to the Bates number of the corresponding image. Each .tiff or .pdf file should be assigned a unique name matching the Bates number of the corresponding image. The Bates number should be consistent across the production, contain no special characters, and be numerically sequential within a given document. Attachments to discoverable documents shall be assigned Bates numbers that directly follow in sequential order the Bates numbers on the documents to which they were attached. If a Bates number or set of Bates numbers is skipped, the skipped number or set of numbers should be noted, for example with a placeholder All images should be provided in a single-page Group IV TIFF or searchable PDF with a resolution of 300 DPI. Bates numbers and confidentiality designations should be electronically branded on each produced .tiff or .pdf image. These .tiff or .pdf images should be provided in a separate folder and the number of TIFF or PDF files per folder should be limited to 1,000 files.

b. Production of Excel. Unless such materials contain privileged information, spreadsheets, audio files, photos, video files, and Excel shall be produced in Native Format. If the files, however, contain privileged information, they need not be produced in Native Format but shall be produced with the extracted text and metadata fields set forth in this Order, and in redacted format, except to the extent the extracted text or metadata fields are themselves redacted. If a party in good faith believes the native file is necessary for interpretation of the document, the parties shall work together to determine a plan for handling the text that needs to be redacted.

c. Text Files. All unredacted documents should be provided with complete document-level extracted text files, where extracted text is available. The extracted full text and/or OCR text for all deliverables should be in separate document-level TXT files. These TXT files may either be provided in a separate folder or included in the same folder as the corresponding images. The number of TXT files per folder should be limited to 1,000 files.

d. Other Native File Production.

i. The parties shall meet and confer to discuss requests for the production of other files in native format, on a case-by-case basis. If the parties are unable to reach agreement with regard to requests for additional documents in native-file format, the parties reserve the right to seek relief from the Court.

ii. A placeholder embossed with the corresponding confidentiality designation and Bates number shall be produced for all ESI produced in native format. The placeholder should include the words "Document produced in native format."

iii. In the event a document is produced in Native and that document requires redaction, the redacted document shall be produced. ESI produced in native

format shall be produced with all the metadata contained in or associated with that file to the extent technologically possible.

iv. Extracted text taken from native files shall be provided at a document level. There shall be one text file per document, using the same name as the beginning Bates number (Document ID) of the document. The extracted text file for a document shall reside in the same location (file directory) as the images for that document. The text file associated with any redacted document shall exclude redacted text (i.e., the producing party can OCR the redacted image of the unstructured ESI and replace the original extracted text).

e. Color. ESI containing color (for example, graphs, pictures, or color marketing materials) shall be produced as color images for each such document if color is necessary to reasonably understand the content of the ESI. Otherwise, a party may request the producing party to produce particular documents or categories of documents in color where reasonable. A party shall not be precluded from objecting to such requests as unreasonable in number, timing or scope, provided that a producing party shall not object if the document as originally produced is illegible or difficult to read. The producing party shall have the option of responding by producing a native-file version of the document. If a dispute arises with regard to requests for higher resolution or color images, the parties shall meet and confer in good faith to try to resolve it.

f. De-duplication. The parties shall make reasonable efforts to de-duplicate ESI. Exact duplicate documents shall be de-duplicated horizontally across custodians. ESI shall be considered duplicative if it has the same content including metadata and where the family of documents are all exact duplicates. If a producing party elects to de-duplicate horizontally, all

custodians who were in possession of de-duplicated document must be identified in the Custodians metadata field in **Exhibit A**.

g. Confidentiality Endorsements. The producing party must brand any confidentiality or similar endorsements in a corner of the images pursuant to the protective order entered in this Lawsuit. Those endorsements must be in a consistent font type and size.

h. Email Threading. To reduce the volume of entirely duplicative content within email threads, the parties may utilize "email thread suppression." As used in this agreement, email thread suppression means reducing duplicative production of email threads by producing the most recent email containing the thread of emails, as well as all attachments within the thread, and excluding emails constituting exact duplicates of emails within the produced string, provided that all previous emails in the thread reflect full sender, recipient, and date and time stamp information, and provided that the software used to identify these "non-inclusive" threads is able to identify any differences to the thread such as changes in recipients (e.g., side threads, subject line changes), dates, selective deletion of previous thread content by sender, etc. To the extent such differences exist, documents with such differences shall be produced. For purposes of this paragraph, only email messages in which the parent document, senders and recipients (including blind copy), and all attachments are exactly the same shall be considered duplicates. Email thread suppression may not be used where any of the emails or attachments included in the thread are withheld or redacted.

i. Custodian Designations in De-duplicated Production. To the extent that deduplication is used, the parties expressly agree that a document produced from one custodian's file but not produced from another custodian's file as a result of deduplication shall nonetheless be deemed as if produced from that other custodian's file for purposes of deposition, interrogatory, request to admit and/or trial. The custodian associated with the first copy of a document processed

shall be considered the primary custodian for that document (the custodian who shall be used as the basis for determining which other collected documents are duplicates). Each production shall include an "All Custodian" field listing of every custodian or source collected for production and who/which possessed a duplicate document and where the document was deduplicated during processing. The "All Custodian" field shall be updated by the producing party via an overlay file if rolling collections result in changes to the field post-production.

j. Handwritten Notes, Track Changes or Other Alterations. If there are any handwritten notes, or any other markings, on a document, it shall not be considered a duplicate. Any document that contains an alteration, handwritten note, marking on, or addition to the original document shall be treated as a distinct version, and shall be produced as such. These alterations include, but are not limited to, handwritten notes, electronic notes/tabs, edits, highlighting, or redlining. The requesting party may request production of a color copy (in native or otherwise) of a document if it determines that such a color copy shall assist in deriving the meaning of the document and the request is otherwise reasonable and proportional. If a document contains track changes and/or comments, the producing party shall image the document showing the tracked changes and/or comments.

k. Metadata Fields and Processing. Each of the metadata and index fields set forth in Exhibit A shall be produced for that document, to the extent such metadata is available. If the producing party becomes aware of an issue extracting a category of agreed-upon metadata, the producing party must notify the other party and meet and confer to arrive at a mutually acceptable resolution of the issue.

l. Parent-Child Relationships. Parent-child relationships refer to the association between an attachment and its parent document. Parent-child relationships must be preserved.

Family relationships often exist between an email and its attachments, but can also be found amongst stand-alone documents and files originally contained within that parent document, which may subsequently be de-embedded as part of discovery processing.

m. Redaction. The parties agree that where ESI items need to be redacted, they shall be produced solely in .pdf or .tiff with each redaction clearly indicated, except in cases where the documents cannot be rendered to .pdf or .tiff in a readable manner (such as spreadsheets). In that case, the document may be redacted natively as long as a pristine copy of the original document is maintained. If the items redacted and partially withheld from production are audio/visual files, the producing party shall provide the unredacted portions of the content, where reasonably feasible. If the content is a voice recording, the Parties shall meet and confer to discuss the appropriate manner for the Producing party to produce the unredacted portion of the content.

If a party redacts documents or ESI, the redaction shall be clearly visible on the face of the document to the extent possible, e.g., "PII," or "PHI."

n. Privilege and Privilege Logs. The parties agree that the following privileged communications or documents need not be included in a privilege log: (a) work product of outside legal counsel; (b) any internal communications by a party's outside law firm; and (c) communications with the outside law firm that postdate the filing of the consolidated complaint.

If only part of a document contains privileged information, the responding party shall redact only the allegedly privileged information and produce the remainder of the document or ESI.

o. Load Files. Documents must be provided with (1) a delimited metadata file (.dat or .txt); (2) an image load file; and (3) a text file.

p. Encryption. To maximize the security of information in transit, any media on which documents are produced may be encrypted by the producing party. In such cases, the producing party shall transmit the encryption key or password to the requesting party, under separate cover.

6. SPECIAL ESI ISSUES

a. Hidden Text. ESI items shall be processed, to the extent practicable, in a manner that preserves hidden columns or rows, hidden text or worksheets, speaker notes, tracked changes and comments. For any document which the requesting party reasonably believes includes hidden content, tracked changes or edits, comments, notes, or other similar information viewable within the native file, at a requesting party's reasonable request, the producing party shall provide the native file, or if possible an image file of a version showing the hidden content, if there is such content. A party shall not be precluded from objecting to such requests as unreasonable in number, timing, or scope.

b. Production of Structured Data. Certain types of databases are dynamic in nature and will often contain information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Thus, a party may opt to produce information from databases in an alternate form, such as a report or data table. These reports or data tables will be produced in a static format. The parties agree to identify the specific databases, by name, that contain the information that parties produce, and meet and confer regarding the format of production.

c. Objections. Nothing in this Stipulation and Proposed Order shall be interpreted to waive any objections to the relevance, responsiveness, production, discoverability, possession, custody, control, or confidentiality of Documents, including (without limitation) objections regarding the burden or overbreadth of document requests.

d. No Waiver of Rights Regarding Review. By entering this Order, a party is not giving up its right to review its documents for privilege or any other reason (including to identify non-responsive documents) and the existence of this Order cannot be used to compel a party to produce documents without review.

EXHIBIT A

Metadata Fields

The following default fields shall be provided for all documents in the production.

Field Name	**Description**
Begin Bates	Beginning Bates Number of the Email, Application File, or Paper Document
End Bates	Ending Bates Number of the Email, Application File, or Paper Document
Bates Beg Attachment	Bates Beg for family
Bates End Attachment	Bates End for Family
Att Count	Number of attachments to an email
Confidentiality	Field populated with the appropriate confidentiality designation for the Document.
Custodian	Multi-value field for custodians identified during collection. All documents should have a custodian value present.

All Custodians	Identification of all custodians the producing party agreed to produce and where a duplicate of the Document was sourced and de-duplicated when processing the documents.

A. Metadata Fields

The following metadata fields associated with emails, attachments and non-email files will be exchanged, where available. Any privileged metadata associated with any redacted documents may be withheld from the production.

Field Name	Email or Non-Email	Description
Subject/Title	Email	Subject line of the email
File Extension	Non-Email	File extension
Sent Date	Email	Email Sent date
Received Date	Email	Email Received date
Created Date	Non-Email	Date Application File was created. Note that Created Date may be subject to change during collection or processing as a result of auto date function or other processes.
Modified Date	Non-Email	Date Application File was last modified
Modified Time	Non-Email	Time Application File was last modified
Author/From	Both	Author of the Application File or sender of the Email
Recipient/To	Email	Recipients of the Email
Copyee	Email	CCs of the Email

BCC	Email	BCCs of the Email
File Type	Both	Email, Spreadsheet, Word Processing Document, etc.
Path to Native	Both	Location of the native file within the Production
Path to Text	Both	Location of the extracted text file within the Production
Email Received Time	Email	Time Email was received
File Created Time	Non-Email	Time Application File was created
Hash Value	Non-mail	Value commonly used to de-duplicate files or identify duplicates

Dated October 8, 2024

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[PROPOSED] ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____, 2024

_____
MELISSA DAMIAN
UNITED STATES DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:24-cv-60591-DAMIAN/Valle

CONSWALLO TURNER, TIESHA FOREMAN, ANGELINA WELLS, PAULA LANGLEY, VERONICA KING, NAVAQUOTE, LLC and WINN INSURANCE AGENCY, LLC, individually and on behalf of all others similarly situated,

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(Jury Trial Demanded)

Plaintiffs,

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ENHANCE HEALTH, LLC, TRUECOVERAGE, LLC, SPERIDIAN TECHNOLOGIES, LLC, NUMBER ONE PROSPECTING, LLC d/b/a MINERVA MARKETING, BAIN CAPITAL INSURANCE FUND L.P., DIGITAL MEDIA SOLUTIONS LLC, NET HEALTH AFFILIATES, INC., BENEFITALIGN, LLC, MATTHEW B. HERMAN, BRANDON BOWSKY, GIRISH PANICKER, and MATTHEW GOLDFUSS,

Defendants.
_____/

[PROPOSED] PROTECTIVE ORDER TO GOVERN THE DISCLOSURE OF CONFIDENTIAL MATERIAL

THIS MATTER came before the Court on the Joint Motion for Protective Order to Govern the Disclosure of Confidential Material [ECF No. __] (the "Motion") filed by Plaintiffs, Conswallo Turner, Tiesha Foreman, Angelina Wells, Paula Langley, Veronica King, NavaQuote, LLC, and Winn Insurance Agency, LLC (collectively, "Plaintiffs"), and Defendants, Enhance Health, LLC, TrueCoverage, LLC, Speridian Technologies, LLC, Number One Prospecting, LLC d/b/a Minerva

Marketing, Bain Capital Insurance Fund L.P., Digital Media Solutions LLC, Net Health Affiliates, Inc., Benefitalign, LLC, Matthew B. Herman, Brandon Bowsky, Girish Panicker, and Matthew Goldfuss (collectively, "Defendants"). The Court, having reviewed the Motion, applicable law, and record in this case, finds good cause for issuance of the requested protective order. *See Gunson v. BMO Harris Bank, N.A.*, 300 F.R.D. 581, 583 (S.D. Fla. 2014) (citing *In re Alexander Grant & Co. Litig.*, 820 F.2d 352, 356 (11th Cir. 1987)); *Whitwam v. JetCard Plus, Inc.*, No. 14-CV-22320, 2015 WL 1014292, at *1 (S.D. Fla. Jan. 21, 2015); *Tracfone Wireless, Inc. v. Simply Wireless, Inc.*, No. 1:15-CV-24565, 2016 WL 4581320, at *1 (S.D. Fla. Aug. 16, 2016). Further, in light of the Parties' joint request, the Court finds it appropriate to implement the non-waiver provisions in Fed. R. Evid. 502(d), (e), and memorialize their clawback agreement. *See ECB USA, Inc. v. Chubb Ins. Co. of New Jersey*, No. 20-20569-CIV, 2020 WL 5491908, at *5-*6 (S.D. Fla. June 17, 2020). Accordingly, the Motion is **GRANTED**, and the Court enters a protective order regarding the use and confidentiality of documents, information, and material produced in this litigation as follows:

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 "CONFIDENTIAL," or "CONFIDENTIAL – ATTORNEYS' EYES ONLY," Information or Items: information (regardless of how it is generated, stored, or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), including but not limited to information that contains trade secrets, proprietary research, development, and/or technical information that is not publicly available; sensitive financial, business, or commercial information that is not publicly available; sensitive personal information (such as social security numbers); and other information required by law or agreement to be kept confidential.

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL," or "CONFIDENTIAL – ATTORNEYS' EYES ONLY."

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter, including by third parties responding to subpoenas.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action.

2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.9 Outside Counsel of Record: attorneys (and employees of those attorneys' firm(s)) who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.10 Party: any party to this action, including all of its officers, directors, employees, retained experts and consultants, and Outside Counsel of Record (and their support staffs).

2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.12 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.13 Protected Material: any Disclosure or Discovery Material that is designated as "CONFIDENTIAL," or "CONFIDENTIAL – ATTORNEYS' EYES ONLY."

2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,

conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order. A Producing Party may designate Discovery Material as

"CONFIDENTIAL" if it contains or reflects confidential, proprietary, and/or commercially sensitive information. A Producing Party may designate Discovery Material as "CONFIDENTIAL – ATTORNEYS' EYES ONLY" if it contains or reflects information that is extremely confidential and/or sensitive in nature and the Producing Party reasonably believes that the disclosure of such Discovery Material is likely to cause economic harm or significant competitive disadvantage to the Producing Party.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) For information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins). Where electronic files and documents are produced in native electronic format, such electronic files and documents shall be designated for protection under this Order by appending to the file names or designators information indicating whether the file contains "CONFIDENTIAL,"

or "CONFIDENTIAL – ATTORNEYS' EYES ONLY," material, or shall use any other reasonable method for so designating Protected Materials produced in electronic format. When electronic files or documents are printed for use at a deposition, in a court proceeding, or for provision in printed form to an expert or consultant, the party printing the electronic files or documents shall affix a legend to the printed documents corresponding to the designation of the Designating Party and including the production number and designation associated with the native file;

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony, or by sending written notice designating such testimony within thirty (30) days of receipt of the transcript of the testimony. The entire transcript should be treated as confidential during this thirty (30) day window. Any Party that wishes to disclose the designated transcript, or information contained therein, may provide written notice of its intent to treat the transcript as non-confidential, after which time, any Party that wants to maintain any portion of the transcript as confidential must identify the confidential portions within fourteen (14) days, or else the transcript may be treated as non-confidential. Any Protected Material that is used in the taking of a deposition shall remain subject to the provisions of this Order, along with the transcript pages of the deposition testimony dealing with such Protected Material;

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only a

portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING DESIGNATIONS OF PROTECTED MATERIAL

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. Before filing any motion or objection to a Confidential designation, the Challenging Party must confer in good faith to resolve the objection informally without judicial intervention. The Challenging Party shall serve written notice of its objection on the Designating Party and shall identify with particularity the documents or information that the Challenging Party contends should be designated differently.

