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February 27, 2026

VIA ECF

The Honorable John G. Koeltl
United States District Court for the Southern District of New York
500 Pearl St # 1030
New York, NY 10007

Re: *The American Psychiatric Association et al v. EmblemHealth, Inc.*, et al, No. 1:25-cv-10783-JGK - Letter Motion for Leave to File Motion to Dismiss

Dear Judge Koeltl:

We write on behalf of Defendants EmblemHealth, Inc. and EmblemHealth Plan, Inc. (together, “EmblemHealth”) to respectfully request leave to file a motion to dismiss the Complaint filed by the American Psychiatric Association (“APA”), the New York State Psychiatric Association (“NYSPA,” and together with the APA, the “Association Plaintiffs”), and six individual Plan Member Plaintiffs (collectively, “Plaintiffs”) on December 30, 2025. Plaintiffs allege that EmblemHealth’s online provider directory contains inaccurate information about participating behavioral health providers, including incorrect contact details and outdated availability status, and that these alleged inaccuracies constitute false advertising and deceptive business practices under federal and state law. As set forth below, the Association Plaintiffs lack Article III and statutory standing under the Lanham Act, the sole basis for federal subject matter jurisdiction. Furthermore, the comprehensive Assurance of Discontinuance entered into between the New York Attorney General and EmblemHealth effective February 19, 2026 (the “2026 AOD”) has rendered the relief sought by Plaintiffs moot, or at a minimum, appropriate for court-ordered mediation.

I. The Association Plaintiffs Lack Standing Under the Lanham Act

The sole basis for this Court’s original jurisdiction is the Association Plaintiffs’ claims under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). However, under *Lexmark International, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014), “to come within the zone of interests in a suit for false advertising under § 1125(a), a plaintiff must allege an injury to a commercial interest in reputation or sales.” A plaintiff must be “engaged in ‘commerce within the control of Congress’ whose position in the marketplace has been damaged by [the defendant’s] false advertising.”

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The APA and NYSPA do not satisfy these requirements. Neither is a commercial enterprise with a position in the marketplace. They do not compete with EmblemHealth, sell goods or services in competition with health insurance products, or occupy any commercial position that could be “damaged” by EmblemHealth’s provider directory. Even assuming individual psychiatrist members could prove reputational harm, such injury to individual providers would not be imputed to the associations. *Lexmark* is explicit: a plaintiff must show “economic or reputational injury directly flowing from the deception wrought by the defendant’s advertising,” and “[t]hat showing is generally not made when the deception produces injuries to a fellow commercial actor that in turn affect the plaintiff.”

The Complaint itself underscores the absence of commercial standing. The Association Plaintiffs expressly disclaim “any legal or equitable monetary relief for themselves or their members” and seek only “equitable and injunctive relief.” They allege, at most, a generalized reputational concern on behalf of their members, which is the precise type of derivative, non-commercial injury that *Lexmark* forecloses.

II. The Court Can Determine as a Matter of Law That a Reasonable Consumer Would Not Have Been Deceived

The remaining state law claims in the Complaint rest on the premise that EmblemHealth’s directory deceived consumers, a premise that fails as a matter of law. Under both the Lanham Act and New York GBL §§ 349 and 350, “a court may determine as a matter of law that an allegedly deceptive advertisement would not have misled a reasonable consumer.” *Chufen Chen v. Dunkin’ Brands, Inc.*, 954 F.3d 492, 500 (2d Cir. 2020) (granting motion to dismiss).

Indeed, here, Plaintiffs’ acknowledge that the “Find a provider” tool includes a disclaimer stating that the information is self-reported and verified only at initial credentialing and every three years. A reasonable consumer viewing a database that discloses these limitations would understand it is not a warranty of current availability. Moreover, certain alleged “inaccuracies,” such as duplicate listings, are, as Plaintiffs concede, “immediately and obviously apparent to anyone who utilizes the provider directory.”¹ This Court can determine as a matter of law that the directory, accompanied by its disclaimers, would not deceive a reasonable consumer.

III. The Complaint Is Moot Considering the 2026 AOD

The New York Attorney General conducted a comprehensive, years-long investigation into the very same conduct alleged in the Complaint and secured relief through the 2026 AOD, effective February 19, 2026. The 2026 AOD addresses every category of harm and every form of relief that Plaintiffs seek.

¹ Dkt. 1 at ¶ 152.

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The 2026 AOD requires EmblemHealth to: (i) maintain an accurate Online Participating Provider Directory with specified data fields; (ii) outreach every credentialed behavioral health provider every ninety days to verify accuracy; (iii) correct its directory within two business days of learning of changes; (iv) respond to member inquiries within one business day; and (v) hold members harmless when inaccurate network information is provided. The 2026 AOD also requires quarterly secret shopper surveys, an independent monitor, and a detailed Behavioral Health Provider Recruitment and Retention Plan.

Critically, the 2026 AOD mandates restitution to all members who paid amounts in excess of in-network amounts for behavioral health services rendered by non-participating providers incorrectly listed as participating, including interest at twelve percent. EmblemHealth must also pay \$2.5 million in penalties, fees, and costs. The comprehensive nature of the 2026 AOD means that every form of injunctive, equitable, and monetary relief sought in the Complaint is already being provided under state regulatory authority.

IV. This Matter Does Not Belong in Federal Court

Because the Association Plaintiffs lack standing under the Lanham Act, the First and Second Causes of Action, the only federal claims, must be dismissed. This Court should decline to exercise supplemental jurisdiction over the remaining state-law claims. (common law unfair competition, GBL §§ 349 and 350, Insurance Law § 4226, and unjust enrichment).

However, to the extent the Court exercises supplemental jurisdiction, Defendants respectfully submit that this case is an ideal candidate for court-ordered mediation, while staying any discovery in this case based on the detailed remediation framework in the 2026 AOD. Given this comprehensive regulatory resolution, it would be a poor use of judicial resources to permit duplicative federal litigation when the alleged harm has been addressed, and relief secured. Mediation would allow the parties to explore efficiently any incremental relief Plaintiffs may seek.

V. Conclusion

For the foregoing reasons, Defendants respectfully request leave to file a motion to dismiss. The Association Plaintiffs lack Lanham Act standing, the consumer deception claims fail as a matter of law, and the 2026 AOD renders the claims moot. Without viable federal claims, this case does not belong in federal court, or alternatively, should proceed to mediation while staying discovery.

Respectfully submitted,

/s/ Amanda H. Freyre

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