6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention, the Designating Party shall file and serve a motion to retain confidentiality within 21 days of the initial notice of challenge or within 14 days of the parties meeting and conferring to attempt to resolve their dispute, whichever is earlier. Notwithstanding the foregoing, the Receiving

Party also may bring a motion to the Court for a ruling that the Discovery Material in question is not entitled to the status and protection of the Producing Party's designation.

The burden of proving the necessity of a confidentiality designation remains with the Designating Party. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order.

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) Experts (as defined in this Order) or investigators of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the court and its personnel and mediators;

(e) court reporters and their staff, videographers, recorders, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.3 Disclosure of "CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to the categories of persons identified in Paragraphs 7.2(a), (c)-(g).

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL," or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as "CONFIDENTIAL," or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as "CONFIDENTIAL." Such information produced by Non-

Parties in connection with this litigation is protected by the remedies and relief provided by this Order.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain produced material is subject to a claim of privilege or other protection, the procedures and obligations set forth in Federal Rule of Civil Procedure 26(b)(5)(B) shall apply. This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review.

12. FILING CONFIDENTIAL INFORMATION

12.1 Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material.

12.2 Reference to a stipulation or protective order that allows a party to designate certain documents as confidential is not sufficient to establish that a document, or portions thereof, are sealable. Parties must comply with Civil Local Rule 5.4.

12.3 For any document a Receiving Party seeks to seal because that document has been designated as confidential by the Designating Party, the burden to show that the document, or

portion thereof, are sealable, shifts to the Designating Party. The Receiving Party's motion need only identify each document or portions thereof for which sealing is sought. The Designating Party shall then file a statement or declaration, as described in paragraph 12.2 and in compliance with Civil Local Rule 5.4, within 7 days of receipt. If any party wishes to file a response, it must do so no later than 4 days after the Designating Party files its statement and/or declaration. A failure to file a statement or declaration may result in the unsealing of the provisionally sealed document without further notice to the Designating Party. The Designating Party's filing shall specify the proposed duration of the requested sealing.

12.4 If a Party's request to file Confidential Information under seal pursuant to Civil Local Rule 5.4 is denied by the court, then a Party may file the information in the public record unless otherwise instructed by the court.

13. MISCELLANEOUS

13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

14. FINAL DISPOSITION

Within 90 days after final disposition, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and

any other format reproducing or capturing any of the Protected Material. Notwithstanding the above requirements to return or destroy documents, the Parties' counsel may retain attorney work product, including an index that refers or relates to designated Confidential (however so designated by the Party providing the designation) under this Order. An attorney may use his or her own work product in subsequent litigation provided that its use does not disclose Confidential Information or as consented to by the designating Party or by order of this Court. Counsel is entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order.

15. ORDER PURSUANT TO FED. R. EVID. 502(d)

15.1. No Waiver by Disclosure. This portion of the order is entered pursuant to Fed. R. Evid. 502(d). Subject to the provisions of this Order, if a Party (the "Disclosing Party") discloses information in connection with the pending litigation that the Disclosing Party thereafter claims to be privileged or protected by the attorney-client privilege or work product protection ("Protected Information"), the disclosure of that Protected Information will not constitute or be deemed a waiver or forfeiture—in this or any other action—of any claim of privilege or work product protection that the Disclosing Party would otherwise be entitled to assert with respect to the Protected Information and its subject matter.

15.2. Notification Requirements; Best Efforts of Receiving Party. A Disclosing Party must promptly notify the party receiving the Protected Information ("the Receiving Party"), in writing, that it has disclosed that Protected Information without intending a waiver by the

disclosure. Upon such notification, the Receiving Party must—unless it contests the claim of attorney-client privilege or work product protection in accordance with paragraph 15.3—promptly (i) notify the Disclosing Party that it will make best efforts to identify and return, sequester or destroy (or in the case of electronically stored information, delete) the Protected Information and any reasonably accessible copies it has and (ii) provide a certification that it will cease further review, dissemination, and use of the Protected Information. Within five (5) business days of receipt of the notification from the Receiving Party, the Disclosing Party must explain as specifically as possible why the Protected Information is privileged. For purposes of this Order, Protected Information that has been stored on a source of electronically stored information that is not reasonably accessible, such as backup storage media, is sequestered. If such data is retrieved, the Receiving Party must promptly take steps to delete or sequester the restored protected information.

15.3. Contesting Claim of Privilege or Work Product Protection. If the Receiving Party contests the claim of attorney-client privilege or work product protection, the Receiving Party must—within ten (10) business days of receipt of the notice of disclosure—move the Court for an Order compelling disclosure of the information claimed as unprotected (a "Disclosure Motion"). The Disclosure Motion should not assert as a ground for compelling disclosure the fact or circumstances of the disclosure itself and the challenged information must be filed under seal. Pending resolution of the Disclosure Motion, the Receiving Party must not use the challenged information in any way or disclose it to any person other than those required by law to be served with a copy of the sealed challenged information.

15.4. Stipulated Time Periods. The Disclosing Party and Receiving Party may stipulate to extend the time periods set forth in paragraphs 15.2 and 15.3 of this Order.

15.5. Attorney's Ethical Responsibilities. Nothing in this Order overrides any attorney's ethical responsibilities to refrain from examining or disclosing materials that the attorney knows or reasonably should know to be privileged and to inform the Disclosing Party that such materials have been produced.

15.6. Burden of Proving Privilege or Work-Product Protection. The Disclosing Party retains the burden—upon challenge pursuant to paragraph 15.3—of establishing the privileged or protected nature of the Protected Information.

15.7. *In Camera* Review. Nothing in this Order limits the right of any party to petition the Court for an *in camera* review of the Protected Information.

15.8. Voluntary and Subject Matter Waiver. This Order does not preclude a party from voluntarily waiving the attorney-client privilege or work product protection, as to a specific document or issue. The provisions of Fed. R. Evid. 502(a) apply when the Disclosing Party uses or indicates that it may use information produced under this Order to support a claim or defense.

DONE AND ORDERED in Chambers, in the Southern District of Florida, this __ day of _____, 2024.

_____
MELISSA DAMIAN
UNITED STATES DISTRICT COURT JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

The undersigned hereby acknowledges that they have read the foregoing Protective Order in the case captioned, *Turner et al. v. Enhance Health, LLC et al.*, 0:24-cv-60591-DAMIAN/Valle, understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of the United States District Court for the Southern District of Florida in matters relating to this Protective Order and understands that the terms of the Protective Order obligate them to use materials designated as Confidential Information in accordance with this Protective Order solely for the purposes of the above-captioned action, and not to disclose any such Confidential Information to any other person, firm, or concern, except in accordance with the provisions of the Protective Order. The undersigned acknowledges that violation of the Protective Order may result in penalties for contempt of court.

Printed name: _____

Date: _____

City and State where sworn and signed: _____

Employer: _____

Business Address: _____

DECLARATION OF BAYLA SMITH

COMES NOW Bayla Smith a/k/a Baila Smith-Kaplan, who, upon being duly sworn, deposes and states as follows, pursuant to 28 USC § 1746:

1.

I am over eighteen years of age and competent to give this Declaration, which is based upon my personal knowledge and is voluntary.

2.

I am a licensed health insurance agent (NPN 4554506).

3.

I worked for TrueCoverage and Speridian Technologies (collectively referred to as "TrueCoverage") from approximately July 2023 to March 19, 2024 at a call center in Deerfield Beach, Florida.

4.

Throughout my tenure with TrueCoverage, consumers called into our call center in response to advertisements. Consumers were calling in expecting to receive cash cards that promised to pay them thousands of dollars per month that could be used to pay for groceries, rent, etc. These advertisements were false and misleading because the cash cards did not exist and the money being promised was actually a subsidy that the federal government paid to the insurance carriers to reduce the premiums for the health insurance. The advertisements also told consumers that they prequalified for these benefits, which was not true.

5.

The sales scripts that TrueCoverage required us to follow misled consumers about the cash cards being promised. For example, the sales script instructed us to open the call with the following:

> Thank you for calling TrueCoverage. This is _____ speaking on a recorded line. How are you doing today?

6.

After the consumer responded to the initial question, the sales script instructed us to say:

"Fantastic, and you saw the prequalified result that led you to us?"

7.

The "prequalified result" was a reference to the false advertisement telling the consumer that they were prequalified to receive the cash card.

8.

The sales scripts also provided us with rebuttals that we were required to use when responding to questions about the cash cards. The rebuttals required us to be vague about the cash card. For example, one of the rebuttals instructed us to tell customers that they would need to contact the carrier and ask them about the reward programs they offer.

9.

Throughout my tenure, TrueCoverage and Speridian executives and management, including Matthew Goldfuss, National Sales Director, John Runkel, Sr. Director of Quality Assurance, Kevin Hale, and Gabriel Harrison, Regional Director, knew that consumers were calling in response to the false advertisements promising cash cards and they pressured agents to use them to enroll consumers into ACA plans.

10.

Throughout my time at TrueCoverage, we were instructed by management, including Matthew Goldfuss and Gabriel Harrison, to enroll consumers into health plans no matter what, even if they already had health insurance. If consumers that called in already had an ACA health insurance plan, we were instructed to re-enroll them anyway whether or not it was appropriate for their needs.

11.

TrueCoverage knew that consumers were complaining to TrueCoverage, state insurance regulators and CMS about the company using fraudulent advertisements to enroll consumers and switching consumers into new ACA plans without their consent. For example, on or about January 11, 2023, Matthew Goldfuss sent an email out to agents, which stated as follows:

Subject: Emails from CMS or DOI's

Good afternoon team,

If you receive an email from CMS or a Department of Insurance from any particular state, **DO NOT RESPOND!** Let me repeat, **DO NOT RESPOND!** Forward them over to me, we will send that off to our compliance team to investigate the complaints and we will create the response to back up any allegation that is made.

If you respond to the complaint yourself, you are putting yourself at risk. We have the recordings, call logs, email and text communications to corroborate any enrollment that was done.

Again, **DO NOT RESPOND** if you get that email, forward it on over to me and we'll take care of it.

Thank you

truecoverage™
Insurance Marketplace
One-stop-shop for all your Insurance needs

Matthew Goldfuss | National Director – Individual & Medicare Sales
Truecoverage LLC | 2400 Louisiana Blvd SE, Bldg 3, Albuquerque, NM 87110
O: (505) 384-7478 | M: (305-600-4184)
Email: matthew.goldfuss@truecoverage.com | www.truecoverage.com

12.

TrueCoverage also knew that there was a threat of a possible class action lawsuit, because the Plaintiffs' attorneys in this case released an online announcement that they were investigating TrueCoverage for its use of online advertisements falsely promising cash cards to enroll consumers.

13.

Agents at the Deerfield Beach call center expressed concern to management about the investigation(s) and Gabriel Harrison downplayed their significance.

14.

Despite TrueCoverage's attempts internally to minimize the significance of investigations by regulators and attorneys, in the first quarter of 2024, TrueCoverage's management claimed to have instituted a zero-tolerance policy on using fraudulent advertisements. I can confirm that call volumes significantly dropped in February 2024.

15.

On or about March 15, 2024, Gabriel Harrison had agents lined up, waiting outside his office. One by one they were being fired. That morning, Michele Wilson, who was with human resources, asked to have a skip level HR discussion/meeting with me on Monday, March 18. I told her that I was taking that Monday off and suggested Tuesday, March 19.

16.

All of this made me very disgusted and as I thought about it over the following weekend, I realized that I could no longer subject myself to that kind of work environment.

17.

Over the weekend, March 16-17, 2024, while I was at home, I logged into my TrueCoverage portal, because I decided that I was going to resign and not go back to work there and not make it to the Tuesday meeting. I wanted to review the email that Michelle sent me regarding the meeting.

18.

When I logged in, I was going through emails and I looked at the group chats, Zoom meetings, and noticed that a lot of Teams group chat messages, emails and recordings that previously existed was deleted. For example, TrueCoverage had a Microsoft Teams Group Chat for the Deerfield Beach call center. I knew that there were a lot of group chat entries that incriminated TrueCoverage's management, including Matthew Goldfuss, Gabriel Harrison and Kevin Hale. The incriminating entries were gone. I noticed that there were also incriminating emails that were gone. In addition, there were Microsoft Teams recorded video conferences that contained incriminating statements by TrueCoverage's management. Those recordings were gone.

19.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 17, 2024.

Bayla Smith (Jun 17, 2024 22:39 EDT)

Bayla Smith

Bayla Smith Declaration

Final Audit Report 2024-06-18

Created:	2024-06-17
By:	Jason Doss ([redacted])
Status:	Signed
Transaction ID:	[redacted]

"Bayla Smith Declaration" History

Document created by Jason Doss [redacted]
2024-06-17 - 10:28:36 PM GMT- IP address: [redacted]

Document emailed to Bayla Smith ([redacted]) for signature
2024-06-17 - 10:28:39 PM GMT

Email viewed by Bayla Smith [redacted]
2024-06-18 - 2:39:11 AM GMT- [redacted]

Document e-signed by Bayla Smith [redacted]
Signature Date: 2024-06-18 - 2:39:38 AM GMT - Time Source: server- [redacted]

Agreement completed.
2024-06-18 - 2:39:38 AM GMT

DECLARATION OF ALBERT MABRY

COMES NOW Albert Mabry, who, upon being duly sworn, deposes and states as follows, pursuant to 28 USC § 1746:

1.

I am over eighteen years of age and competent to give this Declaration, which is based upon my personal knowledge and is voluntary.

2.

I am a licensed health insurance agent (NPN 18977521).

3.

I worked as an agent with Digital Media Solutions, LLC d/b/a Protect Health ("DMS") from approximately October 19, 2023 to June 7, 2024.

4.

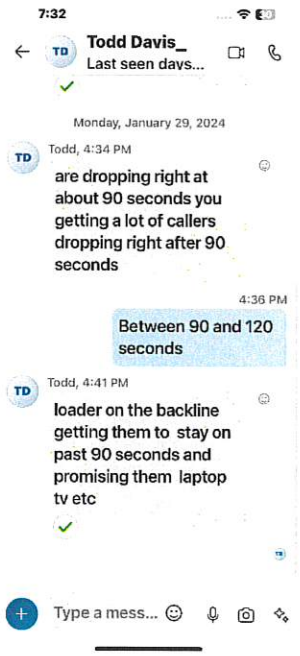
At all times material, DMS was/is a downline of TrueCoverage, LLC and DMS used Inshura as its enrollment platform to enroll consumers into ACA plans.

5.

During my tenure with DMS, I worked in several departments including on the sales team fielding calls with consumers. During my tenure on the sales team, the vast majority of calls that I received were from consumers that were expecting to receive cash cards that promised to pay them thousands of dollars per month that could be used to pay for groceries, rent, etc. These advertisements that led consumers to us were false and misleading because the cash cards did not exist and the money being promised was actually a subsidy that the federal government paid to the insurance carriers to reduce the premiums for the health insurance. The advertisements also told consumers that they prequalified for these benefits, which was not true.

6.

As part of the lead generation process, DMS purchased leads that utilized "fronters," which are individuals that generate leads by either making outbound calls/texts to consumers or by fielding calls from consumers in response to the false advertisements. In both cases, I believe that the fronters lied to consumers about the existence of the cash card prior to transferring those consumers to live agents like me. For example, on or about January 29, 2024, Todd Davis, an DMS sales agent, sent me a Skype message complaining that he heard a fronter falsely promise a consumer on a call that the consumer would receive a "laptop, tv, etc" for staying on the line with Todd for more than 90 seconds. See below.



7.

When consumers were transferred to live agents like me, we were required by DMS in a sales script to first ask whether they were calling in about the [$6,400] benefit? The sales script was kept in Convoso, which is the dialer system used by DMS.

8.

The sales scripts also provided us with rebuttals that we were required to use when responding to questions about the cash cards. The rebuttals required us to be vague about the cash card and we were instructed to tell customers that they would need to contact the carrier and ask them about the reward programs they offer after they were enrolled.

9.

I received sales training when I first started at DMS. The sales training only lasted a week, which I found to be strange and inadequate for a number of reasons, including that it did not train us on the insurance products that we would be expected to sell to consumers. In addition, the training involved us listening to approximately 6-7 live calls. Each of those calls had a fronter on the line who would transfer consumers to live agents with Protect Health. I found these training calls to be very unusual, because consumers were calling in for the cash cards and the fronters/agents misrepresented the nature of the subsidy as described above. During the training, I expressed concerns to my supervisors Bret Easterling and John Ascherl about the deceptive nature of the cash cards being promised.

10.

Approximately two weeks after I started working at DMS, I complained to Michael Kosmas on a Zoom call that the ad campaigns used by DMS promising cash cards were deceiving

consumers. Each time, my complaints were dismissed by management and I was told not to worry about it and to use my "sales rebuttal skills" to work around it.

11.

Throughout my tenure with DMS, TrueCoverage and Inshura provided support to us in the sales department. For example in December 2023, an application on Inshura's enrollment platform showed that the application was "Locked." I was instructed by a representative of TrueCoverage to send her a screenshot to tappcustomerservice@truecoverage.com and TrueCoverage instructed me to "cancel/terminate" the application. See screenshot of a Skype message attached as Exhibit A. In February 2024, TrueCoverage provided us with sales training of selling ancillary products such as dental and vision coverage.

12.

DMS used Rackspace as our email platform and Skype and Slack for messaging and group chats among the sales team, Tango Team, and customer service. DMS used Zoom for virtual training. It used MME, a separate dialer used by customer service and the Tango Team, which kept text histories for agents. DMS used MME to contact consumers. DMS also kept records on Google shared drives. I recall other agents complaining about the deceptive advertisements and DMS's unscrupulous sales practices on Slack, Skype and Zoom.

13.

During the time period of the beginning of April through June 7, 2024, I worked in the research department of DMS. During this time period, my job was to research all the business that had been written to see what had been canceled and/or retained. Anything that had been canceled was flagged to be sent to the Tango Team to be recaptured. Our department also calculated the

number of sales for each agent for commission purposes and we provided support to the customer service department.

14.

From April through June 2024, DMS took steps to cover up fraudulent enrollments in a number of ways. For example, for consumers that did not qualify for $0 health insurance, we were instructed to change their income without talking to the consumers to make them qualify. This was accomplished by falsifying the CMS income attestation forms.

15.

Throughout my tenure at DMS, we were instructed to use Inshura to "scrub" applications submitted to determine if they had been canceled or terminated. If so, DMS instructed agents to reenroll those consumers without contacting them. Beginning in May 2024, DMS tried to cover up their practice of enrolling consumers without consent by instructing agents to try to contact the consumers to obtain retroactive consent.

16.

During early May 2024, we were instructed to pull all applications in Inshura that had Michelle Dumont listed as the agent of record ("AOR") to determine if they were enrolled or terminated. Alejandro Contreras told me that the research was requested because Michelle Dumont's AOR was showing for a different agency. To the best of my recollections, there were approximately 875 applications. To my knowledge, all terminated applications were reenrolled by Tango Team under a different AOR.

17.

In or around May 2024, I again complained about DMS using fraudulent leads promising cash card to consumers. In mid-May 2024, on a Zoom meeting that I attended along with Alejandro

Contreras, John Ascherl and Samantha Gulledge, I was told that we would be getting a different lead generation system.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 22, 2024.

Albert Mabry
Albert Mabry (Jun 22, 2024 15:45 EDT)

Albert Mabry

Albert Mabry Declaration

Final Audit Report 2024-06-22

Created:	2024-06-22
By:	Jason Doss [redacted]
Status:	Signed
Transaction ID:	[redacted]

"Albert Mabry Declaration" History

Document created by Jason Doss [redacted]
2024-06-22 - 7:34:00 PM GMT-[redacted]

Document emailed to Albert Mabry [redacted] for signature
2024-06-22 - 7:34:04 PM GMT

Email viewed by Albert Mabry [redacted]
2024-06-22 - 7:44:24 PM GMT-[redacted]

Document e-signed by Albert Mabry [redacted]
Signature Date: 2024-06-22 - 7:45:01 PM GMT - Time Source: server-[redacted]

Agreement completed.
2024-06-22 - 7:45:01 PM GMT

Exhibit A

7:36

Rosa Lopez

In meetings

longer show the blue cross plans for the enrollment

Do you have time for a call so I can show you what is going on

This is also one of the errors

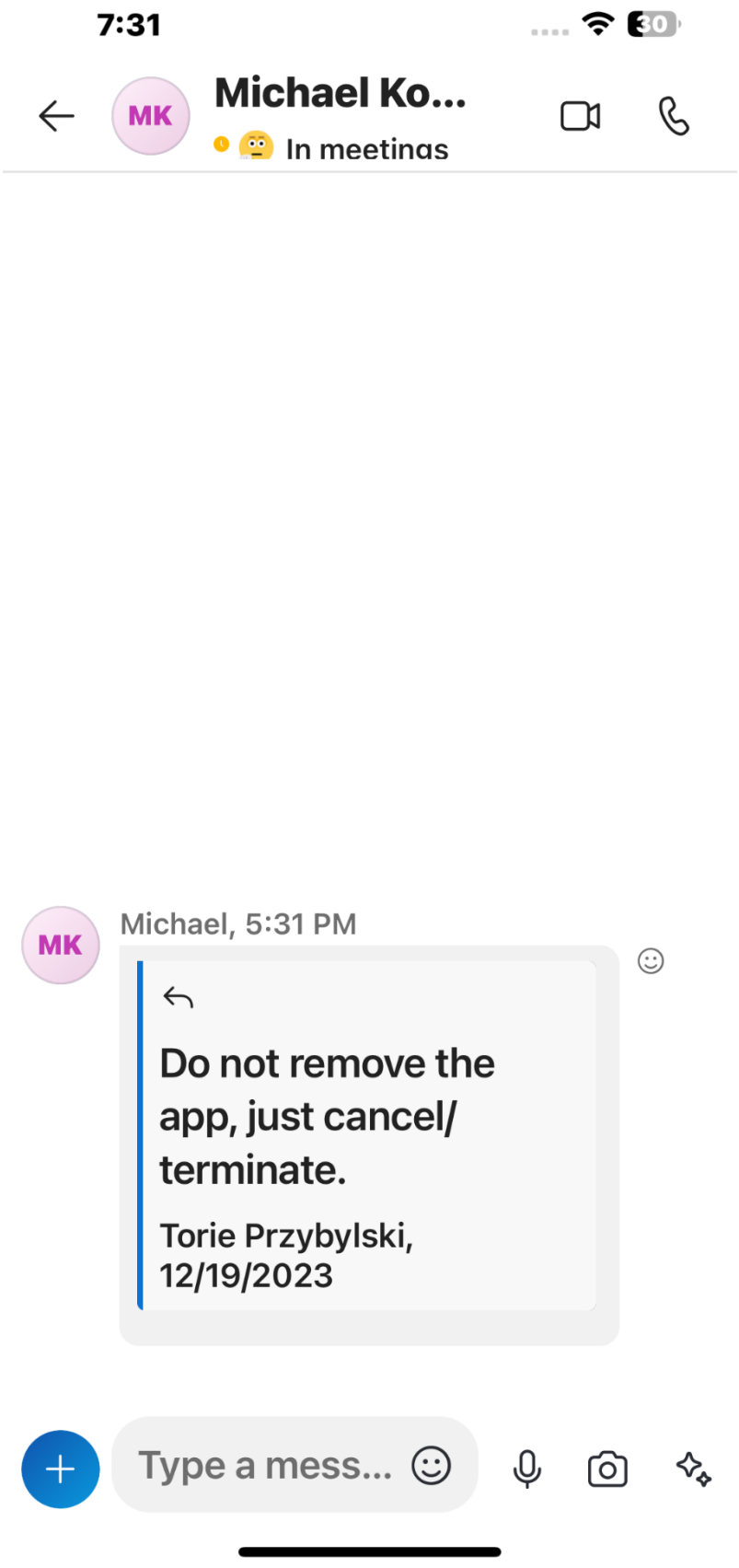
Rosa, 11:53 AM

do me a favor with that specific issue could you send the screenshot explaining the issue to tappcustomerservice@truecoverage.com

12:16 PM

Done

Type a mess...


7:31
Michael Ko...
In meetings
MK
Michael, 5:31 PM
Do not remove the app, just cancel/ terminate.
Torie Przybylski, 12/19/2023
Type a mess...

DECLARATION OF ISAAC CRUZ

COMES NOW Isaac Cruz, who, upon being duly sworn, deposes and states as follows, pursuant to 28 USC § 1746:

1.

I am over eighteen years of age and competent to give this Declaration, which is based upon my personal knowledge and is voluntary.

2.

I am a licensed health insurance agent.

3.

On June 21, 2024, my business partner, Daren Davis and I met with Gabriel Harrison at TrueCoverage at the Deerfield Beach call center to discuss a potential business opportunity. The meeting began at approximately 11:00 A.M.

4.

While we were meeting with Gabriel Harrison, he received a telephone call from Matthew Goldfuss. I believe the call came in sometime between 11:30 AM and noon. The call lasted several minutes and Mr. Goldfuss's voice was loud enough that we were able to hear him.

5.

I overheard Mr. Goldfuss ask Gabriel Harrison whether he had deleted a group chat used at TrueCoverage's call center. Mr. Harrison denied deleting the group chat to Mr. Goldfuss but when he hung up the phone, Gabriel Harrison turned to Daren Davis and I and said in substance that Matthew Goldfuss's question was stupid because, of course I'm gonna cover my ass and I deleted the group chat.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 28, 2024.

Isaac Cruz
Isaac Cruz (Jun 28, 2024 18:26 EDT)

Isaac Cruz

Declaration of Isaac Cruz

Final Audit Report 2024-06-28

Created:	2024-06-28
By:	Jason Doss [redacted]
Status:	Signed
Transaction ID:	[redacted]

"Declaration of Isaac Cruz" History

Document created by Jason Doss [redacted]
2024-06-28 - 10:18:05 PM GMT- [redacted]

Document emailed to Isaac Cruz ([redacted]) for signature
2024-06-28 - 10:18:08 PM GMT

Email viewed by Isaac Cruz [redacted]
2024-06-28 - 10:23:38 PM GMT- [redacted]

Document e-signed by Isaac Cruz [redacted]
Signature Date: 2024-06-28 - 10:26:01 PM GMT - Time Source: server- [redacted]

Agreement completed.
2024-06-28 - 10:26:01 PM GMT

DECLARATION OF DAREN DAVIS

COMES NOW Daren Davis, who, upon being duly sworn, deposes and states as follows, pursuant to 28 USC § 1746:

1.

I am over eighteen years of age and competent to give this Declaration, which is based upon my personal knowledge and is voluntary.

2.

I am a licensed health insurance agent.

3.

On June 21, 2024, my business partner, Isaac Cruz and I met with Gabriel Harrison at TrueCoverage at the Deerfield Beach call center to discuss a potential business opportunity. The meeting began at approximately 11:00 A.M.

4.

While we were meeting with Gabriel Harrison, he received a telephone call from Matthew Goldfuss. I believe the call came in sometime between 11:30 AM and noon. The call lasted several minutes and Mr. Goldfuss's voice was loud enough that we were able to hear him.

5.

I overheard Mr. Goldfuss ask Gabriel Harrison whether he had deleted a group chat used at TrueCoverage's call center. Mr. Harrison denied deleting the group chat to Mr. Goldfuss but when he hung up the phone, Gabriel Harrison turned to Isaac Cruz and I and said in substance that Matthew Goldfuss's question was stupid because, of course I'm gonna cover my ass and I deleted the group chat.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 28, 2024.

Daren Davis (Jun 28, 2024 18:32 EDT)

Daren Davis

Declaration of Daren Davis

Final Audit Report 2024-06-28

Created:	2024-06-28
By:	Jason Doss [redacted]
Status:	Signed
Transaction ID:	[redacted]

"Declaration of Daren Davis" History

Document created by Jason Doss [redacted]
2024-06-28 - 10:13:23 PM GMT- I[redacted]

Document emailed to Daren Davis [redacted] for signature
2024-06-28 - 10:13:26 PM GMT

Email viewed by Daren Davis [redacted]
2024-06-28 - 10:31:27 PM GMT- [redacted]

Document e-signed by Daren Davis [redacted]
Signature Date: 2024-06-28 - 10:32:08 PM GMT - Time Source: server- [redacted]

Agreement completed.
2024-06-28 - 10:32:08 PM GMT

DECLARATION OF ELIZABETH NOVOTNY

COMES NOW Elizabeth Novotny, who, upon being duly sworn, deposes and states as follows, pursuant to 28 USC § 1746:

1.

I am over eighteen years of age and competent to give this Declaration, which is based upon my personal knowledge and is voluntary.

2.

I am a licensed health insurance agent (NPN: 19090821).

3.

I worked as an agent with Enhance Health from approximately November 17, 2022 to January 17, 2023.

4.

Throughout my tenure with Enhance Health, virtually all the inbound calls (at least 9 out of 10) that I received from consumers were in response to online advertisements and consumers were calling in expecting to receive a cash card that promised to pay them thousands of dollars per month that could be used to pay for groceries, rent, etc. These advertisements were false and misleading because the cash card did not exist, and the money being promised was actually a subsidy that the federal government paid to the insurance carriers to reduce the premiums for the health insurance.

5.

Enhance Health knew that consumers were calling in response to the false advertisements because the sales scripts required us to be vague about the cash card and told us to tell consumers

that any benefits would come in the mail after the insurance policy was issued and that they would need to contact the carrier and ask them about the reward programs they offer.

6.

In or around January 2023, I was reprimanded by Xavier Williams, my direct supervisor, for not following the script and for explaining that the cash card being promised in the advertisement that the consumer saw was not real.

7.

On or about January 17, 2023, I quit Enhance Health because the job was exhausting and stressful. Enhance Health put agents like me under immense pressure to sell large volumes of ACA policies in a short amount of time. For example, if followed from beginning to end, the sales script we were provided took less than seven minutes to enroll a consumer. In my opinion, this was not enough time to speak with consumers, field questions, and appropriately sell policies in a compliant way.

8.

If consumers were already enrolled in an ACA policy, we were instructed to capture the customers by switching their plans regardless of whether it was appropriate for their needs. We were also instructed to change the agent of record ("AOR") to someone at Enhance Health.

9.

In addition, with regard to the income requirements to qualify for zero-dollar ACA plans, we were instructed by management to artificially inflate consumers' income to make them qualify for coverage, even if doing so, would cause them to have to repay the subsidy at the end of year.

I never gave Enhance Health authority to use me as an AOR on any policy that I was not directly involved in the sale, and I certainly did not give Enhance Health permission to use me as an AOR after I left the company on January 17, 2023.

10.

I have never sold an ACA policy to a consumer named Jana Burns.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 13, 2024.

Elizabeth Novotny (May 13, 2024 14:40 CDT)

Elizabeth Novotny

Elizabeth Novotny Declaration

Final Audit Report 2024-05-13

Created:	2024-05-13
By:	Jason Doss [redacted]
Status:	Signed
Transaction ID:	[redacted]

"Elizabeth Novotny Declaration" History

Document created by Jason Doss ([redacted])
2024-05-13 - 7:22:21 PM GMT- I[redacted]

Document emailed to Elizabeth Novotny ([redacted]) for signature
2024-05-13 - 7:22:25 PM GMT

Email viewed by Elizabeth Novotny ([redacted])
2024-05-13 - 7:40:13 PM GMT- I[redacted]

Document e-signed by Elizabeth Novotny ([redacted])
Signature Date: 2024-05-13 - 7:40:35 PM GMT - Time Source: server- I[redacted]

Agreement completed.
2024-05-13 - 7:40:35 PM GMT

DECLARATION OF HEATHER CATTANEO

COMES NOW Heather Cattaneo, who, upon being duly sworn, deposes and states as follows, pursuant to 28 USC § 1746:

1.

I am over eighteen years of age and competent to give this Declaration, which is based upon my personal knowledge and is voluntary.

2.

I am a licensed health insurance agent (NPN 20823137).

3.

I worked as an agent with TrueCoverage and as an employee of Speridian Technologies (collectively referred to as "TrueCoverage") from approximately September 27, 2023 to March 11, 2024 at a call center in Deerfield Beach, Florida.

4.

Throughout my tenure with TrueCoverage, consumers called into our call center in response to advertisements. Consumers were calling in expecting to receive cash cards that promised to pay them thousands of dollars per month that could be used to pay for groceries, rent, etc. These advertisements were false and misleading because the cash cards did not exist and the money being promised was actually a subsidy that the federal government paid to the insurance carriers to reduce the premiums for the health insurance. The advertisements also told consumers that they prequalified for these benefits, which was not true.

5.

The sales scripts that TrueCoverage required us to follow misled consumers about the cash cards being promised. For example, the sales script instructed us to open the call with the following:

> Thank you for calling TrueCoverage. This is _____ speaking on a recorded line. How are you doing today?

6.

After the consumer responded to the initial question, the sales script instructed us to say:

"Fantastic, and you saw the prequalified result that led you to us?"

7.

The "prequalified result" was a reference to the false advertisement telling the consumer that they were prequalified to receive the cash card.

8.

The sales scripts also provided us with rebuttals that we were required to use when responding to questions about the cash cards. The rebuttals required us to be vague about the cash card. For example, one of the rebuttals instructed us to tell customers that they would need to contact the carrier and ask them about the reward programs they offer.

9.

Throughout my tenure, TrueCoverage and Speridian executives and management, including Matthew Goldfuss, National Sales Director, John Runkel, Sr. Director of Quality Assurance, and Gabriel Harrison, Regional Director, knew that consumers were calling in response to the false advertisements promising cash cards and they pressured agents to use them to enroll consumers into ACA plans.

10.

Agents in the Deerfield Beach call center frequently complained verbally and on TrueCoverage's group chat about the false advertisements. Throughout the time I worked there, agents were told by Matthew Goldfuss, Gabriel Harrison and others in the management to stop complaining and they threatened to pull us off the sales floor.

11.

For example, on October 6, 2023, Gabriel Harrison, the Regional Director and head of the Deerfield Beach call center, scolded agents for participating in the group chat complaining about the prevalence of the fraudulent advertisements falsely promising the cash cards and he stated, "NEXT PERSON WHO SAYS SOMETHING NEGATIVE IS OFF THE PHONES[.]"See attached Exhibit A.

12.

On October 6, 2023, Matthew Goldfuss then wrote, "If you have issues with it, speak to Gabe, we don't need toxicity spread to everyone[.]" Gabriel Harrison followed with "BUYERS ARE LIARS" and "If YOU dont WANT UNLIMITED FREE LEADS THEN COME SEE ME" See Exhibit A.

13.

On November 3, 2023, John Runkel, Senior Director of Quality Assurance, sent the following email, which instructed agents at the beginning of Open Enrollment to deceive consumers about the cash cards being promised in the ads. See below and attached as Exhibit B.

Cash Card Reminder

John Runkel <john.runkel@speridian.com>
Fri 11/3/2023 1:16 PM

Cash Card Reminder

The customer must bring up the Cash Card to you first before you can engage in any general information.

You must be vague and cannot give any specifics, about any rewards program, under any circumstances.

Despite what ads are promoting, we must always encourage the customer to contact the insurance carrier for additional information about the possibility of additional benefits.

John Runkel | Sr. Director Quality Assurance
TrueCoverage LLC | 2400 Louisiana Blvd SE, Bldg. 3, Albuquerque, NM 87110
O: (505) 591-1327 |
Email: john.runkel@speridian.com | www.truecoverage.com

truecoverage
Insurance Marketplace

14.

I was reprimanded by management for telling consumers that the cash cards did not exist, which was a breach of company policy. For example, on or about January 26, 2024, I complained in writing to Michele Wilson, who was with HR at TrueCoverage, about my floor manager, Kevin Hale. In my email, I stated in pertinent part:

> Gabriel told me that I had to come to you regarding an issue I had with Kevin today. This is not the first issue, but I have ignored it normally. Today, it started at 8:45 am when I was explaining a dental plan to a customer and told me to stop while I was on the phone with customer so I had to call them back later. Then I was on the phone with another customer this afternoon and he told me that he never wanted to hear me say to a customer that asked about receiving cash or checks for the subsidy not to say they were not receiving cash ever again. Then he came back around once I was off the phone and said something to me and I in return said I wasn't telling a customer inquiring about receiving cash that they were and losing my license. So, he said sometimes I have to be the bad guy and tell them I don't know what they are receiving check, card, etc. (Emphasis added).

See Exhibit C.

15.

On the other hand, TrueCoverage management praised agents who were vague about the existence of the cash being falsely promised. For example, on or about January 30, 2024, Kevin Hale sent a group chat to the sales agents in the Deerfield Beach call center. In the group chat, Kevin Hale wrote:

> I've got agents like Adolfo with 20 deals today. So if you have 5 or less, there actually may be some shame in your game. . . . As always, [the] Where's my money? Folks should be sales. I heard someone telling the client they don't get a check, WRONG! and the call went South from there. Read your rebuttals.

See Exhibit D.

16.

Throughout my time at TrueCoverage, we were instructed by management, including Matthew Goldfuss and Gabriel Harrison, to enroll consumers into health plans no matter what even if they already had health insurance. If consumers that called in already had an ACA health insurance plan, we were instructed to re-enroll them anyway whether or not it was appropriate for their needs. For example, on or about November 20, 2023, Matthew Goldfuss sent an email and group chat message instructing everyone "For right now, WE DO WANT YOU TO ENROLL EVERYONE that comes your way." […] "SO ENROLL THEM ALL!" See Exhibit E. On December 15, 2023, Gabriel Harrison sent an email to the agents stating, "Every call that comes in that line you are to enroll them[.]" See Exhibit F.

17.

It is my understanding that in or around February 2024, TrueCoverage was under scrutiny by CMS and insurance regulators, in part, for using fraudulent advertisements to enroll consumers and for unlawfully switching consumers into new ACA plans without their consent. Also, they learned of the threat of a possible class action lawsuit.

18.

During that time period, TrueCoverage told agents in the Deerfield Beach call center that it had stopped using the advertisements. On or about February 26, 2024, Matthew Goldfuss claimed that TrueCoverage had stopped using the fraudulent ads. He also acknowledged that the fraudulent advertisements caused consumers to be deceived and that they had been the cause of the high volume of calls. In an email and group chat on February 26, 2024, Matthew Goldfuss wrote as follows:

> Good early evening team,
>
> Many of you are most likely wondering why call volume has dropped off over the past few weeks and especially so the past few days. We have made a decision to have 0 tolerance policy with companies that are sending us ads that are either outright deceptive or could be misconstrued as misleading. We have informed our lead partners of this policy and as a result this is why you are seeing call volumes decline. The call volume will pick back up but before we begin that process we are committed to rooting out the bad ads and call volumes will most likely remain weak for most likely the next couple of weeks.
>
> There are other calls centers that don't care if they run bad ads and they are willing to take that risk. If TrueCoverage wanted to we could easily open back up the spigots and have a lot more call volume but we are in this for the long-term. We would rather do things the right way.
>
> We appreciate everyone's patience on the matter.

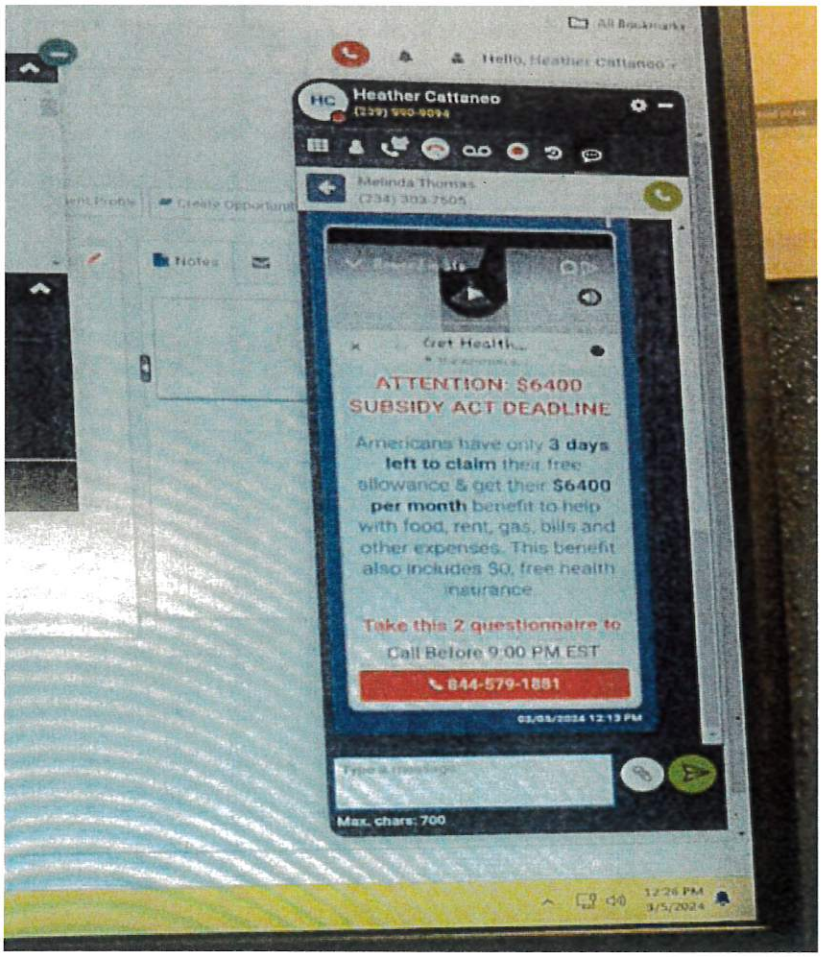
(Emphasis added). Exhibit G.

19.

I confirm that the call volume dropped significantly in February 2024. For example, at the end of the Open Enrollment Period in January 2024, I received approximately 20-30 calls per day. By the end of February 2024, I recall only getting approximately 8-10 calls daily.

20.

TrueCoverage nevertheless continued to generate leads based on the fraudulent advertisements. For example, on or about March 5, 2024, a consumer that I spoke with sent me a copy of the false advertisement that led her to speak with me at TrueCoverage. See below and attached as Exhibit H.



21.

After I quit TrueCoverage, I discovered that the company, without my knowledge and consent, used my name and NPN as agent of record on ACA enrollments that I was not involved with and had no knowledge about.

22.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 11, 2024.

Heather Cattaneo
Heather Cattaneo (Jun 11, 2024 13:28 EDT)

Heather Cattaneo

Heather Cattaneo Declaration

Final Audit Report 2024-06-11

Created:	2024-06-11
By:	Jason Doss [redacted]
Status:	Signed
Transaction ID:	[redacted]

"Heather Cattaneo Declaration" History

Document created by Jason Doss ([redacted])
2024-06-11 - 5:27:26 PM GMT-[redacted]

Document emailed to Heather Cattaneo ([redacted]) for signature
2024-06-11 - 5:27:30 PM GMT

Email viewed by Heather Cattaneo [redacted]
2024-06-11 - 5:27:53 PM GMT-[redacted]

Document e-signed by Heather Cattaneo ([redacted])
Signature Date: 2024-06-11 - 5:28:35 PM GMT - Time Source: [redacted]

Agreement completed.
2024-06-11 - 5:28:35 PM GMT

Exhibit A

Search

Deerfield Beach Office Team Chat Files

Evelyn Harrison Good Morning Team! Lets get on the phones and make some $$$$$$$$$$$$$$$$$$$$ Jose did 5 dental yesterday! You can too! Me and Aaron are going to be doing a few one on ones today, I will pick out two and him two as w...07

Unknown User 06/10/23 11:18

Katina Fuller 06/10/2023, 11:17
I am so sick of hearing about these false advertisements promising to give these people $5400 a month on a check like come on. Does...

Me too!!! Last call was for the $6400

1

Katina Fuller 06/10/23 11:18

Unknown User 06/10/2023, 11:18
Me too!!! Last call was for the $6400

It's ridiculous and it's becoming annoying as hell.

Hans Mardy 06/10/23 11:18

TO PAY 4 HEALTH INSUERANCE

1

Katina Fuller 06/10/23 11:19

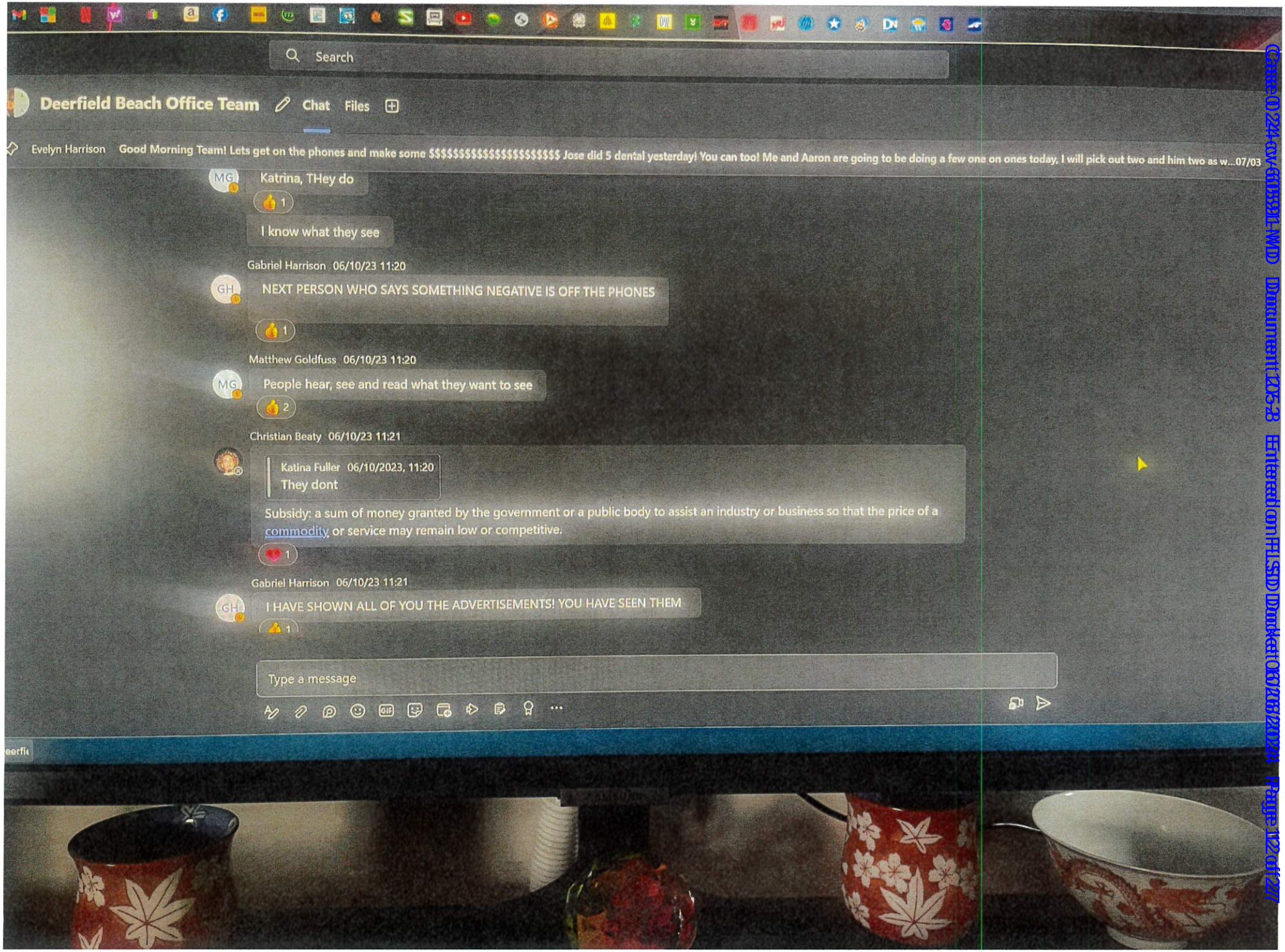
Hans Mardy 06/10/2023, 11:18
TO PAY 4 HEALTH INSUERANCE

yeah they need to include that in the advertisement

Unknown User 06/10/23 11:19 Edited

Type a message

(1) Chat | Deerfi



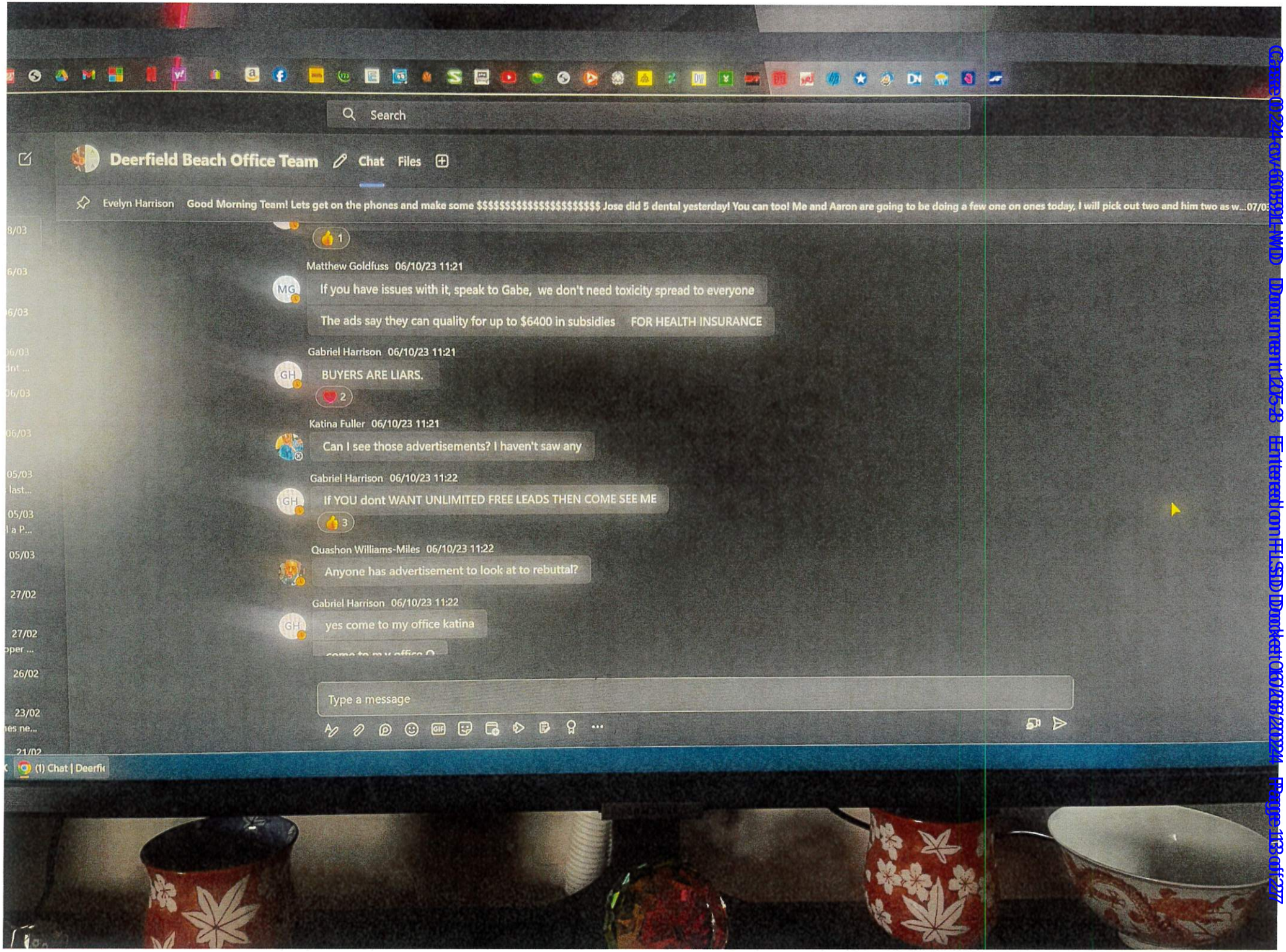


Exhibit B

Cash Card Reminder

John Runkel <john.runkel@speridian.com>
Fri 11/3/2023 1:16 PM

Cash Card Reminder

The customer must bring up the Cash Card to you first before you can engage in any general information.

You must be vague and cannot give any specifics, about any rewards program, under any circumstances.

Despite what ads are promoting, we must always encourage the customer to contact the insurance carrier for additional information about the **possibility** of additional benefits.

John Runkel | Sr. Director Quality Assurance
TrueCoverage LLC | 2400 Louisiana Blvd SE, Bldg. 3, Albuquerque, NM 87110
O: (505) 591-1327 |
Email: john.runkel@speridian.com | www.truecoverage.com

truecoverage™
Insurance Marketplace

Exhibit C

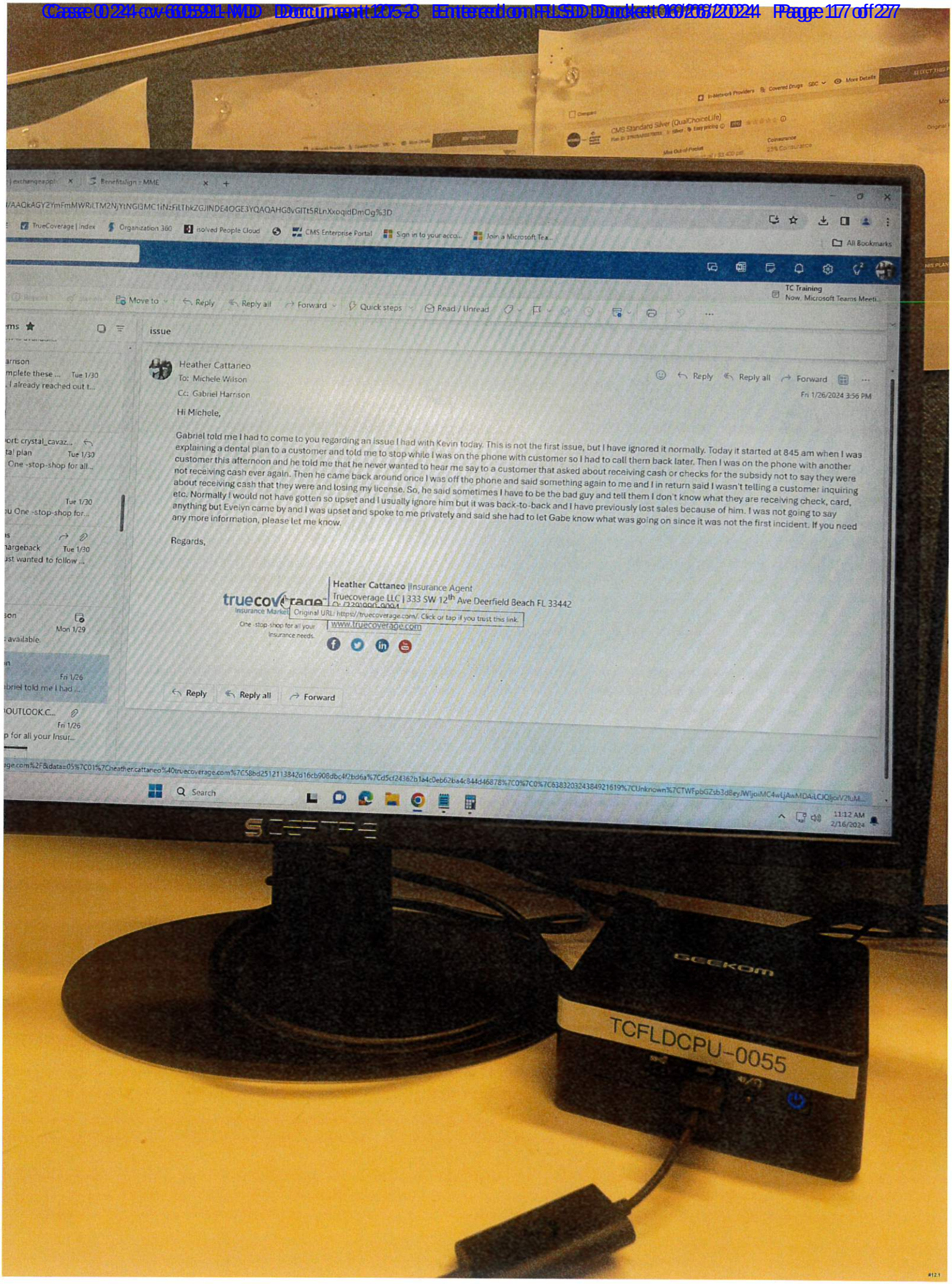

issue
Heather Cattaneo
To: Michele Wilson
Cc: Gabriel Harrison
Fri 1/26/2024 3:56 PM
Hi Michele,
Gabriel told me I had to come to you regarding an issue I had with Kevin today. This is not the first issue, but I have ignored it normally. Today it started at 845 am when I was explaining a dental plan to a customer and told me to stop while I was on the phone with customer so I had to call them back later. Then I was on the phone with another customer this afternoon and he told me that he never wanted to hear me say to a customer that asked about receiving cash or checks for the subsidy not to say they were not receiving cash ever again. Then he came back around once I was off the phone and said something again to me and I in return said I wasn't telling a customer inquiring about receiving cash that they were and losing my license. So, he said sometimes I have to be the bad guy and tell them I don't know what they are receiving check, card, etc. Normally I would not have gotten so upset and I usually ignore him but it was back-to-back and I have previously lost sales because of him. I was not going to say anything but Evelyn came by and I was upset and spoke to me privately and said she had to let Gabe know what was going on since it was not the first incident. If you need any more information, please let me know.
Regards,
Heather Cattaneo |Insurance Agent
Truecoverage LLC | 333 SW 12th Ave Deerfield Beach FL 33442
www.truecoverage.com
Reply
Reply all
Forward
TCFLDCPU-0055

Exhibit D

10A 13H 3Dentals 1Vision

1

Kevin Hale 1/30 5:24 PM

KH **Everyone** I've got agents like Adolfo with 20 deals today. So if you have 5 or less, there actually may be some shame in your game. Are you calling for the subsidy? should never come out of your mouth. Or are you calling for the discount card/rewards card? You might want to hit the restroom and splash some water on yourself. Tighten up, focus, keep it moving, be ready with quick rebuttals and assume the sale, 'cause it's usually no cost to them. This is easy. As always, Where's my money? folk should be sales. I heard someone telling client they don't get a check, WRONG! and the call went South from there. Read your rebuttals.

4 3 1

#52.1

Exhibit E

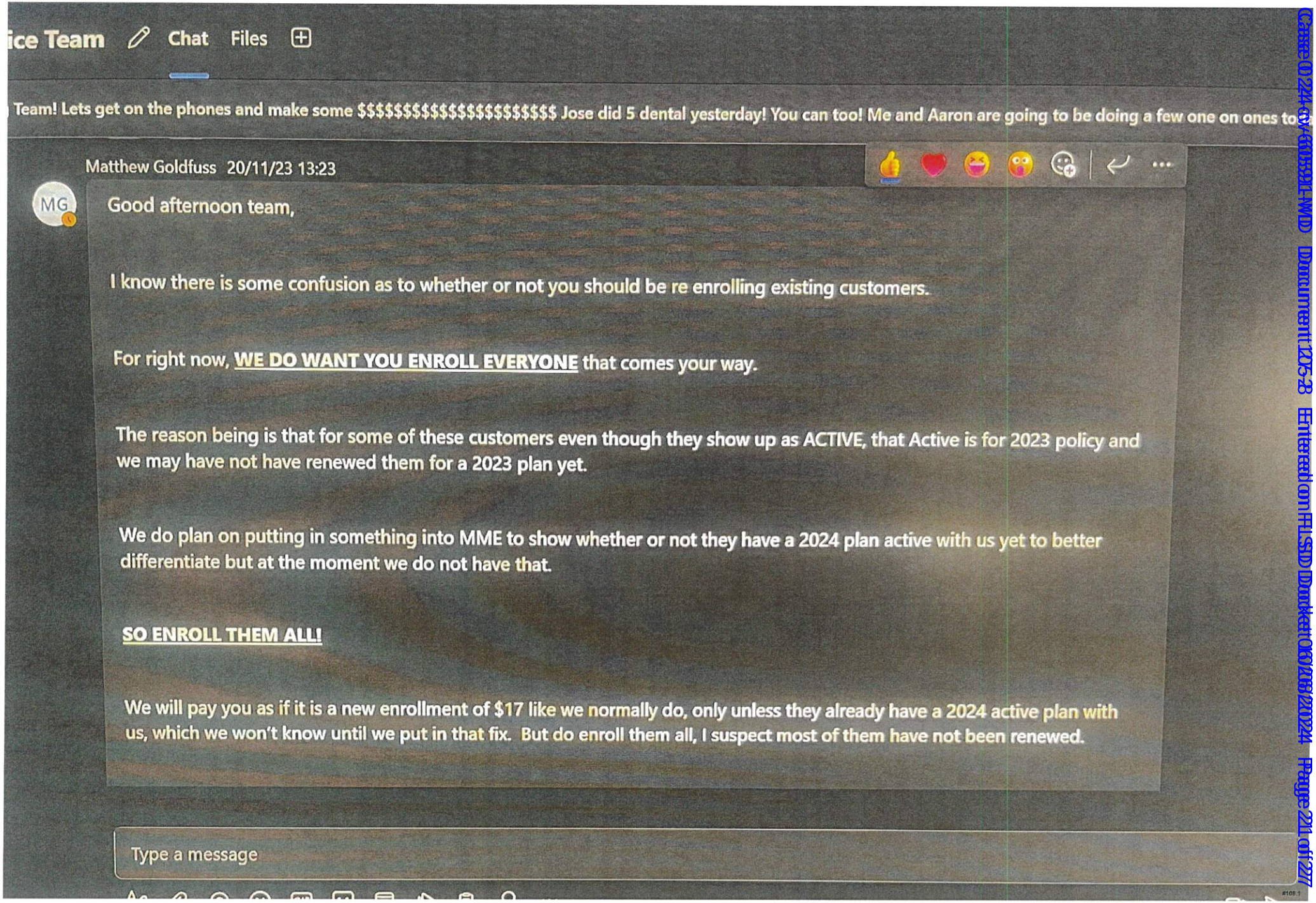


Exhibit F

Clearing the Air

GH Gabriel Harrison
To: TC Deerfield Agents; TC Deerfield Leads; TC Deerfield Admin

Reply Reply all Forward
Fri 12/15/2023 1:25 PM

Good Afternoon Team,

Let me clear the air for everyone. Nothing has changed..... Your commissions are Correct and on Point, Your Hourly Is On Point, Your Overtime is On Point, for those of you who worked for double pay after thanksgiving we have been going through each of your time clocks and if there was an error in calculation for that day then we are going to rectify it.

Every call that comes in that line you are to enroll them, nobody is getting screwed out of their money or pay, if you have a question regarding your pay then come see me and Michele but stop spreading false information about payroll that you don't have the correct answer to.

That email was mainly directed to Other centers not ours, we are the **TOP PRODUCERS** , if you are putting in your numbers then losing 1 sale or even 3 by the end of the week is not going to Affect you!! Get with the Picture guys , everything is great and you all have been paid very well , plus we feed you, plus we give you Bonus for just doing your job , we give out cash spiffs to push you to hit numbers for your own Gain, we give out Prizes for those of you who Put in that extra work to be successful , Guys we pay out Huge checks and everyone knows it, why would we as a company Harm your pay ? We are here to Help you all Become Fat and Happy With a Wheel Borrow full of **CASH**!

Guys don't get stuck in your head, lets push forward and continue the success we have started and make next year an awesome year with a Big book of Business!

truecoverage Insurance Marketplace
One -stop-shop for all your Insurance needs.
Gabriel Harrison | Regional Director
Truecoverage LLC | 333 SW 12th Ave
Deerfield Beach Fl 33442
C: (386) 237-5060
O: (850) 920-4055
Email: Gabriel.Harrison@truecoverage.com www.truecoverage.com

ELITE

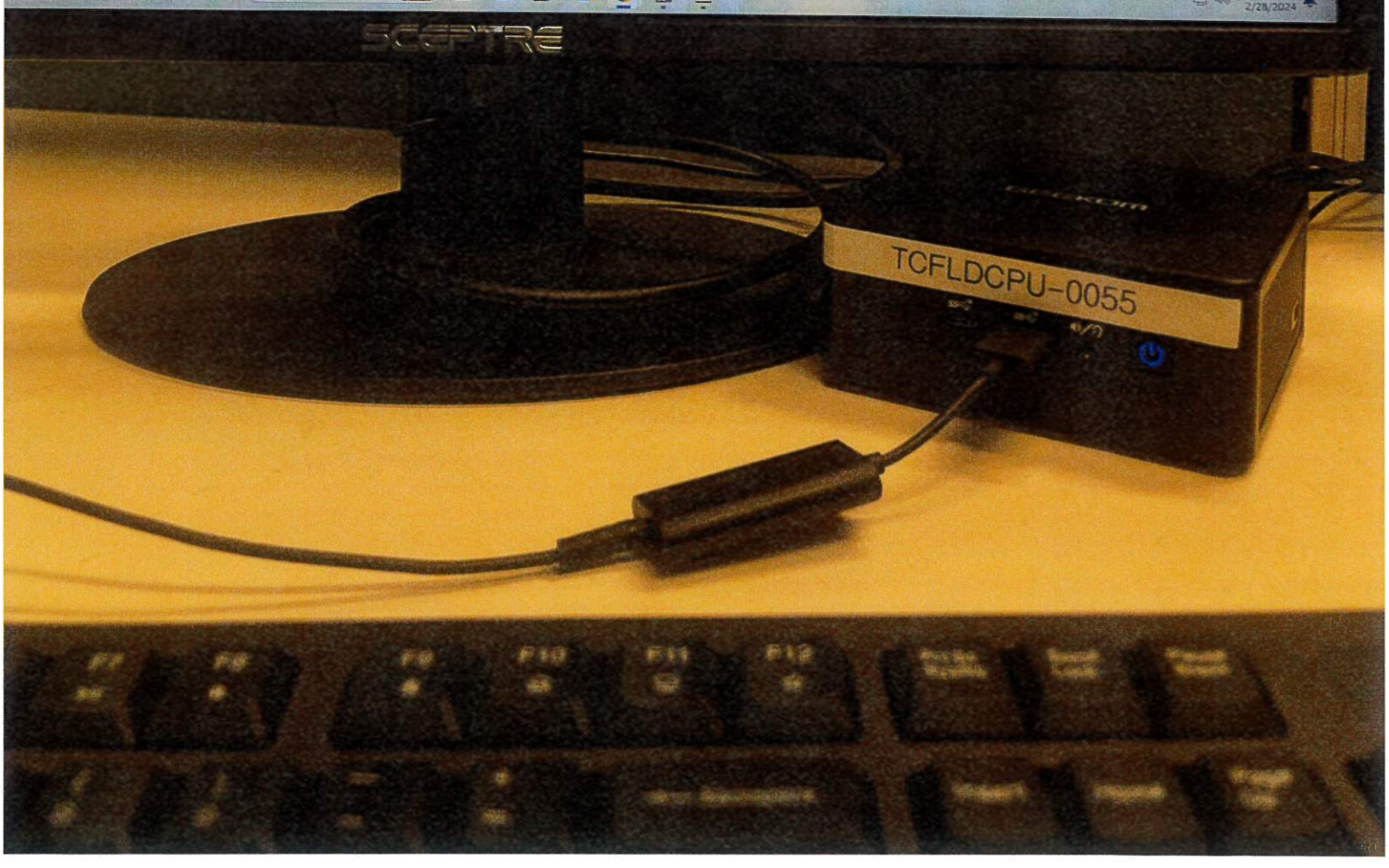


Exhibit G

Chat

phones and make some $$$$$$$$$$$$$$$$$$$$ Jose did 5 dental yesterday! You can too! Me and Aaron are going to be doing a few one on ones today, I will pick ou

2

Matthew Goldfuss 26/02 17:08

MG

Good early evening team,

Many of you are most likely wondering why call volume has dropped off over the past few weeks and especially so the past few days. We have made a decision to have a 0 tolerance policy with companies that are sending us ads that are either outright deceptive or could be misconstrued as misleading. We have informed our lead partners of this policy and as a result this is why you are seeing call volumes decline. The call volume will pick back up but before we begin that process we are committed to rooting out bad ads and call volume will most likely remain weak for most likely the next couple weeks.

There are other call centers that don't care if they run bad ads and they are willing to take that risk. If TrueCoverage wanted to we could easily open back up the spigots and have a lot more call volume but we are in this for the long-term. We would rather do things the right way.

We appreciate everyone's patience on the matter.

6 4

Amy Cannon 26/02 17:43

AC

New

Type a message

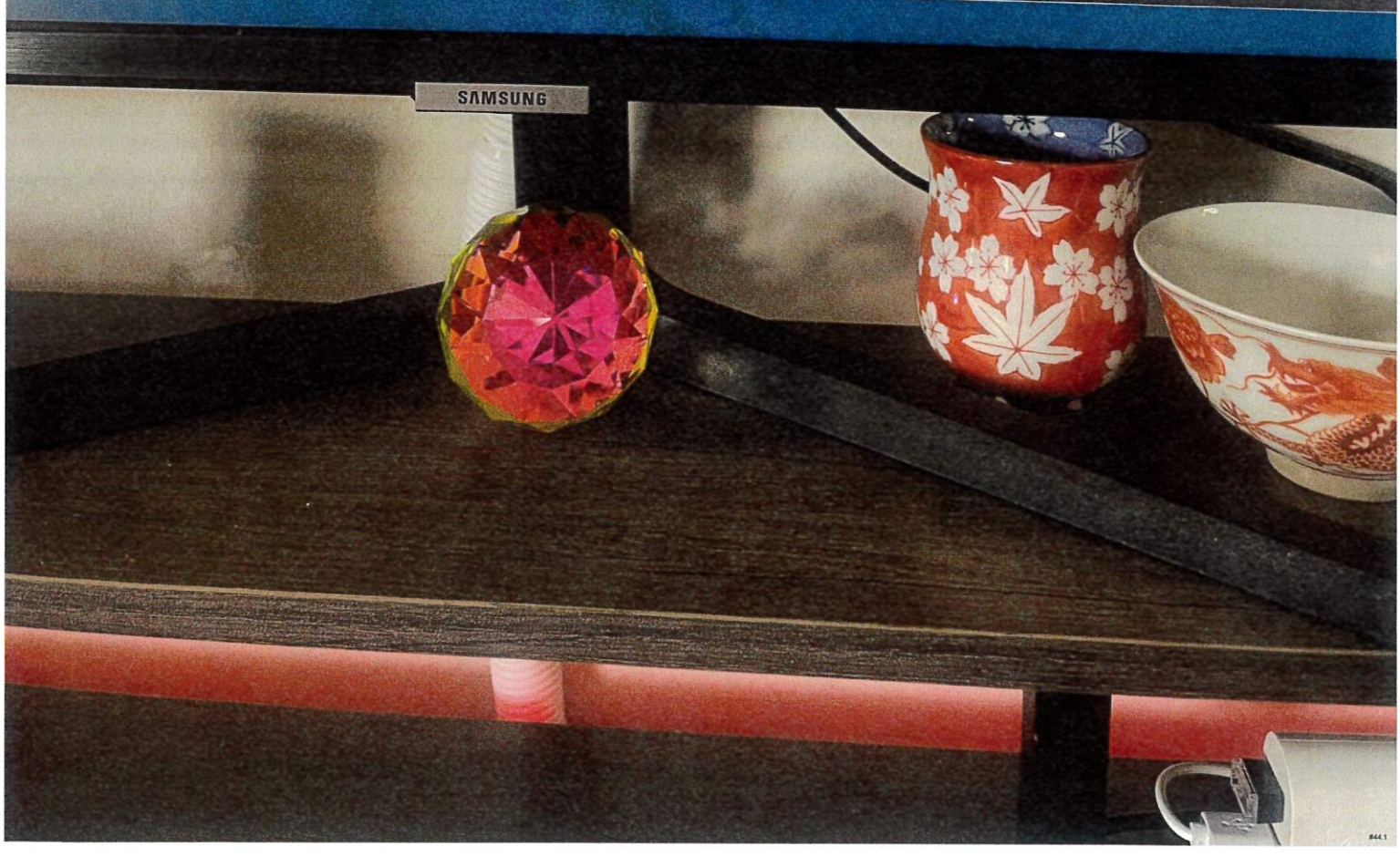
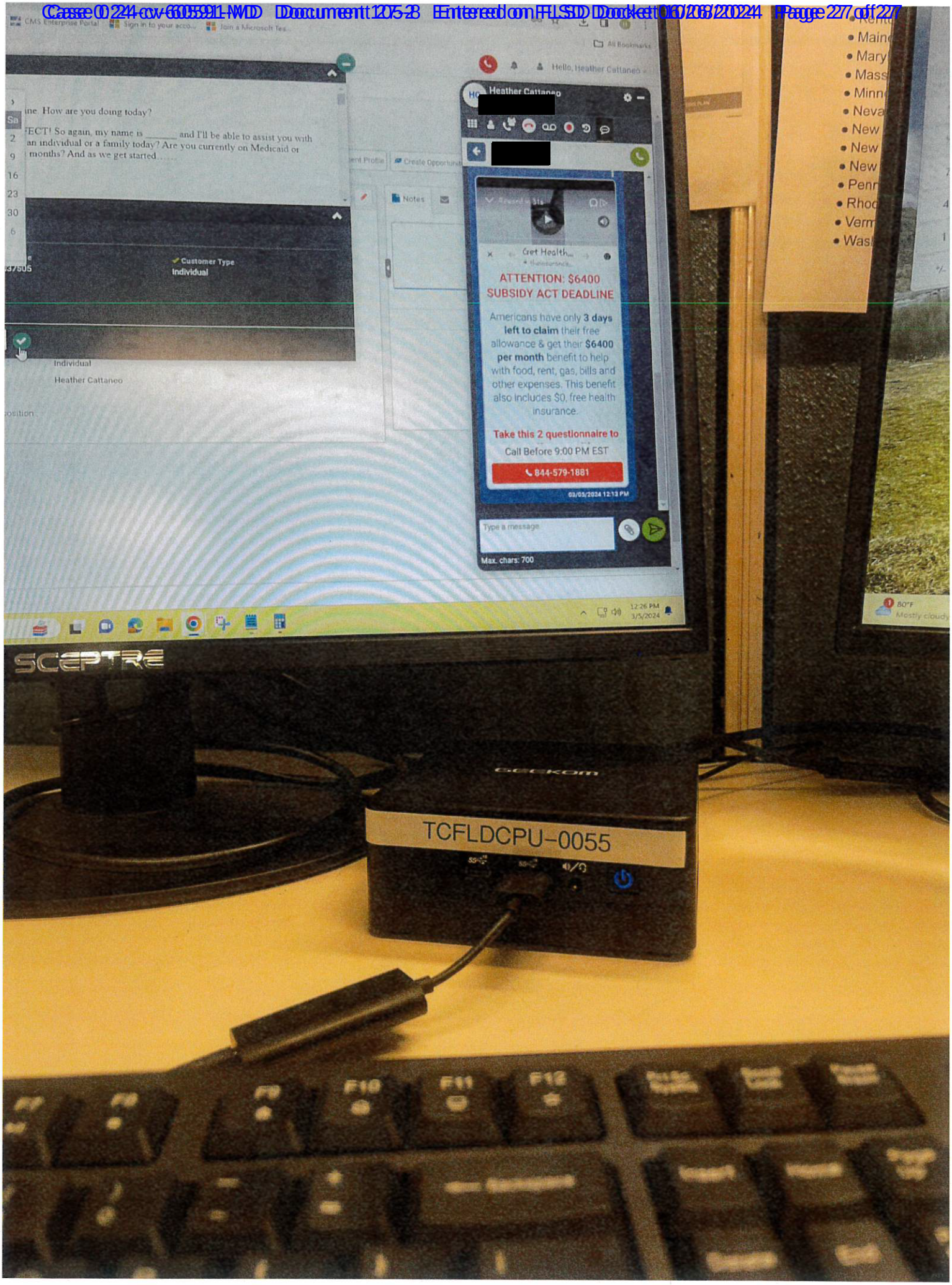


Exhibit H


ine. How are you doing today?
ECT! So again, my name is _____ and I'll be able to assist you with
an individual or a family today? Are you currently on Medicaid or
months? And as we get started.....
Customer Type
Individual
Individual
Heather Cattaneo
Heather Cattaneo
[redacted]
Gret Health...
ATTENTION: $6400 SUBSIDY ACT DEADLINE
Americans have only 3 days left to claim their free allowance & get their $6400 per month benefit to help with food, rent, gas, bills and other expenses. This benefit also includes $0, free health insurance.
Take this 2 questionnaire to
Call Before 9:00 PM EST
844-579-1881
03/05/2024 12:13 PM
Type a message
Max. chars: 700
SCEPTRE
TCFLDCPU-0055

DECLARATION OF NIVEA NAZARIO DE MELO

COMES NOW Nivea Nazario De Melo, who, upon being duly sworn, deposes and states as follows, pursuant to 28 USC § 1746:

1.

I am over eighteen years of age and competent to give this Declaration, which is based upon my personal knowledge and is voluntary.

2.

I am a licensed health insurance agent (NPN 20712755).

3.

I worked for Net Health Affiliates, Inc. (referred to as "NHA") as a sales agent from approximately July 2023 to April 2024 at a call center located at 1560 Sawgrass Corporate Parkway, Sunrise, Florida 33323. Our office was in the building directly next to Enhance Health.

4.

I believe that the owner of NHA was/is Bruce Goldberg. The agent who ran our call center was Ervence Pierre. When I started working at NHA, it had approximately 20 sales agents, but it grew to approximately 60 sales agents during the 2023 Open Enrollment Period, i.e. November 2023-January 2024.

5.

NHA was and/or is a downline agency of Enhance Health. It is my understanding that Enhance Health's marketing department controlled what leads NHA received. Throughout my tenure with NHA, consumers called into our call center in response to advertisements from those leads. Approximately 95% of inbound calls were from consumers calling in expecting to receive cash cards that promised to pay them thousands of dollars per month that could be used to pay for

groceries, rent, etc. These advertisements that led consumers to call were false and misleading because the cash cards did not exist as portrayed and the money being promised actually was a subsidy that the federal government paid to the insurance carriers to reduce the premiums for the health insurance. The advertisements also told consumers that they prequalified for these benefits, which was not true.

6.

The sales scripts that we were required to follow encouraged us to be vague about the cash card and we were instructed to tell customers that they would need to contact the carrier and ask them about the reward programs they offer.

7.

Throughout my time at NHA, we were instructed by management, including Ervence Pierre, to enroll consumers into health plans no matter what, even if they already had health insurance. If consumers that called in already had an ACA health insurance plan, we were instructed to re-enroll them anyway, including switching carriers, regardless of whether it was appropriate for their needs.

8.

Even though NHA was a separate entity, Enhance Health monitored and controlled the operations of NHA, and allowed NHA to hold itself out to consumers as being Enhance Health. For example, we were required to answer inbound calls as "Good morning. I am a licensed insurance agent . . . with Enhance Health enrollment center."

9.

Throughout my tenure, NHA, its owner and management, and Enhance Health, including its executives and management, knew that consumers were calling in response to the false

advertisements promising cash cards and they pressured agents to use them to enroll consumers into ACA plans.

10.

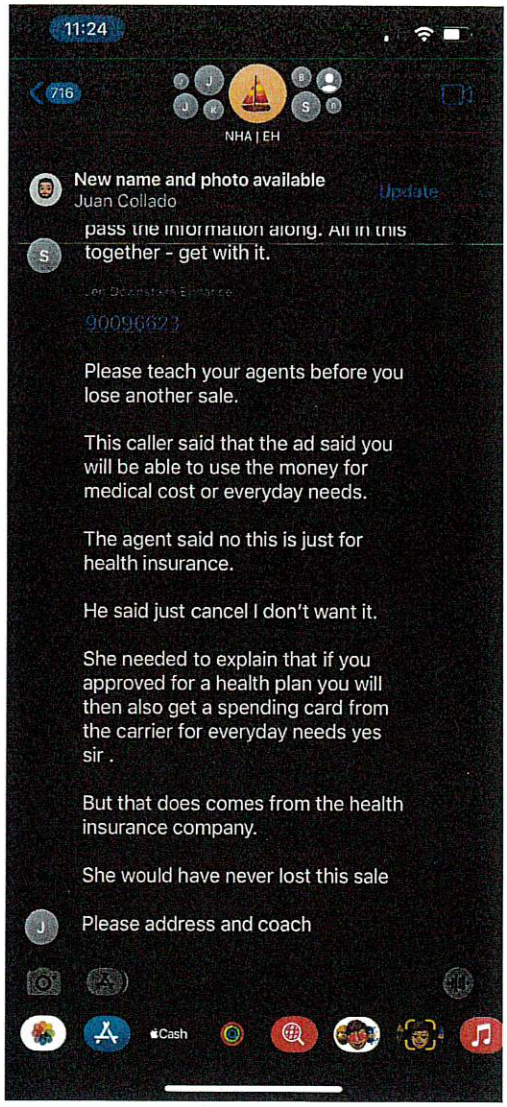
For example, Enhance Health's marketing department, headed by Mark Shuler, monitored and controlled our sales practices. Enhance Health's marketing department created a group text with Ervence Pierre, our NHA sales team leader, and possibly other members of leadership at NHA. The group chat between Enhance Health's marketing department and Ervence Pierre was called "EH/NHA."

11.

Ervence Pierre would send us screenshots of the instructions he was receiving from Enhance Health through the EH/NHA group text. He would forward these screenshots to a group text comprised of NHA sales agents, including myself. We were asked to use our personal cell phones to participate in the NHA group text.

12.

The following text message was sent to our sales agents by Enhance Health's marketing department through the EH/NHA group chat. Juan Collado, whose name is on the text message, worked in Enhance Health's marketing department. The text suggests that Enhance Health was monitoring NHA's sales calls. In the text, Enhance Health's marketing department criticizes an NHA sales agent for losing a sale by not misleading the consumer about cash cards: "She needed to explain [to the consumer] that if you approved for a health plan you will then also get a spending card from the carrier for everyday needs yes sir."



13.

NHA used a dialing system called TLD and as sales agents, the dialer showed where the leads came from. The two lead generators that had the most volume of leads that used fraudulent ads promising cash cards were, "My ACA" and "MNV," which referred to Minerva Marketing.

14.

The sales scripts that we were required to follow encouraged us to be vague about the cash card and we were instructed to tell customers that they would need to contact the carrier and ask them about the reward programs they offer.

15.

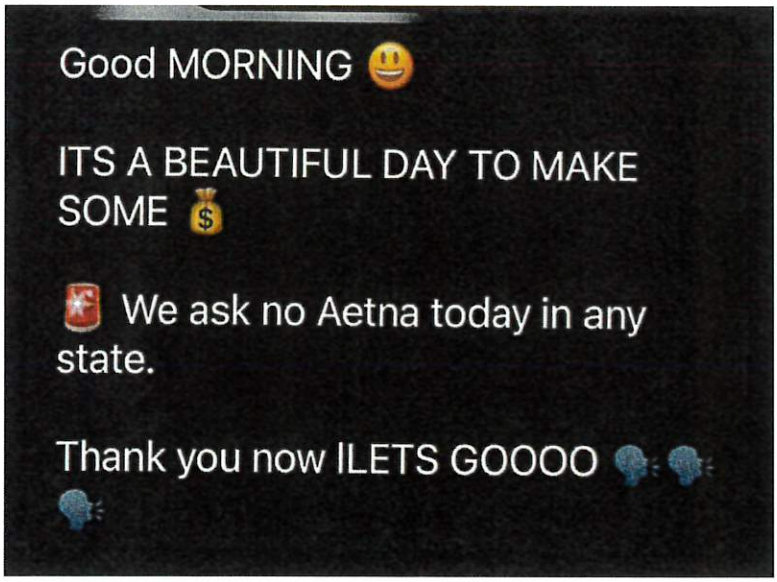
Throughout my tenure with NHA, agents were instructed to enroll consumers in health plans with specific carriers before we spoke with consumers. In other words, the health plans that we were going to enroll consumers into were predetermined prior to speaking with consumers, without regard to whether those health plans met consumers' health care needs.

16.

We received instructions through EH/NHA group chats about what plans to sell on a given day. Below are a couple of examples:

On November 17, 2023 at 10:17 AM, we received the following text:

Another example on a different date stated:



17.

As illustrated in the group text below, Enhance Health dictated what plans to sell. I believe it was so that Enhance Health could receive additional compensation from carriers. One text stated that "Matt the CEO" — that is, Matt Herman, CEO of Enhance Health — was monitoring NHA's sales and dictating the insurance carrier we needed to sell to consumers:

On September 25, 2023 at 9:39 AM, we received the following text:

18.

On multiple occasions, I complained to NHA's management, including but not limited to its owner, Bruce Goldberg, about the fact that NHA was misleading consumers through its deceptive advertisements and its sales process. Each time, my complaints were dismissed.

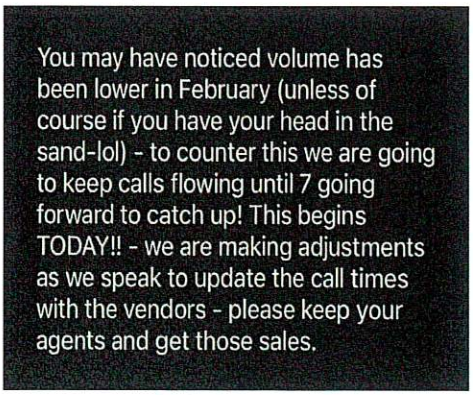
19.

NHA used BenefitAlign as its enrollment platform until the beginning of the Open Enrollment Period in or around November 2023. Enhance Health also used BenefitAlign at that time. Beginning in or around that time, NHA switched its enrollment platform to Jet Health, which is now also Enhance Health's enrollment platform. Throughout my time at NHA, we used Total Leads Domination or "TLD" as our dialer system, which was also Enhance Health's dialing system. Enhance Health's customer service department was responsible for reviewing NHA's enrollment applications. This was another way that Enhance Health controlled NHA.

20.

In February 2024, our call volume dropped significantly. We were told that the drop in call volume was the result of Enhance Health trying to "clean up the vendors." This referred to the lead generators sending NHA leads based on the fraudulent cash cards.

For example, on February 13, 2024 at 3:15 PM, the NHA sales agents, including myself, received the following text message:



21.

I am concerned that NHA and/or Enhance Health has used my name and NPN as agent of record on ACA enrollments without my knowledge and consent. I have started to receive letters from regulators related to customer complaints on policies that I am listed as the agent of record on that I was not involved with and had no knowledge about. To date, I have received three complaint letters from regulators, two from Georgia's insurance regulator and one from the Arkansas insurance regulator.

22.

I am concerned that Enhance Health is not responding to these complaints because on June 17, 2024, I spoke with Zenobia Cooper-Birt, Complaints Analyst with the Georgia Office of Insurance Commissioner, John F. King. Ms. Cooper-Birt called me because she was concerned about my license. Enhance Health told her that it would be responding to the complaint but she let me know that she had not received anything and the deadline had passed. I believe the fact that Enhance Health is communicating on my behalf shows that its controls NHA.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 3, 2024.

Nivea Nazario De Melo (Jul 3, 2024 18:11 EDT)

Nivea Nazario De Melo

Nivea Nazario De Melo Declaration

Final Audit Report 2024-07-03

Created:	2024-07-03
By:	Jason Doss [redacted]
Status:	Signed
Transaction ID:	[redacted]

"Nivea Nazario De Melo Declaration" History

Document created by Jason Doss [redacted]
2024-07-03 - 10:09:00 PM GMT- I[redacted]

Document emailed to Nivea Nazario De Melo ([redacted]) for signature
2024-07-03 - 10:09:05 PM GMT

Email viewed by Nivea Nazario De Melo [redacted]
2024-07-03 - 10:10:12 PM GMT-[redacted]

Document e-signed by Nivea Nazario De Melo ([redacted])
Signature Date: 2024-07-03 - 10:11:49 PM GMT - Time Source: server-[redacted]

Agreement completed.
2024-07-03 - 10:11:49 PM GMT

Exhibit 1

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
200 Independence Avenue SW
Washington, DC 20201

CMS
CENTERS FOR MEDICARE & MEDICAID SERVICES
CENTER FOR CONSUMER INFORMATION & INSURANCE OVERSIGHT

September 2, 2024

VIA ELECTRONIC MAIL AND UNITED STATES POSTAL SERVICE:
ashwini.deshpande@truecoverage.com; Sarika.balakrishnan@truecoverage.com; manal.mehta@benefitalign.com; tamara.white@benefitalign.com, girish.panicker@speridian.com

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c/o Ashwini Deshpande
2400 Louisiana Blvd NE
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Albuquerque, NM 87110

TrueCoverage LLC dba Inshura
c/o Ms. Sarika Balakrishnan
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Albuquerque, NM 87110

BenefitAlign LLC
c/o Manal Mehta and Tamara White
2400 Louisiana Blvd NE
Building 3
Albuquerque, NM 87110

RE: Suspensions of Web-broker and Enhanced Direct Enrollment Entity Activities and Notice of Compliance Audit

Dear Ashwini Deshpande, Sarika Balakrishnan, Manal Mehta, and Tamara White:

The Centers for Medicare & Medicaid Services (CMS), on behalf of the Department of Health and Human Services (HHS), administers the program under which licensed web-brokers may operate non-Marketplace websites or information technology (IT) platforms. Using these websites and platforms, agents and brokers may assist with consumer health insurance enrollments through the Federally-facilitated Marketplaces (FFMs) and State-based Marketplaces on the Federal Platform (SBM-FPs) (collectively, Marketplace or Marketplaces).

Pursuant to 45 C.F.R. §§ 155.220(c)(4)(ii) and 155.221(e), and attributable to credible allegations of misconduct described in this notice, CMS is immediately suspending True Coverage LLC's, TrueCoverage dba Inshura's, and BenefitAlign's (collectively, the Speridian

Companies[1]) ability to transact information with the Marketplaces. CMS is also suspending the Speridian Companies' ability to make its non-Marketplace websites available to other agents and brokers to transact information with the Marketplaces. Pursuant to 45 C.F.R. § 155.220(c)(5) and section X.m. of the executed Enhanced Direct Enrollment (EDE) Agreement, section X.l. of the executed Web-Broker Agreement, and section 15 of the executed Interconnection Security Agreement (ISA), CMS also notifies the Speridian Companies of its intent to conduct a compliance review and audit.

Background

CMS operates a program through which approved web-brokers registered with CMS may host an application for Marketplace coverage on their own websites. Such entities operate as Direct Enrollment (DE) or EDE entities[2] and must comply with the requirements of section 1312(e) of the Patient Protection and Affordable Care Act and associated regulations, including 45 C.F.R. §§ 155.220 and 155.221.

In accordance with federal requirements, the Speridian Companies voluntarily executed the following agreements with CMS to participate in the Marketplace as an approved web-broker and DE/EDE partner, effective for plan years 2022, 2023, and 2024 (collectively, the CMS Agreements):

- Agreement Between Web-Broker TrueCoverage, LLC and CMS for the Individual Market FFM and SBM-FP;
- Agreement Between Web-Broker BenefitAlign, LLC and CMS for the Individual Market FFM and SBM-FP;
- EDE Agreement between EDE Entity BenefitAlign LLC and CMS for the Individual Market FFM and SBM-FP;
- EDE Agreement between EDE Entity TrueCoverage dba Inshura and CMS for the Individual Market FFM and SBM-FP; and

[1] Speridian Global Holdings LLC has common ownership and control of TrueCoverage, Inshura, and BenefitAlign, and their IT platforms for participating in the Marketplaces operate on the same IT infrastructure. This suspension notice collectively addresses all three entities as the Speridian Companies.

[2] "Direct Enrollment is a service that allows approved Qualified Health Plan (QHP) issuers and third-party web-brokers (online insurance sellers) to enroll consumers in Exchange coverage, with or without the assistance of an agent/broker, directly from their websites. In the 'Classic' DE experience … consumers start on a DE entity's (e.g., issuer or web-broker) website by indicating they are interested in Exchange coverage. The issuer or web-broker redirects users to HealthCare.gov to complete the eligibility application portion of the process. After completing their eligibility application, HealthCare.gov redirects the user back to the issuer or web-broker website to shop for a plan and enroll in Exchange coverage.… The Enhanced Direct Enrollment user experience goes well beyond the plan shopping and enrollment experience that is available via Classic DE. EDE is a service that allows approved EDE entities (e.g., QHP issuers and web-brokers approved to participate in EDE) to provide a comprehensive consumer experience including the eligibility application, Exchange enrollment, and post-enrollment year-round customer service capabilities for consumers and agents/brokers working on behalf of consumers, directly on issuer and web-broker websites. Through EDE, approved EDE Entities build and host a version of the HealthCare.gov eligibility application directly on their websites that securely integrates with a back-end suite of FFE application programing interfaces (APIs) to support application, enrollment and more. " *Direct enrollment and enhanced direct enrollment.* CMS.gov. (n.d.). https://www.cms.gov/marketplace/agents-brokers/direct-enrollment-partners

- ISA between EDE Entity BenefitAlign LLC and CMS for the Individual Market FFM and SBM-FP.

The Speridian Companies signed and executed the CMS Agreements, thus voluntarily agreeing to accept and abide by the terms of the CMS Agreements and the federal regulations governing Marketplace web-brokers and DE/EDE partners at 45 C.F.R. §§ 155.220 and 155.221.[3] These terms and regulations provide, in relevant part, the right for CMS or its designee to conduct compliance reviews and audits, including the right to interview employees, contractors, and business partners of an EDE Entity and to audit, inspect, evaluate, examine, and make excerpts, transcripts, and copies of any books, records, documents, and other evidence of the web-broker's and EDE Entity's compliance with applicable requirements.[4]

The Speridian Companies' Previous Record of Noncompliance with CMS Regulations and Agreements

The Speridian Companies have a history of noncompliance with CMS regulations and agreements dating back to 2018. On April 19, 2018, TrueCoverage had its 2018 CMS agreements terminated, which ended their ability to transact information with the Marketplace, due to the severe nature of its suspected and, in some cases, admitted violations of CMS regulations.[5] After the termination, the Speridian Companies were not registered with the Exchanges or permitted to assist with or facilitate enrollment of qualified individuals through the Exchange, including direct enrollment. The Speridian Companies admitted that their agents and brokers submitted false Social Security Numbers in connection with Marketplace eligibility applications, and CMS had reasonable suspicions of other fraud, improper enrollments, and misconduct by the Speridian Companies. The Speridian Companies regained their connection to CMS in 2019 after CMS, satisfied with the good-faith evidence provided, entered into Exchange agreements in Plan Year 2019.

On October 3, 2022, CMS suspended TrueCoverage dba Inshura for noncompliance for failing to implement procedures to verify consumer identity as required by the CMS EDE guidelines.[6] The suspension was lifted when True Coverage dba Inshura instituted procedures for consumer identity proofing. On April 6, 2023, CMS suspended BenefitAlign for attempting to access the FFM's software testing environment from India on March 8, 2023. This suspension was lifted after BenefitAlign submitted a corrective action plan to remediate the issue. Since then, we have corresponded with Speridian Companies on a near monthly basis on a variety of noncompliance issues that did not rise to the level of requiring a system suspension but nonetheless raised consumer protection and other concerns on the part of CMS.

The August 8, 2024 Suspension

CMS began a review of the Speridian Companies' DE platforms after CMS received an

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[3] 45 C.F.R. §§ 155.220(a) and 155.221(a)(2). *See also* definition of "web-broker" at 45 C.F.R. § 155.20; EDE Agreement, section II and section III; Web-Broker Agreement section II.

[4] EDE Agreement at section X.m.; Web-Broker Agreement at section X.l.; ISA at section 15

[5] C.F.R. § 155.285(a)(1)(i). Also see 45 C.F.R. § 155.220(d)(3) and (j)(2)(ii). A termination here is distinct from a suspension. When an entity is terminated from the Marketplace its CMS Agreements are voided and the entity cannot assist or facilitate consumer enrollment. The only way to get back onto the Marketplace is to re-apply (if permitted, as was the case with True Coverage's suspension in 2018). A suspension also blocks an entity's ability to interact with the Marketplace, but can be ended if CMS's concerns are remediated.

[6] 45 C.F.R. § 155.221(e) and Section V.C of the EDE Business Agreement

unconfirmed report on July 24, 2024 that the TrueCoverage and BenefitAlign technical teams were based overseas, and allegedly were able to access the True Coverage and BenefitAlign platforms, including consumer PII submitted to those platforms, in violation of CMS rules.[7] OBJ OBJ OBJ Speridian Companies' DE platforms' technical infrastructure.

On August 6, 2024, CMS began an initial risk assessment of the connection between the Speridian Companies and the Marketplace. This assessment concluded that there existed critical risk to CMS infrastructure and consumers. This assessment was based on the evaluation of five factors: Foreign Ownership, Control, or Influence; Significant Adverse Information; Supply Chain Tier Structure Concerns; Company Product Related Concerns; and the Company Cyber Vulnerabilities.

The Speridian Companies use a hybrid onsite/offshore delivery model, which means that a portion of the software development work and IT support is conducted from overseas locations. This is acceptable, provided that CMS data and consumer PII reside in the United States. Multiple domains tied to the Speridian Companies, however, are based in India, where they operate a large, dedicated data center, and CMS reasonably believes that CMS data, including consumer PII, is processed and/or stored in this location. The company has subsidiaries and operations in Canada, India, Pakistan, Saudi Arabia, Singapore, and the UAE. There may be other locations and subsidiaries that CMS has not yet discovered.

Further, the Speridian Companies, BenefitAlign and True Coverage dba Inshura, are defendants in a pending lawsuit, filed by private parties in 2024, alleging that they engaged in a variety of illegal practices, including violations of the RICO Act, misuse of consumer PII, and insurance fraud that they allegedly carried out by misusing BenefitAlign's access to the Marketplace. Plaintiffs in the lawsuit likewise claim that BenefitAlign allows access to the Exchange from abroad and houses CMS data overseas.

CMS suspended the Speridian Companies' ability to transact information with the Marketplace on August 8, 2024, after a CMS analysis identified a serious lapse in the security posture of the Speridian Companies' platforms; namely, that the Speridian Companies' platforms could be accessed by non-CMS-approved systems outside of the United States. Under CMS's requirements, Marketplace data must always reside in the United States to eliminate the possibility that foreign powers might obtain access to CMS data and information.[8] In addition, the EDE agreement states that EDE entities or their delegated entities, including employees and contracted agents, "cannot remotely connect or transmit data to the FFE, SBE-FP or its testing environments, nor remotely connect or transmit data to EDE Entity's systems that maintain connections to the FFE, SBE-FP or its testing environments, from locations outside of the United States of America.... This includes any such connection through virtual private networks (VPNs)." [9]

On August 13, 2024, OIT met with the Speridian Companies to discuss CMS's concerns about Marketplace data being accessed or accessible from outside the continental United States (OCONUS). During these meetings and afterward, CMS requested information relevant to its

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[7] EDE Agreement at section X.n.

[8] "CMS system owners must ensure that CMS data is not processed, transmitted, transferred, or stored outside the United States and its territories." *BR-SAAS-8*, CMS.gov. (n.d.). https://www.cms.gov/tra/Infrastructure_Services/IS_0250_SaaS_Business_Rules.htm.

[9] EDE Agreement, Section X.n.

concerns, including information regarding who could access the platforms and from what geographic locations. CMS sent an initial data request to the Speridian Companies on August 13, 2024, the first of seven requests for data. The Speridian Companies' responses each time either led to more questions or were incomplete, with the August 16, 2024 response omitting some of the requested VPN access logs altogether.

CMS reviewed the data the Speridian Companies provided between August 19 and 28, 2024. CMS identified several issues of continued concern, including concerns that there appeared to be VPN usage which could indicate a party's intent to hide the fact that its systems could be accessed from outside the United States. The review also identified additional concerns regarding connections to internet protocol (IP) addresses in India and Pakistan. The review also revealed that all IP addresses associated with the Speridian Companies indicated that their primary IT infrastructure was operated in India.

By August 28, 2024, CMS made a number of concerning discoveries, including that multiple users logging onto the Speridian Companies' systems with company-provided credentials had been identified as connecting to IP addresses that were geolocated to India. Similarly, multiple users had been recorded as sending traffic to multiple IP addresses that corresponded to resources geolocated overseas, including in Hong Kong, India, Ireland, Japan, Pakistan, and Sweden. CMS requested further information from the Speridian Companies regarding this activity on August 28, 2024, and has yet to receive a response.

Due to these critical concerns, as well as an absence of requested information that the Speridian Companies have failed to provide to CMS, CMS has determined that continuing the August 8, 2024 suspension of the Speridian Companies is necessary and appropriate. Thus far, the data and information provided do not allay CMS suspicions that Marketplace data, including consumer PII, was transferred outside the United States, or that EDE and/or FFM systems are being accessed from outside of the United States.

Notice of Intent to Conduct a Compliance Review and Audit

Pursuant to CMS's authorities at 45 C.F.R. § 155.220(c)(5) and as specified in the CMS Agreements[10], CMS intends to conduct a compliance review and audit ("Audit") of the Speridian Companies.

On April 12, 2024, private parties filed a civil action in U.S. District Court, *Turner v. Enhance Health, LLC*, Case No.:24-cv-60591 (S.D. Fla.) on behalf of a class of consumers and a class of agents. The pleadings in that case, including the complaint, a motion for expedited discovery, and witness declarations submitted under penalty of perjury, allege that the Speridian Companies committed various acts (described below) that, if true, would constitute noncompliance with the web-broker and DE/EDE program regulations and CMS Agreements,

CMS has a reasonable suspicion, based on credible evidence it has considered, that the Speridian Companies directed its employees and other agents to change Marketplace enrollees' coverage

[10] section X.m. of the EDE Agreement, section X.l. of the Web-Broker Agreement, and section 15 of the executed Interconnection Security Agreement

and enroll insured and uninsured consumers without the enrollees' consent; design, publish, and/or clear misleading advertisements; and utilize agents' and brokers' national producer numbers without the agents' or brokers' consent. These circumstances pose unacceptable risk to the accuracy of the Marketplace's eligibility determinations, Marketplace operations, and Marketplace IT systems. These allegations are independent from, but in addition to, the other IT issues mentioned above, in particular the allegations of unauthorized transmission of consumer PII overseas. Any of these allegations, if true, would constitute noncompliance with the web-broker and DE/EDE program regulations and CMS Agreements.

This Audit would build upon the review CMS initiated on August 6, 2024, and would address issues that may or may not have been evaluated or relevant to the OIT reviewPursuant to the CMS Agreements, the Speridian Companies are expected to provide reasonable access to their information, employees, and facilities during the course of the Audit.[11] The Speridian Companies are also responsible for ensuring cooperation with the Audit by its downstream and delegated entities, including subcontractors.[12]

The Audit will cover the Speridian Companies' activities beginning on or after October 10, 2020 to the present. The Audit's scope will include, but will not be limited to, a review of the Speridian Companies' business relationships with agents and brokers who are not agents or brokers for a Speridian Company, a review of any call scripts used by Speridian Companies' agents, records of commission payments, IT records and practices, business processes and records, relationships with current and former business partners, and any related issues to these topics that may arise as part of the review of the Speridian Companies' compliance with applicable federal regulations and the CMS Agreements. CMS will follow up with additional information on when the Audit will begin and who will conduct it.

Given the serious risk to the Marketplace and consumers and other circumstances underlying CMS's suspicions, these suspensions will remain in effect until CMS completes its investigation and is satisfied that the issues described in this notice have been remedied or sufficiently mitigated as authorized by 45 C.F.R. §§ 155.220(c)(4)(ii) and 155.221(e). During this suspension and audit period, the Speridian Companies may not offer its non-Marketplace website for use by agents or brokers assisting consumers with Marketplace applications for, and enrollments in, insurance affordability programs or to enroll consumers in a QHP offered through any FFM, FF-Small Business Health Options Program (SHOP), SBM-FP, or SBM-FP-SHOP. Similarly, the Speridian Companies, and any of their upstream DE partners will be unable to transact information with Marketplace systems through Speridian Companies' DE/EDE platforms during this suspension and audit period.

CMS System Access Can Only Be Restored Once Concerns are Resolved

As explained above, pursuant to its obligations to protect the privacy and security of consumer information and CMS IT systems, CMS will not lift the suspensions and restore the Speridian Companies' ability to transact information with the Marketplaces or its ability to make its non-

[11] EDE Agreement at section X.m.; Web-Broker Agreement at section X.l.; ISA at section 15.
[12] EDE Agreement, section X.m. Web-Broker Agreement at section X.l.; ISA at section 15. "A QHP issuer direct enrollment technology provider that provides technology services or provides access to an information technology platform to a QHP issuer will be a downstream or delegated entity of the QHP issuer that participates or applies to participate as a direct enrollment entity." 45 C.F.R. § 155.20.

Marketplace website available until the security issues described above have been remedied or sufficiently mitigated to CMS's satisfaction. Further, during this temporary suspension and audit period, the Speridian Companies may not offer its non-Marketplace website for use by agents or brokers assisting consumers with Marketplace applications for, and enrollments in, insurance affordability programs or to enroll consumers in a QHP offered through any FFM, FF-Small Business Health Options Program (SHOP), SBM-FP, or SBM-FP-SHOP. Similarly, Speridian Companies, and any of their upstream DE partners will be unable to transact information with Marketplace systems through Speridian Companies' DE/EDE platforms during this suspension and audit period.

Personally Identifiable Information (PII) Protection and Record Retention Requirements

This suspension does not alter the Speridian Companies' legal obligation to protect and maintain the privacy and security of PII collected in connection with Marketplace applications and enrollments; that obligation remains in full force and effect until such PII is destroyed at the end of the required record retention period. Refer to 45 C.F.R. § 155.260(b) and your CMS Agreements for more information on the obligation to protect the privacy and security of, as well as the accompanying record retention requirements for, PII to which the Speridian Companies gained access to, collected, used, or disclosed in the course of facilitating enrollments through the FFMs, FF-SHOPs, SBM-FPs, and SBM-FP-SHOPs during the term of your CMS Agreements.

Please respond to directenrollment@cms.hhs.gov if you have any questions or would like to discuss this issue further.

Sincerely,

Jeffrey Grant
Deputy Director for Operations
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight

cc: Speridian Global Holdings LLC

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BENEFITALIGN, LLC, *et al.*, **Plaintiffs,** **v.** **CENTERS FOR MEDICARE & MEDICAID SERVICES, *et al.*,** **Defendants.**	**Civil Action No. 24-2494 (JEB)**

ORDER

Plaintiffs BenefitAlign, LLC and TrueCoverage, LLC are entities that assist consumers in searching for and enrolling in subsidized healthcare plans under the Affordable Care Act. When Defendant Centers for Medicare & Medicaid Services suspended Plaintiffs from access to the ACA marketplace, they brought this action, alleging violations of the Administrative Procedure Act and the Due-Process Clause of the Fifth Amendment. See ECF No. 8 (Am. Compl.) at 11–14. They then moved for a Temporary Restraining Order. See ECF No. 9 (Am. TRO Mot.). Having heard oral argument last Friday and believing that Plaintiffs have not shown a likelihood of success on the merits, the Court now denies the Motion.

I. Legal Standard

Motions for TROs and preliminary injunctions are governed by the same standards. Gomez v. Trump, 485 F. Supp. 3d 145, 168 (D.D.C. 2020). "A preliminary injunction is an extraordinary remedy never awarded as of right." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 24 (2008). "A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of

preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." Sherley v. Sebelius, 644 F.3d 388, 392 (D.C. Cir. 2011) (alterations in original) (quoting Winter, 555 U.S. at 20). "The moving party bears the burden of persuasion and must demonstrate, 'by a clear showing,' that the requested relief is warranted." Hospitality Staffing Solutions, LLC v. Reyes, 736 F. Supp. 2d 192, 197 (D.D.C. 2010) (quoting Chaplaincy of Full Gospel Churches v. England, 454 F.3d 290, 297 (D.C. Cir. 2006)). Our Circuit has held that a failure to demonstrate a likelihood of success on the merits alone is sufficient to defeat a preliminary-injunction motion. See Ark. Dairy Co-op Ass'n, Inc. v. U.S. Dep't of Agric., 573 F.3d 815, 832 (D.C. Cir. 2009).

II. Analysis

Defendants offer a number of bases on which the Court should deny the TRO, but it need look no further than success on the merits, the "first and most important factor" here. Aamer v. Obama, 742 F.3d 1023, 1038 (D.C. Cir. 2014). Beginning with Plaintiffs' APA count, the Court has serious questions about whether the suspension constitutes final agency action. "Where there is no final agency action, a plaintiff has no cause of action under the APA." Ramirez v. U.S. Immigr. & Customs Enf't, 310 F. Supp. 3d 7, 22 (D.D.C. 2018). It is well established that to be "final," an agency action must both "mark the consummation of the agency's decisionmaking process" and "be one by which rights or obligations have been determined, or from which legal consequences will flow." U.S. Army Corps of Eng'rs v. Hawkes Co., 578 U.S. 590, 597 (2016) (quoting Bennett v. Spear, 520 U.S. 154, 177–78 (1997)). Here, given that CMS is currently conducting an audit that will determine Plaintiffs' final status, it is unclear why the interim suspension could stand as the consummation of the agency's decisionmaking process.

In any event, the regulation guiding CMS's decision offers substantial discretion to the agency. Cf. Alon Refin. Krotz Springs, Inc. v. EPA, 936 F.3d 628, 655 (D.C. Cir. 2019) ("Some cases involve regulations that employ broad and open-ended terms like 'reasonable' . . . . Those kinds of terms afford agencies broad policy discretion, and courts allow an agency to reasonably exercise its discretion to choose among the options allowed by the text of the rule.") (cleaned up). A direct-enrollment entity may be suspended if CMS "discovers circumstances that pose unacceptable risk to the accuracy of the Exchange's eligibility determinations, Exchange operations, or Exchange information technology systems." 45 C.F.R. § 155.221(e). This language does not require proof that systems have been compromised, only "circumstances" that pose a "risk" that is "unacceptable" in the eyes of CMS. While Plaintiffs may understandably argue that Defendants cannot demonstrate foreign penetration of the Exchange, that is not the standard. CMS has put forward sufficient proof of a risk it deems unacceptable. See Water Quality Ins. Syndicate v. United States, 225 F. Supp. 3d 41, 67 (D.D.C. 2016) ("[D]eference must be given to the agency's factual conclusions, even if reasonable minds could reach different conclusions."); ECF No. 10-2 (Decl. of Keith Busby), ¶¶ 7 (explaining that supply-chain assessment of Plaintiffs' parent company revealed that "risk to CMS data and information systems was critical"), 11 (describing "strong evidence of prohibited foreign access" to Plaintiffs' "enrollment platforms"), 15 (CMS review of platform access logs turned up "three unexpected IP addresses indicating that the platforms had been accessed from outside of the United States").

As to Plaintiffs' due-process claim, even assuming that they have a property interest in their contracts with CMS, they neither sufficiently set forth what process they claim they should

have received before the suspension nor explain why the full audit procedure that is taking place before a final decision is not enough.

III. Conclusion

For the foregoing reasons, the Court ORDERS that:

1. Plaintiffs' [9] Amended TRO Motion is DENIED; and
2. The parties shall appear via Zoom for a status hearing on October 2, 2024, at 11:00 a.m.

/s/ *James E. Boasberg*
JAMES E. BOASBERG
United States District Judge

Date: September 30, 2024